

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular meeting, Wednesday February 25 at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Chairman, Jim Crafton, Vice-chairman, Tony Engel, Ann Pouch, Dean Bonessi, Alternate Board Member JoAnne Telker, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Planning Administrative Assistant Kathleen Scanlan. Zoning Board Secretary Karen Ann Antonucci was not present.

Chairman Phelps called the meeting to order at 4:00 PM. He introduced the board members to the parties present.

Chairman Phelps: The first order on our agenda is the review and approval of our minutes from our last meeting. Anybody have any comments regarding them? I have one in that Dean Bonessi was not here. I'll correct that to my name on the copy I've signed. If there's any other corrections or adjustments, I'll entertain a motion that we adopt the minutes as presented.

TEngel: I so motion.

APouch: Second.

Chairman Phelps: All in favor, I.

All board members were in favor of adopting the minutes.

Chairman Phelps: Ok. The new business, we will have an applicant for a special use permit.

Associate County Attorney SZambon: Mr. Chairman, before you get that I think...

Chairman Phelps: Oh the order.

Associate County Attorney SZambon: The board also has to approve the Lapido order. I don't know why it's not on the agenda.

Chairman Phelps: The order from our last meeting is in the book. I assume all of you had a chance to read it. Are there any corrections, additions or comments regarding the order as presented?

JCrafton: I move we approve the order granting special use permit SUP-09-01.

APouch: Second.

Chairman Phelps: All in favor, I. Opposed, no. It carries unanimous. The order is adopted.

Associate County Attorney SZambon: Mr. Lapido, your order has been approved. The Zoning Department will send you a copy of it. And have you come in and sign it, but you don't have to stay for the rest of this meeting.

Ok. Do we need to sign something today?

Associate County Attorney SZambon: No. Not today. No. So Karen Ann or Toby will contact you.

OLapido: Appreciate it, thank you.

Associate County Attorney SZambon: No problem.

Chairman Phelps: Ok now we're back on track. We've got the minutes approved and the order approved so now we're at new business which is case SUP-09-02. I will need a motion for us to go into a public hearing.

TEngel: I motion.

Chairman Phelps: Do we have a second?

DBonessi: Second.

Chairman Phelps: Dean seconds. All in favor say I. Opposed no.

All board members were in favor of opening the public hearing.

New Business:

Case SUP-09-02, **Joseph (Andy) Petree**, requesting special use permit for Heliport (private accessory) – required in Residential 2-MH as defined by SR 3.9 in the Land Development Code. Location: 264 Diamond Mine Lane, Hendersonville on 5.41 acres, (PIN 9546932139).

Parties:

Andy Petree – property owner

Jason Patomson – Mr. Petree's attorney

Witnesses:

Ken Stubbs

Annette Ward

Chairman Phelps: We are now in open session. I'm going to read a formal statement here for the information of all those present.

Ladies and gentlemen, a quasi-judicial proceeding is being held today on the following petition – the special use permit for a heliport where Joseph A. Petree III is the petitioner. A quasi-judicial proceeding much like a court proceeding, is one in which one's individual rights are being determined under specific rules of procedure. As such, not every person has a right to give evidence in a quasi-judicial proceeding. Under the Rules of Procedure for quasi-judicial proceedings only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding.

Now I have the names here of people that signed up to speak and we will need to determine their standing or if you have standing. First name I see is Karen Krupa. Would you come to the podium please?

KKrupa: Hi. I was at the last meeting and was not...

Chairman Phelps: Could you state your name and address?

KKrupa: Karen Krupa, 60 Bear Rock Road, Hendersonville. And I was not found to have standing at the last meeting so I don't know if anything's changed.

Chairman Phelps: Your property does not abut the applicant's property?

KKrupa: No but his helicopter flies over my house.

JPatomson: Mr. Phelps we assert the same objection that we asserted at the...we would now approach the podium. The same objection we asserted at the last meeting. We would ask that she not be allowed to speak at this proceeding.

Chairman Phelps: Understood.

JPatomson: Thank you. I see on the map.

KKrupa: I abut Valley View Farms.

Chairman Phelps: I think we determined last time, be called as a witness but did not have standing. Is that correct? Is my memory correct?

Zoning Administrator TLinville: Mr. Chairman if you'll go to this map in your packet I've drawn a 1,500 foot boundary from the subject property just to give you some perspective. You can see Bear Rock Road there.

Chairman Phelps: If there's no objection we will determine that Ms. Krupa you do not have standing. The next names I have I think are Ken Stubbs and I can't read the second signature.

JPatomson: Ken Stubbs is a witness for Mr. Petree and Annette Ward is also a witness for Mr. Petree. And Annette Ward actually abuts Mr. Petree's property.

Chairman Phelps: So basically they will be up here as witnesses and not parties that have standing?

JPatomson: Not as interested parties. Yes sir.

Chairman Phelps: Ok. Thank you. Thank you, sir. Andy Petree the applicant would obviously have standing. And that leaves, again I'm having trouble with this – is this Osaldo Aridge?

Associate County Attorney SZambon: That might have been Mr. Lapido regarding his order so I don't think he's here for this matter.

Chairman Phelps: Thank you. So we have determined then that we have witnesses and really just Mr. Petree who has standing. Is that correct? Very good. Let me get back to my document here.

All persons who are allowed to speak and participate in this hearing, including all witnesses that will be called must be placed under oath.

So I would like for those individuals to come back to the podium and be sworn in if you're to appear as a witness or you have standing.

Associate County Attorney SZambon: And Mr. Chairman since Karen Ann is not here Ms. Scanlon will be swearing everyone in.

Planning Administrative Assistant KScanlan: Do you swear or affirm that the testimony you are about to give the Zoning Board of Adjustment shall be the truth, the whole truth and nothing but the truth, so help you God?

Chairman Phelps: The proceedings will be as follows:

-The board will ask any persons (other than the petitioner and the Henderson County Zoning Staff) who desire to become parties to this action to explain how they would be affected by this proceeding. For example, they may be the owner of an adjoining parcel of property, or have some other special and unique interest that justifies their participation as a party. You should understand that you do not have to be a party in order to testify in the proceeding, if some other party calls you as a witness.

-All witnesses and parties will be sworn as a group – Which we just did – to tell the truth in their testimony.

-The board will then have the Zoning Staff summarized the petition, and what is sought by the petitioner.

-The board will then have the petitioner or the petitioner's attorney present their evidence in support of the request.

-Each party has the right to ask questions of the witnesses.

-After the petitioner is finished presenting evidence, the other parties are then allowed to present their evidence.

-Again, each witness who testifies may be asked question by the other parties.

- Board members may also ask questions.

-After the evidence is presented the board will discuss the issues raised and will make a decision. The board's decision must be made in writing within 45 days of this hearing.

-We will now identify the parties. The board acknowledges the petitioner, Joseph A. Petree III, her represented by counsel William Alexander and Jason Patomson - are both of those here or just –

JPatomson: Just myself, sir.

Chairman Phelps: Just you. Thank you. *–and the Zoning Staff as parties to this proceeding. Are there any other persons present who can demonstrate that they will be affected by the outcome of this proceeding and who with to be a party to this proceeding that we haven't already reviewed?*

-All parties should now give their name and address to the Secretary – and I think we now have that on this sheet so that's been taken care of. I suppose we now move to you Toby for the staff presentation of their evidence.

