

**Members:**  
Vickie Mullins, Chairman  
George Lott, Vice-Chair  
George Turner  
Alfonso Ferguson Sr.  
Winton McHenry



**Alternates:**  
Robert E Davis  
Nathan Galbreath  
Stacy Michael Long  
Alberta Ortiz  
Gregory Parks

## **CUMBERLAND COUNTY BOARD OF ADJUSTMENT**

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

MINUTES  
MARCH 16, 2017  
7:00 PM

### **Members Present**

Vickie Mullins  
George Lott  
Winton McHenry  
George Turner  
Robert Davis, Alternate, Non-Voting  
Stacy Long, Alternate, Non-Voting  
Nathan Galbreath, Alternate, Non-Voting

### **Absent Members**

Alfonso Ferguson Sr.

### **Staff/Others Present**

Betty Lynd  
Hope Ward Page  
Patricia Speicher  
Aaron Barnes  
Robert Hasty, Jr. (Assistant County Attorney)  
Phyllis Jones (Assistant County Attorney)  
Rick Moorefield (County Attorney)

Chair Mullins called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse. Chair Mullins stated the procedural matters are to turn off all cell phones and other electronic devices and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded. If any board member wishes to speak or ask any questions please ask to be recognized by the Chair before speaking. Chair Mullins asked Mr. Lott to do the invocation.

#### 1. PLEDGE OF ALLEGIANCE

Recited by all

#### INVOCATION

Mr. Lott

#### 2. ROLL CALL

Mrs. Lynd called the roll and stated a quorum was present. For the record Mrs. Lynd introduced the non-voting alternate members, Mr. Long, Mr. Galbreath and Mr. Davis.

#### 3. ADJUSTMENTS TO THE AGENDA

There were none.

#### 4. APPROVAL OF THE FEBRUARY 16, 2017 MINUTES

**Mr. Turner made a motion to approve February 16, 2017 minutes. Seconded by Mr. Lott. The motion passed unanimously.**

	<b>IN FAVOR</b>	<b>OPPOSED</b>
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
TURNER	YES	

#### 5. TRAINING SESSION

CHAIR MULLINS: Okay it's just the training session.

MRS. LYND: Yes, tonight we have Assistant County Attorney, Mr. Rob Hasty here for the training session for you all.

MR. HASTY: I'm Rob Hasty for those of you that don't know me. I'm the Assistant County Attorney here in Cumberland County and I work with the Board of Adjustment as one of my assigned duties. Rick Moorefield, the County Attorney is here as well this evening. This is just a little training session about the Board of Adjustment and a reintroduction of what it does and then an overview of the procedures that you use so that you can make sure we have everything the way it's supposed to be. Don't doubt your importance first thing I'll say. I started here about four years ago and I've worked in litigation for almost fifteen years and since I've been here I've had three cases that were appealed to the Court of Appeals all from the Board of Adjustment, two of those were oral arguments. In the fifteen years in private practice I've had some appeals but only one actual oral argument in court. I did not know when I started; I would not have guessed that the Board of Adjustment would be the bulk of my litigation in going all the way up to the Court of Appeals. One case is still pending, let's hope it's resolved and we won't go to the Supreme Court, we'll see. The board here, Betty's got on the board the Board of Adjustment is authorized by the statutes here in North Carolina, you'll see there N.C.G.S.A. §160A-388 Board of Adjustment, and if you go to the next slide. That's the County Ordinance, which does create the County Board of Commissioners', they decided to have a Board of Adjustment and so that is you. Can you go back to the state statute? (Referencing N.C.G.S.A. §160A-388). Now this, the state statute is longer than this it's several pages single spaced, but I just put the basics here for you, but it tells you basically what the board does and what it is authorized to do. As seen by the state provisions under (a1) Provisions of Ordinance. – "...hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance..." so we're going to talk about those in a little bit of detail. First thing I want to talk about is your quasi-judicial procedures. We haven't had really an issue with that really per se, in how you handle that, but what that basically is, they're evidentiary hearings. You hear sworn testimony, you receive evidence and you have to make decisions based on what you've heard, we've had several of those here before the board. Those are the cases that have ultimately been appealed. You should, when you hear these cases you're operating kind of like the judge and a jury. You'll make the decisions; you have to be an impartial finder of the facts. You should not do any independent investigation of the case. So you shouldn't drive out to the sites; you know, where the property is, that's this subject of the hearing. When the witnesses testify, you should listen to their testimony. You can ask questions of the witnesses. You should not argue with the witnesses. Someone wants to build a widget factory. You hate widgets. That's not really relevant. It's not to debate the witness on widgets; it's just to hear their evidence and whether or not they ultimately should be able to get their permit.

CHAIR MULLINS: Do we bring them back around though? Let's say they get long winded.

MR. HASTY: Sorry?

CHAIR MULLINS: If they were to get long winded or maybe off track of what we're doing?

MR. HASTY: That, yes and as the Chair in particular, you know what you want to hear is relevant testimony.

CHAIR MULLINS: Okay.

MR. HASTY: When people start digressing from the issues, you can put them; get them back on track, by projecting any questions that are relevant to the hearing. You also will have to, you know you are not held at the same standard as a judge or court per se, but the statute recognize these boards, that you will have to make rules. You will need to pass judgement sometime. We had a hearing here where there were a lot of objections being made by an attorney and you will have to, Chair, you will have you rule on whether it's testimony that's relevant to come in or you can sustain the objection and tell the witness they cannot talk about whatever it is

they are talking that you don't think is relevant to the hearing. What is ultimately important; mention these cases, the cases you decide if they're appealed they go to Superior Court first. The Superior Court Judge across the street will hear the case. In the hearing it's called *De Novo Review*. The Judge sits, as an Appellate Judge they don't hear the whole case again. All the witness do not come in and testify. *De Novo Review* basically means from the beginning. The judge will look at the case with a fresh set of eyes, kind of sits where you're sitting, he makes the same decisions you're making but he does it on the record. The record is extraordinarily important in these cases. What is a record? I brought in a sample. When a case is appealed, Patti or Hope, Betty or someone will put together this notebook and it's got everything in it. All the evidence that's been presented, a transcript of the hearing of what everybody said it's one reason it's important to stay on the issues, not be argumentative, have a nice clean record. Ultimately, for selfish reasons, I'm the one that has to stand in front of the Judge and justify everything that's going on here. Yes?

