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**MINUTES
BOARD OF ADJUSTMENT
OCTOBER 10, 2016
OCTOBER 24, 2016
PUBLIC HEARING**

MEMBERS PRESENT: Karen Barrows (Vice-Chair)
Matt Hughes
Barry Katz
Susan Halkiotis

***MEMBER RECUSED FOR CONFLICT OF INTEREST:** Samantha Cabe (Chair)

STAFF PRESENT: Michael Harvey, Current Planning Supervisor
Elaina Cheek, Board Secretary
James Bryan, Staff Attorney
Anne Marie Tosco, Staff Attorney

AGENDA ITEM 1: CALL TO ORDER

Karen Barrows called the meeting to order.

AGENDA ITEM 2: CONSIDERATION OF ADDITIONS TO AGENDA

No Additions.

AGENDA ITEM 3: APPROVAL OF MINUTES

January 11, 2016 Regular Meeting

MOTION to approve with two corrections by Susan Halkiotis. Seconded by Barry Katz.

VOTE: Unanimous

AGENDA ITEM 4: READING OF PUBLIC CHARGE

Barry Katz read the 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.

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 comment, substantial, and material evidence presented during a previously

1 *scheduled and advertised public hearing on a specific item. As detailed within Section 2.12.2 of the UDO the Board*
2 *chair reserves the right to exclude evidence and testimony that is deemed: 'incompetent, irrelevant, immaterial, or*
3 *unduly repetitious' and therefore fails to reasonably address the issues before the Board of Adjustment. While it*
4 *should be noted there is no time limit on the presentation of evidence, the Chair asks that the presentation of*
5 *evidence be consistent with established policies, rules of procedure, and acceptable levels of decorum to ensure a*
6 *fair and equitable hearing for all parties.*

7
8 **AGENDA ITEM 5: A-1-16 – APPEAL OF A DECISION CONCERNING A PARCEL OF PROPERTY LOCATED AT THE**
9 **INTERSECTION OF MORROW MILL AND MILLIKAN ROADS (PIN: 9729-50-7168)**

10
11 *In accordance with the provisions of Sections 2.11 and 2.26 of the Orange County Unified Development*
12 *Ordinance (UDO) the applicants have appealed a decision of the Zoning Officer, as articulated within a May*
13 *18, 2016 e-mail, related to the processing of a building permit for a parcel of property identified utilizing*
14 *Orange County Parcel Identification Number (PIN) 9729-50-7168 owned by Southeast Property Group LLC*
15 *care of Ms. Kara Brewer.*

16
17 *Specifically the applicants allege staff erred by not requiring zoning approval for said permit.*

18
19 Karen Barrows: So we have before us tonight an appeal. We usually have Staff present first.

20
21 James Bryan: Madame Chair, if you don't mind, can I make a preliminary statement?

22
23 Karen Barrows: You can, sure.

24
25 James Bryan: This is mostly because we have uncommon circumstances here. First, with a full room and
26 also most members of this Board have not had an appeal before them, so I want to go over the general
27 process. So this is a hearing before the Board of Adjustment so it's open to the public meaning that
28 everyone is welcome to watch. It is also quasi-judicial in nature. Quasi-judicial means that it is like a court
29 of law, there are rules as to what this Board this Board may or may not consider. When there are questions
30 about those rules I'll try my best to advise the Board so they may act according to the authorities granted to
31 them by statute. This is also an appeal, which is different than most matters before this Board. It may be
32 new to several members of the Board. There may be questions about standing, jurisdiction, sufficiency of
33 evidence, rules of interpretation, methods of establishing the record, and making the ultimate decision to
34 affirm, modify, or reverse Staff's decision. I'm here to advise the Board and prohibited from giving advice to
35 the public. Full participation in this hearing is limited only to the parties. The parties may include the County,
36 the property owner, and those with special damages. That participation includes making legal arguments,
37 introducing evidence, like calling witnesses and cross-examination. This Board has limited jurisdiction. It
38 may not make advisory opinions but instead is limited to reviewing only the final and finding determinations
39 of Staff. It may not consider appeals after certain time limitations. Evidence is limited as well; it can only be
40 introduced by parties. The Board may only base its decisions on competent material and substantial
41 evidence. The decision will be made by majority vote including findings of fact and followed by the Chair
42 signing a written decision. There has been a sign-in sheet for those wishing to identify as either speakers or
43 parties. Parties will have to demonstrate that they suffer special damages. Speakers may be called by the
44 Board as the Board's witnesses if the Board decides further testimony on facts in question. If there are no
45 facts in question, as to say they're only questions of law rather than fact, then the Board will not call any
46 witnesses.

47
48 Karen Barrows: Thanks James. Any questions before we begin? ... Ok.

1 Michael Harvey: Very briefly as we articulated in our abstracts. First of all ... Michael Harvey with the
2 Current Planning Division. A building permit application, specifically CB16-00020, was filed for an
3 approximately 20-acre parcel of property on Morrow Mill Road, the parcel identification number of 9729-50-
4 7168. This application proposed to construct a barn into what was listed in January (listed on the January
5 application submittal) as a farm event center. In March the property owner, Southeast Property Group LLC
6 care of Ms. Kara Brewer, filed a revised building permit application proposing the development of the
7 property for "*a barn for agriculture use including but not necessarily limited to the storage and processing of*
8 *agricultural products and equipment, agritourism such as educational workshops, school field trips,*
9 *weddings, retreats and farm dinners, and support for all other activities related and incidental to the*
10 *operation of a farm*". The applicant also submitted, which is in your packet, an affidavit. A bona fide farm
11 exemption affidavit indicating that the parcel of property was a bona fide farm as detailed within 153a-340
12 (b) (2) of the North Carolina General Statutes. Further this affidavit indicated the property was governed by
13 a forest management plan and was operating under a farm identification number issued by the U.S.
14 Department of Agriculture, a farm service agency. Within this affidavit the applicant indicated that the use of
15 property would involve; the production and activities relating or incidental to the production of crops, grains,
16 fruits, vegetables, ornamental and flowering plants, dairy, livestock, and poultry, that the use of property
17 would involve the cultivation of soil, the planting and production of trees and timber, the dairying and the
18 raising, management, care, and training of livestock, including horses, bees, poultry and other animals, the
19 operation, management, conservation, improvement, and maintenance of a farm and the structures and
20 buildings on that farm, and the marketing and selling of agricultural products, agritourism, the storage and
21 use of materials for agricultural purposes, packing, treating, processing, storing, of farm related activities
22 and other such activities incidental to the farm's operation. Based on the information as it was submitted by
23 Ms. Brewer and in consultation with the County Attorney's Office, and the review of the documentation
24 submitted demonstrating the property met the definition of a farm as defined within 153a-340 (b) (2) of the
25 General Statute, staff found we are prohibited from requiring zoning review and approval on the project. We
26 sent an e-mail to Ms. LeAnne Brown, an attorney who identified herself as serving the interest of several
27 adjacent property owners, informing her that based on the information supplied by the applicant, the
28 insinuations made that the property was a farm, the documentation that had been submitted justifying or
29 proving same, and the reading of (State) statute we were not allowed to review or issue a zoning permit.
30 Ms. Brown then obviously chose to appeal her application as attached in your packet. That is the synopsis
31 of why we're here this evening.

32
33 Karen Barrows: Any questions for Michael?

34
35 Barry Katz: I'm sorry. My understanding of what you just said is that they justified the fact that this was a
36 farm operation, agricultural operation, and then you had no basis to either approve or disapprove? You had
37 no standing or relevance to what they might have?

38
39 Michael Harvey: You are correct, sir. The applicant has argued that they're a farm. They're arguing that the
40 activities being conducted on the property are farm-related and consistent with the practice of farming as
41 defined by the (State) statute. We under the provision of the General Statute and the grant of power in
42 153a-340 (b) (2) (the planning department) has no authority to take action on farm activities. Therefore we
43 are prohibited by state law from reviewing, issuing, or requiring a zoning permit to be issued. Based on
44 what the applicant has alleged at this point in time.

45
46 Barry Katz: So there is no zoning permit. There was a permit to go ahead with their project, the permits?

47
48 Michael Harvey: Yes, sir. A building permit was issued for the project without zoning review and a Health
49 Department permit was issued for the project. Again without our review or comment.

1
2 Barry Katz: Ok. And so now we'll go on for why we're here?

3
4 Michael Harvey: Yes, sir.

5
6 Karen Barrows: I have a question, Michael. I may be misremembering but I think when we first heard this
7 you said that Ms. Brewer was not constrained to come in for a Class B SUP but that you had suggested to
8 her that that happen.

9
10 Michael Harvey: You are partially correct. We had made the determination originally that Ms. Brewer had to
11 obtain a Class B SUP because there was no agricultural activity on the property. As a result it was my
12 opinion, which was not appealed, that the use did not constitute agritourism as there was no agricultural
13 activity on the property. My argument was that you can't have the tourism without the ag. Regardless of
14 whether or not that was the correct determination, that determination was not appealed. Ms. Brewer
15 proceeded with the Class B SUP. You will recall from my testimony during that public hearing that I did
16 indicate, and you are correct, ma'am, that it is perfectly feasible for a farm to engage in agritourism activity
17 as currently defined under the statute.

18
19 Barry Katz: And am I jumping the gun for asking for a statutory definition of agritourism?

20
21 Susan Halkiotis: I want to hear it too.

22
23 Michael Harvey: What I can provide the Board are copies of 153a 340 (b) (2), the grant of power,
24 establishing what our authority is and is not. I can introduce this as County Exhibit 1.

25
26 Barry Katz: Is there anyone here who has the definition of agritourism?

27
28 Michael Harvey: I am going to get to that in a minute. The second thing I will provide the Board is County
29 Exhibit 2, a provision of (North Carolina General Statute) 106-581.1 "Agriculture defined," which outlays
30 what the term agricultural and farming refer to. With specific interest I will point to number 6: *When*
31 *performed on the farm agriculture, agricultural, and farming also include the marketing and selling of*
32 *agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing,*
33 *treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and*
34 *agricultural items produced on the farm, and similar activities incident to the operation of a farm.* Finally, I
35 can enter into evidence a copy as County Exhibit 3 North Carolina General Statute 99E-330 definitions.
36 And this is agritourism activity liability standards. "Agritourism activity" is defined as any activity carried out
37 on a farm or ranch that allows members of the general public, for recreational, entertainment, or
38 educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural,
39 harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether
40 or not the participant paid to participate in the activity. "Agritourism activity" includes any activity involving
41 any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to 106-
42 520.3. I will also remind the Board that the County has a definition of Agritourism in Article 10 of the Unified
43 Development Ordinance. It is a business directly related or incidental to agricultural activities occurring on
44 the bona fide farm on which it is located and conducted for the enjoyment or education of the public. I
45 would remind you all that there is an argument, which I tend to agree with. It says we don't have the
46 authority or power to define what constitutes an agritourism activity. That is reserved solely to the State.

47
48 Barry Katz: And we have the definition here?

49

1 Michael Harvey: That is a definition of agritourism as it appears within General North Carolina Statute 99E,
2 which is the agritourism activity liabilities provisions of the General Statute.

3
4 Barry Katz: So we're going to rely on that definition?

5
6 Michael Harvey: Yes, sir.

7
8 Barry Katz: Ok.

9
10 Karen Barrows: I have a question, Michael. I was looking through those huge books you gave us and in the
11 UDO 1.1.8 I came across the regulation of farming and bona fide farm activities. "The provisions of this
12 ordinance which are adopted under chapter 153a article 18 part 3 do not apply to property used for bona
13 fide farm purposes as defined within North Carolina General Statute (NCGS) excepts as follows: a) any
14 non-use of farm property."

15
16 Michael Harvey: Any non-farm use of farm property.

17
18 Karen Barrows: Well, what non-farm use can you use?