Zoning Administrator TLinville: You'll see in your packet first is the application for the special use permit. It's filled out by the applicant. Next is the staff memo. This is the same memo that's presented to you and the Technical Review Committee before you. It just includes property description and the supplemental requirements that relates to heliports. Technical Review Committee gave approval to the site plan. It met all the standards. Next there's and aerial photograph of the parcel in question, 264 Diamond Mine Lane. Next is the map that I just showed to you, the 1,500 foot buffer. It will show you some perspective of how far neighbors are from the property. Next is a larger aerial showing more of those homes. And finally is the major site plan as reviewed by the Technical Review Committee. And again, it met all their standards. I'll entertain any questions and ask that you include that as part of the record.

Associate County Attorney SZambon: Mr. Chairman I have a few questions for Toby, if I may. First of all staff would like to enter the packets that are before you including the applicant's application, the maps and the conditions, unless there's any objections from Mr. Patomson, into evidence.

JPatomson: I have no objection. Sarah, I would like to, I don't know if you included the addition of my modification paragraph 7 but we'd like that to be presented to the board as well if that's ok.

Associate County Attorney SZambon: Yes, before the meeting today I presented before you to an addition to #7 to cover repairs, staff would also ask that that would be entered into with the other conditions and the rest of the packet. Mr. Linville, when the TRC reviewed the product did they have any concerns? Any substantial concerns that you recall?

Zoning Administrator TLinville: That's a technical body, they're looking at the technical nature of the site plan to make sure that those parts are met.

Associate County Attorney SZambon: So it met all the technical concerns? Does it meet to your satisfaction all the relevant sections of the SR? That's all I have.

Chairman Phelps: What sheet was that that you said was included? This one?

Associate County Attorney SZambon: That one, yes sir.

Chairman Phelps: Ok. It's just an addition to that. Ok.

Zoning Administrator TLinville: We may need to I guess go ahead if you would like for me to just read this, all these conditions into the record for your benefit and the public's. These are some conditions that were recommended by staff and the applicant for your consideration.

First is the: Hours of operation: The applicant may only fly the helicopter around the subject property within the hours of 7 am and 9 pm.

Second is Trips: The applicant shall restrict trips in and out of the subject property to twenty trips per month.

Third: The applicant and Zoning Administrator acknowledge that the FAA does not presently regulate the construction, maintenance, or operation of private heliports, as established by 14 CFR 139.1 9(c)(5). The applicant shall comply with any and all FAA

requirements for private heliports when and if requirements apply. And that refers back to our supplemental requirements stated that heliports must meet FAA requirements. But there aren't any.

Four: The applicant shall comply with all relevant state, federal, and local laws including but not limited to the Henderson County Land Development Code and the Public Health Nuisance Ordinance.

Five: Permit revocation: The Zoning Administrator and/or the Zoning Board of Adjustment may revoke a permit if at any time after the issuance of the permit it is found that the conditions imposed on/agreements made with the applicant have not been or are not being fulfilled by the holder of the permit. (200A-325 I (1)).

Six: Lighting mitigation measures: Applicant and Zoning Administrator acknowledge that all lighting currently located on the applicant's property was in place prior to the enactment of the Land Development Code. In the event applicant installs additional lighting to the subject property: the applicant agrees to install shielded lighting which prohibits light trespass onto adjoining properties. Further, applicant agrees that if any lighting is installed for the specific use of a heliport, that said lighting shall not be used unless the applicant is operation a helicopter within the hours prescribe by paragraph 1 above.

Seven: Limit the number of helicopters: applicant and Zoning Administrator acknowledge that, let me see the supplements. (The following is read from the Possible Conditions For Petree Special Use Permit Supplemental submitted to the board on 2-25-09): Limit to number of helicopters: applicant and Zoning Administrator acknowledge that applicant currently operates one helicopter on the subject property. Applicant and Zoning Administrator further acknowledge that the special use permit shall continue to allow applicant to utilized one helicopter on the subject property.

Subset a. Substitution for Repairs: When the existing helicopter is being repaired, either on or off the property, the applicant may utilize a substitute helicopter for the time period of repairs. Upon completion of the repairs, only the existing helicopter shall remain on the property. This in no way shall increase the number of trips per month as stated above.

Subset b. Exchange, trade or substitutes the existing helicopter. Applicant may exchange, trade, or substitute the existing helicopter at any time. In the event the applicant acquires more than one helicopter as part of the business, the applicant shall request an amendment to the special use permit from the Zoning Board of Adjustment.

Eight: Amendment: Any amendments or interpretations of this Special Use Permit shall be brought before the Zoning Board of Adjustment.

Chairman Phelps: For my edification how was this determined, how were these derived?

Zoning Administrator TLinville: These were proposed by the County Attorney, and reviewed by Mr. Patomson.

Chairman Phelps: They've had a chance to see this in advance. How were the hours determined? I mean 9 o'clock – particularly when we're not on Day-Light-Savings-Time like in the wintertime is dark, which would necessitate I would think the use of landing lights of some sort. How was the 9 o'clock hour, rather than say during the daylight hours only, for instance?

Associate County Attorney SZambon: The 9 o'clock hour was based on conversations we had with the applicant. And that may be a question better asked to the applicant regarding his ability to land when they present their evidence.

Chairman Phelps: The other thing I noticed you limit in here – twenty trips per month. But there's nothing about the number of trips per day. So they could all be in one day?

Associate County Attorney SZambon: Hypothetically they could all be in one day.

Chairman Phelps: So would it also be wise to limit any one, I mean theoretically if I'm, I could see touch and go landing or something then I could have several types of things. That was another issue. So he might want to consider a number of in and out flights per day.

DBonessi: I've got a question with that. Would it be - you'd have to have somebody out there so...

Zoning Administrator TLinville: Any of these questions you have you can certainly make conditional, strike some of these conditions. This was just a basis, the things we could think of prior to this meeting, so feel free to add, subtract as you wish.

Chairman Phelps: No, Overall I'm, I mean I've had no problem with what you had here. It's just that I did have these other questions that granted they may be extreme and could occur.

Associate County Attorney SZambon: And again, when the applicant comes up he might be able to clarify you know, his actual intent or, you know what he would be willing to, you know suggest regarding those issues.

Chairman Phelps: Are there other questions of Toby from members of the board or you?

Associate County Attorney SZambon: No. But Mr. Patomson may have some.

Chairman Phelps: Mr. Patomson, do you?

JPatomson: I have no questions for Mr. Linville.

Chairman Phelps: Thank you. Any additional evidence or any additional staff comments?

Associate County Attorney SZambon: No, Mr. Chairman.

Chairman Phelps: Now should we hear from the petitioner if we don't have any rebuttal evidence, since we had no one comment, right? So if you would like to, Mr. Patomson, please.

JPatomson: Thank you Mr. Phelps, Mr. Linville, members of the board and Sarah. I appreciate the opportunity to allow me to speak before you today. I'll try to be brief before presenting Mr. Petree and my other witnesses today. As the board is aware Mr. Petree recently submitted an application requesting this board issue a special use permit that would allow him to land and take off a helicopter from his property located at 264 Diamond Mine Lane. As this board is also aware from hearing the testimony from the prior hearing the purpose of utilizing this helicopter is for business purposes, both for his job as an ESPN announcer analyst and his association with NASCAR. Now prior to discussing the merits of his application I'd like to emphasize the nature of the hearing that we are here on today. As Mr. Phelps indicated we are in a quasi-judicial proceeding. The Land Development Code and the North Carolina General Statutes require that Mr. Petree be afforded essentially the same type of protections that he would be afforded in a court of law. And we appreciate the board putting that hat on today and affording him those protections. Initially Mr. Petree must establish a prima facie case establishing that he is entitled to issuance of the special use permit. And we want the board to remember while we're presenting that to you that it is, not bear the burden of proof, just to establish that all standards of Land Development Code have been met, just that he is substantially compliant with what the Land Development Code requires. Upon establishing entitlement opponents must show that the proposed use would not meet the applicable site standards. It appears today that we will not have an opponents presenting evidence. So the only

evidence before this board today is that provided to you by Mr. Linville and staff and that provided by Mr. Petree. Mr. Linville's already addressed the issue that special requirement 3.9 really has no effect here today due to the fact that the FAA doesn't regulate heliports at this time. That being said I think I'm ready to present Mr. Petree. And with the board's permission I'd like to bring him to the podium. Mr. Petree can you state your name for the board please.

