

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
October 27, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, October 27, 2009, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Ray Davis, Robert Gibbons, Larry Ingalls, Karl D. Larson, Steve Beauch and Marty Hudson

Members Absent:

Staff Present: Gail Roberts, Deputy County Attorney
Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

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

DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in all three cases that we are going to be hearing and voting on tonight and is going to be represented by Mr. Clark Leming, the firm that I work for Sullivan, Donahoe and Ingalls has from time to time shared the same clients with Mr. Leming and his firm. Sullivan, Donahoe and Ingalls has not worked on any of the projects and I do not personally represent Mr. Leming's firm or any of the applicants before us tonight. Therefore, I am able to participate fairly, objectively and in the public interest on the cases before the board.

Mr. Gibbons: Any other? I mentioned before at the last hearing that I did talk to the owner and I did visit the property and I called the attorney to schedule that meeting.

Mr. Ackermann: I also did that too.

Mr. Ingalls: I also did that. Called the owner and visited the site.

Dr. Larson: I also visited the site and three residences around the site.

Mr. Gibbons: Okay, thank you very much. Now I ask the secretary to read the first case and the first case here is the Seven Lakes Homeowners Association case, which was deferred from last month to this month.

PUBLIC HEARINGS

1. **A09-3/2900213 - SEVEN LAKES HOMEOWNER'S ASSOCIATION** - Appeal of the Zoning Administrator's letter dated June 26, 2009 stating Stafford County has no authority to regulate a subdivision sign to reflect the approved name of the subdivision on Assessor's Parcel 27F-2-B1. The property is zoned A-1, Agricultural, located in the Christy Farms Subdivision.

Mrs. Musante: Case A09-3/2900213, Seven Lakes Homeowner's Association, appeal of the Zoning Administrator's letter dated June 26, 2009 stating Stafford County has no authority to regulate a subdivision sign to reflect the approved name of the subdivision on Assessor's Parcel 27F-2-B1. The property is zoned A-1, Agricultural, located in the Christy Farms Subdivision. You have the application, the owner's consent form, the Zoning Administrator's response dated June 26, 2009, letter date May 27, 2009 to the Zoning Administrator, letter dated May 13, 2009 to the Zoning Administrator, Resolution R09-313, proposed ordinance O09-53, photo of the sign, tax map and the vicinity map. A sign permit application was submitted to Stafford County on October 9, 2008 to construct a subdivision sign with the language on the application: "wording on sign – Seven Lakes Estates". The zoning review was approved meeting the requirements of a subdivision sign and the proposed location on December 1, 2008. Applicant for this permit was Art & Sign F/X Inc. and owner listed on application was Seven Lakes Estates Homeowners Association. Permit was issued on February 10, 2009 and building plan revision for the foundation approved March 12, 2009. The Zoning Ordinance regulates the size, placement location and identification of the subdivision. August 18, 2009 the Board of Supervisors adopted Resolution R09-313 to refer an amendment of the Zoning Ordinance to the Planning Commission regarding Stafford County Code, Section 28-25, "Definition of specific terms" by proposed Ordinance O09-53. This was a discussion item at the Planning Commission work session on September 2, 2009. Staff noted that the amendment would make it very difficult to post another name to the sign; a variance of the Zoning Ordinance definition would be required. Additionally, the amendment would restrict the content on such a sign. Staff has concerns that regulating the content of a sign may be subject to legal challenges. Staff is working on an amendment to the subdivision ordinance as an alternate to the proposed Ordinance O09-53.

Mr. Gibbons: Let me ask you a technical question, but the Board did send it to the Planning Commission.

Mrs. Musante: Yes, they did.

Mr. Gibbons: And so the staff is going to the Planning Commission to offer an alternative. Is that what you are stating?

Mrs. Musante: That is my understanding.

Mr. Gibbons: Okay. So is the council here tonight? If he wants to stand up, that's alright.

Mr. Leming: I think the whole Seven Lakes Board is here, is it on?

Mr. Gibbons: You want to all stand up then so we can recognize you?

Mr. Leming: Four of the five board members.

Mr. Gibbons: Thank you very much.

Mr. Leming: I do not know who the fifth one was. Good evening Mr. Chairman and members of the Board of Zoning Appeals. My name is Clark Leming and I am here on behalf of the applicant. The

*Stafford County Board of Zoning Appeals
October 27, 2009*

simple question pertaining to this applicant is whether or not the county has authority under its present ordinance, not what is being proposed here, to regulate the content of subdivision signs. Or even more narrowly, whether a subdivision sign, subdivision that is approved by the county with one name, can unilaterally change its name for its signage to a name that the current ordinance does not permit. I will tell you what all that means but first let me comment on the proposed amendment. It is our position, and I will go into somewhat more detail in a moment, that the current ordinance is sufficient for the county to regulate the content of a subdivision sign. It is fine with us if the county changes it, it makes it even stronger but I don't think that is going to apply to the Seven Lakes situation because the permit has already been issued under an existing ordinance. It is my belief that the only opportunity the Seven Lakes has to correct this is through the present appeal. Most of you are familiar with the Seven Lakes subdivision, it was approved in 1989 and is now fully built out. An adjacent subdivision plan was approved for a development not related to Seven Lakes. Not connected by covenant, association or anything but a connecting street in the late 1990's called Christy Farms. That is the name that was on the approved subdivision plans, that is the approved subdivision name. I will tell you in a minute about how that county makes those decisions. The last plat for Christy Farms was recorded in 2004. In 2000, Christy Farms Homeowners Association (HOA) changed it's corporate name and filed something with the State Corporation Commission, new articles of incorporation, changed its name to Seven Lakes Estates HOA. The County as Ms. Hudson, I am sorry, I think Melody did this.

Mr. Gibbons: She does have a name sir. It's not what's her name, it is Melody.

Mr. Leming: I am sorry, Melody. I said Melody, didn't I, as she had indicated, the application was made for a permit and a permit for the sign was issued on February 10. Now when the sign went up, Seven Lakes HOA made an inquiry to see how this could have happened. They objected to the use of the Seven Lakes name in any respect. It causes confusion, it is the name of their subdivision and they expressed their immediate objection to that. This led to the June 26 determination by Ms. Hudson. Now the ordinances that are presently in place at Section 28-123 of the Zoning Ordinance, there is a list of the signs that are permitted in the A-1 Zoning District and this is an A-1 Zoning District. Number four (4) on the list is subdivision signs, so I reference this ordinance simply to make the point that a subdivision sign is something that is permitted under the Zoning Ordinance in an A-1 district. Now Subdivision sign is defined in the Zoning Ordinance, Section 28-25, which are the definitions, Sign, Subdivision, is "a sign sixty (60) square feet or less in aggregate area identifying a subdivision and located thereon at the entrance to such subdivision. Said sign shall be no greater in height than six (6) feet and shall be set back from any right-of-way for proper sight distance". The important provision there, I think, is identifying a subdivision, presumably a subdivision that has been approved by the County and has a name and in this case the name was Christy Farms. Now the Subdivision Ordinance, when a preliminary subdivision plan is approved, the subdivision is named and the Subdivision Ordinance has specific provisions that pertain to the naming of a subdivisions. The naming of a subdivision shall be accepted with the approval of a preliminary subdivision plan or minor subdivision plan or family subdivision plat. Of course, in this case it was a preliminary plan. The name of a new section of a subdivision not shown on approved preliminary plan shall be accepted, this is not particularly relevant in our section, subsection C is the important part. A subdivision name that has already been accepted, pursuant to subdivision A above, that is in the context of a preliminary plan shall not be used for another subdivision. The four (4) cardinal points of the compass may be used, north, south, east and west, maybe be used as a prefix or suffix, thus not duplicating the name of the subdivision. You could have, I guess, a North Seven Lakes or a South Seven Lakes, but not a Seven Lakes Estates. That was not a name that the county could have approved for this subdivision. Ineligible under the ordinance. Now the Zoning Ordinance says the sign, the subdivision sign in question that we are talking about must identify a subdivision. A subdivision, the subdivision in this case that was approved by this county, the legal name of this subdivision is Christy Farms, not Seven

Stafford County Board of Zoning Appeals
October 27, 2009

Lakes Estates. They object to the use of that name, they have a right to object to the use of that name and they want the sign to read Christy Farms, which is the name of the subdivision that is adjacent to Seven Lakes. Now I have copies of these section of the ordinance. I also have the portion of the ordinance that just says that subdivision signs are a permitted sign in an A-1 district. Now, the points that I think need to be made are these. How can the County permit a sign under one portion of its code that is prohibited under another section, presumably this was approved, there was a building permit issued but it was not a name that could have been used. It was not a legal subdivision name. It was not the name of the subdivision that this sign advertises. The county said it can regulate subdivision names even prohibit names under the code section that I just read to you , and it prohibit names but then in the context of this appeal, it says it cannot control the name utilized on this sign that is permitted by the County.

Mr. Gibbons: I want to just interrupt you just a minute, our seventh member is present tonight and we now have a full board with Mr. Hudson.

Mr. Hudson: Yeah, I apologize. I had to drive from West Virginia to here.

Mr. Leming: We appreciate you being here. I have just handed out some sections of the Zoning and Subdivision Ordinance and the issue pertains to the Seven Lakes subdivision and they County permit of a sign for an adjacent subdivision that was given the name Christy Farms through the preliminary subdivision plan and approval process. The sign that has been posted says Seven Lakes Estates, the Seven Lakes HOA, which is not connected to Seven Lakes Estates or Christy Farms, the subdivisions are not tied together in any respect whatsoever, objects to the use of their name at the entrance of Christy Farms. We think it is pretty obvious why this was done, it was done for advertising purposes to help the sales in Christy Farms. Associating that we the subdivision, a very successful subdivision, Seven Lakes. The County says that it cannot regulate the content of a subdivision sign but it has an ordinance saying what a subdivision can be called. It has a definition of subdivision sign that says, it has to be a sign for a subdivision. A subdivision is defined under the ordinance, Christy Farms is a subdivision in Stafford County, Seven Lakes Estates is not a subdivision in Stafford County. The sign does not advertise a subdivision. Begs the question, what could you put on such a sign? Could you say Wal-Mart Estates, could you say Eat At Moe's, what can go on a subdivision sign in Stafford County given the ordinance that is already in place. Even if you look at the Zoning Ordinance alone without pulling in the regulation of the content or the naming of a subdivision from the Subdivision Ordinance, this sign simply fails to identify a subdivision. There is no subdivision by this name in Stafford County. The County says that they have to amend the ordinance to fix it and even then they have concerns about free speech, this is commercial speech. That is simply inaccurate. Commercial messages that mislead can be suppressed. That is not an opinion, this is not political speech, this is a subdivision sign. Subdivision signs are regulated by ordinance all over the country. The County's interest here and this simply goes to the issue of whether you need another ordinance, the county's interest in public safety clearly outweighs any interest in first amendment. Nobody's free speech is prohibited here, we simply want the accurate name of the subdivision on the sign. They can put anything else on the sign that the county will let them put on it but they have to have the right name of the subdivision. So that is our position, the current ordinance, subdivision ordinance, the ordinance tells you what you can call a subdivision. This subdivision was named on the preliminary subdivision plan, on the final plats, in fact, we came across some later documents in the county files. As late as this year, Christy Farms, the Christy Farms subdivision was still petitioning VDOT to accept their roads, not Seven Lakes Estates, Christy Farms. So they are still using the subdivision names to get other kinds of approvals but then want a sign in front of their subdivision that says Seven Lakes Estates. That cannot be what this ordinance requires, the subdivision ordinance says what you can name a subdivision, they had no right, they have no right to name the subdivision Seven Lakes Estates. The Zoning Ordinance says what kind of signs you can put up. It defines

Stafford County Board of Zoning Appeals
October 27, 2009

subdivision sign, it has to be the name of a subdivision, it has to advertise that subdivision. There is no subdivision called Seven Lakes Estates in Stafford County. Seven Lakes Home Owners Association wants the correct name on the sign, they do not want their name used and they want the county to enforce the ordinance that it currently has and they believe that this ordinance is enforceable. I would be happy to answer any questions you may have.

Mr. Gibbons: Any Questions?

Mr. Hudson: Under this ordinance, if I built these properties down to the right of Aquia Harbour under this interpretation, taking Aquia Harbour's name that they use... What would prohibit me from doing that?

Mr. Leming: I think this ordinance would prohibit you from doing this.

Mr. Hudson: That is my point.

Mr. Leming: You mean, somebody else is doing it.

Mr. Hudson: Yeah.

Mr. Leming: You mean something outside of Aquia Harbour?

