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**MINUTES**  
**BOARD OF ADJUSTMENT**  
**DECEMBER 8, 2014**  
**REGULAR MEETING**

**MEMBERS PRESENT:** Larry Wright, Full Member (Chair)  
David Blankfard, Full Member (Vice Chair)  
Karen Barrows, Full Member  
Mark Micol, Alternate Member  
Jeffrey Schmitt, Full Member

**MEMBER ABSENT:** Samantha Cabe, Alternate Member

**STAFF PRESENT:** Michael Harvey, Current Planning Supervisor  
Debra Graham, Board Secretary  
James Bryan, Staff Attorney  
Patrick Mallett, Planner II

**AGENDA ITEM 1: CALL TO ORDER**  
Larry Wright called the meeting to order.

**AGENDA ITEM 2: CONSIDERATION OF ADDITIONS TO AGENDA**  
There were no additions to the agenda.

**AGENDA ITEM 3: APPROVAL OF MINUTES**  
A. **OCTOBER 13, 2014**

**MOTION** made by Karen Barrows to approve minutes. David Blankfard seconded.  
**VOTE:** Unanimous

**AGENDA ITEM 4: PUBLIC CHARGE**

The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time should any member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

The Board of Adjustment is a quasi-judicial administrative body established in accordance with the provisions of local regulations and State law to perform specified functions essential to the County's planning program. Action(s) taken by the board are based solely on competent, substantial, and material evidence presented during a previously scheduled and advertised public hearing on a specific item. As detailed within Section 2.12.2 of the UDO the Board chair reserves the right to exclude evidence and testimony that is deemed: 'incompetent, irrelevant, immaterial, or unduly repetitious' and therefore fails to reasonably address the issues before the Board of Adjustment. While it should be noted there is no time limit on the presentation of evidence, the Chair asks that the presentation of evidence be consistent with established policies, rules of procedure, and acceptable levels of decorum to ensure a fair and equitable hearing for all parties.

1  
2 Larry Wright: I would like to ask for a point of order. I think I would like to clarify for the record at this time if this is a  
3 formal public hearing or a hearing open to the public and on page 20, item B, it states "the hearing, while open to the  
4 public is not a public hearing where non-applicants are allowed to address the board for present arguments and  
5 testimony, etc." Our attorney is Mr. Bryan and I am going to refer to him.

6  
7 James Bryan: This is a public hearing that is open to the public. They can come and observe but only those that are  
8 parties of standing can offer testimony.

9  
10 Larry Wright: Parties of standing would be those which we have...page 27 through page 36...

11  
12 James Bryan: They would have to prove standing. Normally, you would either have special damages or the property  
13 owner so any special use permit that the property owner that owns the property has standing and anybody who has a  
14 loss in value or other special advantages.

15  
16 Larry Wright: So maybe they could introduce that...the reason they have standing when they come up and state they  
17 have been duly sworn. That is how we handle that?

18  
19 James Bryan: That will be good.

20  
21 Larry Wright: Is the board amenable to that?

22  
23 Anthony Taibi: I am Anthony Taibi, counsel for the landowner at the pointed issue and simply if the board is going to  
24 hear witness testimony later, I would like to be permitted to cross examine any witness.

25  
26 Larry Wright: Okay.

27  
28 James Bryan: Since I have been here, I don't think we have done an appeal like this. We have done mostly SUPs  
29 and maybe a variance but this is an appeal of the zoning administrator and also particular to this case is that we have  
30 had a request for a subpoena. How a subpoena works is that there is statutory authorization that the Board of  
31 Adjustment may issue a subpoena. You first go to the chair and have a written request and that was given to the  
32 chair. The chair denied that request so now it goes to the entire board and the board has to make a decision on that.  
33 That is the overall framework. I would suggest proceeding through four different parts to go step by step particularly  
34 because I haven't had a lot of these. The first one is to make a determination about jurisdiction. There is a recent  
35 case in Warren County where the staff, which is who you make the appeal to... you fill out a form and pay money to  
36 make an appeal and it goes to staff. Staff is not allowed to make a determination beyond that. Whatever is filed and  
37 whatever is paid for gets sent to the board. So the board has to make that determination who has standing and who  
38 has jurisdiction. The first question is, is this a question we can answer, jurisdiction. The next one is standing. Is the  
39 right person asking this question? As we mentioned before, the property owner decision affecting standing. We can  
40 get into details later. Usually it is financial loss if it has a financial impact on your property that would stand. The third  
41 one would be the subpoena. Get to that before you get to the final step... the case on the merits. The case on the  
42 merits can be done a number of different ways. I get the inclination that you are going to ask the zoning administrator  
43 for a brief synopsis on what is going on and then usually allow the appellant to make their case. Then it is the same  
44 having both sides put on their evidence allowing cross examination and so forth.

45  
46 T.C. Morphis: T.C. Morphis, I am here for the appellants. We would like the opportunity to make an opening  
47 statement at the pleasure of the board.

48  
49 Larry Wright: First we are going to be looking at jurisdiction. I would like to ask the question of the subpoena, how is  
50 that relevant to this meeting? Is that for another meeting?

1  
2 James Bryan: Are you talking about how the subpoena is relevant to any of this case? I would recommend that you  
3 let the moving party make their case and it is best for me not to speculate. I have had discussions with them but  
4 allow them make their case. If you wanted to do the subpoena first, I guess that is the board's prerogative but you  
5 might ask the appellant if they want to hear it first.

6  
7 Larry Wright: I would like to go through as it is presented and organized as the packet has been designed and then  
8 we will deal with the board's final decision of the jurisdictions and if it is final and binding and we can hear the  
9 testimony of those if they are called on pages 27 through 36 if they want to call them and then present their case and  
10 respond to Michael's situation and then we can go back. We can always deal with subpoena and standing last. We  
11 don't have to do standing up front, do we?

12  
13 James Bryan: My recommendation is to handle jurisdiction and standing first. The subpoena, however you want to  
14 handle that but it has to be before they put on their case is my recommendation.

15  
16 Larry Wright: I would like to, if this is what we are doing today, I have and I will send it to both attorney and you and  
17 Mr. Harvey and to the board members. I want to give the board members ample opportunities as State Statute 160A-  
18 388 Board of Adjustment and how subpoena relates to us. Let's read this information now.

19  
20 David Blankfard: Read the Public Charge.

21  
22  
23 **AGENDA ITEM 5: A-5-14 – Appeal of a Revised Determination made by the Zoning Officer submitted by**  
24 **Adrian Carter, Robert Nicholas, John Gallagher, Kathleen Erickson, Heron Pond**  
25 **Subdivision homeowners, ETAL:**

26 In accordance with the provisions of the Orange County UDO, the applicant(s) have appealed a decision of the  
27 Zoning Officer related to the rescinding of a Notice of Violation associated with the purported operation of a shooting  
28 range.

29 The County issued a Notice of Violation (NOV) on April 29, 2013 over the discharge of firearms on a 34 acre  
30 undeveloped parcel of property identified utilizing Orange County Parcel Identification Number (PIN) 9747-86-5920  
31 owned by Mr. William Klein.

32 The Notice of Violation was rescinded in February 2014 due to lack of credible evidence as well as a review of recent  
33 court cases. The letter rescinding the NOV informed Mr. Klein staff would continue to investigate the matter and  
34 reserved the right to re-initiate the enforcement effort.

35 The applicant(s) allege staff erred when rescinding the NOV citing seven specific determinations as follows:

- 36 1) There is no 'firing range' operating from Bingham Woods Mobile Home Park property.
- 37 2) Discharging firearms by [the] property owner and family was a customary accessory use.
- 38 3) There is currently no 'principal use' on the undeveloped 34 acre parcel.
- 39 4) The [April 29, 2013] NOV is hereby rescinded.
- 40 5) The NOV was ambiguous in that it made mention only of [proposed] operations but failed to give clear and  
41 complete allegation of the violation.
- 42 6) The NOV made no conclusion on whether a non-profit recreational use existed at this location, which is  
43 required for such a determination to be made.
- 44 7) Other than the discharge of firearms by residents and guests, the NOV alleged no facts on which to base a  
45 conclusion that a non-profit recreation use existed.

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Larry Wright: I would like to hear about the section on the subpoena right now.

T.C. Morphis: We did request a subpoena. May I ask a preliminary question? Would you all like any background information? I understand this may be the first time this matter has come before you.

Anthony Taibi: I would object to that coming from a bias witness. If anybody is to describe the facts, it should be the staff because the only question before you is whether the staff's decision is warranted or not. It is not to weigh every underlying fact that could possibly be dragged out.

Larry Wright: Mr. Bryan?

James Bryan: This is probably going to be one of the trickiest decisions you will have to make on the subpoena because one of the...you may issue a subpoena when you will decide if it is relevant, reasonable in nature and scope and not oppressive. In order to know whether it is relevant or not, you are going to have some sort of basis for what this case is about. This is a little bit of a tricky case. I don't think it really matters too much who gives it. You can allow T.C. to start and if he becomes argumentative or too long winded, you can shut him down and say never mind, this is irrelevant but I think it would be good to have some sort of basis and I would probably let T.C. give it the first shot and allow Mr. Taibi to issue another objection if it becomes too far-fetched.

T.C. Morphis: Alternatively, I have no objection to Mr. Harvey presenting the basic information if that would be more amenable.

James Bryan: And that might solve a lot of problems too.

Jeff Schmitt: Pardon my lack of understanding the statutes or the law or this case but who are looking at subpoenaing for what sets of reasons?

Larry Wright: That is good question. Let's start by stating that.

T.C. Morphis: We have requested that the landowner, Mr. William Klein be subpoenaed. We would like the opportunity to cross examine him on some of the information that he and his attorney have presented to county staff. I could provide more detail. I am happy to provide arguments but I don't want to get ahead of Mr. Harvey who I think will explain all the basics of the case.

Anthony Taibi: I would like to note that Mr. Morphis has made a particular representation to Mr. Harvey as to the facts that he wants my client, the witness, to explicate. None of which are at all relevant to the matters before this body. He said the board needs to understand what, if any, safety measures have been taken to contain projectiles on the property, the caliber and type of weapons being fired, the frequency with which weapons have historically been fired and Mr. Klein's future plans for the property. No representation by Mr. Klein is at issue in this matter, simply the staff has determined upon their review that there was not a basis for a prosecution. They may in the future decide, based on future facts... but the question before the body today is simply as to whether the staff had a reasonable basis for their decision not to allow opponents to go on a fishing expedition...

Larry Wright: I understand. Your name again and who do you represent?

Anthony Taibi: Anthony Taibi, Taibi, Kornbluth Law Group, for Mr. William Klein, the property owner.

1 Larry Wright: This was my initial concern... the subpoena is for a future meeting and this is in the past. This whole  
2 agenda is in the past. How does that relate to this meeting and Mr. Taibi addressed my concerns because I didn't  
3 see how it was in order here.

4  
5 James Bryan: That is a question that you must allow the mover to make his case.

6  
7 T.C. Morphis: If Mr. Taibi is going to cut off Mr. Harvey, I will do the same. You are jumping to jurisdictional issues  
8 Mr. Taibi. That is one of the core problems here tonight is there is a fundamental misunderstanding. We are getting  
9 right to jurisdiction now. The key issue we are asking you to decide is whether there is an illegal shooting range on  
10 property owned by Mr. Klein. Let me finish Mr. Taibi.

11  
12 Larry Wright: Please address the Board. I will tell him.

13  
14 T.C. Morphis: I apologize. Mr. Taibi in a letter to Mr. Harvey dated May 17.....

15  
16 Larry Wright: You address the board sir.

17  
18 T.C. Morphis: If I may, I have evidence notebooks. May I hand those out to the board or is that premature Mr.  
19 Chairman?

20  
21 Jeff Schmitt: Is this gentleman going to give us a synopsis or is Mr. Harvey going to do it?

22  
23 Larry Wright: We have been advised to start with the subpoena and so this is what we are doing. I want you to  
24 understand, if you are passing out notebooks, we are not going to be here until three in the morning going through  
25 these notebooks. We will leave at 10:30. I want you to understand what is realistic for this board to handle and you  
26 have a box of notebooks.

27  
28 T.C. Morphis: That is one copy for each of you.

29  
30 Larry Wright: I understand that.

31  
32 T.C. Morphis: I merely wanted you to be able to follow along.

33  
34 Larry Wright: Be succinct.

35  
36 T.C. Morphis: It will help if I am not interrupted.

37  
38 Larry Wright: You realize we can't go through all this tonight.

39  
40 T.C. Morphis: I don't intend to have you do that. Most of it is for our case. I wanted the board to be able to follow  
41 along. The question before you is this is a shooting range. Mr. Taibi, in tab 9...

42  
43 Larry Wright: Is this directly related to the subpoena?

44  
45 T.C. Morphis: Yes. Mr. Klein has made representations that we believe are misguided or more likely untruthful. We  
46 believe we have a constitutional right and due process to cross examine him and challenge the evidence he has  
47 presented. Mr. Harvey's decision was based solely on testimony and information provided by Mr. Klein. We have  
48 not had an opportunity to challenge that. I quite honestly think there would be people without his presence on site  
49 and that is an issue. I believe there are structures on site. Both of which lead to questions about his creditability and

1 go directly to the issue of whether there is a shooting range on site. I believe Mr. Klein's testimony is very important  
2 for this board. We should have a right to challenge what he and his attorney have represented to the staff.

3  
4 Larry Wright: Thank you. Any discussion from the board? Mr. Bryan.

5  
6 James Bryan: The board has some discretion. There is statutory authorization for a subpoena and straight from the  
7 statute whether it is relevant, reasonable in nature and scope and not oppressive. I believe you might, it looks like  
8 Mr. Taibi wants to speak and I think it would be prudent to allow him to make his arguments but then it is a question  
9 about reasonableness and whether you believe it is relevant.

10  
11 Larry Wright: We have whether it is reasonable, nature in scope, not oppressive and relevant. So say we do  
12 approve that they pursue issuing a subpoena and Mr. Klein does not. What happens if he comes anyway? If he is  
13 sitting in the room, can they ask him to testify? Why a subpoena? That is number one. Number two, if he does not  
14 appear after formally being issued a subpoena, isn't he subject to incarceration?

15  
16 James Bryan: The first one. The subpoena is because he is not in the room. The board would issue a subpoena.  
17 What that looks like nobody knows. I don't know of a board issuing one in the past but it does not preclude it from  
18 being an option. If he fails to show up the recourse is it goes to the General Court of Justice, the courthouse and  
19 they get jurisdiction to say you need to show up and if you don't show up it is contempt of court. In theory, it could be  
20 incarceration but it is a legitimate exercise of power.

21  
22 Mark Micol: Is there any precedence?

23  
24 James Bryan: Not that I am aware of. Just because a procedure is rare or awkward doesn't make it any less viable  
25 but in my experience I haven't seen this done.

26  
27 Larry Wright: As I was reading through this, I think there are a couple of cases in North Carolina where Boards of  
28 Adjustment did issue subpoenas and I don't know how long ago it was.

29  
30 James Bryan: I think reasonable in scope and nature and not oppressive, you might be thinking of a property owner  
31 that lives in Asheville or lives out of state coming in, something like that. Those are the nature and scope that you  
32 think about. I think the key one that you will be thinking about is relevancy.

33  
34 Larry Wright: Okay Mr. Taibi.

35  
36 Anthony Taibi: Certainly relevancy is a key issue but it is burdensome and oppressive. They are costing my client  
37 lots of money. If he is subpoenaed, he will seek to have it quashed in Superior Court. This will cause satellite  
38 litigation that is going on and on. Basically what Mr. Morphis wants is a free shot at putting my client under oath and  
39 having an opportunity to interrogate him. What is not before the board is a legislative determination.

40  
41 Larry Wright: We have heard that. Thank you. It is time for the board to discuss this.

42  
43 Karen Barrows: I frankly don't see why we would pursue a subpoena. It doesn't really have anything to do with what  
44 we are being asked to look at tonight.

45  
46 Jeff Schmitt: Is the contention here that unless Mr. Klein comes that he is the only one who can address the seven  
47 issues that have been put forward by the applicant since he is the property owner, is that part of the basis for this  
48 thing. That he is the only person who can really do that?