MR. LOTT: While you're on this. Here awhile back we had a case presented and Neil Yarborough was here representing some people. Now he threw out some legal language that us laymen didn't understand or maybe comprehend. In a case like that do we direct that to your attention or do you give us advice? Or can we ask for advice on that?

MR. HASTY: That's an excellent question. Exactly, it was the next thing I was going to talk about. We're your attorneys. Rick and I, we've come here; we're the Board of Adjustment's attorney and if you don't understand something that's going on legally, ask us and we'll explain it to you. We can't, you can't turn it over to us to make the ruling.

MR. LOTT: Right. I understand.

MR. HASTY: But yes, if you don't understand a term, a legal term.

MR. LOTT: A lot of us need an explanation of what he said in laymen's terms.

CHAIR MULLINS: Well.

MR. HASTY: We can advise you as to that. This is what that means. You need to make a ruling.

CHAIR MULLINS: So was we okay, I already know who said it but, when he would yell, when he objected and we said duly noted, was that okay to do or should we...?

MR. HASTY: I think it's probably best to and it would've been best in that case to have, I mean we probably would've changed the procedures a little bit, because in that particular case...

CHAIR MULLINS: Yeah.

MR. HASTY: ...citizens spoke and I'm not sure that they should've really, that's the typical procedure in a special use permit case or a variance case, but that was a specific case regarding a citation for one individual and that sort of muddied the works little bit. In the citizens did wanna just say they were against the firing range without focusing on the issue of the permit itself.

CHAIR MULLINS: Right.

MR. HASTY: But in that case it would've been better for a ruling to have been made to sustain the objection to witnesses giving irrelevant testimony, and or after they've all spoken to make the ruling and have the witness testimony; citizen testimony stricken from the record subject of that.

MR. MOOREFIELD: Let me comment, comment on that too Rob. You really have to make a ruling on or should make a ruling on an attorney make objections to either sustain it or not sustain the objection, whether or not you let the evidence in. If you have any doubt in your mind as to the reason for it you should be able to know why you're going to not allow the objection or sustain it. In other words, if the testimony's about

something that you think is not relevant to the case or that the witness is say not qualified to testify, as to what they're testifying to. I mean that's something, if you know, if you can articulate that as your reason for it, you don't have to say that in for the record, but if you can that's great too. Then that would be the way to make your decision but it's perfectly okay to ask the attorney for guidance on that question...

CHAIR MULLINS: Okay.

MR. MOOREFIELD: ... and because these are, you're not strictly bound by the rules of evidence but the closer you stay to them the better off the record's going to be so when you have a question, ask the attorney.

CHAIR MULLINS: Okay.

MR. LOTT: Now that would be the Chairman taking care of all this, right?

MR. MOOREFIELD: It is within the purview of the Chairman's duties. But if a board member needs, want to have a question to ask them self, I mean let the Chairman, know you're conducting this hearing. Its fine to let another board member ask a question but it shouldn't be willy-nilly. Everybody should always clear it with the Chairman to question a witness or to ask the Chairman a question so that there's some order to it. You don't want to have two or three folks asking questions at the same time but those decisions should be made by the Chairman. But you have to communicate with the Chairman and the attorney on these things.

MR. LOTT: Okay.

CHAIR MULLINS: Okay.

MR. HASTY: Alright. And as far as the hearing, you know once you've made your, you know once all the evidence is in you have to make a decision. I'm gonna talk about that in a little bit of detail more of an example I'm going to get to the special use permit but in general as you know you have to have findings to support your conclusion in the record. You have to get that in the record and then a written order will be prepared based on your findings and results, when you make a motion, you need to get those findings in there'll be a second and a vote.

CHAIR MULLINS: So, okay when like the person spoke at the last meeting. When, she had done went through it, during our finding of facts whether she had done stated it or not, we still need to reiterate that in our finding of facts whether she done said it or not, right?

MR. HASTY: You...

CHAIR MULLINS: I mean she had stated it so I think that's fine

MR. HASTY: What you can do, you can do the findings, and again I'm going to actually show you that in a minute on a slide, but you can incorporate what a witness has said into your motion.

CHAIR MULLINS: Okay.

MR. HASTY: And then the written order because you adopted that language you can take that out and put that into the written order. So when a witness testifies, to a specific finding you have to make, this is how you make that and you agree with that, and you want that to be the order and you don't need to stumble over that and try to redo it or remember you can scribble in your notes or whatnot you can incorporate what a witness has said and be confident the witness has addressed perfectly the findings. But again I'm going to get into that in a little bit more detail in just a minute. We'll talk about that last case as well. But again the three main types of cases you'll decide are appeals of decisions from the department basically, administrative decisions, special use permits and variances. This *Hampton* case, that you all heard last year or so it's pending in the court of appeals waiting on the decision, we could get next week, I thought we'd get it by now, but that's an example of the decision by the department. The Hampton's had a firing range, it was reported to the Planning Department, an

inspector went out there, saw they had a range, didn't have a permit, cited them for operating range without a permit. They appealed that came to here and that was the hearing that you had, that ended up being appealed to Superior Court and Court of Appeals, but that's an example of that. They're not asking for a special use permit or variance, it was a decision made by the department, which you got to hear on appeal. So, that's an example of that one, that's pretty straight forward. I want to turn to special use permits; we have a slide on that too.

MR. TURNER: Could I ask just one thing?

MRS. LYND: Okay.

MRS. LYND: Excuse me real quick before you do that, can you pull your microphone forward? Hope's worried she can't get a hold of your voice, thank you.

