



**Board of Adjustment
Agenda Packet**

September 8, 2016

Call to Order

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

Approval of Minutes

Board of Adjustment Minutes January 14, 2016
Board of Adjustment Minutes January 28, 2016
Board of Adjustment Minutes February 11, 2016
Board of Adjustment Minutes February 25, 2016
BOA 13-09 Michael & Marie Long Transcript March 13, 2014

Old Business**New Business**

- A) **BOA 16-02 University Park, LLC/Norman Bibeau Appeal:** Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding land disturbance activity within a required 25 foot undisturbed buffer on property located at Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").
- B) **BOA 16-04 University Park, LLC/Norman Bibeau Appeal:** Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding West Mobile Road being used for ingress/egress located at Tax Map 131, Parcel 97A and Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").

Announcements**Closed Session**

Closed Session pursuant to G.S. 143-318.11(a)(1) to review and approve closed session minutes and to prevent the disclosure of information that is confidential pursuant to the law of this State.

- A) Approval of Closed Session Minutes January 14, 2016
- B) Approval of Closed Session Minutes January 28, 2016
- C) Approval of Closed Session Minutes February 25, 2016

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.

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 Plumlee, 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. Plumlee objected to staff report, studies, and other items.

Mr. Morrison explained that it was ok to introduce the entire staff report, but asked Mr. Plumlee 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. Plumlee objected to the staff report and its contents. He presented the board with binders of exhibits.

Mr. McRee said Mr. Plumlee'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. (County Exhibit #1)

Mr. Plumlee 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. Plumlee 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 again introduced the staff report into evidence. (County Exhibit # 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee continued to question Mr. Woody.

Mr. McRee said Mr. Plumlee 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. Plumlee 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. Plumlee 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. (County Exhibit #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. Plumlee 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. Plumlee 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.

RESULT:

RECESS WITH NO VOTE

Next: 1/28/2016 5:30 PM

RECESS

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

County Exhibit #1- BOA 16-01 R.F. London, Inc. Staff Report

County Exhibit #2 - 1990 Currituck County Land Use Plan (Hard copy to be stored with minutes from this meeting.)

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



**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.

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.

Mr. Plumlee 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. Plumlee said he did not object to Mr. Woody as land use expert, but as to his ability

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

to speak on quality of life.

The objection was overruled.

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

Mr. Woody said no.

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

Mr. Woody said just Mermaids.

Mr. Plumlee presented two binders of evidence to each board member, Volumes 1 and 2 titled "R.F. London, Inc, et at. V. Currituck County Bd of Adjustment, et al. 1/14/16 Board of Commissioners Hearing Exhibits". (Applicant Exhibit 1) He 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. 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.

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

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

Mr. Woody did not have that information readily available.

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

Mr. Wood said no.

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

Mr. Woody said yes.

Mr. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee presented Lauren Berry's resume (Applicant Exhibit #2) and a Comparative Market Analysis by Lauren Barry (Applicant Exhibit #3).

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

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

Mr. Plumlee 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. Plumlee 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. Plumlee presented Volume 1, Tab 2, of Applicant Exhibit #1 as the board's record of proceedings.

Mr. McRee objected to the information 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. Plumlee 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. Plumlee 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" (Applicant Exhibit #1) will be kept as a part of these minutes.

Mr. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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. Plumlee 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.

Mr. McRee and Mr. Plumlee 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. Plumlee entered into evidence the May 5, 2015 transcript of the Board of Commissioners' meeting in response to Judge Hight's order from Applicant Exhibit 1. (Volume 2, Tab 4)

Mr. Morrison said Mr. Plumlee 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. Plumlee agreed.

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

Mr. Morrison said yes.

RESULT:	RECESS WITH NO VOTE	Next: 2/11/2016 5:30 PM
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RECESSED

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

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

Applicant Exhibit #1

Volume 1 of 2 and Volume 2 of 2 of the “R.F. London, Inc., et al. v. Currituck Co Bd of Adjustment, et al. January 14, 2016 Board of Commissioners Hearing Exhibits” presented to the board. Both binders will be kept with the minutes of this meeting.

Applicant Exhibit #2

Laruen Berry Resume

Applicant Exhibit #3

Comparative Market Analysis Acorn Lane 2015 by Lauren Berry



**CURRITUCK COUNTY
NORTH CAROLINA**

February 11, 2016
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

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.

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. Plumlee said he had two new witnesses and that he'd like to get started.

Thomas Morgan was sworn in. He is a sound engineer in Norfolk

Mr. Plumlee gave the board a copy of Mr. Morgan's resume.

Mr. Morgan works at Work Release and Audio Light and Music. He has been installing light and sound systems in bars and nightclubs since 2006 and has measured sound levels.

Mr. McRee asked Mr. Morgan what his qualification was for reading a sound meter.

Mr. Morgan said he uses an SPL meter and has had no training on the equipment. He works in nightclubs, churches, and gentlemen's clubs and measures sound levels.

Mr. Morrison asked what it took to operate the instrument.

Mr. Morgan said you turn it on and read the dial and data.

Mr. McRee asked if the instrument had to be calibrated.

Mr. Morgan said no.

Mr. McRee asked if law enforcement used this particular meter.

Mr. Morgan said yes.

Mr. McRee asked if the instrument required expertise to operate.

Mr. Morgan said no. You just take it out of the box, put batteries in it, and turn it on.

Mr. Plumlee submitted Mr. Morgan as an expert witness.

The board determined that Mr. Morgan was an expert witness in sound readings.

Mr. Plumlee asked Mr. Morgan to describe the sound system and the installation of the sound system at Mermaids.

Mr. Morgan explained that the sound system shuts off if it exceeds a certain limit. He installed the system 6-7 years ago. He explained how he took sound readings using an SPL meter and the readings he got both inside and outside the club, with music and without music. There is no difference in meter readings whether the music is turned all the way up, or turned off.

Mr. McRee questioned the sound readings. The highest reading was 61 decibels. The noise ordinance limits the decibels to 50.

Mr. Morgan said it was the same decibel readings with or without music outside by the fence.

Mr. Morgan's resume was accepted into evidence. (Applicant Exhibit # 4)

David Libengood II was sworn in. He owns his own consulting business, ABC Industry Consulting, Inc., and worked as a Virginia Department of Alcoholic Beverage Control as a special agent and code enforcement officer. He also summarized his education.

Mr. Plumlee asked if the public could see inside the building, about the security system, etc.

Mr. Libengood said there were two windows that were covered and the front door was blacked out. There was no trash or debris outside the building. The parking lot was in average condition. There was a fence on the back property line. There would be no view of the building from Acorn Lane. You see a fence, trees, and shrubbery. The fence is 8' tall. The condition of the building is very good. He inspected the interior of the building and found a security system at the front desk. It was a wand metal detector. There were 16 security cameras in the building, including exit cameras and exterior cameras. There is an alarm on the building. There was an identification scanner for the members' driver's licenses to be scanned into. It records name, address, picture, and everything else into the system, including age. This is a member's only club that requires an application for membership. The members have to read the rules and regulations posted on the wall. He walked Acorn Street and said the houses are high quality homes. The community was nice. There are no mobile homes on Acorn Street.

Mr. Plumlee presented Mr. Libengood's resume (Applicant Exhibit #5) and tendered him as an expert in investigation in the field of secondary effects and compliance,

conformance with regulations, code enforcement, and calls of service made to this club and other clubs in the county.

Mr. McRee objected that the witness had shown no expertise.

Mr. Plumlee asked Mr. Libengood what type of work he did as an ABC agent.

Mr. Libengood said he was a law enforcement officer, worked undercover in bars in restaurants, and did compliance work for restaurants and nightclubs. He has worked with probably 500+ facilities in the last 20 years.

Mr. Morrison asked if Mr. Libengood was familiar with Currituck County's sexually oriented businesses or secondary impacts.

Mr. Libengood said he had read it once.

Mr. Morrison suggested that Mr. Libengood is not an expert witness in regards to the sexually oriented businesses regulations in Currituck or secondary impacts.

Mr. Plumlee asked to tender Mr. Libengood as an expert in law enforcement.

Mr. McRee objected because Mr. Libengood saying what he had seen or done does not make him an expert witness.

Mr. Palmer overruled the object and determined Mr. Libengood to be an expert in law enforcement with bars and restaurants.

Mr. Plumlee asked Mr. Libengood had he visited Barry's Walnut Island community establishment.

Mr. McRee objected to line of questioning about another establishment.

Mr. Morrison explained that the judge had ordered that the board compare the intended use with the amended use, not another establishment.

Mr. Tabor said he was struggling with relevance.

Mr. Palmer overruled the objection.

Mr. Libengood said he visited three other establishments. Barry's Walnut Island had a lot of mobile homes, prefab homes, mobile homes sitting on cinderblocks, trash on grounds, and calls for services. He went inside Barry's. There was no security system at front door. Mermaids had security at front door and a security employee inside mermaids. He said he got calls of service records from Liz Hodges.

Mr. McRee objected to hearsay regarding the reports.

Mr. Palmer sustained the objection.

Mr. Libengood said between 2007-2015 there were 94 calls for service at Barry's. Mermaids had 14 calls for service between 2007-2015. The 14 calls were for operation of the facility. He spoke to residence within the vicinity of Mermaids. They had no issues with Mermaids.

Mr. McRee objected to hearsay.

Mr. Palmer sustained the objection.

Mr. Libengood also visited Geno's on Shortcut Road and AJ Gators. Neither of those establishments had security systems or security employees.

Mr. McRee asked when Mr. Libengood when he saw Mermaids in operation.

Mr. Libengood confirmed it was during a time they were closed. He only saw them in operation once a few years ago. He visited Barry's while it was open and serving food.

Mr. McRee asked where restaurants were in Currituck that had security guards at the door.

Mr. Libengood said there were none that he was aware of.

Mr. McRee asked if Mermaids had been continuously in operation during the call reporting time.

Mr. Libengood said it was not.

Mr. Libengood said he visited 112 Acorn Lane, Erica, on other side of fence beside 118 Acorn Lane, directly behind Mermaids. He also visited other residents and the storage facility.

Mr. McRee asked about not being able to see the building.

Mr. Libengood said he could not see Mermaids when standing at the fence, but didn't go into house to see their view from the first or second floor. The club was closed when he was there.

Mr. Libengood said AJ Gators had 26 calls for service between 2007-2015.

Geno's had 64 calls for service between 2007-2015.

Mr. Plumlee gave a photograph to the board that Mr. Libengood took looking towards a fence. (Applicant Exhibit #6)

Mr. Libengood explained the calls of service at Mermaids for: alcohol related offenses (1); drug use (0); prostitution (0); simple assaults and frays (0), ACB violations (0), noise (3), actual citations (0); warnings (0).

Mr. Libengood said Barry's had 94 calls for services with 2 citations, alcohol (9 w/ 1

ticket for fight in progress); solicitation/prostitution (0); drugs (2 with no charges); noise (28 with 1 citation).

The board took a brief recess and then reconvened.

Buddy Brown, President and Owner of Mermaids dba Headlights, was questioned by Mr. Plumlee. Mr. Brown said he did not have a use permit, but had been operating under a judge's order and had spent money improving the club.

Mr. McRee objected to relevance of spending money at the club.

Mr. Morrison said by proffering, Mr. Plumlee has made the information part of the record, but the board could not use the information to make a decision.

Mr. Plumlee argued that the evidence and information should be allowed into evidence.

The board and Mr. Morrison had a discussion about what they were actually supposed to be hearing and what authority the board had. Mr. Morrison also reviewed the judges' orders. He also explained that the board cannot consider latches.

The board sustained the objection and allowed the record to be preserved by proffer.

Mr. Plumlee asked Mr. Brown about the money he had spent on the club.

Mr. Brown said that since the 2010 judge's order and the county dropping the appeal, he spent \$106,000 making improvements to the club and its equipment. Mr. Brown said he owns and operates 10 adult businesses and has done this for 20 years. He has attended many classes on secondary effects. He has testified before legislative committees.

Mr. Plumlee tendered Mr. Brown as an expert witness in area of secondary effects on adult establishments.

Mr. McRee objected. Just because Mr. Brown had lobbied for his business interest, it did not make him an expert.

Mr. Morrison asked if Mr. Brown had testified in court as an expert.

Mr. Brown said no.

Mr. Morrison said the board had to consider if Mr. Brown's testimony would be slanted because he was the business owner.

Mr. Brown was tendered an expert in secondary effects of adult businesses. He performed a census within 1500' of the business. He met with individuals living in the area.

Mr. Plumlee distributed the "Mermaids Public Opinion Survey Secondary Effects" to the board. (Applicant's Exhibit #7)

Mr. McRee objected on the grounds of hearsay.

Mr. Palmer sustained the objection.

Mr. Morrison advised that Mr. Brown can give his opinion.

Mr. Brown explained how secondary effects were determined through the survey. His opinion is that there were no secondary effects because of Mermaids being there. It is his opinion that there were more calls for service at a nightclub than a gentleman's club. He said Mr. Libengood's information had not been brought to the county prior to tonight. He agreed that Mermaids and its neighborhood were cleaner and better kept than other establishments and that there is a fence and trees and shrubs at the establishment.

Mr. Plumlee gave the board a photograph of a new home recently constructed near Mermaids (Applicant Exhibit #8) and asked about the Board of Commissioner's hearing.

Mr. McRee objected because of hearsay.

Mr. Morrison suggested the board allow the testimony because Mr. Brown considered the Board of Commissioner's hearing in forming his opinion.

Mr. Palmer overruled the objection.

Mr. Brown summarized that the Board of Commissioner's agreed to drop the case against Mermaids in 2012. He explained the security system in Mermaids, its membership, etc.

Mr. Plumlee distributed copies of the "Application for Membership to Headlights" and had Mr. Brown read it. (Applicant Exhibit #9)

Mr. Brown said those that said yes to "having a drug conviction in the past five years" were denied membership to the club. He said he had to get a license every year for a gentleman's club and list his name with the sheriff's office. He said that is not typical. He did not have to do that at any of the other clubs that he owned. He said he had listed all of the entertainers and each of them had to get an entertainer's license. Mermaids serves food and has an ABC permit. He has two security employees and the security cameras are maintained. He said you cannot see into the club and there has never been pornographic material distributed at the location. He said alcohol consumption at a bar or nightclub was higher than at a gentleman's club. The bar and nightclub is more of a party environment. Nightclubs and bars have higher rates of fights and altercations. The noise from bands at nightclubs and bars is higher than a gentleman's club. Bands and DJs do not perform at Mermaids. He said if a bar or gentleman's club is creating blight, you will not build a house near it. An entertainer must maintain a 10' distance from a patron during a show. A patron cannot tip an entertainer in the state of nudity. There were no alternative locations for a sexually oriented business in Currituck County. He asked the county for alternative locations in 2015 and the county did not give any. Ms. Collins has not come to Mermaids and made

a complaint. The county has not told Mermaids that Ms. Collins had complained.

Mr. McRee asked about the public opinion survey and the fact that they did not survey everybody. He pointed out that Mr. Brown's own expert witness; Mr. Paster, said the census was not useful.

Mr. Brown met with Pasquotank County and Mr. Morrison when they were developing SOB regulations. He made recommendations on the rules and regulations of operating a club, but not setbacks from churches, parks, etc. Setbacks from residential areas are a good idea for any alcohol establishment or commercial business from residential use.

Mr. McRee discussed the 1000' setback from a residential area in the Currituck County UDO for a sexually oriented business.

Mr. Brown was aware of the 2000 regulation. His business is about 100' from the residential area.

Mr. McRee asked Mr. Brown if he was aware that the business had to be located in the Heavy Manufacturing zoning district and asked if he had requested a rezoning or text amendment to allow his business to operate in its location.

Mr. Brown said he was aware and that his property was zoned General Business. He has not submitted a rezoning request or text amended to allow the business at the location.

Mr. McRee asked if the business has ever operated as a bar and nightclub.

Mr. Brown said it had always been a gentleman's club.

Mr. McRee asked if Mr. Brown had to license his adult businesses in his other locations.

Mr. Brown said he was grandfathered in his other locations.

Mr. McRee confirmed that new establishments would have to be licensed. He also confirmed that a bar, night club, and an adult establishment had to meet the same noise ordinance.

Mr. McRee said Mr. Brown testified that there were no alternate locations in the county for the nightclub.

Mr. Brown confirmed that there are other HM zoning locations, but they may not meet setbacks.

Mr. McRee said the county provided information for Mr. Brown to make a determination.

Mr. McRee confirmed that Mermaids has bachelor/bachelorette parties like in a bar or tavern.

Mr. McRee asked during what time was Mermaids not in operation.

Mr. Brown said he was closed down in 2010 by the county for 16 months.

Mr. McRee confirmed that the business was closed because the ABC license was revoked.

Mr. Brown explained the ABC permit revocation. He also said the club had been licensed since 2004 by the sheriff. He said Stacey Smith (that he knew as the daughter of a former employee), Jason Corbell (former bouncer at Headlights in Elizabeth City that he owns), and the fire marshal visited the site and then they came back for Mr. Scanlon to sign the ABC permit. All officials signed the permit.

Mr. McRee explained that permit was an ABC permit and not a zoning permit.

Mr. Painter asked about serving food and the health department inspection.

Mr. Brown said they've had a Grade A since they opened.

Mr. Painter asked if all patrons had a background check run.

Mr. Brown said no.

Mr. Painter asked if a bar and nightclub would be allowed in that zoning district.

Mr. Plumlee said yes.

Mr. Tabor asked if the conditional use permit had been revoked.

Mr. Plumlee said yes.

Mr. Palmer asked if the zoning and such had to be right to issue an ABC permit.

Mr. Brown said the mixed beverage ABC application says that it has proper zoning, location, person, and business and the county manager had signed off on it. He said in his mind it was his permit to move forward. He had a sexually oriented business license on the wall when staff visited prior to signing the ABC permit application. He said a letter was sent to the ABC board from the county saying that it was not in the correct zone and the permit was revoked. He relied upon that document to move forward.

Mr. Plumlee asked Mr. Brown about his opinion about setbacks and confirmed that he never considered a 1000' setback.

Mr. Brown said that just about all the houses on Acorn Lane were built since Mermaids went in.

Mr. Plumlee confirmed that Mr. Brown could not find alternate locations in 1999 and that the county had not given him an alternative location in 2015. He reiterated that a use permit would still have been required in a heavy manufacturing zoning district.

Mr. Brown said the county has not brought forward information that said a sexually oriented business is more intrusive than a bar or nightclub.

Mr. Tabor confirmed that the sheriff issued a permit in 2004 and renewed annually, but Mr. Brown did not get a permit from zoning or the Board of Adjustment.

Mr. McRee asked Mr. Brown about the ABC permit and the zoning classification of General Business written on the permit. He said the "permitted uses in this zone" line read bar and nightclub.

Mr. Brown agreed.

Mr. Plumlee objected to the line of questioning as out of context and his earlier objection to the evidence.

Mr. Morrison said it goes to what the witness last testified to.

The board overruled the objection.

Mr. Plumlee said he had taken section of evidence out of previously object evidence and asked the board to consider it. (Applicant Exhibit #10)

Mr. Morrison said it is 10-12 pages and asked for a 10 minute recess to review it. He said after recess the board would have to hear closing arguments and go through Judge Tillet's order line by line and vote on each issue. The board recessed.

The board reconvened and Mr. Morrison said what was being offered was a portion of transcript from the 2011 court proceedings. These are exhibits from a document that had been denied as evidence. He said it had been offered solely for the proposition as to whether adverse secondary impacts existed or not and since the county said they didn't know the business was operating during a period of time, there could be no secondary impacts.

Mr. McRee objected because it is only a snippet of testimony from individuals and not the full context of the testimony that could have an entirely different meaning.

Mr. Morrison said Mr. McRee could present a similar document at the next meeting for the board to consider.

Mr. Tabor asked if the evidence was even relevant.

The board allowed the evidence to be submitted into evidence.

Ms. McCloud questioned the board already denying the entire text.

Mr. Morrison said this would only be used to consider secondary impacts.

Mr. Palmer overruled the objection and the information was received.

RESULT:**RECESS WITH NO VOTE****Next: 2/25/2016 5:30 PM****RECESS**

The board recessed because of needing to review the information and the late hour and set the next meeting for February 25, 2015 at 5:30pm.

Applicant Exhibit #4 Thomas Morgan Resume (need copy)
Applicant Exhibit #5 David Libengood, II Resume
Applicant Exhibit #6 Photograph of a tree lined fence
Applicant Exhibit #7 Mermaids Public Opinion Survey Secondary Effects Summary of Findings
Applicant Exhibit #8 Photograph of a home
Applicant Exhibit #9 Application for membership to Headlights
Applicant Exhibit #10 Portions of Exhibit #1



**CURRITUCK COUNTY
NORTH CAROLINA**

February 25, 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 available at a later date.

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. Palmer reconvened the meeting.

Mr. McRee presented a response to Applicant Exhibit #10. (County Exhibit #3) The board received the exhibit into record.

There were no objections.

Mr. Plumlee presented four additional pages to Exhibit #10. (Applicant Exhibit #11)

Mr. McRee objected to the exhibit due to relevance of what the board was to consider.

Mr. Palmer overruled Mr. McRee's objection.

The board took a brief recess to review the new information contained in County Exhibit #3.

The board came back into order.

Mr. Plumlee offered closing arguments. He primarily addressed secondary affects.

Mr. McRee objected to the line of closing arguments regarding constitutionally.

Mr. Plumlee said that secondary effects are what constitutionally is all about.

Mr. Morrison told the board not to consider constitutionally.

Mr. Plumlee continued regarding the contempt of the county.

Mr. McRee objected to the fact that the board has no authority to consider contempt of court.

Mr. Plumlee continued. He asked for relief on behalf of his client. He asked that the special use permit be issued. He mentioned latches.

Mr. McRee objected to the reference to latches which the board cannot act upon.

Mr. Morrison told the board they could not consider latches.

Mr. Plumlee concluded his closing argument.

Mr. McRee presented closing arguments. He discussed secondary effects and not the actual proceedings to issue a use permit; the application and the fact that it did not meet the UDO regulations to issue a permit at the time it was submitted; court orders; amortization; the board not having the authority to issues a special use permit; testimony in a previous proceeding; testimony on Ms. Berry's analysis; the findings of fact that cannot be met; amortization; etc.

Mr. Plumlee rebutted to Mr. McRee's closing argument.

Mr. Painter asked about the state talking about the effects of this type of business in the appropriate location. He asked if the statues gave direction.

Mr. McRee said the statue gave a locality the authority to determine appropriateness of location for adult businesses.

Mr. Painter asked if there were no negative effects, was it in the appropriate location?

Mr. Palmer asked if issuing a license for the dancers and security was a requirement of the county's ordinances.

Mr. McRee said it was not a requirement of county ordinances.

Mr. Painter confirmed that the business was not in compliance when it opened as an adult establishment.

Mr. Morrison said it had been ruled that at least 5% of the county had to be made available for adult businesses. Mr. Morrison said that in 1994, the ordinance was not in compliance with that ruling.

Mr. Tabor asked if there had been an application for an adult business.

Mr. Morrison said there had been based upon court order.

Ms. McCloud confirmed that the business had never been closed based on the applicant's choice.

Mr. Plumlee said not for 180 days.

Mr. Morrison said that even if the board addresses secondary impacts, the distance to the residential area had to be addressed.

Mr. Plumlee said the judge had ordered the special use permit to be issued and the judge knew the distance to the residential area.

Mr. Morrison said the board had to follow the proper proceedings outlined in the order also. He said the board does not have nor has ever had authority to issue a special use permit. Since it is court ordered, the board has the authority to issue it.

Mr. McRee said the board does not have the authority to issue a use permit, and even if it did, the applicant did not meet the minimum requirements of the UDO.

Mr. Painter asked how setbacks would be addressed.

Mr. Plumlee said there are no secondary affects, so the setbacks do not matter.

Mr. McRee said the order was not to issue the permit, but rather rehear the application. The court could have issued the permit.

Mr. Paint asked about Judge Hight saying zoning was not to be considered and the county could not enforce the ordinance.

Mr. McRee said the county had not enforced the ordinance.

Mr. Morrison said the board is not an enforcement board.

Mr. McRee said that it is not a preclusion of the county to be able to enforce its ordinance.

Mr. Palmer asked about the ordinance not being in alignment with Supreme Court ruling. He asked if the 5% rule could be met and why the county did not answer the request to tell the applicant where they could locate.

Mr. McRee said Mr. London did not try to rezone property on which to operate an adult business.

Mr. Balance asked if there is property in the county on which the business can locate.

Mr. Tabor said it is up to the applicant, not the county, to find a place to operate.

Mr. Palmer said he is trying to keep the board involved and make decisions by consensus.

Mr. Tabor asked how a judge could make the board do something it has no authority to do.

Mr. Palmer said the board is under a court order. He questioned the validity of the ordinance.

Mr. Morrison said it is not the authority of the board to call an ordinance invalid.

Mr. Morrison suggested the board go into closed session to discuss legal matters.

Mr. Painter motioned to go into closed session to discuss legal matters. Mr. Tabor seconded the motion and the motion passed unanimously.

Mr. Palmer called the meeting back into session. He said the first time the board knew about the 16 year old court order was in January. The board is asking Mr. Morrison to draft notice to the Board of Commissioners telling them to let the Board of Adjustment know fort with of court orders that they are involved in.

Mr. Morrison said the board had been put in the middle and the board finds that they have been given a difficult task in reviewing ordinances, orders, etc. The board has no authority to hear or issue a special use permit, but since ordered by court, they have to do it this one time.

Mr. Palmer clarified that all of the findings of fact in Judge Hight's order are incorporated by reference into the board's findings.

Upon advice of Mr. Morrison, Mr. Palmer said the board had heard discussions regarding latches, estoppels, previous decision of BOC, violations, etc., but the board does not have authority to address those things and should leave those items to a higher court.

Mr. Morrison addressed the board's attention to Judge Tillett's order that was incorporated into Judge Hight's order. The order remanded the application back to the board for re-hearing and consideration of the application under Sections 1304 and 808 of the UDO. The board shall consider the application pursuant to Section 1304 and make specific finds of fact and conclusions of law.

Mr. Palmer addressed the findings of fact from the application. He asked what the initial intended use was and if it was compliant with UDO Section 1304.

The board determined that the initial intended use was a bar/nightclub in 1993.

Mr. Plumlee said the use permit was supposed to be granted at the board's earliest time. In 1993 the initial intended use was a pool hall/nightclub. Mr. McRee agreed.

ACTIONS REGARDING SECTION 1304 OF THE UDO

Mr. Palmer asked for a motion about the secondary effects of petitioner's initial intended use of a bar/nightclub.

Mr. Painter motioned that there were no secondary effects from the bar/nightclub. Mr. Tabor seconded the motion and the motioned passed unanimously.

Mr. Morrison mentioned the amended use under UDO Section 1304.

Mr. Plumlee said the amended use was a sexually oriented business.

Mr. Morrison asked when a document was filed with county saying the applicant wanted to amend the use from a bar to a sexually oriented business.

Mr. Plumlee said the applicant submitted a letter in May of 1994 saying the use was going to be an adult nightclub. He said the August 1994 inspection by county staff verified topless dancing.

Mr. McRee said the amended use was the 2000 application for a sexually oriented business.

Mr. Morrison said there was no UDO Section 808 in 1994. All the county got was letter announcing topless dancing. He said it was up to board to decide if a letter is proper notification of amended use. There is no definition of amended use.

Mr. Palmer said the letter of May 1994 was notification of the amended use to the county.

Mr. McRee said Judge Tillett's order remanded the case back to the board to hear a new application. A new application is the proper request for a change of use, not a letter.

Mr. Palmer said the judge said to look at the 2000 application under Section 1304 of the UDO and that section does not address sexually oriented businesses.

Mr. Morrison asked if Section 1304 addressed adult entertainment.

Mr. McRee said Section 1304 references Section 1310 that says where sexually oriented businesses may be located in the county.

Mr. Morrison asked what Judge Tillett's order means when it says "petitioner's amended use" and what that amended use was.

Mr. Plumlee said the amended use was a topless operation in nightclub.

Mr. Morrison said the board can only consider the 2000 application.

Mr. Palmer asked the board what the amended use was under Section 1304. He said a letter was sent in 1994 saying that the use was being amended to a sexually oriented business and that letter was a part of the findings of fact.

Mr. Tabor said a letter is not proper notification of an amended use. You would have to amend the permit.

Mr. Balance said a letter is not a proper notification.

Mr. Painter said when the conditional use permit was issued, there was no a way to deal with the amended use in UDO. The applicant used a letter to develop regulations.

Mr. Tabor said a letter does not make the use properly permitted.

Mr. Painter said the letter said to advise the applicant if the amended use was not a legal use. The sexually oriented business regulations were not added to the UDO until later.

Mr. Painter motioned that the letter announcing operation as an adult establishment under Section 1304 was proper notice and there was no ordinance to address adult establishments when the county got the letter and the letter said to advise if not permissible. Mr. Tabor seconded the motion and the motion passed with Mr. Balance voting no.

Mr. Balance and Ms. McCloud said they thought they were supposed to be considering facts since 2000, not 1994.

Mr. Palmer asked for a motion about secondary effects of petitioner's amended use (Sexually Oriented Business).

Mr. Painter motioned that there was a lengthy operation of business without proven secondary effects of the sexually oriented business. Ms. McCloud seconded the motion and the motion passed unanimously.

Mr. Morrison said the board must consider how secondary effects are affected by different intended uses. He assumes Judge Tillett meant to question if secondary effects are different for a bar compared to a topless establishment. Since the board has ruled that there are no secondary effects from a bar or sexually oriented business, there are no differences in secondary effects between the two.

Mr. Tabor motioned that there are no distinctions between the secondary effects of a bar verses a sexually oriented business. Mr. Balance seconded the motion and the motion passed unanimously.

ACTIONS REGARDING SECTION 808 OF THE UDO

Mr. Morrison said the board, in the alternative, shall consider the petitioner's application against Section 808 of the UDO and make findings of fact and conclusions of law for the 2000 application for a sexually oriented business.

Mr. Tabor motioned that the initial intended use was for a sexually oriented business pursuant to the 2000 application. Mr. Painter seconded the motion and the motion passed unanimously.

Mr. Painter motioned that there were no effects from the initial intended use of the 2000 application for a sexually oriented business. Mr. Ballance seconded the motion and the motion passed unanimously.

Mr. Painter motioned that the sexually oriented business use was never permitted. Ms. McCloud seconded the motion and the motion passed unanimously.

Mr. Painter motioned that there were no secondary effects to consider. Mr. Tabor seconded the motion and the motion passed unanimously.

Mr. Painter motioned that there no secondary effects to differentiate from. Mr. Tabor seconded the motion and the motion passed unanimously.

ACTIONS REGARDING THE 2000 SPECIAL USE PERMIT APPLICATION

Mr. Morrison advised the board to go through the 2000 special use permit submitted by Mr. London line by line and vote on A-E of the application separately. In addition, the board has to consider completeness of the application and conformity of the proposed use with those uses in the table of permissible uses indicated with an "S"; the issue of a special use permit not being in the jurisdiction of the board; and if completed as proposed in the application, the use would not comply with one or more sections of the ordinance.

Mr. Plumlee objected because of applying Section 1310 by reference in Section 1304.

Mr. Painter motioned that the application was complete. Mr. Tabor seconded the motion and the motion passed unanimously.

Mr. Painter motioned that the use is among those listed in the Table of Permissible Uses as a special use indicated with an "S." Mr. Tabor seconded the motion and the motion passed unanimously.

Mr. Tabor motioned that the conditions proposed do not meet or exceed the minimum requirements of the UDO as the request does not meet zoning or setbacks. Ms. McCloud seconded the motion and the motion passed unanimously.

Mr. Tabor motioned that the special use will not endanger the public health or safety. Mr. Painter seconded the motion and the motion passed unanimously.

Mr. Painter motioned that 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. Mr. Tabor asked how many objections you have to have from the neighbors to say the use is not in harmony. Mr. Palmer said that harmony is not a legal thing but a secondary effect thing and since the board has ruled that there were no secondary effects, the use was in harmony. Mr. Painter said this location and this use are in harmony with that particular area of the county because there was construction in the neighborhood and the use was similar to a restaurant. David Palmer seconded the motion and the motion passed unanimously.

