

Members:

Ed Donaldson, Chairman
Horace Humphrey, Vice-Chair
Joseph M. Dykes
Vickie Mullins
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

TENTATIVE AGENDA
DECEMBER 19, 2013
7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, December 19, 2013, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. SWEAR IN STAFF
3. ADJUSTMENTS TO THE AGENDA
4. APPROVAL OF THE OCTOBER 17, 2013 MINUTES
5. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES
6. PUBLIC HEARING DEFERRALS/WITHDRAWALS
 - **P13-13-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON .58+/- ACRES; LOCATED AT 3609 GILLESPIE STREET; SUBMITTED BY ISAAC YOUNG (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC. **WITHDRAWN BY APPLICANT** (SIGN POSTED ON PROPERTY – NO PUBLIC NOTICE MAILED/NO NEWSPAPER AD)
8. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
 - A. **P13-11-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 3.68+/- ACRES; LOCATED AT 2589 GILLESPIE STREET; SUBMITTED BY MICHAEL KEITH SUTTON (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.
 - B. **P13-12-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 195 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 34.27+/- ACRES, LOCATED ON THE EAST OF HUCKLEBERRY ROAD (SR 1864) AND SOUTH OF SANDEROSA ROAD (SR 1833); SUBMITTED BY BROADWELL LAND COMPANY (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

C. **P98-32-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE WRECKING YARD/JUNKYARD, IN A M(P) PLANNED INDUSTRIAL DISTRICT FOR AN AREA LOCATED AT 1079 S EASTERN BLVD. PROMISED LAND PARTNERS (OWNER).

D. ON REMAND FROM ORDER OF JUDGE C. WINSTON GILCHRIST, SUPERIOR COURT:

P12-08-C: RECONSIDERATION OF THE BOARD DECISION FOR APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR TO ISSUE A ZONING PERMIT TO TIGERSWAN INC. TO OPERATE THE TIGERSWAN TRAINING COLLABORATION CENTER AS A USE CONSISTENT WITH OUTDOOR RECREATION/AMUSEMENT FOR PROFIT AND WITH MECHANIZED VEHICLES ON A PROJECT SITE CONSISTING OF 978.4 +/- ACRES LOCATED SOUTHWEST OF SR 2053 (DOE HILL ROAD) AT 2850 TIGERSWAN DRIVE SUBMITTED BY RAEFORD B. LOCKAMY, II; SAMUEL D. AND DORIS M. FORT; JULIA KATHERINE FAIRCLOTH; OK FARMS OF CEDAR CREEK, LLC; AND ARNOLD DREW SMITH

10. DISCUSSION

11. UPDATE(S)

12. ADJOURNMENT

Members:

Ed Donaldson, Chairman
(Vacant), Vice-Chair
Horace Humphrey
Joseph Dykes
Vickie Mullins
George Lott



Alternates:

Yvette Carson
Winton McHenry
Nathan Feinberg
(Vacant)
(Vacant)

Cumberland County Board of Adjustment

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7603

MINUTES
OCTOBER 17, 2013
7:00 P.M.

Members Present

Ed Donaldson, Chairman
Horace Humphrey
Joseph Dykes
Vickie Mullins
George Lott

Absent Members

None

Staff/Others Present

Patti Speicher
Melodie Robinson
Robert Haigh
Ken Sykes
Robert Hasty, Jr. (Assistant
County Attorney)

Chair Donaldson 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. INTRODUCE NEW STAFF MEMBER/SWEAR IN STAFF

Ms. Speicher introduced Robert Haigh as the future secretary to the Board of Adjustment.

CHAIR DONALDSON SWORE IN THE STAFF.

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE SEPTEMBER 19, 2013 MINUTES

Mrs. Mullins stated she voted for Mr. Dykes and Mr. Lott stated he voted for Mr. Humphrey. The motion to accept the correction to the minutes was made by Mr. Lott and seconded by Mr. Dykes. The motion passed unanimously.

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

5. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES

There were none.

6. APPROVAL OF THE 2014 DEADLINE/MEETING SCHEDULE

CHAIR DONALDSON: Are there any questions about the schedule for 2014? Is there any discussion? If there is no discussion, I need a motion to approve it.

MR. LOTT: I motion to approve the schedule.

MR. DYKES: I second the motion.

The motion passed unanimously.

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

7. PUBLIC HEARING WITHDRAWALS

P13-05-C: CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUB-SECTION G. BUFFER REQUIREMENTS 1-E, WHICH REQUIRES A SOLID BUFFER WHEN ANY OUTSIDE STORAGE OF MATERIALS, EQUIPMENT OR PRODUCT IS VISIBLE AND/OR ABUTTING ANY RESIDENTIAL DISTRICT AND/OR PUBLIC STREET, FOR A MOTOR VEHICLE STORAGE YARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 4.30 +/- ACRES, LOCATED AT 5523 US HWY 301 SOUTH (SR 2284); SUBMITTED BY ROBERT D. TAYLOR JR (OWNER) AND TOM HOLT.

MS. SPEICHER: Chair, I don't think it is necessary to publish this case. This case is on the agenda only to be withdrawn.

CHAIR DONALDSON: That is the one where you changed Mr. Taylor's conditional approval?

MS. SPEICHER: Yes, his conditional approval was changed to commercial parking. I believe the board members got a thank you from him.

CHAIR DONALDSON: So you just want us to take that one off, right?

MS. SPEICHER: Yes chair.

CHAIR DONALDSON: Which is what we told him we would do.

MS. SPEICHER: We need the board to officially withdraw it.

CHAIR DONALDSON: I need a motion to officially withdraw Case P13-05-C.

MR.HUMPHREY: I motion to withdraw Case P13-05-C.

MR. LOTT: I second the motion.

The motion passed unanimously.

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

8. POLICY STATEMENTS REGARDING APPEAL PROCESS

Ms. Speicher read the Board's policy regarding the appeal process to the audience.

9 PUBLIC HEARING(S)

- A. P13-06-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 300 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 78.35+/- ACRES, LOCATED AT 4208 NC HWY 242; SUBMITTED BY DALE R. AND ANNA B. ACKERMAN (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.**

MS. SPEICHER: Chair, if it pleases the board and to save some time, for those cases where there is no opposition, if we could get the board to accept the application as being complete, which staff has verified the ordinance provisions are complied with and direct the staff to draft an order with the findings as included in the applicant's cover letter and also attaching all the ordinance related conditions to the permit, we could make this evening go a little quicker.

CHAIR DONALDSON: Okay. As I understand, the only ones that are contested are P13-08 and P13-10. Is that correct?

MS. SPEICHER: To our knowledge, yes chair.

CHAIR DONALDSON: Is there anyone here to be heard in opposition to the tower on 78.35 acres located at 4208 NC Hwy 242, submitted by Dale and Anna Ackerman and Thomas H. Johnson, Jr., Nexsen Pruet, PLLC on behalf of American Towers, Inc.? Is there anybody here in opposition to that?

MS. SPEICHER: If we could have the record reflect that you opened the public hearing on that and then close the public hearing.

Public Hearing Open

CHAIR DONALDSON: We will open the public hearing on that and I just published the case. Is there anyone here to be heard on that particular case on the request of the cell phone tower submitted by Dale and Anna Ackerman at 4208 NC Hwy 242? With no one being heard and no one signed up.

Public Hearing Closed

CHAIR DONALDSON: I need a motion if anybody wants to accept the application which has been complied with unless you all want to see everything on it?

MR.HUMPHREY: I offer the motion that we accept the application with the recommendations of the planning staff to let the application go forward.

MRS. MULLINS: I second the motion.

CHAIR DONALDSON: Is there any discussion or does anybody object to it? All those in favor say aye.

The motion passes unanimously.

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

Public Hearing Open

B. P13-07-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 195 FOOT TOWER IN AN R40 RESIDENTIAL DISTRICT ON 63.63+/- ACRES, LOCATED ON THE NORTH SIDE OF JOHN MCMILLAN ROAD (SR 2244) AND EAST SIDE OF EAGLE SPRING DRIVE; SUBMITTED BY PHILLIP C. SMITH (BY POA) ON BEHALF OF LAWRENCE C. AND OLETA C. SMITH HEIRS (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

CHAIR DONALDSON: Is there anyone here to be heard other than the petitioners on this matter?

Public Hearing Closed

MR.HUMPHREY: I offer the motion that we accept this with the same conditions as set out by the Planning & Land Use Committee.

MR. LOTT: I second the motion.

CHAIR DONALDSON: Is there any objection or any discussion? All those in favor say aye.

The motion passed unanimously.

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

Public Hearing Open

C. P13-09-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 250 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 118.07+/- ACRES, LOCATED ON THE SOUTH OF MAXWELL ROAD (SR 1006) AND WEST OF WADE STEDMAN ROAD (SR 1826); SUBMITTED BY GARY F. AND KATHY L. MCMILLAN (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

CHAIR DONALDSON: Is there anybody here to be heard on this matter other than the petitioner? We need a motion.

Public Hearing Closed

MR.HUMPHREY: I offer the motion that we accept this with the same conditions as set out by the Planning & Land Use Committee.

MRS. MULLINS: I second the motion.

CHAIR DONALDSON: Is there any discussion or are there any questions? All those in favor say aye.

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

Public Hearing Open

D. P13-08-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 300 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 184.85+/- ACRES, LOCATED ON THE WEST SIDE OF CEDAR CREEK ROAD (NC 53) AND SOUTH OF DEERTRACK LANE; SUBMITTED BY WYMAN A., JR. AND SARAH O. NICHOLS (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

CHAIR DONALDSON: I understand that we have someone signed up in opposition, is that Mr. Walters? Mr. Walters, if you could come up please. Who's representing the petitioner? You can come up too and we'll swear you all in. David Walters, Thomas Johnson and Joe Smathers were sworn in.

MS. SPEICHER: Ms. Speicher presented the land use and photos of the site to the Board. The Graphics Section made this map because the site is located so far to the south, close to the Bladen County line at NC Hwy 53. You won't always see a map like this, I just wanted to explain this. For the board members, especially the newer ones, the section that governs towers starts on page 100 in the County Zoning Ordinance. The staff has found that the application has met all the minimum standards from the ordinance and/or will meet with the compliance related conditions that are attached. If the Board does decide to approve this application, we request you attach those ordinance conditions to the application. I'm available for questions.

CHAIR DONALDSON: Does any of the board have questions for the staff? Can you go back to the overhead? Isn't that the duck water fowl refuge right there. Mr. Walters, you live out there, which one is it?

MR. WALTERS: Actually, the state owns it.

CHAIR DONALDSON: It is a water fowl refuge.

MR. WALTERS: It is called Jessup Mill Pond. The wildlife department took that over a few years back.

CHAIR DONALDSON: When I saw the overhead slide, I thought that is what it was, I always want to make sure what we are talking about. So the tower would be in the upper quadrant, right up in that area? [referring to the slide] Who wants to be heard on behalf of the petitioner?

MR. JOHNSON: I'm Tom Johnson, the attorney with the law firm of Nexsen Pruet, 4141 Parklake Avenue, Raleigh, N. C., here on behalf of the petitioner American Towers, LLC who is building this tower on behalf of AT&T. This is part of the other three tower cases you will hear tonight and is part of the expansion plan to cover parts of the county that essentially have no service. It is a very remote area, as Ms. Speicher mentioned, just north of the Bladen County line. Ms. Speicher, if you could go back to the previous aerial. What we are doing is using the existing driveway [pointed to the slide]. We will come back and put the site right in here and that is the proposed location. I would ask that you admit into evidence the application and all supporting documents that we have already submitted to the county and we are also in agreement with the conditions that the county staff has recommended. We are in agreement with those and to have those attached to the special use permit. This site is one where we will minimally remove trees in order to get the tower in. We will leave the existing trees that are there. It is a thickly wooded piece of property. We have a 100 x 100 foot lease area, but the compound will be 80 x 80 feet. That is essentially what we will try to remove except what we need to put the fence around the compound. As part of the file we did submit a certification from AT&T about their radio frequency emission and that they do comply with the FCC rules. If you recall, the state statutes says that for this local board, the Federal Government controls the safety of radio frequency emissions and that is not a

consideration by this board. AT&T's emission at this site will be a fraction of 1% of the federally allowed exposure level. I wanted to make that clear, that it is very minimum. Tonight I have Joe Smathers, who is a very experienced real estate broker who has reviewed, Mr. Herring actually prepared the report and Mr. Herring had a conflict tonight and couldn't appear, so I want to have Mr. Smathers come up and talk as far as impact on adjoining property values. That report is in your packet and he wanted to speak to that. If you don't have a copy, I do have extra copies of that report.

MS. SPEICHER: It is not included in the packet.

MR. SMATHERS: I did this report. We had four hearings. Graham did three and I did the report on this one. My name is Joe Smathers, 7500 Cadbury Court, Raleigh, N. C. and as Mr. Johnson has indicated, American Towers has asked me to review this proposed tower location to make certain the construction of the facility on the proposed location has no negative impact on the value of surrounding properties. I've been in engaged in the business of real estate valuation, brokerage and development for 43 years and a licensed North Carolina real estate broker for 40 years. I've been a senior member of the National Association of Review Appraisers and a senior valuer with the International Institute of Valuers and I have examined over 500 proposed tower sites. As my report and contained in other reports and information I've reviewed, the evidence indicates that the construction and the operation of communications towers does not have any adverse impact on property values of the natural degradation or planned use and development of the surrounding area. Also the selection of such a large site and the surrounding tree line, decreases any possibility of impact to property value. Therefore, it is my conclusion that the proposed tower will not injure the value of surrounding properties and will have no negative impact on the future developments of surrounding properties. I'll be happy to answer any questions.

CHAIR DONALDSON: Does any board member have any questions? Mr. Walker, do you want to ask Mr. Smathers any questions?

MR. WALTERS: Yes sir. You say it has no negative impact on values. Is that for a 300 foot tower, I've heard 195 foot. This is approximately a 300 foot tower on the corner of our house which has a well on that lot and is livable someone will live soon so one of my questions is property value and another question is when will construction begin. A lot of people hunt and pay extra for safety permits and for the property value, I'd love to see where that data is collected.

MR. SMATHERS: We have numerous studies that we have done in all types of cities where the towers are directly adjacent and visible to the houses.

MR. WALTERS: I'm not questioning that, I would love to see....

CHAIR DONALDSON: In just a second you'll get to say something. I have a question. When is the construction expected to begin?

MR. SMATHERS: Mr. Johnson can answer that.

MR. JOHNSON: Given the time of the year, it will probably be late in this year or the beginning of next year by the time we get through the permitting process. More likely on this site, I don't expect it to happen before January or even February.

CHAIR DONALDSON: How long does it normally take to construct a site?

MR. JOHNSON: The rough estimate I'll give you is 30 days. It can be quicker than that. It is a pretty quick process, it just depends on the weather.

CHAIR DONALDSON: So if they start in January or February, it would be completed sometime in early spring?

MR. JOHNSON: That is correct. It would be a pretty quick process.

CHAIR DONALDSON: Did that answer your question Mr. Walker?

MR. WALTERS: Yes sir.

CHAIR DONALDSON: Do you want to say anything now, Mr. Walker?

MR. WALTERS: I have an aunt who lives in Baltimore, MD and she owns some of the parcels directly across the road.

CHAIR DONALDSON: Please give him the pointer. Mr. Walker, show us where you live.

MR. WALTERS: I actually live right here and there is a young family that lives here. [pointing to the slide]

CHAIR DONALDSON: You live in the yellow area, right where the pointer is?

MR. WALTERS: Yes sir. That tower is going to be roughly right there and it is awfully close and my wife is six months pregnant. I'm not questioning the value but I would love to see some statistics. I've seen some literature with studies from Harvard and Boston Universities stating there are some electromagnetic rays. I just became aware of this a few days ago, I've been out of town working and that is kind of where we stand, we'd like a little more information. My aunt owns these parcels [pointing to the slide] and she is out of town.

CHAIR DONALDSON: Those parcels don't have houses on them?

MR. WALTERS: They do not. The land value is something that would be interested in if we were allowed more time to look into it. This area back here is owned by a huge conservation area. I've heard different heights while sitting in here tonight. This is a 300 foot tower, a little bit different dynamic so I was a little concerned about the height of it and where it is going in.

CHAIR DONALDSON: I will address one issue for you. The radio frequency; the state legislature said we can't get involved in that. The assumption is, if they have complied with the FCC rules, we can't take that into account when we are determining these hearings. I understand your concerns but you have to understand that we can't do anything about that. So, you are really not questioning the valuation?

MR. WALTERS: I am, I'd really like to trust everybody but I'd like to see some statistics from what it is based on. I'm concerned about 8954 Cedar Creek Road. It's just me and my wife and if we sell this property; we've actually had people stop by and ask what is being

built. I would really like to see some statistics. I'm a little bit late in replying to this, I really wasn't aware, I worked all day and rushed to get here by 7:00. He mentioned his years in that line of work and I'm sure he is very knowledgeable but I'd like to see it for myself where some of these statistics were pulled, it would make me feel a little bit better.

MR. JOHNSON: A couple of points I'll make. This is a very remote and sparsely populated area of the county.

CHAIR DONALDSON: I assume the reason it is a 300 foot tower is because of the sparse area and you have to cover a lot a range as opposed to the ones we have seen like down in Hope Mills?

MR. JOHNSON: That is correct. That is a different situation because you have more population. There are two key points. One, the population is getting rid of their land line phones and relying on wireless. For instance if someone were out there hunting, they are going to have their wireless phone if they get stranded. The other night a kayaker got lost on the lake around the nuclear plant near Raleigh. Obviously in that situation you want to have some GPS tracking or cell phone to be able to contact someone in case of an emergency. Even though this is conservancy property, and there may be some sanctuaries and things like that people get out there and hunt and do other activities, so you want the ability for them to be able to dial 911 and to get service. Our experience is across the state and more particular in Cumberland County, theirs is the same statistic, about seventy percent of calls to 911 are from cell phones. That is one point. The other is, in these rural areas, there is a move to provide data service so you need stronger signals in order to have data service. If you want to have 4G, which Fayetteville was one of the first markets in the state to have 4G service, you have to have that strong signal. That is the reason why you are seeing some of these new towers coming into the area. That is why there is a need for the tower in this area. I was in Bladen County on Tuesday night for hearings where we got three new towers. We are trying to connect in a lot of these rural areas in this part of the state.

CHAIR DONALDSON: Are there any questions?

MR. HUMPHREY: I do have one question. The homeowner has requested that he would like to see the information that the real estate broker was talking about. Is it a possibility since we don't have it in our packet, is there a possibility, to appease what he asking, can it be given to him?

MR. JOHNSON: I'll be happy to show him the report. The report was based upon an examination of the site and the experience of the broker and analyzing over 500 sites for over 40 years. This site is one of the most remote and wooded sites that you will see. Some of the other sites that are on the agenda tonight where we didn't have any opposition show up, were actually in a more open area, some were 250-300 foot and had more adjoining residential properties to them. I can tell you this and from my experience and from what I have seen. One of the nicest country clubs in Raleigh has high voltage transmission lines going right above the club house and some very expensive homes. In Harnett County, there is a site that AT&T has and I personally looked at it because of some sites we were doing in Harnett County. It is an old tower that AT&T had for phone service way back when and it is being used now for wireless service. There are homes within a couple of hundred feet of that tower that is much taller than that. Since that tower has been there, people have built their homes

and lived next to it. It is a more massive type of tower with a bigger profile than this one. Those are but a few examples and I'm sure that Mr. Smathers has other examples where he has actually looked at sites.

CHAIR DONALDSON: Does anybody else have questions?

MRS. MULLINS: You are saying this is a self-support tower?

MR. JOHNSON: Yes, the compound is 80 x 80 feet, the setback is the height of the tower, so if anything catastrophic were to happen and the tower were to fall completely from its base, it would be contained within that setback area. In fact, from Mr. Walters property, based on the scale, probably about 400 feet or so. We more than meet the setback. Ms. Speicher, can you turn to the slide. If you see the circle [referring to the slide] that is the radius, we exceed it. It is not like we came in and put it right up against the corner of the property, it is in the radius.

CHAIR DONALDSON: Mr. Lott, do you have questions?

MR. LOTT: No sir.

CHAIR DONALDSON: Mr. Dykes?

MR. DYKES: You also mentioned that you have two other towers similar to this one here, so is there going to be some type of connection?

MR. JOHNSON: What happens is, AT&T does an analysis by computer to compute the signal. It takes into account the terrain, whether there are leaves on the tree such as winter or summer time, pine trees don't lose their pines so of course you will have more obstruction of the signal in the pine forest area. They look at all of that and they fit together. So if one doesn't come in or changes height, you have a gap, you have a problem. Many of you I'm sure have been on your wireless phone and you dropped a call. That is because you are hitting that spot where you can't connect to the adjoining tower. This is part of the plan for AT&T to give service to these areas that don't have it.

CHAIR DONALDSON: Mr. Humphrey?

MR. HUMPHREY: Mr. Walters, the information that you said you would like to see, are you satisfied with this response?

MR. WALTERS: Not exactly. I actually have AT&T and my 911 is important. When we lived in Raleigh, we obviously knew there would be some towers, but when people drive and live in the country, you sometimes think of getting away from. Our realtor from Townsend Realty, Amanda Smith-Martin, actually just guessed that 310 feet would in effect be a bother by us having a 300 foot tower roughly 400-500 feet from the corner of our property. That does concern me.

MR. SMATHERS: Just a personal note, where I live in Raleigh, from my porch, I can see a tower. I have property in the mountains and from that property I can see two towers. It's like a telephone pole. We have made presentations to the board in High Point, North Carolina

and we showed a picture presentation of what the tower looked like and the board went wild at the telephone lines that they saw instead of the tower because the city owns the telephone lines and they were huge power lines. They didn't worry about our towers, they worried about the kind of impact those power lines were having in property values. What we have found is that the towers...people overlook them today. It's like the first telephone pole that went up, I'm sure that everybody went wild, but today they are just not seen as an issue. I have sold many homes in Raleigh and the surrounding area. I've sold them adjacent to towers. I've had people who said they don't like the tower, I've also had people tell me they don't like the color of the front door. It can be an issue with some people, but just like any other item, it is not an issue with the majority of the general public.

CHAIR DONALDSON: Are there any other questions or discussion by members on the board? Mr. Walker, it's not that we are not sympathetic with you, but the truth is there is really no evidence before us that would say there is going to be an adverse impact on valuation. Sometimes, it is the price we have to pay for progress. I would say there are more people using cell phones than land lines now. Sometimes these things are part of progress and with the population moving. It may be twenty years down the line but it may be subdivisions off Cedar Creek Road. It is one of the things we have to put up with in a modern society. Does anybody on the board want to say anything else? Mr. Walters, do you have anything else to say?

MR. WALTERS: No sir, thank you.

Public Hearing Closed

CHAIR DONALDSON: Does anybody want to make a motion?

MR. LOTT: I make a motion that we pass this.

MR. DYKES: I second the motion.

CHAIR DONALDSON: All those in favor say aye.

The vote was unanimous.

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

In granting the Special Use, the Board has found that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

It will not have these effects based on FCC and other things that we can't control.

2. The use meets all required conditions and specifications;

That staff had indicated they have or will meet the specifications.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

There is no opposing information stating that it will not maintain or enhance the value of neighboring properties and based on that fact, we will go with what was read into the testimony.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan;

Staff has gone through the application and verified it and everything that is submitted had to be approved when submitted. The applicant has agreed to the conditions the county staff recommended. It will be consistent and in harmony with other towers in the area.

Public Hearing Open

E. P13-10-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON A .57+/- ACRE; LOCATED AT 2980 GILLESPIE STREET; SUBMITTED BY CHARLES A. IV AND CINDY M. ALLEN (OWNERS) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

CHAIR DONALDSON: Is there anybody here to speak on behalf of this case. What is your name sir?

MR. VICK: My name is Grey Vick and I'm here on behalf of Waterway Outdoor.

CHAIR DONALDSON: There is someone else signed up, is it Bradley Whited? You are from the city aren't you?

MR. WHITED: Yes sir.

CHAIR DONALDSON: Come up and I will swear you both in. [Bradley Whited and M. Grey Vick were sworn in]

MS. SPEICHER: Presented the zoning, land use and photos of the site to the Board. If I could I will briefly go through the ordinance requirements especially for the newer board members and plus we don't have billboards quite as often as towers. The specific provisions are on Page 145 of the County Zoning Ordinance. "Any billboard in Cumberland County jurisdiction must be located on a limited or controlled access of thoroughfares; cannot be located within 200 feet of a residential district; has a maximum height limit of 35 feet; maximum sign area of five feet; must be fifty feet from the right-of-way line; five feet from a property line; fifty feet from other signs or buildings that are located on the same property; and 500 feet from any other billboard".

CHAIR DONALDSON: Please go back through each of the slides again slowly. So it is going to be to the right as we look at it, is that true Mr. Vick?

MR. VICK: Well, actually, it will be on the left side of this building here. [pointing to the slide]

MS. SPEICHER: On the left of Two Men and a Truck.

CHAIR DONALDSON: And this sign is going to stay up?

MS. SPEICHER: Yes sir.

MR. LOTT: So it meets all the requirements?

MS. SPEICHER: Yes sir.

MR. DYKES: Is that I-95 going south?

MS. SPEICHER: I-95 Business, Highway 301.

MR. DYKES: Past the coliseum?

MS. SPEICHER: Yes sir.

MR. LOTT: How high would the sign be?

MS. SPEICHER: The application has it with maximum height of 35 feet.

CHAIR DONALDSON: That is what the ordinance says. What is the next closest billboard?

MS. SPEICHER: 790 feet to the south. I can show you. The subject property is here and the nearest building is right here. Let me see if it shows up on the aerial. The lines cover it up but the nearest billboard is right here. [pointing to the slide] That is measuring according to our mapping program.

CHAIR DONALDSON: Mrs. Mullins, do you have any questions for the staff?

MRS. MULLINS: What is the reasoning for the sign if you already have one up for both businesses?

MS. SPEICHER: This is for commercial billboard, so the content will change as the people lease the sign space.

CHAIR DONALDSON: Mr. Lott?

MR. LOTT: It looks good to me.

MR. DYKES: It looks good to me.

MR.HUMPHREY: When you say the word “static sign,” are we talking about one that is LED?

MR. VICK: No sir, this actually would be a standard sign and would be built and wrapped with the vinyl. We would potentially change the sign out once a year.

MR.HUMPHREY: The word static was throwing me off.

MR. VICK: It wouldn't rotate like a tri-vision or a digital sign.

MR.HUMPHREY: Okay, thank you.

MR. VICK: I'm in agreement with all the terms of the special use permit that the county laid out. I believe that we have complied with all the required conditions and specifications of the ordinance; the spacing requirement and we obviously dealt with people in the area we will be abutting or adjoining. Nobody in that area behind me had issues with the sign. With this being a transient area and people coming in and out of town, it will provide local businesses within the city and the county opportunities to catch that transient traffic coming through on I-95 or in and out of the area. It is consistent with federal regulations as well and the spacing under the federal regulations you are required to obtain a Department of Transportation permit for an outdoor advertising structure. It is consistent with the commercial area for advertising businesses in the local area. I can answer any other questions that you may have.

CHAIR DONALDSON: Are there any questions from the board? Mr. Whited, please come up.

MR. WHITED: Good evening, my name is Bradley Whited and I reside at 4445 Brighton Circle, Fayetteville, N. C. I am here representing the Fayetteville Regional Airport. I am the Airport Director. I do have a letter and a slide presentation [Exhibit 1] that I would like to submit to the board for consideration this evening. I am here to talk about regarding the placement of billboards along route 301/Gillespie Street near the airport. For years we have discussed the importance of providing a visually pleasing entrance to our community via the Airport Gateway is vital to that presence, similar to the concerns the county has in the area regarding the Crown Coliseum. I consider the Airport and Crown Coliseum to be very similar in nature. We want to have good business and good views. Unfortunately, Airport Road and Gillespie Street in this area is not visually pleasing and my concern would be that we don't add to that with additional billboards. There were two billboards being proposed and I think one was removed from consideration. I'm not sure why that was, but we do have one. If you look at the slide presentation, you can see within a quarter mile of the entrance to the airport road, this is where the billboard is going to be located. We're talking about the significance of the area in terms of the airport being the gateway to the community. We are a regional airport, we are your hometown airport, it is a city facility, our customers are all county residents and a six county area comes to visit in and out. Currently, there exists already two billboards within the immediate area of the proposed billboard. Here is the location of them along Hwy 301, the one on the south was pointed out on the map, the one in the north, a hotel is in that area. Here is the existing billboard nearest to the proposed billboard[pointing to the slide] It is to the right of the road and not very well maintained. It

doesn't have any visual in fact at all, but it exists. That is the other concern with billboards, it is a permanent structure, once it gets in place, this is sometimes the result. [referring to the slide picture of the billboard sign] Federal and State laws kick in once you approve a billboard location and makes it virtually impossible to eliminate it in the future. Now is the time to consider whether or not you want to add to the situation. Here is the other billboard that is to the north of the Airport Inn. It is built with just telephone poles and it is not visually appealing. Once you approve one billboard, it is going to be difficult to not approve others, so billboards continue to be signage in competition with local businesses and with each other. Here is the proposed billboard site with the existing location. [referring to the presentation] You can see there are a number of signs and technically it meets your distances, but visually you can start to see what I am talking about. When you drive out of the airport and look south, this is exactly what you see.

CHAIR DONALDSON: Could you go back to that picture please? What is that building there?

MR. WHITED: That building is the proposed billboard.

CHAIR DONALDSON: No, the one to the right where it says existing.

MR. WHITED: Oh, that is just a sign, a currently existing business sign, it is basically empty.

CHAIR DONALDSON: The reason why I asked is because it appears to be higher than 35 feet.

MR. WHITED: You saw the pictures of the landscaped business, it is beautiful from here, very nice. I would like you to consider the visual aspect of these photos as we move forward. If you consider that whole Business I-95 corridor, and if people continue to make request with the 500 foot separation, you can see a representation of what the billboards could ultimately be in that commercial area. On the next slide you could see what the proliferation of billboards could look like, that is why I think it is important to speak now and for you all to consider what the future might hold. Particularly, when I showed the existing billboards, I don't know what the standards were then, but they certainly haven't been very visually appealing. I'm not saying the current applicant would maintain a billboard like that, but it is clutter, the same clutter we are trying to address. It does have an economic impact on the image of the corridor, whether that is good or bad, we are putting traffic through the area. Unrestricted proliferation of signs can lead to this. [referring to the slide] Bragg Boulevard installed this kind of signage. How does it get like this? Well, people have to approve the signs, so consider that. Fayetteville Regional Airport processes 500,000 passengers per year and that may be what attracted the applicant; however, because we have that traffic coming in and out, that doesn't include the one or two visitors and greeters to the actual 500,000 passengers. The airlines has invested millions of dollars to provide this area with 15,330 aircraft landings and takeoffs per year. Please help us improve the Airport Gateway to our Regional Community by thinking more with a vision of what these billboards could impact in this particular area. Billboards receive special Federal and State protection. Once they are permitted they can remain in perpetuity, as you can see from the existing billboard. These same protections are not afforded to local business signage. So hopefully, a larger sign might be able to be removed. Federal and State protections still interfere with future gateway beautification of this area and can require removal of vegetation to protect the billboard's

viewshed once it is in place. This area is poised for major retail development. Allowing this proposed billboard does not support the redevelopment that is imminent for this area. Local businesses would suffer and economic development would suffer. Your decision tonight is important because it makes a difference in how our greater community area looks and is perceived from tonight forward. I am asking you to vote no on the billboards along this area to protect the airport and help to work with me on how to improve, it needs improving, all along the area. Thank you very much.

CHAIR DONALDSON: Are there any questions?

MR. LOTT: My question is, apparently, this is the law of the land that I've heard so much about lately, and from what I understand, these people meet all the requirements that has been set forth and they have done so. I also understand his point of view about the airport and the way people perceive us as they come in here. However, these people are asking to be considered their due process that they have applied for and met all the requirements for. I think the questions about whether the billboard should be permitted or not as far as the airport is concerned should have been addressed earlier and maybe some rules and regulations put in place at that time to protect the airport. That is not the question. The question is whether they meet the requirements that have been set forth.

CHAIR DONALDSON: Part of the answer is, a special use permit is a discretionary, we don't have to grant it. Otherwise if they didn't need it, they could have granted it at the board, if they met all the compliances. One point of view is why should it come to the board if they have met all the requirements under the ordinance. Why should they have to come to the board to get a special use permit? By having it come to us, implies it is a discretionary and the staff doesn't have the ability to grant it to you. All they can do is process the paperwork and make sure you have complied with everything. It is up to us to determine whether or not 1. Is it reasonable? Does it comply with everything? We can see it does and they followed all the rules. 2. Is it reasonable to grant the special use? Basically the correct thing to do given all the factors and there are a lot of factors. The gentleman from the Fayetteville Airport has a good point about how the city looks. It's not going to be too much longer before that part down there will be in the city. We are not here to enforce the city's rules but we are here to maintain some zoning integrity for the residents of the county. Sometimes we have to vary from that because there are special exemptions, and special situation require you vary from it. Sometimes we say, we would like to, but we don't think you should. I'm not saying one way or the other which way the board should vote, I'm just saying these are things that have to be considered.

MR. DYKES: I have a question for Mr. Vick. Is this the only billboard that you foresee being put there in the near future or is it hard to say?

MR. VICK: As far as how fast the construction would go?

MR. DYKES: Do you see anything within the next 2-3 years, near the year 2016?

CHAIR DONALDSON: It couldn't, it has to be 500 feet from the nearest one.

MR. VICK: That is one of the things I wanted to talk to you all about, the existing regulation. Obviously, I've scouted this whole corridor pretty hard. Under the existing

regulation, I know you showed the map showing the potential of the different locations that could potentially be there. With the actual regulation that is in place, it does make it very restrictive. There are a lot of properties along there and a lot of properties that won't work due to buildings and facing another existing sign. There are a lot of strict regulations in place that inhibit the ability to put signs out there. We had one more case that we had to withdraw. We actually took down another sign which was an illegal sign and it helped to clean up this corridor. One of the existing signs that he had shown was one I was going out to help improve it, the abandoned looking sign, Ms. Speicher, could you go back a little bit [on the slides]

CHAIR DONALDSON: I know that sign. That is Mr. Rose, Mr. Rand and Mr. Thorpe. That was a law firm a long time ago.

MR. VICK: Susan Sherill actually owns some of this property from some of the work that I did to try to clean up this area and has actually rented a sign to Freedom Christian Academy, advertising a local school. I'm hoping that from some of the work that I've been able to go out there to do is actually going to improve this area and clean up some of the violations. There are some old signs, this is an old road. I think Ms. Speicher mentioned that some date back to the 1930's, so it does have some areas that need to be cleaned up. I would like to be able to be a part of and to help you all clean up some of the things that need to be done out there. Adding a couple of nice billboards would actually be an upgrade and to clean up some of the old ones. We've actually seen other areas up in Jacksonville and the airport used outdoor advertising to increase the awareness of the airport being close by. I do think that we would love to help the airport to get more attention on this corridor and other local businesses in this area.

CHAIR DONALDSON: This sign is going to be to advertise your business, right?

MR. VICK: It will be open to advertising by any local business in the city and the county. I got a request this past week from the City Parks and Recreation Department about a sign on Hwy 87 that we have. The city receives a benefit as well from some of the sign locations that we have.

CHAIR DONALDSON: So this sign that you are asking for is not to advertise your business?

MR. VICK: No sir, it would be to advertise local businesses. Some of our customers are located in the city, the county would be Cedar Creek Fish Farm, the Richardson Firm, Fuller's Bar-B-Q Restaurant, Baldino's Subs and some local businesses use some of our signs to advertise their products and services.

MR. HUMPHREY: Did you say there is a sign already on the property?

MR. VICK: Yes sir. There is a sign advertising Two Men & A Truck.

MR. HUMPHREY: So this would be a second sign on that property?

MR. VICK: Yes sir.

MS. SPEICHER: If I could clarify for the board this isn't off premise or off site advertising, so we wouldn't call it a billboard if it was advertising the actual business on the subject property.

MR.HUMPHREY: Okay.

CHAIR DONALDSON: I thought it was for the business.

MRS. MULLINS: Isn't it right up to the other building. Can you show the pictures Ms. Speicher.

MS. SPEICHER: It is five feet from the property line. I don't have the distance from the actual building on the other side.

MRS. MULLINS: Can you show the pictures that show the two parking spots. So where the vehicle is, five feet from there.

MS. SPEICHER: If it helps the board, we do send out public notice to adjacent and all property owners within a 500 foot radius of the subject property in addition to posting a sign and posting it on the website.

MR. WHITED: The reference he made that he already scoped the area and there is no other places for billboards, when you look at the area they are putting the billboard in that meet your requirements, there are signs all around there. So meeting your criteria doesn't seem to be that difficult. I would question whether there would not be proliferation because of that. The other point that I'd like to share with you is, the airport is in a very unique situation, we are an island of the city and we are surrounded by the county. We need to look at the county and you all to help us with these issues. Working towards this in advance is difficult because these are situations that come up as you indicated as special use. The other issue is, annexation not going to happen anymore in North Carolina unless things change in Raleigh. We're going to be married for quite some time on these types of issues.

MR. VICK: I'd like to say something on the comments about it being close to the building. It is next to Mr. Rob Hobbard and I spoke to him about it today. It will be located close to his property being next door. I spoke to him about it and he doesn't have a problem with what we are doing. Not speaking for him, but I did want to let you know that being that close, we want to be a good neighbor as well.

MS. SPEICHER: Since I'm under oath: I too did speak to Mr. Hobbard and sent him a copy of the packet and the plans and he called me back and I explained it to him. I just wanted to let you know. I know that he was aware.

Public Hearing Closed

CHAIR DONALDSON: Does anybody want to make a motion?

MR. LOTT: I make a motion that we approve this special use permit.

MR. DYKES: I second the motion.

CHAIR DONALDSON: Is there any discussion? My own feelings are he is probably correct and there is probably not going to be any more annexation. So you got one side of Hwy 301 belongs to the county and the other side belongs to the city or portions of it. The two planning departments probably should get together and get some type of joint sign regulation that would make things a little more compatible. In a perfect world we would have a regulation that would limit signs to a certain height like they do in other cities which looks much nicer. All the businesses complain about it initially, but studies show people go into a McDonald's that has the low sign and the high signs, it just makes the cities and the areas look nicer. That is something I think the two planning departments should get together about, particularly, not necessarily in the rural part of the county but somewhere where you were talking about the urbanizing theory.

MR. DYKES: Mr. Chairman, who controls the signs when you are going down Cumberland Road and then turn left going up on Owen Drive? There is one out there that says Cape Fear Plastic Surgery, big like a board.

CHAIR DONALDSON: You are talking about at the old passover at the railroad track?

MR. DYKES: Yes. It doesn't look appealing to me.

CHAIR DONALDSON: I don't know. That sign has been there a long time, it was grandfathered in, they just change the way it looks. Once they are there, you can't really get rid of them. I know the sign you are talking about, it flashes. That sign has been there for as long as I can remember when I came here in 1972. It is grandfathered in and the city can't do anything about it. They had a complaint about some of those signs because they rotated and found out they couldn't do anything about them.

CHAIR DONALDSON: All those in favor of it say aye. All those opposed state so.

	IN FAVOR	OPPOSED
DONALDSON		YES
HUMPHREY		YES
DYKES	YES	
MULLINS	YES	
LOTT	YES	

MR.HUMPHREY: The reason why I am voting no is because I heard both presentations and you look at what he presented with almost a half million people coming in and out of the airport. Those people are trying to get some business out of the people we are trying to get here to make our city look good. I do recall some time ago in the Fayetteville Observer when they said we are trying to clean up that area. They were talking about the mobile homes out there in that area. I think this would be another step in the direction to making our gateway look better. That was my reason for my opposition because we have a half million people we are saying no to versus one business.

In granting the Special Use, the Board has found that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

It was submitted that it would not be endangering the public safety or health.

2. The use meets all required conditions and specifications;

It is more than 500 feet. The purpose and intent of the Zoning Ordinance is for the protection of public health and safety and was taken into consideration.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

The area where the sign is to be located is a high traffic area entering the city and serves the purpose of notifying the public of various businesses, etc. available within the city.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan;

This is primarily a business area, it is in harmony. There are no residential areas affected by this and it is in harmony with adjoining properties and uses.

10. DISCUSSION

There was none.

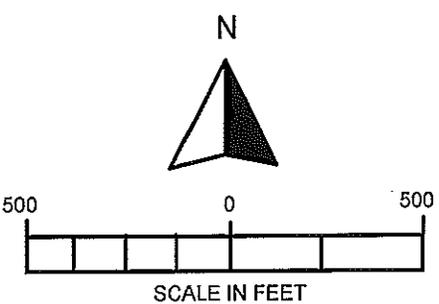
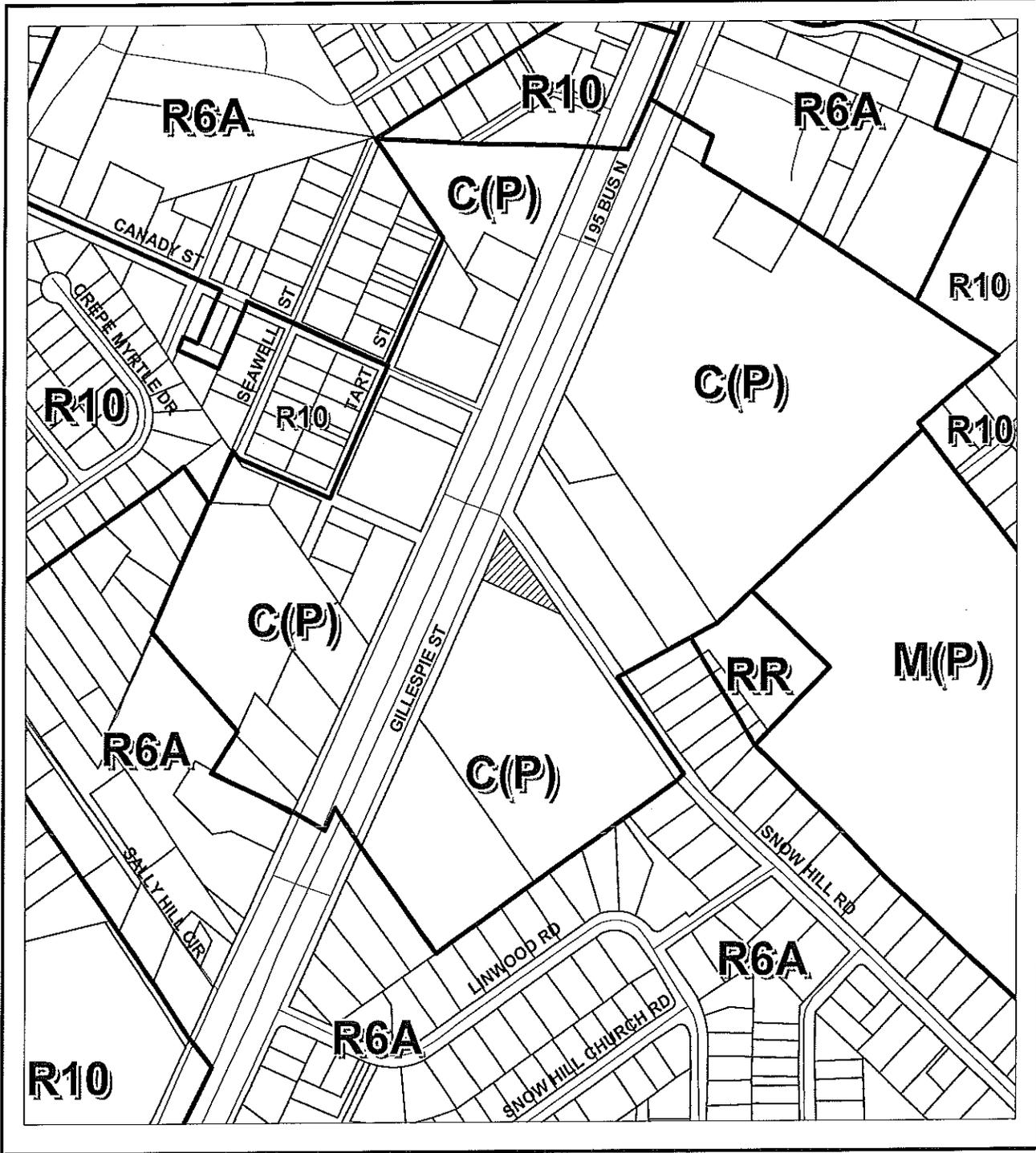
11. UPDATE(S)

ASST. COUNTY ATTORNEY HASTY: There is no update on the TigerSwan case. The orders have not been returned yet.