Mr. Hudson: Yeah, if I went down there on the right where they were building and said, Hey, I am a builder and I want to name this Aquia Harbour.

Mr. Leming: The Subdivision Ordinance specifically says that the only thing you can affix to a particular subdivision name is a direction. You could call it, presumably Aquia North or Aquia South or something like that. The name Aquia Harbour could not be used anywhere else. I know there is a subdivision further out at the end of Decatur Road called Aquia Overlook. It may be that that is sufficiently different from Aquia Harbour that that is okay. Aquia Harbour and Aquia Overlook. Now if there is another subdivision in the Widewater area using the name Aquia Harbour, my position would be that that is prohibited under the ordinance.

Mr. Hudson: No, that is not what I am saying. That would not be rational for that to happen.

Mr. Ackermann: May I ask a question? So the ordinance we have says it must be a sign that identifies a subdivision and your extending that to say that the only way to identify a subdivision is by the subdivision name?

Mr. Leming: Well, I think it is not a subdivision otherwise.

Mr. Ackermann: I mean the sign identifies a subdivision and I don't know exactly what the Zoning Administrator was thinking but one could maybe argue that there maybe more than one way to identify a subdivision.

Mr. Leming: The only one we are talking about it signage.

Mr. Ackermann: I am talking signage also. But you are saying that identifying a subdivision... you are saying that that the ordinance says the only way to identify a subdivision is by the name of the

Stafford County Board of Zoning Appeals
October 27, 2009

subdivision, that is the argument you are making? And that is why we do not need another ordinance even though our current ordinance does not say it has to be identified by the name of the subdivision.

Mr. Leming: The current ordinance says that you can have subdivision sign that, in my view, gives the location of a subdivision.

Mr. Ackermann: It is just identifying a subdivision?

Mr. Leming: Right, and what I believe that means is a subdivision that has been appropriately approved through Stafford County Code.

Me. Ackermann: I understand, that is your interpretation. Thank you.

Dr. Larson: I just have a real quick question, you mentioned earlier Christy Farms had used their Christy Farms subdivision name for roads?

Mr. Leming: Yes.

Dr. Larson: What was the date on that?

Mr. Leming: This year, 2009. They were petitioning for the last of the roads to come in.

Dr. Larson: Do you have a month on that?

Mr. Leming: My recollection is March, I do not have that information with me.

Dr. Larson: So sometime in the spring?

Mr. Leming: Yes. So about the same time the subdivision sign was being considered by the county.

Mr. Gibbons: Mr. Ingalls?

Mr. Ingalls: Mr. Leming, if I am understanding you right, if the sign would have said Seven Lakes North or North Seven Lakes, either one, that would have been appropriate?

Mr. Leming: I think what I would be telling you under those circumstances is not quite because it still does not identify an approved subdivision in Stafford County. We still have the definition of what a subdivision sign is. In the discussion I was having with Mr. Ackermann, the ordinance, the definition of a subdivision sign is sign of a subdivision, that is what it says. I do not think you can have a subdivision sign that advertises something that is not a subdivision. Now, I think it goes beyond location, the sign actually identifies the name of the subdivision. So, I think it has to be a name that is approved. Now if they had come in from scratch, if under the preliminary subdivision plan, they had asked for the approval of subdivision to the south of Seven Lakes, if they had asked for the for the subdivision name Seven Lakes South then I think that would have been permissible under the ordinance. But they did not, the name that is approved on the subdivision is Christy Farms. So I do not think it would have been as simple as putting up a sign Seven Lakes South. They could have only done that even, in my view, if they had that name approved on the preliminary plan, which they could have.

Mr. Ingalls: Under the Zoning Ordinance, if I heard you correctly, the Zoning Ordinance says a sign must

Stafford County Board of Zoning Appeals
October 27, 2009

identify a subdivision, not the subdivision. It says a subdivision.

Mr. Leming: Well, the issue is how you interpret the word subdivision. This is a Zoning Ordinance, what does subdivision mean under the Zoning Ordinance? Does it mean any group of houses together, no, not in my view. I think the name subdivision is used in the Subdivision Ordinance has to mean a subdivision approved under the ordinance. Why would the Zoning Ordinance be talking about any other kind of subdivision other than one that had been approved under the ordinance. So I don't think the term could be used loosely in the context of the subdivision ordinance, I think it has to mean a subdivision approved under the ordinance.

Mr. Ingalls: Are you aware of any other situations where a subdivision sign may say something different than the recorded plat name?

Mr. Leming: I am personally not.

Mr. Ingalls: Are you aware of any current zoning ordinance that tells somebody how to change the name of a subdivision?

Mr. Leming: I think that what you would have to do to change the name...

Mr. Ingalls: Are you aware of any ordinance?

Mr. Leming: No, I do not think an ordinance sections covers that.

Mr. Ingalls: Oh, okay. So there is no ordinance that says they are trying to adopt one the maybe gives a little clearer... If you want to change it.

Mr. Leming: No.

Mr. Ingalls: I would have thought in your business and in my business, somebody calls in and wants a survey in Seven Lakes Estates, I go look up Seven Lakes Estates and I cannot find.

Mr. Leming: Right, not there.

Mr. Ingalls: And then I finally figure out what they are taking about and to be truthful, that is not a uncommon thing. I can assure there is probably more than one or two subdivision signs that identify a group of houses as something other than the plat.

Mr. Leming: You may be absolutely correct.

Mr. Ingalls: I probably am. There is no mechanism for them to have to done it, other than they did it. Which I think is the current policy. We know that builders and developers for whatever reason, I don't like what happened in this subdivision name, so I don't want to be associated with that name, I want to be associated with a different name. They change it for economic reasons normally. So, it does happen. I feel like I don't know of anything in reading what the county said that there is no ordinance that says that I can't do it yet. You go into the subdivision ordinance and I agree with you, a lot of what you say in the subdivision ordinance is certainly true but how do we interpret the zoning ordinance.

Mr. Leming: I think the subdivision ordinance is something you can use to assist you in interpreting the

*Stafford County Board of Zoning Appeals
October 27, 2009*

zoning ordinance. The zoning ordinance says subdivision sign. What is a subdivision and where do you look to find out what a subdivision is in Stafford County? You look in the subdivision ordinance. Where do you look to figure out what a subdivision sign can say, go to the subdivision ordinance because that's where it tells you what you can name a subdivision. The fact that there are other examples of this that have not been objected to, I don't think prohibits Seven Lakes Home Owners Association from coming forward and saying we want you to look at this ordinance and we think this is an ample opportunity under this ordinance to require that Christy Farms use the subdivision name that approved for them. What it means for those other subdivisions that are using names other than what were approved for, I don't know but I don't think the fact that it is a current policy means that the County can not look at the current ordinance and say wait a minute, this actually cannot be done. This is a subdivision sign, here is what a subdivision is under the ordinance, how else would you define? Where else would you go to look for a definition of subdivision? This is clearly a name that they could not use under related County ordinances. So where else would you go to find out what a subdivision is or how it came to be named, in the subdivision ordinance? I think that is material to your inquiry as to what a subdivision is and what a subdivision sign can say in Stafford County.

Mr. Gibbons: Any questions?

Mr. Hudson: I am a little bit troubled, the one point you made troubles me a little bit, I would like to know if County staff has any answer to... I do not see that as quite appropriate that they come in and say my name is Marty Hudson and I am going to apply for something in Mr. Gibbons name because Mr. Gibbons might have a better name than me. I am troubled that if you make an inference to the county as to who you are and then because of commercial reasons, lets be honest, its commercial reasons, I think I was sitting on this board when we approved Seven Lakes. I have been there and it is a beautiful place and to me it is economic and commercial reasons why someone would want to use that name. I don't know who's who in this room and don't really care, I know what I know and I think I was on this board when we approved this. I am troubled as to how someone can make application to the County in one name and exercise the use of another name. I don't that is what is mean of any ordinance and sometimes I think the laws are written or regulations are written to be interpreted in a practical matter. Why things are being used they way they are used I would like to know if the county and Rachel if anyone else has anything else to say about making an application in one name and use another name. That troubles me somewhat.

Mr. Leming: It certainly is confusing. I think that is a good point, let me add one other factual matter here. Although this was done before the sign permit was issued, all of their plats, the last recorded in 2004, were in the name of Christy Farms. The HOA changed its name in 2000, four years before the last plat saying Christy Farms was recorded. There has been a history of the use of the Christy Farms name when it was convenient or necessary to do so in accordance with having their subdivision plans approved but for marketing purposes they switched over to Seven Lakes Estates, apparently as early or tried to do it as early as 2000 because that is when they changed their HOA name.

Mr. Hudson: I would ask the question of the county if anyone was familiar or this had been dealt with in the County.

Ms. Hudson: That is a very good question. I just want to say in reviewing sign permits we enforce the zoning ordinance only. We do not enforce, we do not interpret the subdivision ordinance and we do not enforce the subdivision ordinance. That is what the Director of the Planning Department does. We have several subdivisions that have renamed their... They have a subdivision sign that says a different name than what is on the records at the Commissioner's office and what is on the original preliminary plan.

***Stafford County Board of Zoning Appeals
October 27, 2009***

Mr. Hudson: That does not necessarily make it right.

Ms. Hudson: No, and I am not judging if it is right or wrong. I am just trying to explain to you that our job is to enforce the zoning ordinance not the subdivision ordinance. We do look into the subdivision ordinance when we are reviewing permits or determinations.

Mr. Hudson: When it is coming in from Christy and everything has been in that line and you don't compare.

Ms. Hudson: We have not in the past. With the new proposal we will have to do that.

Mr. Ackermann: As a practical matter, this is not necessarily common practice, its numerous practice. There are a number of occurrences of this practices that go on in some ways?

Ms. Hudson: Yes. We do subdivision signs frequently.

Mr. Ackermann: Okay, and you do not check to see if the name is the same as the name of the subdivision.

Ms. Hudson: No.

Mr. Ackermann: Thank you.

Mr. Ingalls: Ms. Hudson, you are aware then that there are other subdivisions that erected a sign that is different then the platted name and the County has done nothing about it because there is no mechanism there for you to do anything about it.

Ms. Hudson: Not in the zoning ordinance.

Mr. Ingalls: Okay, thank you.

Mr. Gibbons: Any other questions?

Mr. Hudson: When you say not in the zoning ordinance, you are referring to the interpretation of the Administrator.

Ms. Hudson: I am referring to the definition of subdivision sign.

Ms. Gibbons: Could I ask you a quick question Rachel? I think what bothers me the most about this is one of the hardest tasks I ever had to do in the County was when I was Chairman of the Planning Commission. We had to name all of the streets in the County and boy that was an emotional issue when we had a young lady of 94 years of age down there off of Hope Road and she said by the time you get done naming Hope Road will be No Hope Road but we finally got it name Hope Road. The biggest concern that I have got and I have been to several fire departments in the county, the CAD system, is the reason... It disturbs me that we are not tying the zoning to the subdivision is that when you dispatch and you take it into VDOT, which they did this spring, then the CAD system carries Christy Farms as far as the dispatcher goes. It is public safety that I am concerned about. Not linking both ordinances to make sure we are using a common language. I think it is very disturbing and you probably would not realize that until your laying there at two or three o'clock in the morning having a stroke and the poor ambulance

***Stafford County Board of Zoning Appeals
October 27, 2009***

driver is trying to find this subdivision when the street block name says Christy Farms. That is really troublesome and we went out of our way to make sure that Stafford had one of the finest CAD systems, the best communication system in the state right now and we dispatch very accurately. But to bring something in the system and to call it something else on the street. Especially with Fire and Rescue, I think that is something we cannot ignore.

Ms. Hudson: I think that is why the request came down from the Board of Supervisors to the Planning Commission to make changes and to make sure this does not happen.

Mr. Gibbons: Alright Ma'am. Are you all done counselor? We are all done with the questions.

Mr. Leming: Unless there are other questions, our position is simply that Seven Lakes does not have the opportunity to take advantage of any new ordinance. We are stuck with the situation as it is right now and we think that the definition of subdivision sign gives proper rise to the issue of what a subdivision is. If you are trying to figure out what a subdivision is in the context of the zoning ordinance, how can you say a subdivision is something other than one that has been appropriately and properly approved by the county? What other definition of subdivision could you possibly insert in that definition? So that, from our standpoint, I think what this turns on what we have asked you to consider in this particular case. Hopefully, this will not be an issue again. I would like to defer to Mr. Scharpenberg for just a minute to see if he would like to add anything just from their perspective.