Mr. Painter motioned that the special use will be in conformity with the Land Use Plan or other officially adopted plan. Mr. Palmer said that staff findings speak to secondary effects and since there had been no complaints, the use is in conformity with the Land Use Plan as it relates to quality of life and secondary effects. Mr. Tabor seconded the motion and the motion passed unanimously.

Mr. Tabor motioned that 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 because it is a commercial use. Mr. Ballance seconded the motion and the motion passed unanimously.

APPLICATION DENIAL

Mr. Palmer announced that zoning and setbacks preclude the board from issuing the special use permit.

Mr. Painter motioned to deny the application because it does not meet zoning and setback requirements. Mr. Tabor seconded the motion and the motion passed unanimously.

The board directed Mr. Morrison to draw up an order of denial and submit it to the board for execution.

RESULT:	DENIAL [UNANIMOUS]
MOVER:	Michael Painter, Vice Chairman
SECONDER:	Cameron Tabor, Board Member
AYES:	Cameron Tabor, Board Member, C. Shay Ballance, Board Member, Donna McCloud, Board Member, Michael Painter, Vice Chairman, David Palmer, Chairman, Vivian Simpson, Board Member

ADJOURNMENT

There being no further business to discuss, Mr. Tabor motioned for adjournment. Ms. McCloud seconded the motion and the motion passed unanimously.

STATE OF NORTH CAROLINA
COUNTY OF CURRITUCK

BEFORE THE
BOARD OF ADJUSTMENT

IN RE:)	
)	
MICHAEL AND MARIE LONG)	No. BOA 13-09
)	
Appeal of Administrator's)	TRANSCRIPT OF HEARING
Decision that a Proposed)	
Single-Family Detached)	
Dwelling Located at 1441)	
Ocean Pearl Road, Carova,)	
Tax Map 113A, Parcel 8,)	
Complies with the Currituck)	
County Unified Development)	
Ordinance.)	

Theresa Dozier, Chairman
 David Palmer, Vice Chairman
 Donna McCloud
 Michael Painter
 Cameron Tabor

THURSDAY, MARCH 13, 2014

Historic Currituck County Courthouse
 Currituck, North Carolina
 7:00 p.m.

Volume 1 of 1
 Pages 1 through 147

Communication: BOA 13-09 Michael & Marie Long Transcript March 13, 2014 (Approval of Minutes)

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PROCEEDINGS

1
2 Chairman Dozier: And this is Board of
3 Adjustments item number 4, 13-09 Michael and Marie Long
4 appeal the administrator's decision that a proposed single-
5 family detached dwelling located at 1441 Ocean Pearl Road,
6 Carova, Tax Map 113A, Parcel 8, complies with the Currituck
7 County Unified Development Ordinance.

8 And then we have to swear everyone in, so that's
9 everyone that signed UP on the sign-in sheet; correct? Would
10 you come forward, please, and please place your left hand on
11 the bible? And would each of you please state your name and
12 spell it for the Clerk?

13 Mr. Van Dyk: Ed Van Dyk, T-e-d capital
14 V-a-n, capital D-y-k.

15 Mr. Long: Michael, M-i-c-h-a-e-l, P.
16 Long, L-o-n-g.

17 Mrs. Long: Marie, M-a-r-i-e, Long,
18 L-o-n-g.

19 Mr. Wood: George Wood, G-e-o-r-g-e
20 W-o-o-d.

21 Mr. Mancuso: Bernie Mancuso, B-e-r-n-i-e
22 M-a-n-c-u-s-o.

23 Mr. Cronin: John Cronin, J-o-h-n
24 C-r-o-n-i-n.

25 Mr. Mason: Chris Mason, C-h-r-i-s

1 M-a-s-o-n.

2 Mr. Woody: Ben Woody.

3 (Whereupon,

4 **TED VAN DYK**

5 **MICHAEL P. LONG**

6 **MARIE LONG**

7 **GEORGE WOOD**

8 **BERNIE MANCUSO**

9 **JOHN CRONIN**

10 **CHRIS MASON**

11 **BEN WOODY**

12 were sworn collectively.)

13 Chairman Dozier: Okay. So if I could get the
14 staff to---

15 Mr. Gallop: (interposing) Madam Chairman,
16 can I ask one question, please?

17 Chairman Dozier: Yes.

18 Mr. Gallop: Before we go any further, Mr.
19 McRee and Mr. Woody are with the county and they're sitting
20 up here for convenience purposes. They're--I just want to
21 make sure that nobody has any objection to them sitting up
22 here, that everybody is under the clear understanding that
23 they are not a part of this board, that they're with the
24 county and that they're here on behalf of the county. And
25 the board is a different body.

1 Mr. Wills: I just want to mention my name
2 is on the list. I'm the attorney for Mancuso and the Cronins
3 in the case. I didn't swear and I know that---

4 Mr. Gallop: (interposing) As long as
5 you're not providing factual information, that's the typical
6 practice. That's--are you both okay with the fact that
7 they're sitting up here?

8 Mr. Wills: No problem at all.

9 Mr. Gallop: Thank you very much.

10 Chairman Dozier: Okay. So staff, will you
11 present your case?

12 D I R E C T T E S T I M O N Y

13 Mr. Woody: I'm going to present tonight,
14 Madam Chair. I'm Ben Woody, the planning director and the
15 author of this letter of determination. What I'm going to do
16 is I'm going to take a few minutes to go through the letter.
17 I'm sure you reviewed it in your packet. It's pretty
18 straightforward. And after I cover it, I'll be happy to
19 answer any questions the board may have.

20 So as was stated to intro the case, this is an
21 appeal of this letter of determination. And as mentioned in
22 the intro, this is regarding a proposed single-family
23 dwelling at 1441 Ocean Pearl Road, which is a parcel of land
24 located in the off-road area here in Currituck County.

25 And what I want to do before I get into the

1 specifics of this letter is I think it's worth noting that
2 this property--or a set of building plans and a site plan
3 were submitted for this property previously, and a letter of
4 determination was issued on April 12th, 2013. That initial
5 letter is in your packets. That letter was not appealed.
6 Therefore, the determination of that letter is binding, but I
7 think it's worth knowing that's kind of where the process
8 started.

9 And real quickly, in that initial letter of
10 determination, we reviewed--the staff did--a set of building
11 plans and a site plan that showed four buildings that were
12 connected with decking. In that letter of determination, the
13 staff determined that decking does not constitute attachment
14 of buildings for purposes of permitting a single-family
15 detached dwelling.

16 Following that initial letter of determination, a
17 revised set of building plans were submitted to staff for
18 review. Those are the building plans that are in your
19 packets. And as a courtesy, we made 11 by 17 copies and set
20 them at your place so you could perhaps see them a little
21 better. They're a little difficult to read in 8½ by 11. But
22 those were the plans that were used for the purposes of this
23 letter of determination, which is what we're discussing here
24 tonight.

25 In making the findings included in the letter of

1 determination, staff used our Currituck County Unified
2 Development Ordinance and we also used the 2012 North
3 Carolina Residential Building Code.

4 So getting into it, what we--what staff did is in
5 making a determination, we reviewed the building plans you
6 have before you. And as you can see, the plans indicate a
7 three story main building that includes cooking, sleeping,
8 and sanitary facilities.

9 It also indicates two two story side buildings
10 that include sleeping and sanitary facilities. And what makes
11 the set of plans you see before you different than the
12 previous set is those buildings are now connected or attached
13 with conditioned hallways. So the conditioned hallways
14 connect all the rooms within this proposed single-family
15 detached dwelling. And I believe those are printed in color,
16 and what we did is we kind of highlighted in yellow on a
17 couple of the buildings so you can indicate where the
18 attachment of the conditioned hallway is.

19 In the final UDO, which is the basis for this
20 determination, a single-family detached dwelling is a
21 residential building that contains not more than one dwelling
22 unit and is not physically attached to any other principal
23 structure. That's the basic definition of a single-family
24 dwelling, what we're applying here.

25 In reference to the enclosed building plan, what

1 you can see is that the main building and the side buildings
2 are connected through the previously mentioned conditioned
3 hallways, thereby establishing this as a single principal
4 structure for permitting purposes.

5 And to elaborate on that, what that means is that
6 the rooms in this building--or these conditioned hallways
7 allow unrestricted occupant passage between the cooking,
8 sleeping, and sanitary facilities, which is common in a
9 single-family dwelling. So what I mean by that is that you
10 can move--an owner, an occupant, a renter can move from a
11 bedroom, for example, to a sanitary facility or to an eating
12 facility within the conditioned hallway, within the
13 conditioned space of the structure, just like you would in
14 any other ordinary single-family dwelling.

15 Also important to note, the connection of these
16 rooms through this conditioned space is also representative
17 of an independent dwelling unit. What I'm saying is this is
18 one dwelling unit. We don't have a situation where you could
19 have multiple dwelling units that exist.

20 And basically for those reasons I laid out very
21 simply, but it's a pretty straightforward determination,
22 staff found that this proposed single-family detached
23 dwelling, which you see in the building plans before you,
24 located at 1441 Ocean Pearl Road does comply with the
25 county's Unified Development Ordinance as a single-family

1 detached dwelling.

2 And more specifically, two things again I want to
3 put in parentheses is that the main building and side
4 buildings are connected using conditioned hallways that allow
5 unrestricted owner or renter passage between cooking,
6 sleeping, and sanitary facilities, and again, that the use of
7 the conditioned space must be consistent with the require-
8 ments of the 2012 Residential Building Code and must include
9 fixed openings from the connecting hallways directly into
10 adjacent conditioned spaces. That means that the HVAC system
11 is circulating throughout the buildings and the hallways.

12 If you have any questions, I'm happy to answer
13 those. That's a really brief overview, and I'll do my best
14 to answer your questions tonight.

15 Board Member: Ben, if I could ask you--oh,
16 I'm sorry. May I---

17 Chairman Dozier: (interposing) No, you're fine.
18 Go ahead.

19 EXAMINATION

20 By Board Member:

21 Q Our UDO and the verbiage that we have to define
22 single-family residence, that's taken from the state's same
23 items; is that correct?

24 A Our--the way we define a single-family detached
25 dwelling is similar to the building code, but it's not

1 exactly the same as the building code. It is a function of
2 our zoning ordinance.

3 Q Okay. So--but what I'm getting to is our
4 ordinance is not contrary to the state?

5 A No, sir.

6 Board Member: Okay.

7 Mr. Gallop: Madame Chair, you'll also want
8 to make sure that Mr. McRee, Mr. Wills, and Ms. Currin all
9 have an opportunity to question Mr. Woody.

10 Chairman Dozier: Uh-huh. Do y'all have any
11 other questions up here? I can open it up to them. Mr.
12 McRee, would you like---

13 Mr. McRee: (interposing) I don't have any
14 questions for Mr. Woody.

15 Chairman Dozier: No questions. And Ms. Currin,
16 do you have any questions?

17 Ms. Currin: I do. Would you like me to sit
18 here or would you like Mr. Woody here and would you like me
19 there?

20 Chairman Dozier: Yeah. Come to the microphone.

21 Mr. Gallop: He's got a microphone, so---

22 Ms. Currin: (interposing) Okay.

23 Mr. Gallop: ---if you can---

24 Ms. Currin: (interposing) All right.

25 Mr. Gallop: ---use this one.

1 Ms. Currin: Sounds good. Thank you very
2 much. Again, I'm Robin Currin, and I represent the
3 appellants in this case.

4 **C R O S S - E X A M I N A T I O N**

5 By Ms. Currin:

6 Q I just have a couple of questions for you, Mr.
7 Woody. Of course, as you said, you made the determination in
8 this case; is that correct?

9 A Yes, ma'am.

10 Q And when you first started on this case--it's been
11 quite a while ago when you first started; is that true?

12 A That is true.

13 Q Probably about over a year ago?

14 A At least.

15 Q And you've gone through a lot of meetings and a
16 lot of different designs and discussions to try to come to
17 some conclusion?

18 A That is correct.

19 Q Okay. And do you have a copy of your determina-
20 tion in front of you?

21 A I do.

22 Q Okay. I was going to ask you a couple of
23 questions from that, if that's okay. The first determination
24 that you made was in April of 2013, which was almost a year
25 ago. I'll give you a minute; sorry.

1 (Pause.)

2 A Okay.

3 Q Okay. And in that letter you basically are
4 responding to a request for a determination from our clients,
5 Mr. and Mrs. Long. And in that letter you said that you are
6 going to make a determination regarding both the use and the
7 structure; is that correct?

8 A Correct.

9 Q That under the UDO, you had to actually look at
10 two things, how they were using and how it was built; is---

11 A (interposing) How it was---

12 Q ---that correct?

13 A How it was proposed to be used.

14 Q Proposed to be used and proposed to---

15 A (interposing) Proposed to be built, yes.

16 Q Proposed to be built. And you used the definition
17 of a single-family dwelling?

18 A Uh-huh.

19 Q And in that on the second page, you talk about the
20 fact that the development plan had four separate buildings?

21 A Correct.

22 Q Is that correct? And the three that we were
23 talking about was the main building that had the bar and the
24 spa and the nail salon and the dining area; is that correct?

25 A Yes. That had the sleeping, dining, and sanitary

1 facilities, all three.

2 Q One bedroom?

3 A One bedroom.

4 Q Okay. And then the other two buildings had 12
5 bedrooms and 12 baths each; is that correct?

6 A Correct.

7 Q And in this determination you referenced each one
8 of those as a building?

9 A Correct.

10 Q Okay. And I think you said this, and I don't want
11 to be repetitive, but the main reason that you--or one of the
12 reasons that you said that it was not a single-family
13 dwelling at that time is because those three buildings were
14 not physically attached to each other. They only had
15 decking?

16 A Correct.

17 Q But each one of those was a building or a
18 structure under the UDO?

19 A Yes.

20 Q Okay. And then part of that also, that determina-
21 tion, was that none of those buildings were accessory to each
22 other; is that correct?

23 A Yeah. The buildings do not meet the definition of
24 an accessory structure or the general accessory use
25 standards.

1 Q And that was because they're basically all three
2 the same size?

3 A Yeah, because an accessory structure is typically
4 subordinate in area and extent and use.

5 Q So is it fair to say that if all three of the--all
6 three of these buildings would be principal buildings as
7 opposed to accessory buildings?

8 A I didn't--I don't think--I didn't think the
9 buildings with the 12 bedrooms in each could be principal
10 structures because I didn't think they had the components to
11 make them a principal structure.

12 Q Are you talking about a dwelling unit or just a
13 structure?

14 A I'm talking about dwelling unit.

15 Q But the definition for structure is not the same
16 as a definition of a dwelling unit under the UDO, is it?

17 A Correct.

18 Q So it could--a swimming pool is a structure under
19 the UDO, is it not?

20 A Correct.

21 Q So while each building is not a dwelling unit,
22 each building could be a structure, could it not?

23 A It could be, but it doesn't mean it's a principal
24 structure. A swimming pool is not necessarily a principal
25 structure.

1 Q Well, that would be accessory.

2 A Yeah.

3 Q But if you have three structures that are all the
4 same size, how do you decide which one is principal?

5 A For the primary uses or activity.

6 Q Okay. And in this situation could you do that
7 with the first determination, if you have three buildings
8 that are roughly 5,000 square feet?

9 A I would consider the building that contains all
10 the components of a single-family detached dwelling as the
11 principal structure. I consider the other structures to be
12 accessory structures that weren't consistent with the
13 ordinance or did not meet the requirements of the ordinance.

14 Q But they're not--but they weren't--you said they
15 weren't accessory structures.

16 A They weren't principal structures.

17 Q Well, it says here that they can't meet the
18 definition of an accessory structure under the UDO in your
19 first determination.

20 A Yeah, which is clearly incidental or subordinates.
21 I don't think they could be permitted as accessory
22 structures. I don't think that necessarily indicates that
23 they should be permitted as principal structures either.

24 Q Well, I'm not saying they were permitted. But if
25 they are--aren't there only two, accessory or principal? Is

1 there some other type of structure that there can be?

2 A Got to be one or the other.

3 Q And in this determination you said they were not
4 accessory?

5 A I did.

6 Q Okay. Now, with respect to the second determina-
7 tion that you made, which is the one that is in front of us
8 right now, or in front of the board right now, you made a
9 written determination at that time, and that's dated November
10 22nd, 2013; is that---

11 A (interposing) Correct.

12 Q ---correct?

13 A Correct.

14 Q And with respect to that, your question was the
15 same. You were looking at the use and the proposed--the
16 proposed use and the proposed structure to determine whether
17 it's a single-family dwelling?

18 A Correct.

19 Q Okay. And basically what you say at that time is
20 that there are still--according to your determination on
21 page 2, there are still three buildings; correct? And I'll
22 just read to you.

23 A I did. I used buildings, correct.

24 Q You say the plans included a three story main
25 building and two side buildings?

1 A Correct.

2 Q So under--under your own language, there are three
3 buildings here; is that correct?

4 A Correct.

5 Q Okay. And also you say, the main building and the
6 side buildings are connected through conditional (sic)
7 hallways, so basically--and therefore it's one structure.
8 And under the UDO, is it true that a structure and a building
9 are defined in the same way?

10 A Yes, they're interchangeable.

11 Q Right. So my question is how can you--how can you
12 have three buildings--something that's three buildings and at
13 the same time it's one structure?

14 A I think collectively the buildings are connected
15 with the conditioned space, and I think they function as a
16 principal structure.

17 Q But there are three buildings?

18 A Correct.

19 Q Okay. Isn't it true that to be a single-family
20 dwelling, there can only be one building?

21 A The single-family building is a building or a
22 structure, yes.

23 Q One building?

24 A Yes.

25 Q Singular in use? Okay. When you were doing your

1 determination--we already talked about the fact that you
2 investigated the proposed use. And how did you--did you look
3 at the applicant's CAMA application when you were determining
4 what that use was?

5 A I did not.

6 Q Did you talk to the applicant?

7 A I have met with the applicant. I have met with
8 the representatives of the applicant.

9 Q Okay. Were you told--or were you aware or were
10 you told that the applicant represented to CAMA that the only
11 use of the property would be for vacation rentals?

12 Mr. Wills: Objection as to whether or not
13 that is an appropriate area of inquiry. I don't know why
14 that use of the structure becomes an issue.

15 Ms. Currin: Can I respond? Because Mr.
16 Woody specifically says that he is making a determination as
17 to whether the use and building--proposed use and building
18 conformed with the UDO or not. And the UDO governs both use
19 and structure.

20 So if your structure is fine, you know, that's one
21 thing. But what you use it for is big part of the UDO. You
22 can have a building and if you have a restaurant in it, it's
23 just fine. If you put a topless bar in it, it's not. So
24 zoning is a lot more than just what the structure is.

25 Mr. Gallop: Mr. McRee, do you want to be

1 heard---

2 Mr. McRee: (interposing) Not at this
3 time.

4 Mr. Gallop: ---on the objection?

5 Mr. McRee: No.

6 Mr. Gallop: I would overrule the objection.

7 Chairman Dozier: Overruled.

8 By Ms. Currin:

9 Q Okay. Back to this, Mr. Woody, were you aware or
10 did anyone tell you that the principal--or the only use that
11 the applicant represented to the state of North Carolina was
12 going to be vacation rentals?

13 A I can't recall--I can't confirm that, that that
14 was--I can't confirm that they said that to the Division of
15 Coastal Management, no.

16 Q What use did you believe would be used--what did
17 you think this property was going to be used for?

18 A I think this property and most properties on the
19 beach at some point are probably used for vacation rentals.

20 Q Okay.

21 A So that--so I'm just going to say, quite frankly,
22 the use of a single-family dwelling built which is then used
23 for a vacation rental is nothing unusual or atypical for
24 Currituck County.

25 Q Okay. That may be true, but did it play a part in

1 your determination or would it if you knew this was used 100
2 percent for vacation rentals?

3 A No.

4 Q Okay. Now--so you didn't even--you didn't really
5 even go there?

6 A I did not, no.

7 Q Okay. I understand. Now, as far as the UDO, your
8 job as the planning director is--you're the interpreter of
9 the terms, at least the first---

10 A (interposing) Good---

11 Q ---time around?

12 A Good or bad, yes.

13 Q Yes, okay. And the zoning district where this
14 property is located is known as Single-Family Outer Banks
15 Remote?

16 A That's correct.

17 Q Okay. And I guess that that goes by SFR---

18 A (interposing) R, yes.

19 Q ---in your UDO. And is it true that that zoning
20 district is characterized by its lack of infrastructure?

21 A That is correct.

22 Q And that there are very few uses in the UDO which
23 are permitted at all in this district?

24 A That's a correct characterization, yes.

25 Q And do you have the UDO with you?

1 A I do. I'm pulling it up right now.

2 Q Okay. I've got--I can hand you that.

3 A I've got it up.

4 Q Are you good?

5 A I'm good.

6 Q Okay. All right. Now, as far as residential uses
7 go--now, as far as the UDO--and I've got--I don't know--I can
8 wait. I've got so many exhibits. If the UDO is helpful for
9 me to hand up to the board, I'm more than happy to or I can
10 wait and do that later.

11 Mr. Gallop: It's--it's up to you, Ms.
12 Currin.

13 Ms. Currin: Okay.

14 Mr. Gallop: They have--I don't believe they
15 have anything in addition--in front of them other than the
16 packet materials.

17 Ms. Currin: Okay. And this is about my
18 case. I have a packet of potential exhibits that I can hand
19 out now and I can hand to you that will asked to be admitted
20 along the way. And their either will or they won't, but one
21 of those happens to be UDO excerpts. So if I can go ahead
22 and if somebody needs to follow along, it may be helpful. Do
23 you have any objection to that?

24 Mr. Wills: Well, I have no idea what's in
25 the packet.

1 Ms. Currin: No.

2 Mr. Wills: And if there's something in the
3 packet I think would be objectionable, I'd like to object to
4 it.

5 Ms. Currin: Okay. Well, we'll do that.
6 And I tell you what: since you sit as the judge and the
7 jury, you have the ability to say something is inadmissible
8 and to just ignore it. So what I've done is--so let me hand
9 these up so you can see what I'm talking about. There's five
10 right there.

11 Male Voice: Do you have any more?

12 Female Voice: We can share one.

13 Ms. Currin: I have--I have one more.

14 Male Voice: Well, I mean if you need it---

15 Male Voice: (interposing) We can share.

16 Female Voice: We can share one.

17 (Unintelligible conversation.)

18 Male Voice: Thank you.

19 By Ms. Currin:

20 Q Okay. And what I was going to ask you about is
21 some excerpts from the UDO, which I believe are probably part
22 of the case, which is tab number 3. And under the table of
23 permitted uses--if you go to tab 3, I actually put little
24 numbers at the top so that you could follow along. But I'm
25 at the table of permitted uses, which is on page 10,

1 section 4.4 or page 4.4.

2 And Mr. Woody, if you look at page 4.4, that's the
3 residential classification in the UDO; is that correct?

4 A Correct.

5 Q And under your UDO, there are basically three
6 things that are used--three ways to characterize usage.
7 You have what's known as the use classification, the use
8 category, and the use type.

9 A Correct.

10 Q And the big category is Residential, or one of the
11 bigger categories. And single-family dwelling detached falls
12 within that; is that correct?

13 A Correct.

14 Q And that is characterized as a household living
15 unit?

16 A Correct.

17 Q Okay. And if you look under Single-Family Remote,
18 there is only use allowed, and that's a single-family
19 dwelling?

20 A Correct.

21 Q And so the Outer Banks Remote does not allow
22 duplexes, apartments, mansion apartments, multifamilies,
23 townhouses, any kind of use at all. The only type of home
24 that you can have is a single-family dwelling?

25 A Correct.

1 Q Okay. And there is one other group living, which
2 is called a family care home, and that's where like six or
3 less handicapped people can live; is that correct?

4 A Correct.

5 Q Okay. And no commercial is allowed in this zoning
6 district at all, is it?

7 A For the most part, no. There are some public
8 safety buildings that are allowed I mean, but no direct
9 commercial dwelling. I would agree with that statement, yes.

10 Q And there's--no hotels are allowed?

11 A Correct.

12 Q No motels?

13 A Correct.

14 Q Even if they had five rooms, three rooms, not
15 allowed?

16 A Correct.

17 Q A bed and breakfast is not even allowed; is that
18 correct?

19 A I do not think so, but I will look right now.

20 (Witness peruses document.)

21 That is correct.

22 Q And if you look at your ordinance, a bed and
23 breakfast is defined as a single-family dwelling where a
24 person would rent rooms from their single-family dwelling; is
25 that correct?

1 A Correct.

2 Q Okay. So in this district there is basically no
3 type of commercial vacation rental permitted whatsoever?

4 A I don't agree with that necessarily.

5 Q Well, if you look at the table of permitted uses
6 and you go to that commercial section, there is a subcategory
7 called Visitor Accommodations.

8 A Correct.

9 Q And that is bed and breakfast inn, hotels and
10 motels, and hunting lodges?

11 A Correct.

12 Q Those are not allowed; is that correct?

13 A They are not allowed in the SFR.

14 Q Okay.

15 A That's correct.

16 Q And if you were to go to the part of the UDO which
17 basically--section 10 defines or explains what these use
18 categories mean?

19 A Correct.

20 Q Okay. And if you go to section--which is of the
21 pages--page 10.20, 10.20, which is page 18 on the top, which
22 talks about the residential use classifications. And is it
23 true that this portion of the UDO is to be used to help you
24 categorize different uses as they come before you?

25 A Correct.

1 Q Okay. And if you look at Household Living, which
2 is the single-family dwelling; is that correct?

3 A Correct.

4 Q And you look at the characteristics, it provides
5 for "residential occupancy of a dwelling unit by a house-
6 hold"?

7 A Correct.

8 Q There is nothing in that definition that captures
9 vacation rentals, is there?

10 A There is not.

11 Q And if you look at the section which is
12 characterized--which is called Visitor Accommodations, which
13 is page 10.30, 19 on the top, that talks about the character-
14 istics of visitor accommodations?

15 A Correct.

16 Q And that is never allowed in the Single-Family
17 Remote; correct?

18 A Correct.

19 Q And that is defined as "use[s]...that provide
20 lodging units or space for short-term stays of less than 30
21 days for rent, lease, or interval occupancy"?

22 A Correct.

23 Q And the types of uses are hotels and motels, bed
24 and breakfasts; is that correct?

25 A Correct.

1 Q And the type of accessory uses are pools and bars
2 and things of that nature?

3 A Correct.

4 Q Another accessory use to one of these may be a
5 spa; is that--could that be correct?

6 A Could be.

7 Q Okay. Now, when you were making the determination
8 as to the use of this particular property, did you consult
9 those particular sections of the UDO that we just went over?

10 A I do. I did.

11 Q Okay. But you still--but you said you didn't
12 consider whether it was rental or not for that---

13 A (interposing) I did not and I didn't--again, it
14 was a proposed use. I have nothing to indicate how they're
15 going to actually use the property yet.

16 Q Okay. But if in fact you found out that it was
17 going to be a 100 percent vacation rental, could it very well
18 possibly fall into the category of a vacation rental, which
19 is a visitor accommodation?

20 A It would probably--more than just the fact that
21 it's rented on a weekly basis, it would probably be dependent
22 on the characteristics of how it's rented, how it's used.
23 And I think we'd have to dig a little deeper, I mean, because
24 I just--anecdotally, a lot of people will buy a second home
25 and rent it until they're ready to retire and move into it.

1 But of course it's built as a--perhaps as a single
2 type dwelling, so I don't believe you can just say because
3 you rent it weekly, that it falls in this category. I think
4 you would need to see some operational characteristics of how
5 it's rented.

6 Q And possibly the characteristics of how it's
7 constructed?

8 A Possibly.

9 Q Okay. Now, when you're also interpreting, you're
10 aware that the UDO requires you to consider the intent of the
11 individual districts when you're making a decision as to
12 whether a use is permitted or it is not?

13 A Correct.

14 Q Okay. And the use--the purpose of the single-
15 family remote area is to limit that area to very low density
16 residential uses; is that correct?

17 A Correct.

18 Q And isn't it true that the reason for that is
19 because of the lack of infrastructure?

20 A That's the primary reason, yes.

21 Q Because there's no paved roads; is that correct?

22 A Correct.

23 Q And there is no public water?

24 A Correct.

25 Q No public sewer?

1 A Correct.

2 Q And it's actually in a zone where nobody can get
3 any flood insurance?

4 A Correct.

5 Q Is that correct? So---

6 A (interposing) Well, not--you can't get---

7 Q (interposing) Federally---

8 A (interposing) You can't participate in the
9 National Flood Insurance Program.

10 Q Right, right. And have you--did you consider the
11 land use plan at all when you made this determination?

12 A Yes, but it wasn't a primary basis for the
13 determination.

14 Q Okay. And were you aware that one of the
15 recommendations in the land use plan is to limit large struc-
16 tures in this zoning district because of the problems with
17 the lack of infrastructure and firefighting abilities?

18 A I am.

19 Q And there is actually a recommendation in there,
20 although it's not been implemented, to limit the size of new
21 structures for that very reason?

22 A I'm aware of that.

23 Q Okay. And then as far as the table of permitted
24 uses, one of the--would you agree that it appears to be one
25 of the reasons that you can only have a single-family home

1 and you can't have even a bed and breakfast where you rent a
2 couple of--a couple of rooms is because of that lack of
3 infrastructure and the objective, which is to keep commercial
4 out of this particular zoning district?

5 A I would agree with that being the basis for the
6 lack of uses in the use table, yes.

7 Q Okay. Now, if you have a use under the UDO that
8 you can't quite put in a certain category, you have the
9 ability to go to the interpretation provisions that we just
10 talked about and to decide that even though it's not
11 specifically listed, you can decide what it looks like or
12 smells like the most and categorize it according to that use?

13 A Correct.

14 Q So it would be possible for you to have said this
15 is not a single-family dwelling, but it looks more like
16 visitor accommodations; therefore, it's not permitted?

17 A Possible. But I will--I will just add a qualifier
18 that typically we use the provisions of putting a use into a
19 certain use type. I think it's dealing with when the use is
20 unlisted. That's more typical. In this case the single-
21 family dwelling was a listed use, and that's the way they
22 brought forth the application.

23 Q Well, I understand, but you still have the ability
24 as the interpreter to decide that it doesn't necessarily fit
25 in that particular category, do you not?

1 A I think so, yes.

2 Q Okay.

3 A Ultimately.

4 Q So you don't have to take at their word that it's
5 a single-family dwelling?

6 A I don't, no, because obviously there's--if it
7 was--if there was a use brought forward and it was clearly
8 something else, then I think we would raise an objection.

9 Q Okay, or maybe it's not clearly something else and
10 you can't really decide where to put it?

11 A Certainly if it was unlisted, we would go through
12 that process.

13 Q Okay. Now, with respect to--you referenced the
14 building code in your determination with respect to
15 conditioned space?

16 A That's correct.

17 Q Okay. Did you reference the building code at all
18 to determine whether or not the definition from the building
19 code was consistent with your interpretation of a single-
20 family dwelling?

21 A I relied on the Unified Development Ordinance
22 definition of single-family dwelling.

23 Q Okay. Now, if you determine it's a single-family
24 dwelling and the applicant comes in for a building permit,
25 who makes that building--the decision whether the building

1 permit should be issued?

2 A A planner does.

3 Q Okay. Someone from your office?

4 A Yes.

5 Q Okay. And at that point---

6 A (interposing) At least a planner is one part of
7 the review, but additionally a building inspector would
8 review it as well---

9 Q (interposing) Okay

10 A ---both from my office.

11 Q And if this ends up being a single-family dwelling
12 and that applicant comes in and--for a building code review,
13 is your office going to review it as a single-family dwelling
14 under the building code?

15 A Yes.

16 Q Okay. So if in fact that there were portions of
17 the building code that required higher standards because of
18 the size of the building or the use of the building, your
19 office wouldn't look at that? They would just say, "This is
20 a single-family dwelling. That's what we're going to
21 follow"; is that correct? This--being a single-family
22 dwelling is going to follow this project through building
23 permit?

24 A It will, yes.

25 Q Okay.

1 A And it will either be approved or denied as a
2 single-family dwelling.

3 Q Okay, okay. Did you or your--when you were doing
4 your determination, did you--did you review the building code
5 and analyze at all whether or not that if this particular
6 development is only held to the single-family building code
7 standards, whether that might cause some safety issues?

