

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled March meeting on Wednesday, March 26, 2008, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Vice-chairman, Jim Crafton, Tony Engel, Ann Pouch, Alternate Board Member Tedd Pearce, Zoning Administrator Toby Linville, and Secretary to the Board Karen Ann Antonucci. Associate County Attorney Sarah Zambon arrived at the meeting at 4:06 PM. Chairman Bonessi was not in attendance.

Vice Chairman Phelps called the meeting to order at 4:03 PM. Vice Chairman Phelps welcomed everyone. The Board members introduced themselves to the meeting attendees.

Vice Chairman Phelps asked if anyone wanted to speak at the meeting that they sign in, if they had not already done so.

Vice Chairman Phelps asked the Board if there were any corrections, additions or comments to the draft February 27<sup>th</sup> minutes. There were no changes or corrections noted. Vice Chairman Phelps asked for a motion to accept and approve the minutes. Jim Crafton made first motion. Tedd Pearce seconded. All Board members were in favor of approving the minutes. Vice Chairman Phelps signed the minutes in place of Chairman Bonessi.

Vice Chairman Phelps indicated that the first case to be heard was: Case SUP-08-01 Poplar Top Mobile Home Park, Roy P. Dalton. He asked for a motion to open the Public Hearing. Tedd Pearce made first motion. Tony Engel seconded. All Board members were in favor, indicated by stating "I".

**Case SUP-08-01, Poplar Top Mobile Home Park, Roy P. Dalton**, is requesting a special use permit for a Mobile Home Park which is required in the Residential 3 zoning district and is defined by S.R. 1.13 in the Land Development Code. Property is located on approximately 16.67 acres of land (**PIN 0611750241**) located at Poplar Top Lane, Edneyville, NC.

Vice Chair Phelps asked Zoning Administrator Toby Linville to present his material first.

Zoning Administrator TLinville: The first item was a special use permit for a manufactured home park, the second attachment was a memo to the Technical Review Committee that outlined the case. It had been through the Technical Review Committee and has received their approval. All of the minimum standards of the supplemental requirements have been met. The next item was the standards for a Manufactured Home Park from the Land Development Code and in the R2 MH district it requires a special use permit. Any more than 3 homes is considered a Manufactured Home Park. On the next page are the road standards and the chart there is based on how many lots defines what type of roadway has to be in the park. On the next page are the parking requirements, water and sewer provisions. The next page is on solid waste collection, fire protection requirements and buffering. The next page talks about individual homes and the density. The density in the ordinance is based off of the same zoning density, so this tract is approximately 13 acres and this is R3, is that correct? I said R2 MH, but I believe it is R3. Yes. So the density is the same as it is for single family dwellings. It is 1 ½ acres per dwelling, so the total number could be approximately 9 and he's only requesting 6. Finally, signage and lighting. The next page is a zoning report from GIS that shows it's a vacant lot. It was an apple orchard. There is one existing home there that will remain. The acreage says that it is 17.3, but there has been a subdivision. You'll see 2127 Bald Rock Road at the top, that's been subdivided out so it's not quite as large as the acreage shows. The next page is another aerial. Then following is the major site plan and you've got another one at your desk, a larger one so that you can read it. I will entertain any questions you have.

Vice Chair Phelps: Is there a recommendation on this?

Zoning Administrator TLinville: The Technical Review Committee approved the major site plan.

Vice Chair Phelps: Do you have a question Sarah?

Associate County Attorney SZambon: I just wanted to check with Toby about the Notice Waiver for Clifford Vance Dalton.

Zoning Administrator TLinville: I met with him and he has the signed Waiver of Notice.

TPearce: Mostly for the sake of everyone here, the special use permit is a list of conditions that if the applicant meets all of the requirements it signifies that it is allowable and is in, I guess from Sarah's stand point – what latitude, if any do we have if someone meets all the requirements in the special use permit? I mean is it an automatic approval?

Associate County Attorney SZambon: I think that they have to meet all the Supplemental Requirements and that's what Toby was talking about. I think the cheat sheets that I had prepared for this today for special use permit, those are the factors that you should consider. They are in the front pocket of your binder. And those are exactly right from the Land Development Code and those are the things you should consider in determining whether or not a special use permit is appropriate. Some of them are the type of use, the size of use inside the property, health, safety and welfare, injuring property values or improvements in the area, harmony with the surrounding area. And those are the kinds of things this Board has to determine in addition to just meeting the supplemental requirements. The supplemental requirements are a preliminary base line and the other things are what this Board requires and that's why we do a special use permit.

TPearce: Toby, from your stand point is staff saying that it does comply with all the local, state and federal laws, statues, ordinances and regulations?

Zoning Administrator TLinville: Yes, as presented.

TPearce: Does it meet the Comprehensive Land Use Plan, etc.?

Zoning Administrator TLinville: It does.

JCrafton: Referenced the chart of roads in the Manufactured Home Park Standards. I assume they fell under the category of MHP service is from 1 to 24 units.

Zoning Administrator TLinville: It does.

JCrafton: And I gather by you saying they met all the standards, you are saying the roads that service that land meet these standards as well in case any questions should arise in regard to the road being able to handle traffic? The road meets the standards?

Zoning Administrator TLinville: That road would be classified as the private corridor in the second column on the chart – the 1 to 24 in a private corridor. This will be a private roadway.

JCrafton: So the minimum road width is actually 2 feet wider. But in any case the roads in the area do meet these standards?

Zoning Administrator TLinville: Yes, as is drawn on the site plan.

Associate County Attorney SZambon: Mr. Chairman, have all the witnesses and all testimony been sworn in?

Vice Chair Phelps: No, but everyone was asked to sign in.

Associate County Attorney SZambon: Was Toby Linville sworn in?

Vice Chair Phelps: He has not been.

Vice Chair Phelps: Anyone who signed up come to the podium.

Zoning Administrator TLinville: The Board needs to see who has standing who wished to speak.

Vice Chair Phelps: Could Toby and anyone else that signed in to come to the podium to state their name and address so the Board could determine if they have standing.

The first person was Dr. Luis DeLaVega from Bald Rock Road on Luna Trail across from the property.

The second person was Jim Barnette a real estate broker and appraiser. Jason Patomson, attorney for Mr. DeLaVega said Mr. Barnette was a witness for Mr. DeLaVega. Mr. Patomson also stated that he would be presenting testimony today in opposition of the proposed special use permit.

Zoning Administrator TLinville: He's an attorney. That man will need to give his name into the record as well.

The third person was Jason Patomson. He stated he was an attorney in Henderson County and was there representing Mr. DeLaVega in opposition of the special use permit that has been requested by Mr. Dalton.

Associate County Attorney SZambon: Mr. Patomson did not need to be sworn in unless he was giving factual evidence.

JPatomson: I am not here to present factual evidence.

Associate County Attorney SZambon: And we don't have to debate whether or not Mr. Barnette has standing since he is being called as a witness by someone who is determined to have standing.

RDalton: I have a question. Do I need to sign in?

Vice Chair Phelps: Yes, you need to sign in, please and you'll need to be sworn in because you're the applicant. There were no objections from the Board as to the parties that needed to be sworn in.

Vice Chair Phelps: Toby Linville, Mr. Dalton and Mr. DeLaVega and anyone who is planning to give any testimony will come up to the podium at this time and be sworn in.

TPearce: Mr. Barnette needs to be sworn in also.

Sworn in by Secretary to the Board Karen Ann Antonucci were Zoning Administrator Toby Linville, Mr. Roy P. Dalton, Mr. Luis DeLaVega, and Mr. Jim Barnette.

Associate County Attorney SZambon: Mr. Chairman the witnesses need to state their names and addresses for the record when they come to the podium to speak.

Vice Chair Phelps: Are there any further questions for Toby?

Zoning Administrator TLinville: What do I need to do to enter my testimony into evidence?

TPearce: If there were no objections from anyone with standing, I would move that the earlier comments Toby made be accepted into record as sworn testimony.

Vice Chair Phelps: Were there any objections to having Toby's material and comments being accepted as evidence?

Vice Chairman Phelps: There being no objections so ordered.

Associate County Attorney SZambon: To enter into evidence Toby you need to say, "I'd like to enter the following documents into evidence."

Zoning Administrator TLinville said, I would like to enter the information in our agenda and the other items into evidence.

APouch: Has it been determined how many mobile homes would be on the piece of property?

Several of the Board members responded, "6."

Zoning Administrator TLinville: There is 1 existing home there so 7 total on the site, but 6 for this request.

Vice Chair Phelps: Any more questions for Mr. Linville? There were no further questions from the Board for Zoning Administrator Toby Linville.

JPatomson: Mr. Linville, I'd like to direct your attention to the site plan you referenced and also to SR 1.13 which relates to the Manufactured Home Parks. Mr. Linville I believe your testimony to the board earlier was that Table 2.13 required the road that has been described on the site plan as Poplar Top Lane to be 20 feet in width. Is that correct?

Zoning Administrator TLinville: Yes, if it's a private right-of-way.

JPatomson: OK. And would your testimony be today that Poplar Top Lane is a right-of-way?

Zoning Administrator TLinville: said, "According to the site plan it was measured to be 18 feet so maybe it was determined to be a service road by the Technical Review Committee."

JPatomson: For the sake of argument that it was a private right-of-way corridor, and would then be required to be 20 feet in width would that be your testimony that if it is a private right-of-way corridor it would have to be 20 feet in width.

Zoning Administrator TLinville: According to the table in the Land Development Code.

JPatomson: So if that were the case then the site plan would not be able to meet the technical requirements as required by SR 1.13. Is that correct?

Zoning Administrator TLinville: That would be correct.

JPatomson: Also assuming for the sake of argument Poplar Top Lane is a service road instead of a private road right-of-way corridor that in so far that Poplar Top Lane is 18 feet into the property, that portion of the road would comply with SR 1.13. Would that be correct?

Zoning Administrator TLinville: Can you restate the question?

JPatomson: Assuming that Poplar Top Lane is a service road instead of a right-of-way corridor, the portion of that road that is 18 feet would actually comply?

Zoning Administrator TLinville: Yes.

JPatomson: Now there is a portion of Poplar Top Lane, and my direction to you on the site plan would be where the basin is located prior to the point of reaching the dumpsters on the way to what has been labeled lot #6, is it your understanding that that road decreases to 10 feet in width?

Zoning Administrator TLinville: Yes and it is considered a driveway because it only serves one dwelling. Under the code, 10 foot is all that is required.

JPatomson: Can I also direct your attention to what has been labeled as the existing lot #7 and there is some type of unimproved surface, it looks like it is drawn to that with no indication on there as to how lot #7 is to be accessed.

Zoning Administrator TLinville: That is existing, that's an existing home and driveway.

JPatomson: Is that existing home not subject, since it's not included in the proposed mobile home park is that not subject to the same regulations?

Zoning Administrator TLinville: That is not included in the same park, it's just included on the same site.

JPatomson: OK. Those are all the questions I had for Mr. Linville.

TPearce: Is it a stick built home?

Zoning Administrator TLinville: No, it is a manufactured home.

Vice Chair Phelps: Are there any more questions from the Board? If not, I would like the applicant to make a presentation at this point.

Vice Chair Phelps: Mr. Dalton, would you like to make a presentation at this point?

RDalton: If it was allowed I would rather wait to hear the opposition and respond.

Associate County Attorney SZambon: It would be ok, if the other party did not object.

JPatomson: We would object on the basis of the rules of procedure in a quasi-judicial hearing that the applicant has the burden establishing the opposition in making...

TPearce: Mr. Dalton would still be given a chance to rebut anything.

JPatomson: We would prefer that standing rules of quasi-judicial proceeding be adhered to and he present his case.