19
20 Michael Harvey: Technically, we have required permits for single-family residences to be built on the farm. I
21 have required permits for farmers who wish to erect garages to house antique cars that do not serve an
22 agricultural function. We have required permits for swimming pools. To give you a couple of examples.
23 Structure activity that has no agricultural connection is when a zoning compliance permit would be required.

24
25 Karen Barrows: Ok. Any other questions for Michael? If not, at this time we could hear from Ms. Brown.

26
27 LeAnne Brown: Thank you, Ms. Barrows. I appreciate all of you being here this evening for this appeal. My
28 name is LeAnne Brown, and I represent the owners of 2 contiguous properties and a property directly
29 across the street from the property owned by SPG. My clients are Gleta Carswell and Rene Quadt, Thomas
30 Ray and Doris Ray, and Margaret Wilkman and Alice Wilkman. The decision that we have appealed is the
31 Planning Supervisor's determination that no zoning approval was required for the application for
32 construction of the structure and impertinent roads, septic, and other equipment on the property owned by
33 SPG. We contend that based upon, and I'm going to talk at length, Mr. Katz, about how I think these
34 statutes work to try to help work through the legal issue before you. We believe that the County erred in not
35 requiring a Special Use Permit as a condition of obtaining a building permit. I imagine that you recall that
36 the SUP regarding this property was before you at an earlier hearing and you determined that the use as
37 proposed did not maintain or enhance the value of contiguous property, did not promote the public health
38 safety, and welfare, and did not comply with the general plans for physical development of the County, and
39 that it was not in harmony with the area where located. And we contend that that decision was correct and
40 that permit is required in order for this project to proceed on this particular piece of property. What I need to
41 do this evening is to begin, because my clients are not the owners of the property for which the permit was
42 issued, I need to put before you today evidence of why my clients have standing to proceed with this
43 appeal. Standing to proceed with an appeal means that the individuals who are proceeding with the appeal
44 suffer special damages different from the rest of the community. And if you will indulge me I would like to go
45 through the process of putting that evidence on before you and then move from that evidence into the case
46 in chief.

1 James Bryan: Madame Chair, if I could interject here just for the clarity of this case, I think it'd be best to
2 understand exactly what is under appeal, what is the issue of the appeal. I was a bit confused whether... I
3 heard septic permits as well so perhaps LeAnne Brown if you could restate...

4
5 LeAnne Brown: It's our contention that in order to proceed with the development of this property the
6 property owner is required to have a SUP, which was denied, and so the determination by the County Staff
7 that no permits were required because of the farm use is the decision under appeal. The building permit is
8 the obvious permit that goes first but what followed from that was the ability to do the septic permit and
9 otherwise but the appeal is of the grant of the building permit.

10
11 Karen Barrows: Does that answer your concern, James?

12
13 James Bryan: If I could just restate it. The determination by Staff that no SUP was required for the building
14 permit.

15
16 LeAnne Brown: Or stated another way that the plans as proposed were exempt from the Orange County
17 Zoning Ordinance.

18
19 Barry Katz: Because...

20
21 LeAnne Brown: Because of the determination by the Staff that under 153a-340 the County didn't have
22 zoning jurisdiction over the use because of the farm.

23
24 Barry Katz: For farm uses?

25
26 LeAnne Brown: Yes, sir. It's our contention that the use as proposed is a non-farm use and therefore if it's a
27 non-farm use the County Zoning Ordinance applies. So I think we're saying the same thing in three distinct
28 ways. When the building permit application was filed we believe it should have been rejected by the
29 County, however way you want to...

30
31 James Bryan: And that's important. There's two other elements: who and when? So, I think the Board
32 should clarify, when it's Staff, who exactly that Staff is and when that determination was made.

33
34 LeAnne Brown: The decision that we appeal before this Board is the decision, that of Mr. Harvey, that no
35 permit was required and the appeal was required within 30 days of his notice to me that he had made that
36 decision.

37
38 James Bryan: So if I could advise the Board; there is a very base of appeal and usually for a permit it is to
39 the property owner, there is some written piece of paper and it's when they receive that. For other people,
40 other parties, it's when they receive actual notice of it. It's still important to understand when the actual
41 determination was made.

42
43 Barry Katz: Alright, I've got a question. There was a determination made that this was agricultural property
44 and had good justification. Presumably for making that determination that this was qualified as a farm,
45 right? That was one, and then the other thing was the application for the building permit was the second
46 thing that comes up. We have to know, is there any question about whether this property is legitimately
47 agricultural?
48

1 James Bryan: I don't think the record is clear that there was a determination that this was either agricultural
2 or not.

3
4 Barry Katz: They'll have a chance to state that, I'm sure. So then, if that's the case, the real question is
5 does Orange County Planning have any jurisdiction to require or limit the use related to the building permit?
6

7 James Bryan: Where it's not clear points out one discrepancy, the difference between Orange County and
8 Michael Harvey. So Michael Harvey is the zoning administrator who does zoning permits. Septic is
9 different. Environmental Health. Building permits are the building inspector. So you have different people
10 doing different things.

11
12 Barry Katz: Ok now I'm confused... Ok. We'll go on.

13
14 LeAnne Brown: Are you ready for us to go forward?

15
16 Karen Barrows: Yes.

17
18 LeAnne Brown: Ok, thank you. I'd like to ask Gleta Carswell to come up with me please to testify.

19
20 Michael Harvey: I can swear them in.

21
22 *Michael Harvey swore in Gleta Carswell.*

23
24 Michael Harvey: Just state your name and your address for the record indicating you have been sworn in.

25
26 Gleta Carswell: My name is Gleta Carswell, 2700 Millikan Road, and I have been sworn in.

27
28 *Gleta Carswell identified her address on the map.*

29
30 LeAnne Brown: Thanks. Ms. Carswell. How long have you lived at 2700 Millikan Road?

31
32 Gleta Carswell: Almost two years.

33
34 LeAnne Brown: And who are the owners of that property?

35
36 Gleta Carswell: Myself and Rene Quadt.

37
38 LeAnne Brown: And I just want to go briefly through a series of photographs that are on the screen. I have
39 a copy of the photographs to be entered into evidence so that you have a hard copy. And if you would hand
40 those over to Andy, thank you.

41
42 Michael Harvey: Applicant Exhibit 1.

43
44 LeAnne Brown: Actually, that's Exhibit 2. The poster is 1, and I've got a sticker to put on it that packet...
45 And if we could just go briefly through these slides, Ms. Carswell?

46
47 *LeAnne Brown and Gleta Carswell reviewed pictures of her property to clarify to the Board how close the*
48 *service road was to her horse pasture and property line. It is 17-feet from her property line to the edge of*
49 *the service road and the SPG building is 70yards from the Wilkmans' chicken shed.*

1
2 LeAnne Brown: And did you have any experiences with your horses while the service road was being put
3 in?
4

5 Gleta Carswell: Yes, I actually had one day where they were putting the pipes in across the service road
6 back in early September. There was a day when I came home that night my older horse had been injured
7 and it looked like to me that they had been crawling and running and the edge of the horse pasture where
8 the pipes came right across. There were all kinds of paw marks and grass disturbance and so apparently
9 they had been quite agitated at some point. It was directly in front of where the pipe was, so my assumption
10 is that the horses were agitated due to the pipe installation going on.
11

12 LeAnne Brown: And how many horses do you have?
13

14 Gleta Carswell: I only have two horses.
15

16 LeAnne Brown: Can you tell us what that is please?
17

18 Gleta Carswell: These are just two social media postings. The only reason they're here is because the
19 background in these two postings show our property. That's our farm and our horse pasture in the
20 background of both of those.
21

22 LeAnne Brown: And then if you could go back... What is that a picture of?
23

24 Gleta Carswell: That is a picture of the chestnut plantings the Brewers' have put on their property.
25

26 LeAnne Brown: And where is that picture taken from?
27

28 Gleta Carswell: That's if you're standing facing the service entrance drive, that's on the right hand side of
29 their service entrance.
30

31 Barry Katz: Those white posts mark where chestnut trees have been planted? Is that what you're saying?
32

33 Chris Brewer: Yes, sir.
34

35 LeAnne Brown: Is that what you're saying?
36

37 Gleta Carswell: That is what I'm saying, yes.
38

39 Barry Katz: Ok.
40

41 LeAnne Brown: Ok, thank you. Thank you, Michael. That's what we needed from here for right now so we'll
42 come back to this later... Ms. Carswell, would you describe for the Board what you think your special
43 damages are as a contiguous property owner to this particular development?
44

45 Gleta Carswell: When we bought this property, our intention was for it to be horse property. So what we
46 looked for specifically was property that we can have horses on, that would be private, that would be safe
47 for our animals, and that would be able for us to enjoy peace and quiet of the countryside. So we had very
48 specific requirements that we were looking for. And we bought the piece of property, we loved it, we put our
49 horses there, and to this point we've really loved living there. What I'm concerned about is whenever you

1 have the kind of traffic right next to a horse pasture that we will have if the center is operational we're going
2 to have a lot of noise at odd hours because that's the service entrance. There's going to be caterers
3 coming in at weird hours, there's going to be trucks and stuff coming in. The trash will be coming in and out
4 of the service. We'll probably have increased trash, also. I already have alluded to the fact that one of my
5 horses is an older, retired racehorse. He's easy to agitate and they get very upset. There was another
6 incident when they were putting the power line in just this past week and I was observing the horses and
7 they both got very upset. They were racing around the pasture for a few minutes. So when people come in
8 and out of those drives at odd hours or making noises that they're not used to they tend to get upset, and
9 nervous, and agitated. Also, you can see, clearly, all the way down to my house and my barn from the
10 service drive so you can see, whatever privacy we had is also being impacted. But, the main concern I
11 have is that my property was specifically designed to be horse property and my property's value to me,
12 personally, as horse property will be severely degraded and compromised if there's an event center of the
13 scale that the Brewers' are proposing to put in next door.

14
15 LeAnne Brown: Do you consider the development of this event center next to you to cause you to lose your
16 ability to enjoy your property for the purpose you bought it?

17
18 Gleta Carswell: Yes. I definitely do. Privacy is very important to me. And as I said the safety of my horses
19 and the consideration that we had in choosing it specifically for horse property. It was the overriding
20 decision we had for that property and I said this before and I'll say it again, had the event center been there
21 when we were looking for property we never would've even considered looking at that piece of property.

22
23 LeAnne Brown: How will the event center disturb your life style as a rural farmer?

24
25 Gleta Carswell: Well, mainly the safety of my animals. We're going to have a lot more noise, and the
26 possibility of individuals who are walking around at the event center who might feel like it's part of the
27 wedding event experience to go pet the horses or something like that. Also, our drive is not too far away
28 from their drive and it's a long gravel drive and if people are driving around and they get lost and have to
29 turn around they have to come all the way down to my house before they can turn around. So there's a
30 possibility that people will be more on our property than I would hope for.

31
32 LeAnne Brown: You had mentioned trash. Are you concerned about trash blowing off of service trucks and
33 that sort of thing?

34
35 Gleta Carswell: Yes, because the dumpsters are located on that side of the property and the trash trucks
36 will be coming up and down that road and I have yet to see a trash truck that doesn't at least have some
37 trash falling off of it at some time.

38
39 LeAnne Brown: Do you have any concern about the location of your drive to the other drive in addition to
40 people missing the driveway?

41
42 Gleta Carswell: My biggest concern is that people will use our driveway as a turn around and will be
43 confused and come into our drive and think that it's public.

44
45 LeAnne Brown: If there were vehicles lined up to go into the drive to the event center would it potentially
46 block your driveway?

47
48 Gleta Carswell: It could.