8 A I presented the plans to the chief building
9 inspector and the fire marshal, and they felt as presented
10 that it would be a single-family dwelling.

11 Q Okay. And they believed that it would--but they
12 reviewed the use or whether or not that it would meet the
13 building code standards?

14 A They reviewed the building plans.

15 Q To say this is constructed in accordance with a
16 single-family?

17 A Yes.

18 Q But did you ask them, "Are there any safety
19 problems with constructing this as single-family home?"

20 A I did not ask them that specific question, no.

21 Ms. Currin: Okay. Hold on.

22 (Pause.)

23 Ms. Currin: I was just checking with my
24 team. I think that's all that I have at this time. Thank
25 you very much.

1 Mr. Gallop: Since we've got multiple
2 attorneys, it's probably best to let Mr. Wills go before Mr.
3 McRee has a chance to come back to Mr. Woody.

4 C R O S S - E X A M I N A T I O N

5 By Mr. Wills:

6 Q Mr. Woody, first off, are you aware as to whether
7 or not vacation rental homes are--whether homes within the
8 same area as this application are used as vacation home
9 rentals?

10 A They are.

11 Q And that's not objectionable under the UDO, is it?

12 A It is not.

13 Q And when someone comes to you in your office and
14 applies for an application, what you're doing is looking at
15 the application and design plans for the structure and then
16 trying to determine whether or not that design plan either
17 complies or doesn't comply with the express language within
18 the UDO; right?

19 A That's correct. That's what the planning staff
20 does. That's correct.

21 Q And you can't know at the time that that process
22 is going on what they're going to use the property for. You
23 can just evaluate the plans; isn't that right?

24 A We primarily evaluate the plans. Of course we do
25 ask what the use is for, but until the use is actually

1 conducted, it's hard to know if the use standards of the
2 ordinance will be an issue or not.

3 Q And therefore you sort of delve into hypotheticals
4 if you start to try to figure out what everyone is going
5 their property for; right?

6 A You could. You try to have a dialogue about
7 what's allowed and what's not and move forward that way.

8 Q And certainly within Currituck County and this
9 area the use of a single-family dwelling for a vacation
10 rental is common, is it not?

11 A On the Outer Banks it absolutely is.

12 Q Where this home is going to be located based on
13 your actual knowledge; right?

14 A Correct.

15 Q Now, I'm aware that the issue of decking and
16 whether or not the connection of these properties that was
17 discussed in your first letter is more or less not an issue.
18 Certainly your approval and your evaluation assumes the
19 conditioned hallway, which you mentioned several times?

20 A Correct.

21 Q But one of the points that Ms. Currin was raising
22 was that there is something inherently wrong about accepting
23 multiple buildings as though they are one dwelling. And I'd
24 like to ask you, if you could, to take a look at a couple of
25 other properties.

1 Well, let me ask you this. Are you familiar
2 within Currituck County and in conformity with the existing
3 building code whether or not there are single-family homes in
4 Currituck County where you may have a kitchen, a--sleeping
5 areas, and sanitary facilities in one building, one stand-
6 alone structurally independent building, and then other
7 separate buildings that have bedrooms and bathrooms in them,
8 yet the whole structure is treated as a single-family
9 residence? Is---

10 Ms. Currin: (interposing) I---

11 Q ---that a fact that you're aware of that has been
12 deemed by your office to conform with the UDO?

13 Ms. Currin: I'd just like to object because
14 is no other home that is before this board. And unless there
15 is some sort of proof that some other home has been through a
16 similar zoning determination and there has been a final
17 determination that it's permitted--just because something
18 else exists does not mean it's allowed.

19 Mr. Gallop: I would overrule this
20 particular--he's really just setting a basis to see if Mr.
21 Woody is aware of anything.

22 Chairman Dozier: Overruled.

23 A I'll answer this the best I can.

24 Q Okay.

25 A I do know that there are other instances in

1 Currituck County where you have different--more than one
2 building that are attached with decking or sometimes the
3 overhead roof, so I know that exists.

4 Now, my qualifier is I didn't review those plans.
5 I didn't issue those permits. I don't know the details of
6 that. I've never been inside of one of those. I don't know
7 it like I know this one.

8 Q Okay. But at least historically, the fact that
9 there are two separate structures, two separate buildings,
10 does not necessarily mean that they somehow can't qualify as
11 single-family residential dwelling; correct?

12 A There have been buildings under that scenario that
13 have been permitted in this county.

14 Q And that's because you're looking to the use, the
15 integrated use, of the building; isn't that right?

16 A In those instances I would think that the staff
17 probably focused on the function of the property and the
18 buildings.

19 Q Okay, so--and in this instance, if I'm correct,
20 the determination--that is, the evolution from your decision
21 in April of 2013 to your decision in November of 2013--really
22 had to do with the level of connectivity between the
23 structures, the wings of this home, such that it implied to
24 you that their use was as one consolidated unit; correct?

25 A I think that's fair to say that's how this

1 evolved, yes.

2 Q Okay. I would like to show you some pictures and
3 have them entered into the record in this case.

4 Mr. Wills: And I'll show them first to Ms.
5 Currin.

6 Female Voice: Do you have copies of them?

7 Mr. Wills: I'm afraid I don't. You're
8 free to take a look at them.

9 (Pause.)

10 Ms. Currin: Okay. I do--again, I'd like to
11 renew my objection. We don't know where these are, what the
12 zoning district is, who reviewed them, what circumstances
13 they came under. I mean they're just some pictures and don't
14 have any relevance here, whether it's permitted or not.

15 Mr. Wills: The street addresses are
16 identified, and my understanding is that these are
17 photographs that Mr. Mancuso showed to Mr. Woody very early
18 on in the process of other homes within the county. And I
19 just, again, would like it to be part of the record to rebut
20 the assertion that there's some anomaly here when you have
21 two different structures treated as one home.

22 Mr. Gallop: I would sustain the objection
23 until Mr. Woody authenticates that the single pictures had
24 something to do---

25 Chairman Dozier: (interposing) Sustained.

1 Mr. Wills: Can I show the pictures to Mr.
2 Woody?
3 Mr. Gallop: It's just like a court case.
4 Mr. Wills: Very good.
5 Ms. Currin: Well, and also, who took them
6 and---
7 Mr. Gallop: If you have an authentica-
8 tion---
9 Ms. Currin: (interposing) Yes.
10 Mr. Gallop: ---while he's questioning and
11 raise your objection when appropriate. I'll do my best to do
12 the other side of the fence that I'm not used to doing.
13 By Mr. Wills:
14 Q Mr. Woody, have you ever seen those photographs
15 before?
16 A I have--I have certainly seen one of these photo-
17 graphs for sure.
18 Q Which one is it?
19 A I believe that's the one that was originally shown
20 to me in a meeting, 1048 Lighthouse.
21 Q And was that represented to you by Mr. Mancuso at
22 the time as a home existing within Currituck County in
23 support of his assertion that the connection by decking is a
24 common feature within the county?
25 A That's correct.

1 Q Do you have any reason to believe that that's not
2 a true and accurate photograph of an actual house here in
3 Currituck County?

4 A I don't have a reason to believe it's not.
5 Obviously I can't say that I've been to 1048 Lighthouse, but
6 I have no reason to think--I don't think Mr. Mancuso would
7 present inaccurate photographs.

8 Mr. Wills: I'd like to make it part of the
9 record in this case. Mr. Mancuso can testify as to the
10 authenticity later. If you'd like me to admit it at that
11 point, that would be fine.

12 Mr. Gallop: Ms. Currin, do you have an
13 objection to having it admitted it now or would you like see
14 if Mr. Mancuso can authenticate it?

15 Ms. Currin: Well, I would just like to
16 reserve my objection to what zoning district that they're in
17 and as to whether or not that Mr. Woody or anybody else had a
18 sign of approval that they were a single-family dwelling
19 because that's the only way they're relevant.

20 Mr. Gallop: Let's just wait till Mr.
21 Mancuso---

22 Mr. Wills: (interposing) All right.

23 Mr. Gallop: I'll say just sustained.

24 Chairman Dozier: Okay. Sustained.

25 Mr. Wills: Just one moment.

1 (Pause.)

2 Mr. Wills: I don't have any further
3 questions. Thank you.

4 Chairman Dozier: Thank you.

5 Mr. Gallop: Let me---

6 Chairman Dozier: Yes, go ahead.

7 Mr. Gallop: Ms. Currin's objections may or
8 may not have been on the record because she's so far from the
9 microphone. Essentially she objected to the relevance--if
10 one of the other attorneys would raise their hand if they
11 object to my explanation of her objection.

12 Essentially she objected to the relevance
13 initially of the photographs that were shown Mr. Woody and
14 then later objected to the authentication and--of them at the
15 time that Mr. Woody considered them. Is that a fair---

16 Ms. Currin: (interposing) That's fair.

17 Mr. Gallop: ---restatement of her
18 objection?

19 Mr. Wills: Yes.

20 Mr. Gallop: Thank you.

21 Chairman Dozier: Thank you.

22 Mr. Gallop: And---

23 Ms. Currin: (interposing) Do I have the
24 opportunity to---

25 Chairman Dozier: Would you---

1 Mr. Gallop: (interposing) Again, we've got
2 three lawyers, so it's a little more complicated to try and
3 figure out who gets to go next. Does anybody care who goes
4 next?

5 Mr. McRee: Well, I haven't had my turn to
6 cross-examine, so I just want to ask a couple of questions.

7 Mr. Gallop: We'll let Mr. McRee go.

8 Ms. Currin: That's fine. Go on, go on, Mr.
9 McRee, please.

10 Mr. McRee: Okay.

11 **R E D I R E C T E X A M I N A T I O N**

12 By Mr. McRee:

13 Q Mr. Woody, Ms. Currin asked you with regard to the
14 land use plan whether this type of single-family dwelling is
15 allowed in the single-family off-road district; is that
16 correct?

17 A Correct.

18 Q And the land use plan is really an advisory
19 document; isn't that right?

20 A Correct.

21 Q And it does not prohibit the location of a struc-
22 ture of any particular size in the single-family off-road
23 area, does it?

24 A No.

25 Q And in fact the county doesn't regulate the size

1 of structures, does it?

2 A It does not.

3 Q Whether they're residential or commercial; is that
4 correct?

5 A There's no regulation on size. That is correct.

6 Q And you don't regulate the number of bedrooms as
7 well in a single-family residential structure, do you?

8 A We do not.

9 Mr. McRee: I don't have any further
10 questions at this time.

11 Chairman Dozier: Okay. Ms. Currin.

12 Ms. Currin: Okay. Thank you; just a
13 couple.

14 **R E C R O S S - E X A M I N A T I O N**

15 By Ms. Currin:

16 Q Mr. Woody, you were asked whether or not you
17 decided how to classify something on a hypothetical use; is
18 that correct?

19 A Yes, that's correct.

20 Q But if you knew the use and someone affirmatively
21 represented the use that they were going to use their
22 property, that would be relevant, wouldn't it?

23 A If I knew the--yes, correct.

24 Q If someone came in and said, "I am going to use
25 this for this purpose," then that could play into your

1 determination?

2 A It could, yes.

3 Q Okay, because you wouldn't want to permit a use,
4 even though the building was conforming, if you knew that it
5 was going to get built and be prohibited, would you?

6 A I would not want to do that, no.

7 Q And if in fact you made a determination that a
8 building was permitted and then the occupant moved in and the
9 use was illegal, they would have to be shut down, would they
10 not?

11 A That's correct.

12 Q Okay. So that doesn't really make a lot of sense
13 to say, you know, "We're not going to even care what the use
14 is" if you can know it, because that's something you want to
15 know at the beginning, isn't it?

16 A It is.

17 Q Okay. Now, with respect to these photographs that
18 you were shown and descriptions and you said that they were--
19 you knew--you thought that there were other buildings in
20 Currituck County that had multiple structures that were
21 considered to be one dwelling; is that correct?

22 A I know there are other buildings--there are other
23 properties in Currituck County that have multiple structures
24 and they were permitted.

25 Q Okay.

1 A But again, I don't know the details of how they
2 were permitted or any of that.

3 Q Is it--is it possible that these structures that
4 were permitted along with them were accessory structures?

5 A It is possible.

6 Q Okay. And those are permitted with a---

7 A (interposing) Right.

8 Q I mean if you have a single-family dwelling, you
9 can have an accessory structure, can't you?

10 A Correct.

11 Q Okay. But you cannot have a single-family
12 dwelling that is three separate buildings; correct? It has
13 to be one building?

14 A Yes, correct, or the separate buildings have to be
15 accessory structures.

16 Q Correct.

17 A Yes.

18 Q Correct. And these structures--you've already
19 made a determination that in this case these are not
20 accessory structures for---

21 A (interposing) Yeah, they were---if those two side
22 buildings were not attached, I determined they did not meet
23 the standards for an accessory structure.

24 Q Okay. And just because a use or a building exists
25 in the county does not mean that it's in compliance with the

1 UDO, does it?

2 A That's correct.

3 Q So there are nonconforming structures all over the
4 county?

5 A That's probably fair; correct.

6 Q Okay. So as far as relevance goes, just because
7 you say you have something one place does not legitimize it
8 at another if it's otherwise unpermitted; is that correct?

9 A Is it appropriate for me to comment on the
10 relevance of that in this case?

11 Q Well, let me ask it a different way.

12 A It wasn't relevant to me writing this letter of
13 determination.

14 Q Okay. And I guess just as a planner, if someone
15 walks in your office and says, "Well, you know, there's 20
16 other people who are doing this; therefore, I'm permitted,"
17 you certainly do not have to permit that second use if you
18 determine all the other ones are illegal?

19 A That's correct.

20 Q Being illegal doesn't legitimize something no
21 matter how many times you do it?

22 A Correct.

23 Ms. Currin: Okay. That's all I have.

24 Thank you.

25 Mr. Gallop: Do you want to check with---

1 Chairman Dozier: (interposing) Right.

2 Mr. Gallop: ---Mr. Wills and Mr. McRee to
3 make sure that they're both done with Mr. Woody?

4 Chairman Dozier: Would you like to speak
5 further?

6 Mr. McRee: I don't have any further
7 questions---

8 Chairman Dozier: (interposing) Okay.

9 Mr. McRee: ---for Mr. Woody at this time.

10 Chairman Dozier: Mr. Wills?

11 Mr. Wills: Just one question.

12 **R E C R O S S - E X A M I N A T I O N**

13 By Mr. Wills:

14 Q If the home--if someone is applying to build a
15 single-family residential dwelling in this area, in this
16 zoning district, and they told you their intent was to use it
17 as a vacation rental, would that be a basis to deny the
18 application?

19 A I don't think so.

20 Mr. Wills: Okay. Thank you.

21 Chairman Dozier: Thank you. And now tell me
22 what to do with this list.

23 Mr. Gallop: Since staff started, I would
24 ask Mr. McRee if he has got any other witnesses.

25 Chairman Dozier: Okay.

1 Mr. Gallop: And then I would go to Ms.
2 Currin if Mr. McRee doesn't have any more witnesses.

3 Mr. McRee: No, the county does not.

4 Chairman Dozier: Okay. And Ms. Currin, do you
5 have any other witnesses?

6 Ms. Currin: Yes, I do. And I'll just--I'll
7 just do a closing statement at the end. Is that the way
8 we're going to do this?

9 Mr. Gallop: Yes.

10 Ms. Currin: Okay. I would like to call Ted
11 Van Dyk.

12 (Whereupon,

13 **TED VAN DYK**

14 was called as a witness, and having been previously sworn,
15 testified as follows:)

16 **D I R E C T E X A M I N A T I O N**

17 By Ms. Currin:

18 Q Please state your name.

19 A I'm Ted Van Dyk. I'm a registered architect with
20 New City Design Group. We are an 11 person architectural
21 firm in Raleigh, North Carolina, and we do a wide variety of
22 commercial and residential work throughout the state. And
23 we're actually licensed in Virginia, North Carolina, South
24 Carolina, and Florida.

25 Ms. Currin: And I was going to ask him a

1 few--with a question and answer.

2 Q And you've done a short summary of what your
3 experience and occupation are, but if you could go over your
4 licenses and education and experience with the building code
5 and that type of thing.

6 Ms. Currin: We would like to tender Mr. Van
7 Dyk as an expert and I'll let him just set the foundation for
8 that.

9 A Briefly, I've been the principal and owner of New
10 City Design Group for 18 years. I've practiced both in the
11 northwest and here in North Carolina. I'm immediate past
12 chair of City of Raleigh's Appearance Commission. I'm a
13 member of the Urban Land Institute, on the Guiding Committee
14 of ULI Triangle.

15 We've obviously worked in both residential and
16 commercial capacities throughout North Carolina, not so much
17 in the Outer Banks, but on the coast all the way to the
18 mountains. And as I say, we've done a wide variety of
19 commercial and residential work including probably about \$100
20 million of single-family high end residential prior to the
21 recent unpleasantness, which hopefully has passed.

22 We did about--designed and supervised somewhere
23 around \$25 million worth of construction, residential and
24 commercial, last year as part of our practice.

25 Q And just briefly, your background and experience

1 with the North Carolina Building Code?

2 A Our experience with the North Carolina Building
3 Code, of course, is daily. I have five registered architects
4 including myself on staff. We work with municipalities,
5 Raleigh-Durham, all throughout the state. We also work on
6 projects for universities where we engage with the North
7 Carolina Department of Insurance, who does their own plan
8 reviews on plans at the state--or projects at N.C. State
9 University.

10 Ms. Currin: And I would like to tender Mr.
11 Van Dyk as an expert on building design, architecture, and
12 the building code.

13 Mr. Wills: No objection.

14 Mr. Gallop: Do you have an objection, Mr.
15 McRee?

16 Mr. McRee: No objection.

17 Ms. Currin: Okay.

18 Mr. Gallop: I would accept the tender.

19 Chairman Dozier: Okay. I will accept that.

20 By Ms. Currin:

21 Q If you could, I am going to hand you--well, what I
22 would like to do--or you have this here in front of you,
23 which is what we have as Exhibit 8 in your notebook there,
24 which is an excerpt from the North Carolina Building Code.
25 Can you identify that for the board?

1 A This is actually--what I've brought you is a
2 little more hopefully helpful than just the straight North
3 Carolina Building Code. This is out of the *Commercial Code*
4 *Commentary*. The international building code is what North
5 Carolina built its state building code upon, so this is a
6 code that's used widely. And North Carolina uses it as the
7 basis of its code with just some small revisions.

8 This is the commentary for that code, so what it
9 has in addition to the straight language in the code is
10 rationales and reasons that the code is structured in the way
11 that it is.

12 Q And I'm just going to--I'm going to let you talk
13 without me asking a lot of questions, but I do want to ask
14 that based on your--have you--have you reviewed Mr. Woody's
15 determination in this case?

16 A I have, yes.

17 Q And have you reviewed the building plans that were
18 submitted?

19 A I have.

20 Q Okay. And based on--have you reviewed the CAMA
21 permit application that was submitted by the applicant?

22 A I did read it.

23 Q Okay. And did you read in that application that
24 the only use of this property was to be vacation rentals?

25 A I recall that the purpose that was stated was

1 vacation rentals.

2 Q Okay. And based on your review of the project,
3 its layout, and the proposed use, is it your position that--
4 is this or is this not a single-family dwelling under the
5 North Carolina Building Code?

6 A Well---

7 Mr. Wills: (interposing) Objection as to
8 relevance, but--the issue before this body is whether or not
9 it is a single-family residence per the Currituck County
10 Uniform (sic) Development Ordinance.

11 Ms. Currin: We believe that it's highly
12 relevant because as Mr. Woody said, once this gets determined
13 to be a single-family dwelling under the code, then every-
14 thing that gets reviewed on after that is reviewed as a
15 single-family dwelling under the residential code.

16 Also, it is important, we think, to take--if you
17 look at the UDO, there is a provision that says if there is a
18 conflict between the UDO and any state law that the more
19 restrictive will apply. So if the building code--the state
20 building code defines a single-family residence more
21 restrictively than the Currituck County ordinance does, then
22 that's the definition that should apply.

23 We also--you'll hear Mr. Van Dyk say that there
24 are serious health and safety consequences that will
25 ultimately come from this in the future if this stays as a

1 single-family dwelling, which we think is very important.
2 And if you look at the intent of the single-family off-road
3 district, the remote, it is--there are firefighting
4 limitations and there's infrastructure limitations that if
5 you look at that intent, then how this is going to be
6 construed by the state of North Carolina we think is very
7 important.

8 Mr. Gallop: Mr. McRee?

9 Mr. McRee: I would also object as to
10 relevancy and I also note that the matter before the board is
11 what's contained in the record that Mr. Woody had before him
12 when he made this determination. I think he already
13 testified and it's certainly not included within this record
14 any CAMA representation or CAMA permit application.

15 Ms. Currin: This is a de novo hearing. We
16 are not bound by his record. And furthermore, Mr. Woody
17 himself cites the building code in his determination as being
18 the basis for his decision. That conditioned space comes
19 solely out of the building code.

20 Mr. McRee: Our objection has to do with
21 the CAMA permit. Mr. Woody has already testified he had no
22 knowledge of what--any representation that may have been made
23 to another state agent.

24 Ms. Currin: Well, that will come up later
25 for the CAMA. We won't even talk about that. What we're

1 talking about the building---

2 Mr. Gallop: (interposing) Let's hold on
3 for a second and let the--let us think about the concept of
4 the objection to his testimony as to whether or not the
5 proposed building is a single-family residential use under
6 building code and whether or not that is relevant to this
7 proceeding.

8 The question about the CAMA permit I'm going to
9 say is probably an assumption that he can base his opinions
10 on, whatever he saw or didn't see, if we're allowing him to
11 testify. No one objected to him qualifying and testifying.

12 So the question here is truly the relevancy of the
13 question that is before him, which is whether or not it is a
14 building code violation or consistent with the definition
15 under the building code.

16 The Witness: And it's the 2012 International
17 Building Code Commentary.

18 Ms. Currin: Well--and if I could just point
19 you to the part of the UDO that specifically said that--
20 1.6.3, "If a provision of this Ordinance is inconsistent with
21 the provision found in the law or regulations of the state or
22 federal government, the more restrictive provision shall
23 control."

24 Mr. Gallop: There's a two part decision to
25 a relevance objection. The second part is whether or not

1 there's undue prejudice shown and there hasn't been any that
2 I can tell, any prejudice shown. I would overrule the
3 objection and allow the question to be answered. If the
4 question--if it's later determined that it's inappropriate, I
5 would direct you not to consider it in your deliberations and
6 to potentially strike it from the record.

7 Chairman Dozier: Okay. So---

8 Mr. Gallop: I would say overruled.

9 Chairman Dozier: Overruled.

10 Mr. Gallop: You may answer.

11 The Witness: Thank you.

12 A Again, I'll try and be brief. When I look at
13 these plans of course as an architect, I look of course
14 immediately at the building code, as we always do in the
15 projects we do. And again, we do residential projects,
16 single-family, multifamily, apartments, condos. We've done
17 them all.

18 The building code is very clear that the resi-
19 dential occupancies are very critical in their need to be
20 properly classified. And the reason for this is residential
21 occupancies are some of the highest hazard occupancies
22 addressed by the code.

23 One of the main reasons is that people are asleep
24 a third of the time. So unlike even a restaurant, which may
25 have many more occupants, the people are active and alert.

1 They know where the exits are. The building is configured as
2 a commercial building with very strict limits on exiting and
3 on lifesaving.

4 Residential occupancies therefore have to be very
5 carefully considered as to their use and as to their type.
6 So the building code has three residential occupancies: R1,
7 R2, and R3. And R1 is a transient facility where people stay
8 30 days or less.

9 One of the critical things about whether to
10 classify a building as R1, a motel or hotel, or perhaps R3, a
11 permanent structure, is whether or not the occupants are
12 familiar with the layout of the building and they customarily
13 come and go on a regular basis.

14 The reason you cannot even pull into a Motel 6 on
15 the side of the highway and not see a long hallway with two
16 exits at the end and accompanying raised walls between them,
17 fire alarms, smoke detectors, exit signs, and the rest of the
18 configuration that comes with any facility that's holding
19 multiple people who may be sleeping and are unaccustomed to
20 their surroundings is that is how you provide life safety.

21 It is therefore an architect's job to look at the
22 use of the building and to look at the configuration and
23 decide whether or not it meets the standards of life safety
24 for the intended use. So use is very critical.

25 A single-family residence which has one family

1 living in it, customarily lives there, dines there, stays
2 there is one kind of occupant. It is defined in the building
3 code as permanent residents. Transient residents are anyone
4 who stays there 30 days or less.

5 So when I look at a building like this, which is
6 configured with 24 bedrooms in lines and try to evaluate it
7 with the life safety standards that I would place on a
8 building that is designed for occupants who are not going to
9 be there permanently, that is less than 30 days, this
10 building doesn't meet any of the required codes. It is not
11 built under the commercial building code. It is not designed
12 under the code.

13 It's a very incomplete set of drawings. I'll
14 grant you that. But even with the incomplete set of
15 drawings, it's too large to be a type V-B wood structure
16 unless we employ modifications such as sprinklering. It is
17 also too high. You can only go two stories on a
18 nonsprinklered building in an R--I mean a type V-B. There
19 are numerous other code problems if I begin to apply the
20 commercial code to this building.

21 So what I really want to make clear to you is that
22 the North Carolina Building Code--and the commentary, by the
23 way, is this code, which I have here, happy to share--with
24 the additional explanations that the code council has
25 provided to offer guidance to anyone trying to make a

1 determination with the code.

2 So as I say, the key characteristic of an R1
3 occupancy that differentiates it from other R occupancies is
4 that the occupants are considered transient in nature, those
5 whose length of stay is not more than 30 days.

6 There is an expectation that the occupants are not
7 familiar with the building as those residents in nontransient
8 facilities such as apartment buildings and single-family
9 dwellings. If the occupants are unfamiliar with their
10 surroundings, they may not recognize potential hazards or be
11 able to use the means of egress effectively.

12 So although I understand that this is a zoning
13 hearing and that there is a component of this that is the UDO
14 and I don't claim to be an expert on your UDO, the North
15 Carolina Building Code does not take the issue of classifying
16 the proper use of a building lightly.

17 So even as a boarding house, which is the
18 intermediate R2, the classification of any building that has
19 more than 16 persons in it is no longer an R occupancy that
20 can be classified as single-family, but becomes a rooming
21 house at 16 occupants. Over that, you are back to this R1
22 classification, which is transient in nature.

23 So the building code makes a distinction at 16
24 persons in terms of whether or not the occupancy goes from
25 single-family to R2, which is a rooming house, if there are

1 people who are staying less than 30 days. That would be it,
2 pretty fast?

3 Q Yeah. A couple of other questions. Have you
4 designed or been involved in the design of single-family
5 homes that are as large as the proposed project that's in
6 front of you?

7 A We have designed homes of this size many times.

8 Q Okay. And when you look at the design of this
9 particular project, do you consider that to be a design
10 that's common for a single-family home?

11 A Well, of course people are free to live as they
12 wish. I can tell you that if this building is 16,000 feet
13 perhaps, let's say it costs somewhere in the order of \$2
14 million in construction once you throw in the pool and the
15 gazebo.

16 If we're doing a \$2 million home, I can tell you
17 that we are going to have very elaborate living areas--
18 living, dining, kitchen, eat-in kitchen, dens. There's going
19 to be an elaborate master suite. The closets are going to be
20 sized for full-time residents, so they're walk-in closets
21 capable of holding a full-time wardrobe.

22 We would also typically see a three, maybe four
23 car garage associated with a project like this. People who
24 are building homes, single-family occupancy, want to at least
25 cover their cars. I know at the beach oftentimes we drive

1 under them. The building structure itself is covered. We've
2 done beach homes where we have attached garages, of course,
3 on larger parcels. But there's a fairly typical array that a
4 full-time dwelling unit has that you can pretty readily
5 identify.

6 Q And does this have any of those components?

7 A I've not seen a number of them. I can tell you
8 that I've never done a home that has a round bar in the
9 center of the living space and I've never done one with a
10 nail salon or a food prep pantry, but with a very modest
11 front kitchen such as this one.

12 Q What about ones with 25 bedrooms and 21 baths on
13 either side--in separate buildings?

14 A Haven't done one of those.

15 Q Okay. And you've done hospitality hotel-type
16 designs, have you not?

17 A Yes. We just finished the renovation of the
18 Clarion back to the Holiday Inn on Hillsborough Street in
19 Raleigh. It's a 20 story, 200 room building. And actually,
20 a large portion of our work on that was life safety
21 improvements. Back in 2000 when we did the first renovation,
22 it was a sprinkler in the building.

23 Q Okay. And as an architect and having done this
24 for many years, both commercial and single-family, regardless
25 of use--if you picked up this set of plans and looked at

1 them, what would you say this was?

2 A I mean this is my opinion, and I'll give that
3 first, is it looks--it appears to be a hospitality facility.
4 It's got 27 parking spaces in front of it. We've never done
5 a \$2 million home with 27 parking spaces. It's got numerous
6 bedrooms arranged in a straight line configuration. It's got
7 very large hospitality spaces associated with it in the
8 front.

9 I will also say that if I was--even if I were to
10 build this as single-family structure, I would have some
11 serious life safety concerns. A structure this large, even
12 if it was a single-family structure and the rationale was
13 they have lots of friends and relatives who come to visit,
14 it's still not a particularly well laid out plan from a life
15 safety perspective. There are dead-end conditions. There
16 are cases where the residents have to go outside and then
17 back inside to find a means of egress.

18 There are just--there are a lot of life safety
19 problems here that even if I was to accept the conjecture
20 that this is a single-family residence, which I think I've
21 made my thoughts clear on that, I think it would have life
22 safety problems.

23 But when we start to employ those devices to make
24 it safe for transient nature stays, now we're into the
25 commercial building code and we're no longer a single-family

1 residence. We have to jump out of the North Carolina one and
2 two family residential code and go into the commercial code
3 to find guidance on how to design that building.

4 Q So it's your opinion that in order to make this
5 safe under the building code, you'd have to classify this
6 commercial?

7 A Clearly.

8 Mr. McRee: Well, objection as to
9 relevance.

10 Mr. Gallop: I would sustain the objection.

11 Chairman Dozier: Sustained.

12 Ms. Currin: I don't have anything further
13 right now.

14 Mr. Gallop: Anyone else?

15 Ms. Currin: It's your cross.

16 Mr. Wills: Just real quickly.

17 **C R O S S - E X A M I N A T I O N**

18 By Mr. Wills:

19 Q Just real quickly, how many homes have you
20 designed and built in Currituck County?

21 A I have not designed any buildings in Currituck
22 County.

23 Q Okay. And how much are you paid an hour to come
24 here today?

25 A My billing rate is \$118 an hour.

1 Mr. Wills: Thank you.

2 Mr. Gallop: Mr. McRee?

3 Mr. McRee: Just a couple of questions.

4 **C R O S S - E X A M I N A T I O N**

5 By Mr. McRee:

6 Q So you've not done anything--no design or
7 construction work in Currituck County?

8 A No, sir.

9 Q Are you familiar with the area from the Dare
10 County line north to the state line?

11 A I've visited the Outer Banks many times before.
12 And of course, we're all under the same building code state-
13 wide.

14 Q But have you visited the area from the Dare County
15 line north to the state line?

16 A Are we talking about the area in question?

17 Q Yes.

18 A It's been several years, but I have been to
19 Corolla. That's as far north as I've gotten.

20 Q Okay. So you don't have any familiarity with what
21 has been constructed north of Corolla in particular, do you?

22 A No, sir.

23 Q Now, I think what you were also speaking of was
24 preferences. And I think you testified a moment ago, didn't
25 you, that some people like to live differently perhaps, but

1 you might not necessarily design a house this way; is that
2 correct?

3 A Yeah. I think there are two qualifications there:
4 one, I can't speak to how these folks intend to live. I
5 don't make any judgments on people's lifestyles. Everybody
6 has a different point of view. I can speak to the life
7 safety aspects of it, which are a completely different
8 matter.

9 Q Which, again, are preferences; there's nothing---

10 A (interposing) Well---

11 Q (interposing) There's nothing in the building
12 code, is there, that requires life safety features for a
13 single-family residential dwelling, is there?

