

**Members:**

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



**Alternates:**

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

*Cumberland County Board of Adjustment*

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

MINUTES  
JANUARY 20, 2011  
7:00 P.M.

**Members Present**

George Quigley, Chair  
Ed Donaldson  
Melree Hubbard Tart  
Horace Humphrey  
Carrie Tyson-Autry

**Absent Members**

Joseph Dykes (excused)

**Staff/Others Present**

Patricia Speicher  
Pier Varner  
Melodie Robinson  
Joan Fenley  
Harvey Raynor (Deputy County Attorney)

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

1. ROLL CALL

Mrs. Varner called the roll and stated a quorum was present.

2. ADJUSTMENTS TO THE AGENDA

Ms. Speicher administered the Oath of Office to Ed Donaldson.

3. APPROVAL OF THE OCTOBER 21, 2010 MINUTES

A motion was made by Mrs. Tart and seconded by Mr. Humphrey to approve the minutes as submitted. The motion passed unanimously.

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURES

There were none.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

8. PUBLIC HEARING(S)

**Opened Public Hearing**

- **P86-16-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ CONDITIONAL USE PERMIT) OF A MANUFACTURED HOME USED AS A MOTOR VEHICLE SALES OFFICE AND A NIGHT WATCHMAN QUARTER, IN A C3 HEAVY COMMERCIAL DISTRICT ON 2.28+/- ACRES, LOCATED AT 634 WEST MANCHESTER ROAD (SR 1451); DONALD MOSS (OWNER)

MRS. VARNER: Mr. Chairman, Case#P86-16-C was approved on May 22, 1986. Tonight the staff is requesting a revocation of this approved Conditional Use Permit due to a violation of the zoning ordinance; a motor vehicle wrecking yard and junk yard, a motor vehicle repair garage and a grading company and an office business are operating on subject property.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

MS. SPEICHER: Excuse me Chair, for the record, could I have you swear Mrs. Varner in for her testimony?

Chair Quigley swore in Pier Varner.

MRS. VARNER: Mr. Chair, I have a site profile in the packet. Would you like me to go over it?

CHAIR QUIGLEY: Yes, you can cover the important details.

Mrs. Varner reads the site profile.

CHAIR QUIGLEY: Please point to the encroachment.

Mrs. Varner points to the encroachment on the presentation.

CHAIR QUIGLEY: Does anyone have any questions for staff? Who brought the violations to the attention of the Board?

MRS. VARNER: Our Code Enforcement Officer, Joan Fenley is here and she can answer any questions regarding the violations.

CHAIR QUIGLEY: Does anyone have any questions for staff? Do you wish to talk to the Code Enforcement Officer relative to the violations? Is there anyone here to speak on this matter? It looks like all we've got is the Code Enforcement Officer. Would you please take the lectern and discuss what your opinion is on this.

Chair Quigley swore in Joan Fenley.

MS. FENLEY: My name is Joan Fenley and my address is 4 Briar Circle, Fayetteville, NC 28306.

CHAIR QUIGLEY: What sort of information did you determine by examining this property when you visited it?

MS. FENLEY: I originally received a complaint regarding the property. We did an inspection of the property and at the time it was determined it was not in compliance with the conditional use permit as stated. Subsequently, we received another complaint about the property. We revisited the property and determined that they had in fact, opened a junk yard in the timeframe from the first visit and noted them on the first violation and noticed them on the second violation.

CHAIR QUIGLEY: Did you bring those violations to the attention to whoever the owner was or to the occupants?

MS. FENLEY: I still have had no contact with the owner of the property. There was a gentleman there running the vehicle repair yard at the time. I spoke to him and he contacted the property owner, but I have not heard from the property owner. He subsequently moved out. There was a "for rent" sign on the property and another tenant has moved in opening a vehicle yard. They are currently storing vehicles on site in different states of dismantle and repair. The manufactured home does not have the correct underpinning that was required. On the adjoining side of the property they are running a salvage yard ...a grading yard. I was out there as of today and all violations still exist.

CHAIR QUIGLEY: You have no response from the owner or the property owner. It appears the people you are talking to are the renters of the property?

MS. FENLEY: Correct.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: Are the owners now still the owners that asked for the variance in 1986?

MS. FENLEY: Junie Moss was the one who submitted at the time and currently Junie D. Moss submitted the application for the special use condition. The current owner is Donald A. Moss and parties of interest.

MRS. VARNER: Excuse me Chair, for the record, we sent a certified letter to the owner and it was received on January 8, 2011, at 402 Harrell Street, Spring Lake, NC 28390.

CHAIR QUIGLEY: That was the address of record you had for that owner?

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: That was certified mail?

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: You got a receipt back?

MRS. VARNER: Yes. If you would like, the certified mail document is available in the file.

CHAIR QUIGLEY: I understand. You do have the evidence present?

MS. FENLEY: Yes, Betsy Hobson signed for the letter. I have a copy of the delivery notice.

CHAIR QUIGLEY: Does anyone on the Board want to see that document?

MRS. TART: They were informed by this letter that this would be brought before this Board on this particular date and time?

MRS. VARNER: Yes, the owner was notified about this meeting day.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for the Code Enforcement Officer?

CHAIR QUIGLEY: I'll accept a motion.

MR. DONALDSON: I have a question. How can they go from 1986 to 2010 with the Special Permit saying it had to be 120 feet setback when it was only 68 feet? I was just wondering how it went 24 plus years.

MR. RAYNOR: That is because nobody complained.

MRS. TART: If this permit were revoked, what are the procedures following our vote tonight? What will happen?

CHAIR QUIGLEY: The question was: What procedure will you follow to ensure that the revocation is enforced?

MS. FENLEY: We currently have two notices of violations existing and each has a penalty clause. The penalty on the first violation is a Class III misdemeanor and it is a \$500.00 a day fine with a maximum fine of \$4,000. The other fine carries the same penalty. We would move forward with enforcement of those.

CHAIR QUIGLEY: Do we need any more clarification, Mrs. Tart?

MR. RAYNOR: If they don't come into compliance then they will be brought before Environmental Court.

MS. SPEICHER: If I could also add, not for this specific case, but for every case that is typical of this. We work real hard and will continue to work hard to talk to Mr. Moss and get him in to explain to him what it would take to be able to do what he wants to do with this property. We won't just drop it and say "you are fined". We will continue trying.

MR. DONALDSON: When the code violation first came up, has anybody talked to Mr. Moss since that time? Has anybody had any contact with him other than the renter?

MS. FENLEY: We have a Deputy Sheriff that works with us and we have requested him to go out and try to attempt to deliver the letter and make contact with him [Mr. Moss] and the deputy was never able to make contact with him. However, they did sign for their letters.

