



**Board of Adjustment
Agenda Packet**

February 11, 2016

Call to Order

- A) Approval of Agenda
- B) Ask for Disqualifications
- C) Announce Quorum Being Met

Approval of Minutes

- D) January 14, 2016

Motion

- E) January 28, 2016

Motion

Old Business

- A) **Public Hearing and Action: BOA 16-01 R.F. London, Inc.:** Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

New Business

Announcements

Adjournment



**CURRITUCK COUNTY
NORTH CAROLINA**

January 14, 2016

Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

A. Statement

Please be advised that these minutes are not verbatim but are rather a general summary of the discussions at the meeting. A transcript of the meeting prepared by a court reporter will be provided at a later date.

Attendee Name	Title	Status	Arrived
Cameron Tabor	Vice Chairman	Present	
C. Shay Ballance	Board Member	Present	
Donna McCloud	Board Member	Present	
Michael Painter	Board Member	Present	
David Palmer	Board Member	Present	
Vivian Simpson	Board Member	Absent	

B Announce Quorum Being Met

Mr. Tabor Announced a quorum had been met.

C Approval of Agenda

Mr. Palmer presented a revised agenda and moved that it be approved. Mr. Painter seconded the motion and the board unanimously approved the revised agenda.

D Election of Chairman and Vice-Chairman

Mr. Woody opened the nominations for chairman. Mr. Tabor nominated Mr. Palmer for chairman. Mr. Painter seconded the nomination and Mr. Palmer was unanimously voted chairman.

Chairman Palmer opened the nominations for vice-chairman. Mr. Tabor nominated Mr. Painter as vice-chairman. Mr. Painter was unanimously voted vice chairman.

E Ask for Disqualifications

No members disqualified themselves from voting on an item.

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

F Approval of Minutes for September 10, 2015**1. Board of Adjustment Minutes for September 10, 2015**

Mr. Tabor motioned to approve the minutes as presented. Ms. McCloud seconded the motion and the motion passed unanimously.

G Rules of Procedure**1. Proposed Amendment to Rules of Procedure**

Mr. Painter motioned to approved the amended rules of procedure. Mr. Tabor seconded the motion and the motion passed unanimously.

H Closed Session to Confer with BOA Attorney Regarding Court Orders**I Determination of Proper Meeting Advertisement**

Mr. Palmer asked if the meeting had been properly advertised.

Mr. Woody said the case had been properly advertised. The property was posted, a legal ad was in the newspaper, and adjoining property owner letters were mailed. Additionally, the agenda and staff report were posted on the county's website.

OLD BUSINESS**NEW BUSINESS****A. Public Hearing and Action: BOA 16-01 R.F. London, Inc.: Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)**

Mr. Palmer directed staff to provide court orders to the board as soon as possible. He said they were just being notified of the court order several years later. He asked about amending the Rules of Procedure to require this notification.

Mr. Woody said staff will provide orders to the board in a timely order.

Mr. McRee explained that multiple things had happened since the court order to this point. The county filed an appeal, the Board of Commissioners had to hear the case, and the timing of the Board of Adjustment meeting had to be worked out between all parties involved.

Mr. Morrison reiterated that orders regarding the Board of Adjustment must be forwarded to them promptly. The board needs to know if it is under a court order.

Mr. Palmer asked staff to provide draft language to add to the Rules of Procedure regarding court orders.

Mr. Palmer asked Mr. Woody to present the staff report.

Bryan Plumley, attorney to the applicant, objected to the staff report. Mr. Morrison suggested that evidence be objected to as presented throughout the staff report.

Mr. Morrison said the board wants to deliberate the case carefully. The board may want to recess and come back another day to give them time to review the evidence of record.

Mr. Woody presented the staff report to the board.

Mr. Plumley objected to staff report, studies, and other items.

Mr. Morrison explained that it was ok to introduce the entire staff report, but asked Mr. Plumley to cite what he was objecting to.

Mr. Morrison said he can't advise the board if they do not know the specific objections within the staff report. The board may allow an opening statement to help understand the background of case, but not evidence.

Mr. McRee directed Mr. Woody to continue.

Mr. Plumley objected to the staff report and its contents. He presented the board with binders of exhibits.

Mr. McRee said Mr. Plumley's exhibits had not been submitted into evidence.

Ben Woody, Robert Brown, and David Paster appeared before the board and were sworn in.

Mr. Woody introduced the staff report into the record in its entirety. (See Attachment 1)

Mr. Plumley objected because the report lacks a proper foundation, much of it not relevant to the case, hearsay, and it is not competent evidence. He would be objecting to findings, recommendations, conclusions, etc. He asked to give an opening statement. Among other things, he said latches do apply as do secondary effects. He handed out Judge Hight's order, July 2012, and the board's previous order, February 2011. If the Doctrine of Latches are not acted upon in a timely manner, you have lost the ability to enforce the zoning ordinance in this matter. He summarized the court orders and explained secondary effects.

Mr. McRee said the opening statement was not accurate or relevant and was argumentative.

Mr. Morrison said the board cannot decide latches. That motion should be addressed to Judge Hight in Superior Court and not the Board of Adjustment.

Mr. Palmer asked if Mr. Plumley gave an opening statement or a motion.

Mr. McRee cited General Statute that explains competent evidence. The board is not required to comply with Rules of Evidence.

Mr. Morrison explained a quasi-judicial hearing.

Mr. Woody introduced the staff report into evidence. (County Evidence # 1) He gave a summary of the facts of the report. He said the 1999 order asked the board to consider a special use permit application under the ordinance in effect at that time. He explained the findings of fact that had to be considered. Mr. Woody introduced Mr. London's February 7, 2000 application into evidence.

Mr. Woody said the first finding the board had to consider is if the special use permit application was complete. The application stated the use was a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, and organized parties for businesses or groups. He said the February 7, 2000 application was considered complete.

Mr. Woody said the second finding was if the use is listed in the Table of Permissible Uses as a special use indicated with a "S." Staff's preliminary find is that the use is not listed in the Table of Permissible Uses with an "S."

Mr. Plumley objected because the report is coming to the board 17 years after the 1999 Tillett order. He said it was not acted on forth with as Judge Hight's 2012 order directed. He said findings coming from staff are untimely and; therefore, he will continue to object to all findings.

Mr. McRee said the board is doing what the judge ordered by using the ordinance in affect at that time.

Mr. Morrison said the board can't make ruling on latches and sophisticated legal actions and suggested the objection be overruled.

The objection was overruled.

Mr. Woody said that in 2000 and today, the Board of Adjustment does not have the authority to consider and issue permits for sexually oriented businesses. The amended use, an adult and sexually oriented business, is within the jurisdiction of the Board of Commissioners according to Section 1310, use number 37.000. An adult and sexually oriented business is allowed in the Heavy Manufacturing (HM) zoning district, not in the General Business (GB) zoning district. The subject property is zoned General Business (GB) and the applicant has not applied for a zoning map amendment.

Mr. Plumley objected because of timeliness.

Mr. Morrison suggested that the board was in an awkward position because they don't have the authority to consider this special use permit, but the Judge Tillett had ordered that they do.

Mr. McRee agreed that the board cannot consider or grant a special use permit.

Mr. Plumley said the board had judicial authority to grant the special use permit.

The board asked for copy of Judge Tillett's order.

Mr. Morrison asked Mr. Woody the difference in special use permits and a conditional use permits.

Mr. Woody explained that the procedure is the same; however, the boards are different. In 2000 the Board of Adjustment had authority to issue a conditional use permit for nightclub, not including topless dancing. A special use permit was heard by the Board of Commissioners and a conditional use permit was heard by the Board of Adjustment, per ordinance.

Mr. Plumley objected to Mr. Woody responding with some authority to the board of adjustment because he was a sophomore in college in 1999.

Mr. Morrison asked Mr. Woody if he was familiar with what the ordinances were then by virtue of his qualification.

Mr. Woody said he was.

The objection was overruled.

Mr. Morrison stated a conditional use permit could have been issued for a nightclub, but not a topless nightclub. Only the Board of Commissioners could have considered a special use permit for a topless night club.

Mr. Palmer asked if primary and secondary use comes into play. He asked is serving alcohol, food, and games was a primary use and the topless dancing a secondary use.

Mr. Woody said the primary use is an adult establishment.

Mr. Morrison considered Judge Tillett's order. All involved agreed that the board must consider the special use permit application. He asked if the board has no authority to consider a special use permit, can Judge Tillett order the board to do so and become legislature to Currituck County? He said authority comes from the Board of Commissioners and a judge cannot legislate.

Mr. Plumley said the board must consider secondary affects as ordered by Judge Tillett.

Mr. Morrison confirmed with Mr. Woody that Section 1304 of the UDO was the Table of permissible uses and that a special use permit could only be considered by the Board of Commissioners.

Mr. McRee said Section 1304 is actually an introductory paragraph to the table.

Mr. Morrison said someone should have filed a motioned to amend the order. Since the order was not appealed, the board must make findings that it doesn't have authority to issue the permit.

Mr. Plumley said Judge Hight's order reviewed this issue. Judge Hight ruled to follow Judge Tillett's order. The Board of Commissioners had 30 days to issue the special use permit and adhere to the order.

Mr. Morrison said the board cannot do anything about that.

Mr. McRee said the board considered Judge Tillett's order in 2000 and made a finding that it would look at secondary impacts, but the land was not zoned properly for the use, so the board could not hear the case. He summarized Judge Hight's order and said Judge Hight ordered the case to be started over.

Mr. Palmer asked if the board should consider the application or just secondary effects.

Mr. Morrison said the board must consider the application.

Mr. Woody said that finding three is if the conditions proposed meet or exceed the minimum requirements of ordinance. The preliminary staff finding is that the conditions proposed do not meet or exceed the minimum requirements of the ordinance. He said Sections 808 and 1310 of the Unified Development Ordinance, adopted September 19, 1994, classifies topless nightclubs as "Adult and Sexually Oriented Business" which requires such businesses to locate in a Heavy Manufacturing zoning district with a special use permit and be located a minimum of 1,000 feet from any dwelling or R and RA zoning district, among other things. The property on which Mermaids (Headlights) is located, US Highway 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, is zoned General Business. Further, the building in which Mermaids (Headlights) is located is within 1,000 feet of 17 residential dwellings (in the year 2000) and immediately adjacent to an R zoning district.

Mr. Woody said that finding four is that the special use will not endanger the public health or safety. The preliminary staff finding is that the use will materially endanger the public health or safety.

Mr. Plumley objected because staff was using old reports that are not relevant and not about this location. He said the reports are hearsay, not competent, not founded, and not peer reviewed studies.

Mr. McRee said the studies are relied upon by staff and other communities across the country. An individual locality does not have to do its own study. You can rely on studies from other communities.

Mr. Plumley objected to methodology.

Mr. Palmer said the business has been operating for 20+ years and asked Mr. Woody if he had any evidence from this business.

Mr. Morrison said that since Mr. Woody didn't author or talk to the author of any of the documents, and the fact that the board can't ask the authors questions, the studies should be considered hearsay and they should sustain the objection.

The objection was sustained.

Ms. McCloud said the board should only consider evidence from this location.

The collection of studies will not be considered as evidence.

Mr. Woody said the order did not ask for secondary effects for Mermaids, but for the use. He said he cannot provide evidence for the original use because the business never operated as a night club without topless dancing.

Mr. Morrison said the board can consider that Statue says that sexually oriented businesses can cause secondary effects on neighboring property values, if not in a proper location.

Mr. Plumley objected because it was a partial reading of the Statute and Judge Tillett was aware of the Statue when he made his ruling in 1999.

Mr. Woody said that the burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the ordinance remains at all times on the applicant. The special use permit application does not address the public health or safety impacts that may occur outside of the building. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will materially endanger the public health or safety.

Mr. Plumley objected saying this was a matter of law that Mr. Woody was reading.

Mr. Woody said finding five is if the special use will injure the value of adjoining or abutting property and will be in harmony with the area in which it is located. The preliminary staff finding is that the proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area in which it is to be located.

Mr. Plumley objected because the tax accessor is not here to testify.

Mr. McRee said county records created by county officials can be used and relied upon in performing a zoning official's job. General Statue allows the board to consider evidence that is trustworthy.

Mr. Plumley said the North Carolina Supreme Court in Mebane has specifically stated that a tax assessor's appraisal could not be used as evidence.

Mr. Morrison suggested a recess.

Upon returning from recess Mr. Morrison said he had an opportunity to read the case Cardwell vs. Mebane from 1873 and summarized that tax lists were not competent to show the value of the land as the accessors were not witnesses of the case sworn to be cross examined. He said the tax value from the tax accessor is hearsay.

Mr. McRee said it is relevant and acceptable to say it appears that this is the value on the tax card.

The objection to valuation was sustained.

Mr. Woody stated that the amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential". The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the ordinance remains at all times on the applicant. The special use permit application states that lots behind the property have been sold for building purposes and concludes that because of this there has not been a substantial injury to adjoining properties. This statement does not provide the rate and value of comparable building activity on lots not adjoining the subject property and therefore does not provide a basis to support the statement. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area.

Mr. Plumley objected.

The objection was overruled.

Mr. Woody said the sixth finding is if the special use will be in conformity with the Land Use Plan or other officially adopted plan. It is the preliminary staff finding that the proposed use is not consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business.

Mr. Plumley objected because there was not sufficient foundation or relevant findings relevant to this establishment.

Mr. Morrison said Mr. Woody had testified earlier that the property is surrounded by residential property.

Mr. Palmer said Mr. Woody is discussing if it will detract from the quality of life.

Mr. Plumley objected because Mr. Woody has not been qualified as an expert in the subject of quality of life.

Mr. McRee questioned Mr. Woody to proffer that he is an expert in planning and zoning including interpreting the land use plan and zoning map, department operation, plan development and implementation, etc.

Mr. Morrison said Mr. Plumley could cross examine Mr. Woody to determine if he is an expert witness in planning and zoning. An expert can render an opinion in his field of expertise.

Mr. Plumley asked Mr. Woody what work he had done to determine quality of life in this

particular neighborhood concerning this particular business.

Mr. Woody said businesses have closed and relocated, but he couldn't determine if it was because of this business.

Mr. Plumley continued to question Mr. Woody.

Mr. McRee said Mr. Plumley had strayed from the intent of qualifying Mr. Woody as an expert witness in planning and zoning.

Mr. Morrison suggested that he get back to training and education.

Mr. Plumley said Mr. Woody is not an expert of quality of life as it pertains to this establishment.

Mr. Palmer said he believed that Mr. Woody was an expert in his field, but had no psychological or health background to speak to quality of life. He motioned that Mr. Woody was not an expert in planning and zoning as it relates to quality of life for the surrounding neighborhood as it relates to an adult business. Mr. Tabor seconded the motion and the motion passed with Mr. Ballance and Ms. McCloud voting no. Mr. Woody was disqualified as an expert in planning and zoning as it relates to quality of life and land use.

Mr. McRee asked for clarification as to what was allowed to be admitted and what was not.

Mr. Plumley said he is not objecting to Mr. Woody as an expert witness with the land use plan.

Mr. Woody clarified what language was his and what was from the land use plan.

Mr. McRee submitted the 1990 Land Use Plan into evidence. (Evidence #2)

Mr. Woody said the proposed use is not consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not reference a policy from a county plan and therefore has not demonstrated general conformity with a plan adopted by the Board of Commissioners.

Mr. Wood said the seventh finding of fact is if the use will exceed the county's ability to provide adequate public facilities. It is staff's preliminary finding that the use is commercial and will not exceed the county's ability to provide other public facilities.

Mr. Plumley asked to call his witnesses out of order because Ms. McCloud had to leave

and his expert witness was from Oklahoma and could not come back.

Mr. Paster was determined to be an expert witness regarding secondary impacts of adult businesses. He gave testimony about studies he had done and establishments he had visited, etc. He spoke to geography special analysis, a census taken by the business owner, etc. He determined that the establishment has no secondary effects on the area.

Mr. McRee objected to expert using a citizen survey performed by the business owner and not by himself.

Mr. McRee objected to what was said to Mr. London in census as hearsay.

The objection was sustained.

Mr. McRee asked Mr. Paster how long he had been in Currituck.

Mr. Paster answered two days and that he had not been in Currituck before.

Mr. McRee asked if Mr. Paster had a written report based on his analysis and study?

Mr. Paster said no.

Mr. Mcree asked Mr. Paster if he had done interviews with the surrounding owners or the sheriff; reviewed communication records; seen the business in operation; or study the property values.

Mr. Paster said no.

Mr. Mcree said all of the information presented came from the owner and transcripts.

Mr. Plumley said this was a members only club, so patrons could be quickly identified. He said this was different from a bar. He said Lauren Berry, Appraiser, had studied market values and determined that market values were higher than other similar properties on mainland and the county had presented no evidence of secondary effects.

RECESS

The board recessed this case until January 28, 2016 at 5:30.

County Exhibit 1- Case Analysis

CASE ANALYSIS FOR THE
Board of Adjustment
DATE: January 14, 2016
BOA 16-01 R.F. London, Inc.

ITEM: BOA 16-01 R.F. London, Inc. special use permit request for an adult and sexually oriented business (presently adult entertainment).

LOCATION: 9098 Caratoke Highway, Point Harbor, Poplar Branch Township
TAX ID: 0132-000-133A-0000

ZONING DISTRICT: General Business (GB)

PRESENT USE: Adult entertainment (Headlights)

OWNER: Robert F. London
Mermaids, Inc.
134 Albetuck Road
Point Harbor, NC 27964

APPLICANT: Robert F. London, Inc.

LAND USE/ZONING OF SURROUNDING PROPERTY:

	Land Use	Zoning
NORTH:	Warehousing	General Business
SOUTH	Single Family Dwellings	Residential
EAST:	Warehousing/Office	General Business
WEST:	Single Family Dwellings	Residential

SIZE OF SITE: 1.5 acres.

I. NARRATIVE OF REQUEST:

The applicant is proposing to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."

II. QUESTION(S) BEFORE THE BOARD:**Special Use Permit Criteria and Staff Findings:**

As required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 808 and Section 1304 the following specific findings of fact and conclusions of law:

1. Completeness of application.

Preliminary Findings:

a. The completed application for the amended use of an adult and sexually oriented business was submitted on February 7, 2000.

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

2. The proposed use is among those listed in the Table of Permissible Uses as a special use indicated with a "S".

Preliminary Findings: The proposed amended use **is not** among those listed in the Table of Permissible Uses as a special use indicated with an "S".

- a. The amended use, an adult and sexually oriented business, is not within the jurisdiction of the Board of Adjustment to issue a special use permit.
- b. The amended use, an adult and sexually oriented business, is within the jurisdiction of the Board of Commissioners according to Section 1310, use number 37.000.
- c. An adult and sexually oriented business is allowed in the Heavy Manufacturing (HM) zoning district, not in the General Business (GB) zoning district. The subject property is zoned General Business (GB) and the applicant has not applied for a zoning map amendment.

3. The conditions proposed meet or exceed the minimum requirements of this ordinance.

Preliminary Findings: The conditions proposed **do not** meet or exceed the minimum requirements of this ordinance.

- a. Sections 808 and 1310 of the Unified Development Ordinance, adopted September 19, 1994, classifies topless nightclubs as "Adult and Sexually Oriented Business" which requires such businesses to locate in a Heavy Manufacturing zoning district with a special use permit and be located a minimum of 1,000 feet from any dwelling or R and RA zoning district, among other things.
- b. The property on which Mermaids (Headlights) is located, US Highway 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, is zoned General Business. Further, the building in which Mermaids (Headlights) is located is within 1,000 feet of 17 residential dwellings (in the year 2000) and immediately adjacent to an R zoning district.

