

**Members:**

Ed Donaldson, Chairman  
Melree Hubbard Tart, Vice-Chair  
Horace Humphrey  
Joseph M. Dykes  
Randy Newsome



**Alternates:**

William L. Tally  
Carrie Tyson-Autry  
Yvette Carson  
Vickie Mullins  
(Vacant)

***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

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

**TENTATIVE AGENDA**

**MAY 16, 2013**

**7:00 PM**

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, May 16, 2013, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. SWEAR IN STAFF
3. ADJUSTMENTS TO THE AGENDA
4. APPROVAL OF THE JULY 10, 2012 SPECIAL MEETING MINUTES AND APRIL 18, 2013 MINUTES
5. ABSTENTIONS BY BOARD MEMBERS
6. PUBLIC HEARING DEFERRALS
7. BOARD MEMBER DISCLOSURES
8. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
  - A. **P97-36-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE REPAIR AND/OR BODY WORK, IN AN A1 AGRICULTURAL DISTRICT ON 7.11+/- ACRES, LOCATED AT 1921 JOE HALL ROAD (SR 2246); SUBMITTED AND OWNED BY SAMUEL W. AND ELENE WEST.
  - B. **P13-01-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS, TO ALLOW FRONT YARD SETBACKS FOR TWO EXISTING STORAGE BUILDINGS OF 1.86' FOR BUILDING "A" AND 2.35' FOR BUILDING "B" FROM JOSEPH STREET (SR 3080) WHERE 30 FEET IS REQUIRED AS IT WAS APPROVED FOR CASE NO. P03-25-C, IN A C3 HEAVY COMMERCIAL AND C(P) PLANNED COMMERCIAL DISTRICTS ON 9.9+/- ACRES, LOCATED AT 2346 GILLESPIE STREET; SUBMITTED BY CARLOS VIZCARRA ON BEHALF OF AMERCO REAL ESTATE COMPANY (OWNER).

10. ALTERNATE BOARD MEMBER

On the Board of Commissioners May 6, 2013 agenda, they have Winton McHenry listed as being appointed to replace Mark Locklear's vacant position.

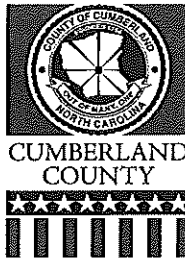
11. DISCUSSION

12. UPDATE(S)

13. ADJOURNMENT

**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  
Yvette Carson

*Cumberland County Board of Adjustment*

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

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

**Members Present**

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

**Absent Members**

**Staff/Others Present**

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

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

Chair Donaldson called the meeting to order at 6:00 p.m. in Public Hearing Room # 3 of the Historic Courthouse.

1. ROLL CALL

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

2. CHAIR DONALDSON SWORE IN THE STAFF

3. ADJUSTMENTS TO THE AGENDA

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

CHAIR DONALDSON: Did you have something else?

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

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

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

4. ABSTENTIONS BY BOARD MEMBERS

There were none.

5. PUBLIC HEARING DEFERRAL

There were none.

6. BOARD MEMBER DISCLOSURES

There were none.

9. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

CHAIR DONALDSON: Are there any stipulations before we start?

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

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

CHAIR DONALDSON: How many witnesses do you all have?

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

MR. CAMPEN: We will have four or five.

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

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

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

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

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

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

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

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

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

MS. SPEICHER: Yes, I do.

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

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

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

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

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

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

MS. SPEICHER: Yes sir.

MR. FLOWERS: Did you ultimately approve that application?

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

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

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

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

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

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

MS. SPEICHER: Yes sir, I did.

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

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

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

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

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

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

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

MS. SPEICHER: On April 18, 2011.

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

MS. SPEICHER: Yes sir, it was.

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

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

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

MS. SPEICHER: Yes sir.

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

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

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

MS. SPEICHER: February 21, 2012.

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

MS. SPEICHER: Yes it was.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. SPEICHER: Yes I do.

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

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

MR. CURRIN: And why is that?

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

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

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

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

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

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

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

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

MS. SPEICHER: Yes.

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

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

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

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

MR. CURRIN: And not a school?

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

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

MS. SPEICHER: Schools are addressed in the ordinance.

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

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

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

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

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

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

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

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

MS. SPEICHER: Regarding the current case?

MR. CURRIN: Yes.

MS. SPEICHER: We did not.

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

MS. SPEICHER: No.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

MR. CURRIN: Does it say training collaboration facility?

MS. SPEICHER: No sir.

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

MS. SPEICHER: Yes sir.

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

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

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: No sir.

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

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

MR. CURRIN: Did you fill out the application?

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

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

MS. SPEICHER: No sir.

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

MS. SPEICHER: Yes, with Steve from TigerSwan.

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

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

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

MS. SPEICHER: No sir, it does not.

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

MS. SPEICHER: Yes sir.

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

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

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

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

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

MS. SPEICHER: On the site plan? Yes.

MR. CURRIN: What has changed about it?

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

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

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

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

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

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

MS. SPEICHER: Yes sir.

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

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

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

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

MR. CURRIN: They have courses for defensive military?

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

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

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

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

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

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

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

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

MS. SPEICHER: No sir, it is not.

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

MS. SPEICHER: No sir.

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

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

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

MS. SPEICHER: Yes sir.

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

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

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Sure it does.

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

MS. SPEICHER: And similar structures, sir.

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

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

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

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

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

MS. SPEICHER: No sir.

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

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

MR. CURRIN: There is a Pro Shop,

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

MR. CURRIN: How many classroom buildings are there?

MS. SPEICHER: I believe it was seven.

MR. CURRIN: There are seven classroom buildings?

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



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

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

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

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

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

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

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

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

MS. SPEICHER: Yes sir, it has been.

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

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

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

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

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

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

MR. CURRIN: Do you know the answer?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. SPEICHER: Yes sir, they are.

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

MS. SPEICHER: Yes sir, it is.

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

MS. SPEICHER: Yes sir.

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

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

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

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

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

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

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

MS. SPEICHER: Yes sir, it does.

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

MS. SPEICHER: Yes it is.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: The Lockamy property has a home.

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

MS. SPEICHER: No.

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

MS. SPEICHER: It is a commercial farm.

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

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

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

MS. SPEICHER: Yes.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir, the conditional approval.

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

MS. SPEICHER: That is correct.

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

MS. SPEICHER: That is correct.

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

MS. SPEICHER: Yes it was.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

MS. SPEICHER: Yes sir.

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

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

MS. SPEICHER: Yes, ma'am.

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

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

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

MS. SPEICHER: No, not just this.

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

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

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

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

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

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

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

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

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

MS. SPEICHER: Yes.

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

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

CHAIR DONALDSON: Let her answer the questions.

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

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

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

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

CHAIR DONALDSON: Are there any questions?

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

MS. SPEICHER: Are you referencing outdoor or indoor?

MR. NEWSOME: Outdoor or indoor.

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

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

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

MR. LOCKLEAR: So you have approved one?

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

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



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

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

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

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

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

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

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

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

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

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

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

MR. FLOWERS: How long have you been Director?

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

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

MR. LLOYD: Yes sir.

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

MR. LLOYD: Yes sir.

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

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

MR. FLOWERS: Otherwise it would be prohibited?

MR. LLOYD: Yes sir.

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

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

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

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

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

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

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

MR. LLOYD: Yes sir.

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

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

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

MR. LLOYD: Yes sir.

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

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

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

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

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

MR. LLOYD: Yes sir.

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

MR. LLOYD: No sir.

MR. FLOWERS: No further questions.

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

MR. LLOYD: Yes sir.

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

MR. LLOYD: Yes sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. LLOYD: Yes sir.

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

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

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

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

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

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

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

CHAIR DONALDSON: Please let me know if you do.

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

MR. LLOYD: No sir.

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

MR. LLOYD: Yes sir.

MR. CURRIN: But the adoption of that section would not affect, would it, how you classify a use in that first step, would it?

MR. LLOYD: No, not if it was listed in the ordinance.

MR. CURRIN: Okay, so in this testimony, you indicated did you not that “we knew there was going to be training” this was about the TigerSwan facility, “we knew there was going to be classroom teaching, which put it into the school category to begin with. I’m not going to go into nearly as much presentation other than we saw this as teaching skills. Actually less than half of what was taught out there according to my correspondence with Mr. Reese, was to even take place outside. Which brings me, by the way; to the Linden facility, which is classified as outdoor entertainment. It was strictly a firing range, nothing was taught there, and there was no instruction. It was 45 acres used merely as a firing range. We classified that as outdoor entertainment. We classified this as a school, first of all, because it had classrooms and it had instruction. Secondly, it had instructions in skill, not necessarily in vocation. Yes, there are people that would go there, but they weren’t getting any kind of a degree, they weren’t working toward a trade. It wasn’t a trade; as the definition of a vocational school read.” So, why the change:

MR. LLOYD: As we discussed, it’s not that Mr. Reese or Mr. Searcy just came in with a plan. I talked to Mr. Searcy at this point in time with respect to the existing court case specifically so it wouldn’t be something trying to squeak through. Mr. Searcy said, and again, you have two different uses; you have classroom, you have outdoor firing range which was used not only for

classroom but for recreation. Mr. Searcy at that point assured me that now that the business is underway, ninety percent of the activity that takes place out there takes place on the firing range. Because of that, like any other multiple uses we have to look at the principle use of the property. Again, I can only state when I made the original interpretation of a school, that was done based only upon a presentation done by Doug Peters and by TigerSwan before anything was ever built. This site plan came in; I asked specifically, if you want to come in as a firing range I need to know the breakdown of the business out there, the breakdown of the activity. He stated that ninety percent of the activity is on the firing range.

MR. CURRIN: There is nothing to stop them if this is approved from expanding that whole track of land to be exactly what is on the site plan to include the seven classrooms and all the other instructional teaching, am I correct?

MR. LLOYD: That's true. I can only relate you back because we continue to get on the vocational school. I have to look at the impact of this use with respect to neighboring property and quite frankly if there were ten classrooms out there, the impact on adjacent properties since they are all indoors wouldn't even be close to the impact a firing range has.

MR. CURRIN: But the uses that are proposed, not what Mr. Searcy or Mr. Reese told you, but what are proposed on this site plan which is before the board, you would agree that based on what you just said that is a school, isn't it? What is allowed but not being done at the present time?

MR. LLOYD: Is it a school?

MR. CURRIN: Yes sir.

MR. LLOYD: I think that case is still going on. I call it a firing range at this point and time. On the site plan again, before this original interpretation was made, and I continue to hammer on this, when I made the original interpretation of a multi-use being proposed, classroom/firing range, I had to make a decision and try to pigeon hole it into one of these categories in our ordinance without using the impact. Once this ordinance amendment in Section 402 clearly showed me that I have to consider the impact of this proposed multiple use be it school, be it firing range on the surrounding area, how would I classify it based on "most closely related to the land use impact and the proposed use" and that is what I did this time.

MR. CURRIN: But if it were a vocational school, you would never reach Section 402?

MR. LLOYD: If it was a vocational school. If it was deemed a vocational school by some court, it would make it easy.

MR. CURRIN: The County is still taking the position in public documents and court documents to the Supreme Court of North Carolina and you are aware that the County is taking the position that this facility that is before this board is in fact a school?

CHAIR DONALDSON: I don't think that is quite right, Mr. Currin. They may be arguing that old case. We are on a new case and if this permit was approved under a new alternative. What the County is doing in the Supreme Court has no bearing on what we do here tonight. What is

before us tonight is not whether it is a school but whether it is permitted under Section 402, which he had the authority to write the ordinance and interpret it. That is a separate entity. That case has nothing to do with what is being heard tonight. I can foresee this one going to the Supreme Court too.

MR. CURRIN: You would admit that if there were to be determined at some point by this board or by the court or by the Planning Department that if it had been determined to be a vocational school based on the entirety of its use, that it would not be permitted in this A1 District?

MR. LLOYD: If it was determined to be a vocation school due to the fact that this particular use wasn't specifically listed then yes, you are correct, it would not be allowed in the A1, unless of course the zoning ordinance was amended.

MR. CURRIN: Let me just make one point for the record. The point I'm trying to make is these are not really different cases. These are the same proposed use substantially that was in the other cases, is that correct?

MR. LLOYD: Please repeat the question.

MR. CURRIN: The TigerSwan site plan that is before the board tonight is substantially the same proposed use that was involved in the previous case that is now before the Supreme Court?

MR. LLOYD: Two things; the site plan is the same. The way I looked at classifying this is not the same.

MR. CURRIN: The way you looked at classifying it was based on what Mr. Searcy verbally told you was being done at the time?

MR. LLOYD: No sir. It was based on the impact of looking at first and foremost the impact of the proposed use on the surrounding property.

MR. MEEKER: It's true, is it not, that Cumberland County and your office had never contended this is a vocational school?

MR. LLOYD: That is correct.

MR. MEEKER: That has never been your position. The ordinance was changed after the first permit was issued and for the second, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: The permit that is before us tonight is under a different ordinance than the first permit, is that correct?

MR. LLOYD: Yes sir.



MR. MEEKER: In terms of the structures at the TigerSwan site, they are fairly small prefabricated buildings, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: And they have been placed there on the site but they are not substantial, is that right?

MR. LLOYD: Yes sir, they are not.

MR. MEEKER: The berms that have been constructed out there; are as much as 15 ft. or more high, is that correct?

MR. LLOYD: Yes sir, they are.

MR. MEEKER: And they are over 100 yards long, are they not?

MR. LLOYD: Yes sir.

MR. MEEKER: Then there are to be additional berms built as additional firing ranges are put in, is that correct?

MR. LLOYD: Yes sir.

MR. MEEKER: And the berms in fact are very substantial, are they not?

MR. LLOYD: Yes sir, they are.

MR. MEEKER: And they take a larger piece of the site at the firing range than the smaller prefabricated buildings, is that correct?

MR. LLOYD: Yes sir and a lot more expensive I'm sure.

MR. MEEKER: No further questions.

MR. LOCKLEAR: I've heard a lot about vocational schools, is there a definition for that somewhere?

MR. LLOYD: Not in our Ordinance. There are many different definitions, with respect to FTCC, there was an article put out by the president as to the mission statement which alluded to vocational schools from Dr. Keen and it didn't say this is a vocational school, but it did say we are a vocational school and what the mission is of the school.

MRS. TART: The ordinance revision 402 that was enacted considerably later than the first decision for the first application, was this initiated because the ordinance as it existed previously did not address things in a sufficient way that the planning staff could come to a complete decision? Was it to clarify what the planning staff was to do with it?

MR. LLOYD: It was done to clarify, but also the court ruling in that Wesley/Chapel case clearly showed that the wording that we had in our ordinance was totally opposite of what the ruling of that court case was. The court said unless it is specifically prohibited, it would be allowed. If it is not listed, we go to something with similar impact. The old ordinance read if it was not listed, it was prohibited.

MRS. TART: Just the opposite?

MR. LLOYD: Yes and I think the best way to look at it is you have all these categories of land use and when somebody comes in and it is not specifically listed, you try and force it into one of these categories. Whereas the court case that came out while we amended our ordinance was instead of trying to find a specific use to classify it, find the use most similar with respect to impact on the surrounding area.

CHAIR DONALDSON: Mr. Currin brought up a point about expanded use, what resources do you have and do you have anyone with the expertise to go out there and inspect those ranges? I know the site plan says they had to comply with DOD range policy or are you going to contract that out to someone from Ft. Bragg to come out there and inspect them?

MR. LLOYD: With the engineer that submitted these safety zones.....

CHAIR DONALDSON: I'm not talking about the safety zones; I'm talking about impact zones, height, depth, the berms and where they have to be located, things like that.

MR. LLOYD: There was a registered engineer that worked at TigerSwan through his seal substantiated that this did meet DOD standards so we did need somebody that could attest to that. In addressing the very first site plan, this is essentially the same; a registered engineer did verify that it did meet DOD standards. I knew we couldn't rely on our inspectors; they have no expertise in this area.

CHAIR DONALDSON: So it was a TigerSwan engineer?

MR. LLOYD: Yes sir, but they....

CHAIR DONALDSON: I understand, they hired their own engineer. Are there any questions?

MRS. CURRIN: You did testify that FTCC is a technical school, is that correct?

MR. LLOYD: Yes.

MRS. CURRIN: So whatever activities that they are engaging in are sufficient for you to determine that they fall into the definition of a vocational school?

MR. LLOYD: Could you repeat that again?

MRS. CURRIN: Whatever FTCC is doing is a vocational school, correct?

MR. LLOYD: Yes.

MRS. CURRIN: Asked Chair Donaldson to admit as evidence the Petitioners Book with Exhibits 1-12 [P1 – P12].

CHAIR DONALDSON: Accepted into evidence the Petitioners Book with Exhibits 1-12 [P1 – P12].

MRS. CURRIN: Mr. Chairman, I know that you mentioned that this is a separate case from the case that is currently at the Supreme Court and that is true to a certain extent.

CHAIR DONALDSON: I didn't say that to put a time on the limits that you have. I'm just saying that it is something that has got to be considered by our board and everybody in here to know there are differences between this one and the previous one.

MRS. CURRIN: Yes sir, there are differences because there has been one section of the ordinance that has been changed which is 402. The use however, and what is going on at the property has not changed.

MR. MEEKER: Mr. Chairman, I thought this was for evidence, not to present argument.

CHAIR DONALDSON: Are you making an opening argument now? If you are just going to give a little overview that is fine, but if you are going to make an argument, either put some evidence on and argue or don't put any evidence on and argue, which do you want to do?

MRS. CURRIN: I'm putting evidence on and arguing. These are our exhibits that I will go through and make our legal argument based on these particular exhibits.

MR. MEEKER: Is she going to put a witness on or is she going to testify?

MRS. CURRIN: I'm not going to testify, I'm going to make a legal argument as to the effects of each of these exhibits. TigerSwan and the County are arguing to the Supreme Court that the use of the grounds right now should be allowed to be continued because it is a school. They are not saying something different should be allowed and they specifically say, if you do not rule in our favor, we will be forced to close down. What we are doing out there now is what we should be allowed to do which is operate a school. We think it is important that the use is exactly the same and that the county has essentially flip flopped on what they say it is. Basically, we have three arguments and based on the evidence we think that the decision should be reversed. As we have been alluding to the decision, the first thing the Planning Department has to do is classify the use. Section 402 has no application what-so-ever if it is a use that is covered by the ordinance. It is our position that the TigerSwan training facility is a vocational school which is a use specifically listed in the Zoning Ordinance that is prohibited in the A1 District. The Zoning Administrator could not in our opinion do anything but classify it as anything but that use. He could not classify it as outdoor recreation with mechanized vehicle. We actually found out for the first time today that they were classifying this as a shooting range. There was no information provided to us in that respect. We got a site plan and a zoning permit that said it was an outdoor recreational use for mechanized vehicles. As Ms. Speicher pointed out we asked her for all the documents in a document request but we didn't get the one that said it might be a shooting range. It is our position that not only will the evidence not show it is not a

shooting range and that it is a vocational school but we will argue that they have made judicial admissions that it is not. If you make sworn testimony and make arguments to a court you cannot come back with the very same use and change it. We will show you that the uses that are going on at FTCC are essentially the same as what TigerSwan is going. They have made representations on their website to the public, to the courts that they are doing vocational training there; training police officers, military people for their jobs to upgrade their skills. That is really all that they advertise that they do. To the extent that you are going to approve this or affirm it we would ask you to say if you want to have a shooting range, have it, but you cannot provide any vocational training to military personnel or the law enforcement agencies. If you read the Court of Appeals opinion which is also in your packet, it says specifically that those uses that are prohibited cannot continue. If you are going parcel out as a vocational school, that is fine, but that is exactly what their primary use is. Our second argument is that the County issued the permit and a site plan for TigerSwan to operate an outdoor recreational with mechanized vehicles. If you look at Exhibits 4 [P4] and 5 [P5], that is what they say they are doing. The site plan is for that use, the zoning permit is for that use. The zoning application or the site plan application leaves a blank what the use is. It is our position that the County can't come in now after issuing the permit for them to operate essentially a go-cart tract or outdoor mechanized vehicles and say "we made a determination that it really didn't fit any use of any sort whatsoever so we decided to classify as this because it has the same impact because there is not such determination in this record. The only thing that is there is this site plan and this zoning permit and they don't say that. The final argument is that which we have alluded to on cross examination, is that even if you say for purposes that the zoning administrator could take these uses out and say suppose it is not a vocational school and we say it is, they could classify the impacts. Again, they are stuck with whatever the requirements are for outdoor recreation with mechanized vehicles. That provision in the zoning ordinance which is at Tab 7 [P7] says that the outdoor recreational uses must be free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, and solar structures used for recreational activities. Again indoor recreation isn't allowed so what they are saying is outdoor recreation regardless of impacts or anything, they have got to follow the rules for outdoor recreation. They are saying you can't have anything but dressing room and little buildings that you have to use for important things while you are outdoors. TigerSwan has six to seven classroom buildings, a Pro Shop, a range control building and instructor office and a break area. These are not buildings that are allowed in outdoor recreation, so it is our position that at a minimum that the site plan has got to be revoked and those buildings have got to go. If they want to have a restroom, if they want to have equipment storage, if they want to have an outdoor pavilion, that is fine, but they cannot have seven classroom buildings, a Pro Shop and offices and still comply with that provision. Finally, we contend again, their evidence is going to show that they are a vocational school. Even if you could look at what has the closest impact, it is not a go-cart track or a BMX track which is what this particular definition says at 7A 203 [P7A] and if you look at that it says that it is something that uses vehicles for recreation, like a go-cart track or a BMX bike track. There is nothing about that that has things flying off of the property. There is nothing about gun fire. We would submit that if there is anything that is close it is an industrial use not otherwise classified. Now that is a use in the list of permitted uses that is not allowed in the A1 and that use is 7E [P7E] which is a use that involves a use which creates a high degree of nuisance and are not generally compatible with abutting residential or commercial uses. You are looking at someone who is firing millions of rounds of fire arms everyday and training military and law enforcement officers, teaching combat and we would assert to you that as close to anything as close that industrial use which is something that is a nuisance and bothers the

neighbors, it is not like a go-cart track or a BMX track. I would like to call out witnesses, they are going to testify and talk about the impact to them and what this is doing to their daily lives.

CHAIR DONALDSON: Swore in Julia Faircloth.

MRS. FAIRCLOTH: My name is Julia Faircloth and I am a Human Resources Director. I live at 6504 HWY 210 South, Stedman.

CHAIR DONALDSON: How close to this piece of property do you live?

MRS. FAIRCLOTH: It is on the map that Ms. Speicher showed earlier. According to their measurements it is approximately two miles from the point of shooting. I will say my property line is just 375 feet from the property site that has been approved, the site outlined in red. [Pointing to the presentation] I do live here on my property with my husband and my three children. I also work full time with a major corporation from this address. It has been more than two years since we have been here and the County Planning Director approved the site as an elementary or secondary school. It has now been more than two years since the County Planning Director erred in approving the TigerSwan plan as an elementary or secondary school despite concerns from local residents and landowners. I am angered by the time and expense incurred by community members in attempting to correct that error. And now, after three North Carolina Appellate Court Judges ruled unanimously in February of this year that the TigerSwan Facility was not a permitted use in our A1 District, instead of Cumberland County complying with that ruling and closing the TigerSwan Facility, the County Planning Director has approved another site plan. He now believes that TigerSwan is an outdoor recreational facility with mechanized vehicles. This is absurd. The TigerSwan Facility is a military and law enforcement training center as TigerSwan has represented time and time again to the courts and others. As we have previously argued, it is a vocational school which is expressly prohibited in the A1 district. In addition, the TigerSwan Facility is nothing like a go-cart or BMX track and the impacts on the neighbors are much more intense and offensive than an outdoor recreational facility with mechanized vehicles. I know this because I live near the TigerSwan Facility and have to suffer its impacts every day. The TigerSwan Facility creates a nuisance to me and my family and is not compatible with the abutting and nearby residential and agricultural uses. We know that military training is a necessity. We respect and appreciate the efforts of the military and when we hear training exercises at Ft. Bragg, we recognize it and have no issues with it. TigerSwan is not the U. S. military. They are a private for-profit company. We do not want their realistic combat training exercises in our backyard. The TigerSwan Facility belongs in a zoning district which permits the use and which can isolate and contain this training from residential and agricultural areas such as the A1 District. There is no doubt in my mind that our property values have been greatly diminished by the presence of the TigerSwan Facility and that it poses an ongoing significant threat of injury and specific and direct loss to us. The TigerSwan Training Collaboration Center advertises on their web site that their Sportsman's range is open on Saturdays from 8am - 4pm. However, this is certainly not what dominates their web site. On the homepage, the following company description appears: \*TigerSwan provides integrated solutions to potential and difficult challenges and \*TigerSwan is a Service-Disabled, Veteran-owned Business that provides comprehensive solutions to global instability, operational risk management, training, logistics, crisis management, business intelligence, and security consulting services to the US Government and corporate clients. The course listings, which are almost universally geared to military and law enforcement training, provide

additional support that this is not intended to be a recreational facility. Throughout the past two and a half years, TigerSwan has asserted that there is no harm in their operation. The last time we appeared before the Board of Adjustment in 2010, TigerSwan had not yet opened their Training Collaboration Center. I now have almost two years of experience living and working near this firing range and many of my concerns have come to fruition and my concerns about the TigerSwan operation have grown. The firing range activity has increased, and my family and I are regularly bothered by the noise from the gunfire coming from the TigerSwan Facility. TigerSwan also still wishes to expand their operation and increase training activity, which will mean even more noise than there is now. My primary concern with TigerSwan is the potential for stray gunfire. TigerSwan uses firearms which have a range sufficient to reach our property. The new site plan does not appear to have any limitations on the weapons that can be used. While TigerSwan's students will be required to comply with the Firearms Regulations, this brings me little comfort given that TigerSwan has previously admitted there is a risk of stray gunfire and the penalty for a violation is potentially only a \$40.00 fine. Because of the TigerSwan Facility, I am no longer comfortable going for walks on my property. When class is in session, the gunfire sounds so close and so direct that I usually feel that I must go indoors. My children are not comfortable practicing outdoor sports when the firing range is open. We no longer can feel comfortable planning cookouts or other activities for guests for fear of stray gunfire and because of the disturbance from the noise and the stress that hearing constant gunfire causes us. The noise from gunfire and explosives is not only loud, but it is frightening. The noise is also a nuisance when we are trying to work, study, play or simply relax. On the morning of October 26, 2011, I was working in my home office, when I began hearing very loud gunfire. Although gunfire from the TigerSwan Facility has caused me to get up from my desk on a number of occasions in the past, this was different. The doors and windows were closed, and our home is well insulated. Around 9:45 in the morning after stopping work a few times to try to determine what was happening, I called the Sheriff's Department. I spoke with Officer McLaurin. I told him that there was very loud gunfire that seemed to be coming from the TigerSwan site. I advised that I felt like I was in a war zone. I also told him that I did not believe that anyone was monitoring the types of weapons being used at the facility. I also told the officer that it sounded like one shot had hit something other than a berm. An officer did come out. By that time the loud gunfire had stopped. The officer that came to my home told me that he could see in the Sheriff's Department records that numerous complaints had been filed regarding the TigerSwan activities. Weekend and night firing activity at the TigerSwan Facility has increased recently and is very loud and disturbing. In addition, residents are typically not notified until the very day that the night firing is to occur, and in some cases, just hours before the sessions are to start. Residents are notified via flyers stuck to mailboxes and in some cases, there has been no notification. We just do not know what to expect. One afternoon this spring, my home phone rang. The call came from one of my neighbors. She said "do you hear the explosions?" I told her that I did, and had been hearing the noise all day. She told me that she had come home from work early to rest due to illness. She had fallen asleep. Almost immediately she was awakened by the sound of explosives. She said that it sounded like a 4<sup>th</sup> of July fireworks show from where she was located. There seems to be a perception that everyone leaves our little community to go off to work each day and that no one lives close enough to the TigerSwan Facility to be bothered by stray gunfire or noise concerns. That is not true and we are bothered by the gunfire during the day and also at night. TigerSwan's leaders have stated that no one lives close enough to the TigerSwan Facility to be bothered by stray gunfire. The fact is that at least 70 residences are located on the northern side of the facility within two and one half miles of the current location of the shooting ranges. Within a three mile radius, there

are approximately 300 residences. Many residents are at home most of the time because they may work virtually for their employers, they may be retired, they may work part-time, and some are farmers. It is undisputed that weapons used on the property can result in gunfire traveling over two and one half miles. The noise from the gun ranges is already very disturbing to us and is a continuous nuisance. The potential for stray gunfire is real and the fear for personal safety and stress caused by noise at the current level of operation creates significant concern for community members. In sum, there is no doubt that out property value is being decreased every day that the TigerSwan Facility is in operation and that this operation is negatively impacting the environment. Our quality of life has also been significantly adversely affected since TigerSwan opened its doors. There has been great hardship already imposed on the citizens of this area. The noise and fear of physical harm already exists from current operations and there is a threat of much greater noise and fear as the TigerSwan Facility has not fully developed to its much larger planned capacity. On their website TigerSwan indicates plans to include an 800 meter Known Distance Sniper range with 15 covered shooting positions and 60 foot tower for high angle shooting. 800 meters is nearly a half mile and shooting at a target that's nearly a half mile away would seem to have increased possibility of stray bullets. The citizens of this area face greatly reduced property values as a result of the operations of this facility, are not free to enjoy their property as previously used, and there are tremendously concerned about the much documented environmental concerns that accompany shooting ranges. Thank you.

CHAIR DONALDSON: Are there any questions?

MR. MEEKER: Mrs. Faircloth, my name is Charles Meeker and I represent TigerSwan in this matter. I believe you testified that you live approximately two miles where the shooting occurs on the firing range on the TigerSwan Facility?

MRS. FAIRCLOTH: That is my understanding, yes.

MR. MEEKER: And much of the area between your house and where the shooting occurs is actually wooded, is it not?

MRS. FAIRCLOTH: Yes.

MR. MEEKER: About a mile of it is forest?

MRS. FAIRCLOTH: I don't know how far it is.

MR. MEEKER: A large amount of it is forest, is that correct?

MRS. FAIRCLOTH: My property, a large amount is forest.

MR. MEEKER: Have you ever been to the TigerSwan shooting range?

MRS. FAIRCLOTH: No.

MR. MEEKER: So you have never seen what is there, have you?

MRS. FAIRCLOTH: Only through photographs.

MR. MEEKER: So you don't know what caliber bullets are used there, do you?

MRS. FAIRCLOTH: I do not.

MR. MEEKER: And you do not know what kind of baffles are in place so that rifles cannot be fired over the berms?

MRS. FAIRCLOTH: I've only seen those through photographs.

MR. MEEKER: And you have never gotten an engineer to study the surface danger zones to see whether if they in fact would keep the caliber actually fired there on site?

MRS. FAIRCLOTH: I have not spoken with an engineer on that topic, no.

MR. MEEKER: In terms of facts, let me ask this; some of your neighbors allow hunting on their property, do they not?

MRS. FAIRCLOTH: I think some do.

MR. MEEKER: And that is actually closer to you than the TigerSwan firing range is which is approximately 2 miles away, is it not?

MRS. FAIRCLOTH: It could be; I'm not really sure.

MR. MEEKER: Are you aware that the Cumberland County Sheriff's Office is undertaking testing to see whether TigerSwan is in full compliance with the Cumberland County Noise Ordinance?

MRS. FAIRCLOTH: They actually told me that they have been trying to figure out a way to measure the sound but did not have that info.

MR. MEEKER: So you don't know if SGT Dowless actually went out and took test at that site, do you?

MRS. FAIRCLOTH: I have actually observed someone who appeared to be the Sheriff's Department in front of my home using a cell phone and holding up something.

MR. MEEKER: Using a cell phone or something so he could attempt to measure the sound?

MRS. FAIRCLOTH: Perhaps, yes.

MR. MEEKER: Just to summarize then, you have not actually seen the firing range at TigerSwan, is that correct?

MRS. FAIRCLOTH: I have not been on their property.

MR. MEEKER: And you have not seen their structure?



MRS. FAIRCLOTH: I have not been there personally.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Swore in Kevin West.

MR. WEST: My name is Kevin West and I live at 4656 Cedar Creek Road. My brother and I own OK Farms which you have seen on the map. We farm there and we own the property that adjoins the TigerSwan Facility.

CHAIR DONALDSON: How many acres is your farm?

MR. WEST: Our farm is about 800. The shoot house, which is hard to see on this map, for the TigerSwan site is approximately 75 yards from my property. I could throw a baseball and probably hit it. The range is approximately one mile from my house and where we work at every day. We have four residences on our property. One has been sold, but the other three belong to us. They are approximately 1.4 miles from the shooting range and also Bogie Island Road, which is in the photo [referring to the presentation], is about 1.4 miles as well, which is a public highway. This, as you've heard, is much closer than the two and one half miles danger zone that they have. Actions don't always go down range, it would be my concern when you are shooting rifles. I am a hunter and I am familiar with what they are shooting there and the fact they can easily reach my property. I have a hunting stand and I can easily shoot their berm consistently from that stand. So I know their weapons would be able to do the same as well. This makes and doing anything else on our property very difficult and a safety issue. In addition to those safety concerns is the loud noise when they are having a full fledged training day. It literally sounds like one of the live news coverage of a reporter in Afghanistan or Iraq; it is that loud and obnoxious. We have pecan trees on our farm. My children don't want to go pick up pecans when they are firing and personally, I don't want them there for fear of the danger that is also there with the firing of the weapons. We suffer damages everyday with TigerSwan shooting and with the noise and safety issues. Along with that the possibility of lead contamination down the road and what that could present to our groundwater being so close. When you put these issues together our property value has decreased greatly and we no longer can enjoy our property in a way that we hoped we could and I hope that by hearing this tonight that you will see that TigerSwan is certainly not an outdoor recreation facility. Thank you.