1 T.C. Morphis: We believe he is the only person who can testify to what he and his attorney have already said. We  
2 believe some of it to be untruthful. However, I will candidly say to the board in the absence of Mr. Klein appearing,  
3 we are fully prepared to present evidence on the issues.  
4

5 Anthony Taibi: Nothing I have said constitutes testimony. Mr. Harvey and I engaged in discussions about these  
6 issues but nothing that I said to him constitutes any kind of any formal representation or fact and I am sure the board  
7 did its own investigation as to all discussed matters and of course most of what we talked about is interpretation so  
8 there really are not any facts that are at issue.  
9

10 Larry Wright: Thank you.  
11

12 T.C. Morphis: I just wanted to point out that in fact, the February 10, 2014 letter we are appealing is replete with facts  
13 that they accept the ...  
14

15 Larry Wright: We will deal with that when it comes. Do I have a motion?  
16

17 **MOTION** made by Jeff Schmitt: that given the information that has been provided by staff and under the context of  
18 the UDO which sets the bounds of limitation that this board has that the information we need to make a decision  
19 relative to the dismissal or the pulling of notice of violation is sufficient for us to do in the material that we have been  
20 provided and no subpoena is necessary. Seconded by Karen Barrows.  
21

22 **VOTE:** Unanimously  
23

24 Larry Wright: Now we move to standing.  
25

26 James Bryan: Jurisdiction I would do first. I made a little chart that would help. It is basically that you will note in the  
27 appeal; the applicant has seven issues that have contentions with. Then for each one of those, I have listed and  
28 have two columns where the jurisdiction, whether it is an order requirement or determination and then whether it is  
29 final and binding. If you have got both of those, you have got jurisdiction to hear it. It can be order, requirement or  
30 determination so it could be ordering something; you have to take the shed off your property. It could be requiring  
31 something; you need to have a 50 foot buffer or it could make a determination; that box out there is a chicken coop  
32 and not a shed. It is my determination and then it has to be final and binding. There are a lot of times you can ask  
33 staff or an advisory opinion and it could be very informal; a phone call. The county could formalize it and say you  
34 have to pay \$50 for this advisory opinion but it is still advisory. It is just what I think and then you have a separate  
35 process for a determination and that would be things like permits, a sign permit, a zoning compliance permit,  
36 something like that, that actually vests rights in the applicant that says once this person gets this letter from the staff,  
37 they have a right years later. It doesn't matter if Michael is fired, if James is fired, if anybody is fired, they will have  
38 that letter and say, yes I can do this on my property or I have to do this.

39 Jeff Schmitt: We are going to be asked to make a determination of jurisdiction and its sundry definitions here. On  
40 each of the items that has been appealed by the applicant?  
41

42 James Bryan: You can do it as one lump haul. I think it would be easier to go item by item.  
43

44 Jeff Schmitt: We need to do this because?  
45

46 James Bryan: All you have right now is somebody saying I want to appeal; here is the money for an application.  
47 Michael has to bring that so if I wrote down that Michael has a messy office, here is \$300 I want to appeal it, he would  
48 have to bring that in front of this board. I could be saying let me bring witnesses for his office, you guys would be  
49 wasting your time, so you would need to set off; is this something this board is granted the authority to decide.  
50

1 Larry Wright: This would be the order of our agenda coming up, these items one through seven and how would you  
2 suggest we proceed?  
3

4 James Bryan: It is a little tricky because it is the applicant's burden and opportunity to present their case. I surmise  
5 this from their application because they did ...it is a blessing and curse but in this instance, a blessing they have an  
6 attorney representing them because he did a really good job of outlining his case and this literally involves and it's  
7 literally verbatim from Michael's letter what he is pointing out that he is objecting to...  
8

9 Larry Wright: But it is an interpretation.  
10

11 James Bryan: Yes. So another way you could do this is to say applicants, why do you have jurisdiction? What are  
12 you asking us to do? And then make a determination on whatever they say and say alright. Is that something that  
13 staff ordered or determined that was final and binding?  
14

15 Larry Wright: I think that is the way to proceed. So how we will proceed is, just to let everybody know, and that is  
16 Michael and Mr. Taibi and Mr. Morphis. We will go through items one through seven individually so your argument  
17 will be for the applicant. There is no firing range operating from the Bingham Wood Mobile Home Property and  
18 everything will be restricted to that.  
19

20 T.C. Morphis: I do have to offer one qualification. Mr. Bryan has omitted two important legal points. One is [North  
21 Carolina General Statutes] 168 S 388 makes it clear that issues that were not raised in an appeal can be challenged.  
22 I was just looking for that. I will be happy to give you the citation in a moment. Second, let's not lose the forest for  
23 the trees. What we are appealing is the planning staff's determination that there was an illegal shooting range and  
24 they rescinded that. End of the day, we believe there is an illegal shooting range and that is on my second page of  
25 my appeal. I then challenged and objected to specific determinations made by Mr. Harvey in support of his key  
26 determination which is there is no shooting range. That is what Mr. Harvey said. Mr. Bryan is correct, these are  
27 seven things we have raised and you can decide if you have jurisdiction or not but at the end of the day, the question  
28 you are being asked and it is right here in the middle of page two, the appellants believe that a non-profit shooting  
29 range is being illegally operated on the subject property and then direct you to Mr. Harvey's February 10, 2014 paper,  
30 it says, "in consultation with the county attorney's office, the NOV is hereby rescinded so we have taken objection  
31 and issue with the NOV rescinded and there being a determination there is no shooting range. I want to be crystal  
32 clear about that. Now, if the Chair will indulge me I am happy to go through these points.  
33

34 Larry Wright: What I would like to do then is to clarify through Mr. Harvey what he... can I do this? I don't see any  
35 evidence; there are no hours or anything. They say they have the evidence and the shooting range is running and  
36 nobody has evidence, he hasn't submitted it. How do we get down to the nuts and bolts at this meeting? We need  
37 evidence to hear.  
38

39 James Bryan: First, you need to figure out what the question is because you have the applicant's arguing something  
40 but I think Mr. Taibi would disagree and I know that staff disagrees with.  
41

42 Larry Wright: Right. How do we do this one through seven?  
43

44 James Bryan: You can disregard the one through seven. I think he made a good summary of what his case is and I  
45 don't want to put it in my own words and maybe I can't wrap my head around it either but maybe it is best to have  
46 Michael say his piece or Mr. Taibi say his piece but what is the question that y'all are going to answer. Make sure it  
47 is crystal clear for you guys and that you understand it. Can somebody appeal a rescission of an NOV? It is a very  
48 confusing question and I think it is something you need to figure out. What was it that Michael determined in a final  
49 and binding manner that can be appealed?  
50

1 Larry Wright: I want to ask the board, how would you like to proceed? Would you like to proceed the way it's  
2 presented in our packet? I think that is the best way to really make sense of it. I don't know. What do you think Jeff?  
3

4 Jeff Schmitt: I wasn't quite sure why we needed to do one through seven but given the last sets of comments, I sort  
5 of think we need to because there might be some place where the board thinks that, I'm just picking one here, that  
6 item five is really not relevant so when we hear the case of the applicant, I don't want to hear anything about item five  
7 because we don't have jurisdiction.  
8

9 Larry Wright: Okay. So how do we hear from the intent of the zoning officer if this was an order or a requirement or  
10 a determination from the zoning officer because that is jurisdiction if the zoning officer says, this is it, this is a violation  
11 and you are going to be fined and I'm not studying it any further, this is it, this is the order. That is jurisdiction isn't it?  
12

13 Karen Barrows: I think, Larry, until we hear what folks have to say including Mr. Harvey, we might be able to go  
14 through.  
15

16 Larry Wright: Go through the one through the seven or go through the way it is in the packet or what?  
17

18 Karen Barrows: Probably the way it is in the packet.  
19

20 Larry Wright: Jeff?  
21

22 Jeff Schmitt: Unless going through the packet presents some issue relative to the appeal of this as opposed to doing  
23 something else first, let's just get started and go through the packet.  
24

25 Larry Wright: I will start with Mr. Harvey.  
26

27 Michael Harvey: Mr. Chairman, if I could make a recommendation. All individuals intending to offer testimony this  
28 evening need be sworn before I say one word other than what I have just said.  
29

30 Larry Wright: Yes. Thank you. Anybody giving testimony tonight, if you are an attorney and giving testimony, you  
31 have to be duly sworn. If you are an attorney not giving testimony, you do not have to be duly sworn.  
32

33 James Bryan: Or you may affirm.  
34

35 Individuals sworn in by Ms. Graham:

36 T.C. Morphis, Jr.

37 Adrian Carter

38 Michael Joerling

39 Robert Nicholas

40 John Gallagher

41 Richard Kirkland  
42

43 T.C. Morphis: Mr. Chairman, I gather I am not going to be able to make opening comments.  
44

45 Larry Wright: You will be given your time.  
46

47 Michael Harvey: Mr. Chairman, beginning on page 19, you have staff's abstract detailing the nature of this item. You  
48 also have several attachments specifically on page 22, you have a map of the subject properties. Beginning on page  
49 23, Attachment 2, you actually have the physical appeal application. Attachment 3, which begins on page 43, is  
50 staff's response to the appeal. Page 53 is the actual notice of violation issued on April 29. Page 85 is the letter

1 revising the determination rescinding that notice of violation. Page 89 is Attachment 3C which is Land v. Village of  
2 Wesley Chapel, a North Carolina Court of Appeals decision. Page 101 is Attachment 3D which is a staff  
3 memorandum that was given to the Orange County Board of Commissioners and Attachment 4 which begins on  
4 page 109 is various forms that have been prepared and provided by the County Attorney's office dealing with  
5 evidence, findings and common objections.

6  
7 In summary, and I am looking at pages 43 through 47, as you will note, we issued a Notice of Violation to Mr. Klein  
8 indicating that we believed there was an establishment of a land use on the property. Either a 77 acre parcel  
9 developed as the Bingham Woods Mobile Home Park or an undeveloped 34 acre parcel of property south of this  
10 mobile home park. This Notice of Violation informed Mr. Klein that the discharge of fire arms on these properties  
11 either, (a) constituted an illegal expansion of the mobile home park if said shooting activities were a recreational  
12 amenity provided for the mobile home park residents and would require the review and action on a Class A Special  
13 Use Permit application through the Orange County Board of Commissioners or (b) the establishment of a recreational  
14 facility non-profit on the 34 acre parcel of property, as defined within our Unified Development Ordinance requiring a  
15 Class B Special Use that is reviewed and acted upon by this board. Mr. Klein subsequently appealed that  
16 determination arguing [he had] not developed a recreational facility of any kind. He had not expanded the mobile  
17 home park to include a shooting range facility for the benefit of the residents. He argued that there was no direct  
18 evidence establishing the determination by the county that an illegal land use had been instituted. And he argued  
19 that the county's action was inconsistent with the established case law. After consultation with the county attorney's  
20 office in February 2014, staff determined there was insufficient evidence to sustain the Notice of Violation as written.  
21 Specifically, we had no direct evidence of who was engaged in the activity. We did not physically catch anybody.  
22 The sheriff's report didn't provide us any documentation on who was doing the shooting activity. We found no  
23 evidence of actual facilities, building, parking, structures, etc. There was no direct evidence of a recreational facility  
24 non-profit as defined in the Unified Development Ordinance being established and as I indicated earlier, in  
25 consultation with the county attorney's office, we made the determination that existing case law, specifically Land v.  
26 Village of Wesley Chapel, a North Carolina Court of Appeal's decision did not support the NOV as was issued by  
27 staff. We rescinded the NOV due to a lack of evidence and then obviously we are here because the adjoining  
28 property owners appealed that determination. Mr. Chairman, at this point in time, I would like to enter my abstract  
29 including Attachments 1, 2, 3 and 4 inclusive into the record. I would also like to enter into the record a copy of the  
30 Orange County Unified Development Ordinance.

31  
32 Larry Wright: What date did you say was the first NOV?

33  
34 Michael Harvey: April 29, there is only one NOV on April 29, 2013 and that is on Page 53 of your packet.

35  
36 Larry Wright: Okay. We would be looking at the UDO relative to that date?

37  
38 Michael Harvey: Correct.

39  
40 Larry Wright: On what basis did you issue that initial NOV?

41  
42 Michael Harvey: I had meetings with several concerned property owners related to the discharge of fire arms.

43  
44 Larry Wright: What was the evidence?

45  
46 Michael Harvey: The evidence at that point in time was audio evidence denoting the shooting activity. Various visits  
47 to the site by the Orange County Sheriff's office. I will call your attention to the actual NOV itself. The NOV was  
48 written from the standpoint that it was not the purpose of our order, and I'm on page 54 and 55 now, it was not [the]  
49 purpose of our order or letter; excuse me, to require Mr. Klein to cease engaging in what could be construed as a  
50 lawful activity from his property. It was to inform that if he wished to allow non-family members, members of the

1 general public, to use either the 34 acre parcel of property or to allow [as] recreation on the Bingham Woods Mobile  
2 Home Park site, both of those activities were regulated by the UDO requiring permit. And you will note on page 54,  
3 he was advised to apply for a Class A Special Use Permit to modify the mobile home park to allow the new recreation  
4 [land use] or he was advised to apply for the Class B Special Use Permit indicating that he was operating the  
5 recreation facility non-profit because that is the only land use category that we found in Section 5.2.2 table permitted  
6 uses of the UDO that would accommodate that activity. Mr. Klein was given until May 29 to do one of three things. If  
7 it was his intent and I'm quoting, "to allow for the activity at the Bingham Woods Mobile Home Park, submit a  
8 complete copy of the enclosed conditional zoning application with all required accompanying documentation in order  
9 to request it" or if it was his intent to allow the activity on the undeveloped property, again, this is the 34 acre property,  
10 "submit a completed copy of the enclosed Class B Special Use Permit application with all the required accompanying  
11 documentation" or to provide documentation that only you or your immediate family members will be engaging in the  
12 activity. And that is what Mr. Klein was advised to do in this notice.

13  
14 Larry Wright: When you issued that NOV, that really wasn't a final and binding or was that a final and binding?

15  
16 Michael Harvey: We made the determination that if the activities were being carried on by non-family members, then  
17 he had to get a permit. That was our determination and that determination was subject to appeal and Mr. Klein, as I  
18 articulated in our abstract and response, appealed that determination.

19  
20 Jeff Schmitt: Mr. Harvey, you referenced that you had some audio recordings that were presented to you by the  
21 residents in the mobile home park.

22  
23 Michael Harvey: Adjacent property owners most of which are subject to the appeal.

24  
25 Jeff Schmitt: Did you deem that to be credible evidence?

26  
27 Michael Harvey: I deemed it to be credible evidence that shooting activities were being conducted. I deemed it to be  
28 credible evidence that there was a lot of shooting activity and as a result, not only based on the comments made by  
29 the adjacent property owners but on that tape, I issued the NOV indicating that if Mr. Klein was engaging in this  
30 activity allowing third party non-family members or either residents of the Bingham Woods Mobile Home Park that  
31 both of those activities required permitting before he could continue.

32  
33 Jeff Schmitt: In the presentation, do you have this evidence, the recording, was there any basis for you to make a  
34 determination as to the level of the noise that was being generated by this (i.e., 100 decibels, 120 decibels).

35  
36 Michael Harvey: No sir.

37  
38 Jeff Schmitt: None.

39  
40 Michael Harvey: And I should point out that is moot. Orange County Unified Development Ordinance does not have  
41 noise regulations. That is a separate ordinance enforced by the Sheriff's Department.

42  
43 Mark Micol: Typically when you get a complaint, you would refer them to the Sheriff's Department and then the  
44 Sheriff would go out and take noise levels or readings and what not?

45  
46 Michael Harvey: If it is a noise compliant, that is a correct statement.

47  
48 Larry Wright: And then what is the recourse then?

49  
50 Michael Harvey: As I'm not an expert on the enforcement of a noise ordinance, I am not going to comment.

1  
2 Larry Wright: But there wasn't a noise ordinance you said.

3  
4 Michael Harvey: There is a noise ordinance enforced by the county [Sheriff]. What I will testify to because I do have  
5 knowledge is that the noise ordinance exempts the discharge of fire arms from being considered a violation.

6  
7 Mark Micol: Does your office get involved like during hunting season where people have large parcels and they have  
8 people who are not family members going onto their parcel and hunting. Have you had anything like that in the past?

9  
10 Michael Harvey: No sir.

11  
12 Mark Micol: If that were to occur, would you then refer them to the Sheriff's Department? What action would you  
13 take if someone was complaining about a high activity of hunting and traffic and noise and that sort of thing, adjacent  
14 to residential areas?

15  
16 Michael Harvey: If someone complained to me about hunting, I would unfortunately tell them that is not a regulated  
17 activity per the Unified Development Ordinance and there was no land use issue that I could investigate or cite.