4. The special use will not endanger the public health or safety.

Preliminary Findings: The proposed use **will** materially endanger the public health or safety for the following reasons:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

c. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:

- i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
- ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.
- iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
- v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
- vi. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials; sale or possession of controlled substances; and violent crimes against persons and property.
- vii. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.

- d. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not address the public health or safety impacts that may occur outside of the building (as enumerated above). It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will materially endanger the public health or safety.
5. The special use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.
Preliminary Findings: The proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area in which it is to be located for the following reasons:
 - a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
 - b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
 - c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
 - d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.
 - e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances;

David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:

- i. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
- ii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.
- iii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
- iv. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead other residents and commercial establishments to relocate.
- v. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day care centers, religious facilities, playgrounds and parks the potential for the identified secondary impacts to be felt by the sensitive uses is lessened.
- vi. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in services provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (1) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (2) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (3) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.
- vii. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.
- f. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application states that lots behind the property have been sold for building purposes and concludes that because of this there has not been a substantial injury to

adjoining properties. This statement does not provide the rate and value of comparable building activity on lots not adjoining the subject property and therefore does not provide a basis to support the statement. It is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the proposed use will substantially injure the value of adjoining or abutting property and will not be in harmony with the particular neighborhood or area.

6. The special use will be in conformity with the Land Use Plan or other officially adopted plan.

Preliminary Findings:

- a. The proposed use is not consistent with the 1990 Land Use Plan because the establishment of an adult and sexually oriented business will detract from the quality of life in Currituck County (Goal 6.1) and the Limited Transition classification of the subject property is characterized by residential development which is not compatible with an adult and sexually oriented business.
 - b. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance remains at all times on the applicant. The special use permit application does not reference a policy from a county plan and therefore has not demonstrated general conformity with a plan adopted by the Board of Commissioners.
7. The special use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate. Such facilities must be in place or programmed to be in place within two years after the initial approval of the plan (sketch plan in the case of major subdivisions).

Preliminary Findings:

- a. The proposed use is commercial and will not exceed the county's ability to provide other public facilities.

III. Special Findings Pursuant to Section 808 (Judge Jerry R. Tillett's Order):

As further required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 808 the following specific findings of fact and conclusions of law to address the following:

1. The initial intended use;

Preliminary Findings:

- a. The applicant's initial intended use was a nightclub and billiards/game room. A completed application to appear before the Board of Adjustment for a special use permit was submitted on August 4, 1993.
- b. R. F. London, Inc. was granted a special use permit on January 26, 1994 to operate a nightclub and billiards/game room on US 158, Point Harbor Township, Tax Map 132, Lot 133A, by the Board of Adjustment based on hearings held August 25, 1993 and January 26, 1994. During hearings, Mr. London testifies that the nightclub will not feature topless dancing.

2. The secondary effects of the initial use;

Preliminary Findings:

- a. Section 1310 of the Unified Development Ordinance established the nightclub and billiards/game room use as a special use in the General Business (GB) zoning district.
- b. The initial intended use, a nightclub and billiards/game room, was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

3. The amended use;

Preliminary Findings:

- a. On February 7, 2000, Robert F. London, Inc. submitted a special use permit application to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."
- b. On May 1, 2000 the Board of Commissioners held a public hearing for the special use permit application to operate an adult and sexually oriented business on US 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, in the building now occupied by Headlights Nightclub. The application was denied by the Board of Commissioners because it did not comply with the applicable requirements of the Unified Development Ordinance.
- c. Specifically, the amended use, an adult and sexually oriented business, does not meet the locational or the spacing requirements of Section 808 of the Unified Development Ordinance.

4. The secondary effects of the amended use; and

Preliminary Findings:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
- c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
- d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate

locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

- e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:
 - i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
 - ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.
 - iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
 - iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
 - v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
 - vi. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
 - vii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.

- viii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
 - ix. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials; sale or possession of controlled substances; and violent crimes against persons and property.
 - x. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead other residents and commercial establishments to relocate.
 - xi. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day care centers, religious facilities, playgrounds and parks the potential for the identified secondary to be felt by the sensitive uses is lessened.
 - xii. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (1) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (2) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (3) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.
 - xiii. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.
 - xiv. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.
5. How the secondary effects are affected by the different intended uses.
- Preliminary Findings:**
- a. The secondary effects of the amended use, an adult and sexually oriented business, are substantial because the use does not meet the locational or the spacing requirements of Section 808 of the Unified Development Ordinance. Further, the amended use endangers the public health or safety, is not in

harmony with surrounding area, and injures the value of adjoining or abutting property.

- b. The secondary effects of the initial intended use, a nightclub and billiards/game room, are not present because that use was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

IV. Special Findings Pursuant to Section 1304 (Judge Jerry R. Tillett's Order):

As further required in an Order issued by the Honorable Jerry R. Tillett dated May 24, 1999, the staff recommends pursuant to Unified Development Ordinance (UDO) Section 1304 the following specific findings of fact and conclusions of law to address the following:

1. The initial intended use;

Preliminary Findings:

- a. The applicant's initial intended use was a nightclub and billiards/game room. A completed application to appear before the Board of Adjustment for a special use permit was submitted on August 4, 1993.
- b. Under Section 1304 of the Unified Development Ordinance, the initial intended use is a legitimate permissible use in the General Business (GB) zoning district.
- c. R. F. London, Inc. was granted a special use permit on January 26, 1994 to operate a nightclub and billiards/game room on US 158, Point Harbor Township, Tax Map 132, Lot 133A, by the Board of Adjustment based on hearings held August 25, 1993 and January 26, 1994. During hearings, Mr. London testifies that the nightclub will not feature topless dancing.

2. The secondary effects of the initial use;

Preliminary Findings:

- a. Section 1310 of the Unified Development Ordinance established the nightclub and billiards/game room use as a special use in the General Business (GB) zoning district.
- b. The initial intended use, a nightclub and billiards/game room, was located on a properly zoned parcel of land and met the requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

3. The amended use;

Preliminary Findings:

- a. On February 7, 2000, Robert F. London, Inc. submitted a special use permit application to operate an adult and sexually oriented business consisting of a "Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups."
- b. Under Section 1304 of the Unified Development Ordinance, the amended use is not a legitimate permissible use in the General Business (GB) zoning district. The amended use is only permitted in the Heavy Manufacturing (HM) zoning district with a special use permit and must be located a minimum of

1,000 feet from any dwelling or R and RA zoning district.

- c. On May 1, 2000 the Board of Commissioners held a public hearing for the special use permit application to operate an adult and sexually oriented business on US 158, Point Harbor, Tax Map 132, Lot 133A, Poplar Branch Township, in the building now occupied by Headlights Nightclub. The application was denied by the Board of Commissioners because it did not comply with the applicable requirements of the Unified Development Ordinance.

4. The secondary effects of the amended use; and

Preliminary Findings:

- a. The amended use, an adult and sexually oriented business, is immediately adjacent to a residential subdivision known as Old Oak Estates, which contains 14 dwellings (in the year 2000). Old Oak Estates is zoned R "Residential".
- b. The amended use, an adult and sexually oriented business, does not meet the locational, nor the spacing requirements of Section 808 established for adult and sexually oriented businesses.
- c. A review of county tax office property valuations histories between 1990 and 2000 for 27 lots in Old Oak Estates shows 24 properties decreased in value a total of \$88,895.00 and 3 properties increased in value a total of \$5,321.00. The net decrease in tax base for Old Oak Estates between 1990 and 2000 is \$83,574.00. Mermaids (Headlights) Nightclub began offering topless dancing in the summer of 1994.
- d. With the enactment of N.C. Gen. Stat. 160A-181.1 the North Carolina General Assembly has found and determined that: sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulations of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.
- e. Based on the North Carolina General Assembly's findings and determination and evidence concerning the adverse secondary effects of sexually oriented business on the community and findings incorporated in the cases *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), and *Barnes v. Glenn Theater, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Dallas/Fort Worth, Texas; Denver, Colorado; Ellicottville, New York; Newport News, Virginia; Indianapolis, Indiana; Los Angeles, California; St. Paul, Minnesota; and Austin, Texas; the findings in Article IV, Chapter 12 of the Town of Nags Head, North Carolina Code of Ordinances; and the findings of Chapter 112 of the Dare County, North Carolina Code of Ordinances; David W. Owens, "Regulating Sexually Oriented Businesses", Special Series No. 15, January, 1997; and David W. Owens, "Recent Developments Regarding Local Regulation of Sexually Oriented Businesses", Planning and

Zoning No. 10, August, 1998, the Board of Adjustment for the County of Currituck further finds that:

- i. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments and that without reasonable regulation there is no mechanism to make owners of such establishments responsible for activities that occur on their premises.
- ii. Employees of certain sexually oriented businesses engage in higher incidences of certain types of illicit sexual behavior than employees of other commercial establishments.
- iii. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency infection, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- iv. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.
- v. Numerous studies and reports have demonstrated that the consumption of alcohol or alcoholic beverages at a sexually oriented business increases the potential for illicit sexual activity, violence, acts characterized as disturbing the peace, and other identified nuisances to occur.
- vi. Studies have demonstrated that sexually oriented businesses are regional businesses and as such have a regional draw.
- vii. Small towns, and by extension rural areas, do not have sufficient target populations to support sexually oriented businesses as has been demonstrated in numerous trade area studies.
- viii. Studies have demonstrated that a sexually oriented business in a small town, and by extension rural areas, will draw in a regional population consisting largely adult males in their twenties whose interests and activities are different from of the older adults or families in the community.
- ix. Studies have demonstrated that where sexually oriented businesses are located, other activities that are illegal or unhealthy tend to accompany them, around them, and be aggravated by them. Such other activities include but are limited to prostitution; solicitation for prostitution; lewd and lascivious behavior; possession, distribution, and transportation of obscene materials; sale or possession of controlled substances; and violent crimes against persons and property.
- x. Sexually oriented businesses tend to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere that promotes crime, and ultimately lead other residents and commercial establishments to relocate.
- xi. By establishing location criteria to keep sexually oriented businesses away from sensitive uses, such as residential districts, schools, day

- care centers, religious facilities, playgrounds and parks the potential for the identified secondary to be felt by the sensitive uses is lessened.
- xii. Those individuals who desire to purchase, lease, or sell those items or services provided by sexually oriented businesses or who wish to participate in provided by sexually oriented businesses have additional reasonable avenues available to do so including but not limited to:
 - (4) Access to sexually oriented items and services within the county which are permitted to sell and distribute sexually oriented items and services;
 - (5) Access to sexually oriented items and services within the regional vicinity of the county, including locations in Dare County municipalities, Elizabeth City, North Carolina, and the incorporated portions of Virginia;
 - (6) Access to cable television, including premium channels, pay-per-view channels and adult channels, access to satellite dish transmissions, internet access, telephone access, on-line computer services and access to oriented material via mail and other delivery services.
 - xv. The public health and safety of the citizens and visitors of the county will be materially endangered by the establishment of the proposed use.
 - xvi. The value of adjoining or abutting property and harmony with the surrounding neighborhood and area will be injured by the establishment of the proposed use.

5. How the secondary effects are affected by the different intended uses.

Preliminary Findings:

- a. The secondary effects of the amended use, an adult and sexually oriented business, are substantial because under Section 1304 of the Unified Development Ordinance, the amended use is not a legitimate permissible use in the General Business (GB) zoning district. The amended use is only permitted in the Heavy Manufacturing (HM) zoning district. The amended use also does not meet the other requirements of the Unified Development Ordinance. Further, the amended use endangers the public health or safety, is not in harmony with surrounding area, and injures the value of adjoining or abutting property.
- b. The secondary effects of the initial intended use, a nightclub and billiards/game room, are not present because under Section 1304 of the Unified Development Ordinance, the initial intended use is a legitimate permissible use in the General Business (GB) zoning district. The initial use also met the other requirements of the Unified Development Ordinance. Therefore, the initial intended use did not endanger the public health or safety, was in harmony with surrounding area, and did not injure the value of adjoining or abutting property.

V. STAFF RECOMMENDATION:

Staff recommends **denial** of the special use permit application because:

- ☐ the proposed use does not meet the requirements of the Unified Development Ordinance, a required finding under Section 1402(1)(c) and Section 2009(3)(c);
- ☐ because the subject property is not zoned correctly;
- ☐ the adult business building is within 1,000 feet of a residential zoning district and within 1,000 feet of buildings used as residential dwellings; and
- ☐ it is staff's opinion that the evidence in the record, prepared in absence of testimony presented at a public hearing, supports the preliminary staff findings that the information presented by the applicant does not meet his burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of the Ordinance.

Attachment (Court Orders)

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96-SP-73

R. F. LONDON, INC.

Petitioner,

v.

THE BOARD OF ADJUSTMENTS OF
THE COUNTY OF CURRITUCK

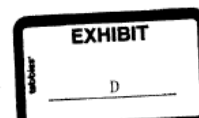
Respondent.

ORDER

THIS CAUSE, coming on for hearing on May 3, 1999 before the undersigned Superior Court Judge on Petitioner's Writ of Certiorari. After reviewing legal briefs and hearing oral arguments of counsel, the Court hereby makes the following:

FINDINGS OF FACT:

1. Petitioner applied for a Conditional Use Permit on or about August 4, 1993 (hereinafter "initial filing").
2. On or about January 26, 1994, the Currituck County Board of Adjustment (hereinafter "Board of Adjustment") issued a Conditional Use Permit to Petitioner.
3. At the time of the initial filing, § 1304(3)(f) of the Currituck County Unified Development Ordinance (hereinafter "Ordinance") was in effect and was interpreted by the Currituck County planning staff as being applicable to topless nightclubs and as being a strict prohibition against topless nightclubs.
4. On August 31, 1994, the Currituck County Board of Adjustment moved to revoke Petitioner's Conditional Use Permit.



5. On September 19, 1994, the Currituck County Board of Commissioners amended the Ordinance whereby it repealed §1304, Permissible Uses and Specific Exclusions, and adopted §808, Adult and Sexually Oriented Businesses.

6. On August 28, 1994, Petitioner timely appealed the Conditional Use Permit revocation to the Superior Court.

7. On December 29, 1994, the Honorable Gary E. Trawick ordered the Board of Adjustment to conduct a new public hearing.

8. On May 29, 1996, a public hearing was held before the Board of Adjustment.

9. On July 8, 1996, the Petitioner timely filed an appeal with this Court in the nature of a Writ of Certiorari, appealing the Board of Adjustment's May 29, 1996 hearing.

10. The Petitioner had submitted a letter (Exhibit 7 of the Record on Appeal) on April 1, 1996, indicating that it would be offering, among other activities, topless dancing.

11. The planning staff interpreted Petitioner's letter (Exhibit 7) as an amendment to the initial application and found the application to be complete (Record on Appeal, Exhibit 11, page 6, lines 1-10).

12. The Board of Adjustment did not make findings of fact and conclusions at its May 29, 1996 hearing that properly supported the denial of Petitioner's application for a Conditional Use Permit pursuant to §1304 as specifically related to diminution of value of adjoining property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, based upon the foregoing Findings of Fact, that:

1. The matter be remanded to the Board of Adjustment for rehearing and that the Board of Adjustment consider Petitioner's application pursuant to §1304 and §808.

-180-

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

2. The Petitioner is to file and the Currituck County planning staff is to accept a new application for a Special Use Permit.

3. The Board of Adjustment shall consider the Petitioner's application pursuant to §1304 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

4. The Board of Adjustment, in the alternative, shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

5. The matter be remanded to the Board of Commissioners for hearing pursuant to §808.

6. The Board of Commissioners shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;

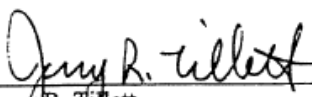
-181-

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

e. How the secondary effects are affected by the different intended uses.

7. These matters are to be conducted at the earliest possible time and at or near the same time so that the matters may be appealed and be considered by the court jointly should the matter be appealed. The parties have consented to pursuing an appeal of § 1304 and § 808 jointly should the matter be further appealed.

This the 24th day of May, 1999.



Jerry R. Tillet,
Superior Court Judge

2007-3-197

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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C.S.C.

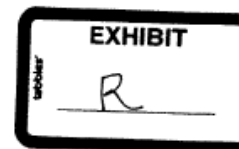
R.F. LONDON, INC., a North Carolina
Corporation, ROBERT F. LONDON, and
MERMAIDS, INC.,

Petitioners/Plaintiffs,

v.

CURRITUCK COUNTY BOARD OF
ADJUSTMENT, and CURRITUCK
COUNTY BOARD OF COMMISSIONERS,

Respondents/Defendants.



ORDER

THIS MATTER came before the Currituck County Superior Court, Civil Session, on January 30, 2006, on Petitioners/Plaintiffs Petition for Writ of Certiorari, Motion to Show Cause, Complaint, and Request for Declaratory Judgment, and the Court finds that Currituck County is unable to produce a verbatim transcript of the hearing before the Currituck County Board of Commissioners.

IT IS HEREBY ORDERED that the matter be remanded to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with the Order signed by the Honorable Jerry R. Tillett in *London v. Currituck*, 96-SP-73.

This the 19th day of April, 2006.

Cy A. Grant
Superior Court Judge Presiding

-177-

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

CERTIFICATE OF SERVICE

I, Charles F. McDarris, hereby certify that I have served a copy of the foregoing proposed ORDER by depositing a copy with the United States Postal Service, postage prepaid and addressed to the following:

John Morrison
Attorney at Law
111 Currituck Commercial Dr.
Moyock, N.C. 27958

This the 13 day of April, 2006.



Charles F. McDarris
Bailey & Dixon, LLP
2500 Two Hannover Square
434 Fayetteville Street Mall
Raleigh, North Carolina 27601

- 178 -

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

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STATE OF NORTH CAROLINA

COUNTY OF CURRITUCK

R.F. LONDON, INC.,
 ROBERT F. LONDON,
 MERMAIDS, INC., and
 MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY
 and CURRITUCK COUNTY BOARD OF
 COMMISSIONERS,

Respondents.

R.F. LONDON, INC.,
 ROBERT F. LONDON,
 MERMAIDS, INC., and
 MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY BOARD OF
 ADJUSTMENT, and
 CURRITUCK COUNTY

Respondents.

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 FILE NOS. 11-CVS-113 and 00-CVS-134

FILED

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CURRITUCK COUNTY, C.S.C.

BY J. Twiford, Asst. C.S.C.