12. ADJOURNMENT

The meeting was adjourned at 8:30 pm, motioned by Mr. Lott and seconded by Mr. Dykes.

NOTE: IN AOD AREA



BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 0.58 AC.+/-	HEARING NO: P13-13-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		

PIN: 0424-88-0021

withdrawn 12-3-13

AM

P13-11-C
SITE PROFILE

P13-11-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 3.68+/- ACRES; LOCATED AT 2589 GILLESPIE STREET; SUBMITTED BY MICHAEL KEITH SUTTON (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

Site Information:

Frontage & Location: 580'+/- on Gillespie St; 270'+/- on Vineland Dr (SR 2325)

Depth: 270'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: woodlands, decorative cross

Initial Zoning: R6A – March 15, 1979 (Area 6); rezoned to C(P) 10/18/79 case No. P79-96

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: CC, LC (Fayetteville), HS(P), M(P), C(P), C3 & R10; West: M(P), C(P), C(P)/CU (C3 setbacks and outside storage), R10 & R6A; East: M(P), R6A; South: LC (Fayetteville), HS(P), M(P), C(P), R10 & R6A

Surrounding Land Use: residential (including multi-family & manufactured dwellings), vacant commercial, (2) religious worship activities, hotel/motel, open storage, motor vehicle repair, manufactured home park, motor vehicle rental, motor vehicle sales

School Capacity/Enrolled: Cashwell Elementary: 800/718; Ireland Drive Middle (6): 340/364; Douglas Byrd Middle (7-8): 600/743; Douglas Byrd High: 1280/1225

2030 Growth Strategy Plan: Urban Area

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: PWC/PWC

Subdivision/Site Plan: See attached "Ordinance Related Conditions"

Soil Limitations: None

Average Daily Traffic Count (2010): 23,000 on I-95 Bus N

Municipal Influence Area: City of Fayetteville

Highway Plan: US 301/Bus 95 (Gillespie Street) is identified in the Highway Plan as a major thoroughfare. The plan calls for widening to a multi-lane facility (6 Ln-div). The current ROW (260') is adequate

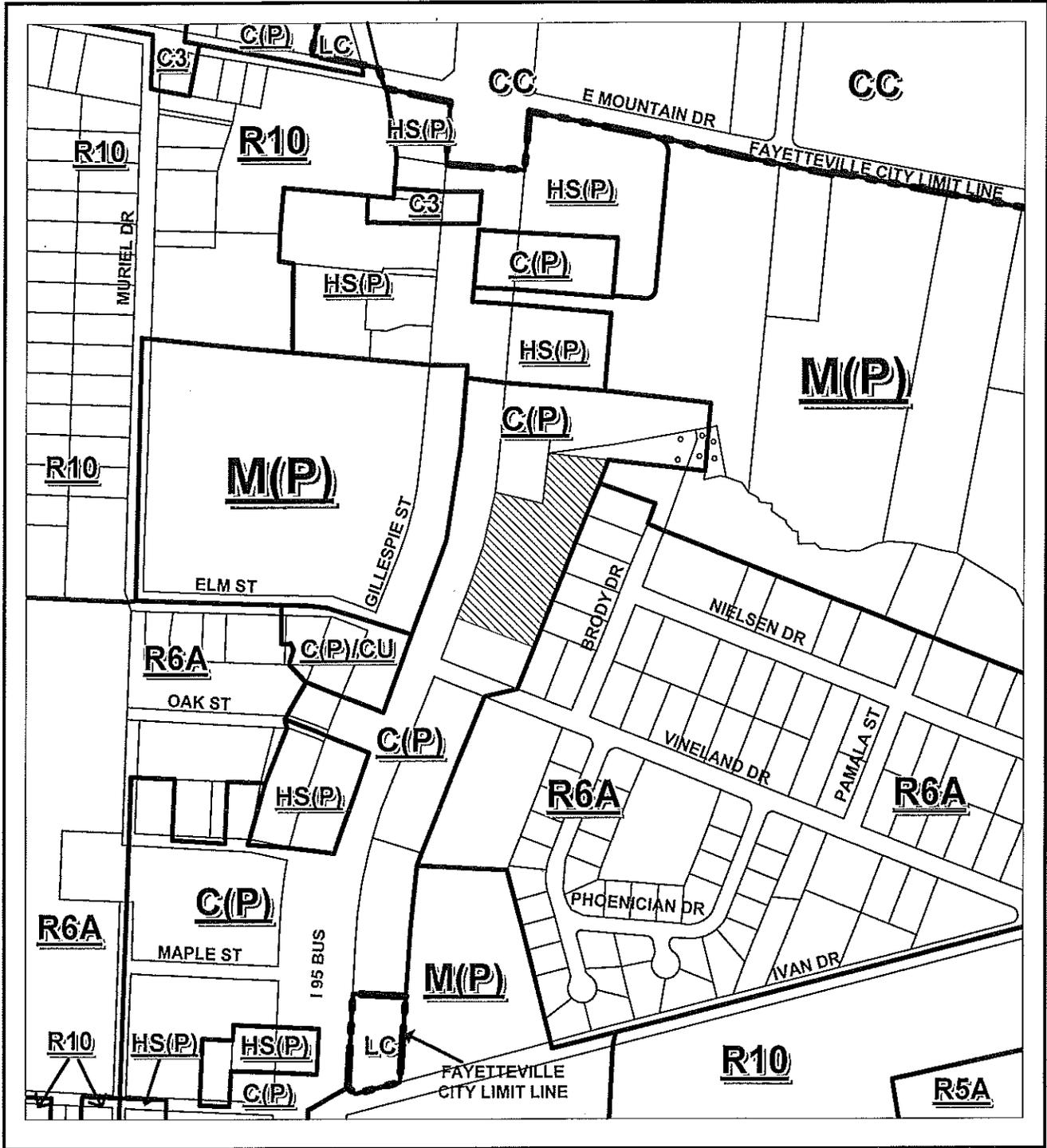
Cumberland County Zoning Ordinance Reference: Section 1307 Billboards (off-premises signs)

Notes:

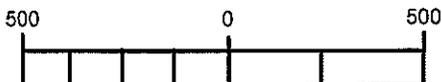
1. Contents of Application:
 - a. Proposed billboard with a steel single, maximum height 35 feet
 - b. Billboard will be illuminated
 - c. Billboard sign area: 480 square feet on each side
 - d. Billboard design: Static face

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.



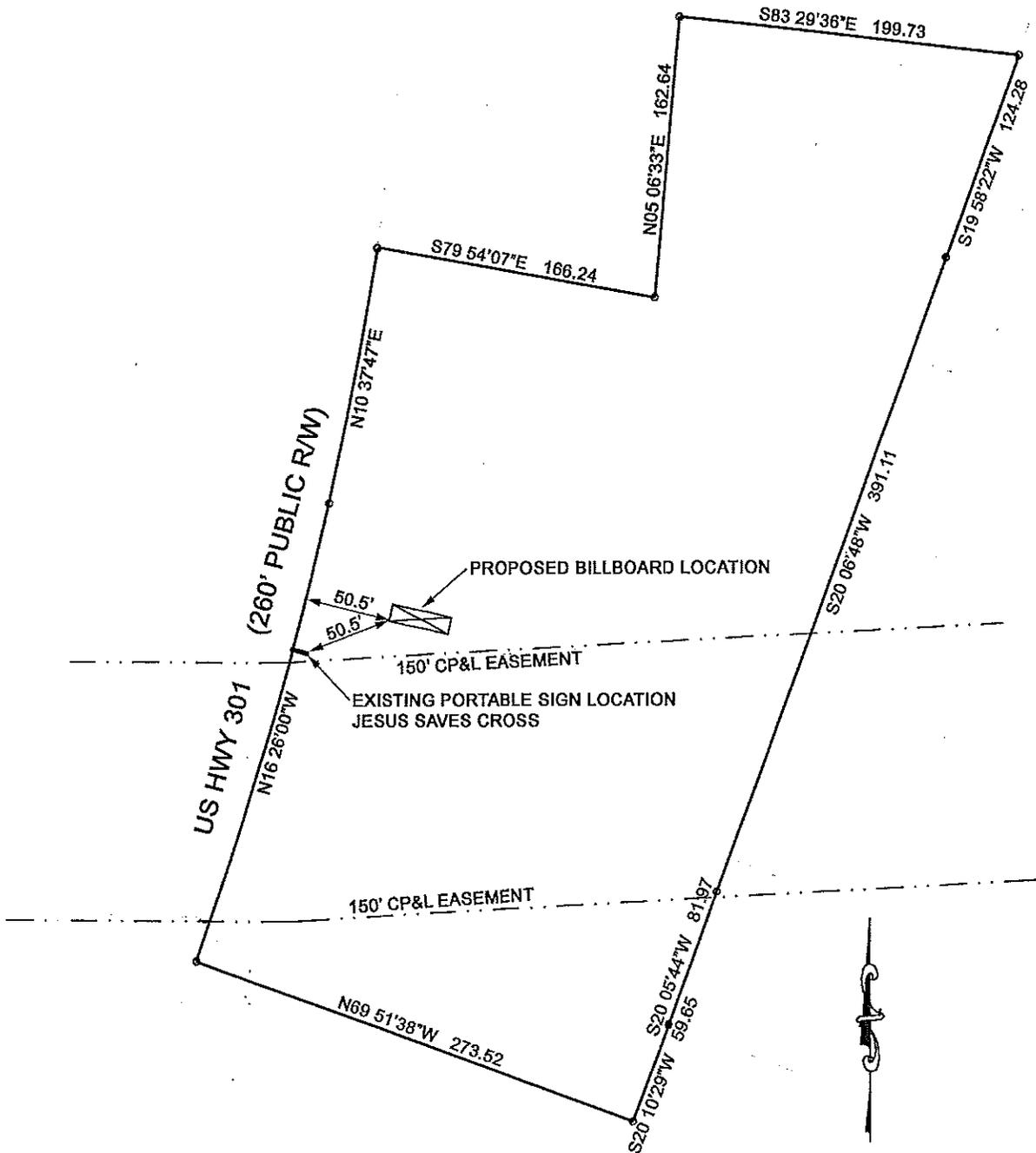
N



SCALE IN FEET

BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 3.68 AC.+/-	HEARING NO: P13-11-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		



BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
 REQUEST: TO ALLOW A BILLBOARD IN A C(P)
PLANNED COMMERCIAL DISTRICT
 CASE: P13-11-C ACREAGE: 3.68 AC.+/-
 ZONED: C(P) SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 2589 Gillespie St. Fayetteville, NC

OWNER: Michael Keith Sutton

ADDRESS: PO Box 535 Fayetteville, NC ZIP CODE: 28312

TELEPHONE: HOME 910-308-9911 WORK 910-308-9911

AGENT: M. Grey Vick

ADDRESS: PO Box 494 Wrightsuille Beach, NC 28480

TELEPHONE: HOME 910-620-3567 WORK same

E-MAIL: waterwayoutdoor@gmail.com

APPLICATION FOR A SPECIAL USE PERMIT

As required by the Zoning Ordinance

A. Parcel Identification Number (PIN #) of subject property: 0435-08-9106
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 3.68 Frontage: 450 Ft Depth: 840

C. Water Provider: county PWC 270 FT second

D. Septage Provider: PWC

E. Deed Book 04601, Page(s) 0466, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: car lot / vacant
office

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) erect a 480 sq ft Billboard Sign
35 FT Overall Height, Steel I-Beam east side

STATEMENT OF ACKNOWLEDGMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the board is not required, it is strongly encouraged;
- The board will hear any and all argument for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the board has the authority to approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the board, whether there is opposition or not, the board has full authority to consider the case.
- If the board's decision is to deny the matter before them, the aggrieved party shall file a **"Notice to Intent to Appeal" with the Planning & Inspections Staff on the next business day following the meeting in which the board's decision was made final, or the next business day following receipt of the written copy thereof.**
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the board is made final.

Signed acknowledgment that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S)



PRINTED NAME OF OWNER(S)

Michael Keith Sutton

DATE

8-19-2013

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Pre- Permit Related:

1. The owner/developer(s) must contact the tax mapping office to activate the plat recorded under plat Bk. 94, Pg. 88 and acquire a new parcel identification number (PIN). The owner/developer(s) must provide the new parcel identification number (PIN) to Code Enforcement prior to any permits being issued.

Permit-Related:

2. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
3. At the time of application for permits, the developer must provide to Code Enforcement approval from the entity that owns and/or regulates the type water and sewer serving the proposed development.
4. At the time of zoning/building permit application, the developer must provide documentation from the NC Department of Transportation (NCDOT) to the Code Enforcement office that indicates the billboard and its proposed location is permitted by the NCDOT.
5. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
6. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
7. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
8. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.
9. Because the subject property is located within the Airport Overlay District and in the event the proposed billboard is greater than 200 feet in height from sea level, the developer will be required to provide a FCC Form 7460-1 to Code Enforcement at the time of permit application. This form must be acknowledged by the FCC that the structure is not a hazard or obstruction to air traffic.

Site-Related:

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Development Ordinance and Zoning Ordinances for the C(P) zoning and Airport Overlay districts must be complied with, as applicable. In addition the contents of the application and site plan are incorporated as part of this conditional approval.
11. Any future freestanding signs, buildings, or other structures located on the subject property must be located in accordance with Section 1307, County Zoning Ordinance in relation to the billboard.

12. This conditional approval is not approval of any additional freestanding signs on the subject property.
13. "US HWY 301" must be labeled as "US HWY 301/I-95 BUS (Gillespie Street)" on all future plans.
14. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision and Development Ordinance)
15. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision and Development Ordinance)
16. If driveways are changed or added, the developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). If required, a copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
17. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.

Advisories:

18. The applicant is advised to consult an expert on wetlands before proceeding with any development.
19. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.
20. Because the subject property is located within the Airport Overlay District, the developer is strongly encouraged to discuss their development plans with Land Use Codes Section and/or the Fayetteville Regional Airport Director early in the planning stage to ensure that the proposed height of any proposed structure can be found to be no obstruction or hazard to air navigation.

Thank you for doing choosing Cumberland County and the Fayetteville area for your business location!

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605 with the Land Use Codes Section; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
Fayetteville Planning:	Marsha Bryant	433-1416
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally Castle	433-3300
Location Services:		
Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

cc: Marsha Bryant, City of Fayetteville

P13-12-C
SITE PROFILE

P13-12-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 195 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 34.27+/- ACRES, LOCATED ON THE EAST OF HUCKLEBERRY ROAD (SR 1864) AND SOUTH OF SANDEROSA ROAD (SR 1833); SUBMITTED BY BROADWELL LAND COMPANY (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

Site Information:

Frontage & Location: 100'+/- on Huckleberry Road (SR 1864)

Depth: 1,240'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Woodland

Initial Zoning: A1 – April 26, 1979 (Area 8)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: A1/CU (open storage and repair of dump trucks), R15, R40A & RR; South: A1, RR; East: A1 & RR; West: A1, A1A

Surrounding Land Use: residential (including manufactured dwellings), farmlands and woodlands,

2030 Growth Vision Plan: Urban Fringe

Special Flood Hazard Area (SFHA): No

Soil Limitations: Yes, hydric soils: TR- Torhunta and Lynn Haven soils

School Capacity/Enrolled: Armstrong: 450/419; Mac Williams Middle: 1,270/1,163; Cape Fear High: 1,425/1,570

Water/Sewer Availability: ESD/Septic

Subdivision/Site Plan: See attached "Ordinance Related Conditions"

Average Daily Traffic Count (2010): 370 on Huckleberry Road (SR 1864)

RLUAC: No objection

Highway Plan: No improvements planned for Huckleberry Road

Cumberland County Zoning Ordinance Reference: Section 927 Towers

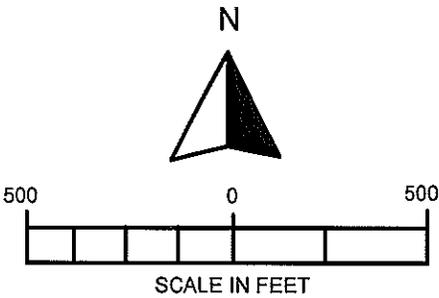
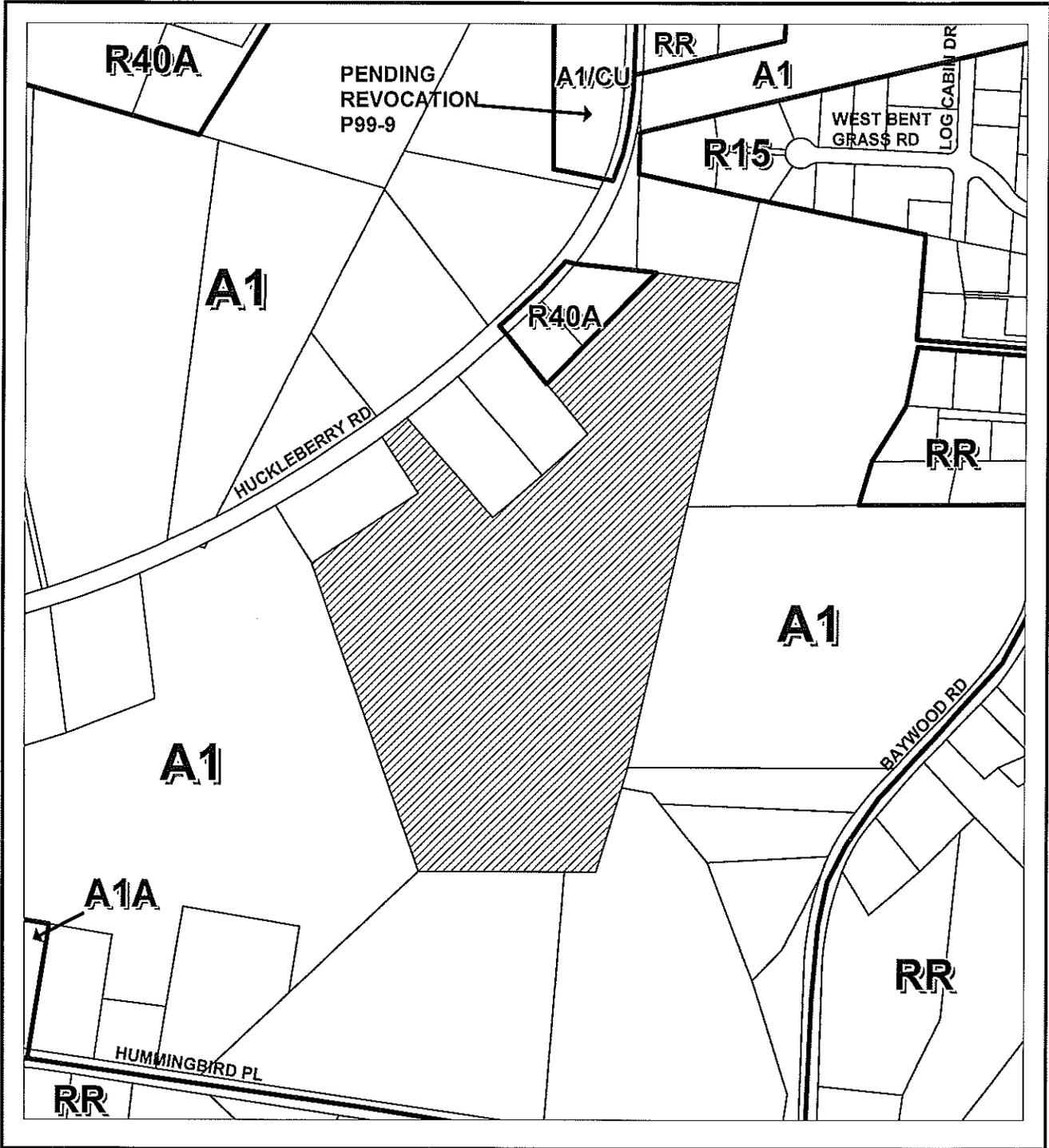
Notes:

1. Contents of the application:
 - a. Proposed 195' self support tower
 - b. Proposed 100x100 (10,000 sq ft) acre lease area
 - c. Proposed 30' access/utility easement for tower site
 - d. No outside storage at the tower site
 - e. No employees on site, tower will be monitored, inspected and maintained monthly
 - f. American Tower's statement indicating its willing to share the tower with three other users
 - g. AT&T report stating its power density levels meets the federally approved and ANSI levels
 - h. Licensed engineer's statement signed and sealed, stating tower will have the structural integrity and have the capacity to support or to accommodate more than one use or user
 - i. American Tower affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

2. All documentation required by the ordinance is attached to the application or contained within the case file, and is available for review upon request.

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.



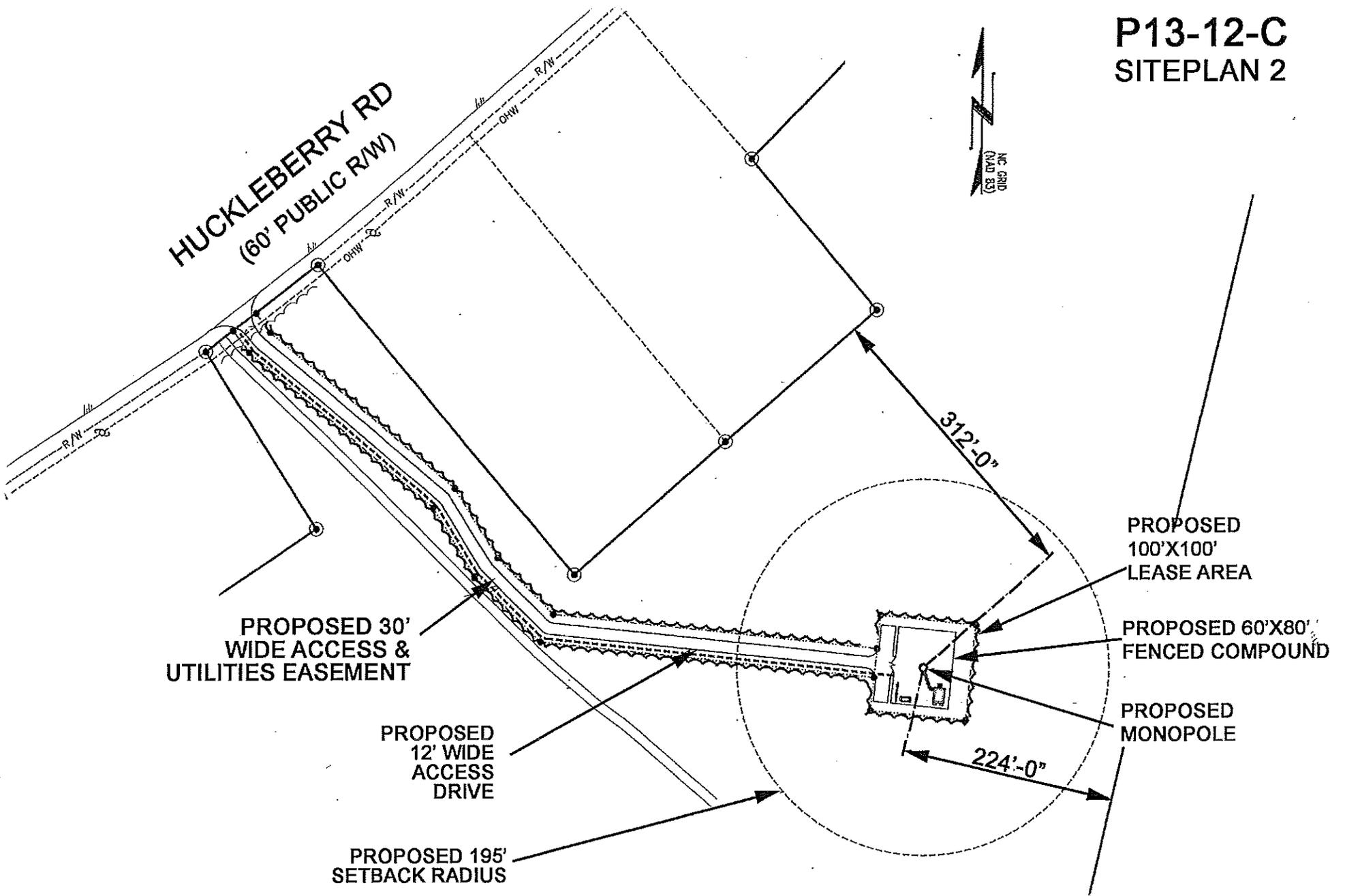
BOARD OF ADJUSTMENT SPECIAL USE PERMIT

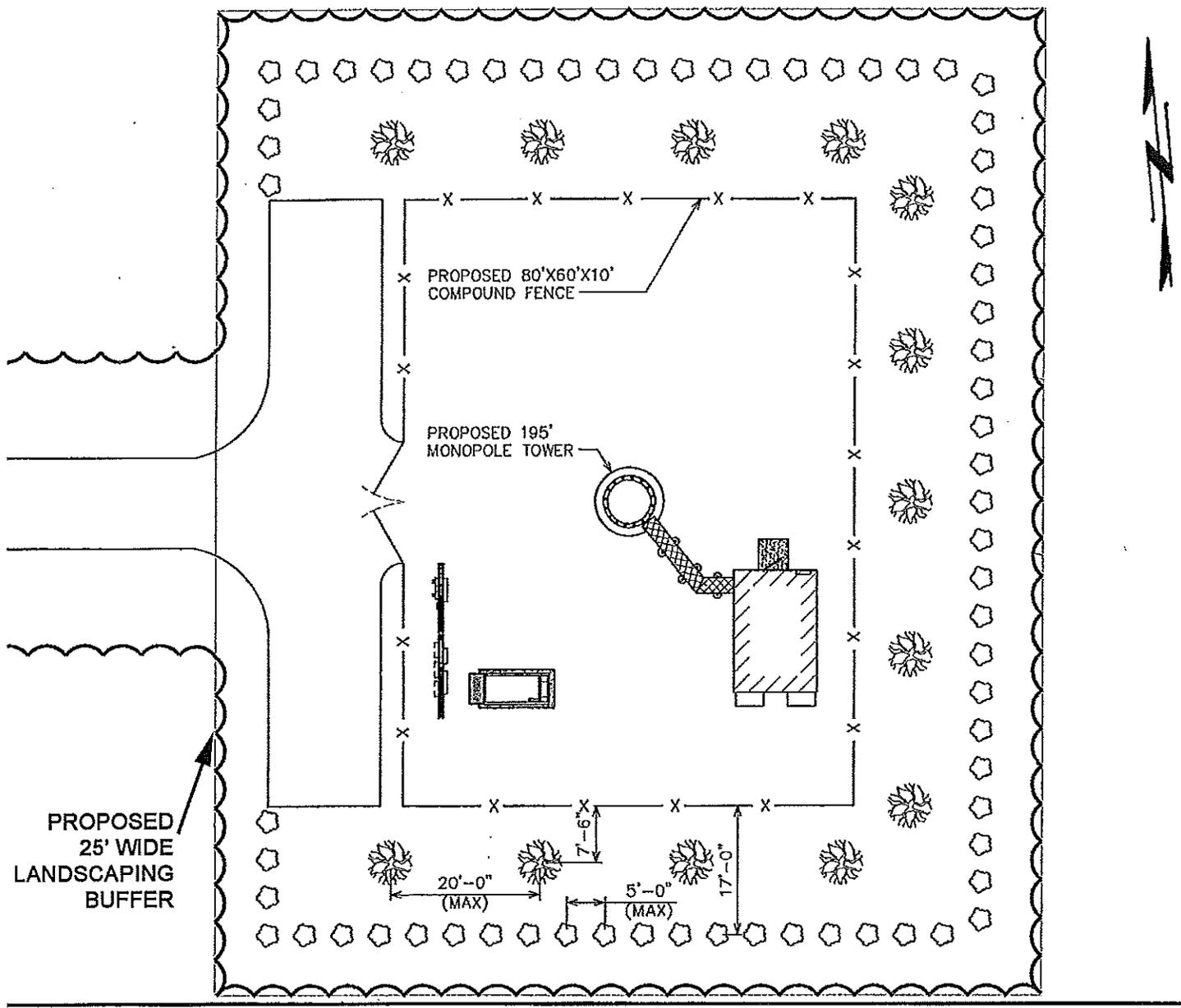
ACREAGE: 34.27 AC.+/-	HEARING NO: P13-12-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		

PIN: 0467-76-6408

12-10-13
AM

P13-12-C SITEPLAN 2





BOARD OF ADJUSTMENT

SR 1864 Fay, Fayetteville, North Carolina 28301

LOCATION OF PROPERTY: _____

OWNER: Broadwell Land Company

ADDRESS: P.O. Box 53587 ZIP CODE: _____

TELEPHONE: HOME _____ WORK 910-484-5193

AGENT: Thomas H. Johnson, Jr., Esq., Nexsen Pruet, PLLC

ADDRESS: 4141 Parklake Avenue, Suite 200, Raleigh, NC 27612

TELEPHONE: HOME _____ CELL 910-616-3100 WORK 919-653-7807

E-MAIL: tjohnson@nexsenpruet.com

APPLICATION FOR A SPECIAL USE PERMIT

As required by the Zoning Ordinance

A. Parcel Identification Number (PIN #) of subject property: 0467-76-6408
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 34.27 Frontage: _____ Depth: 0

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 5941, Page(s) 033, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: wooded/vacant land

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) Unmanned 195' monopole wireless telecommunication facility consisting of a 195' monopole tower to be located on a 100' x 100' (10,000 square feet) acre lease area with a proposed 30' access/utility easement area for the site and a proposed 20' gravel access road for the tower site.

STATEMENT OF ACKNOWLEDGMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the board is not required, it is strongly encouraged;
- The board will hear any and all argument for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the board has the authority to approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the board, whether there is opposition or not, the board has full authority to consider the case.
- If the board's decision is to deny the matter before them, the aggrieved party shall file a "Notice to Intent to Appeal" with the Planning & Inspections Staff on the next business day following the meeting in which the board's decision was made final, or the next business day following receipt of the written copy thereof.
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the board is made final.

Signed acknowledgment that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S)



PRINTED NAME OF OWNER(S)

Broadwell Land Company

DATE

10-16-13

The undersigned hereby acknowledge that the County Planning Staff has conferred with the petitioner or assigns, and the application as submitted is accurate and correct.

Dohn B. Broadwell, Jr., President of Broadwell Land Company, a North Carolina Corporation

NAME OF OWNER(S) (PRINT OR TYPE)

P.O. Box 53587, Fayetteville, NC 28305

ADDRESS OF OWNER(S)

E-MAIL

910-484-5193

HOME TELEPHONE #

WORK TELEPHONE #

Thomas H. Johnson, Jr., Esq., Nexsen Pruet, PLLC

NAME OF AGENT, ATTORNEY, APPLICANT (PRINT OR TYPE)

4141 Parklake Avenue, Suite 200, Raleigh, NC 27612

ADDRESS OF AGENT, ATTORNEY, APPLICANT

tjohnson@nexsenpruet.com

E-MAIL

CELL 910-616-3100

HOME TELEPHONE #

919-653-7807

WORK TELEPHONE #

SIGNATURE OF OWNER(S)

SIGNATURE OF AGENT, ATTORNEY OR APPLICANT

SIGNATURE OF OWNER(S)

The contents of this application, upon submission, become "public record."

Appointment of Agent
Valis, NC ATC Site # 280878 / AT&T #141-307

The undersigned Broadwell Land Company ("Owner") hereby appoints Nexsen Pruet, PLLC as Owner's exclusive agent for the purpose of petitioning Cumberland County for all necessary zoning, site plan, building permit and other local governmental approvals required for the location of a wireless telecommunications tower on the property located at Near 4400 Huckleberry Road (Parcel #467766408) including, without limitation, the following:

1. To submit the proper applications and the required supplemental materials.
2. To appear at public meetings to give representation and commitments on behalf of the Owner.
3. To act on the Owner's behalf without limitation with regard to any and all things directly or indirectly connected with or arising out of the applications for zoning, site plan, building permit and other local governmental approvals required for the wireless telecommunications tower.

This agency agreement shall continue in effect until written notice of revocation by the Owner is delivered to Cumberland County.

This the 8th day of October, 2013

Agent's Name, Address & Telephone

Nexsen Pruet, PLLC

4141 Parklake Avenue, Ste. 200

Raleigh, NC 27612

919-786-2764

Signature of Owner(s)

BROADWELL LAND COMPANY, a
North Carolina corporation

By: John B. Broadwell, Jr.

Name: John B. Broadwell, Jr.

Title: PRESIDENT

Thomas H. Johnson, Jr.
Member
Admitted in NC

October 18, 2013

VIA OVERNIGHT DELIVERY

Mr. Robert Haigh
Cumberland County Planning and Inspections Department
130 Gillespie Street
Fayetteville, NC 28301

Re: Proposed Telecommunication Tower located on SR 1864 Fay,
Fayetteville, North Carolina 28301; ATC Site No. 280878; AT&T
Site No. 141-307 ("Tower")

Dear Mr. Haigh:

As you know, I represent American Towers LLC in connection with the enclosed Application for a Special Use Permit for the telecommunications tower located on SR 1864 Fay, Fayetteville, NC 28301. The owners of the property is Broadwell Land Company.

Charleston
Charlotte
Columbia

I am enclosing the signed Application along with a check in the amount of \$200.00 for the necessary fees, a copy of the recorded deed, a copy of the site plan/construction drawings and all supporting materials. We request that this matter be placed on the agenda for the November 21, 2013 meeting of the Board of Adjustment.

Greensboro
Greenville
Hilton Head
Myrtle Beach

Raleigh

The tower will be a 195' monopole on a 34.265 acre site. The building area will be 100 feet by 100 feet in size. The site is in a wooded area which will be cleared only as necessary to construct the tower site. The site is zoned A1. The Cumberland County Zoning Ordinance (the "Ordinance") allows towers as a special use in the A1 District. The tower will be setback the height of the tower from any structures.

The site plan as required under Section 927 of the Ordinance is included in the enclosed drawings. The construction drawings include all that is required under the Ordinance.

4141 Parklake Avenue T 919.786.2764
Suite 200 F 919.890.4553
Raleigh, NC 27612 E TJohnson@nexsenpruet.com
www.nexsenpruet.com Nexsen Pruet, PLLC
Attorneys and Counselors at Law

Mr. Robert Haigh
October 18, 2013
Page 2

Including with this letter, we will forward to you a certification by a North Carolina professional engineer, that the tower will be designed to have the structural integrity and/or capacity to support or accommodate more than one user and the tower as designed will be structurally sound. The drawings show one proposed user, AT&T, and space for up to three (3) additional users (Sheet C-3).

As required by Section 927B.3., a statement is enclosed with a map of the search area for the proposed tower showing that there are no existing towers, buildings or other useable structures suitable for collocation within the coverage area.

A statement by American Towers LLC, the tower owner, is enclosed indicating its intent and willingness to permit shared use of the tower, and, as stated earlier, the construction drawings show space for up to three (3) users in addition to the initial user. American Towers LLC also includes in its statement that it commitment to comply with all federal, state and local ordinances, including all Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and guidelines. The tower as proposed will be setback the height of the tower from all property lines and no structures are located within the tower setback. As required by Section 927E., the tower base is enclosed in a chain link fence ten feet in height and the fence is a minimum of ten feet from the base of the tower. The landscape buffer required in subsection F. is detailed on Sheets L-1 and L-2. There will be no building or structure on the site that may be used as a work site for any worker. Only periodic maintenance, inspection and renovation of the facility will occur on the tower site.

As required by Section 927M., we will have an expert, Graham Herring, a licensed real estate broker, attend the hearing to provide his opinion on property values of the surrounding neighborhood, based upon his experience with other tower sites in similar situations.

In compliance with Section 927O., enclosed is a report from AT&T that shows that its power density levels will be much less than both the federally approved and ANSI levels. The lighting on the site will be in compliance with FAA standards and the requirements of Section 927P. There will be no outside storage on the site.

Through compliance with the Ordinance provisions above, the site will not materially endanger the public health or safety. The power density levels are much lower than federal and ANSI standards. The tower is designed and setback from existing structures such that if it were to fail, the public will not be harmed. The tower will benefit public safety by providing better wireless coverage in the area. Many depend on their wireless devices to call public safety officials in the event of an emergency. In fact, wireless phones are often used in the home instead of traditional landline

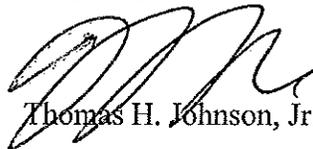
Mr. Robert Haigh
October 18, 2013
Page 3

phones. This use as proposed meets all of the conditions and specifications of the Ordinance.

The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Comprehensive Land Use Plan. The proposed tower will meet the infrastructure needs of this area of the County and will provide much needed access to emergency services, both of which are supported in the 2030 Growth Vision Plan. By virtue of this proposed tower site meeting the requirements of Section 927 for residential areas, the site is in conformity with the Comprehensive Land Use Plan as implemented by the Ordinance.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,



Thomas H. Johnson, Jr.

cc: Greg Csapo (via email, w/encl.)



AMERICAN TOWER®
CORPORATION

Ms. Pier Varner
Cumberland County Planning and Inspections
130 Gillespie Street
Fayetteville, NC 28301
October 10, 2013

ATC Site: 280878 SR 1831 FAY NC (4288 Huckleberry Rd. Fayetteville, NC 28312)

Subject: Confirmation of Tower Structural Capacity

The above noted tower will be designed by the manufacturer to have structural integrity and capacity to support or accommodate more than one user. The tower will be designed in to meet the ANSI/TIA-222-G codes and the 2012 North Carolina Building code.

Please contact the undersigned with any questions regarding this report at 919.466.5209.

Jessica Abbott, E.I.
Structural Engineer I



Raphael Mohamed, PE
Structural Strategic Implementation Lead

IMPACT STATEMENT



AMERICAN TOWER'

SITE #280878

“SR 1831 FAY”

***TO BE LOCATED EAST OF I-295
AND SOUTHEAST OF SR 1864/HUCKLEBERRY ROAD
FAYETTEVILLE, NC 28301
CUMBERLAND COUNTY, NC***

As per submitted plans

**PREPARED BY:
GRAHAM HERRING COMMERCIAL REAL ESTATE
GRAHAM HERRING GRI
8052 GREY OAK DRIVE, RALEIGH, NORTH CAROLINA 27615**

IMPACT STATEMENT

This report addresses whether the proposed use is in compliance with the purpose and intent of the plan of development of The Cumberland County Land Use and Zoning Ordinance, and is generally compatible use in the area where it is to be located. In preparing this report, I am familiar with the site and surrounding areas in the district and reviewed the site plans for the facility provided by (TEP) Tower Engineering Professionals, for the American Tower application for a Special Use Permit. I have also consulted and reviewed with area appraisers, developers, tax authorities, and planners and reviewed the public records in recent zoning cases in various jurisdictions in Cumberland County, and prior applications in Robeson, Lee, Moore, Sampson, Harnett and others.

PROPOSED FACILITY

The proposed facility will consist of a One Hundred Ninety Five Foot (195.0'+-~), Monopole wireless telecommunications facility. The site will be comprised of a developed area as described in the site plans and engineering plans that were submitted. The fencing surrounding the site will be a chain link fence at least eight (8.0') feet in height, with three strands of barbed wire at the top comprising an additional height of one foot three inches, around the sixty foot by sixty foot compound (60.0' by 60.0') within the (100.0' x 100.0') lease area, located in the developed area as described in the plans that were submitted. There will be a four (4) inch thick gravel weed barrier inside the fenced area and extending one (1) inch outside the fenced area. Landscaping will meet or exceed the County Ordinance requirements for this project. The area is zoned A1 Agricultural. The parent tract is shown in the County Records as Pin# 0467-76-6408, DB 05941, and PG 00033. The lease area to be developed will be some 28,057+- ~ SF in size, as per the revised plans that were submitted.

BACKGROUND

In general we have found that the factors that primarily affect property values are use, zoning, topography, and market demand. As the factors change, so do the current market value and development potential of any parcel of real estate.

While the value of a parcel of real property may be affected by the use of adjoining or surrounding property, that use must be significant in its intrusiveness or lack of compatibility in order to override the primary factors that affect property values. Uses which generate significant traffic, noise, odor, or dangerous conditions are generally the types of uses which are so intrusive as to override the normal factors affecting property values, and result in a material adverse impact on surrounding properties. For example, hog farms, rock quarries, paper mills, manufacturing plants, adult entertainment establishments, and similar uses, are generally believed to have a negative impact on the value of surrounding properties. In addition, development of property in a manner, which is significantly incompatible with existing or planned use of surrounding property, can result in a negative impact on property immediately adjacent to the incompatible use.

Our examination of the effects of the existing transmission tower and broadcast tower sites on surrounding properties, and our examination of other studies on this subject and available data, indicates that, in general, these type towers are not the type of use, which is so intrusive as to have an inherently negative impact on surrounding properties so long as the set backs are sufficient as to not cause an adjoining property to not be able to be used or developed for its highest and best use under the jurisdictions zoning restrictions.

