

Members:
Horace Humphrey, Chairman
Vickie Mullins, Vice-Chair
Ed Donaldson
Joseph M. Dykes
George Lott



Alternates:
Yvette Carson
Winton McHenry
Nathan Feinberg
Joseph Decosta
Alfonso Ferguson Sr.

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

MINUTES
AUGUST 20, 2015
7:00 P.M.

Members Present

Horace Humphrey
Vickie Mullins
George Lott
Joseph Dykes
Alfonso Ferguson Sr.

Absent Members

Ed Donaldson

Staff/Others Present

Patricia Speicher
Jaimie Rachal
Katlyn Allen
Scott Walters (Code Enforcement)
Robert Hasty, Jr. (Assistant
County Attorney)

Chair Humphrey called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. ROLL CALL

Ms. Speicher called the roll and stated a quorum was present.

2. SWEAR IN STAFF

Chair Humphrey swore in staff.

3. OATHS OF OFFICE

Ms. Rachal, a notary public for Cumberland County administered Mr. Alfonso Ferguson Sr.'s Oath of Office.

4. ADJUSTMENTS TO THE AGENDA

There were none.

5. APPROVAL OF THE JULY 16, 2015 MINUTES

Mr. Lott made a motion to approve the minutes as submitted, seconded by Mr. Dykes. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	

LOTT	YES
FERGUSON	YES

6. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES

There were none.

7. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

8. POLICY STATEMENT REGARDING APPEAL PROCESS

Ms. Rachal read the policy statement.

9. PUBLIC HEARING(S)

- A. P15-04-C: CONSIDERATION OF AN APPEAL FROM THE CODE ENFORCEMENT OFFICER'S DECISION REGARDING THE OPERATION OF AN OUTDOOR FIRING RANGE IN A RR RURAL RESIDENTIAL DISTRICT ON 74.05+/- ACRES, LOCATED AT 400 KAREN STREET, SUBMITTED AND OWNED BY DAVID AND MARY DERETTE HAMPTON. (DEFERRED)**

Ms. Speicher read the case heading.

MS. SPEICHER: Now just as a reminder, this case was deferred from your board meeting last month.

CHAIR HUMPHREY: Thank you.

MS. SPEICHER: All board members should have received their packet, or already had their packet from last month.

CHAIR HUMPHREY: Alright. Mr. Ferguson, do you have a packet?

MR. FERGUSON: Yes, sir.

CHAIR HUMPHREY: Alright, alright. Did everyone else receive it?

MR. DYKES: I don't have one.

CHAIR HUMPHREY: You don't have one? Okay.

MS. SPEICHER: We have an extra if you need one.

Ms. Allen took an extra copy of the packet to Mr. Dykes.

(Inaudible)

CHAIR HUMPHREY: As soon as you get turned to it, let me know.

MR. DYKES: Okay.

MS. SPEICHER: I was just going to quickly explain this packet to you all. Right on the inside clear cover is the basic cover sheet with basic case info. Then you have a white tab, marked "Property Owner." That's the property owner's appeal and their supporting documents. Then you have another white tab—that's Code Enforcement. It has all of the documents we received from Code Enforcement for your Board of Adjustment packet. I would also like to make sure it's real clear that each board member understands the purpose of us being here tonight for this case. The property owner has appealed a Code Enforcement Officer's Notice of Violation that was issued on their property. The appeal itself that was submitted by the property owner, behind the property owner's tab, and it starts on the second page. I'm sorry, the third page. The owner is requesting that the board recognize that their outdoor firing range, um, preexisted the county's firing range text amendment, and that you find that it legally exists. The, in the appeal, you'll see, in the very first sentence where he refers to June 2013 in his appeal. The significance in that month and year, we'll get back to later on in this presentation.

CHAIR HUMPHREY: Okay.

MS. SPEICHER: I want to make it real clear that we're not considering a special use permit. We're not considering approval of a firing range. We're not considering the merit of the County's Ordinance Text Amendment regarding outdoor firing ranges. We're not considering whether the range that exists is safe or viable or necessary, or, or, anything else. This is only... Are the property owners in violation of the County Zoning Ordinance as it pertains to the outdoor firing range rules?

Ms. Speicher referenced the PowerPoint presentation.

MS. SPEICHER: Now on the screen, you'll see the subject property shown in the hash pattern in the center of the screen. It is zoned RR-Rural Residential. It's primarily surrounded by RR with a small portion of R6A Residential to the northeast. Further out, you have various zoning districts. The land use in the area on the subject property, there is a residential home under construction and the outdoor firing range. The (property marked) one to the west of the property is also a pending case, it's also on your agenda this evening. Two is the DOT Salt House, that most of us would recognize, seeing it on 24. Number three is a manufactured home park. Number four is a religious worship facility. The yellow on this slide represents residential with DW indicating double-wide and SW indicating single-wide manufactured homes. This is an aerial photo of the subject property with the subject property outlined in blue. Hydric soils take up the entire subject property. Then there's a small portion of hydric inclusion. Water and sewer is not a factor in this case. This is one of the site plans that was submitted in the petitioner's packet. It's included with this packet as part of the staff's because typically an applicant—for any type of case—would submit a site plan. He does have many more slides than just this one. We just pulled this one to count as the site plan for this case. I'll come back to this slide in a minute. I'll come back. These are other slides for the petitioner and photos of the site. This is standing on Pleasantview Drive. This is onsite of the subject property. Which, our graphics department contacted the property owners and had permission to go on site June 29 to take these photos. (pause) Sorry.

Now first, I would like to direct your attention to the Notice of Violation. It's behind the first white tab, second page, as submitted by the petitioner. The notice was dated May 6th. The property owners were cited for having a firing range without an approved site plan or permit,

and not meeting the ordinance requirements. Um, I do feel it's necessary at this point, for me to explain my personal knowledge of this case. Now, um, as far as I know, it was initiated because I took a phone call from a citizen in the area who was complaining about truckloads of dirt coming in throughout their street. I, um, I did ask her, had they opened a firing range? And she, you know, her and I talked...

MR. YARBOROUGH: Objection.

MS. SPEICHER: This is my personal conversation.

MR. YARBOROUGH: Objection, hearsay.

CHAIR HUMPHREY: If it was a conversation between, if I may, if it was a conversation between you and an opposition person? Is this what we're hearing on this phone call?

MS. SPEICHER: When the complaint originally came in.

CHAIR HUMPHREY: And you don't believe we can hear this at this time?

MR. YARBOROUGH: Not unless someone's here to testify about what they told her.

CHAIR HUMPHREY: Is that person present?

MS. SPEICHER: Well, I can testify as to what I said. What I said was, I'd explained to a person who indicated to me that they were the property owner of this site. I'd also explained the county firearm regulations, and the site didn't qualify for numerous reasons. It's zoned RR, you had to have A1, you had to have two acres, this is seventy-four. That was the primary reason that, you know, I indicated to him that it could not be a firing range. But she kept talking about the truck, so I gave her DENR's phone number. Department of Environment and Natural Resources and DOT concerning other complaints that she had. That's all.

CHAIR HUMPHREY: Okay. Thank you.

MS. SPEICHER: I meant two hundred acres, I'm sorry.

CHAIR HUMPHREY: Two hundred acres, right?

MS. SPEICHER: Okay, we do need to get into the record that the appeal was filed in a timely manner.

CHAIR HUMPHREY: Thank you.

MS. SPEICHER: The notice of violation, you can see in the second to last paragraph, they were given thirty days from the date of receipt. You have the certified return receipt in your packet under the Code Enforcement Section. It's right before the text amendment tab where Mr. David Hampton signed for the Notice of Violation on May 12th, 2015. The appeal is dated May 21st. If you turn to the Notice of Violation, we'll go back to the first page of the appeal, dated May 21st, was received in my office on or about May 22nd. We did receive the supporting documents based on our instructions to the petitioner that he had until June 11th, your deadline, for the July meeting, to get the rest of his documents into our office for the record. Which he did. Then, of course, the case was scheduled for July 16th.

CHAIR HUMPHREY: Deferred, yes.

MS. SPEICHER: And, um, deferred to this meeting. Staff is of the opinion that the appeal was timely filed. This is a site plan that was submitted by Mr. Hampton specifically to our office. The red indicates the single-family dwelling, which is currently under construction. The permit was issued for that on June 6th of this year. The initial permit. The blue indicates the boundaries of the firing range. There's a like a pole barn at this location, a short range, a long range, which the property owners can explain in much more detail than I. Then there's a structure at this location, fairly large. We don't know the size of it. The property owners pulled a um, or submitted a bona fide farm exemption request to construct that building. And, uh, with a farm number—which our office did verify it's a valid number, in her name. Um, the, uh, the bona fide farm exemption was dated May 1, 2013. The actual permit for the structure, for the 200 amp service to serve the structure, is the very last page of your packet. You'll see that it was issued for a farm building. That is all.

Okay, if I could get you to turn in your hard notebooks, your board books, to page 4 of the County Zoning Ordinance Section 109.

MR. LOTT: Page four of the zoning ordinance?

MS. SPEICHER: Yes, page 4, section 109. The bona fide farm exemption. Bona fide farms are exempt from zoning and most building code regulations. Do you have it?

CHAIR HUMPHREY: Yes. Mmhmm. Yes.

MS. SPEICHER: So if you'll note the last sentence, it does not include structures for non-farm uses that are also located on a bona fide farm. This is consistent with State Statute §153A 340.

Okay. Other than what we've already talked about as far as the permit, there have been no other permits or applications submitted or applied for on the subject property. As far as the county goes. They have worked some problems out with NC DENR and others, but as far as the County Planning and Inspections Department goes, we have no other permits, no other applications on the subject property. Going back to the June 2013 reference, and the very first sentence of the petitioner's appeal, and, um, also go to the tab. Jaimie is going to hand out a certified copy from the county clerk for the board to enter into the record.

Ms. Rachal hands out certified copies of appeal.

MS. SPEICHER: And also, if we could, because we only have one copy of that, give it to the board. If you go to the third to last yellow flag—I think they're yellow—in your booklets, the tab says "Text Amendment." This is the Outdoor Firing Range Text Amendment that was appr—adopted by the County Board of Commissioners on June 17, 2013. I would like to read the complete definition of outdoor firing range and how it was adopted to be entered into the record.

CHAIR HUMPHREY: Okay.

MS. SPEICHER: Firing Range, Outdoor: A facility, including its component shooting ranges, safety fans or shotfall zones, parking areas, all structures for classrooms;

administrative offices, ammunition storage areas and other associated improvements, designed for the purpose of providing a place for the discharge of various types of firearms or the practice of archery. For purposes of this ordinance, outdoor firing ranges are a principal use of property and therefore, shall not be considered incidental or accessory. This ordinance is exclusive of occasional target practice by individuals on property owned or leased by individuals, sighting of weapons for purposes of hunting, or temporary turkey shoots conducted on a property no more than 12 days in any calendar year.

Section 2 of the Text Amendment, the County Commissioners wanted to make certain that all outdoor firing range applications are presented to them through the Conditional Zoning mechanism, um, for consideration for approval. The staff had made a recommendation to be approved at staff level. The Planning Board changed it, wanting it to come to this board, the Board of Adjustment. The County Commissioners said, "No, we want it. We're going to review these applications." I'm not going to go over the entire amendment, but under section 3, I would like for you to, um, note section B. That is where the 200 acre requirement comes from. The staff recommended 30 acres because this board, wait, I'm sorry, the staff had just approved a site plan for a firing range on Johnson Road in Cumberland County that—where the property owner was only using about 40 acres of a 140 acre tract. We'd also, this board, had just approved what we refer to as the Kirby range which is on this agenda as well. That was a 34-35 acre tract. That was the reason for the staff recommendation of 30 acres. The Planning Board changed that recommendation to 100. When that got to the County Commissioners, contentious public hearing said it wasn't enough. We want 200. That's where the 200 acres come from.

Then I would like to direct your attention to subsection K. Subsection K addresses preexisting ranges. Meaning ranges that were in existence prior to the commissioners consideration of the text amendment. And we have a handout because I understand it made some of the packets, but not in others, so we're just going to hand it out. It's a list of the known ranges. When I say known, it's a list the staff knows of. This does not mean that it's every existing firing range in Cumberland County.

Ms. Rachal handed out list of ranges.

MS. SPEICHER: We did work real hard to see that we located them all. We worked with the gun groups, with all the firing ranges, sheriff's department and personal contacts or knowledge, trying to get them all. There are a few on there. The one on Sapland drive, that one comes off. That one did not get approval and the property owner withdrew his attempt at running a firing range.

CHAIR HUMPHREY: Which one is that?

MS. SPEICHER: Sapland Drive. Number 12.

CHAIR HUMPHREY: Number 12? Okay.

MS. SPEICHER: Number 13 is the Kirby range, which is, again, coming up later.

CHAIR HUMPHREY: Okay.

MS. SPEICHER: When the commissioners, with the county attorney's assistance were working on the firing range amendment, they were looking out for and trying to protect all of

the existing ranges and took the lead from the state legislatures. Who, in, um, they created what's called the Sport Shooting Range Protection Act of 1997. That's in the state statute. This makes exempt any firing ranges that were in existence on September 1, 1994, from local regulation unless there had been a substantial change. Well, out of fairness, the County Commissioners wanted to make sure that preexisting ranges were grandfathered, which is why we tried to get this list that you have. Um, So they inserted subsection K to specifically direct staff to issue a permit to the owner of any preexisting range that was in operation on June 20, 2005. Now the reason for June 20, 2005. Now the reason for that date, that was when the County Commissioners adopted a complete rewrite of the County Zoning Ordinance. Up until that time, every nonresidential use didn't have to have a site plan, approval or even permit. However, effective June 20, 2005, some type of plan approval became required along with permits issued for every nonresidential use. The zoning rewrite also included a new section numbered 916 entitled *Non-residential uses in a Residential District* page 91 of the Zoning Ordinance—the subject property is zoned RR Rural Residential. This section of the ordinance was applied to proposed developments for any non-residential use in residential district that was not specifically addressed elsewhere in the ordinance.

Additional side information, August 3, 2010, Court of Appeals issued an opinion in a case we refer to as *Land vs. Wesley Chapel* which, there was a lot of stuff in it, but what we took out of it and applied to our County Zoning Ordinance was that the courts stated that all legal uses must be allowed somewhere within a jurisdiction if not specifically listed as prohibited and that the legal use was to be reviewed under the provisions of a listed use that has the most closest land use impacts. See County Zoning Ordinance page 39 section 402-Uses by Right, which was approved by the Board of Commissioners on April 18, 2011.

So, in firing ranges, our director, who is the ordinance administrator, issued a policy. That policy letter is in your packet on, um, it's behind the code enforcement white tab and it's flagged policy memo. It's dated February 21, 2012.

MR. LOTT: Policy Memo?

MS. SPEICHER: Yes, so from June 20, 2005, until this date if someone were operating a firing range, or wishing to, we would have reviewed them as a non-residential use in a residential district. From February 21, 2012 until the firing range text amendment was adopted on June 17, 2013, our staff was directed, and we did so, review and approve outdoor firing ranges as recreation or amusement, outdoor. We weren't calling them recreational amusement, we were just holding them to the same standard. For example there's specific criteria in the zoning ordinance for outdoor recreation, such as measures that have to be taken to be sure that certain objects do not leave the site. So, like, for a softball field, could've been base, bats, balls. Now that's the primary reason our director associated the firing ranges with outdoor recreation. Or, wanted us to apply them to the firing ranges. There are other things on there, such as controlling dust, noise, things like that that would need to be applied. Now that's pretty much all I have and that takes us right back to the County Commissioners adoption of the Text Amendment on June 17, 2013. I think that's all I have. I am available for questions.

CHAIR HUMPHREY: Okay. Thank you. Questions, anyone? Mr. Ferguson? Any questions to the staff? Mrs. Mullins? Anyone?

Board members all declined.

MR. YARBOROUGH: Cross examination?

CHAIR HUMPHREY: Yes, sir. Please.

MR. YARBOROUGH: Ms. Speicher, was, when the planning board developed the list you just presented to this board, were you aware of the Hampton range?

MS. SPEICHER: No, I was not.

MR. YARBOROUGH: Was anyone in the Planning Department aware of this range?

MS. SPEICHER: No we were not.

MR. YARBOROUGH: Now, to your knowledge, did anybody contact the Hamptons regarding any requirements for additional permitting or review prior to the adoption of the ordinance? When I say the ordinance, I'm talking about the June... and actually, it's the 13th, 17th or 20th, okay. The June 2013 amendment to the ordinance. Did anyone from the county contact them?

MS. SPEICHER: Prior to that day?

MR. YARBOROUGH: Prior to that day.

MS. SPEICHER: No.

MR. YARBOROUGH: This property is zoned RR, right?

MS. SPEICHER: Correct.

MR. YARBOROUGH: And farming is a permitted use in RR Rural Residential, correct?

MS. SPEICHER: Oh, yes sir.

MR. YARBOROUGH: And farm uses do not require site plans, is that correct?

MS. SPEICHER: No, sir.

MR. YARBOROUGH: So what you're sayin...

MS. SPEICHER: If it's a bona fide farm, it does not.

MR. YARBOROUGH: Now, I think you made reference to an appeal uh that, Mr. Hampton or Mrs. Hampton filed with your board. Now I think that happens to be—it seems like, I'm not sure where to find it—it's dated May 21, 2015, correct?

MS. SPEICHER: It's behind the Property Owner tab, yes sir.

MR. YARBOROUGH: What Mr. Hampton and what Mary Hampton originally submitted was this three page document, is that correct?