ORDER

THESE CAUSES coming on to be heard and being heard before the undersigned Superior Court Judge at the 16 July 2012 Civil Session of Dare County Superior Court; before the Court were the Petitioners' Writs of Certiorari for appeal from the February 11, 2011 Order of the Currituck County Board of Adjustment (file number 11-CVS-113), the September 21, 2011 Order of the Currituck County Board of Commissioners (file number 00-CVS-134) and the May 11, 2000 Board of Adjustment Order (file number 00-CVS-134) pursuant to N.C.G.S. § 160A-393; the Petitioners were represented by J. Bryan Plumlee and the Respondents were represented by the County Attorney Donald I. McRee, Jr.; that from review of the entire record on appeal including all transcripts, pleadings and exhibits contained within both files and review of all briefs submitted on behalf of the Petitioners and the Respondents which were combined

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

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for the purpose of these appeals and argument of counsel regarding both cases, this Court makes the following:

FINDINGS OF FACT

1. That these matters have been the subject of litigation and various appeals since 1994, and have been on remand to the Currituck Board of Commissioners and Currituck County Board of Adjustment since 1999.
2. That Mermaids is a topless, adult entertainment nightclub in Currituck County, North Carolina.
3. That R.F. London, Inc., the original Petitioner and operator of Mermaids, transferred all holdings, assets, permits, and rights, including the right to sue and defend to Petitioner Mermaids, Inc. also known as Mermaids, Inc. d/b/a Headlights.
4. That Mermaids, Inc. is in part owned by R.F. London. (London, Mermaids, Inc. and Mermaids, Inc. d/b/a Headlights are collectively referred to herein as "Petitioners").
5. That R.F. London is also the owner of the real property and improvements where the business "Mermaids" has operated.
6. That on August 23, 1993 the Currituck Board of Adjustment heard the conditional use permit application of Petitioner R. F. London, Inc.
7. That the R. F. London, Inc. application was for a conditional use permit to operate a pool hall/nightclub on the Property.
8. That at the time of filing the application for a conditional use permit, a topless bar was not a permitted use in Currituck County.
9. That Robert London appeared on behalf of R. F. London, Inc. and under oath testified that he understood a topless bar "is against the law" and that he did not plan to operate a topless bar.
10. That following the August 23, 1993 hearing and a rehearing on January 26, 1994, the Currituck County Board of Adjustment issued a conditional use permit dated January 27, 1994 to R. F. London, Inc. for operation of a pool hall/nightclub.
11. That on May 20, 1994 John W. Halstead, Jr., attorney for London, forwarded a letter to Currituck County Attorney William H. Romm advising that topless dancing would be offered on a regular basis unless Currituck County officials believed that topless dancing would be grounds for revoking the conditional use permit.

12. That on August 13, 1994, an inspection by Currituck County verified that topless dancing was occurring on Petitioner's premises.
13. That proceedings to revoke the January 27, 1994 conditional use permit were then initiated by Currituck County.
14. That on August 26, 1994 during a meeting with Currituck County's planning director, Petitioner Robert London and the operator of Mermaids Nightclub informed that Mermaids Nightclub was operating a topless nightclub and would continue to operate a topless nightclub on the Property.
15. That during the revocation hearing on August 31, 1994 the attorney for Petitioner R. F. London, Inc. stated that Petitioner R. F. London, Inc. was operating a topless nightclub.
16. That following the revocation hearing, the Currituck County Board of Adjustment issued its order dated September 12, 1994 revoking the January 27, 1994 conditional use permit to operate a pool hall/nightclub and order to immediately stop operating Mermaids Nightclub.
17. That on September 19, 1994 the Currituck County Board of Commissioners amended the Currituck County Unified Development Ordinance ("UDO") to allow for the first time adult or sexually oriented businesses in HM (Heavy Manufacturing) Zoning Districts with a special use permit issued by the Board of Commissioners.
18. That R.F. London, Inc. appealed the Board of Adjustment decision to revoke the conditional use permit to Currituck County Superior Court on September 28, 1994.
19. That on December 29, 1994, the Honorable Gary E. Traywick entered an order holding that: 1) the public hearing held on London's conditional use permit was invalid; 2) he further ordered the Board hold a new hearing to determine if the Petitioner's proposed use complies with the ordinances of Currituck County; and 3) that a new hearing be duly advertised as prescribed by ordinance.
20. That on January 24, 1995, Petitioner appealed Judge Traywick's decision to the North Carolina Court of Appeals.
21. That on January 16, 1996, the North Carolina Court of Appeals dismissed Petitioner's appeal

22. That on May 29, 1996, the Board of Adjustment held a new public hearing and denied R. F. London Inc.'s conditional use permit application for an adult and sexually oriented business.
23. That on July 8, 1996, R.F. London, Inc. timely appealed the Board of Adjustment decision to Currituck County Superior Court.
24. That in Order dated May 24, 1999, the Honorable Jerry R. Tillett, entered an order ruling:
- A. The matter to be remanded to the Currituck County Board of Adjustment for rehearing and that the Board of Adjustment consider an application pursuant to Sections 1304 and 808 of the UDO.
 - B. Petitioners were to file and the Currituck County Planning Staff was to accept a new application for a Special Use Permit.
 - C. The Board of Adjustment was ordered to consider the application pursuant to Section 1304 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - D. The Board of Adjustment, in the alternative, was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - E. Judge Tillett further ordered the matter be remanded to the Currituck County Board of Commissioners for hearing pursuant to Section 808. The Board of Commissioners was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the

following:

- a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
- F. These matters were to be conducted at the earliest possible time and at or near the same time so that the matters could be appealed and considered by the Court jointly should the matter be appealed.
- G. Judge Tillett specifically found that the parties have consented to pursuing an appeal of Section 1304 and Section 808 jointly should the matter be further appealed.
25. That after May 24, 1999, Petitioners continued to operate the facility as an adult entertainment nightclub and this fact was well known within Currituck County and the Court takes judicial notice "Mermaids" operated openly and notoriously as a topless, adult entertainment nightclub and bar.
26. That Judge Tillett's Order of May 1999 has been never amended or appealed by any party and is the law of this case.
27. That Judge Tillett is the Senior Resident Superior Court Judge of the First Judicial District which includes Currituck County and has since May 1999 been available for any motion to amend or modify his May 1999 Order.
28. That Respondents have not requested that Judge Tillett amend or modify his May 1999 Order.
29. That on February 7, 2000, the Petitioners submitted to the County a Special Use Permit application to operate an adult and sexually oriented business and nightclub.
30. That on March 29, 2000, the Board of Adjustment held a hearing for a Conditional Use Permit application.
31. That Petitioners' February 7, 2000 application was denied and the Board of Adjustment failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.
32. That on May 1, 2000, the Board of Commissioners held a hearing for a Special Use Permit application.
33. That the application was denied and the County Board of Commissioners failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.

34. That on June 12, 2000, the Petitioners timely filed a Petition for Writ of Certiorari to the Currituck County Superior Court regarding both denials.
35. That on January 2, 2003, the Honorable William C. Griffin, Jr., entered an order granting the Petition for Writ of Certiorari and ordering a verbatim transcript of both hearings be filed with the Court.
36. That the Currituck County Board of Commissioners failed to comply with Judge Griffin's order that verbatim transcripts be supplied to the Superior Court Division as part of the record on appeal.
37. That on July 7, 2003, the Currituck County Board of Commissioners enacted Ordinance Sec. 8-34 requiring all sexually oriented businesses apply to the Sheriff of Currituck County for a license to operate as a sexually oriented business.
38. That in May 2004, the Sheriff of Currituck County issued Petitioners a sexually oriented business license.
39. That the Petitioners' license was renewed annually.
40. That on April 19, 2006, this matter came before the Honorable Cy A. Grant.
41. That Judge Grant found that the County was unable to produce a verbatim transcript and remanded the matter to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with Judge Tillett's Order of May 1999.
42. That a transcript of the Board of Adjustment hearing of March 29, 2000 does not exist.
43. That no hearing as ordered by Judge Tillett or Judge Grant was held and on December 4, 2006, the Currituck County Board of Commissioners during a public hearing and in the presence of counsel voted 4 to 1 to settle and dismiss the lawsuit.
44. That Petitioners continued to operate the facility as an adult entertainment nightclub.
45. That on May 29, 2007, the Honorable J. Richard Parker, Senior Resident Superior Court Judge, entered an administrative order in case number 00-CVS-134 of "removal and discontinuance" from the pending trial calendar.
46. That on May 11, 2009, the Currituck County Sheriff's Office renewed Mermaids, Inc.'s Sexually Oriented Business License and added Robert Brown as a registered agent.
47. That on June 29, 2009, a county code compliance officer, a county building inspector and a county fire marshal inspected the Mermaids building as part of the Petitioners' request to amend a state alcohol permit from beer and wine to include mixed beverages.
48. That the conditions of the structure clearly indicated that adult entertainment had been taking place and based upon the representations of the Petitioners at that time would

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continue to take place.

49. That all three county officials indicated their approval by signing the state form for an amended permit.
50. That following this inspection, County Manager, Dan Scanlon, who was also present during the December 4, 2006 vote by the Board of Commissioners, signed a sworn statement making no objections to the continued operation of Mermaids at its location as part of its amended application to the Alcoholic Beverage Control Commission of North Carolina.
51. That the Alcoholic Beverage Control Commission of North Carolina issued the amended permit on September 10, 2009.
52. That after Petitioners changed one of the exterior signs to reflect Petitioners' new trade name "Headlights," County Code Enforcement Officer Jennie Newborn hand delivered Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010.
53. That the Notices of Violation were against Mermaids, Inc. and Robert F. London.
54. That Newborn issued civil citations on Monday, April 19, 2010.
55. That Newborn thereafter on April 22, 2012 issued civil penalties in the amount of \$27,000.00
56. That the Petitioners appealed the issuance of the Notices of Violation and the citations on April 23, 2010 to the Currituck County Board of Adjustment.
57. That on April 28, 2010, Currituck County Attorney McRee wrote to the North Carolina Department of Crime Control and Public Safety Alcohol Law Enforcement Division indicating to this agency that Petitioners were not properly permitted to operate an adult entertainment nightclub at its location.
58. That on May 3, 2010, the Alcoholic Beverage Control Commission suspended the Petitioners' ABC permit.
59. That on October 14, 2010, the Currituck County Board of Adjustment met and held a public hearing upon Petitioners' appeal of the citations issued by Enforcement Officer Newborn.
60. That the Board of Adjustment upheld the citations but reduced the penalty to \$9,000.00.
61. That the written order of the Board of Adjustment upholding the citations and reducing the penalties is dated October 14, 2010 and is filed of record on February 11, 2011.
62. That the only Board of Adjustment proceedings transcribed after Judge Tillett's ruling of May, 1999 pertain to this February 11, 2011 filed Order from which the appeal

referenced herein as case number 11-CVS-113 arises.

63. That on October 18, 2010, the Currituck County Board of Commissioners met and held a public hearing upon Petitioners' application for a Special Use Permit.
64. That the Board of Commissioners failed to make the rulings required by the May 24, 1999 Order of Judge Tillett or the subsequent order of Judge Grant.
65. That at no time have the Currituck County Board of Commissioners or the Currituck County Board of Adjustment submitted findings and records of proceedings in compliance with the May 1999 Order of Judge Tillett and the subsequent Order of Judge Grant.
66. That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.
67. That because of the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners, the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Conclusions of Law

Based upon the foregoing findings, the Court makes the following conclusions as a matter of law.

This Court has jurisdiction over the parties and over the subject matter.

Pursuant to N.C.G.S. § 160A-393(d), Petitioners have standing to seek review of the Orders of the Board of Commissioners and the Board of Adjustment.

This Court has conducted a review of the whole record.

This Court has reviewed the record de novo for compliance with the law of these cases (Judge Tillett's Order of May 1999).

The Currituck County Board of Adjustment and Currituck Board of Commissioners have at no time submitted findings and records of proceedings in compliance with the May 24, 1999 Order of Judge Tillett and the subsequent Order of Judge Grant

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Currituck County including its officials and boards have unreasonably delayed enforcement of the Currituck County's Uniform Development Ordinance for over 11 years following the remand of this matter to the Currituck County Board of Commissioners and Board of Adjustment by failing to follow the rulings of this Court as setout in Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

The unreasonable delays by Currituck County have been more than a mere passage of time based upon the facts and circumstances of this case.

The failure to follow Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006 are intentional.

That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.

That the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Because of Currituck County's unreasonable delay and refusal to comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, it would be unjust for the County including its officials and boards to prosecute claims to enforce its Uniform Development Ordinance against the Petitioners.

All civil penalties against Petitioners should be stricken.

These matters should be remanded to the Currituck County Board of County Commissioners and the Currituck County Board of Adjustment to allow them to again comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

Until such time as Respondents comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, Respondents should not be permitted to enforce the Currituck County Uniform Development Ordinance against the Petitioners.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is now, therefore, Ordered, Adjudged And Decreed:

1. that the findings of fact and conclusions of law contained in the Board of Commissioners' September 21, 2011 Order are reversed and the matter is remanded forthwith to the Currituck County Board of Commissioners and to the Currituck County Board of

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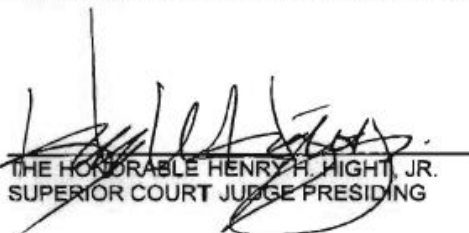
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Adjustment for proceedings and findings not inconsistent with this **Order**, Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006;

2. that pending remanded proceedings and findings ordered herein, the Currituck County Board of Commissioner shall immediately but not later than 30 days from the date of this **Order** issue a Special Use Permit or any other required permit or approval to the Petitioners to operate an adult and sexually oriented business consisting of a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses groups;
3. that pending remanded proceedings and findings ordered herein, Currituck County staff, employees, officers, agents, personnel, elected officials and/or appointed officials may not enforce the relevant portions of Currituck County's Uniform Development Ordinance which are the subject of these appeals against the Petitioners from their use of the property for a sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub;
4. that Currituck County shall immediately certify to the North Carolina Alcoholic Beverage Control Commission that Petitioners have been awarded all necessary permits and approvals to operate the sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub and that its business is not in violation of the County's Uniform Development Ordinance;
5. that the civil penalties against Petitioners are hereby stricken and the findings of fact and conclusions of law contained in the Board of Adjustment's February 11, 2011 filed Order are reversed.

Entered this 24th day of July 2012.


THE HONORABLE HENRY H. HIGHT, JR.
SUPERIOR COURT JUDGE PRESIDING

County Evidence 1
London's 2/7/00 Application

EXHIBIT

A

COUNTY OF CURRITUCK
REQUEST FOR A SPECIAL USE PERMIT

APPLICANT:	OWNER:
Name: Robert F. London, Inc.	Name: Robert F. London
Address: P.O. Box 164 Point Harbor, NC 27964	Address: P.O. Box 164 Point Harbor, NC 27964
Telephone: (252) 491-8581	Telephone: (252) 491-8581

LEGAL RELATIONSHIP OF APPLICANT TO THE PROPERTY OWNER: Applicant is the lessee of the property that is owned by Robert F. London, an individual.
PROPERTY INFORMATION:

Location: U.S. Hwy 158 South, (9098 Caratoke Hwy.)
Tax Map: 0132 Block: 000 Section: 0133A Parcel: 0000
Current Zoning: GB Total Acreage: 1.5 acres +/-

Purpose of Special Use: Nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses or groups.

The applicant should respond to the following issues that the Board of Commissioners must find are met in order to issue a Special Use Permit. Answers should be supported by facts.

- a. The use will not materially endanger the public health or safety;
The nightclub will not materially endanger the public health or safety as a natural buffer exists between adjacent property.
Further, no noise or light originates from inside the building such that neighboring properties would be affected. A nine (9) foot wooden fence also runs the length of the property on its West side.
- b. The use will not substantially injure the value of adjoining or abutting property;
Lots behind the property have been sold for building purposes over the past several years; therefore, there has not been a substantial injury to adjoining properties.

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Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)

- c. The use will be in harmony with the particular neighborhood or area in which it is to be located (even though the proposed use and surrounding uses are generally permissible in the same district and therefore usually compatible);

The property abuts Hwy. 158, a four lane roadway. Commercial businesses are located along the Hwy. 158 and in the immediate vicinity of the nightclub. Commercial development in the area consists of retail furniture outlets, warehouses, office buildings. The building has operated for several years without complaint from the neighbors.

- d. The use will be in general conformity with the Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the board;

Applicant believes that the use is in conformity with the development plans of the County as commercial development is anticipated along Hwy. 158.

- e. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities.

The use will not exceed the county's ability to provide public facilities as such facilities will not be required more than other commercial establishments.

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.

Further, I hereby authorize County Officials to enter my property for purposes of determining zoning compliance.


Signature

County Evidence #2
1990 Currituck County Land Use Plan

Hard copy to be stored with minutes from this meeting.

RESULT:

RECESS WITH NO VOTE

Next: 1/28/2016 5:30 PM

RECESS

The board recessed the meeting until January 28, 2016 at 5:30 p.m. in the Historic Currituck County Courthouse.

Communication: Board of Adjustment Minutes January 14, 2016 (January 14, 2016)



**CURRITUCK COUNTY
NORTH CAROLINA**

January 28, 2016

Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

Mr. Palmer called the recessed meeting back to order.

Attendee Name	Title	Status	Arrived
Cameron Tabor	Board Member	Present	
C. Shay Ballance	Board Member	Present	
Donna McCloud	Board Member	Present	
Michael Painter	Vice Chairman	Present	
David Palmer	Chairman	Present	
Vivian Simpson	Board Member	Absent	

A. Statement

These are not verbatim minutes, but are rather a general summary of conversations held at the meeting. A transcript prepared by a court reporter will be provided at a later date.

B Approval of Agenda

The agenda was not amended.

C Ask for Disqualifications

None of the members disqualified themselves from voting on the agenda item.

D Announce Quorum Being Met

Mr. Palmer announced a quorum had been met.

OLD BUSINESS

A. Public Hearing and Action: BOA 16-01 R.F. London, Inc.: Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

Mr. McRee said Mr. Woody had completed his testimony at the previous meeting.

Mr. Morris said it would be appropriate to allow cross examination of Mr. Woody.

Ben Woody, Nancy Collins, Lauren Berry, and Robert Brown were sworn in.

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

Mr. Plumley objected to any remaining material subject to the staff report.

Mr. McRee asked what was being object to.

Mr. Morrison said objections had been ruled upon at the previous meeting.

Mr. Morrison advised the board that they did not have to believe an expert witness. Mr. Woody had been determined to be an expert witness on land use issues, but not on psychological issues and property valuation.

Mr. Plumley said he did not object to Mr. Woody as land use expert, but as to his ability to speak on quality of life.

The objection was overruled.

Mr. Plumley said Mr. Woody did not cover the entire staff report and objected to any portions not specifically gone over.

Mr. Morrison said that instead of a blanket objection, the board needed line by line itemized objections.

Mr. Plumley said he was objecting to Section 3, special findings, preliminary findings addressing the secondary effects, and bring into play things already ruled upon by the board like studies from other jurisdictions.

Mr. Plumley asked Mr. Woody if the county had performed any study specific to Mermaids or Headlights regarding secondary impacts.

Mr. Woody said no.

Mr. Plumley asked how many adult businesses were operating in the county.

Mr. Woody said just Mermaids.

Mr. Plumley said the sheriff has issued permits to Mermaids to operate every year. The permit is in Volume 2 of 2, Tab 17, in the binders presented to the board. (Exhibit 1) He also introduced Judge Hight's 2012 order – Volume 2 of 2, Tab 16 and Judge Tillett's 1999 order – Volume 2 of 2, Tab 13 (Exhibit 2)

Mr. Wood said he is not familiar with the sheriff's license or the process.

Mr. Plumley asked how many acres in the county would be available for this business.

Mr. Woody did not have that information readily available.

Mr. Plumley asked if there was a study about crime regarding Mermaids or secondary effects of a bar or tavern.

Mr. Wood said no.

Mr. Plumley asked if Mr. Woody had made a finding that there are no secondary effects.

Mr. Woody said yes.

Mr. Plumley asked Mr. Woody if Volume 2, Tab 3, Record 24 of the "January 14, 2016 Board of Commissioners Hearing Exhibits" was his testimony regarding land use in 2010 and if it had been modified.

Mr. Woody said he changed an opinion because another staff member had written the previous report and he had compiled his own report based of the facts of the case.

Mr. Plumley asked if the county had presented to any of the boards any study of secondary impacts on this specific location.

Mr. Tabor said he was taken aback by the sheriff's permit and that appeared to be in conflict with the UDO. He said there was no way to validate the permit at this time and asked if the Sheriff had the authority to issue the license.