SUMMARY

My personal inspection of the site and surrounding areas, and public records revealed the following:

1. Located immediately to the north of the proposed site and parent tract is undeveloped and farmland that is heavily wooded, rural agrarian uses and, scattered rural residential homes, farms and Huckleberry Rd.
2. Located immediately to the west of the proposed site is rural land, with cultivated land and wooded undeveloped land and family farm and single family homes and other undeveloped land.
3. Located to the south of the proposed site are farms and rural agrarian uses, with both cultivated and forested lands, and some scattered rural residential development.
4. Located east of the proposed site are undeveloped rural agrarian uses, including cultivated land woodland, and pastures, separated from the parent tract by mature trees and vegetation.
5. That the visibility of the facility will be very limited at ground level due to the existing vegetation and the upper portion of the tower will be visible, this is consistent with other towers in the county due to the topography and rural nature of the county.

In Summary, my personal inspection of this proposed site and other tower locations in North Carolina, in the jurisdictions of Cumberland, Robeson, Johnston, Wilson, Hoke, Moore, Sampson, Cities of Lumberton, Sanford, Raleigh, Wilmington and many others, my personal Expert Witness Testimony in over 1,700 one thousand seven hundred zoning hearings for the record in these and many other jurisdictions across the southeast, my review of industry data regarding all types of wireless transmission towers, indicates that, in general, wireless telecommunication tower facilities do not have a inherently deleterious affect on surrounding properties. Our review of the Facility to be constructed at the Site, and personal inspection of the Site and surrounding area, indicate that the planned facility is generally compatible with the area's existing and proposed uses, and developed as proposed it will have no substantial negative impact on existing or planned development of the surrounding properties.

OVERVIEW OF THE CREDENTIALS OF GRAHAM HERRING, LICENSED
NORTH CAROLINA AND SOUTH CAROLINA REAL ESTATE BROKER, AND
GRADUATE OF THE UNIVERSITY OF NORTH CAROLINA REALTORS
INSTITUTE.

GRAHAM B. HERRING, GRI
8052 Grey Oak Drive
Raleigh, North Carolina

Experience:

Licensed Real Estate Broker in North Carolina for 38 years
Licensed South Carolina Real Estate Broker

Mortgage Lending and Appraising, 6 Years (Single Family Residential)
Land Development (Commercial and Residential)
Shopping Center development, leasing and sales
Industrial, Office and Institutional, Commercial properties; development, leasing and sales.
Specialized Computer enhanced photography (Photo Simulations)
Site Acquisition, Telecommunications, Radio, Television, and EMS/911 Facilities
SHPO North and South Carolina/ remediation work
Residential/Builder Construction lending
Certificate of Completion, United States Savings and Loan League Single Family Residential Appraising Course.

Past Executive Director of the Nash County, and Rocky Mount Homebuilders Association
Graduate of the North Carolina Homebuilders Institute
Graduate of the North Carolina Insurance Institute
Graduate of the International Shopping Center Institute School of Management and Leasing
Graduate of the University of Pennsylvania/Wharton School Of Investment Real Estate
Consulted with City Municipalities and County Governments. Concerning Potential Impact of Telecommunications Facilities, in planning and study meetings.
Appeared as an expert witness in over 1700 Zoning Hearings, in 67 counties, and 65 jurisdictions in North Carolina, Virginia, Georgia, Florida and South Carolina
Consulted with developers concerning planning and placement of telecommunications facilities in planned developments, i.e.: Weston, and Wakefield.
Testified as an expert witness regarding impact on surrounding properties of Telecommunications Facilities in Board of Adjustment and Commissioners hearings throughout North Carolina, Virginia, Georgia, Florida and South Carolina.
Conducted Market and Tracking Studies in several counties including Wake and Orange counties, on the development of telecommunications facilities, and the sale of improved residential properties in developments that are surrounding such facilities, and comparison studies of such.

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Permit-Related:

1. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
2. For any future development on this site, the County Health Department must approve sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision and Development Ordinance)
3. For any future development on this site, connection to public water is required, the Eastover Sanitary District (ESD) must approve water plans prior to application for any permits. A copy of the Eastover Sanitary District's approval must be provided to Code Enforcement at the time of application for building/zoning permits. (Section 2306 A.1, Public Water and Sewer Systems, County Subdivision and Development Ordinance)
4. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
5. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
6. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
7. Prior to issuance of a building permit for the tower, the applicant/owner or developer must submit to Code Enforcement, drawings sealed by a licensed engineer and a certification letter from the licensed engineer who prepared the plans that the tower will meet all applicable Federal, State and local building codes and structural standards. (Section 927.H, Towers, County Zoning Ordinance.)
8. Prior to issuance of building permits for the tower, if lighting is required by the FAA, the applicant/developer/owner shall submit documentation from the FAA that the proposed lighting is the minimum lighting required by the FAA. (Section 927.P, Towers, County Zoning Ordinance.)
9. Prior to issuance of the final occupancy permit for the tower, the owner/operator of the tower shall submit a sign and seal engineer's statement that the tower is structurally sound. (Section 927.R, Towers, County Zoning Ordinance.)
10. The final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.
11. A review of the data available to the Army Corp of Engineers indicates that jurisdictional waters are likely to be present on this property and therefore are likely to be impacted by the proposed project. However, without an official Jurisdictional Determination at the property, these findings cannot be confirmed.

A permit will be required for this project if construction will involve the temporary and/or permanent placement of fill in waters of the United States including wetlands. If a permit is required, the applicant will be required to avoid and minimize impacts to wetland/waters of the United States and may need to provide compensatory mitigation for unavoidable impacts.

12. If the proposed lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot.
13. The minimum acceptable road frontage for subdivision purposes in this area is 20' in width; if the lot is to be split out for tax or other purposes, in order to get a permit, the area shown as an "ingress/egress easement" must be made a part of the lot and must be a minimum of 20' in width.

Site-Related:

14. All uses, dimensions, setbacks and other related provisions of the County Subdivision & Development Ordinance and Zoning Ordinances for the A1 zoning district must be complied with, as applicable. The contents of the application and site plan are considered a part of this conditional approval.
15. This conditional approval is not approval of any freestanding signs. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is not approval of the size, shape, or location of any signs.)
16. "Huckleberry Rd" must be labeled as "SR 1864 (Huckleberry Road)" on all future plans.
17. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision and Development Ordinance)
18. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision and Development Ordinance)
19. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
20. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
21. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
22. The tower base is required to be enclosed by a chain link fence that is at least 10 feet in height. (Section 927.E, Towers, County Zoning Ordinance.)
23. A 25 foot wide buffer shall surround the tower compound area and that no structures be erected within the buffer this buffer area. Note: The developer is required to obtain an owner's statement granting permission to maintain this buffer area outside the actual lease lot area. The buffer area shall be planted with evergreen trees that will attain a minimum height of 25 feet spaced no greater 20 feet apart. The inner fringe of the buffer area shall be planted with an evergreen hedge with an initial height of three feet and an expected attainment of six feet in height within four years of planting. This buffer shall be maintained for the duration of the lease. (Section 927.F, Towers, County Zoning Ordinance.)
24. All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of one off-street parking space is required for this development.
25. In the event the tower is not used for a period of six months, the tower shall be considered abandoned and must be removed. The owner of the tower is required to remove any abandoned, unused or structurally unsound tower within 90 days of receiving notice

requiring removal. The Code Enforcement Coordinator may establish a shorter period of time for removal in the event the tower is determined to be structurally unsound. (Section 927.Q, Towers, County Zoning Ordinance.)

Advisories:

26. The applicant is advised to consult an expert on wetlands before proceeding with any development. There may be wetlands located in the project area that are subject to the permit requirements of Section 404 of the Clean Water Act. To avoid a violation of federal and/or state law, it is recommended the developer contact the Office of the Army Corp of Engineers or hire an environmental consultant to identify and delineate any wetlands in the project area prior to construction. A Section 404 permit will be required if the applicant needs to fill wetlands and the permit must be obtained prior to any construction on this site.
27. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

Thank you for doing business in Cumberland County!

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605 with the Land Use Codes Section; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Engineer's Office:	Wayne Dudley	678-7636
County Health Department:	Daniel Ortiz	433-3680
Ground Water Issues:	Matt Rooney	678-7625
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally Castle	433-3300
Location Services:		
Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

P98-32-C
SITE PROFILE

P98-32-C: REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE WRECKING YARD/JUNKYARD, IN A M(P) PLANNED INDUSTRIAL DISTRICT FOR AN AREA LOCATED AT 1079 S EASTERN BLVD. PROMISED LAND PARTNERS (OWNER)

Site Information:

Frontage: 450.00'+/-

Depth: 1360.00'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: vacant

Initial Zoning: M(P) – March 15, 1979 (Area 6)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: M(P), C(P); South: M(P), R6A; East: M(P); West: M(P)

Surrounding Land Use: Industrial uses not otherwise prohibited, trailer rentals, vacant & woodlands

2030 Growth Strategy Map: Urban area

Special Flood Hazard Area (SFHA): No flood

Water/Sewer Availability: Well/Septic

Municipal Influence Area: City of Fayetteville

Soil Limitations: Yes, hydric soils: RU – Roanoke-Urban land complex soils

Subdivision/Site Plan: Site plan review conditionally approved on 8/15/2002

School Capacity/Enrolled: Cumberland Road: 457/449; Ireland Drive (6): 340/364; Byrd Middle (7-8): 600/743; Byrd High: 1280/1225

RLUAC: No objection

US Fish & Wildlife: No objection

Average Daily Traffic Count (2010): 20,000 S Eastern Blvd (HWY 301)

Highway Plan: This portion of Eastern Boulevard is identified in the Highway Plan as a major thoroughfare with adequate right-of-way

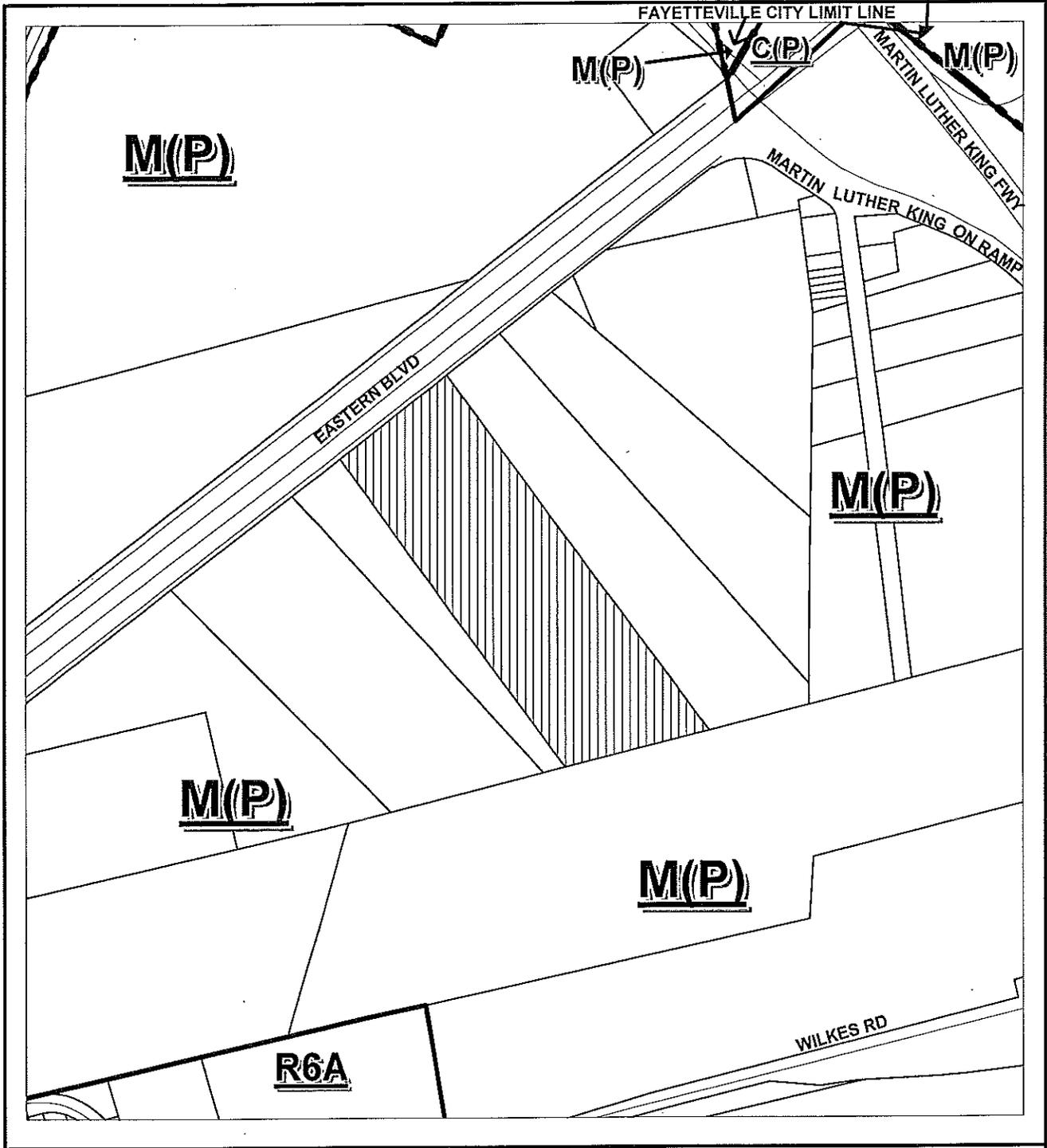
Notes:

1. Revocation of Specified Conditional Use Permit Case No. P98-32-C approved on 11/19/1998
2. Contents of the original application:
 - a. Proposed to operate a motor vehicle wrecking yard and junkyard
 - b. Purchase of ferrous and non-ferrous scrap metals
 - c. 2-5 employee
 - d. Hours of operation: Monday through Saturday from 8:00 am to 6:00 pm.
3. The property has been taken over by Cape Fear Site Works aka River City Recycling. Staff initiated the revocation.

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.

NOTE: PROPERTY IN AOD



REVOCATION SPECIFIED CONDITIONAL USE PERMIT

ACREAGE: 14.25 AC.+/-

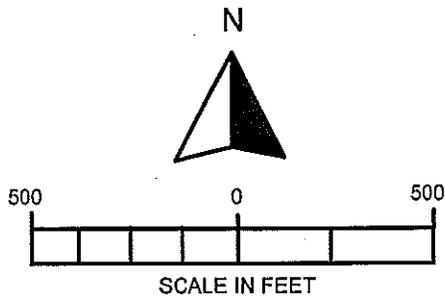
HEARING NO: P98-32-C

ORDINANCE: COUNTY

HEARING DATE

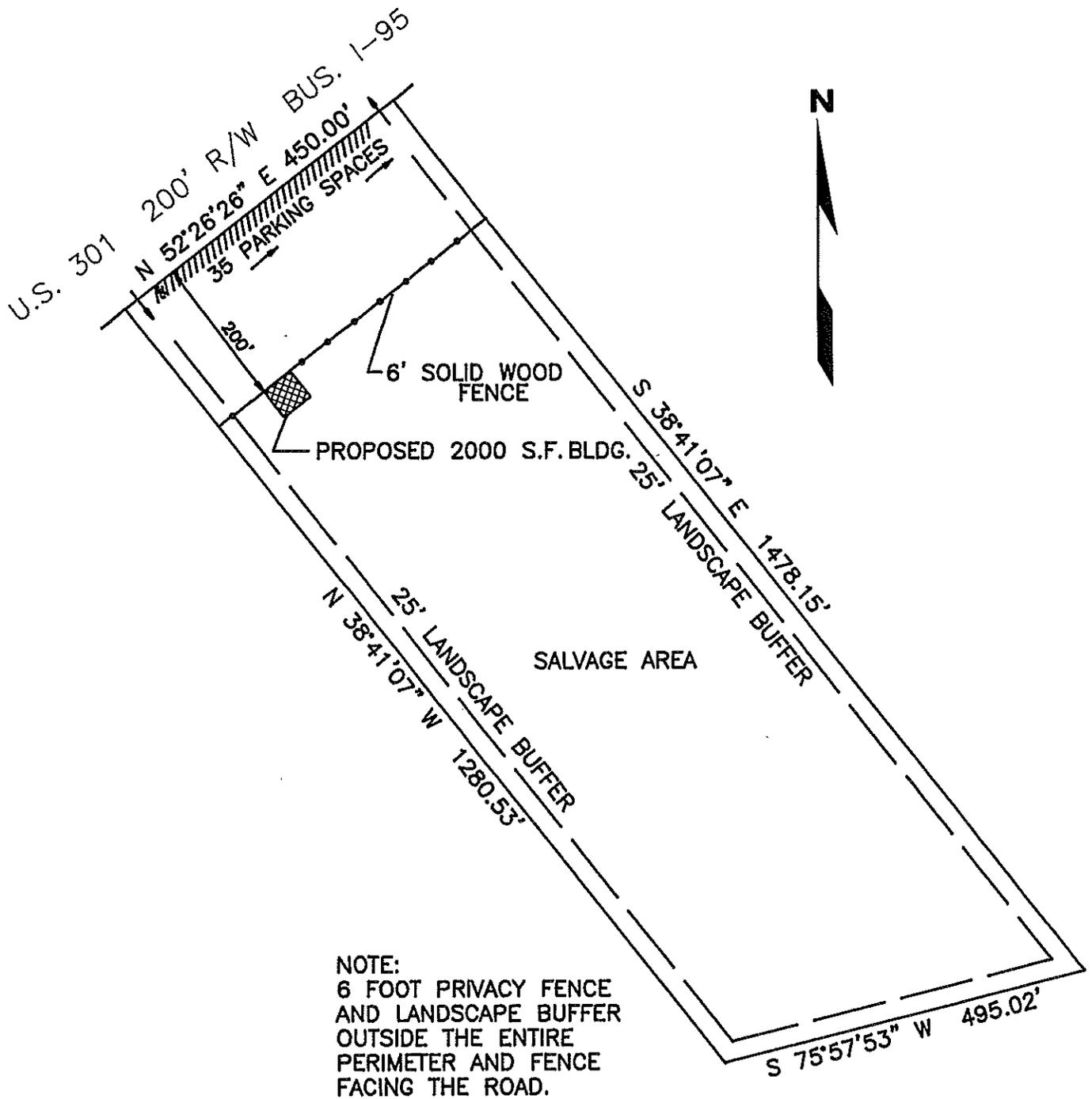
ACTION

GOVERNING BOARD



PIN: 0436-55-6051

AM



SPECIFIED CONDITIONAL USE PERMIT

CASE NO: P98-32-C ACREAGE: 14.25 AC±

REQUEST: TO ALLOW A SALVAGE YARD.

ZONED: M(P) SCALE: 1"=200'

APPLICATION FOR SPECIFIED CONDITIONAL USE PERMIT

To the Planning Board and the Board of Adjustment of Cumberland County, I (We), the undersigned, do hereby respectfully make application and petition to the Board of Adjustment to grant a Specified Conditional Use Permit as required in the Zoning Ordinance. In support of this application, the following facts are shown:

1. The property sought for Specified Conditional Use Permit is located at 3015. EASTERN BLVD between Way 87
(mailing address) (street name)

and Womble St on the EAST (north, south, east,
(street name)

west) side of the street and known as lot(s) number(s) C. It has
frontage of 450 feet and consists of an acreage of 14+ acres.

2. The area sought for Specified Conditional Use is described in Deed Book
3274, Page 272, Cumberland County Registry. (Attach copy of
recorded deed or complete metes and bounds (survey) description of subject
property.) (COURT ORDERED SUBDIVISION)

3. The property sought for Specified Conditional Use is owned by
Charlotte Brunson Banks.

4. The tax parcel identification number (PIN#) of the subject property is:
0436.15-54-5927.

5. It is proposed that the property will be put to the following use: (Describe
proposed use/activity in detail including hours of operation, number of employees
or clients, etc.)

This operation will include the purchase of
scrap: non-ferrous scrap metals. Operation
hours will be 8am to 4pm Monday
thru Saturday. There will be approx. 2
to 5 employees.
Automobile salvage, parts sales and
scrap metal.



COUNTY of CUMBERLAND

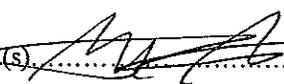
Cumberland County Joint Planning Board

* STATEMENT OF ACKNOWLEDGEMENT regarding appearance before the Cumberland County Board of Adjustment.

The undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relative facts will be given under sworn testimony;
- If the petitioner, or the representative of, this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the request;
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Superior Court. (Affected parties of the Board's decision have 30 days from proper notification in which to serve notice of appeal.)

Signed acknowledgement that the Secretary to the Cumberland County Board of Adjustment has conferred with the petitioner of this application on matters pertaining to the request and the understanding of course of the public hearing stated above at which time the Board will make a decision on this matter.

SIGNATURE OF OWNER(S) 

PRINTED NAME OF OWNER(S) MILTON B. HULLO

DATE 10/14/98 CASE NO. P98-32-C

(If authorized by the owner(s), their agents or assigns may sign this acknowledgement.)



CUMBERLAND COUNTY BOARD OF ADJUSTMENT

Mark Lynch, Chair

130 Gillespie Street
Fayetteville, NC 28302
(910) 678-7600

Catherine Traylor, Vice Chair

MINUTES
NOVEMBER 19, 1998
7:00 P.M.

Members Present

Mark Lynch, Chairman
Catherine Traylor Vice-Chair
Matthew Cockman
Doug Stephens, Alt.
Barbara Malone, Alt.

Members Absent

Clifton McNeill, Jr.
Earl Bunce, Alt.
H. B. Smith, Jr.
Malcolm King, Alt.

Staff/Others Present

Roy Taylor,
Secretary
BJ Cashwell
Bill Peabody,
County Inspections

1. ROLL CALL

Chairman Lynch called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Old County Courthouse. Mr. Taylor called the roll and a quorum was present.

2. APPROVAL OF THE MINUTES OF OCTOBER 15, 1998 MEETING.

Chairman Lynch asked if there were any corrections or additions to the minutes. Vice-Chair Traylor stated the name of the person that made the motion for P98-25-C was omitted. A motion was made by Vice-Chair Traylor, seconded by Mr. Stephens to approve the minutes with the noted correction. The motion passed unanimously.

3. PUBLIC HEARINGS:

Chairman Lynch stated that Case No. P98-31-C would be deferred to the December 17, 1998 meeting and asked for a motion. A motion was made by Mr. Stephens and seconded by Ms. Malone to defer Case No. P98-31-C to the December 17, 1998 meeting. The motion passed unanimously.

Chairman Lynch reviewed with the audience the procedures of the Board and how the hearing would be conducted.

- A. CASE NO. P98-28-C. AN APPLICATION BY JERRY F. MCDONALD FOR MCDONALD GRADING CO., INC. FOR A SPECIFIED CONDITIONAL USE PERMIT AS PROVIDED FOR BY THE CUMBERLAND COUNTY CODE OF ORDINANCES, ARTICLE III, SECTION 3.1, TABLES 1-G AND 1-J TO ALLOW BORROW SOURCE OPERATIONS IN HS(P) PLANNED HIGHWAY SERVICE AND M(P) PLANNED INDUSTRIAL DISTRICTS FOR AN AREA LOCATED WEST OF I-95, EAST OF CLAUDE LEE ROAD (SR 2341). (COUNTY ORDINANCE)

Chairman Lynch asked Mr. Taylor to present the first case.

Mr. Taylor presented the zoning and land use for the area. He stated the total acreage for the property is 32.67 with an existing borrow pit on the site. Mr. Taylor presented the acreage for Areas I through IV as shown on the site plan.

Chairman Lynch swore in Mr. Steve Waters.

Vice-Chair Traylor asked if he lived on Reilly Road or Ferndale. Mr. Bruton stated he live on Reilly Road. She asked if it was the property immediately adjoining. He stated it was next door to the site. Vice-Chair Traylor stated that the day care facility is allowed in a C1. Mr. Bruton stated he was on a corner lot and his property was up for sale. He did not want a business submit a request and be turned down because it would be located next to a day care.

Chairman Lynch asked if there was anyone else to speak in opposition. There were none.

Chairman Lynch closed the public hearing for Board discussion.

----Board discussion---

A motion was made by Mr. Stephens to approve the application based on the following findings of fact:

1. The location, size, design and operating characteristics of the proposed development so that it will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

CASE FACTS: There is C1 surrounding the property and is a commercially developed area.

2. The harmony in scale, bulk, coverage, function and density of the proposed development.

CASE FACTS: The area is commercial and this development would fit in with the density and is in harmony with the neighborhood.

3. The availability of public facilities and utilities.

CASE FACTS: The public facilities and utilities are met.

4. The generation of traffic and the capacity of surrounding streets.

CASE FACTS: The traffic generated by the day care facility would not noticeably affect the current traffic on Reilly Road.

6. The purpose and intent of the general land use plans for the physical development of the district and the protection of the environment.

CASE FACTS: This condition would be met by the Specified Conditional Permit for the day care center.

The motion was seconded by Mr. Cockman to approve the application subject to the following conditions:

1. That a maximum of thirty children be permitted.
2. That all-applicable state, federal and health regulations are complied with at all times.
3. That the site be developed according to the site plan.
4. That play area be fenced off from the parking area.

The motion passed unanimously.

- 
- B. CASE NO. P98-32-C. AN APPLICATION BY MILTON B. HUTTO FOR A SPECIFIED CONDITIONAL USE PERMIT AS PROVIDED FOR BY THE CUMBERLAND COUNTY CODE OF ORDINANCES, ARTICLE III, SECTION 3.1, TABLE 1-J TO ALLOW AN AUTOMOBILE WRECKING YARD/JUNK YARD IN A M(P) PLANNED INDUSTRIAL DISTRICT FOR AN AREA LOCATED ON THE SOUTH SIDE OF US HWY 301/I-95 BUSINESS, WEST OF NC HWY. 87. (COUNTY ORDINANCE)

Chairman Lynch asked Mr. Taylor to present the last case to the Board.

Mr. Taylor presented the zoning and land use for the area. The proposed site and the property surrounding the site are currently vacant. He stated the lot had a depth of 1478.15 feet with a frontage of 450 feet and 35 proposed parking spaces. There is a 25-foot landscape buffer to be provided around the perimeter of the

site with a solid wood fence in front. The applicant also proposes a 2,000 square foot building be constructed on the site.

Chairman Lynch stated there was no one signed up to speak and asked if there was someone present that would like to speak in favor of the request.

Mr. Milton Hutto was sworn in by Chairman Lynch.

Mr. Hutto, 3337 Gusta Highway, Lexington, SC, stated that they proposed to place a recycling scrap yard operation for auto parts on the site.

Mr. Stephens asked what his relation was with the property. Mr. Hutto stated he was the President of Tunago Corporation and they were purchasing the property. Mr. Stephens asked if he had a contract with Mr. Banks. Mr. Hutto stated that he did.

Mr. Ed Miller was sworn in by Chairman Lynch.

Mr. Miller stated he was a real estate broker. He stated they might or may not allow his input as he had a personal interest. He represented the owner and the proposed buyer. Chairman Lynch stated the purpose of the Board was to determine if the case facts support the factors required for the granting the Specified Conditional Use Permit. He asked Mr. Miller to proceed with his testimony.

Mr. Miller stated they had been trying for quite a while to obtain tenants for the property. He stated that property had been vacant for a long period of time and had limited access with a one way street. He said there was no exit on the north end going toward Hwy. 87 and there is no water or sewer services available. He said to find someone who has a use for the property and is willing to provide their own water and sanitation is difficult. He felt this request would be a positive for Cumberland County, as it would add to the tax base for the county. He stated Mr. Hutto can use the site and is willing to work with the Board on the application. The property is already zoned M(P) to allow the use as a Specified Conditional Use Permit.

Chairman Lynch stated they would hear from the opposition and asked Mr. John L. Costin to come forward and be sworn.

Mr. John L. Costin was sworn in by Chairman Lynch.

Mr. John L. Costin, Costin Distributing, 912 Grove Street, stated that his family has 60 acres diagonally across the street from the site. He stated that when he received the notice that it said junkyard and Hwy. 301 and Hwy. 87 are main entrances into the City. He stated it places it between the new Crown Coliseum and the downtown area that we have spent a lot of money to beautify. The junkyard in between would be an eyesore.

Chairman Lynch asked if there were any conditions that the Board could impose on the development that would make him more favorable to support the activity. Mr. Costin stated that it looks good on paper but when you pass the site that it would be a likeness to a junkyard and he has never seen a nice junkyard.

Mr. Stephens stated that Mr. Costin's concern was the appearance of the site. Mr. Costin stated that it would be an eyesore.

Chairman Lynch closed the hearing for Board discussion.

-----Board discussion-----

Chairman Lynch asked Mr. Miller to come back before the Board. Chairman Lynch asked what type of buffering could be provided by the applicant. Mr. Miller stated the applicant has already made elaborate plans for landscaping. He stated that the property back up to the Wilkes Road Landfill and it would be a long time before any one else would want land that backs up to a landfill.

Mr. Hutto asked if could answer the questions about the buffer. Chairman Lynch asked if he could answer the question requested of Mr. Miller. Mr. Hutto stated on the outside of the fence they would plant shrubbery—red tip or maple leaf and on the inside of the fence they would plant in triangle shapes a type of

tree that grows 25 feet in 5 years. Chairman Lynch stated that would be a Leiland Cypress. Mr. Hutto stated if you plant them diagonally that it would give good cover in the front.

Mr. Hutto stated it was between 400-600 feet from Hwy. 87 and the elevation between the road and the property there is not much of a dip. He stated they planned to build the site up because there is a low dip on the site.

Chairman Lynch asked Mr. Hutto to explain the operation of the business in stages. Mr. Hutto stated 50 percent of the business is automobile parts. He stated that a car is turned over in about 30 days. The main part of the business is metal, copper, brass, steel and aluminum. The whole yard would not be a parts operation. He stated across the interstate and to the left 200 yards is a parts yard and have planted trees similar to what he wanted to do. He stated this type business would not be new to the area and 30 years ago there was a parts facility on the present site.

Mrs. Traylor presented the finding of facts as follows:

1. The location, size, design and operating characteristics of the proposed development so that it will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

CASE FACTS: With restrictions it would comply with the specifications.

2. The harmony in scale, bulk, coverage, function and density of the proposed development.

CASE FACTS: It is an open area and the bulk would not adversely affect and the scale would not adversely affect adjoining development.

3. The availability of public facilities and utilities.

CASE FACTS: The owner has indicated that they would provide for water and sewage if they were not available.

4. The generation of traffic and the capacity of surrounding streets.

CASE FACTS: This is not a factor in this case as the site is off on the service road.

5. The purpose and intent of the general land use plans for the physical development of the district and the protection of the environment.

CASE FACTS: The general use of the land is a conditional use that is allowed in this plan and would not be in conflict with the general protection plan. Any environmental issues will be addressed by any restrictions that would be applied on the site.

Vice-Chair Traylor stated that all the conditions for the Specified Conditional Use Permit have been satisfied that the application be approved subject to the following conditions:

1. That all fluids from vehicles, transmission, brake fluid, gasoline, etc. be drained before they are stored. That they be drained into approved containers and be disposed of according to approved environmental procedures and the EPA regulations;
2. Installation of a cement pad is required for the fluid drainage in order that there be no soil pollution;
3. If at any inspection, fluids are found to have been placed in the ground/soil, the permit is to be revoked immediately;
4. Development of site must proceed according to the revised site plan;
5. Operation must be in compliance with all applicable Federal, State and Local regulations at all times;
6. The stacked cars will not be seen from Hwy. 301 service road;
7. The property must be screened on all sides by a well-maintained privacy fence and with plants 6 feet in height to buffer vehicles from all of the surrounding area.
8. That the frontage be 200 feet from the service road and landscaped in keeping with the procedures for the roadway entrance to the city. The site plan be modified to reflect the 200 feet setback and be filed with the Planning Department;

9. That appropriate rodent control procedures be adopted in accordance with the Health Department;
10. The applicant should have the vegetative buffer planted prior to placement of the first vehicles.

The motion was seconded by Mr. Stephens and passed unanimously.

4. DISCUSSION

Mr. Taylor presented the schedule of Cumberland County Board of Adjustment meeting dates and deadlines. Mr. Taylor asked for any comments from the Board. There were none.

A motion was made by Mr. Stephens and seconded by Vice-Chair Traylor to approve the schedule as presented.

5. ADJOURNMENT

There being no further business, the meeting adjourned at 9:55 p.m.

Robert Haigh

From: Patricia Speicher
Sent: Thursday, October 24, 2013 8:13 AM
To: Robert Haigh
Subject: FW: Zoning revoking of P 98-32-C

Robert,

Please print this email and initiate a "Revocation" to go to the December BOA. What used to be specified conditional use permits are now called special use permits. You will treat this pretty much the same as a new application as far as sending out request for comments, etc.

Don't forget to put it on the Graphics' board.

Thanks,
Patti

From: Joan Fenley
Sent: Wednesday, October 23, 2013 2:16 PM
To: Patricia Speicher
Subject: Zoning revoking of P 98-32-C

This specified conditional use permit is no longer in effect on the property. This property has been taken over by Cape Fear Site Works aka River City Recycling. They had contacted Ken back in 2011 regarding the use of the property and recent inspection of the property found that they are now using it as a borrow source. We are asking that the prior use be revoked and we are scheduling a meeting with the property owner and Cape Fear Site works to inform them that they will need to obtain a special use permit for the property. We have had ongoing compliance problems in this area and would like to revoke any uses on this property for possible future enforcement if needed. Sorry got busy and forgot to send you this earlier. Christopher Fulton will be handling the case and I am assisting him.

P12-08-C
SITE PROFILE

P12-08-C: RECONSIDERATION OF THE BOARD DECISION FOR APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR TO ISSUE A ZONING PERMIT TO TIGERSWAN INC. TO OPERATE THE TIGERSWAN TRAINING COLLABORATION CENTER AS A USE CONSISTENT WITH OUTDOOR RECREATION/AMUSEMENT FOR PROFIT AND WITH MECHANIZED VEHICLES ON A PROJECT SITE CONSISTING OF 978.4 +/- ACRES LOCATED SOUTHWEST OF SR 2053 (DOE HILL ROAD) AT 2850 TIGERSWAN DRIVE SUBMITTED BY RAEFORD B. LOCKAMY, II; SAMUEL D. AND DORIS M. FORT; JULIA KATHERINE FAIRCLOTH; OK FARMS OF CEDAR CREEK, LLC; AND ARNOLD DREW SMITH

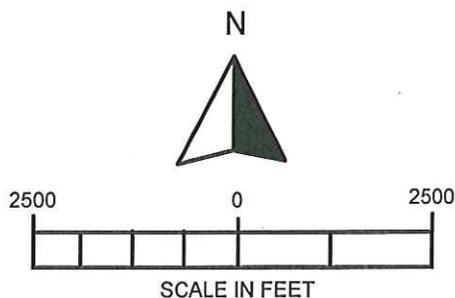
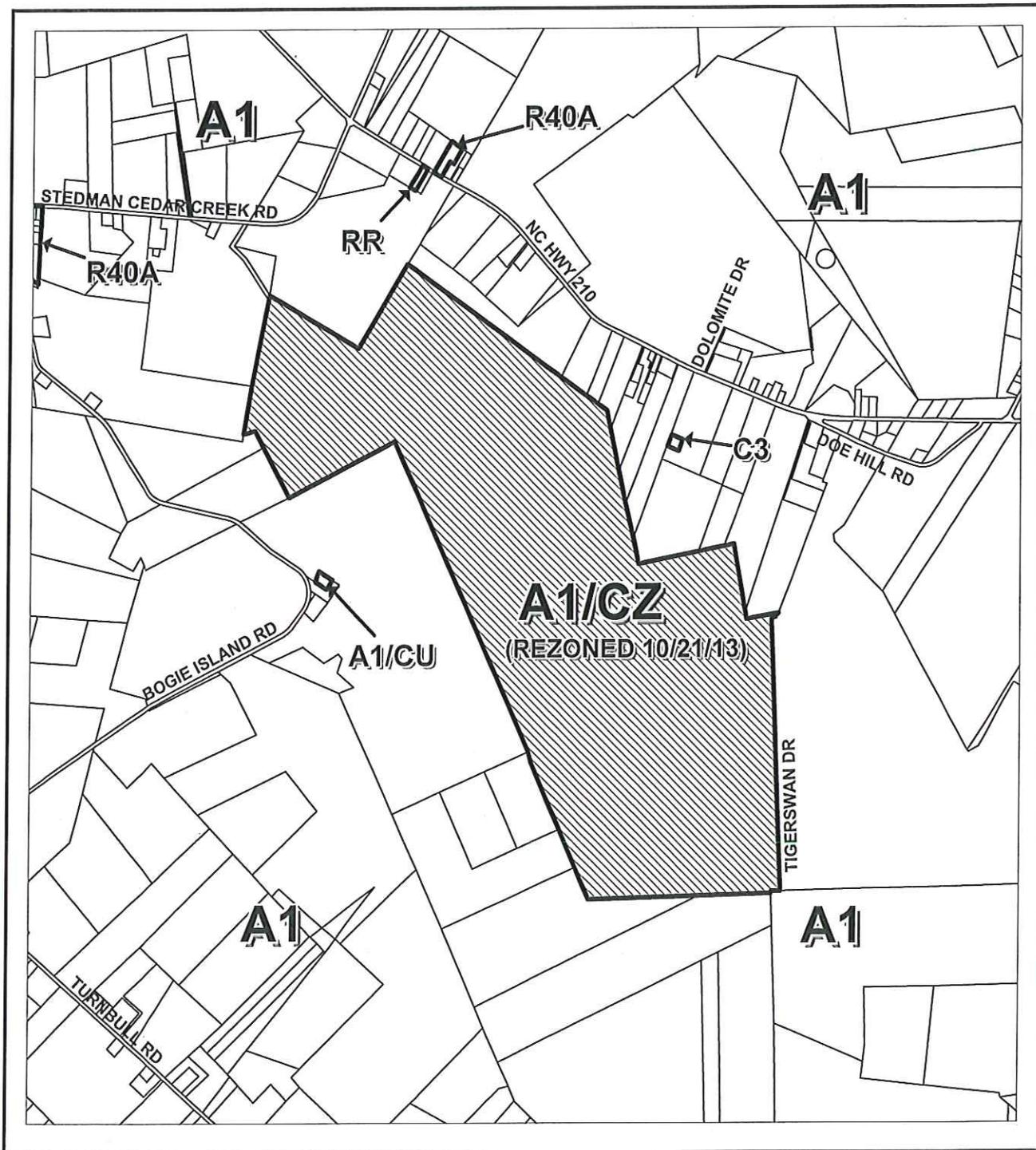
Purpose of Hearing: Superior Court Judge Gilchrist has reversed the July 10, 2012 decision of the Board of Adjustment where the board affirmed the decision of the Planning & Inspections Director. Judge Gilchrist ordered the case to be remanded to the Board of Adjustment and directed the board to revoke the site plan and zoning permit issued on April 9, 2012 and April 17, 2012, respectively. (*See Tab 4*)

CONTENTS OF CASE MATERIAL

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Tab 1: Zoning Sketch Map	1-1
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Enlargement of Range Area	2-2
Enlargement of Incidental Structures Area	2-3
Tab 3: Cumberland County's Notice of Appeal to NC Court of Appeals	3-1 to 3-2
TigerSwan's Notice of Appeal to NC Court of Appeals	3-3 to 3-4
Tab 4: Order – Superior Court Judge Gilchrist	4-1 to 4-6
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Tab 6: Minutes – July 10, 2012 Cumberland County Board of Adjustment	6-1 to 6-87
Tab 7: Zoning Permit # Z12-149289	7-1
Tab 8: Conditional Approval – Case No. 10-058	8-1 to 8-3
Tab 9: Memorandum Issued by Tom Lloyd, Director, dated February 21, 2012	9-1
Tab 10: Section 402, County Zoning Ordinance	10-1

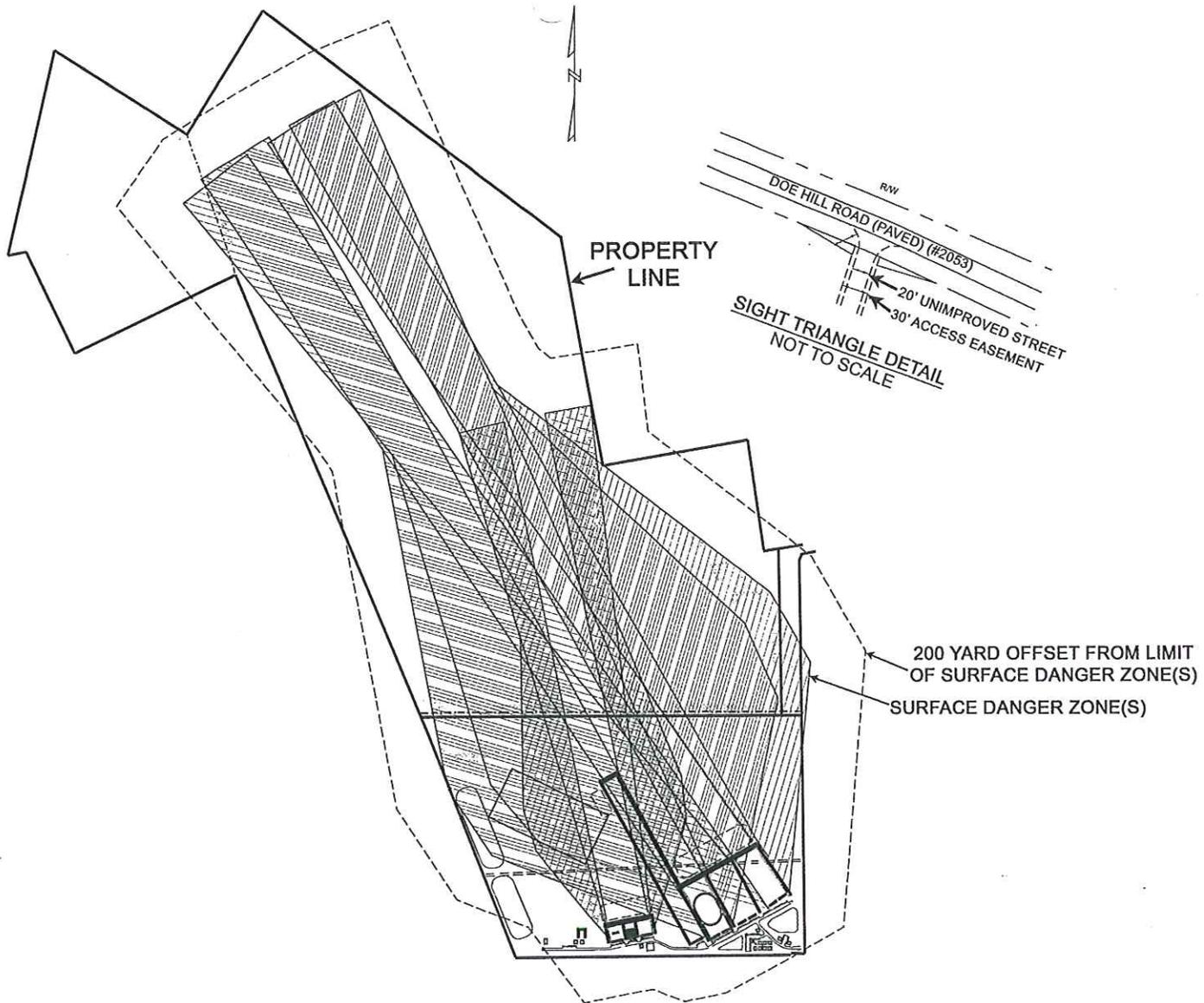
First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.