MR. TURNER: Well, I wasn't involved in that. I wasn't here. But they, it's a little confusing; they appealed the requirement to have a permit? Is that what you said?

MR. HASTY: Correct.

MR. TURNER: Okay, and that's the one that's at the Court of Appeals now?

MR. HASTY: That's correct. This board upheld the ruling. The Superior Court Judge reversed it, said they could have the range, under certain conditions basically that he found...

MR. TURNER: Without a permit?

MR. HASTY: Without a permit.

MR. TURNER: Okay.

MR. HASTY: Sort of commented on commercial or non-commercial on some evidence that came in they, that's on appeal with the Court of Appeals. Patti, I think back in February.

MR. TURNER: Okay.

MR. MOOREFIELD: Another way of looking at it that was a decision by the Planning staff which falls on the Planning Director, that what they were doing needed a permit, and that's why they were cited for not having one. After hearing evidence the Board of Adjustment agreed with the Planning Director or Planning staff's decision in higher docket court, their argument has been they don't need a permit. So that's a matter of interpretation, they're not asking for a variance or special use permit. They said that what they're doing does not require permit, we're saying they do.

CHAIR MULLINS: But most of the time they wouldn't even have an attorney coming in to hear, so right? Most of the time, most people do no, correct?

MR. MOOREFIELD: Yes.

MR. HASTY: That's true and to go back on that I put it in the outline but Rick and I discussed this, like I said we're your attorneys', the Board of Adjustments attorney. There will be cases where an attorney is hired; an outside attorney will come in and represent the Planning Department. It'll probably happen every time now when we have a firing range case because those are the one that've all been appealed. Thing is to preserve the record and make it clean.

CHAIR MULLINS: Right.

MR. HASTY: But the Planning Department's disadvantage is when the other side comes in with an attorney and what not, because we'd have a conflict in the board and the department. So there may be an attorney in the future for the staff if need be depending on what the issue is.

MR. MOOREFIELD: Well for firing ranges there will be.

MR. HASTY: Yes.

MR. MOOREFIELD: There may be something else.

CHAIR MULLINS: As long as it's not a four or five hour meeting, I'm okay.

MR. TURNER: Now I don't want to drag this on but I'm getting really further confused. They're running a firing range and people actually go and pay money to shoot, is that it?

MR. HASTY: Well in that particular case, they said there was no money that exchanged hands, that was part of their argument.

MR. TURNER: That's why they don't need a permit?

MR. HASTY: The ordinance doesn't say anything whether its commercial or non-commercial but we've had some testimony from the staff member that he thought it was commercial and that's one of the parts of the case.

MR. TURNER: Okay I don't want to...

MR. HASTY: We've had several. We've had the *Tiger Swan* case firing range case. We had...

MR. MOORFIELD: *Kirby*.

MR. HASTY: *Kirby* case.

CHAIR MULLINS: *Kirby*.

MR. MOOREFIELD: *Hampton*.

CHAIR MULLINS: *Hampton. That's four.*

MR. HASTY: *Hampton.* case, they're all firing range cases and they're all and you know people get worked up over those and we just need to make sure we're prepared down the road.

MR. TURNER: I understand.

MR. HASTY: But those are probably going all the way up. Alright, special use permits. This is the one that I think has given; I think that most of the ones I've been involved in have been special use permits. And they have caused some problems in these findings of facts. We're going to go back to these for a second. But I put the definition basically down here for special use permits. The uses are not automatically allowed in a zoning district but if certain specified conditions are met they can be granted. But in order to do so you have to find the standards. You have to find the facts these really are conclusions. So if you can't as far as you motion just say we find that the use will not materially endanger the public health or safety if located according to the plan submitted and proposed, that's really a conclusion, you have to find the facts that will support that and that's, and sometimes there have been issues, I think in trying to get that in the motion and have it done in a smooth fashion. Keep in mind first of all that it's up to applicant to give you that information, that's their evidence. You have to; they have to present that evidence in order for you to approve the special use permit. So its, the burden's on them to give you those facts so there's no reason for you to struggle to try and find it. If they've done their homework, they will present their case and go through those facts. If they haven't you can ask them. You can say, well we heard your evidence, but we have to, find that the use number three, the use will maintain and enhance the value of the adjoining or abutting property, or that it's a public necessity, I'm not sure I'm clear, I don't think I've heard evidence on that. What can you tell us about that, and then they've got to give you that evidence and if they can't do it then you can't make that finding and they can't get their permit. So, you don't have to do their job for them is what I'm saying, you don't have to, just hear the case and if it sounds like they ought to get the permit then struggle with trying to find the findings. Now the last meeting or meeting before last, we had a special use permit application for the nursing home, I think.

CHAIR MULLINS: Yes.

MR. HASTY: Lori Epler testified and she had addressed these and she stated, I want to talk to you a little bit about the findings that you have to find in order to approve the special use permit. She started addressing those first the use will not endanger the public health or safety if located and submitted according to the plan, which is one of your requirements. And she went through what she believed would be the appropriate facts to support that; the right-of-ways are there, setbacks, no undesirable activities, facilities over seen day and night 24 hours a day, there's always personnel there, the grounds will be maintained. So that's what she has indicated, and provided as evidence for you to make that finding. She wrapped up the next one too, whether or not it meets all the required conditions and specification. She you know gave her narration of why she believed you should make these findings to support that conclusion in our ordinance. So again, you can jot down when someone's testifying and they give the magic words take your notes and use can use that as part of your motion or you can go back if you believe that you agree with their testimony if you don't have any reason to believe or think it's unreliable testimony and incorporate it in your motion. And the next screen the realtor testified as well. I believe this is testimony on the public need; he used that word quite a bit. There's a need for this type of facility out there, before they can move forward they have to get a certificate of need, spending sixty million dollars and they would not do that if there weren't a need so they've done their homework and investigation, so that could support the public necessity of your findings. And the fourth one you, find Rick and I were talking about today, the location and character the of use if developed according to the plan that's submitted and recommended will be in harmony with the area, etcetera. That's something that you can probably ask the staff, they've probably already looked at that. They can either say yea or nay on whether or not it is but ultimately the burden is on the applicant to show that.