MR. DONALDSON: The question is: Is the person who signed for it authorized to sign for him? Is that in fact his residence?

MS. SPEICHER: If I could be sworn in, I could help with this.

Chair Quigley swore in Patricia Speicher.

MS. SPEICHER: I spoke to Mr. Moss on several occasions. He did return my phone calls. His parents were the ones who got the conditional use approved. When they passed away, he didn't understand that was the only use that he could do without further approvals. I've explained the process to him several times; even on how to get the junk yard approved would take a rezoning for the property. We could process that, there is a lot of industrial out on Manchester Road. At that point, Jeff, in my office, explained to Mr. Moss the site plans and how to draw them. Mr. Moss has never returned our calls or contacted us since.

MR. DONALDSON: Okay, thanks.

CHAIR QUIGLEY: Did we get a motion on the floor? Do we have a motion?

MR. DONALDSON: I motion.

CHAIR QUIGLEY: It's been moved that we revoke the Special Use Permit previously issued on May 22, 1986. Do I have a second?

MS. AUTRY: Seconded.

CHAIR QUIGLEY: Is there any additional discussion on this issue? All in favor of this motion say aye.

The motion passed unanimously. There was no opposition.

IN FAVOR		OPPOSED
<u>QUIGLEY:</u>	YES	None
<u>DONALDSON:</u>	YES	
<u>TART:</u>	YES	
<u>HUMPHREY:</u>	YES	
<u>AUTRY:</u>	YES	

- **P11-01-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1403 SITE PLAN REVIEW, SUBSECTION I., WHICH REQUIRES EXTENSION AND CONNECTION TO PUBLIC SEWER; IN A C1(P) PLANNED LOCAL BUSINESS AND C(P) PLANNED COMMERCIAL DISTRICTS ON 1.14+/- ACRES, LOCATED AT 4958 CUMBERLAND ROAD (SR 1141); SUBMITTED BY TIMOTHY HOLZER (OWNER) AND GEORGE BIJU.

MRS. VARNER: Mr. Chairman, this variance request came up from one of the conditions of the preliminary site plan approval for a convenience store, Case# 10-132, approved on December 6, 2010. If this variance is approved then the applicant will not have to comply with the condition, which is #4.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

MR. DONALDSON: All the blue lines are sewer lines?

MRS. VARNER: The blue lines are water and the beige color are sewer lines.

MR. DONALDSON: Oh, I see, they are running side by side.

MRS. VARNER: Yes sir.

Mrs. Varner continues presenting the zoning, land use and photos of the site.

MRS. VARNER: I'm available for questions, Mr. Chairman.

CHAIR QUIGLEY: Does anyone have any questions for staff?

MR. DONALDSON: As I understand, they are asking for the sewer line to be extended to 22 buildings that exist out there.

MRS. VARNER: No sir.

MR. DONALDSON: I was reading the PWC letter dated December 13, 2010. It says there are several ways this could be resolved. Show me on the map which one they are asking for.

Mrs. Varner points to the on screen presentation.

MR. DONALDSON: Do they want that short extension right there? [referring to what Mrs. Varner pointed out]

MS. SPEICHER: We can't testify to that, Mr. Donaldson. The applicant can better testify to that, but we also have a representative from the PWC here this evening.

MR. DONALDSON: Okay, thank you.

Chair Quigley swore in David Averette.

MR. AVERETTE: My name is David Averette and I'm with Averette Engineering Company, 712 E Lake Ridge Road in Raeford, North Carolina.

CHAIR QUIGLEY: What is your relationship to this?

MR. AVERETTE: I'm the engineer on the project. I'll probably be speaking for everybody, but they will be here in case there are any questions asked they need to answer directly, but my presentation should be for everybody. As I said before, my name is David Averette and I'm with Averette Engineering Company. Just to give you a little background; I've served on the Board of Adjustment for the City of Fayetteville and the Zoning Commission, I've served on the Planning Commission, I've worked for the Public Works Commission, I've worked for Fayetteville Engineering Department. I've got a consulting business that has been in practice for over forty years. I know that these procedures have to be done and I can assure you that everything that I say will be factual. To make sure you understand; our request is that we are allowed to put in a septic tank and drain field in lieu of extending the sewer. The reason for it is because the ordinance calls for it to be along the right-of-way or on an adjacent lot. The sewer manhole was right there [pointing to the on screen presentation]. The property has been subdivided. We stated in our application that the distance from the property to there was 472 feet. It's actually more like 560 feet to the site plan that we're asking for. There is also a lot of problems construction wise in doing it that way. The sewer has got to be run; all of this is in your package that we submitted to you. The sewer has got to be run along the right-of-way between the back of the curb and the right-of-way which is a lot of utilities including one of PWC's water mains. We would have to get closer than ten feet to the waterline with our sewer line, which PWC doesn't like, but that is the way they want us to go if we have to go. Of course, my contention is it is over 300 feet, so no variance is really required. If you think I've got to prove other reasons why a variance is needed, we'll go into that in detail. What I've have done is gone down the eight items you have assigned as facts. In the second item, it says: "Granting the variance requested will not confer upon the applicant any special privileges". The other residents are greater than 300 feet; I don't think they should be required to do it as we should not be required to do it. The literal interpretation says you must connect to a sewer system if a property is 300 feet or less from a sanitary sewer system. Ours is greater than that. The second thing that we want in there is really more feasible for this particular area than spending that much money on infrastructure, effort and time and getting out in that road. A sanitary sewer, septic tank system with drain fields is better for that particular area. As far as the environment is concerned, look at all of the stuff we will have to tear up on Cumberland Road or any other route that we would have to go through. We've got to tear up asphalt and different areas that would cost a tremendous amount of money. We've only got two restrooms in this store, that's basically it and a septic tank will serve well. Of course we'll have to get a permit from the Health Department to do that. The other thing I want to point out is if it's so much that we should have a sanitary sewer system out on Cumberland Road; PWC or DOT, whoever did the improvements on Cumberland Road; PWC elected to improve the water system out there so why didn't they improve and put sanitary sewer systems in at the same time before construction? That would have been a lot cheaper. No disadvantage will be changed by our request. We're asking that you grant us the variance which I don't think is really a variance, but letting us do what we need to do and that is to put in a septic tank and drain field in lieu of extending something over 300 feet. That is our request and all the rest of them are here to answer any question that you may have or if I can answer any more questions, I'd be glad to do it. All we're asking for is that we don't have to put this in because it's over 300 feet from the sewer on the right-of-way.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: If you don't need us to do it, why did you ask?

MR. AVERETTE: Because they said I did. We've got the condition sheet and the condition sheet said I have to put in the sanitary sewer and the water.

MR. DONALDSON: Oh, you are talking about when you got permission.....