18  
19 Mark Micol: And the activity we are talking about today, did that occur on the trailer park parcel or the undeveloped  
20 parcel?

21  
22 Michael Harvey: The 34 acre undeveloped parcel of property.

23  
24 Mark Micol: Okay. So no activity took place in the trailer park itself?

25  
26 Michael Harvey: There was conflicting information and I basically, as I indicated, cited Mr. Klein for both parcels.

27  
28 Larry Wright: Would you please briefly state how a non-profit enters into this argument.

29  
30 Michael Harvey: The land use category as currently defined within the table of permitted uses, there are two types of  
31 recreation facilities allowed in Orange County, specially a for profit and a not for profit [operation]. If I can call the  
32 board's attention to Attachment 3D which has been entered into the record beginning on page 101, this is the  
33 memorandum provided to the County Commissioners. Recreational facilities are broken down into two separate  
34 categories as defined in Article 10 of the Unified Development Ordinance specifically recreation use, non-profit and  
35 indoor outdoor recreation use owned by non-profit corporation according to the laws of North Carolina and then a  
36 recreation use profit, an indoor outdoor recreation use owned by an entity other than a non for profit corporation. A  
37 recreation facility nonprofit is allowed within the county subject to the issuance of a Class B Special Use Permit in a  
38 myriad of different zoning districts, I will not read them all, but it would be allowed in this subject district to the  
39 issuance of a Class B Special Use Permit which is acted upon by this board.

40  
41 Larry Wright: How does one document whether it qualifies or does not qualify as a non-profit?

42  
43 Michael Harvey: The honest answer to that question is we would look for articles of incorporation establishing a non-  
44 profit corporation for the purpose of providing a recreation amenity. We would be looking at the Secretary of State for  
45 North Carolina's website for such documentation.

46  
47 Mark Micol: Getting back to the jurisdiction question, basically you don't make the determination about what is  
48 reasonable or not reasonable as far as traffic, noise level, rapid fire, constant 24/7 shooting, your office doesn't make  
49 the determination if that is reasonable or unreasonable, that is for a court of law to decide?

50

1 Michael Harvey: I would say that is a correct statement, I would just point out for the record that the UDO as entered  
2 into the record at this proceeding, establishes no regulatory standards governing intensity, i.e. does not establish  
3 regulations governing number of shots to be fired in a given hour type of caliber limitations. It does not establish  
4 noise limits at property lines that can or cannot be exceeded and that was not the basis for us issuing the original  
5 Notice of Violation.

6  
7 Mark Micol: Again, getting back to jurisdiction that means this board is not the recourse for the applicant, right?  
8 Basically, Mr. Chairman, what we are trying to figure out is jurisdiction?

9  
10 Larry Wright: I think the jurisdiction... Mr. Bryan why don't you clarify that because there are various points of  
11 jurisdiction.

12  
13 James Bryan: You all aren't proceeding exactly how I recommended but the jurisdiction is you have to find a  
14 determination. Michael didn't order anything here, and a Notice of Violation is the first one. He made a determination  
15 but whatever y'all are doing, is a shooting range and then he thought about it and said, either I don't have enough  
16 evidence for it or what I saw wasn't a shooting range, for whatever reason he said rescind it, I wash my hands of it  
17 and that rescinding is now being appealed. You have somebody who has argued and is very eager to argue that it is  
18 final and binding and creates some sort of rights for Mr. Klein. I think Mr. Klein's attorney is very eager to argue that  
19 no; it's like when a cop writes you a ticket and tears up the ticket, he can still write you a new ticket. Just because he  
20 tore it up doesn't mean that you weren't speeding, it doesn't do anything, just a wash. Y'all are going to have to  
21 make that determination.

22  
23 Larry Wright: What we want is a definition of jurisdiction as it applies to this board because we feel jurisdiction is... it  
24 should go to somebody else. That is the way, when I read jurisdiction, I thought it should go to somebody else. It  
25 should go to the Board of County Commissioners. That is what you are alluding to.

26  
27 James Bryan: No. I just think that ....

28  
29 Mark Micol: We are just determining the NOV, right?

30  
31 Larry Wright: That is it...

32  
33 Mark Micol: It is a lot simpler than we are making it.

34  
35 Larry Wright: As it applies to the UDO as of that April date.

36  
37 Mark Micol: I have a feeling we are going to hear a lot of testimony about rapid fire ....

38  
39 Larry Wright: Everyone can catch them on relevancy and repetition. Jurisdiction as it relates to...can you summarize  
40 that please.

41  
42 James Bryan: A final and binding determination by staff and then you will affirm, reverse it or modify it but you have  
43 to find out what was the final and binding determination by staff.

44  
45 Michael Harvey: Mr. Chairman, before we continue, I feel obligated to make a statement to this board. I already  
46 informed Mr. Morphis I was going to do this but I think before we continue I need to make a statement. Mr. Morphis  
47 and I have a 10 year association with each other that transcends this hearing date. We are friends; we have been  
48 friends for quite a while. It would be fair to say the he and I have had spirited discussions about this issue but we  
49 have not discussed the independent merits of this appeal obviously, that is between him, his client and this board. I  
50 think it is fair and you all need to know that Mr. Morphis and I have a relationship outside of this hearing and that

1 while we have discussed in broad terms the issues that will be brought up tonight, we obviously have not had a  
2 discussion on the merits applicable or any major elements of this case.

3  
4 Larry Wright: Mr. Morphis, proceed with your case.

5  
6 T.C. Morphis: And this is strictly on the issue of jurisdiction. Is that correct Mr. Chairman?

7  
8 Larry Wright: No. Just present your case.

9  
10 T.C. Morphis: You want us to present our witnesses? Or proceed with my opening statement?

11  
12 Larry Wright: However you want to proceed.

13  
14 T.C. Morphis: I know we are halfway into the evening but I do want to thank you all for being here tonight. We very  
15 much appreciate your time and your patience. The emphasis I want to place, I cannot state this strongly enough, is  
16 the question before you, is there an illegal shooting range on property owned by Mr. William Klein. You have heard  
17 all these questions about jurisdiction but I am going to read [North Carolina General Statute] 168 388 v. 1 Section 8  
18 and this is your charge for jurisdiction, "the official who made the decision shall be present at the hearing as a  
19 witness, the appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the  
20 city would be unduly prejudiced about the presentation of matters not presented in the notice of appeal, the board  
21 shall continue the hearing". As Mr. Harvey said, the Board of Adjustment may "reverse or affirm wholly or partly  
22 modify the appeal from and shall make any order, requirement, decision or determination that ought to be made. The  
23 board shall have all the powers of the official who made the decision". I also, and I have a Memorandum of Law I am  
24 going to hand out to you a little later and I have some additional motion I need to file but I will hand that out in a  
25 moment. I do want to cite to you the County of Lancaster v. Mecklenburg County. It is a 1993 North Carolina  
26 Supreme Court case that states unequivocally that appeals to this board from a determination of the zoning official  
27 are De Novo and that is an important distinction because you are going to hear arguments from various attorneys  
28 that tell you this is limited. This is limited to whether he was right to rescind the determination or not. That is not the  
29 issue in front of you. The issue in front of you, what De Novo means is that you get to hear anew. You get to make  
30 all the factual determinations that you need to make and you are not bound by the evidence that was in front of Mr.  
31 Harvey or presented by Mr. Tabai or suggested by the county attorney. You get to determine anew. What you  
32 determine is whether he was correct in 2013 when he determined that this was a shooting range. We additionally, I  
33 believe one of you members had asked about this, believe there is evidence to support the idea that it is likely if not  
34 definitely on the Bingham Woods Mobile Home Park. County staff has suggested that there is staff response that we  
35 can't go on a fishing expedition. Well, we are not but respectively we can use this time to determine the evidence  
36 that is available. We can use it to create new evidence so that is what I want to focus on tonight. Is this a shooting  
37 range? When I was growing up in Hickory, North Carolina, it seemed like everybody had a gun. It would have been  
38 in the 1980s. We had a 12 gauge and a 410 shotgun underneath our bed. Long story short, the world has changed.  
39 People used to use guns primarily for hunting and self-defense. Now there are more guns and more people of higher  
40 caliber than ever before and what you are going to hear here tonight is testimony that shows this isn't simply nimbus  
41 moving from Chapel Hill or wherever out into the woods being upset by traditional uses. You are going to hear that  
42 my clients, some of them are gun owners themselves. Some of them use guns on their properties and they have no  
43 objection to hunting or a little bit of target practice. The use we are talking about now is qualitatively different. You  
44 will hear testimony and I'm going to submit evidence from the sheriff's department that there are structures on the  
45 property, structures sufficient to make this determination. One thing I want to emphasize to you, and again, this is in  
46 more detail in my memorandum of law; there is not definition for shooting range in the UDO. As one of you  
47 suggested, you do not have the authority to say what the standards for regulation ought to be. You can't say there  
48 should be a set back or noise limits or things like that but your job and it is uniquely your job is to determine whether  
49 the use exists and so what I would ask for you tonight is after you hear all the evidence to determine this is a shooting  
50 range and say to the County Commissioner, now you do your job and enact better regulation. We are not asking you

1 to regulate this; we are asking you simply to agree with the 2013 NOV that there is a shooting range on the property.  
2 Before I proceed, I do need, we have gone over the subpoena, we have gone over in some detail jurisdiction, and I  
3 have two motions. You all can address them at your leisure. The first is a motion to continue to January, we may get  
4 there any way but we have additional witnesses that are not available tonight. My hope was that Mr. Klein would be  
5 testifying, I think it is going to be relevant but that is neither here nor there. The other thing, I have never done this  
6 before but I think it is important in this case and at the board's pleasure, I am prepared to talk about my second  
7 motion. I am going to ask that County legal staff be recused from advising you further and you hire outside counsel.  
8 This is not some flamboyant move. I respect Mr. Bryan highly, I think he is an excellent attorney but the evidence  
9 shows and I am prepared to present it that he is actively involved in working with county staff on their position.  
10 Essentially what county staff is they have a dilemma; they can either have Mr. Klein mad at them or have a potential  
11 law suit with 2<sup>nd</sup> Amendment written all over it or they can have us and they have chosen to deal with us instead.  
12

13 Larry Wright: I think that is hearsay.

14  
15 T.C. Morphis: I have the email right here. You have in front of you. I could show it to you. This is a public record's  
16 request. If you flip to Exhibit 10, these are in chronological order. This is a February 4 email to Mr. Bryan, Mr.  
17 Harvey, copying Mr. Craig Benedict and John Roberts. They are talking about the rescission. The determination will  
18 likely be appealed by neighboring property owners who have already retained attorneys. With that in mind, it may be  
19 helpful to focus the letter on those appealable issues. Under tab 10, it is February 4 and I apologize these aren't  
20 better divided.  
21

22 Larry Wright: They should be paginated.

23  
24 T.C. Morphis: The only thing I need to show is "I recommend the following language", and it goes through detail, the  
25 following language which appears nearly verbatim in the rescission letter.  
26

27 Larry Wright: How does this letter influence his working with us to make an unbiased decision? I want that right now.  
28

29 T.C. Morphis: The problem sir is that Mr. Bryan and county legal staff can both represent and advocate for staff or  
30 they can be your unbiased impartial .....

31  
32 Larry Wright: So you can only have one client?

33  
34 T.C. Morphis: That is exactly right.

35  
36 Larry Wright: You can only have one client and that is it.  
37

38 T.C. Morphis: The proper procedure is to hire outside legal counsel.  
39

40 Larry Wright: I know they have done it here for this board.  
41

42 T.C. Morphis: That actually wasn't the straw that broke the camel's back. I met, on Tuesday of last week, with Mr.  
43 Bryan. We had a good conversation about the procedure for this case. There was no discussion on the staff report.  
44 The staff's analysis of this, I would have never seen it except it was emailed to me at 3:30 on Friday last week and in  
45 that, I am happy go into detail at the pleasure of the board. There is an assertion that this is not a De Novo hearing.  
46 It is simply not the law. It is good advocacy but at this point, the county attorney is advocating for the staff's position  
47 which is fine but at that point, the county attorney staff needs to step aside, represent their client and you all need  
48 outside counsel. You don't have to rule on that now but that is the other motion I wish to make at this time.  
49

50 Larry Wright: And your first motion.....

1  
2 T.C. Morphis: To continue this matter until January.

3  
4 Michael Harvey: There will not be a January hearing because I will not be here.

5  
6 T.C. Morphis: Until your next availability. That is all I have for my opening. If you would like, I am happy to start  
7 calling witnesses Mr. Chairman.

8  
9 Larry Wright: Start calling witnesses.

10  
11 T.C. Morphis: I would first like to call Mr. Harvey. Mr. Harvey, could you please tell us your position with the county.

12  
13 Michael Harvey: I am the Current Planning Supervisor.

14  
15 T.C. Morphis: As you have already stated, you issued the NOV in 2013?

16  
17 Michael Harvey: That is a correct statement.

18  
19 T.C. Morphis: And you also issued the rescission in February of this year, is that correct?

20  
21 Michael Harvey: That is also a correct statement.

22  
23 T.C. Morphis: Have you ever been on site and seen the alleged shooting range?

24  
25 Michael Harvey: I have driven down Angel Lane, yes sir. I have not physically gone on the property. That was not  
26 the subject of the Notice of Violation we issued.

27  
28 T.C. Morphis: You haven't looked at the area where the range was allegedly located?

29  
30 Michael Harvey: I have seen pictures provided by several of the applicants this evening.

31  
32 T.C. Morphis: May I ask who wrote the February 10, 2014 rescission letter?

33  
34 Michael Harvey: I did.

35  
36 T.C. Morphis: And was it with assistance of county staff.

37  
38 Michael Harvey: It was with their comment, yes sir.

39  
40 T.C. Morphis: Mr. Harvey, you have one notebook, I want to direct you to Exhibit 9. These are the letters Mr. Taibi  
41 wrote to you in 2013 that collectively, I gather, formed the appeal that he lodged challenging your determination that  
42 an illegal shooting range existed on Mr. Klein's property. Let me know when you are ready.

43  
44 Michael Harvey: Okay.

45  
46 T.C. Morphis: If you look on the first page, it says, 2<sup>nd</sup> paragraph about halfway down, "Mr. William Klein has not and  
47 will not allow any person to shoot on his land without the physical presence and supervision of himself or Eric Klein".  
48 Do you see that sentence sir?

49  
50 Michael Harvey: Yes.

1  
2 T.C. Morphis: Is that what was represented to you by Mr. Taibi?

3  
4 Michael Harvey: Yes.

5  
6 T.C. Morphis: Did you ever attempt to verify that was true?

7  
8 Michael Harvey: No.

9  
10 T.C. Morphis: Alright. If you would flip three pages, the second page with Mr. Taibi's June 25, 2013 letter. If you  
11 look, it says, "no shooting takes place on the undeveloped parcel by anyone other than the land owner and his family  
12 or friends". Did you ever seek to verify that was true?

13  
14 Michael Harvey: Not beyond Mr. Taibi's argument, no sir.

15  
16 T.C. Morphis: And it says, "The landowner says there has never been occasion where more than six persons  
17 including himself have been shooting on a given day". Did you ever verify that was true?

18  
19 Michael Harvey: Not beyond Mr. Taibi's assertions, no sir.

20  
21 T.C. Morphis: No single session of shooting that has lasted more than a couple of hours or so, that that was true?

22  
23 Michael Harvey: Staff has never been called when shooting was to start or occur, no sir, we never verified the  
24 duration of hours.

25  
26 T.C. Morphis: It goes on saying, "any representation of greater numbers of shooters engaged in continuous fire for  
27 several hours at a time is simply false". You never had an opportunity to verify that?

28  
29 Michael Harvey: No sir.

30  
31 T.C. Morphis: I want to direct your and the board's attention to the next page, page 3. At the bottom, Mr. Taibi  
32 writes, "that said, the landowner nevertheless is willing to enter into a settlement with the interest of community  
33 cooperation, he will agree to undertake...", a long list of things. Would you consider that an attempt to reach a  
34 settlement with Mr. Klein over this issue?

35  
36 Michael Harvey: Yes sir.

37  
38 T.C. Morphis: Did these bullet points that Mr. Taibi outlined form at least a starting point for that settlement proposal?

39  
40 Michael Harvey: Yes sir.

41  
42 T.C. Morphis: Did it strike you as odd that someone who had no range that would have a range safety and design  
43 evaluation performed?

44  
45 Michael Harvey: No sir.

46  
47 T.C. Morphis: Or they would access environmental issues in conjunction with range safety and design?