Vice Chair Phelps: Mr. Dalton, you will have an opportunity to rebut after the opposition is heard. Please make your preliminary presentation at that time. Please identify yourself and state your address at the podium.

RDalton: I am Roy Dalton on 3225 Summer Road. I really don't have much to say right at this point. I've owned this property since 1980. I grew apples most of my life and it got to where I wasn't feasible to do that any more it wasn't profitable. And so you know we've got property taxes here. I've got to either do something to help with this, to make a use of this property or sell it and I don't want to sell it. Like I said I've had it since 1980. And eventually you know you saw in there where it said 'Phase II'. I sold the property where I live right now. I have the right to live there for a couple more years and then I intend to move to this same property. It's not like I'm going to put something in there that's going to make something that nobody wouldn't want to live there. I'm not putting in a trash park. It's going to be a clean place. I've got two other parks in the County. I sold one of them in January. I still own the other one. I have no problem with the neighbors around it. It's not like it's going to be a slum park. It's going to be a clean place. It's not going to be trashed and I'm not doing anything to devalue anybody else's property. This is the same type housing that's in that area. It's not like I'm going into a place where there isn't any mobile homes that's going to devalue. And I guess right now that's all I got to say.

Vice Chair Phelps: Does the Board have questions of Mr. Dalton? Mr. Dalton please stay at the podium as the Board may have questions.

TPearce: Part of this applies to him and part of this applies to Mr. Dalton, Toby and Mr. Dalton both. You know the attorney was questioning whether this was a 20 foot road, whether this needed to be a 20 foot service road and I guess I need to ask both him and - Mr. Dalton and Toby both, which one is it?

Zoning Administrator TLinville: I was looking for a definition on the Land Development Code. I don't see one for which is which but this plan was drawn as a service corridor and it meets the standards as laid out in the table. You'll see just above the scale that the mobile home park service road details is a greater detail of the way that road has to be built so, the surveyor may have spoken to Planning, the sub-division administrator and that been the determination. I didn't make that determination. And I can't find the definition, but if it is a service road it meets those standards.

TPearce: said to Associate County Attorney Sarah Zambon, "Well, can you see - I think it has to be determined - if we don't have a definition for service road I personally think we have a hard time saying it's a service road.

TPearce: Mr. Dalton do you have any information that you can help us with on that?

RDalton: I don't. I do have the engineer here that drew it up if that would be a help.

TPearce: Do we have to have Mr., the engineer sworn in?

Associate County Attorney SZambon: The engineer would have to be sworn in.

TPearce: asked the engineer, Do you have any information that would help us?

The engineer said, It stands to reason...

JCrafton: He can't speak until he's been sworn in.

TPearce: Yeah, because if he has any information he can share with us he needs to get sworn in.

Associate County Attorney SZambon: There is no definition in the definition section for service road in the Land Development Code that I can find.

Vice Chair Phelps: Sir, will you come forward to be sworn in and state your name and address?

The engineer stated his name as Steven Waggoner and said I'm not an engineer, just a surveyor.

Secretary to the Board KAAntonucci swore in Mr. Waggoner. He put his address on the 'sign in sheet' as 545 Old Spartanburg Road.

TPearce: Mr. Chairman I would recommend that legal staff, before we go any further, so this stuff gets forgotten, that some amendment or some definition an addition to the definition be made to define a mobile home park service road. It looks to me an LDC mistake that we just didn't have a definition. Usually we have a definition for every road you find.

Associate County Attorney SZambon: Yeah, there's a variety of roads that are defined, but local mobile home service road is not defined. Local road, subdivision – so I can, if it is the pleasure of the Board, I can talk to Planning about making that change in a further amendment.

Vice Chair Phelps: Good, please do.

JCrafton: Well, but in terms of our deliberation today we can only go with what is before us in the ordinance. And in the SR 1.13 it simply says, "Road Construction Standards, Roads should be the responsibility of the mobile home park applicant. The road construction standards shall be determined by road classification as noted in table 2.13 and so...

TPearce: Yeah, but part of that table is mobile home park service and mobile home private right-of-way corridor – each one are defined, but there's nothing to define what a mobile home park service is. So how do we know – when do you use that road?

Associate County Attorney SZambon: Mr. Chairman if I may interject, but again it's up to this Board, but I think it might be more appropriate to hear - this conversation might be more appropriate to have during the Board's discussion after all the applicants have presented. Just because, maybe I can clarify it for you, or to move it along, too.

Vice Chair Phelps: OK.

TPearce: Well my question to Mr. Waggoner would be: Were you given direction to ascertain that this was a service road, or how did you come to the conclusion that this would be a service road rather than a corridor or a private right-of-way?

SWaggoner: The right-of-way is dedicated and accepted by whoever was going to own the whole park. There'll be no subdivision actually going on so this road will service his trailer park, you know, all the homes there. It's not really a private right-of-way.

JCrafton: Are you referring to it as a service road just as a generic term? Do you call it a service road or are you calling it a service road to comply with a definition as you understand it in the code? How...

SWaggoner: You can look at it up in the Dictionary. We did the best thing we could, the best plan we could and it was accepted by Toby and the Technical Review Committee. They didn't have a problem with it.

TPearce: Well then I guess when we get to discussion time we just need to look up the definition of a right-of-way and I believe that Mr. Waggoner's – my initial thought is Mr. Waggoner's assumptions about differences being that there's no deeded property would probably have some bearing on that.

Vice Chair Phelps: Are there any other questions for this witness? There were no further questions from the Board.

Vice Chair Phelps: Mr. Dalton, were you finished with your presentation?

RDalton: Yes.

JPatomson: Mr. Dalton, I believe the testimony today has summarized briefly around what you want to do with this piece of property. What I intend to do was kind of walk you through your special use permit and also through the site plan and ask you some questions, if you'll allow me to do that. The Board has indicated today that you are bound by the R3 density requirements. Do you understand that?

RDalton: Sure do.

JPatomson: How many total acres is the subject site you intend to develop?

RDalton: I believe, I'm not positive, I think it's 16 acres. I believe that's what's left. I sold a little bit off to a guy.

JPatomson: And you have an existing structure which you labeled as #7 on your site plan.

RDalton: Right it's existing, there is a private driveway going to it. It has been existing.

JPatomson: I'm going to place the site plan here before you as we're talking. So in addition to #7 that you have on there you're going to place another 6 manufactured homes.

RDalton: The 6 are located in the park.

JPatomson: So that will be a total of 7 structures on 16 acres.

RDalton: That is correct.

JPatomson: Do you have any futures plans to put anymore structures on this property?

RDalton: The only future plans I have are to move there myself, which at that time I would put one over in this area somewhere.

JPatomson: Which would be a total of 8?

RDalton: Right.

JPatomson: 8 units?

RDalton: That's all.

JPatomson: Let's talk a little bit about the septic field. Can you tell me where you intend to locate the septic field on the property?

RDalton: That would be totally up to the Environmental Department in the County, because I get permits from them.

JPatomson: You understand that when you make a permit to the County you have to provide them with the proposed location of where you are going to put the septic.

RDalton: OK, these will go behind them, this one will be here, this one here and here and here so we don't have to have pump systems.

JPatomson: And your intention is to put the septic system down hill. And in relation to #6 your intention is to put a septic system down hill in close proximity to #6?

RDalton: If that meets requirements, yes.

JPatomson: Do you have any idea how far #6 is from your proposed well site?

RDalton: I haven't had a well site yet. There's one drawn in proposed, I've got 16 acres. I can put that well anywhere on this property. So that septic will meet the standards for the setbacks for a community well. I think it's a hundred feet you have to have off of it, I believe, but I'm not positive. I have plenty of ample room I can be 200 to 300 feet if necessary.

JPatomson: Is the well as indicated on the site plan a different well than the well...

RDalton: There is no well. Once they do the septic permits the County will tell me if it's OK or is it not OK. They'll give me the setbacks.

JPatomson: Your testimony today is that the well location that is on the site plan is not where you intend to put it.

RDalton: No, I didn't say that. I said it may be where it goes, but that'll be up to the Environmental Department to tell me if that's OK or if it's not OK under regulations. If it is OK, we'll probably put it there. If it's not OK, I'll discuss it with the County and ask them where do we need to go from here.

JPatomson: Let's talk about the common area. You indicated the location of the common area on the site plan. Is that where you intend to put the common area?

RDalton: Yes.

JPatomson: You've indicated that there's a 1.5 acre allotment for the common area. What is your understanding of the amount of common area you have to have in relation to the total site?

RDalton: Of that I'm not sure, I didn't draw this up.

JPatomson: I would like to direct the Board's attention to SR 1.13, where it refers to the common area. I believe that's in section 13. And I'd also direct Mr. Dalton's attention to the same section. And can you read section 13 for me?

RDalton read: "The Common Area Requirements – the common area shall be provided that is equivalent to 10% of the mobile home area. Common area shall be accessible for the use and enjoyment of mobile home park occupants, located as to be free of traffic hazards and maintained in good condition by the applicant.

JPatomson: So is 1.5 acres 10% of 16 acres?

RDalton: That mobile home is not going to cover 16 acres.

JPatomson: Then how many acres is the mobile home park?

RDalton: The mobile home itself is probably going to cover about, this is a guesstimate, I'm going to say about 2 to 3 acres.

JPatomson: I guess I would object to your response as being non responsive. My question is, is 1.5 acres 10% of 16 acres?

RDalton: No it's not and I'm not using 16 acres.

JPatomson: And does the 1.5 acres that you have developed, does that include the right-of-way that surrounds Bald Rock Road common area?

RDalton: That I'm not sure.

JPatomson: Do you have any type of barrier between Bald Rock Road and the common area or any type of fencing?

RDalton: Not at this time, no.

JPatomson: I'd also like to draw your attention back to section 13 of SR 1.13 and can you read the highlighted portion beginning with the word *located*.

RDalton read: "Located as to be free of traffic hazards and maintained in good condition by the applicant."

JPatomson: And right now your testimony is that you don't have any type of barrier between Bald Rock Road and the common area.

RDalton: Yeah, there is a bank there that there's no way traffic can come up that bank. The bank's about 6 to 8 foot tall.

JPatomson: But there's no fence or anything along those lines.

RDalton: No, I think that if a car could go up a bank, that much bank, a fence ain't going to stop them.



JPatomson: Do you intend to place any roads on the property other than those listed on the site plan?

RDalton: No I don't.

JPatomson: Is there a reason you chose to drop the road on Poplar Top Lane from 18 feet to 10 feet at the site listed as the basin?

RDalton: Because it's – from that point on it only goes to one house and that's called a driveway.

JPatomson: It also services the dumpsters, doesn't it?

RDalton: The dumpster's right there at the turn around area.

JPatomson: Right, but it's 10 feet where the dumpsters not 18 feet. So that won't be used just as a driveway. It's also going to be used for the dumpsters, is that right?

RDalton: Yes, for people to pull in there and dump. Anything accessing the houses is to the requirements.

JPatomson: There'll have to be also dump trucks to empty those dumpsters?

RDalton: No, there's a dumpster truck with which they have no problem with that. There's an area they have room to turn around there, we have a 'T' there that gives them ample room.

JPatomson: I guess my question to you, Mr. Dalton, is that road won't be solely used for that driveway. That road will also be used for the dumpster trucks to come and empty the dumpsters, is that correct?

RDalton: Out to the 'T', no further than the 'T', yes.

JPatomson: But at the 'T' it's 10 feet, not 18 feet?

RDalton: Yep, you're correct.

JPatomson: What are your plans for lot #7 and the existing road that is there? Do you plan to improve that road or are you going to leave it as it is?

RDalton: As is.

JPatomson: Do you have parking spaces for lot #7?

RDalton: Yes I do.