BOARD OF ADJUSTMENT APPEAL

ACREAGE: 978.40 AC.+/-		HEARING NO: P12-08-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION	
GOVERNING BOARD	7/10/12	DENIED	



**BOARD OF ADJUSTMENT
APPEAL**

REQUEST: CONSIDERATION OF AN APPEAL OF THE ZONING ADMINISTRATOR

CASE: P12-08-C ACREAGE: 978.40 AC +/-

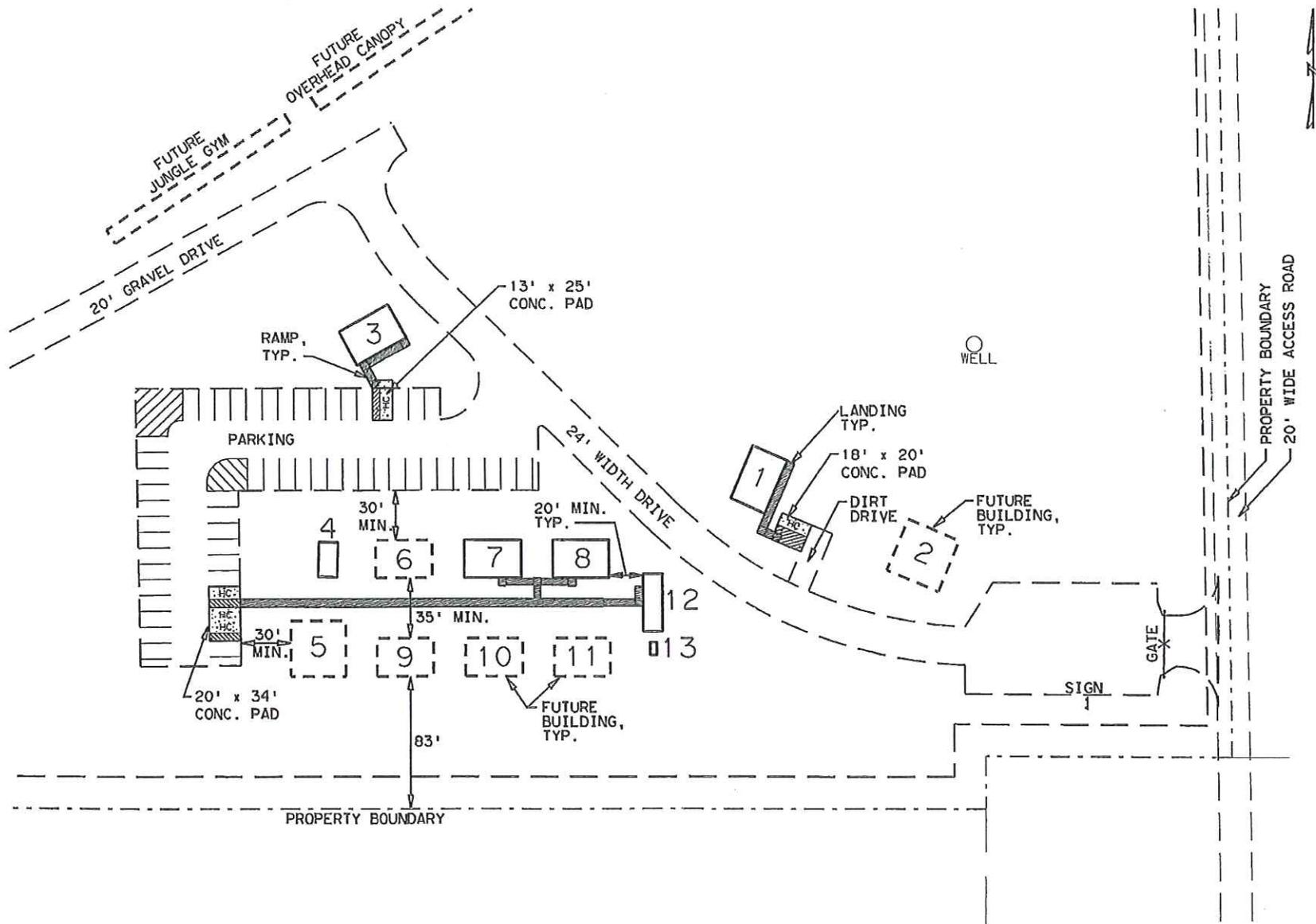
ZONED: A1 SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST

7/10/12

2-1

2-3



P12-08-C
SHEET 3

7/10/12

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2013 NOV 15 AM SUPERIOR COURT DIVISION

COUNTY OF CUMBERLAND

12 CVS 8440

CUMBERLAND CO., C.S.C.

SAMUEL and DORIS FORT, JULIA)
KATHERINE FAIRCLOTH, RAEFORD)
B. LOCKAMY, II, OK FARMS OF)
CEDAR CREEK, LLC, and ARNOLD)
DREW SMITH,)

Petitioners,)

v.)

COUNTY OF CUMBERLAND, North)
Carolina, and TIGERSWAN, INC.,)

Respondents.)

**COUNTY OF CUMBERLAND'S
NOTICE OF APPEAL**

Pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, the County of Cumberland hereby gives Notice of Appeal to the North Carolina Court of Appeals from the Order entered on October 23, 2013, by Judge C. Winston Gilchrist, which reversed the Board of Adjustment's decision affirming a Site Plan and Zoning Permit.

This the 15th day of November, 2013.

By: Robert A. Hasty, Jr.

Robert A. Hasty, Jr.
Office of the Cumberland County Attorney
Attorneys for Cumberland County
P.O. Box 1829
Fayetteville, NC 28302-1829
Telephone: (910) 678-7762
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Email: rhasty@co.cumberland.nc.us
State Bar No. 25551

CERTIFICATE OF SERVICE

This is to certify that the foregoing "County of Cumberland's Notice of Appeal" has been duly served by depositing a copy of same in the United States mail, first class postage prepaid, addressed to:

Ms. Robin T. Currin
Attorney at Law
P.O. Box 86
Raleigh, NC 27602

Mr. Charles C. Meeker
Attorney at Law
P.O. Box 389
Raleigh, NC 27602

This the 15th day of November, 2013

By: Robert A. Hasty, Jr.
Robert A. Hasty, Jr.
Assistant County Attorney
Cumberland County Attorney's Office
P.O. Box 1829
Fayetteville, NC 28302-1829
Phone: (910) 678-7502

NORTH CAROLINA
CUMBERLAND COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12-CVS-8440

SAMUEL and DORIS FORT, JULIA)
KATHERINE FAIRCLOTH, RAEFORD)
B. LOCKAMY, II, OK FARMS OF)
CEDAR CREEK, LLC, and ARNOLD)
DREW SMITH,)

Petitioners,)

v.)

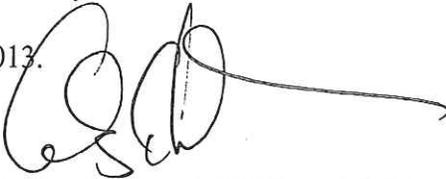
COUNTY OF CUMBERLAND, North)
Carolina, and TIGERSWAN, INC.,)

Respondents.)

**TIGERSWAN, INC.'S
NOTICE OF APPEAL**

Pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, TigerSwan, Inc., by counsel, hereby gives Notice of Appeal to the North Carolina Court of Appeals from the Order entered on October 23, 2013 in this matter by Judge C. Winston Gilchrist which reversed the Board of Adjustment's decision affirming a Site Plan and Zoning Permit issued on April 9, 2012 and April 17, 2012, respectively.

This the 14th day of November, 2013.

By: 

Charles C. Meeker
N.C. State Bar No. 6757
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602
Telephone: (919) 828-0564
Facsimile: (919) 834-4564
Email: charlesmeeker@parkerpoe.com
Attorneys for TigerSwan, Inc.

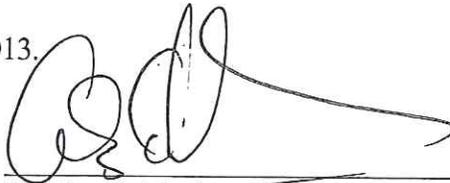
CERTIFICATE OF SERVICE

I, Charles C. Meeker, counsel for Lenoir County, do hereby certify that a copy of the foregoing TIGERSWAN, INC.'S NOTICE OF APPEAL was served on all parties to this action by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Robin T. Currin, Esq.
George Currin, Esq.
Currin & Currin
Post Office Box 86
Raleigh, North Carolina 27602

Rick Moorefield, Esq.
Robert A. Hasty, Esq.
Cumberland County Attorney's Office
Post Office Box 1829
Fayetteville, North Carolina 28302

This the 14th day of November, 2013.



Charles C. Meeker
PARKER POE ADAMS & BERNSTEIN LLP
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

12-CVS-8440

OCT 23 PM 3:08
CUMBERLAND CO., C.S.C.

FILED

SAMUEL and DORIS FORT, JULIA)
KATHERINE FAIRCLOTH,)
RAEFORD B. LOCKAMY, II, OK)
FARMS OF CEDAR CREEK, LLC,)
and ARNOLD DREW SMITH,)

Petitioners,)

v.)

COUNTY OF CUMBERLAND, North)
Carolina, and TIGERSWAN, INC.,)

Respondents.)

ORDER

This cause was before the Court at the August 26, 2013 session of Cumberland County Superior Court on Petitioners' Petition for Writ of Certiorari seeking judicial review of the Cumberland County Board of Adjustment's August 27, 2012 decision affirming the determination of the Cumberland County Zoning Administrator to classify Respondent TigerSwan, Inc.'s Training Collaboration Center (the "TigerSwan Facility") as a use with land use impacts most closely related to "Outdoor Recreation/Amusement, for Profit with Mechanized Vehicle Operations" and, therefore, as a permitted use in the A1 Zoning District. Petitioners were represented by Robin T. Currin; the County of Cumberland, North Carolina, was represented by Assistant County Attorney, Robert A. Hasty, Jr.; and TigerSwan, Inc. was represented by Charles C. Meeker.

The Court has reviewed the Record, including the Minutes of the August 27, 2012 hearing before the Cumberland County Board of Adjustment (the "Board of Adjustment"). The Court has also heard the arguments of counsel and has reviewed the Briefs, case law and other legal authority. Based on that review, the Court finds that the decision of the Board of

Adjustment must be reversed and the case remanded to the Board of Adjustment with instructions to revoke the Site Plan and Zoning Permit for the TigerSwan Facility issued on April 9, 2012 and April 17, 2012. This Court's decision is based on the following:

1. In an appeal by certiorari from a board of adjustment's decision involving the interpretation of a zoning ordinance, the superior court applies a de novo standard of review. See N.C. Gen. Stat. § 160A-393(k)(2). In applying the de novo standard of review, "[t]he Court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate." Id. In addition, the board of adjustment's "findings, inferences, conclusions, [and] decisions," must be supported by "substantial competent evidence in view of the entire record." See N.C. Gen. Stat. § 160A-393(k)(1)(e). "The issue of whether substantial competent evidence is contained in the record is a conclusion of law and reviewable by [the] Court de novo." MCC Outdoor, LLC v. Town of Franklinton Bd. of Comm'rs, 169 N.C. App. 809, 811, 610 S.E.2d 794, 796 (2005). This court has applied the foregoing standard of review in reaching its decision in the case sub judice.

2. The TigerSwan Facility is located in the A1 Zoning District in Cumberland County. The Cumberland County Zoning Ordinance Section 303 sets forth the intent of the A1 District as follows:

A1 Agricultural District. This district is designed to promote and protect agricultural lands, including woodland, within the County. The general intent of the district is to permit all agricultural uses to exist free from most private urban development except for large lot, single-family development. Some public and/or semi-public uses as well as a limited list of convenient commercial uses are permitted to ensure essential services for the residents.

3. Section 402 of the Zoning Ordinance provides as follows:

All uses of property are allowed as a use by right except where this ordinance specifies otherwise or where this ordinance specifically prohibits the use. In the event, a use of property is proposed that is not addressed by the terms of this ordinance, the minimum ordinance standards for the use addressed by this ordinance that is most closely related to the land use impacts of the proposed use shall apply.

4. In its Table of Permitted Uses, the Zoning Ordinance sets forth the uses that are allowed in the A1 District and those which are not. "SCHOOLS, business and commercial, for nurses or other medically oriented professionals, trade, vocational & fine arts," which includes vocational schools, are not permitted in the A1 District. The term vocational school is not defined in the Zoning Ordinance.

5. "Recreation, Outdoor (with mechanized vehicle operations)" is a permitted use in the A1 District. That term is defined in the Zoning Ordinance as follows:

An area or establishment, which requires the use of motors or engines for the operation of equipment or participation in the activity. This definition includes, but is not limited to go-cart tracks, bicycle motocross (BMX) courses and the like. This definition does not include golf courses (golf carts) or other low impact motorized activities or vehicles.

6. The Zoning Ordinance in effect at the time of the approvals by the Zoning Administrator (the "Zoning Ordinance") does not reference a use called a "firing range" or "shooting range," and neither of those terms are defined in the Zoning Ordinance.

7. On April 5, 2012, TigerSwan, Inc. ("TigerSwan") submitted a Site Plan application to the County requesting Site Plan approval for the property upon which the TigerSwan Facility is located, although no specific use was listed on the Site Plan application. The County issued a Site Plan for the TigerSwan Facility on April 9, 2012 for "Outdoor Recreation/Amusement, for Profit with Mechanized Vehicle Operations." On April 17, 2012,

the County issued a Zoning Permit for the TigerSwan Facility for “Outdoor Recreation Amusement.”

8. The decisions to approve the Site Plan and Zoning Permit were based upon the Zoning Administrator’s determination that the TigerSwan Facility was an outdoor firing range, which is not addressed by the Zoning Ordinance. The Zoning Administrator then determined, pursuant to Zoning Ordinance Section 402, that the TigerSwan Facility should be regulated as Recreation, Outdoor (with mechanized vehicle operations), because the land use impacts of the TigerSwan Facility were most closely related to that use.

9. Petitioners timely appealed the decision of the Zoning Administrator to permit the TigerSwan Facility as Recreation, Outdoor (with mechanized vehicle operations) and to approve the Site Plan and Zoning Permit, to the Board of Adjustment.

10. The Board of Adjustment held a quasi-judicial hearing on Petitioners’ appeal on August 27, 2012. At that hearing, Petitioners contended that, inter alia, the TigerSwan Facility is a vocational school and is, thus, prohibited in the A1 District and that the Site Plan and Zoning Permit should be revoked for that reason. The County and TigerSwan contended that the TigerSwan Facility was an outdoor firing range and, thus, should be regulated as Recreation, Outdoor (with mechanized vehicle operations) under Zoning Ordinance Section 402, because the land use impacts of the TigerSwan Facility were most closely related to that use.

11. The Board of Adjustment unanimously affirmed, with one abstention, the decision of the Zoning Administrator. The case is now before this court upon Petitioners’ appeal pursuant to N.C. Gen. Stat. § 160A-393 and § 153A-349.

12. The overriding objective in construing zoning ordinances is to “ascertain and effectuate the intent of the legislative body.” Capricorn Equity Corp. v. Town of Chapel Hill,

334 N.C. 132, 138, 431 S.E.2d 183, 187-88 (1993). “The best indicia of . . . intent are the language of the . . . ordinance, the spirit of the act and what the act seeks to accomplish.” Harry v. Mecklenburg, 136 N.C. App. 200, 203, 523 S.E.2d 135, 137-38 (1999). If a term is not specifically defined in a zoning ordinance, it should be given its “plain and ordinary meaning.” Four Seasons Management Services, Inc. v. Town of Wrightsville Beach, 205 N.C. App. 65, 77, 695 S.E.2d 456 463 (2010). Article II of the Cumberland County Zoning Ordinance, provides that, “[w]ords not otherwise defined shall be construed and given their customary and ordinary meaning.” In interpreting zoning ordinances, courts must “avoid interpretations that create absurd or illogical results.” See Four Seasons, *supra*, at 77, 695 S.E.2d at 463. Interpretations must avoid “bizarre consequences” because it is assumed that the legislative body acted “with reason and common sense and did not intend untoward results.” *Id.* at 82, 695 S.E.2d at 467 (quoting State v. Jones, 359 N.C. 832, 837-38, 616 S.E.2d 496, 499 (2005)).

13. Based on the Court’s de novo review of the whole record and applying the legal principles set forth above, this Court concludes that the TigerSwan Facility is a “[s]chool[], business and commercial, for nurses or other medically oriented professionals, trade, vocational & fine arts,” *i.e.*, a vocational school, as set out in the Zoning Ordinance and is, therefore, prohibited in the A1 District. The evidence in the Record established that the TigerSwan Facility fits within the definition of a vocational school and its purposes and activities are consistent with those of a vocational school as set out in the Zoning Ordinance. The Board of Adjustment, thus, erred in affirming the decision of the Zoning Administrator which determined the TigerSwan Facility was an outdoor firing range, because it is not. The TigerSwan Facility is a vocational school under the Zoning Ordinance. The fact that TigerSwan operates a recreational firing range one day a week and uses a firing range for its courses does not change the nature of the use,

which the Record establishes is to provide instruction to military, law enforcement and security personnel for use in their occupations. See Fort v. County of Cumberland, ___ N.C. App. ___, ___, 721 S.E. 2d 350, 356 (2012) (while some uses offered by TigerSwan may be permitted, “the inclusion of permitted uses cannot offset the uses prohibited by the [Zoning] Ordinance.”).

14. Because the TigerSwan Facility is a vocational school, which is a use that is specifically prohibited in the A1 District, the Zoning Administrator had no authority under Zoning Ordinance Section 402 to determine that the TigerSwan Facility should be regulated according to the minimum standards for the use with the most closely related land use impacts. Regardless, however, and in the alternative, there was no competent evidence in the Record that could support the determination that the TigerSwan Facility’s impacts were most similar to Recreation, Outdoor (with mechanized vehicle operations).

IT IS THEREFORE ORDERED ADJUDGED and DECREED that the decision of the Board of Adjustment affirming the decision of the Zoning Administrator is reversed and the case is remanded to the Board of Adjustment, which is hereby ordered to revoke the Site Plan and the Zoning Permit for the TigerSwan Facility issued on April 9, 2012 and April 17, 2012.

This the 17th day of October, 2013.



C. Winston Gilchrist
Superior Court Judge Presiding

North Carolina

Before the Cumberland County Board of Adjustment

Cumberland County

Case No. P12-08-C

IN RE THE APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR TO ISSUE A ZONING PERMIT TO TIGERSWAN INC. TO OPERATE THE TIGERSWAN TRAINING COLLABORATION CENTER AS A USE CONSISTENT WITH OUTDOOR RECREATION/ AMUSEMENT FOR PROFIT AND WITH MECHANIZED VEHICLES ON A PROJECT SITE CONSISTING OF 978.4 ACRES LOCATED ON THE SOUTHWEST SIDE OF SR 2053 (DOE HILL ROAD) SUBMITTED BY RAEFORD B. LOCAKAMY, II; SAMUEL D. AND DORIS M. FORT; JULIA KATHERINE FAIRCLOTH; OK FARMS OF CEDAR CREEK, LLC; AND ARNOLD DREW SMITH

ORDER OF THE BOARD OF ADJUSTMENT

This matter was deferred by the consent of all parties from the June 21, 2012, meeting of the Board of Adjustment and was heard at a special meeting on July 10, 2012. Chairman Donaldson called the public hearing to order at 6:05 p.m. The following Board members were present and participated in the hearing: Chairman Ed Donaldson, Melree Hubbard-Tart, Randy Newsome, Mark Locklear and Yvette Carson. The following alternate Board members were present without participating in the hearing: Joseph Dykes and Carrie Tyson-Autry. Cumberland County Attorney Rickey L. Moorefield served as counsel for the Board of Adjustment. Attorney J. Scott Flowers of the firm, Hutchens, Senter, Kellam & Pettit, P.A., appeared on behalf of the Cumberland County Planning Department. Attorneys Robin Currin and George Currin, of the firm, Currin and Currin, Attorneys at Law, appeared on behalf of all appellants. Attorneys Charles Meeker and Henry Campen of the firm, Parker, Poe, Adams & Bernstein, LLP, appeared on behalf of the permittee, TigerSwan, Inc.

Chairman Donaldson inquired whether any Board member had a conflict with hearing this matter. No board member responded. The attorneys for the Planning Department and the

permittee stipulated that each of the petitioners had standing to appeal the decision to grant the zoning permit. The attorneys for each of the parties were allowed to make opening statements.

The following sworn testimony was received by the Board:

Senior Planner Patricia Speicher and Planning Director Tom Lloyd testified on behalf of the Cumberland County Planning Department on direct examination and were cross-examined by the attorneys for appellants and permittee. Appellants Julia Katherine Faircloth; Kevin West of OK Farms of Cedar Creek, LLC; Arnold Smith and Samuel D. Fort testified on behalf of themselves on direct examination and were cross-examined by the attorney for the permittee. TigerSwan CEO Brian Searcy; TigerSwan Range Master Steven Swierkowski; Fayetteville-Cumberland County Chamber of Commerce CEO Doug Peters; Cumberland County Deputy Sheriff David Dowless and Stewart Precythe, lessor of the site to the permittee, testified on behalf of the permittee, TigerSwan, Inc., on direct examination and were cross-examined by the attorneys for appellants.

The following exhibits were submitted by the Cumberland County Planning Department and admitted into evidence by the Board:

Exhibit S1 – Packet for Public Hearing Case P12-08-C, Including Permit Issued to TigerSwan.

Exhibit S2 – P12-08-C Powerpoint Presented by Planning Department to the Board.

Exhibit S3 – Memo from Tom Lloyd Dated 2/21/2012 -- Subject: Outdoor Firing Ranges Review and Approval Policy.

Exhibit S4 – Memo from LUCC Dated 2/15/2011 --- Subject: P11-10. Revisions, Amendments and Updates to the Cumberland County Zoning Ordinance for the Cumberland County Joint Planning Board's Annual Review of the June 20, 2005 Ordinance with proposed Amendment to Section 402, Cumberland County Zoning Ordinance attached.

Exhibit S5 – Draft of Amendment Considered by LUCC February 15, 2011

The following exhibits were submitted by the appellants and admitted into evidence by the Board:

Exhibits P1 through P12 [Submitted In White Binder] Listed Below and Titled: Before the CC Board of Adjustment P12-08-C Petitioners' Exhibits

1. Fort v. County of Cumberland, _____ N.C. App. ____, 721 S.E.2d 350 (2012)
2. Fort v. County of Cumberland, Petition for Discretionary Review to Supreme Court filed 03/12/12
3. TigerSwan Site Plan Application dated 03/05/12.
4. TigerSwan Site Plan for "Outdoor Recreation/Amusement, for Profit & W/ Mechanized Vehicle Operations" dated 04/17/12.
5. TigerSwan Zoning Permit for "Outdoor Recreation Amusement" dated 04/17/12.
6. Excerpts from TigerSwan Website (<http://www.tigerswan.com>).
7. Excerpts from Cumberland County Zoning Ordinance
 - A. § 303(A) Agricultural Districts
 - B. § 402 Uses By Right
 - C. Table of Permitted Uses
 - D. § 203 Definitions
 - E. § 307 Planned Industrial Districts
8. Testimony from August 2010 Cumberland County BOA hearing.
9. Fayetteville Technical Community College Website
<http://www.faytechcc.edu>.
10. Definitions of Vocation, Vocational and Vocational School
11. Affidavits
 - A. Julia Katherine Faircloth
 - B. Kevin West

- C. Arnold Smith
- D. Sam Fort
- E. Warren Keith Barnes

12. Excerpts from TigerSwan's Brief to Court of Appeal

The following exhibits were submitted by the permittee and admitted into evidence by the Board:

TigerSwan's Brief in Support of the Planning Department's Site Plan Approval (submitted in black binder) with Tabs A, B, C, D [TS-A, TS-B, TS-C, TS-D]

Exhibit 1 – Aerial Photo w/ TigerSwan Site Outlined [TS1]

Exhibit 2 – Area Site Sketch Map Outlining TigerSwan and Appellants' Properties [TS2]

Exhibit 3 – Aerial Photo of TigerSwan Property with Straight Line Distances to Appellants' Properties [TS3]

Exhibit 4 – Aerial Photo of TigerSwan Property with One-Half Mile Increment Distances to Appellants' Properties [TS4]

Exhibit 5 – Aerial Photo of TigerSwan's Existing Site Improvements [TS5]

Exhibit 6 – Aerial Photo of Existing TigerSwan Ranges [TS6]

Exhibit 7 – Photo of Individuals at TigerSwan Range [TS7]

Exhibit 8 – TigerSwan's Sportman's Range General Rules [TS8]

Exhibit 9 – Report on Noise Issued by Sergeant David W. Dowless, Cumberland County Sheriff's Office [TS9]

All parties were allowed to offer rebuttal evidence. Counsel for each party made a closing argument. At the conclusion of the closing arguments, Chairman Donaldson closed the public hearing and announced the Board would deliberate. Before commencing deliberations, Chairman Donaldson disclosed that he had met and known Mr. Swierkowski a few years ago and did not realize this before Mr. Swierkowski testified. Chairman Donaldson stated that this would not have any impact on his consideration of this matter but he wanted to make it known in a spirit of full disclosure.

The primary issue raised by the appellants was whether the staff of the Cumberland County Planning Department erred by failing to classify the use of the site for the TigerSwan Collaborative Training Center as a vocational school within one of the School land uses.

Based on the evidence the Board makes the following findings of fact:

1. The appellants are concerned about safety, noise and other issues related to use of the site for a firing range. The TigerSwan site is extremely large and remote, and its firing ranges are surrounded by earthen berms which are 15 feet tall.
2. The longest duration of training offered at the TigerSwan facility is at most approximately five days and most of the training is only for one day.
3. The training offered at the TigerSwan facility is in the nature of skill level improvement.
4. Approximately 80-90% of the activities conducted at the TigerSwan facility occur outside on the firing ranges, and the training conducted in the meeting rooms is incidental to the firing of pistols and rifles. Twenty percent (20%) of the activity at the TigerSwan facility is recreational in nature and involves sportsmen and families.
5. The commonly accepted concept or definition of a vocational school is an institution like Fayetteville Technical Community College where students gain career training through extended courses in classrooms. Vocational schools can have hundreds or thousands of students coming by car to the school each day. The TigerSwan facility has just a limited number of cars each day.
6. There was no competent evidence that the use of the site for a firing range has affected the property values in the vicinity in any way. A large hog farm with a large number of pigs is operated by OK Farms of Cedar Creek on property adjoining that on which TigerSwan's facility is located. TigerSwan has implemented and meets or exceeds the

EPA's Best Management Practices for Lead at Outdoor Shooting Ranges. There was no competent evidence that explosives are used at the TigerSwan facility. TigerSwan does not use helicopters at its facility.

7. There is no classification or regulation of firing ranges in the Cumberland County Zoning Ordinance.
8. Pursuant to the 2011 amendments to the Cumberland County Zoning Ordinance, all uses of land are allowed as a use by right unless the Ordinance specifies otherwise or specifically prohibits the use.
9. Pursuant to the 2011 amendments to the Cumberland County Zoning Ordinance, for any proposed use which is not classified in the ordinance, the Planning Director must apply the minimum ordinance standards for the use classified in the ordinance which is most closely related to the land use impacts of the proposed use.
10. Before the submission of the request for a permit for the TigerSwan facility, Planning Director Tom Lloyd issued a directive to staff that any outdoor firing range would be considered as the classified use for *Recreation/Amusement Outdoor (Sec. 920) [(with mechanized vehicle operations)] conducted outside building for profit, not otherwise listed* for the reason that he believed this was the classified use under the ordinance which created the most similar land use impacts.
11. The Planning Department classified the TigerSwan facility in accordance with the Planning Director's directive and issued the subject permit. Conditions to address safety and noise concerns were placed on the TigerSwan permit which applied the minimum ordinance standards for Recreation/Amusement outdoor (with mechanized vehicle

operations) conducted outside building for profit, not otherwise listed and not regulated by Section 924.

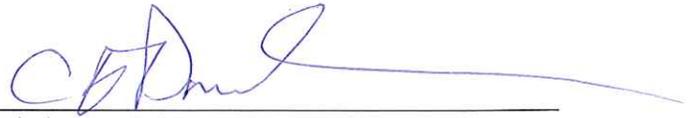
12. The greater weight of the evidence showed that the TigerSwan facility, which has been in operation since the fall of 2010, is not an environmental, noise, health, safety or other nuisance.

Based on the foregoing findings of fact, the Board concludes as follows:

1. The TigerSwan facility permitted on the site in an A1 district does not fall within the classification of "SCHOOL, business and commercial for nurses or other medical oriented professions, trade, vocational and trade arts";
2. The decision of the Cumberland County Planning Department staff to consider the TigerSwan facility to be an outdoor firing range most similar to the classified use for outdoor recreation for profit and with mechanized vehicles was reasonable and was made in conformance with the provisions of the Cumberland County Zoning Ordinance;
3. The classification of the TigerSwan facility as a use most similar to a use as outdoor recreation for profit and with mechanized vehicles is the proper classification; and
4. The conditions the Planning Department placed on TigerSwan's permit are adequate.
5. The ordinance definition of Recreation/Amusement Outdoor (with mechanized vehicle operations) (Section 920) does not contain any limitation on the number or type of buildings associated with the use.
6. TigerSwan's facility is not a nuisance.

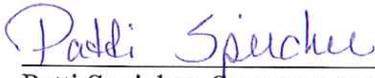
IT IS THEREFORE ORDERED that the appeal is dismissed and the decision of the staff of the Cumberland County Planning Department to issue the permit (no. Z-12-149289) for TigerSwan, Inc., is affirmed.

This decision was made upon the motion of Member Newsome, seconded by Member Locklear, and approved by the affirmative vote of Members Newsome, Locklear, Tart and Carson, with Chairman Donaldson abstaining.



Chairman Ed Donaldson

Attest:


Patti Speicher, Secretary to the Board



Members

George Quigley, Chairman
Ed Donaldson, Vice-Chair
Horace Humphrey
Melree Hubbard Tart
Joseph Dykes



CUMBERLAND
COUNTY



Cumberland County Board of Adjustment

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7603

Alternates:

Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry
Yvette Carson

MINUTES
JULY 10, 2012
7:00 P.M.

Members Present

Ed Donaldson, Chairman
Melree Hubbard-Tart
Randy Newsome
Yvette Carson
Mark Locklear
Joseph Dykes (non-voting)
Carrie Autry-Tyson (non-voting)

Absent Members

Staff/Others Present

Tom Lloyd
Patricia Speicher
Melodie Robinson
Angela Perrier
Rick Moorefield (County
Attorney)

Note: For clarification purposes, the exhibits are marked as: Staff exhibits = S1, S2, etc., TigerSwan exhibits = TS1, TS2, etc., Petitioners exhibits = P1, P2, etc.

Chair Donaldson called the meeting to order at 6:00 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. CHAIR DONALDSON SWORE IN THE STAFF

3. ADJUSTMENTS TO THE AGENDA

MS. SPEICHER: There are no adjustments to the agenda, but for the record, some of the board packets went out without including the actual permit that was issued to TigerSwan. Staff has made available a copy to each board member and to all attorneys and for them to give to the petitioners and for TigerSwan.

CHAIR DONALDSON: Did you have something else?

MS. SPEICHER: No sir, if you could just note for the record that each board member does have a copy of that permit.

MR. MOOREFIELD: Mr. Chairman, I think what the staff is indicating is the packet that was submitted to the board; we would like the board to receive it and mark it as Exhibit 1 [S1].

CHAIR DONALDSON: I take it that all the attorneys have seen the packet that was submitted to the board for review? Does anybody have any objections to receiving it into evidence as Exhibit 1? [There were no objections] The packet is accepted as Exhibit 1. [S1]

4. ABSTENTIONS BY BOARD MEMBERS

There were none.

5. PUBLIC HEARING DEFERRAL

There were none.

6. BOARD MEMBER DISCLOSURES

There were none.

9. POLICY STATEMENTS REGARDING APPEAL PROCESS

Ms. Speicher read the Board's policy regarding the appeal process to the audience.

CHAIR DONALDSON: Are there any stipulations before we start?

MR. FLOWERS: Mr. Chairman, I think one issue we probably need to get resolved is whether the standing question which was raised before needs to be retried this time. It was determined by the Court of Appeals that the petitioners have alleged enough to have standing. We don't think that needs to be retried. We want to stipulate that they do have standing and it might be helpful to just focus on what the staff did issuing the permit as opposed to arguing about the standing. They do have standing for the purpose of this proceeding.

MRS. CURRIN: We certainly will agree to stipulate to standing. We do have affidavits and the petitioners here but we do think some of their testimony that would be relevant to standing is also relevant to the major issue so we would love to stipulate to the standing but with the caveat, we would still like to be able to present all the evidence we need to.

CHAIR DONALDSON: How many witnesses do you all have?

MR. FLOWERS: I have two: Patricia Speicher and Tom Lloyd.

MR. CAMPEN: We will have four or five.

MRS. CURRIN: We have four, but if we can stipulate the standing, we may be able to cut that down to three and just submit the affidavits of the standing on the other for the record.

CHAIR DONALDSON: If you've got those affidavits, you can pass them up and we will receive them.

MRS. CURRIN: We brought all of our exhibits in one notebook so I'll give them out at one time to be marked accordingly. Thank you.

CHAIR DONALDSON: Okay. Ladies and gentlemen of the audience, I know this is quite contentious to some of you but we are not going to let this get out of control. So, keep your remarks to yourself and let these people testify who are going to testify so that we can hear the evidence and make a reasonably sound and intelligent decision. So we do need to have order in here and I suspect we are going to go quite a while, so we will break after about 1 ½ hours depending on how things are going. Please be quiet; please understand that everybody is entitled to be heard without being interrupted to include you no matter who you testify for. Just keep that in mind. Does the board have any questions before we proceed?

MR. FLOWERS: Mr. Chair, as far as order goes, may I be heard briefly? I don't know how Mrs. Currin feels about this, but we had anticipated that the staff would present their site plan overview as they normally do initially to educate the board on what has occurred.

CHAIR DONALDSON: Yes, we can do that. We'll let the staff present their overview as they normally do.

MR. FLOWERS: I do have a few follow up questions for Ms. Speicher and Mr. Lloyd connected to the overview if that is okay? At this time, for purposes of the record, before you present the overview Patti, would you mind stating your name and title.

MS. SPEICHER: Patricia Speicher and I am a Senior Planner Supervisor of the Land Use Codes.

MR. FLOWERS: Ms. Speicher, do you have a site plan prepared with you to present to the board this evening?

MS. SPEICHER: Yes, I do.

MR. FLOWERS: Would you go ahead and present at this time.

MS. SPEICHER: Presented the zoning, land use and photos of the site to the Board. [S2]

CHAIR DONALDSON: Before we go any further, I need to make something clear. There are six people sitting up here. Mr. Dykes is a non-voting member tonight. He is normally a regular member, but for some reason when we put together the board, he wasn't sure if he would be able to make it, but he is here. We have five members here who are voting, just so everybody knows. Consequently, we will need four votes whichever way we rule; actually we'll need four votes out of the five if we want to overrule the zoning department.

MR. FLOWERS: Ms. Speicher, as part of your duties for the Planning Department, do you review and approve applications for zoning permits and site plans?

MS. SPEICHER: For site plans and subdivisions approvals, yes.

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MR. FLOWERS: Were you the one who reviewed the TigerSwan application that we are here for this evening?

MS. SPEICHER: Yes sir.

MR. FLOWERS: Did you ultimately approve that application?

MS. SPEICHER: Yes sir, I conditionally approved it.

MR. FLOWERS: Can you explain to the board why it is that you approved the application?

MS. SPEICHER: We had a policy letter in the office that Mr. Lloyd had written and provided me a copy of which we would like to offer to the board at this time as an exhibit. That policy letter instructs staff, which I could read into the record if the board would rather I read it.

CHAIR DONALDSON: Go ahead and read it into the record and we'll accept it.

MS. SPEICHER: This was dated February 21, 2012, it is a memorandum to the Planning & Inspections Staff from Tom Lloyd, Subject: Outdoor Firing Ranges Review and Approval Policy. "This policy is being issued in light of a recent site plan submittal by a property owner seeking approval of an outdoor firing range on his property – see Case No. 12-025 [If I could sir, that case is on Johnson Road, approx. 4 miles to the southwest of the subject property this evening. It was Mr. Daniel Stanley and his surveyor George Lott who inquired about submitting for and how to receive approval of an outdoor firing range. That was Case No. 12-025.] and will be effective until such time as an ordinance amendment specifically addressing outdoor firing ranges is adopted by the County Board of Commissioners or a replacement policy is issued. Under the terms of our zoning ordinance all legal uses of land must be allowed. Until such time that specific outdoor shooting range zoning ordinance standards are adopted or otherwise addressed, outdoor shooting ranges will be reviewed in accordance with the standards for *RECREATION/AMUSEMENT OUTDOOR (Sec. 920) conducted outside building for profit, not otherwise listed & not regulated by Sec 924* (hereinafter: outdoor recreation) as a principal use. The provisions required for outdoor recreation are the most similar and more closely address the land use impacts that would result from an outdoor firing range than any other use specific provision in our ordinance. The minimum ordinance standards for outdoor recreation require control measures to be in place ensuring that "objects" used on the site are **contained within the designated area**, measures are to be taken to minimize the creation of dust, and outdoor lighting must comply with the ordinance standard. In addition to these specific standards, all other applicable ordinance provisions, to include Section 901 which mandates compliance with the County's noise ordinance, will apply to outdoor firing ranges." [S3] A copy was furnished to Mr. James Martin our County Manager; Mr. Rick Moorefield our County Attorney; and the original was placed in the Department Policy Manual.

MR. FLOWERS: Ms. Speicher, did you utilize and rely upon that memo in approving the site plan for TigerSwan that we are here about tonight?

MS. SPEICHER: Yes sir, I did.

MR. FLOWERS: You mentioned briefly in lieu to the circumstances that gave rise to that memo being issued. Can you describe that a little further for the board?

MS. SPEICHER: Ever since we completely rewrote the County Zoning Ordinance in 2005, staff has been required to do an annual update of the zoning ordinance. That was a pledge made from the Planning Board on May 3, 2005 to the County Commissioners. The ordinance rewrite was adopted on June 20, 2005. Since that time and during the original review of the TigerSwan site plan, there was a Court of Appeals case that was issued August 3, 2010 named *Land vs. the Village of Wesley Chapel*. In that particular case it stated that unless a ordinance specifically prohibits a legal use of land, legal uses of land must be allowed. Because of that and I consistently reviewed logs from the Institute of Government at Chapel Hill, the Appellant Court Opinions as soon as they are released, I get the General Assemblies from Karen Jenkins when she issues the updates to the legislative stuff and I'm constantly watching for changes in laws, court cases, anything or even current trends that would affect our zoning ordinance and subdivision and things that we have in place. When I found *Land vs. Wesley Chapel*, I initially saw it from a blog by Rich Ducker, at UNC at Chapel Hill, which he entitled "A Shot Across the Bow of the Zoning Ship". He addressed the permitted and specifically listed prohibited uses in that. I explained it to Mr. Lloyd and I told him my take on it. I'm not an attorney but I did tell him what I thought about it.

MR. FLOWERS: Ms. Speicher, just for clarity of the case, when you say you explained it to Mr. Lloyd, do you mean you explained the court of appeal cases that you mentioned?

MS. SPEICHER: Yes, the court of appeal case, *Land vs. the Village of Wesley Chapel*. I showed him where a current ordinance prohibited uses of land which we have an exhibit for you with the proposed amendment as we presented it to the Codes Committee and the Codes Committee recommended to the Planning Board with the County Commissioners adopting. If I could back up, I first approached Mr. Lloyd which is my normal thing. "Tom, this is all the information which I have collected this year." These are the changes that I, Code Enforcement, other staff members, we all are given a chance to submit input. We all are given a chance to give collectively what we think should be amended for this year. That was started in the Fall 2010. As you see on that amendment, on the second page of the exhibit, you will see how section 402 previously read. All uses of property are prohibited except those that are permitted unless otherwise allowed under the terms of this ordinance. That was changed to read: All uses of property are allowed as a use by right unless this ordinance specifies otherwise or where this ordinance specifically prohibits the use. In the event a use of property is proposed that is not addressed by the terms of this ordinance, the minimum ordinance standards by the use addressed by this ordinance that is most closely related to the land use impacts of the proposed use shall apply. In addition, the Ordinance Administrator may initiate a text amendment addressing such proposed use providing that the drafting and adoption of said amendment will not cause delay in the permitting of the proposed use. We presented this proposed amendment to the Codes Committee which is made up of five members of the Planning Board and is staffed by Mr. Lloyd, our Director; Cecil Combs, our Deputy Director; myself; Mr. Moorefield, who is present; and LaVerne Howard, our Administrative Coordinator. This document dated February 15, 2011 is what came out of the Codes Committee. If you will notice Item #2, the changes to Section 402 are specifically listed as Item #2 under the major changes. This is the document from the Codes Committee, the recommendation from the Codes Committee to the Joint Planning Board. [S4]

MR. FLOWERS: Did the Board of Commissioners ultimately adopt that recommended amendment to Section 402 of the ordinance?

MS. SPEICHER: Yes sir, they did on March 15, the Joint Planning Board forwarded by unanimous vote, all the recommended changes that were proposed from staff with one exception and that was those related to schools. Then the whole amendment went on to the Board of Commissioners and on April 18, 2011, the Board of Commissioners approved all of the amendments, with the exception of schools and asked us to bring schools back as a separate case.

MR. FLOWERS: When did the amended Section 402 go into effect?

MS. SPEICHER: On April 18, 2011.

MR. FLOWERS: Was that prior to the permit application you received from TigerSwan?

MS. SPEICHER: Yes sir, it was.

MR. FLOWERS: Was it a fact that in the amendment of Section 402 that any use that was not specifically prohibited would be allowed?

MS. SPEICHER: Yes sir, it was as long as it was a legal use.