MS. SPEICHER: If I could just to make it clear to the board that when the applicant or potential applicant comes in to the office, our staff goes over this criteria with not just the applicant but once our signs go up and notice letters go out, individuals that call in whether they're in opposition or in support. We go over these, over, and over, and over with everyone. And when they get here most people act like they don't have a clue but we give them a printed copy of that page of the ordinance and make it real clear this is what the board has to find to approve your request. So it's not like they haven't heard by the time they get here.

MR. LOTT: Well most special use permits though have already met the requirements of the Planning staff and are in agreement with the conditions that y'all put forth?

MS. SPEICHER: With the ordinance and we do get their agreement to the conditions.

MR. LOTT: If they don't do that then they don't get as far as this to us? Okay.

MR. HASTY: Let's see the next slide I believe is what your finished product looks like. This is the actual special use permit and you'll see the findings that are put in there, and we provided exactly the lines we've been talking about from the ordinance. This was the *Kirby* gun range case this was one of the ones that got appealed but, this is what the board found Number one the use will not materially and endanger the public health or safety according to the plan that's submitted and recommended and they went through the range has 2 berms and thick vegetation surrounding the site and ensures all the rounds will stay on the site, they'll be safe in that regard. They will have their reclamation company come gather the spent shells and what not to make sure there's no lead left in the environment so that's just an example of why it's so important for you to make the findings and what not because it goes into that and again the courts will look at these. The judge will look at this and if something doesn't make sense, he doesn't think that's an adequate finding based on the evidence, then he'll toss the permit. It's just important to make sure that those, the *Kirby* case was one another gun range

case where he was teaching lessons and conceal carry classes and what not, so he came for a special use permit and it's the neighbors that took that case.

MR. TURNER: Before you leave that could I just ask one thing that's a little confusing? You made the statement that it is not appropriate for us to ride out and take a look at some of these areas in some instance. What would that do?

MR. HASTY: I mean if you are familiar with an area, that's just the way it is. But you just shouldn't do an independent investigation. You have to hear the case just like a judge and jury would impartially as you can.

MR. TURNER: Yes. It just seems appropriate in some cases you may want to see the big picture.

MR. MOOREFIELD: But you absolutely can't do that. The law is clear on that. You can only decide this case on the evidence that's presented at this hearing. It doesn't matter how much else you could find out from other sources or by going out there, it doesn't really make sense but it's because these cases I mean it sound kind of strange but, when you get to court, the facts don't really matter much, it's what this record is. These cases are won or lost on the record and that's all there is. They are appealed for the special use permit, variance, a Judge in Superior Court is not going to have new witnesses or open up the case for evidence. It's the record; it's just this solid record. Now asking for an interpretation of the ordinance they can hear that from scratch, but those are usually not the problems. It's these special use and variance cases that are the problems, but you just can't do it and that's one of the things whenever you start your hearings you have the chair ask everyone that little list of questions and stuff if you have obtained knowledge, even if some body, someone calls, that's involved in these cases calls you and wants to talk to you about it, it's fine if you tell them I will hear that case and I can't talk to you about it. But if you actually talk to someone you will have to recuse yourself from hearing the case and the penalty for not doing that is we'll lose. If it comes out in court, we'll lose.

MR. TURNER: Yeah, I understand that, but I was just thinking in the...when I was on this board in the early 90's staff would send us this stuff early on and the general consensus among the board members were you'd get it early enough so you could kind of ride out and just see it. And maybe, you know...

MR. MOOREFIELD: I don't know about what use to happen but right now we don't want you to do that. It's just what you hear right here.

MR. TURNER: Okay.

MR. MOOREFIELD: In this hearing.

CHAIR MULLINS: And if by chance you live close by it and my understanding is, if you live close by and you can't get around it if you come into the meeting please don't say you've been by it. Right?

MR. MOOREFIELD: If you pass by a property, you know and some use is being considered just in your normal routine, that's fine. What we're talking about is you make an effort to go and view it. What you see that's normal stuff that's fine. Usually the issue comes when people call you about it or someone talks to you about it.

MR. TURNER: I just seem like I remember, back then, most of them seemed to be special use permits for cell towers and you kind of want to go out and see how intrusive would this tower be out where it is.

MR. HASTY: The staff does a good job. I don't know how they did it back then, but they generally have several photographs, and overhead, maps and satellite views and what not available, so from my experience I've never had trouble getting the lay of the land from the staff presentation.

CHAIR MULLINS: And to give an unbiased, you know, give finding of facts on everything its best to just not do...



MR. MOOREFIELD: Well it's a necessity, you have to come approach this, you cannot make or form an opinion before you get here. If you have, you need to disclose that and recuse yourself. And you think about it like this; this is really a court hearing, it's not as formal with rules of evidence and stuff. It is a court hearing it is an appeal it not a chance, somebody getting another chance at a trial, so stuff that you do on your own, the other side or staff here, they won't have the chance to cross-examine you about that and that's why you can't do it.

MR. HASTY: Any other questions about the findings of facts and the special use permit. I think that's probably the biggest issue and biggest reason why we're probably having the session. Again I think the main thing to remember is the burden is on the applicant and I think that's what's happening in a couple of cases. As the board has heard the evidence and you have a feeling for how you want to rule and your kind of dictate it in to the record, the facts or what not, but just remember the applicant has the burden. So if you don't gather from what they told you the appropriate facts you can ask, them to clarify something or you know I missed the...you know we need find x,y,z and I don't believe I heard that in the evidence, you know, can you go over that again, and let them tell you and then listen out for like the testimony we showed, when they are giving it to you take notes, jot that down to refer back to it.