JPatomson: And is that just out in the grass or gravel?

RDalton: It's gravel.

JPatomson: Let's talk about water for a minute if we can. Have you reviewed section 1.13 that governs water in mobile home parks?

RDalton: No I haven't.

JPatomson: So when you came up with a decision to use a community well, how did you arrive at that?

RDalton: It was to my understanding you can use community wells for up to 10. And after that it goes into state requirements and you go under state regulations and I'm not going to be up to 10.

JPatomson: Up to 10 units or 10 people?

RDalton: 10 units.

JPatomson: Would it surprise you to know that the actual number is 15 units?

RDalton: Well, I said 10. I didn't know.

JPatomson: How many people to intend to have living in these units, total?

RDalton: I figure maybe 3,6, 18, possibly 20.

JPatomson: Plus yourself when you eventually move there.

RDalton: Eventually, but I don't have to use this well

JPatomson: Do you intend to use this well after you move out there?

RDalton: At this point I don't know. Depends on how much output I get out of that well and what the requirements are. If I have to drill another well to meet requirements later on, I'll do so.

JPatomson: Do you do any type of testing on the ground water on that property to find out what type of water you have available?

RDalton: No, I haven't.

JPatomson: So I guess in light of problems you might have do you have any type of yield test?

RDalton: Well I can't get a yield test until I get a well. I have to drill the well

JPatomson: You have no well anywhere on the property?

RDalton: No sir, I do not.

JPatomson: So you have no idea what type of water would be available.

RDalton: No all I know is we've got a spring that we're using at this point and at some point I'm going to change and drill a well and make it a safer one.

JPatomson: Do you have someone you're going to hire to operate and manage the well or are you going to do that yourself?

RDalton: Excuse me, I didn't understand

JPatomson: Are you somebody operate and manage the well for you?

RDalton: No, I'll be doing it myself.

JPatomson: Have you managed...

RDalton: Yes I have. Like I said I've got two other parks. Or excuse me I had two other parks. I sold one back in January of this year.

JPatomson: Do you plan to install any additional buffers on the property than those listed on the site plan?

RDalton: All that's in the plans is what I have here in front.

JPatomson: So your answer would be 'no' you don't plan on...

RDalton: At this point no I don't have any. On the opposite side of the road on DeLaVegas' property there is a huge white pine on buffer there – already existing.

JPatomson: But you don't intend to buffer your property between you and DeLaVegas?

RDalton: That's not in the plans at this point.

JPatomson: I understand that the hardwood buffering line is in between you and James Stepp and also up on the north side of the property is already in existence.

RDalton: Right.

JPatomson: Does the site plan include a buffer on Mr. Knowles' property?

RDalton: No it doesn't.

JPatomson: Do you intend to install a buffer?

RDalton: No, he doesn't want one, or do I.

JPatomson: Are you aware the SR 1.13 requires you to buffer the entire property?

RDalton: No I'm not.

JPatomson: Where do you intend to place the community sign for this park?

RDalton: At the entrance.

JPatomson: And how big do you intend for the sign to be?

RDalton: Whatever the requirements are.

JPatomson: And do you know what those requirements are?

RDalton: I'm not sure at this point. I haven't gotten that far yet.

JPatomson: Do you intend to light this sign?

RDalton: No.

JPatomson: What type of lighting do you intend to put in the mobile home park itself?

RDalton: At this point I don't know. I don't have any except for the lighting the mobile homes have on them themselves.

JPatomson: As far as the tenants are concerned, do you have perspective tenants in mind already?

RDalton: No I don't.

JPatomson: Are you intending to own the mobile homes, the manufactured homes that they live in?

RDalton: That's my intent, yes.

JPatomson: Do you intend to do any type of background checks or screening on the tenants that come into this property?

RDalton: Yes, I check my people. I try not to get bad people, it's for my good, plus everybody in the community. I don't want people moving in that are a problem. If they are they're out real quick.

JPatomson: So you check on your people. What do you do to get references on them?

RDalton: References from them and I go back and check where they've been in the past.

JPatomson: Do you do any type of criminal background checks?

RDalton: No, I haven't in the past.

JPatomson: Immigration status?

RDalton: No, I haven't in the past.

JPatomson: What type of leases do you intend to enter into with these tenants?

RDalton: It'll be my place.

JPatomson: Is there a certification on the site plan that indicates you have searched the public record and that the name of the mobile home park meets the standards of the ordinance?

RDalton: It has been checked, yes.

JPatomson: Is that certification on the site plan?

RDalton: No, I don't think it is. But I did go down to Addressing and they ran a check on it and approved it.

JPatomson: Are you aware of section 2 of SR 1.13 requires you to have that certification on the site plan?

RDalton: No, I'm not.

JPatomson: Is there any other trailer or any other type of building on the property other than the existing trailer you've indicated?

RDalton: No other buildings or existing mobile homes.

JPatomson: Have you talked to any of your neighbors prior to filing this special use permit to see what their opinions are on doing this?

RDalton: No, I didn't but out in that area most everybody does what they do and they leave their neighbors alone.

JPatomson: What is the existing surface of the proposed site? Is it dirt, rock, concrete?

RDalton: Where the mobile homes are?

JPatomson: Yes.

RDalton: Oh, it's all dirt and grass right now. It was orcharded up until last fall it was pushed out.

JPatomson: And what type of pads are you going to use for the mobile homes to rest on?

RDalton: Whatever's required for setup by the County.

JPatomson: And do you know what's required for set up?

RDalton: On a single wide mobile home no foundation has to be poured. You have to dig down below frost line put in solid concrete block and come off of that. For a double wide mobile home you have to pour a pad for each fill.

JPatomson: And are you planning on double wide or single wide?

RDalton: No, just single wide at this point.

JPatomson: The driveways of these single wides are going to be made of, what material?

RDalton: Gravel, once I get it going I'd love to pave, but at this point I can't.

JPatomson: So at some point you wouldn't mind paving?

RDalton: Right.

JPatomson: Is it your testimony today that increasing the impervious surfaces on this property will have any effect on drainage to your neighbors?

RDalton: No. Not at all. The water will not run on them.

JPatomson: You indicated that the prior use of the property was for apple orchard.

RDalton: Yes sir.

JPatomson: Have you tested the soil at all since the apple orchard was removed?

RDalton: No I haven't.

JPatomson: Do you have any idea if there is any type of contamination to the soil of fertilizers, pesticides or any thing of that sort?

RDalton: No, I have no idea. I don't know of any orchard that has a problem like that or anybody that does a check on that.

JPatomson: I have no further questions for this witness.

ViceChairPhelps: Are there questions from the Board?

TPearce: While he's there, Phase 2 is included in the total acreage for future development I presume, but still it would not allow his density to increase beyond 11.1 total allowed units is that correct? That's the understanding of all the parties involved?

Nods indicating-yes.

TPearce: I don't know if it's fair to ask, is the Phase, is it fair to assume or request whether or not Phase 2 is planned to be a continuation of the mobile home park. You know, I know we have some limitations on things we can or cannot ask so I didn't want to ask that if it's not allowed.

Associate County Attorney SZambon: I would generally stick to whatever is in the application and the site plan. I mean, you may want to inquire as to Phase 2 but I think that he would have to come back.

TPearce: So that would be a separate application. OK. It says .9 Phase 2 is considered...

Associate County Attorney SZambon: Well, I mean you know you're welcome to inquire into it but I would...

TPearce: Well if it's not something we're supposed then I would prefer not to ask and I'm not used to all your rules here yet.

Vice Chairman Phelps: Anything else? Thank you. You may step down. Is there anyone else to speak on this case?

JPatomson: I'd like to call Mr. DelaVega

Vice Chairman Phelps: Please state your name and address again for the record.

LDelaVega: Luis DelaVega, Bald Rock Road, Luna Trail, Edneyville.

JPatomson: Mr. DelaVega I'd like to ask you one question we haven't talked about yet, but I'd like to direct your attention to SR 1.13 section 7, subsection a, which refers to water. And in the second full sentence I've highlighted. Can you read a sentence for me?

LDelaVega: Yes sir, it says: Individual water wells shall not be permitted in an MHP.

JPatomson: Is it your understanding that he cannot install wells for these manufactured homes?

LDelaVega: Yes sir.

JPatomson: Mr. DelaVega tell the Board your current address?

LDelaVega: Yes, as I stated, Luna Trail, Bald Rock Road, Edneyville, North Carolina

JPatomson: And you're a property owner of and adjoining property as listed on the site plan to the propose subject site?

LDelaVega: Yes sir

JPatomson: And how long have you owned this property?

LDelaVega: About 15 -16 years.

JPatomson: And can you tell me about the type of housing you have on your property?

LDelaVega: Yes sir, we have 3 homes on the property. There's a main home which is a 2,000sq ft 2 story log home. Consisting of 3 bedrooms and 3 bathrooms. A living room, kitchen and a large den with 2 terraces overlooking a private, a long, large private lake.

JPatomson: And you have two other houses.

LDelaVega: 2 other houses. Going up the hill there is a second house, which is a guest house and it's totally separate from the rest. It has it's own entrance and so on. And then at the very top of the hill there is another log home which has 2 bedrooms and 1 ½ baths with an adjacent structure.

JPatomson: And would you consider the housing on your property to be a superior quality to single wide or double wide manufactured homes?

LDelaVega: Certainly sir.

JPatomson: And Mr. Dalton indicated in his testimony that there were no other structures on the property other than what has been listed as the existing structure, #7.

JPatomson gave to the Board copies of 4 photos of the site.

Associate County attorney SZambon: Mr Patomson do you have a copy for evidence?

JPatomson: I'll give this one to you when I'm done if that's OK. Mr. DelaVega can I refer you to the last photograph in the stack that I handed to the Board members labeled at the bottom #22 Subject Property.

LDelaVega: Yes sir

JPatomson: Can you tell me what that picture shows?

LDelaVega: That picture shows a structure that overnight was dumped in front of the entrance to our property about 2 years ago. It was in a burnt out condition. A wooden trailer. It was dumped sideways and it was, I'd say 50% burnt out. And it stayed there for months until there was a complaint and it was taken away. And it's now in another area within that property.

JPatomson: So that trailer's still on Mr. Dalton's property?

LDelaVega: Yes sir.

JPatomson: And would you describe that cabin as an eyesore?

LDelaVega: It's a total eyesore. I walked up to it and looked one of the, like what's left of one of the doors. And there were actually contractual documents half burnt, I remember that clearly, strewn all over the floor and a staircase that ended up against a wall and it was all burnt out.

JPatomson: I'd like to direct your attention to what I think is the second or third photograph which is #17 of the subject property. Is that the existing structure Mr. Dalton has referred to?

LDelaVega: Yes sir.

JPatomson: Is the debris that is in front of that trailer, has it been there for some time?

LDelaVega: Yes sir it's been there for a while and it's almost at the entrance to our property.

JPatomson: Does Mr. Dalton's prior management of this property give you confidence that he's going to have a first-rate mobile home park if he's approved for this use?

LDelaVega: Not at all sir. It makes me somewhat afraid of what's coming.

JPatomson: I'd like to direct your attention to, it's the first photograph, that has been labeled #9 Cliff Dalton. Can you tell me what you see in that picture?

LDelaVega: More trailers. And in some of these are empty and have been empty for a long time. There is garbage strewn all over the place. There is, not in this photograph but behind the trailer on the left, there is an old refrigerator, rusting, a washing machine that's rusting. A shed that's crumbling. The steps going up to one of the trailers - falling apart, like a dump.

JPatomson: And is it your concern that 7 more trailers will look like this, across the street from your property?

LDelaVega: That's correct sir.