Hank Scharpenberg: My name is Hank Scharpenberg and I am the president of Seven Lakes HOA. Mr. Chairman and members of the Board of Zoning Appeals, county ordinances exist to provide structure to a community, reduce confusion for first responders when every minute counts and to regulate the behavior of its citizens. Those ordinances are only effective if they are enforced and followed. In the case of the sign permit that was granted to the Christy Farms Subdivision, allowing that subdivision to identify itself as Seven lakes Estates, the existing County Ordinance was not followed. If it were, I would not be standing here to ask you to overturn the determination of the Zoning Administrator. This ruling held by the County lacks the authority to regulate the content of a privately owned by County approved sign. Rather than ask my HOA to rename Seven Lakes to avoid the confusion that the County's determination has created, we request that the county follow it's own ordinances. While we can sympathize with those Christy Farms residents who were erroneously and in some cases deceptively informed that they were purchasing a home in Seven Lakes, the remedy should not lead to a name change whereby Sheriff's Deputies are uncertain of there patrol areas. Fire and Emergency Medical Service personnel are not sure in which response area a potential emergency may occur. County tax maps and deeds do not contain references to Seven lakes Estates, yet in The Free Lance Star edition dated 17 October 2009, the newspaper listed a property in Seven Lakes Estates, a community that does not legally exist, that was sold to a new owner who probably does not appreciate what has transpired. In subsequent additions, you will find references to Christy Farms. So I guess it depends what day of the week the name will be certain. To eliminate situations such as I have just described, to make it absolutely clear to Sheriff, Fire and EMS personnel where a potential first responder emergency may be located and to reaffirm confidence in county citizens that Stafford will enforce it's own rules and regulations, we ask you to overturn the decision by the Zoning Administrator and grant our appeal. I am prepared to answer any question you might have.

Mr. Gibbons: Any questions? Okay, thank you Mr. Scharpenberg.

Mr. Leming: Thank you all.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Gibbons: Now is there anybody here, I hate to go out before I go to the public, is there anybody here from the other subdivision?

Scott Huber: Good Evening, my name is Scott Huber and I am the president of the Seven Lakes Estates HOA.

Mr. Gibbons: Your last name again sir?

Mr. Huber: Huber h-u-b-e-r. I guess, from an argument perspective tonight, we did read the ordinance and we do feel that the ordinance does not say that it must be the subdivision legal name, so we do not think that we are in violation. I can shed some light on why Christy Farms may have been turned into VDOT, and the answer to that is Andrew Garrett, as Garrett Development, was the one who currently owned the roads and he was handling any requests to get VDOT approval. So, what he submitted to the county, that's on Andrew Garrett, I don't know why he marketed the neighborhood as Seven Lakes Estates and then represents it as Christy Farms to the County. I do have here as he suggested, everybody in the neighborhood who bought in this subdivision was told that the name was Seven Lakes Estates and I brought the marketing material from it. The MLS listing, listed the subdivision as Seven Lakes Estates and this is from 2002. So I don't know if you guys are interested in seeing this. While it is not our communities intent to cause any kind of confusion, everyone in the neighborhood bought into a subdivision that was named Seven Lakes Estates. From a homeowners perspective that was what made sense to be on the sign.

Mr. Gibbons: Let me ask you one question. I understand about the marketing but your statement is saying that you bought a home in that subdivision but there is no subdivision by that name? It is a play on words is what you are saying?

Mr. Huber: I guess it was changed in 2000 before any homes or lots were ever sold, or any lots were sold. So, to anyone who bought into there, they bought into what they believed was the Seven Lakes Estates subdivision.

Mr. Gibbons: And that was from the owner Mr. Garrett?

Mr. Huber: Yes.

Mr. Gibbons: Okay.

Mr. Ackermann: And that is what is on this MLS listing that you gave us, the name of the subdivision is identified as Seven Lakes Estates.

Mr. Huber: Right.

Mr. Davis: What is listed on your deed?

Mr. Huber: I don't know the answer to that question. I did not bring a copy of that.

Mr. Gibbons: Any other questions?

Dr. Larson: I have a question Mr. Chairman, Mr. Huber, in this letter from Jennifer Dunn, your community manager. She says in her letter that you applied for a subdivision sign, can you confirm that?

Stafford County Board of Zoning Appeals
October 27, 2009

Subdivision sign?

Mr. Huber: I did not handle the application, so assume we applied for whatever zoning was required to put the sign in. I personally did not fill it out, I believe Art & Sign handled the application.

Dr. Larson: Okay.

Mr. Davis: The application is in the packet.

Mr. Huber: I did not see it.

Mr. Gibbons: Thank you. Did you get your answer doctor?

Dr. Larson: No, what does it say.

Mr. Davis: Seven Lake Estates.

Dr. Larson: That is listed as the subdivision... Do they say they are applying for a subdivision sign?

Mr. Ackermann: Yes.

Dr. Larson: Okay, that is what I was after.

Mr. Hudson: Obviously, it is no reflection on you or the people who live there. I remember going through a great deal with Seven Lakes and that becoming a prime beautiful development in this county and I was on the Board then. I guess the homeowners that bought into that and I have a huge amount of sympathy for that part of it. I understand the dilemma that someone sold the house with a more popular name to raise the value up. I do remember Seven Lakes being a showcase community for Stafford County when it was built. My feelings is there is nothing personal but it is personal with me between builders that mislead people, it is not personal with you or the people that live there and bought your homes and want to raise your families in Stafford County. I clearly understand that.

Mr. Gibbons: We want to thank you very much and if we have further questions sir, I will call you back.

Mr. Huber: Okay.

Mr. Gibbons: Alright and thank you very much. So, Rachel, you are next.

Ms. Hudson: Yes sir.

Mr. Gibbons: I have one quick question before you start, when the application went forward this year to take the remaining streets into the subdivision, that had to be approved by the Board of Supervisors because that is the only way it can get to VDOT. Is that correct?

Ms. Hudson: I have no idea.

Mr. Gibbons: Is that correct Gail? I think so.

Dr. Larson: That's correct.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Gibbons: So, at that particular time this year that the subdivision was named Christy Farms and when you go forward into VDOT, they take it into the system as Christy Farm. I guess I can't get off this one thing, when you change the CAD system in the state, in the county and in the 911 system, that is about as serious as you can get. Yet we are saying we can't tie one ordinance to another, we don't review one to the other. You only review what is under the zoning? Not the subdivision, so in other words, when we call something a name, we don't go back and make sure that we don't violate what the post office agreed to.

Ms. Hudson: I can honestly say no.

Mr. Gibbons: Alright, well when the applications come in and the applicant filed. The HOA asked for a subdivision sign, that is what they said right?

Ms. Hudson: I believe that was on the application, a sign company.

Dr. Larson: Yes Mr. Chairman, that's checked on the application.

Mr. Gibbons: I seen that but I just wanted to...

Ms. Hudson: The sign company are the ones that made application, they probably had the name of the subdivision on the owner. Do you have it Melody, in front of you?

Mr. Gibbons: Go ahead.

Mrs. Musante: The application came in the subdivision of Seven Lakes Estates, applied for by Art & Sign, description of work was entrance monument, free standing subdivision sign, proposed verbage Seven Lakes Estates.

Mr. Gibbons: Okay. So your sticking by your guns and you have done well. Your saying there is nothing in your ordinance that says they restrict anybody...

Ms. Hudson: The content.

Mr. Gibbons: Putting any of the content on any sign?

Ms. Hudson: Yes.

Mr. Gibbons: Okay.

Mr. Ackermann: In the sign permit, they have to put what the wording would be.

Ms. Hudson: On the application?

Mr. Ackermann: On the application.

Ms. Hudson: Yes.

Mr. Ackermann: And that would have to be approved with a sign permit.

Stafford County Board of Zoning Appeals
October 27, 2009

Ms. Hudson: The zoning division of Planning and Zoning sign off on all sign permits.

Mr. Ackermann: Right, I mean we wouldn't... You could not put whatever you want on there, it has to be approved when the permit is given. I guess that it, I mean if they change the wording on a sign and it wasn't the same as what was approved, then there would be an issue.

Ms. Hudson: I believe that the application contains the drawing with the wording.

Mr. Ackermann: It does contain the drawing and I am just saying once this is approved then that is the wording that is fixed for that. You cannot change it after this approved without doing through another approval process.

Ms. Hudson: No, that is not so. If you have a subdivision sign and you change the name of your subdivision, whether it is legally done through the county or not, you do not need another permit.

Mr. Ackermann: I do not need another permit to change my sign?

Ms. Hudson: No.

Mr. Ackermann: So, the wording where it says details of proposed sign, the wording sections is irrelevant? It does not matter what we put on the application, we can put whatever we want on the sign?

Ms. Hudson: Well, you are not going to say Jim's Barbeque Place.

Mr. Ackermann: I am trying to identify what the law is, what the ordinances are and also how we follow those ordinances. I am ignorant to most of these things.

Dr. Larson: Quick question. Rachel, just to confirm, when you get an application for a subdivision sign, do you check to see if that is the right name of the subdivision or not.

Ms. Hudson: No.

Dr. Larson: You don't?

Ms. Hudson: No.

Mr. Gibbons: Any other questions?

Mr. Ingalls: So, it is your position that the sign meets the current zoning ordinance?

Ms. Hudson: Yes.

Mr. Ingalls: Thank you.

Mr. Hudson: You are expressing the County Administrator's position?

Mr. Gibbons: No. That is her position.

Ms. Hudson: That is the Zoning Administrator's position.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Hudson: That is what I meant.

Mr. Gibbons: Any other questions?

Ms. Hudson: Thank you.

Mr. Gibbons: Thank you Rachel. Now I will open the public hearing, go ahead sir.

Terrance Gleason: Thank you, my name is Terrance Gleason and I live in Stafford County and in Seven Lakes. Not to be confused with Christy Estates. I do not want to beat a dead horse here but I just made a few notes. I noted that presumably the ordinance allows a sign to identify a subdivision, I think I heard that and I think I wrote this down correctly. It is inconceivable to me that the name that would be put on that sign would not be the subdivision. I think unless I am missing something really obvious here, if you put in an application for a sign for a subdivision, it should say the name of the subdivision. It would not say Terry Gleason's house. The next thing is, it was mentioned during the discussion that there are several other subdivisions in the County that might have the wrong sign up as well and that it turned to policy. Well that wasn't policy, that was practice, if I am not mistaken as I would interpret policy or practice. So what has been done before is almost like it does not matter. On the expense of this thing, I share the concern with the people who live there, who bought a house thinking it was part of Seven Lakes. They thought that why was it called Seven Lakes Estates, so I have a disconnect there. But the remedy that they would have is with the developer, not with Seven Lakes or anyone here, I think. If they have been misled on where they are buying there house then we should take that up separately. We have a pride of community, Seven Lakes HOA as I am sure a lot of communities share the pride of their communities. As I drove here tonight, I drove through Augustine, I went by Hunter's Pond and The Glens. Suppose we decide to change our sign to read Hunter's Pond at The Glens of Augustine at Seven Lakes.

Mr. Gibbons: You have to talk to us.

Mr. Gleason: I am sorry. Suppose we want to change our name to Hunter's Pond at The Glenn's of Augustine at Seven Lakes. I think Sheriff Jett would have a real problem with that and lastly and I will reiterate that if one persons life is put in peril because an emergency responder goes to the wrong spot, then we have not done our job convincing you folks tonight that this is the wrong situation.

Mr. Gibbons: Thank you sir. Anybody else would like to address the Board?

Tammy Burkhardt: Good Evening, my name is Tammy Burkhardt, I live in Stafford Lakes and I have lived there for twelve years and what I have heard tonight is confusion. It is confusion made because a developer was allowed to advertise it as Christy Farms, Christy Estates and then Seven Lakes Estates, purely for marketing reasons. My question to the Board of Supervisors is why is this allowed to be done, because at any whim any developer is allowed to change the name. I feel for Mr. Huber, that bought under the contention that he was buying in Seven Lakes Estates. I personally asked Andy Garrett, the developer at the time, why he changed his names from Christy Farms to Christy Estates to Seven Lakes Estates and he told me purely marketing. No one would buy under Christy Farms and when he changed it to Seven Lakes Estates, they came and bought. I have here like Mr. Hubert had, a thing that was advertised for Seven Lakes. It said Seven Lakes consists of a 180 sites plus 238 acres with sixty-one (61) estate site on Christy Farm. So it was originally advertised as Christy Farms and I happen to be the welcome lady in Seven Lakes for the past ten years and the confusion consists among the two communities. We understand that it has to be there for an emergency through way, our streets, but the confusion don't have to be there. For the past six years, when I welcome a home, I have to explain to them when they ask me if Seven Lakes Estates a part of Seven Lakes and I have to explain, no it is not,

*Stafford County Board of Zoning Appeals
October 27, 2009*

we are separate neighborhood and separate HOA. When it was advertised as Seven Lakes Estates, Mr. Garrett went as far as to tell them our website they could go to and they could attend our holiday parties. None of which was true, so it was false advertising. I stand before you and I just don't understand why the one hand and the other hand are not communicating because a developer is allowed to change a subdivision name three different times for the sake of money. I just don't understand it, so I present to the Board of why there isn't regulation, an ordinance, if it is platted and deeded Christy Farms versus Christy Estates versus Seven Lakes Estates, why this mess was even allowed to happen.