JPetree: Joseph Andrew Petree, III.

JPatomson: And can you provide your date of birth?

JPetree: 8-15-1958.

JPatomson: And can you provide the board with the address where you currently reside?

JPetree: 2001 Mountain Ash Circle, Hendersonville North Carolina.

JPatomson: And can you tell the board what you do to earn a living on a daily basis?

JPetree: My primary position is an analyst for NASCAR racing on ESPN. And I've also got another company, Andy Petree Racing, which is involved in testing equipment for the NASCAR industry.

JPatomson: And is the headquarters for these business ventures located at 264 Diamond Mine Lane?

JPetree: Yes.

JPatomson: And that is the property that we are here to discuss today?

JPetree: Yes.

JPatomson: And are you asking the board in this application to grant you the authority to utilize that property as a private heliport?

JPetree: Yes, that's what we're asking.

JPatomson: And the purpose of that is to advance your ability to operate those businesses?

JPetree: Yes, and to further them, yes.

JPatomson: Ok. Now the Land Development Code requires that you address issues relative to public health, safety, and welfare and how the use of this helicopter will affect those. I'm going to ask you some questions regarding that issue. Have you done anything to modify the property at 264 Diamond Mine Lane for you to use a helicopter on that property?

JPetree: No.

JPatomson: You haven't painted a big H on the ground?

JPetree: No.

JPatomson: You haven't put a control tower up?

JPetree: No.

JPatomson: Haven't put any flood lights on the ground?

JPetree: No.

JPatomson: It's the same as it was before you ever brought the helicopter out?

JPetree: Identical.

JPatomson: Identical. Ok.

JPetree: I did put a windsock up.

JPatomson: Ok. Can you describe the windsock?

JPetree: It's just a regular windsock on a pole at the corner of the fence.

JPatomson: It's not a twenty foot tall pole?

JPetree: No.

JPatomson: Ok. It's not a fifty foot long windsock?

JPetree: No.

JPatomson: Visible from a hundred yards away?

JPetree: Yes.

JPatomson: Ok, 500 yards away?

JPetree: I don't think – I don't know.

JPatomson: Ok. It would probably be a speck from that far.

JPetree: Yeah.

JPatomson: Ok. Are you going to store any hazardous materials on site?

JPetree: No.

JPatomson: No nuclear waste?

JPetree: No.

JPatomson: Are you going to be producing noxious or any type of odors from your property, by using that helicopter?

JPetree: No.

JPatomson: Are you going to store dynamite or anything like that on the property?

JPetree: No.

JPatomson: Ok. Is the heliport in any way going to increase the motor vehicle traffic to and from your property?

JPetree: No.

JPatomson: Would it, as a matter of fact probably decrease the traffic.

JPetree: Yes.

JPatomson: Ok. You're not going to be bringing unsavory characters to the property as a result of having a helicopter, are you?

JPetree: Besides me? No.

JPatomson: How long does it take you to lift off the ground and be approximately 1,500 feet away from the property?

JPetree: Ok, now we're talking from start up?

JPatomson: From the start of the rotors to being away.

JPetree: Ok, so two minutes – it's a one minute warm up basically and then it takes another minute or so to spin up and then pick up to hover and then no more than thirty seconds to fly out and then I'm gone.

JPatomson: Ok. So from the time you start the helicopter to being 1,500 feet away from the property, it will be less than three minutes?

JPetree: Yes. You could say.

JPatomson: And at twenty trips a month times three minutes the total amount of time that rotor will be spent in and around your property in a month is about an hour.

JPetree: If you total it up, yeah. You've done the math, I think so, right?

JPatomson: Three times twenty is sixty. I think that gets us to where, less, and hour or less a month. That's what that helicopter will be spending on your property? Does that sound right?

JPetree: Yes. That's fair enough.

JPatomson: Ok. Now let's talk about your ability with mechanics and machines. And are you kind of predisposed to machines and how they work?

JPetree: Oh yes. That's the way I make my living.

JPatomson: You got some history and some experience with machines and how they work?

JPetree: Yes, sir.

JPatomson: Ok. Are you trained in particular with how a helicopter functions?

JPetree: Yes.

JPatomson: Ok. Are you trained how to fly it?

JPetree: Yes.

JPatomson: How many of hours of training did you receive?

JPetree: Approximately eighty hours of instruction.

JPatomson: Ok. And you are at this point, as far as the FAA is concerned allowed to fly that helicopter by yourself?

JPetree: Yes, I'm fully rated.

JPatomson: Ok. And who were you trained by?

JPetree: Tim Bradley, CFI.

JPatomson: And Tim Bradley transports people?

JPetree: Yes. I just finished the training course with Lundsford Air Consulting in Florida, their advanced turbine course.

JPatomson: Ok.

JPetree: Which is required by my insurance to do, and I just completed that.

JPatomson: Ok. You do, you're required to carry insurance?

JPetree: Yes.

JPatomson: On this.

JPetree: No. not required but I do carry it.

JPatomson: But you do carry it?

JPetree: Yes.

JPatomson: Out of an abundance of caution? Ok. Would it be – what is your personal opinion about the safety of helicopters? Are they prone to accidents?

JPetree: No.

JPatomson: Ok. In comparison to a motor vehicle would you say a helicopter is more or less safe?

JPetree: To a motor vehicle a helicopter would be much safer.

JPatomson: I have provided Ms. Zambon, and I think she may have them in her hand still. I'd like to point the board's attention to what I am offering as Exhibit A and B. Exhibit A is a five year comparative, a US Helicopter Safety Trend report which is produced by the FAA. And Exhibit B is Fatality Rates based on motor vehicles in both North Carolina and the United States. And that report has been produced by the Department of Transportation. Mr. Petree, I'm going to point you to Exhibit A and I'll wait for the board to all receive a copy of this document before we start talking about it. Now what I'd like to point out to you and have you direct your attention to the year 2007. And the reason I'm not directing you to 2008 is because I want to compare this to the motor vehicle data and they don't have 2008 printed yet. But can you tell me the number of helicopter hours that were flown in 2007 in the United States?

JPetree: That's in millions, so no, I can't tell you. It's a big number.

JPatomson: Would that number be three point six two nine million?

JPetree: Yes, I guess that's what it is, yeah. I thought that was a comma.

JPatomson: Out of that three point six two nine hours, which is, that's a bunch of helicopter time, can you look down to the next data table and tell me how many accidents with helicopters occurred in 2007?

JPetree: A total of 178.

JPatomson: And out of those 178 accidents, how many of them resulted in fatalities?

JPetree: Twenty two.

JPatomson: And it is, can you tell me a little bit about your understanding of where most helicopter fatalities occur?

JPetree: Most helicopter fatalities are in the EMS industry. And that is being...

JPatomson: And why is that?