MR. AVERETTE: When we got the site plan approved. If you look on the condition sheet, one of the conditions is that we've got to tie on the water and sewer. I pointed out to them it was over 300 feet and they said you've still got to do it. So if we do need a variance, grant it to us. I hope I've made myself clear.

MR. DONALDSON: You did, I understand now, I'm just wondering....I looked at this and read through it.... if it says over 300 feet, why did you all put a condition on it? Do you see what I'm saying? You've got a conflict between what the rules say and you all have put a condition on this in conflict with that.

MS. SPEICHER: Yes sir, we did, but the Ordinance says if the public sewer exists within 300 feet of the property line, it doesn't say it has to be.....

MR. DONALDSON: So, you all are going off that 130 foot gap?

MS. SPEICHER: Yes sir.

MR. DONALDSON: But, it's not feasible to build from that point, is it, according to PWC?

MS. SPEICHER: Well, technically it's about 165-170 feet going between the buildings.

MR. DONALDSON: So in other words, they made a right turn, then a left turn; a 90° turn to get over there?

MS. SPEICHER: Yes sir.

MR. AVERETTE: Let me respond. What happened when they said we had to have sewer. Quite honestly, I've always advised my clients, if sewers are available and it's not too much more expensive than putting in a septic tank; if it's feasible, let's do it. We went and did a feasibility study and figured out how many different ways we could come in with the sewer and that's been pointed out on the map and PWC took our information that we gave them and they wrote the letter. There are other ways you can go through there. To go through where it shows 130 feet to the building.

MR. DONALDSON: She [Ms. Speicher] just said it's actually about 165 if you make some 90° turns.

MR. AVERETTE: But you can't go through the building, you've got to go around the building; and the distance to get to the property, turns out to be about 175 feet. But, you have to tear out



asphalt within the apartment complex, tear out street lights, curb and gutter. PWC doesn't want us to go that way. They want us to go down the road; that is what they said in their letter. That was their preferred way to go. A couple of other routes we considered, PWC and we all agreed that were not feasible at all, was to go through between the apartments is going to be very costly. PWC has a rule that when you extend sewer to your property, you've got to extend it all the way across to the other side. So, if we came down from the road in there, we're not talking about a 560 foot extension, we're talking about close to 700 foot extension that we would have to put in at approximately \$100.00 a foot. That is about \$70,000. To go the other way and go across the property is about \$80,000 to do what PWC would want us to do which is to run across that piece of property. It wouldn't be deep enough going through the apartments. I could possibly serve that one little corner lot there; it would be 5 ½ feet deep, I've run the numbers on it [pointing to the presentation]. If I brought the sewer around there, carried it over and carried it over to this lot here. I'd be able to sewer that one lot I'd be about 4 ½ feet deep. Now, I doubt if you'd be able to get over to these lots right here [pointing to the presentation]. So, that is not the way to go, even if I go that way and put in the sewer, I shouldn't have to go that way. But, you don't have the authority to tell PWC that I don't have to follow their policy. We need to get out of this thing of trying to tie everything into the sewer plants all over the county. We need to put in a decentralized sewer systems and of course the septic tank and drain field is one way to do it. We don't have to have a sewer system that works forever. A centralized sewer system doesn't work forever either.

MR. DONALDSON: How much did you say the cost was going to be if they ran it around the apartment building to your client?

MR. AVERETTE: Well, if I do it like PWC wants to see it, up the road, it is about 700 feet and it would pretty deep.

MR. DONALDSON: One hundred dollars a foot, is that what you are saying it would cost you?

MR. AVERETTE: Yes, that would be \$70,000. PWC uses the figures that it would be \$100 to \$200 so that is \$140,000. If I go the other way, I've got the drawings showing that if I go in through the apartments, showing the depth, I believe it is about \$200 a foot and about \$80,000 to do that. Let me point out one other thing on these condition sheets. They put conditions on us not only for the sewer but for the sidewalk. We've got to put sidewalks in there to be in compliance with the Hope Mills Ordinance. We've got to do it or get a waiver from Hope Mills, which they will never do. If they wanted sidewalks on that road, why didn't they do it when the improvements were made? They would rather some developer pay for it, especially somebody that is going to be making money in a commercial area. If it were a homeowner doing that, they would drop the whole front division and not do it at all. They couldn't afford it. Not only that, when DOT did divide in there, they put on the right hand side [asked to see the site drawing] put the driveway in. When we go to get the permit for the convenience store, we have to get a driveway permit, we were going to have one here and make another one over here [pointing to the presentation]. DOT said we could not do that; we would have to put it in the middle to serve this whole area. We have to tear this out. This one, if we could use it, doesn't have turning lanes. If they make us move it over here, we'd have to go back and put in turning lanes. Even if we use that one, DOT was going to make us do turning lanes. My point is, if people wanted sidewalks when that road was improved, why didn't they put them in? If people wanted turning lanes on that project, why didn't they put them in when Cumberland Road was done? If PWC wants sewer there, up that road, why didn't they put it in when they put in the

water system? That was not done so we are requesting that we don't have to put in a sewer line there that we can just use our septic tanks and drain fields that as an engineer, I can state, it will work and be adequate.

MR. DONALDSON: Have you all perked the land to see if it will perk?

MR. AVERETTE: No, but there were septic tanks on there before. Now, if we can't get it to perk, we'll be at the mercy of PWC and we'll have to go wherever they tell us and put as much money in there as we want to. If you don't give me a septic tank permit, give me a variance or say I don't need a variance; then I am at PWC's mercy and they can tell me to go anywhere I want to get that sewer because I won't have any alternatives.

MRS. TART: Mr. Averette, will there be any kind of food service in this store?

MR. AVERETTE: I can't answer that. He can answer that. I don't think so. He has told me on several occasions that all he's got is two bathrooms. So, my request again is either say we don't need a variance or if we do need a variance in your opinion, then grant us a variance that would allow us to put a septic tank and drain field in lieu of extending the sewer.

CHAIR QUIGLEY: I understand. Does anyone have any question?

MR. DONALDSON: If we don't grant you the variance, you are at the mercy of PWC and they get to choose which way the pipe runs?

MR. AVERETTE: No, they won't give me the sewer unless I do it exactly like they want to.

MR. DONALDSON: They will choose the route?

MR. AVERETTE: They will choose the route and tell me how deep to put it in so I can serve that one lot below there. That's all I can do if I go through the apartment. Now I can go through and put the sewer line that is in the application. We'd be 10-15 feet deep in that line going down Cumberland Road. If we've got to do it, the most economical way would be to go through the apartments. I don't get to make that call if I have to do it. For this, all we need is somewhere to dispose of the affluence and two bathrooms.

CHAIR QUIGLEY: Any other question? Is there someone here from PWC?

Chair Quigley swore in Chris Rainey.