MS. SPEICHER: Yes.

MR. YARBOROUGH: Okay, now they didn't submit any site plans or anything other than this three page document, correct?

MS. SPEICHER: Yes, he had a couple of site plans sir. Since then they've all been mixed together, so I'm not sure exactly which one...

MR. YARBOROUGH: Now were they site plans or pictures?

MS. SPEICHER: Aerial photos, yes sir.

MR. YARBOROUGH: So, not site plans?

MS. SPEICHER: Right.

MR. YARBOROUGH: So when you're showing that record, at the time, the Hamptons were simply appealing the decision of Mr. Hatcher. Is that right? They said we want to appeal this decision. Is that right? And that's what we're here for? Just to appeal Mr. Hatcher's decision, right? And that's what is shown on the agenda, right?

MS. SPEICHER: Yes sir, that's correct.

MR. YARBOROUGH: And that's the way it was published?

MS. SPEICHER: Yes.

MR. YARBOROUGH: And that's the way we're to see it, correct?

MS. SPEICHER: Yes sir.

MR. YARBOROUGH: Did you specifically ask them to develop a site plan?

MS. SPEICHER: No, I did not.

MR. YARBOROUGH: So how exactly did the site plan come about if they didn't originally submit it?

MS. SPEICHER: This was in their packet, submitted with their supporting documents.

MR. YARBOROUGH: That site plan?

MS. SPEICHER: Yes sir.

MR. YARBOROUGH: Is that something they just came up with on their own? Or was that something they were recommended to do?

MS. SPEICHER: Yes, sir. I did not tell them to.

MR. YARBOROUGH: A site plan would have something to do with a... if they were applying for a special use permit or conditional use, correct?

MS. SPEICHER: Well, or many other types of approvals.

MR. YARBOROUGH: Is a site plan.. Well, certainly not necessary to challenge a, uhh, Code Enforcement's rendering of a Notice of Violation?

MS. SPEICHER: Exactly. Which is why I told staff we didn't need a site plan and we would use one of their slides.

MR. YARBOROUGH: So, what you've got there is a photograph. You've got an overhead photograph with some lines drawn, is that correct?

MS. SPEICHER: Yes.

MR. YARBOROUGH: Okay. Is it denominated a site plan?

MS. SPEICHER: No, sir.

MR. YARBOROUGH: Okay, so it's a picture with some lines drawn—an overhead with some lines drawn on it.

MS. SPEICHER: Yes, sure—submitted by the property owner.

MR. YARBOROUGH: And there's a depiction, there's a depiction of certain things on that site plan, is that correct?

MS. SPEICHER: Yes, yes sir.

MR. YARBOROUGH: Are you personally aware of the use of the building for which they got their farm exemption? Are you personally aware?

MS. SPEICHER: No, no sir I am not.

MR. YARBOROUGH: And you recognize that this property has been approved by the United States Department of Agriculture as a bona fide farm?

MS. SPEICHER: I was told by the extension office that Mrs. Hampton applied for and received a farm number.

MR. YARBOROUGH: That's all my questions for this witness. Thank you.

CHAIR HUMPHREY: Okay. Thank you. Any other questions?

MR. HASTY: If I could, just for the record, Ms. Speicher, you may want to ask that these, um, documents that you've identified, you'll probably want to go through it by number, just for the record and have those introduced.

MS. SPEICHER: This is the entire packet that the staff would request to be introduced. I-I did go over, personally, the staff submittal, and then the second section was the petitioner's application.

MR. HASTY: You just need to identify for the record.

MS. SPEICHER: This packet is labeled P15-04-C, Appeal of Zoning Officer's Decision Related to an Outdoor Firing Range. 400 Karen Street, Fayetteville, North Carolina. Cumberland County Board of Adjustment Regular Meeting, July 16, 2015 at 7:00 p.m., which was deferred to this meeting. If we could have this entered in to the record, please.

CHAIR HUMPHREY: Yes. Yes.

MR. HASTY: Mr. Yarborough, do you have a copy of this?

MR. YARBOROUGH: I do.

MR. HASTY: Do you have any objection?

MR. YARBOROUGH: I do. Just to portions of it, and I mean, I-I know you probably won't accept it, but I would like to object to anything...I will be more specific in my objection at a later time. But for right now, I'll just say I have a general objection and after a while, I'll make a motion to strike—it's just not time yet. I would also suggest that anything that was developed by Mr. Hatcher... I might be more specific about my, uh, objection. Any portion of this that was obtained by Mr. Hatcher, I would object to with the exception of the Notice of Violation. For the record.

(Inaudible amongst the board)

CHAIR HUMPHREY: Okay.

MR. LOTT: Question. Uh, are you indicating that because this is a farm, uh, the range would fall under that criteria that it be exempt because it's part of a farm?

MR. YARBOROUGH: It's certainly a little more complicated than that. But, I mean that's certainly part of the parcel.

MR. LOTT: But, according to Patti, the County Ordinance, uh, is that relevant? That a firing range would be permitted?

MR. YARBOROUGH: More specifically, what I'm submitting is that this is a preexisting nonconforming use which does not require any further validation. That's what.. That's the ultimate point I'm trying to make.

MS. SPEICHER: Staff would like to object to, um, not entering all of Code Enforcement's documents in to the record. If we could get the February 21, 2012 Policy Memo issued by our director, Tom Lloyd, Outdoor Firing Ranges Review and Approval Policy in to the record please.

MR. YARBOROUGH: No objection. I-I, the only thing I object to are photographs and anything like that. Anything taken by George Hatcher after coming upon the property. That's the only thing I object to at this time.

MS. SPEICHER: And just for clarification, if we could get the United States Postal Service Certification where Mr. Hampton signed for the notice and the P11-20 County Zoning Ordinance Text Amendment on Outdoor Firing Ranges.

CHAIR HUMPHREY: Okay.

MR. HASTY: Mr. Chairman, the-to clear up any confusion, um, which... will most likely develop and this may take just a few minutes, but what I would suggest you do is just go through the packet. Then it'll be much cleaner as to what there is no objection to and what there is objection to. Page by page.

CHAIR HUMPHREY: Okay. Page by page. Start from the site profile?

MR. HASTY: Yeah, you want to start with that.

CHAIR HUMPHREY: Okay. Okay. Alright, board members. Are you with him? Do you have your little book? We'll start at the site profile here and we can go through the book.

MS. SPEICHER: Cover page first?

CHAIR HUMPHREY: Okay. Cover page first. P15-04-C

MR. YARBOROUGH: To make it simple, the only thing I'm going to object to are the photographs. Only thing I'm objecting to are the photographs taken on May 6th. Does that help?

MR. HASTY: Alright, let's just make sure we... I think there are two sets of photographs. Are you talking about the ones behind the Code Enforcement tab? Or the ones before that?

MR. YARBOROUGH: I'm talking about the ones dated 05-06-2015.

MR. LOTT: Just the pictures?

(inaudible amongst the board)

MS. SPEICHER: Okay, you're referring to the photographs that stop when you come to the Notice of Violation?

MR. HASTY: Is the basis of this objection at this time that they have not been properly authenticated?

MR. YARBOROUGH: That and I probably have an additional objection. For now, though, that'll do for this purpose. I think I can probably get them authenticated during my first witness.

MR. LOTT: I didn't think there was any question to the validity of the range being a standard range, acceptable as a standard range and the way it's built. I thought the question was, that it was just not processed in the proper manner.

MS. SPEICHER: That's why the Notice of Violation was issued.

MR. LOTT: I mean, the range itself is irrelevant of the condition that it's in. So these pictures really don't have any relevance to us as far as what's being done.

MR. YARBOROUGH: This is a technical objection for the record.

MR. HASTY: And Mr. Humphrey, would you like to hear from Mr. Hatcher to maybe help with the authentication?

CHAIR HUMPHREY: Yes, yes. Mr. Hatcher will you come to the stand please? That might speed us along here. I'm not sure exactly what we were going to ask you, but if you would... The question, right now, Mr. Hatcher, is about the photos.

MR. HASTY: Were you sworn in already?

CHAIR HUMPHREY: Yes, he was sworn in earlier. Do we have any questions to Mr. Hatcher about the photos?

MR. HASTY: Well, Mr. Hatcher, can you identify the photographs that have been objected to?

MR. HATCHER: Right.

MR. HASTY: So, did you take those photographs?

MR. HATCHER: Yes, sir, yes I did.

MR. HASTY: Do they appear to be true and accurate copies of the photographs you took?

MR. HATCHER: Yes sir.

MR. HASTY: Where were they taken?

MR. HATCHER: Out at the, uh, out on Karen Street on May 6th it was, I believe.

MR. HASTY: Okay. And is this on the appellant's property?

MR. HATCHER: Yes sir.

MR. HASTY: Okay. Thank you.

CHAIR HUMPHREY: Okay. Thank you, any other questions? Board members? Thank you.

MR. YARBOROUGH: I have some questions.

CHAIR HUMPHREY: Oh, okay. Go ahead.

MR. YARBOROUGH: How long have you been employed with the county?

MR. HATCHER: Fifteen years.

MR. YARBOROUGH: In what position?

MR. HATCHER: Uh, six or seven years as a carpenter and the rest with Code Enforcement.

MR. YARBOROUGH: Okay. Prior to working with the county, what did you do?

MR. HATCHER: Carpentry work.

MR. YARBOROUGH: Do you have any specific law enforcement experience or training?

MR. HATCHER: No, sir.

MR. YARBOROUGH: Want me to start introducing evidence now, or do you want me to wait?

MR. HASTY: I was just trying to authenticate the photos at this time. I believe he's properly done that. I would ask the Chairman to rule on it. It's up to him how he'd like to proceed from there.

CHAIR HUMPHREY: He will be available to us later if you need him sir, if that's okay with you.

MR. YARBOROUGH: I'll call him back.

CHAIR HUMPHREY: Yeah. Alright. Thank you, sir. Okay. Are we still going page for page, or are we done with that?

MR. HASTY: No, at this time we're back to the record. I think the Chairman has indicated the photos have been properly authenticated. Are there further objections to the photograph?

MR. YARBOROUGH: There are in regards to the methods by which Mr. Hatcher gained access to the property. I will move that they be excluded for those reasons, but I'll have to cross examine Mr. Hatcher first. That way we'll see the details.

MR. HASTY: Do you want to accept this into the record now, at this point?

CHAIR HUMPHREY: Yeah. Accepted. Uh, where were we.

MR. HASTY: Anything further, Ms. Speicher?

MS. SPEICHER: I have nothing further.

CHAIR HUMPHREY: Nothing further? Alright. Sir?

MR. YARBOROUGH: I will call for my first witness, uh, George Hatcher. Um, Mr. Chairman, from time to time I'm going to be approaching the witness stand to present documents.

CHAIR HUMPHREY: Okay.

MR. YARBOROUGH: Mr. Hatcher, I'm going to show you a document that will be identified as exhibit number one. Can you identify this document?

MR. HATCHER: Yes, sir. That's my Notice of Violation to the Hamptons regarding this property.

MR. YARBOROUGH: Mr. Chairman, I would move to introduce into evidence exhibit number one.

CHAIR HUMPHREY: Alright.

(Inaudible)

MR. YARBOROUGH: Looking at this violation, and this is the Notice of Violation that we're here to consider. Is that correct, Mr. Hatcher?

MR. HATCHER: Yes.

MR. YARBOROUGH: Looking at this violation, what you have said is having a firing range on a property without an approved site plan or permits and without meeting the requirements of the public county ordinance. More specifically, an outdoor firing range must be on a lot within a minimum of 200 acres. Is that correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: Your violation stems from the fact that this firing range is not on a 200 acre lot, correct?

MR. HATCHER: Well, yes, that's part of it.

MR. YARBOROUGH: What's the other part of it?

MR. HATCHER: That it doesn't have an approved site plan or permits, or meeting the requirements of the ordinance.

MR. YARBOROUGH: Do you know when, do you have any personal knowledge of when this property was developed as a firing range? This portion of the property was developed as a firing range?

MR. HATCHER: Not specifically dates, I would say, from what I've gathered within the last year or two.

MR. YARBOROUGH: The last year or two? The last year or two would fall somewhere after, we're going to say the adoption date was what, June 17 or June 20? Which is it? June 17th. The last year or two would be sometime after June 17, 2013. Is that your testimony?

MR. HATCHER: Yes.

MR. YARBOROUGH: And is this the basis for you entering this Notice of Violation?

MR. HATCHER: Yes.

MR. YARBOROUGH: Now, your action... The action to correct the violation is to remove the firing range from the property, is that correct?

MR. HATCHER: Right.

MR. YARBOROUGH: What does that mean? What would that entail?

MR. HATCHER: My basis for this violation notice was there was some commercial activity going on with this firing range. So, I'm addressing that part of the firing range part of it. Like, as the commercial part of it.

MR. YARBOROUGH: Okay, so let me ask you this. Would it meet your criteria for removing the violation if no commercial activity occurred within the firing range? Would that satisfy your notice of violation?

MR. HATCHER: Yes sir.

MR. YARBOROUGH: The date of this Notice of Violation is 5/6/2015, correct?

MR. HATCHER: Yes sir.

MR. YARBOROUGH: And what is the date of inspection shown on this document?

MR. HATCHER: Same day.

MR. YARBOROUGH: And when is the first time you received notice that there might be some sort of problem for which you have jurisdiction in the area of 400 Karen Street?

MR. HATCHER: It was around April 29th. I received a phone call about some truck activity.

MR. YARBOROUGH: From whom did you receive that?

MR. HATCHER: It, it was a lady that didn't want to give her name.

MR. YARBOROUGH: It was an anonymous tip?

MR. HATCHER: Yes, anonymous.

MR. YARBOROUGH: Okay. And as a result of that communication what did you do?

MR. HATCHER: I went out to the property and investigated the complaint. I saw a site, a home building site there. I thought, well, there's truck activity because someone's building a house back here. But, and I, let it go like that, you know. I did nothing else after that. Then I received another phone call from another member of the planning department saying he received a phone call about a firing range out there. So I contacted Melissa Joyner from DENR and had her to go out there because I figured that would be something she would deal with. She went out there and she notified me that there was a firing range out there.

MR. YARBOROUGH: Well, first time you went out there was April. Was the second time you went out there May 6?

MR. HATCHER: Yes

MR. YARBOROUGH: And you went out there because Melissa Joyner advised you that there was a firing range out there?

MR. HATCHER: Right, and she was going out to do an inspection, so I met her out there and looked at the property.

MR. YARBOROUGH: When did Ms. Joyner obtain this information?

MR. HATCHER: I would say sometime around the first of May. I'm not exactly sure when I called her, or when she was notified.

MR. YARBOROUGH: Did she go on the Hampton's property?

MR. HATCHER: Yes.

MR. YARBOROUGH: Did she have a search warrant or permission from the Hamptons?

MR. HATCHER: Not that I know of, but I asked her what authority she had to go on that property. She said she had all the authority she needed to go on the property.

MR. YARBOROUGH: Now I want to show you a document that's marked exhibit number two. Now, can you identify that document?

MR. HATCHER: Right, that's an Administrative Search Warrant that I obtained the day I was meeting her—Ms. Joyner—out there.

MR. YARBOROUGH: Mr. Chairman, I would move to enter this as evidence and publish it to the board members.

CHAIR HUMPHREY: Okay.

MR. YARBOROUGH: This administrative search warrant was issued at 8:45 a.m., is that right?

MR. HATCHER: Yes, sir.

MR. YARBOROUGH: And it was served at 1:00 p.m. that same day?

MR. HATCHER: Eleven.

MR. YARBOROUGH: That's eleven? You served it at eleven p.m.?

MR. HATCHER: eleven a.m. Should've been a.m.

MR. YARBOROUGH: Mr. Hatcher, I'm not going to try to confuse you. This is a point that's bothered me since I started looking at it. I really think it might be one dot dot zero zero.

MR. HATCHER: Yeah, yeah. (laughs) You're right.

MR. YARBOROUGH: I didn't want to confuse you, I just kept thinking was it eleven a.m.?

MR. HATCHER: It was one p.m.

MR. YARBOROUGH: And were you accompanied by Ms. Joyner?

MR. HATCHER: That's true.

MR. YARBOROUGH: Now I'm gonna show you a document that's been marked exhibit number 3. I apologize, somehow the copies didn't get marked.

CHAIR HUMPHREY: Thank you.

MR. YARBOROUGH: Is this your affidavit to obtain the search warrant?

MR. HATCHER: Yes.

MR. YARBOROUGH: And this affidavit was sworn to on May 6, 2015, is that correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: And it was based on Melissa Joyner from NC DENR observing that land disturbance occurred on the property? Is that correct?

MR. HATCHER: That's right.

MR. YARBOROUGH: And those were the facts you provided to the magistrate to obtain the warrant. Now do you know how Ms. Joyner obtained this information?

MR. HATCHER: She had been out there prior to that and wanted to go back out there.

MR. YARBOROUGH: And were those the exclusive facts used to determine probable cause to execute the search warrant?

MR. HATCHER: Yes.

MR. YARBOROUGH: Alright. Do you have authority to issue citations for land disturbance, or is that for DENR?

MR. HATCHER: That's, uh, DENR.

MR. YARBOROUGH: I want to show you a document marked exhibit number four. If you'll see at the bottom it says CC; George Hatcher email. You see that?

MR. HATCHER: Yes.

MR. YARBOROUGH: Mr. Chairman, I'd like to enter this document as exhibit number four into the record and publish it to the board's minutes.

CHAIR HUMPHREY: Alright.