48  
49 Michael Harvey: No sir.

50

1 T.C. Morphis: Or they would undertake reasonable range safety and environmental litigation that are consistent with  
2 the scale and scope of the activity?

3  
4 Michael Harvey: No sir.

5  
6 T.C. Morphis: My question is why would he seek to do any of these things, it sounds like a regulated shooting range  
7 if they don't have one.

8  
9 Anthony Taibi: Objection.

10  
11 T.C. Morphis: You don't need to answer that, thank you Mr. Harvey. Is it fair to say that all the allegations and  
12 assertions that Mr. Klein made, you took at face value and did not further verify?

13  
14 Michael Harvey: It was difficult for me to verify considering shooting activities had ceased during the time period that  
15 the NOV was issued and the appeal was being processed.

16  
17 T.C. Morphis: So you did not?

18  
19 Michael Harvey: As I just indicated, sir, it was difficult for me to verify since shooting activities had ceased then there  
20 was nothing to verify.

21  
22 T.C. Morphis: Okay. Thank you. I have no further questions at this time but I do reserve the right for direct...

23  
24 Anthony Taibi: Mr. Harvey, none of those particular matters of fact which I stated in the course of significant  
25 argument and discussion with you, none of those facts that Mr. Morphis pulled out, my representations were in no  
26 way dispositive to your determination ultimately, were they? In other words, you had independent grounds separate  
27 and apart from whether one time he let his buddy go when he was still at home or something like that.

28  
29 Michael Harvey: I think the only way I am going to answer that question is as follows; the April 29 notice of violation  
30 asked either that Mr. Klein submit a Class A Special Use permit to allow for expanded operations, specifically a  
31 recreation amenity at the Bingham Woods Mobile Home Park, or two, he submit a Class B Special Use permit  
32 application to allow for a recreation non-profit facility to be operated from the 34 acre parcel or that sufficient  
33 documentation be provided to refute the claims that I was .... The appeal and subsequent letter submitted by your  
34 office on Mr. Klein's behalf obviously was an attempt to refute the comments and assertions and determinations that I  
35 made in my April 29, 2013 Notice of Violation. As these letters also challenged staff on being able to produce  
36 documented evidence proving that a non-profit recreation facility or that the Bingham Woods Mobile Home Park had  
37 been expanded, which I did not have any, that led staff to rescind the NOV.

38  
39 Anthony Taibi: In fact, any settlement discussion that we might have had and this is very strange to me coming from  
40 civil court was in fact never acted upon and there was not settlement. In fact, what happened was that you decided  
41 in Mr. Bryan's colorful phrase, it is like the cop deciding to tear up the ticket so there was no settlement entered into  
42 of any kind.

43  
44 Michael Harvey: No formal settlement agreement was finalized because we chose to rescind the NOV based on the  
45 reasons articulated in my letter.

46  
47 Anthony Taibi: I'll make argument and close out.

48  
49 T.C. Morphis: No further questions for Mr. Harvey. May I call my next witness?

1 Mark Micol: When you inspected the property, did you give notice or was it unannounced?  
2

3 Michael Harvey: I drove down a common established right of way so I didn't need to give notice.  
4

5 Mark Micol: You actually went on the trailer park property?  
6

7 Michael Harvey: Yes.  
8

9 Mark Micol: Did you look for shells on the ground?  
10

11 Michael Harvey: Yes but I didn't see any. For clarification, you ask specifically about the trailer park property.  
12

13 Anthony Taibi: At the risk of making a representation, am I correct that everybody now accepts that nothing took  
14 place on the trailer park property and we are solely focused on the Angel Way property? That was my understanding  
15 that even before the NOV as a whole was rescinded that the staff was satisfied that the complaints had been quite  
16 ambiguous as to whether the trailer park property or the 34 acres adjacent to it were involved and accepted that all  
17 shooting activity, whatever character you want to call it, in fact was taking place solely on the completely  
18 undeveloped 34 acre parcel and not at all on the grounds of the trailer park.  
19

20 Larry Wright: I don't think that has been clarified or is it relevant.  
21

22 Mark Micol: I think it is very relevant.  
23

24 Michael Harvey: The only thing I would say, Mr. Chairman, is obviously we have our rescinding letter.  
25

26 T.C. Morphis: I do have one more redirect. Mr. Harvey, when you were driving down that part of the road, could you  
27 see anything that looked like a shooting range from the road?  
28

29 Michael Harvey: No sir.  
30

31 T.C. Morphis: I have no further questions, Mr. Chair.  
32

33 Larry Wright: Are you going to bring witnesses?  
34

35 T.C. Morphis: I am. I would like to call Mr. John Gallagher.  
36

37 John Gallagher: I have been duly sworn. My name is John Gallagher.  
38

39 T.C. Morphis: I am going to give you a copy of the Exhibit notebook and it is evident that I should have prepared one  
40 additional copy. I would like everyone to turn to Exhibit 1. I represent to you that this is taken from the Orange  
41 County GIS system. What you will see on here are numbers that I have added in myself. If you flip to page 2, they  
42 correspond with the individual appellants in this case. I have also labeled and outlined in red, properties owned by  
43 Mr. Klein. Property that says simply Klein in the center is the undeveloped parcel. The property that says Klein  
44 Bingham Woods Mobile Park obviously is the mobile home park. Mr. Gallagher, could you please state your address  
45 for the record.  
46

47 John Gallagher: 400 Ford Road, Chapel Hill.  
48

49 T.C. Morphis: I have your properties numbered 7, is that correct?  
50

1 John Gallagher: That is correct.

2

3 T.C. Morphis: Tell me a little bit about yourself. How long have you lived at your property?

4

5 John Gallagher: My wife and I bought this property about 12 years ago, maybe 13 years ago now and we cleared the  
6 land for a home site, lived in a mobile home on the home site for about a year and one half while we built our home  
7 and we have lived there continuously over those 12 years.

8

9 T.C. Morphis: In those 12 years, what is the only way to get in and out of that property?

10

11 John Gallagher: The only way in and out is the easement. I am sorry to correct this, it is a matter of personal  
12 accuracy, and the easement we are talking about off the paved section of Ford Road is all easement through private  
13 land. It is not Angel Way. Angel Way is another road that is the end of that easement and it is labelled as Angel way  
14 there. The easement that Mr. Harvey referred to is the easement that everyone who lives down on this section of  
15 Ford Road passes through so this is in essence the road to our property and it goes through two pieces of property  
16 owned by Mr. Klein.

17

18 T.C. Morphis: Just to orient the board, is the easement you are talking about, does it go through the bottom left hand  
19 corner, the southwest corner of the Bingham Woods Mobile Home tract.

20

21 John Gallagher: That is the easement we are talking about.

22

23 T.C. Morphis: We will get to the location of the range but for now, do you drive by the range entrance?

24

25 John Gallagher: Yes I do.

26

27 T.C. Morphis: Every day?

28

29 John Gallagher: Every day.

30

31 T.C. Morphis: Okay. Now, are you the only people in your family who live in this area?

32

33 John Gallagher: My wife lives with me on the property that is labelled number seven. I have a daughter, son-in-law  
34 and grandchild that live on the property, the land that is directly to the left.

35

36 T.C. Morphis: How long have they lived there?

37

38 John Gallagher: They have lived there 13 years.

39

40 T.C. Morphis: Do any of you, including your daughter and son-in-law own guns?

41

42 John Gallagher: Yes we do.

43

44 T.C. Morphis: Tell me what kind of guns you own?

45

46 Larry Wright: Why is this relevant?

47

48 T.C. Morphis: It is relevant to show the truthfulness and character of the witness. One question the board may have  
49 is do these people know anything about firearms and shooting.

50

1 Larry Wright: I don't think that is relevant to this. Just continue with your questioning.

2  
3 T.C. Morphis: When you first moved in, did you hear gunfire?

4  
5 John Gallagher: Yes.

6  
7 T.C. Morphis: Obviously you can't know where it was from, but where did you guess it was from?

8  
9 Larry Wright: This is hearsay, let's move on.

10  
11 T.C. Morphis: Let's talk about the use. What the Chairman says is that is speculation, it is not relevant and he has  
12 overruled that line of questioning so you don't need to answer Mr. Gallagher. Tell me about the specific noises that  
13 you have heard coming from the Klein property.

14  
15 John Gallagher: It has varied over time; we have been there 12 years. There are times I would say the use of the  
16 gunfire that has been going on would fall within the general boundaries of normal use in a rural area. There are other  
17 people who live in the area who also discharge firearms. I have discharged firearms so there are times when it is at  
18 that level. There are times when the level of use, the number of shooters, the volume and frequency and the duration  
19 is quite amazing.

20  
21 Anthony Taibi: I want to object that the frequencies, direction, none of these are relevant.

22  
23 T.C. Morphis: He can certainly answer those questions. Mr. Chair, we'll let Mr. Gallagher continue speaking and I  
24 think he will clarify.

25  
26 Larry Wright: Let's get to the point.

27  
28 T.C. Morphis: I have taken my witnesses but I have a set of recordings that will be verified by Mr. Adrian Carter that  
29 he made. At the pleasure of the board, I would like to let Mr. Gallagher listen to those. We would represent to you  
30 they are recording shooting going on at the property. I would like for you to get a sense of what Mr. Gallagher  
31 endures on a regular basis.

32  
33 Anthony Taibi: I would absolutely object to the introduction. There is no basis. We don't know the kind of  
34 equipment, when it was done, so are we going to listen for hours on end to know?

35  
36 T.C. Morphis: We have a 10 minute clip of which I was going to play 20 seconds. Mr. Carter can testify to how it was  
37 made, when it was made, and all that information. I only brought Mr. Gallagher up first because he can testify to the  
38 entrance of the range which is important.

39  
40 Larry Wright: Does the board feel this is relevant?

41  
42 Mark Micol: I don't think we need to hear it.

43  
44 Larry Wright: I don't either. Jeff, please.

45  
46 Jeff Schmitt: The gentleman has said this is a De Novo case and that is that we have the opportunity to listen to stuff  
47 that is beyond what was in the record. If that is a legal finding and that is correct then maybe we need to expand  
48 what we are listening to in regards to this. I don't know that is legally correct that this is De Novo. The applicant's  
49 attorney says it is.

1 Mark Micol: If it was from the Sherriff's department or some other entity I would say let's hear it but I don't know.

2  
3 Larry Wright: You could hear a tape of an automatic weapon for five seconds. What does that mean in an overall 24  
4 hour period, seven day, three month and what are we going to do with that? Where do we go with that?

5  
6 Jeff Schmitt: I don't know, I would guess and this is not, given the statements in the comments that Mr. Klein,  
7 through his attorney, made to Mr. Harvey about him being willing to put up limits on the shooting range, where ever  
8 that is here in this letter, number 10, whatever page that was.

9  
10 Larry Wright: While you are finding it, I wouldn't want to be in any one of these people's shoes but we have to work  
11 on something that is tangible. We just can't work on hearsay.

12  
13 T.C. Morphis: This also goes to the question of standing to show the suffering .....

14  
15 Jeff Schmitt: Mr. Klein was willing to come to an agreement with Mr. Harvey on having the safety range designed  
16 and evaluated access environmental issues and then undertake reasonable range safety things. The implication to  
17 me is a very interesting thing and listening to a snippet of this thing may go to some basis by cooperating what is in  
18 here and say that in effect the level of what was going on actually substantiates that there was something beyond the  
19 family members shooting. How long would we listen to this thing?

20  
21 T.C. Morphis: Less than 20 seconds and we will have it authenticated by Mr. Carter.

22  
23 Jeff Schmitt: This thing is not going to end tonight either.

24  
25 Larry Wright: Go ahead.

26  
27 Anthony Taibi: Again, settlement discussions are inappropriate for any discussion by a decision making body of this  
28 kind. They are, I would defer to Mr. Bryan, completely excludable from any discussion. Secondly, to the extent that  
29 my client is attempting to be a good neighbor, that is being used against him so if he and his buddies like to blast  
30 away at an old tree stump then that is a perfectly legal use but if in order to accommodate his neighbors, he says  
31 okay, I will get the bobcat out here and make some attempts to clean things up in a way y'all would like to make it a  
32 little bit more safe. I will put a little quick lime down where the lead might hit, oh, well now he is engaged in an activity  
33 so now somehow it has changed its character. The issue is, is there a facility, I'm allowed to play basketball in my  
34 backyard, if I put up a hoop, it doesn't suddenly become a basketball facility. If I am shooting on my 34 acres and my  
35 neighbors complain and I make some attempt to address any legitimate complaints they might have, I don't expect  
36 that to be used against me. There is no facility. We stipulate that there is lots of shooting of loud guns... bad, bad  
37 guns.

38  
39 Larry Wright: Okay. Thank you. So where are we board? Do you want to hear it or not? Play the tape.

40  
41 T.C. Morphis: I am going to start this at a low volume, I am going to turn it up and you tell me when it sounds like  
42 what you heard. Mr. Taibi, we are entitled to let it in.

43  
44 Anthony Taibi: It is absurd.

45  
46 Larry Wright: You address the board, please. We will hear it.

47  
48 *(Played tape).*

49  
50 John Gallagher: This is what it sounds like outside on my property when I take a walk.

1  
2 T.C. Morphis: How many times a week do you hear this?

3  
4 John Gallagher: There have been times I hear this two or three times a week and go on for more than three hours.

5  
6 T.C. Morphis: For how many years did this go on, sir?

7  
8 John Gallagher: On and off for the time we have been there, 10 or 12 years.

9  
10 T.C. Morphis: Does the noise bother you?

11  
12 John Gallagher: Yes.

13  
14 T.C. Morphis: This is relevant to standing Mr. Taibi. How badly does it bother you? Can you do activities outside?

15  
16 John Gallagher: It bothers me enough that my wife and I know what are called shooting days and not shooting days.  
17 On shooting days, my wife will brave the easement going past the shooting range to get away from the property so  
18 she can have activities away from home because she can't stay there. You go inside your house and you turn up  
19 your music, you have to turn it up to a very distracting level to drown this out. We can't walk on our property, can't  
20 fish in my pond, can't garden, and can't take care of the chickens. You can't be out of the house with that stuff going  
21 on hour after hour.

22  
23 T.C. Morphis: Do you worry about the safety of your grandchild that lives nearby?

24  
25 John Gallagher: Darn right I am. We have an agreement that if there is shooting going on my granddaughter doesn't  
26 get transported to and from our house. If there is shooting going on my wife won't take her outside.

27  
28 T.C. Morphis: Do you believe this has affected the value of your property?

29  
30 John Gallagher: There is no question about it.

31  
32 Larry Wright: That is irrelevant. He is not an appraiser.

33  
34 T.C. Morphis: We have an appraiser here tonight and we will talk about our appraisal testimony.

35  
36 Larry Wright: Mr. Bryan, how does this relate to what we have here today?

37  
38 T.C. Morphis: We have been told that we have to prove standing Mr. Chairman.

39  
40 Larry Wright: Maybe we already have that.

41  
42 T.C. Morphis: If you want to declare we have standing, I can make the testimony short. I am happy to do that.

43  
44 Larry Wright: Do you have any other questions of Mr. Gallagher?

45  
46 T.C. Morphis: I do. Mr. Gallagher, will you please turn to Exhibit 5. There are three photographs. I will represent to  
47 the board, I took these last week and I want Mr. Gallagher to explain to the board what they are looking at.