Mr. Gibbons: Ok. Remember now, we are not the Board of Supervisors, we are just the BZA.

Mrs. Burkhart: Exactly, I am just the messenger.

Mr. Gibbons: Yeah but you know, I want to again thank your young daughter for her testimony for burying the towers

Mrs. Burkhart: Yes and we have our work ahead of us on the towers too.

Mr. Gibbons: Right. Anybody else would like to address the Board? Ok, I will bring it back to the Board.
Mr. Leming, do you have a rebuttal?

Mr. Leming: Yes sir, just a couple of points. First the question raised by Mr. Davis. In the deeds to lots in Christy Farms, there would be a reference to subdivision plat. It would be the subdivision plat for Christy Farms, that would be the specific reference and would have to be in every description of a property of every deed of someone who purchased. Christy Farms is the only plat that is recorded at the Courthouse. What has been clarified here is what the original motivation was for this change in names. The sign application, this was an application for a subdivision sign for a subdivision that doesn't exist. The Zoning Ordinance uses the term subdivision sign, identifying a subdivision, it appears in the zoning ordinance. I don't see how there is any other possible way to construe the term subdivision than a subdivision that has been approved by the County. It can't just be a group of houses if it appears in the zoning ordinance, that wouldn't be permitted. The most interesting thing that came out here in my view is what Rachel said about what can actually go on these signs. She indicated they could change the content of the sign without coming back for another sign permit. They could go and take off the word estates, if this can be done, they call themselves Seven Lakes period. They don't even have to use the word estates. That cannot be what the ordinance requires. What is the point of defining what a subdivision can be named in one part of the ordinance is not their fault that their review, when they come in for these things only goes to the Zoning Ordinance, bad practice. There is a way to understand what they can be called, the county records are replete with references to Christy Estates, that is the only subdivision sign that they could have applied for, they could put up a general advertising sign, the ordinance permits that. They could say buy at Seven Lakes Estates, I don't know what the County could do about that, but this is a subdivision sign, it is not an advertising sign. Bottom line, this is the only opportunity, great that they are changing the ordinance, maybe this will never happen to another subdivision but this is the only opportunity they have to correct this situation. I think there is in the current ordinance, sufficient ammunition to delete the signage Seven Lakes Estates and required that they either formally approve or apply for a subdivision name through the preliminary subdivision plan process, which is when it is approved. Or call themselves what they have been approved as, which is Christy Estates, Christy Farms, excuse me. Thank you all.

Mr. Hudson: Could you just elaborate a little bit more on what you said about you believe there's room in the ordinance to make this decision.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Leming: I think what your decision has to turn on is the definition, which appears in the zoning ordinance of subdivision sign. Now, sure you can sit there and say well it just says subdivision sign that can be anything but the thing I am asking you to consider is that this is a definition that appears in a County ordinance. This is simply not advertising material. This is not a newspaper article. This is a County ordinance. So what does the term subdivision mean in the context of the County ordinance? Can it possibly mean a subdivision that does not exist as far as the County is concerned? You know that's why I think what Ms. Hudson said is so telling here. I mean theoretically they could put any name on that sign ad based on the current interpretation, her current interpretation, they could get away with it. That cannot be the state of the law. What's the purpose of having the ordinance? What's the purpose of naming it? What's the purpose of having another part of the same County code that tells you what you can call a subdivision and then read this term here. Subdivision, identifying a subdivision read that as something else. How can you possibly read it as anything other than a subdivision approved by the County? And the fact that somebody else has gotten away with it is absolutely irrelevant. These people can't get away with this. Done solely for advertising purposes, you've heard the evidence. It's what's in their deed. They are on at least on record notice that they live in Christy Farms not in Seven Lakes. So that's what I think it turns on is this definition of sign, subdivision sign refers to a subdivision. How else can you interpret what a subdivision is except according to the County's own code. I hope that answers it.

Mr. Ackermann: Mr. Leming just to get back to the question I asked before. I think it's clear what a subdivision is. The thing I have a question with is identifying a subdivision. You're asking us the only way to identify a subdivision is by the name that's recorded on the plat, which is the proposed ordinance I guess that the Board of Supervisors sent to the Planning Commission.

Mr. Leming: Well I'm not really sure what distinction it is that you're trying to make. And maybe it's my misunderstanding.

Mr. Ackermann: Well I guess I'm trying to understand what you're trying to say because it sounds like you're saying I mean the code says, identifying a subdivision and located thereon at the entrance to such and such subdivision. So identifying a subdivision, the only way to identify a subdivision is what I think you're asking us to infer is through the platted name of the subdivision.

Mr. Leming: I'm asking you to ask yourself as used in this context what does the word subdivision mean? And it's repeated in two places in the definition.

Mr. Ackermann: I think we're not talking to each other at the right... We are not talking about the same thing.

Mr. Leming: I'm sorry I'm missing your point.

Mr. Ackermann: Because I'm looking at I guess the verb identifying, what does identifying mean precisely?

Mr. Leming: It appears in the same sentence. At the entrance to such subdivision.

Mr. Ackermann: That's right.

Mr. Leming: There are two references to subdivision there. What does subdivision mean in this context? I don't see what it has to do with identify. I think that's irrelevant.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Ackermann: Thank you.

Mr. Gibbons: Any other questions? Ok, I'll close the public hearing and bring it back to the Board. The wishes of the Board.

Dr. Larson: Mr. Chair, let me summarize what I think I heard today. The subdivision Christy Farms applied for a subdivision sign as noted in their application and in the letter from Jennifer Dunn so there's no question they applied for a subdivision sign. Not any other kind of sign that's allowed in the ordinance. They applied for a subdivision sign. Under the sign definition, it says "a sign 60 sq ft or less in aggregate area identifying a subdivision". Identifying a subdivision. It doesn't say the subdivision. It says a subdivision. "And located there on at the entrance to such subdivision". That indicates the subdivision that it's at the entrance to. But I have a couple of problems with the sign.

Mr. Beach: Excuse me, shouldn't we have a motion before we have discussion?

Mr. Gibbons: Well you should make a motion, Doctor first, I thought you were going to ask a question. That's alright, we're not in a discussion period now. You have to make a motion then discuss it.

Dr. Larson: Oh. Alright.

Mr. Gibbons: You're correct. I'm sorry.

Motion:

Dr. Larson: I move that we a, I don't know what the right wording is. That we disapprove the Zoning Administrator's ruling on this sign issue.

Mr. Gibbons: Ok. Do we have a second?

Mr. Hudson: I second.

Mr. Gibbons: Second by Mr. Hudson.

Dr. Larson: Ok, now can I continue, sorry?

Mr. Gibbons: Well, I mean it's proper, we should do things proper. Otherwise we might have a sign placed on the BZA - Closed.

Dr. Larson: So it talks about identifying a subdivision sign. It has already been discussed that Seven Lakes Estates is not a subdivision. So there's a violation there. Then later it says at the entrance to such subdivision. That indicates the reasonable person would have to say the sign has to be the subdivision that it's at the entrance to which again is not true. So that is why I moved the way I did.

Mr. Gibbons: Ok. We have a motion on the floor and a second for discussion now.

Mr. Beach: Mr. Chairman, I'm going to support the motion because I believe as he stated the sign should state the name of the subdivision not the name of some fictitious non-existing subdivision. I think Mr. Leming hit all the points perfectly. Thank you.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Ackermann: I have a different opinion of the, regardless of the official name of the subdivision. I think the subdivision is known by the folks that live there as Seven Lakes Estates. And the sign may make perfect sense to the folks that live there. And in terms of the practice of what goes on in the area as a matter of fact. And, furthermore, I guess you could tell from my questions, I don't think the current ordinance says what the proposed ordinance says. I don't think the current ordinance says the only way to identify a subdivision is by the platted name of the subdivision. That's my opinion.

Mr. Gibbons: Any others?

Mr. Ingalls: Mr. Chairman, I'm inclined not to support the motion, because I also believe that the current ordinance does not address what the name has to be on the sign. We have seen numbers of subdivisions change from what's on the plat to some other name and I guarantee you everyone of them for economic reasons. But that's not the question, the question is could they do it? They did, they applied for a sign permit. They didn't put Christy Farms they put Seven Lakes Estates up there. They applied for a sign permit under Seven Lakes Estates, the County approved it. I believe if you asked everybody that lives in Seven Lakes Estates, where do you live? What subdivision do you live in? They're going to say I live in Seven lakes Estates. So it is a subdivision, that's what they call themselves. And that's what that sign is identifying and right now I can emphasize with all these people on both sides because you got two sides to the issue. You got one side that says well gee-whiz, I don't like this one. The other side will say well I kinda like this one, I moved in here, I've live in here, I'm over here in Seven Lakes Estates, so what is it? But they all know where they live, you ask them, everyone of them know exactly where they live. And like I say, the Zoning Administrator has ruled based on the zoning ordinance that she has in front of her. And obviously, the County, County Attorney, County Staff all think our ordinance does not address this situation. So they're going to change the ordinance. Maybe change the ordinance, until it's voted on we don't know if they're going to change it or not, I don't know what they're going to change it to. So for us to say we're going to not uphold her and we're changing the ordinance. We can't change ordinances. So I think we have to be careful where we're going with this and I think it's been County policy, it's been what they've said. I've heard other people come and argue what the County's done in the past. We ought to make sure, hey you can't change your mind, you know, ten years later and say now you can't change subdivisions on this day but in the past we've done it the last 10 or 15 years or 20 years or 30 years, however long subdivisions have been going on. So I think we've got to be careful what we're doing here and if we're not uphold her, then maybe we're trying to go ahead and do what the Supervisors may do. We don't know they are gonna do that. There's a lot of discussion. I'm not so sure if they didn't pass the ordinance if Seven Lakes Estates or Christy Farms whatever, if they passed the new ordinance if they could go and vacate the Christy Farms plat and put Seven Lakes North on it and go on from there. If that's what they wanted to do, that's what they would have to do as I read the new ordinance. So I think we've got to be careful what we're not approving and approving here.

Mr. Gibbons: Ok.

Mr. Hudson: Well I certainly have a lot of respect for the County and the interpretation of the county regs but I also think that we're in power at least for me to interpret the word subdivision how I think to interpret it I'm not anyone wanting to put the County in a situation I've think setting on this board, it certainly gives me the right to disagree with the County and I interpret subdivision as that group of homes there that was built under the name Seven Lakes for a purpose, what it was named. Sometimes a practical application of the law understanding why somebody does what they do doesn't make it right ... Christy Farms was flying for something all the way through until they determine the market is better I'm not even sure that if the people in the County that approve these signs are coordinated with ...or knew the application was Christy Farms or if some sign approval goes to a different department or if they knew all

*Stafford County Board of Zoning Appeals
October 27, 2009*

along it was Christy Farms and they made their decision based on that. If I just came to the County and said I want to change the name to Green Ridge, would they change it. I'm not sure that both hands were talking to each other, I don't know if they were but I do know, I think we do have the power to exercise ... we don't have the power to right the regulations and all but certainly have the power to interpret and I interpret the subdivision as a subdivision a group of homes that's been named and I think this was done in a way, the County approved it. I don't think it was right. That's why I seconded the motion. I don't think if any of us if you bought a home in a beautiful place like Seven Lakes, you know, somebody come in and build a place behind us or in front of us, I think we'd all feel the same way. I think a subdivision is a subdivision. That's all I'm going to say. I don't want to rewrite the County ... I think this is a County interpretation. It's not the County interpretation of a regulation. I think the board has the right also to interpret the laws that's put here, the regulations that are put before us, that's why we're seated. Otherwise, we don't need to be here. So I interpret subdivision as just what it says in practical terms reading a subdivision and I have all the sympathy in the world for folks that are out of place because someone felt like they could make a little bit more money at the last minute coming in changing the name of a development. I've probably said too much but I think we let builders get away with way too much in this County and I think we can interpret subdivision as what we can interpret it as.

Mr. Gibbons: Anybody else?