MR. YARBOROUGH: Looking at exhibit four, down at the bottom it says the report was prepared by Melissa Joyner and shows you as present. Is that correct?

MR. HATCHER: Right.

MR. YARBOROUGH: And it shows the date as being May 6, 2015, correct?

MR. HATCHER: Right.

MR. YARBOROUGH: And it shows time arriving on site as 1:00 p.m. And by the way, that's how I figured it out, that it was 1:00 p.m. on the other report. So you arrived with her, right?

MR. HATCHER: Yes.

MR. YARBOROUGH: And did you leave with her?

MR. HATCHER: No, she was still there when I left.

MR. YARBOROUGH: Okay, when did you leave?

MR. HATCHER: Probably about 1:45 p.m.

MR. YARBOROUGH: And during that period of time did you take certain photographs of the property?

MR. HATCHER: Yes.

MR. YARBOROUGH: And did you inspect their, uh, the Hampton's property?

MR. HATCHER: Uh, I took, yes, I did.

MR. YARBOROUGH: And did you go into areas that you felt needed a search warrant to go in to?

MR. HATCHER: Yes.

MR. YARBOROUGH: Could you observe any sign of a firing range from the street?

MR. HATCHER: Yes. From the gate.

MR. YARBOROUGH: Could you see any structures or any evidence from the street?

MR. HATCHER: Yes. You could see the structures.

MR. YARBOROUGH: And that's all?

MR. HATCHER: Well, and the driveway.

MR. YARBOROUGH: And is this Notice of Violation based on your inspection pursuant to that search warrant?

MR. HATCHER: Yes.

MR. YARBOROUGH: Uh, did you ever ask the Hamptons for permission to go on the property?

MR. HATCHER: No.

MR. YARBOROUGH: Did the Hamptons ever give you permission to go on the property?

MR. HATCHER: No.

MR. YARBOROUGH: On June 17, 2013, do you know of your own personal knowledge that there was a firing range located on the Hampton's property?

MR. HATCHER: No.

MR. YARBOROUGH: Uh, have you reviewed any financial records of the Hamptons, or do you have any evidence that it was operated commercially?

MR. HATCHER: There, there was a website that I went to that advertised concealed handgun courses and there was a lot of uhh, conversation on that website regarding the building of that range and people using it, and that sort of thing.

MR. YARBOROUGH: And, uh, on that website, did it have anything to do with operating that site as a commercial property?

MR. HATCHER: Yes.

MR. YARBOROUGH: What does it say?

MR. HATCHER: It's talking of courses, dates, fees, shows the facility. Pictures of the facility.

MR. YARBOROUGH: Does it say commercial activity on that site?

MR. HATCHER: No.

MR. YARBOROUGH: Uh, prior to June 17th there was an interim policy established by the director of planning, correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: Showing you exhibit number five. Is that the policy directive?

MR. HATCHER: Yes.

MR. YARBOROUGH: It is?

MR. HATCHER: Yes.

MR. YARBOROUGH: Mr. Chairman, I move to introduce to the record exhibit number 5 and, um, publish it to the board members.

CHAIR HUMPHREY: Alright. Thank you.

MR. YARBOROUGH: This policy directive was from Tom Lloyd to the Planning & Inspections Department, correct?

MR. HATCHER: Correct.

MR. YARBOROUGH: And it's telling you how—it's telling the staff—how you should address outdoor firing ranges prior to an adoption of an ordinance relating to that. Is that correct?

MR. HATCHER: Yes sir.

MR. YARBOROUGH: And does it say that under the terms of our zoning ordinance, all uses of land must be allowed?

MR. HATCHER: Yes sir.

MR. YARBOROUGH: And does it say until such time that specific outdoor shooting ranges ordinances are adopted or otherwise addressed, outdoor shooting ranges will be reviewed in accordance with the standards of amusement outdoor?

MR. HATCHER: Yes.

MR. YARBOROUGH: And that means conducted outside of a building for profit. Is that correct? Section 920 says, conducted outside for profit.

MR. HATCHER: Right.

MR. YARBOROUGH: And you have no specific evidence that this range was ever operated for profit?

MR. HATCHER: Other than the website advertising the courses and on the 9th of May I was out there when these courses were advertised. At 1:30, I heard some commands being given. The gate was open. There were people back there. I heard more commands were given, then shortly after firing commenced. So, um, I would think that'd kind of made me believe on May 9th we had a small arms training course taking place and it was on that site.

MR. YARBOROUGH: For profit?

MR. HATCHER: For profit.

MR. YARBOROUGH: Did you see this—did you see this occur on the property?

MR. HATCHER: No, I heard it.

MR. YARBOROUGH: You heard firing, correct?

MR. HATCHER: Yes, and commands

MR. YARBOROUGH: And you heard commands. Kay. Now, I want to direct your attention to this document. By the way, this document is called an Erosion and Sedimentation Control Plan for David and Mary Hampton, if you'll notice what it says on there. So let's look up there. It is my understanding, were you standing somewhere near their house?

MR. HATCHER: I was standing in the cul de sac, yes sir.

MR. YARBOROUGH: Okay; and it's my understanding that somewhere up there, Mark Kirby... Okay, that somewhere up here Mark Kirby has a firing range is that correct?

MR. HATCHER: I don't know where Mark Kirby's firing range is. I thought it was off to the west of the property.

MR. YARBOROUGH: Okay, okay. Now, can you say for certainty that those commands or shooting weren't coming from Mark Kirby's property?

MR. HATCHER: Yes, sir.

MR. YARBOROUGH: Why so?

MR. HATCHER: Because I could hear it. I was looking in that direction and I could hear commands coming from down that dirt road and commands coming from the end of that dirt road at that cul de sac.

MR. YARBOROUGH: So other than what you heard, other than what you heard, and other than what you read on a website, you have no knowledge of whether anything was being conducted out there for profit? Is that correct?

MR. HATCHER: No sir.

MR. YARBOROUGH: As far as you know, David Hampton could be giving a command to Mary Hampton, correct?

MR. HATCHER: There was quite a few rounds going off. There was more than one weapon being fired at that time. It was a volley, you know?

MR. YARBOROUGH: Okay. And are you familiar with automatic weapon fire?

MR. HATCHER: Yes.

MR. YARBOROUGH: And are you familiar with semi automatic fire?

MR. HATCHER: Yes.

MR. YARBOROUGH: And are you familiar with people firing multiple guns at one time?

MR. HATCHER: Yes.

MR. YARBOROUGH: And you know how to tell the difference?

MR. HATCHER: Well, yes. You can hear the difference. Sounds like popcorn going off.

MR. YARBOROUGH: Now, I'm going to show you what's named exhibit number six. Do you recognize this?

MR. HATCHER: Yes.

MR. YARBOROUGH: It's the zoning ordinance amendment you were talking about. Is that correct?

MR. HATCHER: Right.

MR. YARBOROUGH: Mr. Chairman, I move to have exhibit number six entered as evidence.

CHAIR HUMPHREY: Entered.

MR. YARBOROUGH: Now, there's a specific exclusion for people firing on outdoor firing ranges, uh, excuse me, for the purposes of this ordinance—it says in the middle—outdoor firing ranges are a principal use of the property and therefore shall not be considered incidental or accessory. Now, there's a residence on that property, correct?

MR. HATCHER: Uhh, there is now. When I was out there it was five or six different lots and it's since been combined. It's all one now.

MR. YARBOROUGH: And did you see any activity such as timbering or farming over there?

MR. HATCHER: No.

MR. YARBOROUGH: Were you aware that it was registered as a farm?

MR. HATCHER: Uhh, after I, uh, checked about the building, I discovered that it was a farm.

MR. YARBOROUGH: And it goes on to say, this ordinance is exclusive of occasional target shooting on the property by owners or leasers of the property for purposes of hunting, or temporary turkey shoots conducted on no more than 12 days per calendar year. Is that correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: Now you're pretty sure that wasn't a turkey shoot out there, right?

MR. HATCHER: Pretty sure of what?

MR. YARBOROUGH: Pretty sure it wasn't a turkey shoot going on out there.

MR. HATCHER: Oh, no. No sir.

MR. YARBOROUGH: And you don't know if it was the siting of weapons, do you?

MR. HATCHER: I don't.

MR. YARBOROUGH: And you don't know for sure who was shooting out there, right?

MR. HATCHER: Correct.

MR. YARBOROUGH: I want to show you a document marked exhibit number 7. Are you familiar with this Cumberland County Firearms Ordinance?

MR. HATCHER: Um, I know it exists. I'm not real familiar with it.

MR. YARBOROUGH: But you've read it?

MR. HATCHER: Yes.

MR. YARBOROUGH: Mr. Chairman, I move to enter the document titled exhibit 7 into the record.

CHAIR HUMPHREY: Entered.

MR. YARBOROUGH: Now, does, does this firearm ordinance prohibit anyone from shooting on uh their own property if they do it under certain circumstances?

MR. HATCHER: No.

MR. HASTY: Objection. He's testified he doesn't—that he's not overly familiar with the ordinance.

CHAIR HUMPHREY: Okay. Entered into the record.

MR. YARBOROUGH: Well, then you need to read it. Let me, let me ask you this. When you issued this Notice of Violation, were you aware of this ordinance? Of this county ordinance?

MR. HATCHER: Yes.

MR. YARBOROUGH: Were you aware of the interplay of this county ordinance with the firing range ordinance?

MR. HATCHER: Yes.

(inaudible)

MR. YARBOROUGH: Does the firearm ordinance limit the discharge of firearms only to officially permitted firing ranges?

MR. HATCHER: No, this ordinance limits all firearms.

MR. YARBOROUGH: Uh, is it your opinion that if this range was not used in a for-profit context prior to June 17, 2013, it would be considered a preexisting nonconforming use?

MR. HATCHER: Well, what was the date again?

MR. YARBOROUGH: June 17, 2013.

MR. HATCHER: Uh, no, there still would've had to have been a site plan, requested or approved for it.

MR. YARBOROUGH: So, as I understand it, to get to that opinion, you have to look at the 2005 ordinance. Is that an ordinance requirement?

MR. HATCHER: Right. Uh, nonresidential use.

MR. YARBOROUGH: And you would have to look at Mr. Lloyd's policy directive, right?

MR. HATCHER: Mhmm.

MR. YARBOROUGH: You would have to look at the 2013 ordinance, correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: And you'd have to look at the firearms ordinance of the county, is that correct?

MR. HATCHER: Yes.

MR. YARBOROUGH: No further questions.

CHAIR HUMPHREY: Okay. Anyone on the board have any questions? No? Okay. Thank you Mr. Hatcher.

MR. LOTT: Neil, would you give us a summary of what we just went through?

MR. YARBOROUGH: I will at closing. (Laughs) I would like to call Jennifer Hernandez, if I might.

CHAIR HUMPHREY: Yes sir, okay. Ms. Hernandez, we need to put you under oath. Once we put you under oath, you'll remain under oath for the duration of this meeting if we have to call you back. Ok?

Chair Humphrey swore in Jennifer Hernandez.

MR. YARBOROUGH: Please state your name for the record.

MS. HERNANDEZ: My name is Jennifer Hernandez.

MR. YARBOROUGH: Do you know the Hamptons...

CHAIR HUMPHREY: Excuse me, sir. Would you also indicate your address please? We need your name and address. And for anyone coming forth from here on, we will need your name and address for the record.

MS. HERNANDEZ: My name is Jennifer Hernandez. I live at 5803 Rainsford Drive, Fayetteville, NC 28311.

CHAIR HUMPHREY: Thank you.

MR. YARBOROUGH: Do you know the Hamptons?

MS. HERNANDEZ: I do.

MR. YARBOROUGH: Are they friends of yours?

MS. HERNANDEZ: They are.

MR. YARBOROUGH: Have they previously allowed you to discharge firearms on their property?

MS. HERNANDEZ: Yes.

MR. YARBOROUGH: Did they have portions of their property set up like a firing range?

MS. HERNANDEZ: They do.

MR. YARBOROUGH: Showing you the document marked exhibit 8, is that you firing a rifle on their property?

MS. HERNANDEZ: Yes.

MR. YARBOROUGH: Uh, move to introduce and publish to the board exhibit 8.

CHAIR HUMPHREY: Okay.

MR. YARBOROUGH: Would you look at the date at the bottom? Is that August 16, 2012?

MS. HERNANDEZ: It is.

MR. YARBOROUGH: Do you remember this picture?

MS. HERNANDEZ: I sure do.

MR. YARBOROUGH: Does this picture accurately reflect what was going on at the time?

MS. HERNANDEZ: Yes, sir.

MR. YARBOROUGH: Who's the gentleman with you?

MS. HERNANDEZ: That's Dave Hampton

MR. YARBOROUGH: Was he instructing you on the safe handling of that rifle?

MS. HERNANDEZ: Yes he was.

MR. YARBOROUGH: Did you discharge that rifle in a safe manner?

MS. HERNANDEZ: I did.

MR. YARBOROUGH: Did the Hamptons charge you any money for allowing you to shoot the rifle on their property?

MS. HERNANDEZ: No.

MR. YARBOROUGH: Did the Hamptons charge you any money for instructing you in its safe handling?

MS. HERNANDEZ: No.

MR. YARBOROUGH: Did they ask you for any type of financial consideration for any of those such things?

MS. HERNANDEZ: No.

MR. YARBOROUGH: Why do you think they let you fire the rifle on their property? And why do you think they instructed you on its safe handling?

MS. HERNANDEZ: Because they're my friends and they want me to be safe with weapons.

MR. YARBOROUGH: Thank you. No further questions.

MR. HASTY: Mr. Chairman, would you like me to cross examine on behalf of the board?

CHAIR HUMPHREY: Please.

MR. HASTY: Ms. Hernandez, you don't own any interest in the property, do you? The Hampton property.

MS. HERNANDEZ: No.

MR. HASTY: Ms. Hernandez, you submitted an affidavit to the Hamptons in this case, right?

MS. HERNANDEZ: Yes.

MR. HASTY: And you indicated that you were at the range the first time in 2012. Is that correct?

MS. HERNANDEZ: I, uh, have been at the property since they've had the property.

MR. HASTY: Okay. Do you recall in your affidavit saying July 2012?

MS. HERNANDEZ: Yeah. July.

MR. HASTY: And have they added any shooting stations in the time you've been out there? Since July 2012?

MS. HERNANDEZ: And by shooting stations, are you talking about buildings?

MR. HASTY: Yes, any structures.

MS. HERNANDEZ: Since July? Have any structures?...

MR. HASTY: Yes. July.

MS. HERNANDEZ: Yes.

MR. HASTY: Nothing further.

CHAIR HUMPHREY: I have one question. Do you reside close in proximity to this property?

MS. HERNANDEZ: Uh, no sir.

CHAIR HUMPHREY: You do not. Okay. Thank you. Anybody? (Addressing the board) No? Okay.

MR. YARBOROUGH: Thank you, Ms. Hernandez. I would like to call Mark Kirby, please.

CHAIR HUMPHREY: Alright. Mr. Kirby?

MR. YARBOROUGH: Please state your name and address for the record please? And be sworn.

CHAIR HUMPHREY: State your name and address for the record.

MR. KIRBY: My name is Reginald Mark Kirby and I live at 3802 Pleasantview Drive, Fayetteville, NC.

Chair Humphrey swore in Reginald Mark Kirby.

MR. YARBOROUGH: Um, do you know the Hamptons?

MR. KIRBY: Yes.

MR. YARBOROUGH: How do you know the Hamptons?

MR. KIRBY: Uh, well we met.. We're friends. We met through the area about a month or two ago and been friends since.

MR. YARBOROUGH: And do you often engage in shooting activities on your property?

MR. KIRBY: Yes, sir.

MR. YARBOROUGH: And prior to June 17, 2013, have you engaged in target shooting on the Hampton's property on Karen Street?

MR. KIRBY: Yes, sir I have.

MR. YARBOROUGH: Was it sometime in 2012?

MR. KIRBY: It was.

MR. YARBOROUGH: Was a portion of the Hampton's property on Karen Street set up like a firing range?

MR. KIRBY: Yes, sir, it was.

MR. YARBOROUGH: Did Mr. Hampton instruct you on the safe handling of firing arms and shooting conditions?

MR. KIRBY: Yes he did.

MR. YARBOROUGH: Did the Hamptons charge you anything for target shooting on their property?

MR. KIRBY: No sir.

MR. YARBOROUGH: Did Mr. Hampton charge you anything for any instruction?

MR. KIRBY: No sir.

MR. YARBOROUGH: Did the Hamptons ask you for any financial consideration on any of those things? Why do you think they would allow you to target shoot on their property and why do you think they instructed you on the safe handling of said firearms?

MR. KIRBY: Because we're friends. And he's looking out for us.

MR. YARBOROUGH: No further questions.

CHAIR HUMPHREY: Hold on one second, sir. Board members, any questions from the board members?

MR. HASTY: May I?

CHAIR HUMPHREY: Of course, go ahead.

MR. HASTY: Mr. Kirby, you don't have any financial interests in the Hampton property, do you?

MR. KIRBY: No sir.

CHAIR HUMPHREY: Thank you Mr. Kirby, thank you sir.

MR. YARBOROUGH: I'd like to call Mary Hampton. Please state your name and address for the record.

MR. HASTY: Mary Derette Hampton, 135 Nantahalalah Drive, Linden, North Carolina 28356.

MR. YARBOROUGH: How are you employed?

CHAIR HUMPHREY: Um, was she sworn in yet?

MR. YARBOROUGH: No.

Chair Humphrey swore in Mary Hampton.