49

1 LeAnne Brown: And you mentioned cars driving on the road at various hours. How would light from the cars
2 affect you?
3

4 Gleta Carswell: Me personally? Not a lot. My animals, quite a bit because they would have lights coming
5 down the road. Obviously caterers would be leaving late at night and people could be leaving late at night
6 so there would be lights coming across the pasture late at night, at odd hours.
7

8 LeAnne Brown: So if I understand what you're saying, they won't shine into your house but they would
9 shine into your barn?
10

11 Gleta Carswell: They would shine into the pasture, yes, ma'am.
12

13 LeAnne Brown: Alright, and do you have any other concerns that you want to share with the Board, with
14 regard to your special damages?
15

16 Gleta Carswell: Just that I really value my peace and quiet and privacy, and it would be compromised if this
17 actually occurs.
18

19 LeAnne Brown: Thank you, Ms. Carswell.
20

21 Andy: If I may, I've got a few questions.
22

23 Karen Barrows: I think what we'll do is we'll go through this presentation and then we'll ask you to present
24 your questions.
25

26 James Bryan: I advise witness by witness. LeAnne, do you have an issue with that?
27

28 LeAnne Brown: Because the parties and the property owners have the right to cross examine it might be
29 easier for you if we did it for but one time. So I don't have any objection if he wants to ask now.
30

31 Karen Barrows: Ok, could you introduce yourself, please?
32

33 Andy Petesch: Yes, my name is Andy Petesch of Petesch Law in Raleigh. I'm here on behalf of SPG LLC
34 and Chris and Kara Brewer who own the sub yet property as issued here. Ms. Carswell, do you or anyone
35 that's regularly on your property shoot firearms?
36

37 Gleta Carswell: Yes, we do.
38

39 Andy Petesch Ok. And the area of these photographs... And I'm going to show you a couple that show the
40 area outside between the service entrance and your property. It shows there is a fence there that
41 completely encompasses your horse pasture, is that correct?
42

43 Gleta Carswell: There is a fence around my horse pasture.
44

45 Andy Petesch: Ok. And was this area on the Brewer property, the SPG property, was that forested and did
46 they clear that area? Or has it been cleared like this at the time they purchased it?
47

1 Gleta Carswell: No. There were more trees on that at the time they purchased it. I actually have photos of
2 that, which I don't have with me. There weren't as many, it wasn't heavily forested like it is behind there but
3 there were more pine trees there when they purchased it. They did cut down some trees on that part.
4

5 Andy Petesch: How many?

6
7 Gleta Carswell: I didn't count how many.
8

9 Andy Petesch: Was it more than 5?
10

11 Gleta Carswell: I did not count how many trees. It's probably somewhere... I honestly can't say. It wasn't
12 heavily forested but the part where the Chestnuts were was much more heavily forested.
13

14 Andy Petesch: But between the entrance and your fence how many trees were in that area?
15

16 Gleta Carswell: I did not count the trees sir. But there were pine trees that were over my head.
17

18 Andy Petesch: No further questions.
19

20 LeAnne Brown: Andy I don't want to interrupt you but in fairness to you I went to the second set of pictures
21 and dutifully have pictures to hand out. This is the other set we looked at. And here's a set for the Board. I
22 didn't want you to not have them in case you had questions.
23

24 Michael Harvey: Labeled as Applicant Exhibit 3.
25

26 Karen Barrows: Any other questions Andy?
27

28 Andy Petesch: How did you measure the distance from the Brewers' barn to the chicken coop?
29

30 Gleta Carswell: With a range finder.
31

32 Andy Petesch: And could you describe how that works? You could see the barn?
33

34 Gleta Carswell: Yes, you can see the top of the barn through the trees so you can actually focus on the
35 rafters and then you can use that with a range finder.
36

37 Andy Petesch: Ok and how often do you calibrate the range finder?
38

39 Gleta Carswell: You would have to ask Rene Quadt that question.
40

41 Andy Petesch: No further questions.
42

43 LeAnne Brown: Ms. Carswell, I want to ask you just a couple of questions in follow up. First of all, your
44 special damages as a contiguous property owner next to the service road relates more to road location on
45 where the trees used to be than the loss of the trees, is that correct?
46

47 Gleta Carswell: That's correct.
48

1 LeAnne Brown: And then, Mr. Petesch asked you an interesting question about your horses tolerance of
2 other rural sounds, like guns shots and that sort of thing, would you explain how a horse owner in a rural
3 area helps a horse learn to deal with those kinds of sounds?
4

5 Gleta Carswell: I'm so glad you asked. So what we did to get our horses used to the sound of gunshots is
6 we actually started out with lower caliber guns and to be fair Rene Quadt is the marksman, not me, so we
7 actually started out with lower caliber and we acclimated the horses to it and over time they've gotten used
8 to it. There are constantly gunshots out there. There's not a weekend that goes by that there are not
9 gunshots so gunshots are something that horses hear a lot. What horses react to isn't what they're used to.
10 It's the things that happen that they're not used to that you can't predict. So it's the unpredictability that is
11 actually the most damaging thing when you have horses that are easily aroused.
12

13 Karen Barrows: I think Matt had a question.

14
15 Matt Hughes: I do. I just have a few questions. What do you do with your horses at night?
16

17 Gleta Carswell: They have what's called an open run in shed. So they have shelter that they can go into if
18 they wish and if not they can wander around all night long.
19

20 Matt Hughes: But do you ever put them in stalls or anything?
21

22 Gleta Carswell: I do if the weather is bad or they're injured or something likes that. But normally they have
23 free range of the pasture.
24

25 Matt Hughes: That's all I have.
26

27 Karen Barrows: Any other questions?
28

29 Barry Katz: I have a question. Just so I understand, to clarify, we're listening to you describing the
30 circumstance. We've established that you have standing. Is that the whole purpose?
31

32 LeAnne Brown: Yes, that's the purpose of the first line of questioning I have of all the number.
33

34 Barry Katz: Ok, fine. So we've established that you have standing and I assume you may challenge
35 whether they have standing or not. It's one of those things. Ok, so that's what we're doing?
36

37 LeAnne Brown: That's what we're doing first, yes.

38 Barry Katz: Ok.
39

40 Karen Barrows: No further questions for Ms. Carswell?
41

42 Gleta Carswell: Thank you.
43

44 Karen Barrows: You'll have to be sworn in.
45

46 *Michael Harvey swore in Rene Quadt.*
47

48 Michael Harvey: State your name and that you've been sworn in.
49

1 Rene Quadt: Rene Quadt, I have been sworn in.

2

3 LeAnne Brown: You two reside and 2700 Millikan Road is that correct?

4

5 Rene Quadt: That's correct.

6

7 LeAnne Brown: And did you hear Ms. Carswell's testimony with regards to special damages?

8

9 Rene Quadt: I did.

10

11 LeAnne Brown: Do you believe that you two will suffer the special damages she identified from impact on
12 your property?

13

14 Rene Quadt: I most certainly do.

15

16 LeAnne Brown: Ok. I have no further questions.

17

18 Karen Barrows: Andy?

19

20 Andy Petesch: No questions.

21

22 Karen Barrows: Any questions from the Board? Thank you, Rene.

23

24 LeAnne Brown: If you would swear both of them in Michael?

25

26 *Michael Harvey swore in Doris Ray and Thomas Ray.*

27

28 Thomas Ray: I'm Thomas Ray, I live at 7319 Morrow Mill Road and I have been sworn in.

29

30 Doris Ray: And I'm Doris Ray, 7319 Morrow Mill Road.

31

32 LeAnne Brown: Andy, the last two pictures we looked at were also not in that other packet so there you go
33 and I'll pass those over to the Board. So we're going to be reviewing with Mr. and Ms. Ray Exhibit 6

34

35 *Doris Ray located her property on the map for the Board.*

36 *LeAnne Brown reviewed pictures of Thomas and Doris Ray's property in regards to the entrance to the
37 event center.*

38

39 Doris Ray: It's just across the street. Actually from the point of the pipe in their road which is now being
40 completed to the pipe in our driveway is 25-feet.

41

42 LeAnne Brown: What special damages do you believe that you and Mr. Ray suffer as a result of the
43 development of the property?

44

45 Doris Ray: I think the main thing right now is going to be the lights. They anticipate 150 spaces for cars to
46 be parked in and out during weddings and special events and I feel that that's a lot of lights coming in our
47 bedroom and living room windows at night. So we are very concerned about the lighting flashing and being
48 on our house. We had just one experience recently where one of the tractor trailers had brought in some
49 equipment about 6:30 one morning, the lights flashing coming out of that driveway. So we've seen just a

1 little bit of that now. I think that's going to get worse. There's probably going to be lots of cars parked on the
2 side on the road, parked in front of our house, and if we have a lot of traffic it might be hard for us to get in
3 and out of the driveway. The noise from the music, from the chatter of people outside, I think we'll be able
4 to hear very clearly and of course all those vehicles going in and out of the driveway will certainly be noisy.
5

6 LeAnne Brown: Mr. Harvey, can you go back to Picture 13? So you're worried about cars parking? You're
7 worried that people will park along the shoulder so they don't end up going down the drive?
8

9 Doris Ray: Yes, I think that could happen and they would be parked across the road but in front of our
10 house and stacking the cars I think would be something that could happen so people can get out when they
11 need to get out or with overflow of traffic.
12

13 LeAnne Brown: So if you had an event starting at a time your concern would be that cars waiting to get in
14 there coming in both directions would in effect keep you from getting in and out of your driveway?
15

16 Doris Ray: Exactly, yes.
17

18 LeAnne Brown: Or emergency vehicles getting into your house if somebody needed to be there? And when
19 you talk about stacking that's what you mean?
20

21 Doris Ray: Yes.
22

23 LeAnne Brown: Are there other ways you believe that you will suffer special damages as a result?
24

25 Doris Ray: Well I think it's taking our privacy away from us. I think that we've lived here 54 years but it's a
26 quiet neighborhood. We've never had that much traffic, we don't know exactly what to expect but we sit on
27 our porch a lot in the spring and fall and I just don't think we'll be able to enjoy the peace and quiet that
28 we've had.
29

30 LeAnne Brown: Does the development of the property in this way impact the value of your property, at least
31 to you from your perspective?
32

33 Doris Ray: Well I certainly think it will. I think that not a lot of people would want to be that close to an event
34 center such as this and I'm not even sure that our children would even want to be there if we wanted to
35 leave it to them. So I just think it would definitely decrease our value.
36

37 Thomas Ray: If anything, the value of the property... I don't intend to sell but my kids or grand kids, I'm not
38 sure they'd even want to come out there with the noise and stuff coming from it.
39

40 LeAnne Brown: Am I correct that the two of you own this piece of property together?
41

42 Thomas Ray: Yes.
43

44 LeAnne Brown: I have no other questions of the Rays'.
45

46 Andy Petesch: I just have one question Mr. and Mrs. Ray. Again, I'm Andy Petesch, attorney for the
47 Brewers'. Did you request at some time around the SUP process for the driveway to be moved further away
48 from your driveway from what was originally planned?
49

1 Thomas Ray: Well at that particular time they said they'd work with us on the driveway and I understand
2 that they did move the driveway somewhat.

3
4 Andy Petesch: Further away from your driveway?

5
6 Thomas Ray: Further away. But it's a good thing they did or it'd have been straight in front of me.

7
8 Andy Petesch: But they did accommodate you to the best that they were able up to their property line as far
9 as you know?

10
11 LeAnne Brown: Objection **inaudible**.. I just objected to the question...

12
13 Thomas Ray: My hearing's not too good.

14
15 Andy Petesch: To the best of your knowledge they did accommodate your request by moving their
16 driveway further away from where it was originally planned to be located?

17
18 Thomas Ray: That's the way I understood it.

19
20 Andy Petesch: Ok, thank you.

21
22 Karen Barrows: Do the Board members have any questions?