Mr. Davis: Looking at the sign ordinance this sign appears to be legitimate but in looking at the subdivision names. I think they've used the wrong name. They are Christy Farms that's the name that should have been used for that reason I support the motion.

Mr. Gibbons: Thank you. Larry I have the highest respect for you but when I looked at this before and the interpretation was a language interpretation you can use it but when you look at the ordinance it says that you request for a subdivision sign. A subdivision sign. And it has to be at the entrance of the subdivision. So I think that kind of narrows it down to you know it's got to be a subdivision. Now if they use Seven Lakes up there. You know you would have a hard time arguing against it because that's the subdivision name and might not have been used right but I can't for the sake of me follow that you can use any old language you want on a sign when it says a subdivision and it's got to be at the entrance to the subdivision. And again I know the homeowners hear the same viewpoint I did but what just scares me is the public safety I just can't get that out of the back of my mind, it's bothered me since the first time I read this. So in that regard and I do believe it has to be a subdivision name, then I'll support the motion.

Mr. Ackermann: Can I then, if we approve the request, then we are essentially identifying how this should be interpreted so that the Zoning Administrator of course is still free to do what ever she wishes. But then anyone could come to us, we are stating a precedent here, could come to us saying it has to be identified with the platted name of the subdivision. So essentially making the Board of Supervisors motion moot that that doesn't have to go into the code.

Mr. Gibbons: Well I think... we can dialogue here. I think we should send this to the Board of Supervisors, you know the majority opinion and the minority opinion and say we've looked at this and our interpretation this is how we feel that this ordinance means, just give them what we have done, if they want to use it or the Planning Commission wants t use it as they develop coming up then they can do that if not then when the Board of Supervisors gets it can do whatever it deems at that particular time the proper thing to do.

Mr. Ackermann: But I mean it's pretty clear that if anyone comes forward with a case similar to this unless the Board changes its composition, its opinions on things that's the way it's going to be interpreted.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Gibbons: Yes sir.

Mr. Ackermann: Thank you.

Dr. Larson: Mr. Chairman I have just one other thing to add if I could.

Mr. Gibbons: Certainly.

Dr. Larson: It boils down to an interpretation of the word subdivision. It's not specifically spelled out in the zoning ordinance so when there's ambiguity in an ordinance then you have to go to the reasonable person concept. What would a person reasonably assume that this meant. That's what I've done is I think a reasonable person when they see the word subdivision would assume a subdivision that's platted with the County. That's the name of that. Now if the Board of Supervisors chooses to put forth an ordinance that clarifies that so the ambiguity goes away I think that makes things easier but I still think that the reasonable person would assume the term subdivision means the name of the group of homes platted with the County.

Mr. Gibbons: Does anybody have an objection to Dr. Ackermann's suggestion we send this to the Board with what we've done. Because they're going to debate at the Planning Commission. Ok, we'll do that. Ok, call for the question. All in favor say Aye?

Mr. Beach: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Dr. Larson: Aye.

Mr. Gibbons: Aye. All opposed?

Mr. Ackermann: No.

Mr. Ingalls: No.

Mr. Gibbons: Ok. Rachel, we'll send that down to the Board. The action that we did tonight we want to follow it to the Board of Supervisors and then let them send it down to the Planning Commission. Ok, thank you very much. We'll go on a five minute brake.

- A09-4/2900216 - HCS HOLDING CO, LLC** - Appeal of the Zoning Administrator's letter dated June 26, 2009 regarding a cemetery with a funeral home/chapel as accessory use on Assessor's Parcel 19-22. The property is zoned A-1, Agricultural, located at 154 Shelton Shop Road.

Mr. Gibbons: We will go to the next item on the agenda which is HCS Holding Company LLC and Melody, would you read the background.

Mrs. Musante: Case A09-4/2900216, HCS Holding Company, LLC, appeal of the Zoning Administrator's letter dated June 26, 2009 regarding a cemetery with a funeral home/chapel as accessory use on Assessor's Parcel 19-22. The property is zoned A-1, Agricultural, located at 154 Shelton Shop Road. You have the

Stafford County Board of Zoning Appeals
October 27, 2009

application, owners consent form, request for interpretation dated May 8, 2009, response by the Zoning Administrator dated June 26, 2009, memo from the Assistant County Attorney, tax map and vicinity map. A request the Zoning Administrator dated May 8, 2009 for interpretation if a funeral home with a chapel would be allowable use on a property zoned A-1 that currently has an operating cemetery. The zoning Administrator's response dated June 26, 2009 states that the cemetery is the principle allowed use on the A-1 property and a funeral home with chapel could be an accessory use if serving only this cemetery per Stafford's local zoning ordinance. Funeral homes are not allowed on A-1 zoned property. The Zoning Administrator is given the authority to make decisions and determinations based only on the Stafford County Zoning Ordinances. Please read the memo dated October 5, 2009 from the Assistant County Attorney that is enclosed.

Mr. Gibbons: Any questions of staff? Okay, Counsel?

Mr. Leming: Mr. Chairman, members of the BZA, good evening again. I usually try to space these things out so you have somebody else to look at but they are all bunched up. In this case we are going to be looking at a different section of the zoning ordinance and that is the definition of "accessory use" which appears at section 28-25 and it is reprinted in the letter that I sent to you by both email and overnight or by regular mail dated October 22nd. A use or structure that is subordinate in area, extent and purpose and serves a principle use; and this is the part we are going to focus on here, or structure contributes to the comfort convenience and necessity of the occupants of the principle use or structure served, located on the same lot under the same ownership, the same land use district as the principle use or structure. In no event shall an accessory use be construed authorized under otherwise permitted district in which the principle use is located and in no event shall an accessory be established prior to principle use to which it is an accessory. As I indicated, we are going to be focusing on the first part of this definition, "subordinate in area extent and purpose to and serves a principle use". The applicant here is the owner of the Stafford Memorial Cemetery, which is on Shelton Shop Road and it is right in back of the Mullins Funeral Home. The Mullins Funeral Home has no relationship legally with the cemetery. Sometimes patrons of the funeral home, Mullins, will utilize the cemetery but there is no other formal relationship there. It is just the way things evolved. The owners of the Stafford Memorial Cemetery, in an effort to increase the use of their facility have designed and would like to establish a funeral home on their premise, not next to Mullins but further back on the property. Smaller than Mullins but would feature a funeral and a chapel. The one possible way that this could be done and we will talk about the problem with this in a minute is that the parcel where the funeral home could be quadraned off and rezoned. The Mullins Funeral Home does appear in a commercial zoning district so further back on the property, there is not a place because of the existing use of the cemetery and current grave sites to put it up front. Further back on the property, theoretically you could zone and try to get commercial zoning and establish a funeral home that way. That also may be construed as something called spot zoning that would be inconsistent with the County's Comprehensive Plan for that particular portion of the property. It is by no means a foregone conclusion that could be accomplished and there are significant impediments associated with it. What we did was to utilize another section of the code. The definition of accessory use and we went to the Zoning Administrator and asked whether or not the funeral home was an accessory use for the cemetery and Ms. Hudson agreed that it was. It was an accessory use, it met the definition of accessory use. She added a provision to her letter that is the subject of the appeal here. What she indicted was that it must serve only the primary use. Now the definition simply says "serves a principle use". You will find some ordinances that say primarily and we have not found any ordinance that says exclusively but that is how the Zoning Administrator has interpreted the accessory use portion of the zoning ordinance; to read "to serve exclusively the primary use". Now what is the problem with that? The problem with that in this particular case is that we have a state law, section 54.1-2807(d) which specifically states that funeral homes or funeral planners cannot interfere with the public's freedom of

*Stafford County Board of Zoning Appeals
October 27, 2009*

choice with selecting a cemetery or other establishment for the care of human remains, including cremation. So there is a state law that says if you use a particular funeral home, you cannot be compelled to use the cemetery that is part of the same establishment, that you have the freedom of choice to go somewhere else to use another cemetery or be cremated. Under Ms. Hudson's determination because she says that the accessory use, and she agrees that it is an accessory use, can only serve the principle use under that determination; it can't be done because they cannot impose the restriction that is implicate in the determination. They could build a funeral home and could establish it as an accessory use, but they could not say under state law to a patron of the funeral home that they have to use their cemetery because state law prohibits that. Basically, what the Zoning Administrator gives with one hand and says yes, it is an accessory use, she takes back with the other by saying that it can serve only the principle use. Inserting the word "only" into the definition. For example, if I wanted to use the funeral home, I could not be cremated at all. I would not be permitted under the determination to be cremated and those services are not offered as part of this funeral home, because the only option I would have under the Zoning Administrator's determination is to be buried in that particular cemetery. Of course that is what state law prohibits and I would not have the option of being buried somewhere else either. It is the position of HCS Holding, which is the owner of the cemetery is that this catch 22 kind of situation, where you have state law going one way and the Zoning Administrator's interpretation of this definition of accessory use going another, that that simply cannot be what the law is and cannot be a correct reading of the ordinance. We have talked about the irony of the particular situation, I want to point out that in no zoning district under the Stafford Zoning Ordinance is a cemetery and a funeral home possible. Most zoning ordinances, and we have cited a few in our brief here of other jurisdictions, permit these two previously related uses to exist together in some zoning districts but in Stafford County there is no way to do that. You cannot even do that with a by right use and a use permitted by Conditional Use Permit (CUP). That is not even possible, there is no zoning district that permits both a cemetery and a funeral home. The funeral home would have to be zoned one way and the cemetery would have to be zoned another way. The problem is fairly significant within the county. The only way to accomplish anything like this in Stafford County would be one of two things; one, split zoning on the same parcel such that there would be the funeral home established under one zoning district carved out of the larger tract where the cemetery was and the cemetery under another zoning district. That is the only that it would be possible.

Mr. Gibbons: We have been requested to watch our time.

Mr. Leming: I'm sorry.

Mr. Gibbons: We have a good sense and we know when you're getting close.

Mr. Leming: Ok. Alright, so that is the problem in Stafford. The other way the this can be accomplished is through the accessory use provision. This is the way it is also done in a number of counties, Prince William would be one that would be an example of that. That is the dilemma. I have come up with some court cases for you and I have two of them for you, one is out of King George County and one is out of the City of Alexandria. I would like to share these with you because I don't want you to take for granted what these cases really stand for without you having an opportunity to look at them. All of these packages are in tact.

Mr. Gibbons: Any questions for the counselor?

Mr. Ingalls: Mr. Chairman, before we go any further, I am going to excuse myself from this case. When Mr. Leming mentioned Mr. Mullins, which I did not know Mr. Mullins had a funeral home near or anywhere close to this site.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Gibbons: He doesn't. That has been sold, it is only the name.

Mr. McRoberts: Excuse me Mr. Chairman, Mr. Leming, do you have a copy for me?

Mr. Leming: Yes, I do have one more copy.

Mr. Gibbons: It is just the name Mullins. He sold out many years ago so there would be no conflict with Mullins.

Mr. Ingalls: Thank you. Since we have done work for Mr. Mullins, not on this site, we have done work for Mr. Mullins in Spotsylvania and a little bit in Stafford, I would feel uncomfortable in voting on this, not knowing exactly, I realize that Mullins name stays around and Covenant is different than Mullins.

Mr. Gibbons: So noted.

Mr. Ingalls: So I am going to excuse myself from this case.

Mr. Gibbons: Thank you very much.

Mr. Leming: If I might Mr. Chairman, let me just point out the highlights of these cases. The one from Alexandria, this is the McCormick case, in this case what we had was a funeral home that wanted to establish a crematorium and the issue in the case and this came up with the Zoning Administrator and the Board of Zoning Appeals, which both agreed with the owner of the funeral home here. The issue of the case was whether or not the crematorium was an accessory use.

Mr. Gibbons: Okay.

Mr. Leming: There is a definition of accessory use that also uses the same language that the Stafford one does here, "serves as a permitted principle use". Now the significant thing is that the crematorium, the users of the crematorium...

Mr. Gibbons: I am trying to wrap this up now. You have given us these and we will take our time to read them. I am trying to keep this within the allotted time and you gave them to us. Let us take a quick look and we will go over this.

Mr. Leming: Okay.

Mr. Gibbons: I have one quick question, on page two of the overnight email on the definition of an accessory use, under A, it says "the use or structure contributes to the comfort, convenience or necessity of the occupants of the principle use or structure". I find that kind of ironic.

Mr. Leming: Yes, I understand what you are saying.

Mr. Gibbons: Okay.

Mr. Ackermann: Can I ask one question?

Mr. Gibbons: Yes sir.

***Stafford County Board of Zoning Appeals
October 27, 2009***

Mr. Ackermann: So does the cemetery allow for ashes to be interred?