JPetree: Well their missions are very – there's a lot of pressure on helicopter missions in the EMS community. They are typically flying to pick up someone that's dying or trying to get them to a hospital and the pressure of that mission and competition, that's one other thing I found, that there's a lot of competition. Even though we don't have a lot of

competition in this area for EMS helicopter operations, like in Greenville, South Carolina they do. They've got more than one or two companies. If one company turns down a trip because it may not be safe another company will take it. And it just puts a lot of pressure on these operators to fly these helicopters. The FAA and the NTSB are now addressing a lot of the issues, particularly in the EMS industry because of these fatalities that have, primarily in helicopter industry have been EMS.

JPatomson: Ok. But suffice it to say twenty two fatalities out of three point six two nine million hours is a pretty small number.

JPetree: Yes it is.

JPatomson: Ok. Let me point you to Exhibit B. Exhibit B is a report from the Department of Transportation. I want to point you to the bottom of that chart which is 2007. And does it show the number of fatalities in North Carolina alone?

JPetree: Just in North Carolina 1,675.

JPatomson: So while there were twenty two helicopter fatalities nationwide in 2007, there were over a 1,000 vehicle fatalities in North Carolina alone. And in the United States how many fatalities were there in motor vehicles?

JPetree: Forty one thousand fifty nine.

JPatomson: Once again establishing a position that it's much safer for you to be traveling in a helicopter than it is to be traveling in a motor vehicle?

JPetree: Yes, and I'll even point out that the type of helicopter that I have is a turbine engine helicopter which the NTSB has determined is one of the safest aircrafts in the air next to an airline, regularly scheduled airlines. So it's a very safe vehicle.

Now there are some things that might cause an accident in a helicopter to occur. You've addressed some of those with the EMS issues. Would one of those things be failing to operate the aircraft in accordance with the aircraft's limitations?

JPetree: Yes, absolutely.

JPatomson: Now, are you trained how to operate that aircraft according to its limits?

JPetree: Yes, I am.

JPatomson: Would you ever operate it outside its limits?

JPetree: No, sir.

JPatomson: Would operating the aircraft in unsafe environmental conditions be a problem?

JPetree: Yes.

JPatomson: Are you trained when and when not to use that aircraft?

JPetree: Yes.

JPatomson: Would you ever use it in unsafe conditions?

JPetree: Never.

JPatomson: Would improper maintenance be a cause of accidents?

JPetree: Yes.

JPatomson: Do you have that aircraft properly maintained?

JPetree: To the hilt.

JPatomson: Would you ever fly it if wasn't properly maintained?

JPetree: No.

JPatomson: Would improper training cause accidents?

JPetree: Yes.

JPatomson: But you are properly trained.

JPetree: And I'm on a recurrence training program so it's not like I've learned and never learn any more. I'm learning all the time.

JPatomson: Ok. In your opinion, if the Zoning Board grants your application will your use of the property as a heliport endanger the public health, safety, and welfare?

JPetree: No.

JPatomson: Another area that the Land Use Development Code addresses is whether or not putting a heliport on your property will injure the value of the property in the area. So I want to visit with you about that for a few minutes if I can. Mr. Linville has already proposed some conditions that you have agreed to in order to make your use of the property less burdensome to your neighbors. Have you agreed to all these conditions Mr. Linville has read?

JPetree: Yes. Yes, I have.

JPatomson: Would you be open to the board presenting additional conditions to impose on you to keep the peace?

JPetree: Well, I mean we'll talk about it, yeah.

JPatomson: Within reason.

JPetree: Yes, within reason.

JPatomson: You agree to limit the number of flights per month.

JPetree: Yes.

JPatomson: And you've agreed to limit the hours of operation.

JPetree: Yes.

JPatomson: You've already indicated you haven't modified your property in any way?

JPetree: No.

JPatomson: And you testified that at most it would be an hour a month that you would be utilizing this helicopter on the property, is that correct?

JPetree: Yes.

JPatomson: Now, let's talk about the area surrounding your property. I want to refer you to the application. And I'm going to refer you to the map that Mr. Linville attached which is the, for the board's reference, is the larger blow-up map that shows the surrounding properties. Not the one with the 1,500 foot circle drawn on it but the other large map, just close to the end of the packet. Now can you tell the board what type of use other people in the area are utilizing their properties for?

JPetree: Well I'm not – I couldn't say for sure, I mean there's a lot of different things out there.

JPatomson: Let me approach it from this angle. Do you use your 264 Diamond Mine Lane as commercial property?

JPetree: Yes.

JPatomson: Are there people that use their property as residential?

JPetree: Yes.

JPatomson: Are there other people that have their property just rural in nature and really nothing going on with it?

JPetree: Yes.

JPatomson: So there's not a consistent theme in your area?

JPetree: No.

JPatomson: Now immediately below your 264 Diamond Mine Lane there's a parcel numbered 1384 that's 7.04 acres. Do you currently own that property?

JPetree: Yes, sir.

JPatomson: So you're currently buffered to the south of your property with land that you already own? And immediately west of that property there's another large tract numbered 5722. How many acres are on that tract?

JPetree: Forty.

JPatomson: And you own that tract as well?

JPetree: Yes.

JPatomson: So you're additionally buffered by that tract?

JPetree: Yes.

Chairman Phelps: Mr. Patomson, I'm sorry, that was 5722?

JPatomson: Yes, sir. Let's talk about your property before the Land Development Code was passed. Was it open use at that time?

JPetree: Yes it was.

JPatomson: Has anything substantially changed in your area since the Land Development Code was passed, as far as use of the property?

JPetree: No.

JPatomson: Have you had any conversation with any of your neighbors that are in favor or are ok with you using the helicopter?

JPetree: Yes.

JPatomson: More than one neighbor?

JPetree: Yes.

JPatomson: In your experience of living on that property are there other helicopters that fly over that Crab Creek area?

JPetree: Yes there are. And I get credit for every one of them. But there are a lot of helicopters that fly that valley.

JPatomson: Does Mountain Area Medical Airlift fly in that area, valley?

JPetree: Who's that?

JPatomson: MAMA.

JPetree: Yeah. I didn't know that name.

JPatomson: Do other private helicopters fly in that area?

JPetree: Yes, and military.

JPatomson: Ok. And did you in fact yesterday or in the last couple of days see a double rotor, very large helicopter flying over your property?

JPetree: Right by my building, yeah.

JPatomson: So you're not changing the physical nature of your property. Is that correct?

JPetree: Yes.

JPatomson: There are already helicopters flying in your area. Is that correct?

JPetree: And airplanes fly through there.

JPatomson: And airplanes. And the helicopters that are flying in there, some of them are bigger than yours. Is that correct?

JPetree: Yes.

JPatomson: In your opinion, will your use substantially injure the value of surrounding neighbors?

JPetree: No.

JPatomson: The last issue we want to talk about is going to kind of overlap the first issue we just talked about – and that's whether or not your use will be in harmony with the surrounding area. Once again I want to establish you're not changing the physical characteristics of your property?

JPetree: Nope.

JPatomson: All you're doing is putting a helicopter in and out of that building and taking off one hour a month.

JPetree: Yes.

JPatomson: In your opinion, will your use be in harmony with the uses in the surrounding area?

JPetree: Yes.

JPatomson: Ok. Now there was a concern brought up that you might use those twenty trips all in one day – if that's the condition that's imposed on you. Is there any way you would use all those twenty trips on a day?

JPetree: I would not want to limit myself by doing that because if I did I would hand-cuff myself to be able to use it the rest of the month, so no. And the other thing, I know, speaking to your point about doing practice touch-and-go, that sort of thing, I do no training around my property. If I do training I go away from the property. I go to the airport and then I come back so that's not an issue there.

Chairman Phelps: Thank you. That was a question I had, you know, where do you do your...