Mr. McRee said the Code of Ordinances requires adult businesses to be licensed. It is completely separate from the Unified Development Ordinance.

Mr. Morrison asked if there were standards for the sheriff to issue the license.

Mr. McRee said there was not at the time, but there is now.

Mr. Morrison asked if the Judge ordered the sheriff to issue the license.

Mr. Plumley said the sheriff has been issuing the license since 2004.

Mr. Morrison said the sheriff would not issue the permit unless the Board of Commissioners or Board of Adjustment had previously allowed the application and asked how she could issue the license.

Mr. McRee said the ordinance was changed in 2011 to prohibit issuing a license for a business not allowed by the Unified Development Ordinance.

Mr. Morrison asked what determination the sheriff had to make to issue the license.

Mr. McRee reviewed the Code of Ordinances and said the sheriff now has to deny an application for a sexually oriented business because of the following:

1. An applicant or any individual identified in the application is under 18 years of age; or
2. The application and investigation fee has not been paid; or
3. An applicant or any individual identified in the application has refused to allow an inspection of the premises; or
4. An applicant or any individual identified in the application has overdue license fees associated with the operation of a sexually oriented business; or

5. An applicant or any individual identified in the application has a license under this article which is suspended or revoked; or
6. An applicant failed to provide the information necessary to determine the qualifications of the applicant or any individual identified in the application for issuance of the license, or provided materially false or misleading information on the application form; or
7. An applicant or any individual identified in the application has been convicted of any sexually oriented crime and less than five years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a felony, or less than two years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a misdemeanor. The fact that the conviction is being appealed shall have no effect on the denial of the license; or
8. The application demonstrates or reveals information showing that the proposed business location or location of the adult live entertainment business at which an adult live entertainer intends to perform fails to meet the requirements of the county's unified development ordinance;
9. The application demonstrates or reveals information showing that the proposed business fails to meet the requirements of this article.

Mr. Morrison said Judge Hight's order was issued in 2012 and the sheriff was under the Judge's order to issue the licenses.

Mr. Plumley objected to the assumptions being made about why the sheriff had done certain things. He said the sheriff had been issuing the license up until the business was closed temporarily for approximately 18 months, between 2010-2012. He asked Mr. Woody about sexually oriented businesses being located only in the Heavy Manufacturing zoning district.

Mr. Woody said that was correct with the addition that it also requires a special use permit in the Heavy Manufacturing zoning district.

Ms. Collins said she lives in the house that backs up to the club. She has lived in the home since 2006. Her primary objection is the noise level. She has had to call the police several times. She has had pornographic pictures and trash in her back yard. She is concerned about her grandson seeing this material. She has had kids trying to get through her yard to the club. She is concerned with the other children in the neighborhood seeing things of a sexual nature.

Mr. Morrison said that Ms. Collins should be considered an expert witness since all of these items directly happened to her.

Mr. McRee asked if the club had operated continuously since 2006.

She said no and in 2006 she was told the business would be closed.

Mr. Plumley objected to hearsay.

The objection was sustained.

Mr. McRee asked if she saw any operation in the 18 months they were closed or if she noticed any noise.

Ms. Collins said there was no operation, so no noise during that 18 month period.

Mr. Morrison asked if there was interference with the enjoyment of her property when the business was closed.

Ms. Collins said she could use and enjoy her back yard when the business was closed. When they opened back up, she could not use her backyard because of the noise.

Mr. McRee asked if Ms. Collins if she could tell the difference between employees and patrons.

Ms. Collins said no.

Mr. Plumley asked Ms. Collins if a new house had been built in her neighborhood.

Ms. Collins said she was aware of the home and that it had been for sale for a long time and still not selling.

Mr. Plumley presented Exhibit 3 (Lauren Berry's resume) and Exhibit 4 (Lauren Berry's Comparative Market Analysis).

Ms. Berry was qualified as an expert witness in market analysis, comparative values, and market study. She conducted a study of 2010 in the vicinity. She went through and looked at south Currituck, Grandy to the bridge, and determined price per square foot in general and in this area. She could not find a difference in this area verses the other areas studied. She explained absorption rates, transaction rates, etc.

Mr. McRee objected to Ms. Berry stating why people may enter or leave a neighborhood.

The objection was sustained.

Ms. Berry said that when looking at this neighborhood compared to the rest of the county, she did not see a different rate of people moving in and out. She did not see those transactions. She has an unbiased opinion of this market.

Mr. Plumley asked the study time frame.

Ms. Berry said 2010-2015 and absorption rates were studied from 1995-2014. She also looked at price per square foot and vacant lot sales from Grandy south to the bridge.

Mr. Plumley asked if there was a trending for houses being built near Mermaids during this time frame.

Ms. Berry said 2003-2008 had the largest increase in the 500' buffer and there was another house built in 2012.

Mr. McRee asked Ms. Berry what a comparative market analysis was.

Mr. Berry said it is looking at two markets and comparing them.

Mr. McRee asked what type of analysis it was when looking at this particular property.

Ms. Berry said it could be a comparative analysis. She said she did not appraise the business.

Mr. McRee asked if Ms. Berry had compared another neighborhood with a sexually oriented business next to it.

Ms. Berry said no.

Mr. Plumley asked Ms. Berry if she had found a higher per square foot value for this neighborhood compared to other neighborhoods in the study area.

Ms. Berry said this neighborhood had higher values.

Mr. McRee asked who paid for her appearance tonight and who retained her.

Ms. Berry said Mr. Plumley was paying her and that she was retained by the owner, but she was unbiased.

Bob Stebner was sworn in. He is the general manager of First Flight Storage in apartment there and it is next to Headlights.

Mr. Plumley asked how long Mr. Stebner had been working at the location.

Mr. Stebner said 16 years and he lives there also. He remains on the property most of the time. He has had no negative encounters with Mermaids, its employees, or its patrons. He has noticed no litter and had no problems with noise. He has heard no disturbance.

Mr. Plumley asked if his facility was being used.

Mr. Stebner said he is 98% full. He gives his location as next to Mermaids.

Mr. McRee asked if this was a residential property.

Mr. Stebner said it is a mini warehouse business. He pointed out where his residential unit is at the very northern part of the property.

Mr. McRee suggested that Mr. Stebner has a good buffer between him and Mermaids and that he can't clearly see the building, parking lot, doorway that patrons use, or have ability the to know what is happening on the property when business is in operation.

Mr. Plumley objected.

Objection was overruled.

Mr. McRee asked if there was a period of time with Mermaids was not in operation.

Mr. Stebner said yes.

Mr. McRee asked if the business was closed for about 18 months.

Mr. Stener said yes.

Mr. Plumley asked if he could tell what was going on when the business was open.

Mr. Stener said no; however, he is a patron.

Mr. Plumley clarified that Mr. Stener walked and drove around the storage facility to maintain it, so he could tell what was going on at Mermaids.

Mr. Plumley clarified that his apartment is in the storage facility, but he walks the entire property during his rounds. He asked if he heard loud noise or disturbances from the business.

Mr. Stebner said no.

Ms. McCloud asked Mr. Stebner if he was a paid witness.

Mr. Stebner said no.

Mr. Brown was called to testify. He is the president/owner at Headlights/Mermaids since 2009.

Mr. Plumley presented Exhibit 5 (Volume 1, Tab 2, of the "1/14/16 Board of Commissioners Hearing Exhibits" as the board's record of proceedings.

Mr. McRee objected to Exhibit 5 because it is not relevant to this proceeding before the board. That record related to a violation procedure during the time the matter was appealed to Superior Court. Judge Hight struck the BOA order in its entirety and remanded the case back to the Board of Commissioners and the Board of Adjustment. Judge Tillett's order relates to secondary impacts of the intended use of property and the amended use of property. He said it was a waste of time and had nothing to do with Judge Tillett's order.

Mr. Plumley said it is relevant material because a lot of testimony deals with this evidence. He said Mr. Paster relied on the evidence for his expert testimony.

Mr. Morrison said the board would have to recess to read 1400+ pages.

Mr. McRee objected that the record had nothing to do with the item before the board tonight.

Mr. Plumley said the county maintains that they did not know about Mermaids operation.

Mr. Palmer motioned to go into closed session to confer with counsel. Mr. Tabor seconded the motion and the motion passed unanimously.

The board reconvened and Mr. Palmer said upon advice of counsel the objection is sustained unanimously.

Mr. Morrison said to make the document part of the record, but not evidence. Volumes 1 and 2 in their entirety of the "1/4/16 Board of Commissioners Hearing Exhibits" will be kept as a part of these minutes.

Mr. Plumley said he also moved to have BOC proceedings from 2010 entered into evidence.

Mr. McRee questions the relevance of those proceedings.

Mr. Morrison asked if it is relevant to the BOA.

Mr. McRee said it is outside the Judge's order and objected to allowing the proceedings into evidence.

Mr. Plumley said it is relevant. He summarized why.

Mr. Morrison advised the board to sustain this objection and preserve the record.

Mr. Palmer asked if the board had already been presented these items.

Mr. Plumley said there is a court ruling containing part of the information, but there was a 2006 ruling by the Board of Commissioners to drop the case. He gave other examples of why it should be allowed into evidence.

Mr. Palmer asked if certain parts of the 200+ page proceeding could be presented.

Mr. Plumley asked that the document be made part of the record.

Mr. Painter asked if the charge is to consider the application as it was presented in 1999.

Mr. Plumley said the charge is to consider the 2010 order.

Mr. Painter asked what the board is to consider.

Mr. Morrison said the 2012 Hight order required the board to rehear the case and carry out Judge Tillett's order. Judge Tillett said to rehear the case. He considers a rehearing a new application. The board must consider the 2000 application and make

specific findings based on the rules then in effect. He said the order was to consider both sections 1304 and 808 of the ordinance. (Attachment 1)

Mr. McRee and Mr. Plumley agreed that they had to consider both sections of the ordinance.

Mr. Morrison said Judge Grant's order said to go back and do what Judge Tillett said to do.

Mr. Palmer polled the board and they unanimously sustained Mr. McRee's objection.

Mr. Plumley entered into evidence Exhibit 5, the May 5, 2015 transcript of the Board of Commissioners' meeting in response to Judge Hight's order. (Volume 2, Tab 4)

Mr. Morrison said Mr. Plumley has entered a 150 page document into evidence. There is no way the board can review that much information tonight. He recommended a recess for the members to read the document and consider it as evidence.

Mr. Palmer asked if there are other exhibits that Mr. McRee will object to that will need to also be considered.

Mr. Morrison stated that the board members can review the evidence at their leisure. Mr. McRee and Mr. Plumley agreed.

Mr. Palmer asked if when the board reconvened, could they ask questions about the evidence.

Mr. Morrison said yes.

RECESS

The board recessed until February 11, 2016 at 5:30 p.m.

Respectfully Submitted,

Tammy D. Glave/Sl

Senior Planner

Exhibit 1

Volume 1 of 2 and Volume 2 of 2 of the "January 14, 2016 Board of Commissioners Hearing Exhibits" presented to the board. Both binders will be kept with the minutes of this meeting. Specific reference was made to:

- Permit issued by the Sheriff in April 2016 (Part of EXHIBIT 1) -Volume 2 of 2, Tab 17.

Exhibit 2

Judge Hight's 2012 order – Volume 2 of 2, Tab 16 and Judge Tillett's 1999 order – Volume 2 of 2, Tab 13

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STATE OF NORTH CAROLINA

COUNTY OF CURRITUCK

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY
and CURRITUCK COUNTY BOARD OF
COMMISSIONERS,

Respondents.

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY BOARD OF
ADJUSTMENT, and
CURRITUCK COUNTY

Respondents.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 11-CVS-113 and 00-CVS-134

ORDER

FILED
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CURRITUCK COUNTY, C.S.C.
BY J. Twiford, Asst. C.S.C.

THESE CAUSES coming on to be heard and being heard before the undersigned Superior Court Judge at the 16 July 2012 Civil Session of Dare County Superior Court; before the Court were the Petitioners' Writs of Certiorari for appeal from the February 11, 2011 Order of the Currituck County Board of Adjustment (file number 11-CVS-113), the September 21, 2011 Order of the Currituck County Board of Commissioners (file number 00-CVS-134) and the May 11, 2000 Board of Adjustment Order (file number 00-CVS-134) pursuant to N.C.G.S. § 160A-393; the Petitioners were represented by J. Bryan Plumlee and the Respondents were represented by the County Attorney Donald I. McRee, Jr.; that from review of the entire record on appeal including all transcripts, pleadings and exhibits contained within both files and review of all briefs submitted on behalf of the Petitioners and the Respondents which were combined

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

for the purpose of these appeals and argument of counsel regarding both cases, this Court makes the following:

FINDINGS OF FACT

1. That these matters have been the subject of litigation and various appeals since 1994, and have been on remand to the Currituck Board of Commissioners and Currituck County Board of Adjustment since 1999.
2. That Mermaids is a topless, adult entertainment nightclub in Currituck County, North Carolina.
3. That R.F. London, Inc., the original Petitioner and operator of Mermaids, transferred all holdings, assets, permits, and rights, including the right to sue and defend to Petitioner Mermaids, Inc. also known as Mermaids, Inc. d/b/a Headlights.
4. That Mermaids, Inc. is in part owned by R.F. London. (London, Mermaids, Inc. and Mermaids, Inc. d/b/a Headlights are collectively referred to herein as "Petitioners").
5. That R.F. London is also the owner of the real property and improvements where the business "Mermaids" has operated.
6. That on August 23, 1993 the Currituck Board of Adjustment heard the conditional use permit application of Petitioner R. F. London, Inc.
7. That the R. F. London, Inc. application was for a conditional use permit to operate a pool hall/nightclub on the Property.
8. That at the time of filing the application for a conditional use permit, a topless bar was not a permitted use in Currituck County.
9. That Robert London appeared on behalf of R. F. London, Inc. and under oath testified that he understood a topless bar "is against the law" and that he did not plan to operate a topless bar.
10. That following the August 23, 1993 hearing and a rehearing on January 26, 1994, the Currituck County Board of Adjustment issued a conditional use permit dated January 27, 1994 to R. F. London, Inc. for operation of a pool hall/nightclub.
11. That on May 20, 1994 John W. Halstead, Jr., attorney for London, forwarded a letter to Currituck County Attorney William H. Romm advising that topless dancing would be offered on a regular basis unless Currituck County officials believed that topless dancing would be grounds for revoking the conditional use permit.

12. That on August 13, 1994, an inspection by Currituck County verified that topless dancing was occurring on Petitioner's premises.
13. That proceedings to revoke the January 27, 1994 conditional use permit were then initiated by Currituck County.
14. That on August 26, 1994 during a meeting with Currituck County's planning director, Petitioner Robert London and the operator of Mermaids Nightclub informed that Mermaids Nightclub was operating a topless nightclub and would continue to operate a topless nightclub on the Property.
15. That during the revocation hearing on August 31, 1994 the attorney for Petitioner R. F. London, Inc. stated that Petitioner R. F. London, Inc. was operating a topless nightclub.
16. That following the revocation hearing, the Currituck County Board of Adjustment issued its order dated September 12, 1994 revoking the January 27, 1994 conditional use permit to operate a pool hall/nightclub and order to immediately stop operating Mermaids Nightclub.
17. That on September 19, 1994 the Currituck County Board of Commissioners amended the Currituck County Unified Development Ordinance ("UDO") to allow for the first time adult or sexually oriented businesses in HM (Heavy Manufacturing) Zoning Districts with a special use permit issued by the Board of Commissioners.
18. That R.F. London, Inc. appealed the Board of Adjustment decision to revoke the conditional use permit to Currituck County Superior Court on September 28, 1994.
19. That on December 29, 1994, the Honorable Gary E. Traywick entered an order holding that: 1) the public hearing held on London's conditional use permit was invalid; 2) he further ordered the Board hold a new hearing to determine if the Petitioner's proposed use complies with the ordinances of Currituck County; and 3) that a new hearing be duly advertised as prescribed by ordinance.
20. That on January 24, 1995, Petitioner appealed Judge Traywick's decision to the North Carolina Court of Appeals.
21. That on January 16, 1996, the North Carolina Court of Appeals dismissed Petitioner's appeal

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22. That on May 29, 1996, the Board of Adjustment held a new public hearing and denied R. F. London Inc.'s conditional use permit application for an adult and sexually oriented business.

23. That on July 8, 1996, R.F. London, Inc. timely appealed the Board of Adjustment decision to Currituck County Superior Court.

24. That in Order dated May 24, 1999, the Honorable Jerry R. Tillett, entered an order ruling:

A. The matter to be remanded to the Currituck County Board of Adjustment for rehearing and that the Board of Adjustment consider an application pursuant to Sections 1304 and 808 of the UDO.

B. Petitioners were to file and the Currituck County Planning Staff was to accept a new application for a Special Use Permit.

C. The Board of Adjustment was ordered to consider the application pursuant to Section 1304 and to make specific findings of fact and conclusions of law to address the following:

- a. the initial intended use;
- b. the secondary effects of the initial use;
- c. the amended use;
- d. the secondary effects of the amended use; and
- e. how the secondary effects are affected by the different intended uses.

D. The Board of Adjustment, in the alternative, was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the following:

- a. the initial intended use;
- b. the secondary effects of the initial use;
- c. the amended use;
- d. the secondary effects of the amended use; and
- e. how the secondary effects are affected by the different intended uses.

E. Judge Tillett further ordered the matter be remanded to the Currituck County Board of Commissioners for hearing pursuant to Section 808. The Board of Commissioners was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the

following:

- a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
- F. These matters were to be conducted at the earliest possible time and at or near the same time so that the matters could be appealed and considered by the Court jointly should the matter be appealed.
- G. Judge Tillett specifically found that the parties have consented to pursuing an appeal of Section 1304 and Section 808 jointly should the matter be further appealed.
25. That after May 24, 1999, Petitioners continued to operate the facility as an adult entertainment nightclub and this fact was well known within Currituck County and the Court takes judicial notice "Mermaids" operated openly and notoriously as a topless, adult entertainment nightclub and bar.
26. That Judge Tillett's Order of May 1999 has been never amended or appealed by any party and is the law of this case.
27. That Judge Tillett is the Senior Resident Superior Court Judge of the First Judicial District which includes Currituck County and has since May 1999 been available for any motion to amend or modify his May 1999 Order.
28. That Respondents have not requested that Judge Tillett amend or modify his May 1999 Order.
29. That on February 7, 2000, the Petitioners submitted to the County a Special Use Permit application to operate an adult and sexually oriented business and nightclub.
30. That on March 29, 2000, the Board of Adjustment held a hearing for a Conditional Use Permit application.
31. That Petitioners' February 7, 2000 application was denied and the Board of Adjustment failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.
32. That on May 1, 2000, the Board of Commissioners held a hearing for a Special Use Permit application.
33. That the application was denied and the County Board of Commissioners failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.