48

1 John Gallagher: When you drive down the gravel private road from the pavement to our property, part way through  
2 that route on the right hand side is access to the undeveloped 34 acres and these photographs are of the place  
3 where people pull in, park, open this up and go in to engage in those shooting activities.  
4

5 T.C. Morphis: This is the entrance to the shooting range?  
6

7 John Gallagher: That's it.  
8

9 T.C. Morphis: With barricades and no trespassing signs?  
10

11 John Gallagher: That is right.  
12

13 T.C. Morphis: Is that, in your estimation, look to be a path suitable for vehicles?  
14

15 John Gallagher: Yeah, vehicles do drive through there.  
16

17 T.C. Morphis: Like to get to the facilities?  
18

19 John Gallagher: There is definitely an entrance and there is definitely a route in.  
20

21 David Blankfard: Looks like a running trail.  
22

23 T.C. Morphis: I'm not going to try .... You can certainly ask the witness. Mr. Gallagher, I would like for you to turn to  
24 Exhibit 8 please. First page of Exhibit 8, for explanation to the board, is a list, a spreadsheet I have prepared of all  
25 the sheriff's departments reports that we received. I made a publics records request and after this spreadsheet are  
26 photocopies of all the sheriff's reports we received. There are 13 in total. Mr. Gallagher, did you ever call the  
27 sheriff's department about any of these?  
28

29 John Gallagher: Yes I have.  
30

31 T.C. Morphis: About how many times did you call the sheriff's department?  
32

33 John Gallagher: I've only called the sheriff's department twice. My wife has probably called eight or ten times.  
34

35 T.C. Morphis: Sounds like almost a dozen times, your family.  
36

37 John Gallagher: Something like that.  
38

39 T.C. Morphis: Have you called recently or your wife?  
40

41 John Gallagher: No.  
42

43 T.C. Morphis: Why not?  
44

45 John Gallagher: We were told by the sheriff's department that noise violations didn't give the authority to act in these  
46 cases and that it is legal to shoot on your property and they really didn't have any basis for bringing it to a stop. They  
47 asked us to keep a log of the days and times when we heard shooting and the start and stop duration of those  
48 events. We kept those logs for a couple of months and turned them over to them and we never saw any action as a  
49 result.  
50

1 T.C. Morphis: You testimony is that this is at least once a week for several hours at a time.

2

3 John Gallagher: Yes.

4

5 T.C. Morphis: Okay. I have no further questions at this time.

6

7 Anthony Taibi: So in the last 52 weeks, how many times has there been any shooting activity? On how many  
8 occasions?

9

10 John Gallagher: I personally couldn't give you a firm number but there will be weeks when there will be two or three  
11 days and there will be two or three weeks when there won't be any.

12

13 Anthony Taibi: There will be months, like in the winter when there is not any.

14

15 John Gallagher: No I wouldn't say that, there was shooting tonight.

16

17 Anthony Taibi: Tonight? In don't think so.

18

19 T.C. Morphis: Mr. Taibi, .....

20

21 Larry Wright: You address the board, you don't address each other.

22

23 Anthony Taibi: Withdrawn. In fact, most occasions, overwhelmingly are a sunny, Saturday afternoon, aren't they?

24

25 John Gallagher: No. I don't think that is true.

26

27 Anthony Taibi: Okay. And in point of fact, typically, it is less than two hours in duration.

28

29 John Gallagher: I think it just as likely to be three or four.

30

31 Anthony Taibi: Okay. Do you have any evidence there is a club of some kind?

32

33 John Gallagher: No.

34

35 Anthony Taibi: Do you have any evidence there are memberships offered of some kind?

36

37 John Gallagher: No.

38

39 Anthony Taibi: Do you have any evidence the right shoot on Angel Way is an amenity of living in the trailer park?

40

41 John Gallagher: I do know there are people who are residents of the trailer park, who regularly shoot there.

42

43 Anthony Taibi: That was not my question. Would you answer my question?

44

45 John Gallagher: No. I don't have any evidence.

46

47 Anthony Taibi: You don't have any evidence there is a club, memberships, regular activities, competitions?

48

49 John Gallagher: No.

50

1 Anthony Taibi: Scheduled events?

2

3 John Gallagher: Nope.

4

5 Anthony Taibi: Okay. So your testimony is that simply because this man's family and friends shoot with a greater  
6 intensity and volume than you like, suddenly, activity which you agree is perfectly legal has somehow taken on a  
7 different character, is that correct?

8

9 John Gallagher: Yes.

10

11 Anthony Taibi: No further questions.

12

13 T.C. Morphis: I do have one or two redirect questions. Let's make sure there is full disclosure. Mr. Harvey issued  
14 his original Notice of Violation in 2013 that is known at this time. Did the amount of shooting die off after the Notice of  
15 Violation was issued?

16

17 John Gallagher: Yes it did.

18

19 T.C. Morphis: Okay. No further questions. May I call my next witness, Mr. Chairman?

20

21 David Blankfard: Has the shooting increased since the Notice of Violation was rescinded?

22

23 John Gallagher: It has resumed. There was a period after the Notice of Violation and please don't get the  
24 impression I am tracking this on a minute to minute basis. I am one of many people in the neighborhood and I heard  
25 the Notice of Violation, I heard that it was rescinded but I don't know when and I wasn't following it closely but we all  
26 noticed that when the Notice of Violation was issued that there was a definite reduction in the amount of activity in  
27 that area that I call a shooting range. Now, I noticed that activity has picked back up again but it has not picked up at  
28 the level that it did before the Notice of Violation was originally issued. That is my subject interpretation but it is also  
29 other people that I have spoken who have similar feelings.

30

31 Mark Micol: You said you discharge your weapon occasionally?

32

33 John Gallagher: Yes.

34

35 Mark Micol: What type of weapon do you discharge?

36

37 John Gallagher: I have three different weapons. I have a .22 rifle that I purchased when I bought the property to deal  
38 with snakes and possums in my hen house. I have a .20 gauge shotgun that I bought about three years ago to deal  
39 with possums because a .22 is a little inadequate and I bought a .22 pistol about six months ago because I was  
40 having problems with snakes in the henhouse and I didn't want to blow the walls off with the .20 gauge so those are  
41 the weapons I have. My use of the weapons on my property has been to become familiar with them, to sight them in.  
42 I learned to shoot as a boy. I hunted as a boy. People hunt on our property. I know how to handle weapons but I  
43 wanted to become familiar with those for safety purposes. I probably have fired over 10 years 100 rounds of  
44 ammunition at one time or another on my property.

45

46 Mark Micol: At one sitting, how many times have you discharged?

47

48 John Gallagher: I have never discharged more than 15 or 20 rounds at a time just sighting a gun.

49

1 Larry Wright: Mr. Bryan, on this De Novo issue, this agenda could just be washed away and could go on forever,  
2 how do we define? He could take this and spend the next eight board sessions on it. What do we do here?  
3

4 James Bryan: So you have to give him full and fair consideration and whatever that may take, that will take. At a  
5 point, the constraints to it are relevancy and repetition. Those are your two major restraints but beyond that you have  
6 to allow them to have their case. It really matters as to what is the determination you are working on but regardless  
7 of that, you are not bound by any record on appeal. You guys can issue your own subpoenas apart from them so  
8 they can ask for subpoenas. You can, on your own volition say look I need more information about what happened,  
9 when it happened, I subpoena somebody. He is trying to prove standing and we routinely, in this board, approve  
10 standing or I've never known us to disagree with standing, of course I've been here for 20 years but a professional  
11 coming and showing standing and proving ... why can't we just do that and move on rather than go through countless  
12 witnesses?  
13

14 James Bryan: It was my recommendation that [unintelligible] there is number of different ways to do it. You can  
15 argue special damages. That is not what they are arguing here this evening. They have already submitted the  
16 appraiser's report in here. I believe they have got the appraiser here tonight.  
17

18 Larry Wright: So we could move on to that and he could move on to something else?  
19

20 T.C. Morphis: Yes. That is Exhibit 6. We have an appraiser's report. I have Mr. Kirkland here, I would happy to call  
21 as my next witness and if it is some comfort, I don't have an endless parade of witnesses. I am very cognitive of  
22 competitive testimony. We have witnesses that are going to talk a little bit more along the lines of what you have  
23 heard, talk about what they have actually seen on the site so we are going to actually keep this as limited as possible  
24 on preserving our rights.  
25

26 Anthony Taibi: I would suggest there is a more limited matter in front of you all that will not require a whole lot of  
27 factual explanation that is whether Mr. Harvey's determination that a facility means something other than discharging  
28 firearms at some arbitrary level of intensity. I mentioned that both procedurally and because there is a constitutional  
29 issue which is if you have the right to do something on your property, the original violation says it only has to be  
30 members of your family, you can't have other significant others, you can't have a domestic partner; you can't have  
31 your friends. They have made it very plain what they object to and it is really a matter of interpretation rather than a  
32 question of fact. Is there some level of intensity of an individual and his folks engaging in ordinary shooting activity  
33 on vacant land that at some point that is just ordinary okay activity and as Mr. Gallagher has articulately said, no, at  
34 some level it becomes more than that slimly with the number of people. If it is your family and friends ..... so that will  
35 limit the factual questions before you.  
36

37 Larry Wright: Okay. Thank you. Your appraiser?  
38

39 T.C. Morphis: We have no further questions Mr. Gallagher. Mr. Kirkland. You have heard our board would like to  
40 keep this as short as possible so ... just tell me if I am doing too much lawyer mumbo jumbo.  
41

42 Richard Kirkland: My name is Rich Kirkland I have been sworn in. I am a commercial appraiser certified general in  
43 the State of North Carolina. I am MAI. I have been working in the Triangle area and surrounding areas for about 19  
44 years. I regularly appraise land, rural land and subdivisions as part of my professional practice. I was hired to  
45 address the questions about whether this would have an impact, of whether a shooting range can have an impact on  
46 land value. This has come up in my regular course of business. I have appraised land next to shooting ranges in two  
47 other situations and the ..... Specifically, I have looked at shooting ranges, I have looked at one that was proposed to  
48 go into Harnett County where the property was situated in such a way where they were using buffering and there was  
49 some safety issues with that because I had already appraised a proposed subdivision that was going in right there so  
50 we went through that and that set me onto a process of going through the appraiser. With all the research that has

1 been done across the country and across North Carolina I found a lot of documentation across the country where  
2 proximity to a shooting range can have an impact on value. There are plenty of examples where they do not when  
3 they are safe and regulated and follow modern techniques. You have outdoor facilities where there is really no  
4 potential for projectiles escaping the site and those areas are considered safe and fine. The other side of that is  
5 where you have areas that are not as well regulated or their safety concerns that have come up specifically in Harnett  
6 County. Drake's Landing was in the papers because they actually had projectiles escaping from their facility and I've  
7 done research out and around Harnett County. The county assessor actually dropped values on all the properties  
8 around Drake's Landing. If you were within 1/2 mile, they dropped you by 12 percent and they had a sliding scale  
9 going out to a mile, so yes, where there is a concern for safety and there was issues where things were not handled  
10 to a set level of safety, there is an impact on value and that is recognized by the public and clearly recognized by the  
11 county assessor in that regard. As that pertains to this project, if there is a shooting range type activity going on in an  
12 area where it is unlicensed, unregulated and unsupervised, I would say it would be reasonable for the public to be  
13 concerned because that would be an impact on property value.

14  
15 T.C. Morphis: Mr. Kirkland, don't mean to interrupt your train of thought but if you flip to page 5 of your appraisal  
16 document, could you read that first sentence under conclusion.

17  
18 Richard Kirkland: The unlicensed and unregulated shooting range, if allowed to continue would substantially injure  
19 value of adjoining and nearby property.

20  
21 T.C. Morphis: And that is your professional opinion?

22  
23 Richard Kirkland: That is my professional opinion.

24  
25 T.C. Morphis: We are all talking about, is it a range, isn't a range. Suppose the board decides this is not a shooting  
26 range, does that matter or is it an issue of perception?

27  
28 Richard Kirkland: All market value is a matter of perception... what a willing buyer and seller is going to work out at.  
29 If you go out on a Saturday and you are looking at property to buy a house and there is that level of shooting activity  
30 going on out there, you are not going to be asking whether that is licensed, whether that is actually a shooting range  
31 or just sort of like a shooting range.

32  
33 T.C. Morphis: So all the noise you heard and all that, that could affect the property values even if it is not called a  
34 shooting range.

35  
36 Larry Wright: You say you work in the triangle?

37  
38 Richard Kirkland: Yes sir.

39  
40 Larry Wright: Are you familiar with the area of Hopson Road and Alexander Drive in the Research Triangle Park?

41  
42 Richard Kirkland: Yes.

43  
44 Larry Wright: Are you familiar where the Environmental Protection Agency is and the National Institutes of Health?  
45 Alexander Drive and go over to Hopson Road?

46  
47 Richard Kirkland: I have a vague recollection of the EPA building but not sure I can tell you anything specific.

48  
49 Larry Wright: When have you been there?

50

1 Richard Kirkland: It has been a few years.

2

3 Larry Wright: What time of day?

4

5 Richard Kirkland: Again, I do not recall.

6

7 Larry Wright: Did you hear gunfire?

8

9 Richard Kirkland: No.

10

11 Larry Wright: There is a hunting club. I worked there for 25 years and it goes on all day long. I have just seen a lot  
12 of multi-use development and I just don't know how ....

13

14 T.C. Morphis: May I add one other question that my help with the Chairman's line of question. The range he is  
15 talking about down in the Research Triangle Park, to your recollection, is that primarily a commercial or residential  
16 area?

17

18 Richard Kirkland: I would call that a commercial area but again, I did not look at that gun range as part of this project.

19

20 T.C. Morphis: Understood but this particular use, primarily commercial or residential?

21

22 Richard Kirkland: This is residential.

23

24 T.C. Morphis: Thank you Mr. Kirkland.

25

26 Anthony Taibi: You haven't observed any of the shooting on Angel Way?

27

28 Richard Kirkland: No sir.

29

30 Anthony Taibi: So whether it is a lot or a little, you don't know, that is what you have been told.

31

32 Richard Kirkland: I am not making any assertions about that.

33

34 Anthony Taibi: Garbage in, garbage out.

35

36 Richard Kirkland: I would classify it as that.

37

38 T.C. Morphis: I have other witnesses that are prepared. We have evidence that is relevant to the use. We also have  
39 evidence that is relevant to the standing issue. I am not trying to rush this board, I want to make a full record but I am  
40 also sensitive to your time constraints. Would you all like me to continue presenting evidence regarding standing?  
41 Without a clear ruling on that, that is what I am going to continue doing.

42

43 Mark Micol: I think we can say they have standing so we can eliminate part of this.

44

45 Larry Wright: Do we all agree there is standing?

46

47 T.C. Morphis: Thank you Mr. Chairman, we will do our best to keep this short. My next witness is Mr. Adrian Carter.

48

49 Adrian Carter: My name is Adrian Carter and I have been sworn in.

50

1 T.C. Morphis: Mr. Carter, if you will open the Exhibit notebook please. Go back to Exhibit 1. If you will look at  
2 number 4. Is that the location of your property?

3  
4 Adrian Carter: That is my property.

5  
6 T.C. Morphis: How long have you lived there Mr. Carter?

7  
8 Adrian Carter: We purchased in 1996 and the next couple of years, my wife and I cleared the lot and built our home  
9 together. We moved in September 1998. We have been there a while.

10  
11 T.C. Morphis: Since you moved in, have you heard shooting in the area?

12  
13 Adrian Carter: Of course. As we worked there, we heard shooting, hunting, whatever, seasonality of it, expected in a  
14 rural area, hunting and the sound of hunting is expected.

15  
16 T.C. Morphis: What changed? What made this use objectionable?

17  
18 Adrian Carter: Starting probably in the fall of 2010, we had been there 12 years at this point, significant change in the  
19 frequency and intensity of just the cacophony of multiple caliber weapons, multiple shooters. All coming from the  
20 same general direction which on the map would be east/southeast from our property and so we would have  
21 conversation with our neighbors, what the heck is going on, what's happened, who is just lighting up the sky with  
22 weapons? I think around the start of 2011, we had a homeowners meeting and the nearest email I could find to  
23 where we started to look into this more deeply was around March of 2011 so almost four years ago.

24  
25 T.C. Morphis: I'm going to spare the board and not play the clip again. Tell me about that clip, where did that clip  
26 come from?

27  
28 Adrian Carter: I recorded that clip with a smartphone from my kitchen window facing the property in question.

29  
30 T.C. Morphis: Best guess, how far is your property? And we are going to get, in a moment, to the location of the  
31 range but your best guess, how far is it from the range?

32  
33 Adrian Carter: It is 1,000 feet.

34  
35 T.C. Morphis: That noise that Mr. Gallagher had to talk over, is that an accurate representation of what you hear  
36 from your property?

37  
38 Adrian Carter: I would differ from what John Gallagher said that noise level you played it at was the sound level we  
39 experienced in our home with the windows closed. I think the difference, not to impugn Mr. Gallagher's testimony,  
40 but Mr. Gallagher lives opposite the mussel direction of the gun so we were catching the shock wave of the blast of  
41 the weapon because as we were to later find out, the gun range points towards our house.

42  
43 T.C. Morphis: We will talk in a moment about how you know that. I would like to direct you to Exhibit 8 which are the  
44 police reports again. I apologize, it was sheriff's department. Did you or your wife ever call the sheriff's department?

45  
46 Adrian Carter: Yes.

47  
48 T.C. Morphis: I am looking, there are 13 reports, I don't see your name on any of these but you made those calls, is  
49 that correct?