23
24 Susan Halkiotis: I'm going to have one later but it's not of the Rays'. Their presentation just reminded me
25 that there was a mention earlier about a drainage ditch. I think Ms. Carswell mentioned something, I don't
26 know at what point it's appropriate to have that question asked. But I do want to let you know that I'd like to
27 go back to that at some point and find out what the issue with the drainage ditch is.

28
29 LeAnne Brown: Ok that would be of Ms. Carswell, we'll bring her back up.

30
31 Doris Ray: Could I say one more thing... to answer your question again I had to think about that. To my
32 knowledge we never saw anything in writing but I think that they did say they would try to accommodate to
33 move it but they were already almost as close to the Wilkmans' house that they could move but I'm not sure
34 how much they moved, they didn't tell us if it was a foot or two or what but I don't think we ever saw
35 anything on paper so it's all hearsay.

36
37 Karen Barrows: Ok.

38
39 Barry Katz: I'm just wondering. We're talking about an accommodation of moving a driveway and I'm
40 wondering, do you consider yourselves sophisticated in real estate and understanding what was going on
41 when this property was about to be modified into an event venue? Meaning, do you know what options you
42 might have had when you requested that driveway be shifted from one place to another? Were those your
43 only choices, did you have any other choices or sense of what you wanted to be done?

44
45 Doris Ray: I think they could have moved the driveway, maybe put it at the other end but it was still going to
46 come into our bedroom windows so... Their whole area is directly in front of our house.

47
48 Barry Katz: I have a question. When we had to public charge read, about electronic devices does that
49 include the gentleman behind you who seems to be recording this?

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Michael Harvey: He's a reporter.

James Bryan: Forgive me; I forget what the public charge says.

Barry Katz: Well no, it says all electronic devices such as and it mentions a few but it doesn't mention what he's doing. I just didn't know if this was a legitimate activity or now.

James Bryan: Yeah so it's a little confusing. The public charge is our request for our rules but the public has a right to be here and also a right to record.

Barry Katz: Ok.

Karen Barrows: Thank you.

LeAnne Brown: I'd like to ask Margaret Wilkman to come up.

Michael Harvey swore in Margaret Wilkman.

Michael Harvey: Please state your name and address for the record and that you have been sworn.

Margaret Wilkman: My name is Margaret Wilkman, I live at 7310 Morrow Mill Road and I have been sworn.

Margaret Wilkman located and explained her property on the map for the Board .

LeAnne Brown reviewed pictures of Margaret Wilkman's property in regards to the Brewers' property.

Margaret Wilkman: From the property corner to the center drive it's about 20-feet.

LeAnne Brown: And Ms. Carswell had also identified that it was approximately 70-yards to your chicken shed from what is now the top of the barn.

Margaret Wilkman: That's correct.

LeAnne Brown: What do you keep in your chicken shed?

Margaret Wilkman: Chickens. Also a lawn mower and equipment for trimming along the fence line and around the property.

LeAnne Brown: And do you have concerns that there are special damages that you will suffer as a result of the development of the property?

Margaret Wilkman: I do. One of the things very early on when they were beginning their ground work for this, one day we looked and there was a gentleman down by the chicken coop talking on a phone, and he was there for two hours. He walked in through the gate, he never said hello or anything but he was there for two hours. We did not let our livestock guardian dog out to suggest he move on but he was there a long time. I have no idea who he belonged to but one of my concerns is that we're going to have people who trespass and think that they are entitled to come onto our property whenever. The second concern I have is that we have a long kind of border with the Brewer property and we have had electrical fencing up there to

1 keep our animals in and predators out. That will need to be repaired and we will go ahead and do that. We
2 have a very narrow driveway which we have a gate across and again, that was to keep the animals in and
3 animals out. We have a livestock guardian dog that protects the chickens, and he will bark when there are
4 strangers or strange animals about. So we're concerned about him being in an uproar, he will sometimes in
5 the middle of the night arouse us, screaming at the door and chase something off into the woods. We
6 assume it's some sort of predator. I am concerned that people coming to events at the barn will use the
7 driveway or use the roadway in front of our house to park because it's easy. If you want to get in and out in
8 a hurry just parked on the side of the road. Across from the Rays' there is actually a substantial ditch. There
9 is not one in front of me. I'm concerned about lights at night. When cars, for example Mrs. Ray talked about
10 at 6:30 there was a flashing light from a long construction truck that was in front of their house. Well before
11 it was in front of her house it was in front of our house. Getting both my sister and myself out of bed to see
12 what it was, we opened the door and he moved so the Rays' could enjoy the event. I anticipate that people
13 coming to some sort of gathering will arrive at once but will leave whenever. And if it's at night or after dark
14 there will be a constant flashing of light. Now, we have our chickens and something I had not appreciated
15 when I started with the chicken business is that a rooster's appointed job is to guard the flock and so when
16 anything untoward comes around they crow. Well, if we have untoward lights or noise at night we're going
17 to have a racket coming from the three roosters.

18
19 LeAnne Brown: And is there anything else about the behavior of hens and roosters when they're disturbed
20 by noise?

21
22 Margaret Wilkman: One of the things that was mentioned in the SUP hearing earlier by the vet in the
23 neighborhood is that loud noise, bright lights, etcetera disturb the poultry's routine and so they quit laying
24 eggs. Well we use our eggs to supplement protein in our diet.

25
26 LeAnne Brown: So you're concerned that the coming and going will actually upset the behavior of your
27 poultry?

28
29 Margaret Wilkman: Yes.

30
31 LeAnne Brown: Are you concerned about noise?

32
33 Margaret Wilkman: Yes. One of the joys of living where we live is for the most part it's very, very quiet.
34 Except for the roosters and the geese who also act as farm alarms. With people chattering, cars starting
35 up, driving off, doors slamming, music coming from the center, that would be quite noisy. And I don't like
36 that idea.

37
38 LeAnne Brown: Your property line is contiguous to the Brewer Property. Do you believe that the
39 development of the property with the event center/wedding venue will diminish the value of your property as
40 farm property?

41
42 Margaret Wilkman: I think it will, yes.

43
44 LeAnne Brown: You own the property with whom?

45
46 Margaret Wilkman: My sister, Alice.

47
48 LeAnne Brown: And how long have you and Alice lived on the property?

49

1 Margaret Wilkman: Since the summer of 1999.

2

3 LeAnne Brown: I don't have any other questions of Ms. Wilkman.

4

5 Andy Petesch: No questions.

6

7 Karen Barrows: Does the Board have any questions? Thank you.

8

9 LeAnne Brown: I'll ask Alice Wilkman to come up please.

10

11 *Michael Harvey swore in Alice Wilkman.*

12

13 Michael Harvey: State your name and verify that you have been sworn.

14

15 Alice Wilkman: My name is Alice Wilkman, I live at 7310 Morrow Mill Road and I have been sworn.

16

17 LeAnne Brown: Ms. Wilkman, so that we can move on to the next part of the hearing I don't want belabor
18 the damages but you heard your sister testify about the special damages that she believes that she will
19 suffer as a property owner and the animals will suffer. Do you believe you'll suffer the same kinds of
20 damages that she identified?

21

22 Alice Wilkman: Yes and in fact because of the possibility that this large number of people would be
23 congregating I put up adding ducks to our property. Ducks are my thing. Chickens are my sister's thing so
24 it's really already damaged me in that respect and my ducks would be behind the shed so theoretically
25 closer to where the party barn would be. In addition to that the ducks don't go into their pen at night, they're
26 sort of like horses and they like to be in and out and chatter all night long. So lots of lights, lots of noise and
27 worst of all people coming down to torment them.

28

29 LeAnne Brown: You think the ducks would be an attractive...

30

31 Alice Wilkman: Attractive, as is my worry about the pond. The pond is also an attractive... That is the water
32 point for our neighborhood and I would hate to have to modify that plan because our fire department is
33 counting on that but really it is a concern. Given where the driveway is the pond, I think, is going to be
34 visible and attractive to people that want to get out and away from the heat.

35

36 LeAnne Brown: And just for the record a water point is when a property owner allows a fire department to
37 put in a stand pipe to allow them to fill pump trucks to fight fires in a neighborhood.

38

39 Alice Wilkman: That's correct.

40

41 LeAnne Brown: I have no other questions of Ms. Wilkman.

42

43 Barry Katz: I have a question. Just regarding... You have a pond over there right? And that's what we're
44 talking about? I see it. So your concern is that people would come onto your property and perhaps...

45

46 Alice Wilkman: Fall in and drown.

47

48 Barry Katz: And you would be exposed to some liability.

49

1 Alice Wilkman: Yes that is my concern.

2

3 Barry Katz: Well it wasn't made plain that you would have potential liability for people looking to have some
4 interest in that pond. Perhaps getting into the pond, or whatever. Ok.

5

6 Karen Barrows: Thank you.

7

8 LeAnne Brown: And finally for this part, I'd ask you to bring the certified copy of the Minutes of the Board Of
9 Adjustment meeting. And I'd like to mark that a Exhibit 7 and ask that the Board receive the Exhibits and
10 testimony that we have marked. The reason I have marked the Minutes of the previous Board Of
11 Adjustment meeting was that this Board made a finding of fact that this use as proposed would not maintain
12 or enhance the value of contiguous property and I'd ask you to take judicial notice of your finding to that
13 effect as an acknowledgement that these contiguous and adjacent property owners are suffering a special
14 damage and so if that's the evidence on standing I'm ready to move onto issues about the project, unless
15 there's anything we need to do on standing.

16

17 Karen Barrows: Are we good?

18

19 James Bryan: The Board could make a determination. It could just see if there are any objections to it and
20 just move on. Whatever the Board's pleasure is.

21

22 Barry Katz: Do you have any objection to standing?

23

24 Andy Petesch: The property owners' would simply note their objection to standing that the testimony that
25 the Board heard was primarily **inaudible** the individuals, their animals; it wasn't addressed to property
26 value. There was no certified state appraiser that presented evidence as to diminishing property values.
27 Now, the Supreme Court in Mangum vs. the City Of Raleigh Board of Adjustment did say that monetary
28 damages were not necessary however the Court of Appeals recently altered that determination in another
29 case in Raleigh and the Supreme Court denied cert review of that decision and so that landscape has
30 changed and I believe now that monetary damages are required. But, I simply would note that for the
31 record and that's all.

32

33 Barry Katz: When we reviewed this property in the past were there any realtors that came out and made a
34 statement one way or the other regarding the value of the property and the impact that this would have on
35 their property?

36

37 James Bryan: Let me address just the legal questions. You can ask other people about the recollections of
38 it.

39

40 Barry Katz: Well it would be in the Minutes. I just don't recall them.

41

42 James Bryan: So for standing you need special damages. Special damages isn't perfectly clear but
43 proximity is part of it. The most common one is property value. The statutes aren't clear that you need an
44 expert witness to establish property value that elite person cannot do that. I would advise the Board not to
45 rely on a previous hearing that the Board had if it is separate from this hearing. So the last one was a SUP
46 that had a lot more information to it. This is about a determination by staff based on just a building permit
47 without the additional information.

48

1 LeAnne Brown: And if I could perhaps respond to the legal argument that was made to the Board . It is my
2 opinion, my opinion will be slightly different than Mr. Petesch's I think, but the Magnum case that he
3 mentioned clearly establishes that property owners who are in proximity, particularly contiguous and
4 adjacent, who demonstrate the kind of value. They do not have to demonstrate a real estate appraisers
5 diminution in value. What my clients have testified to is that the value of the property as farm property has
6 been diminished. Property owners are qualified in the state of North Carolina to testify as to their belief
7 about the value of their own value in all kinds of cases, and the expert testimony information in 160a-393 I
8 do not believe applies in the standing context. It applies in the context of the type of findings of fact that this
9 Board made at an earlier hearing. What the court has said in Magnum and what it repeated in the Cherry
10 case to which Mr. Petesch eluded is that testimony that property owners have concerns about vandalism,
11 about safety, about littering, about trespass, about parking overflow, about the interference with the use of
12 their property is sufficient as a matter of law as those special damages and I believe you have ample
13 evidence of that for us to proceed.