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34. That on June 12, 2000, the Petitioners timely filed a Petition for Writ of Certiorari to the Currituck County Superior Court regarding both denials.
35. That on January 2, 2003, the Honorable William C. Griffin, Jr., entered an order granting the Petition for Writ of Certiorari and ordering a verbatim transcript of both hearings be filed with the Court.
36. That the Currituck County Board of Commissioners failed to comply with Judge Griffin's order that verbatim transcripts be supplied to the Superior Court Division as part of the record on appeal.
37. That on July 7, 2003, the Currituck County Board of Commissioners enacted Ordinance Sec. 8-34 requiring all sexually oriented businesses apply to the Sheriff of Currituck County for a license to operate as a sexually oriented business.
38. That in May 2004, the Sheriff of Currituck County issued Petitioners a sexually oriented business license.
39. That the Petitioners' license was renewed annually.
40. That on April 19, 2006, this matter came before the Honorable Cy A. Grant.
41. That Judge Grant found that the County was unable to produce a verbatim transcript and remanded the matter to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with Judge Tillett's Order of May 1999.
42. That a transcript of the Board of Adjustment hearing of March 29, 2000 does not exist.
43. That no hearing as ordered by Judge Tillett or Judge Grant was held and on December 4, 2006, the Currituck County Board of Commissioners during a public hearing and in the presence of counsel voted 4 to 1 to settle and dismiss the lawsuit.
44. That Petitioners continued to operate the facility as an adult entertainment nightclub.
45. That on May 29, 2007, the Honorable J. Richard Parker, Senior Resident Superior Court Judge, entered an administrative order in case number 00-CVS-134 of "removal and discontinuance" from the pending trial calendar.
46. That on May 11, 2009, the Currituck County Sheriff's Office renewed Mermaids, Inc.'s Sexually Oriented Business License and added Robert Brown as a registered agent.
47. That on June 29, 2009, a county code compliance officer, a county building inspector and a county fire marshal inspected the Mermaids building as part of the Petitioners' request to amend a state alcohol permit from beer and wine to include mixed beverages.
48. That the conditions of the structure clearly indicated that adult entertainment had been taking place and based upon the representations of the Petitioners at that time would

continue to take place.

49. That all three county officials indicated their approval by signing the state form for an amended permit.
50. That following this inspection, County Manager, Dan Scanlon, who was also present during the December 4, 2006 vote by the Board of Commissioners, signed a sworn statement making no objections to the continued operation of Mermaids at its location as part of its amended application to the Alcoholic Beverage Control Commission of North Carolina.
51. That the Alcoholic Beverage Control Commission of North Carolina issued the amended permit on September 10, 2009.
52. That after Petitioners changed one of the exterior signs to reflect Petitioners' new trade name "Headlights," County Code Enforcement Officer Jennie Newborn hand delivered Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010.
53. That the Notices of Violation were against Mermaids, Inc. and Robert F. London.
54. That Newborn issued civil citations on Monday, April 19, 2010.
55. That Newborn thereafter on April 22, 2012 issued civil penalties in the amount of \$27,000.00
56. That the Petitioners appealed the issuance of the Notices of Violation and the citations on April 23, 2010 to the Currituck County Board of Adjustment.
57. That on April 28, 2010, Currituck County Attorney McRee wrote to the North Carolina Department of Crime Control and Public Safety Alcohol Law Enforcement Division indicating to this agency that Petitioners were not properly permitted to operate an adult entertainment nightclub at its location.
58. That on May 3, 2010, the Alcoholic Beverage Control Commission suspended the Petitioners' ABC permit.
59. That on October 14, 2010, the Currituck County Board of Adjustment met and held a public hearing upon Petitioners' appeal of the citations issued by Enforcement Officer Newborn.
60. That the Board of Adjustment upheld the citations but reduced the penalty to \$9,000.00.
61. That the written order of the Board of Adjustment upholding the citations and reducing the penalties is dated October 14, 2010 and is filed of record on February 11, 2011.
62. That the only Board of Adjustment proceedings transcribed after Judge Tillett's ruling of May, 1999 pertain to this February 11, 2011 filed Order from which the appeal

referenced herein as case number 11-CVS-113 arises.

63. That on October 18, 2010, the Currituck County Board of Commissioners met and held a public hearing upon Petitioners' application for a Special Use Permit.
64. That the Board of Commissioners failed to make the rulings required by the May 24, 1999 Order of Judge Tillett or the subsequent order of Judge Grant.
65. That at no time have the Currituck County Board of Commissioners or the Currituck County Board of Adjustment submitted findings and records of proceedings in compliance with the May 1999 Order of Judge Tillett and the subsequent Order of Judge Grant.
66. That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.
67. That because of the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners, the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Conclusions of Law

Based upon the foregoing findings, the Court makes the following conclusions as a matter of law.

This Court has jurisdiction over the parties and over the subject matter.

Pursuant to N.C.G.S. § 160A-393(d), Petitioners have standing to seek review of the Orders of the Board of Commissioners and the Board of Adjustment.

This Court has conducted a review of the whole record.

This Court has reviewed the record de novo for compliance with the law of these cases (Judge Tillett's Order of May 1999).

The Currituck County Board of Adjustment and Currituck Board of Commissioners have at no time submitted findings and records of proceedings in compliance with the May 24, 1999 Order of Judge Tillett and the subsequent Order of Judge Grant

Currituck County including its officials and boards have unreasonably delayed enforcement of the Currituck County's Uniform Development Ordinance for over 11 years following the remand of this matter to the Currituck County Board of Commissioners and Board of Adjustment by failing to follow the rulings of this Court as setout in Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

The unreasonable delays by Currituck County have been more than a mere passage of time based upon the facts and circumstances of this case.

The failure to follow Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006 are intentional.

That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.

That the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Because of Currituck County's unreasonable delay and refusal to comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, it would be unjust for the County including its officials and boards to prosecute claims to enforce its Uniform Development Ordinance against the Petitioners.

All civil penalties against Petitioners should be stricken.

These matters should be remanded to the Currituck County Board of County Commissioners and the Currituck County Board of Adjustment to allow them to again comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

Until such time as Respondents comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, Respondents should not be permitted to enforce the Currituck County Uniform Development Ordinance against the Petitioners.

Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is now, **therefore, Ordered, Adjudged And Decreed:**

1. that the findings of fact and conclusions of law contained in the Board of Commissioners' September 21, 2011 Order are reversed and the matter is remanded forthwith to the Currituck County Board of Commissioners and to the Currituck County Board of

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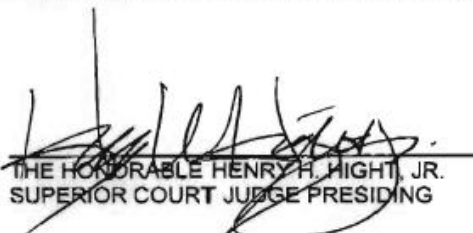
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Adjustment for proceedings and findings not inconsistent with this **Order**, Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006;

2. that pending remanded proceedings and findings ordered herein, the Currituck County Board of Commissioner shall immediately but not later than 30 days from the date of this **Order** issue a Special Use Permit or any other required permit or approval to the Petitioners to operate an adult and sexually oriented business consisting of a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses groups;
3. that pending remanded proceedings and findings ordered herein, Currituck County staff, employees, officers, agents, personnel, elected officials and/or appointed officials may not enforce the relevant portions of Currituck County's Uniform Development Ordinance which are the subject of these appeals against the Petitioners from their use of the property for a sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub;
4. that Currituck County shall immediately certify to the North Carolina Alcoholic Beverage Control Commission that Petitioners have been awarded all necessary permits and approvals to operate the sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub and that its business is not in violation of the County's Uniform Development Ordinance;
5. that the civil penalties against Petitioners are hereby stricken and the findings of fact and conclusions of law contained in the Board of Adjustment's February 11, 2011 filed Order are reversed.

Entered this 24th day of July 2012.


THE HONORABLE HENRY H. HIGHT, JR.
SUPERIOR COURT JUDGE PRESIDING

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96-SP-73

R. F. LONDON, INC.

Petitioner,

v.

THE BOARD OF ADJUSTMENTS OF
THE COUNTY OF CURRITUCK

Respondent.

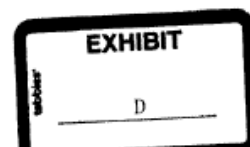
ORDER

THIS CAUSE, coming on for hearing on May 3, 1999 before the undersigned Superior Court Judge on Petitioner's Writ of Certiorari. After reviewing legal briefs and hearing oral arguments of counsel, the Court hereby makes the following:

FINDINGS OF FACT:

1. Petitioner applied for a Conditional Use Permit on or about August 4, 1993 (hereinafter "initial filing").
2. On or about January 26, 1994, the Currituck County Board of Adjustment (hereinafter "Board of Adjustment") issued a Conditional Use Permit to Petitioner.
3. At the time of the initial filing, § 1304(3)(f) of the Currituck County Unified Development Ordinance (hereinafter "Ordinance") was in effect and was interpreted by the Currituck County planning staff as being applicable to topless nightclubs and as being a strict prohibition against topless nightclubs.
4. On August 31, 1994, the Currituck County Board of Adjustment moved to revoke Petitioner's Conditional Use Permit.

-179-



Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

5. On September 19, 1994, the Currituck County Board of Commissioners amended the Ordinance whereby it repealed §1304, Permissible Uses and Specific Exclusions, and adopted §808, Adult and Sexually Oriented Businesses.

6. On August 28, 1994, Petitioner timely appealed the Conditional Use Permit revocation to the Superior Court.

7. On December 29, 1994, the Honorable Gary E. Trawick ordered the Board of Adjustment to conduct a new public hearing.

8. On May 29, 1996, a public hearing was held before the Board of Adjustment.

9. On July 8, 1996, the Petitioner timely filed an appeal with this Court in the nature of a Writ of Certiorari, appealing the Board of Adjustment's May 29, 1996 hearing.

10. The Petitioner had submitted a letter (Exhibit 7 of the Record on Appeal) on April 1, 1996, indicating that it would be offering, among other activities, topless dancing.

11. The planning staff interpreted Petitioner's letter (Exhibit 7) as an amendment to the initial application and found the application to be complete (Record on Appeal, Exhibit 11, page 6, lines 1-10).

12. The Board of Adjustment did not make findings of fact and conclusions at its May 29, 1996 hearing that properly supported the denial of Petitioner's application for a Conditional Use Permit pursuant to §1304 as specifically related to diminution of value of adjoining property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, based upon the foregoing Findings of Fact, that:

1. The matter be remanded to the Board of Adjustment for rehearing and that the Board of Adjustment consider Petitioner's application pursuant to §1304 and §808.

-180-

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

2. The Petitioner is to file and the Currituck County planning staff is to accept a new application for a Special Use Permit.

3. The Board of Adjustment shall consider the Petitioner's application pursuant to §1304 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

4. The Board of Adjustment, in the alternative, shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

5. The matter be remanded to the Board of Commissioners for hearing pursuant to §808.

6. The Board of Commissioners shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;

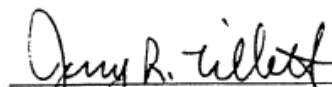
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Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

e. How the secondary effects are affected by the different intended uses.

7. These matters are to be conducted at the earliest possible time and at or near the same time so that the matters may be appealed and be considered by the court jointly should the matter be appealed. The parties have consented to pursuing an appeal of § 1304 and § 808 jointly should the matter be further appealed.

This the 24th day of May, 1999.



Jerry R. Tillet,
Superior Court Judge

-182-

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

EXHIBIT 3

Laruen Berry Resume

Exhibit 3

Lauren Berry
Commercial Real Estate Valuation Services INC
 Work Phone: (252) 453-9933 Work Fax: (252) 453-9933

6328 G Caratoke Hwy. Grandy NC, 27939

Education

2004- 2005	East Carolina University, Greenville NC MBA Degree in Business Administration
2001-2004	East Carolina University, Greenville NC Bachelor's degree Small business Management and Entrepreneurship, Minor in Business administration
09/2002 – 11/2002	Lenoir Community College • Introduction to Real Estate Appraisal (R-1) • Valuation Principles and Procedures (R-2) • Applied Residential Property Valuation(R-3)
5-2004	College of the Albemarle • Working with Underwriters • National USPAP Update
2-2005	Curtis West Appraisal Schools • Introduction to Income Property Appraisal(G-1) • Applied Income Capitalization Procedure (G-2) • Applied Income Property Valuation (G-3)
05-2005	• Trainees and Supervisors • The Appraiser as an Expert Witness • Land, Residential and Commercial Real Estate Investment Strategies
11-2007	Appraisal Institute • Uniform Appraisal Standards for Federal land Acquisitions •
09-2008	Triangle Appraisal School • New FNMA, Federal and State Rules

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

Awards and Organizations

2004	Runner up for the "Most Promising Woman Entrepreneur" Given By the Women Business Owners of Pitt County
2004-Present	Graduate Business Association
2003-Present	Honors Fraternity Sigma Iota Epsilon
2001-Present	National Honors Society
2001-2002	Volunteer at the Summer Moore Cerebral Palsy Center

Organizations Served

USDA, Pasquotank County, Chowan County, Currituck County, United States Coast Guard, Local and Regional Attorneys, Coyleco, Varies Estate handlings, Local Developers, Bank Of Currituck, Bank of the Common Wealth, RBC Centura, Gateway Bank and Trust, Navy Federal Credit Union, and other National and Regional Banks.

Types of Property Analyzed

Commercial offices, shopping centers, Commercial and residential subdivision analysis, Veterinary Offices, Restaurants, Motels, Estates, Marinas, Fire Departments, Churches, and Feasibility Studies, Market Analysis, and Special purpose buildings.

Work Experience

1998-2007	Carolina Coastal ENT. Inc • Clerical Support 1998-2002 • Appraiser Trainee 2002-Present • General Appraiser #6530
2008-Present	Commercial Real Estate Valuation Services • Owner/ General Appraiser #6530 • Real Estate Broker 261730

References

Robert McCall
Bank of the Common Wealth
Senior Vice President and Commercial Loan Officer
8468 Caratoke Highway
Powells Point, NC
(252)-491-8154

Edward Copper
Marco Ventures
Entrepreneur/ Developer
(757)-679-8322

John Galvin
Galvin and Associates
Owner/Appraiser
(336)-312-6630

Claudine Moseley
Contracting Officer for the USDA
AG-4532-C-09-0003
(919) 873-2146

Exhibit 4

Comparative Market Analysis Acorn Lane 2015 by Lauren Berry

Exhibit 4

**Comparative Market Analysis
Acorn Lane 2015**

Average Market \$ per Square foot between 2010-2015 (19 sales) \$110.63

Average Market \$ per Square foot between 2010-2015 (5 Sales) in the 1,000 ft. buffer area \$125.68.

**Due to the small sample size for the 1,000 sq. ft. buffer the difference is not considered significant

Subdivision Analysis

Taking into account the overall market transactions occurring between 1986-2015, no differences were noted in the lot prices or price per square foot. There have been a total of 49 transactions during that time frame. I looked at a total of 29 Lots on Acorn Drive, and concluded that 14 lots were located within the 250 ft. buffer, 10 lots located within the 500 ft. buffer, and, 5 lots located in the 1,000 ft. buffer.

There was no indication that the business has effected development. From 1994 when the business was built, the land has changed in the following ways:

Area	# of Sales	Imp. After 1994	Imp. Before 1994	Currently Vacant
250 ft. Buffer	30	48%	24%	28%
500 ft. Buffer	13	40%	30%	30%
1000 ft. Buffer	6	20%	80%	0

Exhibit 5

May 5, 2015 transcript of the Board of Commissioners' meeting

*Please reference 1/4/16 Board of Commissioners Hearing Exhibits, Volume 2, Tab 4.

Attachment 1

Attachment 1

- a. the mobile home park must contain at least twenty (20) lots on the effective date of this section to qualify for a permit for a storage site;
- b. the storage site must be located on the same lot, tract or parcel as the mobile home park;
- c. the size of the mobile home storage site may not exceed five percent (5%) of the total area of all mobile home lots in the park or 30,000 square feet; whichever area is the smallest;
- d. the total number of mobile homes stored in a mobile home park storage site shall not exceed ten (10) mobile homes and may be as many as two (2) for any mobile park. Under any event, the total number of lots in the park except where such number of stored mobile homes would be less than two (2);
- e. the mobile home storage site shall be completely surrounded by an opaque fence at least eight (8) feet in height. The fence shall be erected and maintained in a manner to present a neat and attractive appearance;
- f. no mobile home may be stored in a mobile home park storage site for more than (6) six months;
- g. it is the intent of this section to allow some relief to owners and operators of mobile home parks who have abandoned mobile homes in their parks or have seized or attached mobile homes under legal process. Only mobile homes which have been abandoned or are in the possession of the mobile home park operators under legal process may be stored and sold in a mobile home park storage site. It is not the intent of this section to allow a mobile home sales lot within a mobile home park and no private sales by persons other than the operators and owners of mobile home parks may be allowed within the storage site; and,
- h. upon request by the Administrator, the mobile home park owner or operator shall submit proof that the mobile homes located within the storage site are those abandoned mobile homes or mobile homes seized or attached under legal process which are permitted under this section.

Section 808 Adult and Sexually Oriented Businesses. (Amended 9-19-94)

1. The provisions of these regulations are adopted by the Currituck County Board of Commissioners under authority granted by the General Assembly of the State of North Carolina, in Chapter 153A,(45-50) and further Article VI of Chapter 153A, Section 135 of the General Statutes. From and after the effective date and hereof, these regulations shall apply to every building, lot, tract, or parcel of land within Currituck County.
2. For the purpose of promoting the health, safety, morals and general welfare of the citizenry of Currituck County, these regulations are adopted by the Board of Commissioners to regulate adult and sexually oriented businesses, as hereby defined, located in Currituck County. Further, these regulations have been made with reasonable consideration among other things, as to the character of the County and its areas and their peculiar suitability for these businesses.
3. These regulations shall not repeal, impair, abrogate, or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions, regulations previously adopted pursuant to law in any established zoning district in

Currituck County. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.

4. For the purpose of these regulations, the following definitions shall apply: (Amended 6/4/07)

- (a) adult arcade: an establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas (as defined hereinafter).
- (b) adult bookstore: an establishment that has as substantial portion (over 25% of total retail space) of its stock-in-trade and offers for rent or sale, for any consideration, any one or more of the following: 1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures video cassettes, slides, or other visual representations that a emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or 2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.
- (c) adult business: an adult business shall be defined as any business activity, club or other establishment which permits its employees, members, patrons or quest on its premises to exhibit any specified anatomical areas before any other person or persons.
- (d) adult motion picture theater: an establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion (25%) of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- (e) adult theater: a theater, concert hall, auditorium or similar establishment characterized by (activities featuring) the exposure of specified anatomical areas or by specified sexual activities.
- (f) massage: any manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- (g) massage business: any establishment or business wherein massage is practiced, including establishments commonly known as massage studios or massage parlors. Specifically excluding from this definition are massages under the direct supervision of a licensed physician by a masseuse licensed in the State of North Carolina or where massage is an accessory to the principal use (except as an accessory to use category 37.000) such as at health clubs and beauty salons.
- (h) sexually oriented business: a sexually oriented business shall be defined as any business activity, club or other establishment, within which the exhibition, showing, rental, or sale of materials distinguished or characterized by an emphasis on material depicting, describing, or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to; adult arcades, adult bookstores, adult motion picture theaters, adult theaters, massage businesses, as defined by this ordinance.
- (i) specified anatomical areas: specified anatomical areas shall be defined as less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the top of the areola.
- (j) specified sexual activities: specified sexual activities shall be defined as:

- (1) human genitals in a state of stimulation or arousal;
- (2) acts of human masturbation, sexual intercourse, sodomy; or
- (3) fondling or other erotic genitals, pubic regions, buttocks or female breasts.
- (k) total retail space: any space within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.
- 5. Adult business shall be subject to the following restrictions:
 - (a) adult businesses may be located only in an HM (Heavy Manufacturing) zoning district provided a special use permit is obtained.
 - (b) no adult business shall be permitted in any building:
 - (1) located within 1000 feet in any direction from a building used as a dwelling and any R and RA zoning district.
 - (2) located within 1000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
 - (3) located within 1000 feet in any direction from a building used as a church, synagogue, or other house of worship.
 - (4) located within 1000 feet in any direction from a building used as a public school or as a state licensed day care center.
 - (5) located within 1000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.
 - (c) except for signs as permitted in Article 17, promotional displays and presentations shall not be visible to the public from sidewalks, walkways or streets.
 - (d) determination of parking requirements shall be the responsibility of the zoning administrator who shall use the table found in Article 4 as a guide (i.e. adult motion picture theaters shall provide parking as is required for other motion picture theaters; adult businesses shall provide parking as is required for dance halls, bars and nightclubs, etc.).
- 6. Sexually oriented business shall be subject to the following restrictions:
 - (a) sexually oriented businesses may be located only in an HM (Heavy Manufacturing) zoning district provided a special use permit is granted.
 - (b) no sexually oriented business shall be permitted in any building:
 - (1) located within 1000 feet in any direction from a building used as a dwelling and any R and RA zoning district.
 - (2) located within 1000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
 - (3) located within 1000 feet in any direction from a building used as a church, synagogue, or other house of worship.