JPetree: Yeah, I've – I did that early on. In the very beginning I did do some hover work over some of my big areas that I have. But I had a discussion with one of the neighbors and I just said, "Ok, I'll do all my training away from the property". I've been very sensitive to their needs and I'm trying to be a good a neighbor as possible.

JPatomson: Mr. Petree, while we're on the subject of being neighborly, I've provided to Ms. Zambon and I'm asking her to present to the board as Exhibit C a booklet that's entitled the Fly Neighborly Guide. And just to let the board know I've not provided you the entire book as it is about thirty pages, I just copied relevant sections for your review today. Where did you obtain this document?

JPetree: I got that at the Helicopter Association International Expo in Anaheim, California this past weekend.

JPatomson: Ok. And what is the purpose of the Fly Neighborly Guide?

JPetree: It is to address noise issues and abatement and how to fly your helicopter in a neighborly fashion.

JPatomson: Ok. And have you reviewed this booklet?

JPetree: Yes I have. And I'm still studying it but I have reviewed it, yes.

JPatomson: Is it your intention to do everything you can to fly neighborly?

JPetree: Yes.

JPatomson: Are you going to try to reduce the noise generated by your helicopter?

JPetree: Yes I am. I mean, there's a lot of guidelines in there on how to do that so...

JPatomson: And do you feel like you can safely abide by these guidelines?

JPetree: Yes.

JPatomson: I want to turn to the last page in the book that I've provided to the board in Exhibit C. It's labeled at the bottom, page #25. It's a color graph. Mr. Petree, can you describe Appendix 1, what you see there?

JPetree: Well basically it compares the noise level of a helicopter at 1,000 feet from an automobile or a semi truck, lawnmowers, trains, and even a chainsaw.

JPatomson: Ok. Now this has three different types of helicopters, the heavy/large, intermediate/medium, and light/small. Which category would your helicopter fall in?

JPetree: Mine is the light/small helicopter.

JPatomson: By the decimal level of light/small, which it looks to me stops at the sixty nine decimal level, is that less noise than the automobile?

JPetree: Yes. It shows it on this graph that it is slightly less than an automobile.

JPatomson: And is it substantially less than a truck or city bus?

JPetree: Yes.

JPatomson: Even compared to a power push lawnmower it's less noise.

JPetree: Quite a bit quieter than a lawnmower.

JPatomson: And even quieter by a greater margin than a chainsaw. Is that correct?

JPetree: Yes.

JPatomson: And last but not least, quieter than diesel train.

JPetree: Yes.

JPatomson: Would you rather have your neighbor have a helicopter or would you rather have a train track running by your house?

JPetree: No. I'd rather have the helicopter.

JPatomson: Are you confident that if this board grants your application that this – your use will not in any way negatively affect your neighbors?

JPetree: I feel very confident of that, yes.

JPatomson: Certainly no more than a chainsaw would affect the neighbors.

JPetree: Way less.

JPatomson: Ok. I have no further questions for Mr. Petree.

Associate County Attorney SZambon: Mr. Chairman I just have a few questions for Mr. Petree. Mr. Petree where will the helicopter be stored when you're not flying it?

JPetree: At 264 Diamond Mine Lane.

Associate County Attorney SZambon: Will it be stored inside or outside?

JPetree: Inside.

Associate County Attorney SZambon: Inside. Ok. Are there going to be any signs on the property saying that you have a helicopter?

JPetree: No.

Associate County Attorney SZambon: It'll just be whatever signs you have now?

JPetree: I don't even have a sign and I purposely did that to try to be more in harmony with the area. I mean, I have a commercial building but I decided not to put a sign up just because it doesn't really help my business and it just kind of detracts from the way the building is viewed from the neighbor.

Associate County Attorney SZambon: When you take off and land the helicopter, you take off and land on the pavement?

JPetree: Yes.

Associate County Attorney SZambon: Ok. So do you ever land on unpaved property?

JPetree: Do I ever? Yes. Not on my property.

Associate County Attorney SZambon: Not on your property. I'm concerned with what you do on your property. Ok. So in terms of dust mitigation...

JPetree: That's not a factor at all.

Associate County Attorney SZambon: Ok. How do you – do you have helicopter fuel on the property?

JPetree: No, I don't. But that's, you know, that's a point that you bring up. If I ever do do that it will be in small quantities, like 300 gallons, just to be able to specifically fuel the helicopter for each mission. I mean, right now I fly it to Asheville or Rutherfordton and get fuel on my way. But I have investigated like a 300 gallon tank. It's just basically a trailer that I can park right there on my property, that I could do that with. I haven't done that yet.

Associate County Attorney SZambon: But there's not – I'm just looking at – will there be any environmental impact regarding fuel or the helicopter?

JPetree: No.

Associate County Attorney SZambon: And you haven't improved the impervious surfaces for the helicopter?

JPetree: No.

Associate County Attorney SZambon: It's the same?

JPetree: It's exactly the same as it was. I haven't done anything at all.

Associate County Attorney SZambon: Will there be other helicopters flying onto this property besides you?

JPetree: Besides me and the one that I – if mine's in the shop – these things have a lot of maintenance. I've got a deal with the guy that taught me how to fly. He has one also. And when mine's in the shop he's allowing me to use his. And then when his is in the shop I

allow him to use mine. So we do do – that's why we wanted that stipulation in but still to stay in the twenty flights a month.

Associate County Attorney SZambon: Will you have a clients flying in on your helicopter?

JPetree: No, no.

Associate County Attorney SZambon: So the only helicopter is...

JPetree: Is what I'm using, yes.

Associate County Attorney SZambon: Whatever you're using?

JPetree: Yes.

Associate County Attorney SZambon: Ok. And will anybody else be using your helicopter besides you, on your property?

JPetree: No.

Associate County Attorney SZambon: Ok.

JPetree: I mean if I loan mine to Tim Bradley, he would naturally take off from my property and go to where ever he's going to train people down in Rutherfordton.

Associate County Attorney SZambon: Ok. But there won't be people coming on your property to specifically just use the helicopter?

JPetree: No. And the reason, you know, we've agreed to twenty a month. That's very restrictive. I would not want to use those up or let somebody use them up. I'm going to use them so that's why I would not allow that anyway.

Associate County Attorney SZambon: And you heard when the board was talking to Mr. Linville that they have concerns about how to police that twenty. Is there any assurances you can give the board?

JPetree: Well, I mean I'm open, I'm open to anything. I keep a log with times and dates. I mean I'll agree to whatever. I keep an aircraft log now, currently of every take off and landing and I'm required to do that. It's part of the aircraft log book. And in there I've got APR is what I use as my base because that's the name of my company. And anytime you see that in that aircraft book is a landing at APR. Now I can create a separate one. I mean I'm open to that if that's a requirement.

Associate County Attorney SZambon: Ok. Another concern the board raised was regarding the 9 o'clock flying in the winter when it will already be dark.

JPetree: Well darkness itself is not that big, is not that big a deal with the helicopter as far as safety. And we agreed to 9 o'clock because most people are not in bed at 9. You know, I just don't want to fly in when people are asleep. That was the only thing there.

Associate County Attorney SZambon: If it's dark and you're flying the helicopter in how much light...

JPetree: Not much, it's, as a matter of fact it's very little. It's a small landing light. There's two lights on the front of the helicopter that shines down. You put one on when you come in and then there's another one that shines straight down. The lights on the helicopter are not very bright.

Associate County Attorney SZambon: Would they be, just to give a comparison...

JPetree: No more than a car.

Associate County Attorney SZambon: No more than a car.

JPetree: As a matter of fact it's less than a car.