MR. YARBOROUGH: Alright, I'm sorry. Um, again how are you employed?

MRS. HAMPTON: I work at Goodyear Tire and Rubber Company.

MR. YARBOROUGH: Okay. And prior to that what did you do?

MRS. HAMPTON: I, uh, was a first sergeant in the United States Army.

MR. YARBOROUGH: As a part of your military training and duties, did you handle firearms?

MRS. HAMPTON: Yes, for over twenty years.

MR. YARBOROUGH: Was your husband also in the army?

MRS. HAMPTON: Yes, he was also a first sergeant, United States Army.

MR. YARBOROUGH: And as a part of his military duties and training, did he handle firearms?

MRS. HAMPTON: Yes, for over twenty four years.

MR. YARBOROUGH: Did he handle firearms in combat situations?

MRS. HAMPTON: Yes. He has multiple tours to Iraq.

MR. YARBOROUGH: Are you and your husband the owners of the 74-acre tract of land that we've been referring to as the Karen Street Property?

MRS. HAMPTON: Yes, we are.

MR. YARBOROUGH: When did you buy the property?

MRS. HAMPTON: September 2011.

MR. YARBOROUGH: And for what purpose did you buy this property?

MRS. HAMPTON: We purchased the property for a retirement home and for farming purposes.

MR. YARBOROUGH: And what attributes of this property attracted you to it?

MRS. HAMPTON: It was an area of Cumberland County we, uh, enjoyed living in. Uh, it also afforded us a place to build our dream home, and farming, and other activities we enjoy such as shooting. We wanted to have an area we could have a firing range.

MR. YARBOROUGH: And was the property suitable for your desires?

MRS. HAMPTON: Yes, it was.

MR. YARBOROUGH: Uh, have you registered this property with the United States, uh, Department of Agriculture as a farm?

MRS. HAMPTON: Yes, I have.

MR. YARBOROUGH: And do you own other farms?

MRS. HAMPTON: Um, yes I do. Another one in the state of Mississippi.

MR. YARBOROUGH: I'm going to show you a document; exhibit number nine. Can you identify this document?

MRS. HAMPTON: Yes, it's a Produce Farm Data Report for the year, showing my farms in Mississippi and Cumberland County.

Mr. Chairman, I move to enter exhibit number nine into the record.

CHAIR HUMPHREY: Entered. Okay.

MR. YARBOROUGH: At the moment are you actively engaged in farming on the Karen Street property?

MRS. HAMPTON: No.

MR. YARBOROUGH: Why not?

MRS. HAMPTON: Um, when we received our citation from DENR, we halted all plant bearing operations until it was, uh, until it was resolved. We got it resolved with DENR. We just put off plant bearing operations until this matter is settled.

MR. YARBOROUGH: And were those land clearing activities part of your farming plans?

MRS. HAMPTON: Yes it is.

MR. YARBOROUGH: I would like to show you a document marked exhibit number nine. Can you identify this document?

MRS. HAMPTON: This is our Letter of Approval from North Carolina Department of Environment and Natural Resources. Um, with our approval plan, specifically the plan for the range area that was under uh violation.

MR. YARBOROUGH: Any matters that you had with DENR regarding any land clearing activities have been resolved, is that correct?

MRS. HAMPTON: They have been completely resolved.

MR. YARBOROUGH: Showing you a photograph marked exhibit number ten. Can you identify that document?

MRS. HAMPTON: I can. This is my husband David and our friend Marcus Heart shooting on the range.

MR. YARBOROUGH: And looking down below at that, is there a .. who took that photograph?

MRS. HAMPTON: I did.

MR. YARBOROUGH: And the front photographs? That you submitted? Did you take those?

MRS. HAMPTON: I did.

MR. YARBOROUGH: So you took those?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: And what date is shown on this document?

MRS. HAMPTON: August 8, 2012.

MR. YARBOROUGH: Is that accurate as to the date that the picture was taken?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: Uh, was this photograph taken at the firing range portion of your farm?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: Um, I want to show you a photograph marked exhibit number 11 and ask you if you can identify this document.

MRS. HAMPTON: Yes I can. This is a photo of Ashley Louk, she was a personal friend of David's. Um, from in the Army. Uh, the child of a friend in the Army. She is twenty one years old now and was considering going into the military, but had never fired a pistol or rifle before.

MR. YARBOROUGH: And Mr. Chairman I move to introduce exhibit number eleven and publish it to the board.

CHAIR HUMPHREY: Entered.

MR. YARBOROUGH: Um, and did you um, the picture, e number ten. Did either you or your husband charge the gentleman that was firing on 8/8/12 uh at the range, or money? Did you seek any financial consideration from him?

MRS. HAMPTON: No.

MR. YARBOROUGH: What about this young lady that's shown on 4/7/13?

MRS. HAMPTON: No.

MR. YARBOROUGH: And uh, no consideration from Ms. Hernandez?

MRS. HAMPTON: No, none.

MR. YARBOROUGH: So why'd you let these people shoot on your range?

MRS. HAMPTON: They expressed that they were friends. We know them, trust them, they have an interest in participating in shooting activities. We felt that we had the best opportunity and place for them to safely conduct those activities.

MR. YARBOROUGH: And uh is your husband in fact a qualified firearms instructor?

MRS. HAMPTON: He is. He's an NRA certified safety, uh, range safety. And also a NC concealed handgun instructor.

MR. YARBOROUGH: Is the primary purpose of your Karen Street property to be one of conducting a commercial firing range?

MRS. HAMPTON: No.

MR. YARBOROUGH: Is it your purpose tonight to find out what you can legally do here and what you can legally not do here?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: And what is the primary purpose of your Karen Street property?

MRS. HAMPTON: It is our—going to be our residence. The house is under construction at this time. And for farming operations is the primary purpose.

MR. YARBOROUGH: Is the range incidental to the enjoyment of your home and this property?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: Prior to June 17 2013 did you set up a portion of your property as a range to be used for discharging firearms?

MRS. HAMPTON: Yes, as early as February 2012.

MR. YARBOROUGH: Have you ever charged anybody anything for using this range?

MRS. HAMPTON: No.

MR. YARBOROUGH: Did anybody from the planning department or county ever inform you of any necessity for submitting any type of site plan to them before June 17, 2013?

MRS. HAMPTON: No. I applied for multiple permits, not only for farming but also residential and was never informed of any additional permits.

MR. YARBOROUGH: Did you apply for permits with the Inspections Department? Or was it the Health Department?

MRS. HAMPTON: I've applied for zoning, farm exemption for building permit, we applied for an electrical permit for the farm building. We also applied for a septic approval permit, and a well approval permit.

MR. YARBOROUGH: And did you take those to the old courthouse?

MRS. HAMPTON: Here. Downstairs.

MR. YARBOROUGH: Downstairs. Did anyone tell you that you needed to have your range approved? Or site plan approved?

MRS. HAMPTON: No, and uh, when we got the septic approval, we had to do that twice because we had to find a second location. It was an extended process and an enforcer code officer came out to the site. They had seen the property prior, and it was still never mentioned, even though we discussed our entire plan with them. Not only with our range, but with our home.

MR. YARBOROUGH: Is it your testimony that uh your property is a bona fide farm?

MRS. HAMPTON: It is.

MR. YARBOROUGH: Have you ever charged anybody anything for using this range?

MRS. HAMPTON: No

MR. YARBOROUGH: Did you hear Mr. Hatcher say anything about May 9, 2015?

MRS. HAMPTON: I did.

MR. YARBOROUGH: Were you on the property on May 9, 2013?

MRS. HAMPTON: We were.

MR. YARBOROUGH: Okay, and what were you doing on the property on May 9, 2013?

MRS. HAMPTON: We were actually, myself David and Mr. Robert Dinsmore were pulling a bulldozer out of a portion of the property where it'd got stuck in the mud while we were trying to clear farmland.

MR. YARBOROUGH: Was there any firearm activity on your property on May 9, 2013?

MRS. HAMPTON: No. In fact, Cumberland County Sheriffs had come that day to complain about noise. About bullets being fired, weapons being fired, they came out and responded and talked to us.

MR. YARBOROUGH: But there was firing in the neighborhood?

MRS. HAMPTON: There was. There's always firing in the neighborhood.

MR. YARBOROUGH: Okay. There's at least...

MRS. HAMPTON: There are several ranges surrounding the entire area.

AUDIENCE MEMBER: Do you mean May 9, 2015? You keep saying May 9, 2013.

MR. YARBOROUGH: I'm sorry, May 9 2015. Thank you. Um, Uh, I noticed there were some photographs of some sort of commemoration of one of your friends. Uh, what was that for and why did you establish a commemorative plaque for your friend?

MRS. HAMPTON: That plaque is for our friend, Robert Dinsmore, uh, he's a dear friend of David and I's. Without the help of him we wouldn't be able to fulfill our dream home and we wanted to commemorate that friendship and his dedicated service to the United States defending the United States.

MR. YARBOROUGH: Is this plaque anywhere it can be seen without someone trespassing on your property?

MRS. HAMPTON: No.

MR. HASTY: Objection. Trespassing? Isn't that an overstep?

CHAIR HUMPHREY: I'm sorry, I couldn't hear you Mr. Hasty.

MR. HASTY: The question here is trespass, with the implication that photographs were a result of trespassing and that's not in the evidence.

MR. YARBOROUGH: I will rephrase the question. I will not use the word trespass. Would someone have to go upon your property to take this photograph?

MRS. HAMPTON: Correct. It is not viewable from the public road where my property begins. It is not viewable from there.

MR. YARBOROUGH: Is this a personal sentiment of yours?

MRS. HAMPTON: Yes it is.

MR. YARBOROUGH: Is this plaque used for commercial purposes?

MRS. HAMPTON: No.

MR. YARBOROUGH: Do you enjoy using firearms on your property?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: Why have you gone to so much trouble to develop such an elaborate area for use of firearms on your farm?

MRS. HAMPTON: My husband and I truly enjoy firearm activities and sport. We chose to have a safe environment where our friends and family could discharge firearms without the possibility of endangering themselves, our friends and our neighbors.

MR. YARBOROUGH: Now I noticed that the name, Mr. Hatcher mentioned a company on a website. Was that your company?

MRS. HAMPTON: It was.

MR. YARBOROUGH: He said, I believe he said it advertised concealed carry courses and firearms training.

MRS. HAMPTON: Yes it did.

MR. YARBOROUGH: Now does your husband have access to a commercial firing range in harnett county for such instruction?

MRS. HAMPTON: Yes he does.

MR. YARBOROUGH: Have you ever allowed any commercial firearms training to occur on your property?

MRS. HAMPTON: No.

MR. YARBOROUGH: What was the primary purpose of the business entity that was shown on your website?

MRS. HAMPTON: It was an attempt to register as a small disabled veteran owned business through Veterans Affairs in order to gain stand-alone contracts from the United States Government; specifically consulting, first aid, security, firearms and business facility management which my degree is in.

MR. YARBOROUGH: Have you recently taken down the website?

MRS. HAMPTON: I have.

MR. YARBOROUGH: Why?

MRS. HAMPTON: It was causing too much confusion.

MR. YARBOROUGH: Were people confusing that site and your range?

MRS. HAMPTON: They were.

MR. YARBOROUGH: Do you still wish to use your property on Karen Street to shoot with your friends and family?

MRS. HAMPTON: Yes.

MR. YARBOROUGH: Other than farming, do you have any intent to use the Karen Street property for making money?

MRS. HAMPTON: No.

MR. YARBOROUGH: Thank you. No further questions.

MS. SPEICHER: I..

CHAIR HUMPHREY: Yes, go ahead.

MS. SPEICHER: First, regarding the website, Mrs. Hampton, if you weren't charging for gun activities or firing activities on this property, or in Cumberland County, where did it occur?

MRS. HAMPTON: The instruction actually occurred at an offsite location other than Karen Street.

MS. SPEICHER: Do you have proper permitting and approval for that location?

MRS. HAMPTON: Um, the business owner gave us permission to use their facilities.

MS. SPEICHER: Is that located in Cumberland County?

MRS. HAMPTON: Um, yes.

MS. SPEICHER: Okay. Um, do you remember being present at the County Board of Adjustment Meeting on April 18, 2013?

MRS. HAMPTON: Yes.

MS. SPEICHER: And testified for Mark Kirby?

MRS. HAMPTON: I did.

MS. SPEICHER: And yet, you just testified with Mr. Yarborough that you had no knowledge that permits or approvals were required?

MRS. HAMPTON: Since I was not applying for a commercial.. since we were not using our range for commercial purposes, I did not feel that it applied. Friends and family were shooting out there and we did not charge anybody to shoot on our range.

MS. SPEICHER: And in the minutes of that meeting, and it could just be a play on words, but you indicate that you were currently planning on developing your property for your private use, and your home. That you had no objection to Mr. Kirby's operation.

MRS. HAMPTON: That is correct. It was ongoing. We were already in the middle, that's... when Mr. Mark Kirby testified today... I met Mr. Kirby when I drove the wrong direction on a bulldozer and took out some of his trees, and that's how we met.

MS. SPEICHER: Was your firing range, any part of the range, operations, anything, occurring on this property on April 13, 2013?

MRS. HAMPTON: Yes.

MS. SPEICHER: Thank you.

CHAIR HUMPHREY: Any other questions?

MR. FERGUSON: Question.

CHAIR HUMPHREY: Go ahead, sir.

MR. FERGUSON: What I was trying to get an understanding of... You were mentioning several times about the um, process of permitting. Then I didn't hear you, you kept saying, and I'm trying to understand, did you not then say to them, the board—the zoning board—that you were planning on having one done there? Because you kept saying that they never asked me or never told me that I needed this. Did you mention to them that you had structures set up as a firing range at that time? I mean, when you were doing those permits?

MRS. HAMPTON: What I testified to at that time April 2013, that we were in the process of building our home and I implied that we were going to finish our shooting range. We already had a small burm and just continued to develop it as we continue to today as it's for private use. I had no, David and I's purpose was never to be a commercial range, so we didn't think we'd need a special use permit from the county. I never applied for a special use permit because it didn't apply. Does that answer your question?

MR. FERGUSON: Yes, thank you.

CHAIR HUMPHREY: Anyone else have questions?

MRS. MULLINS: Yes, I do. Umm, before you even started doing any of this, did you happen to check with any of your fellow residents? That might be retired military for PTSD?

MRS. HAMPTON: Ma'am, no. I'm a retired First Sergeant for the United States Army...

MRS. MULLINS: Okay, but did you ask any of your neighbors? Did you ask any of your neighbors how they felt about any of it before you started this?

MRS. HAMPTON: I had spoken to a couple of my neighbors. They came out when the bulldozer arrived. Everybody came out and spoke to David and Marcus and Robert. Um, we let everybody know what we were doing. That we'd bought the entire 74 acre tract and we were going to be building a single family dwelling, um, but I'm not going to ask them if they have PTSD. And until then, up until April with Mark Kirby's hearing, there was only one person in objection to loud noises, but, it's allowed out there. There's no regulation on people shooting in their back yards in rural residential areas. We just went above and beyond what we felt was safe and since it wasn't for a commercial purpose, this is our private property.

MRS. MULLINS: Well I understand that. Um somebody clarify. Im seeing the GIS system is showing 64.44 acres. But this keeps showing 74. That's ten acres difference.

MRS. HAMPTON: Well we recent, eh, uh, it's been beyond recent... several months ago. Was it six months? Past six months. We reconsolidated and that stemmed from us getting our

septic permit from the county. Our septic is actually offsite. We are having to pump approximately 400 feet away to a suitable area, so we reconsolidated all. There were originally five tracts, we had them reconsolidated into one, we paid to have them surveyed, and turned it in to the county many months ago and they still haven't updated their systems. But it has been approved.

MRS. MULLINS: Okay. Do you realize, I'm just asking now, that, how close you are? I drove out there. You're about, uh, 0.9 miles from highway 24. Okay? Within that distance, you have two schools and a library. Actually, about 2 miles from there. Just a .22 shell range goes a mile. It's on the box.

MRS. HAMPTON: Yes. If you're asking if I took those matters into consideration before building and constructing this range, yes, I did. I personally purchased GPS mapping software and paid for the image overlay system just so that I could properly conform to the regulations from the county that were in existence back in 2012. Which, I believe was between 60 to 100 um feet from residential areas and public roads, trajectory, what berms, we took into consideration and how thick the berms needed to be.

MRS. MULLINS: Because higher powered rifles do shoot farther than a mile.

MRS. HAMPTON: That's also not what this hearing is about. I do understand though, and yes, that was taken into consideration. Our berms, our range can match Fort Bragg's range in safety.

MRS. MULLINS: And you also stated that you have one in Mississippi and one here.

MRS. HAMPTON: I have a farm in Mississippi.

MRS. MULLINS: Right, not a shooting range.

MRS. HAMPTON: Correct.

MRS. MULLINS: Alright, uh, is it okay for me to ask who owns the one at 37 PSR located in Bunnlevel?

MRS. HAMPTON: Um, I don't know who owns that property.

MRS. MULLINS: Um, one of your affidavits said you went out there with them. That's why I'm asking.

MRS. HAMPTON: Huh?

MRS. MULLINS: One of the affidavits, tab two, page one. That you ...

MRS. HAMPTON: Yes, we've gone out with friends to PSR 37. Uh, yes, they did, and that was, they wanted to shoot a rifle. At that time we did not feel comfortable that our berms were able to take a rifle round. So, we used our membership rights and went to PSR 37 to shoot at that location.

MRS. MULLINS: Okay. Thank you.

CHAIR HUMPHREY: Okay, no further questions?