14
15 Barry Katz: So what happened at our last hearing regarding this property is not germane to this?

16
17 James Bryan: I would advise the Board that that's correct but also keep in mind that they don't have to
18 show that, it can be any of the damages; noise, light pollution, anything like that.

19
20 Barry Katz: Ok. Because we did have comparable, from another location out off of Highway 54, that
21 somebody did attest to property values being diminished by another event location that was near them.

22
23 LeAnne Brown: I certainly believe that the Board is entitled and in fact I think required to consider the
24 findings of fact that it made with regard to something that I'm going to show is virtually identical on this
25 issue. But I think with or without it we have ample evidence.

26
27 Barry Katz: This is one of the parts of this whole thing. Do the findings we had previously determined have
28 any relevance to this hearing?

29
30 James Bryan: I believe you're not bound by previous decisions. Take everything as a de nova review but
31 this is a new matter before you.

32
33 Andy Petesch: And just for the record, the Brewers' would object to consideration of that prior determination
34 because one, the standards are not equivalent. We're talking about, here, special damages unique from the
35 rest of the community and it was a different standard in the SUP in terms of impairing the property values of
36 adjacent properties. They are similar but they are not necessarily equivalent. More importantly, however, is
37 that anyone who testified and presented evidence at that hearing is not present today for me to be able to
38 cross-examine, so it would not be competent from that perspective.

39
40 Barry Katz: But we heard similar testimony from these same people who are adjacent to your property, the
41 same kinds of statements were made then as were made now. And you've had the opportunity to cross-
42 examine them.

43
44 Karen Barrows: And I think I had always heard that adjacent property owners could testify in what they
45 think will diminution of their property and that's to be considered. Am I wrong?

46
47 James Bryan: They can definitely testify to the things that they would have personal knowledge of. What
48 they see, smell, hear. Things like that. So when they are testifying that, "I am on my property and I see a
49 driveway there" and then the average person can tell you whether a cars headlights were there, you don't

1 need an expert to say, "What's the average headlight height?" but if you're going to say, "An engine turning
2 on, can you hear that three miles away?" you might need an expert for that.

3
4 Barry Katz: Fine.

5
6 Karen Barrows: So how much longer are you presenting? Because we'll probably need a break.

7
8 LeAnne Brown: This would probably be a great time because we broke between the standing and the
9 discussion of why we contend under the statute that the Planning Supervisor err; this would be a great time
10 to take a break.

11
12 *Brief Break.*

13
14 Karen Barrows: So I just wanted to say that during the break someone came up and spoke to me about
15 their property value. It's not going to influence my decision and they won't speak during the hearing. The
16 other thing we've heard is that folks can't hear us so if everyone could speak up please, it would help.

17
18 LeAnne Brown: I'd like to call Michael Harvey and my next witness. Mr. Harvey, are you sworn in?

19
20 *Karen Barrows swore in Michael Harvey.*

21
22 LeAnne Brown: Mr. Harvey, are you familiar with Orange County's file on a SUP application that was filed
23 in connection with the SPG property on Morrow Mill and Millikan Road?

24
25 Michael Harvey: First of all, Michael Harvey, Current Planning Supervisor with Orange County, and yes, I
26 have been sworn. Yes, Ma'am. I am very familiar with that application.

27
28 LeAnne Brown: And did you bring a copy with you today?

29
30 Michael Harvey: Yes, I did.

31
32 LeAnne Brown: And does that include your staff report?

33
34 Michael Harvey: Yes, it does.

35
36 LeAnne Brown: Do you recall the initial application date for that project? Let's mark that as Exhibit 8 so we
37 can have that in the record, the entire file.

38
39 Michael Harvey: The application, which is attachment 2 page 11 in the packet, was signed by Kara Brewer
40 on the 18th of May of 2015.

41
42 LeAnne Brown: And what was that application for?

43
44 Michael Harvey: A Class B SUP for the construction of event center, barn and associated parking
45 accommodating up to 250 people.

46
47 LeAnne Brown: And Mr. Harvey you have testified or stated to the Board earlier today that you initially
48 determined, as the Planning Supervisor, that that proposed use for an event center for a barn on this

1 particular property for an event center and associated parking that would've accommodated up to 250
2 people required a Class B SUP under the Orange County UDO. Is that correct?

3
4 Michael Harvey: That is correct.

5
6 LeAnne Brown: And was that decision appealed within 30 days after you made it?

7
8 Michael Harvey: It was not.

9
10 LeAnne Brown: And did SPG and Ms. Brewer in fact apply for a Class B SUP?

11
12 Michael Harvey: Yes, they did.

13
14 LeAnne Brown: And did they proceed through the Class B SUP process?

15
16 Michael Harvey: Yes, they did.

17
18 LeAnne Brown: Mr. Harvey, you testified earlier this track is approximately 20-22 acres. Is that correct?

19
20 Michael Harvey: That is correct.

21
22 LeAnne Brown: And how was it zoned?

23
24 Michael Harvey: It is zoned Agricultural Residential.

25
26 LeAnne Brown: Alright, and does it in fact have frontage on Morrow Mill Road and Millikan Road?

27
28 Michael Harvey: It does.

29
30 LeAnne Brown: Alright. Can you look at the application for the Class B SUP and tell me the size of the
31 building proposed?

32
33 Michael Harvey: Quoting from page 3 of the staff application abstract it is a 4,200 square foot structure.

34
35 LeAnne Brown: And how many parking places were proposed?

36
37 Michael Harvey: It is not readily spelled out in staff abstract. The typical parking standard is one space for
38 every four seats.

39
40 LeAnne Brown: So do you think that could possibly be 150 spaces in this application?

41
42 Michael Harvey: Yes.

43
44 LeAnne Brown: And the name of the project on the application is the Barn of Chapel Hill. Is that correct?

45
46 Michael Harvey: Correct.

47
48 LeAnne Brown: And its main entrance was off of Morrow Mill Road, is that correct?

49

1 Michael Harvey: Correct.

2

3 LeAnne Brown: And its secondary entrance was off of Millikan Road for staff, event organizers, emergency
4 services personnel, and etcetera?

5

6 Michael Harvey: Correct.

7

8 LeAnne Brown: In the application that we filed to bring us to this appeal today I in fact made, what we later
9 learned to be a mistake, which is that I had indicated that no appeal had to been taken from this Board's
10 denial of the SUP. Did you learn recently that was incorrect?

11

12 Michael Harvey: Well, let me just state that I also labored under the same opinion that no appeal had been
13 filed and we did find out that an appeal had been filed of the decision to deny the SUP.

14

15 LeAnne Brown: An appeal was in fact filed, is that correct?

16

17 Michael Harvey: Yes.

18

19 LeAnne Brown: On December 11, 2015?

20

21 Michael Harvey: Correct. The County was not notified of the appeal.

22

23 LeAnne Brown: To your knowledge has the County ever been served with that appeal?

24

25 Michael Harvey: No, ma'am.

26

27 LeAnne Brown: Did you get an application for a building permit from SPG and/or Kara Brewer around
28 January of 2016?

29

30 Michael Harvey: The County received the building permit, yes ma'am.

31

32 LeAnne Brown: Alright, and what is the process when the County receives that building permit request?

33

34 Michael Harvey: All building permits are processed by the Building Inspections Division of the Planning
35 Department. Different departments are assigned or requested to review the application to determine
36 completeness or the need for additional permits, which includes Erosion Control, Orange County Health
37 Department, Fire Marshall's Office, and of course, Current Planning.

38

39 LeAnne Brown: And did the filing of that application cause an inquiry to you as Planning Supervisor as to
40 whether further permits were needed?

41

42 Michael Harvey: Yes, it did.

43

44 LeAnne Brown: And what did you determine with regard to the January permit?

45

46 Michael Harvey: The January permit did not contain sufficient information or documentation leading me to
47 change my opinion as to whether or not a SUP was required.

48

49 LeAnne Brown: And why is that?

1
2 Michael Harvey: It was incomplete and the documentation alleging what activity had changed on the
3 property warranting the issuance of a building permit inconsistent with a denied SUP.
4

5 LeAnne Brown: And did you compare the January application to the application for SUP?
6

7 Michael Harvey: No, I did not.
8

9 LeAnne Brown: You testified that you were very familiar with the SUP application. In reviewing the request
10 for building permit and the plans for the building permit have you noticed any differences in the basic
11 design of the event center?
12

13 Michael Harvey: There are detailed building plans that were submitted as part of the building permit
14 application submittal that were not available or not submitted as part of the SUP application. There are now
15 labels to the various uses of the rooms (**inaudible**) building permit application. That is included in the
16 Board's packet this evening.
17

18 LeAnne Brown: And was the land disturbance the same?
19

20 Michael Harvey: My recollection was it was about the same.
21

22 LeAnne Brown: About 85,000 square feet?
23

24 Michael Harvey: That sounds approximately correct.
25

26 LeAnne Brown: And the size of the building and the SUP I believe you testified was listed as 4,200 square
27 feet. Is that correct?
28

29 Michael Harvey: Yes.
30

31 LeAnne Brown: And in the application for the building permit what is the square footage of the building plus
32 the square footage of the wall?
33

34 Michael Harvey: The first floor, according to the application, which is on page 88, is 3,996 square feet. The
35 loft is 658 square feet.
36

37 LeAnne Brown: And if you add those two numbers together is that slightly larger than the building that was
38 included in the application for SUP?
39

40 Michael Harvey: Slightly larger, yes.
41

42 LeAnne Brown: Does the building permit application identify building cost?
43

44 Michael Harvey: The total cost of construction listed on page 88 is \$734,988.75.
45

46 LeAnne Brown: Is there an additional cost for the HVAC system?
47

48 Michael Harvey: The cost of the electrical work was \$74,615.
49

1 LeAnne Brown: Remind me Mr. Harvey, did I mark this second application with an Exhibit sticker?

2

3 Michael Harvey: Not yet.

4

5 LeAnne Brown: We'll make that Exhibit number 9. Do you know if there was a driveway permit application
6 to Orange County in February of 2016, or would that have been to NCDOT?

7

8 Michael Harvey: I have no knowledge of any driveway permit application being submitted. Typically the
9 County doesn't have a driveway permit process. There was however one submitted to the DOT.

10

11 LeAnne Brown: And are you aware of the submittal to the DOT?

12

13 Michael Harvey: Yes.

14

15 LeAnne Brown: And do you know whether there was a trip generation report delivered to the DOT?

16

17 Michael Harvey: No, I do not know.

18

19 LeAnne Brown: Do you know if you got an email from Chuck Edwards that transmitted that to you with the
20 (inaudible)?

21

22 Michael Harvey: There is an email from Chuck Edwards, yes.

23

24 Barry Katz: We don't have this in our packet, right?

25

26 LeAnne Brown: No, it's going to be marked in these Exhibits.

27

28 Barry Katz: Ok.

29

30 Michael Harvey: According to the email the DOT received on the 29th of December 2015 a site plan along
31 with an update property use statement and trip generation summary.

32

33 LeAnne Brown: And do you have by chance a February 15, 2016 email from Chuck Edwards on which you
34 recall?

35

36 Michael Harvey: That is the email I just.

37

38 LeAnne Brown: Ok, and if you would look at that email. Do the materials in that email include the trip
39 generation analysis?

40

41 Michael Harvey: All I have is the email that was in the file.

42

43 LeAnne Brown: Ok. Although it's printed out of my Outlook and has my name on it now, is that in fact the
44 email that you got from Chuck Edwards?

45

46 Michael Harvey: Yes.

47

48 LeAnne Brown: Does it reference attachments?

49

1 Michael Harvey: Yes.

2

3 LeAnne Brown: Is one of the attachments the trip generation information?

4

5 Michael Harvey: It says Brewer Event Center updated statement about property use.

6

7 LeAnne Brown: And what's the other attachment?

8

9 Michael Harvey: It's Brewer Event Center and then an updated statement about property use. Those are
10 the two attachments.