Associate County Attorney SZambon: Ok. Other than when you are taking off and landing will people driving by be able to know that you have a helicopter on that property?

JPetree: No, no. Matter of fact most people don't. Even my friends – a lot of them don't.

Associate County Attorney SZambon: I don't have any more questions for...

Chairman Phelps: So you do keep it inside?

JPetree: Inside, yes sir.

Chairman Phelps: And for my clarification looking at this big map, that paved area behind your building, I'll say behind, that's within that, it looks like wrought iron looking fence.

JPetree: Yeah, it's a fenced in area, yes.

Chairman Phelps: And that's where you take off and land?

JPetree: Yes sir.

Chairman Phelps: In that fenced area.

JPetree: So it's fenced and safe from anybody that happens to walk up or, you know.

Chairman Phelps: So it keeps people away...

JPetree: Right.

Chairman Phelps: From the road.

JPetree: Any curious person come in there, right?

Chairman Phelps: And this guide that you presented, your attorney presented, is good. It seems to have certain good things. My one thought was since you have been flying in and out for a while have you developed a pattern for takeoffs and landing approaches? I mean which way you go?

JPetree: Yes sir.

Chairman Phelps: You are attempting to avoid as much...

JPetree: I have really been diligent about that very thing. I have completely, you know in respect to my neighbors that have complained a little bit about it, yes I have started flying completely different - away from the neighborhoods. I fly right over my building on approach when it's possible. There are some times in wind conditions that will require me to do a little different, but even then it's basically over my property coming in over the fields and whatnot. But most of the time, like today like the wind is I could come right over top of my building and not over fly any of those neighborhoods at low altitude.

Chairman Phelps: Any other questions from the board?

JCrafton: I have a question. In the material that your attorney handed us it talks about flying altitude in respect to takeoff and leaving the property. You indicated that you have a light/small helicopter and it recommends that you fly altitudes no less than 1,000 feet when you're over any areas that might be sensitive. And there are some livestock owned by property owners, not maybe directly adjacent to you, but both sides.

JPetree: Actually there are two horses on my property. I let a guy keep them there.

JCrafton: My question is do you expect to achieve the 1,000 feet minimum altitude while you're still over your own property?

JPetree: Not necessarily. In helicopters typically fly between 500 and 1,000 feet AGL or Above Ground Level. So I wouldn't necessarily fly 1,000 feet all the time. You don't necessarily do that.

JCrafton: Although the recommended height altitude on your...

JPetree: That's over the neighborhood, yes.

JCrafton: For 1,000 feet in a neighborhood. And you have residential housing across the highway from you and to another side of you that - you said that you try to control your approach. Can you tell us on the map what is your most typical approach both for landing and takeoff?

JPetree: My typical approach is coming right down here with the Valley Hill Fire Department and right over my building and land right here. My typical departures are leaving here and going over my property and then turning out and going over this valley. And if I'm going that way I just make a circle as I'm climbing to 1,000 feet and turn this way.

JCrafton: Ok. Is there any reason the approach cannot be similar to the departure?

JPetree: Well it's really not practical, especially with the winds. I mean if the wind is blowing this way you would want to land and basically takeoff into it. So you couldn't turn around and go down. You'd takeoff down-wind basically. And it's a little bit unsafe to takeoff and have to get as high as that building, come up above that building, straight up. It's actually operating in what's called a high velocity curve which is unsafe if you get above a certain height without having a certain airspeed.

JCrafton: Ok. That's all I have Mr. Chairman.

Chairman Phelps: Dean?

DBonessi: Yeah, I've got a couple of questions. The twenty restriction that we talked about or that you talked about, twenty trips in and out, is that twenty landings? Or is that twenty departures and there's twenty return trips, or...

JPetree: Yes. Twenty takeoffs and landings. Twenty trips.

DBonessi: Yeah, that's essentially forty per month? Twenty in and twenty out?

JPetree: No. Well yeah, yeah. I got you.

DBonessi: I want to be clear that somebody doesn't think, 'ok you can only come in here ten times, yeah.

JPetree: Every takeoff has to be a landing.

DBonessi: Twenty round trips.

JPetree: Yeah, right.

TEngel: Rephrase it.

DBonessi: Twenty round trips is a better way to describe that. We talked about the in and outs one day – what is a reasonable thing – how many times would you go in and out of your property in a day?

JPetree: Typically now?

DBonessi: Yeah.

JPetree: One. One a day. And I've done that on purpose. I mean I don't – like I said if I'm training I go away from my property, go down to Rutherfordton or go somewhere else, or Hendersonville even. And don't come back – I just don't come in and out of there more than once a day.

DBonessi: Would you go, ever go more than twice?

JPetree: No. More than twenty?

DBonessi: No, more than twice?

JPetree: Twice? No. I mean there may be an instance somewhere along the line – yeah, I might have something – I've got to go back or I don't know. And at that point, then I've got to say, 'ok do I want to use up two of them today or, you know?'

DBonessi: Well I mean that was my question.

JPetree: Definitely a deterrent for me using it more than once a day. It's because it limits how much I can do the rest of them a month.

Chairman Phelps: But you would be ok say, if we put in there no more than three in one day?

JPetree: Yeah. I'd be fine with that.

Chairman Phelps: That would for the neighborhood knowing it couldn't possibly be more than three round trips in any one day.

JPetree: Exactly. Three is fine. I mean I would agree to that.

TEngel: With the twenty restriction...

APouch: With the weather he couldn't fly everyday anyway.

JPetree: What's that now?

TEngel: With twenty round trips – I don't think it's a really needs anything entered in there to require it to be less than three per day, because you'll use all your trips up.

JPetree: Yeah, that's what I said. I don't want to use them up. I want to keep them.

DBonessi: My thing is the whole policing thing. I'd rather – my personal thing – I'd rather say, 'ok' - I don't know how anybody can truly police that.

Chairman Phelps: But he does say he keeps his flight log.

JPetree: I will keep a flight log.

Chairman Phelps: And could be presented as evidence if required to do so in any hearing or complaint or whatever, right?

JPetree: And it'll go back even further than today. I've got it since I've owned it.

Chairman Phelps: And that's a normal FAA required log, right?

JPetree: Yes.

Chairman Phelps: That you have to maintain so any fraudulent entry's on that would be...

JPetree: Well it affects everything.

Chairman Phelps: Subject you to license revocation or whatever so I think there's some basis for assuming that that would be accurately maintained, is the point I'm trying to make.

JPatomson: Correct. Mr. Phelps it also goes to the aircraft maintenance requirements and things of that nature. So that hour log is multi-faceted in its use and necessity to be accurate.

JPetree: And I would caution whoever is the enforcing body on this condition that there are a lot of helicopters that operate in that area. I can't tell you how many of them I get credit for when I'm not even there. You may have people say well, I'm flying a helicopter. They got to make sure that it's me flying it.

DBonessi: Well that's just it. I'm trying to think of our guys and what's, you know...

JPetree: Well I promise that I'm going to keep good records and they are available for anybody to review at anytime.

TEngel: Before you bought that helicopter would you say that many helicopters were flown over Crooked Creek where I live?

JPetree: And they continue. I see them a lot. As a matter of fact I landed my helicopter, walked in my shop and heard another big one coming and it was MAMA flying right over the front of the building. I know there are people that say, 'you took off three times the other day'. I said, "nope, just once". But it was other helicopters in the area.

JCrafton: I would think that his compliance with that part of the conditions would only come into question if there were complaints. Because I don't think the county has anybody to go out there and count the...

DBonessi: That's what I'm saying. I just, you know we've talked about these types of things and how you police them. I think we need to make sure that we put something that's reasonable for both the applicant and the county to adhere to.