MR. FLOWERS: So, a legal use meaning not selling drugs or selling stolen guns?

MS. SPEICHER: Yes sir.

MR. FLOWERS: Is a firing range a prohibited use in the ordinance?

MS. SPEICHER: No sir, it is not. There are no prohibited uses listed in the County Zoning Ordinance.

MR. FLOWERS: Back to the memo issued by Mr. Lloyd, it was issued when?

MS. SPEICHER: February 21, 2012.

MR. FLOWERS: So that was eight months after Section 402 was amended?

MS. SPEICHER: Yes it was.

MR. FLOWERS: Can you tell the board how it is that the memo came to be?

MS. SPEICHER: We had several phone calls. At the time we honestly thought it was different people with different firing ranges and people were inquiring from the staff that works with me and how can I get a firing range approved. I had a surveyor, George Lott, call me specifically and ask. I went to Tom and I said "Tom, we're going to have to do something about firing ranges because we have people out there wanting to construct them and to get them operating." Tom said yes, he mentioned the amendment, we did do the amendment and the amendment was

adopted and under the current terms of our ordinance, I will get you a policy letter because we have the outdoor firing range text amendment that Tom originally tasked me with, has also been placed on hold. Tom said until we can get something done with that, I'll do a policy letter.

MR. FLOWERS: Under Section 402 when you have a proposed use that is not specifically prohibited, are you tasked with aligning that proposed use with the most similar permitted use in the ordinance?

MS. SPEICHER: I could only make a recommendation to Mr. Lloyd. Mr. Lloyd would make the final determination as far as the land use impact of the proposed use and the uses that are currently listed in our use matrix to compare which was closest. We certainly talk about it, but the final determination is Mr. Lloyd's.

MR. FLOWERS: Did you recommend to Mr. Lloyd that the closest land use was the outdoor recreation?

MS. SPEICHER: I pointed out to Mr. Lloyd that outdoor recreation and the specific individual provision in the Zoning Ordinance is the only place in the Zoning Ordinance that addresses outdoor uses with possible objects leaving the site that may create dust, noise and projectiles or objects leaving the site.

MR. FLOWERS: I don't have any other questions for Ms. Speicher.

MS. SPEICHER: If I could, I would like to go through the conditions that were included in your packet, not all of them. I have Section 901 and I would like to briefly mention the section requirements that were named in that memo and reference you to the specific condition number where it is addressed. Under Section 901, Item A, requires parking/loading to meet the ordinance standards. That is Condition #19 in your packet. The conditions of approval with the revision approval dated April 17, 2012. Item #16 coincides with Para. B, which states that lighting must be directed internally and comply with Section 1102M, which is the County Zoning Ordinance Lighting Standards. Para. C addresses noise generated by the use. Condition #20 you will find where the noise levels are addressed on the conditional approval. Para. D, any nonresidential use requires a buffer when it is adjacent to another residential use. This property is completely surrounded by agricultural, so that does not apply. Para. E references the sign regulations which are covered under Section 920 which specifically addresses recreation or amusement public or private and indoor/outdoor. Paragraph 8 under section 920 states one sign will be permitted in accordance with the C(1)P zoning district standards addressed by Condition #10 on your conditional approval. Para. B, the site shall have vehicular access to a paved public street, that is addressed by #9 on your conditional approval and the TigerSwan Drive is a private street approved under the previous approval. Para. D, outdoor lighting is Condition #16, E, addresses the dirt and measures being taken to minimize dust; that is Condition #22 on your conditional approval. F is fencing netting to prevent objects from leaving the site as addressed by Condition #3 on your conditional approval. G, references the mechanized outdoor which there is a future driving track planned for the TigerSwan site and it requires a minimum of three acres. This site is in excess of 978 so it meets that standard. Staff would also like to point out Condition #21 which emphasizes to the TigerSwan operators that use of helicopters would basically be classified as a minor airport which requires a Special Use Permit to be issued by this board, the Board of Adjustment, prior to the use of helicopters at this

location. That was Condition #21. You have over thirty condition listed and they are all ordinance related and permit related conditions.

MR. FLOWERS: When you were going through the process of determining the impact of the site and what conditions should be placed in the approval, do you speak with other agencies and obtain information from other agencies about the site?

MS. SPEICHER: Yes sir, other agencies and even federal agencies and internal.

MR. FLOWERS: Did you speak with Bobby McCormick, Transportation Planner with the Transportation Coordinating Committee for the Fayetteville Area Metropolitan Planning Organization about this site?

MS. SPEICHER: Yes, as we do with every site plan submitted to our office, we check on the traffic impacts, and any right of way improvements required because of the proposed use and there were none for this particular case.

MR. FLOWERS: Did you speak with Daniel Ortiz, Environmental Health Supervisor for the Cumberland County Department of Health about this site?

MS. SPEICHER: Yes I did, on the original approval we had conditioned that they get approval from the County Health Department so when the revised site plan came in I had the staff resubmit it to Mr. Ortiz and he confirmed for me that they were in compliance with the County Public Health Regulations.

MR. FLOWERS: Did you speak with Mr. Art Barnhardt at the North Carolina Division of Water Quality about the site?

MS. SPEICHER: I did during the original approval process and we did send them a copy of our revised plan and when I spoke to Mr. Barnhardt, I spoke to him on a couple of occasions regarding this particular case and he relayed to me that due to the slow migration of lead.....he is the head of the Water Quality Section for the local DENR office and Director of Water Quality. My specific questions to him were in regards to lead in the ground water and he explained to me that DENR had no concerns with that regarding this site. They had a reclamation plan. DENR has had their soil and erosion plan and numerous other plans, stormwater and that the lead, with the reclamation plan, even with the lead levels left on the ground or missed, that it migrates in such a slow state, that it would essentially disintegrate.

MR. CURRIN: Ms. Speicher, You presented a memorandum dated February 21, 2012 to the board and it looks to be a memo from Mr. Lloyd. Do you remember receiving a public records request from the law firm of Currin & Currin in April 2012?

MS. SPEICHER: Yes I do.

MR. CURRIN: This document was not included in that response to that public records request, was it?

MS. SPEICHER: No sir, it wasn't.

MR. CURRIN: And why is that?

MS. SPEICHER: Because the public records request said “specific to the current TigerSwan approval” and this document is not in the TigerSwan file.

MR. CURRIN: But it is related to it and you relied on it, did you not in making the determination that you are testifying on?

MS. SPEICHER: I relied mostly on the fact I just approved the Daniel Stanley Firing Range so I did not refer to this document at that time.

MR. CURRIN: With respect to Section 402 that you talked about. I believe I understand what you were saying is: If a use of a property is not addressed in the ordinance, then you would then look and see what is most closely related to that use based on the impacts of the use.

MS. SPEICHER: Again, what I said is that Mr. Lloyd would make that call; I would confer with Mr. Lloyd.

MR. CURRIN: That is what you are testifying to, that is the interpretation that staff has about this particular section.

MS. SPEICHER: That was Mr. Lloyd’s interpretation, what he stated to me, yes.

MR. CURRIN: So, if a use is addressed in the ordinance, then Section 402 has no use, is that correct?

MS. SPEICHER: Yes.

MR. CURRIN: This particular facility, this particular use that we are talking about tonight, the TigerSwan facility is actually a school, is it not?

MS. SPEICHER: We did originally conditionally approve it as a school, but after going out to the site, seeing the site and considering everything as it was, and then Mr. Lloyd’s policy letter declaring that a shooting range/outdoor firing range are principle use of property so it cannot be incidental to something else which is why I approved the firing range.

MR. CURRIN: So have you taken the position that it is not a school?

MS. SPEICHER: Based on what Mr. Lloyd had stated to me, I approved the current TigerSwan facility as an outdoor firing range.

MR. CURRIN: And not a school?

MS. SPEICHER: I approved it as an outdoor firing range.

MR. CURRIN: But it is not a school, because schools are addressed in the ordinance, correct?

MS. SPEICHER: Schools are addressed in the ordinance.

MR. CURRIN: And vocational schools are addressed in the ordinance?

MS. SPEICHER: There are numerous schools addressed in the ordinance.

MR. CURRIN: So, for example, if this particular facility was categorized or classified as a vocational school, then Section 402 would have no application what-so-ever, is that correct?

MS. SPEICHER: I went based on what Mr. Lloyd had told me concerning outdoor firing ranges and the policy he issued for the department staff.

MR. CURRIN: Where you aware the County is currently taking the position in the Supreme Court of North Carolina that this particular facility is in fact a school?

MR. FLOWERS: Objection, I don't think that is accurate.

MR. DONALDSON: I think she has answered the best she is going to answer your question; that she was following the policy set out by Mr. Lloyd. You may have questions for Mr. Lloyd on that specific issue.

MR. CURRIN: Can you tell me what conversations you and Mr. Lloyd had about whether to classify this as a school or not.

MS. SPEICHER: Regarding the current case?

MR. CURRIN: Yes.

MS. SPEICHER: We did not.

MR. CURRIN: It was not discussed whether it was a school?

MS. SPEICHER: No.

MR. CURRIN: Do you have the Subdivision Group Development Site Plan Subdivision Form that was submitted by TigerSwan?

MS. SPEICHER: Yes sir.

MR. CURRIN: If you could look at that Ms. Speicher, the name of the development just says TigerSwan.

MS. SPEICHER: Yes sir.

MR. CURRIN: Does it say training collaboration facility?

MS. SPEICHER: No sir.

MR. CURRIN: This is a form that the applicant fills out, correct?

MS. SPEICHER: Yes sir.

MR. CURRIN: There are spaces here that the county wishes to have information about, correct?

MS. SPEICHER: We try to get that, yes sir.

MR. CURRIN: This form was devised for that purpose?

MS. SPEICHER: Yes sir.

MR. CURRIN: There is one particular question that has a long line and it says "use of property" and then in parenthesis it says "be specific"?

MS. SPEICHER: Yes sir.

MR. CURRIN: And there is nothing on that line, is there?

MS. SPEICHER: No sir.

MS. CURRIN: Do you know why there is nothing on that line?

MS. SPEICHER: That is my oversight sir, when I accepted the application.

MR. CURRIN: Did you fill out the application?

MS. SPEICHER: No sir, I did not. My handwriting is in the top right hand corner.

MR. CURRIN: When TigerSwan filled out this application for this particular permit, they did not put the use of the property on there, did they?

MS. SPEICHER: No sir.

MR. CURRIN: Did you have any conversations with applicant about that?

MS. SPEICHER: Yes, with Steve from TigerSwan.

MR. CURRIN: Can you tell me what they said about why they did not fill that out?

MS. SPEICHER: I didn't ask him about why he didn't fill it out when he came into the office and completed the application, and he explained to me that they were submitting for approval of an outdoor firing range.

MR. CURRIN: But it does not say that on this application?

MS. SPEICHER: No sir, it does not.

MR. CURRIN: So you are saying they made an application for an outdoor firing range?

MS. SPEICHER: Yes sir.

MR. CURRIN: Even though the application has nothing about that on there?

MS. SPEICHER: Yes sir, but the site plan did.

MR. CURRIN: The site plan mentions outdoor firing range?

MS. SPEICHER: Steve and I went over the site plan because there had been a couple of revisions to the site and I asked him specifically which firing ranges, etc., as far as the individual buildings that I went over, he showed me which ones are built, which ones are not, what they are used for, we went over the ranges. He showed me the one that is constructed and he showed and explained the firing ranges; showed and explained the berms to me and the baffles for the actual firing stands and he explained the complete site plan to me to the best that I could understand.

MR. CURRIN: Nothing has changed from TigerSwan's original use of the 2010 site plan and what they want to do, has it?

MS. SPEICHER: On the site plan? Yes.

MR. CURRIN: What has changed about it?

MS. SPEICHER: We have done three revisions to the site plan.

MR. CURRIN: Are they still going to be giving instruction to military law enforcement?

MS. SPEICHER: Sir, I can't answer that question.

MR. CURRIN: Why can't you answer that?

MS. SPEICHER: I can answer what I think and my understanding is that it is training for law enforcement, for military, for civilian training; I could go out there and learn how to better shoot my weapons, especially for hunters, it is a wide spectrum, with the principal use of that property appearing to me to be a firing range.

MR. CURRIN: Were you here the last time that we were in this particular room for a hearing on this case?

MS. SPEICHER: Yes sir.

MR. CURRIN: Do you recall Mr. Lloyd at that time testifying under oath that this facility was a school?

MS. SPEICHER: Yes sir and I reread the minutes.

MR. CURRIN: Nothing about the training, the instruction that TigerSwan has always said they are going to do has changed from the original proposed use, has it?

MS. SPEICHER: That the principal use seems to be training to use weapons and fire weapons.

MR. CURRIN: They have courses for defensive military?

MS. SPEICHER: They also have mechanized on the conditional approval for that reason.

MR. CURRIN: But that is for the military and law enforcement security personnel?

MS. SPEICHER: It could be for me or for you is my understanding.

MR. CURRIN: I understand, but they advertise it for being for military and law enforcement security personnel, that is what they told you right?

MS. SPEICHER: That is what I saw on their site, but I also saw that civilians could sign up as well, that I could go sign up for a course.

MR. CURRIN: And they have classrooms, do they not? The point I'm trying to get at is this is not simply a shooting range; this is an instructional training facility which has been characterized by the county previously as a school.

MS. SPEICHER: In the current site plan approval that I did was based on the policy letter that stated that shooting ranges are a principal use of property.

MR. CURRIN: Indoor recreation activity is not permitted in the A1 District is it?

MS. SPEICHER: No sir, it is not.

MR. CURRIN: Vocational schools are not permitted in the A1 District?

MS. SPEICHER: No sir.

MR. CURRIN: How do you classify the indoor activities that would be going on in these classrooms on the TigerSwan facility?

MS. SPEICHER: As far as the weapons training and things like that as incidental to a firing range.

MR. CURRIN: If in fact you are correct, if this particular training facility is not addressed in the ordinance, then you would apply the minimum ordinance standards for the use addressed by this ordinance as most closely related to the land use impact shall apply?

MS. SPEICHER: Yes sir.

MR. CURRIN: You have determined that the most closely related is the outdoor recreation?

MS. SPEICHER: Yes sir, because the shooting range as the outdoor firing range is the principle use.

MR. CURRIN: Any site plan that was submitted under that theory would have to comply with the minimum standards for an outdoor recreation facility, correct?

MS. SPEICHER: Yes sir.

MR. CURRIN: In fact, this site plan does not do that, does it?

MS. SPEICHER: Sure it does.

MR. CURRIN: The outdoor recreation ordinance only allows...it must be an area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, and open air pavilions and similar structures used primarily for recreational activities.

MS. SPEICHER: And similar structures, sir.

MR. CURRIN: The classrooms are not being used for recreational activities, are they?

MS. SPEICHER: For the weapons training, the book training for weapons, I would find that to be, yes sir.

MR. CURRIN: That is educational, is it not?

MS. SPEICHER: I would still find it to be incidental; you would have to go there before you could fire a weapon, especially for the beginning classes.

MR. CURRIN: There are too many buildings on this site plan, are there not?

MS. SPEICHER: No sir.

MR. CURRIN: To meet the minimum standards for an outdoor recreational use?

MS. SPEICHER: Not in my judgment, no sir, there are not.

MR. CURRIN: There is a Pro Shop,

MS. SPEICHER: Which is also the range check in.

MR. CURRIN: How many classroom buildings are there?

MS. SPEICHER: I believe it was seven.

MR. CURRIN: There are seven classroom buildings?

MS. SPEICHER: You are saying you believe those seven classroom buildings are incidental and fit into the category of equipment storage and maintenance buildings?

MS. SPEICHER: Sir, in my review of the site plan, those buildings were possibly the size of or less than a two car garage.

MR. CURRIN: That is not what it talks about here, is it?

MS. SPEICHER: It was relative to the site and some uses would have more need for incidental structures than others. Again, I would like to emphasize that I went with the policy letter that stated that outdoor firing range was the principle use of the property.

MR. CURRIN: There are seven classroom instructional buildings and you have determined that those buildings meet the minimum standards for outdoor recreation.

MS. SPEICHER: Depending on the individual use of those buildings, which at the time that they were constructed, code enforcement verified that they were used for outdoor firing range purpose.

MR. CURRIN: But they don't fit the kinds of buildings that are listed in the ordinance for outdoor recreation, do they?

MS. SPEICHER: It could be storage buildings for the additional buildings, now they only have two classroom built right now.

MR. CURRIN: But this has been approved for seven classrooms, right?

MS. SPEICHER: Yes sir, it has been.

MR. CURRIN: So seven classrooms and yet you are saying this is not a school?

MS. SPEICHER: Yes sir, I'm saying it is not a school.

MR. CURRIN: Even though TigerSwan has said it is a school.

MS. SPEICHER: This conditional approval was approval of an outdoor firing range as a principle use of the property.

MR. CURRIN: Did your office look and see or analyze whether this particular facility was a vocational school?

MS. SPEICHER: I think Mr. Lloyd would be better able to address that answer.

MR. CURRIN: Do you know the answer?

MS. SPEICHER: I wasn't privy to the entire reasoning and thought process on that.

MR. CURRIN: Isn't it important for you to know what the use is of property before you can determine whether it is permitted in a particular zoning district?

MS. SPEICHER: And this application was conditionally approved as an outdoor firing range. If Code Enforcement goes out there and warrants it is something different then they would issue a notice of violation.

MR. CURRIN: But don't you have to make an interpretation and analysis of what the property is going to be used for?

MS. SPEICHER: Mr. Lloyd is the ordinance interpreter, not me.

MR. CURRIN: You are involved in the decision, are you not?

MS. SPEICHER: If I have issues, concerns or questions then, yes, I go to Code Enforcement and Mr. Lloyd, but once the site plan is approved, regardless of what the site is for, and it happens all the time that someone introduces another use or an additional use or a totally new or different use, Code Enforcement goes out and they handle it from their side. This site was approved as an outdoor firing range on that property.

MR. CURRIN: But when you get this application for the site plan, in which we have talked about, there is a blank there that you said this form was formulated for information that the Planning Department wanted.

MS. SPEICHER: Yes, I can explain that. I typically do not accept site plans at all. There is a full staff that processes them. I happen to be standing there when Steve came in the door to submit the application and the site plan. "I'll help you", is exactly what I said. The reality is, I'm not used to looking detailed at those applications for acceptance purposes.

MR. CURRIN: My point is, it is important for the planning staff to know and it is a specific question.

MS. SPEICHER: Which is why I stood there and went over with him the site plan, what he wanted, any changes and again, we went over the firing ranges.

MR. CURRIN: But it is important to the site plan approval for you to know what the use of the property is.

MS. SPEICHER: I've personally discussed with the applicant.....

CHAIR DONALDSON: You've asked the same question about twenty different ways and the answer has been the same.

MR. CURRIN: Can you tell me, what was the basis for this memorandum, if you know, that just made it a blanket rule by Mr. Lloyd that all firing ranges would be deemed to be like the recreation amusement outdoor?

MS. SPEICHER: Yes sir, I do and I don't have copies but like I said previously, especially Ed Byrne, who is my right hand man in the office, and I both kept receiving numerous inquiries concerning how to get a firing range approved. I went to Mr. Lloyd and said, "Tom, we have to

do something.” He said yes with that amendment there now we’ve got to find a place to put them. He and I discussed it and then he issued the policy.

MR. CURRIN: What would happen if you know, if the property had more than one use, in other words if the property were being used as a firing range and also being used as a vocational school?

MS. SPEICHER: On this particular site, a vocational school is not permitted. We do have provisions in our ordinance for group development for two or more uses on the same property. We could not approve a vocational school on this site.

MR. CURRIN: Even if there were a firing range on this property, and it was also being used for a vocational school, you would not approve it.

MS. SPEICHER: Right. And I would have conditionally approved the firing range and would have put on the pre-permit that this is not approval of a vocational school and that way when Code Enforcement goes out there, they are the ones who visits, who sees the site and who knows what is going on, they would issue a notice of violation and determine what the remedy would be.

MR. CURRIN: Thank you. I don’t have any more questions.

MR. MEEKER: Ms. Speicher, if you could pull up the TigerSwan Exhibit 1 [TS1] that we sent you.

CHAIR DONALDSON: There was a jurisdictional question that I have. When was this notice of appeal filed? The approval was on April 17?

MS. SPEICHER: Yes sir, April 17, 2012. The appeal was filed with my office on May 4, 2012.

CHAIR DONALDSON: Okay, I just want to get it on record the time they filed. Thank you.

MS. SPEICHER: Can you identify what type of slide Exhibit 1 [TS1] is that is being handed out?

MS. SPEICHER: This is the boundary of the site plan that was approved with the firing ranges to the southern end of the property.

MR. MEEKER: And the firing ranges, given the size, are relatively small in size, is that correct?

MS. SPEICHER: Yes sir, they are.

MR. MEEKER: This total tract is over 1500 acres, is that correct?

MS. SPEICHER: Yes sir, it is.

MR. MEEKER: And to put that in that in miles, that is about 2 square miles of one continuous tract, is that right?

MS. SPEICHER: Yes sir.

MR. MEEKER: Would it be fair to say this is one of the largest if not the largest tract in Cumberland County?

MS. SPEICHER: It is the largest that has been submitted to my office for a site plan approval, yes.

MR. MEEKER: And quite often firing ranges are 20, 30 or 40 acres, are they not?

MS. SPEICHER: Yes sir.

MR. MEEKER: And this one is actually on a site that is over 1500 acres.

MS. SPEICHER: Yes sir.

MR. MEEKER: So it is 30, 40, or 50 times the size of other sites, is that correct?

MS. SPEICHER: If I could, I would like to clarify for the record, the site plan was approved for 978+ acres of the 1500 acre tract.

MR. MEEKER: This is the whole tract here in Exhibit 1? [TS1]

MS. SPEICHER: This is the portion that was approved, the 987 acres [indicating on the slide]

MR. MEEKER: Please show Exhibit 2, [TS2] does that show the relationship to the other streets in the area?

MS. SPEICHER: Yes sir, it does.

MR. MEEKER: The parcel in question is outlined in red, is that correct?

MS. SPEICHER: Yes it is.

MR. MEEKER: There are certain names there on Exhibit 3, [TS3] is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: And those are the names for the petitioners in this case, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: And then you have distances from the firing range to the petitioners property, is that right?

MS. SPEICHER: Yes sir.

MR. MEEKER: Those distances range from 4800 ft. to over 10000 ft., is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: So between a half mile and two miles from the actual firing to where the adjacent properties are, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: One property has the house, is that the Faircloth property which is actually two miles from the firing range, is that right?

MS. SPEICHER: Yes sir.

MR. MEEKER: And the other parcels do not have houses, is that correct?

MS. SPEICHER: The Lockamy property has a home.

MR. MEEKER: But that is not in the direction of the firing range?

MS. SPEICHER: No.

MR. MEEKER: The farm labeled OK Farms, what is that?

MS. SPEICHER: It is a commercial farm.

MR. MEEKER: Do they have ponds at that farm?

MS. SPEICHER: It appeared to me to be a commercial hog farm.

MR. MEEKER: In Exhibit 4 [TS4] the blue circles are showing the distances, is that correct?

MS. SPEICHER: Yes.

MR. MEEKER: It is one half mile for each circle, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: So the petitioners' property in some cases, are a little over one half mile away and in some cases two miles away, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: Was it your understanding that the principle use of this property is as a firing range?

MS. SPEICHER: Yes sir.

MR. MEEKER: And that's the reason your office issued the permit, is that right?

MS. SPEICHER: Yes sir, the conditional approval.

MR. MEEKER: Is it also correct that the Zoning Ordinance used to make this decision does not have a category for firing ranges, is that correct?

MS. SPEICHER: That is correct.

MR. MEEKER: And that is the reason you looked to the impact of a similar use such as outdoor recreation?

MS. SPEICHER: That is correct.

MR. MEEKER: In the questions from your council, you talked about the revised Section 402 and that was a significant revision to the ordinance, was it not?

MS. SPEICHER: Yes it was.

MR. MEEKER: It basically says a use is allowed unless it is prohibited, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: And that is sort of the opposite of the way it was before?

MS. SPEICHER: Yes sir.

MR. MEEKER: So that made the Zoning Ordinance much more permissive as of April 18, 2011, is that correct?

MS. SPEICHER: Yes sir.

MR. MEEKER: And that Zoning Ordinance was in accordance with the policy set after the Land vs. Wesley Chapel case that North Carolina favored the free use of property, do you remember that?

MS. SPEICHER: Yes sir.

MR. MEEKER: We have no further questions, thank you.

MRS. CURRIN: You stated the site plan was different now than when it was submitted in 2010?

MS. SPEICHER: Yes, ma'am.

MRS. CURRIN: I don't have it as an exhibit, but you can take a look. I have a copy here for you to look at, can you tell me if this was the site plan that you approved in 2010 and that was a part of the record in the Court of Appeal?

MS. SPEICHER: I do not know what was submitted on the record for the Court of Appeal but I can tell you if it was a site plan in place in 2010. It does appear to be the most current revision in the case file.

MRS. CURRIN: Okay. Isn't that exactly the same as the site plan that you approved as the shooting range?

MS. SPEICHER: No, not just this.

MRS. CURRIN: Okay, but that layout, if you could please put it on the screen for the board to see?

MS. SPEICHER: If you will notice the difference surrounding building 1 on your site plan. Building 3 is showing a wall being constructed that is different. The parking has been realigned a little bit, the concrete in the handicapped spaces has since been installed and are now showing on the site plan, the walkway between the structure and the proposed and existing structures is now on the site plan. There is no parking to the northeast side which is shown on this site plan. There are several changes.

MRS. CURRIN: The buildings are exactly the same. It still proposes seven classrooms, is that correct?

MS. SPEICHER: The number of buildings appears to be the same.

MRS. CURRIN: The Pro Shop is the same and there are still seven classrooms, right?

MS. SPEICHER: And the parking is missing in between structure 1 and 2 so without scaled drawings I can't tell you if they are in the same location or not.

MRS. CURRIN: You are telling me that the parking and layout has changed a lot, but the actual uses on this are no different on this than they were in 2010, is that correct?

MS. SPEICHER: No, I'm not saying the actual uses are no different, I conditionally approved an outdoor firing range as a principle use of this property on the most recent TigerSwan approval.

MRS. CURRIN: I understand that Ms. Speicher, you have the site plan that you approved as a school from 2010, is that correct?

MS. SPEICHER: Yes.

MRS. CURRIN: The one that you approved as a shooting range this year has exactly the same facility and building legends, the same Pro Shop, the same classrooms as the previous approval?

MR. FLOWERS: There are about five questions there, can we break that down?

CHAIR DONALDSON: Let her answer the questions.

MS. SPEICHER: This alone is not representative of the site plan. This is the site plan with all three sheets that was conditionally approved as an outdoor firing range.

MRS. CURRIN: Aren't all three of these sheets substantially the same as the three sheets that were submitted in 2010?

MS. SPEICHER: They are substantially the same, however, our ordinance changed.

MRS. CURRIN: I understand that. Okay, that is all I have.

CHAIR DONALDSON: Are there any questions?

MR. NEWSOME: I have a clarification question when it comes to a school. Is any gun range or gun store in the County, any place that teaches, does zoning require them to be a school because they have a classroom teaching a class?

MS. SPEICHER: Are you referencing outdoor or indoor?

MR. NEWSOME: Outdoor or indoor.

MS. SPEICHER: Indoor is treated differently and we would treat that as indoor recreation and let the building code handle the internal building safety standards. If an outdoor firing range, regardless of the reason, came into my office today, we would conditionally review it and hopefully approve it if we could as an outdoor recreation facility.

MR. LOCKLEAR: You mentioned that you had reviewed several other shooting ranges which kind of spurred the letter. Did any of those get approved?

MS. SPEICHER: We never reviewed or approved. We only actually had one submitted, the one that Mr. George Lott the surveyor called me about; he stated Beaver Dam; then when Mr. Stanley's site plan came in and when he discussed it with me he was referring to Cedar Creek. So in my mind we are talking about two different outdoor firing ranges, but when Mr. Stanley brought his in, George Lott had prepared it and it was the one in Cedar Creek. That was just approved in early spring, in March, of this year. That is the only one, all other firing ranges that exists outdoors, that we know about, pre-existed zoning in that specific area.

MR. LOCKLEAR: So you have approved one?

MS. SPEICHER: We have approved two, TigerSwan and that one.

CHAIR DONALDSON: The one that you approved, not this one, but the other one, what type of zoning classification was it on?

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MS. SPEICHER: A1. We have approved residual information, but Paintball of course is on a 20 acre track as an outdoor recreation in the A1 District as well.

CHAIR DONALDSON: I meant to ask TigerSwan, are you going to introduce these exhibits?

MR. MEEKER: Yes, we would like to introduce the first three.

CHAIR DONALDSON: We are accepting these four photos and sketches in as Exhibits 1, 2, 3 & 4 from TigerSwan. Do you want me to number them consecutively with the others? How do you want me to number them? I've got them numbered as TigerSwan Exhibits 1, 2, 3, 4.

MS. SPEICHER: Chair, for the record, Melodie is labeling all of TigerSwan's exhibits as T1, T2, T3, etc.; Petitioners as P1, P2, P3, etc.; and Staff as S1, S2, S3, etc.

CHAIR DONALDSON: I've got five exhibits from the staff, is that right?

MR. MOOREFIELD: Mr. Chair, there was also reference to the site plan, I'm not sure if you want to put that in the record, but there was reference to that as well.

CHAIR DONALDSON: Okay. Go ahead Mr. Flowers. Please state your name and your occupation, Mr. Lloyd.

MR. LLOYD: Thomas J. Lloyd, Planning and Inspections Director, Cumberland County.

MR. FLOWERS: Mr. Lloyd, you stated you are the Director, Cumberland County Planning & Inspections, are you familiar with Section 106 of the Cumberland County Ordinance that refers to the Director of Planning?

MR. LLOYD: Yes sir. I'd like to clarify that before I became the Planning & Inspections Director, I actually was in charge of the Land Use Codes Section, the position that Ms. Speicher has and occupied that position for probably ten years.

MR. FLOWERS: How long have you been Director?

MR. LLOYD: I was Interim Director; overall I've served in the capacity close to eight years.

MR. FLOWERS: You are aware that Section 106 authorizes you as the Director to administer and enforce the Cumberland County Zoning Ordinance and that Section 106 authorizes you as the Director to interpret the Cumberland County Zoning Ordinance.

MR. LLOYD: Yes sir.

MR. FLOWERS: We've talked some about the Section 402 and that it was amended in April 2011, are you aware of that?

MR. LLOYD: Yes sir.

MR. FLOWERS: Can you describe for the board what effect that amendment had on how you would analyze a site application or a zoning permit application?

MR. LLOYD: Previously, if the use wasn't specifically listed within the permitted use matrix, it would have been prohibited unless of course, as a staff, with respect to good customer service, we try to find a similar type use at that time. A lot of times we have to amend the Ordinance.

MR. FLOWERS: Otherwise it would be prohibited?

MR. LLOYD: Yes sir.

MR. FLOWERS: Since the change to Section 402, how is that treated now?

MR. LLOYD: I'd like to clarify this in light of the questions that have been asked. As administrator of the ordinance, I would not be calling a particular use such and such. What I would do is look at the use and see what use in the matrix had the closest relationship with respect to land use impact.

MR. FLOWERS: So in a situation such as this where you have a site plan request for a firing range, if a firing range is not one of the listed uses, what analysis would you make?

MR. LLOYD: Most of the time it is the applicant who brings it in and I would sit down with the applicant, look at the nature of the use and then try and find in our matrix what it would most closely resemble with respect to impact.

MR. FLOWERS: When you say with respect to impact, will you clarify that for the board.

MR. LLOYD: Negative impact or noxious impact on the surrounding land uses which is really the essence behind zoning is to try to make uses, if not compatible but the least incompatible. There are various portions of our ordinance which address compatibility or ways to minimize a noxious aspect of that use. In this particular case, not TigerSwan, but a firing range was going to be submitted. It's in the minutes of the last BOA meeting on TigerSwan it was already in existence which predated zoning. As Ms. Speicher already stated, she came in and said we don't have any regulations on firing ranges, so in the use of this event, I had to go to the ordinance and not only discuss it with Ms. Speicher, but with other members of staff to see what was the impact of this use, what would most closely resemble a firing range on neighboring, do we have anything in the ordinance which minimizes the same similar type of use with respect to what is going on at the property and its relationship to surrounding property.

MR. FLOWERS: Let me make sure I understand this process as you've explained it to the board. Two step process here. First, under the new amendment, you look and see if it is a use that is prohibited and if it is not prohibited, then it is permitted, is that right?

MR. LLOYD: Yes sir.

MR. FLOWERS: Then the next step is to determine what conditions you will put upon that use and in order to do that you look at a similar use that is going to have a similar impact?

MR. LLOYD: You look at the impact that this particular use may have. We go through the ordinance and look at other uses that may have similar impacts or at least similar measures to control what may be noxious in issues if it is addressed in the ordinance under another use.

MR. FLOWERS: In your memorandum dated February 21, 2012, had you made a determination prior to issuing that memo that the most similar use and impact to a firing range was the outdoor recreation amusement?

MR. LLOYD: Yes sir.

MR. FLOWERS: Can you take the board briefly through your analysis as to how you made that determination and the facts that are similar to the two uses?

MR. LLOYD: We looked at the affects of a firing range and noted what would be the biggest objection or the biggest problem with respect to health, safety and welfare to neighboring properties and of course that would be any projectile leaving the firing range site. Of course there are other aspects too including noise, lighting and traffic volume. But most of all we had to look at the safety of the surrounding property. When you look at outdoor recreation it addresses safety specifically Section 920F which talks about fencing, netting and other control measures and many times with firing ranges, the use permit, shall be provided around the perimeter of any areas used for hitting, flying, or throwing of objects to prevent the object from leaving the designated area. The only thing we had in the ordinance that addressed objects of any kind leaving the site or leaving the area was outdoor recreation. With respect to that and that measure of any projectile on a firing range leaving the area as well as the less impact of lighting and noise, they were also similarly addressed in outdoor recreation.

MR. FLOWERS: Just so we are clear on this, when you issued that memo on February 21, 2012, you were not saying that a firing range is outdoor recreation but that the impact is similar to outdoor recreation, is that right?

MR. LLOYD: Yes sir, which is exactly the way the ordinance amendment in Section 402 read.

MR. FLOWERS: And that is what the Ordinance instructs you to do?

MR. LLOYD: Yes sir.

MR. FLOWERS: You've heard questions being asked about a vocational school at this site. Did your office approve a vocational school at this site?

MR. LLOYD: No sir.

MR. FLOWERS: No further questions.

MR. CURRIN: Mr. Lloyd, your attorney was asking you some questions, so the first thing you would do is define, isn't it?

MR. LLOYD: Yes sir.

MR. CURRIN: So you don't go straight to Section 402. To determine the impact you first need to determine what is going on and what is the use?

MR. LLOYD: Yes sir.

MR. CURRIN: In this particular case with TigerSwan, you have previously indicated in your testimony at the last hearing that you classified this.....

MR. FLOWERS: I object, we are not here to retry that case; we are here under a different ordinance that is not relevant to this site plan.

CHAIR DONALDSON: I'll let him a little bit, but not too far. I don't see a problem with asking him. If he made statements then he can use them now to contradict whatever testimony he is doing now. It was sworn testimony made last time.

MR. CURRIN: That's all I am going to do is cross examine him with these prior statements. You testified that you classified this TigerSwan facility which Ms. Speicher has said the use is substantially the same as it was back in 2010, it is the same now?

MR. LLOYD: No sir, she didn't say the use; she said the site plan is essentially the same.

MR. CURRIN: Is it not true the use is substantially the same as what they sought back in 2010?

MR. LLOYD: The use was originally classified by me as a private school, I was basing that interpretation on a presentation that was given to the County Commissioners by TigerSwan with Mr. Peters, Chairman of the Chamber based on what TigerSwan planned to do which is well over 2 ½ years ago. I had to make an interpretation at that time before anything was on the ground as to what this particular animal was. Subsequently and this time around there was discussion with Mr. Searcy who came in and talked to me that in fact most of the use going on at TigerSwan was that of a firing range. Because I had more to go on than speculation which I had at the first meeting to what actually exists on the land now; that's how I wrote this classification.

MR. CURRIN: What has been approved this second go round and what the Board of Adjustment is being asked to uphold is not just what is going on at the grounds right now, but what the future uses are, isn't that correct?

MR. LLOYD: If you are going to count the buildings on the same plan, then yes sir.

MR. CURRIN: So what is being approved is the seven classrooms and the educational instruction, not just the firing range?

MR. LLOYD: That's the site plan approval which is only a part of the interpretation process.

MR. CURRIN: But if this board upholds that approval then those things, the seven classrooms and the educational instruction and so forth will be allowed?

MR. LLOYD: Yes sir. When I looked at this TigerSwan submittal, and yes there are classrooms in there, again I go back to the ordinance amendment which read: the most closely related to the land use impact of the proposed use shall apply. I realized there were classrooms, but the real impact in the objection to TigerSwan had to do with the firing range, not the classrooms, so where was the most noxious impact of this use? It was not just impact of the firing range and that is why of course if I counted the classrooms, we don't have that use either, I had to go by the oldest amendment which says that the land use impact imposed by this use, what most closely resembled it, and in this case I applied that it was outdoor recreation.

MR. CURRIN: I want to bring you back to the first thing we started with; the first thing you have to do is to define the use. You are jumping ahead.

MR. LLOYD: Not define the use, look at the use. I don't determine what's going to be going on and what will be going on at the site.

MR. CURRIN: So before you go to Section 402, you have to make that determination and previously you classified this based on the uses that are being asked to be approved tonight, you classified it as a private school.

MR. LLOYD: I classified it as such because at that time the way the ordinance read, I tried to pigeon hole what was told to me what would go on and the site plan submitted into the use as opposed to more closely looking at the impact. The impact wasn't looked at prior to this ordinance amendment. What was looked at was trying to get the proposed use for TigerSwan pigeon holed into something on our table or else it wouldn't be allowed.

MR. CURRIN: I want to ask you some questions about schools and vocational schools and some statements you made previously. You don't get the impact until you determine what the use is? If in fact the use is addressed in the ordinance you don't go to Section 402, do you?

MR. LLOYD: No. But if the use is specifically addressed, yes.

MR. CURRIN: Vocational schools are specifically addressed in the ordinance, are they not?

MR. LLOYD: Yes sir.

MR. CURRIN: If in fact if this facility is determined to be a vocational school, then Section 402 would not apply, would it?

MR. LLOYD: Correct, but it has never been determined to be a vocational school.

MR. CURRIN: Hands out Exhibit 8 [P8] from the petitioners' binder.

MR. LLOYD: Many times you have uses that come in and there are multiple types of uses. I reiterate that I could only go by what TigerSwan at that time said what they were going to be doing on that property which was a combination of a firing range but also as a school, a private school. I based it on a private school at the time because our determination of vocational school was that it led to a degree. To my knowledge at this point in time I don't know that it was placed by a vocational school.

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MR. CURRIN: Passed out to each board member a binder with the petitioners exhibits [Exhibits P1 through P12].

CHAIR DONALDSON: Mr. Campen and Mr. Meeker, do you have any objection with this binder being introduced into evidence?

MR. CAMPEN: We have just received this and have not had opportunity to review.

CHAIR DONALDSON: Please let me know if you do.

MR. CURRIN: Mr. Lloyd, I am handing you Exhibit 8 [P8] and I would like for you to take a look at it to see if you recognize that transcript as your testimony from the previous hearing. Do you have any reason to doubt that this is an accurate reflection of your testimony you had previously given from the Board of Adjustment on August 19, 2010?

MR. LLOYD: No sir.

MR. CURRIN: I want to ask you a question to follow up on what you said a minute ago. The adoption of Section 402 which is this new ordinance about if a use is not addressed in the ordinance then you go to see what is the most similar impact would be and you could put it there. Is that pretty much it?

MR. LLOYD: Yes sir.

MR. CURRIN: But the adoption of that section would not affect, would it, how you classify a use in that first step, would it?

MR. LLOYD: No, not if it was listed in the ordinance.

MR. CURRIN: Okay, so in this testimony, you indicated did you not that “we knew there was going to be training” this was about the TigerSwan facility, “we knew there was going to be classroom teaching, which put it into the school category to begin with. I’m not going to go into nearly as much presentation other than we saw this as teaching skills. Actually less than half of what was taught out there according to my correspondence with Mr. Reese, was to even take place outside. Which brings me, by the way; to the Linden facility, which is classified as outdoor entertainment. It was strictly a firing range, nothing was taught there, and there was no instruction. It was 45 acres used merely as a firing range. We classified that as outdoor entertainment. We classified this as a school, first of all, because it had classrooms and it had instruction. Secondly, it had instructions in skill, not necessarily in vocation. Yes, there are people that would go there, but they weren’t getting any kind of a degree, they weren’t working toward a trade. It wasn’t a trade; as the definition of a vocational school read.” So, why the change:

MR. LLOYD: As we discussed, it’s not that Mr. Reese or Mr. Searcy just came in with a plan. I talked to Mr. Searcy at this point in time with respect to the existing court case specifically so it wouldn’t be something trying to squeak through. Mr. Searcy said, and again, you have two different uses; you have classroom, you have outdoor firing range which was used not only for

classroom but for recreation. Mr. Searcy at that point assured me that now that the business is underway, ninety percent of the activity that takes place out there takes place on the firing range. Because of that, like any other multiple uses we have to look at the principle use of the property. Again, I can only state when I made the original interpretation of a school, that was done based only upon a presentation done by Doug Peters and by TigerSwan before anything was ever built. This site plan came in; I asked specifically, if you want to come in as a firing range I need to know the breakdown of the business out there, the breakdown of the activity. He stated that ninety percent of the activity is on the firing range.

MR. CURRIN: There is nothing to stop them if this is approved from expanding that whole track of land to be exactly what is on the site plan to include the seven classrooms and all the other instructional teaching, am I correct?

MR. LLOYD: That's true. I can only relate you back because we continue to get on the vocational school. I have to look at the impact of this use with respect to neighboring property and quite frankly if there were ten classrooms out there, the impact on adjacent properties since they are all indoors wouldn't even be close to the impact a firing range has.

MR. CURRIN: But the uses that are proposed, not what Mr. Searcy or Mr. Reese told you, but what are proposed on this site plan which is before the board, you would agree that based on what you just said that is a school, isn't it? What is allowed but not being done at the present time?

MR. LLOYD: Is it a school?

MR. CURRIN: Yes sir.

MR. LLOYD: I think that case is still going on. I call it a firing range at this point and time. On the site plan again, before this original interpretation was made, and I continue to hammer on this, when I made the original interpretation of a multi-use being proposed, classroom/firing range, I had to make a decision and try to pigeon hole it into one of these categories in our ordinance without using the impact. Once this ordinance amendment in Section 402 clearly showed me that I have to consider the impact of this proposed multiple use be it school, be it firing range on the surrounding area, how would I classify it based on "most closely related to the land use impact and the proposed use" and that is what I did this time.