14 A This building is too large to be construed as a
15 type V-B wood structure under the North Carolina Building
16 Code without modifications such as a sprinkler or area
17 increases, which we would have to do some calculations to
18 find out. And I don't believe it can be three stories under
19 North Carolina code.

20 Q Did you consult with the Department of Insurance
21 as you came---

22 A (interposing) We did consult with them---

23 Q ---to that opinion?

24 A ---on the fire code rule, which we didn't actually
25 talk about.

1 Q With regard to this particular plan.

2 A Oh. We didn't talk about this plan because it's a
3 very incomplete set of plans. There's no elevations.
4 There's no structural drawings. So I am very freely
5 qualifying that I'm only reviewing what was provided, which
6 is a pretty schematic set without complete information. But
7 things like the dead end limits, the width of the stairways,
8 the egress passageways are clearly identifiable.

9 Mr. McRee: I don't have any further
10 questions.

11 Chairman Dozier: Can the board--does the board
12 have any questions for Mr. Van Dyk?

13 (No response.)

14 Chairman Dozier: Okay. Ms. Currin?

15 Ms. Currin: I just have one. Let me get up
16 to the mic.

17 **R E D I R E C T E X A M I N A T I O N**

18 By Ms. Currin:

19 Q Mr. McRee asked did you talk to the Department of
20 Insurance, and you did talk to them about one particular
21 matter about this project; is that correct?

22 A We did.

23 Q Okay. Do you want to tell the board about that?

24 A One of the things that we're held to very strictly
25 in our residential work in Raleigh and throughout the region

1 is the 150 foot hose rule, which according to the fire
2 prevention code is 150 foot rule, which basically means when
3 a fire truck pulls up, they have to be able to reach all
4 parts of the building within 150 feet, obviously to get to it
5 with a 150 foot fire hose. That's the state code.

6 There are three ways that that can be modified.
7 The first is sprinklering the building, in which case the
8 fire marshal has discretion. In Raleigh they'll usually give
9 us somewhere between 25 and 50 feet of additional length if
10 we have a sprinklered building, but they still require access
11 to all points around the building.

12 You can provide an alternate system, fire
13 suppression, that's been approved by the building code
14 professional. And that is up to the discretion of the
15 designer to propose that and for the building code
16 professional to accept it. And I think there's one more:
17 sprinkler, alternate means of compliance--I think that might
18 be it.

19 So you actually cannot under the fire protection
20 code build a building which is--you cannot get to all points
21 of within 150 feet, and we confirmed this with the DOI. That
22 is how they interpret the rule. Again, I did say that the
23 fire marshal has some discretion in that matter. But of
24 course, the reason for it is to be able to reach all parts of
25 a building during a fire event and extinguish the flames and

1 evacuate the inhabitants.

2 Q And what relevance does that have here?

3 A Well, the building is actually--is well in excess
4 of being able to meet any of those standards. I think the
5 building itself is 200 feet long perhaps. I don't remember
6 the exact dimensions. And there are no fire access roads.
7 That's the third thing, that you can provide fire access
8 roads around the perimeter of the building so the fire truck
9 can get to a point where it can reach all those points.

10 Mr. McRee: If I may follow up?

11 Chairman Dozier: Yes.

12 **R E C R O S S - E X A M I N A T I O N**

13 By Mr. McRee:

14 Q And that standard--that fire standard is for what
15 type of structure?

16 A All structures.

17 Q Single-family residential structures---

18 A (interposing) Yes, sir.

19 Q --as well?

20 A Some of the highest hazards in the--80 percent of
21 all fire deaths are in residential occupancies in the United
22 States. So these are the most dangerous buildings. They are
23 made of wood. The occupants are often asleep or they're
24 relaxed.

25 Mr. McRee: I believe this---

1 A (interposing) A requirement when they're not
2 mindful---

3 Mr. McRee: (interposing) I believe this
4 actually is not relevant to this hearing.

5 The Witness: Fair enough.

6 Mr. McRee: I have no further questions.

7 Chairman Dozier: Mr. Wills?

8 Mr. Wills: No, Your Honor.

9 The Witness: I'll still be around if y'all
10 need anything.

11 Chairman Dozier: Okay. Thank you. Is there--
12 Ms. Currin, did you want to speak again?

13 Ms. Currin: Well, I was hoping--we had--
14 that if the owner of the property is here--is it---

15 Mr. Cronin: (interposing) It's my wife.

16 Ms. Currin: Are you---

17 Mr. Cronin: (interposing) I'm her husband.

18 Ms. Currin: I would like to ask some
19 questions. Can I ask you---

20 Mr. Cronin: (interposing) Certainly.

21 Ms. Currin: ---some questions? Okay.
22 Thank you.

23 Mr. Gallop: So can you make sure to state
24 your name and---

25 Mr. Cronin: (interposing) Yes. I am John

1 Cronin.

2 (Whereupon,

3 **JOHN CRONIN**

4 was called as a witness, and having been previously sworn,
5 testified as follows:)

6 **D I R E C T E X A M I N A T I O N**

7 By Ms. Currin:

8 Q Okay. So have you been involved in the design and
9 application process for this home?

10 A Design, no.

11 Q Okay. There was an application filed with--a CAMA
12 application filed with the state of North Carolina. Are you
13 familiar with that?

14 A I can't speak to that.

15 Q Okay.

16 A I know that Mr. Mancuso takes care of that.

17 Q Okay. Do you know who provided the information
18 that went into that particular application?

19 A Again, not even knowing what that information
20 is--if you tell me what it is, I can probably give you some
21 light on that.

22 Q Okay. Well, let's move on to something else. So
23 you weren't involved in that?

24 A No, ma'am.

25 Q Okay. And you say that your wife is the owner?

1 A Yes, ma'am.

2 Q Is that Ms. Letendre?

3 A Yes.

4 Q Okay. And you and your wife live in
5 Massachusetts?

6 A Yes.

7 Q Okay. You're not a resident of Currituck County?

8 A No.

9 Q Do you intend on moving down here?

10 A Yes.

11 Q Okay. At what point?

12 A Probably within the next three years. We have
13 another home down here.

14 Q Okay. And are you going to live in this
15 particular house?

16 Mr. Wills: I'm going to---

17 A (interposing) Part time.

18 Mr. Wills: ---object. I really object to
19 the line of questioning where we're going to go into my
20 clients' use of the property, when they're going to move into
21 it. What relevance does that have to the application to
22 construct this home?

23 Ms. Currin: If you look at the definition
24 of single-family dwelling, it says, "a residential building
25 containing not more than one dwelling unit to be occupied by

1 one family." Okay? It's got to be occupied by one family.
2 That is your definition. So if you look at the definition of
3 family, what that means is it's "people who are related by
4 blood or five or less people."

5 So if it is not going to be occupied by a family,
6 then it is not a single-family dwelling. So we think how
7 it's going to be occupied and used is highly relevant.

8 Mr. Gallop: Mr. McRee, do you have anything
9 to say on that?

10 Mr. McRee: No, I don't.

11 Mr. Gallop: What was the question again?

12 Ms. Currin: The question was whether his
13 family is going to occupy this dwelling.

14 Mr. Gallop: Is it---

15 Mr. Wills: (interposing) Actually, the
16 question was "Are you going to move here in two or three
17 years? When are you planning to move here?"

18 By Ms. Currin:

19 Q I would like to know if you're---

20 A (interposing) I think you're going---

21 Q ---planning to occupy--if your family is planning
22 to occupy this building.

23 A Well, it's my wife and I. And we will occupy it
24 eventually. But if I could add to that, I have three other
25 homes. Two of those are 12 bedrooms apiece and we don't live

1 in those all the time. Where we stay is kind of our choice.
2 And whether we stay here for six months or two months or two
3 days, I can't guarantee you exactly the time frame.

4 Q Okay. But how---

5 Mr. Gallop: (interposing) Can we go back
6 for just a second and let her rule on---

7 Ms. Currin: (interposing) Okay.

8 Mr. Gallop: The objection was--I believe
9 the question was "Are you going to occupy the house?" If
10 that's the--if the objection is to that question, I would say
11 overruled. And he had already answered, I believe, the
12 question, Mr. Wills---

13 Mr. Wills: (interposing) Right, he had.

14 Mr. Gallop: ---about when he would do it.
15 I'm sorry. So I would overrule that prior objection and
16 allow them to continue on---

17 Chairman Dozier: (interposing) Overruled.

18 Mr. Gallop: ---with the questioning.

19 By Ms. Currin:

20 Q Okay. So the question is are you going to occupy
21 it when it's built?

22 A Immediately, no.

23 Q Okay. Are you going to rent it as a vacation
24 rental during that time?

25 A That depends.

1 Q Okay. Are you aware that--you say you don't know
2 anything about the CAMA application?

3 A No, I don't.

4 Q So it is--it depends on what?

5 A The cost of how much it is to operate the home. I
6 mean you're--obviously we're building this as a part of our
7 retirement portfolio. So in order to do that, we'll evaluate
8 what that income is monthly in the area and see how it works.
9 If that means we sell another house and we move down here to
10 make that work, then--we won't know until that time, you
11 know, it's available.

12 Q So you have not made any plans to use this house
13 for vacation rentals?

14 A If need be and we can rent it for a month or so, I
15 would certainly would like to do that, yes.

16 Q Okay. Can you explain to me how you came up with
17 the design that you did for this house? Why did you choose
18 to include 25 bedrooms?

19 A Because as I stated, the other two houses--two of
20 those are over 11 bedrooms apiece. I don't--this is not the
21 common--this may sound rude, but we happen to have the money
22 to build whatever size we want. So it's something we wanted
23 big. If you wanted to have, you know, 15 of our relatives
24 down. We want to be able to do that.

25 Mr. Wills: Again, I'm going to object. I

1 understand where she's going, but we could be here all night
2 trying to decide. And not every person who builds a home has
3 to come and be cross-examined about how they want to use it
4 and what their intentions are, why are you building one room
5 one place.

6 Ms. Currin: I think when you have---

7 Mr. Gallop: (interposing) Is the objection
8 that the testimony is cumulative, Mr. Wills?

9 Mr. Wills: Cumulative and irrelevant. And
10 I would ask for another issue is, if vacation rentals is
11 within the zoning issue, then examination on vacation rentals
12 is also irrelevant.

13 Ms. Currin: We do not believe that vacation
14 rentals are within--less than a month, we do not believe they
15 are permitted in a single-family remote. And it is clear
16 from the zoning ordinance that they are not. And that is one
17 reason that this is not permitted.

18 Mr. Gallop: But haven't you already--he's
19 already told you he may rent it for vacation rentals. He may
20 live there. Is that---

21 Ms. Currin: (interposing) I wasn't asking
22 him--I was asking him why it was designed like it was, why it
23 has that many bedrooms.

24 A It's a choice to be able to do that. If you want
25 to build a 50 bedroom home and you have the money to do that,

1 you should be able to do that.

2 Q I understand that---

3 A (interposing) I can't see that it's any
4 different.

5 Q ---you should. I just asked why you chose to put
6 them in wings of 12 bedrooms each.

7 A Because it would be too hard to put all of them
8 under one roof. So if I thought I wanted to have it spread
9 that way and it would protect my pool, that's the reason--
10 that's part of the thought behind it.

11 Q So you chose three buildings to protect your pool?

12 A That's part of it, yes. I have another home where
13 I have---

14 Mr. Wills: (interposing) Again---

15 A ---issues with that constantly.

16 Mr. Wills: Does every citizen have to--are
17 they subject to this sort of examination when they apply to
18 build a home in Currituck County?

19 Mr. Gallop: Mr. Wills, I don't know if
20 that's an objection or not, but---

21 Mr. Wills: (interposing) Well, that's an
22 objection as to relevance.

23 Mr. Gallop: But the question is, is this
24 question relevant to the UDO. And you've already gotten into
25 the use. He's already told you what the use may or may not

1 be. The design is the design. If the use is the use--is
2 there somewhere were you're---

3 Ms. Currin: (interposing) We believe that
4 it's designed---

5 Mr. Gallop: (interposing) I guess if I
6 were a judge, I'd ask you is there somewhere---

7 Ms. Currin: ---to be used---

8 Mr. Gallop: ---that you're going with this?

9 Ms. Currin: Yeah. We believe it's designed
10 and intended to be used for a commercial purpose. We believe
11 that to be the case. And this---

12 Mr. Gallop: (interposing) Other than
13 rental--other than a vacation rental?

14 Ms. Currin: No, for a vacation rental.

15 Mr. Gallop: So we've already---

16 Ms. Currin: (interposing) That's what we
17 believe it is.

18 Mr. Gallop: So we've already pinned down
19 the question that it may be used for a vacation rental. And
20 Mr.---

21 The Witness: (interposing) Cronin.

22 Mr. Gallop: ---Cronin has testified to
23 that. I'm not sure that--I mean the design shows what it
24 shows, doesn't it?

25 Ms. Currin: It does.

1 By Ms. Currin:

2 Q But my question is did you design it for vacation
3 rentals or did you design it to live in it?

4 Mr. Gallop: And he's already--I would say
5 overruled on that objection. Let him answer the question did
6 they design it for vacation rentals or design it to live in.
7 And then I don't know if there's any other questions that are
8 necessary.

9 A With both--dual purpose in mind.

10 Q Okay. Do you know how you are going to treat this
11 particular project for your tax purposes? Are you going
12 to---

13 Mr. Wills: (interposing) Objection,
14 relevance.

15 Mr. Gallop: Sustained.

16 Chairman Dozier: Sustained.

17 Ms. Currin: Can I be heard on that?

18 Mr. Gallop: You can.

19 Ms. Currin: I think that if it's being
20 listed as being an income producing property, that that's
21 relevant to what the use is.

22 Mr. Gallop: I would assume the objection is
23 speculation. It's not going to--that it's not going to be
24 listed until it does one thing or another. Wouldn't it be
25 speculation for him to answer the question as to what---

1 A (interposing) I have no idea of knowing that.

2 Q So you have no plans at this time as to how you're
3 going to categorize it for tax purposes?

4 A Once again, that's my issue is I don't know the
5 run rate of that house. I have no idea if it's going to be
6 rented for three weeks or if I can afford to never have to
7 rent it.

8 Ms. Currin: Okay. That's all I have.

9 Chairman Dozier: Mr. McRee?

10 Mr. McRee: I don't have any questions.

11 Chairman Dozier: Okay. Mr. Wills?

12 Mr. Gallop: Do the board members have any?

13 Chairman Dozier: Does the board have any
14 questions for Mr. Cronin?

15 (No response.)

16 Chairman Dozier: Okay. Thank you.

17 Mr. Wills: Could I ask him one question?

18 Chairman Dozier: Oh, sorry about that.

19 **C R O S S - E X A M I N A T I O N**

20 By Mr. Wills:

21 Q If you do ever rent it---

22 A (interposing) Yes.

23 Q ---are you going to rent it as one structure or
24 are you going to rent it as individual rooms?

25 A Yeah. It would be one structure, I'm thinking.

1 Mr. Wills: That's all I have.

2 Chairman Dozier: Okay. Any further questions?

3 (No response.)

4 Chairman Dozier: Thank you. There are others
5 signed on this---

6 Ms. Currin: (interposing) I'm not done.

7 Chairman Dozier: Okay.

8 Mr. Gallop: What you want to do is let Ms.
9 Currin put on all of her people---

10 Chairman Dozier: (interposing) Okay.

11 Mr. Gallop: ---and then we'll let Mr. Wills
12 put on all of his people. And we'll just step through each
13 one of them. And we'll want to keep the cumulative evidence
14 question in regard as we go forward for all the attorneys, I
15 believe. It's a relatively narrow question, so if we can
16 keep the evidence in line with that, I think that would be
17 beneficial for everyone.

18 Ms. Currin: Well, that's true, but they're
19 objecting to things that we believe are relevant. Can I ask
20 for George Wood? Is he here?

21 Male Voice: He is.

22 Ms. Currin: Can I call him?

23 Mr. Wills: I'm going to--this is the CAMA
24 expert, and I'm going to object to going into the whole CAMA
25 permitting process. Mr. Wood is here if that's an issue.

1 Mr. McRee: I'm going to join that
2 objection. We don't view that as relevant as to the matter
3 before the board tonight.

4 Ms. Currin: As I told you, your UDO clearly
5 states that if the state regulations are more restrictive,
6 that they trump the UDO. Furthermore, if an applicant has
7 made a representation as to the use of this and how it's
8 constructed to a state agency and submitted that, I think
9 that it's relevant for you to hear what they told somebody
10 else it was because it's totally different than what they're
11 telling you.

12 Mr. Gallop: Do you have any purpose to ask
13 Mr. Wood about his application--the county ordinance to the
14 facts that are here?

15 Ms. Currin: My question is to him what the
16 use is. The use is relevant. On this CAMA application,
17 there is a clear answer as to what the use of this property
18 is. In this application there is a clear description that
19 there are four separate buildings. So to me, does the board
20 not think it's relevant to know what they told the state of
21 North Carolina they were building?

22 Mr. Gallop: I think you should overrule the
23 objection and ask Ms. Currin to ask very directed questions
24 that can be considered and objected to as needed as they come
25 up without continuing answers so that Mr. Wills and Mr.

1 McRee--let's see what she asks him first before we--we don't
2 even know his name yet. Let's get him up there and see where
3 she goes with him first.

4 Chairman Dozier: Okay. Overruled.

5 Mr. Gallop: I would overrule that
6 objection.

7 (Whereupon,

8 **GEORGE WOOD**

9 was called as a witness, and having been previously sworn,
10 testified as follows:)

11 **D I R E C T E X A M I N A T I O N**

12 By Ms. Currin:

13 Q Please state your name.

14 A George Wood.

15 Q Okay, Mr. Wood. Is it true that you submitted a
16 CAMA application on behalf of Ms. Letendre for this project?

17 A That is true.

18 Q Okay. And I'm going to hand you what's been
19 marked Exhibit 2. If you could take a look at that and tell
20 me if that is a copy of the CAMA application that you signed?

21 (Pause.)

22 A This is part of the application that was made to
23 the Division of Coastal Management.

24 Q All right. And when you filled this application
25 out, you intended for all the information in it to be true

1 and correct, did you not?

2 A Absolutely.

3 Q Okay. So the representations that you made in
4 here are right; is that correct?

5 A They are representative of what I've been advised
6 was the answers to those questions, yes.

7 Q Okay. And I just have a couple of questions. On
8 page number 6 there is a question which states, "Give a brief
9 description of purpose, use, ...daily operations, [and]
10 project when complete"; is that correct? And the answer is,
11 I quote, "The house will be used for vacation rentals"?

12 A Correct.

13 Q So that is what you represented the use to be to
14 CAMA?

15 A Yes.

16 Q Okay. Now, if you continue to the very last page
17 of what I have, which is the description, you represented to
18 CAMA that there would be four buildings; is that correct?

19 A Correct.

20 Q And you represented that each of those buildings
21 would be structurally independent; is that correct?

22 A That's correct.

23 Q Okay. And that building 1 would be 4,997 square
24 feet, .1?

25 (Pause.)

1 Q Or the north side building.

2 A Thank you.

3 Q The north side building is 4,997.1 square feet?

4 A That's correct.

5 Q Okay. And then the south side building is 4,997.1
6 square feet?

7 A Correct.

8 Q And the main building is 4,971 square feet?

9 A .7.

10 Q .7.

11 A Thank you.

12 Q And each one of those buildings is roughly the
13 same size; is that correct?

14 A For an attorney, yes; maybe for--for an architect,
15 maybe not, so--but yes, roughly.

16 Q Okay. And so the representation to CAMA was that
17 there were going to be four buildings, not one; is that
18 correct?

19 A That's true.

20 Q Okay. And is it true that CAMA rules have
21 different setbacks for buildings that are less than 5,000
22 square feet and ones that are over 10,000?

23 A They have different setbacks for different size
24 buildings, yes, 5,000 square feet being one of the building
25 limits.

1 Q Okay. So if a building is less than 5,000 square
2 feet, the CAMA setback is roughly 60 feet?

3 A It's 30 times the annual erosion rate with some
4 exceptions.

5 Q Or 60, whichever is greater or less?

6 (Pause.)

7 A It's more complicated than what we need to get
8 into. There is a multiplier of 30 times the annual erosion
9 rate for the setback, and it depends on the location, the
10 first line of stable natural vegetation. And it depends
11 on--if you have excessive erosion in some areas, then you're
12 able to use the lower erosion rate.

13 Q Well, let's put it this way. If your building,
14 individual building, is less than 5,000 square feet, then you
15 can be closer to the ocean than at the same location if the
16 building is over 10,000 square feet?

17 A Yes.

18 Q Okay. So by categorizing this as multiple
19 buildings for CAMA, you can be closer to the ocean than if
20 you went and told CAMA it was one building; is that correct?

21 A The Division of Coastal Management views these as
22 separate buildings because if there's say an event which
23 affects part of the building, the rest of the building is
24 structurally intact. So it is looked at by the Division of
25 Coastal Management as separate structures, yes.

1 Q Four buildings?

2 A In this case it's three buildings and a gazebo.

3 Q A gazebo; three buildings and a gazebo?

4 A Uh-huh.

5 Q But if you went to the Division of Coastal
6 Management and said, "I am doing one building," which is what
7 has been represented to the county, "We're doing one
8 building," then if it was one building, you would have to be
9 set back considerably further from the ocean; is that
10 correct?

11 A That's hypothetical. What we're talking about
12 here is that in the Currituck County UDO, the consideration
13 of this building for this function is one building.

14 The Division of Coastal Management doesn't care
15 about the function of the building. It looks at its
16 structural ability to withstand certain events and therefore
17 falls under a different set of considerations that in this
18 case could be represented as three buildings and a gazebo.

19 Q But my question is a simple one. One 15,000
20 square foot building has to be set back from the ocean,
21 hypothetically, much further than three 5,000 square foot
22 buildings--or 4999; isn't that correct?

23 A That's not the case we have in front of us,
24 though.

25 Q I'm asking you if that is the case under the law.

1 A Can you state it to me again?

2 Q Okay. Under CAMA if you have the same location,
3 assuming that it's this location, and you have three
4 buildings under 5,000 square feet, okay, isn't it true you
5 can place those closer to the ocean than you could if you had
6 one 15,000 square foot building?

7 A The erosion rate multiplier is lower for three
8 5,000 square foot.

9 Q So that means it can be built closer to the ocean;
10 correct?

11 A Probably, yes.

12 Ms. Currin: Okay. That's all I have.
13 Thank you.

14 Chairman Dozier: Mr. McRee, do you have
15 questions?

16 Mr. McRee: No, I don't.

17 Chairman Dozier: And Mr. Wills?

18 Mr. Wills: Just briefly.

19 C R O S S - E X A M I N A T I O N

20 By Mr. Wills:

21 Q Mr. Wood---

22 A Yes, sir.

23 Q ---we didn't go into your background, training,
24 and experience. I think they jumped right to your being an
25 expert. Tell us how long you've been dealing with CAMA.

1 Give the members of the board just a brief summary of your
2 background and experience.

3 A I worked for the Division of Coastal Management as
4 CAMA major permits coordinator in Raleigh for about, I'd say,
5 four years before having the great opportunity to escape
6 Raleigh and move out here to Elizabeth City and live in
7 Currituck County where I acted as a field representative for
8 northeastern North Carolina.

9 As a part of my duties in CAMA, I did the
10 consistency determinations. We talked about land use plans
11 and a little bit about that. I became a permitting--I was
12 the one that put together the CAMA permits for signature by
13 the director. And also as working out here, I was
14 responsible for consulting with people that wanted to
15 construct.

16 I left the state and started a consultancy
17 business in 1987 and have been conducting that consultancy
18 business since then. My primary focus is in Corps and CAMA
19 permits.

20 Q Okay. With regard to the Letendre home that's
21 before this body here, can you tell the members whether or
22 not the CAMA regulating officials that you communicated with
23 and dealt with with regard to this application were aware
24 that this home was intended to be used as a one unit, as a
25 single dwelling unit, throughout the process?

1 A They certainly were. As a matter of fact, the
2 rest of the application, which was failed to be presented,
3 included a letter of determination from the County of
4 Currituck, the letter of determination that we're discussing
5 this evening.

6 Q And did you--as you went through the CAMA
7 permitting process, were you also familiar with the process
8 that Mr. Mancuso was going through and the revisions that
9 were being done to the same set of plans with Mr. Woody with
10 regard to compliance with the Uniform (sic) Development
11 Ordinance?

12 A Yes. The same set of plans were submitted to the
13 county is the exact same plans as were submitted to the
14 state. It was--the distinction is they're different
15 authorities in how they view the plans.

16 The Currituck County UDO, I believe, looks at how
17 the unit would function and therefore functions as one unit.
18 The state Division of Coastal Management looks at how it's
19 structurally built and they would react structurally as
20 separate buildings.

21 Q But it was the same set of plans and the same--and
22 the CAMA officials were fully aware of the intended use and
23 the connectivity of the wings with the bedrooms to the
24 central building with the kitchen, were they not?

25 A Absolutely.

1 Q And they were aware of Mr. Woody's concerns with
2 regard to the UDO?

3 A Absolutely.

4 Q And so there was no distinction or difference
5 between the representations that were being made by the
6 Letendres to the CAMA officials versus the representations
7 that were being made to Mr. Woody; correct?

8 A True..

9 Q The same set of plans throughout.

10 A Uh-huh.

11 Q So any implications that counsel is making that
12 you're trying to make some sort of representation to CAMA
13 that is different from what's been made to the county, is
14 that true or false based on your actual knowledge and
15 interaction with both regulators?

16 A Well, not only is it false. I mean it would be
17 against the certifications that I have and my ethical--I'm
18 bound by ethical practice. It would unethical, I would
19 think, to do that. So there's no doubt that everybody
20 involved was aware of what we were proposing to do. They
21 received the same information.

22 Q Do you have an estimate of approximately how many
23 oceanfront homes in Currituck County that you've been
24 involved with in terms of the permitting and construction?

25 A 100, maybe 200.

1 Q Is it--what percentage of those homes do you think
2 are used for vacation rentals?

3 A Most of them.

4 Mr. Wills: Thank you. I don't have any other
5 questions.

6 Mr. McRee: I would just like to ask Mr.
7 Wood if he would just elaborate further with regard to his
8 credentials.

9 **C R O S S - E X A M I N A T I O N**

10 By Mr. McRee:

11 Q What are your credentials? What certifications
12 do you hold and your educational background?

13 A I grew up in eastern North Carolina, lived here
14 all my life, went to East Carolina University and got a
15 couple of degrees there, actually in marine biology. I was
16 fortunate enough after getting out of college to secure a job
17 in Raleigh, North Carolina with the North Carolina Division
18 of Coastal Management.

19 I went to work with them and I was part of their
20 policy team. I helped develop some of the regulations we're
21 even talking about today. And I spent a lot of time in the
22 14 stories of the Archdale Building in Raleigh, North
23 Carolina. By the way, those windows don't open in that
24 building.

25 So I escaped Raleigh, in part because I had

1 always, as a marine biologist, wanted to live on the coast.
2 So a job opening became available in Elizabeth City. I moved
3 out here. I think I worked for the division a few more years
4 out here, three or four more years.

5 And in that process of transformation from state
6 employment to the private sector, I pursued certifications
7 such as a certified environmental professional, which is the
8 highest designation in my field, requiring, as I've
9 mentioned, adherence to a code of ethics and also demon-
10 stration of expertise in the area in which I choose to be
11 certified.

12 I'm also a professional wildlife scientist and I
13 coordinate on a regular basis--in fact every day, Monday
14 through Friday and sometimes on Saturday--with the state and
15 federal regulations as it relates to just these issues.

16 Mr. McRee: I have no further questions.

17 Chairman Dozier: Okay. Ms. Currin?

18 Ms. Currin: Thank you, just a couple.

19 **R E D I R E C T E X A M I N A T I O N**

20 By Ms. Currin:

21 Q The CAMA permit hasn't been issued yet, has it?

22 A It has been drafted, not issued.

23 Q Okay. And if this project is in zoning violation,
24 CAMA won't issue that permit, will it?

25 A There is a provision called no violation of any

1 rule in the CAMA regulations. And then it would be up to
2 them to decide if they would see the outcome of this board as
3 being pertinent to whether they issue it or not.

4 Q So CAMA didn't make any determination as to
5 whether it's in zoning violation or not, did they?

6 A I think that--they certainly looked at the land
7 use plan for consistency, and that may have zoning language
8 in it.

9 Q Are you telling me that they made a determination
10 that this was in zoning compliance?

11 A What I'm telling you is they made a determination
12 that--as far as I know, that they're going to intend an issue
13 that is consistent with the Currituck County land use plan.

14 Q Where is that evidence of that?

15 A That they would issue the permit.

16 Q But---

17 A (interposing) The CAMA major permit is a
18 consistency determination.

19 Q I understand that. But Mr. Wood, if this board
20 says that this is in zoning violation, then they would have
21 to take that as being the case. They couldn't determine it
22 wasn't?

23 A You know, they make the decision, so---

24 Q (interposing) They don't make a zoning decision.

25 A They make a decision whether to issue the permit

1 or not, so I cannot advise whether they would or not.

2 Q Right, but do not the CAMA--isn't there a question
3 that asks whether it's in zoning compliance or not?

4 A Yes. Well, they--there is a--there is a part in
5 the application that asks what the zoning is and what the
6 intended use is.

7 Q And they don't ask whether it's in compliance?

8 A You'd have to ask the county because I'm sure
9 probably they would consult with the county.

10 Q Okay. And they will depend on Mr. Woody to give
11 them that answer; is that correct?

12 A They would probably depend on the county in which
13 the project is being proposed---

14 Q (interposing) Or this---

15 A ---whoever in the staff of Currituck County.

16 Q Or this board or whatever the decision ultimately
17 is?

18 A I don't know. I don't know who this works with
19 the Board of Adjustments and the decisions that they make as
20 binding on CAMA.

21 Q Okay. So are you telling me that if this board or
22 a court said there was a zoning violation that CAMA could
23 come in and interpret the UDO to say there's not?

24 A I'm telling you I don't know.

25 Q Okay. That's good enough.

1 A Yes.

2 Q Now, you say that you know there's a lot of other
3 vacation rentals?

4 A Uh-huh.

5 Q Have you ever been through a process to
6 determine--have you determined whether they're in zoning
7 compliance or not?

8 A No.

9 Q That's not what you do. Okay. So you know you're
10 out there. You don't know whether they're legal or not, do
11 you, from a zoning perspective?

12 A No.

13 Q Okay. And I think what you're saying--what you
14 have said is that CAMA defines building different than the
15 UDO?

16 A Yes.

17 Ms. Currin: Okay. That's all.

18 Chairman Dozier: Mr. McRee, do you have any
19 other questions?

20 Mr. McRee: No, I do not.

21 Chairman Dozier: And any questions from the
22 board?

23 Board Member: Yeah, if I could?

24 **E X A M I N A T I O N**

25 By Board Member:

1 Q Just for my clarity--just for my clarity to make
2 sure I'm understanding it right, Currituck County's view of
3 this being a structure and CAMA's view as being four or three
4 structures is independent of each other and not contradictory
5 to each other?

6 A Correct.

7 Board Member: Thank you.

8 Chairman Dozier: Okay. Thank you.

9 Mr. Gallop: Do you want to ask Ms. Currin
10 if she has any more witnesses?

11 Chairman Dozier: Yeah. Do you have any other
12 people that you'd like to speak to this case?

13 Ms. Currin: I would like to call Mr. Van
14 Dyk back up, if that's okay, for just a quick question.

15 Mr. Gallop: Any objection from the
16 attorneys?

17 Mr. McRee: No objection.

18 Mr. Wills: No objection.

19 Chairman Dozier: Okay. Please state your name.

20 Mr. Van Dyk: Ted Van Dyk.

21 Chairman Dozier: Thank you.

22 (Whereupon,

23 **TED VAN DYK**

24 was recalled as a witness, and having been previously sworn,
25 resumed the stand and testified further as follows:)

D I R E C T E X A M I N A T I O N

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By Ms. Currin:

Q Mr. Van Dyk, you heard the testimony that the definition of buildings were not inconsistent with each other; is that correct?

A I did hear that.

Q Do you disagree with that?

A I would say that there's a--since the North Carolina Building Code has been referenced in the UDO, I would want to examine each one of these independent structures per CAMA's definition and make sure that an event such as has been described that wiped away one of these structures and two remained, that the other two structures are still sufficient for lifesaving.