JPatomson: Well Mr. Bonessi, I think the applicant would be willing to submit copies of his flight logs to the board or to Toby at request, if that's a condition that needs to be applied, we'd be happy to.

JTelker: I have a question. Would it be better to put in some kind of ground lighting if you're going to fly at night?

Associate County Attorney SZambon: Ms. Telker, you can't ask questions because you're an Alternate.

JTelker: I'm sorry.

Associate County Attorney SZambon: So the board should disregard her question and the applicant doesn't have to answer it. And it's objected to and removed from the record.

JTelker: Sorry.

DBonessi: I guess the only other thing I – the question I have is maybe more of a housekeeping thing, I mean we've run into it in the past. The special use permit, the property owners and the helicopter owners, I mean is that all in line Sarah? I remember we had a problem where we had somebody make an application. A special use permit was granted and then it was found out that that person or that entity didn't own the property. It was a company of his. Do you remember that case?

Associate County Attorney SZambon: I do not remember that case however the application for this is, I believe it's in the trust, but I believe he signed it.

JPetree: Yes, I signed it.

Associate County Attorney SZambon: Yes, he signed it and Mr. Patomson signed it. So regarding that particular issue I don't foresee a problem.

DBonessi: Ok. It sort of helps to be clear.

Associate County Attorney SZambon: That was more of a question when there were – I think there were a bunch of people on the trust and it was just some person who wasn't. I mean Mr. Petree's name is in the name of the trust.

Chairman Phelps: Jim did you have another question?

JCrafton: No.

Chairman Phelps: Tony?

TEngel: No.

Chairman Phelps: Ann?

APouch: No.

Chairman Phelps: No, we're fine? Refresh my memory, I failed to make a note. And you said the servicing of the helicopter, you do that on site there in your building?

JPetree: We do some. Most of the time I take it to Bell Service Center, where they do any real maintenance. But we do have certain little glitches or maybe somebody will come in there and work on it.

Chairman Phelps: But any storage of let's say oils or anything of that nature...

JPetree: No.

Chairman Phelps: Of that nature would be...

JPetree: I mean other than a quart of oil.

Chairman Phelps: Further questions?

TEngel: In servicing it would they be starting it up and be running it for a while and shutting it down and starting it?

JPetree: There could be a time where you would ground run it. It's a relatively quiet operation.

TEngel: It's not fast?

JPetree: Not fast. And there's times like when you – I wash it maybe like once a month – wash the engine and then you ground run it.

TEngel: To warm it up?

JPetree: Right. But that's a very quiet operation. It's not loud.

Chairman Phelps: Do you have any witnesses that you wanted to call?

JPatomson: I do but I just want to ask Mr. Petree two redirect questions. You already maintain lubricants, solvents, fuel and other things of that nature for your racing business on the property?

JPetree: Yes, essentially the same things.

JPatomson: Basically the same stuff you would use for the helicopter?

JPetree: Yes.

JPatomson: Ok. I do have one other witness that I'd like to present. Actually two other witnesses it that'd be ok. You can take a seat Andy. Ms. Ward can you state your name for the board please?

AWard: Annette Ward.

JPatomson: And can you tell the board your address?

AWard: 129 Diamond Mine Lane.

JPatomson: And how long have you resided at that address?

AWard: Twenty five years.

Ok. And Ms. Ward I'm going to point you to a map which is the zoomed in version of Mr. Petree's property. And for the board reference, I don't know if you can see it, but I'm talking about this picture. Now you see Mr. Petree's building with the 264 on top of it?

AWard: Yes.

JPatomson: There's a road running in between your property and his property that's Diamond Mine Lane.

AWard: Yes.

JPatomson: Can you point on that map where your house sits?

AWard: Ok.

JPatomson: Where the 288 is?

AWard: Yes.

JPatomson: So you are the closest house to Mr. Petree's property, is that correct?

AWard: Yes.

JPatomson: You're real close to where the helicopter takes off and lands, is that correct?

AWard: Yes.

JPatomson: And do you have any negative experience with Mr. Petree coming in and out of that property with that helicopter?

AWard: I have not.

JPatomson: And has he woken you up in the middle of the night flying it?

AWard: No.

JPatomson: Has he scared you or your family by coming in and out of the property?

AWard: No.

Do you have any concerns, safety concerns about him flying that helicopter out there?

AWard: No.

JPatomson: And do you have any concerns about him devaluing your property by flying the helicopter in and out of there?

AWard: No. He's been very respectful and considerate.

JPatomson: Has he gone out of his way to make sure you're happy with what's going on out there?

AWard: I think so.

JPatomson: And are you aware of other helicopters flying in that area?

AWard: Yes.

JPatomson: Certainly more than Mr. Petree's.

AWard: Very loud.

JPatomson: But not Mr. Petree's helicopter?

AWard: No.

JPatomson: Ok. I have no further questions for Ms. Ward.

Chairman Phelps: Questions from the board? Thank you.

JPatomson: Thank you. I'd also like to call Ken Stubbs. Mr. Stubbs can you state your name for the record please?

KStubbs: My name is Kenneth Stubbs and I live in Hendersonville, North Carolina.

JPatomson: And how long have you been a resident of Hendersonville?

KStubbs: For twenty two years.

JPatomson: Mr. Stubbs what do you do for a living?

KStubbs: I'm in the construction business.

JPatomson: Ok. And are you also a private pilot?

KStubbs: I am an airport transport rated pilot, yes, and a licensed aircraft mechanic.

JPatomson: And so you have a general knowledge of people who are flying in and around Hendersonville and the Crab Creek area?

KStubbs: Yes, sure do.

JPatomson: And are there other helicopters flying in the Crab Creek area?

KStubbs: Yes. There's continually – the Crab Creek area is on a low side of a mountain, or basically in a valley where the mountains are a little higher. So it affords a routing from Transylvania County back down to Hendersonville without being on top of the mountains and the winds and all. So you see a lot of helicopter traffic not only in their area but east of Hendersonville. I mean there's a lot of helicopters operate in that area.

JPatomson: Ok. And do you have any knowledge of whether helicopters are safer than motor vehicles?

KStubbs: Helicopters, aircraft in general are considerably safer. We've had a lot of news here lately that everybody looks at but you can have a small aircraft ground loop and everybody walk away in California and it's all over the national news. That's why we get such a poor representation about it but helicopter and aircraft travel is by far is one of the safest means of transportation.

JPatomson: No further questions from Mr. Stubbs.

KStubbs: Thank you.

Chairman Phelps: Questions from the board?

JPatomson: Hold on a second.

KStubbs: Thank you.

JPatomson: The applicant will rest at this point.

Chairman Phelps: We really had no one else with standing.

Associate County Attorney SZambon: There was no other parties found with standing, Mr. Chairman.

Chairman Phelps: That could only be called as witnesses.

Associate County Attorney SZambon: Yes Mr. Chairman. And staff doesn't have any rebuttal.

Chairman Phelps: No rebuttal evidence from the staff?

Associate County Attorney SZambon: No rebuttal from staff.

Chairman Phelps: If nothing else from you and Toby? Any further questions before we move on? Would you like to make any kind of closing remark?