MR. CURRIN: But if it were a vocational school, you would never reach Section 402?

MR. LLOYD: If it was a vocational school. If it was deemed a vocational school by some court, it would make it easy.

MR. CURRIN: The County is still taking the position in public documents and court documents to the Supreme Court of North Carolina and you are aware that the County is taking the position that this facility that is before this board is in fact a school?

CHAIR DONALDSON: I don't think that is quite right, Mr. Currin. They may be arguing that old case. We are on a new case and if this permit was approved under a new alternative. What the County is doing in the Supreme Court has no bearing on what we do here tonight. What is

before us tonight is not whether it is a school but whether it is permitted under Section 402, which he had the authority to write the ordinance and interpret it. That is a separate entity. That case has nothing to do with what is being heard tonight. I can foresee this one going to the Supreme Court too.

MR. CURRIN: You would admit that if there were to be determined at some point by this board or by the court or by the Planning Department that if it had been determined to be a vocational school based on the entirety of its use, that it would not be permitted in this A1 District?

MR. LLOYD: If it was determined to be a vocation school due to the fact that this particular use wasn't specifically listed then yes, you are correct, it would not be allowed in the A1, unless of course the zoning ordinance was amended.

MR. CURRIN: Let me just make one point for the record. The point I'm trying to make is these are not really different cases. These are the same proposed use substantially that was in the other cases, is that correct?

MR. LLOYD: Please repeat the question.

MR. CURRIN: The TigerSwan site plan that is before the board tonight is substantially the same proposed use that was involved in the previous case that is now before the Supreme Court?

MR. LLOYD: Two things; the site plan is the same. The way I looked at classifying this is not the same.

MR. CURRIN: The way you looked at classifying it was based on what Mr. Searcy verbally told you was being done at the time?

MR. LLOYD: No sir. It was based on the impact of looking at first and foremost the impact of the proposed use on the surrounding property.

MR. MEEKER: It's true, is it not, that Cumberland County and your office had never contended this is a vocational school?

MR. LLOYD: That is correct.

MR. MEEKER: That has never been your position. The ordinance was changed after the first permit was issued and for the second, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: The permit that is before us tonight is under a different ordinance than the first permit, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: In terms of the structures at the TigerSwan site, they are fairly small prefabricated buildings, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: And they have been placed there on the site but they are not substantial, is that right?

MR. LLOYD: Yes sir, they are not.

MR. MEEKER: The berms that have been constructed out there; are as much as 15 ft. or more high, is that correct?

MR. LLOYD: Yes sir, they are.

MR. MEEKER: And they are over 100 yards long, are they not?

MR. LLOYD: Yes sir.

MR. MEEKER: Then there are to be additional berms built as additional firing ranges are put in, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: And the berms in fact are very substantial, are they not?

MR. LLOYD: Yes sir, they are.

MR. MEEKER: And they take a larger piece of the site at the firing range than the smaller prefabricated buildings, is that correct?

MR. LLOYD: Yes sir and a lot more expensive I'm sure.

MR. MEEKER: No further questions.

MR. LOCKLEAR: I've heard a lot about vocational schools, is there a definition for that somewhere?

MR. LLOYD: Not in our Ordinance. There are many different definitions, with respect to FTCC, there was an article put out by the president as to the mission statement which alluded to vocational schools from Dr. Keen and it didn't say this is a vocational school, but it did say we are a vocational school and what the mission is of the school.

MRS. TART: The ordinance revision 402 that was enacted considerably later than the first decision for the first application, was this initiated because the ordinance as it existed previously did not address things in a sufficient way that the planning staff could come to a complete decision? Was it to clarify what the planning staff was to do with it?

MR. LLOYD: It was done to clarify, but also the court ruling in that Wesley/Chapel case clearly showed that the wording that we had in our ordinance was totally opposite of what the ruling of that court case was. The court said unless it is specifically prohibited, it would be allowed. If it is not listed, we go to something with similar impact. The old ordinance read if it was not listed, it was prohibited.

MRS. TART: Just the opposite?

MR. LLOYD: Yes and I think the best way to look at it is you have all these categories of land use and when somebody comes in and it is not specifically listed, you try and force it into one of these categories. Whereas the court case that came out while we amended our ordinance was instead of trying to find a specific use to classify it, find the use most similar with respect to impact on the surrounding area.

CHAIR DONALDSON: Mr. Currin bought up a point about expanded use, what resources do you have and do you have anyone with the expertise to go out there and inspect those ranges? I know the site plan says they had to comply with DOD range policy or are you going to contract that out to someone from Ft. Bragg to come out there and inspect them?

MR. LLOYD: With the engineer that submitted these safety zones.....

CHAIR DONALDSON: I'm not talking about the safety zones; I'm talking about impact zones, height, depth, the berms and where they have to be located, things like that.

MR. LLOYD: There was a registered engineer that worked at TigerSwan through his seal substantiated that this did meet DOD standards so we did need somebody that could attest to that. In addressing the very first site plan, this is essentially the same; a registered engineer did verify that it did meet DOD standards. I knew we couldn't rely on our inspectors; they have no expertise in this area.

CHAIR DONALDSON: So it was a TigerSwan engineer?

MR. LLOYD: Yes sir, but they....

CHAIR DONALDSON: I understand, they hired their own engineer. Are there any questions?

MRS. CURRIN: You did testify that FTCC is a technical school, is that correct?

MR. LLOYD: Yes.

MRS. CURRIN: So whatever activities that they are engaging in are sufficient for you to determine that they fall into the definition of a vocational school?

MR. LLOYD: Could you repeat that again?

MRS. CURRIN: Whatever FTCC is doing is a vocational school, correct?

MR. LLOYD: Yes.

MRS. CURRIN: Asked Chair Donaldson to admit as evidence the Petitioners Book with Exhibits 1-12 [P1 – P12].

CHAIR DONALDSON: Accepted into evidence the Petitioners Book with Exhibits 1-12 [P1 – P12].

MRS. CURRIN: Mr. Chairman, I know that you mentioned that this is a separate case from the case that is currently at the Supreme Court and that is true to a certain extent.

CHAIR DONALDSON: I didn't say that to put a time on the limits that you have. I'm just saying that it is something that has got to be considered by our board and everybody in here to know there are differences between this one and the previous one.

MRS. CURRIN: Yes sir, there are differences because there has been one section of the ordinance that has been changed which is 402. The use however, and what is going on at the property has not changed.

MR. MEEKER: Mr. Chairman, I thought this was for evidence, not to present argument.

CHAIR DONALDSON: Are you making an opening argument now? If you are just going to give a little overview that is fine, but if you are going to make an argument, either put some evidence on and argue or don't put any evidence on and argue, which do you want to do?

MRS. CURRIN: I'm putting evidence on and arguing. These are our exhibits that I will go through and make our legal argument based on these particular exhibits.

MR. MEEKER: Is she going to put a witness on or is she going to testify?

MRS. CURRIN: I'm not going to testify, I'm going to make a legal argument as to the effects of each of these exhibits. TigerSwan and the County are arguing to the Supreme Court that the use of the grounds right now should be allowed to be continued because it is a school. They are not saying something different should be allowed and they specifically say, if you do not rule in our favor, we will be forced to close down. What we are doing out there now is what we should be allowed to do which is operate a school. We think it is important that the use is exactly the same and that the county has essentially flip flopped on what they say it is. Basically, we have three arguments and based on the evidence we think that the decision should be reversed. As we have been alluding to the decision, the first thing the Planning Department has to do is classify the use. Section 402 has no application what-so-ever if it is a use that is covered by the ordinance. It is our position that the TigerSwan training facility is a vocational school which is a use specifically listed in the Zoning Ordinance that is prohibited in the A1 District. The Zoning Administrator could not in our opinion do anything but classify it as anything but that use. He could not classify it as outdoor recreation with mechanized vehicle. We actually found out for the first time today that they were classifying this as a shooting range. There was no information provided to us in that respect. We got a site plan and a zoning permit that said it was an outdoor recreational use for mechanized vehicles. As Ms. Speicher pointed out we asked her for all the documents in a document request but we didn't get the one that said it might be a shooting range. It is our position that not only will the evidence not show it is not a

shooting range and that it is a vocational school but we will argue that they have made judicial admissions that it is not. If you make sworn testimony and make arguments to a court you cannot come back with the very same use and change it. We will show you that the uses that are going on at FTCC are essentially the same as what TigerSwan is going. They have made representations on their website to the public, to the courts that they are doing vocational training there; training police officers, military people for their jobs to upgrade their skills. That is really all that they advertise that they do. To the extent that you are going to approve this or affirm it we would ask you to say if you want to have a shooting range, have it, but you cannot provide any vocational training to military personnel or the law enforcement agencies. If you read the Court of Appeals opinion which is also in your packet, it says specifically that those uses that are prohibited cannot continue. If you are going parcel out as a vocational school, that is fine, but that is exactly what their primary use is. Our second argument is that the County issued the permit and a site plan for TigerSwan to operate an outdoor recreational with mechanized vehicles. If you look at Exhibits 4 [P4] and 5 [P5], that is what they say they are doing. The site plan is for that use, the zoning permit is for that use. The zoning application or the site plan application leaves a blank what the use is. It is our position that the County can't come in now after issuing the permit for them to operate essentially a go-cart tract or outdoor mechanized vehicles and say "we made a determination that it really didn't fit any use of any sort whatsoever so we decided to classify as this because it has the same impact because there is not such determination in this record. The only thing that is there is this site plan and this zoning permit and they don't say that. The final argument is that which we have alluded to on cross examination, is that even if you say for purposes that the zoning administrator could take these uses out and say suppose it is not a vocational school and we say it is, they could classify the impacts. Again, they are stuck with whatever the requirements are for outdoor recreation with mechanized vehicles. That provision in the zoning ordinance which is at Tab 7 [P7] says that the outdoor recreational uses must be free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, and solar structures used for recreational activities. Again indoor recreation isn't allowed so what they are saying is outdoor recreation regardless of impacts or anything; they have got to follow the rules for outdoor recreation. They are saying you can't have anything but dressing room and little buildings that you have to use for important things while you are outdoors. TigerSwan has six to seven classroom buildings, a Pro Shop, a range control building and instructor office and a break area. These are not buildings that are allowed in outdoor recreation, so it is our position that at a minimum that the site plan has got to be revoked and those buildings have got to go. If they want to have a restroom, if they want to have equipment storage, if they want to have an outdoor pavilion, that is fine, but they cannot have seven classroom buildings, a Pro Shop and offices and still comply with that provision. Finally, we contend again, their evidence is going to show that they are a vocational school. Even if you could look at what has the closest impact, it is not a go-cart track or a BMX track which is what this particular definition says at 7A 203 [P7A] and if you look at that it says that it is something that uses vehicles for recreation, like a go-cart track or a BMX bike track. There is nothing about that that has things flying off of the property. There is nothing about gun fire. We would submit that if there is anything that is close it is an industrial use not otherwise classified. Now that is a use in the list of permitted uses that is not allowed in the A1 and that use is 7E [P7E] which is a use that involves a use which creates a high degree of nuisance and are not generally compatible with abutting residential or commercial uses. You are looking at someone who is firing millions of rounds of fire arms everyday and training military and law enforcement officers, teaching combat and we would assert to you that as close to anything as close that industrial use which is something that is a nuisance and bothers the

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neighbors, it is not like a go-cart track or a BMX track. I would like to call out witnesses, they are going to testify and talk about the impact to them and what this is doing to their daily lives.

CHAIR DONALDSON: Swore in Julia Faircloth.

MRS. FAIRCLOTH: My name is Julia Faircloth and I am a Human Resources Director. I live at 6504 HWY 210 South, Stedman.

CHAIR DONALDSON: How close to this piece of property do you live?

MRS. FAIRCLOTH: It is on the map that Ms. Speicher showed earlier. According to their measurements it is approximately two miles from the point of shooting. I will say my property line is just 375 feet from the property site that has been approved, the site outlined in red. [Pointing to the presentation] I do live here on my property with my husband and my three children. I also work full time with a major corporation from this address. It has been more than two years since we have been here and the County Planning Director approved the site as an elementary or secondary school. It has now been more than two years since the County Planning Director erred in approving the TigerSwan plan as an elementary or secondary school despite concerns from local residents and landowners. I am angered by the time and expense incurred by community members in attempting to correct that error. And now, after three North Carolina Appellate Court Judges ruled unanimously in February of this year that the TigerSwan Facility was not a permitted use in our A1 District, instead of Cumberland County complying with that ruling and closing the TigerSwan Facility, the County Planning Director has approved another site plan. He now believes that TigerSwan is an outdoor recreational facility with mechanized vehicles. This is absurd. The TigerSwan Facility is a military and law enforcement training center as TigerSwan has represented time and time again to the courts and others. As we have previously argued, it is a vocational school which is expressly prohibited in the A1 district. In addition, the TigerSwan Facility is nothing like a go-cart or BMX track and the impacts on the neighbors are much more intense and offensive than an outdoor recreational facility with mechanized vehicles. I know this because I live near the TigerSwan Facility and have to suffer its impacts every day. The TigerSwan Facility creates a nuisance to me and my family and is not compatible with the abutting and nearby residential and agricultural uses. We know that military training is a necessity. We respect and appreciate the efforts of the military and when we hear training exercises at Ft. Bragg, we recognize it and have no issues with it. TigerSwan is not the U. S. military. They are a private for-profit company. We do not want their realistic combat training exercises in our backyard. The TigerSwan Facility belongs in a zoning district which permits the use and which can isolate and contain this training from residential and agricultural areas such as the A1 District. There is no doubt in my mind that our property values have been greatly diminished by the presence of the TigerSwan Facility and that it poses an ongoing significant threat of injury and specific and direct loss to us. The TigerSwan Training Collaboration Center advertises on their web site that their Sportsman's range is open on Saturdays from 8am – 4pm. However, this is certainly not what dominates their web site. On the homepage, the following company description appears: *TigerSwan provides integrated solutions to potential and difficult challenges and *TigerSwan is a Service-Disabled, Veteran-owned Business that provides comprehensive solutions to global instability, operational risk management, training, logistics, crisis management, business intelligence, and security consulting services to the US Government and corporate clients. The course listings, which are almost universally geared to military and law enforcement training, provide

additional support that this is not intended to be a recreational facility. Throughout the past two and a half years, TigerSwan has asserted that there is no harm in their operation. The last time we appeared before the Board of Adjustment in 2010, TigerSwan had not yet opened their Training Collaboration Center. I now have almost two years of experience living and working near this firing range and many of my concerns have come to fruition and my concerns about the TigerSwan operation have grown. The firing range activity has increased, and my family and I are regularly bothered by the noise from the gunfire coming from the TigerSwan Facility. TigerSwan also still wishes to expand their operation and increase training activity, which will mean even more noise than there is now. My primary concern with TigerSwan is the potential for stray gunfire. TigerSwan uses firearms which have a range sufficient to reach our property. The new site plan does not appear to have any limitations on the weapons that can be used. While TigerSwan's students will be required to comply with the Firearms Regulations, this brings me little comfort given that TigerSwan has previously admitted there is a risk of stray gunfire and the penalty for a violation is potentially only a \$40.00 fine. Because of the TigerSwan Facility, I am no longer comfortable going for walks on my property. When class is in session, the gunfire sounds so close and so direct that I usually feel that I must go indoors. My children are not comfortable practicing outdoor sports when the firing range is open. We no longer can feel comfortable planning cookouts or other activities for guests for fear of stray gunfire and because of the disturbance from the noise and the stress that hearing constant gunfire causes us. The noise from gunfire and explosives is not only loud, but it is frightening. The noise is also a nuisance when we are trying to work, study, play or simply relax. On the morning of October 26, 2011, I was working in my home office, when I began hearing very loud gunfire. Although gunfire from the TigerSwan Facility has caused me to get up from my desk on a number of occasions in the past, this was different. The doors and windows were closed, and our home is well insulated. Around 9:45 in the morning after stopping work a few times to try to determine what was happening, I called the Sheriff's Department. I spoke with Officer McLaurin. I told him that there was very loud gunfire that seemed to be coming from the TigerSwan site. I advised that I felt like I was in a war zone. I also told him that I did not believe that anyone was monitoring the types of weapons being used at the facility. I also told the officer that it sounded like one shot had hit something other than a berm. An officer did come out. By that time the loud gunfire had stopped. The officer that came to my home told me that he could see in the Sheriff's Department records that numerous complaints had been filed regarding the TigerSwan activities. Weekend and night firing activity at the TigerSwan Facility has increased recently and is very loud and disturbing. In addition, residents are typically not notified until the very day that the night firing is to occur, and in some cases, just hours before the sessions are to start. Residents are notified via flyers stuck to mailboxes and in some cases, there has been no notification. We just do not know what to expect. One afternoon this spring, my home phone rang. The call came from one of my neighbors. She said "do you hear the explosions?" I told her that I did, and had been hearing the noise all day. She told me that she had come home from work early to rest due to illness. She had fallen asleep. Almost immediately she was awakened by the sound of explosives. She said that it sounded like a 4th of July fireworks show from where she was located. There seems to be a perception that everyone leaves our little community to go off to work each day and that no one lives close enough to the TigerSwan Facility to be bothered by stray gunfire or noise concerns. That is not true and we are bothered by the gunfire during the day and also at night. TigerSwan's leaders have stated that no one lives close enough to the TigerSwan Facility to be bothered by stray gunfire. The fact is that at least 70 residences are located on the northern side of the facility within two and one half miles of the current location of the shooting ranges. Within a three mile radius, there

are approximately 300 residences. Many residents are at home most of the time because they may work virtually for their employers, they may be retired, they may work part-time, and some are farmers. It is undisputed that weapons used on the property can result in gunfire traveling over two and one half miles. The noise from the gun ranges is already very disturbing to us and is a continuous nuisance. The potential for stray gunfire is real and the fear for personal safety and stress caused by noise at the current level of operation creates significant concern for community members. In sum, there is no doubt that out property value is being decreased every day that the TigerSwan Facility is in operation and that this operation is negatively impacting the environment. Our quality of life has also been significantly adversely affected since TigerSwan opened its doors. There has been great hardship already imposed on the citizens of this area. The noise and fear of physical harm already exists from current operations and there is a threat of much greater noise and fear as the TigerSwan Facility has not fully developed to its much larger planned capacity. On their website TigerSwan indicates plans to include an 800 meter Known Distance Sniper range with 15 covered shooting positions and 60 foot tower for high angle shooting. 800 meters is nearly a half mile and shooting at a target that's nearly a half mile away would seem to have increased possibility of stray bullets. The citizens of this area face greatly reduced property values as a result of the operations of this facility, are not free to enjoy their property as previously used, and there are tremendously concerned about the much documented environmental concerns that accompany shooting ranges. Thank you.

CHAIR DONALDSON: Are there any questions?

MR. MEEKER: Mrs. Faircloth, my name is Charles Meeker and I represent TigerSwan in this matter. I believe you testified that you live approximately two miles where the shooting occurs on the firing range on the TigerSwan Facility?

MRS. FAIRCLOTH: That is my understanding, yes.

MR. MEEKER: And much of the area between your house and where the shooting occurs is actually wooded, is it not?

MRS. FAIRCLOTH: Yes.

MR. MEEKER: About a mile of it is forest?

MRS. FAIRCLOTH: I don't know how far it is.

MR. MEEKER: A large amount of it is forest, is that correct?

MRS. FAIRCLOTH: My property, a large amount is forest.

MR. MEEKER: Have you ever been to the TigerSwan shooting range?

MRS. FAIRCLOTH: No.

MR. MEEKER: So you have never seen what is there, have you?

MRS. FAIRCLOTH: Only through photographs.

MR. MEEKER: So you don't know what caliber bullets are used there, do you?

MRS. FAIRCLOTH: I do not.

MR. MEEKER: And you do not know what kind of baffles are in place so that rifles cannot be fired over the berms?

MRS. FAIRCLOTH: I've only seen those through photographs.

MR. MEEKER: And you have never gotten an engineer to study the surface danger zones to see whether if they in fact would keep the caliber actually fired there on site?

MRS. FAIRCLOTH: I have not spoken with an engineer on that topic, no.

MR. MEEKER: In terms of facts, let me ask this; some of your neighbors allow hunting on their property, do they not?

MRS. FAIRCLOTH: I think so.

MR. MEEKER: And that is actually closer to you than the TigerSwan firing range is which is approximately 2 miles away, is it not?

MRS. FAIRCLOTH: It could be; I'm not really sure.

MR. MEEKER: Are you aware that the Cumberland County Sheriff's Office is undertaking testing to see whether TigerSwan is in full compliance with the Cumberland County Noise Ordinance?

MRS. FAIRCLOTH: They actually told me that they have been trying to figure out a way to measure the sound but did not have that info.

MR. MEEKER: So you don't know if SGT Dowless actually went out and took test at that site, do you?

MRS. FAIRCLOTH: I have actually observed someone who appeared to be the Sheriff's Department in front of my home using a cell phone and holding up something.

MR. MEEKER: Using a cell phone or something so he could attempt to measure the sound?

MRS. FAIRCLOTH: Perhaps, yes.

MR. MEEKER: Just to summarize then, you have not actually seen the firing range at TigerSwan, is that correct?

MRS. FAIRCLOTH: I have not been on their property.

MR. MEEKER: And you have not seen their structure?

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MRS. FAIRCLOTH: I have not been there personally.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Swore in Kevin West.

MR. WEST: My name is Kevin West and I live at 4656 Cedar Creek Road. My brother and I own OK Farms which you have seen on the map. We farm there and we own the property that adjoins the TigerSwan Facility.

CHAIR DONALDSON: How many acres is your farm?

MR. WEST: Our farm is about 800. The shoot house, which is hard to see on this map, for the TigerSwan site is approximately 75 yards from my property. I could throw a baseball and probably hit it. The range is approximately one mile from my house and where we work at every day. We have four residences on our property. One has been sold, but the other three belong to us. They are approximately 1.4 miles from the shooting range and also Bogie Island Road, which is in the photo [referring to the presentation], is about 1.4 miles as well, which is a public highway. This, as you've heard, is much closer than the two and one half miles danger zone that they have. Actions don't always go down range, it would be my concern when you are shooting riffles. I am a hunter and I am familiar with what they are shooting there and the fact they can easily reach my property. I have a hunting stand and I can easily shoot their berm consistently from that stand. So I know their weapons would be able to do the same as well. This makes and doing anything else on our property very difficult and a safety issue. In addition to those safety concerns is the loud noise when they are having a full fledged training day. It literally sounds like one of the live news coverage of a reporter in Afghanistan or Iraq; it is that loud and obnoxious. We have pecan trees on our farm. My children don't want to go pick up pecans when they are firing and personally, I don't want them there for fear of the danger that is also there with the firing of the weapons. We suffer damages everyday with TigerSwan shooting and with the noise and safety issues. Along with that the possibility of lead contamination down the road and what that could present to our groundwater being so close. When you put these issues together our property value has decreased greatly and we no longer can enjoy our property in a way that we hoped we could and I hope that by hearing this tonight that you will see that TigerSwan is certainly not an outdoor recreation facility. Thank you.

MR. MEEKER: Mr. West, my name is Charles Meeker, and I am representing TigerSwan in this matter. Did you say you have a hunting stand on your property?

MR. WEST: I do, I have several.

MR. MEEKER: Do you use those for hunting?

MR. WEST: Yes.

MR. MEEKER: Do you have rifles?

MR. WEST: Yes.

MR. MEEKER: Do other people use them?

MR. WEST: No.

MR. MEEKER: So it is just you using them?

MR. WEST: Yes.

MR. MEEKER: What do you hunt?

MR. WEST: Deer.

MR. MEEKER: In addition, you had a reference to lead, have you had any studies done saying that lead migrated from this site?

MR. WEST: I have not.

MR. MEEKER: So you do not have any factual information on that?

MR. WEST: I do not.

MR. MEEKER: Earlier, you talked about that you run a farm, is it a hog farm?

MR. WEST: It is.

MR. MEEKER: How many hogs do you have on the farm?

MR. WEST: Depending on the time you would ask me that it would be around 12,000 nursery pigs.

MR. MEEKER: 12,000 nursery pigs?

MR. WEST: Yes.

MR. MEEKER: How big are nursery pigs?

MR. WEST: Anywhere from six pound to about fifty pounds, it depends on the age.

MR. MEEKER: Do those hogs from time to time squeal and make other noise when they are fed?

MR. WEST: Sure.

MR. MEEKER: So there is some noise from those 12,000 nursery pigs.

MR. WEST: It is not comparable to the firing range.

MR. MEEKER: But you do agree that there is noise from those 12,000 pigs.

MR. WEST: Certainly.

MR. MEEKER: There is also odor from time to time depending on which way the wind is.

MR. WEST: Yes.

MR. MEEKER: And do you have a hog lagoon?

MR. WEST: I have two of them.

MR. MEEKER: How big are they?

MR. WEST: About not quite an acre each.

MR. MEEKER: And they are open to the air, is that right?

MR. WEST: Yes.

MR. MEEKER: Have you tested the water near those lagoons?

MR. WEST: I do, every sixty days.

MR. MEEKER: And everything is okay?

MR. WEST: Yes sir, I'm required to do so by law.

MR. MEEKER: Have you actually been to the TigerSwan site?

MR. WEST: I have not walked on their property but I can drive within fifty to seven-five yards on their property.

MR. MEEKER: You can see the property, the firing range?

MR. WEST: I can.

MR. MEEKER: And the berms are about fifteen feet high, is that correct?

MR. WEST: I could probably guess, but I would not be able to determine that.

MR. MEEKER: They are very substantial, is that correct?

MR. WEST: They are a pile of dirt.

MR. MEEKER: They are big piles.

MR. WEST: It is pretty big, but you asked me if I have been over there and I have not.

MR. MEEKER: They are about 100 yards on each side, is that right?

MR. WEST: I would say so.

MR. MEEKER: Can you see the baffles so the rifles cannot shoot over the berms?

MR. WEST: Well, no.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Swore in Julia Faircloth and Kevin West to the previous testimony and any further testimony presented tonight.

MRS. CURRIN: Mr. West, Mr. Meeker asked you if there was gunfire from hunting. Can you compare the gunfire that comes from hunting and the sound and impact of what you hear from the TigerSwan firing range?

MR. WEST: It is not comparable. You are talking about one shot, you don't shoot a thousand times at deer, you shoot and you either hit him or you don't. There really is no comparison. I may have gone hunting fifteen times last year and I shot my gun one time. So there really is no comparison.

MRS. CURRIN: The noise from the TigerSwan training center, it bothers you significantly, is that correct?

MR. WEST: Yes.

MRS. CURRIN: Can you compare the noise from your pigs to the noise from the TigerSwan Facility?

MR. WEST: No ma'am, I'm pretty sure TigerSwan can't hear my pigs squealing.

MRS. CURRIN: You said you are familiar with the weapons that TigerSwan uses, is that correct?

MR. WEST: Yes, I believe they are using 308 calibers and shoot 270's which is slightly smaller.

MRS. CURRIN: Based on your knowledge of those weapons, could gunfire reach your property if someone shot over the berm?

MR. WEST: Absolutely.

MRS. CURRIN: I don't have anything else.

MR. MEEKER: Mr. West, when you hunt, you don't have a berm behind what you shoot at, do you?

MR. WEST: No.

MR. MEEKER: No further questions.

MRS. CARSON: You are the second person to testify about your property value being affected, do you have anything from the County or anything that states since TigerSwan has been in business that your property value has decreased?

MR. WEST: No, I do not.

CHAIR DONALDSON: Swore in Arnold Smith.

MR. SMITH: My name is Arnold Smith and my address is 1075 Broadwater Bridge Road, Roseboro, NC. I have property that adjoins with Jimmy Pew who has a little corner of land between me and TigerSwan where the houses and the berms are. Estimated my property comes within 200-300 yards and that is approximately, I've never measured it. I plant tobacco in those fields and we harvest by hand. I grow tobacco out on the edge of the county and the adjoining county and on any given day there could be 120 – 135 workers in the field. The problem I have with TigerSwan is you can hear the rapid fire right through the hedge growth. When you have workers out in the field, they are concerned about what is going on across there and is there a chance the gunfire can come through to here where we are working. I have the same concerns myself. The biggest impact on my property, particularly but not limited to the tobacco field is the rapid gun fire which I just spoke about. It frightens the workers and they are concerned about their safety. I know that they do have berms and I have been to the site. I heard you ask the other witnesses have they been to the site. I've actually been to the site with Mr. Precythe at one time or another and the berms are facing the opposite direction from me. The firing is away from my property, but there are three berms, at least it was at the time I visited the property; one on the left, one on the right and one on the far end. The largest concern for me is back behind. These people take these guns to the firing range and if they are loaded and if one was to discharge, a bullet can travel a mile or a mile and half or 200 – 300 yards through the woods where they are working. There are no berms in that direction at all. Am I correct on that sir? That is one of my biggest fears? The noise that comes from it is not a big nuisance for me as the worry of stray gunfire. I think Mr. Lloyd stated tonight that ninety percent of what goes on there is a firing range and I bought that property to enjoy and if I wanted have a summer camp for the boy scouts, take the kids fishing in the pond and cook hot dogs in the back field on Saturday evening. What I would like to ask you is would you let your kids go if there firing right nearby? That's what I would like for you to think about when you make a decision because my kids' safety and the safety of the neighborhood is what I'm worrying about. Thank you.

MR. MEEKER: Mr. Smith, I believe you said that you agreed with Mr. Lloyd that ninety percent of what occurred at this site is a firing range, is that correct?

MR. SMITH: I didn't say that I agreed with that, I said the he [Mr. Lloyd] had agreed to that. I was just making a statement that mostly what went on out there was the firing and my concern with the safety.

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MR. MEEKER: So in your observation, it is mainly the firing that is going on out there, is that right?

MR. SMITH: More than anything else, from my prospective.

MR. MEEKER: Now you live in Roseboro, is that correct, you don't live near here?

MR. SMITH: I live about eight miles down from the property.

MR. MEEKER: So the land that you own nearby is used for tobacco and not for residence, is that right?

MR. SMITH: At the time, yes.

MR. MEEKER: In terms of the firing, the people there, the sportsmen and the training; they are actually firing at targets that are away from your property in those three solid berms, are they not?

MR. SMITH: They are supposed to be.

MR. MEEKER: Have you ever seen anybody fire in any direction other than the targets?

MR. SMITH: I've never seen anybody fire in any direction period. I've just heard it.

MR. MEEKER: Have you had any injuries on your property from stray gun fire?

MR. SMITH: No sir.

MR. MEEKER: Do you know how strictly TigerSwan restricts where people can shoot on their property?

MR. SMITH: I don't know that. I assume they only allow firing into the berms.

MR. MEEKER: Are you aware they have never had an injury on site where any of the people fire?

MR. SMITH: No I was not aware of that.

MR. MEEKER: Are you aware of the training of the people who are in charge of the TigerSwan Facility?

MR. SMITH: No.

MR. MEEKER: Are you aware of what the shooters are told what they can and cannot do?

MR. SMITH: No sir.

MR. MEEKER: Have you seen the baffles that restrict where they can shoot?

MR. SMITH: No sir.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Are there any questions? Thank you sir. Swore in Samuel Fort.

MR. FORT: I live at 6506 Emu Drive, Hope Mills. I did not intend to speak tonight so I will not repeat what other folks have covered. I have just a couple of points that I want to make. I own property that is adjacent to the land that is currently being used by TigerSwan. I strongly oppose the recent approval of the training facility as an outdoor recreation facility. I feel this is not a permitted use in the A1 District. There are several issues we covered before and now Mr. Davis' testimony as to the safety concerns we have, the potential environmental impact and to the noise and of course property value. I just want to hit on the safety and I have an abbreviated comment on that, but I go back to a couple of years ago when I was looking at all the information available and in the original site plan that was submitted by TigerSwan there was DOD pamphlets in there indicating the safety danger zone in the cases of the weapons for intended use there. I remember this specifically because it was also listed on the original site plan conditional permit. One of those weapons was 7.62 mm and basically equivalent to a 308 caliber and the listed surface danger zone is 4100 meters listed on the permit and on the DOD standards submitted by TigerSwan. 4100 meters is a little over two and a half miles and if a stray bullet happens to get out of those berms and understand stray bullets do get out sometimes even though there are a lot of precautions; that two and a half miles takes it on to my property and beyond. I don't live in the residence on my property but I do spend a lot of time down there working in the fields. I work with pine tree settings, I work with bush hogging the fields, I work with gardening in my fields and cutting wood in the woods. I've even been down there recently with my wife with a forestry consultant and she told me if we hear the guns firing we are going to leave. I have a concern about safety, I think it is real, it I think it certainly immediate and I think it is dangerous. Of course the noise is not going to exceed the county limitations on the property line at my end, but it still is something I hear all the time, it is there all the time when I am down there working. It is disturbing to say the least to hear multiple shooters with rapid fire shooting in an area that is typically known for silence or farm sounds or wildlife sounds. That is considered a nuisance to me. There was another previous statement about environmental concerns. We listed at great length before and I wasn't planning to do that but I think right now environmental threats are the same as they were in 2010 when we challenged that. We believed the soil, water, wetlands and wildlife would be adversely affected because of lead contamination. It is widely documented that shooting ranges cause lead contamination and are a major source of pollution in the environment and that is the documentation I looked at. I don't have reference to it right now because I wasn't planning to outline that but there is plenty documentation available of studies that have shown that to be the case. This is a wetland area, there's water streams feeding out of that area going to the other areas. Actually there is a water stream from that property onto my property and so if there is lead contamination in the water and the soil; it can easily migrate to my property and other properties. I think we all know that is not necessarily an immediate concern but it is a long term future concern. We have drinking water problems sometimes now and we certainly don't want to have to extend city water to places because of lead poisoning. That is all I had to say. Thank you.

MR. MEEKER: Mr. Fort, my name is Charles Meeker, I believe you testified that you agreed that the sounds from the TigerSwan Facility do not exceed the Cumberland County Noise Ordinance, is that correct?

MR. FORT: I said I suspect it doesn't at this time.

MR. MEEKER: But you have no information that it does exceed the noise ordinance?

MR. FORT: No.

MR. MEEKER: You talked about lead concerns? Do you have any facts or tests showing any lead migration from the soil?

MR. FORT: No I do not.

MR. MEEKER: You don't have any facts?

MR. FORT: I don't have any samples that there is lead migration now. I do have what appeared to be legitimate documentation and history of studies that show lead contamination occurs frequently at shooting ranges.

MR. MEEKER: That is at some other site that may not be using mitigation.

MR. FORT: Another concern is they are not required to by this Planning Conditional Permit to follow EPA lead mitigation guidelines, they are only encouraged to, and they are not required.

MR. MEEKER: Do you know what guidelines they are in fact following:

MR. FORT: I do not.

MR. MEEKER: You also testified that a certain caliber of bullet is being used. Have you been to the site to know what caliber is being used?

MR. FORT: I have not been to their site; I've been where I can see their site.

MR. MEEKER: Could you see the caliber of bullet being used?

MR. FORT: No, I saw pictures that indicated that they were really close to. In the newspaper they looked like 308 or that type of weapon, but I don't know.

MR. MEEKER: You have no personal knowledge, is that correct?

MR. FORT: No except the information that you submitted or TigerSwan submitted that they were going to use that weapon.

MR. MEEKER: Finally, Mr. Fort, do you hunt on your property?

MR. FORT: Not now, I don't hunt at all.

MR. MEEKER: Have you hunted before?

MR. FORT: I have.

MR. MEEKER: Did you have berms behind at what you were shooting at?

MR. FORT: No.

MR. MEEKER: No further questions.

MRS. CURRIN: You testified that you had no indication that the noise ordinance was being violated at your property line, is that correct?

MR. FORT: That is right.

MRS. CURRIN: You don't know about anybody else's property line and your property line is much further than some of these other people's, is that correct?

MR. FORT: That is true.

MRS. CURRIN: When you were talking about lead, you did testify, the site plan does not require any lead mitigation what-so-ever does it?

MR. FORT: Not that I can see, it only encourages it.

MRS. CURRIN: It has no restrictions or regulations about how much lead can go on a property does it?

MR. FORT: That is correct and from what I also understand while reading the logs is that the private enterprises are not even directed by EPA to clean up the lead.

MRS. CURRIN: You went to some meetings with representative of TigerSwan a couple of years ago, didn't you?

MR. FORT: Yes.

MRS. CURRIN: Did they tell you how many millions of rounds of gunfire that they would fire?

MR. FORT: I can't remember if that was specifically mentioned there but their original site plan description and their ballistics and the sounds indicated seven to fifteen million rounds a year.

MRS. CURRIN: Were you told by any representative of TigerSwan what the likelihood of stray gunfire would be?

MR. FORT: There was a comment made by someone else there and one of the TigerSwan representative said it was a one in a million chance.

MRS. CURRIN: At fifteen million rounds a year, that means some bullets might leave the property under what TigerSwan has actually informed you.

MR. FORT: If that statement were true, if they fire fifteen million rounds a year, then fifteen stray bullets could get out.

MRS. CURRIN: You were talking about the types of weapons that TigerSwan would use and that is based on the first site plan, is that correct?

MR. FORT: That is correct.

MRS. CURRIN: That first site plan listed specific types of weapons that they could use on the property, is that correct?

MR. FORT: Correct.

MRS. CURRIN: This site plan has no such limitations, does it?

MR. FORT: No.

MRS. CURRIN: There is nothing in this site plan that stops them from using any type of weapon that they want to, is that true?

MR. FORT: I presume.

MRS. CURRIN: That's all I have.

CHAIR DONALDSON: Are there any other witness Mrs. Currin?

MRS. CURRIN: No sir

MR. MEEKER: I would like to give a brief overview and while I do this Mr. Campen will hand out the material for TigerSwan Exhibits T1 through T7 [T1-T7]. Members of the board, TigerSwan respectfully submits that the Cumberland County Planning & Inspections Department properly issued site plan approval on April 9, 2012 of this year. We submit the briefings for that.

CHAIR DONALDSON: Did you give a copy of this to Mr. & Mrs. Currin?

MR. MEEKER: Yes sir, we did. In terms of TigerSwan, we have the two owners here tonight, Brian Searcy and Jim Rease, they are both Delta Force veterans and they are retired from the military and they are here in Cumberland County creating jobs here as well as elsewhere. They are outstanding citizens in this community. TigerSwan leases a massive site just east of Fayetteville. It's site is 978 acres, the total site is 1521 acres over 2 1/3 square miles. Just for the boards reference quite often a firing range is 20, 30 or 40 acres; this is on a site that is 1500

acres and perfectly was suited for this. You are going to hear how the Cumberland County Chamber of Commerce recruited TigerSwan to Cumberland County over other counties in part because the site was the ideal location for the training facility here. You are going to hear that at the site there are plans for additional buildings and currently there are a couple of classrooms or meeting buildings that are actually used for storage. There is an administrative building, some restrooms and a couple of other buildings on the site, but the primary use you will hear under sworn testimony is that for firing; that is firing both pistols and rifles. The rifles are restricted in how high you can shoot. You have to shoot in the berms, you will see a picture of the berms. The practice ranges there are the primary use at this site. You will hear what you have already heard from the Planning Department that there was a prior approval permit and then a Court of Appeal. The one approved here was after the revision to the Cumberland County Ordinance. The ordinance was fundamentally changed as Ms. Speicher and Mr. Lloyd pointed out, the prior ordinance prohibited it unless it was expressly permitted. After the Wesley Chapel case and the Court of Appeal indicating it is a policy in North Carolina it should be free use of property unless prohibited; Cumberland County did a 180 degree turn-around and that is unless something is prohibited, it is permitted as a matter of right and if there is not a specific use of category, then you look to the use category with the most similar impact. In the brief, you will see that Exhibit B shows the revised Section 402 and that is the section that is applicable here and that is the section under which the permit has been granted. We believe that the evidence that has been shown and will continue to show that the Planning Department correctly used its judgement in using the ordinance and looking to a similar impact. In terms of the use matrix, we have included that as part of Exhibit C. You will see in use matrix there is nothing for a firing range. There is no prohibition but there is also no use category for it, and so thus you go to what is the most similar use category. In looking at the A1 District which is the second district there, you will see A1 allows Agricultural but are also a lot of other permitted uses for Special Use Permits including of the outdoor recreation categories; there are actually five recreation categories on page 45. One of them is indoor and that is not permitted in A1, the other four outdoor recreations are permitted to as a matter of right to issue a Special Use Permit. Mr. Lloyd and Ms. Speicher correctly determined this is outdoor recreational with mechanized vehicles is most similar in terms of impact so this permit was correctly issued. You will hear testimony about how well this firing range has operated, that the firing is the main activity, that they are looking after any potential lead very carefully and the Cumberland County Sheriff's office coming out to make sure they are complying with the noise ordinance. Also you will hear briefly that the property values in fact in this area are increasing not decreasing. In response to two or three points by the petitioners, first they contend that somehow TigerSwan has split-filed from the prior case, that is not really the correct story. In the prior case it was approved as a private school and the petitioners were saying no, you are not a private school; TigerSwan said yes, they thought they were. The Court of Appeals ruled that it is not, so actually both sides have shifted their position on whether it is a school or not. That is not what is important, the question is how the current ordinance applies, not what was done before to attempt to pigeon hole this use into a category it may not have fit in at least that is what the Court of Appeals ruled. Both parties have changed their position a little bit and that is because the ordinance has changed and because of the Court of Appeals ruling. Secondly, in terms of this vocational school, that is something that doesn't apply here. A vocational school is like a community college or a nursing school and is referred to in the ordinance as something that has extended courses of study where people come to for months at a time, where people take test, get their degrees and is primarily an indoor activity. It is something that involves sometimes thousands of cars per day. This facility is fundamentally different in that is really is an outdoor

facility with a few dozen people coming each day. It doesn't have an extended course of study and most of the activity is outside not inside the building as you would have in a vocational school. So vocational school really has nothing to do with this. There is some limited instruction, a building or two used for storage, most of the instruction is outside where people are learning a skill as how to shoot a gun. They are not sitting in a vocational school like becoming a nurse or something like you would do in a community college. Finally, in terms of this discussion of buildings allowed in outdoor recreation, I would like to point out the exhibit given by the petitioner's, I believe it is Exhibit 7B [P7B], they have been referring to outdoor recreation as general outdoor recreation as limited buildings, actually that is not the right category. If you turn over to page 24-25 of Exhibit D [P7D], where it says Recreation, Outdoor (with mechanized vehicle operations); that is the one that should apply, not the general outdoor recreation. So there are no limitation on buildings in that particular one. To summarize our points, TigerSwans feels that the Planning Department acted correctly in issuing the new permit under the revised ordinance because the primary activity here is a firing range; there is no restriction, no prohibition on firing ranges. I'd like to call my first witness, Brian Searcy.