Mr. Leming: The cemetery for ashes to be interred?

Mr. Ackermann: It does, okay. Thank you.

Mr. Gibbons: Any other questions?

Mr. Beauch: I have a question.

Mr. Gibbons: Yes Sir.

Mr. Leming: But they have to be buried there.

Mr. Ackermann: That is what I mean.

Mr. Beauch: Is it true that the state requires in every district it allows funeral homes by right in every zoning district where there are cemeteries by right?

Mr. Leming: The state does not require that, Stafford County does not have a district that permits that. What the state law requires is that the owner of a funeral home dictate that a user of the funeral home must also use the cemetery that is associated.

Mr. Beauch: No, I am on a different issue.

Mr. Leming: Okay. No, the state does not require that, there is no law that says that.

Mr. Beauch: Let me read it verbatim from what I have in front of me.

Mr. Leming: Alright.

Mr. Beauch: Virginia Code 54.1-2807(d) requires every locality to permit funeral homes by right in every zoning district where cemeteries are permitted by right.

Mr. Leming: Well, that is not something that Stafford County has, except by accessory use.

Mr. Beauch: But the states says they have to, don't they?

Mr. Leming: State says they have to allow them. Ms. Hudson can speak for herself, I think so would say yes they do that, permitting this as an accessory use and our comeback to that is yes, but we cannot comply with state law if we go with what you have given us.

Mr. Beauch: I understand, it seems like that is a pretty strong argument.

Mr. Leming: It is a strong argument that the county should have a specific zoning district or in any zoning district a district where a cemetery is permitted. They also should permit a funeral home.

Mr. Beauch: It seems like it should be by right.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Leming: It seems that way.

Mr. Beach: I did not know why you were not arguing that more strongly but okay.

Mr. Leming: I did not get to finish my argument.

Mr. Ackermann: We can talk about it in the discussion.

Mr. Gibbons: Now Rachel. It seems like you and Mr. Leming are not on the same sheet of music all night tonight.

Ms. Hudson: I think so. To go back to your question, I am not sure which paragraph you read out of the state code.

Mr. Beach: This is in a memorandum to you from Alan F. Smith, October 5, 2009, first page.

Ms. Hudson: Right.

Mr. Beach: Now he is quoting from the HCS argument, down at the bottom of the page, fourth line from the bottom. HCS argument is that Virginia Code 54 blah blah blah blah.

Ms. Hudson: I've got it.

Mr. Ackermann: Mr. Beach?

Mr. Beach: Yes.

Mr. Ackermann: The paragraph on the next page says that HCS is wrong.

Ms. Roberts: I can read it and answer any questions you have.

Mr. Beach: I understand that, but that is then their interpretation of the law.

Mr. Ackermann: Right.

Mr. McRoberts: I think that the Assistant County Attorney was attempting to summarize his view of Mr. Leming's argument.

Ms. Roberts: Correct.

Mr. McRoberts: And not quoting the statute.

Mr. Beach: Oh, that could make a difference.

Mr. McRoberts: Because if you look at the statute it says in that subsection (d) that he cites actually says "no person licensed for the practice of funeral service or preneed funeral planning or any of his agents shall interfere with the freedom of choice of the general public in the choice of person or establishments for the care of human remains or a preneed funeral planning or preneed funeral contracts". This is what that code subsection says.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Beach: Okay, thank you.

Ms. Hudson: I do believe though if the Board of Supervisors wanted to permit funeral homes with cemeteries they would amend the code and allow it. The option for this applicant is to also ask for a code amendment to see if they could do the combination cemetery/ funeral.

Mr. Gibbons: Any Questions?

Mr. Ackermann: I have a question and maybe it is just a technical issue. On the vicinity map, there is a building with large parking by it. Is that the existing Mullins Funeral home?

Ms. Hudson: Melody, would you answer that please.

Mr. Ackermann: It is marked off as number twenty-one on the tax map.

Ms. Hudson: The parcel is twenty-two.

Mrs. Musante: The one outlined in blue is the existing cemetery. The one that is up on Shelton Shop Road is the existing funeral home.

Mr. Ackermann: Okay, thank you.

Ms. Hudson: The other parcel.

Mr. Ackermann: The other parcel, correct. So essentially, it adjoins the cemetery as Mr. Leming said.

Mrs. Musante: Yes.

Mr. Ackermann: And then to approve a funeral home here they would have to go through other zoning agreements about parking and all that sort of stuff?

Ms. Hudson: Well if they wanted to get the zoning to build the funeral home as a principle use they could ask for a code amendment or request a reclassification.

Mr. Ackermann: As an accessory use, there is still issues about how much space they use for parking.

Ms. Hudson: They would have to go through the site plan process and meet the requirements of the zoning ordinance.

Mr. Gibbons: Any other questions? Okay, thank you Rachel.

Ms. Hudson: You're welcome.

Mr. Gibbons: Now I will open the public hearing. Anybody on my right that would like to speak, anybody on my left? I will bring it back to the Board.

Mr. Leming: I think there is an implication under the state law, it is strongly advisable that the same zoning district permit these very closely related uses but another to accomplish that and the only that it can be accomplished absent the zoning exercise in Stafford County and having the split zoning on the

Stafford County Board of Zoning Appeals
October 27, 2009

parcel. The only way that it could be accomplished here is through the accessory use. The irony of the situation here is that the Zoning Administrator agrees that it is an accessory use but then has, in our view, interpreted the definition of accessory use in such a way that it can't happen and has done so in such a way by inserting the word exclusive before the word serve "exclusively serve a principle use" that is simply not there. In both of the cases I gave you, we have the King George Circuit Court and Alexandria City Circuit Court, deciding cases where the accessory use did not serve only the principle use. The case in King George is about a daycare center associated with the church, the court in the that case was with Judge Haley, who overturned the BZA, which decided that the daycare could only serve the church and Haley's position was that it was an extension of their ministry. He did not buy the narrow interpretation of accessory use that was utilized and indeed to this day the students of that daycare center come from all over. They are not related to that particular church. So the issue here is whether the funeral home has been authorized as an accessory use is restricted to the point that it can only serve the principle use which is the cemetery, which everyone who uses that funeral home has to use the cemetery, which is inconsistent with state law. Our position is simply that is not what the ordinance says, it does not say exclusive and that in this particular case, it causes a conflict.

Mr. Gibbons: Let me ask a question that I was going to ask Andrew, I am confused. If you are building an accessory to this cemetery and it has a chapel and everything then I have a choice to what funeral parlor I want to go to. So in other words, if this one can only use this funeral parlor and you must use the cemetery, I don't like that. I can go to another funeral home. I have a choice of different funeral parlors but as long as I know what the ground rules are then it is my choice what choice I make.

Mr. Leming: The problem is if somebody comes in there to utilize their funeral home, they can't even tell them that they also have to use their cemetery.

Mr. Gibbons: What do you mean?

Mr. Leming: Because that is inconsistent with state law.

Mr. Gibbons: I follow your argument but I can't follow that argument. When I walk in there it is my choice to go to that one entity and if I don't like the ground rules at that one entity I can go to many other entities. You're saying once I walk in there then the state code takes over.

Mr. Leming: I am saying they can't restrict you like that, they don't have the option of saying you have to use our cemetery if you use our funeral home. What the County has done to interpret the definition of accessory use in such a way to create the problem.

Mr. Gibbons: I understand but this applicant still has the right to file a zoning application.

Mr. Leming: They could and there is no indication of what would happen because of the split zoning issue.

Mr. Gibbons: Ok. Any other questions? My question Andrew is what prevents that funeral director when I walk through the door and say I would like to use your service for him saying to me that my service is available only if you use my other service of using the cemetery. If I don't like that, why would the state code come in and say this man can't reveal that to me? I just don't understand that.

Mr. McRoberts: This gets to the very interesting area of the law where you have a license requirement by the state as referenced in this statute and you have sort of an overlapping zoning requirement. The

Stafford County Board of Zoning Appeals
October 27, 2009

Virginia Supreme Court has taken a lot of cracks at this, a couple of times that I am familiar with have involved ABC regulations. In the world of the ABC, you can go out and get a license under the ABC, you still have to comply with the local zoning. Some local zoning ordinances provide, generally that you can have commercial uses or retail uses. Some will say when and where you can actually serve alcohol and you cannot be within so many feet of a school or a church. Or you can't have two stores serving alcohol within a certain number of feet within a red light district. That was the Tiny House vs. the City of Norfolk case for many years ago. More recently the County of Chesterfield said in a CUP in the Windy Hill Golf Course that you shall not serve alcohol there as a condition of their approval of the golf course under a CUP. The argument was made to the Supreme Court that there is a state law that says I get to serve alcohol and Chesterfield said there was a zoning condition that says you cannot. The Supreme Court said that both apply and you have to comply with both. You have to get your license from the state and you have to get your zoning approval from the local government. In this case, I am not aware of any Virginia Supreme Court case that applied with this particular section of the zoning but I believe based upon those two cases that I would suggest that you have to comply with both. If you can't apply with both, then you can't. It very well may be an accessory use as Ms. Hudson stated or it may not be depending on what you say here tonight but either way you have to allow freedom of choice when the walk in the door. Maybe you can't do both and maybe this is not the right location to do business. That is how I read the law.

Mr. Beauch: This business of exclusivity, how do you read that into the ordinance. I don't see the word exclusivity, I don't even see the logic of implying it. Where did it come from?

Ms. Hudson: I am not sure but the memo that you have from the Assistant County Attorney addresses that, the definition of accessory use does not state that the accessory use must exclusively serve the principle use. In this case, it is implicit in the definition.

Mr. Beauch: I do not see that. I am wondering how you see that.

Ms. Roberts: I believe the rationale is that if you allow this chapel and funeral home to serve all other parcels and cemetery's that becomes the primary use and you cannot have two primary uses on the parcel.

Ms. Hudson: Unless it is allowed.

Mr. Beauch: Suppose they did 100 funerals in a year and one of them was to be buried in some other cemetery, is it now a primary use or is it still a secondary use.

Ms. Hudson: I think you have to be careful when you have accessory uses for not only the size but also traffic and other issues.

Mr. Beauch: I think the ordinance describes the secondary use and square footage and certain size but it does not say anything about exclusivity and that you cannot serve somebody else. That is where I have the problem. I think they should have said that if that is what they wanted to do.

Mr. Gibbons: How many cases do we have for November?

Mrs. Musante: One.

Mr. Gibbons: I have a lot of questions on this.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. McRoberts: Mr. Chairman, let me take a crack at answering that. Obviously, I am not familiar with the way the Stafford has interpreted that over the years. I know that at my place I saw a good number of interpretations over the years that seemed to suggest exclusivity has been the way they have interpreted that over the years. The law says that needs to be given great weight. With that said, if it is plain wrong, it is plain wrong. Part of it is inherent in how you view accessory use. Accessory uses have no right on their own, they stand only in a position with the primary principle use. If you take away the principle use the accessories cannot exist. The question is what if ninety-nine of those funerals were off site and only one was on? It still, under this definition, serves the principle use, correct? One funeral went to that cemetery, but is that an accessory use? I think, like it or hate it, at least there is a bright line rule.

Mr. Beauch: Yes, but they defined accessory use by square footage. If they wanted it to be exclusive, why didn't they say that? It would have made our jobs easier.

Mr. McRoberts: It absolutely could be clearer. What I am saying though is that two things; one, is that is the way they interpreted it in the past and two, is an accessory only exists in relationship to the principle use. That is just the way principle and accessory uses work.

Dr. Larson: I have a question for Mr. Leming. You obviously disagree with the definition of accessory that the Zoning Administrator has put forward. What would your interpretation be?

Mr. Leming: Ultimately, that is what this turns on, the definition of accessory use. In my view, without limiting words, there is no requirement of exclusivity that the fact that there are others served by the accessory use other than the user of the primary use is not prohibited by this ordinance section. There was an example given by Mr. McRoberts that goes way in the other direction and I think that is a legitimate question. What if only one user of that funeral home ended up using the cemetery? However, this problem has been addressed and that is why I gave you the case, it has been addressed by other BZA's and other Circuit Courts and the two case that we could fine both interpret principle use as being non-exclusive and that is what I am basing my interpretation on. The daycare center in King George County where the attendees don't have to be part of the church, they can be from anywhere in the County. The crematorium in the City of Alexandria, whether you use the funeral home, which is the principle use is irrelevant to whether you use the crematorium. I think that it does turn on more on the dimensions, I don't think it would be possible for the funeral home to become the primary use as was suggested in this memorandum because of the other things in the ordinance. They go to size and area. It would be impossible because the cemetery is so gigantic. There is no way that the funeral home could become the dog and the cemetery could become the tail. I think the appropriate reading of the ordinance is that it is not exclusive. It does not have to exclusively serve the principle use and that is our argument. The Zoning Administrator has read exclusivity into the ordinance and it is simply not there and the case law goes the other way.