MS. SPEICHER: If, if I could get the Board of Adjustments adopted minutes from April 18, 2013, the cover sheet, and page six into the record please?

MR. HASTY: And a few questions on behalf of the board, please?

CHAIR HUMPHREY: Yes.

MR. HASTY: Mrs. Hampton, I believe your uh, the May 21, 2015 letter you've indicated the initial berm was built in June 2012. Is that correct?

MRS. HAMPTON: Initial berm? That's correct.

MR. HASTY: And how many berms do you have now?

MRS. HAMPTON: Now, we have 2 primary backstop berms, but we also have 2 side berm that traverse a whole portion of the range.

MR. HASTY: And can you tell us when those were developed?

MRS. HAMPTON: Those were developed.. those have been improved continuously. We continue to dig out the pond, we've created a pond where we've been getting dirt from to thicken them, so continuously.

MR. HASTY: Alright, so up until now, you're continuing to construct and improve berms?

MRS. HAMPTON: Well, not right now, the last operations have been back in May.

MR. HASTY: May 2015?

MRS. HAMPTON: Yes. We had to stop with the DENR violation in May. Then we had to reroute all of our efforts towards correcting the DENR violation. June 23 is when we finally finished.

MR. HASTY: Of 2015?

MRS. HAMPTON: Right, to correct our DENR violations.

MR. HASTY: Alright. It's been established, but you do not have a permit to operate a firing range?

MRS. HAMPTON: That is correct.

MR. HASTY: And you've not applied for one, correct?

MRS. HAMPTON: Correct.

MR. HASTY: Alright, um, and you did not own the property in 2005, did you?

MRS. HAMPTON: No.

MR. HASTY: So you were not operating a firing range on June 20 2005, correct?

MRS. HAMPTON: that's correct.

MR. HASTY: Did you ever tell George Hatcher not to enter your property?

MRS. HAMPTON: No, well, I know when we met with them on May 11, 2015, in the Code Enforcement Office, I know we asked... We asked if he had a permit, or uh, an Administrative Search Warrant. He said he did, and that met our...

MR. HASTY: Satisfaction was met?

MRS. HAMPTON: Satisfaction. Yes.

MR. HASTY: Did you have any signage posted on your property telling people to keep out?'

MRS. HAMPTON: Yes, there were signs posted all over the cul de sac because we own the entire cul de sac. Posted on multiple trees, and specifically right at the driveway, because at that point we'd already cleared an acre and a half and the sand had been brought in before the construction on the house began.

MR. HASTY: Alright. Mr. Hatcher indicated that he had an Administrative Search Warrant?

MRS. HAMPTON: He did.

MR. HASTY: Alright. And as to whether or not you needed a permit because of commercial use, is that just an assumption you made?

MRS. HAMPTON: Um, from, from the ... When we purchased the land in 2011, we could not find anything in the Cumberland County documents that were available to us that we, for a private range, shooting on our own residential property, that we needed to apply for a permit. When I met Mark Kirby and he informed me of his case, and when we received, because we're property owners, the notice letters, we were informed of the case officially. Um, that's when I learned about the special use permit because he was trying to gain one for his range for commercial purposes. And that did not meet our intentions.

MR. HASTY: Have you, uh, have you reviewed the June 2013 zoning text amendment?

MRS. HAMPTON: Yes, I have.

MR. HASTY: And it doesn't mention anything about commercial use for a firing range, does it?

MRS. HAMPTON: It, what it states, to our understanding, only the owners or leasers of the property may fire on the property of a residential area. Otherwise, you have to have 200 acres and approved through the county to be able to have friends. It-it-it's very vague, to my understanding. Well, because right now we cannot have friends and family if we had the range established after June 2013. They have to be owners or leasers of that property.

MR. HASTY: Okay. Thank you.

CHAIR HUMPHREY: Okay. Anybody else? Any further questions? No? Okay. Thank you very much ma'am. We may need to call you back. If so, you're still under oath, okay?

MRS. HAMPTON: Yes sir.

CHAIR HUMPHREY: Thank you. Yes sir?

MR. YARBOROUGH: I'd like to go ahead and be sworn so I can make my closing statement if that's okay.

CHAIR HUMPHREY: Say that again, sir.

MR. YARBOROUGH: I would like to go ahead and be sworn so I can make a statement to the board, and perhaps answer Mr. Lott's question.

CHAIR HUMPHREY: Oh, oh yes! Yes sir, we'd be glad to swear you in. Most attorneys won't swear in. (laughs)

Chair Humphrey swore in Mr. Neil Yarborough.

CHAIR HUMPHREY: Please state your name and address for the record.

MR. YARBOROUGH: Neil Yarborough, 115 East Russell Street, Fayetteville, North Carolina.

CHAIR HUMPHREY: Thank you.

MR. YARBOROUGH: I want to direct the board's attention to what we're asking tonight and what this is about. This is not about you deciding whether this is a good thing or not. That's number one. It's a very technical issue. An issue that, number one, is this a preexisting non-conforming use that does not require any further permitting or the Hamptons to use this property for non-commercial purposes? That is themselves individually or family and friends. That's issue number one. And in support of that, I would point out to you that farms are not required to submit site plans under the 2005 zoning. 2013, they were in existence and operating, or using a portion of their farm on June 17, 2013 for a private firing range for themselves, their friends and family, that no commercial activity occurred on that prior to that time, and no commercial activity has occurred after that time. That's issue number one. Second issue is, what is—that's part of it. In other words, should there be a Notice of Violation at all? Please remember, the only reason we're here tonight is George Hatcher's Notice of Violation, and what's in his notice of violation and the reasons for which it was issued. So that's issue number one. There is a sub-issue that I would like to address. And the reason why I didn't address it in full at the time was I wanted to make sure that the record was developed enough to support my basis. And that is, I would move that all evidence relating to any violation be excluded from the evidence and stricken in that I believe the warrant was improperly issued based on facts that didn't support the issue itself. An administrative search warrant under these conditions. That's a technical issue, but I'd like to make that point. The third issue is, should you feel that for some reason the Hamptons are in violation of the notice which Mr. Hatcher gave them, what is the required remedy? From Mr. Hatcher's own lips tonight, and I stand to be corrected. I believe you heard him say, don't use it as a commercial property. You heard it better than I did. You heard it at the same time I did. I think that's

what he said. And he didn't say, tear down anything, he didn't say remove anything, he didn't say never discharge a weapon on anything, he didn't say don't have any friends or family fire. So, if the only reason we're tonight, which I submit it is, is the interpretation of Mr. Hatcher's Notice of Violation and if you decide that A, there is a violation, we'd like to know under Mr. Hatcher's testimony, what is the range of what we would have to do to be conforming. These people are citizens operating on their own land exercising their own rights under the Constitution and the firing ordinance that Ms. Speich... uh, the statute Ms. Speicher mentioned, the Firing Range Protection Act... on their own property to exercise a shooting port. A sport they enjoy with their family and friends. So my question is, as Mr. Hatcher has testified, as the um, record reflects, should this have happened to the Hamptons? Did they do anything? What do they have to do? I would submit none of that, that's not the desired remedy, that's not the mandated remedy. If anything, they need to curtail some type of use of the property, not the structured amenities on the property. And they also need a little bit of guidance as to what their permitted uses are. Because, I think, if you read the county's firearm ordinance, the 2005 ordinance, the director's interim instruction, the 2013 ordinance and the other ordinances which exempt farm use from certain types of site plan requirement. There was nothing practical that Mr. or Mrs. Hampton could've put together, in my opinion. My opinion of the ordinance. A site plan if it's a bona fide farm. So those are the issues before you for this hearing and I've tried to target this hearing to those key elements. Not whether this is a good idea, not whether you should grant a special use permit, not whether you should grant a variance, but whether they were a preexisting use that was valid and hence was no violation. That there's no constitutionally acceptable evidence in the record and thirdly, if for some reason, there is some type of violation, that the only punishment or only thing they should have to come into compliance is to not use the property for commercial purposes. Thank you.

CHAIR HUMPHREY: Okay.

MR. LOTT: Question.

MR. YARBOROUGH: Any questions for me? I'm sorry.

CHAIR HUMPHREY: Okay, go ahead.

MR. LOTT: Now they are subject to the 2005 conditions? They fall under that category?

MR. YARBOROUGH: I would argue that they don't in that they are farm use.

MR. LOTT: But I mean, under the 2005 regulations, they are in compliance.

MR. YARBOROUGH: That is my position. Now I think that, as I understood, Ms. Speicher's testimony that a farm did not have to have a site, was not required to have a site plan issued. Perhaps she can answer that better.

MS. SPEICHER: That is correct, but recreation or a firing range or any other nonresidential use would be required to have submitted for site plan approval and obtain permits.

MR. YARBOROUGH: But I would point out to you that there has been a specific notice of exemptions for noncommercial use. It says so very clearly in uh, let me get these exhibits. Did someone take my exhibits?

CHAIR HUMPHREY: You passed them out to us.

MR. YARBOROUGH: I'm talking about the ones that are supposed to be up here. Anything with a yellow sticker on it is the courts'. Exhibit number five which is Mr. Lloyd's memo. If you read this instruction, this this falls in ... (inaudible)... site plan submitted is effective until such time as the ordinance amendment specifically addressing outdoor firing ranges is adopted by the board. Now this was dated February 21, 2012. By the terms of our zoning ordinance, all legal uses of land were met. Until such time that specific outdoor shooting range standards are adopted or otherwise addressed, outdoor shooting ranges will be reviewed in accordance with the standard of recreation amusement outdoor. Then, if you look, it looks like an excerpt from section 920. It says, conducted outside building for profit not otherwise listed or regulated by section 924. Hereinafter outdoor regulation as a principle use. You've already been told that—you've already heard testimony—that the primary use of this property is farming and as a homestead and, as an incidental use, there is a firing range for the private use of my clients' family and friends. So, that's really all I know to say about that. It just appears that under the circumstances and what the Hamptons' use of this property is, that it is a legitimate, preexisting nonconforming use, which I believe 2005 ordinance does not apply because of the farm designator.

CHAIR HUMPHREY: Thank you.

MS. SPEICHER: If I could respond to that please?

CHAIR HUMPHREY: Go ahead.

MS. SPEICHER: Director Lloyd's memo that directed staff to review outdoor firing ranges under the provisions of recreational amusement did not tell us or direct us that these were recreational amusement. We were just directed to review them under the same provisions that would apply to recreation and amusement. Never once did Mr. Lloyd, or anyone else on staff as far as I'm concerned, call an outdoor firing range an outdoor recreation. So the "Outdoor recreation conducted outside for profit", that was only a title inserted in this memo as the heading for section 920. The provisions listed, the individual provisions under 920 are the ones that pertained to outdoor firing ranges.

CHAIR HUMPHREY: Okay. Thank you. Alright, okay. Moving on. Counselor anything further?

MR. YARBOROUGH: No, sir.

MR. HASTY: Mr. Chairman, there may be other parties interested in this case that would be interested in testifying.

CHAIR HUMPHREY: Yes, yeah. In opposition, yeah. We have some opposition folks here that have signed up. We have quite a few of them actually. We'll take you and go down the list. Anybody that's testifying, we'll ask you to ...

Audience member: May we request a break? We've been sitting here for two hours.

CHAIR HUMPHREY: Yes, the board will recess for ten minutes.

Board recessed for ten minutes at 9:06 p.m.

Chair Humphrey called the board back in session at 9:18 p.m.

CHAIR HUMPHREY: We do have opposition people opposed and we're going to go down the list. Uh.. Kenneth Nettles? If you'll give your name and address for the record, please?

MR. NETTLES: My name is Kenneth Nettles, I live at 3920 Pleasantview Drive, Fayetteville, North Carolina 28312.

Chair Humphrey swore in Mr. Kenneth Nettles.

MR. NETTLES: As you can see from the photos I received in the packet, it's clearly identified as the Robert M. Dinsmore Range Complex. Not just a firing range.

MS. SPEICHER: Excuse me, chair? Mr. Nettles gave the staff copies. We thought that might speed it up.

MR. NETTLES: You should have enough hard copies so you can follow along. Because, I'll tell you what, I'll try to be brief because many of these the county attorney and board have already covered a lot of issues that I'd planned to cover, so I will skip some, but I would like for you to have this.

Ms. Rachal passed out copies of the packet titled "Dinsmore Range Complex," submitted by Mr. Kenneth Nettles.

MR. HASTY: Mr. Nettles, can you clarify who took the photographs?

MR. NETTLES: I got it as a part of the packet from the planning department.

MR. HASTY: They are not photographs you took? So you did not take the photographs?

MR. NETTLES: No I did not.

CHAIR HUMPHREY: Alright.

MR. NETTLES: This case should be about the law. We have concerns about the safety, noise, property value, and the environment. I'll skip the environmental discussion because I think they already admitted upon inspection, they were cited with six violations that they have now corrected. It is a wonder though; would they have corrected them had they not been cited? Uh, we're all a bit concerned about noise, safety and property values. I would like to remind the board that the county took strong action on 17 June 2013, to correct those and alleviate the concerns of the residents when they passed the current law concerning outdoor ranges.

Next slide.

I'd like to go over the timeline of the Dinsmore Range Complex. If you'll look in your packet, there is an email on June 13, 2011 between a realtor expressing a desire to purchase land. They specifically mentioned they wanted land where they would be able to build a 500-yard shooting range. 500-yards. Only the most powerful military target rifles that we have are used on a 500-yard range. That was the primary purpose if you'll look at this email. He wanted twenty to forty acres. He also wanted a home, but he wanted a 500-yard range. That's what he wanted. That is one of the owner's emails that he included to the board and had

notarized. Then, on September 26, 2011, they purchased 64.44 acres of land on Karen Street. It's zoned Rural Residential, it is also, you'll notice, wetlands, most of it is wetlands, and the tax department rates it at \$500 per acre due to being swamp waste land. On April 18, 2013, the Board of Adjustment Hearing on the Kirby Range. One of the owners testified that night, which was mentioned by the planning board [staff]. She certainly understood the procedure that was going on with the Kirby Range that night. On May 6, 2013, something that's not been brought up, but on May 6, 2013 at the strong assistance of the county attorney, the commissioners issued a moratorium on ranges. On June 17, they had new regulations on firing ranges take effect. On May 6, the county inspects and issues a notice of violation to the Hampton Range and on May 21 they appealed to the Cumberland County Board of Adjustments.

Slide

This, you've already had introduced into evidence as the existing ranges as of May 2, 2013 and the Hampton Range is currently not identified

Next slide is from a Cumberland County aerial photo, taken in the winter of 2010. This is the year before they purchased the property. You can see that there's no development on that land.

The next photo is in the winter of 2013. Now, the way this was explained to me, the way Mr. Osbourn explained it to me, they take aerial photos in the winter. January through February, early March because they're looking at property. They want to see, they want to get them before the trees start to you know, doing their canopies and things that start covering the property.

This next one is a Google Earth image taken of the Hampton property. You'll notice on May 24th, it's imagery date is May 24, 2013, and clearly a building, at this point has been erected. This is the farm building that you've heard some discussion of. This was on May 24, you've heard and you can see in your packet they've included an electrical inspection uh permit that was issued in June, but you can see no other use no other development on that property.

This is a close up of the farm building that you see, or what's described as a farm building. Next slide, please.

This goes back to the photo before the close up of the farm building, and you can see in this area, there's still no... you cannot tell that... well you'll also notice this landmark. This is what I call the DOT Salt Works on 24. You'll notice right up here in this corner here, that is the Kirby Range that you've heard speak of.

Next slide shows a close up and you can clearly see the Kirby Range, but you can clearly show that you can check these kinds of ranges from overhead photography. Again, dated 5/24/2013. This next photo is the US Department of Agriculture aerial photo of the Hampton property in the summer of 2014. You can clearly see development, but the development you see.. Is it farmland or a gun range?

Slide please.

Current law for firing ranges, minimum 200 acres, it requires A1 zoning, a special zoning permit must be issued, and that special use permit must come from the County Commissioners. It is also a very important part of the new law, it was strongly urged by the.. at the June 17th 2013 meeting at the County Commissioners that the county adopt range design criteria from the Department of Energy. It is a very impressive document, and people who attended that meeting on the 17th and who read that document were greatly relieved that their safety, noise and other concerns would be addressed. Even if you recognize that they're a range. Even if you don't believe your lying eyes about the aerial photos, and you believe the range existed prior, back in 2012, even the law then required nonresidential use or special use permit. The special use permit had to be issued by the County Board of Adjustment, public notice and public hearings were required, applications and site plans were required, and the entire process was subject to judicial review.

The County Board covered this as far as the surrounding areas. As you can see, this is a Rural Residential area, even this SS15 is part of the city; that is a city zoning. But there isn't any A1 anywhere close in proximity to this.

This shows the houses. You can see the site and each one of those blue dots is somebody's house. I think that's important for the noise argument. And believe me, the law talks about occasional use by residents, they are still not residents. And I would hardly call, as someone who lives close by, the gunfire occasional. It is frequent and sometimes on Sundays its continuous.

This photograph comes from the packet that you have. This is what they're claiming is for their incidental use. This is the 25-yard range.

Next slide

The 100-yard range berm. I don't know what kind of crops you can grow with those berms. This is a firing range.