MR. MEEKER: Mr. West, my name is Charles Meeker, and I am representing TigerSwan in this matter. Did you say you have a hunting stand on your property?

MR. WEST: I do, I have several.

MR. MEEKER: Do you use those for hunting?

MR. WEST: Yes.

MR. MEEKER: Do you have rifles?

MR. WEST: Yes.

MR. MEEKER: Do other people use them?

MR. WEST: No.

MR. MEEKER: So it is just you using them?

MR. WEST: Yes.

MR. MEEKER: What do you hunt?

MR. WEST: Deer.

MR. MEEKER: In addition, you had a reference to lead, have you had any studies done saying that lead migrated from this site?

MR. WEST: I have not.

MR. MEEKER: So you do not have any factual information on that?

MR. WEST: I do not.

MR. MEEKER: Earlier, you talked about that you run a farm, is it a hog farm?

MR. WEST: It is.

MR. MEEKER: How many hogs do you have on the farm?

MR. WEST: Depending on the time you would ask me that it would be around 12,000 nursery pigs.

MR. MEEKER: 12,000 nursery pigs?

MR. WEST: Yes.

MR. MEEKER: How big are nursery pigs?

MR. WEST: Anywhere from six pound to about fifty pounds, it depends on the age.

MR. MEEKER: Do those hogs from time to time squeal and make other noise when they are fed?

MR. WEST: Sure.

MR. MEEKER: So there is some noise from those 12,000 nursery pigs.

MR. WEST: It is not comparable to the firing range.

MR. MEEKER: But you do agree that there is noise from those 12,000 pigs.

MR. WEST: Certainly.

MR. MEEKER: There is also odor from time to time depending on which way the wind is.

MR. WEST: Yes.

MR. MEEKER: And do you have a hog lagoon?

MR. WEST: I have two of them.

MR. MEEKER: How big are they?

MR. WEST: About not quite an acre each.

MR. MEEKER: And they are open to the air, is that right?

MR. WEST: Yes.

MR. MEEKER: Have you tested the water near those lagoons?

MR. WEST: I do, every sixty days.

MR. MEEKER: And everything is okay?

MR. WEST: Yes sir, I'm required to do so by law.

MR. MEEKER: Have you actually been to the TigerSwan site?

MR. WEST: I have not walked on their property but I can drive within fifty to seven-five yards on their property.

MR. MEEKER: You can see the property, the firing range?

MR. WEST: I can.

MR. MEEKER: And the berms are about fifteen feet high, is that correct?

MR. WEST: I could probably guess, but I would not be able to determine that.

MR. MEEKER: They are very substantial, is that correct?

MR. WEST: They are a pile of dirt.

MR. MEEKER: They are big piles.

MR. WEST: It is pretty big, but you asked me if I have been over there and I have not.

MR. MEEKER: They are about 100 yards on each side, is that right?

MR. WEST: I would say so.

MR. MEEKER: Can you see the baffles so the rifles cannot shoot over the berms?

MR. WEST: Well, no.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Swore in Julia Faircloth and Kevin West to the previous testimony and any further testimony presented tonight.

MRS. CURRIN: Mr. West, Mr. Meeker asked you if there was gunfire from hunting. Can you compare the gunfire that comes from hunting and the sound and impact of what you hear from the TigerSwan firing range?

MR. WEST: It is not comparable. You are talking about one shot, you don't shoot a thousand times at deer, you shoot and you either hit him or you don't. There really is no comparison. I may have gone hunting fifteen times last year and I shot my gun one time. So there really is no comparison.

MRS. CURRIN: The noise from the TigerSwan training center, it bothers you significantly, is that correct?

MR. WEST: Yes.

MRS. CURRIN: Can you compare the noise from your pigs to the noise from the TigerSwan Facility?

MR. WEST: No ma'am, I'm pretty sure TigerSwan can't hear my pigs squealing.

MRS. CURRIN: You said you are familiar with the weapons that TigerSwan uses, is that correct?

MR. WEST: Yes, I believe they are using 308 calibers and shoot 270's which is slightly smaller.

MRS. CURRIN: Based on your knowledge of those weapons, could gunfire reach your property if someone shot over the berm?

MR. WEST: Absolutely.

MRS. CURRIN: I don't have anything else.

MR. MEEKER: Mr. West, when you hunt, you don't have a berm behind what you shoot at, do you?

MR. WEST: No.

MR. MEEKER: No further questions.

MRS. CARSON: You are the second person to testify about your property value being affected, do you have anything from the County or anything that states since TigerSwan has been in business that your property value has decreased?

MR. WEST: No, I do not.

CHAIR DONALDSON: Swore in Arnold Smith.

MR. SMITH: My name is Arnold Smith and my address is 1075 Broadwater Bridge Road, Roseboro, NC. I have property that adjoins with Jimmy Pew who has a little corner of land between me and TigerSwan where the houses and the berms are. Estimated my property comes within 200-300 yards and that is approximately, I've never measured it. I plant tobacco in those fields and we harvest by hand. I grow tobacco out on the edge of the county and the adjoining county and on any given day there could be 120 – 135 workers in the field. The problem I have with TigerSwan is you can hear the rapid fire right through the hedge growth. When you have workers out in the field, they are concerned about what is going on across there and is there a chance the gunfire can come through to here where we are working. I have the same concerns myself. The biggest impact on my property, particularly but not limited to the tobacco field is the rapid gun fire which I just spoke about. It frightens the workers and they are concerned about their safety. I know that they do have berms and I have been to the site. I heard you ask the other witnesses have they been to the site. I've actually been to the site with Mr. Precythe at one time or another and the berms are facing the opposite direction from me. The firing is away from my property, but there are three berms, at least it was at the time I visited the property; one on the left, one on the right and one on the far end. The largest concern for me is back behind. These people take these guns to the firing range and if they are loaded and if one was to discharge, a bullet can travel a mile or a mile and half or 200 – 300 yards through the woods where they are working. There are no berms in that direction at all. Am I correct on that sir? That is one of my biggest fears? The noise that comes from it is not a big nuisance for me as the worry of stray gunfire. I think Mr. Lloyd stated tonight that ninety percent of what goes on there is a firing range and I bought that property to enjoy and if I wanted have a summer camp for the boy scouts, take the kids fishing in the pond and cook hot dogs in the back field on Saturday evening. What I would like to ask you is would you let your kids go if there firing right nearby? That's what I would like for you to think about when you make a decision because my kids' safety and the safety of the neighborhood is what I'm worrying about. Thank you.

MR. MEEKER: Mr. Smith, I believe you said that you agreed with Mr. Lloyd that ninety percent of what occurred at this site is a firing range, is that correct?

MR. SMITH: I didn't say that I agreed with that, I said the he [Mr. Lloyd] had agreed to that. I was just making a statement that mostly what went on out there was the firing and my concern with the safety.

MR. MEEKER: So in your observation, it is mainly the firing that is going on out there, is that right?

MR. SMITH: More than anything else, from my prospective.

MR. MEEKER: Now you live in Roseboro, is that correct, you don't live near here?

MR. SMITH: I live about eight miles down from the property.

MR. MEEKER: So the land that you own nearby is used for tobacco and not for residence, is that right?

MR. SMITH: At the time, yes.

MR. MEEKER: In terms of the firing, the people there, the sportsmen and the training; they are actually firing at targets that are away from your property in those three solid berms, are they not?

MR. SMITH: They are supposed to be.

MR. MEEKER: Have you ever seen anybody fire in any direction other than the targets?

MR. SMITH: I've never seen anybody fire in any direction period. I've just heard it.

MR. MEEKER: Have you had any injuries on your property from stray gun fire?

MR. SMITH: No sir.

MR. MEEKER: Do you know how strictly TigerSwan restricts where people can shoot on their property?

MR. SMITH: I don't know that. I assume they only allow firing into the berms.

MR. MEEKER: Are you aware they have never had an injury on site where any of the people fire?

MR. SMITH: No I was not aware of that.

MR. MEEKER: Are you aware of the training of the people who are in charge of the TigerSwan Facility?

MR. SMITH: No.

MR. MEEKER: Are you aware of what the shooters are told what they can and cannot do?

MR. SMITH: No sir.

MR. MEEKER: Have you seen the baffles that restrict where they can shoot?

MR. SMITH: No sir.

MR. MEEKER: No further questions.

CHAIR DONALDSON: Are there any questions? Thank you sir. Swore in Samuel Fort.

MR. FORT: I live at 6506 Emu Drive, Hope Mills. I did not intend to speak tonight so I will not repeat what other folks have covered. I have just a couple of points that I want to make. I own property that is adjacent to the land that is currently being used by TigerSwan. I strongly oppose the recent approval of the training facility as an outdoor recreation facility. I feel this is not a permitted use in the A1 District. There are several issues we covered before and now Mr. Davis' testimony as to the safety concerns we have, the potential environmental impact and to the noise and of course property value. I just want to hit on the safety and I have an abbreviated comment on that, but I go back to a couple of years ago when I was looking at all the information available and in the original site plan that was submitted by TigerSwan there was DOD pamphlets in there indicating the safety danger zone in the cases of the weapons for intended use there. I remember this specifically because it was also listed on the original site plan conditional permit. One of those weapons was 7.62 mm and basically equivalent to a 308 caliber and the listed surface danger zone is 4100 meters listed on the permit and on the DOD standards submitted by TigerSwan. 4100 meters is a little over two and a half miles and if a stray bullet happens to get out of those berms and understand stray bullets do get out sometimes even though there are a lot of precautions; that two and a half miles takes it on to my property and beyond. I don't live in the residence on my property but I do spend a lot of time down there working in the fields. I work with pine tree settings, I work with bush hogging the fields, I work with gardening in my fields and cutting wood in the woods. I've even been down there recently with my wife with a forestry consultant and she told me if we hear the guns firing we are going to leave. I have a concern about safety, I think it is real, it I think it certainly immediate and I think it is dangerous. Of course the noise is not going to exceed the county limitations on the property line at my end, but it still is something I hear all the time, it is there all the time when I am down there working. It is disturbing to say the least to hear multiple shooters with rapid fire shooting in an area that is typically known for silence or farm sounds or wildlife sounds. That is considered a nuisance to me. There was another previous statement about environmental concerns. We listed at great length before and I wasn't planning to do that but I think right now environmental threats are the same as they were in 2010 when we challenged that. We believed the soil, water, wetlands and wildlife would be adversely affected because of lead contamination. It is widely documented that shooting ranges cause lead contamination and are a major source of pollution in the environment and that is the documentation I looked at. I don't have reference to it right now because I wasn't planning to outline that but there is plenty documentation available of studies that have shown that to be the case. This is a wetland area, there's water streams feeding out of that area going to the other areas. Actually there is a water stream from that property onto my property and so if there is lead contamination in the water and the soil; it can easily migrate to my property and other properties. I think we all know that is not necessarily an immediate concern but it is a long term future concern. We have drinking water problems sometimes now and we certainly don't want to have to extend city water to places because of lead poisoning. That is all I had to say. Thank you.

MR. MEEKER: Mr. Fort, my name is Charles Meeker, I believe you testified that you agreed that the sounds from the TigerSwan Facility do not exceed the Cumberland County Noise Ordinance, is that correct?

MR. FORT: I said I suspect it doesn't at this time.

MR. MEEKER: But you have no information that it does exceed the noise ordinance?

MR. FORT: No.

MR. MEEKER: You talked about lead concerns? Do you have any facts or tests showing any lead migration from the soil?

MR. FORT: No I do not.

MR. MEEKER: You don't have any facts?

MR. FORT: I don't have any samples that there is lead migration now. I do have what appeared to be legitimate documentation and history of studies that show lead contamination occurs frequently at shooting ranges.

MR. MEEKER: That is at some other site that may not be using mitigation.

MR. FORT: Another concern is they are not required to by this Planning Conditional Permit to follow EPA lead mitigation guidelines, they are only encouraged to, and they are not required.

MR. MEEKER: Do you know what guidelines they are in fact following:

MR. FORT: I do not.

MR. MEEKER: You also testified that a certain caliber of bullet is being used. Have you been to the site to know what caliber is being used?

MR. FORT: I have not been to their site; I've been where I can see their site.

MR. MEEKER: Could you see the caliber of bullet being used?

MR. FORT: No, I saw pictures that indicated that they were really close to. In the newspaper they looked like 308 or that type of weapon, but I don't know.

MR. MEEKER: You have no personal knowledge, is that correct?

MR. FORT: No except the information that you submitted or TigerSwan submitted that they were going to use that weapon.

MR. MEEKER: Finally, Mr. Fort, do you hunt on your property?

MR. FORT: Not now, I don't hunt at all.



MR. MEEKER: Have you hunted before?

MR. FORT: I have.

MR. MEEKER: Did you have berms behind at what you were shooting at?

MR. FORT: No.

MR. MEEKER: No further questions.

MRS. CURRIN: You testified that you had no indication that the noise ordinance was being violated at your property line, is that correct?

MR. FORT: That is right.

MRS. CURRIN: You don't know about anybody else's property line and your property line is much further than some of these other people's, is that correct?

MR. FORT: That is true.

MRS. CURRIN: When you were talking about lead, you did testify, the site plan does not require any lead mitigation what-so-ever does it?

MR. FORT: Not that I can see, it only encourages it.

MRS. CURRIN: It has no restrictions or regulations about how much lead can go on a property does it?

MR. FORT: That is correct and from what I also understand while reading the logs is that the private enterprises are not even directed by EPA to clean up the lead.

MRS. CURRIN: You went to some meetings with representative of TigerSwan a couple of years ago, didn't you?

MR. FORT: Yes.

MRS. CURRIN: Did they tell you how many millions of rounds of gunfire that they would fire?

MR. FORT: I can't remember if that was specifically mentioned there but their original site plan description and their ballistics and the sounds indicated seven to fifteen million rounds a year.

MRS. CURRIN: Were you told by any representative of TigerSwan what the likelihood of stray gunfire would be?

MR. FORT: There was a comment made by someone else there and one of the TigerSwan representative said it was a one in a million chance.

MRS. CURRIN: At fifteen million rounds a year, that means some bullets might leave the property under what TigerSwan has actually informed you.

MR. FORT: If that statement were true, if they fire fifteen million rounds a year, then fifteen stray bullets could get out.

MRS. CURRIN: You were talking about the types of weapons that TigerSwan would use and that is based on the first site plan, is that correct?

MR. FORT: That is correct.

MRS. CURRIN: That first site plan listed specific types of weapons that they could use on the property, is that correct?

MR. FORT: Correct.

MRS. CURRIN: This site plan has no such limitations, does it?

MR. FORT: No.

MRS. CURRIN: There is nothing in this site plan that stops them from using any type of weapon that they want to, is that true?

MR. FORT: I presume.

MRS. CURRIN: That's all I have.

CHAIR DONALDSON: Are there any other witness Mrs. Currin?

MRS. CURRIN: No sir

MR. MEEKER: I would like to give a brief overview and while I do this Mr. Campen will hand out the material for TigerSwan Exhibits T1 through T7 [T1-T7]. Members of the board, TigerSwan respectfully submits that the Cumberland County Planning & Inspections Department properly issued site plan approval on April 9, 2012 of this year. We submit the briefings for that.

CHAIR DONALDSON: Did you give a copy of this to Mr. & Mrs. Currin?

MR. MEEKER: Yes sir, we did. In terms of TigerSwan, we have the two owners here tonight, Brian Searcy and Jim Rease, they are both Delta Force veterans and they are retired from the military and they are here in Cumberland County creating jobs here as well as elsewhere. They are outstanding citizens in this community. TigerSwan leases a massive site just east of Fayetteville. It's site is 978 acres, the total site is 1521 acres over 2 1/3 square miles. Just for the boards reference quite often a firing range is 20, 30 or 40 acres; this is on a site that is 1500

acres and perfectly was suited for this. You are going to hear how the Cumberland County Chamber of Commerce recruited TigerSwan to Cumberland County over other counties in part because the site was the ideal location for the training facility here. You are going to hear that at the site there are plans for additional buildings and currently there are a couple of classrooms or meeting buildings that are actually used for storage. There is an administrative building, some restrooms and a couple of other buildings on the site, but the primary use you will hear under sworn testimony is that for firing; that is firing both pistols and rifles. The rifles are restricted in how high you can shoot. You have to shoot in the berms, you will see a picture of the berms. The practice ranges there are the primary use at this site. You will hear what you have already heard from the Planning Department that there was a prior approval permit and then a Court of Appeal. The one approved here was after the revision to the Cumberland County Ordinance. The ordinance was fundamentally changed as Ms. Speicher and Mr. Lloyd pointed out, the prior ordinance prohibited it unless it was expressly permitted. After the Wesley Chapel case and the Court of Appeal indicating it is a policy in North Carolina it should be free use of property unless prohibited; Cumberland County did a 180 degree turn-around and that is unless something is prohibited, it is permitted as a matter of right and if there is not a specific use of category, then you look to the use category with the most similar impact. In the brief, you will see that Exhibit B shows the revised Section 402 and that is the section that is applicable here and that is the section under which the permit has been granted. We believe that the evidence that has been shown and will continue to show that the Planning Department correctly used its judgement in using the ordinance and looking to a similar impact. In terms of the use matrix, we have included that as part of Exhibit C. You will see in use matrix there is nothing for a firing range. There is no prohibition but there is also no use category for it, and so thus you go to what is the most similar use category. In looking at the A1 District which is the second district there, you will see A1 allows Agricultural but are also a lot of other permitted uses for Special Use Permits including of the outdoor recreation categories; there are actually five recreation categories on page 45. One of them is indoor and that is not permitted in A1, the other four outdoor recreations are permitted to as a matter of right to issue a Special Use Permit. Mr. Lloyd and Ms. Speicher correctly determined this is outdoor recreational with mechanized vehicles is most similar in terms of impact so this permit was correctly issued. You will hear testimony about how well this firing range has operated, that the firing is the main activity, that they are looking after any potential lead very carefully and the Cumberland County Sheriff's office coming out to make sure they are complying with the noise ordinance. Also you will hear briefly that the property values in fact in this area are increasing not decreasing. In response to two or three points by the petitioners, first they contend that somehow TigerSwan has split-filed from the prior case, that is not really the correct story. In the prior case it was approved as a private school and the petitioners were saying no, you are not a private school; TigerSwan said yes, they thought they were. The Court of Appeals ruled that it is not, so actually both sides have shifted their position on whether it is a school or not. That is not what is important, the question is how the current ordinance applies, not what was done before to attempt to pigeon hole this use into a category it may not have fit in at least that is what the Court of Appeals ruled. Both parties have changed their position a little bit and that is because the ordinance has changed and because of the Court of Appeals ruling. Secondly, in terms of this vocational school, that is something that doesn't apply here. A vocational school is like a community college or a nursing school and is referred to in the ordinance as something that has extended courses of study where people come to for months at a time, where people take test, get their degrees and is primarily an indoor activity. It is something that involves sometimes thousands of cars per day. This facility is fundamentally different in that is really is an outdoor

facility with a few dozen people coming each day. It doesn't have an extended course of study and most of the activity is outside not inside the building as you would have in a vocational school. So vocational school really has nothing to do with this. There is some limited instruction, a building or two used for storage, most of the instruction is outside where people are learning a skill as how to shoot a gun. They are not sitting in a vocational school like becoming a nurse or something like you would do in a community college. Finally, in terms of this discussion of buildings allowed in outdoor recreation, I would like to point out the exhibit given by the petitioner's, I believe it is Exhibit 7B [P7B], they have been referring to outdoor recreation as general outdoor recreation as limited buildings, actually that is not the right category. If you turn over to page 24-25 of Exhibit D [P7D], where it says Recreation, Outdoor (with mechanized vehicle operations); that is the one that should apply, not the general outdoor recreation. So there are no limitation on buildings in that particular one. To summarize our points, TigerSwans feels that the Planning Department acted correctly in issuing the new permit under the revised ordinance because the primary activity here is a firing range; there is no restriction, no prohibition on firing ranges. I'd like to call my first witness, Brian Searcy.

CHAIR DONALDSON: Swore in Brian Searcy.

MR. MEEKER: Mr. Searcy, please state your name and address for the record.

MR. SEARCY: Brian Searcy, 412 Amberdon Lane, Raleigh, NC.

MR. MEEKER: How are you employed at the present time?

MR. SEARCY: I am the President, Chief Operating Officer for TigerSwan and also one of the owners of the company.

MR. MEEKER: Will you summarize your military experience for the board.

MR. SEARCY: I spent twenty-three years in the Army Special Forces, stationed at Ft. Bragg. I've spent the last sixteen years in the Army's Delta Force and I retired from there in October 2005.

MR. MEEKER: Would it be correct to say that you have extensive training in the use of firearms?

MR. SEARCY: It would.

MR. MEEKER: Would you describe briefly to the board, how your company arrived here in Cumberland County.

MR. SEARCY: Because we do so much training for the military and law enforcement, we knew that we would like to have a branch facility. We looked at Sampson, Johnston, Harnett and Cumberland. We looked for land that was large enough to meet our stringent safety requirement and the stand-off for noise and being good neighbors with folks. The piece of land in Cumberland fit the bill. It was the largest piece of land we could find. The surface danger zone for the caliber we wanted to fire would be completely contained on the facility and we

knew we wanted to be in Cumberland County because of the proximity to Ft. Bragg. That is how we came to be in Cumberland County.

MR. MEEKER: Could you describe for the board what a surface danger zone is.

MR. SEARCY: The surface danger zone is the predicted area of where a projectile will land and is based on the caliber of projectile fired the muzzle velocity and the weight of the projectile. These are well documented by the Department of Defense based on the caliber fired and velocity. We designed the facility so that the surface danger zone; that is the area where a round may land if the weapon is fired at the optimum elevation, the maximum distance it could go. The surface danger zone has included in it, ricochet zones and dispersion areas. There is also the ten percent safety factor added. There is quite a bit of safety built into the surface danger zone. When we built the facility, we designed it so that the surface danger zone for the main caliber that we train military and law enforcement with; those main calibers would be completely contained on the facility and the extreme case where a round did make it over the berm. That was one of the things we really wanted to include in our safety specifications. In addition to that we put the fifteen foot berms up so that we capture all the lead and hopefully capture all those bullets so they never leave the range facility.

MR. MEEKER: In addition to the berms, when the rifles are fired, are there also baffles in place so that one cannot lift the rifle up and shoot over the berms?

MR. SEARCY: Yes, we've heard a lot of arguments and I know the caliber of rounds can go three miles; that is true; some guns can go three miles. The caliber of the rounds that we fire on the range is out in the open or the calibers where the SDZ's are completely contained on the facility, mainly the 556 military rifle rounds and pistol rounds. We do let hunters fire larger calibers on our sportsman's range, but it is very controlled where they fire from and there are baffles on the range where it creates what we call "no blue sky range" which prevents anybody from firing over the berm with those bullets. That in effect, keeps the SDZ on the range. We create what we call a no SDZ range once we have the baffle in place.

MR. MEEKER: A baffle is a piece of wood that goes in the structure that prevents anybody from shooting above certain levels, is that correct?

MR. SEARCY: Correct, they are 2 x 12 that come down completely and restrict anybody from firing over the top of the berm from the shooting position on our sportsman's range. That is the only place where we allow our sportsman shooters to shoot the 308 caliber guns or anything over where the SDZ's goes on the property.

MR. MEEKER: Now looking at the TigerSwan pictures, does it show the baffles here on the right?

MR. SEARCY: It does.

MR. MEEKER: Ms. Speicher, please show TigerSwan's Exhibit 5 [TS5] on the screen. Mr. Searcy, please describe what you see on this exhibit.

MR. SEARCY: We have our two ranges with the fifteen foot berms, there is an eight foot berm down the center of the ranges. This overhead structure here is where we allow the sportsman to fire on the weekend. Typically during the week, we have our military and law enforcement customers here and then on the weekend we restrict our recreational shooting here. This is our Pro Shop where we sell ammunition for folks who want to use the range on the weekend, our branch operations building where we manage the safety of the facility, the latrine and these are classrooms; one is for storage for maintenance and facilities and the other is really used for storage for our customers.

MR. MEEKER: In terms of the usage here on the site, how much is firing guns vs. instruction or anything inside of the buildings?

MR. SEARCY: Nine-five percent of everything that occurs on this facility is range fire, outdoors. The classrooms, our longest course is a ten-day instructor's course, it is eight hours long. There are eight hours of classroom instruction; that is an extreme for any of our courses. All the rest of the training is conducted on the ranges, every bit of it.

MR. MEEKER: On Exhibit 6, [TS6] is that a closer view of what the berms are?

MR. SEARCY: It is.

MR. MEEKER: There is a smaller berm in the middle with fifteen foot berms around the sides?

MR. SEARCY: Correct and those berms comply with the best industry practices in the NRA recommendation for berms in our ranges.

MR. MEEKER: Are they made of clay?

MR. SEARCY: They are actually made of sand that we pulled off the facility here.

MR. MEEKER: And they trap the bullets?

MR. SEARCY: They do.

MR. MEEKER: On Exhibit 7, [TS7] describe what is shown there.

MR. SEARCY: That is a class of military students with targets and it clearly shows and give you an indication of how high those berms are.

MR. MEEKER: So the target is three or four feet high and the berms to up fifteen feet?

MR. SEARCY: Yes.

MR. MEEKER: In terms of the individuals and groups that come to the TigerSwan site for training and practice, what kind of groups do you have?

MR. SEARCY: We get the full spectrum of customers that come to us. Everyone, from women who have never fired a firearm before, who just want to learn gun safety; to experienced law

enforcement and soldiers who are trying to improve their shooting abilities before they go overseas. We get the full spectrum and we train in the full spectrum. We have women's only introductory pistol classes all the way to classes we have going on this week, which is training Special Forces.

MR. MEEKER: How much emphasis does TigerSwan put on safety?

MR. SEARCY: Safety is our number one concern. First of all we wouldn't be in business if we weren't safe. We come from a culture in the military where you cannot have training accidents with firearms; that is the bottom line. We took those strict safety practices that we used in the military and we applied them to our business. We have conducted over sixty thousand hours of live fire training and not have one accident.

MR. MEEKER: There have been some comments or arguments that this firing range should be considered more like a community college, nursing school or vocational school; does this have any similarities to that type of operation.

MR. SEARCY: None. We do not qualify people to do jobs, we don't give diplomas and we don't give any degrees. We give a certificate of training to people who attend two or three day courses. All we're doing is helping improve skills that they already have.

MR. MEEKER: So people are just practicing a skill which is firing a weapon as opposed to doing something else?

MR. SEARCY: Correct.

MR. MEEKER: In terms of this general location, would it be correct to say that this location is extremely large and remote?

MR. SEARCY: It is extremely large and remote.

MR. MEEKER: And the pictures we have seen are just one small section of it?

MR. SEARCY: Yes, one small section of it.

MR. MEEKER: Other than the two petitioners that we have heard from tonight, does your company generally have good relations with people in the area?

MR. SEARCY: Yes, we do.

MR. MEEKER: No further questions.

MRS. CURRIN: You filled out the application for the site plan, is that correct?

MR. SEARCY: No, I did not.

MRS. CURRIN: Do you know why the use of property, why it was supposed to be filled out, was left blank?

MR. SEARCY: I don't.

MRS. CURRIN: TigerSwan has a website on the internet that states what it does, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Is the information on the website reliable?

MR. SEARCY: The information on the website is marketing information and for the most part, yes it is correct

MRS. CURRIN: What do you put on the website, you are putting out to the public and to the world what you do, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: You testified just a little while ago that during the week you provide training to law enforcement and military personnel, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Are there any other courses during the week?

MR. SEARCY: No.

MRS. CURRIN: Your sportsman's range or recreational shooting only occurs one day a week, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: And that is on Saturday?

MR. SEARCY: Yes, Saturdays.

MRS. CURRIN: If you have to estimate, what percentage of your training is provided is provided to law enforcement and military personnel?

MR. SEARCY: Eighty percent, but I want to point out something here. Not all of it is conducted at the training facility. You've got to remember that we the largest provider of tactical training in U. S. Special Operations Forces. The vast majority of it takes place on a military training post.

MRS. CURRIN: How much of your activities on this particular parcel is currently provided to military and law enforcement personnel?

MR. SEARCY: Currently, probably fifty percent.



MRS. CURRIN: How much is planned to be there ultimately for military and law enforcement personnel?

MR. SEARCY: Eighty percent.

MRS. CURRIN: The military personnel, you are giving them firearms training in order to improve their performance in their occupation as a soldier, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: The law enforcement training is to allow those law enforcement officers to better perform their jobs as law enforcement officers, is that correct?

MR. SEARCY: To improve their current skills that they have, correct.

MRS. CURRIN: So they can do their job better, is that correct?

MR. SEARCY: I'm not going to sit here and say we are running a vocational school, because we are not.

MRS. CURRIN: I'm not asking you to, I'm asking why you are teaching law enforcement.

MR. SEARCY: To improve shooting skills.

MRS. CURRIN: And they shoot as a part of their job, is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: With your course schedule that is on your website, you can correct me, it appears that about fifty percent of your courses are not only available to military and law enforcement, but they are the only people who can attend those courses, is that correct?

MR. SEARCY: Correct and that is based on skill, we typically run three or four open enrollment classes a month which are open to the general public.

MRS. CURRIN: On your website you states "A recognized leader in military and law enforcement training", is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: Would you classify that as your primary purpose?

MR. SEARCY: No.

MRS. CURRIN: What is your primary purpose?

MR. SEARCY: Training is a small portion of what TigerSwan does.

MRS. CURRIN: Let's go back. Is it one of your primary purposes at your Cumberland County Facility, to provide training to military and law enforcement?

MR. SEARCY: It is to provide training to customers, the majority of those military and law enforcement and that is just based on economics.

MRS. CURRIN: But you do say on your website that you are "a recognized leader in military and law enforcement training", is that correct?

MR. SEARCY: We are.

MRS. CURRIN: You also state that TigerSwan gives military, law enforcement and security professionals the opportunity to network and train with other professionals seeking to improve their skills and to train with the highly skilled operators in the world, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: So you are putting out to the world that one of your primary purposes is to train military, law enforcement and security professionals, is that correct?

MR. SEARCY: For that part of the business, that is correct.

MRS. CURRIN: And that is the part of the business that you are doing in Cumberland County?

MR. SEARCY: That is part of the business that we are doing in Cumberland County.

MRS. CURRIN: What is the other part of the business?

MR. SEARCY: We support recreational shooters, providing a place where gun owners and hunters can safely fire firearms in a rural neighborhood.

MRS. CURRIN: On Saturdays, is that correct?

MR. SEARCY: That is correct. Let me point something out. This is a commercial entity. The business plan doesn't support having the range open to the public everyday of the week.

MRS. CURRIN: I understand; I'm just trying to clarify to the board what you are doing out there and you are having recreational shooting one day a week, correct?

MR. SEARCY: We had it two days a week and we also had open enrollment classes on Fridays, Saturdays and Sundays typically two or three day courses; several of them a month.

MRS. CURRIN: Your company filed a petition for a discretionary review to the Supreme Court, is that correct?

MR. SEARCY: That is correct.

MRS. CURRIN: One of the things you asked the Supreme Court to do is to grant your petition because you wanted to keep operating as you were operating, is that correct?

MR. SEARCY: I'm not sure what you are me asking here?

MRS. CURRIN: One of your primary arguments, if I can remember correctly is that you were bringing a big economic benefit to Cumberland County and that if the courts were to close you down that would be some sort of blow to economic development; is that correct?

MR. SEARCY: Correct.

MRS. CURRIN: When you were doing that, you were saying, we are operating right now, is that correct? You told the Supreme Court you were out there operating on the property, correct?

MR. SEARCY: Yes.

MRS. CURRIN: And you told them who your customers were, do you remember that?

MR. SEARCY: No, I don't.

MRS. CURRIN: Okay, let me try to remind you. Is it true that these are a list of the customers that you serve; The Police Department of Fayetteville?

MR. SEARCY: We have conducted training with the Police Department of Fayetteville.

MRS. CURRIN: The Police Department of Cary and Police Department of Goldsboro.

MR. SEARCY: Correct.

MRS. CURRIN: The Cumberland County Sheriff's Department.

MR. SEARCY: No, that is a mistake. There have been individual officers from the Cumberland County Sheriff's Department.

MRS. CURRIN: North Carolina Alcohol Law Enforcement and State Police, Immigration and Customs Enforcement, Custom and Border Protection, Marine Special Operations Command, The Marine Corps.

MR. SEARCY: Yes.

MRS. CURRIN: 21<sup>st</sup> Special Tactics Squadrons U.S. Air Force?

MR. SEARCY: We train a lot of military units and police units.

MRS. CURRIN: U.S. Military Special Operations Command, Joint Special Operations Command 82<sup>nd</sup> Airborne Division.

MR. SEARCY: That is correct.

MRS. CURRIN: Do you know whether you represented to the Supreme Court whether you had customers other than the ones I just listed?

MR. SEARCY: I don't know.

MRS. CURRIN: You also say that you have trained 2200 individuals since TigerSwan opened their facility in Cumberland County last September. How many of those 2200 individuals would you say were involved in law enforcement and military?

MR. SEARCY: Probably eighty percent of them. I would say they were military law enforcement and private security contractors, the rest were recreational shooters.

MRS. CURRIN: The security operators, the courses that you offer to them are aiding them in performing their professions as well, is that correct?

MR. SEARCY: Many of these guys want to improve their skills so they can save their own lives.

MRS. CURRIN: When is their own life in jeopardy, when they are at work?

CHAIR DONALDSON: Are you talking about the security operators now or are you talking about the military?

MRS. CURRIN: I had asked the question that if the courses that were provided for purposes .....

CHAIR DONALDSON: I was confused, are you talking about military people or are you talking about security operators? Which group of people were you asking about?