CHAIR DONALDSON: Swore in Brian Searcy.

MR. MEEKER: Mr. Searcy, please state your name and address for the record.

MR. SEARCY: Brian Searcy, 412 Amberdon Lane, Raleigh, NC.

MR. MEEKER: How are you employed at the present time?

MR. SEARCY: I am the President, Chief Operating Officer for TigerSwan and also one of the owners of the company.

MR. MEEKER: Will you summarize your military experience for the board.

MR. SEARCY: I spent twenty-three years in the Army Special Forces, stationed at Ft. Bragg. I've spent the last sixteen years in the Army's Delta Force and I retired from there in October 2005.

MR. MEEKER: Would it be correct to say that you have extensive training in the use of firearms?

MR. SEARCY: It would.

MR. MEEKER: Would you describe briefly to the board, how your company arrived here in Cumberland County.

MR. SEARCY: Because we do so much training for the military and law enforcement, we knew that we would like to have a branch facility. We looked at Sampson, Johnston, Harnett and Cumberland. We looked for land that was large enough to meet our stringent safety requirement and the stand-off for noise and being good neighbors with folks. The piece of land in Cumberland fit the bill. It was the largest piece of land we could find. The surface danger zone for the caliber we wanted to fire would be completely contained on the facility and we

knew we wanted to be in Cumberland County because of the proximity to Ft. Bragg. That is how we came to be in Cumberland County.

MR. MEEKER: Could you describe for the board what a surface danger zone is.

MR. SEARCY: The surface danger zone is the predicted area of where a projectile will land and is based on the caliber of projectile fired the muzzle velocity and the weight of the projectile. These are well documented by the Department of Defense based on the caliber fired and velocity. We designed the facility so that the surface danger zone; that is the area where a round may land if the weapon is fired at the optimum elevation, the maximum distance it could go. The surface danger zone has included in it, ricochet zones and dispersion areas. There is also the ten percent safety factor added. There is quite a bit of safety built into the surface danger zone. When we built the facility, we designed it so that the surface danger zone for the main caliber that we train military and law enforcement with; those main calibers would be completely contained on the facility and the extreme case where a round did make it over the berm. That was one of the things we really wanted to include in our safety specifications. In addition to that we put the fifteen foot berms up so that we capture all the lead and hopefully capture all those bullets so they never leave the range facility.

MR. MEEKER: In addition to the berms, when the rifles are fired, are there also baffles in place so that one cannot lift the rifle up and shoot over the berms?

MR. SEARCY: Yes, we've heard a lot of arguments and I know the caliber of rounds can go three miles; that is true; some guns can go three miles. The caliber of the rounds that we fire on the range is out in the open or the calibers where the SDZ's are completely contained on the facility, mainly the 556 military rifle rounds and pistol rounds. We do let hunters fire larger calibers on our sportsman's range, but it is very controlled where they fire from and there are baffles on the range where it creates what we call "no blue sky range" which prevents anybody from firing over the berm with those bullets. That in effect, keeps the SDZ on the range. We create what we call a no SDZ range once we have the baffle in place.

MR. MEEKER: A baffle is a piece of wood that goes in the structure that prevents anybody from shooting above certain levels, is that correct?

MR. SEARCY: Correct, they are 2 x 12 that come down completely and restrict anybody from firing over the top of the berm from the shooting position on our sportsman's range. That is the only place where we allow our sportsman shooters to shoot the 308 caliber guns or anything over where the SDZ's goes on the property.

MR. MEEKER: Now looking at the TigerSwan pictures, does it show the baffles here on the right?

MR. SEARCY: It does.

MR. MEEKER: Ms. Speicher, please show TigerSwan's Exhibit 5 [TS5] on the screen. Mr. Searcy, please describe what you see on this exhibit.

MR. SEARCY: We have our two ranges with the fifteen foot berms, there is an eight foot berm down the center of the ranges. This overhead structure here is where we allow the sportsman to fire on the weekend. Typically during the week, we have our military and law enforcement customers here and then on the weekend we restrict our recreational shooting here. This is our Pro Shop where we sell ammunition for folks who want to use the range on the weekend, our branch operations building where we manage the safety of the facility, the latrine and these are classrooms; one is for storage for maintenance and facilities and the other is really used for storage for our customers.

MR. MEEKER: In terms of the usage here on the site, how much is firing guns vs. instruction or anything inside of the buildings?

MR. SEARCY: Nine-five percent of everything that occurs on this facility is range fire, outdoors. The classrooms, our longest course is a ten-day instructor's course, it is eight hours long. There are eight hours of classroom instruction; that is an extreme for any of our courses. All the rest of the training is conducted on the ranges, every bit of it.

MR. MEEKER: On Exhibit 6, [TS6] is that a closer view of what the berms are?

MR. SEARCY: It is.

MR. MEEKER: There is a smaller berm in the middle with fifteen foot berms around the sides?

MR. SEARCY: Correct and those berms comply with the best industry practices in the NRA recommendation for berms in our ranges.

MR. MEEKER: Are they made of clay?

MR. SEARCY: They are actually made of sand that we pulled off the facility here.

MR. MEEKER: And they trap the bullets?

MR. SEARCY: They do.

MR. MEEKER: On Exhibit 7, [TS7] describe what is shown there.

MR. SEARCY: That is a class of military students with targets and it clearly shows and give you an indication of how high those berms are.

MR. MEEKER: So the target is three or four feet high and the berms to up fifteen feet?

MR. SEARCY: Yes.

MR. MEEKER: In terms of the individuals and groups that come to the TigerSwan site for training and practice, what kind of groups do you have?

MR. SEARCY: We get the full spectrum of customers that come to us. Everyone, from women who have never fired a firearm before, who just want to learn gun safety; to experienced law

enforcement and soldiers who are trying to improve their shooting abilities before they go overseas. We get the full spectrum and we train in the full spectrum. We have women's only introductory pistol classes all the way to classes we have going on this week, which is training Special Forces.

MR. MEEKER: How much emphasis does TigerSwan put on safety?

MR. SEARCY: Safety is our number one concern. First of all we wouldn't be in business if we weren't safe. We come from a culture in the military where you cannot have training accidents with firearms; that is the bottom line. We took those strict safety practices that we used in the military and we applied them to our business. We have conducted over sixty thousand hours of live fire training and not have one accident.

MR. MEEKER: There have been some comments or arguments that this firing range should be considered more like a community college, nursing school or vocational school; does this have any similarities to that type of operation.

MR. SEARCY: None. We do not qualify people to do jobs, we don't give diplomas and we don't give any degrees. We give a certificate of training to people who attend two or three day courses. All we're doing is helping improve skills that they already have.

MR. MEEKER: So people are just practicing a skill which is firing a weapon as opposed to doing something else?

MR. SEARCY: Correct.

MR. MEEKER: In terms of this general location, would it be correct to say that this location is extremely large and remote?

MR. SEARCY: It is extremely large and remote.

MR. MEEKER: And the pictures we have seen are just one small section of it?

MR. SEARCY: Yes, one small section of it.

MR. MEEKER: Other than the two petitioners that we have heard from tonight, does your company generally have good relations with people in the area?

MR. SEARCY: Yes, we do.

MR. MEEKER: No further questions.

MRS. CURRIN: You filled out the application for the site plan, is that correct?

MR. SEARCY: No, I did not.

MRS. CURRIN: Do you know why the use of property, why it was supposed to be filled out, was left blank?

MR. SEARCY: I don't.

MRS. CURRIN: TigerSwan has a website on the internet that states what it does, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Is the information on the website reliable?

MR. SEARCY: The information on the website is marketing information and for the most part, yes it is correct

MRS. CURRIN: What do you put on the website, you are putting out to the public and to the world what you do, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: You testified just a little while ago that during the week you provide training to law enforcement and military personnel, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Are there any other courses during the week?

MR. SEARCY: No.

MRS. CURRIN: Your sportsman's range or recreational shooting only occurs one day a week, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: And that is on Saturday?

MR. SEARCY: Yes, Saturdays.

MRS. CURRIN: If you have to estimate, what percentage of your training is provided is provided to law enforcement and military personnel?

MR. SEARCY: Eighty percent, but I want to point out something here. Not all of it is conducted at the training facility. You've got to remember that we the largest provider of tactical training in U. S. Special Operations Forces. The vast majority of it takes place on a military training post.

MRS. CURRIN: How much of your activities on this particular parcel is currently provided to military and law enforcement personnel?

MR. SEARCY: Currently, probably fifty percent.

MRS. CURRIN: How much is planned to be there ultimately for military and law enforcement personnel?

MR. SEARCY: Eighty percent.

MRS. CURRIN: The military personnel, you are giving them firearms training in order to improve their performance in their occupation as a soldier, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: The law enforcement training is to allow those law enforcement officers to better perform their jobs as law enforcement officers, is that correct?

MR. SEARCY: To improve their current skills that they have, correct.

MRS. CURRIN: So they can do their job better, is that correct?

MR. SEARCY: I'm not going to sit here and say we are running a vocational school, because we are not.

MRS. CURRIN: I'm not asking you to, I'm asking why you are teaching law enforcement.

MR. SEARCY: To improve shooting skills.

MRS. CURRIN: And they shoot as a part of their job, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: With your course schedule that is on your website, you can correct me, it appears that about fifty percent of your courses are not only available to military and law enforcement, but they are the only people who can attend those courses, is that correct?

MR. SEARCY: Correct and that is based on skill, we typically run three or four open enrollment classes a month which are open to the general public.

MRS. CURRIN: On your website your states "A recognized leader in military and law enforcement training", is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Would you classify that as your primary purpose?

MR. SEARCY: No.

MRS. CURRIN: What is your primary purpose?

MR. SEARCY: Training is a small portion of what TigerSwan does.

MRS. CURRIN: Let's go back. Is it one of your primary purposes at your Cumberland County Facility, to provide training to military and law enforcement?

MR. SEARCY: It is to provide training to customers, the majority of those military and law enforcement and that is just based on economics.

MRS. CURRIN: But you do say on your website that you are "a recognized leader in military and law enforcement training", is that correct?

MR. SEARCY: We are.

MRS. CURRIN: You also state that TigerSwan gives military, law enforcement and security professionals the opportunity to network and train with other professionals seeking to improve their skills and to train with the highly skilled operators in the world, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: So you are putting out to the world that one of your primary purposes is to train military, law enforcement and security professionals, is that correct?

MR. SEARCY: For that part of the business, that is correct.

MRS. CURRIN: And that is the part of the business that you are doing in Cumberland County?

MR. SEARCY: That is part of the business that we are doing in Cumberland County.

MRS. CURRIN: What is the other part of the business?

MR. SEARCY: We support recreational shooters, providing a place where gun owners and hunters can safely fire firearms in a rural neighborhood.

MRS. CURRIN: On Saturdays, is that correct?

MR. SEARCY: That is correct. Let me point something out. This is a commercial entity. The business plan doesn't support having the range open to the public everyday of the week.

MRS. CURRIN: I understand; I'm just trying to clarify to the board what you are doing out there and you are having recreational shooting one day a week, correct?

MR. SEARCY: We had it two days a week and we also had open enrollment classes on Fridays, Saturdays and Sundays typically two or three day courses; several of them a month.

MRS. CURRIN: Your company filed a petition for a discretionary review to the Supreme Court, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: One of the things you asked the Supreme Court to do is to grant your petition because you wanted to keep operating as you were operating, is that correct?

MR. SEARCY: I'm not sure what you are me asking here?

MRS. CURRIN: One of your primary arguments, if I can remember correctly is that you were bringing a big economic benefit to Cumberland County and that if the courts were to close you down that would be some sort of blow to economic development; is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: When you were doing that, you were saying, we are operating right now, is that correct? You told the Supreme Court you were out there operating on the property, correct?

MR. SEARCY: Yes.

MRS. CURRIN: And you told them who your customers were, do you remember that?

MR. SEARCY: No, I don't.

MRS. CURRIN: Okay, let me try to remind you. Is it true that these are a list of the customers that you serve; The Police Department of Fayetteville?

MR. SEARCY: We have conducted training with the Police Department of Fayetteville.

MRS. CURRIN: The Police Department of Cary and Police Department of Goldsboro.

MR. SEARCY: Correct.

MRS. CURRIN: The Cumberland County Sheriff's Department.

MR. SEARCY: No, that is a mistake. There have been individual officers from the Cumberland County Sheriff's Department.

MRS. CURRIN: North Carolina Alcohol Law Enforcement and State Police, Immigration and Customs Enforcement, Custom and Border Protection, Marine Special Operations Command, The Marine Corps.

MR. SEARCY: Yes.

MRS. CURRIN: 21st Special Tactics Squadrons U.S. Air Force?

MR. SEARCY: We train a lot of military units and police units.

MRS. CURRIN: U.S. Military Special Operations Command, Joint Special Operations Command 82nd Airborne Division.

MR. SEARCY: That is correct.

MRS. CURRIN: Do you know whether you represented to the Supreme Court whether you had customers other than the ones I just listed?

MR. SEARCY: I don't know.

MRS. CURRIN: You also say that you have trained 2200 individuals since TigerSwan opened their facility in Cumberland County last September. How many of those 2200 individuals would you say were involved in law enforcement and military?

MR. SEARCY: Probably eighty percent of them. I would say they were military law enforcement and private security contractors, the rest were recreational shooters.

MRS. CURRIN: The security operators, the courses that you offer to them are aiding them in performing their professions as well, is that correct?

MR. SEARCY: Many of these guys want to improve their skills so they can save their own lives.

MRS. CURRIN: When is their own life in jeopardy, when they are at work?

CHAIR DONALDSON: Are you talking about the security operators now or are you talking about the military?

MRS. CURRIN: I had asked the question that if the courses that were provided for purposes

CHAIR DONALDSON: I was confused, are you talking about military people or are you talking about security operators? Which group of people were you asking about?

MRS. CURRIN: I asked him specifically if the courses that the security personnel were taking were to aid in their ability to perform their jobs as security.

CHAIR DONALDSON: You said security operator and there is a difference between security operator and security personnel.

MR. SEARCY: Shooting is a perishable skill and what we do is teach how to maintain these skills; a training methodology so they can train themselves later. That is what we do.

MRS. CURRIN: But the courses that are provided with respect to security personnel, to people who are security officers.....if somebody is an off-duty police officer or their job is to provide security at a museum or a parking lot or private business, you train those people as well, is that correct. They are not military law enforcement, they are private?

MR. SEARCY: Typically, those people will sign up on their own at our open enrollment classes. You are talking about security personnel, what we are talking about are security personnel that are working overseas for the U. S. Government.

MRS. CURRIN: That is what you are talking about with respect to security personnel?

MR. SEARCY: Yes.

MRS. CURRIN: The courses you are providing to them are aiding in their job as security personnel, is that correct?

MR. SEARCY: What we are teaching them is how to improve their shooting skills.

MRS. CURRIN: When do they shoot when they are on the job?

MR. SEARCY: Very seldom.

MRS. CURRIN: Are you teaching them how to shoot when they are on duty or when they are off duty?

CHAIR DONALDSON: Let's move on.

MR. SEARCY: There are a lot of shooting schools out there that are not considered vocational schools.

MRS. CURRIN: You have a contract with the U. S. Military, don't you?

MR. SEARCY: We have several contracts with the U. S. Military.

MRS. CURRIN: And those contracts are to provide training to soldiers or the military, is that correct?

MR. SEARCY: Some of them aren't.

MRS. CURRIN: You also provide a defensive driving school, is that correct?

MR. SEARCY: That is not correct. We have done that in the past. TigerSwan provides a lot of training from shooting skills that we conduct here on the range and on military bases; but we also teach things like strategic communications. We provide contractors with Special Forces qualifications on Ft. Bragg.

MRS. CURRIN: I understand that, we are just talking about what you do on this property.

MR. SEARCY: Well you were asking me about contracts that I have with the military.

MRS. CURRIN: Do you have contracts with the military where those services are provided in Cumberland County?

MR. SEARCY: Yes.

MRS. CURRIN: I asked about defensive driving because there has been representation made to courts that you provide training in defensive driving, do you or do you not?

MR. SEARCY: We provide tactical training, what we call tactical mobility out in the deserts of Nevada for Special Operations Forces and then we also teach personal security detail training at different locations and we may teach some type of defensive driving.

MRS. CURRIN: Do you do it in this location as you have done it in the past?

MR. SEARCY: No, right now we don't have track on the ranges since we haven't been able to move forward in construction.

MRS. CURRIN: You would be allowed to do it though under this permit if you so desire?

MR. SEARCY: The only thing we would be allowed to do with this permit is operate the vehicle on the small track on one of the ranges.

MRS. CURRIN: Why do you say that?

MR. SEARCY: Because that is the only thing on the site plan.

MRS. CURRIN: You have made representations in the past that you were going to do defensive driving on this particular site. Now you are saying you are not doing it.

MR. SEARCY: We would have to apply for another permit for any track facility.

MRS. CURRIN: I guess I'm a little confused because I've been doing this case for two years. Are you providing training for Homeland Security at this site?

MR. SEARCY: No. I mean, who works for the Department of Homeland Security? Yes, we have those people come to the facility.

MRS. CURRIN: Well, when I read your website, it says we provide training for Homeland Security so I'm just trying to ask if that is something that you do at that site. I'm just trying to get you to confirm whether or not that is what you actually do.

MR. SEARCY: We provide training at the site and off the site for those different customers.

MRS. CURRIN: That's all I have, thank you.

CHAIR DONALDSON: Swore in Steve Swierkowski.

MR. SWIERKOWSKI: My name is Steven Swierkowski, 2716 Franciscan Drive, Fayetteville, NC 28306. I'm employed at TigerSwan and I serve as their Director of Training at the TigerSwan Collaboration Center.

CHAIR DONALDSON: I doubt if Mr. Swierkowski remembers me, but I've had a brief encounter with him in the past, but just through a mutual friend. I remember because of my military background. I'm just letting everybody know. It's been a number of years back.

MR. CAMPEN: Mr. Swierkowski, would you describe your responsibilities as Training Director at TigerSwan.

MR. SWIERKOWSKI: As Training Director for TigerSwan I coordinate the training events that take place and I also run the facility at the archery building.

MR. CAMPEN: So you are on the site on a daily basis?

MR. SWIERKOWSKI: Yes, I am on the site on a daily basis, most of the time teaching another course and as Mr. Searcy explained we do training off the facility as well; but primarily I am at the facility.

MR. CAMPEN: Where does most of the activity that you provide here at the Cumberland County facility take place? There are a number of different components to the facility. Where does the principle activity take place?

MR. SWIERKOWSKI: As we stated before, the majority of the activities takes place on the range.

MR. CAMPEN: There has been testimony about the range that there are meeting rooms or instructional rooms on the site. How many of those are there presently?

MR. SWIERKOWSKI: We are currently using one which is designated on the diagram as a classroom as a meeting room. The other one, there are two next to the latrine facility; one is a storage facility for our maintenance equipment and targetry and the other is used as a meeting room and occasionally we do use it as a classroom; but that is very minimum use.

MR. CAMPEN: The site plan provides for a number of additional facilities at that site, is that correct?

MR. SWIERKOWSKI: Yes, it does.

MR. CAMPEN: Do you plan to build those at some point?

MR. SWIERKOWSKI: I'm speaking for the owner at this time; he is the one that would approve what buildings get placed. My assumption would be yes. My assumption is that they would be used similarly to what they are being used for now. So as we increase the number of ranges and increase the number of personnel coming to conduct the training, we are going to need those additional buildings to be used for as Mr. Searcy stated our students, some of the personnel who come for training who actually use it to store their equipment and to conduct their own briefings, things like that.

MR. CAMPEN: Those briefings that take place, do they involve TigerSwan instructor personnel or are they briefings that are conducted among the groups that are going there for use of the facility?

MR. SWIERKOWSKI: There are times when we do minor briefs in there and one of the board members asked about the concealed carrier; that is one class for instruction that we do use the

meeting classroom for a short period of time during that training. We do some instruction in the classroom which is required by law and then we go out to the range and we conduct the firing portion of that training.

MR. CAMPEN: Is that safety instruction before people go out to use the range?

MR. SWIERKOWSKI: Primarily if somebody is going to use the range, about ninety-five percent of the activity that takes place there is on the actual firing range. If we are going to conduct a safety briefing prior to somebody shooting, it is done on the range.

MR. CAMPEN: Do all of the activities and programs that take place at the TigerSwan Facility require the use of the meeting room or the instruction room?

MR. SWIERKOWSKI: Absolutely not, we can execute this range without the use of any classrooms.

MR. CAMPEN: Is it fair to say that from earlier testimony that a very small amount of the activity takes place in those rooms?

MR. SWIERKOWSKI: That is correct.

MR. CAMPEN: How many customers might you have on the site on an average day?

MR. SWIERKOWSKI: It varies considerably, but on an average day it may be twenty-four personnel that are conducting firearms training.

MR. CAMPEN: Does that consist of groups, individuals or mixed?

MR. SWIERKOWSKI: It is a mix.

MR. CAMPEN: Do families use the facilities?

MR. SWIERKOWSKI: Absolutely, we do have families that come to use the facilities, especially on Saturdays when the sportsman's range is open. Father's bring their sons there to learn how to shoot the hunting rifle. I have taken my son and daughter there to teach them how to do firearms in a safe and efficient manner.

MR. CAMPEN: You mentioned families using the sportsman's range. Is the range available to them any day that you are open?

MR. SWIERKOWSKI: No, the range is available to sportsmen on Saturdays and primarily during the week as Mr. Searcy mentioned the business model supports training groups, military or if we are having an open enrollment class where people sign up specifically for training.

MR. CAMPEN: In those open enrollment classes, Mr. Searcy testified Friday, Saturday and Sunday.

MR. SWIERKOWSKI: Primarily, in the open enrollment courses, we have military and non military sign up and they do sign up on Friday, Saturday and Sunday because it supports their schedule.

MR. CAMPEN: Are there other types of recreational uses that occur at the facility?

MR. SWIERKOWSKI: Yes. We do have other recreational uses, we have archery targets that we set up especially during the hunting season for hunters to come out there and conduct some archery training.

MR. CAMPEN: How much traffic do you have?

MR. SWIERKOWSKI: I would say with the personnel that work there and the personnel that come there for training; it would be ten to fifteen vehicles. You've got to understand that not everybody coming there to conduct marksmanship training is going to drive their own vehicle, they will car pool. Typically you will have a group of students with four in a vehicle.

MR. CAMPEN: I'm going to ask Mr. Meeker to hand out TigerSwan's Exhibit 8 [TS8]. Does TigerSwan have rules that apply to the use of the range?

MR. SWIERKOWSKI: Absolutely, we have rules.

MR. CAMPEN: Can you identify Exhibit 8 [TS8]?

MR. SWIERKOWSKI: These are the Sportsman's Range General Rules.

MR. CAMPEN: What is the purpose of these rules?

MR. SWIERKOWSKI: The purpose is to stress safety. As Mr. Searcy said, we do stress safety on the range, so when somebody comes in to sign up at the Pro Shop to use the sportsman's range the first thing they will see is a large poster board of our Sportsman's Range Rules that they have to read and then they will sign a document stating that they understand the range rules. Once they get out to the range, we have a range safety officer and he is a NRA range safety officer qualified individual to patrol to ensure everything is conducted in a safe manner.

MR. CAMPEN: Are these rules distributed to every person who uses the range?

MR. SWIERKOWSKI: Yes, the Sportsman's Range is specific to the sportsman's range. We have people that come to the range for an open enrollment course or military units, we have another set of rules that we give to them. It's not all of these rules that apply to a military unit.

MR. CAMPEN: Everybody that uses the range gets a set of safety rules?

MR. SWIERKOWSKI: Everybody that uses the range gets a set of safety rules. Yes.

MR. CAMPEN: You've been there all evening, haven't you Mr. Swierkowski?

MR. SWIERKOWSKI: Yes, I have.

MR. CAMPEN: Do you recall testimony from Mr. Smith, one of the petitioners, about his concern that shooting takes places not in the direction of the berm but back towards his property behind the range?

MR. SWIERKOWSKI: Yes, I do recall that testimony.

MR. CAMPEN: Is there any risk of that given the safety measures that you have in place?

MR. SWIERKOWSKI: That risk is extremely mitigated. We take all safety measures seriously. One being that our instructors are trained safety officers certified, they have countless hours of weapons experience, and we have redundancy with the amount of safety personnel that are on the range. Our classes typically have two instructors, one if the class is very small, but we do have a small student to instructor ratio. Typically it can be anywhere from ten to one for more experienced shooters it could be five to one if we have less experience shooters on the range. We have multiple people that work at the range that are there to supervise and everybody is a safety officer when you are on the range to make sure people are firing their weapon in a safe manner.

MR. CAMPEN: I want to ask you some questions about the conditions of your permit and this is the permit that is part of the board packet which is Exhibit 1 [S1]. Are you familiar with the zoning permit that was issued to TigerSwan?

MR. SWIERKOWSKI: Yes, and I am familiar with the thirty-one conditions.

MR. CAMPEN: Has TigerSwan complied with all the conditions?

MR. SWIERKOWSKI: Yes we have.

MR. CAMPEN: I want to direct you attention to Condition #26 of the permit. Would you read that for the board please?

MR. SWIERKOWSKI: It reads "The developer is encouraged to meet or exceed the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges."

MR. CAMPEN: Does the TigerSwan Facility meet these practices?

MR. SWIERKOWSKI: Yes we do.

MR. CAMPEN: Would you briefly describe for the board what the EPA's Best Management Practices are and how TigerSwan is complying with these practices.

MR. SWIERKOWSKI: The EPA Best Management Practices recommend you take certain steps to mitigate the effects of lead. We do this in a number of ways. One is we contain the lead rounds that are fired that is through the use of the berms. The instructors set up the target that the rounds will be shot into the berms. Those are first measures we use to capture the lead. The next thing we do is mitigate the effect of lead going into the sub-ground and into the water and we do this by conducting soil samples and water samples and we do this semi-annually.

We conduct the water samples from four monitoring wells that are located throughout the range and additionally with the soil samples, we apply lime and phosphate in accordance with the soil reports that we get back and it says soils is deficient in certain type of nutrient to help mitigate the effect of the lead. We also maintain meticulous records on the amount of rounds fired. I know a comment was made earlier that we fire millions of rounds a day. I just want to say for the record that is inaccurate. Since we have been open, and I maintain the records for the amount of rounds we do fire, since September 2010, we have fired just under two million rounds, so it is not millions rounds a day. We do track that and once again we maintain the records of our soil and water samples and then we have a base line and we make sure there is consistency there with our results; that there is no spikes in the lead, copper, zinc or magnesium when we do those tests.

MR. CAMPEN: I want to turn your attention to another Condition #20 regarding noise, would you read it please.

MR. SWIERKOWSKI: It reads, "Noise levels cannot exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level cannot become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.

MR. CAMPEN: So TigerSwan has to follow that condition and maintain a noise level of 60 dB(A) between 10:00 pm at night and 7:00 am in the morning? Is that correct?

MR. SWIERKOWSKI: That is correct.

MR. CAMPEN: Does TigerSwan ever permit use of the firing range after 10:00 pm and before 7:00 am?

MR. SWIERKOWSKI: We have not fired rounds after 10:00 pm or before 7:00 am.

MR. CAMPEN: Does TigerSwan conduct training before 10:00 pm at night?

MR. SWIERKOWSKI: Yes.

MR. CAMPEN: What time of night do these exercises take place?

MR. SWIERKOWSKI: It varies based on the time of the year. For instance, now if we did a night fire, it would not start until about 9:00 at night and it leaves a very limited window because it doesn't get dark until about 9:00 and then at 10:00 we have to stop firing. We still maintain that based on the conditions.

MR. CAMPEN: How often might you conduct night firing exercises before 10:00 pm at the facility?

MR. SWIERKOWSKI: Night firing exercises might take place possible a couple of times a month. It is part of one of our five day courses when we do a night fire. It is not a common occurrence. When we do, we hand out an announcement that we are going to be conducting a night fire. We typically list a window. So residents will receive a flyer that typically will have

a Tuesday through Thursday and that is because if there is inclement weather, we have a window there when we do the firing.

MR. CAMPEN: You are familiar that there is a condition in the permit that TigerSwan is required to get a separate permit from this board if it ever intended to use helicopters on the site, is that correct?

MR. SWIERKOWSKI: That is correct. What we would do is apply for a Special Use Permit and to date we have never used helicopters at the site, but if the requirement came up and we have the request, we would come to a board hearing and apply for the Special Use Permit.

MR. CAMPEN: Do you know if there has been any helicopter traffic in the area around the facility?

MR. SWIERKOWSKI: Absolutely, there is a lot of helicopter traffic around the range. We are in close proximity to Simmons Air Field and we see a lot of the helicopters flying in the air.

MR. CAMPEN: I have nothing further at this time.

MR. CURRIN: Mr. Swierkowski, these rules that Mr. Campen was asking you about a Sportsman's Range General Rules, who makes those rules?

MR. SWIERKOWSKI: We do.

MR. CURRIN: They can't be enforced by the County, can they?

MR. SWIERKOWSKI: I'm not sure if the County's jurisdictions can enforce Sportsman's Range Rules.

MR. CURRIN: So after this case, if you were to be approved, you could do away with every one of these rules, could you?

MR. SWIERKOWSKI: That would be pretty stupid because they you risk having

MR. CURRIN: Just answer the question, you could?

MR. SWIERKOWSKI: I would not do it. I wouldn't allow firing without those rules.

MR. CURRIN: You could do it though, couldn't you?

MR. SWIERKOWSKI: Are you telling me or are you asking me? I told you that I am not going to do it. As Director of Training, I am not going to do away with the rules.

MR. CURRIN: But no one cannot make you change them, can they?

MR. SWIERKOWSKI: No one cannot make me do anything.

CHAIR DONALDSON: Let's move on to something else.

MR. SWIERKOWSKI: The bottom line is, no, we are not going to change the rules.

MR. CURRIN: What happens if the rules are broken?

MR. SWIERKOWSKI: That person is kicked off the range.

MR. CURRIN: And that is all?

MR. SWIERKOWSKI: They will not come back to TigerSwan.

MR. CURRIN: Did you fill out the application or the submission form?

MR. SWIERKOWSKI: I certainly did.

MR. CURRIN: You filled that out as the Director of the facility?

MR. SWIERKOWSKI: I did.

MR. CURRIN: Is there some reason why you didn't fill out the blank where it asks you to put the use of property and then said underneath that be specific?

MR. SWIERKOWSKI: I've got a couple of things there. I didn't see an asterisk there that said this area must be filled out. Please correct me if I'm wrong.

MR. CURRIN: You are welcome to look at it and the line is about four inches long.

MR. SWIERKOWSKI: I've got it and it does not say it has to be filled out in any way, but I will be glad to fill in the use if you need me to.

MR. CURRIN: There are lines on that piece of paper; did you understand those were blanks for you to fill in?

MR. SWIERKOWSKI: I understand there are a lot of lines on this paper; not every one needs to be filled in; not every line of an application needs to be filled in.

MR. CURRIN: You didn't think the use of property needed to be filled in?

MR. SWIERKOWSKI: No because as Ms. Speicher testified, she and I discussed it in detail.

MR. CURRIN: Really, beforehand?

MR. SWIERKOWSKI: No, when I came in to give her the permit.

MR. CURRIN: You filled out the form before you talked to Ms. Speicher, correct?

MR. SWIERKOWSKI: Correct. I do not recall when I filled it out, if I filled it out when I came here or after I talked to Ms. Speicher. Honestly, I don't recall.

MR. CURRIN: You don't recall. So you think you filled it out after you talked to Ms. Speicher?

MR. SWIERKOWSKI: I don't recall. I probably filled it out beforehand because if I did it after Ms. Speicher, I would have put in the use.

MR. CURRIN: Okay again, why did you not put in that form the use of the property?

MR. SWIERKOWSKI: Again, I discussed it in detail with Ms. Speicher, we went over the site plan.

MR. CURRIN: That was after you filled out the form, wasn't it? You talked to Ms. Speicher after you filled out the form, correct?

CHAIR DONALDSON: He said he didn't remember.

MR. SWIERKOWSKI: I don't recall.

MR. CURRIN: You don't recall why you didn't fill out the form, is that your answer?

MR. SWIERKOWSKI: Don't put words in my mouth; that is not my answer. I didn't say I don't recall why I didn't fill out the form; I said I don't recall when I filled out the form.

MR. CURRIN: Is it your testimony today on the record that you do not recall why you did not put on that line what the use of property would be?

MR. SWIERKOWSKI: I think I answered that question that I discussed with Ms. Speicher the use of the property when we discussed the site plan in detail.

MR. CURRIN: Tell us about your discussion with Ms. Speicher about the use of the property.

MR. SWIERKOWSKI: It is a firing range.

MR. CURRIN: Is that what Ms. Speicher told you or is that what you told her?

MR. SWIERKOWSKI: I'm not going to repeat myself.

CHAIR DONALDSON: What did you tell Ms. Speicher?

MR. SWIERKOWSKI: It is going to be used as a firing range.

MR. CURRIN: Why didn't you put that on there to start with?

MR. SWIERKOWSKI: I don't recall.

CHAIR DONALDSON: What are you getting at, Mr. Currin? You've got witnesses that have testified and everybody knows that it is a firing range. What difference does it make if.....

MR. CURRIN: We're not contending that it is a firing range.

CHAIR DONALDSON: You did last time.

MR. CURRIN: No, we never have.

CHAIR DONALDSON: You contend that it is a school now.

MR. CURRIN: We have always contended that it was a vocational school, not an elementary or a secondary school.

CHAIR DONALDSON: My question is, why are you going on about that blank? Everybody's testified that it is a firing range, okay? We've heard enough about it, so move on.

MR. CURRIN: Do you know what the term classroom means?

CHAIR DONALDSON: If you know, answer it.

MR. CURRIN: What is your understanding of the definition of the word classroom?

MR. SWIERKOWSKI: A place, a meeting establishment used to learn a specific subject or to meet for some type of learning.

MR. CURRIN: This particular site plan that you submitted to the County of Cumberland has on it seven classroom on the TigerSwan Facility in Cumberland County, doesn't it?

MR. SWIERKOWSKI: That site plan has two existing and five potential classrooms.

MR. CURRIN: I believe you testified it was your understanding that these buildings and classrooms would be developed in the future, is that correct?

MR. SWIERKOWSKI: I believe I testified that is Mr. Searcy's decision since he is the one with the purse strings.

MR. CURRIN: But you understood that is what would happen?

MR. SWIERKOWSKI: I would assume that is the potential, yes.

MR. CURRIN: That is all the questions I have, thank you.

CHAIR DONALDSON: Are there any questions from the board?

MR. NEWSOME: Typically, what is the number of the most people that would be using the firing range at one time in any given class firing weapons?

MR. SWIERKOWSKI: The most people I have seen there has been thirty-five at one time specifically on the firing range. Some of that comes into the safety. You have to have a certain amount of distance when firing on a range.

MRS. TART: What percentage of your clientele would you consider is there for recreational use and I'm talking about somebody like myself that would go to learn to fire a weapon?

MR. SWIERKOWSKI: I would say roughly twenty percent.

MRS. TART: And eighty percent would be the law enforcement and military?

MR. SWIERKOWSKI: Yes, ma'am.

MRS. TART: What agency monitors the activities, there, is it OSHA?

MR. SWIERKOWSKI: I know the Cumberland County Sheriff's Department does the acoustic testing for the noise. As for other agencies that would monitor, we have environmental personnel come out to make sure of sediment and erosion control. The ATF monitors the use of our weapons and storage as well.

MRS. CARSON: If you have about thirty-five people out there some time or another, how many instructors or guidance persons would be there?

MR. SWIERKOWSKI: It depends on the skill level of the class. Typically, military law enforcement units that have thirty-five personnel, we do a ten to one student to instructor ratio. It is ten students to one instructor. So if we have thirty-five students we will have at least four instructors and with this you can see at least two instructors [referring to one of the Exhibit photos]; we had about thirty-five. This is one of the 82nd units. We have four instructors for thirty-five in addition to that, I'm at the range. I'm not instructing, but I'm overseeing and making sure that we are conducting things in a safe and efficient manner. So, four instructors plus other personnel at the range.

MR. LOCKLEAR: How many instructors are employed full-time?

MR. SWIERKOWSKI: Full time employees...there are four instructors, but we do use personnel on a regular basis, they aren't full time employees but we do use other instructors on a regular basis.

CHAIR DONALDSON: How many total employees do you have out there?

MR. SWIERKOWSKI: At the range we have eight full time employees, but that can vary based on whether or not we bring in instructors based on different events.

CHAIR DONALDSON: Swore in Doug Peters.

MR. PETERS: My name is Doug Peters and I live at 1628 Holloman Drive, Fayetteville, N.C. 28302. I am the President and CEO of the Fayetteville Cumberland County Chamber of Commerce.

MR. CAMPEN: What are your general responsibilities in that position?

MR. PETERS: Primarily to serve the interest of the business community and secondarily in partnership with the private sector my job is to recruit new companies to Cumberland County area.

MR. CAMPEN: Are you familiar with the TigerSwan Facility?

MR. PETERS: I am.

MR. CAMPEN: Do you and your family use the facility?

MR. PETERS: We do.

MR. CAMPEN: How do you use it?

MR. PETERS: I spend a good deal of time there with my sons and daughter. I was told a long time ago if you teach your kids to hunt you won't be hunting your kids and it is a place where they understand how to do it and how to do it appropriately in a safe environment.

MR. CAMPEN: Is the firing range the primary attraction for your family?

MR. PETERS: It is. We like to look at the turtles in the canal on the way in too.

MR. CAMPEN: Do you and your family ever make use of the meeting rooms that are on the facility?

MR. PETERS: No.

MR. CAMPEN: So your activity with TigerSwan is outdoors?

MR. PETERS: It is.

MR. CAMPEN: Would you describe your use as recreation for you and your family?

MR. PETERS: Absolutely.

MR. CAMPEN: How often do you and your family use the facility?

MR. PETERS: It really depends on whether it is a warm month and if we are in the community and if there is fishing, I would generally say once a month or so.

MR. CAMPEN: In your observance from being there would you say there were more people on the firing range or in the classrooms?

MR. PETERS: I don't think I've ever seen anyone in the classrooms. Typically, there aren't a whole lot of people out on the firing range when we are there. I assume there is a steady stream in and out all day, but there is no backlog of folks.

MR. CAMPEN: When you have been there, was there much traffic?

MR. PETERS: No.

MR. CAMPEN: Were you involved in TigerSwan's decision to locate this facility in Cumberland County?

MR. PETERS: I came on the backside of the recruitment of TigerSwan. I arrived in the community in June 2008 and that was about the same time the recruitment effort was coming to a closed. So as much as I would like to take credit for the recruitment of TigerSwan, I was a party to the closing, but I was not an active part of the recruitment process.

MR. CAMPEN: What would you say made this site attractive to TigerSwan?

MR. PETERS: I think the fact that it was remote, was probably as important as the fact that it was large. But I think also the fact that there were hotels and restaurants at Exit 49 on I95 to serve the folks who come in for training there. It was also very appealing to TigerSwan.

MR. CAMPEN: Do you know if Ft. Bragg was considered as a site for this facility?

MR. PETERS: I don't know if it could have been. Part of my relationship with the chamber is to have the Garrison Commander of Ft. Bragg as Chief of the Board of Directors. I have on more than one occasion toured Ft. Bragg from the air and I understand clearly that there is not room to expand any training on post and there is a real strong effort to try to restrict growth around Ft. Bragg, so this remote area was really the only option this firm had.

MR. CAMPEN: Why was the chamber interested in the site?

MR. PETERS: The defense contracting industry is the bread and butter of this community's economy. We just completed a study done by Garner Economics out of Atlanta that said forty percent of our gross product as a community is military related. When you are that heavily dependent on military jobs in your community whether they are active duty or civilian, those folks obviously need a place to work. So, in order to create wealth in the community, to resolve social issues that exists we recruit from a number of different sectors and the defense sector is probably our shining star.

MR. CAMPEN: Thank you Mr. Peters; that is all I have.

CHAIR DONALDSON: Swore in David Dowless.

SGT. DOWLESS: My name is David Dowless.

MR. CAMPEN: How are you employed?

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SGT. DOWLESS: As a Nuisance and Abatement Officer for the Cumberland County Sheriff's Office.

MR. CAMPEN: How long have you been in that position?

SGT. DOWLESS: Slightly over three years.

MR. CAMPEN: What is your responsibility in that position?

SGT. DOWLESS: To investigate nuisances and to help with County Code Enforcement in getting property abated.

MR. CAMPEN: Is enforcement of the Cumberland County Noise Ordinance part of your responsibility?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Have you ever been to the TigerSwan Facility?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: When was the first time you recall being there?

SGT. DOWLESS: Around two years ago in 2010.

MR. CAMPEN: At whose request did you visit the facility?

SGT. DOWLESS: At the time it was Mr. Raynor.

MR. CAMPEN: The County Attorney?

SGT. DOWLESS: Yes.

MR. CAMPEN: Why did he ask you to visit the facility?

SGT. DOWLESS: It was part of my job and since it dealt with the noise ordinance, he wanted me to get to know the facility and to understand the layout of it.

[Mr. Campen asked to have the first map from the board's packet shown on the screen] [S1]

MR. CAMPEN: What did you do on your first visit out there?

SGT. DOWLESS: I got familiar with the property and listening with my ears because at the time we didn't have the noise meter that met the standards for doing gunfire. We basically did it by ear. We walked the area on the backside, it went back in there quite a bit.

MR. CAMPEN: Did you walk the entire area or did you listen? Were they conducting firing while you were on the site?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Can you tell us where you heard noise from the firing range when you were in the vicinity? Can you point out on the map?

SGT. DOWLESS: I can't really tell where the berms are, I assume that is where the berms are, right? [pointing to an area on the screen]

SGT. DOWLESS: This is firing in berm #1. It is the first one when you come off that dirt road.

MR. CAMPEN: During that visit at Mr. Raynor's request, did you come to any conclusion as to whether or not the facility was complying with the noise ordinance?

SGT. DOWLESS: We actually went out to the road side and we listened from Doe Drive and it was windy that day, it was a little chilly that day and you could just barely hear the gunfire. I can't tell you what guns they were using that day. We also went to the property adjacent to the drive to the right of Doe Drive.

MR. CAMPEN: Would you use the point to show the board where you were.

SGT. DOWLESS: I don't want to mislead anyone. You had a picture before that showed Doe Drive. There is a property that goes along the side of where TigerSwan's entrance is on Tigerswan Drive, roughly 125 yards; we did listen there and one on the second shot you could hear it just barely. Then we went out to the far end of the range and it has a dirt area over towards this edge [pointing to the area on the slide] where there used to be farmland all in here, there is a lot of dirt in there and we listened there and you could barely hear it there. We went out to Highway 210 South in the proximity of where Mrs. Faircloth lives and you had to really listen hard to hear it. But I understand it was not done with sound gear, it was done by ear.