MR. MOOREFIELD: And another to thing keep in mind is, you are the finder of facts. You also, you determine the weight to be given to the evidence. In other words we all hear adjoining property owners come say this is devastated the value of my property, my property is declined. Well, that is really not, that's not evidence that you can base your decision on. Now if, they bring in a qualified person to present evidence on that and you find that to be credible that's fine but, just saying something doesn't mean you have to believe it or find it credible or particularly useful in making your decision. So you got to keep that in mind too because you got to find facts that will enable you to make these conclusions. You don't have to find much and you're given pretty much complete deference as to what you believe or what you don't believe or what you think is more important in how you weight the evidence as far as an appeal of this but if you don't have a fact in that record to justify one of these conclusion then that's the problem.

MR. HASTY: And there are hearings where only the applicant attends basically but there will be cases and there have been cases where it's been somewhat contentious and so both sides are putting on evidence there might be some conflicting evidence. So you have to just like a jury would, weigh that evidence the credibility of it and what not and make your decision. Like Mr. Moorefield said, you can make those findings, then it's okay to grant, just because there's opposition, you don't have to deny it, you have to just base your decision on the evidence.

MR. TURNER: Too much of that evidence turns out be just opinion too.

MR. MOOREFIELD: Yes.

MR. HASTY: Yeah you have to filter through it. I mean if there's a lot of witnesses aren't being guided through, they haven't met with their lawyer and gone over their testimony, like you would in a trial, a lot of them, they come because they heard about somebody wants to do something. So they just want to come, say they're against it, but that's not in itself evidence. We have them on the record them being against it but they have to present their evidence too and you'll have to weigh all that. The other big area, are variances. I'm not going to spend a lot of time on that. I don't think we've had since I've been here, I don't have any war stories, so much myself, but from my own experience. But you have to similarly to the special use permit; you still have to make findings. Based on what they're presenting, but variances are basically something that are, people want

that are contrary to the ordinance, it's something they just can't do. They need some leeway from you to be able to do it and it has to still be within the sphere of the ordinance and what not. An example maybe, maybe there's a neighborhood, with houses, a development and someone wants to build a storage room on the back of their house. And maybe every house on the street and behind them has the exact same storage room they want to build but because of the way they divided the neighborhood, their lot is just a little smaller and maybe it's going to be a foot closer to the setback or over the setback, than it should be under the ordinance. And you can weigh that and say well it's going to fit in fine with the neighborhood, it's an exception, the law would allow in this case, and if you can make these findings, then that's something you can do. Those are probably; correct me if I'm wrong Patti, but setback cases are those mostly the variance cases?

MS. SPEICHER: Yes.

MR. HASTY: They work similarly but I don't recall an issue with a variance cases since I've been here. Probably means it'll be one now.

MR. MOOREFIELD: The Board of Adjustment had some. I mean the last year or so, yeah the board of adjustments, had some variance cases.

CHAIR MULLINS: I think like the lady with the awning, over her door?

MR. MOOREFIELD: No, you've had several. I know you had the, you've had some mobile homes that were...

CHAIR MULLINS: Not...

MR. MOOREFIELD: too long for...you've had several things, fences.

MS. SPEICHER: Also, we had, remember the deputy who wanted to put the canopy over the backdoor.

CHAIR MULLINS: Yes that's the one.

MS. SPEICHER: We had the property owner with the shed and the wall, retainer wall that DOT had installed on Elk Road.

MR. HASTY: I think Betty wants to say a few words just about the staff and what not and the relationship and what they do and then I guess we'll finish up.

MRS. LYND: Okay. Mr. Hasty just wanted to get me to kind of explain what happens to the case before it gets to you all. A lot of times they come in for different reasons. Either they know they want to do something that the use matrix says requires special use permit or they've went to get a permit for a building and code enforcement says that's going to be too close, you need to get a variance. So when they come to me the first thing we do is pull up the property or really whatever staff member they speak to. We take a look at it up front. You know daycares and stuff have certain standards they have to meet. So, that's the kind of stuff we look at up front; can they even apply for what they're wanting to do? Once we figure out that it's an option for them to apply for a variance, a special use permit or appeal a decision, we give them the application they fill it out. In order to turn it in that consists of information about the property, the deed for the property and a site plan showing what they want to do; what is already on the ground, what they want to propose to be on the ground, and of course the fee for us to process the case. These are all based on the deadline schedule for which you are familiar with and so they must turn it in before the deadline that you all have adopted, in order to make it to the hearing. Part of that once it's done I begin processing the case. I gather information on the case, what kind of soils they have, the tax records, make sure that the deed is accurate. We send it out for comments to different agencies, roughly 15-20, that send us back their comments, DOT, utility companies, etcetera. I also create the site profile that you all see in your board packet for every case, that's part of the process. While I'm doing that, Hope is doing her part. She runs the legal ad in the newspaper and she also creates the notice letter and mails

them to adjacent property owners. Both of those things have to be done 10-25 days before the hearing per the state statute and that is the admin side of the case. The third group of people who deal with it are the graphic section. They are the ones who go out and take the pictures you see of the site. They put, post the sign out that calls people, or makes people give us all the phone calls we get and they create the slideshow presentation that you all see every night for each case. And then once that's done it makes it to you guys, the process that it takes for me to get the case to you is roughly two months, that's because the state statute has certain timelines, those events have to happen like the letters are 10-25 days before the meeting. And then it gets to you all and we have the hearing and then you deal with Mr. Hasty's training session.

MR. HASTY: So it goes from there probably should've let Betty go first to lay the foundation for it then it gets here but the main thing I think are the record we've said making sure what we've got is your decision supported by the evidence in the record. That makes everybody's job a little easier and obviously you want to get it right.

CHAIR MULLINS: Right.

MR. HASTY: As far as any parliamentary procedure, I think this board does a good job with that, you got your agenda you go through it and have your discussion. I don't think anybody talks over anybody. You're good at making motions, seconds and what not so I don't think there are really any issues there. Any questions, I think I'm about finished.