11

12 LeAnne Brown: Alright, when you turn a couple pages into that do you see a letter from a company that
13 was forwarded to NCDOT on behalf of SPG and Ms. Brewer regarding trip generation?

14

15 Michael Harvey: Yes.

16

17 LeAnne Brown: Can you look at that letter and tell me what kind of trip generation information was being
18 used to analyze the driveway permit when the information was given to NCDOT?

19

20 Michael Harvey: On page 2 it says for your site plan (**inaudible**) 414 trips for your AVT estimate and 105
21 peak hours trips as shown on the table.

22

23 LeAnne Brown: Alright, and does it say what kind of data it used to make those count? Does it reference in
24 fact special events in retreat centers?

25

26 Michael Harvey: Yes.

27

28 LeAnne Brown: So is it fair to say that the trip generation data given to DOT identified the use of the
29 property as special events and retreat center for the purpose of counting cars?

30

31 Michael Harvey: Yes.

32

33 LeAnne Brown: Did there come a time in March that you received another building permit application from
34 Ms. Brewer?

35

36 Michael Harvey: Yes, we were informed by the Building Inspections Department a revised application had
37 been submitted.

38

39 LeAnne Brown: And you have the revised application?

40

41 Michael Harvey: Correct.

42

43 LeAnne Brown: May I mark it as Exhibit 11?

44

45 Michael Harvey: That's in the Board's packet.

46

47 LeAnne Brown: So is everything in your file there in the Board's packet? Ok, let me mark your whole permit
48 file as 11 so that we have all of it in for the record. And were you consulted as the Planning Supervisor to
49 determine whether based on that application a permit was required in order for a building permit to issue?

1
2 Michael Harvey: Yes.

3
4 LeAnne Brown: And what did you determine?

5
6 Michael Harvey: After consulting with the County Attorney's Office it became apparent the applicant was
7 alleging and stipulating that the property was being developed to support an agricultural land use and
8 based on the current wording in (General Statute) 153a-340 (b) (2) it was the decision that we did not have
9 the authority to review the project.

10
11 LeAnne Brown: And on that basis you determined that no SUP would be required and the building permit
12 process should proceed.

13
14 Michael Harvey: We are prohibited from reviewing the project from the statute because the applicant's
15 alleging farm use.

16
17 LeAnne Brown: And (**inaudible**) the determination was made that the interpretation of the statute prohibited
18 you from reviewing the plans any further?

19
20 Michael Harvey: Correct.

21
22 LeAnne Brown: And what is different about that application from the January application? You had testified
23 that in the January application you still believed a SUP was needed. What's different?

24
25 Michael Harvey: The project description has changed dramatically.

26
27 LeAnne Brown: What's the project description?

28
29 Michael Harvey: The project description in the January application's to construct barn into farm event
30 building.

31
32 LeAnne Brown: Barn for agricultural use? Is that what is says?

33
34 Michael Harvey: No. The January application packet says construct barn into farm event building. Period.

35
36 LeAnne Brown: And the March application?

37
38 Michael Harvey: The March application reads as follows: Barn for agricultural use including but not
39 necessarily limited to the storage and processing of agricultural products and equipment, agritourism, such
40 as educational workshops, school field trips, weddings, retreats, and farm dinners and support for all other
41 activities related and incidental to the operation of a farm.

42
43 LeAnne Brown: And the land disturbance in the **inaudible** 16 application? Is it still 85,000 square feet?

44
45 Michael Harvey: I believe that's correct.

46
47 LeAnne Brown: And the size of the building; is it still 3,996 square feet of building plus 654 square feet of
48 loft?

49

1 Michael Harvey: Correct.

2

3 LeAnne Brown: And is the cost of construction still \$734,988.75?

4

5 Michael Harvey: Yes.

6

7 LeAnne Brown: And is the alleged **inaudible** still \$74, 615?

8

9 Michael Harvey: Yes.

10

11 LeAnne Brown: Is parking shown within that application?

12

13 Michael Harvey: No.

14

15 LeAnne Brown: Are driveways shown within that application?

16

17 Michael Harvey: No.

18

19 LeAnne Brown: Other than the change in the description of the project, are there any differences in the
20 plans between plans in January that you determined still required a SUP in the plans in March that you
21 determined did not?

22

23 Michael Harvey: The difference is an affidavit indicating the property is now a farm use and as such the use
24 of the property is farm activity.

25

26 LeAnne Brown: And that affidavit is an affidavit submitted by Kara Brewer?

27

28 Michael Harvey: Correct.

29

30 LeAnne Brown: And what independent activities did you or Orange County undertake to determine the
31 extent of which the proposed use was incidental to the farming activity identified in that affidavit?

32

33 Michael Harvey: Well as we indicated in our email to you, we haven't made any final determination of use
34 (of property) whatsoever. In fact, if I can quote back to the May 18th email, on page 76 of the packet, "As an
35 update to the barn project off Morrow Mill Road I would like to offer you the following: you may already be
36 aware the applicant has filed a building permit application proposing the construction of an agricultural
37 structure i.e.) a barn, along with an affidavit indicating the structure will be used for agricultural purposes
38 exempt from zoning. As a result from the submitted documentation that zoning approval for the project was
39 required for a building permit further zoning enforcement will be dependent upon actual use of the property
40 and whether it is consistent with the County UDO or state statutory exemptions. At this juncture we don't
41 have any sufficient evidence to document or demonstrate that the activity is not going to be inconsistent
42 with the bona fide farm exemption. As future use of the property is made we will then have to make
43 additional determinations'.

44

45 LeAnne Brown: And the evidence that you have with regard to the use is solely the affidavit that you have
46 from Ms. Brewer?

47

48 Michael Harvey: Correct. And the building permit application itself.

49

1 LeAnne Brown: Are you aware of whether there was an application made to Orange County for wastewater
2 and well?

3

4 Michael Harvey: I am aware.

5

6 LeAnne Brown: Do you happen to have copies of those materials?

7

8 Michael Harvey: Yes.

9

10 LeAnne Harvey: Let's mark it as number 12. Looking at Exhibit 12 can you identify the number of guests
11 and staff that are represented to Orange County as utilizing this facility? Maybe look at wastewater instead
12 of well.

13

14 Michael Harvey: It is not readily apparent in what I'm reading. Are you talking about the application for
15 permit received on the 17th of March 2016?

16

17 LeAnne Brown: Yes, that's right. How many guests and staff members does it anticipate?

18

19 Michael Harvey: Friday and Saturday the number of employees, 10 max. A number of 250 guests for a
20 farm building constructed for bona fide farm purposes including but not limited to the storage and
21 processing of agricultural products, equipment, agritourism, such as educational workshops, school field
22 trips, weddings, retreats, and farm dinners.

23

24 LeAnne Brown: So we have 10 staff members and 250 guests on the application for wastewater permit. Is
25 that correct?

26

27 Michael Harvey: Correct.

28

29 LeAnne Brown: And it identified three events per week, is that correct?

30

31 Michael Harvey: I don't see where it says three events per week, it says Friday and Saturday number of
32 employees and I just alluded to you, 10 max and number of guests, 250. Monday through Thursday the
33 number of employees is 5 max, number of guests is zero.

34

35 LeAnne Brown: Can you look at those materials and tell the size of the design square footage? Do you
36 have the letters passed back and forth in that file?

37

38 Michael Harvey: The information provided to me by the health department; I have a February 19th letter.
39 Based on the design flow of 2,750 gallons per day was assigned in accordance with applicable sewage
40 treatment system regulations per the state.

41

42 LeAnne Brown: Do you have a letter requiring 82,000 square foot?

43

44 Michael Harvey: Yes, that's the next line. Design flow of 2,750 gallons per day when need approximately
45 82,500 square feet of suitable soil area.

46

47 LeAnne Brown: Is that about 1.89 acres?

48

49 Michael Harvey: Approximately, yes.

1
2 LeAnne Brown: I have no further questions of Mr. Harvey.

3
4 Andy Petesch: Thank you. Mr. Harvey, do you have a copy of the earlier Minutes from the November 9th
5 Board of Adjustment meeting?

6
7 Michael Harvey: Yes.

8
9 Andy Petesch: And would you turn to page 3 please?

10
11 Michael Harvey: Alright.

12
13 Andy Petesch: And then starting on line 17, that paragraph was your testimony to the Board , is that
14 correct?

15
16 Michael Harvey: Correct.

17
18 Andy Petesch: And would you read the first two or three sentences there for the Board, beginning on line
19 20?

20
21 Michael Harvey: Line 20 begins as follows: We are here because staff has determined this proposal
22 requires a Class B SUP in order to operate. As you will note from the abstract as well as some information
23 provided within the notification materials there has been some concern in discussion over the property's
24 current status as a farm. Your charge tonight is not to review, interrupt, or make a decision on property
25 status as a farm as defined by the General Statute (State of North Carolina General Statute). That is not
26 your charge this evening. In fact, you all don't have any authority to make that determination.

27
28 Andy Petesch: Ok you can stop there. And so their charge as you were explaining there was only to
29 consider the requirements of the SUP and not to evaluate this property as a farm?

30
31 Michael Harvey: Correct.

32
33 Andy Petesch: And it is your understanding that that was what Ms. Brewer... Did you ever instruct Ms.
34 Brewer similarly that this wasn't a place to address the farm; it was to focus on the SUP standards?

35
36 Michael Harvey: Yes.

37
38 Andy Petesch: And secondly, you noted earlier that you have not made any determination as to the specific
39 uses on the farm at this point? With respect to whether they are non-farm purposes or bona fide farm
40 purposes.

41
42 Michael Harvey: Correct.

43
44 Andy Petesch: And what circumstances were contributed to make such a determination?

45
46 Michael Harvey: It would depend on the use of the property and our investigation has retained whether or
47 not they are even allowed under the current Unified Development Ordinance or they are exempt from
48 zoning review authority per the statute.

49

1 Andy Petesch: So what determination did you make with respect to this building permit application at this
2 point?

3
4 Michael Harvey: That as revised by Ms. Brewer in March of this year, based on the affidavit and based on
5 the general purpose and intent and project description, we were not required to issue a zoning compliance
6 permit as the applicant had indicated it was from farm use.

7
8 Andy Petesch: So your determination was that they were exempt?

9
10 Michael Harvey: This building (permit application) was exempt from our zoning review, correct.

11
12 Andy Petesch: Alright. Thank you very much.

13
14 Karen Barrows: If there are no further questions for Mr. Harvey.

15
16 Barry Katz: When you first stated that you based the determination that you approved because it was an
17 agricultural use you left open a determination about what the actual use is. Did you make a statement
18 regarding that? That we accept the face value that this affidavit says that this is for agricultural purposes
19 but if it's determined later on that it's not agriculture purposes you may reconsider the UDO rules apply or
20 not?

21
22 Michael Harvey: Let me read what I wrote again to the email to Ms. Brown on page 76 of your packet. "As
23 an update to the barn project of Morrow Mill Road I would like to offer you the following: As you may
24 already be aware the applicant filed a building permit application proposing the construction of an
25 agricultural structure i.e.) a barn. Along with an affidavit indicating the structure will be used for agricultural
26 purposes exempt from zoning. As a result from the submitted documentation that zoning approval for the
27 project was required for a building permit further zoning enforcement will be dependent upon actual use of
28 the property and whether it is consistent with the County UDO or state statutory exemptions".

29
30 Barry Katz: So future zoning enforcement will be determined based on the actual use?

31
32 Michael Harvey: Correct.

33
34 Barry Katz: Ok. I thought I heard something like that.

35
36 Michael Harvey: You heard correctly but it's important to understand the manner in which it was stated.