JPatomson: And Mr. Dalton had indicated in his testimony that there are already some trailers in the area. Do you view it as being a difference of trailers in the area and a mobile home park in the area?

LDelaVega: Seeing what's been on that property until now, the burnt out trailer and this other one that you just showed me I'm very concerned as to a continuation of this, it's like dump dumping grounds all around.

JPatomson: And do you have any problems with the tenants that live in the trailers around you now?

LDelaVega: Yes sir. We've come to our property and found the residence from these trailers in, we have two lakes. A small one and a large one. We found them sitting on the lake and asked them, "What are you doing here?" And I've had to talk to them in Spanish and they told me, they didn't speak English, so in Spanish they told me they were just cruising around. On other occasions there have been children swimming in our larger lake, the bigger lake. Which is 15 feet deep and it's scary that a child may die in there - drown. I know there are snapper turtles in there. There are water snakes and we, you know, we tell them, "Please leave, this is private property." We have signs all over the place saying 'Private Property - No Trespass.'

JPatomson: And are you concerned that by increasing the tenants in the area you'll have more problems of this sort?

LDelaVega: Yes sir.

JPatomson: And do you have any drainage problems from Mr. Dalton's property to your property as it sits now?

LDelaVega: Yes sir. After the road, I don't know what you call it, the entrance excavation that they did, on the embankment to create the entrance to this new area was put in place, we now have a gorge like a mini gully, about as wide from there to here getting bigger and bigger where there was an embankment before. And it comes from that property over Bald Rock Road straight into our property eating away. Now it's starting to eat away at our private road coming into our property and it's going into our lake.

JPatomson: And is it your feeling that by increasing the impervious surface on Mr. Dalton's that that's going to make the problem worse?

LDelaVega: Yes sir. That's already happening. It's a very steep incline and we're right down hill from it.

JPatomson: And are you concerned that Mr. Dalton's, the approval of his application will negatively effect your property values?

LDelaVega: Yes sir.

JPatomson: And as you testified earlier there would be a difference to the impact of the property value from a mobile home park as opposed to the existing single trailers that are out there.

LDelaVega: Yes sir

JPatomson: And you testified earlier that you have concerns for public safety at the mobile home park as approved.

LDelaVega: Yes, yes sir.

JPatomson: And are you overall concerned about the placement of the septic lines and the water well?

LDelaVega: That's another thing. As we are straight downhill from it, I'm not an engineer, just logic tells me that it's something to watch out for.

JPatomson: And were you so concerned about what's happening here with the proposed use that you flew here from Florida yesterday?

LDelaVega: Yes sir.

JPatomson: I have no further questions for Mr. DelaVega.

TPearce: I would have a question. In as much as pictures are nice, well you gave us four pictures. You have not indicated anything about #26. It does appear that #9 Cliff Dalton and #26 Cliff Dalton, are we to assume that these are not on the subject property?

LDelaVega: That is correct sir. So right around, circling.

JPatomson: And those pictures are presented to give the Board an idea of the negative impact of more trailers being placed on the subject property.

Associate County Attorney SZambon: Do you want to enter those into evidence?

JPatomson: Yes I do. I'd like to offer the pictures that have been handed to the Board into evidence.

APouch: I don't understand, are these pictures of Mr. Dalton's property and his trailers?

TPearce: The first two are not. There are of adjoining that belongs to someone else other than the applicant.

APouch: The other, of the burnt up trailer...

TPearce: The burnt up trailer #22, the last one and #17 is what they are calling the existing structure, I would presume.

APouch: Oh, OK.

TPearce: I think that's the testimony they were giving. Mr. Dalton would have to verify those things, though.

JPatomson: Any other questions of the Board?

Vice Chairman Phelps: Cliff Dalton's property is across the road from this property?

JPatomson: As shown on the site plan, yes sir.

TPearce: That's the property across the road and then adjacent to Mr. DelaVega's, right?

JPatomson: Right.

TEngel: Is that where #9 and #26 is located? On the property across the way?

JPatomson: Correct.

Vice Chairman Phelps: Further questions?

There being no further questions from the Board, Vice Chairman Phelps thanked Mr. DelaVega.

Associate County Attorney SZambon: Mr. Chairman you might want to see if the applicant wants to cross examine him.

Vice Chairman Phelps: Mr. Dalton would you like to cross examine Mr. DelaVega?

RDalton: Yes.

Associate County Attorney SZambon: This would be the time Mr. Dalton can ask Mr. DelaVega any questions.

TPearce: Does he need a copy of the pictures?

RDalton: OK. You agree with this picture, the first picture, #9, that this trailer does not belong to me.

LDelaVega: I said so, sir.

RDalton: So why are you basing what I'm going to do on what another neighbor does? I have no control over that. I have no intention of putting junk like that in there. If you'll look up here I've set a lead on Cyprus to block it from my property myself. I have no intentions of trashing my neighborhood like that. Another question I've got – you said you're concerned with septic systems. How far is your *house* from this property?

LDelaVega: My property is...

RDalton: How far is your *house* from this property where you have water and are using your septic systems and your well, or spring, whichever it is?

LDelaVega: My property is right across the...

RDalton: How far is your *house* and your well and your septic from where I'm going to put this in?

LDelaVega: I'm going to answer your question sir, but I have to start it like this.

RDalton: OK.

LDelaVega: My house, my property is right across the street from yours at a very steep down hill angle. Whatever comes from your property comes straight into my property. In so far as seepage or water that runs off your property. So I can't tell you exactly how many, I don't know. A couple of city blocks. No, cause I have ½ a mile of road inside my property and so a couple of city blocks from Bald Rock Road – from the edge of your property but straight down hill from it. My lake is also in that same down hill direction.

RDalton: Is there not a valley between where I'm going to do this and your house?

LDelaVega: No sir.

RDalton: Yes sir, it goes down the hill to the valley and you start back up.

JPatomson He's not asking a question he's making a statement. Objection. Mr. Dalton had his opportunity to present testimony.

RDalton: There is a stream between us.

LDelaVega: What?

RDalton: There is a stream between us, your property. Where you live and where I'm going to do this.

LDelaVega: There is a stream between my property and yours.

RDalton: So that in turn means there's a valley between what I'm doing, this and where you live?

JPatomson: Once again I object. He's not asking a question.

RDalton: No, I said does this not show a valley.

TPearce: I think it would be proper for him to make testimony that he wants to make. Mr. DelaVega answered there is not a valley in between, we have a right to question that ourselves.

RDalton: Define that mobile home. Yes it is. It doesn't belong to me. I let somebody else park it there and when you complained to the County, I assume you are the one that complained...

LDelaVega: I wasn't the one.

JPatomson: Once again I object. This is not part of the question being asked. He's making testimony.

Vice Chairman Phelps: Please direct questions to - you'll have a chance to ask questions later or rebuttal that you would like to present.

RDalton: Once you made a complaint about this mobile home did I not pull it around so it wouldn't be a problem for you and get it on the back side by the orchard where it wouldn't be in your sight?

LDelaVega: After several months or almost a year of the home being there as an eyesore in front of my property every time I came out, yes sir. You did take it away, but had it there for a year. And going back to your original question what was – why would I think that you would turn that place into a dump? Because you dumped that burnt out mobile home and had it there for almost a year in front of my property. That is one big reason for me to see a red light and say, "My God what's happening here? He had this here for a whole year and didn't move it." First of all you put it there. This burnt out eyesore kept it there for a whole year and you're asking me why am I thinking that you're not going to turn that place into that? You already did.

RDalton: Once I knew it was a problem to you did I not respond and get it out of your property?

LDelaVega: But I wonder sir, why did I have to tell you that it was a problem? You should have known this. This would have been based on your own judgment so I don't trust your judgment now to do the right thing in that park that you want to make there.

RDalton: I understand your thoughts on that. That's all I have right now.

JCrafton: Sir how many months of the year do you live in that house? You live in Florida, I assume you don't live in that house year-round,

I don't sir. I depends. In the summer I may spend three months of the summer there I come up in the fall for two or three weeks. Christmas time two or three weeks. I come up with my two children, my 89 year old mother, my 92 year old father came up here until he died recently, with me. Then I come back at Easter. It's our second home. I've been coming up to North Carolina since I was 6 years old, in 1952 when we befriended the Ned's on Sugar Loaf Road, Redgate's Cottages and through that friendship we kept coming back until we purchased this property here. My father had properties here in the 50's when I was a little boy. In the beginning of the 50's.

JCrafton: so would you say you spend maybe four months out of the year in that house?

LDelaVega: Could be sir.

JCrafton: OK. Thank you.

JPatomson: I'd like to call Mr. William Alexander, if I could.

WAlexander: Ladies and gentlemen, Mr. Patomson and I are associates and he'll be handling most of this and I have to depart. If you'll allow me to make one brief comment, one concern I had on Mr. Dalton's presentation to you. He made the comment that he wasn't dedicating all the property to this MHP application. And in his special use permit application he has to satisfy the residential densities of an R3 zone. So He's got to have 7 units in this MHP he's got to have 7 times 1.5 acres. Well his plat that he submitted to you for his MHP application shows 16.23 acres, but his comment earlier indicated at least to me that he doesn't really intend to apply all of that to mobile home. He responded to Mr. Patomson that it just might be 7 acres. Well it has to be 7 times 1.5 acres and so I think a point of inquiry for you is – are you dedicating this entire property to this 7 unit MHP that you've applied for? If he is not then I think his application is deficient on that base and he would have to have the perimeter boundaries that the special use permit application is going to apply to determined on his plat he submits to you. Because any excess land, it gets included in his MHP special use permit. He can't use that land for other purposes. It's dedicated to the MHP. And so if he intends to make other use of that property he needs to submit a new application with a new plat that shows a much reduced – down to 7 times 1.5. And that's my only comment. Mr. Patomson, I'll hand it over to you.

Associate County Attorney SZambon: Please state your name and your firm.

My name is William Alexander Jr. of the Alexander Law Firm and Mr. Patomson and I are associates. And we represent Mr. DelaVega and his neighbors. Thank you.

JPatomson: I'd like to call Jim Barnette.

Vice Chairman Phelps: Mr. Barnette can you state your name for the Board again and can you state your address please?

JBarnette: Jim Barnette 105 Overlook Terrace, Hendersonville.

JPatomson: And can you state your occupation.

JBarnette: I'm a real estate broker, real estate appraiser.

JPatomson: And how long have you been a broker?

JBarnette: Around 40 years.

JPatomson: And how long have you been an appraiser?

JBarnette: Around 35.

JPatomson: And have you done both of those in Henderson County for some period of time?

JBarnette: Yes.

JPatomson: And do you have appraisal experience with mobile home parks?

JBarnette: Yes I have.

JPatomson: And in your 35 to 40 years of experience in appraising what has been the effect of placing a mobile home park on adjacent property values?



JBarnette: Well what you run into is external or economic obsolescence when you place a mobile home park within a residential area. It has a negative effect on the surrounding properties.

JPatomson: And in your attendance of this hearing today you've heard Mr. Dalton's proposal. You've heard testimony related to his application. Based on that information and your experience what would your professional opinion be on the impact of this mobile home park on the adjacent property values?

JBarnette: Well based on my passed experience in appraising all these mobile home parks I would say it would have a negative effect.

JPatomson: I have no further questions for this witness.

Vice Chairman Phelps: Questions from the Board?

TPearce: Mr. Barnette, have you been to the subject property?

JBarnette: No, I have not been to the subject property.

Have you looked at the adjacent property to this?

JBarnette: No. I have not looked at the adjacent properties.

TPearce: So you're making this a general statement.

JBarnette: As a general – based on past experience.

TPearce: And you're not inferring in anyway that this particular mobile home park located in this particular spot with this property being across from it and looking at all the other adjacent properties in that neighborhood you're not giving any testimony that this would in fact actually increase or decrease the value of Mr. DelaVega's property, is that correct?