This is an overhead of the property, you can see. It's hard to see with the light on, but this is the 25-yard pistol range, this is the 100-yard rifle range, this—what is this? They farm in a straight line? Remember this is a prerequisite, in an email he wrote to the realtor he wanted a 500-yard range. A 500-yard range. That looks like it's well on its way. There's a pond here, and this area here, I thought was kind of strange because it's real smooth and leveled out. What could they possibly use that part of the property for? A close up of Google Map Photo shows tires; you can probably see better on the ones I gave you than this one here. These are tires in that area. Now I worked 37 years at Goodyear, and these are tires. Now what on the world would they use tires for? They can be used for shooting ranges, and there on the next slide, they can be used as a live fire shoot house. This is where you'd train for urban combat. You stack the tires, drive a stake or a metal pipe down the middle, put the tire around the pipe, fill it with a little dirt, and you form them in the shape of rooms. Then you train people...

MR. YARBOROUGH: I'm going to object to this photograph and any testimony regarding this photograph.

MR. NETTLES: I was just trying to explain what the tires were doing there. They're the ones that call it a "range complex," not me.

MR. YARBOROUGH: This is not a photograph of the property.

MR. NETTLES: No, it's not. It's a depiction, an example of what you use tires for on a shooting complex.

MR. YARBOROUGH: I'll object to the relevance.

CHAIR HUMPHREY: Objection noted.

MR. NETTLES: Okay, safety concerns, as I've mentioned, the range criteria, table 1. Lists the shooting ranges of certain ammunition. Part of the requirements, in order to get a permit, you have to state the maximum, most powerful ammunition that you use. The reason you do that, it effects the design of the range. How far those bullets can go depend on the area that you need to control. Some of the things that have already been pointed out: a .22 can go a mile. You've got .556 that our military uses in M4s and M16s, and AR15s go 3300 yards. .762 go 4400 yards. I want to point out to you here that the maximum ammo that you might use on a 500-yard range would be a .50 cal machine gun. That's the kind of weapons we put on our fighter planes in World War II to shoot down other fighter planes. That ammunition now is used in sniper rifles and long range target rifles.

Next slide please.

MR. YARBOROUGH: Objection, this has nothing to do with the reason for the board.

MR. NETTLES: I think the board should hear everything, our concerns. We're here for the noise...

MR. YARBOROUGH: This is a legal proceeding on a specific issue. This is a trial. This has nothing to do with that, what somebody thinks, what somebody hears, what somebody's condition is. It has to do specifically with dates, times and development on that site. For the record, I will object. I feel that listening to this is prejudicial and any evidence that does not directly affect the interpretation of Mr. Hatcher's Notice of Violation is out of order. It's prejudicial and it's not relevant.

CHAIR HUMPHREY: Okay. Board agrees?

MR. NETTLES: So do you want me to skip that?

CHAIR HUMPHREY: Yes.

MR. NETTLES: And the M107 sniper rifle, do you object to that?

MR. YARBOROUGH: Objection.

MR. NETTLES: And the 500-yard rifles?

MR. YARBOROUGH: Objection.

MR. NETTLES: The only thing I want to tell you, Dave Hampton, in his own words, in his own email said he wanted a 500-yard range. Now we can pretend he didn't say it, but he said it. And he had that document notarized and entered into evidence with you. I didn't make it up. I'm just suggesting, what in the hell would you need a 500-yard range for? I'm trying to show you what for. You don't use .22 on a 500-yard range. Okay, I'm almost done. This is an aerial map of the area. It shows certain developments. See, this is not classified as a rural area, this is considered urban now. There's suburbs, I've listed ranges and many of the landmarks on the map. I used the Cumberland County measuring tool on the GIS website to get measurements. I feel like it's a little impersonal to sit here and look at aerial photos and talk about ranges. That's why I want to briefly go through the rest of these photos and show you where they're at and how they affect the community.

MR. YARBOROUGH: Objection.

MR. NETTLES: We know it's their hobby, but we've got a right to say that. I didn't make it up, I just heard her say it.

CHAIR HUMPHREY: Address the board, if you will please, sir.

MR. NETTLES: Okay, the next one. This is the Salt Works, 275-yards from their range.

MR. YARBOROUGH: Objection.

MR. NETTLES: Okay. This is Caleb Drive. This is towards the back end of their property, 530 yards from where they stand and shoot.

MR. YARBOROUGH: Objection.

MR. NETTLES: Baywood Village, 600 yards. That's right where you live.

MR. YARBOROUGH: Objection.

MR. NETTLES: This is Bladen Circle.

MR. YARBOROUGH: Objection

MR. NETTLES: This is Baywood Plaza

MR. YARBOROUGH: I'll make a standing objection.

MR. NETTLES: This is a North Carolina Driver's Licensing Office.

CHAIR HUMPHREY: Is your testimony that you are...

MR. NETTLES: I took these pictures myself.

CHAIR HUMPHREY: That was not the question sir. Are you showing the closeness in proximity to the range? Is that the purpose?

MR. NETTLES: That's right. 1850 yards down range.

CHAIR HUMPHREY: Okay.

MR. NETTLES: This is the soccer stadium 1900 yards away used by both Cape Fear and Mac Williams. This is the Mac Williams Middle School, 2050 yards away.

MR. YARBOROUGH: Mr. Chairman, if you'll recognize that I have a standing objection to any of this, I'll quit saying objection.

CHAIR HUMPHREY: It is noted.

MR. NETTLES: Okay, this is CFHS Practice Field 2200 yards. Now if you'll switch back to that for just a second. If you've ever passed Cape Fear High School, you'll notice there's two large fields directly in front. The one closest to the road has six soccer, I mean three soccer fields and six goals. They practice there. I talked to the principal and there are 40 kids in the soccer program. You can see the football players in the background on the second field. That's where the varsity and JV teams practice and they have 110 members of the JV and Varsity teams. Many of our people couldn't be here tonight because of open house at Cape Fear. I didn't mention the band, they have 150 members and they also practice there. This is the reason I say we are an urban community and this is no place for a firing range, especially the kind that has been shown to you tonight. This is not just a casual range. And I want to just say, Cape Fear High School is the center of our community. It was planned 50 years ago when Stedman and Central were becoming overcrowded. They selected Vander to build that school there. Would they have picked Vander with a firing range like this 2000 yards down

range? Would these neighborhoods and subdivisions have been developed with firing ranges right there? Y'all have a great responsibility here tonight. The County Planning Department and Enforcement Officers are trying to do their job. They're doing what the County Commissioners appointed them to do. They're just trying to enforce it and we're asking you to support it.

MR. YARBOROUGH: I ask for cross-examination.

CHAIR HUMPHREY: Please remain to be cross-examined.

MR. YARBOROUGH: I want to draw your attention to this photograph. Cumberland County aerial photograph, winter 2010. Was this on the document that you pulled off the website?

MR. NETTLES: I received that from Mr. Osbourn in the Planning Department.

MR. YARBOROUGH: And there were no changes made to it?

MR. NETTLES: No sir, I've got the email to prove it.

MR. YARBOROUGH: I want to show you this photograph, next photograph, winter 2013. See that?

MR. NETTLES: I see that.

MR. YARBOROUGH: Now look at the next document. There's no building reflected on that document right?

MR. NETTLES: Right.

MR. YARBOROUGH: Now, winter of 13 would be something like October November...

MR. NETTLES: No, it'd be January February March, as explained to me by Mr. Osbourn. The county, they their pictures the earliest part of the year before the leaves start developing so they can see property.

MR. YARBOROUGH: So this is January 2013?

MR. NETTLES: That indicates to me the building was built sometime between March and May. And they filed the building permit because they knew we were watching them.

MR. HASTY: Mr. Chairman, is the board wanting to receive? I believe these are... other than the ones Mr. Yarborough objected to and the overhead photographs of winter 2013, August 2015, August 2015, I think. One, two, three, five pages beginning winter of 2013. That would be for purposes of introducing them for the record.

CHAIR HUMPHREY: For the record, okay.

MR. HASTY: Did you get that?

CHAIR HUMPHREY: Yes, yes. I was asking her if she got that. You did, okay.

MR. HASTY: Winter 2010 would be the first one.

(Inaudible)

MR. YARBOROUGH: I would also like to be sure that my objection was noted in the record.

CHAIR HUMPHREY: Okay. Tammy Nettles? Mrs. Nettles, would you please state your name and address for the record?

MRS. NETTLES: Tammy Nettles and I live at 3920 Pleasantview Drive, Fayetteville, North Carolina. I just want to say that...

CHAIR HUMPHREY: Wait, wait one second. Let's swear you in, please.

Chair Humphrey swore in Mrs. Tammy Nettles.

CHAIR HUMPHREY: Will you please speak in the mic for us, you have a very soft voice.

MRS. NETTLES: Okay. I have lived at 3920 Pleasantview Drive for 33 years. I sit out there, it was a rural area. It is peaceful, well, it was peaceful. I sit out on my screened in porch every morning and drink my coffee and listen to bang, bang, bang. My grandchildren, my three year old grandchild is nervous about going in the back yard. She hears guns shooting. I just want to say I'm in opposition for it, and please consider everything my husband said tonight.

CHAIR HUMPHREY: Thank you, thank you for your testimony.

MR. YARBOROUGH: Objection. Motion to strike, for the record.

CHAIR HUMPHREY: That's a no. AJ? AJ if you would also state your name and address for the record?

MR. BALLINGER: My name is AJ Ballinger I live at 4502 Blue Bush Drive, Fayetteville, North Carolina.

Chair Humphrey swore in Mr. A.J. Ballinger.

MR. BALLINGER: I would just like to say that I agree with everything the Nettles said. I've lived in Vander my whole life. I actually grew up at 3920 Pleasantview Drive. It was always real nice and quiet. We would always go out and play in those woods. As a kid, I don't remember anything about property lines or where our property ends. It's the same for other kids, you know? It's not that they're intentionally going on other peoples' property, they don't know they are! Kids should be able to play. They need to take into account the danger this could have on the kids that don't think about that. It's the country. Kids do that. It's not the city. Like I said, I agree with everything the Nettles said and I hope you make the right decision.

CHAIR HUMPHREY: How close do you live to the property?

MR. BALLINGER: How far? I would say... Baywood Village is actually, what I'd say...

AUDIENCE MEMBER: Well from my house it's 600 yards.

MR. BALLINGER: So, what'd that be?

CHAIR HUMPHREY: Just approximately.

MR. BALLINGER: Approximately I'd say 700-800 yards.

CHAIR HUMPHREY: 700-800 yards?

MR. BALLINGER: Correct.

CHAIR HUMPHREY: Okay, thank you.

MR. YARBOROUGH: Objection, motion to strike. And, for the record, I would like to make a standing objection to any testimony, any opinion testimony on effects and anything that does not relate to the issue at hand, which is the preexisting use and Mr. Hatcher's violation.

CHAIR HUMPHREY: Okay, but we have to hear their testimonies. We don't know what they're going to say. Next, uh, Barbara Roberts? Ms. Roberts, again please if you'll recite your name and address for the record.

MRS. ROBERTS: Name is Barbara Roberts, I live at 3463 Pleasantview Drive, Fayetteville, North Carolina.

Chair Humphrey swore in Ms. Barbara Roberts.

CHAIR HUMPHREY: Question, how close do you live to the property?

MRS. ROBERTS: Umm, I do not really know. It is a very curvy road. As they say, as the bird would fly, it isn't very far. Probably within the range of a mile maybe from there...

CHAIR HUMPHREY: Okay, continue with your testimony.

MRS. ROBERTS: I'm not an expert, and all I have is an opinion, and I'll leave it there. My childr—

MR. YARBOROUGH: Objection!

MRS. ROBERTS: Children are there, my grandchildren are there. I have a grandson that plays football at Cape Fear, and he's on that field. We do have a right to fear for their safety. Accidents do happen. I'm sure that they would prefer to do just what they want and there never be an accident. But how many instances does it take in this country where people die every day because of an accident? It – the danger, we shouldn't have to live in fear of something happening to our loved ones. Firing ranges are a nuisance. If you go to sell your property, you have to disclose that that is there because it's something undesirable to someone interested in purchasing your property. It's a – the constant noise is detrimental to our lives and our health, but especially to our property value. Our citizens deserve better than this and I'm thankful that the County Commissioners realized this and put this 200 acre requirement. Mrs. Hampton stated earlier that her range is a necessity for her to enjoy her property. Her not

having a firing range that we have to listen to, as residents in that area, is necessary for us to enjoy ours.

(Applause)

CHAIR HUMPHREY: Does that conclude your testimony? Thank you, thank you. Any questions from the board members? No questions? Okay. Kim Rhodes? Again Ms. Rhodes if you'd give your name and your address please and be sworn?

MRS. RHODES: My name is Marsha Kimberly Rhodes. I reside at 3116 Jackie Street, Fayetteville, North Carolina.

Chair Humphrey swore in Ms. Marsha Rhodes.

CHAIR HUMPHREY: What's your proximity to the property?

MRS. RHODES: I can't give you the footage or anything.. I'm at the corner of Karen and Jackie and they're at the end of the cul de sac.

CHAIR HUMPHREY: Okay. Continue.

MRS. RHODES: Can I have some overhead light? I can't see very well anymore. My husband and I relocated to our address from Georgia in December of 2010 because we loved the rural residential quiet and peaceful setting- where you had neighbors, but also had acreage to yourself. Much to our surprise, I would be before you speaking for the second time against yet another outdoor firing range. We relocated to North Carolina with happy hearts from Georgia as part of a base army closing relocation for Fort McPherson in Georgia. My husband was originally born and raised in North Carolina and he's from a large family with seven sisters and four brothers. The vast majority is still in North Carolina. Family time is very important to us. We like having reunions and fish fries, or a good ole pig pickin'. With such a large family, we have people from all ages anywhere from newborn to over 80 years of age. Gun fire is not something we want to hear, to be close to us, ourselves or any of our family. The gunfire is very disturbing and unnerving to all.

MR. YARBOROUGH: Objection.

MRS. RHODES: We have family that won't come to our home because they fear for themselves and their children's' safety due to all of the gun fire. It's a shame that we cant enjoy peaceful quiet relaxing times ourselves at home without the sound of gunfire of either small or large caliber. It's a shame we can't have all of our family here at our home without being in fear of stray gunfire and just the noise and uneasy feeling. I'm a stage three breast cancer survivor. And even though I've survived breast cancer, it didn't leave me without marks. Between the cancer and all the treatments and surgeries (which I'm currently recovering from my last surgery that was on the 30th of July) along with many other contributors have caused me to suffer on multiple levels. I have a letter that I provided at a previous hearing that I will provide once again from my medical provider.

MR. YARBOROUGH: You do understand that I have a standing objection? Do you accept my objection? I don't want to interrupt her anymore, but you do recognize my objection?

CHAIR HUMPHREY: Yes sir. It is noted in the record.

MR. HASTY: Mr. Chairman, just to advise the board, if folks have signed up they have the right to speak. I would just ask the board to only consider testimony relevant to the issues of this case.

MRS. RHODES: So do I continue? Or not continue? Or?

CHAIR HUMPHREY: Try to find your comments to the board about the range.

MRS. RHODES: Okay, um, I did want to address that as far as the board here is concerned. She did address Mrs. Hampton, and, she asked her if she had contacted any of the neighbors, possibly about PDS... or, uh, PTSD... Post-Traumatic Stress Disorder (laughs), I'm sorry, my brain isn't working as well. I'm over fifty and have chemo brain on top of it. What I'm saying is, I don't suffer from PTSD as in a war situation, but I have other medical conditions that I'm not able to obtain the rest and relaxation that I require due to all the gunfire that goes on throughout the day and sometimes even on the weekends and after nine at night! Last Friday was a good example for that! It goes sometimes from early in the morning to well into the night. There's a report that can be court ordered, but a report was made by the officer. If... I'll come out of the closet as well, so to speak. I am the female that actually called and spoke with the ... uhh...

CHAIR HUMPHREY: Code Enforcement Officers?

MRS. RHODES: I spoke with Ms. Speicher and Mr. Barnhill and I spoke to Mr. Hatcher as well, but I'm the one that made the report of all the trucks coming in and out. I was hesitant and asked them to keep me anonymous because I feared retaliation. These people are well known for being great marksman and marksmanship trainers, and I'll be darned if I want to be, or my family wants to be gunned down.

MR. YARBOROUGH: Objection!!

CHAIR HUMPHREY: Alright, alright. You probably need to...

MRS. RHODES: I believe it was probably sometime in March or early April that I noticed the massive amount of dump trucks coming into our two street subdivision. They were large sized dump trucks. I live on the corner, like I said, so every one of these dump trucks was passing my property. I could hear them, so I got up to see what was going on. So I saw that they were big dump trucks of dirt. These trucks were coming in every fifteen minutes for eight or nine hours a day, five or six days a week, for approximately three weeks. Now just the one hour, that's four dump trucks an hour, approximately 32 trucks a day. Unless they're very rich, it seems the only reason possible for that number of deliveries . . .

CHAIR HUMPHREY: Do you have anything further about the – that's relevant beyond what you've said already? Anything that you have to say now?

MRS. RHODES: Well, yes sir. Um, what I need to say now is that the Hamptons have come up and stated that they bought this property for farm use. Now most farms I've ever seen are either livestock or it's having um, food grown on it, whatever. So therefore, why build a firing range for personal or public use if your main purpose is farming? It's also funny that their home site didn't start getting built until after the Cumberland County cited the property.

CHAIR HUMPHREY: I think you need to confine your testimony to the firing range.

MRS. RHODES: Okay. Thank you for your patience.

CHAIR HUMPHREY: Rose Beau? Rose?

MR. RHODES: My official name is Harold.

CHAIR HUMPHREY: I'm sorry, I was looking at the wrong one, you wrote Beau on here! I'm sorry! Please state your name and address for the record, please.