JPatomson: I would sir. Members of the board I think that testimony that's been provided to you today has been more than demonstrative of the fact that Mr. Petree's proposed use of this property as a private heliport meets all three of the general requirements in the Land Development Code. His use of the helicopter on the property will not negatively affect the public health, safety and welfare. It will not injure the value of the property around him. He is not altered his property in any way. From time to time he will pull a helicopter in and out of a building that has been there for a number of years and take off and land. But he will not alter his property in any other way. The use will be in harmony with the surrounding area. This is a very diverse area with rural, residential, commercial property that has been testified to today by Mr. Petree, Ms. Ward, and Mr. Stubbs there are already a large

number of rotary wing aircraft flying in this valley for this specific purpose. It's a good place to fly. Mr. Petree's additional small private helicopter, as it has been testified to an hour a month, is not going to harm the harmony of that neighborhood. We feel like there's no opposition evidence presented to the board. We feel that the overwhelming testimony that has been provided to you to assist you in reaching a determination that you should grant Mr. Petree the right to do this. He's been more than willing to provide evidence to you in terms of his compliance, his flight logs if necessary. And we would ask that you grant that relief today. Thank you.

Chairman Phelps: Closing remarks from staff?

Associate County Attorney SZambon: Mr. Chairman I think from staff's point of view, we don't have a problem with issuing Mr. Petree a special use permit based on conditions suggested by staff and any others recommended by this board.

Chairman Phelps: Ok then I guess that gets us to the point where we reaching discussion, a vote, and decision. We can either vote today directing staff to bring back finding of fact and conclusions consistent with the decision to a future meeting of the board for our review, or we can continue or discussion and decision until a later date. I remind the board however, that the board must issue a written decision within 45 days of the conclusion of the hearing. I now need a motion to go out of public hearing.

TEngel: I so motion.

Chairman Phelps: Tony.

DBonessi: I second.

Chairman Phelps: And Dean seconds. All in favor, I. Alright, we are now out of public hearing and into our board discussion, closed board discussion. Comments from members of the board?

APouch: I see no problem with it, if we attach the...

JCrafton: Mr. Chairman the only question I have is just for clarification – this special use permit is only to be allocated to the address of 264 Diamond Mine Lane, is that correct?

Associate County Attorney SZambon: That would be correct.

Chairman Phelps: And it will go with the property, the special use permit?

Associate County Attorney SZambon: It will go with the project.

Chairman Phelps: The project?

Associate County Attorney SZambon: This would be the only property given a special use for a heliport in Hender - for Mr. Petree's use in Henderson County. It would go with the property.

TEngel: And with those restrictions, if we put these restrictions on. The conditions that are listed here, and they would be part of that.

Associate County Attorney SZambon: Yes, those would travel with the special use permit.

APouch: Can we use this seven instead of this seven or add to it?

Associate County Attorney SZambon: Yes, use the replacement seven instead of the seven in your packets, if this board so chose.

Chairman Phelps: Ok. So we would use the new seven. Also I think in item two we should clarify that by saying 'twenty round trips per month' so that there's no misunderstanding as to what is intended there. Any other comments, or questions, or opinions?

DBonessi: I think Toby did a good job in outlining what they want to do.

TEngel: They've restricted it enough. I don't think we should restrict it any more than these particular conditions. Sounds like we're ready to vote.

Chairman Phelps: It sounds like that so I will entertain a motion regarding this case at this time. Do we follow that format for the motion?

JCrafton: You mean the script?

Chairman Phelps: That yellow - I don't see that script in my book. Do you have one?

Associate County Attorney SZambon: I don't have one Mr. Chairman. I'm going through Karen Ann's information, but the motion depending on this board's will does not – does only really needs to say, 'I make a motion to approve the special use permit for the applicant's property with the conditions as discussed.

Chairman Phelps: Which would include the new section seven and the addition of 'round trips' to paragraph two.

Associate County Attorney SZambon: That's all I have, yes, Mr. Chairman unless this board adds other conditions.

TEngel: I make the motion as she phrased it.

APouch: I second it.

Chairman Phelps: Motion is made and second. Is there any discussion on the motion? If not shall we come to a vote? All those in favor please say I.

Chairman Phelps: I

JCrafton: I

APouch: I

TEngel: I

DBonessi: I

Chairman Phelps: Opposed, no. Unanimous decision. Mr. Petree would you please come back to the podium? As you heard the board has approved your application for a special use permit.

JPetree: Thank you.

Chairman Phelps: I would encourage you to continue your efforts to be a good neighbor. Realize that we are becoming more and more populate and need to interact with each other so at this time Ms. Zambon will tell you next as to what happens as far as the order.

Associate County Attorney SZambon: Mr. Chairman I will come back to the board at its March meeting. Toby do you know what the date of the March meeting is?

March 25th.

Associate County Attorney SZambon: March 25th meeting with the draft order which I can forward before hand to Mr. Patomson if this board would like so that he can read it over to make sure that the applicant's in agreement. And then it will come before this board for a vote and then at such time you will have your special use permit.

JPetree: I'd like to thank you very much. Thank you to all the board members for considering this and approving it and I promise to fly neighborly. Thank you.

Chairman Phelps: Thank you.

JPatomson: Thank you.

Chairman Phelps: And you do want to see the advanced copy, I assume?

JPatomson: I do sir. Thank you.

Chairman Phelps: Thank you. Ok I guess, do we need a motion to close the hearing?

Associate County Attorney SZambon: Yes Mr. Chairman.

TEngel: So moved.

JCrafton: Second.

Chairman Phelps: And Jim second. All in favor, I.

All board members were in favor of closing the hearing.

Chairman Phelps: Ok, that takes care of the case. Do we have any other business to come before the board at this time?

Zoning Administrator TLinville: You have before you a copy of the Minimum Housing Code and as far as I know that's the only discussion item we have for next month.

Chairman Phelps: This will be next month's meeting?

Zoning Administrator TLinville: Yes. The Planning Department is going to present to you what that ordinance means and says and what you'll have to consider if you're hearing an appeal. I don't have any – there won't be any cases because we haven't reviewed any site plans. The only, well Mr. – motor cross track – Mr. Bennett could possibly submit in time. We've got five days because we don't have to review his site plan. It's already been reviewed.

Associate County Attorney SZambon: But to submit a new application, not to appeal.

Zoning Administrator TLinville: Right. He's got to reapply for a special use permit.

Chairman Phelps: Was there anything about additional training if we didn't have a case material?

Associate County Attorney SZambon: I had offered to this board if there was any additional training that you would like - you wanted a refresher on quasi-judicial proceedings - if there are particularly legal issues that you wanted to go over – standing, hearsay, any of that stuff, I'd be more than willing to do that at this hearing. That's why we put the Minimum Housing Code on there as training in the information session. So if there's additional topics that this board would like to cover I'm more than willing to do that.

Chairman Phelps: Toby, did you check to see about that class, you know, that we went to over a year ago? Any schedule for that?

Zoning Administrator TLinville: I did a little bit. Let's see, I talked to them. I'm trying to remember now. It's been too long since I talked to them. They have talked about it but they haven't scheduled anything yet. There've been so many folks that froze their training budget that they haven't scheduled one for the spring so I'll check back with them. And they said that if they did they would forward it. Of course they forward it out to everyone. I'll keep my ears open. The Council of Government was not proposing anything.

Chairman Phelps: So we have the Minimum Housing Code training and if there's no other case that will be it unless someone of the board would like to request additional training that Sarah could prepare. If not...

DBonessi: I think that if we did do something and decide to turn it into a training session try to invite all the Alternates. Because I mean that's...

Chairman Phelps: Yes, please make a note. That would be a good idea to let them hear as well.

Chairman Phelps: If there's no further business I'll entertain a motion we adjourn.

DBonessi: I motion.

TEngel: Second.

Chairman Phelps: All in favor, I. Opposed, no.

All board members were in favor of adjourning the meeting.

Chairman Jim Phelps

Karen Ann Antonucci, Secretary