CHAIR MULLINS: I have one. If, I know we cannot go out the property or site like George said we use to, but if we get on the GIS system can we look through it to get an idea of where it's at? Cause there's a lot of places on. It's kind of hard, I mean they send the maps and stuff but to get a general idea.

MR. MOOREFIELD: You typically gonna get that.

CHAIR MULLINS: Okay.

MR. MOOREFIELD: Staff is going to go through and present the case as best they can with the, in these parameters, and get you the information they can give you. Again the burden of proof is on the applicant. But you know, you're asking... alright, let's back up a little bit when we say you can't go look at, as a board you can go. You can go do any of this. You can go look at it. You can compel witnesses. I mean you don't have to, if you have a complex case, and with the amount of effort, that firing ranges have caused us and the amount of time we have spent in these things, we are always going to regard those as complex cases and that's why we say we're going to always hire an attorney to represent staff to help them along. And we've done that, I think in two cases, I don't think either one of those were firing ranges, (addressing Ms. Speicher), was one of those in *Tiger Swan*?

MS. SPEICHER: Yes. *Tiger Swan*.

MR. MOOREFIELD: But, you don't have to make a decision at the end of these hearings. And what I mean by that is, it's your prerogative if you think you need more evidence you can actually, work through the attorneys, but you can subpoena witnesses, you can continue this hearing to another time if you need to. If you have a, one thing that is a good practice to use, sometimes but not for every case but we're only talking about a few cases that would involve something like this, but it would be perfectly appropriate for you to order without having major decisions both staff and both the applicant to provide you proposed Order with findings of facts and conclusions and just let them write up what they think the evidence has been. One advantage that you can gain from that that is, you may give them two days, a week, whatever you want to do, but you'll have to meet again I know that's another problem, because you are citizens, it's not like you're a Judge getting paid to do this stuff so I know it's just a balance. But if you have a real complex case, that would be sort of a safety net you can use

and these are things that would be fine for Rob to advise you that, recommend that you order that they, each side provide you an Order and you'll have to meet you can't be you look at it, talk on the phone and work it out. You'll have to come back and accept it and discuss it that way. We can provide the Order to you but as far as, you will have to come back and meet and then the final Order will be whatever you directed it would be. You could accept one of those or portion of either those or none of that and make your Order from that. And sometimes, just...in June of 1982, I think that was the second one of these things I ever was involved in. It carried on, there was thirteen hours for over three days it was terrible. And the Chairman of that board knew a whole lot more about that stuff than I did at that time. That's what he did and it worked out. It was a way to get a grip on something that was really kind of overwhelming. So, and we're going to try to do a better job; I don't know what kind of cases y'all have had I really hadn't been coming here that much. I've seen, Rob talks to me about this stuff and I told him after we had this experience with the *Kirby* and *Hampton* case, that was not Rob's fault or my fault either, it's just I thought we had all the firing range cases we're going to have. I didn't realize they are such a big deal and justifiably so. But they are a big deal to the community they're in and to the folks who want to do them. If we have to pay an attorney to do that, that's cheaper or can be cheaper in terms of expediency of getting these things done, getting them done right and moving on. We actually, to settle the *Kirby* case; I guess it was Rob, the county ended up paying some attorney's fee for the hearing in Superior Court for the other side to get that matter settled. And like the *Hampton* case, the big issue that we've had in the *Hampton* case was that, one of the inspectors that testified, his opinion of the ordinance was his would classify as commercial well that's really not what the ordinance says but that has been a big block in trying to get this, and now we're in the Court of Appeals and as Rob said it may end up in the Supreme Court. This thing has been going on, could go on for a couple of years. So that's why we will do what we have to do, to get an attorney to representing staff to kind of streamline this stuff. Ask the attorney and one thing that's always real helpful, I think it is, before you finally close this thing down and decide to make a decision as the Chairperson, whoever it is, just look over at the attorney and say Mr. Attorney do you have, or Ms. Attorney do you have any further direction, advice, whatever and that might be a way, cause it's tough for us to. Sitting over here we don't want to interject in what you guys going and we have to be careful about that too, because it's your decision and that stuff. In this last case Rob was talking about. That's one of the arguments that Neil Yarborough's made that it was too much directed by the staff and the attorneys and stuff. There's nothing wrong with that but we can't, we don't want to interject into what you're doing. But when you have questions, but also for board members, except the Chairperson, always direct your questions through the Chair, Madam Chair person, can I ask the attorney a question, I mean kind of keep it all above board, like it's been channeled in the process being directed the way the statute says.

MR. LOTT: In a situation like that though, if it complicated enough for us to have to delay it or carry it over, couldn't we go to our attorneys for advice on situations like that?

MR. MOOREFIELD: Yes.

MR. LOTT: Before we...?

MR. MOOREFIELD: Yeah.

MR. LOTT: Extend that, carry that case over to another?

MR. MOOREFIELD: Yes. That's what I'm saying every case, even if it's a cut and dry thing I think it's going to always be to your advantage to just ask Rob, do you have any further direction or advice that sort of stuff. As a way to, sometimes its simple stuff like, maybe you forgot to admit something or receive something into

evidence. I mean sometimes, we have to keep up with this stuff too. So it's tough but this board generates as much litigation as anything else in the county. So, and it's not your fault. It's just the nature, people want to do this stuff and other people don't want them to do it. It can't more conflictual than that. Fortunately for most of these cases the neighbors that are opposed to stuff are not in a position or either it's not that big of deal to actually hire a lawyer and try to take this stuff to court. But when you get one like a firing range where and really all these firing ranges have been commercial even though they say they're not. They were started as commercial stuff, they're making money so they'll hire a lawyer and they'll do whatever they can and God knows what they spent on *Tiger Swan* case.