Dr. Larson: Okay, let me ask you this. If accessory does not mean exclusive to the primary use on that property then if we were to say that and allow that accessory use to service other cemeteries, how is that different from changing the zoning on that property to allow the funeral home?

Mr. Leming: As I indicated initially, the possibility of a rezoning here is purely theoretical but there are a lot of things arguing against it. Because of the existing gravesites, if they were to accomplish this funeral home, it has to be back further on the property. So it is not in an area where commercial zoning, which is what you have to have for a funeral home would logically occur, number one. Number two, the commercial zoning anywhere on this property would be inconsistent with the current comprehensive plan. The likelihood of getting it rezoned so a funeral home could coincide with cemetery by the same owner

Stafford County Board of Zoning Appeals
October 27, 2009

on the same parcel, all of which is contemplated by this definition is by no means a foregone conclusion. We think the county should have an ordinance that permits both in the same district, it does not though. That is another exercise that is conceivable to go to the Board, say please change the ordinance, and put these things in the same district. Legally, I do not think any of that is necessary because I think the definition of accessory use as it has been interpreted by Circuit Courts that have looked at this particular issue and this is a perfectly lawful way to do it and they don't get out of doing anything. I think Mr. Ackermann asked about parking and all of those things. They still have to go through site plan requirements, parking requirements for the underlying use, they are not getting away with anything but pretty clearly at least in what I think is the most important part of the definition of accessory use here, it is clearly an accessory use. The funeral home takes up a very small dimension, certainly subordinate in area, extent and purpose because of the area. The only quibble is over this term "serves a principle use" and we do not think that means exclusive.

Mr. Gibbons: Does that answer your question Doctor?

Dr. Larson: Yes, I think so. I think what I am sort of hearing is if it is not an accessory use and it is not restricted to the principle use of the cemetery then it is in essence a rezoning to allow the funeral home on the property.

Mr. Gibbons: Right.

Dr. Larson: That is basically what it is.

Mr. Gibbons: You are absolutely correct. So we have it in the Board now. Is there any objections to having Andrew read this and come back the next month?

Mr. Ackermann: Andrew, you said that you felt there was precedent where there was a conflict of zoning and state law that it turns out that folks can do neither?

Mr. McRoberts: I don't see it as a conflict. They are overlapping and they each need to be applied.

Mr. Ackermann: That is what I am saying.

Mr. Gibbons: Anybody have any problems with just deferring it and letting him come back and review what both sides have said?

Mr. Hudson: I don't have any problem. I am amazed that something like this has not made its way to the Virginia Supreme Court with the history white churches and black churches and where you can be buried and where you can't be buried. There has got to be some kind of State Supreme Court record in the state of Virginia. Without a lot of work, is there any way to see if the court has spoken anything to this.

Mr. McRoberts: I will certainly look at that believe me and I will ask both counsels to search the record and provide anything they can find. I know that Mr. Leming has provided me anything he was able to find, I know the County Attorney Office has provided me with anything they can find. The issue here is not church, not cemetery, the issue is the definition of accessory use in Stafford County and how is that to be applied and that is really the question for the BZA.

Mr. Gibbons: So does anybody have any objections to deferring this to next month. Okay, we need a motion please.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Motion:

Mr. Beach: I will move to defer this.

Mr. Ackermann: Second.

Mr. Gibbons: All in favor say aye.

Mr. Beach: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Dr. Larson: Aye.

Mr. Ackermann: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions? If you could take a chance Andrew and read Clark's letter, I would like to know the necessity of the occupants of the principle use.

Vote:

The motion to defer action on this case until our November meeting passed 7-0.

Mr. Ackermann – yes

Mr. Beach – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – yes

Dr. Larson – yes

UNFINISHED BUSINESS

- A09-2/2900205 - DGF LAND COMPANY LLC AND JOHN FIELDS** - Appeal of the Zoning Administrator's determination letter dated June 18, 2009 regarding violation of the requirement to construct an enclosed building for the crushing process and removal of automobile fluids, Section 28-39(b)(1), "Performance standards in M-1 & M-2 districts", on Assessor's Parcels 22-28B & 28E, zoned M-2, Heavy Industrial, located at 164 and 182 Norman Road.

Mr. Gibbons: The next case is unfinished business and Melody, will you tell us where we stand now.

Mrs. Musante: Mr. Gibbons, do you want me to read the case again?

Mr. Gibbons: No, I don't think that is necessary. Last month when we heard this we deferred it one month so those who chose to visit the site and go over first hand what is going on could do so. In the

*Stafford County Board of Zoning Appeals
October 27, 2009*

mean time, Mr. Leming sent us another letter dated 22 October and I asked Andrew if we could ask questions on that and he said we would be allowed to ask questions on the memo that he gave us. We did not receive anything from the County. Rachel, did you or Gail have anything else to reference as to what has transpired over the last two months? Okay, so first of all, does anybody have any questions that you want to ask about Mr. Leming's October 22nd letter? I had a couple of questions Mr. Leming, how many registered DMV sites are there in the state?

Mr. Leming: According to the Virginia Auto Recyclers Association, which we made inquiry to stated there were 270 active demolition permits in the state. We have requested information whether any crusher in the state is contained indoors and the response from the association is that there is no crusher in the state of Virginia that is indoors or required to be indoors. We have a few emails that came back from the association even beyond that, we also looked into a facility in Lorton called Davis, which is really a shredder rather than a crusher, but that is not required to be enclosed either and there is a similar one in Fredericksburg and the name is Summit and that is not something that simply smashes cars but also shreds up the metal into little pieces, and that is not enclosed. There are two other crushers contained on site in Stafford County, M&M and All Foreign and neither of those crushers are enclosed. They stay there all the time. The concept of an enclosed crusher is not in the state of Virginia.

Mr. Gibbons: And you had another definition here. The difference between manufacturing and...

Mr. Leming: Yes, we cited some Supreme Court Cases and I do have copies of those cases if you would like them. The cases do not deal with demolishers, but the two cases again one out of King George County and one out of Chesterfield County, they do deal with the definition in one case with manufacturing and one case of processing. In the case out of King George County, concerns gravel in the crushing lot and the contention there that that was manufacturing, this was the 1980 case. What the Virginia Supreme Court said in that case was that it was not manufacturing, this was the definition we used "unless the processing transforms the new material into a article or a product of substantially different character it cannot be considered to be manufacturing even though the process increases the value or usefulness of the product", which would not even be the case in the case of crushing cars. Second case from Chesterfield County is a brand new case, this is the Palace Laundry case you have before you. This deals with the definition of processing and whether or not the cleaning of linens was processing and how they should be taxed. What the Virginia Supreme Court held in that case is that processing requires that the product undergo a treatment rending the product more marketable or useful and of course in the case of crushing cars the product would not be more marketable or useful. The Supreme Court went on to say the Palace Laundry does not apply treatment that make the linens more marketable or useful than when the linens were originally purchased. In the case of crushing cars it would go even further in the other direction. I realize that last time we were here I offered a dictionary definition of manufacturing and processing and there was some question to whether other dictionary's define those things differently so we went to the Virginia Supreme Court and found these definitions.

Mr. Gibbons: Thank you very much. Any question?

Dr. Larson: Mr. Leming, the definition of process where they expand and say "more marketable or useful then when the linens were originally purchased", given that this was a tax case and taxes generally have some base price. Do you think that may have been why they phrased it that way?

Mr. Leming: Could well be the case, neither of these cases deal with the crushing of automobiles. But they do deal with concepts of processing and manufacturing something. Perhaps what they say earlier at the previous decision on the page before that is more helpful. That is where they say that the process that

Stafford County Board of Zoning Appeals
October 27, 2009

the product undergo a treatment to make a product more market able or useful. Then when they turn and talk about the particular facts about the linen case, they get into the concept of original purchase and what the value was at that time. They do offer a general definition of what processing is as the court did in the Solight case for manufacturing.

Dr. Larson: Thank you.

Mr. Leming: Yes Sir.

Mr. Ackermann: In the crushing of vehicles, they are crushed for the purpose of transporting them to some other location to be sold that way? Is that right?

Mr. Leming: As junk, yes.

Mr. Ackermann: I would think that it does increase the value of that in the sense that it could be transported in an economical way and sold.

Mr. Beauch: The question I have is does it make it worth more or easier to transport?

Mr. Leming: The purpose of crushing is for the ease of transporting.

Mr. Beauch: What do they do with them when they crush them up and deliver them somewhere. Do they throw them in a big pot and melt them or something?

Mr. Fields: There is a machine about the size of this building and it is highly unsophisticated, it goes up on a conveyer belt and steel teeth rips them apart. There is no requirement for it to be flattened or crushed on this machine. Plenty of whole unflattened goes on this conveyer belt and crunches it up and spills it into a big pile too. That is where I think the transformation takes place.

Mr. Gibbons: Any more questions? Then I will bring it back to the Board, we ought to dispose of this, we have had it a couple of months now with good legal on both sides. What is the wish of the Board?

Mr. Hudson: Can I get a point of clarification?

Mr. Gibbons: Yes.

Mr. Hudson: Is the County's position that the Zoning Administrator's determination letter June 18, 2009 a violation for the crushing of the vehicles, without being in a building is that what the county has based it on? To construct a building?

Ms. Hudson: Yes it is.

Mr. Ackermann: When we say an enclosed building, does that mean the building has to be closed all the time or can it be operated while open? Can I make a building with really large doors so when I operated the crusher I could keep the doors open? Is that still an enclosed building?

Ms. Hudson: I really don't know where to go with that question. An enclosed building has sides, they have doors and overhead doors.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Beauch: You would have to have big garage doors for that equipment to go in and carry in the car and dump it in the crusher. The question is now, if we had him build this building with big garage doors, they go up and down, would there be some mechanism for the county to require that they close the doors before they operate the crusher?

Ms. Roberts: I don't think that we will be able to answer that question until such time that a site plan purposing the building, then Fire and Rescue and any relevant parties who have an interest in making sure the emission and operated safely can weigh in on that. I think at this stage in the game we cannot answer those questions.

Mr. Ackermann: So we could not require them to build a building that was unsafe to operate.

Ms. Hudson: Right.

Motion:

Mr. Beauch: Mr. Chairman, if you're looking for a motion, I will make one.

Mr. Gibbons: Yes Sir.

Mr. Beauch: Then we can have discussion, legitimately.

Mr. Gibbons: Okay.

Mr. Beauch: I might be convinced to go the other way but I will move to uphold the Zoning Administrator's decision.

Mr. Gibbons: Okay, do we have a second?

Mr. Ackermann: I will second it.

Mr. Beauch: We have a second so I can talk a little bit. I have some notes that I am going to reference, I thought counselor argument about enclosing an airport did not apply, the other was towers, which did not apply. We are talking about a crusher and this crusher can be put in a building. He argued that if it is adequately screened you don't need to put in indoors. That is not right because you need to screen the storage of the junk cars. It is pretty clear on screening storage and manufacturing or servicing or processing. Our definitions are so fuzzy that I want to put myself in the position of a 1978 Board of Supervisor making the decision on this. I feel like there is no evidence that they knew they were going to be crushing. They were approved for a salvage recycling yard and I have gone through all this material and cannot find where they knew it was a crushing yard. There has been testimony that they have been crushing the whole time but it seemed from Rachel's testimony that the Zoning Administrator had never been out there. If they had they probably did not look at the crusher, if it was even there. I don't think the County knew about the crusher until way late in the game. If they had they may not have approved the zoning the way it was, they may have made them put it in a building. I think if I put myself back to 1978 and it is not in the forest, fifty miles from everything, instead I recognize that there is a residential zoning right next door. I think I am going to say that it needs to be in a building and that is why I made the motion.

*Stafford County Board of Zoning Appeals
October 27, 2009*

Mr. Ackermann: Mr. Chairman, I would like to say that I second the motion and I thought an awful lot about it ever since we have been considering this thing which has been several months now, I still come back to my interpretation to my definition of the word processing. I still feel this is processing, making it possible to transport these vehicles put in a form that makes it easier to get them out of the yard. The situation in the yard I think is very well run but still those cars have to move out at some point. That is why I seconded the motion.

Mr. Beach: I would like to add if I could just to pick up on what Mr. Ackermann said, when I was down there and saw the crusher going I thought that sure is not manufacturing but I think it is processing. I just have to go with my own definition.