In other words, if one of these buildings under the CAMA definition were part of one home and happened to contain a stairway that was critical to the exiting of the rest of the occupants and was swept away where the other stood, from an architect's point of view that is critical to a definition of a building. Not only can the building stand, it must be able to function independently.

So if someone asked me to design four buildings and cluster them together so if one of them was washed away in a storm event, I would want to make sure that the other ones functioned completely independently. And that would be

1 from a life safety perspective as well as from merely a
 2 structural perspective or from merely a passageway accessi-
 3 bility perspective.

4 So the building code would need to be evaluated
 5 and these structures would have to be evaluated to see if
 6 they can each stand alone to be considered separate buildings
 7 under any definition. And if they were, then they are in
 8 fact independent buildings. And that does not contradict the
 9 UDO necessarily, but it may call into question whether you
 10 can actually have one building that's four buildings at the
 11 same time.

12 Chairman Dozier: Any questions from--Mr. Wills?

13 Mr. Gallop: Mr. Wills, the microphone.

14 Mr. Wills: I'm sorry.

15 C R O S S - E X A M I N A T I O N

16 By Mr. Wills:

17 Q Have you ever pulled a CAMA permit?

18 A I have never pulled a CAMA permit.

19 Mr. Wills: Thank you.

20 Mr. Gallop: Mr. McRee.

21 Chairman Dozier: Mr. McRee? Okay.

22 Mr. McRee: No questions.

23 Chairman Dozier: Okay. Any other questions from
 24 the board?

25 Board Member: I do have one question.

1 Chairman Dozier: Mr. Van Dyk, would you
2 please---

3 The Witness: (interposing) Oh, sorry about
4 that.

5 **EXAMINATION**

6 By Board Member:

7 Q So is it that CAMA is evaluating on the structural
8 integrity of the building or are they also evaluating based
9 on the function?

10 A Well, what I'm suggesting is that--why we're here
11 tonight, there's not a simple one answer fits all. What
12 we're hearing from the expert, and I defer to him,
13 essentially is that CAMA wants these structures to be
14 independent and to function independently so that if an event
15 takes place, the entire structure is not compromised. The
16 sides--the building can be broken down into components so
17 that, you know, in a flood situation or a storm event, they
18 are for the consideration--and I don't want to put words in
19 his mouth--during the consideration of the storm that they
20 are smaller, independent structures.

21 What I'm suggesting is that the building code also
22 speaks to an independent structure. That's not the only
23 criteria you can apply. You can't have a building that has
24 two or three stairways and one of them breaks away, and the
25 folks in the second building are stuck because there's not a

1 sufficient egress. That's still not an independent building.

2 It could be an independent structure--you can
3 consider each pier coming out of the ground to be an indepen-
4 dent structure to be left there if everything else was swept
5 away, but that doesn't constitute an independent building.

6 So we're talking about the same thing, but I'm
7 trying to add a layer of information that when you're
8 evaluating a building that has significant life safety
9 implications on the way it's classified, there's another
10 layer here that I just wanted to bring to your attention.

11 Board Member: Can I ask a---

12 Chairman Dozier: (interposing) Sure.

13 By Board Member:

14 Q Do you disagree that the whole thing is condi-
15 tioned space under the building code?

16 A I cannot say because there's not a mechanical plan
17 associated with the project. There's no HVAC drawings
18 associated with the drawings that I reviewed.

19 Q So if the testimony was that it was--the HVAC
20 flowed freely between all of the structures or buildings or
21 portions of the connected (inaudible), that that would be
22 consistent with the definition?

23 A That testimony would be. It's not reflected in
24 any of the drawings that I reviewed. There's just simply not
25 a mechanical system plan in the drawings.

1 Board Member: Thank you.

2 Chairman Dozier: Okay. Do you have some others,
3 Ms. Currin, that you would like to have speak to the case?

4 Ms. Currin: Yes. I would like Mr. Michael
5 Long to come. There is an affidavit in your packet there
6 that speaks to the impact that the Longs believe that this
7 project will have on their property.

8 And the reason that we're submitting this is
9 because in order to have standing to file this appeal and to
10 file further appeals, that there's got to be something in the
11 record that establishes what their impact is. And that is
12 what that affidavit shows and that is what Mr. Long is going
13 to speak to.

14 Chairman Dozier: Please state your name--oh,
15 sorry.

16 Mr. Gallop: In the past, Ms. Currin, we've
17 dealt with this situation before and been able to expedite
18 the process by having the parties agree to submission of the
19 affidavit without the remainder of the testimony. Can we
20 give the other attorneys an opportunity to review and see if
21 they're willing to do that just for the purposes of standing?

22 Ms. Currin: Yes, as long as--I would like
23 to make sure the board does actually take a look at that too,
24 because I would like the board--we would like the board to
25 know what the Longs' stake in this is as well because we

1 think it's very important to--even though it's not in the
2 record, that they take the time to read it as well.

3 Mr. Gallop: I agree. I just--if they don't
4 have any objections to it coming in for standing purposes, we
5 may be able to save some time. But if they have objections,
6 then we've just got to deal with it the way we've dealt with
7 everything else.

8 (Pause.)

9 Chairman Dozier: In order to review this
10 affidavit properly, we're going to take a ten minute recess.
11 Thank you.

12 (A brief recess was taken.)

13 Chairman Dozier: I'll now call the meeting to
14 order.

15 Mr. Gallop: Ms. Chairman, we had recessed
16 for them to consider the affidavit. Mr. Wills has informed
17 me that he isn't willing to stipulate to the affidavit. Mr.
18 McRee, are you willing to stipulate to---

19 Mr. McRee: (interposing) I mean the
20 county won't stipulate that the Longs have standing. We
21 would currently want to have paragraphs 7 and 8 stricken from
22 the affidavit if it is to be admitted and considered by this
23 board in that it's based on speculation, generalized fears,
24 and assumes facts that aren't in evidence.

25 Mr. Wills: I would have the same objection

1 to the same two paragraphs. That's it.

2 Ms. Currin: Under North Carolina law that
3 is perfectly admissible to show standing for that purpose.
4 It's the only reason that we're submitting it. It's not for
5 a special use permit hearing. We have an obligation to get
6 into court or stand before you today to allege exactly that.
7 And it is held to be proper under the Supreme Court holding
8 in *Mangum v. City of Raleigh*.

9 Mr. Gallop: You would agree that that
10 evidence is not proper for their consideration of the appeal?

11 Ms. Currin: It is not substantive evidence
12 for purposes of appeal. It is evidence with respect to the
13 impact on the appellants for purposes of standing, yes.

14 Mr. Gallop: So Gentlemen, if it's merely--
15 with that representation---

16 Mr. Wills: (interposing) If it is merely
17 to establish standing--we're already willing to stipulate to
18 it even without the affidavit. But if it's merely for
19 standing purposes, then I have no objection. But certainly
20 would agree it's not substantive, competent material evidence
21 that this board should consider in making its decision.

22 Ms. Currin: Well, and it has nothing to do
23 with the determination at issue of whether it's a single-
24 family dwelling. It has to do with impact.

25 Mr. Gallop: Okay. Mr. Wills, are you

1 willing to admit it for that sole purpose of standing with
2 the statement and provisos of Ms. Currin regarding the
3 agreement that it's not part of the consideration by this
4 board for the decision on the appeal?

5 Mr. Wills: Again, I'll just--I understand.
6 I too would stipulate for standing. I don't know that it
7 needs to be done by way of affidavit form that has inaccurate
8 information.

9 And I will say that I would like to ask Mr. Long a
10 couple of questions. And if she intends to call and talk
11 about it, we can--I mean if she has no other purpose than to
12 submit the affidavit, I can stipulate to the standing issues.

13 Mr. Gallop: And I think that the purpose
14 for the standing issue is just so that we don't have to go
15 through all the paragraphs in the affidavit and it's there in
16 writing and everybody can deal with it on an appeal without
17 having to look through the testimony other than to see Ms.
18 Currin's agreement that it's not there for any other purpose.

19 Ms. Currin: And a stipulation as to
20 standing does me no good. As you know, a court can decide on
21 its own motion that these people don't have standing. And
22 without this in the record, a stipulation does not do
23 anything for these people.

24 Mr. Gallop: What I'm taking this as is a
25 stipulation that it can be admitted solely for the purpose of

1 standing and for no other purpose. Is that what you were
2 saying, Mr. McRee?

3 Mr. McRee: That's all we would stipulate
4 to.

5 Ms. Currin: That it's admitted for purposes
6 of standing?

7 Mr. McRee: Right.

8 Mr. Gallop: Right, and only for---

9 Ms. Currin: (interposing) Because as I
10 said, you can't---

11 Mr. Gallop: (interposing) You can admit
12 anything for---

13 Ms. Currin: ---stipulate to standing.

14 Mr. Gallop: You can admit anything for
15 various different purposes, for illustrative purposes, for
16 substantive evidence purposes, for standing purposes and that
17 we're admitting this, if everybody is agreeable to it, solely
18 for the purpose of standing, just to avoid having to deal
19 with the testimony on that issue.

20 If there's--if parties aren't willing to
21 stipulate, we'll just go through the testimony and everybody
22 can object as needed when it comes up. I don't know that
23 this affidavit is admissible otherwise, and I think there are
24 some issues on those other provisions.

25 Ms. Currin: Well, that may very well be

1 true, but you know as well as I do that if I don't have this
2 in there, then I potentially am subject to a motion to
3 dismiss for lack of standing, so---

4 Mr. Gallop: I'm not challenging that. I'm
5 just challenging the way we're going to--I'm just questioning
6 the way we're going to do it, are we going to do it the quick
7 way with a stipulation that it's admissible or not.

8 And I get from Mr. McRee for sure that he's okay
9 with admissibility for standing purposes only. And Ms.
10 Currin is okay with admissibility for standing purposes only.
11 And Mr. Wills, I think I got yours, but I'm not absolutely
12 sure and you're not on a microphone, so---

13 Mr. Wills: I will stipulate for purposes
14 of standing only.

15 Mr. Gallop: Okay.

16 Mr. Wills: I do want to examine Mr. Long.

17 Mr. Gallop: And you'll have an opportunity
18 to call him if you want, or Ms. Currin, I believe you were
19 going to call him to ask him a couple of questions as well?

20 Ms. Currin: Well, let's just go ahead and
21 have Mr. Long go ahead and give a short statement to you.
22 And then he can be cross-examined.

23 Chairman Dozier: Okay. Please state your name.

24 Mr. Long: Michael Long.

25 Mr. Gallop: And I would say that the

1 affidavit is admitted for standing purposes only based on the
2 stipulations---

3 Chairman Dozier: (interposing) Okay.

4 Mr. Gallop: ---of the parties.

5 Chairman Dozier: The affidavit is admitted for
6 standing purposes only.

7 Mr. Gallop: And that's Exhibit 6.

8 Chairman Dozier: Exhibit 6.

9 Mr. Gallop: The affidavit of Michael Long
10 and the---

11 Chairman Dozier: (interposing) Affidavit of
12 Michael Long.

13 (Appellants Exhibit 6 was
14 received in evidence.)

15 (Whereupon,

16 **MICHAEL LONG**

17 was called as a witness, and having been previously sworn,
18 testified as follows:)

19 **D I R E C T T E S T I M O N Y**

20 Mr. Long: Good evening. I know this has
21 been running kind of long. There are just a few things I
22 wanted to say. You know, I bought property down in Corolla
23 in 2002 and put plans together and finished our house. We
24 started the house in 2003, finished it in 2004.

25 And when we built our house, you know, we had the

1 intent of building it for a second home to retire in. That
2 was our purpose. That was our intent. We didn't rent our
3 house last year at all. My wife spends most of her time
4 there, actually.

5 When we bought the property, the house to our
6 south was a second home. The house to our north was a
7 primary residence. And the house beside of it was a second
8 home. There were no rental properties on either side of us
9 at that time.

10 And I was told when I bought and built my house
11 that I could only build one structure. I could build an
12 incidental, subordinate structure, a full house, a garage,
13 but only one structure. And I get this plan that has four
14 buildings and I'm saying, "What's going on?" How come when I
15 built my house, I could build one structure. I built it back
16 on the second dune line with everybody else. My house is
17 less than 5,000 square foot of occupancy. It has decking
18 that exceeds 6,000, but the occupancy is under 5,000. I
19 could have built it up much closer, but I built it back in
20 line with everybody else on the second dune line.

21 Then I get this proposal. The end building is in
22 front of my house and it exceeds down about 240 feet, which
23 completely overwhelms the property and blocks my view to the
24 northeast completely. And I'm saying, "What's going on? Why
25 is it that I have to follow a guideline that other people

1 don't have to follow all of a sudden? What's changed?" I
2 don't understand that. It doesn't make sense to me.

3 And it's submitted as three buildings to CAMA.
4 It's submitted as three buildings to the county. So what's
5 the deal? It can't be that way. Those other buildings have
6 to be incidental or subordinate or it can't be, but yet it
7 is. I don't understand that. It's not fair and I think it's
8 wrong. That's it.

9 **C R O S S - E X A M I N A T I O N**

10 By Mr. Wills:

11 Q Mr. Wood, have you offered your home in---

12 A (interposing) Long.

13 Q I'm sorry, Mr. Long. I'm sorry about that. Have
14 you used your home as a vacation rental?

15 A Yes.

16 Q How long have you used and offered your home as a
17 single-family--or as a vacation rental?

18 A Up until--we didn't rent it at all last year.
19 The week before that--I mean the year before that we rented
20 it four weeks. We started out--the first year I think we
21 rented it for nine weeks. Then we graduated back six weeks.
22 Our intent was to get to a (inaudible) to no rental.

23 Q So last year was 2013. Did I understand your
24 testimony to say you bought your home in 2002?

25 A We bought the property in 2002. We finished it in

1 2004.

2 Q You finished it in 2004. So from 2004 until 2013,
3 your home was used as a vacation rental property?

4 A Not exclusively, no.

5 Q Well, you rented it during the summer; correct?

6 A I rented it for the first year about nine weeks,
7 yes.

8 Q And your attorney is here objecting to the use of
9 your neighbor's property as a vacation rental; is that right?

10 Ms. Currin: That's a legal conclusion and
11 that is actually not our argument, but---

12 Q Okay. I'm sorry. Maybe I misunderstood her
13 argument.

14 A The intent of my house is for a second home, a
15 retirement home.

16 Q Okay, but you rented it for about nine years---

17 A (interposing) Nine years.

18 Q ---before you moved into retirement; right?

19 A No. We've been living in it a long time. You
20 know, we spent more time in it than we did rent it.

21 Q I want to show you a picture here and ask if
22 you've ever seen that before.

23 A Yes, I have.

24 Q I've written on there the Mark Twain--well, first
25 off, tell me what that's a picture of.

1 A It's a house to the north of me.

2 Q How many lots away from your house?

3 A I don't know exactly, eight maybe. I don't know.

4 Q Well, how--distance-wise--can you see it from your
5 lot?

6 A If I walk down maybe 50 yards, I can look back and
7 see it. It's in line pretty much with my house.

8 Q Okay.

9 Mr. Wills: Can I mark this as an exhibit?

10 Chairman Dozier: If you submit it to the board,
11 we--it remains our property.

12 Mr. Wills: That's fine.

13 Chairman Dozier: Okay.

14 Mr. Wills: I don't know how else to
15 corroborate it with him. I'll just mark this as Mancuso
16 Exhibit 1. Would that be all right?

17 Mr. Gallop: That's fine.

18 (Mancuso Exhibit 1 was marked
19 for identification.)

20 Mr. Gallop: What's---

21 Ms. Currin: Is there a copy--can we have a
22 copy?

23 Mr. Wills: I'm afraid I don't, ma'am.

24 Mr. Gallop: Can you let her review it to
25 see if---

1 Mr. Wills: (interposing) Yes, I will.

2 Mr. Gallop: ---she will object? And also
3 can you tell us what purpose it's being admitted for?

4 Mr. Wills: This is an 18 bedroom home
5 within the same community and the same area. And one of the
6 contentions that was made is that the size and the use of the
7 home of this size is inconsistent with the UDO.

8 And I just want to point out--and there was
9 testimony earlier made to the board that a home of this size
10 within the area would not be consistent with the use in the
11 area. I would offer it to rebut the assertions previously
12 made.

13 Ms. Currin: We didn't--we didn't make that
14 assertion. I would still object because we don't know
15 whether--this is not in front of you.

16 Mr. Gallop: I would sustain the objection
17 for the purposes of using it as explaining the size of the
18 house other than--and I think it's--I think if you wanted to
19 admit it, it's illustrious of a house that's up the street.
20 He's authenticated that. But I don't think, you know--since
21 you were testifying to the size, not him--so I think that--I
22 don't know that you can admit it for that. Do you see what I
23 mean?

24 Mr. Wills: Very well. That's fine. I can
25 admit it for illustrative purposes, then.

1 Mr. Gallop: That it's a house in the
2 neighborhood.

3 Mr. Wills: That's correct.

4 Ms. Currin: And I would object to this
5 being substantive evidence about what the classification of
6 the house under--under consideration is because it has
7 nothing to do with it.

8 Mr. Gallop: Admission of something as
9 illustrative is not substantive evidence of anything other
10 than the fact that he's seen that house and it's in the
11 neighborhood.

12 Ms. Currin: And nobody has testified as to
13 how many bedrooms it is. He's the lawyer.

14 Mr. Gallop: Correct.
15 (Mancuso Exhibit 1 was received
16 in evidence for illustrative
17 purposes only.)

18 By Mr. Wills:

19 Q Have you got any idea how many bedrooms are in the
20 house up the street?

21 A No.

22 Q Any other large homes within the same community?

23 A There's large homes, yes.

24 Q I'm going to show you another picture. Have you
25 ever seen that one before? Do you recognize that photograph?

1 A I think so, uh-huh.

2 Q Isn't that--well, strike that. Tell me how you
3 recognize it.

4 A It looks like one of the houses to the north of
5 me.

6 Q So it's next to the last house we looked at, isn't
7 it?

8 A I think it is, yes.

9 Q Have you got any idea how many bedrooms are in
10 that house?

11 A Don't know.

12 Q Do you know whether that house is used for
13 vacation rentals?

14 A Don't know.

15 Q Do you ever see people---

16 A (interposing) I see people coming out of the
17 house.

18 Q ---there in the summertime, a lot of people
19 there---

20 A (interposing) Yeah.

21 Q ---a lot of people hanging out in front of it?

22 A Well, I don't really watch that house. It's not
23 close to me, so I don't really know what--what the movement
24 is.

25 Q I'll show you another photograph here. And we'll

1 call that one Mancuso 2 and Mancuso 3.

2 (Mancuso Exhibits 2 and 3 were
3 marked for identification.)

4 Q Have you see that house before?

5 Ms. Currin: Can I see it, please?

6 Mr. Wills: Yes, ma'am. I'm sorry.

7 Ms. Currin: I renew my same objections to
8 every one. This is not evidence that this is permissible and
9 it has nothing to do with the classification of this house or
10 whatever it is under consideration.

11 Mr. Wills: Same purpose, same reason.

12 Mr. Gallop: I'll overrule the objection.

13 Chairman Dozier: Overruled.

14 (Mancuso Exhibits 2 and 3 were
15 received in evidence for
16 illustrative purposes only.)

17 By Mr. Wills:

18 Q And Mr. Long, if you can, the next photograph,
19 which your attorney has got in her hand there, do you
20 recognize that?

21 Ms. Currin: Same objection.

22 Chairman Dozier: Ms. Currin, could you step to
23 the microphone, please?

24 Ms. Currin: I have the same objection with
25 respect to every one of these photographs, and I assume the

1 ruling is the same as to each one, partially sustained,
2 partially overruled.

3 Mr. Gallop: Yes. For substantive purposes
4 I would say that it's sustained and for illustrative purposes
5 of what houses are in the neighborhood and whatever's shown
6 in the picture. Overruled, Madam Chair, is what I would---

7 Chairman Dozier: (interposing) Yes.

8 Mr. Gallop: ---advise you to say.

9 Chairman Dozier: Overruled.

10 A I'm familiar with the name, but I've never seen
11 the house from that view, so I don't--I can't really say.
12 I've never seen that side of the house.

13 Q Well, let me ask you this. Are there two very
14 large houses right in a row?

15 A Yes.

16 Q Okay.

17 A Single buildings, one structure.

18 Q No idea how many bedrooms are in any of those
19 houses?

20 A I have no idea how many bedrooms are in the
21 structures, no.

22 Q Would you characterize them as very large homes?

23 A They are large homes.

24 Mr. Wills: Thank you. I don't think I
25 have any further questions. Thank you very much.

1 Mr. McRee: No questions.

2 Chairman Dozier: All right.

3 Mr. McRee: I have no questions.

4 Chairman Dozier: Okay. Ms. Currin.

5 Ms. Currin: Let me get back to mic here.

6 Okay, just a couple of questions.

7 **R E D I R E C T E X A M I N A T I O N**

8 By Ms. Currin:

9 Q When you purchased your property and built your
10 home, what was the primary purpose of that home?

11 A For retirement.

12 Q Okay. So it was for--I assume for your family to
13 live in?

14 A Yes.

15 Q And the rental was significantly less of the time
16 than you actually were in the house; is that correct?

17 A Correct.

18 Q So that would be incidental and not the purpose of
19 your home?

20 A Correct. We came--even when we had rented it, we
21 were down there more than we were renting it, much more. We
22 only live two and a half hours, so every weekend, and my wife
23 was down there probably more than she was in Williamsburg.

24 Q So if you had--did you have to get a CAMA permit?

25 A No, I don't think so.

1 Q Okay. But if you---

2 A (interposing) Well, excuse me. I think I did
3 have to get a CAMA permit for our Hatteras room, I think.
4 Actually, George Wood was the one that acquired that.

5 Q If someone were to ask you the question to fill in
6 the blank, "What is the primary purpose of your structure,"
7 what would the answer be?

8 A It's my retirement home.

9 Q A single-family home?

10 A Yes.

11 Q You wouldn't put it was a vacation rental?

12 A No.

13 Q Okay. Now, with respect to all those pictures you
14 saw, how many structures were in each of those pictures?

15 A One.

16 Q In any of those large homes were they broken up
17 into separate structures?

18 A No.

19 Ms. Currin: Okay. Thank you.

20 Mr. McRee: No questions.

21 Chairman Dozier: Any further questions?

22 Mr. Wills: Just real quick.

23 **R E C R O S S - E X A M I N A T I O N**

24 By Mr. Wills:

25 Q I wanted to clarify. Did you say that you used

1 Mr. Wood to help in your dealings in your permitting process
2 with the construction of your home?

3 A No.

4 Q What did you use Mr. Wood's services for? Do you
5 know?

6 A For a CAMA permit after the house was built.

7 Q Okay. But to make some construction on your
8 property, this lot, you used Mr. Wood's services to help get
9 you the permit to do so; is that correct?

10 A For the Hatteras room, yes.

11 Mr. Wills: Thank you.

12 Chairman Dozier: Mr. McRee?

13 Mr. McRee: No questions.

14 Chairman Dozier: Any questions from the board?

15 (No response.)

16 Chairman Dozier: Okay. Thank you.

17 Mr. Gallop: Madam Chair, I've got the three
18 pictures. I'm going to---

19 Chairman Dozier: (interposing) Okay.

20 Mr. Gallop: ---pass them down for board
21 members to see.

22 Ms. Currin: I think we're finished with our
23 witnesses. We would like to make a closing statement to
24 summarize when everything is done.

25 (Appellants rest.)

1 Mr. Gallop: Currently that's the procedure
2 that I'm going to advise the chair to take.

3 Chairman Dozier: Mr. Wills, do you have anyone
4 else you'd like to speak to the case?

5 Mr. Wills: I do not, ma'am. Thank you
6 very much.

7 Chairman Dozier: Okay.

8 Ms. Currin: Hold on a second.

9 (Pause.)

10 Ms. Currin: Okay.

11 Mr. Gallop: Ms. Currin, you're done with
12 your evidence, and Mr. Wills, I'm going to confirm on the mic
13 that you're done. You don't have anyone to call?

14 Mr. Wills: That's correct. We don't have
15 any other evidence and no witnesses.

16 (Respondents rest.)

17 Mr. Gallop: Mr. McRee?

18 Mr. McRee: I have nothing further.

19 (Board rests.)

20 Chairman Dozier: Okay.

21 Mr. Gallop: I think I might would ask the
22 board if they had anybody in particular--if there were any
23 questions of witnesses that they wanted to ask.

24 Chairman Dozier: Are there--does the board have
25 any other questions they'd like to ask of these witnesses?

1 (No audible response.)

2 Chairman Dozier: Okay, so we're ready---

3 Board Member: (interposing) Could the---

4 Chairman Dozier: Go ahead.

5 Board Member: Could I ask Mr. Woody a couple
6 of things? I didn't know if he's considered a witness or---

7 Mr. Gallop: (interposing) Yes.

8 Board Member: Okay.

9 Mr. Gallop: Everybody who has spoken is a
10 witness except for Mr. McRee and Mr. Wills and Ms. Currin.

11 (Whereupon,

12 **BEN WOODY**

13 was recalled as a witness, and having been previously sworn,
14 testified further as follows:)

15 **E X A M I N A T I O N**

16 By Board Member:

17 Q Mr. Woody, the drawings that you approved that you
18 gave a letter of determination to that it was approved, you
19 considered that a single-family dwelling; is that correct?

20 A That's correct.

21 Q And that's because the plans were changed and each
22 component was connected through a conditioned hallway?

23 A Yes, that's correct.

24 Q So as far as the county is concerned, that is
25 structurally a single-family dwelling?

1 A That is the planning department's determination,
2 yes.

3 Q Okay. And even though CAMA may consider it
4 differently than you do, it doesn't--that's not part of your
5 determination?

6 A No. My charge is to apply the standards of the
7 Unified Development Ordinance, which is what I did.

8 Board Member: I have one follow-up question.

9 By Board Member:

10 Q Is it possible to have three structural buildings
11 that are structurally sound, but considered part of one
12 structure? Is it possible to have a building that is
13 designed so that components or accessory buildings are
14 structurally sound to stand alone and function alone, but
15 still be part of a single building?

16 A I would think it possible because you could create
17 a foundation for each building and they could share a common
18 wall. You see that sometimes with--in instances of flood
19 development where you may have an old structure and an
20 addition that's required to meet flood standards. So it
21 would be given its own foundation, slightly elevated, and
22 would butt up to the other structure and share a common
23 doorway or entrance, and we would permit it as well.

24 Q So the fact that CAMA would look at the structural
25 integrity of an individual building is not necessarily

1 considered when a determination is made if it's a single
2 building?

3 A The county planning department would not consider
4 that, no.

5 Mr. Gallop: Do you want to ask around the
6 table again of the attorneys if they have any follow-up to
7 that questioning.

8 Chairman Dozier: Are there any follow-up
9 questions from the attorneys?

10 Mr. McRee: None from the county.

11 Mr. Wills: No, not from me.

12 Chairman Dozier: Thank you.

13 Ms. Currin: Just one question from me.

14 **C R O S S - E X A M I N A T I O N**

15 By Ms. Currin:

16 Q Mr. Woody, it is true, though, under the UDO that
17 there is a provision in the UDO which specifically states
18 that if there is a conflict, if state law interprets
19 something or has one definition and the county has a
20 different definition, then the county is obligated under
21 Section 1.6.3 to apply the more restrictive one?

22 A I want to say I think that section phrases it as
23 an inconsistency with state law. And I would take the
24 position that both agencies are willing to issue the permit.
25 I'm not sure there's any inconsistency.

1 Q Well, the question is not whether you're willing
2 to issue them a permit. It's whether you are able to issue
3 them a permit because your definition--it falls within the
4 definition of single-family dwelling; correct?

5 A Correct.

6 Q And I think you heard testimony that the defini-
7 tion of a building is different under CAMA than under the
8 UDO; is that correct?

9 A I've heard testimony of that, yes.

10 Q Okay. And in that situation if each one of these
11 buildings--which, again, you wrote in your letter there were
12 three buildings; correct?

13 A I did.

14 Q Okay. And if the building definition under CAMA
15 is one which would prohibit the use, it would be more
16 restrictive, would it not?

17 A Yes. If CAMA prohibited the use, it would be more
18 restrictive.

19 Q Okay. And if you had a building code that if it
20 is true, and you've heard testimony that the North Carolina
21 residential building code does not consider this to be a
22 single-family dwelling, that that would be more restrictive
23 than your interpretation; is that correct?

24 A It would.

25 Ms. Currin: Okay. That's all I have.

1 Thank you.

2 Chairman Dozier: Any other questions from the
3 board?

4 (No response.)

5 Chairman Dozier: Okay. We would now close the
6 public hearing. Do I have a motion---

7 Mr. Gallop: (interposing) Ask for
8 discussion.

9 Chairman Dozier: Discussion; oh, okay. Is there
10 any discussion for us to close the public hearing?

11 Board Member: You've closed the public--
12 you've closed the public hearing. Now we need discussion---

13 Chairman Dozier: (interposing) Right.

14 Board Member: ---amongst us.

15 Chairman Dozier: Our discussion, uh-huh.

16 Mr. Gallop: Before that, I think the
17 parties would want to have arguments. Each---

18 Chairman Dozier: (interposing) Thank you.

19 Mr. Gallop: ---attorney is going to have
20 their opportunity for that. They're not giving evidence so I
21 don't know that it matters whether it's technically in the
22 public hearing or outside of the public hearing. We're in
23 public and we're all going to hear it. But I believe that I
24 would ask Ms. Currin to go first---

25 Chairman Dozier: (interposing) Okay.

1 Mr. Gallop: ---for Appellants and go around
2 the room that way.

3 Chairman Dozier: Right. Okay. Ms. Currin is
4 going to give her closing argument now.

5 Ms. Currin: Thank you.

6 Mr. Gallop: And please, Ms. Currin, if you
7 could do your best for the microphone?

8 Ms. Currin: I will. Also I would like to
9 move to admit the exhibits that we handed up into evidence.
10 I think that we've already admitted the CAMA--the objection
11 to the CAMA was overruled.

12 We have the affidavit for purposes of standing.
13 We have some definitions that were from *Black's Law*
14 *Dictionary*. That's legal authority. And we have some cases
15 that are legal authority. And everything else comes right
16 out of your UDO land use plan.

17 Mr. Gallop: Does anybody have any
18 objections to introduction of things that are evidence that
19 have not been admitted already being admitted into evidence
20 in Ms. Currin's package?

21 Mr. McRee: No objection from the county,
22 although we do want to make sure that the entirety of the
23 agency packet before the board tonight is admitted as
24 evidence as well for the record.

25 Mr. Gallop: Does anyone have any--well,

1 first, Mr. Wills, do you have any objection to Ms. Currin's
2 additional evidentiary information, not--the legal authority
3 is the legal authority.

4 Mr. Wills: No, I don't. I would like--I
5 have the exhibits that were offered up there.

6 Mr. Gallop: And they are up here. They've
7 been passed around and they'll be made a part of the record.
8 Mr. Wills, while you're at the microphone, do you have any
9 objection to Mr. McRee's request to have the entirety of the
10 packet be admitted as evidence as well? That's the packet
11 that was provided to the board and mailed out initially from
12 the county.

13 Mr. Wills: Oh. No, no. My assumption is
14 that that constitutes the record on appeal by express
15 directive from the UDO, so certainly no.

16 Mr. Gallop: And Ms. Currin?

17 Ms. Currin: No objection.

18 Mr. Gallop: And Madam Chair, I would deem
19 all of that admitted.

20 Chairman Dozier: Okay. Please admit all of that
21 as part of the record.

22 (Appellant Exhibits 1-4 and
23 7-11 were received in evidence.
24 Board Exhibit 1 was marked for
25 identification and received in

1 evidence.)

2 C L O S I N G A R G U M E N T

3 Ms. Currin: Thank you. I'll try to make
4 this as brief as possible. Again, I know you've been here a
5 long time. As you know, it is our position that Mr. Woody's
6 interpretation was erroneous and that this proposed project
7 is not a single-family dwelling under the UDO.

8 I would say even though there's talk about the
9 record and what the county's position is, your job as the
10 Board of Adjustment is to look at this brand new, de novo.
11 Mr. Woody has an interpretation, but you are not bound in any
12 way to follow that. What you do have and he didn't have is
13 the benefit of sworn testimony before you in this forum.