MRS. CURRIN: I asked him specifically if the courses that the security personnel were taking were to aid in their ability to perform their jobs as security.

CHAIR DONALDSON: You said security operator and there is a difference between security operator and security personnel.

MR. SEARCY: Shooting is a perishable skill and what we do is teach how to maintain these skills; a training methodology so they can train themselves later. That is what we do.

MRS. CURRIN: But the courses that are provided with respect to security personnel, to people who are security officers.....if somebody is an off-duty police officer or their job is to provide security at a museum or a parking lot or private business, you train those people as well, is that correct. They are not military law enforcement, they are private?

MR. SEARCY: Typically, those people will sign up on their own at our open enrollment classes. You are talking about security personnel, what we are talking about are security personnel that are working overseas for the U. S. Government.

MRS. CURRIN: That is what you are talking about with respect to security personnel?

MR. SEARCY: Yes.

MRS. CURRIN: The courses you are providing to them are aiding in their job as security personnel, is that correct?

MR. SEARCY: What we are teaching them is how to improve their shooting skills.

MRS. CURRIN: When do they shoot when they are on the job?

MR. SEARCY: Very seldom.

MRS. CURRIN: Are you teaching them how to shoot when they are on duty or when they are off duty?

CHAIR DONALDSON: Let's move on.

MR. SEARCY: There are a lot of shooting schools out there that are not considered vocational schools.

MRS. CURRIN: You have a contract with the U. S. Military, don't you?

MR. SEARCY: We have several contracts with the U. S. Military.

MRS. CURRIN: And those contracts are to provide training to soldiers or the military, is that correct?

MR. SEARCY: Some of them aren't.

MRS. CURRIN: You also provide a defensive driving school, is that correct?

MR. SEARCY: That is not correct. We have done that in the past. TigerSwan provides a lot of training from shooting skills that we conduct here on the range and on military bases; but we also teach things like strategic communications. We provide contractors with Special Forces qualifications on Ft. Bragg.

MRS. CURRIN: I understand that, we are just talking about what you do on this property.

MR. SEARCY: Well you were asking me about contracts that I have with the military.

MRS. CURRIN: Do you have contracts with the military where those services are provided in Cumberland County?

MR. SEARCY: Yes.

MRS. CURRIN: I asked about defensive driving because there has been representation made to courts that you provide training in defensive driving, do you or do you not?

MR. SEARCY: We provide tactical training, what we call tactical mobility out in the deserts of Nevada for Special Operations Forces and then we also teach personal security detail training at different locations and we may teach some type of defensive driving.

MRS. CURRIN: Do you do it in this location as you have done it in the past?

MR. SEARCY: No, right now we don't have track on the ranges since we haven't been able to move forward in construction.

MRS. CURRIN: You would be allowed to do it though under this permit if you so desire?

MR. SEARCY: The only thing we would be allowed to do with this permit is operate the vehicle on the small track on one of the ranges.

MRS. CURRIN: Why do you say that?

MR. SEARCY: Because that is the only thing on the site plan.

MRS. CURRIN: You have made representations in the past that you were going to do defensive driving on this particular site. Now you are saying you are not doing it.

MR. SEARCY: We would have to apply for another permit for any track facility.

MRS. CURRIN: I guess I'm a little confused because I've been doing this case for two years. Are you providing training for Homeland Security at this site?

MR. SEARCY: No. I mean, who works for the Department of Homeland Security? Yes, we have those people come to the facility.

MRS. CURRIN: Well, when I read your website, it says we provide training for Homeland Security so I'm just trying to ask if that is something that you do at that site. I'm just trying to get you to confirm whether or not that is what you actually do.

MR. SEARCY: We provide training at the site and off the site for those different customers.

MRS. CURRIN: That's all I have, thank you.

CHAIR DONALDSON: Swore in Steve Swierkowski.

MR. SWIERKOWSKI: My name is Steven Swierkowski, 2716 Franciscan Drive, Fayetteville, NC 28306. I'm employed at TigerSwan and I serve as their Director of Training at the TigerSwan Collaboration Center.

CHAIR DONALDSON: I doubt if Mr. Swierkowski remembers me, but I've had a brief encounter with him in the past, but just through a mutual friend. I remember because of my military background. I'm just letting everybody know. It's been a number of years back.

MR. CAMPEN: Mr. Swierkowski, would you describe your responsibilities as Training Director at TigerSwan.

MR. SWIERKOWSKI: As Training Director for TigerSwan I coordinate the training events that take place and I also run the facility at the archery building.

MR. CAMPEN: So you are on the site on a daily basis?

MR. SWIERKOWSKI: Yes, I am on the site on a daily basis, most of the time teaching another course and as Mr. Searcy explained we do training off the facility as well; but primarily I am at the facility.

MR. CAMPEN: Where does most of the activity that you provide here at the Cumberland County facility take place? There are a number of different components to the facility. Where does the principle activity take place?

MR. SWIERKOWSKI: As we stated before, the majority of the activities takes place on the range.

MR. CAMPEN: There has been testimony about the range that there are meeting rooms or instructional rooms on the site. How many of those are there presently?

MR. SWIERKOWSKI: We are currently using one which is designated on the diagram as a classroom as a meeting room. The other one, there are two next to the latrine facility; one is a storage facility for our maintenance equipment and targetry and the other is used as a meeting room and occasionally we do use it as a classroom; but that is very minimum use.

MR. CAMPEN: The site plan provides for a number of additional facilities at that site, is that correct?

MR. SWIERKOWSKI: Yes, it does.

MR. CAMPEN: Do you plan to build those at some point?

MR. SWIERKOWSKI: I'm speaking for the owner at this time; he is the one that would approve what buildings get placed. My assumption would be yes. My assumption is that they would be used similarly to what they are being used for now. So as we increase the number of ranges and increase the number of personnel coming to conduct the training, we are going to need those additional buildings to be used for as Mr. Searcy stated our students, some of the personnel who come for training who actually use it to store their equipment and to conduct their own briefings, things like that.

MR. CAMPEN: Those briefings that take place, do they involve TigerSwan instructor personnel or are they briefings that are conducted among the groups that are going there for use of the facility?

MR. SWIERKOWSKI: There are times when we do minor briefs in there and one of the board members asked about the concealed carrier; that is one class for instruction that we do use the

meeting classroom for a short period of time during that training. We do some instruction in the classroom which is required by law and then we go out to the range and we conduct the firing portion of that training.

MR. CAMPEN: Is that safety instruction before people go out to use the range?

MR. SWIERKOWSKI: Primarily if somebody is going to use the range, about ninety-five percent of the activity that takes place there is on the actual firing range. If we are going to conduct a safety briefing prior to somebody shooting, it is done on the range.

MR. CAMPEN: Do all of the activities and programs that take place at the TigerSwan Facility require the use of the meeting room or the instruction room?

MR. SWIERKOWSKI: Absolutely not, we can execute this range without the use of any classrooms.

MR. CAMPEN: Is it fair to say that from earlier testimony that a very small amount of the activity takes place in those rooms?

MR. SWIERKOWSKI: That is correct.

MR. CAMPEN: How many customers might you have on the site on an average day?

MR. SWIERKOWSKI: It varies considerably, but on an average day it may be twenty-four personnel that are conducting firearms training.

MR. CAMPEN: Does that consist of groups, individuals or mixed?

MR. SWIERKOWSKI: It is a mix.

MR. CAMPEN: Do families use the facilities?

MR. SWIERKOWSKI: Absolutely, we do have families that come to use the facilities, especially on Saturdays when the sportsman's range is open. Father's bring their sons there to learn how to shoot the hunting rifle. I have taken my son and daughter there to teach them how to do firearms in a safe and efficient manner.

MR. CAMPEN: You mentioned families using the sportsman's range. Is the range available to them any day that you are open?

MR. SWIERKOWSKI: No, the range is available to sportsmen on Saturdays and primarily during the week as Mr. Searcy mentioned the business model supports training groups, military or if we are having an open enrollment class where people sign up specifically for training.

MR. CAMPEN: In those open enrollment classes, Mr. Searcy testified Friday, Saturday and Sunday.



MR. SWIERKOWSKI: Primarily, in the open enrollment courses, we have military and non military sign up and they do sign up on Friday, Saturday and Sunday because it supports their schedule.

MR. CAMPEN: Are there other types of recreational uses that occur at the facility?

MR. SWIERKOWSKI: Yes. We do have other recreational uses, we have archery targets that we set up especially during the hunting season for hunters to come out there and conduct some archery training.

MR. CAMPEN: How much traffic do you have?

MR. SWIERKOWSKI: I would say with the personnel that work there and the personnel that come there for training; it would be ten to fifteen vehicles. You've got to understand that not everybody coming there to conduct marksmanship training is going to drive their own vehicle, they will car pool. Typically you will have a group of students with four in a vehicle.

MR. CAMPEN: I'm going to ask Mr. Meeker to hand out TigerSwan's Exhibit 8 [TS8]. Does TigerSwan have rules that apply to the use of the range?

MR. SWIERKOWSKI: Absolutely, we have rules.

MR. CAMPEN: Can you identify Exhibit 8 [TS8]?

MR. SWIERKOWSKI: These are the Sportsman's Range General Rules.

MR. CAMPEN: What is the purpose of these rules?

MR. SWIERKOWSKI: The purpose is to stress safety. As Mr. Searcy said, we do stress safety on the range, so when somebody comes in to sign up at the Pro Shop to use the sportsman's range the first thing they will see is a large poster board of our Sportsman's Range Rules that they have to read and then they will sign a document stating that they understand the range rules. Once they get out to the range, we have a range safety officer and he is a NRA range safety officer qualified individual to patrol to ensure everything is conducted in a safe manner.

MR. CAMPEN: Are these rules distributed to every person who uses the range?

MR. SWIERKOWSKI: Yes, the Sportsman's Range is specific to the sportsman's range. We have people that come to the range for an open enrollment course or military units, we have another set of rules that we give to them. It's not all of these rules that apply to a military unit.

MR. CAMPEN: Everybody that uses the range gets a set of safety rules?

MR. SWIERKOWSKI: Everybody that uses the range gets a set of safety rules. Yes.

MR. CAMPEN: You've been there all evening, haven't you Mr. Swierkowski?

MR. SWIERKOWSKI: Yes, I have.

MR. CAMPEN: Do you recall testimony from Mr. Smith, one of the petitioners, about his concern that shooting takes places not in the direction of the berm but back towards his property behind the range?

MR. SWIERKOWSKI: Yes, I do recall that testimony.

MR. CAMPEN: Is there any risk of that given the safety measures that you have in place?

MR. SWIERKOWSKI: That risk is extremely mitigated. We take all safety measures seriously. One being that our instructors are trained safety officers certified, they have countless hours of weapons experience, and we have redundancy with the amount of safety personnel that are on the range. Our classes typically have two instructors, one if the class is very small, but we do have a small student to instructor ratio. Typically it can be anywhere from ten to one for more experienced shooters it could be five to one if we have less experience shooters on the range. We have multiple people that work at the range that are there to supervise and everybody is a safety officer when you are on the range to make sure people are firing their weapon in a safe manner.

MR. CAMPEN: I want to ask you some questions about the conditions of your permit and this is the permit that is part of the board packet which is Exhibit 1 [S1]. Are you familiar with the zoning permit that was issued to TigerSwan?

MR. SWIERKOWSKI: Yes, and I am familiar with the thirty-one conditions.

MR. CAMPEN: Has TigerSwan complied with all the conditions?

MR. SWIERKOWSKI: Yes we have.

MR. CAMPEN: I want to direct you attention to Condition #26 of the permit. Would you read that for the board please?

MR. SWIERKOWSKI: It reads "The developer is encouraged to meet or exceed the EPA's Best Management Practices for Lead at Outdoor Shooting Ranges."

MR. CAMPEN: Does the TigerSwan Facility meet these practices?

MR. SWIERKOWSKI: Yes we do.

MR. CAMPEN: Would you briefly describe for the board what the EPA's Best Management Practices are and how TigerSwan is complying with these practices.

MR. SWIERKOWSKI: The EPA Best Management Practices recommend you take certain steps to mitigate the effects of lead. We do this in a number of ways. One is we contain the lead rounds that are fired that is through the use of the berms. The instructors set up the target that the rounds will be shot into the berms. Those are first measures we use to capture the lead. The next thing we do is mitigate the effect of lead going into the sub-ground and into the water and we do this by conducting soil samples and water samples and we do this semi-annually.

We conduct the water samples from four monitoring wells that are located throughout the range and additionally with the soil samples, we apply lime and phosphate in accordance with the soil reports that we get back and it says soils is deficient in certain type of nutrient to help mitigate the effect of the lead. We also maintain meticulous records on the amount of rounds fired. I know a comment was made earlier that we fire millions of rounds a day. I just want to say for the record that is inaccurate. Since we have been open, and I maintain the records for the amount of rounds we do fire, since September 2010, we have fired just under two million rounds, so it is not millions rounds a day. We do track that and once again we maintain the records of our soil and water samples and then we have a base line and we make sure there is consistency there with our results; that there is no spikes in the lead, copper, zinc or magnesium when we do those tests.

MR. CAMPEN: I want to turn your attention to another Condition #20 regarding noise, would you read it please.

MR. SWIERKOWSKI: It reads, "Noise levels cannot exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level cannot become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.

MR. CAMPEN: So TigerSwan has to follow that condition and maintain a noise level of 60 dB(A) between 10:00 pm at night and 7:00 am in the morning? Is that correct?

MR. SWIERKOWSKI: That is correct.

MR. CAMPEN: Does TigerSwan ever permit use of the firing range after 10:00 pm and before 7:00 am?

MR. SWIERKOWSKI: We have not fired rounds after 10:00 pm or before 7:00 am.

MR. CAMPEN: Does TigerSwan conduct training before 10:00 pm at night?

MR. SWIERKOWSKI: Yes.

MR. CAMPEN: What time of night do these exercises take place?

MR. SWIERKOWSKI: It varies based on the time of the year. For instance, now if we did a night fire, it would not start until about 9:00 at night and it leaves a very limited window because it doesn't get dark until about 9:00 and then at 10:00 we have to stop firing. We still maintain that based on the conditions.

MR. CAMPEN: How often might you conduct night firing exercises before 10:00 pm at the facility?

MR. SWIERKOWSKI: Night firing exercises might take place possible a couple of times a month. It is part of one of our five day courses when we do a night fire. It is not a common occurrence. When we do, we hand out an announcement that we are going to be conducting a night fire. We typically list a window. So residents will receive a flyer that typically will have

a Tuesday through Thursday and that is because if there is inclement weather, we have a window there when we do the firing.

MR. CAMPEN: You are familiar that there is a condition in the permit that TigerSwan is required to get a separate permit from this board if it ever intended to use helicopters on the site, is that correct?

MR. SWIERKOWSKI: That is correct. What we would do is apply for a Special Use Permit and to date we have never used helicopters at the site, but if the requirement came up and we have the request, we would come to a board hearing and apply for the Special Use Permit.

MR. CAMPEN: Do you know if there has been any helicopter traffic in the area around the facility?

MR. SWIERKOWSKI: Absolutely, there is a lot of helicopter traffic around the range. We are in close proximity to Simmons Air Field and we see a lot of the helicopters flying in the air.

MR. CAMPEN: I have nothing further at this time.

MR. CURRIN: Mr. Swierkowski, these rules that Mr. Campen was asking you about a Sportsman's Range General Rules, who makes those rules?

MR. SWIERKOWSKI: We do.

MR. CURRIN: They can't be enforced by the County, can they?

MR. SWIERKOWSKI: I'm not sure if the County's jurisdictions can enforce Sportsman's Range Rules.

MR. CURRIN: So after this case, if you were to be approved, you could do away with every one of these rules, could you?

MR. SWIERKOWSKI: That would be pretty stupid because they you risk having .....

MR. CURRIN: Just answer the question, you could?

MR. SWIERKOWSKI: I would not do it. I wouldn't allow firing without those rules.

MR. CURRIN: You could do it though, couldn't you?

MR. SWIERKOWSKI: Are you telling me or are you asking me? I told you that I am not going to do it. As Director of Training, I am not going to do away with the rules.

MR. CURRIN: But no one cannot make you change them, can they?

MR. SWIERKOWSKI: No one cannot make me do anything.

CHAIR DONALDSON: Let's move on to something else.

MR. SWIERKOWSKI: The bottom line is, no, we are not going to change the rules.

MR. CURRIN: What happens if the rules are broken?

MR. SWIERKOWSKI: That person is kicked off the range.

MR. CURRIN: And that is all?

MR. SWIERKOWSKI: They will not come back to TigerSwan.

MR. CURRIN: Did you fill out the application or the submission form?

MR. SWIERKOWSKI: I certainly did.

MR. CURRIN: You filled that out as the Director of the facility?

MR. SWIERKOWSKI: I did.

MR. CURRIN: Is there some reason why you didn't fill out the blank where it asks you to put the use of property and then said underneath that be specific?

MR. SWIERKOWSKI: I've got a couple of things there. I didn't see an asterisk there that said this area must be filled out. Please correct me if I'm wrong.

MR. CURRIN: You are welcome to look at it and the line is about four inches long.

MR. SWIERKOWSKI: I've got it and it does not say it has to be filled out in any way, but I will be glad to fill in the use if you need me to.

MR. CURRIN: There are lines on that piece of paper; did you understand those were blanks for you to fill in?

MR. SWIERKOWSKI: I understand there are a lot of lines on this paper; not every one needs to be filled in; not every line of an application needs to be filled in.

MR. CURRIN: You didn't think the use of property needed to be filled in?

MR. SWIERKOWSKI: No because as Ms. Speicher testified, she and I discussed it in detail.

MR. CURRIN: Really, beforehand?

MR. SWIERKOWSKI: No, when I came in to give her the permit.

MR. CURRIN: You filled out the form before you talked to Ms. Speicher, correct?

MR. SWIERKOWSKI: Correct. I do not recall when I filled it out, if I filled it out when I came here or after I talked to Ms. Speicher. Honestly, I don't recall.

MR. CURRIN: You don't recall. So you think you filled it out after you talked to Ms. Speicher?

MR. SWIERKOWSKI: I don't recall. I probably filled it out beforehand because if I did it after Ms. Speicher, I would have put in the use.

MR. CURRIN: Okay again, why did you not put in that form the use of the property?

MR. SWIERKOWSKI: Again, I discussed it in detail with Ms. Speicher, we went over the site plan.

MR. CURRIN: That was after you filled out the form, wasn't it? You talked to Ms. Speicher after you filled out the form, correct?

CHAIR DONALDSON: He said he didn't remember.

MR. SWIERKOWSKI: I don't recall.

MR. CURRIN: You don't recall why you didn't fill out the form, is that your answer?

MR. SWIERKOWSKI: Don't put words in my mouth; that is not my answer. I didn't say I don't recall why I didn't fill out the form; I said I don't recall when I filled out the form.

MR. CURRIN: Is it your testimony today on the record that you do not recall why you did not put on that line what the use of property would be?

MR. SWIERKOWSKI: I think I answered that question that I discussed with Ms. Speicher the use of the property when we discussed the site plan in detail.

MR. CURRIN: Tell us about your discussion with Ms. Speicher about the use of the property.

MR. SWIERKOWSKI: It is a firing range.

MR. CURRIN: Is that what Ms. Speicher told you or is that what you told her?

MR. SWIERKOWSKI: I'm not going to repeat myself.

CHAIR DONALDSON: What did you tell Ms. Speicher?

MR. SWIERKOWSKI: It is going to be used as a firing range.

MR. CURRIN: Why didn't you put that on there to start with?

MR. SWIERKOWSKI: I don't recall.

CHAIR DONALDSON: What are you getting at, Mr. Currin? You've got witnesses that have testified and everybody knows that it is a firing range. What difference does it make if.....

MR. CURRIN: We're not contending that it is a firing range.

CHAIR DONALDSON: You did last time.

MR. CURRIN: No, we never have.

CHAIR DONALDSON: You contend that it is a school now.

MR. CURRIN: We have always contended that it was a vocational school, not an elementary or a secondary school.

CHAIR DONALDSON: My question is, why are you going on about that blank? Everybody's testified that it is a firing range, okay? We've heard enough about it, so move on.

MR. CURRIN: Do you know what the term classroom means?

CHAIR DONALDSON: If you know, answer it.

MR. CURRIN: What is your understanding of the definition of the word classroom?

MR. SWIERKOWSKI: A place, a meeting establishment used to learn a specific subject or to meet for some type of learning.

MR. CURRIN: This particular site plan that you submitted to the County of Cumberland has on it seven classroom on the TigerSwan Facility in Cumberland County, doesn't it?

MR. SWIERKOWSKI: That site plan has two existing and five potential classrooms.

MR. CURRIN: I believe you testified it was your understanding that these buildings and classrooms would be developed in the future, is that correct?

MR. SWIERKOWSKI: I believe I testified that is Mr. Searcy's decision since he is the one with the purse strings.

MR. CURRIN: But you understood that is what would happen?

MR. SWIERKOWSKI: I would assume that is the potential, yes.

MR. CURRIN: That is all the questions I have, thank you.

CHAIR DONALDSON: Are there any questions from the board?

MR. NEWSOME: Typically, what is the number of the most people that would be using the firing range at one time in any given class firing weapons?

MR. SWIERKOWSKI: The most people I have seen there has been thirty-five at one time specifically on the firing range. Some of that comes into the safety. You have to have a certain amount of distance when firing on a range.

MRS. TART: What percentage of your clientele would you consider is there for recreational use and I'm talking about somebody like myself that would go to learn to fire a weapon?

MR. SWIERKOWSKI: I would say roughly twenty percent.

MRS. TART: And eighty percent would be the law enforcement and military?

MR. SWIERKOWSKI: Yes, ma'am.

MRS. TART: What agency monitors the activities there, is it OSHA?

MR. SWIERKOWSKI: I know the Cumberland County Sheriff's Department does the acoustic testing for the noise. As for other agencies that would monitor, we have environmental personnel come out to make sure of sediment and erosion control. The ATF monitors the use of our weapons and storage as well.

MRS. CARSON: If you have about thirty-five people out there some time or another, how many instructors or guidance persons would be there?

MR. SWIERKOWSKI: It depends on the skill level of the class. Typically, military law enforcement units that have thirty-five personnel, we do a ten to one student to instructor ratio. It is ten students to one instructor. So if we have thirty-five students we will have at least four instructors and with this you can see at least two instructors [referring to one of the Exhibit photos]; we had about thirty-five. This is one of the 82<sup>nd</sup> units. We have four instructors for thirty-five in addition to that, I'm at the range. I'm not instructing, but I'm overseeing and making sure that we are conducting things in a safe and efficient manner. So, four instructors plus other personnel at the range.

MR. LOCKLEAR: How many instructors are employed full-time?

MR. SWIERKOWSKI: Full time employees...there are four instructors, but we do use personnel on a regular basis, they aren't full time employees but we do use other instructors on a regular basis.

CHAIR DONALDSON: How many total employees do you have out there?

MR. SWIERKOWSKI: At the range we have eight full time employees, but that can vary based on whether or not we bring in instructors based on different events.

CHAIR DONALDSON: Swore in Doug Peters.

MR. PETERS: My name is Doug Peters and I live at 1628 Holloman Drive, Fayetteville, N.C. 28302. I am the President and CEO of the Fayetteville Cumberland County Chamber of Commerce.



MR. CAMPEN: What are your general responsibilities in that position?

MR. PETERS: Primarily to serve the interest of the business community and secondarily in partnership with the private sector my job is to recruit new companies to Cumberland County area.

MR. CAMPEN: Are you familiar with the TigerSwan Facility?

MR. PETERS: I am.

MR. CAMPEN: Do you and your family use the facility?

MR. PETERS: We do.

MR. CAMPEN: How do you use it?

MR. PETERS: I spend a good deal of time there with my sons and daughter. I was told a long time ago if you teach your kids to hunt you won't be hunting your kids and it is a place where they understand how to do it and how to do it appropriately in a safe environment.

MR. CAMPEN: Is the firing range the primary attraction for your family?

MR. PETERS: It is. We like to look at the turtles in the canal on the way in too.

MR. CAMPEN: Do you and your family ever make use of the meeting rooms that are on the facility?

MR. PETERS: No.

MR. CAMPEN: So your activity with TigerSwan is outdoors?

MR. PETERS: It is.

MR. CAMPEN: Would you describe your use as recreation for you and your family?

MR. PETERS: Absolutely.

MR. CAMPEN: How often do you and your family use the facility?

MR. PETERS: It really depends on whether it is a warm month and if we are in the community and if there is fishing, I would generally say once a month or so.

MR. CAMPEN: In your observance from being there would you say there were more people on the firing range or in the classrooms?

MR. PETERS: I don't think I've ever seen anyone in the classrooms. Typically, there aren't a whole lot of people out on the firing range when we are there. I assume there is a steady stream in and out all day, but there is no backlog of folks.

MR. CAMPEN: When you have been there, was there much traffic?

MR. PETERS: No.

MR. CAMPEN: Were you involved in TigerSwan's decision to locate this facility in Cumberland County?

MR. PETERS: I came on the backside of the recruitment of TigerSwan. I arrived in the community in June 2008 and that was about the same time the recruitment effort was coming to a closed. So as much as I would like to take credit for the recruitment of TigerSwan, I was a party to the closing, but I was not an active part of the recruitment process.

MR. CAMPEN: What would you say made this site attractive to TigerSwan?

MR. PETERS: I think the fact that it was remote, was probably as important as the fact that it was large. But I think also the fact that there were hotels and restaurants at Exit 49 on I95 to serve the folks who come in for training there. It was also very appealing to TigerSwan.

MR. CAMPEN: Do you know if Ft. Bragg was considered as a site for this facility?

MR. PETERS: I don't know if it could have been. Part of my relationship with the chamber is to have the Garrison Commander of Ft. Bragg as Chief of the Board of Directors. I have on more than one occasion toured Ft. Bragg from the air and I understand clearly that there is not room to expand any training on post and there is a real strong effort to try to restrict growth around Ft. Bragg, so this remote area was really the only option this firm had.

MR. CAMPEN: Why was the chamber interested in the site?

MR. PETERS: The defense contracting industry is the bread and butter of this community's economy. We just completed a study done by Garner Economics out of Atlanta that said forty percent of our gross product as a community is military related. When you are that heavily dependent on military jobs in your community whether they are active duty or civilian, those folks obviously need a place to work. So, in order to create wealth in the community, to resolve social issues that exists we recruit from a number of different sectors and the defense sector is probably our shining star.

MR. CAMPEN: Thank you Mr. Peters; that is all I have.

CHAIR DONALDSON: Swore in David Dowless.

SGT. DOWLESS: My name is David Dowless.

MR. CAMPEN: How are you employed?

SGT. DOWLESS: As a Nuisance and Abatement Officer for the Cumberland County Sheriff's Office.

MR. CAMPEN: How long have you been in that position?

SGT. DOWLESS: Slightly over three years.

MR. CAMPEN: What is your responsibility in that position?

SGT. DOWLESS: To investigate nuisances and to help with County Code Enforcement in getting property abated.

MR. CAMPEN: Is enforcement of the Cumberland County Noise Ordinance part of your responsibility?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Have you ever been to the TigerSwan Facility?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: When was the first time you recall being there?

SGT. DOWLESS: Around two years ago in 2010.

MR. CAMPEN: At whose request did you visit the facility?

SGT. DOWLESS: At the time it was Mr. Raynor.

MR. CAMPEN: The County Attorney?

SGT. DOWLESS: Yes.

MR. CAMPEN: Why did he ask you to visit the facility?

SGT. DOWLESS: It was part of my job and since it dealt with the noise ordinance, he wanted me to get to know the facility and to understand the layout of it.

[Mr. Campen asked to have the first map from the board's packet shown on the screen] [S1]

MR. CAMPEN: What did you do on your first visit out there?

SGT. DOWLESS: I got familiar with the property and listening with my ears because at the time we didn't have the noise meter that met the standards for doing gunfire. We basically did it by ear. We walked the area on the backside, it went back in there quite a bit.

MR. CAMPEN: Did you walk the entire area or did you listen? Were they conducting firing while you were on the site?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Can you tell us where you heard noise from the firing range when you were in the vicinity? Can you point out on the map?

SGT. DOWLESS: I can't really tell where the berms are, I assume that is where the berms are, right? [pointing to an area on the screen]

SGT. DOWLESS: This is firing in berm #1. It is the first one when you come off that dirt road.

MR. CAMPEN: During that visit at Mr. Raynor's request, did you come to any conclusion as to whether or not the facility was complying with the noise ordinance?

SGT. DOWLESS: We actually went out to the road side and we listened from Doe Drive and it was windy that day, it was a little chilly that day and you could just barely hear the gunfire. I can't tell you what guns they were using that day. We also went to the property adjacent to the drive to the right of Doe Drive.

MR. CAMPEN: Would you use the point to show the board where you were?

SGT. DOWLESS: I don't want to mislead anyone. You had a picture before that showed Doe Drive. There is a property that goes along the side of where TigerSwan's entrance is on Tigerswan Drive, roughly 125 yards; we did a listen there and one on the second shot you could hear it just barely. Then we went out to the far end of the range and it has a dirt area over towards this edge [pointing to the area on the slide] where there used to be farmland all in here, there is a lot of dirt in there and we listened there and you could barely hear it there. We went out to Highway 210 South in the proximity of where Mrs. Faircloth lives and you had to really listen hard to hear it. But I understand it was not done with sound gear, it was done by ear.

MR. CAMPEN: You were standing in front of Mrs. Faircloth's property on the highway?

SGT. DOWLESS: Yes, about twenty-five feet from her mailbox.

MR. CAMPEN: I want to pass out TigerSwan's Exhibit 9 [T9]. Can you identify that document for the board?

SGT. DOWLESS: Yes, this is a survey I did for the Sheriff's Office.

MR. CAMPEN: Did you use this describing a noise test you conducted in the vicinity of the property?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Did you use a noise meter to measure?

SGT. DOWLESS: Yes sir, the county rented a noise meter that could actually pick up gunfire.

MR. CAMPEN: What is the noise level that is permitted on the TigerSwan property?

SGT. DOWLESS: On the TigerSwan property, the noise level that is permissible is 75db and a maximum of 90db.

MR. CAMPEN: So the letter describes the results from four tests from four locations around the property, is that correct?

SGT. DOWLESS: Yes sir.

MR. CAMPEN: Would you show us on the map, where each of these tests sites is located?

SGT. DOWLESS: The first test was done and the noise level was high there because it was done right at the range, right at the picnic tables; a Glock 9 MM was fired and a M4 Carbine Rifle. [Sgt. Dowless pointed to the area on the range]

MR. CAMPEN: For the record, Ms. Speicher, is that the photograph from the board packet?

MS. SPEICHER: This is in the board packet.

SGT. DOWLESS: The lowest noise level for the Glock 9 MM was 78.4 db and the highest was 79.2 db with an average of 78.9 db; that was directly on the range.

MR. CAMPEN: Point out to the board the other three locations from which you conducted tests. Tell them where you were when you conducted the tests with the meter.

SGT. DOWLESS: The next reading was done approximately 350 yards from the range near the deer stand. My pointing might be off a little bit, but there is a third row that goes down into TigerSwan by their shooting range and there is a deer stand on the range in the field just as you leave Doe Drive about a quarter of a mile.

MR. CAMPEN: Did the noise levels that you measured from any of the four sites that you testified to and described in your exhibit exceed the noise levels allowed under the Cumberland County's Noise Ordinance?

SGT. DOWLESS: The only one that even came close was the ones measured directly on the range, but none outside the range.

MR. CAMPEN: Has the Sheriff's Department or have you received complaints from anyone in this vicinity about noise from TigerSwan?

SGT. DOWLESS: Have I received complaints about TigerSwan? The Sheriff's Office has, but I have not received a complaint on that.

MR. CAMPEN: Nothing further.

MR. CURRIN: Sgt. Dowless, I'm trying to understand this letter. What time was it when you did this test?

SGT. DOWLESS: About 9 am is when we got there.

MR. CURRIN: So the facility was not open?

SGT. DOWLESS: No sir, I was trying to get a reading while we still had the meter there.

MR. CURRIN: Mr. Swierkowski knew you were coming, correct?

SGT. DOWLESS: Yes sir.

MR. CURRIN: So you called him up and said you were coming to do a noise test?

SGT. DOWLESS: Yes sir.

MR. CURRIN: So you haven't actually done a noise test when the facility is in actual operation, have you?

SGT. DOWLESS: No, not in actual operation. With the job I have I have to get it done when I can, when somebody is there.

MR. CURRIN: And the test you performed only had to do with one firearm being fired at a time?

SGT. DOWLESS: Yes sir, one firearm by one person.

MR. CURRIN: You have no idea what the noise level would be if multiple firearms were being fired while the facility is open.

SGT. DOWLESS: Not with multiple firearms being tested at one time, no sir.

MR. CURRIN: So you did not go on your own to test it without telling Mr. Swierkowski, did you?

SGT. DOWLESS: No, I didn't do that.

MR. CURRIN: So only one 9MM was fired and you tested that.

SGT. DOWLESS: Yes sir and we tested the M-4 Carbine and the 5.56 also.

MR. CURRIN: Separately?

SGT. DOWLESS: Yes. It was shot at the berm.

MR. CURRIN: One shot by one gun is what you tested?

SGT. DOWLESS: Yes.

MR. CURRIN: Do you attend training classes at TigerSwan to improve your on-the-job skills?

SGT. DOWLESS: No sir, I do not.

MR. CURRIN: That is all the questions I have, thank you.

CHAIR DONALDSON: Are there any question from the board?

CHAIR DONALDSON: Swore in Stewart Precythe.

MR. CAMPEN: Please state you name and address for the record.

MR. PRECYTHE: My name is Stewart Precythe and my business address is 111 West Railroad Street, Faison, NC.

MR. CAMPEN: What is your business?

MR. PRECYTHE: I'm a produce broker, a developer.