- (4) located within 1000 feet in any direction from a building used as a public school or as a state licensed day care center.
 - (5) located within 1000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.
 - (c) except for signs as permitted in Article 17, promotional displays and presentations shall not be visible to the public from sidewalks, walkways or streets.
 - (d) determination of parking requirements shall be the responsibility of the zoning administrator who shall use the table found in Article 4 as a guide (i.e. adult motion picture theaters shall provide parking as is required for other motion picture theaters; adult businesses shall provide parking as is required for dance halls, bars and nightclubs, etc.).
7. Any adult business and sexually oriented business lawfully operating on the effective date of this ordinance, that is in violation of this Ordinance shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed two (2) years. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If a nonconforming use is discontinued for a period of one hundred eighty days (180) or more it shall not be reestablished. If two (2) or more adult businesses and sexually oriented adult businesses are within 1000 feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and the later-established business(es) shall be considered nonconforming. An adult business and sexually oriented adult business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a church, house of worship, day care center, school, playground, public swimming pool, or public park within 1000 feet of the adult business and sexually oriented business. (Amended 11-5-01, 6/4/07)

Section 809 Temporary tents and tent sales. (Amended 6-7-99)

1. For purposes of this Section, the term "tent" shall be defined as any temporary shelter, canopy or enclosure of canvas, fabric, plastic film or other stretch material supported and sustained by a pole(s) and/or guy line(s).
2. This Section shall apply only to those temporary sales that are conducted on property with an established commercial use. Such temporary sale must be commonly associated with the commercial use established on the property and shall be considered as an accessory to the principal use. This Section shall not apply to any vacant or undeveloped property. Any temporary sale not commonly associated with the established commercial use shall not be permitted under this Section.
3. The following shall be exempt from the provisions of this Section:
 - a. Temporary funeral tents at grave sites;
 - b. Temporary private event tents as an accessory activity to a residential dwelling;
 - c. Temporary recreational camp tents as an accessory activity to a residential dwelling or within an approved campground;
 - d. Temporary tents for church/non-profit related functions;
 - e. Tents erected in conjunction with a Special Event which has been granted a Conditional Use Permit by the Board of Adjustment.
4. Tents shall be setback not less than ten (10) feet from any property line. Tents shall not be located in any easement, right-of-way, vehicular access area, required vehicular parking space, sight-distance area, septic area or other similar area.

ARTICLE 13 PERMISSIBLE USES AND TABLE

Section 1301 General.

1. The Table of Permissible Uses should be read in close conjunction with the definitions of terms set forth in Section 25, the provisions of this Article, and the other interpretative provisions set forth in this Ordinance.

Section 1302 Use of the Designations "Z", "S" and "C" in Table of Permissible Uses.

1. The letter "Z" means that the use is permissible in the indicated zone with a zoning permit issued by the Administrator, the letter "S" means a special use permit must be obtained from the Board of Commissioners and the letter "C" means a Conditional Use Permit must be obtained from the Board of Adjustment except in circumstances where the use is part of a planned unit development or planned residential development, in which case only the Board of Commissioners special use permit approval shall be required.
2. When used in connection with non-residential uses, the designation "ZS" or "ZC" means that such developments require a zoning permit if the lot to be developed is less than five (5) acres in size and a special or conditional use permit, respectively, if the lot is five (5) acres or larger in area.
3. Use of the designation "Z", "S" and "C" for combination uses is explained in Section 1308.

Section 1303 Board of Adjustment Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit.

1. Whenever the Table of Permissible Uses (interpreted in the light of Section 1302 and other provisions of this Article) provides that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a zoning permit, a conditional use permit shall nevertheless be required if the Administrator finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the Administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

Section 1304 Permissible Uses and Specific Exclusions.

1. The presumption established by this Ordinance is that all legitimate uses of land are permissible within at least one zoning district within the County. Therefore, because the Table of Permissible Uses set forth in Section 1310 cannot be all-inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.
2. All uses that are not listed in Section 1310 (Table of Permissible Uses) and that do not have impacts that are similar to those of the listed uses are prohibited. Nor shall Section 1310 be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible in other zoning districts.
3. Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts: **(Amended 11-5-01)**

13.1

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

- (a) use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted, except that the following shall not be prohibited solely by this Subsection:
 - (1) retail sale of food products, with a County Health Department certification, from a vehicle that is removed from the site each day after completion of the sales;
 - (2) retail sale of goods and merchandise manufactured, created, or produced by the Seller, so long as the vehicle is removed from the site each day after the completion of sales; or,
 - (3) use of a truck trailer for temporary purposes at a construction site, in accordance with Section 802.
 - (b) package treatment plant waste water disposal systems that discharge to surface waters;
 - (c) use of a boat, houseboat, or other floating structure as a temporary or permanent residence (this shall not prevent the overnight occupancy of a vessel temporarily docked while in transit on navigable waters);
 - (d) use of a travel trailer as a permanent residence and use of a travel trailer as a temporary residence outside of a campground, except in accordance with Section 801.
 - (e) commercial businesses or any part thereof (i.e. horseback riding, hang gliding, etc.) operating on the beach strand, excluding those commercial operations that are considered an accessory use (i.e. umbrella rentals at PUD beach club) and commercial fishing operations. Commercial businesses operated out of an appropriately zoned area that only drop-off customers at the beach strand with their rental item and who later return to the beach strand to pick-up the customer and rental item are not subject to this provision but shall be subject to the zoning regulations affecting their base operations. For purposes of this subsection, beach strand shall be defined as that area of beach extending from the dune line to the waters edge. **(Amended 8-3-98)**
4. The Table of Permissible Uses in Section 1310 indicates that 4,000 classification uses generally are permissible in both the LM and HM Zoning Districts. Notwithstanding any contrary implication in that Table, the following uses are permissible only within the HM District. The use descriptions are taken from the Standard Industrial Classification Manual published by the U.S. Department of Commerce, to which reference may be made for a more complete description of each type of use.

S.I.C. Number

Group No.	Industry No.	Use Description
201	2011	Meat Packing Plants
201	2013	Sausages and Other Prepared Meat Products
204	2047	Dog, Cat and Other Pet Food
207	2077	Animal and Marine Fats and Oils
261	All	Pulp Mills
262	All	Paper Mills
281	All	Industrial Inorganic Chemicals
286	All	Industrial Organic Chemicals
287	All	Agricultural Chemicals
289	All	Miscellaneous Chemical Products
291	All	Petroleum Refining
295	All	Paving and Roofing Materials
299	All	Misc. Products of Petroleum and Coal
324	All	Hydraulic Cement
327	3273	Ready Mixed Concrete
495	4953	Incinerator Operation Junkyards

Section 1305 Accessory Uses. (Amended 5/7/07)

1. The Table of Permissible Uses classifies different principal uses according to their different impacts. Whenever an activity is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the Permit issued for the principal use. For example, a country club is customarily associated with and integrally related to a residential subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a conditional use permit (use classification 6.210).
2. For purposes of interpreting Subsection (1):
 - (a) a use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use; and,
 - (b) to be commonly associated with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.
3. Without limiting the generality of Subsections of (1) and (2), the following activities are specifically regarded as accessory to residential principal uses so long as they satisfy the general criteria set forth above:
 - (a) an accessory use home occupation that is conducted by a person on the same lot where such person resides provided that:
 1. the business activity is clearly incidental and subordinate to the residential use of the property;

13.3

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

2. there is no substantial visible evidence that a business is being conducted on the premises;
 3. no vehicular or pedestrian traffic is generated in excess of that which is reasonable for a private residence;
 4. not more than one (1) truck, van, car, or other vehicle which is visibly for commercial use if kept on the property, nor any such vehicle or trailer which is larger than eight feet by thirty-two feet (8' x 32');
 5. no open storage is maintained on the property; and,
 6. no sign or advertisement of any type other than a temporary sign for sale of produce, etc. shall be maintained on the property indicating the presence of a business. Signs giving the family name, address, property name (i.e. Mallard Manor, etc.) are permitted.
- (b) hobbies or recreational activities of a non-commercial nature;
- (c) yard sales or garage sales (as defined herein), so long as such sales are not conducted on the same lot for more than three (3) days (whether consecutive or not) during any ninety (90) day period;
- (d) receive-only earth stations, as long as:
- (1) any dish antenna is less than fourteen (14) feet in diameter;
 - (2) there are no more than one (1) dish antenna per single-family detached units; and no more than one (1) dish antenna per four (4) dwelling units on other lots;
 - (3) the station is situated to the rear of the front building facade, shall be allowed to extend up to one (1) foot (measured from the outermost portion of the dish) to the principle structure and must comply with all remaining accessory building setback requirements (10' from side and rear property lines), and is screened so that:
 - a. it will be screened from the road right-of-way to the front of the lot with Type B screen; and,
 - b. in the event that the unit is not placed on a roof, it will be screened with a Type B screen from adjacent residential dwelling units except to the extent that screening would interfere with satellite reception within the area.
 - (e) the sale of agricultural products (either in a "roadside stand" or on a "pick your own" basis) from property where such products were grown or from land that is all part of the same farm or farming operation as the land where such products were grown shall be regarded as accessory to an agricultural operation (use classification 14.100);
 - (f) a mobile home storage site may be permitted as an accessory use within a mobile home park under the conditions set forth in Section 1404;
 - (g) storage of up to four boats for personal use. Storage of more than four boats for personal use is permitted when there is at least one acre of land per each additional boat stored over four and such storage is screened from adjacent residential dwellings. Nothing in this subsection shall be deemed to permit uses that could be classified as junkyards; or

13.4

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

- (h) the placement of an accessory building on a lot where no residential dwelling is located, but where one is intended to be built, for the storage of equipment related to the upkeep of that lot.
- (i) horse stables, provided that when located in an "R" zoning district the following standards shall be met:
 1. all horses boarded on that premises shall belong to or be leased by the individual who owns and/or leases the land on which the stable is located (mares under breeding contract are exempt);
 2. the land on which the stable is located is at least two (2) acres in size.
 3. no stable is within two-hundred (200) feet of any existing adjoining residential dwelling and one-hundred (100) feet from any adjoining water source (well) being used for human consumption;
 4. a dwelling is not required on the property where the stable is located;
 5. stables must be operated and maintained in a healthy and safe manner. Healthy and safe is defined as, but not limited to: fences kept in good repair; potable water available on demand; protection from wind or rain; a sign posted indicating the name and phone number of the person to be contacted in case of emergency.
- (j) piers located on lots where no residential dwelling is located when used for the recreational enjoyment of the property owner shall be considered as an accessory use to the lot. **(Amended 8-21-95)**
- (k) fences provided they do not exceed 8' in height for residential uses. Fences exceeding 8' in height for residential uses shall be prohibited. Barbed wire and electric fences are prohibited in residentially platted subdivisions not intended to accommodate livestock (i.e. residential farmette subdivisions whose restrictive covenants allow livestock and that conform to county zoning requirements shall not be subject to the barbed wire and electric fence provisions). **(Amended 11-20-95)**
- 4. Temporary keeping of livestock as an educational project, approved and sponsored by a youth organization in a (Residential) zoning district subject to the following: **(Amended 4-2-01)**
 - (a) The market livestock project must be approved by a bona fide educational or agricultural association for youths, such as the 4-H Livestock Club and similar organizations. Prior written notice of an intent to participate in a livestock project shall be provided to the zoning officer no less than fourteen days (14) prior to the commencement of the project. The notice shall specify the address at which the project will be conducted, the name of the association sponsoring the project, the type of animal to be kept on the premises and the lot acreage. In addition, the zoning officer may require verification that any livestock project to be conducted in accordance with this section has been approved and is sponsored by a bona fide educational or agricultural association for youths.
 - (b) A market livestock project shall only be conducted as an accessory use to a principal use of the property for residential purposes. All pens, shelters and animal quarters shall be located behind the residential structure. Pen, shelters and animal quarters shall be located seventy-five (75) feet from any occupied dwelling and one-hundred (100) feet from any well and must maintain a distance of twenty-five (25) feet away from all abutting property lines.
 - (c) The market livestock project shall be limited to the temporary keeping of young cattle, hogs, sheep and goats. Cattle and hogs shall be permitted in the A (agricultural and RA (

13.5

Communication: Board of Adjustment Minutes January 28, 2016 (January 28, 2016)

Residential/Agricultural) zoning districts only, with a minimum land area of one (1) acre or more. Sheep and goats may be kept on any residential lot or parcel of land with a lot area of 20,000 square feet or more.

- (d) No market livestock project may commence on residential zoned property prior to December 1 and must be completed by April 30. All livestock must be removed from residential zoned property by April 30.
- (e) All pens, stalls and grazing areas shall be maintained in a sanitary manner free from noxious odors.

Section 1306 Permissible Uses Not Requiring Permits.

1. No zoning, special use, or conditional use permit is necessary for the following uses:

- (a) streets;
- (b) electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public street right of way;
- (c) neighborhood utility facilities located within a public street right-of-way with the permission of the owner of the right-of-way; and,
- (d) electric power distribution lines located within a utility easement other than major transmission lines.

Section 1307 Change in Use.

1. A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:
 - (a) the change involves a change from one principal use category to another;
 - (b) if the original use is a combination use (use classification 27.000) or Planned Unit Development (use classification 28.000), the relative proportion of space devoted to the individual principal uses that comprise the combination use or Planned Unit Development use changes to such an extent that the parking requirements for the overall use are altered;
 - (c) if the original use is a combination use or planned unit development use, the mixture of types of individual principal uses that comprise the combination use or planned unit development use changes;
 - (d) if the original use is a planned residential development (use classification 30.400), the relative proportions of different types of dwelling units change; or,
 - (e) if there is only one (1) business or enterprise conducted on the lot (regardless of whether that business or enterprise consists of one (1) individual principal use or a combination use), that business or enterprise moves out and a different type of enterprise may be classified under the same principal use or combination use category as the previous type of business). For example, if there is only one (1) building on a lot and a florist shop that is the sole tenant of that building moves out and is replaced by a clothing store, that constitutes a change in use even though both tenants fall within principal use classification 2.111. However, if the florist shop were replaced by another florist shop, that would not constitute a change in use since the type of

business or enterprise would not have changed. Moreover, if the florist shop moved out of a rented space in a shopping center and was replaced by a clothing store, that would not constitute a change in use since there is more than one (1) business on the lot and the essential character of the activity conducted on that lot (shopping center--combination use) has not changed. Further, reuse of an existing pier by a non-recreational type of boat to another non-recreational type boat shall not constitute a change of use. **(Amended 4-17-95)**

2. A mere change in the status of property from unoccupied to occupied or vice-versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two (2) active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than 180 consecutive days or has been abandoned.
3. A mere change in ownership of a business or enterprise or a change in the name shall not be regarded as a change in use.

Section 1308 Combination Uses.

1. When a combination use comprises two (2) or more principal uses that require different types of permits (zoning, special use, or conditional use), then the permit authorizing the combination use shall be:
 - (a) a conditional use permit if any of the principal uses combined requires a conditional use permit but none requires a special use permit;
 - (b) a special use permit if any of the principal uses combined requires a special use permit and,
 - (c) a zoning permit in all other cases.
2. This is indicated in the Table of Permissible Uses by the designation "Z,S,C" in each of the columns adjacent to the 27.000 classification.

Section 1309 More Specific Use Controls.

1. Subject to Subsection (2) whenever a development could fall within more than one (1) use classification in the Table of Permissible Uses (Section 1310), the classification that most closely and most specifically describes the development controls. For example, a small doctor's office or clinic might easily fall within the 3.110 classification (office and service operations conducted entirely indoors and designed to attract customers or clients to the premises). However, classification 3.130, "physicians' and dentists' offices and clinics occupying not more than 10,000 square feet of gross floor area" more specifically covers this use and therefore is controlling.

Section 1310 Table of Permissible Uses.		(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)										
USE #	DESCRIPTION	A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
1.000	Residential											
1.100	Single Family Residences											
1.110	Single Family Detached, One Dwelling Unit Per Lot											
1.111	Site Built and Modular	Z	Z	Z	Z	Z	Z	Z	Z	Z		
1.112	Class A Mobile Home	Z	Z	Z								
1.113	Class B Mobile Home subject to Article 8	C	C	C	C	C	C	C	C	C	C	C
1.114	Class C Mobile Home subject to Article 8											
	Existing mobile home parks and mobile home subdivisions subject to Article 8											
1.120	Single Family detached, more than one dwelling unit per lot											
1.121	Site Built and Modular	Z	Z	Z								
1.122	Class A Mobile Home	Z	Z	Z								
1.123	Class B Mobile Home subject to Article 8	C	C									
1.124	Class C subject to Article 8											
	Existing mobile home parks and mobile home subdivisions subject to Article 8											
1.200	Two-Family Residences											
1.210	Two-Family Conversion			S								
1.220	Primary Residence with Accessory Apartment			S								
1.230	Duplex			S								
1.240	Two-Family Apartment			S								
1.300	Multi-Family Residences			S								
1.310	Multi-Family Conversion			S								
1.320	Multi-Family Townhomes			S								
1.330	Multi-Family Apartments			S								
1.400	Homes emphasizing special services, treatment of supervision											
1.410	Homes for handicapped, aged or infirm	C	C					C	C	C		
1.420	Nursing care, intermediate care homes	C	C									
1.430	Child Care Homes	C	C									
1.440	Halfway Houses	C	C									

1.3.8

USE #	DESCRIPTION	A	RA	R	ROI	RO2	RR	GB	C	LBH	JM	HM
1.450	Family Care Homes for the handicapped provided there is 1/2 mile between them measured from lot lines	Z	Z	Z	Z	Z	Z	Z	Z	Z		
1.460	Family Care Homes for the Aged	C	C									
1.500	Miscellaneous rooms for rent situations	C	C									
1.510	Rooming Houses, Boarding Houses	C	C									
1.520	Bed and Breakfast Establishments	C	C	C	C	C	C	C	C	C		
1.530	Tourist homes and other temporary residences renting by the day or week	C	C	C	C	C	C	C	C	C		
1.540	Hotels, motels, and similar business or institutions providing overnight accommodations	C										
1.550	Hunting and Fishing Lodges	Z	Z	Z	Z	Z	Z	Z	Z	Z		
1.600	Temporary Emergency, Construction and Repair Residences	Z	Z	Z	Z	Z	Z	Z	Z	Z		
1.700	Home Occupations	C	C	C	C	C	C	C	C	C		
1.800	Resident Manager/Caretaker Dwelling	C	C	C	C	C	C	C	C	C		
2.000	Sales and Rental of Goods, Merchandise and Equipment											
2.100	No Storage or Display of Goods Outside of Fully Enclosed Building											
2.110	High Volume Traffic Generation											
2.111	Convenience Stores											
2.112	Other											
2.120	Low Volume Traffic Generation											
2.130	Wholesale Sales											
2.140	Auction House (Amended 8/2/04)											
2.150	Pawn Shop (Amended 2/5/07)											
2.200	Storage and Display of Goods Outside Fully Enclosed Building Allowed											
2.210	High Volume Traffic Generation (Amended 2/5/07)											
2.220	Low Volume Traffic Generation (Amended 2/5/07)											
2.230	Wholesale Sales (Amended 2/5/07)											
3.000	Shopping center, subject to Section 805											
	Office, Clerical, Research and Services Not Primarily Related to Goods or Merchandise											
3.100	All Operations Conducted Entirely Within Fully Enclosed Building											