1 Adrian Carter: I would say a half dozen times maybe more when these episodes would escalate, we would call our  
2 neighbors, as were instructed by Michael Harvey to document the shooting episodes to inform the sheriff's  
3 department of the episode and have the sheriff's department come out. I can't explain why our record is not here.

4  
5 T.C. Morphis: It would appear there were phone calls made for which there were no record generated?

6  
7 Adrian Carter: Absolutely.

8  
9 T.C. Morphis: We made a public records request for all sheriff's reports, is that correct?

10  
11 Adrian Carter: Absolutely.

12  
13 T.C. Morphis: Would you please turn to the last four pages of Exhibit 8. If you look in the top right corner, there is a  
14 date, June 21, 2014, is that correct?

15  
16 Adrian Carter: Yes.

17  
18 T.C. Morphis: This is the date of the police report. Did you hear the shooting on that date?

19  
20 Adrian Carter: Yes I did.

21  
22 T.C. Morphis: The reason I ask is did you have any discussions with your neighbors about this shooting, specifically  
23 with your neighbor, Mrs. Molly James?

24  
25 Adrian Carter: I didn't have a discussion with Molly James, however, her husband Johnathan, called the police  
26 department, the sheriff's department and I believe Mr. James emailed both you and I and possibly Mr. Harvey about  
27 this escalation and reversion to the way it had been before.

28  
29 T.C. Morphis: We have a sworn affidavit from Ms. James, I would like you to read it out loud and tell me if it  
30 accurately reflects the conversation you had. It is relevant because it talks about non-family members on the  
31 property.

32  
33 Anthony Taibi: Relevance... hearsay.

34  
35 T.C. Morphis: It is a sworn affidavit.

36  
37 Larry Wright: Sir, you talk to the board.

38  
39 T.C. Morphis: I apologize. The last three pages of Exhibit 7 Mr. Carter.

40  
41 David Blankfard: Do we really need to listen to him read this affidavit.

42  
43 T.C. Morphis: I am happy to read two relevant paragraphs.

44  
45 Larry Wright: Two paragraphs you are going to read?

46  
47 T.C. Morphis: Yes sir. We will skip right to paragraph 6. After an unusually loud and ongoing shooting session on  
48 June 21, 2014, my husband called the Orange County Sheriff Department to see if they could check on the shooting.  
49 I drove down to the shooting range. As I walked toward the activity a man turned to face me and pointed a semi-  
50 automatic weapon in my direction. I directed him to lower his fire arm as even I know the basics of gun safety. There

1 were also three other men present as well as a very young child approximately four to five years old. I asked if Mr.  
2 Klein was present among them as my understanding was that while the shooting range that is being disputed that Mr.  
3 Klein needed to be present for any shooting activity. One man said which Klein was at home and had given them  
4 permission to shoot their guns there. I asked them to stop shooting until I talked to Mr. Klein and was told then ....  
5

6 Anthony Taibi: I want to object.

7  
8 David Blankfard: He is not here.

9  
10 Anthony Taibi: He is not here exactly.

11  
12 Larry Wright: I understand that.

13  
14 Anthony Taibi: They are trying to get it in through another witness who wasn't there.

15  
16 Larry Wright: Sustained.

17  
18 T.C. Morphis: Mr. Klein is free to rebut this testimony.

19  
20 Anthony Taibi: He wasn't there either.

21  
22 Larry Wright: Address the board.

23  
24 T.C. Morphis: Mr. Carter, let's go back. I would like to direct you to Exhibit 3 and Exhibit 4. I apologize; it is a little  
25 hard to read. Please take a look at these two and tell me what you are looking at sir. If you need any help, we can  
26 walk through that.

27  
28 Adrian Carter: They look like topos of Bingham Mobile Home Park, Ford Road. Top of the page is north.

29  
30 T.C. Morphis: If you will flip to Exhibit 3. Also take a look at Exhibit 4 and tell the board what that is.

31  
32 Adrian Carter: That's a satellite view of the same topo.

33  
34 T.C. Morphis: I represent to the board that Exhibit 3 and Exhibit 4 are Orange County GIS data that I pulled to  
35 prepare these exhibits. Mr. Carter, start on Exhibit 4, there is a little word in the top center that says Ford Road. I  
36 want you to follow Ford Road and I want you to stop at the approximate entrance to the shooting range and tell me  
37 how you know it is a shooting range and please describe for the board.

38  
39 Adrian Carter: I have driven down this road so whether it is called Angel Way or Ford Road, it is not my business but  
40 I have driven down this road and so I know the blue line that traverses Ford Road is a creek bottom, probably a  
41 seasonal creek, I am imagining. There is some sort of culvert across the road and if you continue down southeast  
42 from traveling down Ford Road, past the horizontal yellow lot boundary, there is an entrance into the shooting range  
43 on the right side that Mr. Gallagher to in the photographs that showed the entrance to that.

44  
45 T.C. Morphis: I am looking at the bottom right of Exhibit 4, a little orange smear. Is that the dirt road entrance?

46  
47 Adrian Carter: I am not seeing that.

48  
49 T.C. Morphis: That is not a good Exhibit.

1 Adrian Carter: Yes. That looks reasonable.

2

3 Anthony Taibi: Can I object to this? What is the basis?

4

5 T.C. Morphis: We are getting to the basis. Just for your information, Mr. Taibi, to show the physical structures as  
6 part of your client's shooting range.

7

8 Jeff Schmitt: Maybe the board would like to know where the smear is.

9

10 T.C. Morphis: May the witness approach? Mr. Carter will talk about physical structure. Mr. Carter, have you ever  
11 been on site at the range?

12

13 Adrian Carter: Yes I have.

14

15 T.C. Morphis: When you entered the property, did you intend to enter Mr. Klein's property?

16

17 Adrian Carter: No.

18

19 T.C. Morphis: You would not want to trespass, is that correct?

20

21 Adrian Carter: Correct.

22

23 T.C. Morphis: Please explain to me what happened.

24

25 Adrian Carter: My neighbors and I were concerned for our safety and went to see if we could find the source of the  
26 gunfire so we went on the property.

27

28 T.C. Morphis: If you would stop Mr. Carter and orient the board. Go to Exhibit 1 for me and I want to generally  
29 describe where Ms. Boysen's property is.

30

31 Adrian Carter: Ms. Boysen's property is in the gap between the numbered properties and the mobile home park  
32 properties. The two entitled lots that separate two and four. The two lots adjoining north and south.

33

34 T.C. Morphis: You thought you were going on Ms. Boysen's property, correct?

35

36 Adrian Carter: Yes.

37

38 T.C. Morphis: Continue sir. So you found the range, what did you see?

39

40 Adrian Carter: There was a shooting station set up near that creek, dry creek on the high side of the dry creek. On  
41 the opposite of the creek were some targets set up. There were some trees that had been cut down.

42

43 T.C. Morphis: We are talking like finger saplings or substantial trees?

44

45 Adrian Carter: Six, eight, twelve inch trees riddled with bullets.

46

47 T.C. Morphis: Why were the trees cut down? You obviously weren't there but what did it appear was the reason?

48

49 Adrian Carter: There was targets set up on the opposite side of the creek bed at approximately level site line across  
50 the creeks if you can imagine a depth firing station on one side, target set up on the other and any trees that

1 encroached on your site line had been cut down to facilitate the shooting or the direction of fire. There was also an  
2 earthen berm had been built up on the opposite side into the Bingham Mobile Home Park property.

3  
4 T.C. Morphis: That appeared to be a man-made berm?

5  
6 Adrian Carter: It was a man-made berm. I am a building contractor I would know what a man-made berm looks like.

7  
8 T.C. Morphis: Were there any other physical facilities on the site, sir?

9  
10 Adrian Carter: There were some structures, catwalks across the creek so you could access the targets, I assume in  
11 a number of places they had some bridges and stuff made.

12  
13 T.C. Morphis: Did you see any shells on the ground?

14  
15 Adrian Carter: There were thousands of shells on the ground.

16  
17 T.C. Morphis: Not five or ten?

18  
19 Adrian Carter: No.

20  
21 T.C. Morphis: There were thousands?

22  
23 Adrian Carter: Easily. There were clay target remnants, shotgun shells, pistol cartridges, rifle cartridges of various  
24 calibers.

25  
26 T.C. Morphis: I want you to go back to Exhibit 4. Maybe easier to use Exhibit 3 which is the top of the exact same  
27 area. I want you to verbally explain to the board where this range is located. Kind of walk them through what you  
28 saw and I want you to explain to them how you know where you saw it.

29  
30 Adrian Carter: The kind of creek bottom determines the center point of the shooting range since they are up at a  
31 firing station on one side and shoot across the creek, perpendicular to the creek and the elevated targets are on the  
32 other side, so the only place these conditions exist are into the triangular of the mobile home park property which is  
33 just to the southwest of Ford Road in that little triangle that traverses Ford Road. The direction of fire with a very  
34 small margin of error from this shooting station across that creek fires on a reasonable direct line to my property  
35 which is, you'll see from this topography, you will see my house located near the crown of the hill, that is ...

36  
37 T.C. Morphis: Let me interrupt you, you are looking at Exhibit 2?

38  
39 Adrian Carter: I am on Exhibit 2 which is the clearest one.

40  
41 T.C. Morphis: Approximately in the northwest direction?

42  
43 Adrian Carter: Approximately west northwest direction. You will see the elevation adjacent to my house is 530 feet  
44 above sea level. The elevation around my neighbor, Michael Joerling's house is 555 and the elevation at the creek  
45 bottom is 480 so my house is 50 feet higher than the shooting station which is critical if a line of site misses the top of  
46 this man-made berm and it wouldn't take a lot of elevation height from the shooter for its projectile to traverse berm  
47 and hit my house or my neighbor's house.

48  
49 T.C. Morphis: To avoid repetition, you generally agree Mr. Gallagher about frequency and in terms duration and  
50 number of times per week.

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50

Adrian Carter: There was significant escalation from when I mentioned in the fall of 2010, significant escalation, and words cannot describe it was nothing like we had lived with before. It escalated for the 18 months or two years that we were engaged with Michael Harvey trying to document this and trying to get a resolution to it until he issued the NOV and then as Mr. Gallagher testified, everything, actually before the NOV was issued, the shooting died down and it was assumed that Mr. Klein's legal counsel advised him to keep his head low. I don't know this.

T.C. Morphis: I have no further questions. Anything else you would like to add to the board.

Adrian Carter: I can't stress enough, how I am not a gun owner, however we respect people's right to shoot on their property but this is just not landowners exercising his right to shoot his weapon on his property. There are police reports showing that tenants from the mobile home park and these seem to be tenants that are being ID'd by the sheriff's department seemed to be the escalation incidents.

Anthony Taibi: Objection. This is hearsay.

Larry Wright: Sustained.

Anthony Taibi: You have a smart phone?

Adrian Carter: Yes.

Anthony Taibi: You usually carry it with you?

Adrian Carter: Yes.

Anthony Taibi: It has GPS in it?

Adrian Carter: Yes.

Anthony Taibi: But you didn't bother to take a GPS coordinate of this place.

Adrian Carter: I don't know how.

Anthony Taibi: You don't know how but you do know how to read one of these maps and tell us exactly where the thing is?

Adrian Carter: I can show you the outline of the county's property here on my smart phone right now without any technical ability at all.

Anthony Taibi: This area around the area where folks shoot, whatever we care to call that, it's a heavily wooded area, isn't it?

Adrian Carter: Which area are you talking about?

Anthony Taibi: There is an area around where people who are shooting tend to do their shooting, right, that you just described where you saw lots of spent shell casings.

Adrian Carter: Yes.

1 Anthony Taibi: The surroundings of that are heavily wooded, correct?

2

3 Adrian Carter: Yes.

4

5 Anthony Taibi: There is no way you can see from that spot to your home however high it is, correct?

6

7 Adrian Carter: Correct.

8

9 Anthony Taibi: And to the extent someone is engaging in legal sport shooting activity on their property, would you  
10 prefer that they make attempts to mitigate any trouble to their neighbors or ....

11

12 T.C. Morphis: Objection.

13

14 Larry Wright: Sustained.

15

16 T.C. Morphis: I know you are not a gun owner but how far do you think a high caliber hunting rifle can shoot?

17

18 Adrian Carter: With this incidence going on at our property, I decided I would educate myself and some high caliber  
19 weapons can travel several miles. I believe a .22 can travel over a mile.

20

21 T.C. Morphis: I only have two short other witnesses and I can truncate their testimony I promise.

22

23 Larry Wright: I would appreciate that because I really don't know how this relates to what we have to do, what our  
24 business is tonight, do you understand?

25

26 T.C. Morphis: I do sir.

27

28 Larry Wright: And I am going to ask our attorney, how does this relate to what we are supposed to be doing, what we  
29 are charged with tonight?

30

31 James Bryan: That is not a question I could answer. The board has determined that there is jurisdiction. It is a  
32 question for the appellant, what is he asking you to do, how does it relate? I don't see how I can offer anything.

33

34 Larry Wright: I am going to ask the board. Do you have any comments or questions right now relative to what this  
35 has to do with where we are to go tonight?

36

37 David Blankfard: I don't think we have heard anything here tonight that says this is a firing range operating on this  
38 property. What is the definition of a firing range? We have heard there are people shooting, okay, they can do that.  
39 There is no person from NRA that says this is a legal shooting range.

40

41 Mark Micol: We haven't heard all the testimony and I am assuming we are going to hear more of the same but that is  
42 the question I have, is the next witnesses, is it going to be more of the same?

43

44 Jeff Schmitt: Mr. Harvey, did you notice this plethora of shells covering the ground and all that was described here?

45

46 Michael Harvey: I have seen pictures provided by the property owners.

47

48 Jeff Schmitt: Physically, you have never walked any of this property to see it?

49

50 Michael Harvey: No sir.

1  
2 Mark Micol: Is there a reason why you didn't?

3  
4 Michael Harvey: Yes sir. I didn't have permission from the property owner to go on the property but I felt that I had  
5 sufficient evidence to issue the NOV as I did in 2013.

6  
7 Jeff Schmitt: There have been comments made that I have sort of read in here that before a determination can be  
8 made for a profit or not for profit, there has to be some level of physical facility on the property, that is the implication I  
9 am getting, is that correct or not? Some structure, something that would indicate...

10  
11 Michael Harvey: Let me go back very quickly to make the following statement. I am going to get the board to redirect  
12 their attention to Attachment 3A beginning on page 53. That is my Notice of Violation. On page 54, staff had initiated  
13 the dialogue with Mr. Klein in 2012 concerning shooting activities from his property and told him at that point in time  
14 that if it was just him and his family shooting on his 34 acre property from our standpoint, that was not a violation [of  
15 the UDO]. If he allowed the general public to come on the property, then that to us constituted the creation of a  
16 [regulated] land use. We cited Mr. Klein because we felt we had antidotal evidence supporting the fact that non-  
17 family members were engaging in shooting activity on the property.

18  
19 Jeff Schmitt: How many members are in Mr. Klein's family?

20  
21 Michael Harvey: At this point, I don't know sir. Within our Notice of Violation we did request documentation from Mr.  
22 Klein as to how many family members were engaged in shooting activities for the property and was determined, after  
23 consultation with the county attorney, that I had overstepped my authority in asking for said information since it wasn't  
24 germane to any regulation of the UDO. With respect to the [operation of a shooting] facility, I will point you to my staff  
25 response to the appeal and I will pick on Mr. Carter, only because he is convenient. If Mr. Carter was doing research  
26 at his residence on a project or he was writing a paper, that work doesn't constitute a research facility as defined by  
27 the UDO. It is the development of amenities, structures, support structures that then morph the use of property into  
28 something that would be regulated.

29  
30 Jeff Schmitt: In other words, there does need to be some physical presence of something at some place for it to be  
31 considered non-profit or profitable from the UDO perspective?

32  
33 Michael Harvey: From the standpoint of the UDO, the definition of [recreation] facility, there has to be structural  
34 elements creating this facility. There also needs to be, as we have articulated in our letter of rescinding the Notice of  
35 Violation, there has to be evidence there is a non-profit operation going on on the property. I am going to call your  
36 attention to page 50 of our staff response. No evidence of an established formal or defined recreation facility was  
37 found to be evidence. Some of this evidence might include installation of structural elements (i.e. parking for patrons,  
38 berms, booth, etc.)

39  
40 Jeff Schmitt: You don't know that Mr. Harvey since you never went down there.

41  
42 Michael Harvey: Correct statement. Since we didn't have that evidence, we were advised by the County Attorney's  
43 office that our original Notice of Violation lacked sufficiency. If we had sufficient evidence, we would not have  
44 rescinded the NOV.