MR. CAMPEN: Do you own property in the vicinity of TigerSwan?

MR. PRECYTHE: Yes.

MR. CAMPEN: In fact, don't you own that property and lease it to TigerSwan?

MR. PRECYTHE: I do.

MR. CAMPEN: Are you regularly in this area of Cumberland County in connection to your business?

MR. PRECYTHE: I try to get over there at least once every month or once every two weeks.

MR. CAMPEN: I believe you said you buy and sell land in that area of the county?

MR. PRECYTHE: Yes.

MR. CAMPEN: So it is important for you keep up with the price of land and in this area?

MR. PRECYTHE: Yes, I've bought four tracts of land since I've purchased the land that joins the Barra Farm.

MR. CAMPEN: Since TigerSwan developed in that area, has the price of property in that area been affected?

MR. CURRIN: Objection, I don't think he has the knowledge and I don't think he an expert either

CHAIR DONALDSON: Well, in that case we don't consider any of the testimony of your witnesses either who stated their value dropped.

MR. CURRIN: It is different when it comes to standing, your honor, the standard is different.

CHAIR DONALDSON: Overruled. Go ahead. Repeat the question.

MR. CAMPEN: Since TigerSwan started operations, has the price of land in the vicinity of that facility been affected?

MR. PRECYTHE: Yes, in my opinion it has. When I bought the Barra Farm, since then I have purchased four pieces of property that adjoin the Barra Farm. The first tract I purchased was the Hester Tract and that was 300 +/- acres east of that, then I purchased some from Jimmy Pugh and both of those were less than five hundred dollars an acre. Then I purchased from a family that joined the Pugh property and then I right before TigerSwan got there, I purchased forty acres from Mr. & Mrs. Jessie Bullock. So I have purchased four or five properties.

MR. CAMPEN: So what has been the effect on the price of land in the vicinity of the TigerSwan Facility?

MR. CURRIN: I object, the form of the question is too broad.

CHAIR DONALDSON: Overruled, go ahead.

MR. PRECYTHE: People know I buy property in the area and since TigerSwan is there, I've been called by two people to purchase land, to sell me land that adjoins the property. Andrew Coptias and wanted to sell me land and he asked for twenty-five thousand an acre. John Jordon called me and he has land on the east side, a very nice fellow, and he wanted over five thousand dollars an acre for his farm.

MR. CAMPEN: Are those prices higher than you would have experienced before TigerSwan's Facility was located there?

MR. PRECYTHE: A lot higher.

MR. CAMPEN: Thank you.

CHAIR DONALDSON: When did you buy the land the land before TigerSwan had it?

MR. PRECYTHE: I purchased it around 85' or 86'.

CHAIR DONALDSON: It was how much then?

MR. PRECYTHE: I paid around six hundred dollars for all of it.

MRS. CURRIN: Do you have any knowledge of a sale of property adjacent or nearby the TigerSwan Facility since their beginning operation in September 2010?



MR. PRECYTHE: Arnold bought some property. If I recall he paid four or five thousand dollars an acre for the farmland. Arnold Smith is his name. Jimmy Pugh told me that Arnold Smith purchased farmland from him for about four or five thousand dollars an acre.

MRS. CURRIN: That is hearsay. You don't know that for a fact?

MR. PRECYTHE: Jimmy Pugh told me; he owns the land. He tried to sell it to me but I didn't purchase it because he wanted five thousand.

MRS. CURRIN: Is that the only sale you are aware of since TigerSwan began operations?

MR. PRECYTHE: Yes.

MRS. CURRIN: I don't have anything further.

CHAIR DONALDSON: Does the board have any questions? Mr. Swierkowski, please come back up please. When the military is firing, what is the largest caliber round fired out there?

MR. SWIERKOWSKI: We allow below 50 calibers to be fired.

CHAIR DONALDSON: You don't fire any 50 calibers?

MR. SWIERKOWSKI: No sir.

CHAIR DONALDSON: What is the typical weapon, the M-4 Carbine?

MR. SWIERKOWSKI: Yes sir, the most common weapon is the M-4 used by the law enforcement, military and even foreign military use it as well and the 9 MM Baretta or the Glock.

MR. LOCKLEAR: To the staff, how often to you amend your ordinance through the year?

MR. LLOYD: We do it annually; one time.

MR. LOCKLEAR: Is there anything in the ordinance for an amendment that would add technical training schools to the ordinance?

MR. LLOYD: We are in the process of working up an ordinance amendment addressing firing ranges.

MRS. TART: Mr. Lloyd, at the time of this application there was no ordinance that would provide for any kind of activity of this type so you assumed according to prior testimony that the closest would follow recreational use?

MR. LLOYD: The closest with respect to land use impact. Yes.

MRS. TART: Would be recreation?

MR. LLOYD: Yes, because of how it was addressed in the ordinance and the restrictions that were put on outdoor recreation in the ordinance also. It wasn't that I was trying to classify this as recreation; I wasn't calling it necessarily outdoor recreation. I was merely finding a category with a land use impact with closest and most similar. That is what our ordinance asked us to do. The way I had to look at this based on the ordinance amendment was the land use impact on surrounding property and to find something close to that.

MRS. CARSON: Are there anymore firing ranges in Cumberland County?

MR. LLOYD: Yes, I don't have the exact number but I know there is a very popular one in Grays Creek that is used by many sportsmen.

CHAIR DONALDSON: Correct me if I'm wrong, if I own that piece of land and I went out there and took a bulldozer and built up a berm and invited my friends to fire; you all would not have anything to do with it would you? I could invite all my friends to come out anytime I want to and shoot?

MR. LLOYD: Yes, it would be a recreational use on your property. At this standpoint, because we don't have an "outdoor firing range regulation".

CHAIR DONALDSON: That was my question; any person who owned land like that?

MR. LLOYD: Yes sir and we are the Inspections Department also and we have had complaints of citizens throughout the county doing that and at this point in time, there is nothing we can do.

MR. FLOWERS: I just want to crystallize to the extent I can on what the issue is before the board tonight. The issue is not whether this is a firing range or a vocational school or outdoor amusement recreation area. Under our ordinance as it exists now since April 2011 and when Section 402 was amended, unless a use is specifically prohibited by our ordinance then it is allowed by our ordinance. Firing ranges are not specifically prohibited by our ordinance and therefore they are allowed and the reason why that section was amended in April 2011 is because the law essentially required Cumberland County to amend its ordinance as a result of the Wesley Chapel Case that you've heard us talk about. So Cumberland County didn't go out and do that on its own, it did it because the law essentially required them to do it. The way the ordinance works now is if it is not expressly included then it is permitted. So the only question for the board tonight is did Mr. Lloyd the Director and his staff correctly apply the ordinance and the way they applied the ordinance was: I looked at this use, it is a firing range, the testimony from the only people who know actually what happens out here has been that eighty to ninety percent use of this land is as a firing range. Firing ranges are not prohibited by our ordinance and therefore it is allowed. The next step for Mr. Lloyd is, to say what conditions do we put upon the use of this land to make sure that this firing range is operated in a safe manner. Since there is no firing range use in our ordinance that would list all the conditions for him, he has to look at the most similar use in the ordinance in terms of the impact upon the land and the surrounding environment and take the conditions for that use and apply it when allowing this permit. The most similar use in the ordinance was the recreation and outdoor use because of the issues of noise and projectiles and traffic and outdoor lighting. As a result of that the staff used the conditions that one would use for outdoor recreation and applied them to this facility along with other conditions in order to make sure the facility was operated in a safe manner. The staff

is not saying that this is an outdoor recreation facility, that is very important. They simply used that use in order to come up with the proper conditions for the use of this firing range because there is no firing range in our ordinance currently that list those conditions out for the staff. You have heard testimony and arguments that this is a vocational school and I'll let the councils for TigerSwan argue about the facts of a vocational school. What is important is in order for you to determine that the Director and his staff failed to appropriately enforce the ordinance and apply the ordinance, you must find that TigerSwan is a vocational school, not that it is like a vocational school, not that it is more like a vocational school than it is like outdoor recreation; but that it is a vocational school; because as I said at the very beginning, a use is only prohibited when it is expressly prohibited. A vocational school is expressly prohibited. So if it is a vocational school then it is expressly prohibited, there is no argument about that, we all agree about that. What is important is that it is not similar to a vocational school because if it is similar to a vocational school and not a vocational school, it is not prohibited. Do you see the difference? It has to be a vocational school. I will leave it up to you to determine whether the petitioner's who have the burden of proof in this hearing have proved tonight that this facility is a vocational school. That is the only way that you can overrule the Director. Thank you.

MR. MEEKER: Mr. Flowers has correctly summarized the law; that is when the ordinance was amended back in April 2011 all uses became allowed as a right unless prohibited and there is no prohibition for firing ranges. That is the question, what standards apply to that firing range and the Planning Director and his staff correctly apply the standards applicable to outdoor recreation with mechanized vehicles. I think all the evidence shows that. There has been some argument to the contrary but there has been no one who has testified the Planning Director did not handle things correctly. We think this site was not only correctly permitted but is an idea site for a firing range. It is much bigger than other firing ranges, well managed by the TigerSwan people, there are not that many people there during the day, up to thirty-five or maybe two dozen, it is properly located in a way that it does not disturb people. So for all of these reasons we believe the permit was correctly issued. In terms of vocational schools, as I mentioned before, if you look in the use matrix under schools where it talks about nursing schools, fine arts, community college and it has a vocational list. The things of that nature tend to have a lot of students and a lot of traffic and tends to be studying indoor and is different from a firing range that we have here. What people are doing here is practicing a skill as to firing a weapon; it is not something that you learn in a profession like nursing or architecture of something like that. It is a skill you have; you don't end up with a degree after three or four years. It is a different kind of facility, much lower impact in terms of traffic, higher impact in terms of potential of something going off site and indeed like an outdoor recreation, things are happening outside as opposed to inside which is normally what happens at a vocational school. So for all those reasons, we believe this is not a vocational school; that is just not a correct characterization of it. There may be parts of this facility that has some aspects of that and as Mr. Flowers pointed out, unless it is in fact a vocational school that is the primary use, that it should not be considered that. In addition the reference to the limitation on buildings and outdoor recreation, as I pointed out in my opening comments that is Exhibit 7D [P7D] the petitioners they were actually looking at the incorrect reference The looked at Outdoor Recreation, it is actually Recreation, Outdoor (with mechanized vehicle operations) and there are no building restrictions on that. Even if there were building restrictions, these buildings fit within the categories there. Finally there has been some testimony about the petitioners about lead, about noise, about property values. We have rebutted that fully by witnesses who are more knowledgeable in these issues in terms of lead being talked about by Mr. Swierkowski, in terms of the EPA regulations, property values from

the gentlemen who bought land and the Sheriff Deputy who talked about the noise ordinance has not been violated. So for all these reasons we feel these are not issues, not a nuisance, not a problem here. The final thing to keep in mind is that the policy of North Carolina as set in the Wesley Chapel case is in the policy of Cumberland County as set out in the revised zoning ordinance adopted April 2011 is to allow uses of property freely. They are not prohibited unless it is expressly prohibited. There is no prohibition of firing ranges. This one is being operated well and should be allowed to go ahead as permitted by the Planning Department. Thank you.

MRS. CURRIN: We of course are asking you to reverse the decision of the Planning Director. Our first argument is that this is a vocational school. We have argued that since we walked in this door two years ago; we have never wavered from that. We came in here and said two years ago it was classified as a elementary or secondary public or private school. We said no it is not, it is a vocational school. We argued that to the Court of Appeals. What the Court of Appeals said about this appeal at the time when the ordinance said any use not permitted it is prohibited. the only thing that has changed is the analysis. The use of this property has not changed. The Court of Appeals said that the interpretation that they chose which was the only schools allowed in the A1 District are elementary and secondary schools and they said you are a school but you are not that so you are not permitted. They said this interpretation is reinforced by the drafters expressed prohibition of vocational schools. The Petitioners (us) argue that the training facility should be prohibited based on that language. We have argued it all along and to the Court of Appeals. Why TigerSwan intends to distinguish the training facility from a trade or vocational school by arguing they teach skills not occupations without deciding whether the TigerSwan Facility qualifies as a trade or vocational school; you conclude it is not a permitted use. So that issue is still out there. It has not been conclusively decided by anyone and we have argued it since the beginning. I want to go through the reasons that we believe in the evidence as to why this is a vocational school. There has been a lot of talk about this Section 402 and basically for purposes of this appeal, that change means nothing in our opinion. What it says is "if a use is not expressly prohibited by the ordinance then you go and look at its impact and try to find something that has similar impact and then you use those standards". But if it is prohibited by the ordinance, you never do that. As both of the planner's have testified and Mr. Flowers has conceded, a vocational school is a prohibited use under the ordinance. Mr. Searcy told you eighty percent of what they do at this facility is focused on law enforcement and military training. If you look at what they have told the Court of Appeals in the Supreme Court, they have told unequivocally they are a school which provides training to military and law enforcement. They have also represented, and I just want to preserve this for the record, it is at Tab 12 [P12], they represented to the Court of Appeals that they are not a shooting range; they said we aren't a shooting range, we are a school. We just want to show this is a judicial admission and want it in the record. We don't think that you can go to the Supreme Court and the Court of Appeal on this exact use and say we are not a shooting range; we are a school and then come back and tell you we are a shooting range and we are not a school. You should take that into consideration. The word vocational is not defined in the zoning ordinance and what you need to do is go to a dictionary and what we have done is provide dictionary definition for vocation, vocational, vocational school, those terms. Vocation is: the work in which a person is employed. Vocational is: is or of relating to a vocation. Vocational School is: a school offering instructions in one or more skilled or semiskilled occupations and one intended to prepare one for an occupation. Does TigerSwan fall into this category? Start with the admission that eighty percent of what they do is teaching law enforcement and military personnel. Their website says they provide instruction to military law enforcement and security

personnel and topics such as weapons training, urban welfare and warrior combatants, we teach and mentor tomorrow's soldier. It says it is the convenient and cost effective solution for law enforcement, homeland security, military and corporate clients to meet their training needs. It says TigerSwan is a recognized leader in military and law enforcement training. TigerSwan gives courses in military and law enforcement and security areas and gives those professionals the opportunity to train with other professionals. It specializes in conducting the most realistic combat training possible. So what and who are its clients? This is what TigerSwan told the Supreme Court: Police Department, Sheriff's Department, law enforcement, State Police, the Air Force, the Marine Corps, Special Operations; they didn't list one private person and as you know, they've got one day when they do anything other than train military and law enforcement and that is Saturday. What we have at Exhibit 9 [P9] is excerpts from the materials from Fayetteville Technical Community College FTCC. If you look at the definition of vocational, vocation and vocational school you can see that what they do fits squarely in there. It is training military, law enforcement, security personnel in their jobs. They say you are not getting a degree, you are not actually becoming a nurse or as Mr. Meeker said, an architect, which I don't think is a technical school kind of thing, but in fact if you look at what FTCC does, they do exactly what TigerSwan does. If you read their literature, they do a whole lot of things other than just provide people with degrees. We have those excerpts and I just want to go over that quickly. The purpose of FTCC is to provide continuing education and to upgrade occupational skills and other practical skills. It is to provide education to meet the needs of industries and businesses through course of study in basic skills, job and career training and law enforcement training. It is to provide training to upgrade a person's skill and qualifications. It is to help industries by customizing education courses for their employees. One of its purposes is employers send their employees there to upgrade their skills. Another thing that is done is it provides military training to commanders to improve their job performance. There is actually at FTCC a law enforcement training program. It provides instruction to current law enforcement operations and procedures, and what is significant about this aspect of it is it doesn't teach people how to be police officer, it provides upgraded training to people who are already police officers. As a matter of fact you cannot go to FTCC and go to their law enforcement training program unless you are already a police officer. They are doing exactly what TigerSwan is which is come to us and we will help you do a better job at law enforcement. Its' purpose is to enhance the performance of certified law enforcement officers and to get up-to-date training. This is a quote, "The program is to enable students to do the best possible job in protecting the citizens of this country, their fellow officers and themselves", which is almost a carbon copy of what TigerSwan says it is doing. It also offers a Homeland Security Program, instructs in Terrorism, Border and Transportation Security and Critical Incident Management. Again if you read TigerSwan's website and you look at this website they've got many of the same courses and unlike what you have been told, it is not just to go get a degree; it is to upgrade skills. We contend if you look at what TigerSwan does, read the definition of vocational school and you look at what FTCC does and what TigerSwan does, they are exactly the same or at least eighty percent of what they do is vocational upgrading and training for professionals. They contract with the military to do this. What TigerSwan told the Court of Appeals and is actually arguing to you now saying we are a firing range. The truth is they are a firing range on Saturday; they are a vocational school every other day of the week when they are training people from the military and law enforcement fields in their training. What the Court of Appeals said is very important. The fact that you do other things if they are prohibited activities then those activities are always prohibited. You can't legalize this vocational school by saying, we do hunter safety courses, or we have a shooting range here. That shooting range is there to teach these people to

do better in their vocation. That is the only reason it is there except for Saturdays. This is their primary purpose and the Humane Society vs. Southern Pines says that you have to categorize based on the primary purpose, not what some incidental use is. An example out of my head is you can't stick an apartment in your concrete plant and say it is a residential use. Basically, that is what they are doing. What they have said is we are training the military, we are training law enforcement to do a better job for you, but on the other hand we let people come and shoot on Saturdays so therefore we are a shooting range, and that is not correct. One of the canons of construction, statutory interpretation is that you should not interpret this ordinance to have an absurd result. We respectfully submit that if you cannot on this property train nurses to do their job, why can you train law enforcement and military persons to shoot guns? This is not an impact question. The Board of Commissioners said we don't want vocational schools here and that is because the intent of the agricultural district is to only have farms and limited residences and uses that provide essential services. You can have an elementary and secondary school but you cannot have a vocational school here. What a ruling here would be if you affirm that is that you can't teach nurses how to be nurses here, you can't teach auto mechanics how to be auto mechanics here, but you can teach soldiers and law enforcement how to shoot guns very close to people who live here every day and are obviously disturbed by the noise and are afraid. I would submit to you that probably or that there is a low probability is not the same thing as having to live next to it all the time and hear it and have that fear all the time. The second argument is why is that blank...why didn't you put the use on there. If you look at the documents in the record that were produced to us. There are three, an application, what is your use, it doesn't say. The second document is a site plan, it says it is a site plan for outdoor recreation for profit with mechanized vehicle operations. That's what the permit is for, it is not for a shooting range that looks, smells and has the impacts of an outdoor recreational facility. According to this site plan here that is what they are authorized to do and nothing else. Even under their ordinance, their site plan should have been for a shooting range if that what it is. So we contend that you can't even look at it if it is a shooting range or not because there is no such interpretation that has ever been issued in this case. The third document is the zoning permit and I have to respectfully correct Mr. Meeker because that zoning permit is specifically for an outdoor recreation amusement; it is not limited to mechanized vehicles. That is the use that was issued for and that does have limitations on the types of buildings. That is what you got, you don't have any interpretation that...it says "this doesn't fit in any uses therefore we are going to treat it like an outdoor recreation and amusement even though it is a shooting range." You've got something that says it is an outdoor recreation and that is said and it is not, so it should be reversed. We have discussed this at length; we think the ordinance is clear, the zoning permit is for an outdoor recreational use that prohibits any buildings other than restroom and outdoor pavilions and that type of thing. We think seven classroom buildings and a Pro Shop and offices literally runs afoul of this. Finally, again if you are going to look at this, and we disagree with this completely; we don't think you should look to similar impact, we think it is a vocational school, period. If you did, there isn't a better use out there than a go-cart track and a BMX track that has impacts like this and there is a use in the table of permitted use called Industrial Uses Not Otherwise Classified. It is not allowed in A1 and that use specifically says that "manufacturing and industrial districts are for uses which normally create a high degree of nuisance and are not generally compatible with surrounding and abutting residential or commercial areas." Why would you take what we contend is a vocational school as a training facility when choosing weapons and explosions would be more closely related to an industrial use than a go-cart track? It just doesn't make any sense. In sum, we would ask that you reverse the decision of the Zoning Administrator and pull the use, it is prohibited, it is a vocational

school and it can't go forward. The alternative what we would ask you to do is to rule that TigerSwan cannot have a vocational school in any shape or form on this property and I am going to read you one more excerpt from the Court of Appeals and it says lastly that TigerSwan argues that Petitioners distort the nature of their activities that will occur at the training facility by focusing on the more intense activities highlighted in their advertising material such as training law enforcement and military personnel in urban welfare. TigerSwan does not dispute such skills will be taught at its facility, rather TigerSwan stresses that it will also instruct adults and children in leadership, first aid and foreign languages; skills commonly taught in elementary and secondary schools. However, the Zoning Ordinance expressly states in the introduction that no building, land or structure shall be used in whole or in part for any use other than the uses permitted in the district in question. That is why TigerSwan may offer some instruction that would be permitted in an elementary or secondary school the inclusion of permitted uses can't offset the uses prohibited by the ordinance. If they've got eighty percent teaching vocational skills, then we would ask that you say, okay you can have your shooting range, but what you can't do is have a vocational school there, so to the extent as Ms. Speicher said, you can't have it there, to the extent of a vocational school, it must be prohibited. The same thing with respect to the buildings; if you want to say, and we respectfully disagree, that you are the same as a BMX or go-cart track, tell them they can't have their classroom buildings. Make them actually comply with those requirements. That is all I have and we respectfully ask that you reverse this decision and hold this to be a prohibited use which we believe is clearly the intent of the drafters.

**Public Hearing Closed:**

CHAIR DONALDSON: Is there any discussion from the board?

MR. MOOREFIELD: Mr. Chairman, just as a formality, to make sure we are okay with our record and to make sure I understand and that the clerk understands the five exhibits that have been introduced as evidence for the staff [Exhibits S1-S5].

CHAIR DONALDSON: Yes, I understand and TigerSwan has a notebook. We've got all of TigerSwan's exhibits that we accepted [Exhibits T1-T7]. The petitioners have a notebook that was already introduced [Exhibits P1-P12].

MR. LOCKLEAR: I know there has been a lot of discussion here tonight and given what I do, I have sat on the other side of the fence in this situation and I know how hard it is for staff to make a decision when it comes to cases like this. A lot of the discussion was safety and a lot of different things that goes along with the shooting ranges and how hard they can be to deal with from a neighborhood's standpoint; I've dealt with that to a certain extent. At the end of the day, you are here to see if the zoning administrator made the right decision. In my opinion, he did in this case make the right decision. It is hard to do and you have to look directly at what the ordinance says. I pulled it today and I reviewed it before I got here and I didn't realize it was going to be such a big issue tonight. I did think the case would be a big issue, don't get me wrong. At a certain point I had already found in the ordinance today to what I would ever figure to be the issue on how the director would make his decision. It is a decision while both ends of it could be a stretch argued on either side, it is the right decision in my opinion.

MRS. CARSON: I've listened all evening to testimony. Like Mr. Locklear said, it is a very difficult decision. In view of all of the testimony given here, I do not find where it has been proven that a vocational school is out at that facility. So I am going to vote with the Planning Administrator.

CHAIR DONALDSON: I will summarize it and we can take our vote. The issue is 1: Is it a vocational school or not or is it a firing range? In a lot of people's minds, there's no question it is a firing range, some people's argument is that it is a vocational school. If it is a vocational school and that is what we find, then the decision would not stand because it would not be permitted in that area. I would say that given the new rules in effect and given the case, if someone came into the office and said I want to put a vocational school out there, it wouldn't be prohibited. In fact, they would be the closest land use, where it says elementary and secondary school would be permitted. If you wanted to permit it you could probably argue that vocational schools can go there now, if it was actually a vocational school. The question is, is it a vocational school? There is some argument that it is because it does provide training and classroom instruction but on the other hand you can argue that it is not a vocational school; not all training is vocational. Some of it is just skill level improvement. The common exception I think for vocational accepted definition would be at FTCC (Fayetteville Technical Community College) that type of thing where you go in to gain a career skill and extended training. I think what the evidence shows on this has been that the most training is a five day course, most of it is one day, I don't know if that makes it a vocational school, but that is for each individual board member to decide on that. The question is: 1. has the appellants by preponderance of the evidence proven their case? 2. Is it abuse of discretion by the director? Given the rules the way they are written now, if you look at the way they have interpreted them, the director has the right to interpret the rules. He issued that policy letter that stated firing ranges. The argument would be, was it in a direct response to the Court of Appeals case? Probably so, but that's the irrelevant ruling because he had the authority to do it. The other thing about that is the fact that he is given that authority and he is given that discretion and the Board of Commissioners is giving it to him. Those are other issues that we have to talk about, discuss or consider. It is a conflicted case and there is a lot of emotion involved in this. I don't know that I would want to be living next to the firing range too and I was in the military for a long time, but at the same time I can't let that influence how I vote and how I vote will be what I think is under the law and the evidence. There has been little or no evidence that I can see of any devaluation of property, not credible evidence and there has been no credible evidence on the other side that I find that property values have been affected one way or the other. That is one of the issues that always come up in these types of cases. Having said that, it's a situation where I need a motion. Does anyone have a motion at this time to deny the petitioner's appeal?

MR. NEWSOME: I motion to deny the appeal.

MR. LOCKLEAR: I second the motion.

CHAIR DONALDSON: All those in favor of denying the appellant's appeal, signify by raising your hand. I will just abstain from this point. The vote is 4-0; that is 4/5 of the board voting. The appellant's motion for appeal is denied.

MR. MOOREFIELD: And that is a vote to uphold the decision of the additional permit.



|           | IN FAVOR              | OPPOSED |
|-----------|-----------------------|---------|
| NEWSOME   | YES                   | NONE    |
| LOCKLEAR  | YES                   |         |
| TART      | YES                   |         |
| CARSON    | YES                   |         |
| DONALDSON | ABSTAINED FROM VOTING |         |

CHAIR DONALDSON: Now we need the findings of facts.

MR. MOOREFIELD: You should simply state the issue is that whether or not you determined if it is a vocational school or a firing range and find some facts to address that issue.

CHAIR DONALDSON: First I will put this to the board? Does anyone believe that it is a vocational school? [All the board members agreed it is not a vocational school]. I make a finding of fact that based on the evidence it is not a vocational school. I make a finding of fact that pursuant to the new ordinance, the changes and the policies allowed by the director as found by the director which is allowed by the ordinance; the proper classification for this endeavor was in the recreational use that he placed it in. That the conditions that the department placed on TigerSwan's operations were adequate and by all appearances have been followed and complied with. That...anyone have anything else?

MR. MOOREFIELD: Mr. Chairman, I suggest that some of the facts you would look at also is the testimony that 80-90% of the activity occurred on the firing range.

CHAIR DONALDSON: Well, those are facts. All the testimony has been that about 80% of the activity out there has been on the firing range and that any of the other training they needed in the classroom was just incidental to the firing. I don't know that I want to find anymore.

MR. MOOREFIELD: I think that addresses the issue, the use of the range and the incidental use of the buildings.

CHAIR DONALDSON: I think the real issue is under the ordinance he had the authority to do what he did and he didn't abuse it and I don't think anybody believes he abused his discretion on it.

MR. LOCKLEAR: My opinion is that the ordinance outlines the procedure for the situation; it's done that and the Zoning Administrator followed that procedure.

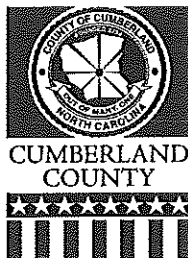
CHAIR DONALDSON: Ultimately, this is an issue that the Board of Commissioners is going to have to decide and I know you all will take it up. I understand that but ultimately what I suspect is that the Board of Commissioners is going to change the code and it will happen anyway. No matter what we do here, that is for them to decide, not us. Is there any further business? [There was none].

ADJOURNMENT:

There being no further business, the meeting adjourned at 11:05 pm.

**Members:**

Ed Donaldson, Chairman  
Melree Hubbard Tart, Vice-Chair  
Horace Humphrey  
Joseph Dykes  
Randy Newsome



**Alternates:**

William Lockett Tally  
Carrie Tyson-Autry  
Yvette Carson  
Vickie Mullins  
(Vacant)

*Cumberland County Board of Adjustment*

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

MINUTES  
APRIL 18, 2013  
7:00 P.M.

**Members Present**

Melree Hubbard Tart, Acting Chair  
Joseph Dykes  
Horace Humphry  
Yvette Carson  
Carrie Tyson-Autry

**Absent Members**

Ed Donaldson  
Randy Newsome

**Staff/Others Present**

Patricia Speicher  
Pier Varner  
Melodie Robinson  
Ken Sykes  
Robert Hasty, Jr. (Assistant  
County Attorney)

Acting Chair Tart 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 with four members. Mrs. Varner stated that it would be the applicant's decision to proceed with the meeting with the four members but the vote would have to be unanimous; or the applicant can choose to wait until a later meeting with five members present which would allow a majority vote.

**ACTING CHAIR TART:** Four members do represent a quorum for the Board of Adjustment and we have four members present this evening, but for a Special Use Permit, you would have to have a unanimous vote of four members. Normally we have five members present and that would require four out of five votes. It is up to the applicant to defer this hearing to a later meeting or to proceed with the knowledge that tonight's vote would have to be unanimous.

**REGINALD KIRBY:** Stated that he wanted to go forth.

**MR. HASTY:** Stated that Mr. Kirby's answer is sufficient to proceed with the hearing.

2. ACTING CHAIR TART SWORE IN THE STAFF

3. ADJUSTMENTS/APPROVAL TO THE AGENDA

There were no adjustments. Mr. Humphrey motioned to approve the agenda as submitted, seconded by Mr. Dykes. Unanimous approval.

4. APPROVAL OF THE JUNE 21, 2012 MINUTES

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

5. ABSTENTIONS BY BOARD MEMBERS

There were none.

6. PUBLIC HEARING DEFERRAL(S)

There were none.

7. BOARD MEMBER DISCLOSURES

There were none.

9. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

ACTING CHAIR TART: Informed the board, staff, applicant, and audience that Mrs. Carrie Tyson Autry arrived and she is the fifth board member and the applicant would now need four out of five votes.

MR. HASTY: Acknowledged Mrs. Autry's attendance.

10. PUBLIC HEARING(S)

**Opened Public Hearing**

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

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board.

ACTING CHAIR TART: Are there any questions for the staff?

MR. HUMPHREY: There was a road going into the property, please show that again. How far is that connecting to the highway?

MRS. VARNER: If you would address that question to the applicant, he will give you more information about it.

ACTING CHAIR TART: Swore in Reginald and Jacquelyn Kirby. Please state your name and your address.

REGINALD KIRBY: Reginald Kirby, 3920 Pleasant View Drive, Fayetteville, NC 28312.

JACQUELYN KIRBY: Jacquelyn Kirby, 3920 Pleasant View Drive, Fayetteville, NC 28312.

MRS. KIRBY: We have a PowerPoint presentation [**Exhibit 1**] and I have copies if anybody wants one. This is our proposal for a Special Use Permit. Our purpose is to use our personal shooting range that has been there for several years to promote firearm safety by providing one on one instruction in the following NRA Courses: Basic Pistol Training and Home Firearm Safety. We want to clarify that purpose because there has been some misinformation spread. The Special Use Permit is to be able to obtain permission to use an already existing personal firing range for instructional purposes in which the owner/instructor would charge a fee for such service. The range is not a public shooting range. The public is not allowed to come and pay a fee to shoot. I want to give you a little personal experience of the instructor/owner. Reginald, who goes by Mark Kirby, has over forty years of experience with firearms use. He desires to use his hobby/interest to educate others in the use and care of firearms. He has taught many of his friends in the use of gun safety, free of charge. Because of his increase in interest, he has taken the next step to become NRA certified. This is Course 1, the NRA Home Firearm Safety Course. Course 2 is the NRA Basic Pistol Shoot Course. These are the two courses he is certified in. The instructor requirement for certification is pretty grueling. He had to complete 17 + hours of classroom instruction on the weekends, pistol qualification shooting at 15 yard target with 80% accuracy and score 90% or better on final exams. This is his certification and these are his credentials. It says at the top, "Thank you for your efforts in promoting the safe and responsible use of firearms", which is really his goal. When we filled out the site plan, we were required to put all possible hours and that is why we put all the daylight hours in a week, not to indicate that we would be open those hours, but to say that we would only be teaching classes during daylight hours. We anticipate that there will be only three sessions per week due to his booked scheduled. The use will not materially endanger the public health or safety. The range is located in the center of a 34 acre tract of land. The tract of land is completely surrounded by woods and heavy foliage which provides barrier. The berms are constructed of dirt of at least 9 feet high on all sides. Berms are in a U shape and are very thick. Shooting is only permitted in the direction of the berm. Training is one on one with the instructor present at all times. Only one person may shoot at a time. These are pictures of the berms; there are two berms side by side. They are very high and very thick. Behind the berms are trees and the foliage is all around. Here is a picture of the foliage and what it looks like that is surrounding the property. This is several months ago, he taught a friend of ours to shoot. She had never touched a gun before but she wanted to get one for protection. She has gained quite a bit of confidence using a pistol now. She is just a friend of ours, and she mentioned it and he said I can show you how to shoot. Another consideration that people might be concerned about is soil contamination. We have done some research, and our research finds that there are no known instances of acute lead poisoning of humans from small arms ranges. Indoor shooting ranges provide more risk. Upon approval, we will seek additional information related to this issue and the need for periodic clean-up. Based on our research and thus far talking with a company that actually does clean-up, we are estimating the possible need for clean-up is every 5 years. We feel the use meets all required conditions and specifications. Our main concern is for safety because it is dealing with firearms. Any other conditions and specifications that Cumberland County would have, we would certainly comply. The use will maintain or enhance the value of adjoining properties and the use is a public necessity. Based on research related to other shooting ranges in Cumberland County, property values will not be adversely affected. This is a range located in Beaver Dam and the next slide compares property values starting in 2002 through 20012, and there has been a slight increase in property values in those surrounding properties. The next slide is a range in the Pearces Mill Area,

the wildlife shooting range. There was a little dip in 2007 when the real estate market dived and then it rebounded quite a bit in 2012. I think that range has been around since the 70's. Of course our range is not a shooting range like that where people are allowed to go and shoot by themselves. Based on the information we present; property values for properties in the vicinity of these ranges have increased. The use is a public necessity. If you watch the news and statistics, 50% of homes in the United States have firearms. Thirty children are killed or injured everyday by firearms. Gun awareness and safety is essential in our society. The absence of proper education related to firearms and handling them safely can result in senseless tragedy. The NRA Home Firearm Safety Course teaches safe gun handling, how to identify and unload firearms, and cleaning and storage of firearms. This is the article I took the statistics from, as far as home safety and the need for that in our society. Those who own a firearm or wish to own one should be educated in the proper use and care to prevent any unnecessary tragedy from happening. Those interested in obtaining a concealed carry permit should also be trained in the safe and proper handling of a defensive firearm. The NRA Basic Pistol Shooting Course teaches pistol knowledge and safe gun handling, fundamentals of pistol shooting, and selecting and maintaining a pistol. The location and character of use is in harmony with the area in which it is located. The range proposed to provide instruction has been in existence for several years and has been solely used for the recreation of the owner. Many other neighbors also use their own private lots to target practice. Many of them shoot into makeshift berms of wood, dirt, or some just target practice at targets placed on trees with no berms at all. We personally know of at least 5 other properties within a quarter mile radius where shooting takes place regularly. We often hear gunfire by other neighbors while we are at home. In comparison to other ranges in our area, we have taken extra steps to ensure safety by constructing berms. Because the entire perimeter surrounding the range is thick in foliage, this adds increased barrier for noise reduction and protection. Our use of our range will also be supervised. We do not anticipate a substantial increase in shooting at our range due to the fact that classes are offered by appointment only, and at the convenience of the owner who works 50+ hours per week at a public job. Time constraints would prevent any more than 3 training sessions per week. Classes would only be offered during daylight hours. This is an aerial photo, where we have the yellow stars; those are known lots where people actually shoot in their neighborhood in their backyards. We appreciate the opportunity you have given us to address your board. Please feel free to ask any questions. Mr. Kirby can answer questions on the instruction part.