CHAIR MULLINS: But we did have a gentleman, I think when I first started it was an elderly gentleman I think out towards Hope Mills or 87 out that way. We did have to continue him because we gave him a 30 or 60 day reprieve and then he came back. He had to clean it up or something. You know something like that. I can't think of his name.

MS. SPEICHER: It was off of Middle Road.

CHAIR MULLINS: Yes.

MS. SPEICHER: It was the World War II Vet.

MR. MOOREFIELD: I wasn't involved.

MS. SPEICHER: Mr. Williams was his name.

CHAIR MULLINS: Yeah.

MS. SPEICHER: Isaac Williams.

CHAIR MULLINS: Yeah. Isaac Williams, very nice gentleman.

MS. SPEICHER: But it wasn't, he didn't have junk. It was his stuff.

CHAIR MULLINS: Yes. It was just stuff. Just stuff.

MR. MOOREFIELD: And I've seen cases where the applicant, it couldn't present its case, his or her or its case without a witness. They can't compel somebody to testify but you can. So you may occasionally run into a situation where the applicant comes in and ask you to subpoena someone and reset the date that's perfectly legit. Well you can inquire, don't let them just try and jerk somebody around. You can inquire as to what the nature of the testimony will be, and make a determination of the relevancy of it. In most cases you should always err on the side of issuing subpoenas, unless you can see it's clearly being an abuse to the process so. I don't think y'all had one of those here, as least I'm aware of, but that can happen. So I mean it really is, it's called quasi-judicial because it's a judicial proceeding you're just not judges, that's what the quasi is.

CHAIR MULLINS: And they all have a chance to speak. I mean, as long as they have signed in.

MR. MOOREFIELD: Not really. This is not like a Planning board public hearing. I mean these are public hearings simply because they have to be advertised and their open to the public and that sort of stuff. But you have the prerogative to determine whether what someone wants to testify about is relevant to the case and you don't have to allow everyone to testify. I'm not talking about ask far as when neighbors come in and say I'm a neighbor and I don't want this, that kind of stuff. Whomever the applicant calls you need to let them call them but it could be a situation where once you get into, you don't think the testimony is relevant. I mean

MR. LOTT: What do you do in a case like this? Do you ask to dismiss them?

MR. MOOREFIELD: Well the safest thing to do is let the witness know, okay, I don't really see the relevance of what your testifying about, get to the point and if you don't have a point...you know.

CHAIR MULLINS: Just like in the *Hampton* one, they were all saying the same thing, everybody had the same thing.

MR. HASTY: They probably in a case like that; they will probably look at it in advance. If a witness calls wanting some of those neighbors that's fine but, I mean if a party calls one of those neighbors as a witness, I don't know they should've really been allowed to speak, they weren't parties to the citation.

CHAIR MULLINS: I mean they just kept on. Everybody just kept saying the exact same thing.

MR. MOOREFIELD: And one of these little blogs I think that Rob has attached in this stuff it would be helpful for you to read over too. I think and they discuss the issues of standing. What that is, who has, standing – means who should be allowed to address you or present evidence and it goes through this. That's a complicated question. The courts have kind of broadened that concept a whole lot in the last four-five years than what it used to be. But if you look at the way the statute talks about standing, it's in the owner of the property or a someone with an option to purchase the property or the applicant for the development approval, anyone who has actually got some real interest in the property itself. Whether it is, it doesn't necessarily have to be an owner either. It could be a developer. It could be someone with option to buy the property.

MR. LOTT: Vested in it.

MR. MOOREFIELD: Someone with kind of interest in the property that's legally recognizable. Any other person who will suffer special damages as a result of the decision being appealed and this is a whole lot broader than what it used to be. But it is discussed here while physical proximity in of itself is not sufficient is an important factor. And the *Tiger Swan* case a lot of the folks that testified were parties in that actually lived miles from that and didn't own any property, close to it. And that was an issue that was brought up in the court too but the Judge ruled in our favor on that and but that's another issue and if someone starts offering testimony and you can't figure out what their connection is or if they have a legitimate connection to this case inquire into it. And it's okay to rule that they don't have standing. Just have some basis for it. In other words don't just ask them do you own any property, adjoining to it or something and they say no and say sit down. Make a record, again the record is what is going to control this. How far do you live from this property, do you own any, what's the closest property you have to this property? I mean just try to get some basis for making that decision. We see this all the time Planning board, here, board of commissioners, people come all the time not that close to property that's being rezoned or something and are really opposed to it. One of the big things is, it's going to increase traffic on the road and the case law is clear on that. Unless someone presents you with a traffic engineer or someone that has some expertise in making that calculation maybe from D.O.T. I mean there could be studies. that's just not really confident evidence for a property owner to say it's gonna increase traffic on the road and I don't mean to be rude to folks it's fine to hear that but when you weigh the credibility and importance of the testimony keep that in mind what somebody says about it's going to increase traffic, it should carry a lot less weight than a traffic engineer or someone presenting a D.O.T. study that actually has some numbers and calculations on it so, that's and things like that sometimes we had some of those in the *Tiger Swan* case, sometimes the applicant will introduce technical journals or things like that into evidence that's perfectly fine but again that's something for you to assign the weight of how much credibility how much weight you're going to give to it. And if you ever get into a case stuff like that will certainly be an appropriate case to direct the party, I'm just saying cause like in *Tiger Swan* we were talking about a very technical ordinance and we were using, where they come from the Department of Energy some weird place it was some very technical stuff but that would be a kind of case it would certainly be appropriate. I know over in Harnett County they had a

firing case that went on for I think that the total amount of time that the Board of Adjustment listened was four...

MS. SPEICHER: Four days.

MR. MOOREFIELD: Yeah it was 43 hours I think they actually have yeah so. I mean it can really get out of control. That's just another issue. That's just a little discussion on that. And if you have a question about, does this person really have standing to address us at all, send it to the attorney. Ask that would be an appropriate question to ask for guidance from the attorney. Our role is to advise the board of adjustment on whatever it needs to render this decision. That's what the attorneys are doing. That's why we can't advise staff.