JBarnette: I couldn't say specifically to that piece of property. But I am basing it on a general knowledge of appraising and setting various mobile home parks.

TPearce: But if there were already mobile home parks or mini mobile home parks around the adjacent property of Mr. DelaVega would that have some bearing as to the evaluation of how much it would increase or decrease the value of Mr. DelaVega's property of something going in? Let's say this piece of property – if you haven't seen this property you don't know if the mobile home park may be improving the property that's already there, is that correct?

JPatomson: If I could interject real quick. I don't think there's been any testimony that there is an existing mobile home park any where around this park.

TPearce; There is testimony that there are adjacent mobile homes, junk mobile homes and graveyards if I understand it correctly. No, I'm not inferring that there were, you're just making – if there were other things around there that have been similarly described – I mean I don't know how you can say this is going to – be expert testimony that this is going to decrease the property value of Mr. DelaVega's property if you haven't looked to see what ever is around and done some kind of a study. Or at least, I know you're giving an opinion, but still...

JBarnette: I'm making a general opinion with past experience of mobile home parks, setting mobile home parks, appraising mobile home parks. In practically all cases I would say that the mobile home park had a negative effect on the surrounding properties. This specific property I haven't seen and I couldn't comment on it particularly, but...

TPearce: I have no further questions then.

JPatomson: I just want to make sure we're clear on your testimony. In 35 years you have done appraisals that have included mobile home parks.

JBarnette: Right.

JPatomson: Has there ever been a case where a mobile home park being placed on a property has improved the value of the surrounding properties?

JBarnette: No, I can't say think of any.

JPatomson: In every place that a mobile home park has been placed on a property, the surrounding values have decreased?

JBarnette: Based on my memory and experience I would say, yes.

JPatomson: I have no further questions for this witness.

Vice Chairman Phelps: Any further questions from the Board? Thank you.

JPatomson: I have a closing statement if the Board would want to hear that now, or if you'd like to wait until Mr. Dalton gives his rebuttal I'll leave it at your discretion.

Vice Chairman Phelps: Go ahead and hear your statement.

TPearce: Is there a proper procedure?

Associate County Attorney SZambon: Typically you would do the rebuttal then hear closing statements for both sides. But if this Board would prefer having Mr. DelaVega's closing statements now that is up to the Board.

Vice Chairman Phelps: Let me ask Mr. Dalton, would you like to make a rebuttal and a closing statement? Or would you just prefer to hear his closing statement and then make your closing statement?

RDalton:I'll hear his.

Vice Chairman Phelps: Fine.

JPatomson: Based on the testimony that has been presented to the Board today, Mr. DelaVega respectfully requests that the Board deny Mr. Dalton's request for approval of the proposed request for special use. We've indicated that we feel there are multiple reasons that the Board deny the special use application. The first is that the site plan is technically deficient for its failure to provide certification according to section 2. We also indicate that we feel that it is technically deficient and that it fails to provide an adequate road width. We feel that the road that is placed on the site plan should be used as a right-of-way and not as a service road. And therefore it needs to be an additional 2 feet wider which has not been provided to the Board on the site plan. We further indicate that it is technically deficient for failure to provide water in accordance with section 7 of SR 1.13. Mr. Dalton has been unable to tell this Board where well water will be, whether or not there is sufficient water on the property to produce sufficient water for 7 manufactured homes and for up to the 20 to 23 people that he has indicated will live on this property. Further he hasn't indicated at what depth the water is available, the quality of the water or anything else that's satisfied the Board that there's going to be sufficient water to meet public safety and health needs of the residence who would reside in this mobile home park. We would also indicate that it fails to provide for common areas as required by section 13 of SR 1.13. As Mr. Alexander pointed out to this Board, that if Mr. Dalton intends to put 7 lots total on this property he has to meet the density requirements contained in an R3 zone. That density requirement is 7 x 1.5 and just doing simple math that comes out to, in the neighborhood of 12 acres. Now the common area is not sufficient based on the entire mobile home park listing of 16 acres. You would have to have 10% of that and 1.5 is currently not sufficient. Further we would argue that the 1.5 acres is not actually 1.5 acres because a large portion of that is overlapped by the right-of-way of Bald Rock Road, which simply cannot be included in the common area. He doesn't have exclusive use of that right-of-way. It's been set aside for the use of the right-of-way. More importantly that common area is dictated by SR 1.13 to require that it be free from any traffic and safety hazards. That common area is located right along Bald Rock Road. Now the Board members are well informed and intelligent enough to know that we have no idea what a vehicle's going to do. When an accident occurs the nature of physics could turn that vehicle any which way, and send it flying through the air into the common area and cause who knows what kind of damage to children or families that are spending time in that common area. Without some type of protection or buffer placed in that zone the common area simply does not meet the requirements of SR 1.13. Additionally we would also indicate that the placement of this mobile home park will negatively affect the public safety, health and welfare based on the proposed location due to the fact that it will be too close to the dumpster pad. It will be too close to the drainage that has been proposed on the site and it will be too close to the septic fields that have been proposed. Now Mr. Dalton has indicated in his testimony that he can place that well anywhere, but what the Board faced with decision today is with the documents that are in front of you. And the proposed site plan has a well on it and that well is not in proper location as determined by the Henderson County Environmental Health regulations that are in place at this time. It's less than 60 feet from a proposed septic site. It's less than 60 feet from a proposed dumpster. And it's less than 60 feet from the drainage ditch. Those distances are all well short of the 100 feet that is required. I would also that it is a danger to the public health, safety and welfare based on the increased likelihood of trespassing and other deleterious

effects of the type of people who tend to rent these trailers in that area. Mr. DelaVega's testimony was clear and uncontested that the tenants in the surrounding property do not treat his land with respect. They trespass consistently and place themselves at risk of danger by surrounding that lake with their children. Finally we would indicate that Mr. Dalton has indicated the failure to abide by the Henderson County ordinances and to be a proper steward of the land that he is in possession of as demonstrated by the burnt out trailer that has been placed on the property and has also demonstrated by the existing trailer and the junk that is sitting in front of it. The concerns are real. The concerns are legitimate that this trailer park will not be operated in the manner that is consistent with public health, safety and welfare. And that these, the operation of this trailer park, will negatively impact Mr. DelaVega's and the surrounding property areas owner's property values. For these reasons we respectfully request that you deny the special use permit. Thank you.  
Vice Chair Phelps: OK sir. (to Mr. Patomson)

Vice Chair Phelps: Mr. Dalton your closing statement.

RDalton: Well let me say, I hadn't noticed this until he just now mentioned it on the mobile home that's got that stuff in front of it, that's not my mobile home. I don't own it. Now am I responsible for that?

Vice Chair Phelps: Which one are you referring to sir?

RDalton: Second picture, #26. In #2, I do know about the freezer. That's not a junk freezer. The freezer is in use. The people bought it new. They didn't have room in the house and the set it outside. It's what the people have done in the past?

TPearce: Is there any other, is #9, pictures #9 and #26, these are not on your property, is that correct?

RDalton: Not on my property, that's correct.

Vice Chair Phelps: They had already testified to that.

RDalton: Well no, he just now testified that the mobile home in the picture, with the junk in front of it. That's not mine.

Vice Chair Phelps: I think he was referring to #22, wasn't he and #17, where the debris...

RDalton: He was referring to the trash around #27.

Vice Chair Phelps: Sir would you, for the Board's clarification...

RDalton: This one.

JPatomson: I was referring to photograph #17 which has the debris and the roller in front of that existing trailer which is #7 and also referring to the burned out trailer in photograph #22. We would stipulate and I've already agreed that the first two photographs are not his property.

RDalton: As far as the equipment sitting there, I'm in the grading business. That is a sheep's foot roller I used in my business. I've got to put it somewhere.

Vice Chair Phelps: So it is in use? I mean it's just not scrap metal?

RDalton: Yeah. And Mr. DelaVega said this was the ground he's talking about running off. He said it was the entrance where, where the entrance is going to be. That's not even where the entrance is going to be. The entrance to this park is going to be further up the road from his driveway. And also, you know, he said I didn't know if I had ample water. Well I didn't think it feasible or too smart to go in there and spend the money drilling the well not knowing if this was going to be approved. I felt like if I get the approval and I go in and drill a well and I ain't got water, I'm not going to do it. I don't have the water to supply the people. And I tried to make him understand in this picture. The well will be put where ever it takes to satisfy the County's requirements. And why should I go pull a well permit and he said it was so close to a septic permit, to a septic system. There has been no septic system laid out there by the County. I haven't even applied for it at this point, so there's no way he knows it's 60 feet from where the well's going to be. The County, if they do permit the well where it is they're not going to permit me a septic permit within that distance so that's claims he's bringing up, you know I just don't think it's too smart on my account to go in there and spend this money until I get it approved and then start spending the money to check and see if it's going to work. All I can say is I'm not going to put in a trashy place. My other trailer parks, they're not like that, I don't have any problems with the neighbors with them. I can't be responsible for what some other people have done in the neighborhood. People that swim on his property. I can't control that. That's out of my control. But all I can tell him if he's ever

got a problem with anybody that's in my park all he's got to do is make a phone call to me and it'll be resolved. And pretty much that's about all I can say.

Vice Chair Phelps: OK.

JCrafton: There's been a question raised about the acreage and meeting the acreage to density requirement. How many acres are a part of your application to us today?

RDalton: That I can't – I don't have a copy of that application in front of me. I can't tell you exactly.

Zoning Administrator TLinville: The entire acreage is part of the application today. In the future if he does something else, if he subdivides then those acres would be determined at that point. That if he was going to subdivide part of that property and leave just enough as required by the density that would be calculated then.

JCrafton: So for our deliberation today we go by what we have.

Vice Chair Phelps: I assume we have to go by...

RDalton: Well, the first phase of it is on a portion of that land, not on my land and it shows to be a second phase.

Vice Chair Phelps: But the second Phase is part of the 16.67?

RDalton: Yes sir.

Vice Chair Phelps: But that's required, Toby, to be a whole separate application.

Zoning Administrator TLinville: And another hearing, that's correct.

TPearce: OK. It seems that we can cover that in discussions, not in questions.

Ann Pouch: I have a question about your road that the gentleman was complaining about, where you're putting your drive in and the wash is coming down to his property. Can you address that?

RDalton: Yes ma'm I can. The state road is between me and his property and this side he's talking about is where I sold some dirt and the dirt was removed there. It's not going to be the entrance to the property. There is no way that the water coming off of my property runs over the state road and onto his property. It may go down the side ditch to a culvert that was installed by the state. I don't know that. I haven't looked. But there's no way, there's probably 100 x 100 right there where I removed some dirt that's not in grass as you see in the picture. And there's no way that caused him the problems he's talking about. He said it washed across the road onto his property. There's no way it runs across to his property. There's a side ditch there.

TPearce: How deep is it? Is it a typical side ditch?

RDalton: State maintained side ditch.

TPearce: State maintained?

RDalton: Yes.

Vice Chair Phelps: Further questions of Mr. Dalton? Thank you, sir.

Vice Chair Phelps: At this time I'd like to enter a motion we close the Public Hearing.

TPearce: So moved.

APouch: Seconded.

All board members were in favor of closing the Public Hearing.

Vice Chair Phelps: We are now in closed hearing of discussion of the Board.

TPearce: OK, I'm not used to procedures, but is it common to approve or disapprove an application solely upon the merits of the individual items on a plat for instance or is it common or uncommon to approve it subject to conditions?

APouch: We can do conditions.

Vice Chair Phelps: We can do conditions. We normally consider each one on its own merits but that doesn't mean that we can't provide additional screening, other conditions.