MR. CAMPEN: You were standing in front of Mrs. Faircloth's property on the highway?

SGT. DOWLESS: Yes, about twenty-five feet from her mailbox.

MR. CAMPEN: I want to pass out TigerSwan's Exhibit 9 [T9]. Can you identify that document for the board?

SGT. DOWLESS: Yes, this is a survey I did for the Sheriff's Office.

MR. CAMPEN: Did you use this describing a noise test you conducted in the vicinity of the property?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Did you use a noise meter to measure?

SGT. DOWLESS: Yes sir, the county rented a noise meter that could actually pick up gunfire.

MR. CAMPEN: What is the noise level that is permitted on the TigerSwan property?

SGT. DOWLESS: On the TigerSwan property, the noise level that is permissible is 75db and a maximum of 90db.

MR. CAMPEN: So the letter describes the results from four tests from four locations around the property, is that correct?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Would you show us on the map, where each of these tests sites is located?

SGT. DOWLESS: The first test was done and the noise level was high there because it was done right at the range, right at the picnic tables; a Glock 9 MM was fired and a M4 Carbine Rifle. [Sgt. Dowless pointed to the area on the range]

MR. CAMPEN: For the record, Ms. Speicher, is that the photograph from the board packet?

MS. SPEICHER: This is in the board packet.

SGT. DOWLESS: The lowest noise level for the Glock 9 MM was 78.4 db and the highest was 79.2 db with an average of 78.9 db; that was directly on the range.

MR. CAMPEN: Point out to the board the other three locations from which you conducted tests. Tell them where you were when you conducted the tests with the meter.

SGT. DOWLESS: The next reading was done approximately 350 yards from the range near the deer stand. My pointing might be off a little bit, but there is a third row that goes down into TigerSwan by their shooting range and there is a deer stand on the range in the field just as you leave Doe Drive about a quarter of a mile.

MR. CAMPEN: Did the noise levels that you measured from any of the four sites that you testified to and described in your exhibit exceed the noise levels allowed under the Cumberland County's Noise Ordinance?

SGT. DOWLESS: The only one that even came close was the ones measured directly on the range, but none outside the range.

MR. CAMPEN: Has the Sheriff's Department or have you received complaints from anyone in this vicinity about noise from TigerSwan?

SGT. DOWLESS: Have I received complaints about TigerSwan? The Sheriff's Office has, but I have not received a complaint on that.

MR. CAMPEN: Nothing further.

MR. CURRIN: Sgt. Dowless, I'm trying to understand this letter. What time was it when you did this test?

SGT. DOWLESS: About 9 am is when we got there.

MR. CURRIN: So the facility was not open?

SGT. DOWLESS: No sir, I was trying to get a reading while we still had the meter there.

MR. CURRIN: Mr. Swierkowski knew you were coming, correct?

SGT. DOWLESS: Yes sir.

MR. CURRIN: So you called him up and said you were coming to do a noise test?

SGT. DOWLESS: Yes sir.

MR. CURRIN: So you haven't actually done a noise test when the facility is in actual operation, have you?

SGT. DOWLESS: No, not in actual operation. With the job I have I have to get it done when I can, when somebody is there.

MR. CURRIN: And the test you performed only had to do with one firearm being fired at a time?

SGT. DOWLESS: Yes sir, one firearm by one person.

MR. CURRIN: You have no idea what the noise level would be if multiple firearms were being fired while the facility is open.

SGT. DOWLESS: Not with multiple firearms being tested at one time, no sir.

MR. CURRIN: So you did not go on your own to test it without telling Mr. Swierkowski, did you?

SGT. DOWLESS: No, I didn't do that.

MR. CURRIN: So only one 9MM was fired and you tested that.

SGT. DOWLESS: Yes sir and we tested the M-4 Carbine and the 5.56 also.

MR. CURRIN: Separately?

SGT. DOWLESS: Yes. It was shot at the berm.

MR. CURRIN: One shot by one gun is what you tested?

SGT. DOWLESS: Yes.

MR. CURRIN: Do you attend training classes at TigerSwan to improve your on-the-job skills?

SGT. DOWLESS: No sir, I do not.

MR. CURRIN: That is all the questions I have, thank you.

CHAIR DONALDSON: Are there any question from the board?

CHAIR DONALDSON: Swore in Stewart Precythe.

MR. CAMPEN: Please state you name and address for the record.

MR. PRECYTHE: My name is Stewart Precythe and my business address is 111 West Railroad Street, Faison, NC.

MR. CAMPEN: What is your business?

MR. PRECYTHE: I'm a produce broker, a developer.

MR. CAMPEN: Do you own property in the vicinity of TigerSwan?

MR. PRECYTHE: Yes.

MR. CAMPEN: In fact, don't you own that property and lease it to TigerSwan?

MR. PRECYTHE: I do.

MR. CAMPEN: Are you regularly in this area of Cumberland County in connection to your business?

MR. PRECYTHE: I try to get over there at least once every month or once every two weeks.

MR. CAMPEN: I believe you said you buy and sell land in that area of the county?

MR. PRECYTHE: Yes.

MR. CAMPEN: So it is important for you keep up with the price of land and in this area?

MR. PRECYTHE: Yes, I've bought four tracts of land since I've purchased the land that joins the Barra Farm.

MR. CAMPEN: Since TigerSwan developed in that area, has the price of property in that area been affected?

MR. CURRIN: Objection, I don't think he has the knowledge and I don't think he an expert either

CHAIR DONALDSON: Well, in that case we don't consider any of the testimony of your witnesses either who stated their value dropped.

MR. CURRIN: It is different when it comes to standing, your honor, the standard is different.

CHAIR DONALDSON: Overruled. Go ahead. Repeat the question.

MR. CAMPEN: Since TigerSwan started operations, has the price of land in the vicinity of that facility been affected?

MR. PRECYTHE: Yes, in my opinion it has. When I bought the Barra Farm, since then I have purchased four pieces of property that adjoin the Barra Farm. The first tract I purchased was the Hester Tract and that was 300 +/- acres east of that, then I purchased some from Jimmy Pugh and both of those were less than five hundred dollars an acre. Then I purchased from a family that joined the Pugh property and then I right before TigerSwan got there, I purchased forty acres from Mr. & Mrs. Jessie Bullock. So I have purchased four or five properties.

MR. CAMPEN: So what has been the effect on the price of land in the vicinity of the TigerSwan Facility?

MR. CURRIN: I object, the form of the question is too broad.

CHAIR DONALDSON: Overruled, go ahead.

MR. PRECYTHE: People know I buy property in the area and since TigerSwan is there, I've been called by two people to purchase land, to sell me land that adjoins the property. Andrew Coptias and wanted to sell me land and he asked for twenty-five thousand an acre. John Jordon called me and he has land on the east side, a very nice fellow, and he wanted over five thousand dollars an acre for his farm.

MR. CAMPEN: Are those prices higher than you would have experienced before TigerSwan's Facility was located there?

MR. PRECYTHE: A lot higher.

MR. CAMPEN: Thank you.

CHAIR DONALDSON: When did you buy the land the land before TigerSwan had it?

MR. PRECYTHE: I purchased it around 85' or 86'.

CHAIR DONALDSON: It was how much then?

MR. PRECYTHE: I paid around six hundred dollars for all of it.

MRS. CURRIN: Do you have any knowledge of a sale of property adjacent or nearby the TigerSwan Facility since their beginning operation in September 2010?

MR. PRECYTHE: Arnold bought some property. If I recall he paid four or five thousand dollars an acre for the farmland. Arnold Smith is his name. Jimmy Pugh told me that Arnold Smith purchased farmland from him for about four or five thousand dollars an acre.

MRS. CURRIN: That is hearsay. You don't know that for a fact?

MR. PRECYTHE: Jimmy Pugh told me; he owns the land. He tried to sell it to me but I didn't purchase it because he wanted five thousand.

MRS. CURRIN: Is that the only sale you are aware of since TigerSwan began operations?

MR. PRECYTHE: Yes.

MRS. CURRIN: I don't have anything further.

CHAIR DONALDSON: Does the board have any questions? Mr. Swierkowski, please come back up please. When the military is firing, what is the largest caliber round fired out there?

MR. SWIERKOWSKI: We allow below 50 calibers to be fired.

CHAIR DONALDSON: You don't fire any 50 calibers?

MR. SWIERKOWSKI: No sir.

CHAIR DONALDSON: What is the typical weapon, the M-4 Carbine?

MR. SWIERKOWSKI: Yes sir, the most common weapon is the M-4 used by the law enforcement, military and even foreign military use it as well and the 9 MM Baretta or the Glock.

MR. LOCKLEAR: To the staff, how often to you amend your ordinance through the year?

MR. LLOYD: We do it annually; one time.

MR. LOCKLEAR: Is there anything in the ordinance for an amendment that would add technical training schools to the ordinance?

MR. LLOYD: We are in the process of working up an ordinance amendment addressing firing ranges.

MRS. TART: Mr. Lloyd, at the time of this application there was no ordinance that would provide for any kind of activity of this type so you assumed according to prior testimony that the closest would follow recreational use?

MR. LLOYD: The closest with respect to land use impact. Yes.

MRS. TART: Would be recreation?

MR. LLOYD: Yes, because of how it was addressed in the ordinance and the restrictions that were put on outdoor recreation in the ordinance also. It wasn't that I was trying to classify this as recreation; I wasn't calling it necessarily outdoor recreation. I was merely finding a category with a land use impact with closest and most similar. That is what our ordinance asked us to do. The way I had to look at this based on the ordinance amendment was the land use impact on surrounding property and to find something close to that.

MRS. CARSON: Are there anymore firing ranges in Cumberland County?

MR. LLOYD: Yes, I don't have the exact number but I know there is a very popular one in Grays Creek that is used by many sportsmen.

CHAIR DONALDSON: Correct me if I'm wrong, if I own that piece of land and I went out there and took a bulldozer and built up a berm and invited my friends to fire; you all would not have anything to do with it would you? I could invite all my friends to come out anytime I want to and shoot?

MR. LLOYD: Yes, it would be a recreational use on your property. At this standpoint, because we don't have an "outdoor firing range regulation".

CHAIR DONALDSON: That was my question; any person who owned land like that?

MR. LLOYD: Yes sir and we are the Inspections Department also and we have had complaints of citizens throughout the county doing that and at this point in time, there is nothing we can do.

MR. FLOWERS: I just want to crystallize to the extent I can on what the issue is before the board tonight. The issue is not whether this is a firing range or a vocational school or outdoor amusement recreation area. Under our ordinance as it exists now since April 2011 and when Section 402 was amended, unless a use is specifically prohibited by our ordinance then it is allowed by our ordinance. Firing ranges are not specifically prohibited by our ordinance and therefore they are allowed and the reason why that section was amended in April 2011 is because the law essentially required Cumberland County to amend its ordinance as a result of the Wesley Chapel Case that you've heard us talk about. So Cumberland County didn't go out and do that on its own, it did it because the law essentially required them to do it. The way the ordinance works now is if it is not expressly included then it is permitted. So the only question for the board tonight is did Mr. Lloyd the Director and his staff correctly apply the ordinance and the way they applied the ordinance was: I looked at this use, it is a firing range, the testimony from the only people who know actually what happens out here has been that eighty to ninety percent use of this land is as a firing range. Firing ranges are not prohibited by our ordinance and therefore it is allowed. The next step for Mr. Lloyd is, to say what conditions do we put upon the use of this land to make sure that this firing range is operated in a safe manner. Since there is no firing range use in our ordinance that would list all the conditions for him, he has to look at the most similar use in the ordinance in terms of the impact upon the land and the surrounding environment and take the conditions for that use and apply it when allowing this permit. The most similar use in the ordinance was the recreation and outdoor use because of the issues of noise and projectiles and traffic and outdoor lighting. As a result of that the staff used the conditions that one would use for outdoor recreation and applied them to this facility along with other conditions in order to make sure the facility was operated in a safe manner. The staff

is not saying that this is an outdoor recreation facility, that is very important. They simply used that use in order to come up with the proper conditions for the use of this firing range because there is no firing range in our ordinance currently that list those conditions out for the staff. You have heard testimony and arguments that this is a vocational school and I'll let the councils for TigerSwan argue about the facts of a vocational school. What is important is in order for you to determine that the Director and his staff failed to appropriately enforce the ordinance and apply the ordinance, you must find that TigerSwan is a vocational school, not that it is like a vocational school, not that it is more like a vocational school than it is like outdoor recreation; but that it is a vocational school; because as I said at the very beginning, a use is only prohibited when it is expressly prohibited. A vocational school is expressly prohibited. So if it is a vocational school then it is expressly prohibited, there is no argument about that, we all agree about that. What is important is that it is not similar to a vocational school because if it is similar to a vocational school and not a vocational school, it is not prohibited. Do you see the difference? It has to be a vocational school. I will leave it up to you to determine whether the petitioner's who have the burden of proof in this hearing have proved tonight that this facility is a vocational school. That is the only way that you can overrule the Director. Thank you.

MR. MEEKER: Mr. Flowers has correctly summarized the law; that is when the ordinance was amended back in April 2011 all uses became allowed as a right unless prohibited and there is no prohibition for firing ranges. That is the question, what standards apply to that firing range and the Planning Director and his staff correctly apply the standards applicable to outdoor recreation with mechanized vehicles. I think all the evidence shows that. There has been some argument to the contrary but there has been no one who has testified the Planning Director did not handle things correctly. We think this site was not only correctly permitted but is an idea site for a firing range. It is much bigger than other firing ranges, well managed by the TigerSwan people, there are not that many people there during the day, up to thirty-five or maybe two dozen, it is properly located in a way that it does not disturb people. So for all of these reasons we believe the permit was correctly issued. In terms of vocational schools, as I mentioned before, if you look in the use matrix under schools where it talks about nursing schools, fine arts, community college and it has a vocational list. The things of that nature tend to have a lot of students and a lot of traffic and tends to be studying indoor and is different from a firing range that we have here. What people are doing here is practicing a skill as to firing a weapon; it is not something that you learn in a profession like nursing or architecture of something like that. It is a skill you have; you don't end up with a degree after three or four years. It is a different kind of facility, much lower impact in terms of traffic, higher impact in terms of potential of something going off site and indeed like an outdoor recreation, things are happening outside as opposed to inside which is normally what happens at a vocational school. So for all those reasons, we believe this is not a vocational school; that is just not a correct characterization of it. There may be parts of this facility that has some aspects of that and as Mr. Flowers pointed out, unless it is in fact a vocational school that is the primary use, that it should not be considered that. In addition the reference to the limitation on buildings and outdoor recreation, as I pointed out in my opening comments that is Exhibit 7D [P7D] the petitioners they were actually looking at the incorrect reference The looked at Outdoor Recreation, it is actually Recreation, Outdoor (with mechanized vehicle operations) and there are no building restrictions on that. Even if there were building restrictions, these buildings fit within the categories there. Finally there has been some testimony about the petitioners about lead, about noise, about property values. We have rebutted that fully by witnesses who are more knowledgeable in these issues in terms of lead being talked about by Mr. Swierkowski, in terms of the EPA regulations, property values from

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the gentlemen who bought land and the Sheriff Deputy who talked about the noise ordinance has not been violated. So for all these reasons we feel these are not issues, not a nuisance, not a problem here. The final thing to keep in mind is that the policy of North Carolina as set in the Wesley Chapel case is in the policy of Cumberland County as set out in the revised zoning ordinance adopted April 2011 is to allow uses of property freely. They are not prohibited unless it is expressly prohibited. There is no prohibition of firing ranges. This one is being operated well and should be allowed to go ahead as permitted by the Planning Department. Thank you.

MRS. CURRIN: We of course are asking you to reverse the decision of the Planning Director. Our first argument is that this is a vocational school. We have argued that since we walked in this door two years ago; we have never wavered from that. We came in here and said two years ago it was classified as a elementary or secondary public or private school. We said no it is not, it is a vocational school. We argued that to the Court of Appeals. What the Court of Appeals said about this appeal at the time when the ordinance said any use not permitted it is prohibited. the only thing that has changed is the analysis. The use of this property has not changed. The Court of Appeals said that the interpretation that they chose which was the only schools allowed in the A1 District are elementary and secondary schools and they said you are a school but you are not that so you are not permitted. They said this interpretation is reinforced by the drafters expressed prohibition of vocational schools. The Petitioners (us) argue that the training facility should be prohibited based on that language. We have argued it all along and to the Court of Appeals. Why TigerSwan intends to distinguish the training facility from a trade or vocational school by arguing they teach skills not occupations without deciding whether the TigerSwan Facility qualifies as a trade or vocational school; you conclude it is not a permitted use. So that issue is still out there. It has not been conclusively decided by anyone and we have argued it since the beginning. I want to go through the reasons that we believe in the evidence as to why this is a vocational school. There has been a lot of talk about this Section 402 and basically for purposes of this appeal, that change means nothing in our opinion. What it says is "if a use is not expressly prohibited by the ordinance then you go and look at its impact and try to find something that has similar impact and then you use those standards". But if it is prohibited by the ordinance, you never do that. As both of the planner's have testified and Mr. Flowers has conceded, a vocational school is a prohibited use under the ordinance. Mr. Searcy told you eighty percent of what they do at this facility is focused on law enforcement and military training. If you look at what they have told the Court of Appeals in the Supreme Court, they have told unequivocally they are a school which provides training to military and law enforcement. They have also represented, and I just want to preserve this for the record, it is at Tab 12 [P12], they represented to the Court of Appeals that they are not a shooting range; they said we aren't a shooting range, we are a school. We just want to show this is a judicial admission and want it in the record. We don't think that you can go to the Supreme Court and the Court of Appeal on this exact use and say we are not a shooting range; we are a school and then come back and tell you we are a shooting range and we are not a school. You should take that into consideration. The word vocational is not defined in the zoning ordinance and what you need to do is go to a dictionary and what we have done is provide dictionary definition for vocation, vocational, vocational school, those terms. Vocation is: the work in which a person is employed. Vocational is: is or of relating to a vocation. Vocational School is: a school offering instructions in one or more skilled or semiskilled occupations and one intended to prepare one for an occupation. Does TigerSwan fall into this category? Start with the admission that eighty percent of what they do is teaching law enforcement and military personnel. Their website says they provide instruction to military law enforcement and security

personnel and topics such as weapons training, urban welfare and warrior combatants, we teach and mentor tomorrow's soldier. It says it is the convenient and cost effective solution for law enforcement, homeland security, military and corporate clients to meet their training needs. It says TigerSwan is a recognized leader in military and law enforcement training. TigerSwan gives courses in military and law enforcement and security areas and gives those professionals the opportunity to train with other professionals. It specializes in conducting the most realistic combat training possible. So what and who are its clients? This is what TigerSwan told the Supreme Court: Police Department, Sheriff's Department, law enforcement, State Police, the Air Force, the Marine Corps, Special Operations; they didn't list one private person and as you know, they've got one day when they do anything other than train military and law enforcement and that is Saturday. What we have at Exhibit 9 [P9] is excerpts from the materials from Fayetteville Technical Community College FTCC. If you look at the definition of vocational, vocation and vocational school you can see that what they do fits squarely in there. It is training military, law enforcement, security personnel in their jobs. They say you are not getting a degree, you are not actually becoming a nurse or as Mr. Meeker said, an architect, which I don't think is a technical school kind of thing, but in fact if you look at what FTCC does, they do exactly what TigerSwan does. If you read their literature, they do a whole lot of things other than just provide people with degrees. We have those excerpts and I just want to go over that quickly. The purpose of FTCC is to provide continuing education and to upgrade occupational skills and other practical skills. It is to provide education to meet the needs of industries and businesses through course of study in basic skills, job and career training and law enforcement training. It is to provide training to upgrade a person's skill and qualifications. It is to help industries by customizing education courses for their employees. One of its purposes is employers send their employees there to upgrade their skills. Another thing that is done is it provides military training to commanders to improve their job performance. There is actually at FTCC a law enforcement training program. It provides instruction to current law enforcement operations and procedures, and what is significant about this aspect of it is it doesn't teach people how to be police officer, it provides upgraded training to people who are already police officers. As a matter of fact, you cannot go to FTCC and go to their law enforcement training program unless you are already a police officer. They are doing exactly what TigerSwan is which is come to us and we will help you do a better job at law enforcement. Its' purpose is to enhance the performance of certified law enforcement officers and to get up-to-date training. This is a quote, "The program is to enable students to do the best possible job in protecting the citizens of this country, their fellow officers and themselves", which is almost a carbon copy of what TigerSwan says it is doing. It also offers a Homeland Security Program, instructs in Terrorism, Border and Transportation Security and Critical Incident Management. Again if you read TigerSwan's website and you look at this website they've got many of the same courses and unlike what you have been told, it is not just to go get a degree; it is to upgrade skills. We contend if you look at what TigerSwan does, read the definition of vocational school and you look at what FTCC does and what TigerSwan does, they are exactly the same or at least eighty percent of what they do is vocational upgrading and training for professionals. They contract with the military to do this. What TigerSwan told the Court of Appeals and is actually arguing to you now saying we are a firing range. The truth is they are a firing range on Saturday; they are a vocational school every other day of the week when they are training people from the military and law enforcement fields in their training. What the Court of Appeals said is very important. The fact that you do other things if they are prohibited activities then those activities are always prohibited. You can't legalize this vocational school by saying, we do hunter safety courses, or we have a shooting range here. That shooting range is there to teach these people to

do better in their vocation. That is the only reason it is there except for Saturdays. This is their primary purpose and the Humane Society vs. Southern Pines says that you have to categorize based on the primary purpose, not what some incidental use is. An example out of my head is you can't stick an apartment in your concrete plant and say it is a residential use. Basically, that is what they are doing. What they have said is we are training the military, we are training law enforcement to do a better job for you, but on the other hand we let people come and shoot on Saturdays so therefore we are a shooting range, and that is not correct. One of the canons of construction, statutory interpretation is that you should not interpret this ordinance to have an absurd result. We respectfully submit that if you cannot on this property train nurses to do their job, why can you train law enforcement and military persons to shoot guns? This is not an impact question. The Board of Commissioners said we don't want vocational schools here and that is because the intent of the agricultural district is to only have farms and limited residences and uses that provide essential services. You can have an elementary and secondary school but you cannot have a vocational school here. What a ruling here would be if you affirm that is that you can't teach nurses how to be nurses here, you can't teach auto mechanics how to be auto mechanics here, but you can teach soldiers and law enforcement how to shoot guns very close to people who live here every day and are obviously disturbed by the noise and are afraid. I would submit to you that probably or that there is a low probability is not the same thing as having to live next to it all the time and hear it and have that fear all the time. The second argument is why is that blank...why didn't you put the use on there. If you look at the documents in the record that were produced to us. There are three, an application, what is your use, it doesn't say. The second document is a site plan; it says it is a site plan for outdoor recreation for profit with mechanized vehicle operations. That's what the permit is for, it is not for a shooting range that looks, smells and has the impacts of an outdoor recreational facility. According to this site plan here that is what they are authorized to do and nothing else. Even under their ordinance, their site plan should have been for a shooting range if that what it is. So we contend that you can't even look at it if it is a shooting range or not because there is no such interpretation that has ever been issued in this case. The third document is the zoning permit and I have to respectfully correct Mr. Meeker because that zoning permit is specifically for an outdoor recreation amusement; it is not limited to mechanized vehicles. That is the use that was issued for and that does have limitations on the types of buildings. That is what you got, you don't have any interpretation that....it says "this doesn't fit in any uses therefore we are going to treat it like an outdoor recreation and amusement even though it is a shooting range." You've got something that says it is an outdoor recreation and that is said and it is not, so it should be reversed. We have discussed this at length; we think the ordinance is clear, the zoning permit is for an outdoor recreational use that prohibits any buildings other than restroom and outdoor pavilions and that type of thing. We think seven classroom buildings and a Pro Shop and offices literally runs afoul of this. Finally, again if you are going to look at this, and we disagree with this completely; we don't think you should look to similar impact, we think it is a vocational school, period. If you did, there isn't a better use out there than a go-cart track and a BMX track that has impacts like this and there is a use in the table of permitted use called Industrial Uses Not Otherwise Classified. It is not allowed in A1 and that use specifically says that "manufacturing and industrial districts are for uses which normally create a high degree of nuisance and are not generally compatible with surrounding and abutting residential or commercial areas." Why would you take what we contend is a vocational school as a training facility when choosing weapons and explosions would be more closely related to an industrial use than a go-cart track? It just doesn't make any sense. In sum, we would ask that you reverse the decision of the Zoning Administrator and pull the use, it is prohibited, it is a vocational

school and it can't go forward. The alternative what we would ask you to do is to rule that TigerSwan cannot have a vocational school in any shape or form on this property and I am going to read you one more excerpt from the Court of Appeals and it says lastly that TigerSwans argues that Petitioners distort the nature of their activities that will occur at the training facility by focusing on the more intense activities highlighted in their advertising material such as training law enforcement and military personnel in urban welfare. TigerSwan does not dispute such skills will be taught at its facility, rather TigerSwan stresses that it will also instruct adults and children in leadership, first aid and foreign languages; skills commonly taught in elementary and secondary schools. However, the Zoning Ordinance expressly states in the introduction that no building, land or structure shall be used in whole or in part for any use other than the uses permitted in the district in question. That is why TigerSwan may offer some instruction that would be permitted in an elementary or secondary school the inclusion of permitted uses can't offset the uses prohibited by the ordinance. If they've got eighty percent teaching vocational skills, then we would ask that you say, okay you can have your shooting range, but what you can't do is have a vocational school there, so to the extent as Ms. Speicher said, you can't have it there, to the extent of a vocational school, it must be prohibited. The same thing with respect to the buildings; if you want to say, and we respectfully disagree, that you are the same as a BMX or go-cart track, tell them they can't have their classroom buildings. Make them actually comply with those requirements. That is all I have and we respectfully ask that you reverse this decision and hold this to be a prohibited use which we believe is clearly the intent of the drafters.

Public Hearing Closed:

CHAIR DONALDSON: Is there any discussion from the board?

MR. MOOREFIELD: Mr. Chairman, just as a formality, to make sure we are okay with our record and to make sure I understand and that the clerk understands the five exhibits that have been introduced as evidence for the staff [Exhibits S1-S5].

CHAIR DONALDSON: Yes. I understand and TigerSwan has a notebook. We've got all of TigerSwan's exhibits that we accepted [Exhibits T1-T7]. The petitioners have a notebook that was already introduced [Exhibits P1-P12].

MR. LOCKLEAR: I know there has been a lot of discussion here tonight and given what I do, I have sat on the other side of the fence in this situation and I know how hard it is for staff to make a decision when it comes to cases like this. A lot of the discussion was safety and a lot of different things that goes along with the shooting ranges and how hard they can be to deal with from a neighborhood's standpoint; I've dealt with that to a certain extent. At the end of the day, you are here to see if the zoning administrator made the right decision. In my opinion, he did in this case make the right decision. It is hard to do and you have to look directly at what the ordinance says. I pulled it today and I reviewed it before I got here and I didn't realize it was going to be such a big issue tonight. I did think the case would be a big issue, don't get me wrong. At a certain point I had already found in the ordinance today to what I would ever figure to be the issue on how the director would make his decision. It is a decision while both ends of it could be a stretch argued on either side, it is the right decision in my opinion.

MRS. CARSON: I've listened all evening to testimony. Like Mr. Locklear said, it is a very difficult decision. In view of all of the testimony given here, I do not find where it has been proven that a vocational school is out at that facility. So I am going to vote with the Planning Administrator.

CHAIR DONALDSON: I will summarize it and we can take our vote. The issue is 1: Is it a vocational school or not or is it a firing range? In a lot of people's minds, there's no question it is a firing range, some people's argument is that it is a vocational school. If it is a vocational school and that is what we find, then the decision would not stand because it would not be permitted in that area. I would say that given the new rules in effect and given the case, if someone came into the office and said I want to put a vocational school out there, it wouldn't be prohibited. In fact, they would be the closest land use, where it says elementary and secondary school would be permitted. If you wanted to permit it you could probably argue that vocational schools can go there now, if it was actually a vocational school. The question is, is it a vocational school? There is some argument that it is because it does provide training and classroom instruction but on the other hand you can argue that it is not a vocational school; not all training is vocational. Some of it is just skill level improvement. The common exception I think for vocational accepted definition would be at FTCC (Fayetteville Technical Community College) that type of thing where you go in to gain a career skill and extended training. I think what the evidence shows on this has been that the most training is a five day course, most of it is one day, I don't know if that makes it a vocational school, but that is for each individual board member to decide on that. The question is: 1. has the appellants by preponderance of the evidence proven their case? 2. Is it abuse of discretion by the director? Given the rules the way they are written now, if you look at the way they have interpreted them, the director has the right to interpret the rules. He issued that policy letter that stated firing ranges. The argument would be, was it in a direct response to the Court of Appeals case? Probably so, but that's the irrelevant ruling because he had the authority to do it. The other thing about that is the fact that he is given that authority and he is given that discretion and the Board of Commissioners is giving it to him. Those are other issues that we have to talk about, discuss or consider. It is a conflicted case and there is a lot of emotion involved in this. I don't know that I would want to be living next to the firing range too and I was in the military for a long time, but at the same time I can't let that influence how I vote and how I vote will be what I think is under the law and the evidence. There has been little or no evidence that I can see of any devaluation of property, not credible evidence and there has been no credible evidence on the other side that I find that property values have been affected one way or the other. That is one of the issues that always come up in these types of cases. Having said that, it's a situation where I need a motion. Does anyone have a motion at this time to deny the petitioner's appeal?

MR. NEWSOME: I motion to deny the appeal.

MR. LOCKLEAR: I second the motion.

CHAIR DONALDSON: All those in favor of denying the appellant's appeal, signify by raising your hand. I will just abstain from this point. The vote is 4-0; that is 4/5 of the board voting. The appellant's motion for appeal is denied.

MR. MOOREFIELD: And that is a vote to uphold the decision of the additional permit.

	IN FAVOR	OPPOSED
NEWSOME	YES	NONE
LOCKLEAR	YES	
TART	YES	
CARSON	YES	
DONALDSON	ABSTAINED FROM VOTING	

CHAIR DONALDSON: Now we need the findings of facts.

MR. MOOREFIELD: You should simply state the issue is that whether or not you determined if it is a vocational school or a firing range and find some facts to address that issue.

CHAIR DONALDSON: First I will put this to the board? Does anyone believe that it is a vocational school? [All the board members agreed it is not a vocational school]. I make a finding of fact that based on the evidence it is not a vocational school. I make a finding of fact that pursuant to the new ordinance, the changes and the policies allowed by the director as found by the director which is allowed by the ordinance; the proper classification for this endeavor was in the recreational use that he placed it in. That the conditions that the department placed on TigerSwan's operations were adequate and by all appearances have been followed and complied with. That...anyone have anything else?

MR. MOOREFIELD: Mr. Chairman, I suggest that some of the facts you would look at also is the testimony that 80-90% of the activity occurred on the firing range.

CHAIR DONALDSON: Well, those are facts. All the testimony has been that about 80% of the activity out there has been on the firing range and that any of the other training they needed in the classroom was just incidental to the firing. I don't know that I want to find anymore.

MR. MOOREFIELD: I think that addresses the issue, the use of the range and the incidental use of the buildings.

CHAIR DONALDSON: I think the real issue is under the ordinance he had the authority to do what he did and he didn't abuse it and I don't think anybody believes he abused his discretion on it.

MR. LOCKLEAR: My opinion is that the ordinance outlines the procedure for the situation; its' done that and the Zoning Administrator followed that procedure.

CHAIR DONALDSON: Ultimately, this is an issue that the Board of Commissioners is going to have to decide and I know you all will take it up. I understand that but ultimately what I suspect is that the Board of Commissioners is going to change the code and it will happen anyway. No matter what we do here, that is for them to decide, not us. Is there any further business? [There was none].

ADJOURNMENT:

There being no further business, the meeting adjourned at 11:05 pm.

~~CUMBERLAND COUNTY PLANNING & INSPECTION DEPT.~~
130 Gillespie/PO Drawer 1829
Fayetteville, NC 28302-1829
(910)321-6636 Fax(910)321-6637

MISC

Zoning PERMIT

Z-12-149289 PAGE 1 of 1
Issued by: JWH Pct by: JWHEELER

Permission is hereby granted for the construction or installation as identified herein. All work must comply with the North Carolina State Building Code and all other applicable State and Local Laws, Ordinances, and Regulations.

Date Issued: 04/17/2012 Pin: 0493-04-5262-
Location: 2850 TIGERSWAN DR Subdivision: TIGERSWAN INC.
Lot: TRACT A ECOBANK (1521.69 ACS) Lot:
Owner: SOUTHERN PRODUCE DISTRIBU
Address: PO BOX 130 Phone: 590-9500
FAISON, NC 28341
Contractor: SOUTHERN PRODUCE DISTR. License: OWNER
Address: PO BOX 130 Phone: 910-590-9500
FAISON, NC 28341 Phone: 910-267-0011

Structure: Commercial Type: Improvement Other Occupancy: BUSINESS
Construction Type: No of stories:
Heated (SQ. FT): Unheated: Total Sq. Ft.
Area: (Sq. Ft.): First Floor: Second Floor: Third Floor:
Water: Sewer:
Zoned as: A1 Set Backs: Front: ² Rear: ² Left: ² Right: ²
Fees:

Total Fees: \$50.00 Work Value:

OUTDOOR RECREATION AMUSEMENT
TO BE SITED IN ACCORDANCE WITH APPROVED SITE PLAN AND ALL CONDITIONS OF
APPROVAL - CASE # 16-055

TO BE SITED AS PER PLOT PLAN

All work will comply with the NC State Bldg. Code & all other applicable state & local laws, ordinances & regulations. The Inspection Dept. shall be notified of any changes in the approved plans or work as submitted. It is the permit holders responsibility to request all required inspections & ensure approval prior to continuing work.

Without further notice from this Dept., this permit will become void if work is not started within 6 mths. from issuance or if the work is discontinued for one year as determined by no inspection activity. These time periods are superseded by time limitations set by County ordinance and/or Code Enforcement Actions.

Call before you dig - 1-800-632-4949. A \$25 processing fee shall be charged for all returned checks. (NCGS25-3-506)

Roy Turner,
Chair
Cumberland County

Walter Clark,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Steadman
Patricia Hall,
Town of Hops Mills
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning and Inspections Department

Mrs. J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Lori Epler,
Sara E. Pilon,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaughlin,
Wade, Falch & Godwin

REVISED: 04-17-12

STAFF REVIEW: 4-9-12

PLANNING BOARD DECISION: N/A

CASE NO: 10-058

NAME OF DEVELOPMENT: TIGERSWAN, INC.

MIA: N/A

AI SITE PLAN REVIEW (OUTDOOR RECREATION/AMUSEMENT, FOR PROFIT & W/ MECHANIZED VEHICLE OPERATIONS)

LOCATION: SOUTHWEST SIDE OF SR 2053 (DOE HILL ROAD)

ZONING: AI

SOUTHWEST OF NC HWY 210 S

PIN: 0493-04-5262

OWNERS / DEVELOPER: TIGERSWAN INC.

ENGINEER OR DESIGNER: CALL SIGN ENGINEERS

PLANNING & INSPECTIONS DEPARTMENT ACTION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

PLANNING BOARD DECISION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

The development plan you submitted to this office is conditionally approved. Your approval is subject to the following conditions:

Permit-Related:

1. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
2. The County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
3. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
4. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's Post-Construction Permit must be provided to County Code Enforcement.
5. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
6. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance and as shown on the supplemental site plan, provided that enough existing trees will remain on site to satisfy the minimum standards. The following are the minimum standards for the required landscaping of this site:

- Eleven large shade trees or 22 small ornamental trees are required within the parking areas.

In addition:

- a. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and

8-1

- b. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.
7. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

8. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the A1 zoning district must be complied with, as applicable;
9. The street name "Tiger/Swan Drive" has been approved for the private street and the street sign has been installed.
10. This conditional approval is not approval of any new freestanding signs. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is not approval of the size, shape, or location of any signs.) (Note: One sign is permitted and cannot exceed the standards of the C1(P) zoning district.)
11. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
12. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
13. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
14. The driveway permit has previously been issued by the NC Department of Transportation for the existing connection to SR 2053 (Doe Hill Road); this revision is not approval of any additional driveways;
15. Turn lanes may be required by the NC Department of Transportation (NCDOT).
16. All lighting is required to be directed internally within this development and comply with the provisions of Section 1302 W, *Outdoor Lighting*, County Zoning Ordinance.
17. A solid vegetative buffer should be provided and maintained completely surrounding the subject property; the developer is strongly encouraged to plant and/or allow tree growth where possible to achieve a natural buffer.
18. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
19. All required off-street parking spaces shall be a minimum of 9' x 20'. A minimum of one off-street parking space for each four persons in design capacity for the firing range is required for this development.
20. Noise levels cannot exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level cannot become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.
21. This conditional approval is not approval of the use of helicopters at this facility. "Minor airport operations" requires approval of a Special Use Permit issued by the County Board of Adjustment prior to commencement of any air traffic activity.
22. Protective measures are required to be in place to minimize the creation of dust affecting surrounding properties.
23. Fencing, netting, berms or other control measures are required to be provided on the site to ensure that rounds/ammunitions are prevented from escaping the designated area.
24. Full compliance with Chapter 9:5, Article IX, Cumberland County Code of Ordinances, is required as applicable - see attached copy.
25. The developer is encouraged to meet or exceed the DOD Range Safety measures as specified in the Department of the Army Pamphlet 385-63.
26. The developer is encouraged to meet or exceed the EPA's *Best Management Practices for Lead at Outdoor Shooting Ranges*.

Other Relevant Conditions:

27. The applicant is advised to consult an expert on wetlands before proceeding with any development. There may be wetlands located in the project area that are subject to the permit requirements of Section 404 of the Clean Water Act. To avoid a violation of federal and/or state law, it is recommended the developer contact the Office of the Army Corp of Engineers or hire an environmental consultant to identify and delineate any wetlands in the project area prior to construction. A Section 404 permit will be required if the applicant needs to fill wetlands and the permit must be obtained prior to any construction on this site.
28. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

29. This conditional approval is not to be construed as all encompassing of the applicable rules, regulations, etc. which must be complied with for any development. Other regulations, such as building, environmental, health and so forth, may govern the specific development. The developer is the responsible party to ensure full compliance with all applicable Federal, State, and local regulations.
30. The developer is encouraged to post warning signs approximately every 100 feet around the perimeter of the site to warn individuals of the ranges.
31. The owner/developer be aware that every deed created for the purpose of conveying a lot served by a private street must contain the following disclosure statement at the time of recordation with the County Register of Deeds:

"It is hereby acknowledged that a subdivision streets disclosure statement has been executed in accordance with N.C.G.S 136-102.6(f)."

If you need clarification of any conditions, please contact Ed Byrne at 919-678-7609 or Paul Spischer at 919-678-7605; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 919 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits)	Ken Sykes	321-6554
County Engineer's Office	Wayne Dudley	678-7636
County Health Department	Daniel Ortiz	433-3680
Ground Water Issues	Matt Reoney	678-7625
County Public Utilities/NORCRESS	Tom Cooney	678-7682
Corp of Engineers (wetlands)	Crystal C. Anschler	251-4170
NCDENR (B&S)	Sally McKinney	433-3500
E911 Site-Specific Address	Ron Gonzales	678-7616
E911 Street Naming/Signs	Diane Shelton	678-7663
Tax Parcel Numbers		678-7549
NCDOT (driveways/curb-cuts)	Gary Burton	488-1496
N.C. Division of Water Quality	Mike Randall	(919) 733-5083 ext. 545

Attachment: Article IX, Firearm Regulations, Chapter 9.5 Cumberland County Code of Ordinances

OFFICIAL PRELIMINARY STAMP
CUMBERLAND COUNTY
CASE NO: 10-958
REVISED: 04-17-12

THIS PLAN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTION DEPARTMENT ON: 04-09-12

COMMENTS: SUBJECT TO CONDITIONS

I CERTIFY THAT THIS PLAN HAS BEEN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DEPARTMENT AS DRAWN HEREON AND MAY BE USED FOR ANY OFFICIAL PURPOSE AS PERMITTED BY LAW. THIS APPROVAL IS VALID UNTIL: 04-09-14

Patricia S. Spischer
SUPERVISOR, LAND USE CODES

Roy Turner,
Chair
Cumberland County

Walter Clark,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning & Inspections Department

February 21, 2012

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

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Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon & Godwin

MEMORANDUM

TO: Planning & Inspections Staff
FROM: Tom Lloyd *TJL*
SUBJECT: Outdoor Firing Ranges Review and Approval Policy

This policy is being issued in light of a recent site plan submittal by a property owner seeking approval of an outdoor firing range on his property – see Case No. 12-025 – and will be effective until such time as an ordinance amendment specifically addressing outdoor firing ranges is adopted by the County Board of Commissioners or a replacement policy is issued.

Under the terms of our zoning ordinance all legal uses of land must be allowed. Until such time that specific outdoor shooting range zoning ordinance standards are adopted or otherwise addressed, outdoor shooting ranges will be reviewed in accordance with the standards for *RECREATION/AMUSEMENT OUTDOOR (Sec. 920) conducted outside building for profit, not otherwise listed & not regulated by Sec. 924* (hereinafter: *outdoor recreation*) as a principal use.

The provisions required for outdoor recreation are the most similar and more closely address the land use impacts that would result from an outdoor firing range than any other use specific provisions in our ordinance. The minimum ordinance standards for outdoor recreation require control measures to be in place ensuring that “objects” used on the site are **contained within the designated area**, measures are to be taken to minimize the creation of dust, and outdoor lighting must comply with the ordinance standard. In addition to these specific standards, all other applicable ordinance provisions, to include Section 901 which mandates compliance with the County’s noise ordinance, will apply to outdoor firing ranges.

cc: James Martin, County Manager
Rick Moorefield, County Attorney
Department Policy Manual

Excerpt from Cumberland County Zoning Ordinance

**ARTICLE IV
PERMITTED, CONDITIONAL, AND SPECIAL USES**

SECTION 402. USES BY RIGHT.

All uses of property are allowed as a use by right except where this ordinance specifies otherwise or where this ordinance specifically prohibits the use. In the event, a use of property is proposed that is not addressed by the terms of this ordinance, the minimum ordinance standards for the use addressed by this ordinance that is most closely related to the land use impacts of the proposed use shall apply. In addition, the Ordinance Administrator may initiate a text amendment addressing such proposed use, provided that the drafting and adoption of said amendment will not cause delay in the permitting of the proposed use.

(Amd. 04-18-11)