ACTING CHAIR TART: Do any of the board member have questions?

MR. HUMPHREY: That road that is coming into the property, does it connect to a state maintained highway? How do you get to that road?

MR. KIRBY: It connects to Pleasant View Drive. The white house on the property is a rental house and it came with the farm, which we own.

MR. HUMPHREY: So you actually own that house?

MR. KIRBY: Yes sir.

MR. HUMPHREY: That road leads to that house?

MR. KIRBY: No, that road goes past the white house, which is gated at Pleasant View Drive and it is also gated again once you go past the white house, so there is no access by vehicle. Pleasant View Drive is a main highway. You turn off Pleasant View Drive, it comes by our rental house and after you pass the driveway by our rental house there is another gated area, a maintained road is by a median and it goes all the way to the back of the property and passes the firing range which is about 350 yards from that house.

MR. HUMPHREY: Thank you.

ACTING CHAIR TART: You said this is a rental house. Do you live in close proximity to the property?

MR. KIRBY: Yes.

ACTING CHAIR TART: Where do you live?

MR. KIRBY: Pointed to the PowerPoint presentation his residence and the lot beside his which is owned by his mother-in-law. He pointed out how the properties connect by walking from the back of his house on the trail near some old barns in the back. He said you can walk right up to the rental house. He stated everything is joined and either he owns it or his in-laws own it.

MRS. VARNER: Mrs. Tart, to help you and Mr. Humphrey with your questions, I have a map with the distances to the roads. You were asking about Pleasant View Drive. These are the distances to the streets.

MR. HUMPHREY: Thank you very much.

MR. KIRBY: I want to stress the point that this is not a public shooting range where people can call me and ask how much I will rent a range for. That is not what it is. This range has been here for several years. I've got buddies who like to hunt. It took a lot of time and money. We cut the timber when we first bought the farm, where the berms are actually located inside that cutover knowing that it grows back quick. It is completely surrounded by acres and acres of trees, foliage, and if anybody knows what a cutover is, it is extremely dense and thick. After you pass the rental house, it is covered in 10 – 12 acres of pine trees and we left that in consideration for our neighbors. Some have actually come to shoot with me over there. When I was training some of these ladies who wanted a handgun for self-defense, there was never any charge for this. They kind of inspired me to do this; they would say to me "maybe you should start charging to do this". So I looked into the legal aspect of this and went and became NRA certified. Some of the folks that are opposed that are here think that this huge facility is going to be built. The facility is already there. You saw what it is. The parking is a little field that is right beside the berms which is way back in the woods. It is by appointment only. I get off at 2:00 p. m. in the afternoon. That's why I say it has to be in the afternoon unless it is on a Saturday or a Sunday; it is completely in the county. We shoot anyway. I've got friends who come once or twice every two weeks to shoot. That's all it is. Some of the flyers that got out were very, very misleading. I have to be at work at 4:30 a.m. in the morning, so there is no way I can teach a class and get off at 2:00 anytime in the a. m. hours. It would have to be in the afternoon. It started as a hobby and now I would like to do something else. So this is where we are today, so we can charge; not charge someone to use the range, but charge someone to use my services and to teach them to use a handgun and to defend themselves.

ACTING CHAIR TART: Does any other board member have questions?

ACTING CHAIR TART: Swore in Mary Hampton.

MARY HAMPTON: My name is Mary Hampton and my address is 135 Nantahala Drive, Linden; but the owner of 400 Karen Drive. As the owner of 400 Karen Drive, which actually encompasses five separate parcels with a total acreage of 70 acres, which is directly adjoining Mark & Jackie Kirby's property at the end of Karen Drive at the traffic circle, Plot 1-4 and the large 64.44 rural acreage to the rear area. We are currently developing that area for our own private use and our home and we have no objection to these operations being conducted or any future operations.

ACTING CHAIR TART: Are there any questions from the board?

VICE-CHAIR TART: Swore in Deborah Morgan.

DEBORAH MORGAN: My name is Deborah Morgan and my address is 309 Rockhill Road, Fayetteville, NC. I met Mark and Jackie Kirby approximately one year ago after visiting with my niece at their firing range. As a female living alone, I had been warned numerous times that I should consider purchasing a gun. Being one who had never fired a gun before, I was petrified at the thought. After observing the range and seeing how very safe it was, I became very interested. Mark talked with me through my fears by showing me the proper way to handle, load and clean a firearm. His first priority has always been safety, he never once asked me for a penny and even supplied the firearm and bullets to use the first few times that I was there. After realizing how expensive the bullets are, I started purchasing my own. I now own my own firearm and feel very confident in my use of it. He has taught me not only the safety on the range but also proper storage at my home. As a grandmother of two young boys, this was very important to me. He assured me there were things I could purchase to make sure that the boys couldn't get to the guns. Thanks to Mark, I have now completed the concealed carrying course and I am in the process of getting my permits.

ACTING CHAIR TART: Are there any questions?

ACTING CHAIR TART: Swore in Lori Matthews.

LORI MATTHEWS: My name is Lori Matthews and my address is 135 Bladen Circle, Fayetteville, NC. The Kirby's are very good friends of mine and I have the utmost faith and confidence in them. With numerous break-ins in the area I started to question the security of my home. In conversation with Mark, he suggested that I go to his range for training. I have never touched a firearm or done any target shooting. I was amazed at the size of the range and the safety and security of the location. Mark educated me one on one how to hold, load and unload the firearm and stressed to me the importance of safety. Once when I was shooting, he stayed a couple of steps behind me as far as safety and was always watching me. I am so comfortable now with a firearm and I have taken the concealed carrying course, and as of today I have received in the mail my certificate for the course, thanks to Mark.

ACTING CHAIR TART: Swore in Anita Goggio.

ANITA GOGGIO: My name is Anita Goggio and my address is 220 Bladen Circle, Fayetteville, NC. With all the home invasions you see in the news, I wanted to learn how to protect myself and family. Mark Kirby volunteered and trained me and my husband on the proper and safe way to handle and shoot a gun. On the training range, he made sure we were taken care of when shooting and also around the range. He only allows one person to shoot at a time and he stands with you to make sure you are holding the gun correctly and standing in proper position. If you have any questions or concerned, he is right there to assist. We feel very safe at his training range. Mark gave us the knowledge and training to where we can handle a gun properly and safely.

ACTING CHAIR TART: Called John Matthews and Mr. Matthews declined to speak.

ACTING CHAIR TART: Swore in Bobby Brandenburg.

BOBBY BRANDENBURG: My name is Bobby Brandenburg and my address is (inaudible) Fayetteville, NC. I've known Mark for about twenty-five years and he's probably the most honorable guy you can ever meet. When he says he is going to do something, you can count on it. He taught me how to use a pistol, unload it, shoot it, clean it and I was always afraid of it. I did all of this on the training facility that we are talking about tonight. I appreciate what he has done for me and he can help a lot of people to understand safety and what guns are for.

ACTING CHAIR TART: I would like to remind each of you that you remain under oath should you be recalled for questioning.

ACTING CHAIR TART: Swore in Martha Barnhill.

MARTHA BARNHILL: My name is Martha Barnhill and my address is 3915 Pleasant View Drive, Fayetteville, NC. I'm happy to hear that I have such a kind neighbor. Our basic concern is about establishing the new zone in our neighborhood and if his business is a success the quiet residential that we have now is going to have bullet and the sound of gun shots through it. We do have the sound of gun shots every once in a while. I did not realize the area was already built for gun shots, but how I know where it is coming from. I thought there was hunting or something going on in back of my home. I own about 20 acres. We moved to the area because we thought it was quiet and safe and for the most part, it really is. I guess I have questions about who would monitor the number of classes per week. The thing sent to me in the notification said it would be three a week. What happens if his business is successful? I heard him say that he does work now, but everybody retires and I'm sure he would increase his hobby time teaching people. That will make the amount of gunshots we have to hear go up. Sometime there are such things as accidents. I worked with someone in Maryland. Their little girl was shot with stray bullets, it wasn't intentional. She was lying on the living room floor and was hit in the head. That was about twenty-five years ago. To my knowledge she is still in a nursing home and still not moving because she had damage to her brain. Even though they are taking precautions, my concern is for anybody who has children in the yard. I know he is safe with guns, but his proposal is to teach people who maybe don't have information about it. I live right on Pleasant View Drive, which is where the people would drive up and if they carried their own guns with them, he doesn't have control over them with what they do before they get there or after they leave. By that I mean supposed somebody is in the car with a gun, trying to shoot it thinking it has blanks and it is loaded. Most young children who come to visit us are usually out in the yard. I am across



the street from where he is down to the left. On a personal note, when I was sixteen years old I was actually robbed by gun point and shot at twice. They didn't talk about post-traumatic stress syndrome back in those days. To this day when I hear a gun go off, it just rattles me. I feel like if this is passed the quality of my life is going to go down because I will be forced to listen to gun shots whether I want to or not and it is going to be more than what I am hearing now. So, that is my personal opinion about it. The other thing is you are probably not going to get a true reflection of the people from our neighborhood. Tonight is the meeting for the South River Electric and a lot of people go to that meeting because they give out prizes and they give you a break on your electric bill. I'm not sure that the number of opposing people that you would willingly see is here tonight. So would you please understand and not change our zoning to allow this business on our street, please don't do it. Thank you for your time.

ACTING CHAIR TART: Does any board member have questions?

ACTING CHAIR TART: Swore in Barbara Roberts.

BARBARA ROBERTS: My name is Barbara Roberts and my address is 3463 Pleasant View Drive, Fayetteville, NC. We have an opportunity to speak to you tonight about our concerns and are glad. We are very blessed to live in a very peaceful part of the County. Some have more than one tract of land. We don't have traffic in and out of our community. As Mrs. Barnhill expressed, we have concerns about the increase in traffic and people coming into our community. I know to get a self-carry, you have to have a background investigation, but I don't know if you have to have background information just to learn and take the class. I also have that little side concern. We have all ages of people living in our community. Gunfire is very disconcerting to probably a majority of people, but especially to the children. We do hear that how and I also did not know that he had the range already set up already. I have grandchildren and some live right next to us and they don't like to hear that. We have retired people in our community and perhaps they are home a little more and so they would be hearing it more in the daytime. We hate to see our community change for the wishes of one when the wishes of many hopes to keep our quiet way like we have it. Aside from the noise we have to consider the decrease in our property values. Today's financial difficulty that we face in this nation, our county and our city concerning our property are an issue. Not as much as it used to be, you don't get the tax money and it is not as it used to be. I do believe if this firing range is allowed in our community that our property values as a whole will go down and therefore our tax value with the County will also go down. I also understand there were some school principals that were going to be here but they called and expressed their concerns, especially the high school principal. There are many people here that are concerned and that we talked to, who were not able to attend, but we try to reflect. As you can see, you have a full house and from what I understand this is unusual and I'm willing to guess the majority are on the opposed side. If this Special Use Permit is allowed, his intention may only be to do it three hours a week, but once he has that special use and those hours are there, he would have to do all of those hours if he chose. Like Mrs. Barnhill said, when he retires or if he sells the property, someone else may use the property for all of the hours. It is wonderful that he has been able to train people in gun safety and that he has had so many friends come and speak for him. That fact is, we are here for our property and for our peace of mind and our lifestyles are at stake, not just doing a few classes and picking up some extra money. Mr. Kirby did point out that their interest is to prepare people in gun safety, but there are many other locations to have these classes throughout the County. Some are given at the fire stations; some are given by law enforcement

trained people. I have family members who have taken such courses. I would hope that you could listen to the concerns of so many of us that are here and protect the quality of life that we have living in our community. It is commendable that Mr. Kirby has all of these people but once again, it is our lifestyle that is at stake and we thank you for time and consideration in this matter. There are a lot of people here tonight and we are all grateful to be able to express our concerns. Thank you.

ACTING CHAIR TART: Does any board member have questions? Where do you live in proximity to this property?

MRS. ROBERTS: This piece of property [pointing to her residence on the PowerPoint Presentation]. This little square is the cemetery and this is where our house is, it is separate, and all of this behind here is ours. We have approximately 48 acres, minus about two acres that our children live on so we may be down to about 45 acres.

ACTING CHAIR TART: We have many people signed up to speak in opposition, but I would encourage you, unless you have something new to present, when I call your name, if you would just state that you are in favor of the testimony that has already been given, so that we are not redundant in our testimony.

ACTING CHAIR TART: Called Sandy Rogers. Mrs. Rogers declined to speak.

ACTING CHAIR TART: Swore in Kim Rhodes.

KIM RHODES: My name is Marsha Kimberly Rhodes and my address is 3916 Jackie Street. My husband and I just in the past few years moved to Jackie Street because we enjoy the peace and quiet. We thought it was a very safe environment and very peaceful. I suffer from several medical conditions. I have a statement from my doctor [**Exhibit 2**] stating my treatment for chronic pain and fatigue since 2011. I frequently need to take naps due to my fatigue. I have been medically retired. I have been informed that a neighbor wishes to create a firing range near my home and would operate from 7:00 a. m. to 8:00 p. m. That is the information by the County, seven days a week. My doctor is very concerned with the effect that may have on me as their patient. There is a good possibility that the sound of gunfire will increase my anxiety and in-turn, increase my pain symptoms. Also the sound of gunfire will disrupt my much needed sleep that I require even during the daytime hours as I can't often sleep at night. Therefore my pain and fatigue will worsen. At this point and time my illness is stable; however, she strongly suspects that I will have more problems with pain and fatigue due to loss of ability to sleep during the day. We're also concerned with our quality of life. To sit in my living room and have the TV on and be able to hear gunfire periodically is bad enough at any time of day or night. I should be able to sit in my home and have peace and quiet, I should not have to hear gunfire. If they are doing it on the firing range or in their yard, I don't know what is legal or illegal in this State. I haven't thrown up any red flags up to this point, but tonight I am because it is my health and it is my quality of life. If you were going to buy a home and you went to look at this home, and you heard gunfire and every time you went to look at that same home, you heard gunfire, would you want to buy it and knowing that is what you were going to be surrounded by? I don't think so. Therefore, yes, I do think it will cause our homes to depreciate in value. Of course nobody wants that. Thank you.

ACTING CHAIR TART: Are there any questions?

ACTING CHAIR TART: Called Beau Rhodes.

BEAU RHODES: Mr. Rhodes declined to speak but stated he agreed with the opposition.

ACTING CHAIR TART: Swore in Kenneth Nettles.

KENNETH NETTLES: My name is Kenneth Nettles and my address is 3920 Pleasant View Drive, Fayetteville, N.C. Madam Chair and member of the board, I rise in opposition to the permit that the applicant has requested. I have nothing against the applicant, I find him to be in good character. Mark came out to my house and spoke to me about his firing range and what he intended to do with it. He invited me to actually inspect the property and I did. I have no doubt about his character or his good intentions but, my wife and I who live at 3920 Pleasant View Drive, which is right above the land in question. We are concerned about disturbing the tranquility of our neighborhood and being detrimental to the quality of life. That's our property right there, [pointing to the PowerPoint Presentation]. We have four basic concerns, but not necessarily in this order: 1. The noise, 2. Denial of the use of our property, 3. Property values and 4. Safety. I will try not to repeat the arguments the previous speakers have already made, but for the purpose of discussion I would like to quote the County Code on the noise ordinance which you may very well be familiar with, madam chair, but I think it is important for the consideration. Section 9.5-21 - the purpose of the County Noise Ordinance is to recognize the excessive and unnecessary noise and danger, physical and emotional welfare of the people. It appears legitimate business and recreational activity increases construction cost, depresses property values, offends the senses, creates public nuisances and in other respects, reduces the quality of life. It is further recognized that a substantial value of science and technology exists, which excessive sound may be measured as substantially invaluable. The policy says that excessive and unnecessary noise may jeopardize human health or welfare or substantially degrade the quality of life as well. It is the power of the governing bodies and police. It is clear that the purpose of this section is to prevent and to provide for the regulation of unnecessary noise which may injure the physical and emotional health and welfare of the citizens or degrade the quality of life. This provision is generally designed to control lawn mower noise, loud stereos and barking dogs. There is a provision that deals with detrimental effects. The sound of gunfire instills fear. What is your first reaction when you hear gunfire? You flinch. Simply being in your yard and being within close proximity to continuous gunfire instills fear and disrupts the tranquility of the neighborhood. You can't ignore gunfire and you can't get used to it. The application says seven days a week, from 7 a. m. – 8. p. m. and that is anticipated. The classes could be up to ten students per class. The second argument that we have is that it denies the use of our property. My wife and I were just blessed with our first grandchild on Valentine's Day of last year. My wife keeps her three or four days a week and they enjoy being on the screened in porch and in the yard. What grandmother or mother will allow a child to be in the yard playing with gunfire? What assurance can this board give this community that no matter how safe the berms are that we can avoid that noise? Gunfire is something that we cannot ignore. My wife purchased this property thirty-one years ago and we've raised a family there. She was there first. The property was zoned residential and that shouldn't change. The third point is property values. I will not repeat what the previous speakers but you have heard it before that the key to property value is location, location, location. Our property will be located next to a firing range. Who among the board would want to purchase property next to a firing range? Lastly is the safety that concerns us. Where my property is located is in the exact opposite of where the bullets are

intended to be fired. I'm also concerned about my neighbors and their safety. I prepared a map that I want to share with you and I've made some points of interest. There are some things on the application that were not mentioned that I think should have been both in the applicant's favor and for the board's consideration. When I viewed the property, the pistol range actually has a fish hook around it that actually protects for noise. It doesn't show on the diagram but it shows on the [inaudible – talking about direction of the sound]. I will agree that the property between my property and the firing range I will say is heavily wooded. However, from the property behind the berms, it would be very easy to see if you stood in front of the firing range and if you look at the photographs, it would not be out of expectation that a bullet fired over those berms will clear those trees and it is going to land somewhere. You'll notice on the map, and I will give you a copy showing the points of interest [Exhibit 3]. Our home is point one and the firing range is the red star. Our home is 350 yards away, Highway 24 is 500 yards away, the Karen Street neighborhood is 300 yards away, the Bladen Circle neighborhood is 700 yards away, the Vander stop light is 2,300 yards away, the four-way stop light is in the center of the Vander community and has several distances, there is the Vander Café, a nail salon, a furniture store, an appliance store, auto parts store, oil company, barber shop, all within 200 yards of that stop light. The volunteer fire department is 2,300 yards away. The Vander Civic Walking Trail, where the community goes to walk is 2,400 yards away. The Vander Civic Playground, where children go to play is 2,450 yards away, Sunnyside Presbyterian Church is 2,550 yards away, Pleasant Grove Baptist Church is 2,700 yards, Vander Church of God is 600 yards away, Sunnyside Elementary is 2,800 yards. For all of those not directly in the southerly direction, there is Mack Reed Middle School that is 2,900 yards away, Cape Fear High School is 3,100 yards away, I95 and NC 24 is 2,000 yards away and the Cumberland County Library is 3,200 yards away. I'm not a ballistics expert, and I know the board has access to many through the Sheriff's office, but I will say the most common ammunition used in rifles and pistols is the 22 long riffle; maximum range 2,000 yards. A 243 Remington, a very popular rifle cartridge that you see in the assault weapons that you hear about, 3,875 yards, probably one of the most common rifle cartridge. The colt 6 is 5,675 yards. Additional, pistol ammunition such as the 9 mm Lugar, 2,400 yards, a 45 automatic Colt; 1,800 yards, a 44 magnum; 2,500 yards. I ask you to please review the map that you have been presented. I think you will find it accurate and disconcerting. Bullets that clear those berms are going to land somewhere. I don't think anybody on the other side of those berms is going to claim it with their name on it. Thank you very much.

ACTING CHAIR TART: Are there any questions for the board? Unless you have something that is new information that is relevant to this case, I would appreciate it when your name is called, that you would indicate you are in agreement with prior testimony.

ACTING CHAIR TART: Called Aubrey Belanger. Mrs. Belanger stated she agrees with the opposition.

ACTING CHAIR TART: Called Augrey Hyatt. There was no answer.

ACTING CHAIR TART: Swore in Tami Nettles.

TAMI NETTLES: My name is Tami Nettles and my address is 3920 Pleasant View Drive.

The only other thing I have and my husband just spoke. Mr. Kirby said the hours he works at his regular job is from 4:30 in the morning until 2:30 in the afternoon. This leaves only late afternoon and the weekends to operate his business. For those people that work, getting home at 5:00 p. m. and the firing range is open until 8:00 p. m. That is what they are going to be hearing when they get home from work and on the weekends because that is the only time he is going to be available to train, late afternoon, in the evening and on the weekend. Other than that, I agree with everything else that was said.

ACTING CHAIR TART: Called Amanda Belanger. Mrs. Belanger declined to speak.

ACTING CHAIR TART: Swore in Marie Massengill.

MARIE MASSENGILL: My name is Marie Massengill and my address is 535 Baywood Road and I own the property at 3901 Pleasant View Drive. I don't have a lot to add. I agree with everything that was said. I do want to note that the property that I own right now is a rental property and is very close to the road that will be going into here. I am concerned with the traffic that will be going into here and I am also concerned it will not be rentable after this, especially to anyone who may work shift work, who may be ill or who may have a small child or a child with special needs. This is a property that my mother built back in 1971 because of the quiet neighborhood. There is a property that my husband and I had planned to retire into within the next 3-4 years, which probably won't happen if this firing range goes in there. The only other thing I wanted to reiterate is that I appreciate the information that the Kirby's have shared, I appreciate that he wants to teach people safety and that he has become certified to do this. I think this would be the very least of the requirement to do this. I want to reiterate that this is a business, this is for profit and so as the demand for this increases, then the traffic and the customers are definitely going to increase. I appreciate the data they gave and I'm not sure who their data source is but it is my belief that it will definitely decrease the property value in that particular community. Thank you.

ACTING CHAIR TART: Swore in Amie DeCarlo.

AMIE DECARLO: My name is Amie DeCarlo and my address is 1706 Bragg Boulevard, Fayetteville, NC.

MRS. DECARLO: I am the daughter of Tami Nettles and the step-daughter of Kenny Nettles. I live at 1706 Bragg Blvd, Fayetteville, NC. I am now married and have a little girl, fourteen months old and she stays with my mom at least three times a week. I have a concern because every time I leave her there and go to work. She is outside and in the yard with the firing range right next door, with only a lot and a rental house and then my mom's house. Thank you.

ACTING CHAIR TART: Called Emma McCall. Declined to speak, but stated she is opposed.

ACTING CHAIR TART: Called Janice Cogdell. Declined to speak, but stated she is opposed.

ACTING CHAIR TART: Called Irene Cogdell. Declined to speak, but stated she is opposed.

ACTING CHAIR TART: Swore in Nancy Smith.

NANCY SMITH: My name is Nancy Smith and I live at 573 Christmasberry Court which is off of Sunnyside School Road, but my mother Susan Seawhite lives at 3928 Pleasant View Drive. My parents purchased their property back in the 1970's and built their home and they hoped to live out their life there in peace and quiet. My mother is 93 years old and she became unable to walk about seven years ago and we have to pick her up and take her outside. She loves to go outside in the yard and sit. It was about seven years ago when she became unable to care for herself, we asked for permission to put a mobile home on the back of my mother's property. We were told under no circumstances could we do that. Later on after my father passed away, my mother had about 300 feet of a slip-rail fence installed along her property line. The property next to her has a bunch of dead trees and they were allowed to fall and destroy my mother's slip-rail fence, which was expensive. My mother contacted someone and she was told that she should be a good neighbor rather than I'll help you pay for this damage. So, today the slip-rail fence is laying every way. Our problem began some time ago. I did not realize that the noise was as bad as it is. I went back in the fall to help my mother in her yard to rake the pine cones. I was raking and I hear gunfire. I wondered where it was coming from. I could tell the noise was coming from right there. [Pointing to the PowerPoint Presentation]. Previously, two years ago, at my property, a gentleman that lives five houses down from me, has a personal firing range in his backyard. He has 9 foot berms and his berms has wheat straw and in a u-shape. One day I was down at my barn doing some work and all of a sudden a bullet went whizzing by my head. It scared me to death. The only reason I knew it was a bullet was in my younger days I used to go hunting with my husband and after he killed the first deer, I said "no, I'm never doing this again", but I remember that bullet whizzing by. I called the sheriff's department and I got in my truck and I drove to all of these places and I found the guy who was doing the shooting. I pulled in there and he became very indignant when I said the bullet had whizzed by my head. I do attest that his bullet went past my ear. If he is in control, and he's got the 9-foot berm of wheat straw, how did that bullet come by my head and I live five blocks down from him and I have twenty-two acres? He just has a normal residential lot. So how did that bullet come by my head? I don't know, but I know this past Friday and Saturday I was out in my mother's yard and I hear, boom! boom! boom! boom! continuously. I would say it lasted about 4-5 minutes. My mother's property is right next to Ken's property. My mother cannot go into the yard, she is very frightened when she hears that. I just don't want her to have to live out her last few days hearing gunfire. I know that the world is in terrible shape and I do understand that we all probably need to learn how to use a gun, but why can't they go on another property. Why do they have to be in the middle of a residential section? I have no problems with what they want to do, I have a problem where they want to do it. My mother when she passes away, we will probably have to sell the house. All of my brothers and sisters live somewhere else, so what will I tell the real estate person? I request that you deny this application. Thank you.

ACTING CHAIR TART: Swore in Erin McCoy.

ERIN MCCOY: My name is Erin McCoy and my address is 352 Gray Barber Drive. I am a victim of a home invasion, it happened this past year. Ever since then I have become a gun enthusiast and I have started going to shooting ranges. My main concern is because I am new at this and going to gun ranges. I was not in control, even with a certified person right there showing me how to load and use. The first time I shot the gun the first five bullets went into the ceiling. It was nothing he could have done. Luckily it was an indoor range, but if it was outdoors, bad things could have happened. I'm also concerned because when the police came to my house after my home invasion, everybody around the neighborhood was scared to death. All of a sudden

everybody was breaking out their shotguns, shooting around the neighborhood because we found out the person who broke into my house was from my neighborhood so now everybody was saying we will let them know that we are going to protect ourselves. The cops told me and went to some of the neighbors and said it is illegal to shoot guns in a residential area in your own yard. I don't know what the statutes are, but that is what I was told. I am concerned not only about the noise but also with the traffic and having new armed, unknown people coming into the neighborhood and seeing how everybody lives. There are many different types of people in our neighbor and you could see who lives where, who is or isn't protected and I'm afraid it would open the neighborhood up to more breaking and entering. Thank you.

ACTING CHAIR TART: Swore in Kay Lowther.

KAY LOWTHER: My name is Kay Lowther and my address is 353 Gray Barger Drive. I am acquainted with the area. My street is almost to the end of Pleasant View going towards Baywood Road. At the end of that street, I might be wrong, but I kind of acquainted with that whole area in there they are talking about. I know that there used to be a lot of teenagers and drug use down in that area. People used to go hunting down there. Being a parent of a teen son, my concern is if it runs into that area, is the curiosity going to affect the teens being there is a firing range. I don't know what kind of control they have on the area as far as keeping teens out of that area if they are not scheduled for the training classes. Those are my concerns and just to say one thing that happened a couple of months ago, my son was watching my neighbor's dog and the dog roams and got out of the area. My son went to look for him and I'm standing outside in my driveway and all of a sudden all of this shooting starts to happen. I can't tell you where it was coming from. As a parent I thought they were shooting at my son. To have that go on in a neighborhood that you live in, I'm very opposed to it and I think as home owners, we should not have to go through this. I know that the Kirby's intentions are good but I think the area is not good. Thank you.

ACTING CHAIR TART: Called Laretta Vic. Mrs. Vic stated she agreed with the opposition.

ACTING CHAIR TART: Called Nadine Holland. Mrs. Holland declined to speak.

ACTING CHAIR TART: Called Peggy Porter. Mrs. Porter stated she agreed with the opposition.

ACTING CHAIR TART: Called Ed Porter: Mr. Porter stated he agreed with the opposition.

ACTING CHAIR TART: Called Mariel Kunz: Mrs. Kunz stated she agreed with the opposition.

ACTING CHAIR TART: Swore in James Massengill.

JAMES MASSENGILL: My name is James Massengill and my address is 535 Baywood Road, Fayetteville, N. C. 28312. I along with my wife own the property across the road from where the firing range is going to be at 3901 Pleasant View. A lot of things have been said about concerns of noise and safety. I am familiar with people shooting especially for the first time, I am familiar with people who are probation officers and who had to learn firing for the first time. I have witnessed the first time they shot. They pointed the gun wrong and I saw it discharge. One thing I wanted to question is the presentation that the Kirby's gave about property values around the firing range. How close were these properties to the firing range? Was it 100 yards, a mile or ten miles? I think property values would be an issue. I also agree with the things that Mr. Nettles said. Thank you.

ACTING CHAIR TART: Called Robin Roberts. Mr. Roberts stated he agreed with the opposition.

ACTING CHAIR TART: Swore in Cecil Johnson.

CECIL JOHNSON: My name is Cecil Johnson and my address is 484 Rockhill Road. I am concerned with the noise. With this property in question, I ride horses and I've been on this property. It's been a couple of years since I've been there but I didn't see anything that looks like a shooting range back in there. Thank you.

ACTING CHAIR TART: Mr. Kirby, you remain under oath. You and Mrs. Kirby may have rebuttal if you wish.

MR. KIRBY: I'd like to say that I appreciate everybody coming out whether they oppose or are for it. We do live in the County and there are a lot of other people that shoot other than me. Some of the people that oppose are miles from where we are. The make-shift berms and the foliage control a lot of the sound. Everyone who shoots and is from the County, if they are responsible, they are perfectly within their rights to shoot, practice, hunt and they have permission and agree not to trespass. What I've been doing, I've done without charging anyone and with respect to those who oppose and to you folks here I can still continue to do that whether it passes or not; I can still do it and continue to educate people. The shooting respectfully won't stop. I'm not the only one; I'm just the only one who has gone to this length of safety to make it safe. I am a safe hunter. It's all about safety. Everything's about safety when it comes to firearms. If you have a home invasion and you don't have a firearm, you don't bring a knife to a gun fight. You need to learn to protect yourself. Even black belt martial arts doesn't matter, it doesn't match against a weapon. It's just the bottom line. The opposers were looking at the pine trees that we left standing, those are thin, young pines but that is not where the berms are. The berms are in the dense cutover. Those thin pines are 25-35 feet tall now and completely surrounding. There are acres of land near the salt house, where the County keeps its salt. That's in the direction of where the firing is. The second berm is right beside the main range and is deep. It was dug out to be deep, it actually goes down which makes it even safer. One of the opposers asked about how many yards, it is 1,760 yards long. It's one-on-one training, that's what it is. Defensive training is fifteen yards and in. If someone is standing at the end of a courtroom threatening you with a ball bat, you can't legally shoot them. You have time to escape or do something else to keep from harming that person. Defensive range is in your personal space and this is how I train a person to protect themselves. If I can't charge for it I can certainly continue to do what I'm doing to make people safe whether I can make any money from it or not. I don't plan on getting rich from it, I don't see that happening, and I just enjoy doing it. Especially the youth, I love to see them come and learn to shoot. As we age we get interested in hunting, and as we age it is wear and tear on the body and we need to educate the youth on gun safety. Hopefully, they will not only learn how to use a weapon for self-defense, but for hunting. Thank you.