TPearce: I mean, for instance could you make a condition that says the plat does not, the plat as submitted, the site plan as submitted is incorrect and should recognize 16.67 acres of, for instance, common area. And would that be a condition or is that a new application?

Associate County Attorney SZambon: My perspective would be...

TPearce: Is the site plan – is the sanctity of it or not?

Associate County Attorney SZambon: Yeah and as the precedent for this Board, if the site plan or the application is wrong I would say that you can't make a condition on that. But that is what is the evidence

before you. Depending on how minor you feel it is. If it is something very minor, very technical there may be a case there, but typically what kinds of conditions you would do would be buffers or the well, the septic, you might require that Toby gets a copy of whatever comes back from Environmental Health. I would feel uncomfortable because at some point you're just asking him to do another application. So it depends on what...

TPearce: That's the reason I wanted to ask, because there's several things that I, some of them are flaws, but I believe that if I consider the information we have before us, I'm not saying in the application itself but the site plan itself. And as I would point them out, number 1: I would have to agree that the amount of acreage that we have before us, the 16.67 piece of ground and just the fact that the words 'Phase II' are written in there really has no bearing on this. And now if they were to have pulled out approximately 10.5 acres of this total and labeled that 'Phase I' and labeled the second one 'Phase II' then the words 'Phase II' would mean something. But since there's no delineating lines it would seem to me that the words 'Phase II' are superfluous and that the common area is indeed deficient and that I would, even though the owner's property line goes to, somewhere along the road right-of-way, that it says very specifically in here that the right-of-way is for the use of the property owners only, of the mobile home park. I'll have to find that page. It's not right in front of me anyway. So from that perspective the 10% requirement on the common area, in my estimation, as I understand it could not be part, could not include the road. Now there's no requirement that the 10%, that the 10% of the common area all be in one spot. They could part of it over her and part of it in another location as long as it's on the same phase if it were to be properly phased. But you know there's a few other things I'm not too, the water and septic, the well location, I don't know why it's even on there if it's a guess-tamate. We have a requirement for water and septic, for providing those. And those are expected to be done by the state, so those come under County and state guidelines. Those to me aren't typically something you would see, I wouldn't expect to see on here unless they were existing. Where it says 'well' that indicates an existing well. I guess the problem I see, based upon your interpretation I think this application would have to be denied, not saying that I could, we could rule on all aspects of it but the site plan as presented is deficient and does not meet the requirements of the Land Development Code.

Vice Chair Phelps: Are you saying that on the basis that there is not enough common area?

TPearce: The common area is deficient.

Vice Chair Phelps: Based on what? If 12 acres are allocated to the mobile homes then 1.2 would be...

TPearce: We have nothing on this site plan that indicates that 12 acres are divided to anything.

Vice Chair Phelps: I understand. I'm just trying to say, so you're saying it should have at least 1.67 acres allocated to the common area.

TPearce: They have, we have a 16.67 presentation before us of a site plan. Of that 16.7, yeah, 1.67 acres needs to be common area. And that cannot, it should not be allowed to be included in any of the road way which is right-of-way use by some other parties, by definition.

APouch: Look at this whole plan here. There's ample acreage for him to do what he wants.

TEngel: But it's non on the...

APouch: Now if he wants to come back...

Zoning Administrator TLinville: Can I further muddy the waters?

Vice Chair Phelps: Sure, please.

Zoning Administrator TLinville: Under that section 13, the common area shall be provided for 10% of the total, the text says for 10% total of the manufacture park area. Now is that the entire tract? Or is that just the ground covered by the park? Which is the way, I guess TRC interpreted that so that the common area there is more than would have been required.

TEngel: We have not called out the size of the park, though.

TPearce: The size of the park according to this is 16.67 acres according to the application, as I read it

TEngel: There is no Phase II.

TPearce: There is an indication from them that they would like a phase II, but typically when you have a phase II on a, say a subdivision plat you have a delineating line. You have a point of, and a computation of phase I acreages, a computation of phase II acreages and very definitive lines separating those and I don't see any.

JCrafton: I agree that he does not have the necessary common area by a small amount, but nevertheless he doesn't have it. I don't agree, but further I don't agree that he can't use the road right-

of-way. Because there's nothing in our code that denies him use of the road right-of-way, in terms of the common area.

TPearce: "Located as to be free of traffic hazard and maintained in good condition by the applicant." The applicant isn't the maintainer of that property and it is, it'd be hard to say it's free of traffic hazards if it's used as a public road.

JCrafton: No, I didn't say it was free of traffic hazards. I said I don't think there's anything that denies him the use of the right-of-way as part of his claim to how much is common area.

TEngel: You're not allowed to use that when you have a piece of property you figure the square foot area you can't use...

TPearce: Yes you can.

JCrafton: If you own it you can.

TPearce: Yes you can, but I said common area requirements, "common area be accessible for the use and enjoyment of the mobile home occupants and located as to be free of traffic hazards and maintained in good condition." The portion of the 1.67 acres approximately, that is required to be in there, that is in the road, any portion that is in the, I would say the road service area is not free of traffic hazards and is not for the use, "is for the use and enjoyment, I guess that was a little up in the air, I don't know what defines enjoyment, but at the very least it's free of traffic hazards. I guess that was my only argument. And I'm not saying the entire right-of-way of the road necessarily, since he owns part of it, but that portion of the right-of-way that is being used for road and for drainage of the road at least would need to be excluded.

JCrafton: I agree.

Vice Chair Phelps: Sir could that be a condition, that you have to allocate 1.7 acres for common area?

JCrafton: I think that's in the category of the big exception, that she was suggesting we not include.

Associate County Attorney SZambon: Yeah, I mean you're getting to a point where, at some point, you could get an application and this is purely hypothetical, but you could get an application where there are many flaws in it. You could make conditions correcting all the flaws. Is that really the job of this Board?

Vice Chair Phelps: No.

Associate County Attorney SZambon: I don't know if that answered your question or not.

TEngel: Yes.

JCrafton: Since we're hearing this application because this issue is going to arise additionally in the future, I'd like to make the comment, there's been evidence presented to us that having a mobile home park in that location is going to deteriorate the values of surrounding properties. One of the difficulties in our community is then where can you put manufactured home sites in our community. And we can't very well let the NIMBY rule, not in my back yard, deny all of the opportunities. If you look at the surrounding properties, by the very evidence that the opponents have presented there are other negative sites already in the neighborhood. And I don't think we can utilize that to say that the next site will further deteriorate from it. I drove up there the other day and it's hard to find, Mr. Dalton. You drive by other mobile homes that are in clear visibility of the area. And so I just think as a Board as we look to the future to the idea of the concept that a mobile home park is not acceptable by anybody else's property because it'll deteriorate the value of their property. I think you have to evaluate the whole area and is it conducive to that type of a thing. For the people who can afford those living quarters need places in our county to build them and to place them. In our judgment just needs to be, which are those suitable places, but we can't eliminate all of them.

APouch: Well, I agree with you and I think Mr. Dalton has a perfect right to use his property and make a profit from it. I live on a lake and more and more people are moving down our way. And it's a constant problem to keep people off your dock, off your waterfront property. And that just comes with rising population. That's not Mr. Dalton's fault. And it is a problem.

TPearce: Mr. Chairman, I'd like to give you a few other things for guidance, or for this Board as we're making determinations. Number 1, I would ask, I would agree that a certification of the road, the road name certification...

Zoning Administrator TLinville: No, that has been secured. I've seen that. I did not include that document in the packet but property addressing reviewed that.

TPearce: But it says it's supposed to be on the site plan. That's his additional deficiency. I do believe that the road width right-of-way, as far as being 18 feet or 20 foot, I personally believe that this is a service road since – a right-of-way indicates ownership generally. That somebody has an ownership of a property or a right to cross your property to get to another property, or something to that way. To me even though a service road is not defined as such in the Land Development Code, I think common sense indicates that this is a service road because it's servicing the properties on - servicing things on the property owned by Mr. Dalton and that Mr. Dalton is retaining ownership. The buffering we talked about. Water and septic I believe are things that we should be able to regularly handle on any, as something that is under the purview of somebody else, i.e., the city, the county, a state agency. Somebody else who is in charge of that may comply with all applicable rules and regulations and that is one area I don't believe we need to do.

Again I repeat, I do not believe unless Phase II is delineated as some 5-6 acre roughly piece of ground that wording Phase II should not be on there. The wording of the well and septic, I don't believe I see anything on septic. I tend to believe that generally speaking, you could interpret the rule, to be decreasing property values, but I don't believe the testimony was sufficient to ascertain that this particular property was, would be adversely effected in as much as number 1, if you look around all the other junk trailers and abandoned mobile homes, etc. that are already adjacent to the property and number 2, I don't feel that the testimony was specific enough to this one here to warrant saying that this negatively effected the property. And health, safety and welfare, I don't believe that that was, that that particular item was ever met, that this inhabited mobile home park would negatively effect the health, safety and welfare of adjacent property owners or people living on the property. But I do believe that there are several deficiencies of which I've outlined. I do not see any, I'm not quite certain I'm at that, the planted buffer area, outside of testimony, I'm assuming that's something that's going to be done, not already done. But that being the case I would move that this application be denied because it does not meet the certification requirements, the road, the common area requirements, and has other deficiencies as I've mentioned.

Vice Chair Phelps: You making that as a motion?

TPearce: I'm making that as a motion. Do I need to be any more specific. I'm new at this.

Associate County Attorney SZambon: No, that's fine.

Vice Chair Phelps: To deny, do you make a motion to deny.

TPearce: I'm making a motion to deny the application.

JCrafton: Gave first motion.

Vice Chair Phelps: Since we haven't voted on our new rules, do we have a second?

TEngel: Seconded.

Vice Chair Phelps: Is there any discussion on the motion?

APouch: What are we asking this gentleman to go back and redo this?

Vice Chair Phelps: Let me ask Toby. Does that mean that he would have to resubmit after these concerns that we've discussed today have been addressed?

Zoning Administrator TLinville: He will try to address all those and it will go back to before the Technical Review Committee and then back before this Board.

Vice Chair Phelps: Back through the process, basically?

Zoning Administrator TLinville: Correct.

TPearce: As a new application?

TEngel: So it would show the entire piece of property then as being part of this mobile home park?

Zoning Administrator TLinville: I don't know how he's going to address that. If he's going to...

TEngel: Does that address that part of stuff being stored on the property? If it's a mobile home park then he shouldn't have storage, correct?

TPearce: I did want to ask that question, but I didn't know if we could do it now.

Zoning Administrator TLinville: That could be a condition. There are uses in this county that were once agricultural that now are residential that still resemble the old use. You could certainly make a condition that the other home be demolished that's on the property.

TEngel: And that everything be neatened up on the property itself and no storage at all.

JCrafton: Well here, if you're operating a business then I don't know that you can store.

TEngel: Have we not said that the entire parcel would be mobile home?

TPearce: As presented.

TEngel: If it's a mobile home park then they can't store because they can't have another business running where they have that business.

JCrafton: That's correct. Does Mr. Dalton have access to the information in the minutes that delineate the objections that the opponent's attorney presented to us so that he has access? So that we don't have to go over and say, "this is what you've got to fix." But he can look at it, the minutes of our comments that have determined what the deficiencies are if we were to deny his permit based on deficiencies, he would have access to that information?

Associate County Attorney SZambon: Yeah, Mr. Dalton has access to two things, as would any adjacent property owners or people that may have heard of this motion. They would have access to the minutes from this meeting, as they are prepared. And they would after the Board signs it at the next meeting, have the order that I would draft, denying or approving, as this Board finds fit.

JCrafton: Then I would support the motion that we deny, based only on the deficiencies of his application and not on the merits of what his intention for use of the property is.