MR. LOTT: How about time wise? A meeting time wise.

MR. MOOREFIELD: You cannot set limits on the time like you can for a legislative hearing, which is something that's done by the Planning Board and Board of Commissioners. You basically have to let, I mean I'm sure that staff will kind of do whatever you want to but as far as the applicant you have to give them opportunity to present the evidence.

MR. LOTT: Say you, we realize when we get into a case that it's gonna take more than four hours, three hours we're going to have to say at a certain time we're going to have to adjourn this meeting to another time?

MR. MOOREFIELD: Yes.

CHAIR MULLINS: That's probably what we should've done with the *Hampton's*.

MR. MOOREFIELD: The way you can, maybe speed things little bit if you have a series of witnesses the applicants puts up they are basically saying the same thing.

MR. LOTT: Same thing yeah.

MR. MOOREFIELD: It's fine to say, we've noted your testimony. If you don't have anything additional to say sit down and let someone else speak. That's okay. But you can't cut it. You can't say, okay you got ten minutes, you got five minutes you can't do that.

MR. LOTT: I understand that.

MR. TURNER: Let me ask you one thing, if it's okay. How would you weigh the evidence of a tenant versus a property owner? We have had one if I remember where there was a lady that was opposed to something. She didn't own the property she was a tenant and lived adjoining to it, you remember that?

CHAIR MULLINS: No I don't.

MR. TURNER: Is her opinion less important?

MR. MOOREFIELD: Well, it depends on what she is addressing. In other words if it were a firing range and she's living next door to it and she's gonna be the one experiencing the noise and possible risk. I think her testimony would be just as important as anyone's. If she wants to say, the value of this property has declined well you know, that would not matter.

MR. TURNER: The fact that she rents versus owning and has to bear the brunt of whatever happens is not an issue really?

MR. MOOREFIELD: No it's not.

MR. TURNER: Okay.

MR. MOOREFIELD: It just depends on what the circumstances are. It's about the physical characteristics that are affecting her as a person living there, that's fine. If it's about the value of the property or that sort of stuff it would be.

MR. HASTY: I have put these blogs on from the School of Government, a couple of them on for your reading enjoyment, about quasi-judicial hearings and *standings* and what not. But what you do isn't real easy. When we argue before a judge they typically once they hear the arguments, usually in a case will take it under advisement, which means they will take it back in their office and think about it, look through the record have their cup of coffee and then they usually ask the prevailing parties attorney to draft the Order. So what you've got to do is after the hearing or you could, like Mr. Moorefield said ask another party to do it. But generally speaking you will have to deliberate here in public and make your findings and what not, so it's not an easy thing. I think everybody understands that and in a complex case, you take the advice that was given and have others draft the Orders.

CHAIR MULLINS: Okay.

MR. LOTT: Well I know when Donaldson was here as the Chairman and the *Tiger Swan* come up. I heard him say a couple times he was not going to allow that back on the agenda. Now was that something to do with legal findings? Or was that something that was pertinent to the rules of the board?

MR. HASTY: Well I think there was one case pending in the courts and they brought something else in here. They wanted the court issue resolved before... he...I can't remember exactly.

MR. MOOREFIELD: Yes. Mr. Donaldson he did a great job. But Mr. Donaldson really handled this like a District Court.

MR. LOTT: Yes.

CHAIR MULLINS: Yes. He did.

MR. MOOREFIELD: That was what he did and it's not quite the same process but he handled that when we got to the *Tiger Swan* case, ultimately that all worked out but that was an aggravating case.

MR. TURNER: I'm glad I missed that one.

MR. MOOREFIELD: And actually Planning staff I think just last week gave me a little thing they'd gotten from the School of Government about a series of training material I think they're webinars, that the School of Government has I was not aware of and they have asked me if I could run that through my office to pay for it, to get some of that stuff done. I haven't had a chance to look at it but we I am going to look at that stuff. If we have an opportunity it looks like it would be useful for a webinar at some point, this year through that then that would be something where you wouldn't have to listen to us. I would be people who really know what they're talking about from the School of Government. We're going to continue to look at some training opportunities, because like I say this stuff this is serious business.

CHAIR MULLINS: Yes.

MR. LOTT: Yep. I mean we're dealing with people's lives.

CHAIR MULLINS: You're right.

MR. LOTT: Or their livelihood.

CHAIR MULLINS: Livelihood.

MR. MOOREFIELD: Did any of you alternate members have any questions that you wanted to ask?

MR. HASTY: Anything else from anybody?

MR. LOTT: I want to thank you very much.

CHAIR MULLINS: Yes. Thank you.

MS. SPEICHER: Betty, explain to them about draft amendment.

MRS. LYND: Yes. Item 6 on the agenda discussion and updates



6. DISCUSSION

MRS. LYND: The first one being behind the packet that Mr. Hasty gave you all, should be a draft. It's the first draft of a text amendment for the section of the ordinance that deals with the Board of Adjustment. Again, it's just the first draft and it's for you all to read. When the case proceeds we'll be happy to give you any further information on it.

MR. LOTT: Okay.

MRS. LYND: And also the second update is, we do have cases. So we will have a meeting in April. And I don't know if Mr. Hasty has any updates on anything.

MR. MOOREFIELD: How many cases?

MRS. LYND: Three.

MR. MOOREFIELD: Any firing ranges?

MRS. LYND: No. I need my lawyer; you'll be the first to know.

MR. HASTY: I don't have anything. I mentioned the *Hampton* case, still waiting on the decision so.

CHAIR MULLINS: Okay, any other discussion?

7. ADJOURNMENT

CHAIR MULLINS: Okay, meeting adjourned.

MRS. LYND: Madam Chair we need a motion to adjourn, and a vote.

**Mr. Lott made motion to adjourn. Seconded by Mr. Turner. The motion passed unanimously. Meeting adjourned at 8:07pm.**

	IN FAVOR	OPPOSED
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
TURNER	YES	