MR. RHODES: My name is Harold Rhodes. I reside at 3916 Jackie Street, Fayetteville, North Carolina.

Chair Humphrey swore in Mr. Rhodes.

CHAIR HUMPHREY: Approximately how far are you from the property?

MR. RHODES: It's within twenty feet.

CHAIR HUMPHREY: Okay.

MR. RHODES: Since we want to keep it technical... I'm a technical person. Um, if y'all could direct your attention to the pictures that were provided. In particular, the picture of Ms. Hernandez that says 2012. Now, it's a copy of a picture. Can any of you, with certainty, look at that picture and know it has or has not been photo shopped? Um, I am curious as to what kind of farming is going on there. That's not a technical piece, the photo shop was the technical piece. That's all I have.

CHAIR HUMPHREY: Okay, thank you sir. Richard Barnhill?

(Inaudible)

CHAIR HUMPHREY: Mr. Barnhill, would you please state your name and address for the record please?

MR. BARHNILL: My name is Richard Barnhill and I live at 3915 Pleasantview Drive and I live right across from Mr. Nettles, so however far that is from the property.

Chair Humphrey swore in Mr. Richard Barnhill.

MR. BARHNILL: Okay, first I'd like to say that I-my wife and I moved to Pleasantview Drive in 1996 on purpose because it's a nice variety. You can have anything from a single wide to an executive home out there. It's a nice place to live. We are not a subdivision. We don't have an HOA. We have you to enforce all of the regulations of Cumberland County to see that our welfare is being looked at, and uh, Mr. Nettles presented a lot of our concerns on Pleasantview Drive. We've heard from several and everything is leaning towards whether it's a farm or not, if it was a farm it doesn't have to meet these site plans and all that stuff. But the best I can tell, it wasn't even classified as a farm until 2015. But anyway, I'm putting my trust in you to weigh all the evidence presented to you and to make the best decision.

CHAIR HUMPHREY: Thank you for your testimony sir. Any questions? No questions. Any objections? Barnhill, Richard? Is it Barnhill?

MR. BARNHILL: You already got me.

CHAIR HUMPHREY: Oh, okay. I'm sorry. Rogers, Sandra? S-A-N-D-R-A? Sandra?

MS. ROGERS: Yes.

Chair Humphrey swore in Ms. Sandra Rogers.

CHAIR HUMPHREY: Thank you, please state your name and address for the record.

MS. ROGERS: Sandra Rogers, 3920 Jackie Street, Fayetteville, North Carolina. I've lived there for approximately 24 years. I have worked extremely hard to get my home paid for. I've been retired for about seven years now. I was very much looking forward to it. I love gardening and being in the backyard. I have beautiful landscapes, but it's a little bit frightening when you hear gunshots in your back yard. It's like they're coming in my back yard. I can no longer enjoy my deck like I used to because of the shots. Saturday and Sunday are especially bad days. And no, I don't like it in our neighborhood. I have grandchildren that like to come over and visit. Their parents surely don't think they're safe, and I don't either. So, I think this firing range in our community is totally out of place. Totally out of place.

CHAIR HUMPHREY: Thank you.

MR. YARBOROUGH: You recognize my continuing objection?

CHAIR HUMPHREY: Yes, sir. (laughs)

MS. ROGERS: You thought you'd wear us down, Neil, but it didn't happen!

CHAIR HUMPHREY: Okay, alright. Nancy Smith?

MS. SMITH: Yes?

CHAIR HUMPHREY: Ms. Smith, if you'd give us your name and address too, please.

MS. SMITH: Nancy Smith, 3928 Pleasantview Drive, Fayetteville, North Carolina. This is the home of my mother, Susan White.

Chair Humphrey swore in Ms. Nancy Smith.

CHAIR HUMPHREY: Thank you. Excuse me for interrupting you. Continue.

MS. SMITH: It appears that, um, Mr. Yarborough is kind of winning, doesn't it.

CHAIR HUMPHREY: We...

MS. SMITH: Because we're talking about one thing and he's talking about something else. So perhaps, perhaps we should go on home.

CHAIR HUMPHREY: Please keep your testimony...

MS. SMITH: I remember you, Mr. Humphrey, the last time I was here! Do you remember what you told me?

CHAIR HUMPHREY: Ms. Smith, I think it's relevant that you keep your testimony please to about this firing range. Please? I'm, I'm...

MS. SMITH: That is my testimony. You told us the last time we were here that you had heard gunfire all your life and that we needed to get used to it. My mother is 94 years old.

MR. YARBOROUGH: Objection.

MS. SMITH: She and her husband purchased the property to live out their days not knowing that we were going back to the wild, wild west. Everybody is shooting guns. Is this what our nation is coming to? Would y'all live next door to this? Would any of you live next door to this? Now I know what Mr. Yarborough's spiel is. We heard that, we understand that. What we're trying to say is all of this information came from the incompetence of our County Commisioners, our zoning people and just ordinary people who could not pass laws that protect the people who live in the suburbs. Why are we having to go through all this? It is because people don't care about their neighbors anymore. Well, I'm going to try to care about my mother. She can't go in the yard and sit, listen to the birds, listen to the squirrels. She can't do that any longer. Our house is not really close to these people, mother's house is one house away from the Kirby residence and it is gunfire, gunfire. The dogs and cats are running everywhere. They're scared to death. So what're we supposed to do? Can we move in with y'all? Can we do that? Or maybe y'all could move in with them. Thank you.

CHAIR HUMPHREY: Alright, thank you. Any questions, board members? Malloy, is it Martha? Martha? Alright, same thing, state your name and address please.

MS. MALLOY: My name is Martha Malloy and my address is 332 Bubble Creek, Hope Mills, North Carolina.

Chair Humphrey swore in Ms. Martha Malloy.

MS. MALLOY: My comments about this... My son in law is a teacher at Mac Williams. He coaches junior high students and they're out on those practice fields all the time and the vicinity of the firing range to these schools with all of those children is concerning. That's all.

CHAIR HUMPHREY: Alright. Thank you very kindly. Jesse Zaches...

MR. ZACHESKI: Zachceski.

CHAIR HUMPHREY: Zacheski, alright. Will you state your name and address for the record?

MR. ZACHESKI: Jesse Zacheski, I live at 4008 Baywood Point Drive, Fayetteville, North Carolina.

Chair Humphrey swore in Mr. Jesse Zacheski.

MR. ZACHESKI: Okay, first I'd like to say I am also a retired, disabled American veteran, and to answer your question, I don't live 630 meters from the firing range and unlike everyone else here, I'm actually in the direct line of fire, right there on the other side of the highway. And yes, I do have PTSD and that's why I moved down here back in 2011 was so I didn't have to hear that anymore. Now that I do, it's dramatically effecting the way I live and the way my family lives. My children, my neighbor's children and all my neighbors that were up here earlier would love to tell you the same thing. This was a bad idea. That's not 200 acres out there, and that little tract there, that's a buffer for firing targets. That's not farm, agricultural land. That's why there's going to be a berm at the end of it probably come the next year. That's all I have to say. Thank you.

CHAIR HUMPHREY: Okay. Questions? Anyone? Thank you sir. Robin? Is it Robin? Okay. Please state your name and address for the record, ma'am.

MS. KIVETT: My name is Robin Kivett and I live at 4042 Pleasantview Drive. I do swear to tell the truth and nothing but the truth, so help me God.

CHAIR HUMPHREY: Alright. Thank you! I appreciate it!

MS. KIVETT: Our property actually butts right up against this. There's a small section of trees. Where that blue typing is, that's right about where our property is. We're right there. Those trees are a barrier between our property and theirs presently. We are part of the pipeline that's coming through, so we don't know how many of those trees are going to be taken down, um, if I walk out my back door, I will walk directly into where they're firing. So once that tree barrier is gone, we won't have anything. It may be a point of technicality, but this was a public hearing, so we can all come and state our opinions. So if this hearing was just a point of technicality, then we never should've been invited to this meeting. Thank you.

CHAIR HUMPHREY: Thank you. I believe everyone that's signed up to speak has had an opportunity. Did we miss anyone?

MS. RAY: Right here!

CHAIR HUMPHREY: Who, who is this? Who said right here? Please come forward ma'am and give your name and address for the record. What was your name?

MS. RAY: Letha Ray.

CHAIR HUMPHREY: Okay. I don't see it, but anyway, please state your name and address for the record.

My name is Letha Ray. 731 Bladen Circle, Fayetteville, North Carolina.

Chair Humphrey swore in Ms. Letha Ray.

MS. RAY: Okay, I live on Bladen Circle. Sometime around June my family and I was sitting in my backyard and a bullet came and hit the tree. Um, I'm a foster parent, plus I have grandkids. There's nowhere else to play unless they play on the outside. So I'm against the firing range. They tell me a bullet doesn't have no limits and my thing is, if you doing a fire range, do not your bullets supposed to stay on your private range? In this situation, I would say to the board before I leave, I struggled to pay for my home, well paying for, it ain't paid

for yet. The noise really bothers me. I have a nervous condition from that. I would ask you tonight, when you go to make your decision, what if it was you, sitting in this room tonight? Living in close proximity? How would you feel? Thank you.

CHAIR HUMPHREY: Thank you. Hopefully we gave everyone an opportunity to be heard. Did we miss anyone? We did? Come forward. Name, record, address.

MS. BERRY: My name is Kelly Berry and I live at 424 Kiln Street, Fayetteville, North Carolina.

Chair Humphrey swore in Ms. Kelly Berry.

MS. BERRY: My concern is that I actually live right next-door to this firing range. I have small children that cannot play in my backyard because of the shooting. They can't play in the woods. Are they going to put up a fence to show where their border is? So kids don't accidentally cross into their property? So that my kids aren't accidentally getting shot? So my family can be in my backyard and know that bullets aren't going to come... Are they going to put strings on these bullets to make sure they're not leaving the firing range? A bullet can go anywhere. A bullet can ricochet off anything. I'm not against owning firearms, I'm not against having firearms on your property. I'm against openly firing your weapons repeatedly with endless ammunition in a neighborhood full of children –who play on these streets, who play in these woods! I'm sorry, I'm against it. My children are little. They're eight, eleven, six and nine. I have an infant grandson who has PTSD because of his premature birth. He can't be at my house on the weekends because of the firing of these weapons. There's more than one, and there's more than one being fired at a time. There's nothing recreation about it. Nothing recreation about it. And if you don't believe it from everyone else that's testified that lives a little further away than I do, believe it from me. I live next door. I hear it as soon as they start, at the crack of damn dawn on Saturday morning, until the midnight hours, all weekend long. You're telling me this is recreation? This is just for fun? I don't think so. I'm sorry, but I hope you take all our testimonies into consideration. Thank you.

(Applause.)

CHAIR HUMPHREY: Having heard everyone that wanted to be heard, which we have. At least I think we have. We will close out the public testimony and we're going to come now to the board members and have some discussion. If you have questions, we'll relay them. If you don't, we can call for a motion.

(Inaudible)

MR. LOTT: I think I understand.

CHAIR HUMPHREY: You understand?

MR. MOOREFIELD: Were you going to ask questions of Mr. Hasty?

MR. HASTY: I don't think there are questions...

MR. MOOREFIELD: The board will need to make findings in fact and then make a determination. You shouldn't just do this as a motion. So Mr. Hasty certainly will certainly offer you guidance on making findings in fact if you need assistance.

CHAIR HUMPHREY: So it's not a special use... (Inaudible board discussion)

MS. SPEICHER: Excuse me, Chair, there is no worksheet for a Board of Appeal.

CHAIR HUMPHREY: I didn't think so, I just wanted to make sure. So we do the findings in fact and then make the motion...

MR. LOTT: Is there any information that we need to hear from our attorneys? Any advice they need to give us, or statements?

MR. MOOREFIELD: I think we can assist you in making some findings in fact. That's what this boils down to. What do you find to be the facts, and based on those facts what is your decision? You use the findings in fact to make the decision.

MR. LOTT: From what I understand, we're here to uphold or not uphold the citation that the investigator for the county made.

MR. MOORFIELD: That's correct.

MR. LOTT: Whether it is valid, or not valid.

MR. MOOREFIELD: That's correct. The issue was that... the issues Mr. Hatcher charged them with were that they were operating without a permit, that they were operating on less than 200 acres, and that the statute of 2013 was prior to the 200 acres.. What was the third issue, Mr. Hatcher?

MR. HASTY: I don't have it.

MR. HATCHER: 200 acres... a firing range has to be on 200 acres, and without site plan and permits.

MR. MOOREFIELD: So the site plan and permit go together. So that's... either of those would be sufficient basis, but when we say findings in fact, I mean, I think there's some facts that you've heard here today. I mean, such as I don't think anyone disputes that the Hamptons purchased the property in 2011. Do y'all find that as a fact? Mrs. Hampton, and I mean, I'm just offering suggestions. You've got to find the facts.

MR. LOTT: Well, I think staff presented their side of it supporting what Mr. Hatcher's done.

MR. MOOREFIELD: Well, you have to consider all of the evidence that you've heard.

MR. LOTT: I understand, I'm all for personal freedoms. I like to hunt and shoot. Uh, it's a fact of life that a shooting range is, or can be aggravating. I've heard them. Um, I hope it don't get to the point where they're going to be a necessity in the future. But that's regardless. Is it time to make a motion?

MR. MOOREFIELD: Well, it's time to state your facts. (laughs)

CHAIR HUMPHREY: Well, you have the facts, you can make the motion, or... Do you have to include some of your facts?

MR. MOOREFIELD: Well, let's... I've taken some notes and Mr. Hasty has taken some notes. Let's ... I mean, our advice to you, or my advice to you... If you agree with this, and y'all need to let us know. The Hamptons purchased the property in 2011 and began construction of a firing range at some point after purchasing the property. Mrs. Hampton testified that in 2013, only a small berm had been constructed on the property. Do y'all find that a fact?

CHAIR HUMPHREY: Yes.

Um, Mrs. Hampton testified that they continued to improve and expand the property into May of 2015. Do y'all find that as a fact?

CHAIR HUMPHREY: Yes.

MR. MOOREFIELD: Mrs. Hampton testified that they have obtained permits for a septic tank and DENR permits, but they have not constructed anything on their personal dwelling at that time. Do you find that as a fact?

CHAIR HUMPHREY: Yes.

MR. MOOREFIELD: The uh, use of the property for firing range does not constitute a farm use of the property, or that portion of the property. Do y'all find that as a fact? Can y'all make that determination that the use of the property does not qualify as a farm use? Is there any issue with that? Anybody? In other words, the purpose of a firing range is not use for farming. Do you think... Is that a fact y'all find from the evidence?

MR. LOTT: If we uphold the, uh, citation, or whatever you want to call it, and deny these people their use of the range, are we to be concerned with any recourse they have? Are they going to have any recourse?

MR. MOOREFIELD: Well, yes. They can certainly appeal your decision to Superior Court, but, I mean, that's what you're here for. To make a decision, either uphold, deny or modify the decision. You can't just ... you need to elaborate why you've come up with that decision. What I'm suggesting to you is, based on the evidence presented, if you were in agreement. These are just some facts that you could find. I'm not telling you you have to, but if you're in agreement with these facts, or have something different to say about it. This is for y'all to discuss and find these facts. But uh, the uh, do you agree or find as a fact the portion of the property used as a firing range is not a farm use of the property? And uh that the section 107 that's been read into the record, that Mr. Hasty, who mentioned in the Cumberland County Ordinance that they require a permit for any use of land since June 20, 2005. Do you find that to be what the ordinance says? And the Hamptons, um, Mrs. Hampton testified they do not have a permit for the use of this property as a firing range and they have not applied for a permit to use the property as a firing range. Do y'all find those as facts? Are there any other facts y'all think are relevant to your decision to process this? I mean, if you find those as facts, you can make a motion to find those facts as the facts that you, in your considerations.

CHAIR HUMPHREY: Mr. Ferguson?

MR. FERGUSON: In my opinion, I think we need to make the fact for sure about the permit and the use of it as a firing range versus the farm. I think we really need to go on that.

MR. LOTT: What are you saying?

MR. FERGUSON: I'm saying that they didn't submit for a permit for the firing range, but they did submit for the farm use. We need to make that as a facts findings.

CHAIR HUMPHREY: Oh, okay. Mrs. Mullins?

MRS. MULLINS: I say we just go for it. We've got the facts.

MR. MOOREFIELD: Do y'all make the motion that those are the facts?

CHAIR HUMPHREY: Let's use those as our findings in fact. Yes.

MR. LOTT: Well, I'd like to make a motion that we uphold the county officer.

MR. MOOREFIELD: But you need to make some findings in fact.

CHAIR HUMPHREY: Facts, yes, facts.

MR. LOTT: Well, the fact that he is a county employee and that's his job, he investigated, he found them to be in violation...

MR HASTY: I'm sorry, if you agree with the findings examples the county attorney read, you can put that in a motion.

CHAIR HUMPHREY: Okay.

MR. MOOREFIELD: I would advise you that those findings in fact would be sufficient to conclude that the, that they did not have a permit and were in violation of the ordinance. I mean, but you've got to find some facts to make that decision.

CHAIR HUMPHREY: Could we list the uh facts for the motion one more time. I know we just did that, but just so it's clear to the board members, would you do that?

MR. MOOREFIELD: Yes, sir. The Hamptons purchased the subject property in 2011. The Hamptons began construction of a firing range shortly after purchasing the property. Mrs. Hampton testified that they only had a small berm built in April 2013 she testified at the Kirby hearing. The Hamptons have continued to expand and improve the property through May of 2015. Um, the Hamptons have not used the property for residence but have received permits to install a septic tank and I think a dwelling on the property. Do y'all find that as a fact?

