



**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

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 on 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.

<b>RESULT:</b>	<b>RECESS WITH NO VOTE</b>	<b>Next: 2/11/2016 5:30 PM</b>
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## **RECESSED**

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

**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 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