MR. RAINEY: My name is Chris Rainey, 1708 Johnsey Street, Eastover, North Carolina. I work for PWC.

CHAIR QUIGLEY: Can you give us any clarification on the issues that have been posed?

MR. RAINEY: We have met with the engineer for the developer and the developer several times to discuss this location. As the letter outlines, there were three options looked at early on as far as sewerage the site. One of those was pretty much ruled out from the start due to existing apartments, retaining walls and some steep slopes. The other option which was discussed coming between the apartment buildings, the shortest route, that one is obviously an option; not

PWC's preferred option and the option that PWC prefers would be to come down the right-of-way of Cumberland Road from the entrance road into the apartment site, which will be the one delineated to be roughly 500 feet away. [pointing to the presentation] Coming from this location and coming to the site is PWC's preferred route; although the shorter route; that was roughly 170 feet between the apartment building is an option as well, it's just not PWC's preferred route.

CHAIR QUIGLEY: So essentially what you've just said is your preferred route exceeds what the requirement is in the code?

MR. RAINEY: That is correct. As Mr. Averette was saying earlier the PWC extension policy calls for the sewer to be extended to the far side of the developed property if it can serve others, which in this case, there are other lots which could be served. So the roughly 700-800 foot extension from this location [pointing to the presentation] coming across the front of their proposed site would be PWC's preferred route.

CHAIR QUIGLEY: Essentially, PWC would prefer that a private developer fund that installation, is that correct?

MR. RAINEY: Right, the PWC development extension policies call for the developer to pay for the cost of said extension.

CHAIR QUIGLEY: That would exceed the 590 feet that is indicated?

MR. DONALDSON: The property is 225 across the front, I believe?

MRS. VARNER: The frontage? It is 278 feet.

MR. DONALDSON: So that would be 778 feet across if it has to go to the other property line.

MR. RAINEY: If I may, the route coming from between the buildings is not undoable, there are obviously some obstacles you would have to contend with there and the parking lot existing services for the folks in the apartments and being able to traverse between the buildings and something that would be constructed. Also, that we could maintain in the future, so there are obstacles with going that route, but it is a doable option.

CHAIR QUIGLEY: Is there anyone here from that apartment complex?

MR. DONALDSON: If we don't grant the variance, which route is PWC going to insist on, the one along the road?

MR. RAINEY: That is obviously the preferred route, but .....

MR. DONALDSON: He won't have any choice in the matter, you all would dictate to him, am I right?

MR. RAINEY: Well, I would not say we would dictate to him.

MR. DONALDSON: If you are going to be the one to make the decision, it would be the one that PWC wants, right?

MR. RAINEY: It would be a collaborative effort to determine which route we would go. We would have to see a lot more information, detailed design before we could really make that call.

MR. DONALDSON: Looking at the upper right where the sewer line ends [pointing to the presentation] is there a main sewer line that comes all the way down Cumberland Road?

MR. RAINEY: Are you talking about right there?

MR. DONALDSON: No, go further; move up Cumberland Road to your right. There is a sewer line indicated on what I'm looking at. Is that a main sewer route that comes down from Cumberland Road?

MR. RAINEY: There is another main and it is roughly the same distance, 700 feet, somewhere in that neighborhood. That was a fourth option that the grade really won't allow it. It will just barely get there, so the other option we looked at early on pretty much ruled that one out.

MR. DONALDSON: So, there is actually about a 1300 or 1400 foot gap between that sewer line up there and the sewer line down here. This gentleman here would have to pick up about half of it, is that what you are telling me?

MR. RAINEY: If he extends either one of the routes, coming from either direction, he would have to go half way to tie them together.

MR. DONALDSON: Okay, thank you.

MRS. TART: I have a question about the adjoining property owners. If he goes down Cumberland Road, these people who do not now have access to public sewer, suppose they would have failing septic tanks; then they would tie into that sewer line in the future? Are they just going to benefit from his investment or what would happen at that point?

MR. RAINEY: At such time that the line is installed, if they wanted to either install a tap if he didn't install taps for them as an agreement with them as he passed them, they would just pay the proper fees in order to tie into it.

MRS. TART: So they would benefit from the cost of the line?

MR. RAINEY: Right.

MR. DONALDSON: How much is the per foot cost?

MR. RAINEY: On my estimate, I used \$200 a foot to include engineering and easements.

MR. DONALDSON: So we're talking 768 feet, roughly \$150,000, right?

MR. RAINEY: One thing to add with the folks who don't have sewer service currently. If a developer extends a line past those folk's properties, the developer does receive credits for making sewer available to those folks if they don't currently have availability of sewer.

MRS. TART: What kind of credit would that be?

MR. RAINEY: It is a per foot basis and it can be applied to the fees the developer would owe to PWC for facility impact.

MRS. TART: I don't know if you would have this information or if it would be something for Environmental Health. Are there problems with any of the septic tanks now on the properties facing Cumberland Road?

MR. RAINEY: I'm not aware, I don't know.

CHAIR QUIGLEY: Thank you.

Chair Quigley swore in Tim Evans.

MR. EVANS: My name is Tim Evans, I live at 2256 Cypress Lakes Road and I am the broker who represents the buyer and the seller. There are a couple of things I would like to stipulate that I don't think has been addressed. First of all, I have met with Little and Young, the property managers of Cumberland Towers on three different occasions because I felt like at one time we were probably going to have to go between the apartments as Public Works had wanted and naturally they frowned upon it from the standpoint of the inconvenience to the people that live in Cumberland Towers by having to rope off the parking area and things of this nature. The second thing is being familiar with Cumberland Road and being a broker; a lot of those lots left on Cumberland Road that was a mill village. What I see is that entire area in the future going commercial. My client here, which was a commercial paint business; he initially lost his building in the right-of-way and I met with Gary Burton in DOT. When the State settled with him, this driveway was part of the settlement knowing this property was already zoned commercial. So when I approached Gary, who I know personally, I said "Gary, we do need access for the convenience store, clarify the other driveway". In a nice way, he told me there was a mistake made by DOT and that we really couldn't use that driveway for the rest of the property because the State couldn't determine the traffic flow that would be coming in and out of that driveway. So in essence, the driveway was useless to the owner of the property. So we are really not declaring any hardship here, I think my clients would really want him to tie in the sewer. I've been to meetings, I've been to John Allen's office three different times; I hear everything that everybody is saying and I understand PWC has to protect their best interest, but what they are saying in a nice way is that it is going to be a hard transaction and anyway you decide to go there are obstacles. I think with the people living in the apartments there, if you tear up the sidewalks, if you tear up the place where they park and rope it off, I don't know how long this would take, but I think it would be a major inconvenience to them. Thank you.

CHAIR QUIGLEY: Thank you.