MRS. KIRBY: I just want to add that this was a diagram at the end of our PowerPoint Presentation. The yellow stars are neighbors we know for a fact who shoot in their back yard. The one directly behind our house, he shoots in a make-shift pile wood berm. Another neighbor has a dirt pile that their son and his friends shoot into. Other neighbors shoot and there is somebody back here that shoots and we hear sounds like dynamite. If the neighbors are complaining about hearing gunshots, it is not necessarily coming from here. It could be anywhere and these are just the ones we know for a fact that shoot in our area. I just hope that you will consider that he's got a



safe place and he is not out there just letting people shoot. Everybody realizes that accidents can happen and should this pass, we will be adequately insured for accidents. We are just trying to see if this passes before we go to the next step. We are responsible and we would make sure that we were adequately insured. We know accidents can happen anywhere. You can't send your kid to school without possible getting shot these days. In this case, he is trying to do a responsible thing and teach people safety that can also pass this on to their family members and their children and doing it in a controlled and safe environment. We just hope you all will consider that as well.

ACTING CHAIR TART: How did you arrive at seven days a week?

MRS. KIRBY: When we filled out the site plan we were told to put down all possible hours. It may seem misleading, but what we were trying to say in that is that it would only be during daylight hours and not during the night time; all possible hours, by appointment only. We are not going to have a sign on the street. This is a private range and it will remain a private range. So many of the neighbors said they did not know we had it. He's been shooting back there for probably seven years and nobody knew that we had it back there. The noise cannot be that disturbing if nobody knew we had it. Now they know we have it because a letter went out and also because of this flyer that somebody made up saying we would be open seven days a week. There will be no open hours, it is by appointment only. On the site plan we also had that language in there, by appointment only, not to exceed three sessions per week. So three sessions a week won't last seven days a week. The sessions would probably last a couple of hours each. In those sessions you have to realize that part of that is class work, training from the text book. If you have a two hour session, you may only have a half hour of actually shooting. You have to go through the stance, which he could probably tell you more about that.

MR. KIRBY: I want to do it in about a three hour session. Usually there is at least an hour and a half of classroom. You just don't go over the gun, you go over the ammunition. The only thing that makes the gun bad is the bullet, so you need to be educated in ammunition as well in the firearm and that takes time especially to a beginner shooter. The ladies that I've trained and most of who I've trained have been ladies, have been very responsive and easy to train. They are mature adults. I won't take a child or a youth out there because they can't even buy a gun yet. Can they use a gun for hunting if supervised by an adult? Sure. I'm not certified in that, but I can also do that. The class is about three hours long, and one and a half hours is class time with about thirty minutes of actual shooting. There are some Saturdays and Sundays when we are sitting in the house and we hear gun fire. I know the neighbors think that it's me, but that is not necessarily true. If you don't have foliage, trees, berms, there is a lot of expense to do that if you've never built one, it's expensive.

ACTING CHAIR TART: Does anyone from the board have questions?

MRS. CARSON: Will there be ammunition kept on site?

MR. KIRBY: No ma'am. In my training, the fee that I charge is for my personal time and the use of my range. They are paying me to teach them. They can supply their own ammunition with their own gun and bring it. If they want to rent a hand gun, I have many hand guns and ammunition that I can supply, but there is no ammunition kept on site.

MRS. KIRBY: There is nowhere to keep it.

MR. KIRBY: The only thing that is kept on sight is targets.

MR. HUMPHREY: You mentioned the berms. Is there a national standard for berms for ranges? Is it 9 feet, 6 feet? How do you stack up if there is an average out there? Is yours minimum, maximum or does it fall in between?

MR. KIRBY: If you shoot at a distance of 200 yards or more for a high powered rifle, the berms have to be 25 meters. That is considerably more than what I do. In my range the furthest point you can shoot is 100 yards and 95% of the shooting is hand guns inside the berm. You walk into a huge u-shape and you are surrounded by 9 feet which is misleading because some of the sides are 12 feet high. It's really intimidating especially with the separate pistol range that I added to it. The berms are really high; you are standing in a hole. If you see the target there in the center, if I stood beside that, my head would be about midway of those boards [referring to a slide in the PowerPoint Presentation].

MR. HUMPHREY: How tall are you?

MR. KIRBY: I'm 5'11". If you look at the berms to the right of the big target board, those are 12 feet high and that berm separates the two ranges.

MR. HUMPHREY: And the berms are made out of?

MR. KIRBY: Dirt and clay.

MR. HUMPHREY: Thank you.

### **Public Hearing Closed**

ACTING CHAIR TART: Do we have any questions from the staff? Mr. Hasty, if this is approved, there is nothing that would keep him from having classes every day even though he says it will only be three times a week?

MR. HASTY: The hours that he put on the application are the ones he would be entitled to.

ACTING CHAIR TART: Do I have a motion to approve or to deny?

MR. HUMPHREY: I'm in favor of this application based on the PowerPoint Presentation that was presented. The Kirby's are sworn under oath to give factual information. They presented and I don't know where she got it, but I do remember her saying the property values and even with other ranges did not decline. I have to consider that. She also said that they would meet all standards as required by the County and planning staff. Based on the presentation that I saw and the choices given to them; and this is not a school, but appointment based; I am in favor of it. I do know that gun shots can be heard at different hours, but I live off of Ramsey Street and I hear artillery shells falling all through the night. That is something we've got to live with in Cumberland County. Basically, it is my proposition what was presented here that I can go in favor of it.

ACTING CHAIR TART: I wonder if the board would consider as a special condition changing the hours if that would be permissible, Mr. Hasty?

MR. HASTY: If the board desires to modify the hours, they could do that as part of the conditions.

MR. HUMPHREY: What kind of hours are you looking at?

ACTING CHAIR TART: I was thinking never earlier than 8:00 am and never later than 7:00 pm.

MR. KIRBY: I can do even better than that, how about 10:00 am to 5:00 pm.?

ACTING CHAIR TART: That would be even better. I do feel that people need peace and quiet. Do I have a motion from the board to either approve or deny the Special Use Permit?

MR. HUMPHREY: I make a motion that we approve the Special Use Permit with the hours being limited to 8:00 am to 5:00 pm and by appointment only.

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

**The range has two u-shaped berms and thick vegetation completely surrounding the site, which will ensure rounds fired will remain on site, help reduce noise and also aid in controlling unauthorized access to the site. In addition, the applicant (property owners) consulted a lead reclamation company and, following their guidelines, will reclaim and properly dispose of the lead at the appropriate time (approximately five year increments).**

2. The use meets all required conditions and specifications.

**Once the Ordinance Related Conditions are met and the site is properly permitted, all County required conditions and specifications will be complied with – the applicant (property owners) has verbally agreed to all Ordinance Related Conditions.**

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

**The applicant (property owners) submitted evidence derived from the County Tax Administration database as a matter of public record showing how similar firing ranges existing within Cumberland County have not detrimentally affected adjacent or nearby property values; the evidence presented shows that from 2002 through 2012, the property values of properties surrounding the “Wildlife Range” constructed in 1971 have escalated in value. In addition, the applicant testified that the firing range currently exists for personal use, and he does not anticipate a significant increase in its use with the Special Use Permit. The range could also be viewed as a public necessity considering the current climate concerning the increase in firearms purchases, in that these purchasers need a place to be trained in the proper handling and use of firearms.**

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.

**The applicant (property owners) testified, showing specific property locations on a map, that a minimum of five other ranges (albeit *makeshift*) also exist in the immediate area. The application meets or exceeds the minimum standards of the County Zoning Ordinance, which was drafted and adopted based on the policies and actions adopted in the 2030 Growth Vision Plan and the 2030 Growth Strategy Map.**

Having heard all the evidence and argument presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Cumberland County Zoning Ordinance for the development proposed, and that therefore the application to make use of the property described within this case for the purpose indicated is hereby approved, subject to all applicable provisions of the Zoning Ordinance and the following conditions:

- 1. The applicant shall complete the development strictly in accordance with the application and site plan submitted to and approved by this Board, a copy of which is filed in the Cumberland County Planning & Inspections Office.**
- 2. The applicant/property owner is the responsible party for the information contained within the site plan, including but not limited to the property boundaries, easement locations, and right-of-way boundaries.**
- 3. The applicant/property owner is the responsible party to ensure compliance with all other related Federal, State, and local regulations, including but not limited to the NC Building Code.**
- 4. The applicant (property owners) is the responsible party to ensure all Ordinance Related Conditions pertaining to the Special Use Permit and included in the board's packet are complied with.**
- 5. The applicant (property owners) agreed to amend their application specifically restricting the hours of operation to be from 8:00 am to 5:00 pm by appointment only.**

**The motion passed with four board members in favor and one opposed.**

|          | IN FAVOR | OPPOSED |
|----------|----------|---------|
| TART     | NO       | YES     |
| HUMPHREY | YES      |         |
| DYKES    | YES      |         |
| CARSON   | YES      |         |
| AUTRY    | YES      |         |

10 . ADOPTION OF 2013 DEADLINE/MEETING SCHEDULE

A motion was made by Mr. Humphrey and seconded by Mr. Dykes. Unanimous approval.

11. DISCUSSION

There was none.

12. UPDATES(S)

There were none.

13. The meeting adjourned at 9:00 p.m., motioned by Mr. Dykes and seconded by Mrs. Carson.

**P97-36-C**  
**SITE PROFILE**

**P97-36-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE REPAIR AND/OR BODY WORK, IN AN A1 AGRICULTURAL DISTRICT ON 7.11+/- ACRES, LOCATED AT 1921 JOE HALL ROAD (SR 2246); SUBMITTED AND OWNED BY SAMUEL W. AND ELENE WEST.

**Site Information:**

**Frontage:** 480.00'+/- on Joe Hall Road (SR 2246)

**Depth:** 570.00'+/-

**Jurisdiction:** Cumberland County

**Adjacent Property:** Yes, one lot on the west side of subject property

**Current Use:** Motor vehicle repair and/or body work, 2-residences, open storage of junk

**Initial Zoning:** A1 – June 25, 1980 (Area 13)

**Nonconformities:** Existing garage (40x70) with second story-no record of permits. Existing double-wide manufactured home doesn't meet the front yard setback-date structure placed on property is unknown/no permits on record; no record of permits for addition to single-wide manufactured home

**Zoning Violation(s):** Yes, Case # ZN6812-2012 received on 07/02/2012 for operating a storage and a motor vehicle wrecking yard and junkyard use in a zoning district that does not allow it, and open storage of junk

**Surrounding Zoning:** North, South and West: A1; East: A1 & R40

**Surrounding Land Use:** Substation, religious worship facility, residential (including manufactured homes) and woodlands

**2030 Growth Strategy Map:** Rural area

**Special Flood Hazard Area (SFHA):** No flood

**Water/Sewer Availability:** Well/Septic

**Sewer Service Area:** Yes

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

**School Capacity/Enrolled:** Gray's Creek Elementary: 495/425; Gray's Creek Middle: 1,000/999; Gray's Creek High: 1,270/1,227

**Subdivision/Site Plan:** Conditions of approval for case No. 97-339 apply

**Average Daily Traffic Count (2010):** 320 on Joe Hall Road (SR 2246)

**Highway Plan:** There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

**Notes:**

1. Specified Conditional Use Permit Case No. P97-36-C approved on 12/18/1997
2. Contents of the application submitted on 10/14/1997
  - a. Proposed a privacy fence so cars would not be visible
  - b. 2 employees
  - c. Hours of operation: Monday through Friday from 8:00 am to 5:00 pm, Saturday from 8:00 am to noon, and closed on Sunday
3. On March 21, 2013 the Board of Adjustment deferred case P97-36-C to the May 16, 2013 meeting for more information from the Code Enforcement office and requested the owner/applicant to submit a revised site plan—revised plan submitted on 04/15/2013 and is included in this packet

**First Class and Record Owners' Mailed Notice Certification**

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

Walter Clark,  
Chair  
Cumberland County

Patricia Hall,  
Vice-Chair  
Town of Hope Mills

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Charles C. Morris,  
Town of Linden



CUMBERLAND  
★ COUNTY ★  
NORTH CAROLINA

Planning & Inspections Department

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Lori Epler,  
Sara E. Piland,  
Vikki Andrews,  
Cumberland County

Benny Pearce,  
Town of Eastover

Donovan McLaurin,  
Wade, Falcon & Godwin

I, Samuel W. and Elene West of 1921 Joe Hall Road request and consent to the revoking of my Specified Conditional Use Permit (Case No. P97-36-C). I am ceasing the operation of the Automobile Repair and body work shop.

*Samuel W. West*

Samuel W. West

Sworn to and Subscribed to by me

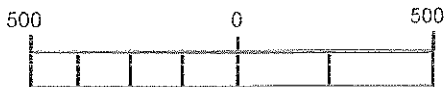
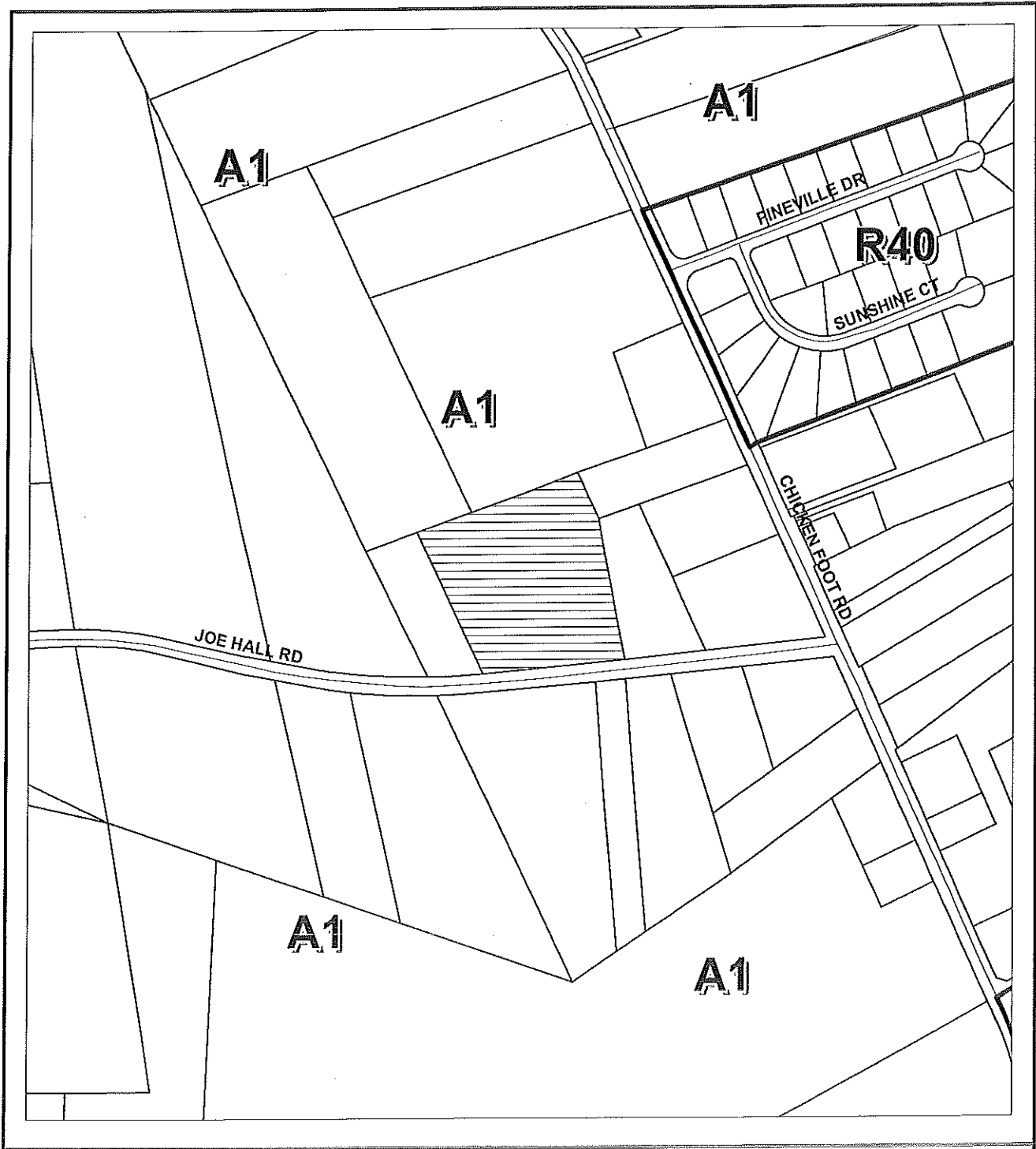
this 15<sup>th</sup> day of October, 2012

*[Signature]*  
Notary Public

11-03-14

my Commission expires



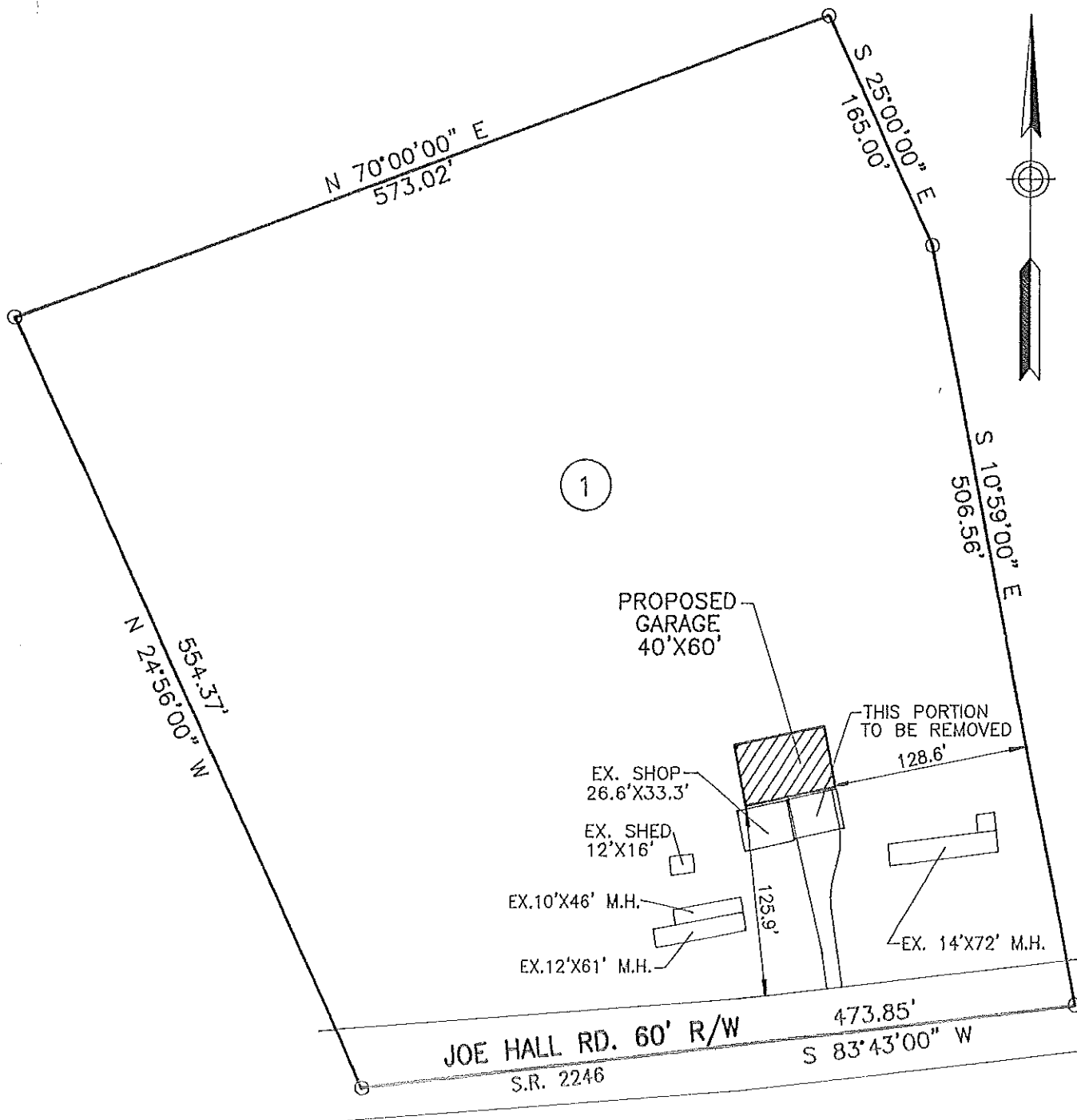


SCALE IN FEET

## REVOCATION SPECIAL USE PERMIT

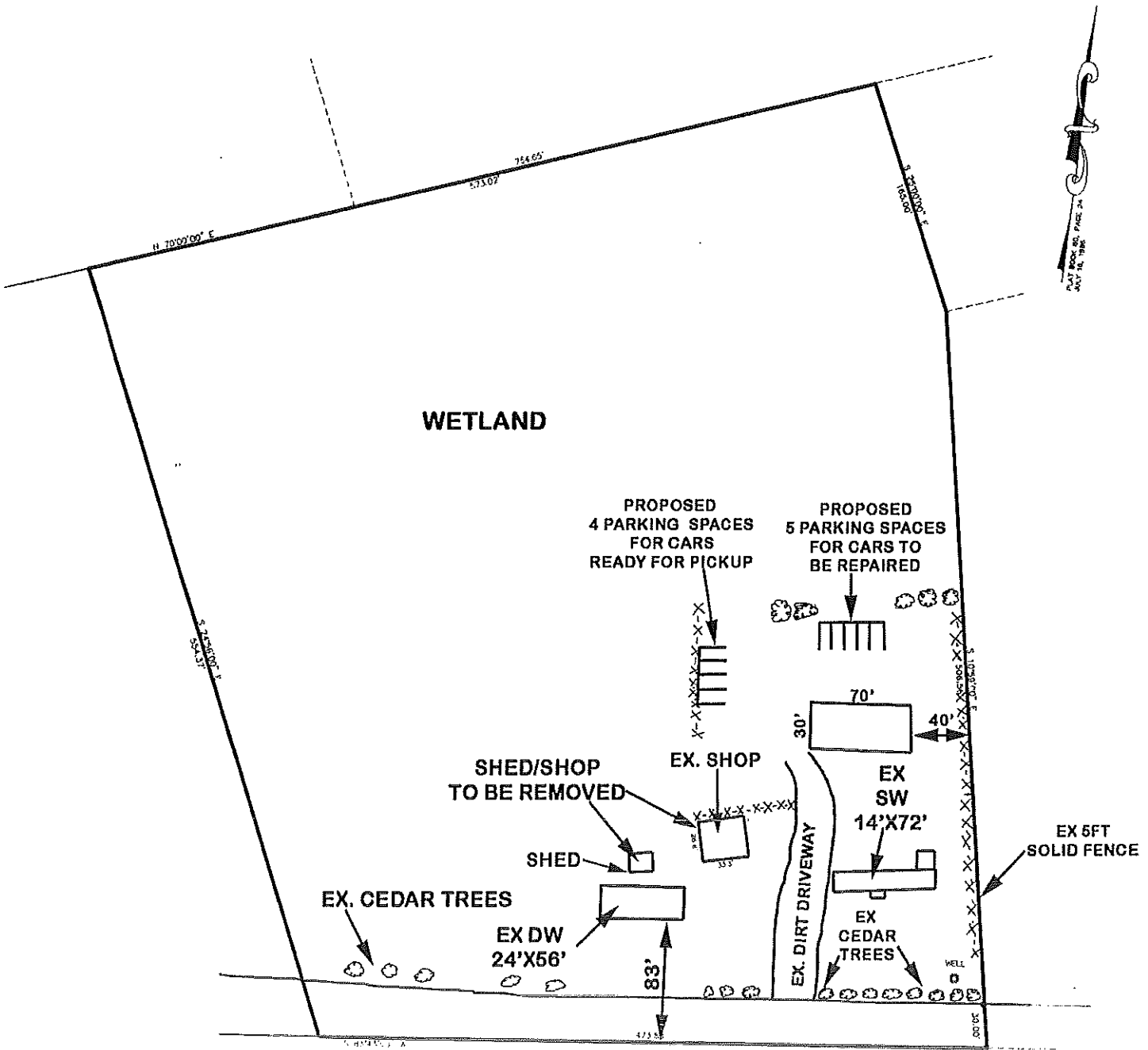
|                       |                      |        |
|-----------------------|----------------------|--------|
| ACREAGE: 7.11 AC. +/- | HEARING NO: P97-36-C |        |
| ORDINANCE: COUNTY     | HEARING DATE         | ACTION |
| GOVERNING BOARD       |                      |        |





## SPECIFIED CONDITIONAL USE PERMIT

CASE NO: P97-36-C ZONED: A1 ACREAGE: 7.11 AC±  
 REQUEST: TO ALLOW AUTOMOBILE REPAIR AND/OR BODY WORK,  
EXCLUDING WRECKING, DISMANTLING, OR STORAGE OF JUNKED  
VEHICLES. SCALE: 1=100'



SR #2246 JOE HALL ROAD 60' R/W

BOARD OF ADJUSTMENT  
 UPDATE OF SITE PLAN  
 CASE: P97-36-C

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

Walter Clark,  
Chair  
Cumberland County

Patricia Hall,  
Vice-Chair  
Town of Hope Mills

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Charles C. Morris,  
Town of Linden



# CUMBERLAND COUNTY NORTH CAROLINA

## Planning & Inspections Department

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Town of Eastover

Donovan McLaurin,  
Wade, Falcon & Godwin

STAFF REVIEW: 04-17-13 PLANNING BOARD DECISION: N/A

CASE NO: 97-339 NAME OF DEVELOPMENT: SAMUEL WEST PROPERTY

MIA: N/A GROUP DEVELOPMENT & A1 SITE PLAN REVIEW (BOA APPROVED MV REPAIR – P97-36-C)

LOCATION: 1905 & 1921 JOE HALL ROAD (SR 2246) ZONING: A1

PIN: 0465-34-9214-

OWNERS / DEVELOPER: SAMUEL WEST ENGINEER OR DESIGNER: N/A

PLANNING & INSPECTIONS DEPARTMENT ACTION:

- PRELIMINARY
- EXTENSION       REVISION
- APPROVED CONDITIONALLY
- DENIED

PLANNING BOARD DECISION:

- PRELIMINARY
- EXTENSION       REVISION
- APPROVED CONDITIONALLY
- DENIED

The development plat/plan you submitted to this office is conditionally approved. Your approval is subject to the following conditions:

**Pre- Permit Related:**

1. Prior to final occupancy permits being issued the Code Enforcement Section must verify the location of proposed doublewide manufactured home. It appears that the manufactured home does not meet the required 50 foot front yard setback if the structure is located as shown on the aerial photos. (Note: If the manufactured home does not meet the 50 foot front yard setback then the developer must either relocate the doublewide manufactured home so it meets all setbacks or must apply for a variance to the Board of Adjustment for approval of the location.)
2. The proposed two story motor vehicle repair garage shop and storage area must meet all building code requirements for the proposed use. The Building Inspectors and Code Enforcement Officer must verify that all building code and zoning regulation have been met for the proposed repair shop. (Note: This condition is required since the structure has already been constructed and must be verified for compliance.)
3. The "Shed/Shop to be Removed" must be removed prior to permit application. In the event the property owner desires to retain the existing structures, the site plan must be revised prior to permit issuance.

**Permit-Related:**

4. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
5. The County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision and Development Ordinance)
6. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
7. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.

8. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.
10. A review of the data available to the Army Corp of Engineers indicates that jurisdictional waters are likely to be present on this property and therefore are likely to be impacted by the proposed project. However, without an official Jurisdictional Determination at the property, these findings cannot be confirmed.

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

**Site-Related:**

11. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Development Ordinance and Zoning Ordinances for the A1 zoning district must be complied with, as applicable.
12. Storage of junk or junked vehicles on this site is not permitted; the temporary storage of motor vehicles awaiting repairs must be temporarily stored in such an area that the vehicles are screened from view and cannot be seen from a public street or the adjacent residential property.
13. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is not approval of the size, shape, or location of any signs.)
14. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision and Development Ordinance)
15. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision and Development Ordinance)
16. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
17. Turn lanes may be required by the NC Department of Transportation (NCDOT).
18. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
19. A solid buffer must be provided and maintained in such a manner that the motor vehicles waiting to be repaired are screened from view from the public street in accordance with the provisions of Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing cannot be used to satisfy the buffer requirement.)
20. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
21. All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of five off-street parking spaces are required for this development.
22. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.

**Advisories:**

23. The developer should be aware that this approval is not an approval of any residential dwelling unit to be located on the second floor of the proposed motor vehicle repair shop. (Note: If the developer intends on using the second floor for any use other than storage, additional review and approval will be required prior to conversion to a residential unit.)
24. The applicant is advised to consult an expert on wetlands before proceeding with any development. There may be wetlands located in the project area that are subject to the permit requirements of Section 404 of the Clean Water Act. To avoid a violation of federal and/or state law, it is recommended the developer contact the Office of the Army Corp of Engineers or hire an environmental consultant to identify and delineate any wetlands in the project area prior to construction. A Section 404 permit will be required if the applicant needs to fill wetlands and the permit must be obtained prior to any construction on this site.
25. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

26. This conditional approval is not to be construed as all encompassing of the applicable rules, regulations, etc. which must be complied with for any development. Other regulations, such as building, environmental, health and so forth, may govern the specific development. The developer is the responsible party to ensure full compliance with all applicable Federal, State, and local regulations.

**Other Relevant Conditions:**

27. All applicable conditions from Case: P97-36-C apply, provided that the Board of Adjustment does not revoke the permit approved on December 18, 1997 for the motor vehicle repair business. Reconsideration of the revocation is scheduled to be heard on May 16, 2013 by the Board of Adjustment.

*Thank you for making Cumberland County your home!*

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

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

|                                   |                     |                         |
|-----------------------------------|---------------------|-------------------------|
| Subdivision/Site Plan/Plat        | Ed Byrne            | 678-7609                |
| Code Enforcement (Permits):       | Ken Sykes           | 321-6654                |
| County Building Inspections:      | Gary Faulkner       | 321-6648                |
| Fire Marshal – Emergency Services | Rodney Ward         | 321-6625                |
| County Health Department:         | Daniel Ortiz        | 433-3680                |
| Ground Water Issues:              | Matt Rooney         | 678-7625                |
| County Public Utilities:          | Amy Hall            | 678-7637                |
| Corp of Engineers (wetlands):     | Crystal C. Amschler | (910) 251-4170          |
| NCDENR (E&S):                     | Sally Castle        | 433-3300                |
| Location Services:                |                     |                         |
| Site-Specific Address:            | Ron Gonzales        | 678-7616                |
| Tax Parcel Numbers:               |                     | 678-7549                |
| NCDOT (driveways/curb-cuts):      | Gary Burton         | 486-1496                |
| N.C. Division of Water Quality:   | Mike Randall        | (919) 733-5083 ext. 545 |

**OFFICIAL PRELIMINARY STAMP  
CUMBERLAND COUNTY  
CASE NO: 97-339**

**THIS PLAN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTION DEPARTMENT ON: 4-17-13**

**COMMENTS: SUBJECT TO CONDITIONS**

**I CERTIFY THAT THIS PLAN HAS BEEN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DEPARTMENT AS DRAWN HEREON AND MAY BE USED FOR ANY OFFICIAL PURPOSE AS PERMITTED BY LAW. THIS APPROVAL IS VALID UNTIL: 4-17-15**

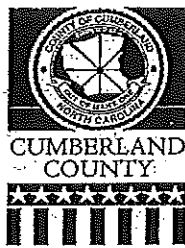
*Patricia S. Speicher* **GB**  
**SUPERVISOR, LAND USE CODES**

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Ken Sykes,  
Inspections Coordinator

Carol M. Post  
Planning and Inspections  
Office Support



Kim Reeves,  
Inspector  
Angela Perrier,  
Inspector  
George Hatcher,  
Inspector  
Joey Lewis,  
Inspector  
Joan Fenley,  
Inspector

## COUNTY of CUMBERLAND

*Planning & Inspections Department*

### NOTICE OF VIOLATIONS

July 2, 2012

TO: Samuel W. & Elene West & Parties of Interest & Catalina Elaina Ramos & Parties of Interest  
1921 Joe Hall Road 1921 Joe Hall Road  
Hope Mills, NC 28348 Hope Mills, NC 28348

CASE #ZN 6812-2012

You are hereby issued a Notice of Violation of the Cumberland County Code, Appendix A, Zoning.

1. Nature of Violation(s): You are using/permitting the use of land that you own for the storage of vehicles and an accumulation of open storage of miscellaneous materials on a lot zoned A1, which by definition in the Cumberland County Zoning Ordinance is a junk yard and a violation of the conditions of the Specified Use Permit granted by the Cumberland County Board of Adjustment on December 18, 1997 (Case # P97-36-C). Specifically: inoperative vehicles, auto parts, boxes, tools, batteries, construction debris, demolition debris, etc..
2. Code Reference: Zoning Ordinance, Cumberland County, North Carolina, Article IX, Individual Uses, Section 915, Motor Vehicle Wrecking Yards and Junk Yards, Article XVII, Legal Provisions, Section 1703, Violations
3. Action to Correct Violations(s): Either remove the construction debris, rubbish, and outside storage, or store the items inside an approved building.
4. Property Location: On or about 1921 Joe Hall Road, Hope Mills, NC. Being that property as listed under Cumberland County, NC Tax Parcel Number 0431-04-6956.
5. Property Owner: Samuel W. & Elene West Inspection Date: 6/20/2012

You are hereby advised that the above listed violation is a Class 3 Misdemeanor, under the provisions of North Carolina General Statute 14-4, and must be corrected within thirty (30) days of receipt of this notification. Failure to correct this violation will subject you to a civil penalty of \$500 dollars per day (each day being a separate violation) and prosecution for a misdemeanor violation in Environmental Court. Also be advised of your right to appeal this decision in accordance with Article XVII., Section 17.03(E), Appeal, Zoning Ordinance, Cumberland County, North Carolina.

If you have any questions, please contact the undersigned at (910) 321-6647.