(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)

USE #	DESCRIPTION	A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
3.110	Operations designed to attract and serve customers or clients on the premises, such as the offices of attorneys, other professions, insurance and stock brokers, travel agents.	C	C	C	C	C		Z	Z	Z	Z	Z
3.120	Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use	C	C	C	C			Z	Z	Z	Z	Z
3.130	Offices or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area	C	C	C	C			Z	Z	Z	Z	Z
3.140	Government Offices	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z
3.150	Operations designed to attract little to no customer or client traffic other than employees of the entity operating the principle use (conducted entirely within fully enclosed building). Where office space is less than 25% of total building square footage and warehouse space is used for storage of materials/products to support business. No on premise sales of goods, merchandise or equipment permitted.							Z	Z		Z	Z
3.200	Operations conducted within or outside fully enclosed building											
3.210	Operations designed to attract and serve customers or clients on the premises							C	C		C	C
3.220	Operations designed to attract little or no customer or client traffic other than the entity operating the principal use							C	C		C	C
3.230	Banks with drive-in windows							C	C		C	C
4.000	Manufacturing, Processing, Creating, Repairing, Renovating, Painting, Cleaning, Assembling of Goods, Merchandise and Equipment subject to Subsection 1304 (4)											

13 10

USE #	DESCRIPTION	A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
4.100	All operations conducted entirely within fully enclosed building											
4.110	Majority of dollar volume of business done with walk-in trade	C						C	C	C	Z	Z
4.120	Majority of dollar volume of business not done with walk-in trade	C	C									
4.130	Tattoo and Body Piercing Studios (Amended 6-4-07)							C	C		Z	Z
4.200	Operations conducted within or outside fully enclosed building											
5.000	Educational, Cultural, Religious, Philanthropic, Social, Fraternal Uses											
5.100	Schools											
5.110	Elementary and secondary (including associated grounds and athletic and other facilities)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
5.120	Trade or vocational schools	S	S					S	S	S	S	S
5.130	Colleges, community colleges (including associated facilities such as dormitories, office buildings, athletic fields, etc.)	S	S									
5.200	Churches, synagogues and temples (including associated residential structures for religious personnel and associated buildings but not including elementary school or secondary school buildings)											
5.300	Libraries, museums, art galleries, art centers and similar uses (including associated educational and instructional activities)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
5.310	Located within a building designed and previously occupied as a residence or within a building having a gross floor area not in excess of 3,500 square feet											
5.320	Located within any permissible structure	S	S	S								
5.400	Social, fraternal clubs, and lodges, union halls, and similar uses							C				
6.000	Recreation, Amusement, Entertainment	Z	Z	C				Z	C	C	Z	Z

13.11

USE #	DESCRIPTION	(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)										
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
6.100	Activity conducted entirely within a building or substantial structure											
6.110	Bowling alleys, skating rinks, indoor tennis and squash courts, billiards and pool halls, indoor athletic and exercise facilities							C	C	C	Z	Z
								Z	Z	Z	Z	Z
6.120	Movie theaters											
6.200	Activity conducted primarily outside enclosed buildings or structures											
6.210	Privately owned outdoor recreational facilities such as golf and country clubs, etc., (but not including campgrounds), not constructed pursuant to a permit authorizing the construction of some residential development (Amended 10/7/02)							S	S	S	S	S
6.220	Publicly owned outdoor recreational facilities such as athletic fields, golf courses, tennis courts, swimming pools, parks, campgrounds, beach or sound access facilities, including parking areas, boat ramps and docks, etc, not constructed pursuant to a permit authorizing the construction of another use such as a school							S	S	S	S	S
6.230	Golf driving ranges not accessory to golf courses, par 3 golf courses, miniature golf courses, skateboard parks, water slides, and similar uses (See Section 1.25(1)) (Amended 10/7/02)							S	S	S	S	S
6.240	Horseback riding, schooling and boarding facilities provided that when in an R district, a minimum of 10 acres is required (not constructed pursuant to permit authorizing residential development)							C	C	C	C	C
6.250	Automobile and motorcycle racing tracks											
6.251	Competitive go-kart/ATV race tracks							S	S	S	S	S
6.260	Drive-in movie theaters											
6.270	Private campgrounds											

13.12

USE #	DESCRIPTION	A	RA	R	RO1	RO2	RR	GB	C	LBH	JM	HM
6.271	Travel trailer allowed											
6.272	Travel trailers not allowed											
6.280	Petting Zoo											
6.290	Recreation Grounds											
7.000	Institutional Residences or Care or Confinement Facilities											
7.100	Hospitals, clinics, other medical (including mental health) treatment facilities in excess of 10,000 square feet of floor area											
7.200	Nursing care institutions, intermediate care institutions, handicapped or infirm institutions, child care institutions											
7.300	Institutions (other than halfway houses) where mentally ill persons are confined											
7.400	Penal and correctional facilities											
8.000	Restaurants, Dance Halls, Bars, Night Clubs											
8.100	Restaurants											
8.110	No substantial carry-out or delivery service, no drive-in service, no service or consumption outside fully enclosed structure											
8.120	No substantial carry-out or delivery service, no drive-in service. Service or consumption outside fully enclosed structure allowed											
8.130	Carry-out and delivery service, consumption outside fully enclosed structure allowed, but no drive-in service; delivery service in outer banks overlay district-see Section 125 (1)(g)											
8.140	Carry-out and delivery service, drive-in service, service outside fully enclosed structure; drive-in and delivery service in outer banks overlay district-see Section 125 (1)(g)											
8.200	Dance Halls, Bars and Nightclubs											
9.000	Motor Vehicle and Boat Related Sales and Service Operations											
9.100	Motor vehicle and boat sales or rental or sales and service Subject to Article 14											
9.200	Automobile service stations											
13.13												

USE #	DESCRIPTION	(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)										
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
9.300	Gas sales operations							Z	Z	Z	Z	Z
9.400	Automobile repair shop or body shop provided all wrecked vehicles and parts are visually screened from exterior property lines and right-of-way lines							Z	Z	Z	Z	Z
9.500	Car Wash							Z	Z	Z	Z	Z
9.600	Motor vehicle and boat wholesale and service							Z	Z	Z	Z	Z
(Amended 1/7/02)												
10.000	Storage and Parking											
10.100	Automobile parking garages or parking lots not located on a lot on which there is another principal use to which the parking is related							Z	Z	C	Z	Z
10.200	Storage of goods not related to the sale or use of those goods on the same lot where they are stored							Z	Z	C	Z	Z
10.210	All storage within completely enclosed structures							Z	Z	C	Z	Z
10.220	Storage inside or outside completely enclosed structures				C			C	C	C	Z	Z
10.300	Parking of vehicles or storage of equipment outside enclosed structures where: (i) vehicles or equipment are owned and used by the person making use of lot, and (ii) parking or storage is more than a minor and incidental part of the overall use made of the lot							C	C	C	Z	Z
10.400	Temporary indoor/outdoor storage, mobile office(s) and one dwelling for a caretaker when associated with off-site construction of a public facility and when in accordance with applicable provision of Section 801 and Section 802. (Amended 12/21/92)											
11.000	Scrap Materials, Salvage Yards, Junkyards, Automobile Graveyards											S
12.000	Service and Enterprises Related to Animals											Z
12.100	Veterinarian											Z
12.200	Kennel											Z

13.14

USE #	DESCRIPTION	A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
12.210	Pet Grooming Facility inside a fully enclosed Structure (Amended 9/05)							Z	Z			
12.300	K-9 Training Facility for Explosives (Amended 3/18/02, 5/19/03)	S										
12.400	K-9 Training Facility for Obedience (Amended 5/19/03)	C										
13.000	Emergency Services								C	C	Z	Z
13.100	Law Enforcement Stations											
13.200	Fire Stations	S	S	S	S	S	S	S	S	S	S	S
13.300	Rescue Squad, Ambulance Service	S	S	S	S	S	S	S	S	S	S	S
13.400	Civil Defense Operation	S	S	S	S	S	S	S	S	S	S	S
14.000	Agricultural, Silvicultural, Mining, Quarrying Operations											
14.100	Agricultural operations, farming (not exempt as bona-fide farms)											
14.110	Excluding Livestock											
14.120	Including Livestock	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
14.200	Silvicultural operations	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
14.300	Mining or quarrying operations, including on-site sales of products	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
14.400	Reclamation landfill	S	S									
15.000	Miscellaneous Public and Semi-Public Facilities and Related Uses	C	C	C	C	C	C	C	C	C	C	C
15.100	Post Office											
15.200	Airports and Airstrips											
15.210	County owned or operated airport	S	S	S	S	S	S	S	S	S	S	S
15.220	Privately owned airport (Amended 4/5/04)	S										
15.230	Airstrip	S										
15.300	Sanitary landfill & Convenience Centers											
15.310	County owned or operated	S	S	S	S	S	S	S	S	S	S	S
15.320	Other											
15.400	Demolition landfill	S	S	S								
15.500	Incinerators	S	S	S								
15.600	ABC Stores											
15.700	County authorized life guard stations with accessory use rental of approved beach related items			C						Z	Z	Z
16.000	Dry Cleaner and Laundromat											
16.100	Dry Cleaner											
16.200	Laundromat											
13.15												

USE #	DESCRIPTION	(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)										
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
17.000	Utility Facilities (Amended 6/2/03)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
17.300	County owned or operated	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
18.000	Towers and Related Structures	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
18.100	Antennas and supporting structures, water towers, radio towers, other towers all of which are 50 feet or less, and receive only earth stations	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
18.200	Antennas and supporting structures and towers of all types more than 50 feet tall	C	C					C	C		C	C
18.300	Non-commercial amateur radio towers and antennas with a maximum height of 100'	C	C	C	C	C	C	C	C	C	C	C
19.000	Open Air Markets											
19.100	Farm and craft markets, - produce markets not qualifying as accessory use to use classification 14.100	C						Z	Z	Z	Z	Z
19.200	Flea Markets							Z	Z	Z	Z	Z
20.000	Funeral Home											
21.000	Cemetery and Crematorium	C	C									
21.100	Cemetery (Amended 6/06)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
21.200	Cemetery Family and Church (Amended 6/06)	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
22.000	Crematorium	C	C	C	C			Z	Z	Z	Z	Z
22.000	Nursery School, Day Care Centers	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
23.000	Temporary Construction and Sales Office	Z	Z	Z								
24.000	Crabshedding											
25.000	Commercial Greenhouse or Nursery	Z						Z	Z	Z	Z	Z
25.100	No on-premises sales	Z						Z	Z	Z	Z	Z
25.200	On-premises sales permitted (AMENDED 1/3/05)	S	S	S	S	S	S	S	S	S	S	S
26.000	Special Events	ZSC	ZSC	ZSC	Z	S	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC
27.000	Combination Uses	Permissible only in P.U.D. districts (See Article 10) with a Special Use permit										
28.000	Planned Unit Developments											
29.000	RESERVED											
30.000	Subdivisions	S	S	S	S	S	S	S	S	S	S	S
30.100	Major	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
30.200	Minor	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS
30.300	Private Access Subdivision											

13.16

USE #	DESCRIPTION	(Z - Zoning Permit; C - Conditional Use Permit; S - Special Use Permit)										
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM
30.400	Planned Residential Development	S	S	S	S							
30.500	Residential Airport Subdivision											
31.000	Stockyards, slaughterhouses, rendering plants	C										
32.000	Agribusiness Uses	C										
33.000	Planned Industrial Developments	C	C					Z	Z			
34.000	Miscellaneous Water Related Uses											
34.100	Boat Ramps											
34.110	Publicly owned	S	S	S	S	S	S	S	S	S	S	S
34.120	Privately owned, but open to public on fee basis											
34.200	Marinas not associated with a residential devel.					ZC	ZC	ZC	ZC			
35.000	Adaptive Reuse of Historic Property	C	C	C	C	C	C	C	C	C	C	
36.000	Land Application of Commercial Sludge and Commercial Liquid Septage	C	C	C	C	C	C	C	C	C	C	C
37.000	Adult and Sexually Oriented Businesses (Subject to Section 808 and Article 14)											
38.000	Planned Adult Retirement and/or Assisted Living Communities (Subject to Section 207) (Amended 11/1/99)											S
39.000	Security Training Operations and Services (Amended 5/3/04)	S										

13.17

ARTICLE 14 CONDITIONAL AND SPECIAL USES

Section 1401 Purpose of the Conditional and Special Use Permit.

1. Conditional and special use permits allow flexibility to the Unified Development Ordinance. Subject to high standards of planning and design, certain property uses are allowed in the several districts where these uses would not otherwise be acceptable. By means of controls exercised through the conditional and special use permit procedure, property uses which would otherwise be undesirable in certain districts can be developed to minimize any negative effects that they might have on the surrounding properties.
2. Article 13 sets forth uses that may be established as a matter of right in each district. Some land uses however, have a particular impact on the surrounding land that cannot be determined and controlled by general regulations. In order to insure that these uses, in their proposed locations, would be compatible with surrounding development, their establishment shall not be as a matter of right but only after review and approval as hereinafter provided.

Section 1402 General Standards.

1. Subject to Subsection (2), The Board of Adjustment or the Board of Commissioners, respectively, shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:
 - (a) the requested Permit is not within its jurisdiction according to the Table of Permissible Uses; or,
 - (b) the application is incomplete; or,
 - (c) if completed as proposed in the application, the development will not comply with one (1) or more requirements of this Ordinance (not including those the applicant is not required to comply with under the circumstances specified in Article 15 Nonconforming Situations).
2. Even if the permit issuing board finds that the application complies with all other provisions of this Ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - (a) will materially endanger the public health or safety; or,
 - (b) will substantially injure the value of adjoining or abutting property; or,
 - (c) will not be in harmony with the particular neighborhood or area in which it is to be located (even though the proposed use and surrounding uses are generally permissible in the same district and therefore usually compatible); or,
 - (d) will not be in general conformity with the Land Use Plan, Thoroughfare Plan, or other plan officially adopted by the board; or,

14.1

- (e) will exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate. Such facilities must be in place or programmed to be in place within 2 years after the initial approval of the sketch plan. In the case of subdivision and multifamily development at the sketch plan/special use, preliminary plat or final plat stage, the Board of Commissioners may establish time limits on the number of lots/units available for development to assure adequate public facilities are available in accordance with Section 2015. **(Amended 10/17/94, 5/15/95, 10/2/95)**

Section 1403 Specific Standards. (Amended 6/2/03)

1. In addition to complying with the General Standards of Section 1402, uses listed under this section shall comply with the provisions contained herein.
2. Home occupation not considered an accessory use home occupation as defined in Article 13:
 - (a) one (1) on-premise advertising sign shall be allowed but shall not exceed six (6) square feet in area or four (4) feet in height. Additionally, one (1) off-premise advertising sign shall be allowed subject to the requirements of Section 1703(1)(e) of this Ordinance; **(Amended 3/19/01)**
 - (b) open storage which must be fenced with opaque fencing;
 - (c) a permit to construct an accessory building or addition must conform in appearance to existing primary or accessory structures and may not have a commercial appearance;
 - (d) the use does not disturb or intrude upon the residential character of the subject property or the surrounding neighborhood; and,
 - (e) the following is prohibited:
 - (1) any on-premises retail sales of goods not produced on-site except when the home occupation is located on a lot with direct access to US Highway 158, NC Highway 168, NC Highway 34, NC Highway 3, or NC Highway 615; **(Amended 1/4/99)**
 - (2) more than two (2) persons not a resident on the premises are employed in connection with the purported home occupation;
 - (3) the use creates objectionable noise, fumes, odor, dust or electrical interference;
 - (4) more than one (1) motor vehicle that is used in connection with the purported home occupation is regularly kept on the property or the adjacent street; and,
 - (5) more than twenty-five percent (25%) of the total gross floor area of residential buildings plus other buildings housing the purported home occupation, or more than 1,000 square feet of gross floor area (whichever is less), is used for home occupation purposes.

RESULT:**RECESS WITH NO VOTE****Next: 2/11/2016 7:00 PM****NEW BUSINESS**

There was no new business.

ANNOUNCEMENTS

There were no announcements.

RECESSED

The board recessed the meeting until February 11, 2016 at 5:30 p.m.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1412)

Agenda Item Title

Public Hearing and Action: BOA 16-01 R.F. London, Inc.:

Brief Description of Agenda Item:

Special Use Permit request for an adult and sexually oriented business (presently adult entertainment.)

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 11-CVS-113 and 00-CVS-134

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY
and CURRITUCK COUNTY BOARD OF
COMMISSIONERS,

Respondents.

R.F. LONDON, INC.,
ROBERT F. LONDON,
MERMAIDS, INC., and
MERMAIDS, INC. d/b/a HEADLIGHTS

Petitioners,

VS.

CURRITUCK COUNTY BOARD OF
ADJUSTMENT, and
CURRITUCK COUNTY

Respondents.

FILED

12 JUL 31 PM 12:37

CURRITUCK COUNTY, C.S.C.

BY J. Twiford, Asst. C.S.C.

ORDER

THESE CAUSES coming on to be heard and being heard before the undersigned Superior Court Judge at the 16 July 2012 Civil Session of Dare County Superior Court; before the Court were the Petitioners' Writs of Certiorari for appeal from the February 11, 2011 Order of the Currituck County Board of Adjustment (file number 11-CVS-113), the September 21, 2011 Order of the Currituck County Board of Commissioners (file number 00-CVS-134) and the May 11, 2000 Board of Adjustment Order (file number 00-CVS-134) pursuant to N.C.G.S. § 160A-393; the Petitioners were represented by J. Bryan Plumlee and the Respondents were represented by the County Attorney Donald I. McRee, Jr.; that from review of the entire record on appeal including all transcripts, pleadings and exhibits contained within both files and review of all briefs submitted on behalf of the Petitioners and the Respondents which were combined

Attachment: ORDER - JUDGE HIGHT 7-31-2012 (1412 : BOA 16-01 R.F. London, Inc.)

for the purpose of these appeals and argument of counsel regarding both cases, this Court makes the following:

FINDINGS OF FACT

1. That these matters have been the subject of litigation and various appeals since 1994, and have been on remand to the Currituck Board of Commissioners and Currituck County Board of Adjustment since 1999.
2. That Mermaids is a topless, adult entertainment nightclub in Currituck County, North Carolina.
3. That R.F. London, Inc., the original Petitioner and operator of Mermaids, transferred all holdings, assets, permits, and rights, including the right to sue and defend to Petitioner Mermaids, Inc. also known as Mermaids, Inc. d/b/a Headlights.
4. That Mermaids, Inc. is in part owned by R.F. London. (London, Mermaids, Inc. and Mermaids, Inc. d/b/a Headlights are collectively referred to herein as "Petitioners").
5. That R.F. London is also the owner of the real property and improvements where the business "Mermaids" has operated.
6. That on August 23, 1993 the Currituck Board of Adjustment heard the conditional use permit application of Petitioner R. F. London, Inc.
7. That the R. F. London, Inc. application was for a conditional use permit to operate a pool hall/nightclub on the Property.
8. That at the time of filing the application for a conditional use permit, a topless bar was not a permitted use in Currituck County.
9. That Robert London appeared on behalf of R. F. London, Inc. and under oath testified that he understood a topless bar "is against the law" and that he did not plan to operate a topless bar.
10. That following the August 23, 1993 hearing and a rehearing on January 26, 1994, the Currituck County Board of Adjustment issued a conditional use permit dated January 27, 1994 to R. F. London, Inc. for operation of a pool hall/nightclub.
11. That on May 20, 1994 John W. Halstead, Jr., attorney for London, forwarded a letter to Currituck County Attorney William H. Romm advising that topless dancing would be offered on a regular basis unless Currituck County officials believed that topless dancing would be grounds for revoking the conditional use permit.