Mr. Hudson: I can't support the motion; if I were to support this motion I would say I am driving down Route 1 and looking over at M&M Auto, they have a fence up but I can see every junk car they have that has been sitting there for the last thirty years and where does this lead to? Processing is what I do in my industry, we process coal through a preparation plant, we wash it, we clean it and we put it in a railroad car. I respectfully disagree that when you crush a car that you are crushing it to load it on a truck to get more there. It has been around longer than most of us here. Are we going to required a building at M&M Auto for all the cars that can be seen. The people knew when they moved in that the business was there and that is why I have a hard time supporting this. If my facts are wrong, I can certainly be corrected. What do we do if someone raises a complaint about M&M? Are we going put a dome over the whole place.

Mr. Ackermann: With all respect, the issue isn't to put a dome over the salvage yard, the issue is whether the crusher itself is the only thing that we have identified as processing that needs to be put into a building. They still need to abide by the County Ordinance for screening, which for good or bad, the way the lay of the land is there, some of the houses are up above and if we required a forty foot fence, it still would not completely obstruct the view. The issue we are talking about is the processing, that is my interpretation.

Mr. Hudson: Processing to me is producing a product, this crushing a car and taking it somewhere to get it out of somebody's yard, if you call crushing or processing to make a product or manufacture something, it is not manufacturing anything, it is destroying an eyesore that we all want to get rid of.

Dr. Larson: Mr. Chairman, I am very torn on this issue and still mulling things in my mind. Having visited the site, I came to realize that Mr. Fields is performing a community service by what he does by salvaging materials out of these vehicles. I think that is a very good thing, on the other half after visiting three residents that live around the site, they have real issues with noise and pollution and hours of operation and safety, which unfortunately are not relevant to our conversation. I hope everybody in the audience understands that we can only consider whether this thing goes into a building or not. That is all we can do right here. Given that, I still think although I agree with some of the things Mr. Hudson said, I still think this is a processing operation and it does make the product more marketable. It may not alter the products beauty but it make it more transportable therefore more marketable. The thing that I am struggling with is the certification by the County over many years that they are in compliance with the zoning ordinance and to what extent Mr. Fields relied on that to buy his crusher. I am struggling with that, if I voted for the motion I suppose Mr. Fields could always sell his crusher but that would be a disservice to the community as a whole because he is doing something that really has to be done and he is doing it in an efficient way so you can reuse the parts that need to be reused and get rid of the carcus where it can be recycled. Something we discuss here alot is the health, safety and welfare of our residents and I think there is an issue with the health and safety, I think they are as careful as they can be with the

*Stafford County Board of Zoning Appeals
October 27, 2009*

way they drain the fluids out of these cars, there is a small stream near one of the homes and you can see oil on the top of it. Now where the oils comes from, I don't know but it is right next to the salvage yard. I would be interested to see some soil, air and ground in and around the salvage yard myself. Would the health, safety and welfare of the residents be enhanced by putting the operation in a building, I believe it would. Is it fair? That is what I am struggling with.

Mr. Ingalls: I tried to transport myself back to 1978, I am sure if those Supervisors were sitting around this table today they would say what did we do. Maybe they didn't do quite enough when they did what they did in 1978 knowing what that part of the county looked like and if you read some of the Planning Commission comments you would realize this was a great place for this thing. The Supervisors knew that this was adjacent to a portion of Aquia Harbour, that had not been developed but back in those days we had small junk yards all over the place. Even in this rezoning they talked about Mr. Boswell and how they wanted him to get junk cars from over here and move them over there during this same 1978 period. A lot of these places that had junk cars in that era would fill up the space they had with junk cars and then bring in a portable crusher to crush the cars and then haul them away so they would have more room to do their business and create new spots. That was taking place at that time and the Supervisors, I assume, would have known that and knew what was going on with the salvage and recycling operation type businesses. It does not say crushing per say but I think automobile salvaging and recycling, I think they knew what that definition would include, some type of crushing because crushing was going on. For thirty-one years the County has basically said that operation was okay, I find it hard to say that the County has told the state of Virginia over a number of years that this place meets all the requirements of the County. The County now says that we really did not mean that, we meant it was in the right zone. I am not sure that is what the state was looking for nor did they expect to get an answer that said, it is there but it is not doing right. If we were making him put it in a building, now all these years he really was not operating but now we say he is. That is changing the rule and I think that is a determination that has been made by the county in the past that it has been okay to operate that crusher without it being in a building. I have a hard time calling it a manufacturing and processing. The crusher is actually mobile so it is not a fixed piece of equipment, it has wheels and the applicant testified last month that he has moved it on and off the property. It is not a piece of equipment that is bolted down to a concrete slab. It is physically there but it is mobile and I feel like that is another issue that I have to consider. I think when the Supervisors approved it in 1978, they thought about it at least enough to put the fifty foot buffer around the site. They said we have to have at least a fifty foot buffer around the site and that was required as one of the conditions. Like everyone here, would I want to live next to it, no sir. I was out there today and of course it rained. The applicant stated that his storm water pond was environmentally protected and there was nothing going offsite and he has a way of collecting what little bit that does run off. I stood there within twenty feet of the crusher, had a meaningful conversation with Mr. Fields. I did not have to yell at him and he did not have to yell at me. I went up to the top of the hill to some of the neighbors and stood on that fence just to see what I could hear and how loud it was? It was not excessive and I did not have any hearing problems. There was not an extreme amount of noise that came from the crusher; I do not feel that the intention was ever to have the crusher in a building and the county did determine by its action that they were satisfied that be. I am thinking that I will oppose the motion.

Mr. Davis: I have heard all this information and basically what we are here to decide tonight is whether there is a violation of County Code. Should this crusher be in a building? It does not matter what happened in 1978, they did not know anything about a crusher. There is no material to indicate that. It does not matter that we have two or fifteen other crushers in the County, we are talking about this one. If there is a complaint on the other crushers then the county and us would have to take a look at it and make a determination at that time.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Gibbons: I have one question? I had asked before about the reduction of hours, have you given that any thought?

Mr. Leming: What Mr. Fields has indicated was that he can operate within a window in the middle part of the day, say in the vicinity of ten to three o'clock. That is sufficient time to operate the crusher but it would not be operated during the early morning hours nor would it be operated in the evening, weekdays and Saturdays, no operation on Sunday.

Mr. McRoberts: There are uses listed in that zone that you cannot put inside a building and I think there is a fundamental flaw in the zoning ordinance itself that you guys are wrestling with and that you cannot fix tonight. I think the Zoning Administrator should look at and maybe come forward to fix and go before the Planning Commission and the Board and deal with the issue

Mr. Gibbons: Can we put a timelimit on this?

Mr. McRoberts: No sir, there is nothing in the zoning ordinance that says that.

Mr. Gibbons: All in favor say aye.

Mr. Beauch: Aye.

Mr. Davis: Aye.

Dr. Larson: Aye.

Mr. Ackermann: Aye.

Mr. Gibbons: All opposed? No.

Mr. Ingalls: No.

Mr. Hudson: No.

Mr. Gibbons: Any abstentions? We appreciate you coming and the neighbors coming.

Vote:

The motion to uphold the Zoning Administrator's determination passed 4-3.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – no

Mr. Hudson – no

Mr. Ingalls – no

Dr. Larson – yes

ZONING ADMINISTRATOR REPORT

Mr. Gibbons: The next item on the agenda is the Zoning Administrators report. Nothing from the Zoning Administrator?

Ms. Hudson: Nothing really, I did include a handout for you of the “Fences, wall and hedges” that was approved by the Board and a couple of other ordinances that are going.

ADOPTION OF MINUTES

4. August 25, 2009

Mr. Gibbons: The next item is adoption of the minutes. Is there any questions on the minutes for August 25th? Ok, we need a motion.

Motion:

Mr. Hudson: So moved.

Mr. Gibbons: Moved by Mr. Hudson.

Mr. Beach: Second.

Mr. Gibbons: Second by Mr. Beach. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Beach: Aye

Mr. Davis: Aye.

Dr. Larson: Aye.

Mr. Hudson: Aye.

Mr. Gibbons: Aye.

Mr. Ingalls: I am going to abstain because I was not here in August.

Mr. Hudson: I will have to abstain from September 22nd also.

Mr. Gibbons: No, no, we are doing them individually. You were here in August.

Mr. Beach: Was I there in August?

Mr. Hudson: Yes, I was there.

Mr. Beach: I was there in August.

Stafford County Board of Zoning Appeals
October 27, 2009

Mr. Ingalls: You were here.

Mr. Beach: I was not here in September.

Vote:

The motion to approve the August 25, 2009 minutes passed 6-0-1.

Mr. Ackermann – yes

Mr. Beach – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – abstained

Dr. Larson – yes

5. September 22, 2009

Mr. Gibbons: Right, Ok. We need a motion for September 22nd. Somebody who was present.

Motion:

Mr. Ackermann: I was here. I move that we accept the minutes.

Mr. Gibbons: Mr. Ackermann moves, do we have a second?

Mr. Ingalls: Second.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Dr. Larson: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye.

Mr. Gibbons: Opposed? Abstention?

Mr. Hudson: And I abstain.

Mr. Beach: I abstain

Mr. Gibbons: We should have two abstentions, right?

Mr. Beach: I abstained.

***Stafford County Board of Zoning Appeals
October 27, 2009***

Mr. Gibbons: Yeah, and so did Marty. Alright, other business and Ray had asked for us...

Mr. Ingalls: On the minutes there we just approved, September 22, 2009, it says September 22nd on page one and then when I flip it over it says August 25th.

Mr. Ackermann: They kept the same header, I think.

Mr. Ingalls: Yeah, it says August 25th.

Mr. Gibbons: It is a draft though, it says draft on it. When we type it, I hope we type it right.

Mr. Ingalls: Yeah, I guess we need to make sure.

Mr. Davis: Is that August or September we just approved?

Mr. Ingalls: September.

Mr. Beauch: We did them both.

Mr. Hudson: We did August and then September.

Mr. Davis: On page 29 of the September minutes, line 206, it should say: we have an attorney here now and we have NOT had one in the past.

Mrs. Musante: Mr. Davis, I am sorry, I did not hear what you said.

Mr. Davis: On page 25, line 206, it should say: we have an attorney here now and we have NOT had one in the past.

Mrs. Musante: Are we on the September minutes?

Mr. Davis: Yes.

Mr. Gibbons: Yes.

Mrs. Musante: Page 25?

Mr. Davis: Page 25, line 206.

Mrs. Musante: Line 206.

Mr. Gibbons: Did you get that correction? Okay the minutes will be as amended.

Mrs. Musante: Yes.

OTHER BUSINESS

***Stafford County Board of Zoning Appeals
October 27, 2009***

Mr. Gibbons: Mr. Davis had asked in an email and we all got a copy of it, that we got some form of proper County ID. So if we go on the properties and go visit, that we at least have something that says who we are and be official. Rachel, are you going to take this or Melody? Who is going to take this?

Ms. Hudson: We will look at it again but I asked if you all could get County ID's and was told no.

Mr. Gibbons: Who said no?

Ms. Hudson: I do not remember if it was HR.

Mr. Davis: The Electoral Board has County ID and they are not employees.

Ms. Hudson: I will ask the County Administrator.

Mr. Gibbons: We just had her here.

Ms. Hudson: The Deputy County Administrator.

Mr. Gibbons: Oh, deputy, Mike?

Ms. Hudson: Yes.

Mr. Gibbons: Please do that. The problem is if you go visit something, you should something that says that I am who I am.

Mr. Ingalls: You gave us name tags, it had BZA and my name on it.

Mr. Gibbons: I can make those too.

Mr. Ingalls: I can make one up.

Mr. Gibbons: If you had the proper ID from the county with the seal on it and had your mug taken then that is a lot better.

Mr. Ackermann: When I was on the cable TV committee we had business cards printed up for everyone on the committee.

Mr. Gibbons: We have one case for next month?

Mrs. Musante: We have two for November.

Mr. Gibbons: Right, the unfinished one and the other. Everybody should consider now and try to schedule, do we want a meeting in December or do we want to go like we have been and not have one?

Mrs. Musante: We can accept the applications, we would just put them on in January.

Mr. Ackermann: I think we should continue past practice and not have a meeting.

Mr. Gibbons: Does everyone agree with that? So we all agree, no meeting.

*Stafford County Board of Zoning Appeals
October 27, 2009*

ADJOURNMENT

Mr. Gibbons: Anything else? Okay, we adjourn the meeting and thank you very much.

With no further business, the meeting was adjourned at 10:32pm.

Robert C. Gibbons, Chairman
Board of Zoning Appeals