14 So just very quickly, with respect to the rules of
15 interpretation for zoning ordinances, if you look at 5A,
16 which is an exhibit we've handed up which is an overview of
17 what North Carolina law has said the Board of Adjustment
18 should consider when determining what a provision of a zoning
19 ordinance means. And here the question is what is a single-
20 family dwelling detached? And the overriding objective in
21 considering the meaning of any zoning provision is always to
22 ascertain the intent of the legislative body.

23 Now, if a term is not defined, then it should be
24 given its plain and ordinary meaning. Also, it is a very
25 well established canon of construction that when you

1 interpret a zoning ordinance, it must be done in such a way
2 as not to create an absurd or illogical result. You cannot
3 interpret things out of context. You look at intent and try
4 to harmonize and don't come--you cannot come to an illogical
5 result.

6 We believe that the only logical interpretation of
7 this particular provision is to hold that the project in
8 front of you is not a single-family dwelling. The first
9 thing that's very important to look at is where this is
10 located. Again, it doesn't matter if there are 50 other
11 structures that are out of zoning compliance. The question
12 is look at what is in front of you and determine whether or
13 not it meets the intent.

14 The Outer Banks remote or SFR district is very
15 specific that high intensity development is not permitted,
16 access--there are no paved roads, access only by four wheel
17 drive. There is no public water. There is no public sewer.
18 There are provisions in the land use plan and in the
19 ordinance that say, "We want to keep development low." The
20 uses are very, very limited.

21 If you look and see, what is permitted is single-
22 family dwellings. There are no duplexes. If you look, there
23 is--a bed and breakfast is prohibited. That is a single-
24 family dwelling where you could rent two rooms. And the
25 legislative body has said you can't do that. You can't have

1 a condo. You can't have a commercial use. You can't have a
2 hotel or a motel.

3 So the question you have to ask yourself is in
4 this district where they have said, "We want very little
5 development because of the problems with the infrastructure,"
6 can you have--and this is at tab 8--can you have a develop-
7 ment which by the planning director's own words and the
8 applicant's own words to CAMA is three buildings, okay?

9 One of those buildings has a bar. The biggest
10 part in the middle of it is a bar. It has a nail salon and a
11 spa that has a built-in chair, a very small kitchen, a large
12 dining area. Okay?

13 The other two buildings each have 12 bedrooms and
14 12 bathrooms. So you have to ask--and the applicant has told
15 you when he testified, "I don't really know what I'm going to
16 do," but the representation that you were told by Mr. Wood
17 that "I made a true representation to CAMA," and that
18 representation is this is going to be for vacation rentals,
19 not a single-family dwelling, but for vacation rentals.

20 So he's got 25 bedrooms, okay, that they are going
21 to come in and rent for vacation rentals. And if you look at
22 the definition of vacation, that is a short term time when
23 people are away from home. And this is going to be allowed,
24 but someone can't rent out two rooms for a bed and breakfast?
25 They can't have a small hotel? They can't have a boarding

1 house with less than six people because of the
2 infrastructure?

3 So you have to get your head around the intent and
4 common sense, does this make sense. Does it make sense to
5 allow something with 25 bedrooms for vacation rentals when
6 you're not letting someone rent two rooms out of their house?
7 And we think when you look at this district and the uses that
8 this is clearly not intended.

9 Also, as we talked about with Mr. Woody, the
10 zoning ordinance or the UDO talks about the characteristics
11 of different classifications. Now, a commercial use is a
12 visitor accommodation, which is when you rent to anybody,
13 anytime. And it may very well be that there are a lot of
14 people in violation, but that's not in front of you.

15 The question is does this, which Mr. Van Dyk has
16 told you is set up just like a hotel, and you from common
17 sense purposes should know that normally you don't have 12
18 bedroom wings with a big common area with a bar and a nail
19 salon in a single-family home.

20 Now, what changed between the first determination
21 and the second determination? Now, Mr. Woody says there's
22 three buildings in the first one. He says there's three
23 buildings in the second. We respectfully submit if it's
24 three buildings--this definition says you can have one. So
25 if there's three, it can't be a single-family dwelling. So

1 the determination by its own terms says you can't, same with
2 the representation to CAMA.

3 But the only thing that changed is--nothing
4 changed on the first floor, nothing. It's exactly the same.
5 On the second floor what they did is put--they're called
6 conditioned hallways, but what they are is breezeways that
7 are conditioned that go from the top level of each of these
8 two buildings to the center. So if you look at it, what it's
9 really like is if you've been like up north where they have a
10 breezeway that goes across the street that you go from one
11 building to another, that's what this is. And you know that
12 doesn't make those two buildings one building.

13 And we would respectfully assert that the very
14 first part of this definition, which is a building, has not
15 been met here. And the fact that you have connected it to
16 other buildings doesn't help because actually if you look at
17 the definition, it says it can't be physically attached to
18 any other principal structure.

19 Now, you know, Mr. Woody has said it's not an
20 accessory structure, and every structure must be accessory or
21 principal. These are all three the same size. So basically
22 by attaching them, that doesn't help. What it just does is
23 says you have three structures that are illegal and now
24 you've illegally connected them.

25 With respect to the--as we said, the CAMA permit,

1 we do think that's very important. We think that you
2 cannot--no matter--no matter what you say, that you cannot
3 have the same development be one building for one purpose and
4 three buildings for another purpose. And the reason this was
5 done is that--or we believe is that, as Mr. Wood told you, if
6 there are three buildings, you could be closer to the ocean.
7 So the only reason, we would assert, is that this was
8 designed in the way that it was is to be able to be--have
9 less of a setback.

10 If it was all one building together, would we have
11 issues with it? Yes, we would. Would we be here tonight?
12 Probably not. You know, the problem is, is that it is set up
13 as three separate buildings and it's used only for vacation
14 rental and it's inconsistent with the purpose of the off-road
15 district. All of these things put together show us that this
16 is not a single-family dwelling. Each one of them has its
17 own roof. Each one has its own foundation. There are no
18 common walls at all. So we think it's pretty clear.

19 Now, with respect to the next--it has to be resi-
20 dential. And we've been through the zoning code with you.
21 As we told you, a residential use is a household use. The
22 definition is in our exhibits to you. And that means one
23 family living under the same roof.

24 So if this is going to be one family living under
25 the same roof, then it's residential. If it's going to be

1 vacation rentals, which is what has been said to CAMA the
2 only thing it's going to be, then it cannot be. It has to go
3 into the visitor accommodations under the zoning ordinance.

4 Finally, with respect to the one family
5 definition--and we really haven't talked about that very much
6 so far, but the UDO does define family, and it's in the
7 exhibits. And it means an individual or two or more persons
8 related by blood, marriage, or adoption living together in a
9 single housekeeping unit. So to be--and it says "to be
10 occupied," so this has to be occupied. To be a single-family
11 dwelling, it has to be occupied by one family. That's the
12 rule. That means everybody may be violating it, but that's
13 what it says.

14 And so whoever is there has got to be either in
15 the same family or the other definition is not more than five
16 people. I mean I would respectfully assert that you do not
17 need 25 bedrooms in two huge buildings on the side for less
18 than five people. Also, it can't be a vacation rental and be
19 occupied by one family because they would have to live there
20 all the time or it would have be rented to the same family
21 all the time.

22 Now, I understand also this idea that "Oh, you
23 know, we don't really know what we're going to do with it
24 yet. It may not be rental" or whatever. But what we do know
25 is this, that it would be a travesty to allow this to be

1 built because you say it's one structure, which we don't
2 believe it is, and then to find out that it's getting rented
3 for vacation rentals all year round like they said it was,
4 and then you find out, okay, well, it's really not one
5 family.

6 So I do think that you need to look at what's in
7 front of you in the evidence that was represented to a state
8 agency and decide if it is for vacation rentals, can it be
9 one family. And we assert that it cannot. And we have the
10 definition for vacation there as well.

11 If it's not a single-family dwelling, what is it?
12 Now, what we believe it is, is that it's a multiple building
13 commercial visitor accommodation use that's not in the list.
14 It's one of these things where it's really not--it's not a
15 single-family dwelling. It's not really a motel because a
16 motel is nightly rentals, so--and family--single-family
17 dwelling or household use means that you're over a month. So
18 you've got the situation where you're renting something to
19 the public and it's not for--it's for less than a month, but
20 it's vacation, so it doesn't quite fit.

21 So really what Mr. Woody could do is he could go,
22 okay, what does it look like the most? What does it smell
23 like the most? And if in fact you do that, we think it comes
24 out to be something that falls in the visitor accommodation
25 category, which is never allowed in the off road.

1 Finally, I do want to--Mr. Van Dyk did talk very
2 extensively to you, but I do think it's important to know
3 that if this single-family dwelling category is assigned,
4 then that's the one that's going to stick with it. And it's
5 going to be permitted under the building code as a single-
6 family dwelling.

7 And he is an expert and he has told you that there
8 are significant safety issue with calling this a single-
9 family dwelling because it does not have the features--and
10 then renting it to the public because it doesn't have the
11 safety features that are required.

12 But if you put those in--see, here's the problem.
13 If you put in those safety features, then it becomes a
14 commercial dwelling. It's not permitted. So it's like "Oh,
15 we don't want to do that. We don't want to be commercial
16 because then we can't build it. We'll be single-family," but
17 then it's unsafe.

18 So that really puts you in a bad spot. We think
19 you should go with safety first and say, "Look, if it looks
20 like a duck and it walks like a duck and it quacks like a
21 duck, that's what it is." And it may be that there's other
22 houses that are getting rented and are big and everything
23 else, but this one that's in front of us today, we are not
24 going to call this a single-family dwelling and put people at
25 risk and let them get around the zoning code just so that

1 they can have zoning compliance.

2 In other words, you know, it needs to be classi-
3 fied in a way that is consistent with what they've told state
4 agencies and what the building code says because that is the
5 right thing to do. Now, does that mean they can't build it
6 at this location in the Outer Banks remote? Yeah. But you
7 know, at the end of the day, that's the right thing to do and
8 we respectfully ask that you overturn the decision of Mr.
9 Woody. Thank you. If you have any questions--I know you're
10 (inaudible), but I'm here.

11 **C L O S I N G S T A T E M E N T**

12 Mr. Wills: I just want to say that Mr.
13 Woody had a tough job to do and we want to thank him. He had
14 to review this. He met with my clients. He met with the--
15 you know, the engineers, the architects, and my clients
16 consulted with the county throughout.

17 Folks, it's very clear that these buildings can
18 fit two purposes. They can comply with CAMA and comply with
19 the UDO. The question that was asked of Mr. Woody at the end
20 is really the source of the whole issue, is this
21 inconsistent?

22 I think Mr. Wood has explained that what he has
23 shown and represented to CAMA is entirely consistent and went
24 hand in hand with what he was telling Mr. Woody. These
25 buildings are cosmetically and functionally integrated as one

1 unit while simultaneously being structurally different.

2 Therefore, they meet the purposes of CAMA and they
3 meet the express purpose of the UDO. And that was what was
4 disclosed to everybody throughout. And so we just think that
5 Mr. Woody did the right thing. He did a consultation with
6 legal staff and full disclosure of what was happening to
7 CAMA.

8 You know, with regard to the issue of vacation
9 rentals, I'm reminded of that thing in *Casablanca* where the
10 cop comes in the room and says, "I'm shocked to find there's
11 gambling going on here." I mean the homes here on the Outer
12 Banks, single-family homes, are used for vacation rentals.
13 It is not a basis to object to the authorization of a single-
14 family home that it is going to be used as a vacation rental,
15 a weekly vacation rental, just as Mr. and Mrs. Long have done
16 themselves for the past nine years.

17 The staff is correct in saying that size is not
18 limited. Your job is to review today, ultimately decide
19 whether or not Mr. Woody was correct or incorrect about his
20 interpretation of the UDO. They want to make this about the
21 building code. They want to make this about CAMA regula-
22 tions. That's not the purpose for the hearing.

23 And as you meet and gather, I would ask that you
24 consider and discuss specifically what it is that was being
25 appealed and what it is you're asked to decide. And that

1 just relates to the Uniform (sic) Development Ordinance. And
2 Mr. Woody is absolutely correct, and his interpretation and
3 his letter concisely and simply cites what you need to look
4 to.

5 I thank you-all so much for taking so much time
6 and I'm sorry we pulled all these lawyer things for you. But
7 thank you for your attention.

8 **C L O S I N G S T A T E M E N T**

9 Mr. McRee: I just have a quick comment.
10 Echoing of course Mr. Wills, the county does believe and
11 would submit that you should affirm Mr. Woody's interpreta-
12 tion. Mr. Woody went through a very diligent process in
13 trying to come to a reasonable conclusion as to what was put
14 for him--what was put before him, what was this--or what is
15 this structure. And I think taking the definition that's
16 before you on the board over there, it's very clear what
17 indeed this is.

18 The fact that it is a very large structure with
19 more bedrooms than most of us probably would ever be inclined
20 to build is not relevant. What indeed is relevant is what is
21 this structure? And Mr. Woody has concluded it is a single-
22 family residential structure as put before him.

23 It is now tied together in such a way that it
24 works as one integrated structure with one kitchen that
25 serves the entirety of the structure, bedrooms, and sanitary

1 facilities that serve the entirety of the structure. And the
2 occupants within that structure may flow freely from one part
3 of the structure to another in fully conditioned space.

4 Where this structure is located is also not
5 relevant. The appellant here would have you take into
6 consideration that the land use plan somehow forbids this
7 type of structure being located in the off-road area because,
8 among other things, it is too dense a development.

9 But also it's important to note from the record
10 and the information contained in the record, this is an
11 almost 3½, I think, acre lot that this structure is located
12 on. This isn't the typical rather postage size stamped--
13 postage stamp size lot that we do see in parts of the
14 off-road area. This is a large piece of property on which
15 this structure is to be located.

16 As Mr. Woody testified, there is no limitation in
17 Currituck County on the square footage or size of single-
18 family residential structures or the number of bedrooms, nor
19 do we have any aesthetic regulations. So again, Mr. Woody is
20 faced with making the determination based on the information
21 presented to him by the applicant, the property owner, and
22 can only come to a conclusion that based upon what he had
23 before him, it is a single-family, detached residential
24 structure--single-family detached dwelling that should be
25 allowed to go forward under Currituck County's Unified

1 Development Ordinance.

2 Now, the appellant here tonight would have you
3 also consider building code regulations or have you consider
4 life safety issues. While they may be nice and someone might
5 want to add them as an additional protective measure to a
6 structure, whether it be residential or otherwise, it's not
7 necessarily required.

8 They would have you also overturn Mr. Woody's
9 interpretation and determination based upon what CAMA
10 regulations may or may not provide. And they also would have
11 you overturn Mr. Woody's determination based upon what use
12 may--in speculation may be used, how this structure may be
13 used down the road.

14 We submit that that's premature. That's not
15 what's before you tonight. There's ample opportunity--if
16 these appellants or others believe there's some violation of
17 the state building code or the county's Unified Development
18 Ordinance relative to uses of property or structures or
19 there's some CAMA regulation, there are other bodies and
20 other forms for those issues to be raised should there ever
21 be an indication that there's a violation of those various
22 regulations.

23 We'd also point out some of the case law that was
24 present to you by the appellant's attorney. And of course,
25 one of the things that our courts have said is that you

1 should take into consideration the intent of the legislative
2 body. Well, the legislative body, of course, is the
3 Currituck County Board of Commissioners.

4 And the appellants would have you believe that the
5 Currituck County Board of Commissioners' intent is not to
6 allow for any rental of single-family residential dwellings
7 within Currituck County, not just on the off-road area. But
8 it would be suggested that anyone renting a single-family
9 residential structure in Currituck County is somehow all of
10 sudden kicked over into a commercial use that is somehow now
11 in violation of the Unified Development Ordinance. And as
12 our appellate courts have also said, you should not interpret
13 the ordinance in such a way that has an illogical or absurd
14 result, as obviously that would have we submit.

15 Lastly, you also are not authorized to act as a
16 legislative body, as you understand. Your authority and
17 responsibility is not to create or enact law. It is and your
18 status tonight is to review the administrator's interpreta-
19 tion and determination and determine whether indeed he was
20 correct as the UDO is written. You do have some interpreta-
21 tion ability, of course, but you don't have the legislative
22 ability.

23 And the appellants, yet again tonight, are trying
24 to get you to create some kind of new use category, vacation
25 rental accommodation, that doesn't even exist in the Unified

1 Development Ordinance. And if that is something that the
2 appellants want to pursue, then the appropriate place for
3 that is through text amendment to the Currituck County Board
4 of Commissioners as the legislative body. That would be the
5 proper board to make that determination.

6 So based upon all those reasons, we would say that
7 you should quickly and easily come to the conclusion that Mr.
8 Woody very diligently and properly came to the conclusion
9 that he did to make a determination as to what with the
10 information placed before him this proposed structure is,
11 that you should affirm his finding that it is a single-family
12 detached dwelling and that, we submit, should be your
13 conclusion tonight.

14 Chairman Dozier: Is there any further discussion
15 of the board?

16 (No response.)

17 Chairman Dozier: If not, I'll ask for a motion
18 from the board.

19 Board Member: As much as we would like for
20 our emotions to rule us, we don't get that luxury on this
21 board in the judiciary process. And in view of the facts I
22 make a motion that we uphold the county.

23 Board Member: I second.

24 Chairman Dozier: All in favor say aye.

25 Board Members: Aye.

1 Chairman Dozier: All opposed say no.

2 (No response.)

3 Chairman Dozier: The motion carries unanimously.

4 Mr. Gallop: Madam Chair, in this case given
5 that there are multiple attorneys present, I would ask that
6 you ask the prevailing party, which--I don't know if that's
7 Mr. Wills or Mr. McRee; I guess Mr. McRee is probably the
8 prevailing party--to prepare an order for my consideration to
9 discuss with you.

10 Chairman Dozier: Okay. And would you---

11 Mr. McRee: (interposing) I'll be glad to
12 do that.

13 Chairman Dozier: Okay. Thank you.

14 Mr. Gallop: And if you'll share that
15 with---

16 Mr. McRee: (interposing) Sure.

17 Mr. Gallop: ---with counsel?

18 Mr. McRee: Certainly.

19 (End of portion of meeting pertaining to appeal
20 hearing.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Kay K. McGovern, do hereby certify that the foregoing pages 6 through 146 represent a true and accurate transcript to the best of my ability of a digital recording of a portion of the meeting of the Currituck County Board of Adjustment held on Thursday, March 13, 2014, for which I was not present and did not act as court reporter.

This, the 11th day of July, 2014.

 /s/ Kay K. McGovern

Kay K. McGovern, CVR-CM
Court Reporter/Transcriptionist

Communication: BOA 13-09 Michael & Marie Long Transcript March 13, 2014 (Approval of Minutes)



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1646)

Agenda Item Title

BOA 16-02 University Park, LLC/Norman Bibeau Appeal:

Brief Description of Agenda Item:

Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding land disturbance activity within a required 25 foot undisturbed buffer on property located at Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody



Currituck County

Planning and Community Development Department
Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055 FAX 252-232-3026

To: Board of Adjustment
 From: Planning Staff
 Date: September 1, 2016
 Subject: BOA 16-02 University Park, LLC/Norman Bibeau Appeal

Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding land disturbance activity within a required 25 foot undisturbed buffer on property located at Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").

Background

The University Park Planned Development was approved by the Board of Commissioners on July 15, 2015. A planned development is a development type that is planned under unified control in accordance with more flexible standards that are conducive to allowing a mix of uses and otherwise higher quality development.

During the Board of Commissioners public hearing for the planned development zoning map amendment, compatibility concerns were raised by an adjoining property owner located west of the Subject Property. There was discussion during the hearing regarding the establishment of a landscape buffer to address compatibility issues. Following the public hearing and Board of Commissioners approval of the zoning map amendment with conditions, the Subject Property's final master plan and terms and condition document required a 25 foot undisturbed buffer along the western property line. (See Attachments 3A, 3B, and 3C)

The subdivision of lots for Phase 2 required another public hearing process for the approval of a preliminary plat/use permit. On September 8, 2015 the preliminary plat/use permit presented during the public hearing, and approved by the Board of Commissioners, depicted a 25 foot undisturbed buffer along the western property line. (See Attachments 3D and 3E)

The Technical Review Committee approved Phase 2 construction drawings on November 18, 2105 and a final plat on March 10, 2016, both of which note or reference the 25 foot undisturbed buffer along the western property line. (See Attachments 3F and 3G)

Violation

In early April 2016 the county began receiving complaints that land disturbance and clearing was occurring within the required 25 foot undisturbed buffer along the western property line of the Subject Property. The staff inspected the property on April 11, 2016 and determined that land disturbance and vegetation removal had occurred within the required 25 foot undisturbed buffer. A notice of violation was sent to University Park, LLC on May 4, 2016. (See Attachment 1)

The notice of violation requested compliance with the required 25 foot undisturbed buffer through submission and approval of a supplemental landscape plan for reestablishing plant material to provide a level of screening equivalent to the original buffer in its undisturbed state. Mr. Bibeau subsequently appealed the notice of violation.

Unified Development Ordinance

The following sections of the UDO are applicable to this case:

- Section 9.3.1 provides that failure to comply with the terms and conditions of any permit or other development approval shall constitute a violation. Further, this section provides that permits or development approvals issued by a Board or county staff authorize only the development set forth in such permits or development approvals. (See Attachment 4A)
- Section 9.3.2 provides that it is a violation to occupy or use land without complying with the terms and conditions of all appropriate permits or development approvals. (See Attachment 4A)
- Section 2.4.5 provides that lands rezoned to a PD district are subject to the approved master plan and terms and conditions. (See Attachments 4B)
- Section 2.4.8 provides that development of a major subdivision requires approval of a preliminary plat, use permit, construction drawings, and then a final plat. (See Attachment 4C)
- Section 2.3.13 provides that approval of any development application authorizes only the particular use, plan, or other specific activity approved. (See Attachment 4D)

The UDO defines buffer, but does not define undisturbed buffer. In the absence of a specific definition, the plain and commonly understood meaning is applied to an undefined term.

- UDO definition of “buffer”: an area of natural or planted vegetation adjoining or surrounding a use and unoccupied in its entirety by any building, structure, paving or portion of such use, for the purposes of screening and softening the effects of the use, no part of which buffer is used for recreation or parking.
- According to the Oxford US English Dictionary, “undisturbed” means: not disturbed; “disturbed” means: interfere with the normal arrangement or functioning of.

There is a distinction between the standard landscaping requirements of the UDO and the undisturbed buffer requirement included in the zoning and subdivision approvals for the Subject Property.

- Section 5.2.10 of the UDO allows for maintenance of landscape areas *in accordance with the approved landscape plan*. (See Attachment 4E)

The approved landscape plan requirement for “undisturbed buffer” is shown on Attachments 3A, 3B, 3D, and 3E.

Attachments

The county submits the following attachments for the Board's consideration:

- Attachment 1: Notice of Violation dated May 4, 2016
- Attachment 2: Photographs of the violation
- Attachment 3: Plan approvals indicating the 25 foot undisturbed buffer
- Attachment 4: Relevant sections of the UDO
- Attachment 5: Appeal application
- Attachment 6: Subject Property map



COUNTY OF CURRITUCK
 Code Enforcement Program
 153 Courthouse Road, Suite G106
 Currituck, NC 27929
 (252) 232-6027

AMENDED NOTICE OF VIOLATION #
 V16-338

University Park LLC, Property Owner
 8624 Caratoke Hwy
 Powells Point, NC 27966

Norman T. Bibeau, Registered Agent
 PO Box 237, Kitty Hawk, NC 27949
 Norman T. Bibeau, Jr., Managing Member
 4320 S Hammerhead Dr., Nags Head, NC 27959

<p>Violation Date: May 4, 2016</p>	<p>Inspection Date: April 11, 2016</p>
<p>Property Address: 108 Amherst Drive-University Park</p>	<p>PIN #: 124J-000-OSP2-0000</p>
<p>Violation Description:</p> <p>The required 25 foot undisturbed buffer along the western property line has been disturbed. 1) Per the Currituck County Board of Commissioners approval on July 15, 2013 the final PDM master plan and terms and conditions document state, "A 25 foot undisturbed buffer will be provided along the western property line (of the PDM)"; 2) Per the Technical Review Committee approval on November 26, 2013 a general note on the revised PDM master plan states, "A 25 foot undisturbed buffer shall be provided along the western property line"; 3) Per the Board of Commissioners approval on September 8, 2015 the preliminary plat/use permit depicted a 25 foot undisturbed buffer along the western property line; 4) Per the Technical Review Committee approval on November 18, 2015 a general note on the construction drawings states, "A 25 foot undisturbed buffer shall be provided along the western property line"; 5) Per the Technical Review Committee approval on March 10, 2016 the recorded final plat includes a development standards table that references the alternative landscape plan as detailed in the terms & conditions document (which incorporates the 25 foot undisturbed buffer).</p>	
<p>Compliance Request:</p> <p>Submit a supplemental landscaping plan for reestablishing plant material to provide a level of screening equivalent to the original 25 foot undisturbed buffer. Once the plan has been approved by the Planning Department you will then have 30 days to install the supplemental landscaping. Contact Stacey Smith for more information</p>	<p>UDO Code Reference:</p> <p>Planned development, Section 2.4.5 Subdivision (preliminary plat/use permit), Section 2.4.8 Subdivision (construction drawings), Section 2.4.8 Subdivision (final plat), Section 2.4.8</p>
<p>Required Compliance Date: Approved supplemental landscaping plan by May 16, 2016</p>	



Attachment: 16-02-staff-report-appeal (1646 : BOA 16-02 University Park, LLC/Norman Bibeau Appeal)

Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.

If you wish to appeal this decision, you have thirty (30) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Planning & Community Development Department.

Picture taken April 11, 2016 of a freshly cut tree stump and an area cleared of underbrush



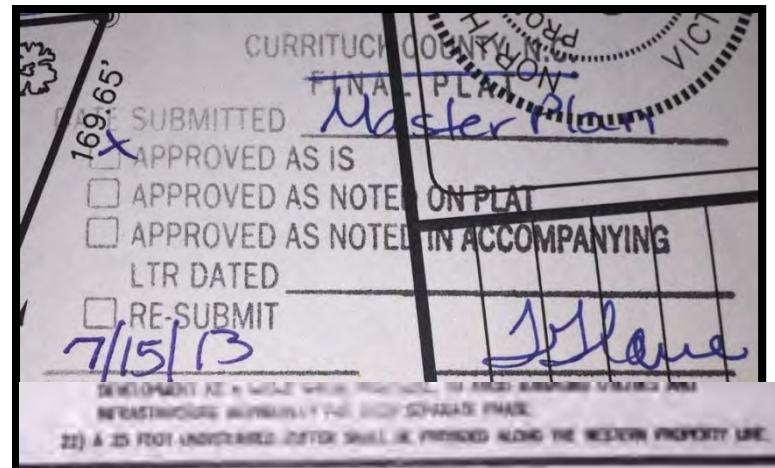


Picture taken on April 11, 2016 of a pile of brush and stumps that were near the disturbed buffer area

Picture taken April 11, 2016 of an undisturbed area within the 25' buffer



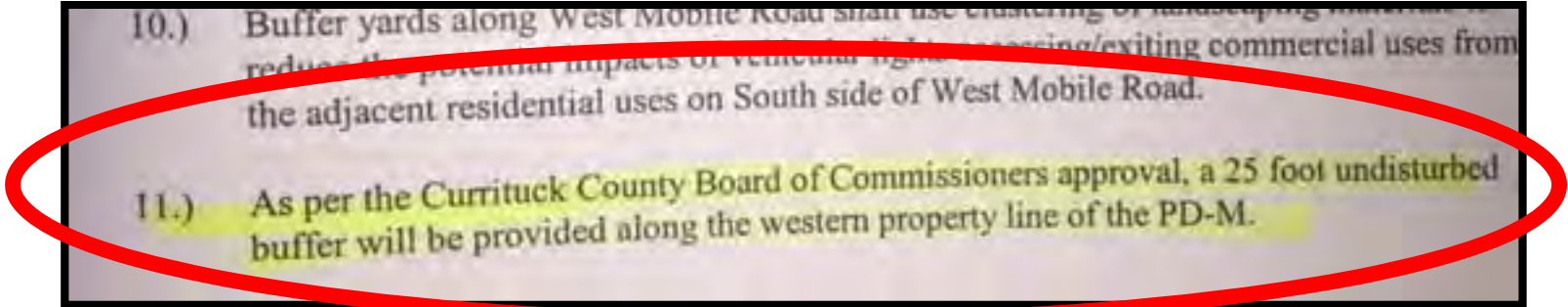
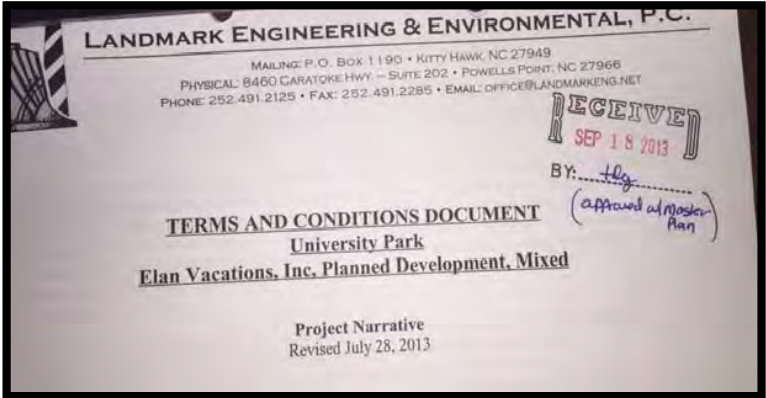
University Park, Phase 2 Approved Master Plan, Page C1



DEVELOPMENT AS A WHOLE WHERE PRACTICAL, TO AVOID MAINTAINING UTILITIES AND INFRASTRUCTURE INDIVIDUALLY FOR EACH SEPARATE PHASE.
22) A 25 FOOT UNDISTURBED BUFFER SHALL BE PROVIDED ALONG THE WESTERN PROPERTY LINE.