12. That on August 13, 1994, an inspection by Currituck County verified that topless dancing was occurring on Petitioner's premises.
13. That proceedings to revoke the January 27, 1994 conditional use permit were then initiated by Currituck County.
14. That on August 26, 1994 during a meeting with Currituck County's planning director, Petitioner Robert London and the operator of Mermaids Nightclub informed that Mermaids Nightclub was operating a topless nightclub and would continue to operate a topless nightclub on the Property.
15. That during the revocation hearing on August 31, 1994 the attorney for Petitioner R. F. London, Inc. stated that Petitioner R. F. London, Inc. was operating a topless nightclub.
16. That following the revocation hearing, the Currituck County Board of Adjustment issued its order dated September 12, 1994 revoking the January 27, 1994 conditional use permit to operate a pool hall/nightclub and order to immediately stop operating Mermaids Nightclub.
17. That on September 19, 1994 the Currituck County Board of Commissioners amended the Currituck County Unified Development Ordinance ("UDO") to allow for the first time adult or sexually oriented businesses in HM (Heavy Manufacturing) Zoning Districts with a special use permit issued by the Board of Commissioners.
18. That R.F. London, Inc. appealed the Board of Adjustment decision to revoke the conditional use permit to Currituck County Superior Court on September 28, 1994.
19. That on December 29, 1994, the Honorable Gary E. Traywick entered an order holding that: 1) the public hearing held on London's conditional use permit was invalid; 2) he further ordered the Board hold a new hearing to determine if the Petitioner's proposed use complies with the ordinances of Currituck County; and 3) that a new hearing be duly advertised as prescribed by ordinance.
20. That on January 24, 1995, Petitioner appealed Judge Traywick's decision to the North Carolina Court of Appeals.
21. That on January 16, 1996, the North Carolina Court of Appeals dismissed Petitioner's appeal

22. That on May 29, 1996, the Board of Adjustment held a new public hearing and denied R. F. London Inc.'s conditional use permit application for an adult and sexually oriented business.
23. That on July 8, 1996, R.F. London, Inc. timely appealed the Board of Adjustment decision to Currituck County Superior Court.
24. That in Order dated May 24, 1999, the Honorable Jerry R. Tillett, entered an order ruling:
- A. The matter to be remanded to the Currituck County Board of Adjustment for rehearing and that the Board of Adjustment consider an application pursuant to Sections 1304 and 808 of the UDO.
 - B. Petitioners were to file and the Currituck County Planning Staff was to accept a new application for a Special Use Permit.
 - C. The Board of Adjustment was ordered to consider the application pursuant to Section 1304 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - D. The Board of Adjustment, in the alternative, was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the following:
 - a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
 - E. Judge Tillett further ordered the matter be remanded to the Currituck County Board of Commissioners for hearing pursuant to Section 808. The Board of Commissioners was ordered to consider the application pursuant to Section 808 and to make specific findings of fact and conclusions of law to address the

following:

- a. the initial intended use;
 - b. the secondary effects of the initial use;
 - c. the amended use;
 - d. the secondary effects of the amended use; and
 - e. how the secondary effects are affected by the different intended uses.
- F. These matters were to be conducted at the earliest possible time and at or near the same time so that the matters could be appealed and considered by the Court jointly should the matter be appealed.
- G. Judge Tillett specifically found that the parties have consented to pursuing an appeal of Section 1304 and Section 808 jointly should the matter be further appealed.
25. That after May 24, 1999, Petitioners continued to operate the facility as an adult entertainment nightclub and this fact was well known within Currituck County and the Court takes judicial notice "Mermaids" operated openly and notoriously as a topless, adult entertainment nightclub and bar.
26. That Judge Tillett's Order of May 1999 has been never amended or appealed by any party and is the law of this case.
27. That Judge Tillett is the Senior Resident Superior Court Judge of the First Judicial District which includes Currituck County and has since May 1999 been available for any motion to amend or modify his May 1999 Order.
28. That Respondents have not requested that Judge Tillett amend or modify his May 1999 Order.
29. That on February 7, 2000, the Petitioners submitted to the County a Special Use Permit application to operate an adult and sexually oriented business and nightclub.
30. That on March 29, 2000, the Board of Adjustment held a hearing for a Conditional Use Permit application.
31. That Petitioners' February 7, 2000 application was denied and the Board of Adjustment failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.
32. That on May 1, 2000, the Board of Commissioners held a hearing for a Special Use Permit application.
33. That the application was denied and the County Board of Commissioners failed to preserve the record or make the findings required under Judge Tillett's order of May 1999.

34. That on June 12, 2000, the Petitioners timely filed a Petition for Writ of Certiorari to the Currituck County Superior Court regarding both denials.
35. That on January 2, 2003, the Honorable William C. Griffin, Jr., entered an order granting the Petition for Writ of Certiorari and ordering a verbatim transcript of both hearings be filed with the Court.
36. That the Currituck County Board of Commissioners failed to comply with Judge Griffin's order that verbatim transcripts be supplied to the Superior Court Division as part of the record on appeal.
37. That on July 7, 2003, the Currituck County Board of Commissioners enacted Ordinance Sec. 8-34 requiring all sexually oriented businesses apply to the Sheriff of Currituck County for a license to operate as a sexually oriented business.
38. That in May 2004, the Sheriff of Currituck County issued Petitioners a sexually oriented business license.
39. That the Petitioners' license was renewed annually.
40. That on April 19, 2006, this matter came before the Honorable Cy A. Grant.
41. That Judge Grant found that the County was unable to produce a verbatim transcript and remanded the matter to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with Judge Tillett's Order of May 1999.
42. That a transcript of the Board of Adjustment hearing of March 29, 2000 does not exist.
43. That no hearing as ordered by Judge Tillett or Judge Grant was held and on December 4, 2006, the Currituck County Board of Commissioners during a public hearing and in the presence of counsel voted 4 to 1 to settle and dismiss the lawsuit.
44. That Petitioners continued to operate the facility as an adult entertainment nightclub.
45. That on May 29, 2007, the Honorable J. Richard Parker, Senior Resident Superior Court Judge, entered an administrative order in case number 00-CVS-134 of "removal and discontinuance" from the pending trial calendar.
46. That on May 11, 2009, the Currituck County Sheriff's Office renewed Mermaids, Inc.'s Sexually Oriented Business License and added Robert Brown as a registered agent.
47. That on June 29, 2009, a county code compliance officer, a county building inspector and a county fire marshal inspected the Mermaids building as part of the Petitioners' request to amend a state alcohol permit from beer and wine to include mixed beverages.
48. That the conditions of the structure clearly indicated that adult entertainment had been taking place and based upon the representations of the Petitioners at that time would

continue to take place.

49. That all three county officials indicated their approval by signing the state form for an amended permit.
50. That following this inspection, County Manager, Dan Scanlon, who was also present during the December 4, 2006 vote by the Board of Commissioners, signed a sworn statement making no objections to the continued operation of Mermaids at its location as part of its amended application to the Alcoholic Beverage Control Commission of North Carolina.
51. That the Alcoholic Beverage Control Commission of North Carolina issued the amended permit on September 10, 2009.
52. That after Petitioners changed one of the exterior signs to reflect Petitioners' new trade name "Headlights," County Code Enforcement Officer Jennie Newborn hand delivered Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010.
53. That the Notices of Violation were against Mermaids, Inc. and Robert F. London.
54. That Newborn issued civil citations on Monday, April 19, 2010.
55. That Newborn thereafter on April 22, 2012 issued civil penalties in the amount of \$27,000.00
56. That the Petitioners appealed the issuance of the Notices of Violation and the citations on April 23, 2010 to the Currituck County Board of Adjustment.
57. That on April 28, 2010, Currituck County Attorney McRee wrote to the North Carolina Department of Crime Control and Public Safety Alcohol Law Enforcement Division indicating to this agency that Petitioners were not properly permitted to operate an adult entertainment nightclub at its location.
58. That on May 3, 2010, the Alcoholic Beverage Control Commission suspended the Petitioners' ABC permit.
59. That on October 14, 2010, the Currituck County Board of Adjustment met and held a public hearing upon Petitioners' appeal of the citations issued by Enforcement Officer Newborn.
60. That the Board of Adjustment upheld the citations but reduced the penalty to \$9,000.00.
61. That the written order of the Board of Adjustment upholding the citations and reducing the penalties is dated October 14, 2010 and is filed of record on February 11, 2011.
62. That the only Board of Adjustment proceedings transcribed after Judge Tillett's ruling of May, 1999 pertain to this February 11, 2011 filed Order from which the appeal

referenced herein as case number 11-CVS-113 arises.

63. That on October 18, 2010, the Currituck County Board of Commissioners met and held a public hearing upon Petitioners' application for a Special Use Permit.
64. That the Board of Commissioners failed to make the rulings required by the May 24, 1999 Order of Judge Tillett or the subsequent order of Judge Grant.
65. That at no time have the Currituck County Board of Commissioners or the Currituck County Board of Adjustment submitted findings and records of proceedings in compliance with the May 1999 Order of Judge Tillett and the subsequent Order of Judge Grant.
66. That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.
67. That because of the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners, the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Conclusions of Law

Based upon the foregoing findings, the Court makes the following conclusions as a matter of law.

This Court has jurisdiction over the parties and over the subject matter.

Pursuant to N.C.G.S. § 160A-393(d), Petitioners have standing to seek review of the Orders of the Board of Commissioners and the Board of Adjustment.

This Court has conducted a review of the whole record.

This Court has reviewed the record de novo for compliance with the law of these cases (Judge Tillett's Order of May 1999).

The Currituck County Board of Adjustment and Currituck Board of Commissioners have at no time submitted findings and records of proceedings in compliance with the May 24, 1999 Order of Judge Tillett and the subsequent Order of Judge Grant

Currituck County including its officials and boards have unreasonably delayed enforcement of the Currituck County's Uniform Development Ordinance for over 11 years following the remand of this matter to the Currituck County Board of Commissioners and Board of Adjustment by failing to follow the rulings of this Court as setout in Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

The unreasonable delays by Currituck County have been more than a mere passage of time based upon the facts and circumstances of this case.

The failure to follow Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006 are intentional.

That the delay of the prosecution of the remand issued by this Court and the subsequent actions of the Respondents, the findings, inferences, conclusions and decisions of the Currituck County Board of Commissioners and the Currituck County Board of Adjustment were arbitrary and capricious.

That the actions of County Code Enforcement Officer Jennie Newborn hand in delivering Notices of Violation (OB10-13 and OB10-14) to Robert F. London on Friday, April 16, 2010 against Mermaids, Inc. and Robert F. London, in issuing civil citations on Monday, April 19, 2010 and in issuing civil penalties in the amount of \$27,000.00 on April 22, 2012 were arbitrary and capricious.

Because of Currituck County's unreasonable delay and refusal to comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, it would be unjust for the County including its officials and boards to prosecute claims to enforce its Uniform Development Ordinance against the Petitioners.

All civil penalties against Petitioners should be stricken.

These matters should be remanded to the Currituck County Board of County Commissioners and the Currituck County Board of Adjustment to allow them to again comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006.

Until such time as Respondents comply with Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006, Respondents should not be permitted to enforce the Currituck County Uniform Development Ordinance against the Petitioners.

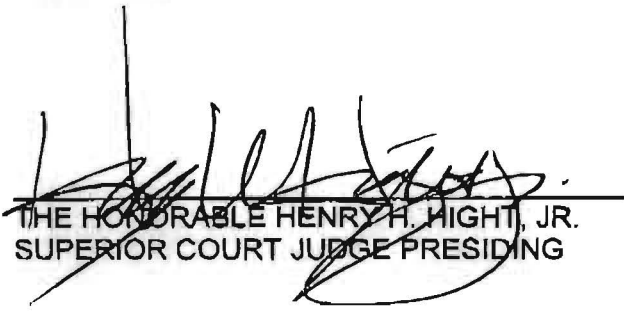
Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, it is now, **therefore, Ordered, Adjudged And Decreed:**

1. that the findings of fact and conclusions of law contained in the Board of Commissioners' September 21, 2011 Order are reversed and the matter is remanded forthwith to the Currituck County Board of Commissioners and to the Currituck County Board of

Adjustment for proceedings and findings not inconsistent with this **Order**, Judge Tillett's Order of May 1999 and Judge Grant's Order of April 2006;

2. that pending remanded proceedings and findings ordered herein, the Currituck County Board of Commissioner shall immediately but not later than 30 days from the date of this **Order** issue a Special Use Permit or any other required permit or approval to the Petitioners to operate an adult and sexually oriented business consisting of a nightclub offering comedy, pool tables, video games, musicians, dancing, topless dancing, organized parties for businesses groups;
3. that pending remanded proceedings and findings ordered herein, Currituck County staff, employees, officers, agents, personnel, elected officials and/or appointed officials may not enforce the relevant portions of Currituck County's Uniform Development Ordinance which are the subject of these appeals against the Petitioners from their use of the property for a sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub;
4. that Currituck County shall immediately certify to the North Carolina Alcoholic Beverage Control Commission that Petitioners have been awarded all necessary permits and approvals to operate the sexually oriented business, topless, adult entertainment establishment and/or bar and nightclub and that its business is not in violation of the County's Uniform Development Ordinance;
5. that the civil penalties against Petitioners are hereby stricken and the findings of fact and conclusions of law contained in the Board of Adjustment's February 11, 2011 filed Order are reversed.

Entered this 24th day of July 2012.


THE HONORABLE HENRY H. HIGHT, JR.
SUPERIOR COURT JUDGE PRESIDING

Attachment: ORDER - JUDGE HIGHT 7-31-2012 (1412 : BOA 16-01 R.F. London, Inc.)

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

FILED
05 APR 26 AM 11:30
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
00 CVS 134
C.S.C.

R.F. LONDON, INC., a North Carolina
Corporation, ROBERT F. LONDON, and
MERMAIDS, INC.,

Petitioners/Plaintiffs,

v.

CURRITUCK COUNTY BOARD OF
ADJUSTMENT, and CURRITUCK
COUNTY BOARD OF COMMISSIONERS,

Respondents/Defendants.

ORDER

EXHIBIT

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R

THIS MATTER came before the Currituck County Superior Court, Civil Session, on January 30, 2006, on Petitioners/Plaintiffs Petition for Writ of Certiorari, Motion to Show Cause, Complaint, and Request for Declaratory Judgment, and the Court finds that Currituck County is unable to produce a verbatim transcript of the hearing before the Currituck County Board of Commissioners.

IT IS HEREBY ORDERED that the matter be remanded to the Currituck County Board of Commissioners for rehearing of Petitioners' application for a Special Use Permit consistent with the Order signed by the Honorable Jerry R. Tillet in *London v. Currituck*, 96-SP-73.

This the 19th day of April, 2006.

Cy A. Grant
Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I, Charles F. McDarris, hereby certify that I have served a copy of the foregoing proposed ORDER by depositing a copy with the United States Postal Service, postage prepaid and addressed to the following:

John Morrison
Attorney at Law
111 Currituck Commercial Dr.
Moyock, N.C. 27958

This the 13 day of April, 2006.



Charles F. McDarris
Bailey & Dixon, LLP
2500 Two Hannover Square
434 Fayetteville Street Mall
Raleigh, North Carolina 27601

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96-SP-73

R. F. LONDON, INC.

Petitioner,

v.

THE BOARD OF ADJUSTMENTS OF
THE COUNTY OF CURRITUCK

Respondent.

ORDER

THIS CAUSE, coming on for hearing on May 3, 1999 before the undersigned Superior Court Judge on Petitioner's Writ of Certiorari. After reviewing legal briefs and hearing oral arguments of counsel, the Court hereby makes the following:

FINDINGS OF FACT:

1. Petitioner applied for a Conditional Use Permit on or about August 4, 1993 (hereinafter "initial filing").
2. On or about January 26, 1994, the Currituck County Board of Adjustment (hereinafter "Board of Adjustment") issued a Conditional Use Permit to Petitioner.
3. At the time of the initial filing, § 1304(3)(f) of the Currituck County Unified Development Ordinance (hereinafter "Ordinance") was in effect and was interpreted by the Currituck County planning staff as being applicable to topless nightclubs and as being a strict prohibition against topless nightclubs.
4. On August 31, 1994, the Currituck County Board of Adjustment moved to revoke Petitioner's Conditional Use Permit.

EXHIBIT

D

5. On September 19, 1994, the Currituck County Board of Commissioners amended the Ordinance whereby it repealed §1304, Permissible Uses and Specific Exclusions, and adopted §808, Adult and Sexually Oriented Businesses.

6. On August 28, 1994, Petitioner timely appealed the Conditional Use Permit revocation to the Superior Court.

7. On December 29, 1994, the Honorable Gary E. Trawick ordered the Board of Adjustment to conduct a new public hearing.

8. On May 29, 1996, a public hearing was held before the Board of Adjustment.

9. On July 8, 1996, the Petitioner timely filed an appeal with this Court in the nature of a Writ of Certiorari, appealing the Board of Adjustment's May 29, 1996 hearing.

10. The Petitioner had submitted a letter (Exhibit 7 of the Record on Appeal) on April 1, 1996, indicating that it would be offering, among other activities, topless dancing.

11. The planning staff interpreted Petitioner's letter (Exhibit 7) as an amendment to the initial application and found the application to be complete (Record on Appeal, Exhibit 11, page 6, lines 1-10).

12. The Board of Adjustment did not make findings of fact and conclusions at its May 29, 1996 hearing that properly supported the denial of Petitioner's application for a Conditional Use Permit pursuant to §1304 as specifically related to diminution of value of adjoining property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, based upon the foregoing Findings of Fact, that:

1. The matter be remanded to the Board of Adjustment for rehearing and that the Board of Adjustment consider Petitioner's application pursuant to §1304 and §808.

2. The Petitioner is to file and the Currituck County planning staff is to accept a new application for a Special Use Permit.

3. The Board of Adjustment shall consider the Petitioner's application pursuant to §1304 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

4. The Board of Adjustment, in the alternative, shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;
- e. How the secondary effects are affected by the different intended uses.

5. The matter be remanded to the Board of Commissioners for hearing pursuant to §808.

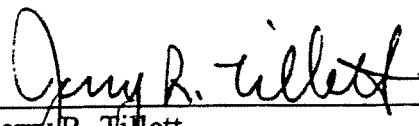
6. The Board of Commissioners shall consider the Petitioner's application pursuant to §808 and make specific findings of fact and conclusions of law to address the following:

- a. The Petitioner's initial intended use;
- b. The secondary effects of Petitioner's initial use;
- c. The Petitioner's amended use;
- d. The secondary effects of Petitioner's amended use;

e. How the secondary effects are affected by the different intended uses.

7. These matters are to be conducted at the earliest possible time and at or near the same time so that the matters may be appealed and be considered by the court jointly should the matter be appealed. The parties have consented to pursuing an appeal of § 1304 and § 808 jointly should the matter be further appealed.

This the 24th day of May, 1999.



Jerry R. Tillet,
Superior Court Judge