MS. SPEICHER: Mr. Chair, we have something that may help in Mrs. Tart with her question regarding the Health Department; it's the Health Department's comment as part of our normal review process and it is part of the record, if you would like to see it.

CHAIR QUIGLEY: Would you read that into the record.

MS. SPEICHER: It's from Daniel Ortiz, Environmental Health Supervisor, Cumberland County Health Department in his email he sent to Pier on January 20, 2011. Daniel stated this office recommends the extension of public sewer and water.

CHAIR QUIGLEY: Would you pass that up here for us to see, please. Also, let Mr. Averette take a look.

MS. SPEICHER: If I could help, the bottom portion of the email is where Pier sends out the distribution to all the agencies and other departments requesting their comments concerning specific cases. She attaches the maps and the site plans along with it and sends it out by email. Most respond back by email.

CHAIR QUIGLEY: Okay.

MR. EVANS: Mr. Chair, we couldn't hear what it was that Patti was saying.

CHAIR QUIGLEY: Essentially what the Environmental Health supervisor provided was that their office recommends the extension of the public sewer and water.

MR. EVANS: Well, don't you think that is a natural response from them? Don't you think they would side with the County?

MS. SPEICHER: I don't think staff could answer that, the Board would have the option to defer the meeting and we could certainly make sure we do everything we can to make sure Mr. Ortiz is here. We can't promise that he will be here, but we could make sure of that.

CHAIR QUIGLEY: We don't have anyone here obviously from the Health Department. When they recommend the extension, what is their intent in that statement?

MS. SPEICHER: Generally, they look and see the proximity of the existing lines, proximity to the proposed development and almost always if it's within with whatever he has determined is within a reasonable distance, it will say that. All other times and other parts of the County, it typically always says "approval of septic is required".

CHAIR QUIGLEY: Okay, thank you.

MR. AVERETTE: Can I respond to a couple of things that PWC said in that letter? You noticed he said the water and sewer will be extended. That indicates to me that he doesn't know what the situation is or how far the sewer is. The water's there, there is no water extension. He doesn't know how far the sewer is when he makes that statement and if I was sitting there at the Health Department and I've been on the Board of Health, and I've work with them a whole lot of times; if somebody asked me do you want to put in a septic tank and drain field or do you want to extend the sewer? I'd say extend the sewer? PWC will take care of that. Some of the things that Chris said about this being their preferred route; their preferred route is way over 300 feet. So, if we've got to go that route, you should allow the use of the septic tank and drain field. If you don't allow those, then we've got to put in one that is way over that in order to get sewer because we can't put in the septic tank. You are putting us in a real tight squeeze. They

won't even say they will accept it the other way and they said that in the letter that they did not want that. The other thing is if we extend that sewer all the way up to the piece of property, he said we would get some credits, I'm not sure what those credits would amount to, but when those people tie on to that sewer line that we put in up there, we don't get a dime of it back, it goes all into PWC's pocket. I don't know what they call it now, but when I was down there, they charged tap in fees and lateral charges and connection fees and all of these different types of things. Those things mount up to a whole lot of money and PWC puts that directly back into their pocket.

CHAIR QUIGLEY: Thank you. Is there anyone else that wishes to introduce some new information relative to this? Are there any questions?

MR. HUMPHREY: If the variance is not granted, then it will automatically fall to PWC? Is that right? It's cut and dry; either the variance goes or it goes to PWC.

CHAIR QUIGLEY: Essentially, that is correct.

MR. DONALDSON: The site conditions where they wanted them to hook up to that and they've asked for a variance from the site approval, is that to the point?

CHAIR QUIGLEY: Yes.

MR. DONALDSON: So, if we don't grant the variance, they've got to comply with the site approval plan which means they've got to go to PWC, which means that PWC is going to choose the route.

CHAIR QUIGLEY: Right.

MRS. TART: Basically, what we are considering is strictly financial consideration.

MR. DONALDSON: Among other things.

CHAIR QUIGLEY: I think also, there is the question about how the code is written and what the implication is of this particular action is relative to the 300 feet written into the code.

MR. EVANS: Mr. Chair, can I say one thing?

CHAIR QUIGLEY: Sir, the hearing is closed.

MR. DONALDSON: I agree that the 300 or 175 feet is, but PWC and everybody says that is not really feasible. If you drew a straight line, yes it is within 300 feet, that is the technical compliance with the regulation.

MR. RAYNOR: You will have to make a factual determination as to whether or not the testimony you heard complies with the statute and if you do find that it does, whether or not you can grant a variance from that statute. There is an issue here.....

MR. DONALDSON: Well, as a rule, I'm always in favor of sewers over septic tanks, given this day and age, but at some point in time it becomes an unreasonable financial burden on people to

comply with. My opinion is whatever that short distance is, that straight line distance which runs through a building, though technically within the requirement of the statute, is not feasible. It's just not sustainable to me. I'm for granting the variance as opposed to not granting the variance and making him pay to fill in half that gap that PWC wants filled in on Cumberland Road.

MRS. TART: I have a question for staff. Is there any way it could be written into the conditions that if we approve a septic tank, that there could not be food service in that convenience store, it could only be for the two restrooms?

MS. SPEICHER: Yes.

CHAIR QUIGLEY: If we grant the variance, you want that condition specified?

MRS. TART: Yes.

MR. DONALDSON: Do we actually have to make the findings of fact now on the record? Why can't we do them in writing and then submit them.

MS. SPEICHER: All debate has to be at the public forum.

MR. DONALDSON: I'm not talking about the debate; I'm talking about the findings. It's sort of like, if I rule for this person here and I will enter a written order backing that up and get it submitted.

CHAIR QUIGLEY: They write it up based on the fact findings.

MR. DONALDSON: Okay, so we have to do it now instead of some subsequent time.

CHAIR QUIGLEY: Yes.

MR. RAYNOR: You have to find the findings, they do the writing up.

MR. DONALDSON: I understand, but I was just going on the basis of when I was a judge. A lot of times I would enter the ruling and say I would have an order in three or four days with the findings.

CHAIR QUIGLEY: If you can, determine as you look at the case facts which way it goes.

MR. DONALDSON: I understand, but you want to fine tune them sometimes.

MR. RAYNOR: You can fine tune them in terms of how we do? Generally, we have got to have the facts done here.

CHAIR QUIGLEY: I think some of the facts, as already stated, is the code states 300 feet and essentially an interpretation could be that if we don't grant the variance, then PWC might order them to follow this process which may be 700 feet for them to be responsible for. So that would exceed what the code says.



MR. DONALDSON: I would only disagree with the one point. I think it is a foregone conclusion that PWC is going to order them to go up the road. They are not going to go through that apartment complex. One for probably cost, and second it doesn't really tie in to those lots on the front side that are adjoining this particular piece of property.