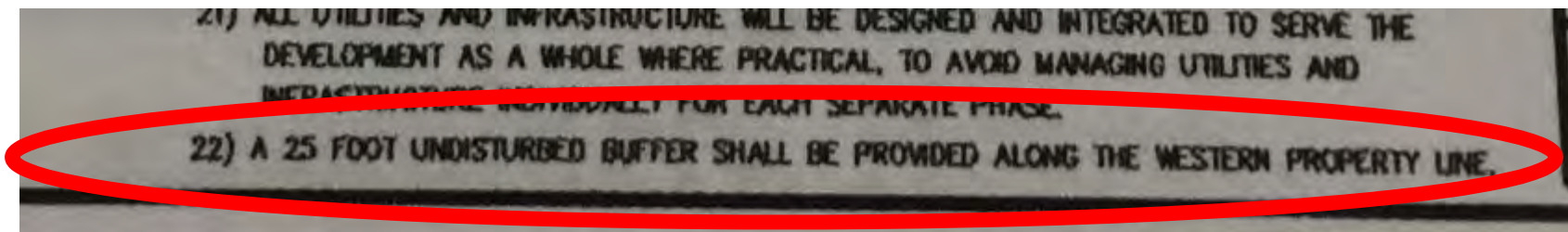
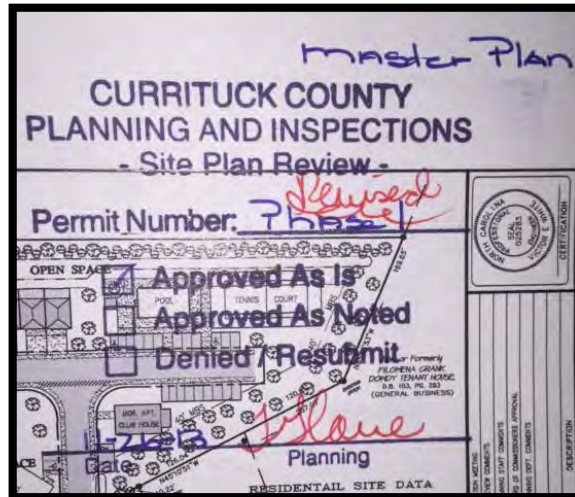
Undisturbed 25' buffer noted on approved Master Plan

University Park, Phase 2 Master Plan - Approved Terms and Conditions Doc, Pages 1 and 8



Undisturbed 25' buffer noted on approved Terms and Conditions Document

University Park, Phase 2 Approved Revised Master Plan, Page C1

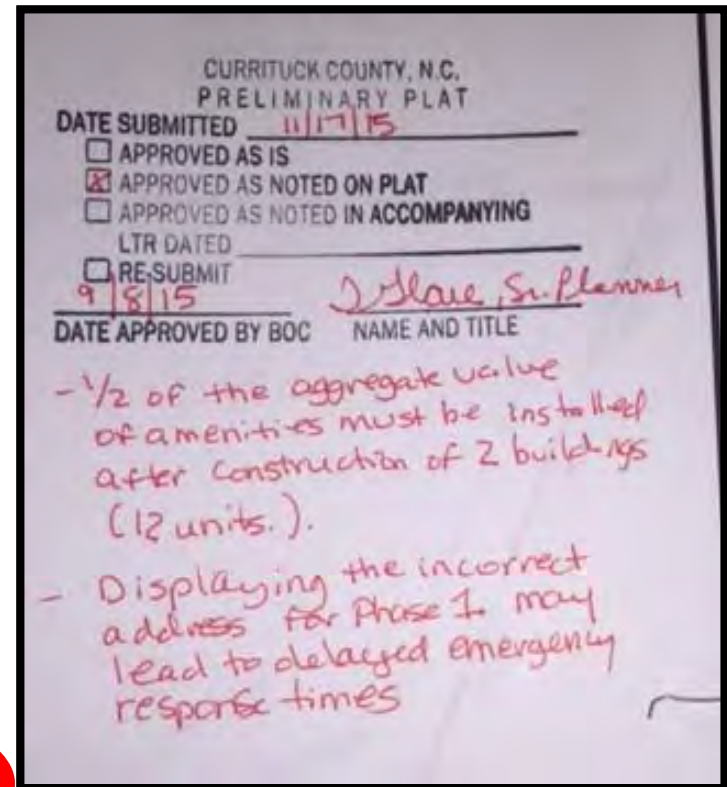


Undisturbed 25' buffer noted on approved Revised Master Plan

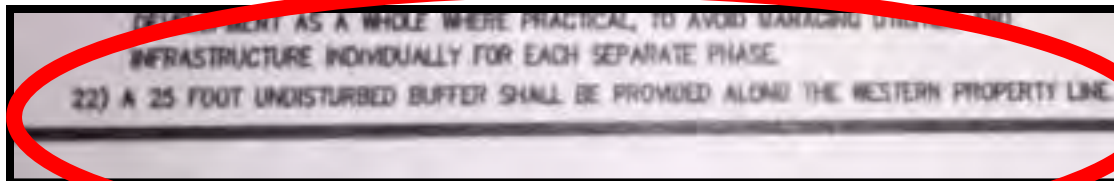
University Park, Phase 2 Approved Preliminary Plat/Use Permit



Page C1 – Cover Sheet and Existing Conditions

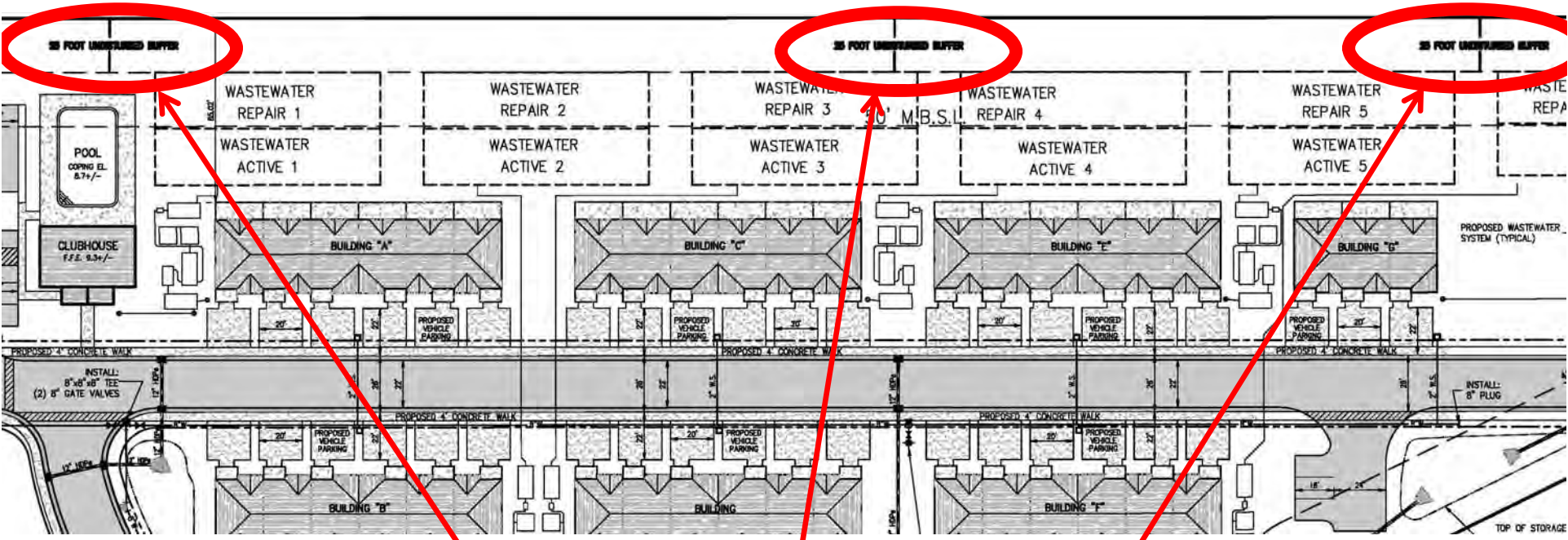


Page C1 – Overall Project Plan (full size)



Page C1 – Cover Sheet and Existing Conditions

Approved Use Permit, Section (A): The applicant shall complete the development strictly in accordance with the plans submitted to and approved by the Board of Commissioners, a copy of which is filed in the office of the Planning and Community Development Department.



Undisturbed 25' buffer noted on approved Preliminary Plat

University Park, Phase 2 Approved Construction Drawings, Page C1

CURRITUCK COUNTY, N.C.
CONSTRUCTION DRAWINGS

DATE SUBMITTED 11/17/15

APPROVED AS IS

APPROVED AS NOTED ON PLAT

APPROVED AS NOTED IN ACCOMPANYING LTR DATED _____

RE-SUBMIT

11-18-15

DATE APPROVED _____

NAME AND TITLE Debra S. Plamondon

- Displaying the incorrect address at Phase 1 may lead to delayed emergency response times.
- Will show min. bldg Pad on final plat.
- Will show street signs on final plat

	REVISED PER TRC REVIEW COMMENTS	REVISED NOTE	SHOW AREA OF INFILTRATION BASIN A TO B	AREA TO INCLUDE ADDITIONAL AMENITY, RE	REVISED PER A.R.H.S. REVIEW AND CURRITUCK
1	7/27/15				
2	8/3/15				
3	9/2/15				
4	11/16/15				

RECIEVES A CERTIFICATATE OF OCCUPANCY FROM THE BOARD OF ZONING ADJUSTMENTS

21) ALL UTILITIES AND INFRASTRUCTURE WILL BE DESIGNED AND INTEGRATED TO SERVE THE DEVELOPMENT AS A WHOLE WHERE PRACTICAL, TO AVOID MANAGING UTILITIES AND INFRASTRUCTURE INDIVIDUALLY FOR EACH SEPARATE PHASE.

22) A 25 FOOT UNDISTURBED BUFFER SHALL BE PROVIDED ALONG THE WESTERN PROPERTY LINE.

Undisturbed 25' buffer noted on approved plan

University Park, Phase 2 Approved Final Plat, Pages C1 and C2

CURRITUCK COUNTY, N.C.
FINAL PLAT

DATE SUBMITTED 3/10/16

APPROVED AS IS
 APPROVED AS NOTED ON PLAT
 APPROVED AS NOTED IN ACCOMPANYING

LTR DATED _____
 RE-SUBMIT

DATE APPROVED BY [Signature] NAME AND TITLE City Planner

EX. 1 1/2" OPEN PIPE 16" TALL

EX. 3/4" REBAR 5" TALL

EX. 3/4" REBAR 12" TALL

EX. 3/4" REBAR 18" TALL

126.04' 257.07' 120.81' S45°10'51"E

Non or Formerly BENJAMIN HOPKINS GRANT EIGHTY-NINE, LOT 3, D.B. 371, PG. 187 (GENERAL BUSINESS)

Non or Formerly FILOMENA GRANK DOWDY TENANT HOUSE, D.B. 103, PG. 293

* No DOT pavement Cert. is required prior to C.O. for first unit.
 * As built required after road completion (including curb & gutter).
 * One half of the aggregate value of amenities must be installed after completion of 2 buildings/12 units.

OWNER'S CERTIFICATE

DEVELOPMENT STANDARDS	
DISTRICT AREA (Acres):	26.05
OFF - STREET PARKING and LOADING FOR OFFICE/RETAIL	AS PER U.D.O FOR SHOPPING CENTERS, AS DETAILED IN TERMS & CONDITIONS DOC.
OFF - STREET PARKING and LOADING FOR HOTEL	1/GUEST ROOM AS DETAILED IN TERMS & CONDITIONS DOC.
OFF - STREET PARKING and LOADING FOR THEATER	1 SPACE /4 SEATS AS DETAILED IN TERMS & CONDITIONS DOC.
LANDSCAPING	ALTERNATIVE LANDSCAPE PLAN AS DETAILED IN TERMS & CONDITIONS DOC.
TREE PROTECTION	

Terms and Conditions Document Referenced on Final Plat, Pages 7 & 8

Buffering/Landscaping

Buffering and Landscaping shall meet the intent minimum requirements of the Currituck County Unified Development Ordinance. The goal of the alternative landscaping plan is to:

- Utilize existing vegetation wherever possible for both exterior buffers and interior landscaping to the maximum extent practical. The property currently has significant vegetation that will be incorporated to meet the landscaping and buffering requirements. It is the intent of the developer to leave each phase in its natural state as much as possible until the development of that corresponding phase.
- The developer wants to ensure allowing clustering of shrubs/trees where vehicular traffic patterns would shine light onto other interior uses.
- The developer wants to allow small existing trees which can be saved during development to be credited towards the shrub requirement for both interior street landscaping and exterior buffers.
- Exterior Buffer Yards will be Type A at a minimum, and may be greater as determined during the site planning process, based on the development type and intensity.
- Interior Buffer Yards are not required between phases of commercial development, but are allowed based on the development type and intensity.
- Interior Buffer Yards between residential and commercial development inside the development shall be Type A at a minimum, and may be greater as determined during the site planning process, based on the development type and intensity.
- The developer would like to include 5 unit residential buildings to be exempt from Streetscape requirements from Caratoke Highway. This would exempt the residential portion of the development from those requirements, which currently state in the UDO that 4 unit residential buildings are exempt. It is thought that the commercial streetscape requirements from Caratoke Highway as well as the interior buffer between the residential and commercial uses should provide sufficient screening of the residential phases from Caratoke Highway.

Buffering + Landscaping Cont

- Individual buffering/landscape plans shall be reviewed and approved administratively by the County during the site planning phase of each development phase.
- Section 3.5 on Planting Standards in the UDO administrative manual is to be incorporated into all buffering/landscaping plans for the development.
- Buffer yards along West Mobile Road shall use clustering of landscaping materials to reduce the potential impacts of vehicular lights accessing/exiting commercial uses from the adjacent residential areas along West Mobile Road.
- As per the Currituck County Board of Commissioners approval, a 25 foot undisturbed buffer will be provided along the western property line of the PD-M.

CHAPTER 9. ENFORCEMENT

9.1. PURPOSE

This chapter establishes procedures through which the county seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this chapter are intended to encourage the voluntary correction of violations, where possible.

9.2. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the county.

9.3. VIOLATIONS

9.3.1. Violations Generally

A. Failure to Comply with Ordinance or Term or Condition of Approval Constitutes Ordinance Violation

Failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this chapter.

B. Permits or Permit Approvals only Authorize Development Approved

Permits or development approvals issued by a decision-making body or county staff authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

9.3.2. Specific Violations

It shall be a violation of this Ordinance to undertake any activity contrary to the provisions of this Ordinance, including but not limited to any of the following:

- A.** Develop land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- B.** Occupy or use land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- C.** Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision, and complying with their terms and conditions.
- D.** Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals, and complying with their terms and conditions.

SECTION 2.4: SPECIFIC REVIEW PROCEDURES**Subsection 2.4.5: Planned Development**

- (b)** As part of the decision, the Board of Commissioners shall adopt a written statement of consistency and reasonableness that:
 - (i)** Describes whether the decision is consistent with all county-adopted plans that are applicable; and
 - (ii)** Explains why the decision is reasonable and in the public interest.

D. Planned Development Review Standards

The advisability of establishing a planned development is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a planned development, the Board of Commissioners shall consider the standards in Section 2.4.3.C, Zoning Map Amendment Standards, and the standards for the proposed type of PD district in Section 3.7, Planned Development Base Zoning Districts.

E. Designation on the Official Zoning Map

Designation of a PD zoning district on the Official Zoning Map shall note the ordinance number approving the PD zoning classification.

F. Effect

Lands rezoned to a PD district shall be subject to the approved PD master plan and the approved PD terms and conditions. The master plan and terms and conditions are binding on the land as an amendment to the Official Zoning Map. The applicant may apply for and obtain subsequent development permits and approvals necessary to implement the PD master plan in accordance with the appropriate procedures and standards set forth in this Ordinance. Any permits or approvals shall comply with the PD master plan and the PD terms and conditions.

G. Expiration

- (1)** If no application for approval of a preliminary plat or site plan for any part of the approved PD master plan is submitted within two years after approval of the planned development, the Planning Director shall initiate a map amendment application to rezone the land back to its prior zoning classification or any other base zoning classification determined to be appropriate. Such time period shall not be extended with transfer of ownership.
- (2)** Upon written request submitted at least 30 days before expiration of the two-year period provided in Section 2.4.5.G.1 above, and upon a showing of good cause, the Planning Director may grant one extension not to exceed six months for the applicant to submit required development applications.

H. Minor Deviation**(1) General**

Subsequent plans and permits for development within an approved planned development may include minor deviations from the PD master plan or PD terms and conditions, provided such deviations are limited to changes addressing technical considerations that could not reasonably be anticipated during the PD zoning classification process or any other change that has no material effect on the character of the approved planned development or any

SECTION 2.4: SPECIFIC REVIEW PROCEDURES

Subsection 2.4.8: Subdivision

(b) Additional Standards for Family Subdivisions

Family subdivisions shall follow the review procedure for minor subdivisions and shall comply with the general standards in (a) above as well as the following:

- (i)** Lots shall be conveyed solely to family members within two degrees of kinship (e.g., child, grandchild). A maximum of one lot shall be conveyed to the individual family member, including family subdivisions on different parent parcels.
- (ii)** No more than five lots are created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area) as it existed ten years prior to application submittal.
- (iii)** Ingress and egress to a lot shall not be from a major arterial street.
- (iv)** Private access streets created shall not serve more than five lots.
- (v)** Principal uses shall be limited to single-family detached dwellings and customary accessory uses.

(3) Effect of Development Approval

- (a)** Approval of a minor subdivision constitutes approval of a final plat for subdivision.
- (b)** Lots shall not be sold or conveyed until after a final plat has been recorded.

(4) Amendment of Development Approval

Applicable (see Section 2.3.14).

(5) Expiration of Development Approval

A minor subdivision plat shall be recorded with the Currituck County Register of Deeds within 90 days of its approval, or it shall be null and void.

E. Major Subdivision**(I) Overview****(a) In General**

- (i)** Development of a major subdivision requires approval of a preliminary plat (type I or type II), a use permit (if applicable), construction drawings, and then a final plat.
- (ii)** The Planning Director may allow concurrent submittal of a preliminary and final plat in cases where no public improvements are required, or concurrent submittal of a preliminary plat and construction drawings where public improvements are required.
- (iii)** Minor subdivision lots shall be included when calculating the acreage and total number of lots for a major subdivision when:
 - (A)** The minor subdivision lots are created from the same parent parcel or parcels of land proposed for a major subdivision; and

SECTION 2.3: STANDARD PROCEDURES**Subsection 2.3.11: Conditions of Approval****B. Remand**

The decision-making body may remand the application to the appropriate advisory body or county staff for further consideration of new information or specified issues or concerns by the staff or any advisory bodies, if appropriate.

C. Clearly State Factors for Decision

Unless stated otherwise in this Ordinance, the decision-making body's decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

D. Timing

The decision-making body shall take action as promptly as possible in consideration of the interests of the applicant, affected parties, and citizens of the county.

E. Timing of Lots

The Board of Commissioners may allocate the total number of lots in a subdivision that may be depicted on a final plat at any one time, based upon the adequacy of public facilities serving the development.

2.3.11. Conditions of Approval

Conditions of approval shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.

2.3.12. Notification of Decision or Action

Within ten business days after a final decision on a development application, the Planning Director shall provide the applicant written notice of the decision or action and make a copy of the decision available to the public in the offices of the Planning and Community Development Department, during normal business hours.

2.3.13. Effect of Development Approval

Approval of any development application in accordance with this Ordinance authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application. In the event that one permit or approval is a prerequisite to another permit or approval (e.g., administrative adjustment or variance approval prior to a site plan approval) development may not take place until all required approvals are obtained, and approval of one development application does not necessarily guarantee approval of any subsequent development application.

2.3.14. Amendment of Development Approval

Unless specified in the specific procedure description in Section 2.4, Specific Review Procedures, an amendment of a permit or approval may only be reviewed in accordance with the procedures and standards established for its original approval.

SECTION 5.2: LANDSCAPING STANDARDS

Subsection 5.2.10: Maintenance

required landscaping will interfere with the utility equipment or service.

- (b) Utility equipment and associated security fencing shall be screened from rights-of-ways and existing developed land by a Type C buffer. The buffer may be reduced in accordance with Subsection (a) above.

5.2.10. Maintenance

A. General

The owner shall be responsible for the maintenance of all landscape areas not in the public right-of-way. Such areas shall be maintained **in accordance with the approved Landscape Plan or Alternative Landscape Plan** and shall present a healthy and orderly appearance free from refuse and debris. All plant life shown on an approved Landscape Plan or Alternative Landscape Plan shall be replaced if it dies, is seriously damaged, or removed. This section is not intended to prevent normal, routine maintenance.

(1) Damage Due to Natural Occurrence

In the event that any vegetation or physical element functioning to meet the standards of this section is severely damaged due to an unusual weather occurrence or natural catastrophe, or other natural occurrence such as damage by wild or domestic animals, the owner or developer shall be required to replant if the landscaping standards are not being met. The owner shall have one growing season to replace or replant. The Planning Director shall consider the type and location of the landscape buffer or required vegetation area as well as the propensity for natural re-vegetation in making a determination on the extent of replanting requirements.

(2) Protection During Operations

The owner or developer shall take actions to protect trees and landscaping from unnecessary damage during all facility and site maintenance operations. Plants shall be maintained in a way that does not obstruct sight distances at roadway and drive intersections, obstruct traffic signs or devices, or interfere with the use of sidewalks or pedestrian trails.

(3) Maintain Shape

All required trees (whether canopy or understory) shall be maintained in their characteristic natural shape, and shall not be severely pruned, sheared, topped, or shaped as shrubs. Trees (including, but not limited to Crape Myrtles) that have been severely pruned, sheared, topped, shaped as shrubs, such that they no longer serve the intended buffering or screening function, shall be considered as damaged vegetation in need of replacement within one growing season.

B. Natural Death

The natural death of existing vegetation within any required landscape area does not necessarily constitute a violation and does not require re-vegetation to replace the plant material unless the required landscape area no longer complies with the required standards of this section. In no instance shall this provision be construed to prevent re-planting if, in the opinion of the Planning Director, the required performance standard of the landscaping is not being met.

TRIMPI & NASH, LLP

ATTORNEYS AT LAW

200 NORTH WATER STREET, SUITE 2A

ELIZABETH CITY, NC 27909

TELEPHONE (252) 338-0104

TELECOPIER (252) 338-0327

May 16, 2016

JOHN G. TRIMPI

Email jtrimpi@trimpinash.com

THOMAS P. NASH, IV

Email tomnash@trimpinash.com

HAND DELIVERED

Ben E. Woody, AICP, Planning Director
County of Currituck
Planning and Community Development

Re: Appeal of Notice of Violation #V16-338
as to University Park, LLC

Dear Ben:

Please find enclosed the Appeal Application of Norman Bibeau and University Park, LLC appealing the Notice of Violation V16-338. I further enclose herewith my firm check in the amount of \$150.00 representing the appropriate application fee.

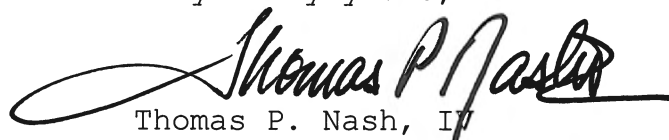
At the hearing, I would anticipate utilizing photographs which I will email to you together with all or a portion of the July 15, 2013 public hearing regarding the approval for University Park. I will also be presenting portions of the Currituck UDO which my client feels are counter to the violation.

I would respectfully request that Stacey Smith, Code Enforcement Officer and Rick Godsay, Building Inspector be made available for the hearing. I would also respectfully request that the Chairman of the Board of Adjustments issue subpoenas for Paul O'Neal, Mike Hall, Mike Payment and Paul Beaumont as said individuals all visited the site of the alleged violation and made it known that they felt that a violation had not occurred.

Please advise as to when the hearing before the Board of Adjustments will take place and I will provide you with the evidence that will be made available to the Board members.

Thanking you for your assistance in this matter, I remain,

Very truly yours,



Thomas P. Nash, IV

cc: Client
TPN/seh
Enclosures



Appeal Application

OFFICIAL USE ONLY:	
Case Number:	_____
Date Filed:	_____
Gate Keeper:	_____
Amount Paid:	_____

Contact Information

APPLICANT:	PROPERTY OWNER:
Name: <u>Norman Bibeau</u>	Name: <u>University Park, LLC</u>
Address: <u>4320 Hammerhead Dr.</u>	Address: <u>8648 Caratoke Highway</u>
<u>Nags Head, NC 27959</u>	<u>Powells Point, NC 27966</u>
Telephone: <u>252-207-7016</u>	Telephone: <u>252-491-8787</u>
E-Mail Address: <u>nbibeau@aol.com</u>	E-Mail Address: <u>nbibeau@aol.com</u>

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Applicant is Managing Member of Owner

Property Information

Physical Street Address: Amherst Drive

Location: Powells Point, NC

Parcel Identification Number(s): 124J-000-OSP2-0000

Statement of Error, or Improper Decision or Interpretation

I wish to appeal a: Decision or Interpretation Notice of Violation

The determination being dated 5 / 4 / 16.


Grounds for appeal

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

The alleged violation is inconsistent with applicable procedures specified in the Currituck UDO and as stated at the public hearing on 7/15/13, the alleged violation is unsupported by substantial competent evidence including the public hearing on 7/15/13 and pictures taken of the alleged violation and the alleged violation is arbitrary and capricious effectively preventing one from removing dead, diseased trees, threatening structures or the safety of occupants thereof.

Please include all related support materials with the application.

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. All information submitted and required as part of this application process shall become public record.

 5/13/16
Appellant/Applicant Date

Owner Verification

If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property, or under contract to purchase, then the actual owner of the land must complete this section. If the owner is the appellant/application please do not complete this section.

Dear Sir or Madame:

I am the owner of the property located at Amherst Drive, University Park, Powells Point, NC

I hereby authorize Norman Bibeau and Attorney Thomas P. Nash, IV to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application.

Respectfully yours, UNIVERSITY PARK, LLC

By:

[Signature] 5/13/16
Owner Date

Sworn to and subscribed before me, this the 13th day of May, 2016.

Starr G. Hunt
Notary Public
My commission expires: 11/8/20

Area of Buffer Disturbance



West Mobile Road Access



W Mobile Rd

Caratoke Hwy

158

© 2016 Google

Google

3.A.a

NORTH CAROLINA
CURRITUCK COUNTY

BEFORE THE
BOARD OF ADJUSTMENT
File No. BOA 16-02

In the Matter of the Appeal By: :
:
UNIVERSITY PARK, LLC/ :
NORMAN BIEBEAU :
:
:
Petitioner. :
:
:
_____ :

MOTION TO DISMISS

NOW COMES the County of Currituck, (the “County”), moving for dismissal of the appeal in the above captioned action. In support of its motion the County shows the following:

1. On May 4, 2016 Currituck County Code Enforcement Officer Stacey Smith issued Petitioner a Notice of Violation upon determination that “the required 25 foot undisturbed buffer along the western property line has been disturbed” constituting non-compliance with the July 15, 2013 PDM Master Plan and conditions approved by the Currituck County Board of Commissioners, Technical Review Committee approval of the PDM Master Plan on November 26, 2013, the September 8, 2015 preliminary plat/use permit approval by the Currituck County Board of Commissioners, the November 18, 2015 Technical Review Committee approval of Petitioner’s construction plans and the March 10, 2016 Technical Review Committee approval of the Petitioner’s final plat with development standards.

2. Petitioner filed its appeal of the Notice of Violation on or about May 16, 2016 stating as its “Grounds for appeal” that:

The alleged violation is inconsistent with *applicable procedures specified in the Currituck UDO and as stated at the public hearing*

Attachment: motion-to-dismiss-boa-16-02 (1646 : BOA 16-02 University Park, LLC/Norman Bibeau Appeal)

on 7/15/13, the alleged violation is unsupported by substantial competent evidence including the public hearing on 7/15/13 and pictures taken of the alleged violation and the alleged violation is arbitrary and capricious effectively preventing owner from removing dead, diseased trees, threatening structures or the safety of occupants thereof.

[Emphasis added].

3. The Petitioner's grounds for appeal challenge the plan, plat and permit conditions approved by the Currituck County Board of Commissioners, the procedures specified in the Currituck County UDO, and those procedures stated at the July 15, 2013 public hearing before the Currituck County Board of Commissioners. Pursuant to N. C. Gen. Stat. §153A-340(c1) the decision of the Currituck County Board of Commissioners, conditions placed on the Petitioner's plan, plat and permits and procedures specified in the Currituck County UDO as stated at the July 15, 2013 public hearing are subject to review of the superior court in the nature of certiorari.

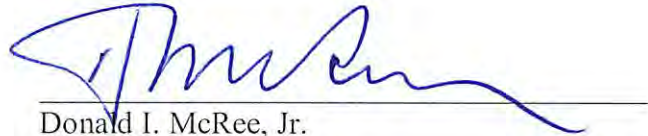
4. Pursuant to N. C. Gen. Stat. §160A-388(e2)(2) the Petitioner was required to file its petition for review with the Currituck County Clerk of Superior Court by the later of 30 days after the effective date of the decision of the Currituck County Board of Commissioners approving and the Petitioner's plan, plat and permit conditions or after written copy of the decision was given the Petitioner.

5. Having failed to timely appeal to the superior court the plan, plat and permit conditions approved by the Currituck County Board of Commissioners, the Petitioner may not now collaterally attack the plan, plat and permit conditions. (See Grandfather Village v. Worsley, 111 N.C. App. 686, 433 S.E.2d 12, review denied, 335 N.C. 237, 439 S.E.2d 146 (1993)).

6. As set out in this motion the Currituck County Board of Adjustment is without jurisdiction or authority to review, consider or modify conditions placed on Petitioner's plan, plat and permit by the Currituck County Board of Commissioners, the procedures of the Currituck County UDO or the procedures as stated at the July 15, 2013 public hearing before the Currituck County Board of Commissioners.

WHEREFORE, the County moves that the Currituck County Board of Adjustment dismiss Petitioner's appeal.

This 2nd day of September, 2016.



Donald I. McRee, Jr.
Currituck County Attorney
N.C. State Bar No. 13922
153 Courthouse Road, Suite 210
Currituck, NC 27929
Telephone Number (252) 232-0300
Facsimile Number (252) 232-3551
Attorney for the Respondent County of Currituck

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the attached Notice of Hearing upon all parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party, or leaving a copy at the office of said attorney with a person in charge thereof, to wit:
- Transmitting a copy thereof via electronic mail to tomnash@trimpinash.com.
- Depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to each party as follows:

Thomas P. Nash, IV, Esq.
Trimpi & Nash, LLP
200 North Water Street, Suite 2A
Elizabeth City, NC 27909

This the 2nd day of September, 2016.



Donald I. McRee, Jr.



Currituck County Agenda Item Summary Sheet

Agenda ID Number – (ID # 1647)

Agenda Item Title

BOA 16-04 University Park, LLC/Norman Bibeau Appeal:

Brief Description of Agenda Item:

Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding West Mobile Road being used for ingress/egress located at Tax Map 131, Parcel 97A and Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").

Board Action Requested

Action

Person Submitting Agenda Item

Susan Tanner, Administrative Assistant

Presenter of Agenda Item

Ben Woody



Currituck County

Planning and Community Development Department
Planning and Zoning Division
 153 Courthouse Road, Suite 110
 Currituck, North Carolina 27929
 252-232-3055 FAX 252-232-3026

To: Board of Adjustment
 From: Planning Staff
 Date: September 2, 2016
 Subject: BOA 16-04 University Park, LLC/Norman Bibeau Appeal

Mr. Norman Bibeau is appealing the Planning Director's decision and notice of violation regarding West Mobile Road being used for ingress/egress located at Tax Map 131, Parcel 97A and Tax Map 124J, Parcel OSP2, Poplar Branch Township (the "Subject Property").

Background

The University Park Planned Development was approved by the Board of Commissioners on July 15, 2015. A planned development is a development type that is planned under unified control in accordance with more flexible standards that are conducive to allowing a mix of uses and otherwise higher quality development.

During the Board of Commissioners public hearing for the planned development zoning map amendment, members of the community expressed safety concerns with the proposed connection to West Mobile Road. Following the public hearing and Board of Commissioners approval of the zoning map amendment with conditions, the Subject Property's final master plan and terms and condition document required that there be no access to West Mobile Road. (See Attachments 3A and 3B)

The subdivision of lots for Phase 2 required another public hearing process for the approval of a preliminary plat/use permit. On September 8, 2015 the preliminary plat/use permit presented during the public hearing did not depict an access to West Mobile Road. (See Attachment 3C)

The Technical Review Committee approved Phase 2 construction drawings on November 18, 2105 and a final plat on March 10, 2016, neither of which depict, note, or reference an access to West Mobile Road. (See Attachments 3D and 3E)

Violation

In early June 2016 the county began receiving complaints that West Mobile Road was being used for ingress/egress to the Subject Property. The staff inspected the property on June 29, 2016 and determined that West Mobile Road was being used as the primary access and construction entrance for Phase 2. A notice of violation was sent to University Park, LLC on June 30, 2016. (See Attachment 1)

The notice of violation requested compliance by discontinuing the use of West Mobile Road as an ingress/egress to the Subject Property. Mr. Bibeau placed an obstruction at the access point and subsequently appealed the notice of violation.