TEngel: Isn't that what you brought before? (to Tedd Pearce)

TPearce: Yeah. I agree with it. Then I would agree with that.

Vice Chair Phelps: You would agree that that's part of the motion? (to Tedd Pearce)

JCrafton: Well, I didn't mean to change the motion.

TPearce: I don't think you're changing anything.

TEngel: No, it's the same.

Vice Chair Phelps: He would have access to Toby, right? For questions about what our concerns are.

TPearce: About what our concerns are, yeah, he works it out. I do have a question of Sarah and I think it gets back to this. Once a property, if this whole 16 piece acres, as submitted were to be a mobile home park, does it lose its exemption as, does it in that point in time lose its exemption as an agricultural property which is not under the requirements of the nuisance ordinance and junk, what's the word?

Zoning Administrator TLinville: Just the nuisance ordinance.

TPearce: Just the nuisance ordinance?

Associate County Attorney SZambon: Just the nuisance ordinance. The nuisance ordinance is the only one we have right now. It is based on what the property is being used as. If the property is being used, which would be proven through a special use permit or special use application, as being used as a mobile home park then it would not be used as a bona fide farm and thus would not be exempt under the nuisance ordinance as bona fide farm production.

JCrafton: He's not up to the use of all that acreage according to the special use that he's been granted, given him when it's granted?

Associate County Attorney SZambon: If an order is granted it would put him under specific acreage and a specific PIN number. And it would say this property as per the application for this property is going to be used as a mobile home park.

TPearce: Now if he wanted to use part of that property that wasn't being, in the mobile home park proper, if he wanted to plant trees or grow corn on it or something, does that preclude him from doing that, on the mobile home property?

Associate County Attorney SZambon: From the county's perspective, this would be a mobile home park. In the common area they could plant a community garden. You know there's nothing we can do to control that, but the use will be a mobile home park.

TEngel: Not agriculture.

Associate County Attorney SZambon: Not agriculture.

TEngel: So he'd have to comply with the nuisance.

Associate County Attorney SZambon: And, you know, at some point in the future, it was no longer used as a mobile home park and is was used as something else we would evaluate that in the future.

TPearce: In looking at this and recommending anything that would come forth in the future, seems to me that phasing this property creates more, in light of what I knew or suspected of the nuisance ordinance, seems to me that Phase II, phasing this property and having that last 6 acres in this



application actually limits his choices on the land rather than enhances them. But that's just a personal observation.

JCrafton: Mr. Chairman, I'd like to move for the question because I think these issues now go beyond what the issues are before us today. We've got another whole case to hear.

Vice Chair Phelps: The prior motion has been called.

Associate County Attorney SZambon: Mr. Chairman, for the clarification of me at least and maybe Karen Ann, what is the motion?

Vice Chair Phelps: The motion is to deny the...

Associate County Attorney SZambon: Is it Mr. Pearce's motion or Mr. Crafton's motion?

Vice Chair Phelps: It's Mr. Pearce's. He just clarified it, I think to make sure the motion includes...

JCrafton: I was just giving my opinion as a member of the Board.

Zoning Administrator TLinville: Would you restate the motion?

TPearce: The motion is made to deny the application based upon the fact that the information provided in the site plan does not comply with the requirements of the Land Development Code for a mobile home park application. Based – do I need to be specific as which one of those items?

Associate County Attorney SZambon: You do not.

Vice Chair Phelps: Thank you. Is that OK with you Jim?

JCrafton: Yes, that's fine.

Vice Chair Phelps: Jim's called the previous question, so...

APouch: Can he come back?

Vice Chair Phelps: That's up to him.

Associate County Attorney SZambon: Yes he can, and we still need the second.

TEngel: I did the second.

Associate County Attorney SZambon: OK. Sorry.

Vice Chair Phelps: All those in favor of the motion? Please raise your hand saying 'I'.

Tony Engel – yes

Jim Crafton – yes

Tedd Pearce – yes

Vice Chairman Jim Phelps – yes

Vice Chair Phelps: Opposed? 'no'

Ann Pouch – no

Vice Chair Phelps: The motion carries. The vote is 4 to 1. The application is denied. Mr. Dalton, you heard the discussion here. Your application was denied. You can consult with Toby and you can resubmit your application that addresses our concern. We thank all parties involved for their attention.

Roy Dalton spoke from the back of the room.

Vice Chair Phelps: Yes sir? (to Mr. Dalton)

RDalton: What are the conditions that I need to meet?

Vice Chair Phelps: I'll suggest that you meet with Toby following the meeting and let him clarify those for you.

Associate County Attorney SZambon: Mr. Dalton, you'll also get a copy of the minutes of this meeting if you request them. And there will be an order signed by this Board at the next meeting that will reflect some of the conditions.

Vice Chair Phelps: At this point I would exercise the Chairman's prerogative to take a 5 minute recess and then we will reconvene and consider the next case.

Vice Chair Phelps: shall we reconvene the meeting? I need a motion to open the hearing.

TEngel: I motion on open.

Vice Chair Phelps: All in favor, 'I'. We're now in open hearing. Case is SUP-08-02, Roland and Amelia Gayarre, Recreation Vehicle Park.

**Case SUP-08-02, Rolando and Amelia Gayarre, Recreation Vehicle Park**, is requesting a special use permit for a Recreational Vehicle Park which is required in the Residential 2-MH/Local Commercial zoning district as defined by S.R. 4.18 in the Land Development Code. Property is located at 350 Old Sunset Hill Road, Lot 1. **(PIN-9579975700)**

Vice Chair Phelps: Do we have anyone here representing the applicant? Toby's been sworn, would you like to go ahead and give your testimony?

TPearce: Just a second, how can we have a public hearing when the applicant isn't here for us to ask questions to?

Associate County Attorney SZambon: You can. The burden in a quasi-judicial proceeding is on the applicant to present all the things that you all want to know for the special use permit. Toby, technically he does not have to present anything. This Board...

TPearce: First of all he has to be sworn in before he can proceed.

Vice Chair Phelps: Well didn't we swear him in for both cases?

Associate County Attorney SZambon: I feel comfortable that he was sworn in in the beginning and he could hear all the hearings in a day at the beginning as long as it's on the record that he was sworn since he's just swearing to tell the whole truth, not specific to any case necessarily. However, Toby doesn't have to testify at all. If Toby wasn't here, the hearing still goes on. It's not Toby who is the applicant. So it is up to this Board whether or not you want to have Toby do his presentation and enter evidence and decide it based on the stuff, the information that Toby has. Or if you want to, or technically you could just straight out deny it since the applicant is not here and the burden is on the applicant.

JCrafton: I would move that we simply not take up this case.

Vice Chair Phelps: Can we table it?

JCrafton: No. If you table it, it means you've accepted it onto the floor and I would just suggest that the application is here, but we not take it up since there is no applicant and there's no way we can ask questions. And I for one, again went to this site and I have some questions. And I don't see any way that we can deliberate in and ask questions without having the evidence here to deal with.

TEngel: Or we could deny it also.

APouch: We could just deny.

JCrafton: I don't think we have any basis to deny.

TPearce: If we do deny it doesn't that mean that they have to start the whole process again, pay new fees again, etc., etc., etc.?

Associate County Attorney SZambon: That is correct.

TPearce: Just in case there was a mistake on their part, the misunderstanding was when the proceeding was taking place, I'm not saying there was, I think maybe out of kindness we could at the very least accept, I would second his motion that we not bring this up at this meeting and, because the applicant is not here to question and it does not make sense. Questions would be required of him, that we not go forward.

APouch: What were you going to say, Toby?

Zoning Administrator TLinville: I was going to ask, is there a time limit between when an applicant can make a request?

Associate County Attorney SZambon: I don't think there's a time limit between when an applicant can take up a request and when it is heard. I think usually it is at the next meeting. The only time limit is once you start hearing a case, I'm sorry, once you're completed hearing evidence in a case the decision has to issued in writing within 45 days.

Vice Chair Phelps: Right.

Zoning Administrator TLinville: And let me share this with the Board. I've never met to the applicant to permit the property owner in this case. I've dealt with their surveyor the whole time, so I'll have to check, but I'm pretty sure I emailed them and said, "who's going to be here to represent the case." And they said, "one of our people would." I've got several of those going with TRC so either way they're not here. But I think that I had confirmation that they would be here.

JCrafton: The other thing that you could do, you could start it and then continue it. But I don't see any point in that – to start into something.

Zoning Administrator TLinville: The point of that is we won't have to re-advertise, if you continue it. If you open and close it...

Vice Chair Phelps: So we could continue next month.

TPearce: We could continue it to the next meeting.

Vice Chair Phelps: Just make the motion.

Zoning Administrator TLinville: Our public hearing notice requirements are met.

JCrafton: But what would you do in terms of any communication with the applicant? Would you communicate to him?

Zoning Administrator TLinville: Oh yes.

JCrafton: Because I think it would be unfair to him to open it and continue it and not let him know that. Then he'd really be out of luck.

Zoning Administrator TLinville: I'd definitely tell him that they need to be here or it's going to be denied because there is no one to answer questions.

Associate County Attorney SZambon: And Toby when you talk to him, as we talked about before, make sure that he comes or an attorney comes. He cannot have just the surveyor represent him.

Vice Chair Phelps: Oh that's right under the new rule.

TPearce: The legal requirements are that the person and or an attorney at law is the only persons able to represent?

Associate County Attorney SZambon: Yes.

TPearce: Or a relative?

Associate County Attorney SZambon: No.

TPearce: So I can't even...

Zoning Administrator TLinville: That's not a rule. That's a recommendation by the North Carolina Bar. That's not even worth the paper it was printed on.

Associate County Attorney SZambon: The North Carolina Bar, a year ago, issued a ruling saying that anybody in a quasi-judicial proceeding, only people that are allowed to present a case on behalf of the applicant or any party are the applicant or party themselves or an attorney. That other wise that is an unauthorized practice of the law. That is the ruling of the North Carolina Bar Association who determines who's practicing law. They've clarified the decision since to discuss the implications for planning department specifically. So it is, the North Carolina Bar decides what is the unauthorized practice of law and what isn't. That's what that decision is. Under the North Carolina Criminal Code, Toby Linville, it is a crime to practice law do to the unauthorized practice of law.

TPearce: Whether or not somebody does something illegal or not in these proceedings is not our – do we have the legal right – the question would be then, do we have the legal right to deny somebody to be able to represent someone just because the Bar Association says they shouldn't then they have the right to file legal proceedings against them if they so choose.

JCrafton: We have the right to deny anybody and the opportunity to speak based on our understanding of they're having standing before us because we are...

TPearce: But the engineer would have standing as a witness.

JCrafton: That's the issue.

TEngel: Well he has to be called in by the applicant.

JCrafton: I continue to suggest and put forward my motion that we simply not take this up. But to that end, Toby, what kind of cost is involved in advertising and is that what part of the fee is used for to pay the cost of advertising?

Zoning Administrator TLinville: It is and it's about \$200 for one of these adds.

JCrafton: That it costs the County? And how much are we charging a fee?

Zoning Administrator TLinville: \$400.

JCrafton: So if we have to advertise again as opposed to starting up and continuing, so that you don't have to advertise again, the Board denying it so he has to pay the fee again, how much is the County out if we're doing him the convenience of not taking it up and you're having to re-advertise and he's only paid one fee?

Zoning Administrator TLinville: It's going to cost us another \$200 and we're not going to get another fee.

Associate County Attorney SZambon: That means the entire fee that was collected was used up in advertising and not in staff time.

TPearce: Not that we break even on them anyway.

Associate County Attorney SZambon: We never come close to breaking even on them.