CHAIR QUIGLEY: It wouldn't have long range impact.

MR. DONALDSON: Plus, I don't think it is within what they would call their feasibilities for expanding the line. At some point in time, if we grant the variance, that line is going to be there and he is going to be required to hook in.

MS. SPEICHER: The Board could consider as conditions that, at the point in time that public sewer is there, if the septic fails than connection is required. You could add that as a condition.

MR. DONALDSON: That will be less of a burden on him because the costs will not be nearly as much on the assessment.

MRS. TART: Well, isn't that automatic with the Environment Health if you have a failing system and public sewer is available, you have to tie in?

MS. SPEICHER: I cannot state it is automatic, I have heard people make that statement, but I don't know that to be a fact.

CHAIR QUIGLEY: Let's make a motion.

MR. DONALDSON: I make a motion to grant the variance.

MS. AUTRY: I second the motion.

CHAIR QUIGLEY: In regard to Case# P11-01-C, findings reveal .....

MR. DONALDSON: I have a question. Do you have to find specifics under each one or can you find that particular item does not apply to this particular case?

MR. RAYNOR: The statute says you must find all the following conditions exist on the individual case. That's what the ordinance says and it lists those eight terms and also the case law says it.

MRS. TART: I have a problem with #6.

MR. RAYNOR: The fact I think you are finding there is because of its practical distance from the existing sewer?

MR. DONALDSON: Yes, that's what I was missing.

MRS. TART: How does the practicality of the ordinance play into this Mr. Raynor?

MR. RAYNOR: I think Mrs. Tart has a problem with #6 and we need to address that.

MRS. TART: If it doesn't meet one condition, we can't approve it.

MS. SPEICHER: The agent for the applicant has offered his handwritten form if the Board would like to see it. [Exhibit I]

CHAIR QUIGLEY: Sure.

MR. DONALDSON: Mrs. Tart, I think #6 can be handled simply because the fact is, this is the minimum variance that will make possible the legal use of the land. If we don't grant the variance, he can't comply with the condition the Board has put on him to put sewer in to hook up to something that is outside of what the regulation says. As they have stated, they have chosen the closest point which is not even a feasible point based on what PWC says because they'd have to run through the apartment complex. So, if we don't grant it he won't have any legal use to his property, short of stating he will have to pay the \$150,000 + to PWC.

MRS. TART: My question is can we just consider financial consideration only?

MR. RAYNOR: In that sense, you can't just consider financial just based on finances, but I think what you said correct. If there is a question here, it is whether or not it comes under the ordinance.

MRS. TART: Whether the variance is even needed?

MR. RAYNOR: Right.

MR. DONALDSON: Whether it comes under the ordinance about the 300 feet?

MR. RAYNOR: Right.

MR. DONALDSON: If you look at it from a purely technical point of view, it does come under the ordinance because it is 130 feet, but I don't think that is the spirit of what was intended by the ordinance because it is not feasible. If you do the literal interpretation, then he is not entitled to the variance. If you look at the actual interpretation of what is going to happen, I think he is entitled to the variance based on the fact that even though it's within the 300 feet, which is not feasible. With no disrespect to the Board, it is not reasonable to expect someone, even though it is within the 300 feet, to go through a building or through an apartment complex.

MS. SPEICHER: If I could offer this to help the Board. Regardless of the use that was proposed on that site, whether it was a home, a convenience store, a produce stand, or any use, that same condition would be placed upon that property.

MR. DONALDSON: Because they interpreted it within 300 feet and it technically is within 300 feet. So, if you said it was going to be a house, you just added \$150,000 to the cost of the house.

MS. SPEICHER: I offered that thinking it may help you with #6. To help you with #2, two different phrases that I heard Mr. Donaldson say that are kind of put together is "the preferred

PWC route exceeds the ordinance standards” and then if we add the word “and” and then put “no long range impact for the public good” which is the intent of the ordinance. That would solve #2 and #3 if the Board pleases.

CHAIR QUIGLEY: That fits.

MR. DONALDSON: I have a question? Are we putting the cart before the horse before we decide if he’s entitled to it, how we are going to vote on it? We can vote on it and decide what the findings are going to be based on that. If it didn’t pass, then we’d have to go back and find different findings. Do you see what I am saying? I’m just saying if we go through this process and all of a sudden we vote and it doesn’t pass; we’ve got to go back again and do the order over to say it doesn’t pass, right?

MR. RAYNOR: You only have to get to one, if you are going to deny it.

MR. DONALDSON: I know we are all talking about all the reasons, but do we have consensus on each one of these reasons that is valid for the variance.

CHAIR QUIGLEY: Does any Board member see any one of the conditions that would warrant disapproving the variance?

MR. RAYNOR: Mrs. Tart, are you okay with #6?

MRS. TART: If you make it financially impossible, then they can’t make legal use of the land and it is not reasonable to expect them to go through existing apartment complexes.

MR. RAYNOR: It’s the facts that are not before you that I think are significant on the ideal of this thing going this shorter route. There has not been any testimony that there are any easements. Just because you can take a piece of paper and draw a line and get from point A to point B. If you are going across somebody else’s property; what you draw on that paper is all you can do.

MR. DONALDSON: Mr. Averette, do you know if there is an easement from the apartment? I’m sure there is probably one along the road.

MR. RAYNOR: We’ve closed the hearing. But, what I’m saying to you is the evidence that is not before you is something that you can consider as well in coming to a reason with this shorter route. There has been no evidence presented....

CHAIR QUIGLEY: No evidence that there are no problems with the shortest route.

MR. RAYNOR: We’re trying to make some kind of engineering decision about it being feasible and the preferred method, but there is no evidence that this is legally doable. There was testimony that along the right-a-way on the highway, so there is some testimony that there is a right-a-way there.

MR. DONALDSON: Mr. Averette testified that they would have to be within ten feet along that easement.

MR. RAYNOR: I would just look at this with the idea of that 750+ price being the alternate.

Mr. Donaldson made a motion to approve the variance.

Ms. Autry seconded the motion.

CHAIR QUIGLEY: I don't see any dissenting opinion? The motion is that we grant the variance.