37
38 Susan Halkiotis: So to follow up on that, let's just use a scenario. What would have to happen for future
39 zoning enforcement to take place and I'm just curious what future zoning enforcement might look like.

40
41 Michael Harvey: If it was determined that there was an activity inconsistent either with the zoning ordinance
42 or inconsistent with the use of the property for agricultural purposes we would initiate a zoning enforcement
43 action per the UDO requiring the applicant either cease and desist (the activity) or bring the property into
44 compliance with the applicable law. They would, by our ordinance and by State law, have the ability to
45 appeal that determination to this Board within 30 days of the decision being rendered. If they did not appeal
46 or failed to abate or address the issue we would move into a final notice of violation, which could incur civil
47 penalties. We also have other actions afforded to us within the UDO to seek **an injunction through**
48 Superior Court or deny other permits until the issue is abated. But that would depend on a case by case
49 basis with what the activity is.

1
2 Karen Barrows: So when would you be making this next determination?

3
4 Michael Harvey: As their uses of the property are initiated.

5
6 Susan Halkiotis: So I just want to follow up on that. So let's just pretend that we get down the road six
7 months and it doesn't appear to be used as a bona fide farm but it's primarily used as a special event
8 center for something like weddings or retreats. At that point what would happen?

9
10 Michael Harvey: As I indicated we would look to be engaging in an enforcement action if the use of the
11 property wasn't being done consistent with the exemptions afforded to it within the General Statute or that it
12 was being used in violation of our local ordinances.

13
14 Susan Halkiotis: I have two more questions. One, I just made a not that there was an appeal filed after the
15 Board's decision?

16
17 Michael Harvey: Yes.

18
19 Susan Halkiotis: And you guys didn't get the appeal. Who gets the appeal?

20
21 Michael Harvey: We weren't notified by the Court that the appeal had been filed. So to us no appeal had
22 been filed.

23
24 Andy Petesch: If I could update this issue. The Brewers' have filed a dismissal of that appeal, that was
25 something that they did to preserve their right following that but it was determined that this option was
26 available, they pursued it and therefore they did not pursue the appeal.

27
28 LeAnne Brown: When was it dismissed Andy?

29
30 Andy Petesch: I filed it late last week.

31
32 Susan Halkiotis: And then my last question for the time being has to do... If we go back to the wastewater
33 system design. So the design requires 82,500 square feet but only 50,000 square feet are available. I mean
34 how is that reconciled?

35
36 Michael Harvey: All I can testify to is in that same packet. The Health Department issued a permit
37 authorizing Ms. Brewer to move forward with her project.

38
39 LeAnne Brown: As I understand it she had to use more land...

40
41 Michael Harvey: She addressed the concern and allowed the permit to be issued.

42
43 Susan Halkiotis: Ok so ultimately the 82,500 square feet were available or made available. Is that?

44
45 Chris Brewer: Yes.

46
47 Susan Halkiotis: I'm just curious how that works. Why that didn't present a problem.

48
49 Andy Petesch: Would you like to swear Ms. Brewer so that she can respond?

1
2 Barry Katz: You can respond for her, you're her attorney.

3
4 Andy Petesch: I don't have personal knowledge of the information.

5
6 Barry Katz: Oh, ok.

7
8 *Karen Barrows swore in Kara Brewer.*

9
10 Kara Brewer: My name's Kara Brewer. So regarding that; what you have to do is we had to hire an
11 engineer and they do a break flow equalization which essentially shrinks the system that we need.
12 Obviously we don't need that much water, or that much usage of it every single day, so they did it by the
13 days that we think we're going to be using certain uses.

14
15 Barry Katz: So you don't use that much water everyday they're averaging it out?

16
17 Kara Brewer: Correct.

18
19 Barry Katz: And that meets the requirement for your wastewater?

20
21 Kara Brewer: It does.

22
23 Barry Katz: Does that include a septic field and a repair area?

24
25 Kara Brewer: I do not know.

26
27 Michael Harvey: In the packet you have received there is a repair area denoted.

28
29 Barry Katz: Ok.

30
31 Matt Hughes: I have a question about enforcement. So what prompts you to look into whether or not
32 something is being used according to permit? Do you periodically check or is it based on just getting a tip
33 from someone who thinks?

34
35 Michael Harvey: It's either a complaint or we conduct periodic inspections throughout the County and
36 determine that there is a problem and initiate an enforcement action.

37
38 Matt Hughes: How do you determine that periodic check? Is it routine? How long after a permit is issued
39 would you do that periodic review?

40
41 Michael Harvey: Well, the County only has one enforcement officer for zoning; I'm it.

42
43 Matt Hughes: Ok, I think that answers the question.

44
45 Karen Barrows: Any further questions for Mr. Harvey?

46
47 Susan Halkiotis: I had made a note earlier when Mr. Harvey quoted from the Orange County regulations
48 that the agritourism activity must be directly related or incidental to a bona fide farm. And is that somewhere
49 in the materials that we've been given?

1
2 Michael Harvey: No. That was my testimony from what the definition of agritourism says in Article 10 of the
3 UDO. But then I also reminded the Board that I am obligated to abide by the State Statute which in
4 County's Exhibit 3 defines an agritourism activity as any activity carried out on a farm or ranch and allows
5 members of the general public for recreation, entertainment, or education purposes to view or enjoy rural
6 activities including, farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and
7 attractions.

8
9 Karen Barrows: Is that it for Mr. Harvey?

10
11 LeAnne Brown: I'm not sure. I had hoped we could agree to **(inaudible)** hearing by agreeing to facts that
12 didn't work out for us to do because a hurricane came through town and tied up Mr. Petesch pretty badly. I
13 am ready to make legal argument as to why I believe you need to reverse the decision but there may be
14 other evidence so I would want to save that until all the evidence has been received. So I don't know if you
15 plan to do rebuttal evidence or not.

16
17 Andy Petesch: I do.

18
19 LeAnne Brown: If the Board would agree I think it would make sense for the rebuttal evidence to go in and
20 then for me to make my closing argument and Mr. Petesch can argue and I can rebut that.

21
22 Karen Barrows: Ok.

23
24 Andy Petesch: Thank you very much. Again my name's Andy Petesch and I represent SPG, which is the
25 LLC that owns the property and the Brewers' who are attempting to start their farm business here on this
26 site. I want to start out by calling... I'm going to call two witnesses. Kara Brewer and Mr. Erin White, who I
27 will submit as an expert in food system policy and then I will discuss a little bit about what the evidence
28 that's been presented, we'll synthesized that and then Ms. Brown can present her argument and I'll
29 respond. So if I could ask Ms. Brewer... Ms. Brewer, could you again state your name and address for the
30 Board for the record?

31
32 Kara Brewer: My name is Kara Brewer; I live at 82 Jordan Hills in Chapel Hill.

33
34 Andy Petesch: And would you just tell the Board briefly a little bit about your background?

35
36 Kara Brewer: Sure. Right now I'm at stay at home mom. I stay at home with the kids. I worked for Carolina
37 Donor Services, an organ and tissue donation organization for the State of North Carolina for about 3 ½
38 years and then I worked for the University for the school pharmacy for 2 years, and at that point that's when
39 I left to stay at home with my children.

40
41 Andy Petesch: And how would you describe... You said you're currently a stay at home mom, is that really
42 how you would describe your current employment?

43
44 Kara Brewer: No, I manage our business affairs and of course with getting a farm started.

45
46 Andy Petesch: And are you married?

47
48 Kara Brewer: Yes.

49

1 Andy Petesch: And this is your husband here, Chris?

2

3 Kara Brewer: Yes.

4

5 Andy Petesch: And you have children?

6

7 Kara Brewer: We do. I have a son who is 9 and a daughter who is 7.

8

9 Andy Petesch: And how long have you been in North Carolina?

10

11 Kara Brewer: I've been in North Carolina since I was 8. We lived just outside of Greensboro, Gibsonville. I
12 went to high school at Eastern Carolina Kinston, and then I came up to Chapel Hill for college and just
13 ended up staying. I've been in Chapel Hill now for 19 years.

14

15 Andy Petesch: Could you tell the Board about the idea? Where did this idea for a farm originate?

16

17 Kara Brewer: Sure. Well, as the kids got older and went to school. Liala's in first grade now but as she was
18 entering Kindergarten Chris and I decided that we wanted to do something that we could involve the kids in
19 and get them outside. He has a full time job and he wanted to be outside more as well. So we just really
20 wanted the flexibility, be able to pick up the kids when I could from school and just be able to just involve
21 them in what we're doing and what was going on, that was a few years ago, so that's when we first started
22 talking about the idea of starting a farm.

23

24 Andy Petesch: And would you tell the Board about your property search? You said this started several
25 years ago. What year approximately?

26

27 Kara Brewer: Yes, 2012-2013. We were specifically looking for farm property but we had specific criteria. It
28 had to be a certain size for what we needed. I was looking for acreage, 20 acres or more, and that's very
29 hard to find in Chapel Hill. Very difficult to find so it took us several years to find an appropriate property.

30

31 Andy Petesch: And what were some of the factors that made it hard to find an appropriate parcel, other
32 than size?

33

34 Kara Brewer: Cost. The expense of farmland in Chapel Hill.

35

36 Andy Petesch: And so what was it about this parcel that made it work for you?

37

38 Kara Brewer: The price was more affordable than what we had come across previously. The size was right;
39 it was 20 acres so that would work for our purposes. It also had a clearing as you've seen. So we knew that
40 even though most of our activity would be here in the center we could get started pretty much right away
41 because of the cleared area, which was unusual as well. Also, it was dry. A lot of what we had been looking
42 at, even if the price was affordable or the amount of land was correct, sometimes it was just in swamp land
43 which would not have worked out either.

44

45 Andy Petesch: So you were looking to do some type of orchard right away? Were you initially thinking
46 chestnuts?

47

48 Kara Brewer: No actually, initially we were thinking almonds of all things, which I know sounds crazy but it
49 wouldn't have worked out with the almonds. But through our conversations with finding out more about the

1 almond trees is when we discovered chestnuts and that was just something that really interested both of
2 us.

3
4 Andy Petesch: And were there any other agricultural pursuits that you plan to include in this farm?

5
6 Kara Brewer: Yes. Flowers. Starting a flower farm.

7
8 Andy Petesch: And so when did you close on the Morrow Mill property?

9
10 Kara Brewer: It was at the end of March 2015.

11
12 Andy Petesch: And when did you first apply for a farm ID number with the USDA?

13
14 Kara Brewer: Right away. So it was the very beginning of April and it did take a couple of weeks for that to
15 come back and so that was issued the beginning of May.

16
17 Andy Petesch: Ok. And the reason that you pursued that, could you tell the Board?

18
19 Kara Brewer: Sure. There were a couple of reasons. We were starting a farm. Also, it's helpful for grant
20 purposes and then if I needed a building permit, using the farm number I could have done that as well.

21
22 Andy Petesch: And during this time period, which is roughly 2012 to early 2015, were you engaging with
23 the County staff? Having any discussions with them?

24
25 Kara Brewer: I was, yes.

26
27 Andy Petesch: Could you tell the Board what the nature of those discussions were?

28
29 Kara Brewer: Just as I would find a particular piece of property in Orange County that interest me I would
30 contact the staff just to make sure that what I was thinking about using it for would be an allowable use.

31
32 Andy Petesch: And what was that, specifically? The allowable use you were looking for.

33
34 Kara Brewer: Weddings.

35
36 Andy Petesch: And what did you learn in those discussions?

37
38 Kara Brewer: It was my understanding that it could essentially happen one of two ways. Through farm use
39 or through a SUP application.

40
41 Andy Petesch: And how did you base your decision?

42
43 Kara Brewer: I just saw value in the SUP application. We were starting off, we were the ones able to put in
44 infrastructure and put in the planning so we were kind of in the unique position of being in the beginning of
45 everything. So I just saw the value in making sure that what I was doing or trying to do complied with the
46 SUP requirements.