Unified Development Ordinance

The following sections of the UDO are applicable to this case:

- Section 9.3.1 provides that failure to comply with the terms and conditions of any permit or other development approval shall constitute a violation. Further, this section provides that permits or development approvals issued by a Board or county staff authorize only the development set forth in such permits or development approvals. (See Attachment 4A)
- Section 9.3.2 provides that it is a violation to occupy or use land without complying with the terms and conditions of all appropriate permits or development approvals. (See Attachment 4A)
- Section 2.4.5 provides that lands rezoned to a PD district are subject to the approved master plan and terms and conditions. (See Attachments 4B)
- Section 2.4.8 provides that development of a major subdivision requires approval of a preliminary plat, use permit, construction drawings, and then a final plat. (See Attachment 4C)
- Section 2.3.13 provides that approval of any development application authorizes only the particular use, plan, or other specific activity approved. (See Attachment 4D)

Attachments

The county submits the following attachments for the Board's consideration:

- Attachment 1: Notice of Violation dated June 30, 2016
- Attachment 2: Photographs of the violation
- Attachment 3: Plan approvals indicating the 25 foot undisturbed buffer
- Attachment 4: Relevant sections of the UDO
- Attachment 5: Appeal application
- Attachment 6: Subject Property map



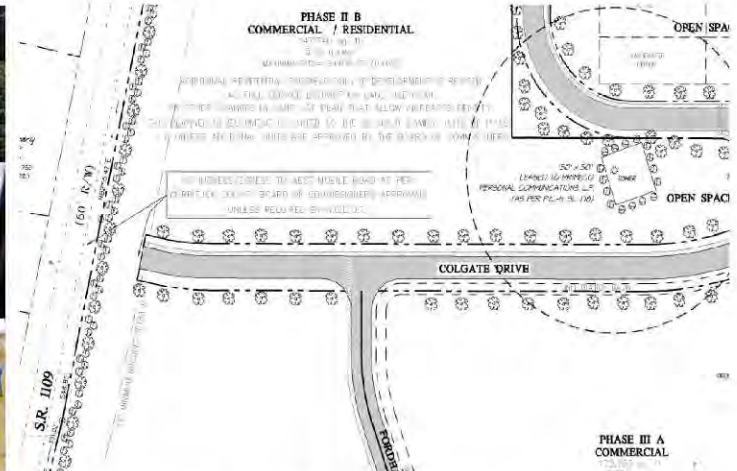
COUNTY OF CURRITUCK
 Code Enforcement Program
 153 Courthouse Road, Suite G106
 Currituck, NC 27929
 (252) 232-6027

NOTICE OF VIOLATION #
 V16-397

University Park LLC, Property Owner
 8624 Caratoke Hwy
 Powells Point, NC 27966

Norman T. Bibeau, Registered Agent
 PO Box 237, Kitty Hawk NC 27949
 Norman T. Bibeau, Jr., Managing Member
 4320 S Hammerhead Dr, Nags Head NC
 27959

Violation Date: June 30, 2016	Inspection Date: June 29, 2016
Property Address: 108 Amherst Dr & 138 W. Mobile Road - University Park	PIN #: 0131-000-097A-0000 & 124J-000-OSP2-0000
Violation Description:	
West Mobile Road is being used for ingress/egress to the subject properties. Per the Currituck County Board of Commissioners approval on July 15, 2013 the final PDM Master Plan and terms and conditions document state, " No ingress/egress to West Mobile Road unless required by NCDOT."	
Compliance Request: Discontinue the use of West Mobile Road as an ingress/egress to the subject properties. Contact Stacey Smith for more information	UDO Code Reference: Planned Development Section 2.4.5
	Required Compliance Date: July 6, 2016



Attachment: 16-04-staff-report-appeal (1647 : BOA 16-04 University Park, LLC/Norman Bibeau Appeal)

Please be advised that failure to comply with the above may result in civil penalties assessed by the County of up to \$500.00 per day for each day that the violation exists.

If you wish to appeal this decision, you have thirty (30) days from receipt of this notice in which to submit an appeal application to the Board of Adjustment or this decision shall be considered final. Applications can be obtained and submitted in the Planning & Community Development



June 29, 2016: West Mobile Road used for ingress/egress

Attachment: 16-04-staff-report-appeal (1647 : BOA 16-04 University Park, LLC/Norman Bibeau Appeal)



June 29, 2016: West Mobile Road used for ingress/egress

Attachment: 16-04-staff-report-appeal (1647 : BOA 16-04 University Park, LLC/Norman Bibeau Appeal)



June 29, 2016: West Mobile Road used for ingress/egress

Attachment: 16-04-staff-report-appeal (1647 : BOA 16-04 University Park, LLC/Norman Bibeau Appeal)

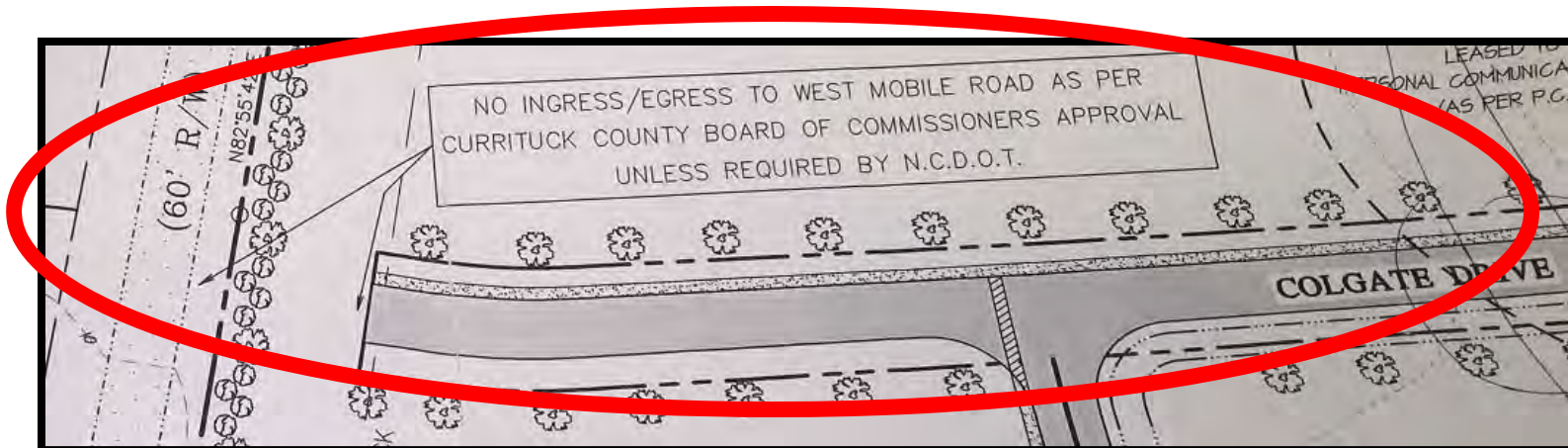
University Park, Phase 2 Approved Master Plan, Page C1

CURRITUCK COUNTY NORTH CAROLINA
FINAL PLAN
Master Plan

SUBMITTED
 APPROVED AS IS
 APPROVED AS NOTED ON PLAT
 APPROVED AS NOTED IN ACCOMPANYING LTR DATED _____
 RE-SUBMIT

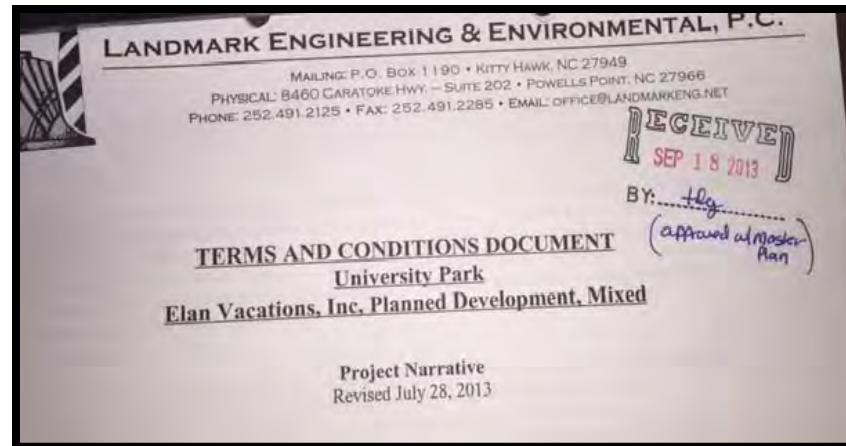
7/15/13
DATE APPROVED BY PB *BCC*

J. Lane
NAME AND TITLE



No Connection to West Mobile Road

University Park, Phase 2 Master Plan – Approved Terms and Conditions Doc Pages 1 and 7



Access

Access to the project from Caratoke Highway is as shown on the Master Sketch plan. All necessary permits from Currituck County and NCDOT shall be obtained prior to construction of these access roads. Interior access and circulation shall be designed during the site planning and permitting phase of each development phase. Traffic studies may be required as part of this process. The access to and from West Mobile Road was removed as per the Currituck County Board of Commissioners approval, and would only be made if required by N.C.D.O.T.

No Connection to West Mobile Road

University Park, Phase 2 Approved Preliminary Plat/Use Permit

CURRITUCK COUNTY, N.C.
PRELIMINARY PLAT

DATE SUBMITTED 11/17/15 *See full size for conditions*

APPROVED AS IS
 APPROVED AS NOTED ON PLAT
 APPROVED AS NOTED IN ACCOMPANYING

LTR DATED _____
 RE-SUBMIT 9/8/15

DATE APPROVED BY BOC _____
 NAME AND TITLE Shane S. Planner

Page C1 – Cover Sheet and Existing Conditions

CURRITUCK COUNTY, N.C.
PRELIMINARY PLAT

DATE SUBMITTED 11/17/15

APPROVED AS IS
 APPROVED AS NOTED ON PLAT
 APPROVED AS NOTED IN ACCOMPANYING

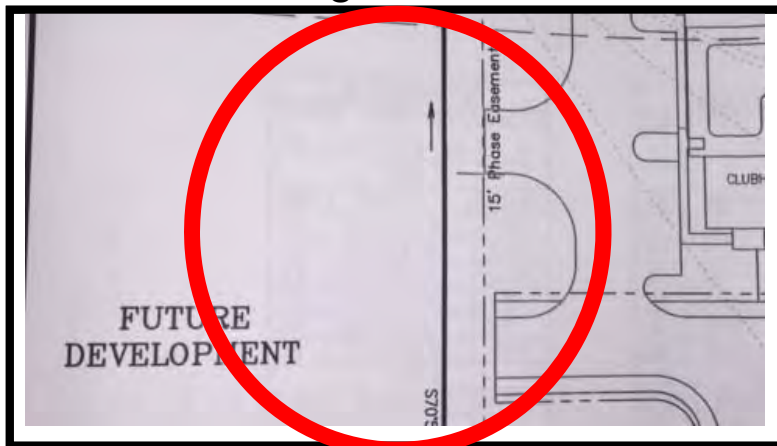
LTR DATED _____
 RE-SUBMIT 9/8/15

DATE APPROVED BY BOC _____
 NAME AND TITLE Shane S. Planner

- 1/2 of the aggregate value of amenities must be installed after construction of 2 buildings (12 units.)

- Displaying the incorrect address for Phase 1 may lead to delayed emergency response times

Page C1 – Overall Project Plan (full size)



Page C2 – Unit Boundary Plan (full size) – No connection to West Mobile Road

University Park, Phase 2 Approved Construction Drawings, Page C1

CURRITUCK COUNTY, N.C.
CONSTRUCTION DRAWINGS

DATE SUBMITTED 11/17/15

APPROVED AS IS

APPROVED AS NOTED ON PLAT

APPROVED AS NOTED IN ACCOMPANYING LTR DATED

RE-SUBMIT

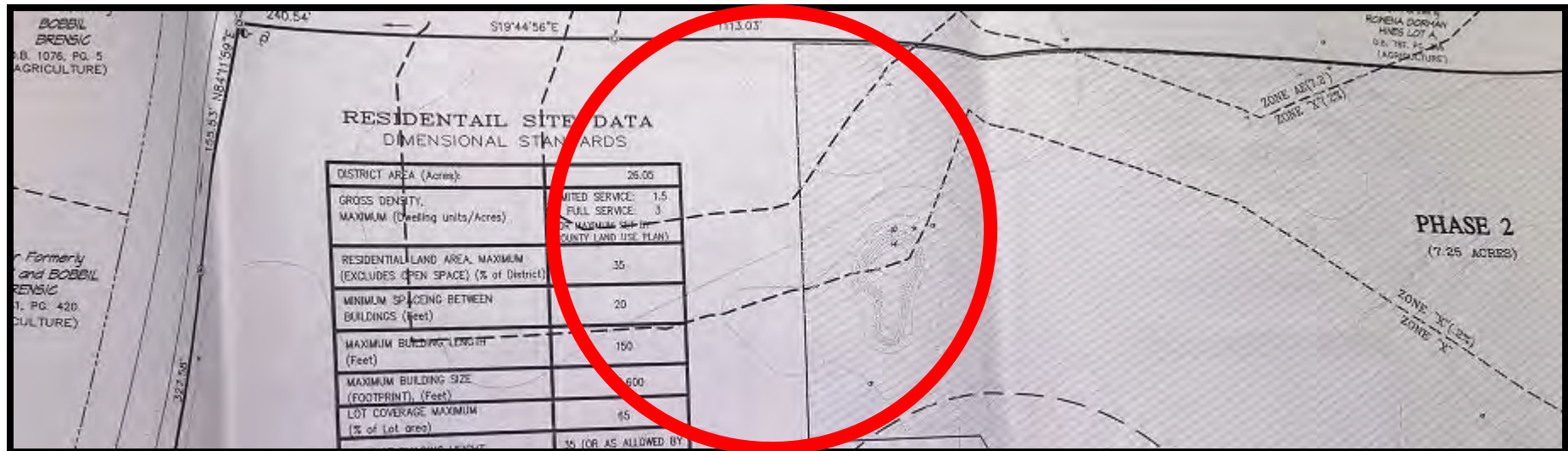
11-18-15

DATE APPROVED 11-18-15

NAME AND TITLE Delaney S. Lane

- Displaying the incorrect address at Phase 1 may lead to delayed emergency response times.
- Will show min. bldg Pad on final plat.
- Will show street signs on final plat

REVISED PER	TRC REVIEW COMMENTS
7/27/15	
8/3/15	
9/2/15	SHOW AREA OF INFILTRATION BASIN A TO B
	AREA TO INCLUDE ADDITIONAL AMENITY, RE
11/16/15	REVISED PER A.R.H.S. REVIEW AND CURRITUCK



No Connection to West Mobile Road

University Park, Phase 2 Approved Final Plat, Pages C1 and C2

CURRITUCK COUNTY, N.C.
FINAL PLAT

DATE SUBMITTED 3/10/16

APPROVED AS IS
 APPROVED AS NOTED ON PLAT
 APPROVED AS NOTED IN ACCOMPANYING

LTR DATED _____
 RE-SUBMIT

DATE APPROVED BY [Signature] NAME AND TITLE Sr Planner

EX. 1 1/2" OPEN PIPE 16" TALL

EX. 5/8" REBAR 8" TALL

EX. 5/8" REBAR 12" TALL

126.04'

257.07'

120.81'

S45°10'51"E

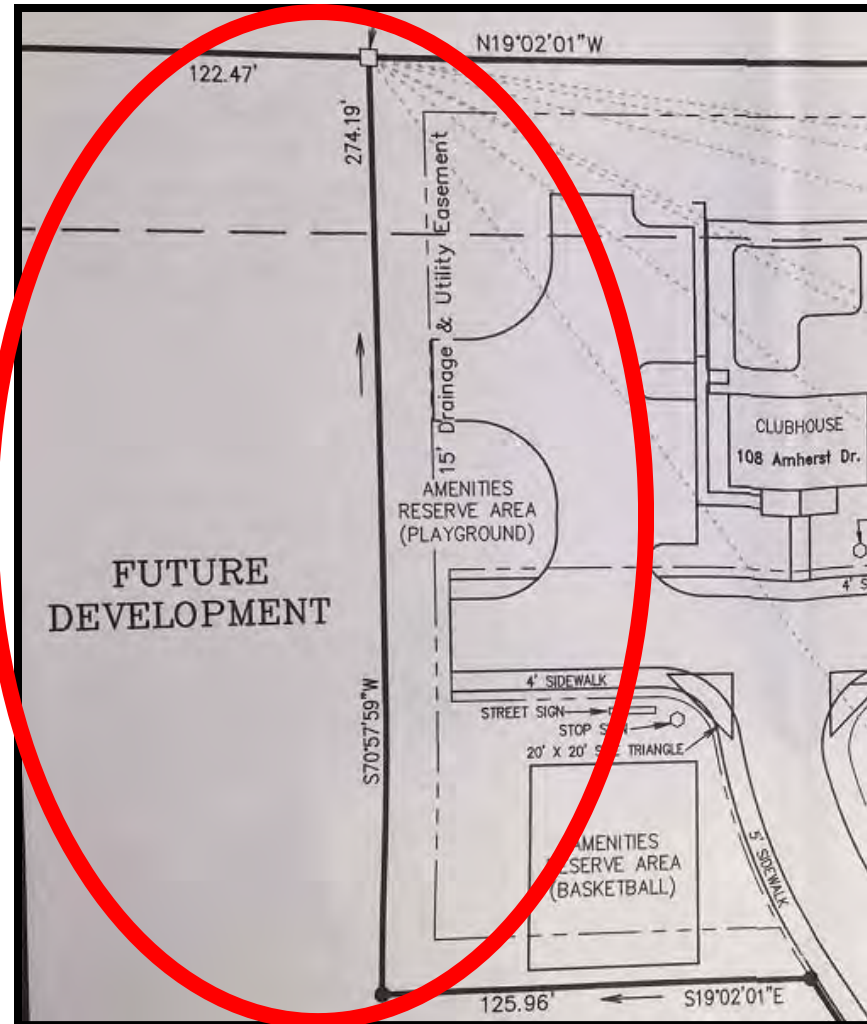
EX. 5/8" REBAR 18" TALL

Now or Formerly
FILOMENA GRANK
DONDY TENANT HOUSE,
D.B. 103, PG. 293

* NC DOT pavement Cert. is required prior to C.O. for first unit.
* As-built required after road completion (including curb & gutter).
* One half of the aggregate value of amenities must be installed after completion of 2 buildings/12 units.

Now or Formerly
BENJAMIN HOPKINS
GRANT EIGHTY-NINE,
LOT 3,
D.B. 371, PG. 187
(GENERAL BUSINESS)

OWNER'S CERTIFICATE



No Connection to West Mobile Road

CHAPTER 9. ENFORCEMENT

9.1. PURPOSE

This chapter establishes procedures through which the county seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this chapter are intended to encourage the voluntary correction of violations, where possible.

9.2. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the county.

9.3. VIOLATIONS

9.3.1. Violations Generally

A. Failure to Comply with Ordinance or Term or Condition of Approval Constitutes Ordinance Violation

Failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this chapter.

B. Permits or Permit Approvals only Authorize Development Approved

Permits or development approvals issued by a decision-making body or county staff authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

9.3.2. Specific Violations

It shall be a violation of this Ordinance to undertake any activity contrary to the provisions of this Ordinance, including but not limited to any of the following:

- A.** Develop land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- B.** Occupy or use land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- C.** Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision, and complying with their terms and conditions.
- D.** Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals, and complying with their terms and conditions.

SECTION 2.4: SPECIFIC REVIEW PROCEDURES**Subsection 2.4.5: Planned Development**

- (b)** As part of the decision, the Board of Commissioners shall adopt a written statement of consistency and reasonableness that:
 - (i)** Describes whether the decision is consistent with all county-adopted plans that are applicable; and
 - (ii)** Explains why the decision is reasonable and in the public interest.

D. Planned Development Review Standards

The advisability of establishing a planned development is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a planned development, the Board of Commissioners shall consider the standards in Section 2.4.3.C, Zoning Map Amendment Standards, and the standards for the proposed type of PD district in Section 3.7, Planned Development Base Zoning Districts.

E. Designation on the Official Zoning Map

Designation of a PD zoning district on the Official Zoning Map shall note the ordinance number approving the PD zoning classification.

F. Effect

Lands rezoned to a PD district shall be subject to the approved PD master plan and the approved PD terms and conditions. The master plan and terms and conditions are binding on the land as an amendment to the Official Zoning Map. The applicant may apply for and obtain subsequent development permits and approvals necessary to implement the PD master plan in accordance with the appropriate procedures and standards set forth in this Ordinance. Any permits or approvals shall comply with the PD master plan and the PD terms and conditions.

G. Expiration

- (1)** If no application for approval of a preliminary plat or site plan for any part of the approved PD master plan is submitted within two years after approval of the planned development, the Planning Director shall initiate a map amendment application to rezone the land back to its prior zoning classification or any other base zoning classification determined to be appropriate. Such time period shall not be extended with transfer of ownership.
- (2)** Upon written request submitted at least 30 days before expiration of the two-year period provided in Section 2.4.5.G.1 above, and upon a showing of good cause, the Planning Director may grant one extension not to exceed six months for the applicant to submit required development applications.

H. Minor Deviation**(1) General**

Subsequent plans and permits for development within an approved planned development may include minor deviations from the PD master plan or PD terms and conditions, provided such deviations are limited to changes addressing technical considerations that could not reasonably be anticipated during the PD zoning classification process or any other change that has no material effect on the character of the approved planned development or any

SECTION 2.4: SPECIFIC REVIEW PROCEDURES

Subsection 2.4.8: Subdivision

(b) Additional Standards for Family Subdivisions

Family subdivisions shall follow the review procedure for minor subdivisions and shall comply with the general standards in (a) above as well as the following:

- (i)** Lots shall be conveyed solely to family members within two degrees of kinship (e.g., child, grandchild). A maximum of one lot shall be conveyed to the individual family member, including family subdivisions on different parent parcels.
- (ii)** No more than five lots are created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area) as it existed ten years prior to application submittal.
- (iii)** Ingress and egress to a lot shall not be from a major arterial street.
- (iv)** Private access streets created shall not serve more than five lots.
- (v)** Principal uses shall be limited to single-family detached dwellings and customary accessory uses.

(3) Effect of Development Approval

- (a)** Approval of a minor subdivision constitutes approval of a final plat for subdivision.
- (b)** Lots shall not be sold or conveyed until after a final plat has been recorded.

(4) Amendment of Development Approval

Applicable (see Section 2.3.14).

(5) Expiration of Development Approval

A minor subdivision plat shall be recorded with the Currituck County Register of Deeds within 90 days of its approval, or it shall be null and void.

E. Major Subdivision**(I) Overview****(a) In General**

- (i)** Development of a major subdivision requires approval of a preliminary plat (type I or type II), a use permit (if applicable), construction drawings, and then a final plat.
- (ii)** The Planning Director may allow concurrent submittal of a preliminary and final plat in cases where no public improvements are required, or concurrent submittal of a preliminary plat and construction drawings where public improvements are required.
- (iii)** Minor subdivision lots shall be included when calculating the acreage and total number of lots for a major subdivision when:
 - (A)** The minor subdivision lots are created from the same parent parcel or parcels of land proposed for a major subdivision; and

SECTION 2.3: STANDARD PROCEDURES**Subsection 2.3.11: Conditions of Approval****B. Remand**

The decision-making body may remand the application to the appropriate advisory body or county staff for further consideration of new information or specified issues or concerns by the staff or any advisory bodies, if appropriate.

C. Clearly State Factors for Decision

Unless stated otherwise in this Ordinance, the decision-making body's decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

D. Timing

The decision-making body shall take action as promptly as possible in consideration of the interests of the applicant, affected parties, and citizens of the county.

E. Timing of Lots

The Board of Commissioners may allocate the total number of lots in a subdivision that may be depicted on a final plat at any one time, based upon the adequacy of public facilities serving the development.

2.3.11. Conditions of Approval

Conditions of approval shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands. They shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.

2.3.12. Notification of Decision or Action

Within ten business days after a final decision on a development application, the Planning Director shall provide the applicant written notice of the decision or action and make a copy of the decision available to the public in the offices of the Planning and Community Development Department, during normal business hours.

2.3.13. Effect of Development Approval

Approval of any development application in accordance with this Ordinance authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application. In the event that one permit or approval is a prerequisite to another permit or approval (e.g., administrative adjustment or variance approval prior to a site plan approval) development may not take place until all required approvals are obtained, and approval of one development application does not necessarily guarantee approval of any subsequent development application.

2.3.14. Amendment of Development Approval

Unless specified in the specific procedure description in Section 2.4, Specific Review Procedures, an amendment of a permit or approval may only be reviewed in accordance with the procedures and standards established for its original approval.

TRIMPI & NASH, LLP

ATTORNEYS AT LAW

200 NORTH WATER STREET, SUITE 2A

ELIZABETH CITY, NC 27909

TELEPHONE (252) 338-0104

TELECOPIER (252) 338-0327

THOMAS P. NASH, IV

Email tomnash@trimpinash.com

JOHN G. TRIMPI

Email jtrimpi@trimpinash.com

July 25, 2016

VIA UPS

Ben E. Woody, AICP, Planning Director
 County of Currituck
 Planning and Community Development

Re: Appeal of Notice of Violation #V16-397
 as to University Park, LLC

Dear Ben:

Enclosed please find the Appeal Application of Norman Bibeau and University Park, LLC appealing the Notice of Violation V16-397. I further enclose herewith my firm check in the amount of \$150.00 representing the appropriate application fee.

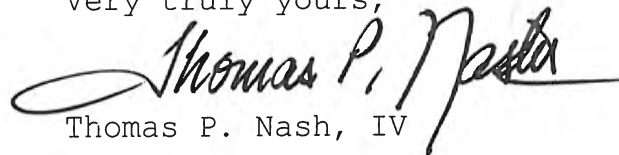
As the other violation (V16-338) is now going to be heard at the August 11th meeting of the Board of Adjustments, I would respectfully request that this matter also be scheduled for that hearing. If this is not possible, please so advise.

By copy of this letter, I am also forwarding by email a copy of this letter and the Appeal Application to Ben Gallop, attorney to the Board of Adjustments.

Please advise if I need to furnish you with any further documentation and, as to whether or not this matter can be heard on August 11th.

Thanking you for your assistance and with kind regards, I am,

Very truly yours,



Thomas P. Nash, IV

cc: Client (via email)
 Benjamin M. Gallop, Esq. (via email bmgallop@hrem.com)
 TPN/seh
 Enclosures



Appeal Application

OFFICIAL USE ONLY:	
Case Number:	<u>16-04</u>
Date Filed:	<u>8/11/16</u>
Gate Keeper:	<u>SS</u>
Amount Paid:	<u>100.00</u>

Contact Information

APPLICANT:	PROPERTY OWNER:
Name: <u>Norman Bibeau</u>	Name: <u>University Park, LLC</u>
Address: <u>4320 Hammerhead Dr.</u>	Address: <u>8548 Caratoke Highway</u>
<u>Nags Head, NC 27959</u>	<u>Powells Point, NC 27966</u>
Telephone: <u>252-207-7016</u>	Telephone: <u>252-491-8787</u>
E-Mail Address: <u>nbibeau@aol.com</u>	E-Mail Address: <u>nbibeau@aol.com</u>

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Applicant is Managing Member of Owner

Property Information

Physical Street Address: 108 Amherst Drive and 138 W. Mobile Road--University Park, Powells Point, NC

Location: _____

Parcel Identification Number(s): 0131-000-097A-0000 and 124J-000-OSP2-0000

Statement of Error, or Improper Decision or Interpretation

I wish to appeal a: Decision or Interpretation Notice of Violation

The determination being dated 6 / 30 / 15.

Grounds for appeal

State the facts you are prepared to prove to the Board of Adjustment that should lead the board to conclude that the decision of the administrator was made in error.

The alleged violation is inconsistent with applicable procedures specified in the Currituck UDO and as stated at the public hearing on 7/15/2013, the alleged violation is not a violation of the terms and conditions document as approved by Board of Commissioners on July 15, 2013 and the alleged violation is arbitrary and capricious effectively preventing owner from using an existing access from W. Mobile Road to avoid traffic congestion, safety hazards and damage to existing paved roads coming off of Highway 158.

Please include all related support materials with the application.

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. All information submitted and required as part of this application process shall become public record.

[Signature] 7/11/16
 Appellant/Applicant Date

Owner Verification

If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property, or under contract to purchase, then the actual owner of the land must complete this section. If the owner is the appellant/application please do not complete this section.

Dear Sir or Madame:

I am the owner of the property located at 108 Amherst Drive and 138 W. Mobile Road, Powells Point, North Carolina

I hereby authorize Norman Bibeau and Attorney Thomas P. Nash, IV to appear with my consent before the Board of Adjustment in order to request an appeal or interpretation at the above location. I authorize you to advertise and present this matter in my name as the owner of the property.

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

If you have any questions, you may contact me at the following at the address, phone number, or email address listed on this application

Respectfully yours,
[Signature]
University Park, LLC
BY: [Signature] 7/11/16
Owner Date

Sworn to and subscribed before me, this the 11 day of July, 2016.

Elizabeth A. Minton
Notary Public
My commission expires: 11-15-2017

Elizabeth A Minton
Notary Public
Dare County
North Carolina
My Commission Expires 11/15/2017

Area of Buffer Disturbance



West Mobile Road Access



W Mobile Rd

Caratoke Hwy

158

NORTH CAROLINA
CURRITUCK COUNTY

BEFORE THE
BOARD OF ADJUSTMENT
File No. BOA 16-04

In the Matter of the Appeal By: :
:
UNIVERSITY PARK, LLC/ :
NORMAN BIEBEAU :
:
:
Petitioner. :
:
:
_____ :

MOTION TO DISMISS

NOW COMES the County of Currituck, (the “County”), moving for dismissal of the appeal in the above captioned action. In support of its motion the County shows the following:

1. On June 30, 2016 Currituck County Code Enforcement Officer Stacey Smith issued Petitioner a Notice of Violation upon determination that “West Mobile Road is being used for ingress/egress to the subject properties” constituting non-compliance with the July 15, 2013 final PDM Master Plan for Petitioner’s properties and the terms and conditions approved by the Currituck County Board of Commissioners.

2. Petitioner’s appeal of the Notice of Violation, deemed filed on or about July 26, 2016, stated as its “Grounds for appeal” that:

The alleged violation is inconsistent with applicable procedures specified in the Currituck UDO and as stated at the public hearing on 7/15/13, the alleged violation is not a violation of the terms and conditions document as approved by Board of Commissioners on July 15, 2013 and the alleged violation is arbitrary and capricious effectively preventing owner from using an existing access from W. Mobile Road to avoid traffic congestion, safety hazards and damage to existing paved roads coming off of Highway 158.

[Emphasis added].

Attachment: motion-to-dismiss-boa-16-04 (1647 : BOA 16-04 University Park, LLC/Norman Bibeau Appeal)

3. The Petitioner's grounds for appeal challenge the plan, plat and permit conditions approved by the Currituck County Board of Commissioners and procedures specified in the UDO and as stated at the July 15, 2013 public hearing before the Currituck County Board of Commissioners that culminated in conditions on Petitioner's plan, plat and permit. Pursuant to N. C. Gen. Stat. §153A-340(c1) the decision of the Currituck County Board of Commissioners placing conditions on the Petitioner's plan, plat and permits and procedures set forth in the Currituck County UDO and stated at the July 15, 2013 public hearing are subject to review of the superior court in the nature of certiorari.

4. Pursuant to N. C. Gen. Stat. §160A-388(e2)(2) the Petitioner was required to file its petition for review with the Currituck County Clerk of Superior Court by the later of 30 days after the effective date of the decision of the Currituck County Board of Commissioners approving and the Petitioner's plan, plat and permit conditions or after written copy of the decision was given the Petitioner.

5. Having failed to timely appeal to the superior court the plan, plat and permit conditions approved by the Currituck County Board of Commissioners and its procedures under the Currituck County UDO, as stated during the July 15, 2013 public hearing, the Petitioner may not now collaterally attack the plan, plat and permit conditions. (See Grandfather Village v. Worsley, 111 N.C. App. 686, 433 S.E.2d 12, review denied, 335 N.C. 237, 439 S.E.2d 146 (1993)).

6. As set out in this motion the Currituck County Board of Adjustment is without jurisdiction or authority to review, consider or modify conditions placed on Petitioner's plan, plat and permit by the Currituck County Board of Commissioners or the procedures of the Currituck

County Board of Commissioners as specified in the Currituck County UDO or as stated at the public hearing on July 13, 2013.

WHEREFORE, the County moves that the Currituck County Board of Adjustment dismiss Petitioner's appeal.

This 2nd day of September, 2016.



Donald I. McRee, Jr.
Currituck County Attorney
N.C. State Bar No. 13922
153 Courthouse Road, Suite 210
Currituck, NC 27929
Telephone Number (252) 232-0300
Facsimile Number (252) 232-3551
Attorney for the Respondent County of Currituck

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the attached Notice of Hearing upon all parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party, or leaving a copy at the office of said attorney with a person in charge thereof, to wit:
- Transmitting a copy thereof via electronic mail to tomnash@trimpinash.com.
- Depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to each party as follows:

Thomas P. Nash, IV, Esq.
Trimpi & Nash, LLP
200 North Water Street, Suite 2A
Elizabeth City, NC 27909

This the 2nd day of September, 2016.



Donald I. McRee, Jr.