1. It is the Board's **CONCLUSION** that, there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. This finding is based on the following **CONDITIONS**:

**The location of the existing lines in relation to the proposed development and based on the shape of the subject property, the distance for sewer line extension is much greater than the 300 feet as required by the ordinances;**

2. It is the Board's **CONCLUSION** that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located. This finding is based on the following **CONDITIONS**:

**The preferred PWC route exceeds the ordinance standards and extension from the nearest existing line would serve only the subject property with no long range impact for the public good.**

3. It is the Board's **CONCLUSION** that the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. This finding is based on the following **CONDITIONS**:

**Other property owners are not required to connect when one development is proposed that exceeds 300 feet in distance from the existing public sewer line;**

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

**Restatement of and special emphasis placed on Condition No. 3 above;**

5. It is the Board's **CONCLUSION** that the special circumstances are not the result of the actions of the applicant. This finding is based on all of the **CONDITIONS** listed above as well as the following:

**During the recent road widening and utility relocation, public sewer lines were extended in this area at tax payer expense a distance of approximately 560 feet to the northeast of the subject**

**property and 500 feet to the southwest of the subject property, leaving an unexplainable gap in the public sewer line of approximately 1,200 feet;**

6. It is the Board's **CONCLUSION** that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This finding is based on the following **CONDITIONS**:

**Regardless whether the variance is granted for the current proposed use as a convenience store, or any other use to include residential use of the subject property, the requirement for the public sewer extension and connection remains the same;**

7. It is the Board's **CONCLUSION** that the variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. This finding is based on the following **CONDITIONS**:

**This variance request is not related to the use of the subject property, building or structure, and will not change any district boundaries; and**

8. It is the Board's **CONCLUSION** that the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of this requested variance. This finding is based on the following **CONDITIONS**:

**The use of neighboring property, nonconforming or not, had no bearing on the board's decision for this case.**

CHAIR QUIGLEY: What we want to discuss now is, are there any special conditions that we want to introduce, I think I heard there should be a condition that they will not have food preparation as a function of the convenience when it is established, is that your condition?

MRS. TART: I don't want to include that because if there were problems, the Health Department would take care of that.

CHAIR QUIGLEY: Thank you. That is not included. What other special conditions did we have that we wanted to introduce, other than the fact they have to comply with whatever regulations they need in order to install a septic system, is that right Ms. Speicher?

MS. SPEICHER: Yes, if the Board approves the variance, then I will modify their conditional approval to reflect that. They have to get Health Department permits.

CHAIR QUIGLEY: Right now I've got a motion that has been properly seconded to grant the variance. Is there any other discussion? All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR		OPPOSED
QUIGLEY:	YES	None
DONALDSON:	YES	
TART:	YES	
HUMPHREY:	YES	
AUTRY:	YES	

- P11-02-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 150 FOOT TOWER IN AN R10 RESIDENTIAL DISTRICT ON 15.26+/- ACRES, LOCATED AT 5870 COLUMBINE ROAD (SR 3065); SUBMITTED BY DRL ENTREPRISES, INC., (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.**

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: Mrs. Varner, please put the map that shows the vegetation. It appears that this site that they are going to develop is in that wooded area.

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: Okay, I'll discuss that with the testimony. Thank you. Does anybody have question for staff?

MR. DONALDSON: I need to disclose that I drove by that piece of property.

Mrs. Varner continued with presenting the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for Mrs. Varner or staff?

Chair Quigley swore in Tom Johnson.

MR. JOHNSON: My name is Tom Johnson of the law firm of Nexsen/Pruet, 4141 Park Lake Avenue, Suite 200, Raleigh, NC 27612. I'll try to keep this short and certainly respond to any question. I've been before you before with another tower recently. I know you have got a new member now, so I will briefly go over my presentation. As was stated by staff, we meet the requirements of the ordinance and I ask that the application and the documentation that we previously submitted be admitted into evidence in support of our Special Use Permit. We submitted the required documentation and we meet the standards. We have no objections that have been placed on the site by staff. We are in agreement with those and agree with those completely. If you could, Mrs. Varner, go to the maps. This is the wooded area [pointing to the presentation] where we are putting it. It will be surrounded by woods in the area. We are putting the tower in this location and our goal is to have the magenta or the pink color here which provide good building coverage in this area. As you can see, we have very little coverage in the area we are trying to cover. This is where the tower will fill in, so we get the magenta color as opposed to what you see here which eventually at some point will probably have to be filled in, but right now this is what we're targeting right here [pointing to the presentation] to match up with these existing sites we have in the area.

MR. DONALDSON: What's the distance between those sites and the one proposed?

MR. JOHNSON: Approximately two miles. All of that changes with usage. Everybody doesn't want to just talk on their phone anymore. They want a Blackberry or an I Phone or something like that. My daughter and son don't talk to me, they text me. That takes more usage of the system. AT&T will be the first carrier on this tower. AT&T's focus is to improve their coverage.

MR. DONALDSON: I just wanted to know. It used to be that you took notice every time you passed by one, now there are so many of them, you don't notice them anymore.

MR. JOHNSON: That's true. It is infrastructure, like water and sewer and like you were just talking about on that variance and that's what we're doing is to provide that service for the usage of the customers and to provide access to public safety when somebody needs it and for the emergency use of wireless. As you can see from the map, there is a demonstrated need and we meet the ordinance conditions and requirements. If there are any questions that you have, I do have with me a Radio Frequency Engineer from AT&T. I have Mr. Herring, who prepared the appraisers report that was submitted, Samar Qubain is with AT&T and she assisted with the preparation of the maps that I just showed you as well as the certification that we are well within the FCC guidelines in terms of the emissions from this tower, which is the requirement of the law. I have Mr. Leach, the property owner, and he can speak as well if you have any questions for him. Aside for that, since we meet the requirements and staff agrees that we meet with the requirements of the ordinance, I would ask that you approve the Special Use Permit.

CHAIR QUIGLEY: Who is the property owner present?

MR. JOHNSON: Mr. Dan Leach. He is listed on there. It actually is a corporation in which Mr. Leach is the president.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for Mr. Johnson?

Chair Quigley swore in Mr. Leach.

MR. LEACH: My name is Daniel R. Leach, 2179 Crystal Springs Road.

CHAIR QUIGLEY: Where is that located in proximity to where the tower is going to be placed?

MR. LEACH: The tower is on the Columbine Side and my land goes... Mr. Leach points to his land on the map.

CHAIR QUIGLEY: Do you reside on that property?

MR. LEACH: Yes sir, I do.

CHAIR QUIGLEY: You don't have a problem with the citing of this tower?

MR. LEACH: No sir. We discussed it where it would be back out of the way in the tree line.

CHAIR QUIGLEY: Does anyone have questions for Mr. Leach? He is the property owner who resides on the property. Thank you.

CHAIR QUIGLEY: Does anyone have any questions on the valuation of the property? I've heard no argument, but we do have Mr. Herring, right? Would you like to tell us about the valuation of the property, Mr. Herring?

Chair Quigley swore in Mr. Herring.