45  
46 Larry Wright: I noticed in our packet that both the applicant and the county, it is opened looking or evidence, right?  
47 Is the county still pursuing, is this an open case?  
48

1 Michael Harvey: We have rescinded the Notice of Violation. If we find evidence or if evidence comes to light proving  
2 that there is a facility being operated or a land use that has been established, a new Notice of Violation would be  
3 issued, yes sir.

4  
5 Larry Wright: How would you, if the plaintiff, if Mr. Klein doesn't permit you to go on the property, how would you fulfill  
6 the applicant's request?

7  
8 Michael Harvey: I would pursue an administrative search warrant as allowed by the UDO in order to determine if  
9 there is a violation on the property.

10  
11 David Blankfard: Why hasn't that been completed?

12  
13 Michael Harvey: I don't believe I have sufficient evidence to show cause to obtain an administrative search warrant.  
14 The simple act of discharging a fire arm is not sufficient.

15  
16 Larry Wright: And the shells?

17  
18 Michael Harvey: The shells in and of themselves are proof of nothing except that guns are being discharged.

19  
20 Larry Wright: What do you need?

21  
22 Michael Harvey: As shooting activities are occurring, the county planning department needs to conduct an inspection  
23 as to who is out there shooting and what is going on.

24  
25 Jeff Schmitt: That has to occur simultaneously?

26  
27 Michael Harvey: Yes.

28  
29 Jeff Schmitt: I don't know how that would ever happen.

30  
31 Larry Wright: Karen, where are you on this?

32  
33 Karen Barrows: I am very interested in what the folks have to say and yet we have Michael's comments.

34  
35 Larry Wright: Mr. Morphis?

36  
37 T.C. Morphis: At this time, the only contradicted evidence are those sheriff's reports. The evidence is that they do  
38 not reflect anywhere near the number of times that calls have been made much less shooting. The sheriff's reports  
39 show that on multiple occasions residents of the mobile home park on the property. We also have uncontroverted  
40 evidence that people have been there. They are not likely related to Mr. Klein without Mr. Klein on the property. I  
41 would like the board to be mindful of that.

42  
43 Jeff Schmitt: How do we know that?

44  
45 T.C. Morphis: We have the list from the sheriff's department.

46  
47 David Blankfard: You said there were people on site that weren't related to Mr. Klein.

48  
49 T.C. Morphis: We have sheriff's reports that show the residents and name of these individuals and if you will at Mr.  
50 Taibi's report or letter. He talks about people who will be using the property so I direct you back to Exhibit 9, his May

1 17, 2013 letter, he said “to be sure Mr. Williams Klein and his adult children, Mr. Eric Klein, Ms. Heidi enjoy hunting  
2 and shooting”. Mr. Klein’s name is not on any of these sheriff’s reports, Ms. Heidi Klein, Mr. Eric Klein. We have  
3 Carlton Williams, Nathan Barnhart, and Christopher Wright twice. Christopher Wright is a resident of the mobile  
4 home park. We also have evidence although I can only test it with Mr. Klein testifying that Mr. McCloud Derek who  
5 we believe is also a non-relative and resident. We also have Stephen Johnson, Samuel Kelly, owner of the property  
6 Butch Klein so the sheriff’s department knows the people, I don’t know because I can’t question Mr. Klein but appear  
7 to be non-family members, residents of the mobile home park repeatedly using the property. We have two incidents,  
8 November 2, 2010, Christopher Wright who lives at 149 Ford Road, Lot 12 showed up in the report. Same Mr.  
9 Christopher Wright, June ....

10  
11 David Blankfard: I understand there are people that are on the property but that is not against the law or against the  
12 rules. That is allowed. I can have people at my house.

13  
14 Mark Micol: Do we have any of those members say they are members of a club?

15  
16 T.C. Morphis: We can subpoena them and find out. At the end of the day, I am not arguing with you, this is certainly  
17 your purview. My point is that we are presenting evidence that there is a physical structure that is used repeatedly by  
18 people more than what Mr. Klein alleged. It points in a specific direction and the shells shoot straight at my client’s  
19 houses and but for their man-made berm and a little topography change, you could go from having thousands of  
20 rounds with no injury to shells entering people’s property and that at the end of the day is the evidence we are  
21 presenting.

22  
23 Jeff Schmitt: The physical structure you are referring to is this berm that has been created?

24  
25 T.C. Morphis: There is the berm, the use of the natural topographic drainage, there is a catwalk, there are targets,  
26 there are six or seven inch trees that have been cleared, there is a firing range, there is an entrance suitable for an  
27 ATV.

28  
29 Larry Wright: So let’s just say that we declare all this, what can we do? We are just a Board of Adjustment.

30  
31 T.C. Morphis: You are the only people in the county who can do anything about it. The Board of Commissioners can  
32 issue new regulations to regulate these uses but until they do and who knows when they will....

33  
34 Larry Wright: But we are independent of them. A member of the BOCC can sit right and we can rule against them  
35 and they have no recourse.

36  
37 T.C. Morphis: That is exactly my point. Since staff has said they agree with Mr. Klein, staff has said there is no  
38 shooting range here. We are not telling you that you need to find the standards and say here is what the setbacks  
39 are but you need to determine and we actually have some arguments about what the legal definition of a shooting  
40 range is and at the appropriate time I will be happy to present that to the board but we believe this constitutes a  
41 shooting range. I can go into that or wait for my closing arguments.

42  
43 Michael Harvey: I would like to respectfully disagree with Mr. Morphis’ point. We have said there is no non-profit  
44 recreational facility as defined by the UDO. That is the only point in the UDO where the term shooting range is  
45 referenced.

46  
47 T.C. Morphis: Could you say that again Mr. Harvey?

48  
49 Michael Harvey: The only component the UDO references a shooting range is under a non-profit recreational facility  
50 or for profit recreation facility.

1  
2 T.C. Morphis: I am happy to explain that further but I don't want to speak out of turn so it is at the pleasure of the  
3 board.  
4  
5 Larry Wright: Call your next witness please.  
6  
7 T.C. Morphis: Could I get Mr. Michael Joerling.  
8  
9 Michael Joerling: I have been sworn in.  
10  
11 T.C. Morphis: Would you please turn to Exhibit 1 in the notebook. I have your property number 2, is that correct?  
12  
13 Michael Joerling: That is correct.  
14  
15 T.C. Morphis: How long have you lived on your property?  
16  
17 Michael Joerling: We have live there almost 30 years.  
18  
19 T.C. Morphis: Do you own a gun sir?  
20  
21 Michael Joerling: I do.  
22  
23 T.C. Morphis: About how far away from the range do you think your property is?  
24  
25 Michael Joerling: I think we are just under 1,000 feet from the shooting range.  
26  
27 T.C. Morphis: Have you been on site?  
28  
29 Michael Joerling: I have.  
30  
31 T.C. Morphis: Did you intend to trespass?  
32  
33 Michael Joerling: No I didn't.  
34  
35 T.C. Morphis: When you went on the property did you think you were on Ms. Boysen's property?  
36  
37 Michael Joerling: I suspected it was coming from Ms. Boysen's property so I walked back there to take a look.  
38  
39 T.C. Morphis: And physical structures you saw, was it the same thing that Mr. Carter saw?  
40  
41 Michael Joerling: They are. There was a berm. There was some sort of platform they were shooting from, targets,  
42 trees cut down, and thousands of shells on the ground.  
43  
44 T.C. Morphis: You have heard testimony about the frequency, duration, volume, you heard audio, was that  
45 consistent?  
46  
47 Michael Joerling: It is consistent. It can get much worse than what you heard on the tapes but....  
48  
49 T.C. Morphis: We were talking the other day and you called that a warm up, was that accurate?  
50

1 Michael Joerling: Yeah. They get cranked up and then they start out seemingly like people are target shooting, there  
2 is no space between shots.

3  
4 T.C. Morphis: Are you worried about safety on your property?

5  
6 Michael Joerling: My biggest issue is the direction they are shooting in.

7  
8 T.C. Morphis: Do they fire directly at your house?

9  
10 Michael Joerling: The way the range is set up, it is firing directly in my property which I spend a lot of time outside  
11 both myself and my wife work from home and it wouldn't take much and I respectfully disagree with how wooded it is  
12 around the range. The least wooded area is behind the berm and if it gets past the berm it is coming in my property.

13  
14 T.C. Morphis: Is it correct, that past the berm, there is no field that backs to woods?

15  
16 Michael Joerling: Exactly right.

17  
18 T.C. Morphis: Mostly saplings?

19  
20 Michael Joerling: Saplings and past that is open field. The next thing they are going to hit is my house or my  
21 property.

22  
23 T.C. Morphis: Do you have grandchildren that come visit you?

24  
25 Michael Joerling: I have got kids, I have got grandkids, I have got pets. We spend a lot of time outside, that is why  
26 we live there.

27  
28 T.C. Morphis: I have no further questions.

29  
30 Larry Wright: Mr. Taibi?

31  
32 Anthony Taibi: Sir, do you have any evidence there are any memberships being given away, sold, advertised? Do  
33 you ever see any advertisements for activities to take place?

34  
35 Michael Joerling: I wouldn't know where to see advertisements but no I have not.

36  
37 Anthony Taibi: No flyers or anything of that nature?

38  
39 Michael Joerling: It's not a flyer kind of place.

40  
41 Anthony Taibi: You would agree if somebody has their family and friends and would like to shoot a few rounds up in  
42 a rural area, that is perfectly acceptable. One should be a good neighbor but it is not a question for the land use  
43 authority.

44  
45 Michael Joerling: If that is what they were doing, I would have no objection. We are not here because they are  
46 shooting a couple of rounds off.

47  
48 Anthony Taibi: How many rounds is your distinction between a private and acceptable activity and private activity?

49  
50 T.C. Morphis: I object.

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Larry Wright: Sustained.

Michael Joerling: My concern is safety. Somebody is going to get shot.

Larry Wright: He has no idea of rounds, I don't either.

T.C. Morphis: I have no further questions.

Robert Nicholas: I have been sworn in.

T.C. Morphis: If you will turn to Exhibit 1, is your house located at number 1.

Robert Nicholas: That is correct.

T.C. Morphis: How long have you lived at the property?

Robert Nicholas: Since 2003.

T.C. Morphis: Have you ever visited the site?

Robert Nicholas: No.

T.C. Morphis: Tell me about the intensity, the volume, the timeframe, you have already heard testimony, is that consistent with what you understand.

Robert Nicholas: It is definitely consistent.

T.C. Morphis: What you heard is accurate and truthful?

Robert Nicholas: That is correct.

Anthony Taibi: Like the other witnesses, you have no evidence to suggest there is a club, there is an organization, any kind of organized or formal facility or activity going on, just you hear a lot of shooting?

Robert Nicholas: A lot of shooting, very loud.

T.C. Morphis: Thank you Mr. Nicholas, you are done.

Larry Wright: Mr. Taibi, do you have any witnesses?

Anthony Taibi: I do not, I believe the questions before the board are purely questions of law and interpretation that are solely for your determination and are not matters of fact.

Larry Wright: Do you have any questions? Your closing arguments please.

T.C. Morphis: I will make them as quickly as I can sir. I want to thank you all again, it has been a long night. We very much appreciate you giving us the opportunity to speak our mind. I want to emphasize again, this is a De Novo hearing, there are all these issues, we have identified specific issues in the rescinding. At the end of the day, Mr. Harvey made two determinations in his 2013 NOV. One, he said he thought the range was on the Bingham Woods

1 Mobile Home property. Tonight is the first night we have had sworn testimony about the location. It is consistent with  
2 that finding. Two, he determined that either on the Bingham Woods Mobile Home property and/or on the  
3 undeveloped property, there was a shooting range. The evidence you have heard tonight in addition to the legal  
4 arguments I am going to make, demonstrate conclusively there is a shooting range, you have the right to make a De  
5 Novo review of those issues. The reason we appealed Mr. Harvey's 2014 decision is because he, in essence, said  
6 there is no shooting range, we have no evidence that is, on the Bingham Woods Mobile Home Park property. The  
7 issue tonight, is there a shooting range and we have talked about where this is defined in the UDO. The answer is,  
8 there is no specific definition of shooting range in the UDO. All you have is the term recreation facility for profit and  
9 this is under UDO section 10.1. I have concluded that in tab 12 in your notebook but it is not necessary at this time.  
10 In fact, I have included all the UDO provisions that I am citing to, also relevant statute about Land vs. Wesley Chapel  
11 since my colleague appears to be fixated on that. Shooting range ... I want to digress for just a moment on what  
12 Land vs. Wesley Chapel says. So county staff has attempted to argue that this court of appeals case says you  
13 cannot regulate something, what essentially, they don't ever specifically state in staff response why they think Land  
14 vs. Wesley Chapel is relevant so I will tell you what the holding of that case was. It says, "unless an ordinance clearly  
15 prohibits a specific use, that land use is allowed". That is all Land vs. Wesley Chapel stands for. In that case, the  
16 Village of Wesley Chapel tried to require a special use permit for an existing shooting range and the court of appeals  
17 said no, you can't do that you have no reference to shooting range, therefore it is not regulated by your ordinance  
18 and is allowed. Here, Orange County clearly regulates shooting ranges. At this point, it is not an appeal or argument  
19 issue because Mr. Taibi and his client, Mr. Klein, never challenged that determination. They have conceded from day  
20 one that Orange County regulates shooting ranges so Land vs. Wesley Chapel is irrelevant. So what is a shooting  
21 range? It is not defined in the UDO. Mr. Harvey correctly pointed out, or maybe he didn't, but states this but I think  
22 he would agree. There are some standards for "for profit" shooting ranges. Non-profit do not have standards,  
23 additionally, the term non-profit recreational facility does not include shooting ranges so you have some ambiguities  
24 and mix-ups in the ordinance. What is clear is the ordinance regulates shooting ranges. There is a lot of talk about  
25 non-profit corporations and things like that. Respectfully, that is the staff confusing an illegal use with an unregulated  
26 use. It is... at best to say if you don't meet all the requirements in our ordinance, you don't exist and you are not  
27 illegal. That would be saying if I had an asphalt batch plant in a residential area, as long as it is not...on the other  
28 requirements in the definition, it doesn't exist. Clearly that is not the case but county staff does, as they say do we  
29 regulate this, and then they say does the use exist. Our UDO clearly regulates shooting ranges and says they are  
30 allowed in some places and not others and then the question of whether Mr. Klein's range is lawful and complies to  
31 the ordinance, completely different question because as Mr. Harvey indicated at the beginning of the hearing tonight.  
32 There is a way Mr. Klein could have a lawful shooting range and if he had a special use permit issued for that range  
33 on his property, I will tell you now, and my clients would not be here tonight. There is however one good definition  
34 that I will point to you for shooting ranges. In the absence of a shooting range definition, the UDO, I am going to cite  
35 you to the North Carolina Shooting Range Protection Act, we are not required to follow this but I do think it is  
36 instructive. If you will look on page 6 of my Memorandum of Law, the definition is there. It is the last paragraph. This  
37 is the separate sheet of paper I handed out. I am going to read the statute. This is GS 14-409.45 from the North  
38 Carolina Shooting Range Protection Act of 1997. A sport shooting range or range is defined as "an area  
39 designed and operated for the use of rifles, shotguns, pistols, skeet, black powder or any other similar shooting".  
40 Respectfully, there is no physical structure requirement. It says an area. If any of y'all have ever been to a wildlife  
41 club or been out to a relative with a lot of land, you know sometimes that area is just an open field. This act was  
42 designed to protect existing shooting ranges that have been around from 1994 and earlier, not including Mr. Klein's  
43 range as the testimony shows it appears to have been established around 2010. This is designed to protect all sorts  
44 of range uses. I would respectfully submit that in the absence of additional definition in the ordinance that is the best  
45 definition you have. What evidence do we have tonight that this is an area for sports shooting? We have audio that  
46 has been verified, of the volume, of the frequency, of the intensity, of the direction of the range. You have evidence  
47 that multiple shooters shoot on multiple occasions on the same location with regularity. Seems like every week if not  
48 more often. The only controverted evidence in the record is that non-family members are using the range. We don't  
49 know how many but we know that residents of the mobile home park are using the range. There are also emails in  
50 Exhibit 10 from Sheriff Lindy Pendergrass to Mr. Harvey talking about the berm because the sheriff's department has

1 been on the site and they have seen the berm. The only contradicted evidence we have about what the site looks  
2 like are from my witnesses and they talk about a physical structure. There is a man made at the top of a natural rise.  
3 They have cleverly used a natural drainage to help make them shoot into the ground. That is one of the things the  
4 sheriff's department talked about in their emails. We don't know what we can do, they are shooting downhill so it  
5 appears it is safe shooting. That is not the question in front of you. We also have a shooting platform area. We have  
6 evidence that massive, not massive, large trees have been cleared; there are targets that have been put up. There is  
7 nothing in the ordinance that says you have to have a certain kind of shooting building, a certain number of targets or  
8 other protections. You have a situation where there is a structure and there is evidence of use and we are fortunate  
9 that nobody has been shot by a stray bullet tonight. I thank you very much for your time and I appreciation your  
10 consideration of this matter.