CHAIR HUMPHREY: Yes.

MRS. MULLINS: Yes.

MR. FERGUSON: Yes.

MR. LOTT: Yes.

MR. DYKES: Yes.

CHAIR HUMPHREY: Are we in agreement?

MRS. MULLINS: In agreement.

CHAIR HUMPHREY: Okay.

MR. MOOREFIELD: The use of the property as a firing range does not constitute a farm use for that portion of the property that's included in the range.

MRS. MULLINS: Yes.

MR. MOOREFIELD: Section 107 of the Cumberland County Zoning Ordinance has required a permit for any use of land since June 20 2005. Do y'all agree?

MRS. MULLINS: Agree.

MR. DYKES: Agree.

MR. MOOREFIELD: The Hamptons do not have a permit for the use of the property as a firing range.

MR. LOTT: Agree.

MR. MOOREFIELD: The Hamptons have not applied for a permit for the use of the property as a firing range.

MRS. MULLINS: Agree.

MR. MOOREFIELD: And if y'all find those facts, would you conclude that the Hampton's use of the property as a firing range is not a permitted use?

MRS. MULLINS: Yes.

MR. MOOREFIELD: So if y'all would make those findings into a conclusion, then it would be appropriate to use those findings to uphold the decision of the Code Enforcement Officer and order them to cease operations. I think his order was to remove the range, but obviously until they apply for a permit, then there's not really anything the county can do about it other than make them cease operations. But the conclusion, what he's ordered to do is remove the firing range. But if you make those findings and you said you agree with them, and you conclude that it is not a permitted use, it would be appropriate for you to uphold the decision of the enforcement officer. If that is what you want to do, then you would need to make a motion.

CHAIR HUMPHREY: Okay. All clear?

MRS. MULLINS: Yes.

MR. DYKES: Yes.

MR. LOTT: Yes.

MR. FERGUSON: Yes.

CHAIR HUMPHREY: Alright, all clear. Well then, if that's all, feel free to make a motion. Alright, so if we need to we can go over the facts again, but the facts need to be incorporated into the motion. And that, that's for the record. We've done it once, we've done it twice and we can do it again.

MR. MOOREFIELD: I don't think you need to, if everybody agrees to that, you don't need to repeat it.

MRS. MULLINS: Okay, I was going to say I'll make a motion to accept the facts.

MR. MOOREFIELD: That you find these facts.

MRS. MULLINS: That we find these facts that the attorney just read. Um, and for the Board of Adjustments to uphold the violation by Mr. Hatcher on Case No. P15-04-C.

MR. FERGUSON: Second.

CHAIR HUMPHREY: Motion made by Mrs. Mullins, second by Mr. Ferguson. Okay, we uphold the findings of fact as previously read. All in favor?

Mrs. Mullins made the motion to uphold Code Enforcement's violation, seconded by Mr. Ferguson. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	
LOTT	YES	
FERGUSON	YES	

MR. MOOREFIELD: And for the record, Mr. Chair, you have noted that Mr. Yarborough objected to pretty much everything presented by the citizens?

CHAIR HUMPHREY: I believe she's been writing them down. I nodded to her to get the objection. I think Mr. Yarborough acknowledged that they were being objected.

MR. MOOREFIELD: And Mr. Yarborough has introduced and you've accepted exhibits numbers one through eleven? And the county introduced exhibits one, which is that book of several documents, and exhibits two through eight which were just some of the photographs presented by Mr. Nettles.

MR. YARBOROUGH: Mr. Chairman, may be heard about one issue? I'm not trying to argue your motion, I just want clarification on one thing.

CHAIR HUMPHREY: I will give you that opportunity, but first let me address the board members. I just want to be sure they understand what we've done and everyone is clear. Okay, sir. Go ahead.

MR. YARBOROUGH: You haven't addressed the portion of the inspector's order requiring removal. I think what I heard was that the action would be to cease operation. Are you telling us to tear out... if you uphold his decision, you would have us tear down everything. If you agree with the county manager—uh county attorney, you would say they need to cease operation.

MR. LOTT: That would be my understanding.

CHAIR HUMPHREY: Wasn't that the intent of the motion?

MRS. MULLINS: Yes, yes it was.

MR. MOOREFIELD: So the order is to cease operations. See, Mr. Yarborough, we assumed that if the order was held to tear it down then you would be talking to planning staff to resolve that issue, but if that is the board's order. See, what you did was uphold the order, when in reality, you modified the order because you're ordering them to cease the operation.

MRS. MULLINS: Right. Cease and desist. At this time.

CHAIR HUMPHREY: Do we need a motion?

MR. MOOREFIELD: If you're just clarifying for the record, that was motion enough.

CHAIR HUMPHREY: Okay. Clarifying for the record, cease and desist. Cease and desist. Okay, anything further on this case? Okay. Thank you for your attendance! The board here has some other unfinished business. You're free to leave or you can sit and hear us on our business. Thank you for your presence!

(Inaudible)

B. P13-02-C: REVOCATION OF THE BOARD OF ADJUSTMENT'S APPROVAL OF A SPECIAL USE PERMIT TO ALLOW AN OUTDOOR FIRING RANGE, IN AN RR RURAL RESIDENTIAL DISTRICT ON 34.68+/- ACRES, LOCATED AT 3802 PLEASANT VIEW DRIVE, SUBMITTED AND OWNED BY REGINALD MARK AND JACQUELINE TART KIRBY.

CHAIR HUMPHREY: Okay, alright. I think we'll go right ahead. If you need to stand up or something for a minute go ahead. We're just going to keep moving right along. It's ten thirty, so, um.. We're moving on to P13-02-C.

Chair Humphrey read the case heading for P13-02-C.

MR. HASTY: Mr. Chairman, this is the matter that we brought to your attention a couple of meetings ago. It was forthcoming by court order, um, this matter, special use permit was reversed and it's been remanded to this board to have it revoked.

CHAIR HUMPHREY: I think it's that one right there in the packet. Did you see that, Mr. Lott?

MR. LOTT: Yes.

CHAIR HUMPHREY: Okay. So essentially what we're doing here, the court said go back and reverse what you've done. We're going to do that so we're in compliance. We just need a motion that we uphold it or process this revocation.

MS. SPEICHER: I'm not certain it's up to the attorney, but the property owner is here and indicated he wanted to address the board.

MR. HASTY: It's up to the board.

CHAIR HUMPHREY: What was that?

MS. SPEICHER: The property owner is here and indicated that he would...

CHAIR HUMPHREY: Okay, certainly. If he's here, we can hold off. Property owner? Come forward please. Yes, by all means.

MR. LOTT: Do we have a choice?

CHAIR HUMPHREY: Well, no, we have to, but he's here so we should hear him.

MR. LOTT: Well we can hear him, certainly.

CHAIR HUMPHREY: Go ahead, sir.

MR. KIRBY: Reginald Mark Kirby, 3082 Pleasant View Drive, Fayetteville, North Carolina. Well, I know you're taking my permit, and I should probably thank my neighbors for getting that done. Um, you know, I live in the county, I live in the same place many years. I shoot whenever I want and will continue to shoot whenever I want. Um, Mrs. Nettles said she hears shooting in the early mornings having her coffee. That's not my range and that's not the Hampton range. I don't know who that's coming from. I know there was another lady who lives on Bladen Circle. There's a shooting range on Bladen Circle and they're shooting there all the time. And you can whine and cry all you want but there's a shooting range on Bladen Circle.

Inaudible comment from the audience.

CHAIR HUMPHREY: He's addressing the board, so please hold your comments, sir.

MR. KIRBY: Um, when the winds coming from the south, I can hear it. I came outside one day and thought it was on my property. Good for them, I'm glad they shoot. But that's probably the guns they hear, which is at a makeshift range. I've seen it. I also have a neighbor, Tammy and Tim Sutton. They're good people, but he's got a range between two trees with limbs piled. That's what he shoots in. That's what Mrs. Rhodes hears, it's not my range. My range is probably used maybe 8-10 times a month. Most of the time it is Saturday and Sunday. It's confined to the berms. Um, there's also shooting on the Kivett's land. They have a field that's almost across the road from Roger's place. Their son shoots in that pile of dirt they have over there. It sounds like it's at my doorstep, but it's not my range. Um, there's enough of us in here voicing our opinions on guns until it comes time to use one to protect our freedom. So, like I said, with the permit that I had, regulations on the range, business hours from eight to five, which I honored for my classes. My range was never a public shooting range. That's not what it was. They hired me for defensive shooting training. So, if shooting

was going on, I was training. Now without the permit that you're taking tonight, I no longer have any regulations. I still can shoot any time I want. We don't shoot all the way til dark and we don't shoot after dark. Never have. Not at my range. I still can do my classes, just can't charge for them. Now if they want to give a range donation, they can. Nothing wrong with me giving you twenty dollars. You'd take it wouldn't you. I'm not charging for my classes; I can't do that now since my permits being revoked, but that's fine. Now what the neighbors don't know, I've seen them have functions in their yard. We all live there. I have not shot. They don't know that. It goes unnoticed. All these little makeshift ranges are the ones you should be concerned about. Mine was professionally built. Just like the Hampton range. His is very professional. This range actually isn't the bad one. My range is extremely safe. It did pass through the board last time I was here. I spent lots of money. They spent a lot of money out of pocket. In fact, I think the attorney fees were \$12000.00 to begin with, with a \$3000.00 discount, and the county folded under pressure and settled for \$3000.00. So they came \$7000.00 out of pocket. I'm sure they had a whole posse to get those funds together, but what did they win? Nothing. I still shoot, I'm still gonna shoot. Get over it. All these people that revoked this, I respect them, they're good people, but they've gone way overboard. (inaudible) You ought to get your facts right before you start pretending you're a ballistics expert. You need some training. People take a class and get a permit, go to a range and think they're ready for battle. It doesn't work like that. There's people here that go to Jim's and shoot at an indoor range. That doesn't prepare you for walking out of Walmart when someone tries to snatch your purse, or tries to mug you, or shoots you. You'd be surprised ... anyways, the whole point is that nothing changes for me. I'll still do operations, very under the table. It's very professional. I was very considerate of my neighbors when I had my range.

CHAIR HUMPHREY: Thank you for your testimony. Are you concluded?

MR. KIRBY: Yeah, um, I just want to vent a little bit. It's been very frustrating; it's a lot of stress. Especially when we're not the ranges they should be complaining about. It looks like they'd appreciate the ones spending a lot of money to make the ranges safe. They're much more professional than those little makeshift ranges.

CHAIR HUMPHREY: You do understand that this board approved you before. Now the courts said, hey it's over with. You can fire, but you got what you came to the board for!

MRS. MULLINS: And I do have one thing to say. Don't assume because we're sitting up here, we don't have concealed carries also. We do have gun knowledge.

MR. KIRBY: I'm sure you do. Some of you do.

CHAIR HUMPHREY: Okay, thank you. Thank you for your testimony, sir. Alright, now we can go and have this motion. We can carry the motion. Do we have a motion to ...

MRS. MULLINS: I make a motion that we go ahead and revoke the special use permit, and follow through with what the courts said.

MR. HASTY: Case number?

MRS. MULLINS: P13-02-C.

MR. LOTT: Second.

CHAIR HUMPHREY: Okay.

Mrs. Mullins made a motion to revoke the special use permit, seconded by Mr. Lott. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	
LOTT	YES	
FERGUSON	YES	

C. P15-05-C: CONSIDERATION OF A VARIANCE TO ALLOW A 12.5 FOOT REAR YARD SETBACK WHERE 35 FEET IS REQUIRED IN A PND PLANNED NEIGHBORHOOD DISTRICT ON .18+/- ACRE, LOCATED AT 5205 MIRANDA DRIVE, SUBMITTED BY KYLE J. AND SANDRA L. PATRICK (OWNERS).

CHAIR HUMPHREY: Alright, one more.

MS. SPEICHER: One more.

MR. LOTT: You buying breakfast? What about supper?

MS. SPEICHER: Would you like to excuse the audience if they'd like to go? In case they're not here for the last case.

CHAIR HUMPHREY: Oh, yes. Anyone who would like to leave can go. We have one more case, but you're free to go. I thought they knew that. They've been walking out anyway.

(Shuffling)

MS. SPEICHER: Okay, and the last case. Before we get into it, Jaimie has a handout. This is to replace the variance worksheet that's in your workbook now. The state statutes have changed; there's only four findings now instead of the eight that we used to have. Just trying to help.

MRS. MULLINS: Just under the variance?

MS. SPEICHER: She's going to give you a worksheet.

Ms. Rachal distributes worksheet.

Ms. Speicher read the case heading for P15-05-C and went over the case information and maps.

Ms. Speicher and staff recommend the property owners hire a surveyor due to discrepancies regarding distance to the new property line.

MR. LOTT: Now the reason being is that some of their property had been taken by DOT?

MS. SPEICHER: Correct. And the aerial photos show it better than I could ever tell it. This is the front of the property on Miranda

MR. LOTT: Right.

MS. SPEICHER: That's the back. This is Elk Road, there is a wall that's been recently installed, and then when you see the next one, that's the backyard now—which used to be the standard R10 back yard. That's how much room they have now. The dick – er, deck is existing and you will see again on the site plan, there's the deck and they're just simply asking for a sunroom. There is no opposition present.

MR. LOTT: Due to the fact that, you know, a man's home is his castle, he should be able to make additions to it for a better standard of living, and it's certainly not his fault DOT took some of his property. I think we should give it to him. I make the motion that we approve it.

MRS. MULLINS: Second.

MS. SPEICHER: As far as public safety can we go ahead and address number four and go ahead and get it in there that because the wall is between the existing back yard and Elk Road, that a site distance or anything like that would not affect the safety of the public.

MR. LOTT: Yeah, I saw the wall.

MS. SPEICHER: Just trying to help.

MR. HASTY: Mr. Chairman, under section 1605 Variance, there are some findings. They're already written down, but you must address the findings on A through G.

CHAIR HUMPHREY: Okay.

MS. SPEICHER: Wait, you didn't give one to the attorney? It's been changed, Mr. Hasty. There's only four now.

MR. HASTY: Oh, okay. That's what you were saying.

(Inaudible)

MR. LOTT: The fact that there's a wall there would add to the safety factor.

MRS. MULLINS: Right. That would be under three, right?

MR. LOTT: The DOT took part of the property through no fault of the owners. Number two, the fact that DOT took part of their property affects the future value of this piece of property, but then the addition to the house would enhance this piece of property the future value of the property which would cancel one another out so to speak. The third one being that the wall is there, it's a safety factor. It would not cause a hardship to the people there as a safety factor. I make a...

MS. SPEICHER: And you have number four on the back.

MR. LOTT: Yes, a man's home is his castle and he should be able to do with it what he wants to. Now I make the motion?

MS. SPEICHER: And you could add that they sat here until eleven o'clock at night waiting on it.

MR. LOTT: I make the motion to approve case P15-05-C.

MRS. MULLINS: Second.

Mr. Lott made the motion to approve case no. P15-05-C, seconded by Mrs. Mullins. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	
LOTT	YES	
FERGUSON	YES	

MS. SPEICHER: One more thing... We did discuss the preference was to get the end of term certificates at the commissioners, but we like to buy plaques. The board won't give plaques to regular board members, they give certificates. So, Mr. Humphrey has something for Mr. Dykes tonight. You will still get an invite to the Commissioner's meeting for your certificate.

CHAIR HUMPHREY: That gives us a chance to stand up. (laughs)

Chair Humphrey presented Mr. Dykes with a plaque.

10. NOMINATION TO FILL VACANCY

MS. SPEICHER: We have a couple of little things we have to do. We sent word to the County Commissioners that we did not want to make a recommendation on the replacement for Mr. Dykes. The Board of Commissioners sent back word that they want a nomination.

CHAIR HUMPHREY: They want a nomination?

MS. SPEICHER: From this board.

CHAIR HUMPHREY: Do we have a list of nominees?

MS. SPEICHER: Now, Katlyn has pulled two of the existing alternates that stated they were interested and they are Mr. McHenry and Mr. Ferguson.

CHAIR HUMPHREY: Right. Mr. Ferguson is here tonight.

MS. SPEICHER: Yes. They are the two alternates; existing alternates. You can also consider, I think you have in your packet, the current applicants but these are not current alternates and they could have their chance if Mr. Ferguson moves up. They did make it very clear that they do wish and would appreciate a recommendation from this board.

CHAIR HUMPHREY: Mr. Ferguson is here tonight. He's been very helpful with the discussion tonight. Board members, would anyone like to make a motion for Mr. Ferguson? You, you would accept, wouldn't you?

MR. FERGUSON: Yes.

CHAIR HUMPHREY: Okay.

MR.DYKES: I make a motion that we choose Mr. Ferguson for recommendation to fill my vacant spot.

MS. SPEICHER: And we will get that to the board as soon as we can.

MRS. MULLINS: Second.

Mr. Dykes made the motion to nominate Mr. Ferguson, seconded by Mrs. Mullins. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	
LOTT	YES	
FERGUSON	YES	

11. DISCUSSION/INFORMATIONAL ITEMS

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12. UPDATE(S)

There was none.

13. ADJOURNMENT

Mr. Lott made a motion to adjourn at 11:02 p.m., seconded by Mrs. Mullins. The motion passed unanimously.

	IN FAVOR	OPPOSED
HUMPHREY	YES	NONE
MULLINS	YES	
DYKES	YES	
LOTT	YES	
FERGUSON	YES	

Patricia Speicher, Secretary to the Board

Horace Humphrey, Chairman