MR. HERRING: My name is Graham Herring, 8052 Gray Oak Drive, Raleigh, NC. As indicated in the documentation that was submitted with the application package, I reviewed this proposed tower and site plan and looked at not only the specific area that it is to be located in, but the surrounding properties, neighborhoods and uses. This location, I would term is excellent, from the standpoint of its separation from any residential or other commercial industrial usage. Site line and visibility to the arterial service to the area and this is not dissimilar in many ways to many other existing towers that are located within Fayetteville and within Cumberland County. Not only cell towers but electric transmission towers, water towers, radio towers, television towers, microwave towers, public service towers, just all types of vertical structures and with the placement of this, this telecommunications facility built as planned, would have no detrimental or injurious effect on the property values of the surrounding neighbor or other unimproved or improved properties in the general vicinity. Finally, the nature of this location with the separation from the residential arterial located to the north of the proposed site, the unimproved area and mixed uses nearby heavily wooded area, vegetation such that the proposed development will not create any negative aesthetic affects on the scenic roadways or other unique natural features of the area. That is my conclusion.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Herring? He's been here before and seems to have a lot of credibility. There is no one here who wants to speak in opposition of this tower. Has anyone indicated any interest in doing this? We have a case where they are asking for a Special Use Permit and no one is opposing. This is rare especially with a Special Use Permit and the sighting of a tower. Obviously you've found a good location, Mr. Johnson.

CHAIR QUIGLEY: I'll accept a motion.

MR. HUMPHREY: I'll offer a motion that we approve the Special Use Permit based on there being no opposition to it and based on the testimony that we heard and if we need to go through the case facts, we can do that.

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;
2. The use meets all required conditions and specifications as outlined by the Cumberland County Code for Towers;

**The staff will set the conditions of this so they will agree to all the condition of the staff.**

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



**It will maintain, I'm not sure if a cell phone tower will enhance, but at least it will maintain it.**

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.

**I don't think we have any problem with the character use of the land. It seems to be ideally located. The application will meet all the conditions of the Planning Department.**

MR. HUMPHREY: I offer a motion that we approve the Special Use permit.

MR. DONALDSON: I second.

CHAIR QUIGLEY: Is there any discussion on it? All of the conditions have been agreed to by the person putting in the application?

MS. SPEICHER: Yes sir.

CHAIR QUIGLEY: All in favor of approving the Special Use Permit for Case# P11-02-C signify by saying aye.

The vote was unanimous. There was no opposition.

IN FAVOR		OPPOSED
QUIGLEY:	YES	None
DONALDSON:	YES	
TART:	YES	
HUMPHREY:	YES	
AUTRY:	YES	

9. REVISED RULES OF PROCEDURES

MS. SPEICHER: It's up to the Board if you want to vote on it or not.

CHAIR QUIGLEY: In August we received copies of the Rules of Procedure, updated. In my reading of them, I had no problem, they were significantly clear. Has everyone had an opportunity to look at them?

MS. SPEICHER: I did make a simple change. Notice the ones you have now are October 26<sup>th</sup>? What that is on page 3, close to the bottom, highlighted in yellow with the strikeout, instead of the four-fifths vote required for Special Use Permit, the State Statute allows a majority vote. We are also changing that terminology in the Zoning Ordinance. It would just be a majority. If we only have four members show up and the vote was 3-1 then we could still move along. That was the only change from the August version to the October version.

CHAIR QUIGLEY: Does anyone have any questions for staff? I'll accept a motion to approve the Rules of Procedure as modified in the document provided dated August 30, 2010 and modified October 26, 2010.

MRS. TART: I motion we approve.

MR. DONALDSON: I second.

All in favor of approving the Rules of Procedure signify by saying aye.

The vote was unanimous. There was no opposition.

IN FAVOR		OPPOSED
<u>QUIGLEY:</u>	YES	None
<u>DONALDSON:</u>	YES	
<u>TART:</u>	YES	
<u>HUMPHREY:</u>	YES	
<u>AUTRY:</u>	YES	

10. RECOMMENDATION FOR NOMINATION OF VACANT ALTERNATE BOARD MEMBER

MS. SPEICHER: If you would like, this is not mandatory to the Board. We thought you would like to offer a recommendation to the Commissioners

CHAIR QUIGLEY: This has no real bearing on who is going to get it. Actually it is the County Commissioners' decision, but we can recommend, is that correct?

MS. SPEICHER: That is correct. Typically, in the past the County Commissioners have gone with you.

CHAIR QUIGLEY: We do have one person who has served for a long period of time on the Board in the past, Mrs. Waddle. Is there anyone of the other candidates who have been on the Board before?

MS. SPEICHER: Not to my knowledge.

CHAIR QUIGLEY: Does anyone want to make a proposal?

MR. DONALDSON: Well, given her experience and her knowledge of the community and her position within the community, I would recommend Mrs. Waddle.

CHAIR QUIGLEY: It is the consensus of the Board that Mrs. Roberta Waddle be nominated as the alternate Board member.

11. ADOPT 2011 DEADLING/MEETING SCHEDULE

MS. SPEICHER: You also have in your handout this evening the 2011 Deadline/Meeting Schedule. Nothing is changed, our meeting dates are on Thursdays and the deadline schedule is consistent with the Planning Board's which is generally twenty-four days prior to the meeting. If we could, get a motion to make it official.

CHAIR QUIGLEY: I'll accept a motion to approve the County Board of Adjustment Deadline/Meeting Schedule that was provided.

MR. HUMPHREY: I motion to approve the County Board of Adjustment 2011 Deadline/Meeting Schedule.

MS. AUTRY: I second.

CHAIR QUIGLEY: Is there any discussion on it or request for changes? All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR		OPPOSED
<u>QUIGLEY:</u>	YES	None
<u>DONALDSON:</u>	YES	
<u>TART:</u>	YES	
<u>HUMPHREY:</u>	YES	
<u>AUTRY:</u>	YES	

12. DISCUSSION:

There were none.

13. UPDATE(S)

CASE NO. WS08-04

MS. SPEICHER: We do have an update on the Andrews Mini-Storage which the Board approved as a high density watershed. Jeff worked real diligently trying to keep him in compliance but he let his bond expire. We're at the point now that we have had to have the Sheriff in Florida serve him with the fine notice. We have scheduled in our processing for your next meeting the revocation of the high density watershed approval so the Board can revoke it. However I did send Jeff out to the site and have him approximate how much land has been covered versus how much is left undisturbed. It looked like, if we could get Mr. Andrews to return our calls, we could probably approve it as a low density, which is a staff approval, not a Board approval, for only what he has built now. He couldn't build or do anything else with the property if you revoke the high density approval without coming back and resubmitting. I've sent him a certified letter and a regular letter basically stating you can still be okay with what you have now, but you can't get anymore.

14. ADJOURNMENT

CHAIR QUIGLEY: I'll ask for a motion to adjourn.

MR. HUMPHREY: I offer a motion to adjourn.

MS. AUTRY: I second.

There being no other business, the meeting adjourned at 9:30 pm.