Vice Chair Phelps: Let's defer to next month and they can withdraw it during that period of time.

TPearce: Before we vote on it I want to ask Sarah again what he was asking before. I know on a rezoning, I'm only speaking from Planning Board experience, but when we had a rezoning application there was X number of days to do it or it automatically became, went forward to the Board of Commissioners as a recommendation. There is definitely no time limitation on this Board acting on an application or it automatically is approved? There's nothing like that in the code?

Associate County Attorney SZambon: There is nothing like a rule to be automatically approved for a special use in the code.

TPearce: I just wanted to make sure. I'm just being cautious, because I second his motion still. But I just didn't want to call for a question until I knew that, I didn't want to create another problem.

Associate County Attorney SZambon: And this Board has had to continue things in the past for a variety of reasons that were before them.

TEngel: This will be continued and continued until he finally comes in?

Associate County Attorney SZambon: I wouldn't suggest that this Board should allow that.

Vice Chair Phelps: We could just deny it at the next meeting.

JCrafton: Toby when you said you'd never met the man and he indicated he was going to have a surveyor represent him, did you also say that you conveyed to him that he could not be represented only by his surveyor?

Zoning Administrator TLinville: I did not because I disagree with Sarah's ruling on that.

JCrafton: So he is under the impression, is he an absentee land owner?

Zoning Administrator TLinville: No, I think he lives on the site.

JCrafton: But he definitely would have ended up with the impression that he could send a surveyor?

Zoning Administrator TLinville: I think so. So I will...

JCrafton: He ultimately bears the responsibility that if he's not here and sending a representative that the representative's here and the representative fails to show he still bears that responsibility, doesn't he?

Zoning Administrator TLinville: Well I will direct him that he as to attend the meeting even though I disagree with Sarah.

APouch: You haven't spoken with him have you?

Zoning Administrator TLinville: No.

TPearce: I think we can handle that in a separate motion. I think we need to settle that issue once and for all. I would call for the question on this motion.

Vice Chair Phelps: The motion is that we just contin...

TPearce: Do not.

Vice Chair Phelps: No. and that's what I disagree with. But the motion according to Jim, Jim you correct me, is that we just don't hear it, period.

JCrafton: That we don't take up the application this month and then we can address whatever the circumstances are next month, next month.

TEngel: That would mean he'd have to re-advertise?

Vice Chair Phelps: If we don't here it, we're not deferring till next month.

Zoning Administrator TLinville: Correct.

TEngel: So we'd have to re-advertise.

Vice Chair Phelps: I would like to see the motion amended to say we're just simply not going to hear it and deferring further action until the next meeting.

TPearce: To help out I'll withdraw my second on the motion. That'll kill the second unless somebody else wants to second.

JCrafton: In other words, you want to continue? To make an order to do that you'd have to open a hearing and...

Vice Chair Phelps: We have opened it.

JCrafton: No, you asked for a motion and we started a conversation. Nobody opened it.

TPearce: We voted it open. We didn't swear anybody in.

JCrafton: Did we, Karen?

Secretary to the Board KAAntonucci: Jim said to reconvene and then you stated the case itself and then you said we'd go into public hearing and then Jim Crafton was the first one that mentioned...

JCrafton: As soon as you asked for a motion to go into public hearing I made a motion that we not hear it. We never went into public hearing.

Vice Chair Phelps: I thought we went into public hearing.

Zoning Administrator TLinville: Then please go into public hearing, continue it, and close public hearing.

Associate County Attorney SZambon: Or don't...

Zoning Administrator TLinville: No, I don't want to pay \$200 more dollars.

Associate County Attorney SZambon: It is not your decision. We serve at the pleasure of this Board.

Vice Chair Phelps: It seem from the practical sense we've given the applicant ample opportunity to give him the benefit of the doubt with a misunderstanding on whatever, that if we just continue it and then if he's contacted prior to the next meeting, if there's any failure to show at that point, we just drop the case.

JCrafton: I agree. I withdraw my motion. The applicant needs to bear some responsibility to be here for his application.

TPearce: I move that we open the hearing.

TEngel: I second.

Vice Chair Phelps: All in favor? All Board members were in favor.

TPearce: I move to continue this application until the next meeting. Who else?

Vice Chair Phelps: I guess the next scheduled meeting is April 30<sup>th</sup>.

JCrafton: Now before we vote on it, I can tell you now Karen, I will not be here April the 30<sup>th</sup>. So you only have 4 remaining Board members and 1 of those is an alternate.

Secretary to the Board KAAntonucci: Dean should be back.

Associate County Attorney SZambon: No evidence has been presented for testimony.

JCrafton: OK, alright.

Secretary to the Board KAAntonucci: OK, help me here. Motion to...

TPearce: Motion to continue.

Secretary to the Board KAAntonucci: Did anyone second it?

TEngel: I did, now I did.

Vice Chair Phelps: Questions? Question's been called. All in favor of continuing the motion, let me know by raising your hand.

Tony Engel – yes

Jim Crafton – yes

Tedd Pearce – yes

Vice Chairman Jim Phelps – yes

Ann Pouch – yes

Vice Chair Phelps: Any opposed? No. the motion so carries.

TPearce: I move that we close the hearing.

Vice Chair Phelps: Can we close the hearing?

TPearce: Can we close it or does the continuance cover that?

Associate County Attorney SZambon: You can't close it because you've already continued it.

To answer Mr. Pearce's question, the Land Development Code in 200A Special Use Permit, that's the time frame or review schedule 60 days processing period for notification requirements in review by the Zoning Administrator and the TRC prior to public hearing, but there is no requirement as to how long

before the Zoning Board takes it up. Just that the Zoning Board has to take it up it has to be quasi-judicial. So because it's quasi-judicial you have 45 days after the case is heard.

TEngel: So we could do that at the next meeting?

Associate County Attorney SZambon: Yeah, but I would caution this Board that you might not want to make this a public practice so that people think, "oh, they'll just continue it." The burden is on the applicant to present the evidence and then you'll blow Toby's whole budget.

Vice Chair Phelps: I think in this case though, we could say that Toby's never talked to the applicant it would be a special exception.

TPearce: Well Mr. Chairman I think this Board needs to decide whether we're going to abide by Sarah's interpretation or Toby's interpretation of who can represent a case.

TEngel: What happens to the person that doesn't speak English?

TPearce: Well, that's a whole different problem.

Associate County Attorney SZambon: I will say that it is my duty as a member of the North Carolina Bar and as an officer of the court, as a lawyer, to advise you that's the law and that's the law in North Carolina. However, you along with many Boards around the state, I'm sure can choose to disregard my advice on that issue.

TPearce: It seems to me until we have a state statute requiring it or we have something in the Land Development Code that requires it I do not, I believe that an applicant should have the legal right before this Board as they do before, or many other Boards in the County to represent themselves, or allow somebody else to represent them or hire someone, be that a surveyor, an engineer, an attorney at law or a CPA.

Vice Chair Phelps: That could subject us to be overturned in court.

JCrafton: Exactly. It's more that what we think is fair to the applicant. Our ruling can only be overturned in a court of law so we want to be sure that if we make our ruling from such a fashion that they would be upheld in a court of law.

TPearce: But is that different from what you've done in the past? In the past have you never allow, did you not allow a surveyor, or an engineer or someone other than an attorney to represent the case, a brother?

Vice Chair Phelps: That's just been within the last year that this ruling...

Associate County Attorney SZambon: It's just been in the last year, year and a half that they've had this ruling. And it is only for quasi-judicial proceedings. So a lot of other boards, planning board, perhaps for a sub division approval – that's not quasi-judicial. Rezoning for a planning board are not quasi-judicial.

TPearce: Some of our hearings are hard.

Associate County Attorney SZambon: Yeah, some of them are but for the most part anything before this Board that's not quasi-judicial, I don't care who represents them. It's just to protect the due process of people to make sure that their rights are protected.

Zoning Administrator TLinville: And typically, the applicant is here. 9 times out of 10.

Vice Chair Phelps: And we've never had this since I've been on the Board.

Zoning Administrator TLinville: I mean we had 12 people testifying here for Chip Gould but Chip was here.

TEngel: The applicant can then call someone up, and let them present it.

Zoning Administrator TLinville: Right, they don't have to say a word, other than I call my attorney or surveyor, or my best friend.

Associate County Attorney SZambon: Chip Gould was represented by council, by Brian Gould.

Vice Chair Phelps: He can call anybody as a witness after he's here.

Zoning Administrator TLinville: Right.

Vice Chair Phelps: Then I would hate to go against recommendation of the attorney of the county. And if we need reinforcement, I'm sure Sarah could get to the county attorney to concur with her opinion to us if we need further back up.

TPearce: Will then would it be appropriate to direct Toby and his staff that in the future they indicate who has to be there. And if it needs to be changed on any documentation about the public hearings on any of the paperwork that you submit out needs to be amended to show what our expectations are.

Vice Chair Phelps: 'You or your attorney shall be present'.

Zoning Administrator TLinville: And they received the notice. They at least received the same packet that their neighbors received.

TEngel: Who filled out the form?

Zoning Administrator TLinville: Well I was just wondering that myself, because it's typed and there's some...

Zoning Administrator TLinville: I think in that case the property owner has to sign it because we've had one thrown out before because of that.

Associate County Attorney SZambon: But if there's an agent.

Zoning Administrator TLinville: But that doesn't look like...

TEngel: Owner or agent is on the application.

Associate County Attorney SZambon: But there's a separate agent form the planning department and the zoning department are supposed to use that says where the property owner signs it saying so and so is my agent, I, certify, my name. Other wise I could go around saying I'm anybody's agent and start filing variance requests on all of your properties.

Vice Chair Phelps: This signature on here – is illegible as far as I'm concerned.

JCrafton: The property on the front sheet was listed as Rolando Gayarre and the signature on the application is false. You've got to determine if the application is properly filed.

Zoning Administrator TLinville: I don't think it's even filed properly.

JCrafton: And if it's not we don't even have a case.

Vice Chair Phelps: On the front here it says agent.

TPearce: It seems to me when somebody is supposed, when we've got somebody listed as the agent what's the technical definition of an agent? Are they the one representing you in this matter?

Associate County Attorney SZambon: That's why we have the separate agent form.

TPearce: So why isn't the agent also allowed to present the information?

Associate County Attorney SZambon: It's quasi-judicial. I don't make the rules I just play by them.

TPearce: I don't like the form.

Zoning Administrator TLinville: We need to amend our form.

TPearce: In other words this has to be 'information submitted by' I would assume the applicant still has to sign the form and no longer allow their agent, unless they're an attorney at law, to sign it.

TEngel: How do you contact them? They don't even have a phone number.

Associate County Attorney SZambon: Somebody else can fill out the application for them because most of the information on the application is technical in nature.

TEngel: You don't have a phone number on these people?

Zoning Administrator TLinville: No. I'm sure I can get it from the engineering firm.

### **Old Business.**

Vice Chair Phelps asked if everyone had an opportunity to review the draft 3/14/08 bylaws and if there were any questions or comments. He noted only one change on Page 4 of 5, section XI, letter B-Motions. He stated that the words 'and then require a second' be removed as had been discussed in the February 27<sup>th</sup> meeting. The sentence will end with, 'including the chair.'

JCrafton made a motion to submit the bylaws with that correction, to the Commissioners for approval.

TPearce offered first.

APouch: seconded

Vice Chair Phelps: All in favor?

All Board members were in favor.

**New Business.**

There being no new business Vice Chair Phelps called for a motion to end the meeting. Tony Engel made first motion. Ann Pouch seconded. All Board members were in favor. The meeting was adjourned at 6:26 PM.

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Jim Phelps, Vice Chairman

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Karen Ann Antonucci, Secretary