11  
12 Anthony Taibi: Even under Mr. Morphis' definition from that act, it has to be something that is operating, having some  
13 land, you got 34 acres of land, you take your bobcat and knock some things over and make yourself, that is a  
14 shooting range. That is a place where you shoot. If I go in my back yard and put something up, paper targets taped  
15 up, that makes a facility? There is no membership, no club, are we going to get focused on who is a family member  
16 or start defining who is a family member and have lists of family members to answer this question? There are really  
17 two different questions here. One question is the one that is not before you and that is how ought shooting ranges ...  
18 how should shooting activities be regulated in the county. The county is changing its character, its going from being  
19 rural to being more urban and there have been some issues made that maybe my client has not always been a good  
20 neighbor. But that is not the question here. This is about zoning and it doesn't have to be a profit making business  
21 but there has to be an operation. It has to be a facility. This is about do you have a facility. This is 34 acres of  
22 undeveloped land. People are going to shoot, you knock down a few trees, you put up some paper towers. There is  
23 a couple of boards over some wet spots does not make it a facility. There is no operation, there is no club, there is  
24 no organized activity of any kind. There are just some people shooting. Should that be regulated? We have heard  
25 testimony that the sheriff has told people that this is not something he can intervene but they call him 10 times but he  
26 says it is not his business. The EPA is interested in intervening. I believe in the idea that laws about not just we want  
27 something how can we make it happen but that there is a right procedure and a right place to go for the remedy.  
28 There is the law of nuisance. They can go and get regulations changed about how the county regulates the  
29 discharge of firearms. We even offered to voluntarily take some steps that would make them a better neighbor but  
30 what it isn't is a land use decision. Certainly, the staff in coming to that decision was supported by reason and  
31 evidence. It's not in their brief to be a roving commission to right every wrong and take up everybody who maybe  
32 wasn't always the best neighbor. Their job is, do I have evidence, is there something that is clearly a violation of the  
33 land use rule. Not to see if they can twist the land use rule into being an instrument for people to highjack the zoning  
34 process for their political end. Let's do that in a political arena. Thank you.

35  
36 Larry Wright: Do you have any questions for the counsel? Have we declared jurisdiction on the points...

37  
38 Michael Harvey: Mr. Chairman, if it's not your intent to have any additional testimony, you need to close the public  
39 hearing. I'd ask Mr. Bryan about that.

40  
41 James Bryan: You close the public hearing, you don't have closed session.

42  
43 Larry Wright: I'm sorry. We are not closing the public hearing for board discussion on the process. Any questions  
44 before we do this? On the initial point of order that I made, I didn't know we really had to close the public hearing.  
45 Mr. Bryan, will you summarize how we are to proceed on this.

46  
47 James Bryan: I think you, as a board, have ruled on standing on the subpoena and jurisdiction. You heard all the  
48 testimony the parties intended to give. I would rule on whether there is a shooting range or not, whether you believe  
49 there is enough evidence to support the Notice of Violation. There was an opportunity to say the NOV doesn't exist  
50 because the rescission eliminated it. I think you have already granted jurisdiction so the question is do we have

1 enough evidence for issuing an NOV based on the evidence you have heard tonight, not necessarily what Michael  
2 had at the time. You will have to decide what the shooting range is. It is not defined in the ordinance so you have an  
3 understanding on what it is or you can use a definition. You can use it from a dictionary, a statute or whatever you  
4 want then apply the evidence to it.

5  
6 Larry Wright: Is there any way we can make recommendation to, for example, the commissioners to clarify in the  
7 UDO? There seems to be a discrepancy when I was on the planning board, that is what we were doing and still  
8 working on....

9  
10 Jeff Schmitt: That is a separate issue.

11  
12 Larry Wright: My question is can we make a recommendation that they clean this up in the UDO.

13  
14 James Bryan: As a whole, your decision is to affirm the determination, reverse the determination or modify it. Those  
15 are generally the three categories. You can also make any other orders you think are appropriate. I don't think that  
16 you can order the BOCC to do anything. You can't determine them; you can't require them to do anything. After you  
17 have made you decision tonight for this, you can add something for the next agenda or modify the agenda for tonight  
18 and as separate item, discuss anything you want to do. You can say hey board; this is what we would like.

19  
20 Larry Wright: Let's start with the shooting range. What are your feelings on... it's not in the UDO, that we have had  
21 several definitions of a shooting range. Is there a shooting range going on there? Do we deem it and can we define,  
22 and can we say there is a shooting range going on?

23  
24 Jeff Schmitt: Is the Range Protection Act of 1997 effectively a statute?

25  
26 James Bryan: It is a statute. I think, don't worry about it other than does it sound good.

27  
28 Jeff Schmitt: It has standing in law then.

29  
30 James Bryan: It is totally not binding on you all. I would give it the same weight as the Webster's dictionary for a  
31 shooting range, the Oxford English dictionary. Those two dictionaries might have differences and this statute might  
32 have a difference. The attorney would reopen the hearing if you want to subpoena a dictionary.

33  
34 Mark Micol: I think we are all sympathetic to people that live next to noises whether it is fire or motorcycles or chain  
35 saws. I think we open a Pandora's box when we try to limit lawful activity. We used several scenarios earlier but I  
36 am reading here that recreational facilities, tennis clubs, swim clubs, skating rinks, billiard pool halls. So if freeze my  
37 pond over and invite friends over and we are skating does that make me an owner of a skating rink. I don't think that  
38 does or if I put three greens on my 10 acres does that make me have a golf course. I think we are going down a path  
39 here when we start saying we are a shooting range because we have friends over, firing firearms. I don't want to go  
40 down that path, I think it is really something for the county commissioners to decide but I am sympathetic to what they  
41 are saying.

42  
43 Larry Wright: There was a reference here that the emails from the Orange County Sheriff, I don't believe it was Mr.  
44 Pendergrass, but he saw berm in his report and then there is the one definition of a shooting range that berms was  
45 among the list and I guess my line of thinking is, is this report, this email sufficient to have staff look in to this and get  
46 some sort of order to find out, if indeed, there is a shooting range going on. If there is an organized, and to clarify  
47 this, obviously that neighborhood is polarized by this and I don't think we can do anything to mitigate that but is this  
48 email enough to provoke staff to investigate this further, would they still do it.

1 Mark Micol: If you take the firearms piece, safety is the biggest thing so when you take the safety away and you can  
2 think of many other uses for 34 acres that would be annoying. I am thinking as I was listening riding motorcycles on  
3 Saturday. You could have 30 acres with 10 kids riding motorcycles hours and hours a day and that would be just as  
4 annoying as firearms. The only difference is the safety and we don't have the authority to solve that problem.  
5

6 David Blankford: The police said it was hidden and they would have shut them down if they said they were shooting  
7 down into the ground.  
8

9 Larry Wright: There is a case of a woman who lives next door to a go kart track and she has tried and tried but there  
10 is nothing that can be done about it. That noise is as bad if not worse than this. She has been to everybody.  
11

12 Mark Micol: The evidence that I have heard supports the property owner over the appellant. When you listen to the  
13 audio, I heard rapid fire but that could have been one person making those shots. The ground level topography, you  
14 mentioned it could be a trail. That wasn't very supportive of their argument. The aerial shot didn't show ... when he  
15 said structure, I am thinking it was going to be a 1,200 square foot building. Instead we hear it is a board over a  
16 creek and an earthen berm. I think the evidence they put on was as supportive to the owners as it was to them. The  
17 sheriff's report supported the owner in many ways. I am not convinced.  
18

19 Larry Wright: Karen?  
20

21 Karen Barrows: I think I have to agree with Mark and I am very sympathetic. We live down the street from a hunt  
22 club so we hear but not to the level these people are exposed to. I don't know what the recourse is but I don't think it  
23 is us.  
24

25 Larry Wright: Even though it is out of order, there is a hunt club at RTP. Nobel prize winners are going by there and  
26 bullets and mixed use development is going in, single family homes. They are trying to find a place to move to.  
27 Anyway, I digressed. I don't know. How do you think we should proceed on this?  
28

29 Karen Barrows: The only question I have is whether we should have independent counsel. How does the rest of the  
30 board feel about that?  
31

32 Larry Wright: After he made his motion, he moved on before there was chance for us to even ....  
33

34 James Bryan: I think this board knows and I will say it again. I work for the county, I represent this board. It is  
35 always best to have your own independent counsel. I am directed to and fully prepared to represent you all but it is  
36 fully within your discretion to do so.  
37

38 Jeff Schmitt: Karen, I agree with you but I'm not sure a different counsel would have provided counsel which would  
39 change the opinion. Larry, a couple of years ago when I was on this group before, we had a case in Northern  
40 Orange where we had a church that had put up lights to play softball defacto for the membership and I think all of us  
41 knew as we listened to it that it was being run as a for profit institution by the church. Couldn't prove it and never had  
42 the right definitions in point to say when lights should be put up and when they shouldn't be put up. This has  
43 somewhat of the same flavor to it. Unfortunately, I find myself in the same position. I have a lot of empathy for this. I  
44 live in the country, I have guns, I shoot but if I were at a place where it was just significant, that is a big problem. I  
45 can't vote to overturn what has gone on here but I think there needs to be something we say after this I would like to  
46 have Michael do. I think there needs to be further investigation to look at the property, look at the land, and make a  
47 comment relative to the structure which is far too vague here.  
48

49 Larry Wright: On both sides. The burden of proof is on both sides, the applicant's as well. I agree.  
50

1 Jeff Schmitt: That is my piece. Unfortunately, I have read the state statute. I know where you can and can't do, you  
2 can discharge your fire arms and there is nothing that talks about the volume or velocity or the issues of noise,  
3 unfortunately.

4  
5 Larry Wright: And there is nothing that speaks to it with a gun, with an ordinance because guns are not included in  
6 the noise ordinance. I think we are coming to some sort of consensus here with respect to staff's decision. Is  
7 anybody willing to make a motion?

8  
9 **MOTION** made by Karen Barrows to uphold the 2014 rescinding order made by planning staff. Seconded by Mark  
10 Micol.

11 **VOTE:** Unanimous

12  
13 Jeff Schmitt: I don't know whether you phrase this as a motion but I think there needs to be. I don't know what the  
14 basis by which you would be able to do this. I don't know whether this board has the ability to decide to do that or  
15 not. I think there needs to be further investigation by the staff of the area contained by the witnesses is the shooting  
16 range. Physical presence on it, look at it, understand whether or not there are structures definitely on this thing to  
17 see whether or not, given that, there would be a notice that would be reissued for whatever set of reasons.

18  
19 Larry Wright: Mr. Bryan, can we put this in the form of a recommendation?

20  
21 Jeff Schmitt: Does anybody else agree?

22  
23 Larry Wright: I am trying to talk about the feasibility of moving forward.

24  
25 David Blankfard: Staff needs to do their administrative search of the "shooting area".

26  
27 Mark Micol: What did Mr. Harvey say about a warrant? What was the term? An administrative search warrant. That  
28 sounds like a step.

29  
30 David Blankfard: He said he didn't have enough evidence.

31  
32 Mark Micol: Well, if he didn't have enough evidence then, he is probably not going to have any going forward.

33  
34 David Blankfard: Sworn testimony...

35  
36 Jeff Schmitt: We have all this stuff here.

37  
38 Mark Micol: What we have heard here tonight, he has already heard and he made the determination it wasn't  
39 warranted then so the question is do we have the power to compel him to do that? That is what he is asking. How  
40 do we compel him to go out there and search the property and determine if what we heard tonight is factual.

41  
42 James Bryan: If I may suggest, you all are affirming the rescinding letter.

43  
44 Jeff Schmitt: The discussion we had since this is closed... the comment that Mark makes is, are we contradicting  
45 ourselves. Well maybe we are but maybe there needs to be some catalyst or something that occurs that would allow  
46 this to be re-investigated.

47  
48 Mark Micol: They already said that up until the NOV was not warranted, right? So it is really going forward that if  
49 they call Mr. Harvey's office tomorrow ...

1 Larry Wright: I think the motion is that we support the rescission of the NOV and it could be for lack of evidence and  
2 this is what we are discussing because it was a lack of evidence and now we are ...  
3

4 James Bryan: If I keep my mouth shut, the board will come to it on their own. That is exactly right. You affirmed  
5 rescinding the NOV. You didn't say there is not a shooting range there. You said we don't have enough proof that  
6 there is or we don't have enough of a definition right now. Something is not right. This board does not want to send  
7 it up to Superior Court with what we have right now. We want to build a better case. If that is what you believe his  
8 NOV was, that is fine. If you think his rescinding NOV letter, if you think that was ambiguous, wasn't clear, modify it  
9 and say we affirm but we modify it to be clear that we are continuing an investigation pursuant to more information.  
10

11 Jeff Schmitt: That is a procedural statement from my perspective, whatever is correct, I don't know.  
12

13 Larry Wright: You understand. I think there should be a continuing investigation, the question is how is that done  
14 and ....  
15

16 Jeff Schmitt: Do we do it by modifying this or is there a separate issue?  
17

18 Larry Wright: That could be the work of a lifetime.  
19

20 James Bryan: I don't believe this board can have continued jurisdiction, I think it is a one shot deal.  
21

22 Larry Wright: I agree.  
23

24 James Bryan: But Michael, that staff position does continue authority, every day is a new one until there is a final  
25 and binding determination. I think if you just make it clear that you affirm the recession, modify it if you like.  
26

27 Larry Wright: Are we happy with the decision and just leave it that way or is there some way we would like to modify  
28 that. Think we leave it the way it is.  
29

30 Jeff Schmitt: I have spoken my peace about those issues. I understand both sides. I am continuing in a way here to  
31 express my empathy for the residents of this community, that I have guns, I shoot guns, I understand all that stuff but  
32 I understand the issue that has been brought here. That is, my statements said may be inappropriately.  
33

34 Mark Micol: It could also, in the future, be something as simple as amending the noise ordinance as well. Its sounds  
35 like our nuisance ordinance is not adequate to protect our citizens but again, that is up the county commissioners. It  
36 sounds like there needs to be some type of, like you said earlier, send a letter of recommendation to the county  
37 commissioners. That is all we can do right?  
38

39 Larry Wright: Can we do that?  
40

41 James Bryan: Yeah. Once you have determined this matter is over. The next item on the agenda is how can we  
42 prevent this from happening again and make a motion to tell the BOCC we need better regulations, tell staff to keep  
43 investigating. It is just recommendations that are separate and apart from this.  
44

45 Larry Wright: I am really in favor of that because they are going through the UDO now and cleaning it up and I think  
46 we should be make some recommendations.  
47

48 David Blankfard: Like Mark said, we need to have something about the sound level, nuisance law.  
49

50 Jeff Schmitt: If you do something with the sound, you will have [the NRA} on the top of your head.

1  
2 Mark Micol: It may be distance from residential.

3  
4 Larry Wright: I think distance in our area. Distance is taking care of itself. Does somebody want to craft a motion for  
5 recommendations.

6  
7 Mark Micol: I think we could make a general ... again, we are not going to be able to iron it out tonight. It has to be  
8 done by the BOCC but we need to send them a message...

9  
10 Larry Wright: We could draft that into a motion and have it go to them and ask staff to convey our vote or motion and  
11 opinions to them.

12  
13 David Blankfard: Will we do that tonight or at the next meeting?

14  
15 Jeff Schmitt: That could be a separate issue.

16  
17 Larry Wright: I don't think we should lose sight of this.

18  
19 Karen Barrows: We could ask to make it an item on the next agenda so we don't forget.

20  
21 Unidentified female: I would like to say when one of my six granddaughters gets shot; it is on you people, every one  
22 of you.

23  
24

25 **AGENDA ITEM 6: ADJOURNMENT**

26  
27 **MOTION** made by David Blankfard to adjourn. Seconded by Jeff Schmitt.

28 **VOTE:** Unanimous

29