  
George Hatcher  
Code Enforcement Officer

# CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

January 5, 1998

MEMO TO: CUMBERLAND COUNTY INSPECTIONS DEPARTMENT

FROM: ROY TAYLOR, PLANNER I *RT*  
CUMBERLAND COUNTY BOARD OF ADJUSTMENT

SUBJECT: CASE NO. P97-36-C. AN APPLICATION BY SAMUEL WEST FOR A SPECIFIED CONDITIONAL USE PERMIT AS PROVIDED FOR BY THE CUMBERLAND COUNTY CODE OF ORDINANCES, ARTICLE III, SECTION 3.1, TABLE 1-A-1, TO ALLOW AUTOMOBILE AND REPAIR AND/OR BODY WORK, EXCLUDING COMMERCIAL WRECKING, DISMANTLING OR STORAGE OF JUNKED VEHICLES IN AN A1 AGRICULTURAL DISTRICT FOR AN AREA LOCATED ON THE NORTH SIDE OF JOE HALL ROAD (SR 2246), WEST OF CHICKEN FOOT ROAD (SR 2252). (COUNTY ORDINANCE)

The Cumberland County Board of Adjustment met December 18, 1997 and voted unanimously to approve the application as submitted.

RT:bjc

cc: Samuel West  
Rt 1 Box 337A-3  
Hope Mills NC 28348

DATE APPLICATION SECURED  
DEADLINE DATE TO RETURN MONDAY OCT 20  
THE COUNTY BOARD OF ADJUSTMENT MEETING  
DATE WILL BE ON  
DATE RETURNED TO PLANNING 10-14-97  
RECEIPT # 34975 RECEIVED BY: EMB

**CUMBERLAND COUNTY  
SPECIFIED CONDITIONAL USE PERMIT**

Upon receipt of the completed application and check, the Planning Department will contact the Chairman of the Board of Adjustment and a public hearing will be set. The Planning Department will then advertise the public hearing and a notice will also be mailed or delivered to surrounding residents or property owners which in the opinion of the Board may have an interest in the proposed case.

The Board of Adjustment is a quasi-judicial review board and all persons wishing to appear before this Board should be prepared to give sworn testimony on relative facts.

The following items are to be submitted with the completed application:

1. A copy of the deed or a written legal description.
2. A copy of a detailed site plan drawn to an engineering scale, showing location of all buildings, yard dimensions, driveways, parking areas, and all other pertinent data to the case;\*
3. A check made payable to Cumberland County for the amount of \$100.00.

**Note:**

1. The application fee is nonrefundable.
2. The Planning Staff is available for advice on completion of the application; however, the Planning Staff is not available for completion of the application or preparation of site plan.
3. The secretary, Ms. Jackson, shall review the site plan and application for sufficiency. (If you have any questions please contact Ms. Jackson at 678-7618)

\*Inaccuracies or errors on legal description or site plans may cause a case to be delayed to a Board of Adjustment meeting.



APPLICATION FOR SPECIFIED CONDITIONAL USE PERMIT

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

1. The property sought for Specified Conditional Use Permit is located at RR 1 - Box 337 - A3 Home Mills 28348 (mailing address) between Joe Hall Rd (street name)

and Chicken Ft Rd (street name) on the North (north, south, east,

west) side of the street and known as lot(s) number(s) 1. It has

frontage of 473.85 feet and consists of an acreage of 7.11 acres.

2. The area sought for Specified Conditional Use is described in Deed Book 3272, Page 672, Cumberland County Registry. (Attach copy of recorded deed or complete metes and bounds (survey) description of subject property.)

3. The property sought for Specified Conditional Use is owned by Samuel and Elene West.

4. The tax parcel identification number (PIN#) of the subject property is: 0431-04-5827 Zoned A1

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

The proposed use is an Automobile Repair Shop.

There will be a privacy fence where no cars are exposed. There will be two employees, one which is the owner. The hours of operation will be Monday - Friday 8am - 5pm, Saturday 8am - 12, Sunday closed.

6. Attach copy of detailed site plan of subject property. (Note: Site Plan to be drawn to an engineering scale, reflecting entire parcel, street name and right-of-way width, foot print of all buildings on site or to be built, curbcut(s) location and width, parking spaces, setbacks to all property lines and indicate fencing (if applicable).

MAILING LIST

7. The following are all of the individuals, firms or corporations owning property adjacent to BOTH SIDES and REAR, and the property in FRONT of (across the street from) the property sought for Specified Conditional Use Permit: (This information should be obtained from the Tax Mapping office on the 5th floor of the New Courthouse.)

ADJACENT PROPERTY OWNERS

| NAME                       | ADDRESS                     | ZIP   |
|----------------------------|-----------------------------|-------|
| Ronald + Teresa Cook       | Rt 1, Box 337 AA Hope Mills | 28348 |
| Betty Durden               | Rt. 1, Box 337 A Hope Mills | 28348 |
| Delphine Cagle             | Rt. 1, Box 337 C Hope Mills | 28348 |
| Grays Creek Historic Lodge | P.O. Box 421 Hope Mills     | 28348 |
| Evelyn Durden              | Rt 1, Box 337 B, Hope mills | 28348 |
| Hiram Canady               | Rt 1, Box 343 Hope mills    | 28348 |
| Donald Cook                | Rt. 1, Box 341 Hope mills   | 28348 |
| <del>Carol Johnson</del>   | <del>Rt 1, Box 337</del>    |       |
|                            |                             |       |
|                            |                             |       |

✓ Samuel West  
 Print Name of Applicant or Agent

*Samuel West*  
 Signature of Applicant or Agent

Rt 1, Box 337 A-3  
 Address of Applicant or Agent

Hope Mills, N.C. 28348  
 Address Zip Code

Telephone: Home: 423-1733

Work: \_\_\_\_\_

# CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

MINUTES  
DECEMBER 18, 1997  
7:00 P.M.

## Members Present

Moses Mathis, Chairman  
Clyde Vaughan  
Catherine Traylor  
Clifton McNeill

## Members Absent

Mark Lynch, Vice Chairman  
James Flanders, Alt.  
Robert Owens, Alt.  
Matthew Cockman, Alt.  
Beverly Pringle, Alt.

## Staff/Others Present

Frances V. Jackson,  
Secretary  
Roy Taylor  
Bob McArthur, County  
Inspections Dept.  
BJ Cashwell

### 1. ROLL CALL

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

### 2. APPROVAL OF THE MINUTES OF NOVEMBER 3, 1997 MEETING.

There being no additions or corrections to the Minutes of the November 3, 1997 meeting, a motion was made by Ms. Traylor and seconded by Mr. Vaughan to approve the Minutes as written. The motion passed unanimously.

### 3. PUBLIC HEARINGS:

- A. CASE NO. P97-36-C. AN APPLICATION BY SAMUEL WEST FOR A SPECIFIED CONDITIONAL USE PERMIT AS PROVIDED FOR BY THE CUMBERLAND COUNTY CODE OF ORDINANCES, ARTICLE III, SECTION 3.1, TABLE 1-A-1, TO ALLOW AUTOMOBILE AND REPAIR AND/OR BODY WORK, EXCLUDING COMMERCIAL WRECKING, DISMANTLING OR STORAGE OF JUNKED VEHICLES IN AN A1 AGRICULTURAL DISTRICT FOR AN AREA LOCATED ON THE NORTH SIDE OF JOE HALL ROAD (SR 2246), WEST OF CHICKEN FOOT ROAD (SR 2252). (COUNTY ORDINANCE)

Chairman Mathis asked for the first case to be presented.

Mr. Taylor presented the zoning and land use in the area. He stated that the proposed use was for a automobile repair shop. There would be a privacy fence erected so no cars would be visible. He stated that there would be 2 employees with one being the owner. The hours of operation would be Monday thru Friday 8am-5pm, Saturday 8am-noon and closed on Sunday. He stated that the applicant was issued a violation on September 9, 1997 by the County Inspections Department. He stated that the proposed 40 by 60 foot garage was shown on the site plan. There is an existing shop facing Joe Hall Road with a portion of it to be removed. There are two existing mobile homes on the site with a existing 12 by 16 feet accessory structure.

Mr. Samuel West was sworn in by Chairman Mathis.

Mr. West stated that he would like to operate a repair shop. He stated that it was a family business. He stated if there was no business then his son goes home and the business would be closed for the day. He stated that there would be no junk cars on the site. There were Pine trees on one side with fencing. He stated that cars could not be seen from the road. The front of the lot had cedar trees planted and said he would plant more if they were needed. He stated elderly people live in the area and are unable to have their car serviced a great distance from home and it takes a long time for them to get their car back. He stated that his son works on their car right away. He stated that they are not there to have a junk yard or mess the community up. He thanked the board for their consideration.

Chairman Mathis asked if there was any one else to speak in behalf of the application.

Kenneth West was sworn in by Chairman Mathis.

Mr. West stated that Mr. West was his father. He stated whatever they needed to do that they would do it and abide by it.

Chairman Mathis asked if there was any one in opposition to the application. There was none.

Mr. McNeill stated that the location, size and design would be compatible and would not adversely affect the surrounding property. It was in compliance with harmony, scale, and bulk. There was adequate facilities. It would not generate appreciable increase in traffic. The purpose and intent was in compliance with the plans for the area. Based on these conditions he moved that the application be approved as outlined in the application. The motion was seconded by Mr. Vaughan. The motion passed unanimously.

~~B. CASE NO. P97-39-C. AN APPLICATION BY WILLIAM AND AUDREY HALCOMB FOR A VARIANCE AS PROVIDED FOR BY THE CUMBERLAND COUNTY CODE OF ORDINANCES, ARTICLE III, SECTION 3.34 (G) TO ALLOW AN ABOVE GROUND SWIMMING POOL TO BE LOCATED IN A REQUIRED YARD (SIDE YARD OF A CORNER LOT) IN AN R10 RESIDENTIAL DISTRICT FOR AN AREA LOCATED AT 6431 CHARTLEY DRIVE. (COUNTY ORDINANCE)~~

~~Chairman Mathis asked Mr. Taylor to present the next case.~~

~~Mr. Taylor presented the zoning and land use for the area. He stated a violation of the side yard was cited on September 30, 1997 by the Cumberland County Inspections Dept. He stated for the site to be in compliance a variance was needed or the pool removed. He stated that the house faced Chartley Drive. The pool on the site was a above ground pool. The pool setback was 12 ½ feet from the side property line and 8.5 to the house from the deck and 5 feet from the right-of-way of Sedbury Dr.~~

~~Mr. William Halcomb was sworn in by Chairman Mathis.~~

~~Mr. Halcomb stated they were requesting a variance for the swimming pool. He stated they were first time homeowners. He stated they were familiar with the restrictive covenants. The covenants stated that the pool could not block the view or lighting of the house. He stated that was why the pools was dug down into the side yard. He stated that the location of the house sits higher up than the neighbors beside them. He stated a concrete drainage was installed. He stated that the swimming pool contractor surveyed the site for the pool. He felt that if something else needed to be done that the contractor would have mentioned it. Therefore, they felt they were in compliance. He stated that they invested \$8,000 in the pool. He stated they were concerned about safety and bought the pool with the attached fence and lower lattice. He stated they would like to install a fence if the pool is approved. He submitted a petition with 19 signature of residents in the area that were in favor of the request~~



KENNETH H. SYKES, JR.  
DIRECTOR

# COUNTY of CUMBERLAND

DEBORAH S. SIMPSON  
ASSISTANT DIRECTOR

## Inspections Department

### NOTICE OF VIOLATION(S)

September 9, 1997

TO: Samuel W. West & wife, Elene & Parties of Interest  
RR 1, Box 337-A3  
Hope Mills, NC 28348-9791

CASE #Z 125-97

420  
517

You are hereby issued a Notice of violation(s) of the Cumberland County Code.

1. Nature of Violation(s): That you have allowed the construction of building(s) and that you have stored more than two (2) vehicles in the open on your property, without first obtaining the required Zoning Permit.
2. Code Reference: Article XII., Section 12.321, Zoning Permit Required and Section 12.341 Procedural Remedies, Cumberland County, North Carolina Code.
3. Action to correct Violations(s): Rezone your property to a zoning classification that would allow the open storage of vehicles and then do all that is required to obtain the required zoning permit(s).
4. Property Location: On or about Joe Hall Road, Cumberland County, NC. Being that property as listed under Cumberland County, NC Tax Parcel Number 0431-04-5827
5. Property owner: Samuel W. West & wife Elene
6. Phone Number: Unknown

You are hereby advised that the above listed violation(s) must be corrected within (30) days of receipt of this notification. Failure to correct this violation(s) will subject you to a Civil penalty of fifty (\$50) dollars per day (each day being a separate violation), and one hundred (\$100) dollars per day (each day being a separate violation) for the second and subsequent violation(s). Be advised that additional action may be taken to correct this violation(s) pursuant to the provisions of North Carolina General Statute 14-4.

Bob McArthur  
Zoning Officer/Inspector

9.10.97  
Date

I understand that my signature of acceptance of this document does not constitute acknowledgment of guilt of the above described violation(s).

Received By: \_\_\_\_\_  
Signature Date

**P13-01-C**  
**SITE PROFILE**

**P13-01-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS, TO ALLOW A FRONT YARD SETBACK OF UP TO 50 FEET FROM JOSEPH STREET (SR 3080) WHERE 50 FEET IS REQUIRED, FOR TWO EXISTING STORAGE BUILDINGS, IN A C3 HEAVY COMMERCIAL DISTRICT ON 9.9+/- ACRES, LOCATED AT 2346 GILLESPIE STREET; SUBMITTED BY CARLOS VIZCARRA ON BEHALF OF AMERCO REAL ESTATE COMPANY (OWNER).

**Site Information:**

**Frontage & Location:** 700' +/- on Gillespie St., 850'+/- on McInnis St., and 610'+/- on Joseph St.

**Depth:** 730'+/-

**Jurisdiction:** Cumberland County

**Adjacent Property:** No

**Current Use:** Mini-storage

**Initial Zoning:** HS(P) – November 17, 1975 (Area 4)

**Nonconformities:** Two existing mini-storage units on subject property do not meet front yard setbacks for the C3 current zoning – structures were built between 2004 -2005

**Zoning Violation(s):** None

**Surrounding Zoning:** North: SF6, LC, CC, OI & NC (Fayetteville), R6 & R6A; West: CC (Fayetteville), C3, R10, R6 & R6A; East: CC & HI (Fayetteville), M(P), O&I(P), C(P), C3 & R6A; South: CC (Fayetteville), C(P) (County & Fayetteville), M(P), HS(P), C3, R10 & R6

**Surrounding Land Use:** Motor vehicle storage yard, 2-strip malls, 5-restaurants, servicing, retail, motor vehicle service station operation, 2-motor vehicle repair and/or body work, hotel, recreation/amusement indoor, 2-offices, trade contractor, residential (including manufactured homes and an abandoned home) and woodlands

**2030 Grow Strategy Map:** Urban area

**Special Flood Hazard Area (SFHA):** None

**Soil Limitations:** None

**Water/Sewer Availability:** PWC/PWC

**Subdivision/Site Plan:** Site plan approval Case No. 13-005 on 1/10/13, developer is required to apply for a variance for a front yard setback on Joseph Street for two existing buildings. If variance is denied, developer is required to revise his site plan showing the two existing buildings meeting the setback requirement for the C3 zoning district

**School Capacity/Enrolled:** Cumberland Mills Elementary: 457/466; Ireland Drive Middle (6): 340/406; Douglas Byrd Middle (7-8): 600/731; Douglas Byrd High: 1280/1232

**Municipal Influence Area:** City of Fayetteville

**Airport Overlay District:** Yes

**Average Daily Traffic Count (2010):** 26,000 on Gillespie Street (SR 1242)

**Highway Plan:** US 301/Bus 95 (Gillespie Street) is identified in the Highway Plan as a major thoroughfare. The plan calls for widening to a multi-lane facility. This is Priority #2 in the Highway Portion of the LRTP

**County Zoning Ordinance Reference:** Section 1104, District Dimensional Provisions

**Notes:**

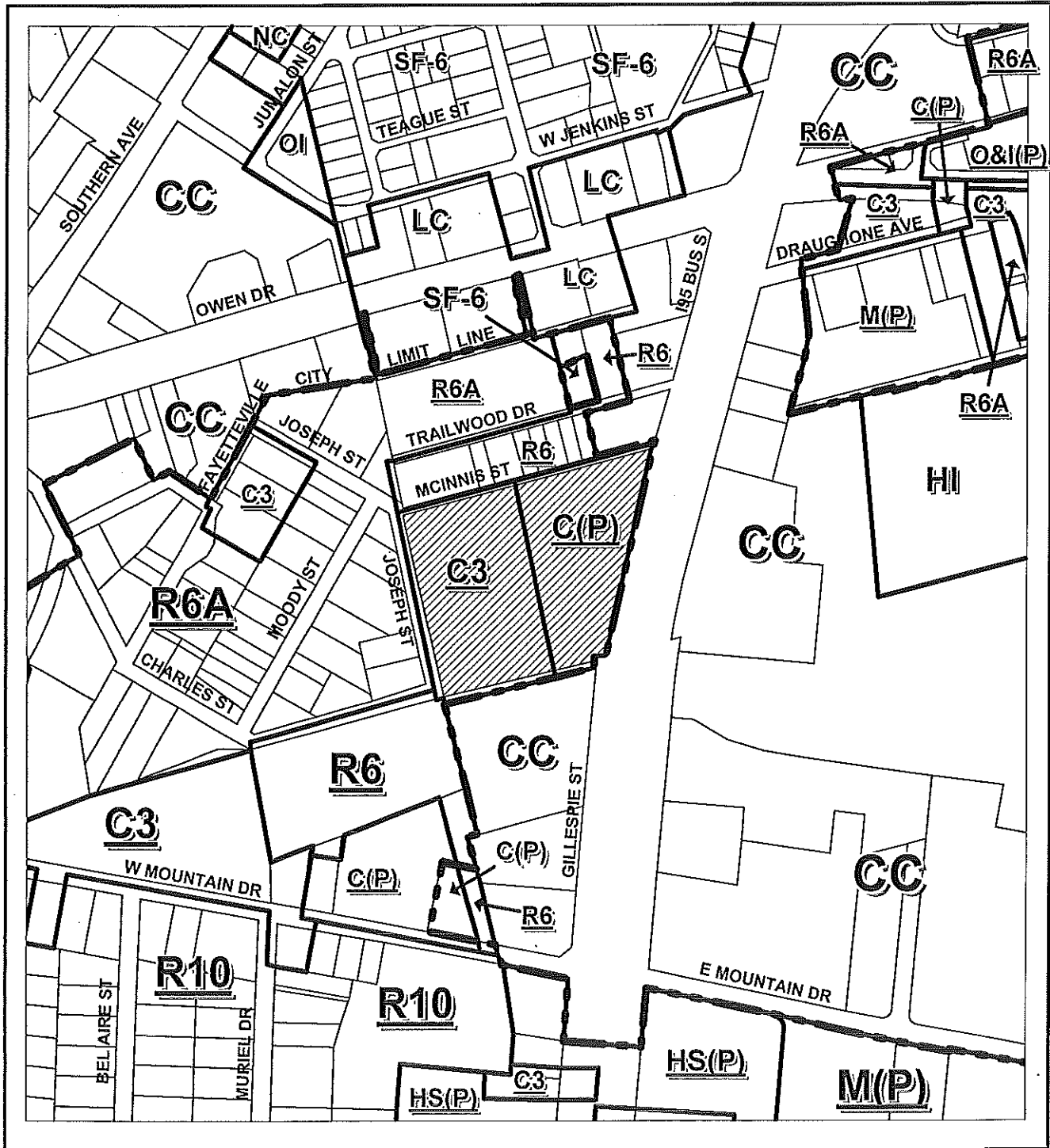
1. C(P) Minimum Yard Setbacks

|            |  |
|------------|--|
| Front: 50' | <u>BOA Case No. P03-25-C setbacks approved on 11/20/2003</u><br>Front: 30' on Joseph Street, formerly Woody St. / (Variance request)<br>26' on McInnis Street (setback is met) |
| Side: 30'  | Side: 30' (setback is met)   |
| Rear: 30'  | Rear: 30' (setback is met)   |
  
2. Summary of request: The applicant is requesting a front yard variance from the setbacks approved on BOA Case P03-25-C (see the setbacks above) for two existing storage units for a mini-storage company.
  
3. C3 Heavy Commercial District is a dormant district and corresponds to C(P) Planned Commercial District.  
(Amd. 06-20-05)
  
4. A mini-storage is an allowed use in the C(P) Planned Commercial District.

**First Class and Record Owners' Mailed Notice Certification**

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

NOTE: PROPERTY IN AOD



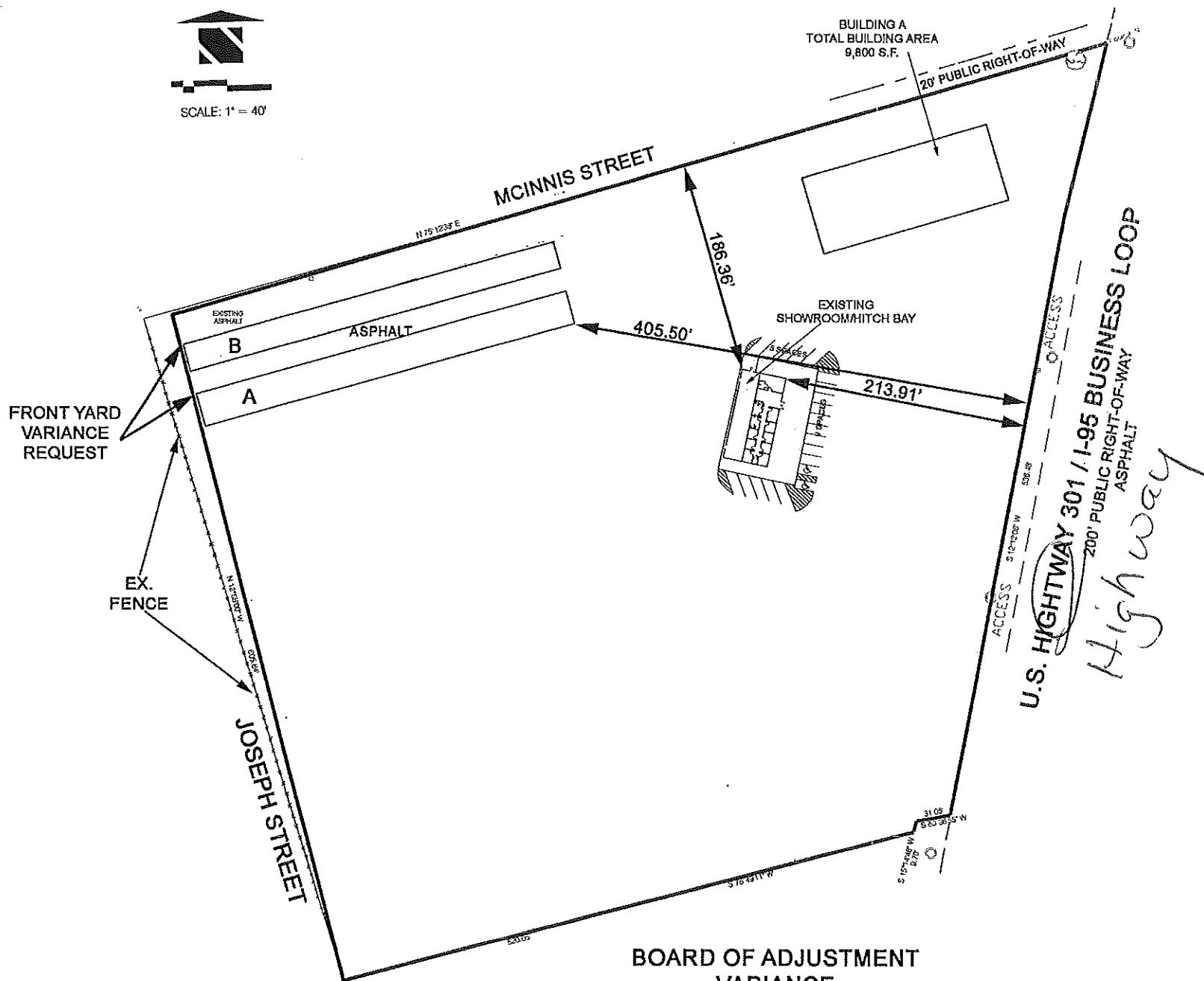
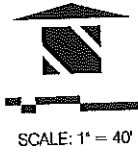
SCALE IN FEET

## BOARD OF ADJUSTMENT VARIANCE

|                      |                      |        |
|----------------------|----------------------|--------|
| ACREAGE: 9.90 AC.+/- | HEARING NO: P13-01-C |        |
| ORDINANCE: COUNTY    | HEARING DATE         | ACTION |
| GOVERNING BOARD      |                      |        |

PIN: 0436-01-5023

2/22/2013  
AM



**BOARD OF ADJUSTMENT  
VARIANCE**

**REQUEST: CONSIDERATION TO ALLOW A FRONT YARD  
SETBACK OF UP TO 50 FEET FROM JOSEPH STREET  
(SR 3080) WHERE 50 FEET IS REQUIRED, FOR TWO  
EXISTING STORAGE BUILDINGS**

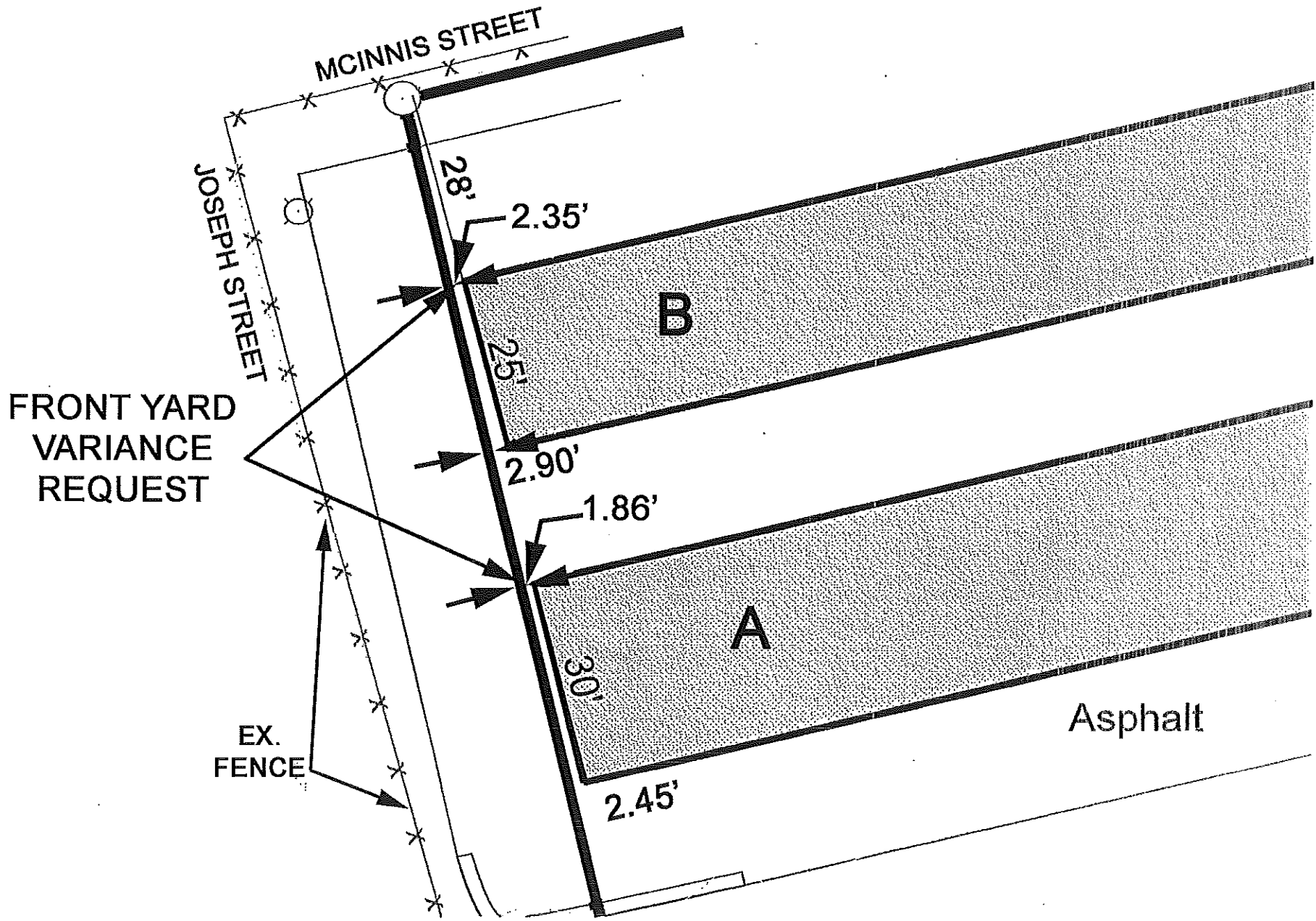
**CASE: P13-01-C ACREAGE: 9.9 AC +/-**

**ZONED: C3 SCALE: NTS**

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



P13-01-C



BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 2346 Gillespie St.

↓ OWNER: Amerco Real Estate Company (Carlos Vizcarra)

ADDRESS: 2727 N. Central Ave. Phoenix AZ ZIP CODE: 85004

TELEPHONE: HOME 602-263-6555 WORK \_\_\_\_\_

AGENT: Dan O'Lonnor

ADDRESS: 2727 N. Central Ave Phoenix, AZ 85004

TELEPHONE: HOME 602-263-6502 WORK \_\_\_\_\_

E-MAIL: dan-connor@jhaul.com

APPLICATION FOR A VARIANCE  
As required by the Zoning Ordinance

A. Parcel Identification Number (PIN #) of subject property: 0436-01-5023  
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 9.9 Frontage: 693' Depth: 581'

C. Water Provider: PWC

D. Septage Provider: PWC

E. Deed Book 8970, Page(s) 0087, Cumberland County  
2/1/13 PV

F. Existing and/or proposed use of property: Mini-storage

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: C (P) Planned Commercial District, Section 1104 district Dimensional. (P) 2/1/13

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or Code: See attached narrative

**STATEMENT OF ACKNOWLEDGMENT**

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

- That although appearance before the board is not required, it is strongly encouraged;
- The board will hear any and all argument for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the board, whether there is opposition or not, the board has full authority to consider the case and defer, approve, or deny the case;
- If the board's action is to deny the matter before them, the course of appeal to their decision will be that of Cumberland County Superior Court. (Affected parties of the board's decision have 30 days from proper notification which to serve notice of appeal).

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

SIGNATURE OF OWNER(S)



PRINTED NAME OF OWNER(S)

Carlos Vizcarra

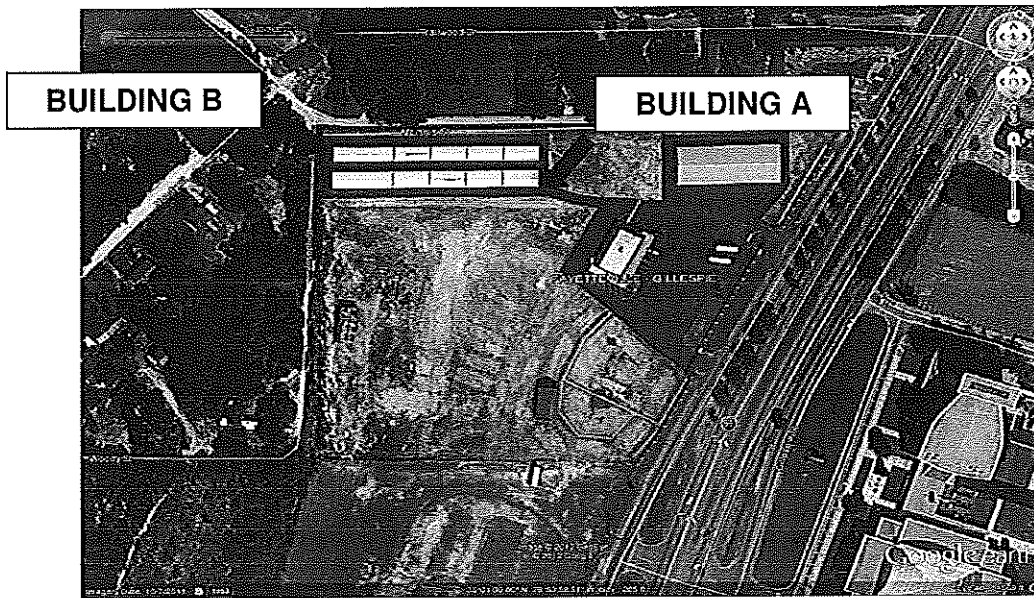
DATE

1.31.13



## NARRATIVE REPORT

U-Haul of Fayetteville  
2346 Gillespie St.  
Fayetteville, NC



### Request

The purpose of this application is to request a variance to allow two storage buildings built adjacent to the rear street side property line to remain as were constructed in 2005. Based upon a recent survey of the property, the northernmost building, "Building B" as seen above is currently built 2.35 feet from the property line adjoining Joseph (Woody) Street, while "Building A" is built 1.86 feet from the Joseph Street property line.

The property was granted site plan approval to construct the two existing storage buildings thirty (30) feet from the Joseph Street property line in 2003. Consequently, we are requesting a maximum variance of 28.14 feet or approximately 28 feet 2 inches from the approved setback for Building A as well as a maximum variance of 27.65 feet or approximately 27 feet 8 inches for Building B. This would entail granting of a 1.86 foot front street yard setback from the current property line on the Joseph Street side for the Building A as well as a 2.35 foot setback for Building B.

## **Description of Proposal**

AMERCO Real Estate Company, parent company of U-Haul International, purchased the property located at 2346 Gillespie Street in June of 2012. Upon commencement of our due diligence for site expansion, it was brought to our attention that the two mini-storage buildings, Buildings A and B, were built in close proximity to the Joseph Street property line. Joseph Street is an unimproved dirt alley that is rarely traveled.

