



**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 Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 1412)

**Agenda Item Title**

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

**Brief Description of Agenda Item:**

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

**Board Action Requested**

Action

**Person Submitting Agenda Item**

Susan Tanner, Administrative Assistant

**Presenter of Agenda Item**

Ben Woody