U-Haul has conditional site plan approval from the Cumberland County Planning Department to improve the property by erecting two covered RV canopies, two indoor storage buildings, and the addition of new landscaping around the entire perimeter of the property. As a condition of our site plan approval, AMERCO, being the new owner of the property, must correct the previous property owner's nonconformity in relation to existing building setbacks.

In discussions with Cumberland County planning staff, our options to move forward with planned site improvements include receiving a variance to reduce the street yard setback - thereby allowing the buildings to remain as is, removal of approximately fifty (50) of the two buildings to accommodate the current setback of fifty (50) foot setback, or to pursue a partial street vacation to increase the current building setback.

AMERCO has diligently worked on finding a solution to the existing non-conforming setback in recent months. We contracted with an additional surveyor to ensure the current survey presented is correct. We have also started the process of a Joseph Street closure. However, because the road vacation is a somewhat lengthy procedure and will not be finalized until approved by the Cumberland County Board of Commissioners, county staff has encouraged us to file a formal variance application.

AMERCO Real Estate Company purchased this property on a very tight budget. The planned recreational vehicle canopies and the indoor storage buildings are part of the overall business plan that was established before the purchase of this property. A strict budget for the planned improvements is necessary to ensure economic success for this U-Haul location. With that said, any additional capital investment spent on removing portions of the existing buildings is a grave threat to the overall success of this location. U-Haul intends to be a long-standing community partner in Cumberland County. We are requesting to find a mutually agreeable solution to deal with the existing non-conforming street yard setback that does not entail removal of the existing building improvements.

## **Variances (Per Section 1605)**

A. 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.

*There are extraordinary conditions relating the siting of this property in relation to the Joseph Street right-of-way. Due to non-use of Joseph Street, at the time of the previous survey for building construction, incorrect property boundaries were determined and relied upon.*

*In the same sense, exceptional conditions relate to the approval of the property improvements at the time they were constructed. Because of the unique condition of this particular property with its adjacency to the unimproved right-of-way, no interested parties were made aware of the survey inconsistency until years after the site improvements were completed.*

*While not directly related to the physical condition of the property, there are exceptional circumstances related to the property that are not applicable to other surrounding properties. Building improvements were constructed wholly on the subject property and within the setbacks prescribed by the approved site plan, albeit from an incorrect property line. The building improvements were approved and have continued to be occupied without issue since that time. The granting of this variance will allow the properties to function as they have since their original construction.*

B. 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.

*The rare nature of this situation would not grant any special privileges that have been denied to others. If the requested variance were granted, the property would continue to function in the same fashion as it has since 2005, when the buildings in question were constructed. Because Joseph Street is unimproved and rarely traveled, decreasing the street yard setback to accommodate storage buildings A and B would not create any hardship for neighboring properties. In addition, granting of the variance would not give U-Haul any special privileges that the previous owner did not enjoy.*

C. The literal interpretation of the provisions of this Ordinance would deprive the applicant of right commonly enjoyed by other residents of the district in which the property is located.

*U-Haul would like to operate the existing buildings as the previous owner did. To alleviate any concerns, U-Haul will be adding and maintaining additional landscaping around the perimeter of the property, including the rear portion where the buildings are built up to the property line to improve the aesthetics of the project for the community. Literal interpretation of the current setback provisions would unfairly preclude U-Haul, as the*

*new business owner, from utilizing the current operation as constructed and approved by Cumberland County.*

D. 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.

*Granting of the variance will be in harmony with the Cumberland County Zoning Ordinance. Because of the width of the Joseph Street right-of-way, the storage buildings will continue to remain a respectable distance away from neighboring properties, as is the intent of the setback regulations prescribed in the zoning ordinance.*

*In addition, this variance would not hamper the general welfare of the neighborhood in any fashion. The property and the buildings that we are requesting the reduced street yard setback variance for were constructed over eight years ago and have operated without any issues since their completion.*

E. The special circumstances are not the result of the actions of the applicant.

*This problem was blindly inherited by AMERCO from the previous owner. AMERCO did not create the current problem, but instead is trying to work with Cumberland County to come to a mutually agreeable solution.*

F. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

*The variance requested is to allow the property to remain as is. At this time we are requesting the minimum variance needed without the approval of the Joseph Street closure. The requested variance is to reduce the Joseph Street side yard setback to 1.86 feet as opposed to the approved setback of thirty (30) feet. If the street vacation were to be approved an additional twenty-five (25) feet of property would be gained, thereby reducing the needed variance to 3.14 feet or approximately 3 feet 1 ¾ inches.*

G. 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.

*We are not proposing to change anything in regard to the current building uses or construction makeup. We are seeking to utilize the buildings as is and in the same fashion as they have been since built. Granting of the variance would not change district boundaries as all buildings are located within the boundaries of the subject property. Currently, the storage use and building construction type are permitted within the base zoning district.*

H. The existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other district does not constitute a reason for approval of the requested variance.

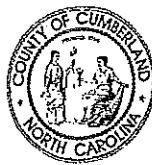
*This variance request is not based upon any nonconforming use of neighboring lands or properties within other zoning districts. The building improvements were built assuming incorrect property lines and were approved by Cumberland County officials during both plan review and upon granting of a certificate of occupancy. However, once AMERCO purchased the property, it inherited the mistaken Joseph Street yard setback as an existing nonconformity that now is being addressed via this variance process.*

### **Conclusion**

U-Haul is not asking for any favors that have been denied to others in the past. This property was developed incorrectly by the previous owner and given occupancy approval. AMERCO Real Estate purchased this property, to not only expand and improve the site, but to eliminate the possibility of a large property remaining vacant. U-Haul intends to be an active member of the local community. Our purchase and operation of this site will stimulate the local economy and create additional employment opportunities for the surrounding community. We appreciate the Board's consideration of our request to reduce the street side yard setback and to legalize the existing non-conformity that currently exists.



Clifton McNeill, Jr.  
Chair  
Cumberland County



Nancy Roy, AICP  
Director  
Planning & Inspections

Charles C. Morris, Vice-Chair  
Town of Linden  
David Averette,  
John M. Gillis, Jr.,  
Dr. Marion Gillis-Olson  
Cumberland County

## COUNTY of CUMBERLAND

### *Planning and Inspections Department*

Joe W. Mullinax,  
Town of Spring Lake  
Donovan McLaurin,  
Wade, Falcon & Godwin  
Frankie Underwood,  
Town of Stedman

December 10, 2003

MEMO TO: KEN SYKES, CODE ENFORCEMENT COORDINATOR

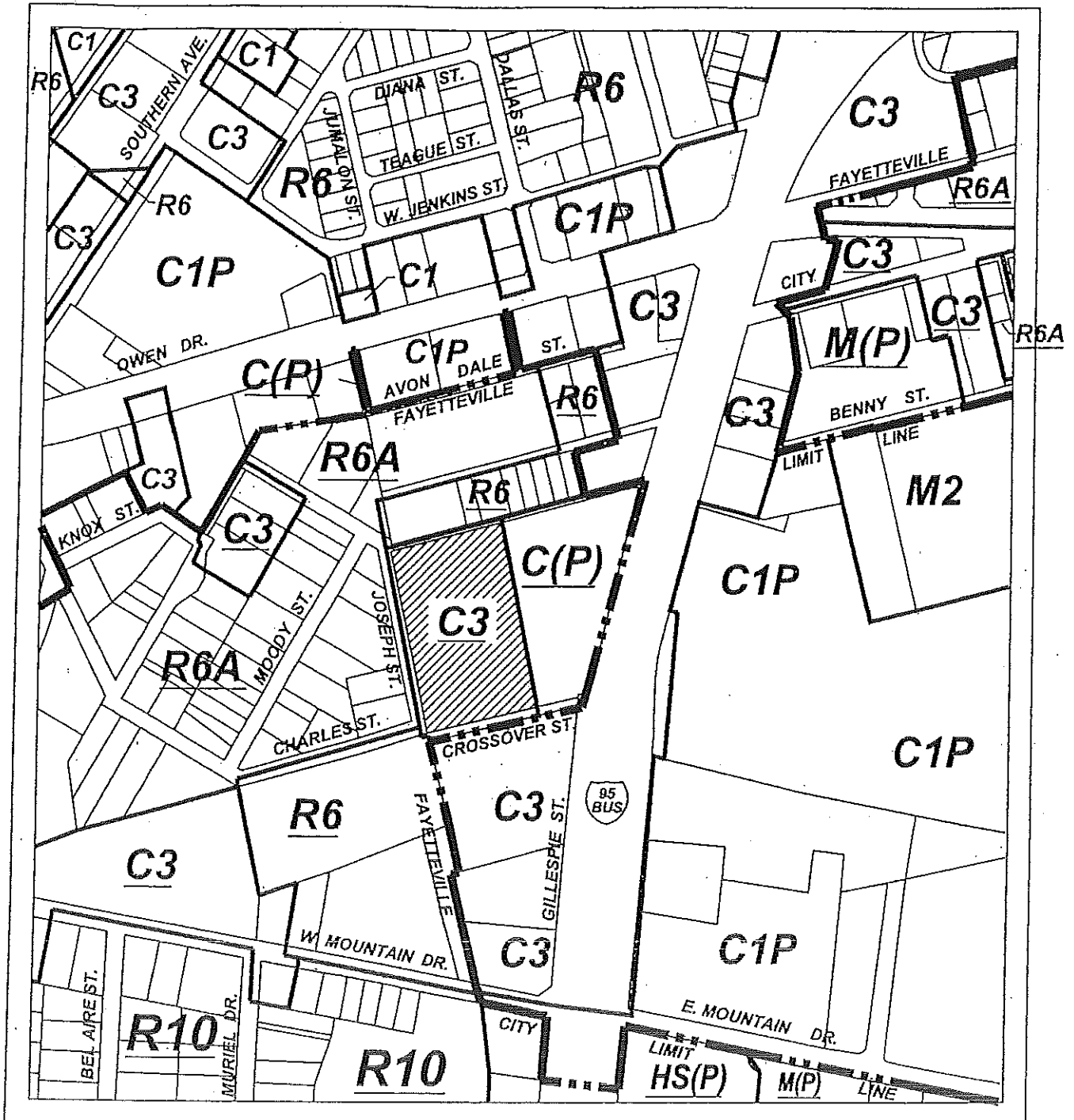
FROM: BONNY G. COLLINS, PLANNER I

SUBJECT: **P03-25-C: REQUEST FOR A SPECIFIED CONDITIONAL USE PERMIT TO ALLOW MINI-STORAGE IN A C3 DISTRICT, CONTAINING 5.26 ACRES OF A 9.90 ACRE TRACT, AT 2346 GILLESPIE STREET, OWNED BY CAROLINA VILLAGE OF FAYETTEVILLE, INC.**

The Cumberland County Board of Adjustment met on November 20, 2003 and approved the Specified Conditional Use Permit to allow mini-storage subject to the following conditions:

1. The applicant shall fully comply with all the specific requirements stated in the Ordinance for the proposed use.
2. A living buffer be installed along Joseph and McInnis Road in accordance with Section 7.27 "Buffer Requirement" and Section 10.2 "Buffer", of the Cumberland County Zoning Ordinance.
3. The site be developed in accordance with the site plan.
4. All permits be obtained prior to construction.
5. All operations be in compliance with Local, Federal and State regulations at all times.
6. Hours of operation would be from 7 a.m. to 11 p.m.

Cc: Attn: Jeffery Herholz  
Herholz Holding, LLC  
2346 Gillespie Street  
Fayetteville, NC 28306



NORTH



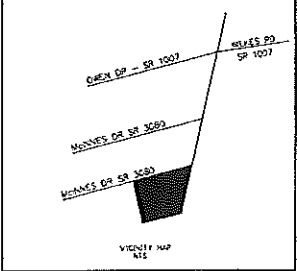
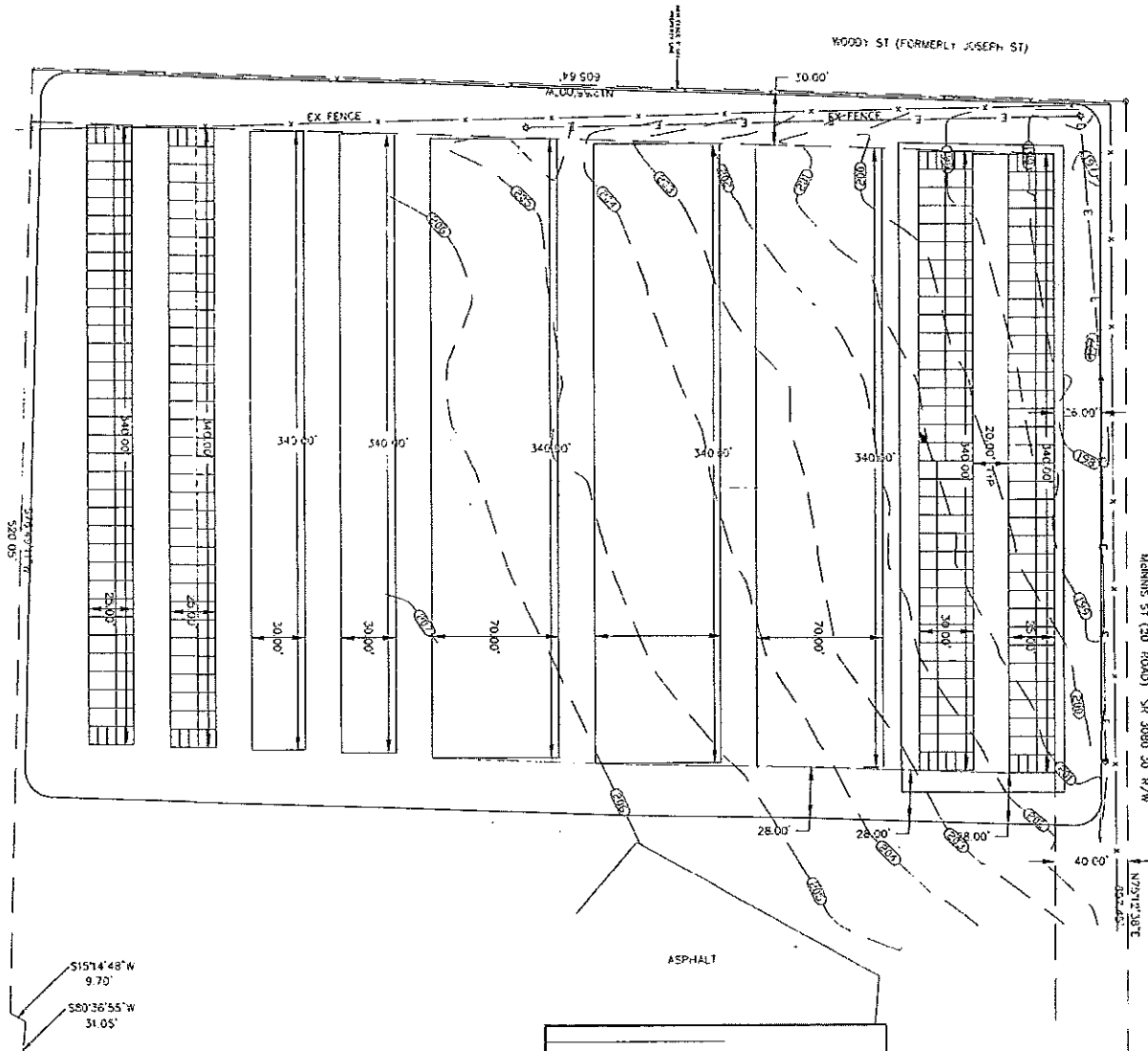
SCALE IN FEET

## SPECIFIED CONDITIONAL USE PERMIT

|                     |                      |        |
|---------------------|----------------------|--------|
| ACREAGE: 5.26 AC. ± | HEARING NO: P03-25-C |        |
| ORDINANCE: COUNTY   | HEARING DATE         | ACTION |
| GOVERNING BOARD     |                      |        |

# CASE: P03-25-C

## REF. CASE OF P13-01-C



- LEGEND**
- - EXISTING CONCRETE MONUMENT
  - - EXISTING PE RAIL
  - - EXISTING IRON STAKE
  - - EXISTING IRON PIPE
  - - EXISTING IRON PIPE
  - - SET IRON STAKE
  - - SET IRON PIPE
  - - SET IRON PIPE
  - - FUTURE POLES
  - - OVERHEAD POWERLINES
  - - FENCE-CHAINLINK
  - - FENCE-WOOD
  - - TELEPHONE FERRISAL
  - - LIGHT POLES
  - - WATER VALVE
  - - WATER METER

**BENNETT ENGINEERING**  
 150 GILLESPIE ST., 2nd FLOOR  
 FAYETTEVILLE, NC 28501-5444  
 PH (910) 484-5523  
 FAX (910) 484-1077

*Patricia S. Spitzer, C.R.P.*  
 P03-25-C

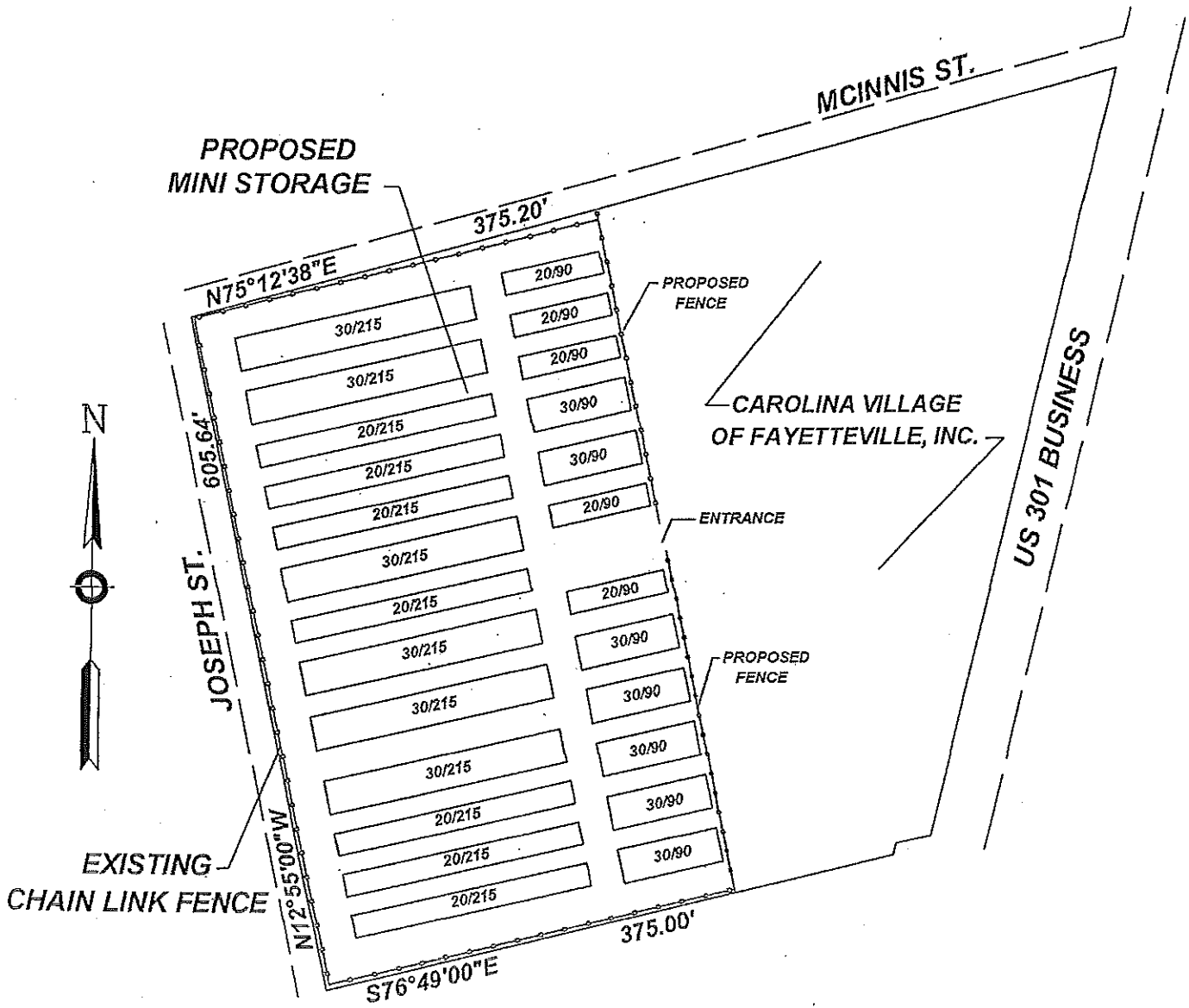
**STAFF COPY**

**PRELIMINARY**

NOT FOR SALES, TRANSFER  
 OR RECORDATION



|   |  |  |  |   |                      |
|---|--|--|--|---|----------------------|
| DRAWN BY:<br>DATE: 2/28/04<br>CHECKED BY: | DESIGNED BY: <i>Patricia S. Spitzer</i><br>DATE: 2/28/04 | PROJECT:<br><b>BENNETT ENGINEERING</b><br>150 GILLESPIE ST., 2nd FLOOR<br>FAYETTEVILLE, NC 28501-5444<br>PH (910) 484-5523<br>FAX (910) 484-1077 | SHEET NO.:<br><b>CAROLINA VILLAGE MINI STORAGE</b><br>20XED CO., 45.55 AC (PER PLAN)<br>PROPERTY OF CAROLINA VILLAGE OF FAYETTEVILLE, INC.<br>DB 6249 PG 755, PB 63 PG 80<br>US HWY 201, FAYETTEVILLE, CUMBERLAND CO., NC<br>PIN # XXX-XX-XXXX | SHEET NAME:<br><b>SITE PLAN - BLDG LAYOUT</b><br>2 MARCH 2004 | SHEET NO.:<br>- of - |
|---|--|--|--|---|----------------------|



**SPECIFIED CONDITIONAL USE**

**CASE: P03-25-C SCALE: NTS**

**REQUEST: TO ALLOW MINI-STORAGE**

**ACREAGE: 5.26± (PORTION) ZONED: C3**

DATE APPLICATION SECURED \_\_\_\_\_  
RETURN DEADLINE \_\_\_\_\_  
DATE OF CUMBERLAND COUNTY  
BOARD OF ADJUSTMENT MEETING 11-20-03  
DATE APPLICATION SUBMITTED 10-20-03  
RECEIPT # CO 7299 RECEIVED BY: Age

**APPLICATION  
CUMBERLAND COUNTY BOARD OF ADJUSTMENT  
FOR  
SPECIFIED CONDITIONAL USE PERMIT**

The Cumberland County Board of Adjustment meetings are held on the third Thursday of each month. The Planning Department will advertise the public hearing and a notice will be mailed or delivered to surrounding residents or property owners that may be affected by the proposed specified conditional use permit request.

The Board of Adjustment is a quasi-judicial review board and all persons wishing to appear before this Board should be prepared to give sworn testimony on relevant facts.

**The following items are to be submitted with the completed application:**

1. A copy of the recorded deed and/or plat, or an accurate written legal description of only the area to be considered;
2. A copy of a detailed site plan drawn to engineering scale, showing the location of all buildings, yard dimensions, driveways, fencing, lighting, parking areas, and all other pertinent data to the case;
3. A check made payable to Cumberland County for the amount of \$200.00. The application fee is nonrefundable.

**Note: Inaccuracies or errors on legal descriptions or site plans may cause a case to be delayed to a later Board of Adjustment meeting.**

APPLICATION FOR SPECIFIED CONDITIONAL USE PERMIT

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

- The property sought for Specified Conditional Use Permit is located at 2346 Gillespie St., 28306 between US 301 business Gillespie St. (Street address or Route and Box #, and Zip Code) (street name) and Woody Street on the West (north, south, east, west) side of the street and known as lot(s) number(s) \_\_\_\_\_ It has frontage of 605.64 feet and consists of 5.26 +/- acres. 9.09 ac tract.
- The area sought for Specified Conditional Use is described in Deed Book 5949, Page 156, Cumberland County Registry. (Attach copy of recorded deed or complete metes and bounds (survey) description of subject property.)
- The property sought for Specified Conditional Use is owned by Carolina Village of Fayetteville
- Parcel Identification Number 0436 . 01 5023 for subject property. (Obtain from Tax Receipt or from Office of the Tax Administrator 678-7567)
- It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees or clients, etc.)  
Use: mini storage  
# employees - 1-2  
hours of operation - 24 hrs/day w/  
controlled access gate

Fence is 7ft chain link w/ 6ft cedar buffering inside fence. Buffering along Woody McInnis Sts. Zoned C3 & c(P) PWC. Wtr & sewer? Yes.

## MAILING LIST

The following are all of the individuals, firms or corporation: owning property adjacent to **BOTH SIDES** and **REAR**, and the property **in FRONT** of (across the street from) the property sought for Variance: (This information should be obtained from the Tax Mapping office on the 5th floor of the New Courthouse.)

### ADJACENT PROPERTY OWNERS

| NAME                  | ADDRESS                             | ZIP CODE |
|-----------------------|-------------------------------------|----------|
| Annette M. Miller     | 2624 Huntington Rd. Fayetteville NC | 28303    |
| James S. Thrash       | 2450 Joseph St. Fayetteville NC     | 28306    |
| Johnny Reece & wife   | 2405 Moody St. Fayetteville NC      | 28306    |
| D&M Enterprises, Inc. | PO Box 514 Lemon Springs NC         | 28533    |
| Vera Chance           | 134 McInnis St. Fayetteville NC     | 28306    |
| Ronald Tyler & wife   | 2347 Joseph St. Fayetteville NC     | 28306    |
| Mary W. Caudle        | 504 W. Manchester Rd. Spring Lake   | 28390    |
|                       |                                     |          |
|                       |                                     |          |
|                       |                                     |          |
|                       |                                     |          |
|                       |                                     |          |
|                       |                                     |          |

Signature of Owner or Agent

*[Handwritten Signature]*  
Herholz Holdings - LLC

Address of Owner or Agent

2346 Gillespie St  
Fayetteville NC 28306  
City State Zip Code

Telephone: Home: 910-488-7915

Work: 910-223-1552

Cell: 910-309-9625



## CUMBERLAND COUNTY BOARD OF ADJUSTMENT

Doug Stephens, Chair

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

Roberta Waddle, Vice-Chair

MINUTES  
NOVEMBER 20, 2003  
7:00 P.M.

### Members Present

Doug Stephens, Chair  
Roberta Waddle, Vice-Chair  
Steve Burnett  
Steve Parsons  
Johnnie Lee Council, Alt.  
George Quigley, Alt.

### Members Absent

Dr. John Ray, Alt. Vice-Chair  
Sean Scott Fincher, Alt.  
Norman Moore, Jr.

### Staff/Others Present

Bonny G. Collins  
Angela Perrier, Code  
Enforcement  
BJ Cashwell

#### 1. ROLL CALL

Chair Stephens called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic County Courthouse. Ms. Collins called the roll and a quorum was present.

#### 2. APPROVAL OF THE OCTOBER 16, 2003 MINUTES.

Chair Stephens asked if there were any corrections or additions to the minutes. There were none. A motion was made by Mr. Quigley and seconded by Mr. Burnett to approve the minutes as written. The motion passed unanimously.

#### 3. ABSTENTIONS BY BOARD MEMBERS/PUBLIC HEARING DEFERRALS

There were no abstentions or Public Hearing Deferrals by Board members.

#### 4. POLICY STATEMENT REGARDING APPEAL PROCESS READ BY BONNY G. COLLINS.

Ms. Collins read the Board's policy regarding appeal procedures to the audience.

#### 5. PUBLIC HEARINGS:

- A. ~~P03-24-C: REQUEST FOR A SPECIFIED CONDITIONAL USE TO ALLOW A KENNEL IN A RR DISTRICT AND FOR VARIANCE TO ALLOW TWO ACCESSORY STRUCTURES, ONE TO BE LOCATED 3 FEET FROM THE REAR PROPERTY LINE AND ONE TO BE LOCATED ONE FOOT FROM THE SIDE YARD PROPERTY LINE WHERE 5 FEET IS REQUIRED IN A RR DISTRICT, CONTAINING .51 ACRE, AT 4225 FULTON STREET, OWNED BY JOHNNIE WHITE AND WIFE.~~

~~Ms. Collins presented the zoning, land use and pictures of the site to the Board. She said a zoning violation was issued for the amount of dogs on the site and explained only three dogs were allowed along with any dog under five months old.~~

~~Chair Stephens reviewed the policy of the Board and procedure for speaking before the Board.~~

~~Chair swore in Natalie Palmer.~~



Chair Stephen swore in Shirley Veltman.

Ms. Veltman said she was opposed to the request and it should never have gotten started. She informed the Board that for four years she had distributed a newsletter to the neighborhood. She explained there was a kennel in the area before and the dog fesse attracted rats. She told the Board she had an elderly neighbor that had contacted her at 1:00 in the morning because she thought someone was under the trailer but it turned out to be rats. She explained that the Health Department had determined that the rats were coming from a house where dogs were being breed three houses down. The Health Department notified the homeowner to come in compliance with the regulations and clean the property up. She informed the Board that it was a very populated area where children need to be safe to be able to play and ride their bikes. She said there were mothers with strollers and elderly people that walk in the area.

Chair Stephens swore in Donna Pope.


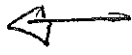
Ms. Pope appeared before the Board in opposition to the request and said she had a 3-½ year old daughter. She told the Board her daughter had rode her bike one day and was chased by a dog that had gotten out. She said her main concern was for her daughter's safety.

--Public Hearing Closed--

Mr. Parsons said that the location, size, design and operating characteristics of the proposed development would adversely affect the livability or development of abutting properties and the surrounding neighborhood and moved that the Conditional Use Permit and Variance requested be denied. The motion was seconded by Mr. Quigley.

Ms. Waddle stated that granting the variance requested would confer upon the applicant special privileges that were denied to the residents in the district in which the property was located and the circumstances were the result of the actions of the applicant and asked this finding be added to the motion.

The Board concerned with the inclusion of the finding and upon a vote, the motion to deny both requests passed unanimously.

 B. **P03-25-C: REQUEST FOR A SPECIFIED CONDITIONAL USE TO ALLOW MINI-STORAGE IN A C3 DISTRICT, CONTAINING 5.26 ACRES OF A 9.90 ACRE TRACT, AT 2346 GILLESPIE STREET, OWNED BY CAROLINA VILLAGE OF FAYETTEVILLE, INC.** 

Ms. Collins presented the zoning, land use and pictures of the site. She indicated to the Board that it would be a 24-hour operation with 2 employees. She said there were some Cedar trees buffering the area.

Chair Stephens swore in Jeff Herholz.

Mr. Herholz explained he owned the 9.90 acres and currently operated a very small used car lot in the front and his main business was manufactured housing. He said any type of addition had been done in a professional manner and was willing to install any type buffering required. He said there were trees growing along the fence line. He informed the Board there was a demand for mini warehouses and the occupancy rate was 85 percent.

Mr. Quigley asked how much traffic did he envision on a daily basis to the site. Mr. Herholz explained the average rental was 30 units a month. He said he had been driving by other sites and you never see any one there.

Ms. Waddle asked how many units were there total including the 30 leased. Mr. Herholz explained the business on Camden Road had 700 units and he leased 30 to 35 a month. He said you might have someone to leave items for 5 years and others for 30 days.

Chair Stephens asked how many units was he proposing to build. Mr. Herholz said 814 units. He said the units would be designed with walls that could be moved to various sizes. He said the site would be developed in phases. He said he would begin with two 30 by 90 and five 20 by 90s, which would be 142 units.

Mr. Parson asked how would people enter the site. Mr. Herholz said there was a motorized gate at the front. Mr. Parson said they would be entering into the manufactured area. Mr. Herholz said they would and planned to installed rod iron fencing later.

Mr. Parson asked what type of material were the buildings made of. Mr. Herholz said they were metal.

Ms. Waddle said he planned 24-hour service and asked if they would be going by the mobile homes 24 hours a day. Mr. Herholz said he found in the programming of the gate that it shuts down after 11 p.m.

Ms. Waddle asked if he was stilling planning on 24-hour service. Mr. Herholz said he was not that all other storages stop access at 11 p.m.

Ms. Waddle asked if the storage was being developed only on the C3 portion of the property. Mr. Herholz said it would only be the 5.25 acres on the back portion.

Chair Stephens said some sites have on site managers and asked if he planned to have anyone. Mr. Herholz said he had security there and was planning to install video cameras. He said if someone entered the facility that they would only be able to access their unit. He said he would not have an on-site manager.

Chair Stephens asked if there was anyone else to speak in favor or in opposition to the request. There were none.

--Public hearing closed--

Ms. Waddle presented the following findings of fact:

1. The location, size, design and operating characteristics of the proposed development would not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
2. It would be in harmony in scale, bulk, coverage, function and density of the proposed development.
3. There was adequate availability of public facilities and utilities.
4. The capacity of surrounding streets would be adequate for traffic generated.
5. The purpose and intent of the general land use plans for the physical development of the district and the protection of the environment would be adequate.

Based on the findings of fact, a motion was made by Ms. Waddle and seconded by Mr. Burnett to approve the Specified Conditional Use Permit subject to the following conditions:

1. The applicant shall fully comply with all the specific requirements stated in the Ordinance for the proposed use.

2. A living buffer be installed along Joseph and McInnis Road in accordance with Section 7.27 "Buffer Requirement" and Section 10.2 "Buffer", of the Cumberland County Zoning Ordinance.
3. The site be developed in accordance with the site plan.
4. All permits be obtained prior to construction.
5. All operations be in compliance with Local, Federal and State regulations at all times.

Motion amended to add:

6. Hours of operation would be from 7 a.m. to 11 p.m.

Upon a vote of the amended motion, it passed unanimously.

## 7. ADJOURNMENT

There being no further business, the meeting adjourned at 8:25 p.m.