47
48 Andy Petesch: And so at this point you had received a USDA Farm ID number?

49

1 Kara Brewer: Yes.

2

3 Andy Petesch: And were you in the process of getting any other farm approvals, like a forest management
4 plan?

5

6 Kara Brewer: Yes. We did end up getting a forestry management plan in February of 2016 and I also got a
7 Farmer Sales Exemption Certificate that we can buy equipment and we don't have to pay sales tax.

8

9 Andy Petesch: When was that exemption granted?

10

11 Kara Brewer: That's a good question. Maybe in May 2016. April or May of 2016.

12

13 Andy Petesch: If I could at this time. It may assist the Board if I could hand out some notebooks that have
14 some exhibits. Some of them have already been admitted, some of them I will admit as we go... So under
15 tab 17 there are a couple of documents. Could you identify those to the Board please?

16

17 Kara Brewer: Sure. The first one is my farmer exemption certificate. That was May 2015.

18

19 Andy Petesch: That's for North Carolina sales tax?

20

21 Kara Brewer: Correct.

22

23 Andy Petesch: And the second?

24

25 Kara Brewer: It's my forestry management plan.

26

27 Andy Petesch: And the third?

28

29 Kara Brewer: The farm number.

30

31 Andy Petesch: This is from the USDA farm service agency?

32

33 Kara Brewer: Correct.

34

35 Andy Petesch: I'd like to admit those to the Brewers' exhibits.

36

37 LeAnne Brown: I'd like to lodge an objection for the record to the extent that much of the material here are
38 not exhibits for the purpose of evidence but are in fact statutes and other material that, some of which, are
39 in your record. I don't mind you having it but I don't think all of it is evidential. So for the record I would
40 object on that basis.

41

42 Andy Petesch: And to the extent that there is statutory language; the County's comprehensive plan, the
43 forest management plan, etcetera. Those documents speak for themselves. Some of them I will seek to put
44 into the record and into evidence when the appropriate time comes.

45

46 Karen Barrows: Can I ask a question? I'm looking at the forestry one and it says, "Extra information
47 designed to help you make sound decisions in managing your forest". What is your forest going to be?
48 Those chestnut trees?

49

1 Kara Brewer: So, yes. With the forestry management plan they gave me two options. We could clear cut
2 the entire property, which I did not want to do. It was important to me for the overall farm plan to leave trees
3 and woods there for wild life. So the secondary was to manage that area, clear what I needed to clear for
4 the farming operation and leave some of the forest around it and then yes, adding the chestnut aspect to it
5 as well.

6
7 Karen Barrows: How many chestnut trees are you going to plant?

8
9 Kara Brewer: So on this farm we started with 36 just to see how they did and they're doing well. We're
10 doubling that this spring and then I'm hoping to get close to 150 chestnut trees on that property.

11
12 Karen Barrows: Ok, thank you.

13
14 Barry Katz: Have you ever harvested chestnuts?

15
16 Kara Brewer: Yes, actually. We are currently working with a farm in Hillsborough. A chestnut orchard. A
17 fully mature chestnut orchard. And so we're actually in the middle of chestnut harvest season right now and
18 it's fascinating and when we're out there you have to grab them when they fall to the ground and then...

19
20 Barry Katz: Are you doing this with your children?

21
22 Kara Brewer: Yes. We are. They love it. We just have to make sure that they have gloves.

23
24 Barry Katz: That's not the usual thing that children do. And how many years do you think it will take you
25 before you actually have chestnuts?

26
27 Kara Brewer: It will be somewhere in the realm of 3-5 years. Although we were out there today and the first
28 one dropped and we did have some chestnuts.

29
30 Barry Katz: And what do you plan on doing with these chestnuts that you harvest?

31
32 Kara Brewer: So right now we are selling to area grocery stores and markets. And so we're establishing
33 that market through our partnership with the current orchard that we're working with. Also, direct sales.
34 Eventually we're going to get to a point where we're processing it into flour. The flour is gluten free and
35 there are a lot of uses for that.

36
37 Andy Petesch: So can you tell the Board the nature of the chestnut? Is it a fat or carbohydrate nut?

38
39 Kara Brewer: It's a carbohydrate. It's almost like it's a potato. The texture, if you've never had a roasted
40 chestnut. It's similar to that.

41
42 Andy Petesch: Any more questions?

43
44 Barry Katz: Do you know what species you have?

45
46 Kara Brewer: The Dunstan chestnut. Which is actually developed by a scientist in North Carolina, out of
47 Greensboro.

48 Barry Katz: Ok.
49

1 Andy Petesch: And so after the SUP denial how did you decide to pursue?

2
3 Kara Brewer: Well, knowing that we had the secondary option we went with that, which was moving forward
4 with the farm exemption to get the barn built.

5
6 Barry Katz: And have you made any kind of financial projections about what this chestnut business
7 amounts to annually?

8
9 Kara Brewer: Yes. We have extensive projections.

10
11 Barry Katz: Are they in this packet?

12
13 Andy Petesch: Yes, if you'll turn to tab 16. Ms. Brewer could you tell the Board about what this document
14 is?

15
16 Kara Brewer: This is my farm plan summary. So it goes through all of the farms uses and what we're
17 planning to do with the chestnuts and flowers with honey as well as agritourism.

18
19 Andy Petesch: Who prepared this document?

20
21 Kara Brewer: I did.

22
23 Andy Petesch: And could you walk them through the sections here and talk about your operations?

24
25 Kara Brewer: Sure. So the first section you can see is our chestnut. I gave a little bit of detail about the
26 history of the chestnut. There is detail there about how the chestnuts produce nuts 3-5 years after planting.
27 It gives information about the pound per tree and what we can expect. We do have a 20-year outlook. And
28 you'll see that right in the next section. And although we do have extensive projections, that's our 5 years
29 out, 10 years, 15, and 20 years out.

30
31 Andy Petesch: Would you say that for the record what those numbers are?

32
33 Kara Brewer: Sure. So at 5 years it's \$23,981. At 10 years it's \$188,154. 15 years is \$320,300. And 20
34 years is \$387,790.

35
36 Andy Petesch: And this is based on your current properties that you own. Is this more than just the Morrow
37 Mill property?

38
39 Kara Brewer: Yes, we do have another property where we are planning to have 1,200 trees, which will
40 (inaudible) the largest chestnut tree farm in North Carolina, and one of the largest in the Southeast.

41
42 Andy Petesch: And where will you process these nuts once they're harvested?

43
44 Kara Brewer: At the barn at Morrow Mill.

45
46 Barry Katz: I don't know what the basis is that these trees are going to yield between 55 and 110 pounds
47 per tree. I'm absolutely shocked that these would do that. I've been around chestnut trees in this area for a
48 long time and I've never seen anything remotely like that. And do you have any consideration about
49 disease that chestnut trees get and the possibility that you can lose your entire...

1
2 Kara Brewer: So you're talking about, specifically, the blight?

3
4 Barry Katz: For instance that one. These ones are resistant I assume to that. But a lot of these trees
5 experience die back all the time. I'm astounded by 55 pounds per tree. It doesn't seem reasonable. Plus
6 you list what you might make on these trees but I don't see where you list the labor costs.

7
8 Kara Brewer: We have all of that... It's not included in this.

9
10 Barry Katz: I see. So the projections you have for net profit do not include your labor.

11
12 Kara Brewer: These costs right here do include everything. We just didn't, because it's proprietary, so we
13 didn't...

14
15 Barry Katz: Proprietary but the thing is that you have what your total revenue is and what your net profit is
16 and everything but you have shipping and coolers and everything but you don't have labor. I mean labor is
17 going to be a large part of this thing. I don't see how your numbers add up at all.

18
19 Andy Petesch: Was labor included in the expenses side on this calculation?

20
21 Kara Brewer: Yes.

22
23 Barry Katz: Where? It's not there. You have preparation, and buckets and floral wrap and cooler converter
24 and shipping container...

25
26 Kara Brewer: That's just for the flowers.

27
28 Barry Katz: But you have to... For instance, harvesting those things. Those are the numbers that I see
29 here. I don't see the same kinds of numbers over here. There's no labor cost in here. I don't believe these
30 numbers at all.

31
32 Andy Petesch: It's your sworn testimony, before this Board, that labor and other expenses are calculated in
33 that number?

34
35 Kara Brewer: Yes. Very much, yes.

36
37 Andy Petesch: And could you tell the Board the reason why these numbers are proprietary. Is it because
38 this is an emerging market in North Carolina?

39
40 Kara Brewer: Yes, and we have partners in this so I can't release that information.

41
42 Barry Katz: Sure, but when you're talking about chestnuts. I'm sorry to take all this time up but when you're
43 talking about chestnuts you have to pick each one that falls, individually, you have to deal with the fact that
44 they've got to be opened carefully, chestnuts have to be removed. It's a total labor-intensive thing. It's not
45 like you can go with a harvester and just...

46
47 Kara Brewer: Actually, yes. They do have machinery and equipment for that. Which we will be using.

48
49 Barry Katz: Do you own this equipment?

1
2 Kara Brewer: No, not yet. We won't need the equipment for several more years.

3
4 Barry Katz: Yeah but you have to amortize that in there too. I just don't know if these numbers mean
5 anything. I mean just based on the cut flowers since there's no labor in there. I just have no idea what you
6 mean by this.

7
8 Matt Hughes: I have a few questions. Not relating to your business plan per se and your numbers. But
9 section 1,2,3, etcetera list what you plan to do on your farm. Is that in order? So do you plan being on
10 mostly for chestnuts, and then flowers, and then honey production and then event stuff.

11
12 Kara Brewer: That's correct.

13
14 Matt Hughes: Ok. And so how do you think as maybe a percentage of your farms operation would be
15 hosting events and having others on your property? Like field trips and things like that?

16
17 Kara Brewer: Sure. So I did write that out. That would be section 4. Page 6.

18
19 Andy Petesch: This is still under tab 16, page 6.

20
21 Kara Brewer: So for example, right now for 2017 we're looking at 15 Saturday farm weddings and 22 for
22 2018. And then for floral workshops for 2017 I'm just doing the grouping in the fall so we'll have three
23 different workshops and we'll do three different dates for those. I'm going to cap it at about 30-40 people
24 per workshop and then for the educational programs we are opening that up to elementary aged kids. And
25 so I'm hoping in 2017 to have roughly 5-6 per months at certain times of the year. But again, we're working
26 all that out. This is just planning. But that's what I would like to do.

27
28 Matt Hughes: And the comments we have from the folks that are appealing the decision of staff. Most of the
29 comments that I heard involved nighttime activities, which I would assume, would be weddings. So in 2017
30 you're saying you're projecting 15 just based on market analysis just based of 22 for the next year? Do you
31 plan on capping the number of weddings that you have?

32
33 Kara Brewer: Yes, and as a matter of a fact, we can do only so many weddings on a Saturday. So we could
34 only at most have 4-5 weddings on a Saturday per month for wedding season, which runs from May to
35 October, roughly. Now there are occasions when there might be a Friday or a Sunday wedding, that's
36 typically much less and again I would cap it and maybe 5 or 6 times a year. And that's primarily just the
37 holidays.

38
39 Matt Hughes: So you're anticipating that most of the weddings would occur during a particular time of year.

40
41 Kara Brewer: Yes, there is a very specific wedding season. It runs from May to October. And even for me
42 that presents difficulty because a popular time for weddings is September and October and that's when
43 we're busy with the chestnut harvesting. So I might not be able to do as many in September and October,
44 which would leave mainly summer, and maybe a few early spring.

45
46 Matt Hughes: I think that's all I have.

47

1 Andy Petesch: Mr. Hughes asked a question a little while ago and, just to clarify, he was asking about the
2 order in which you are implementing the different aspects of the farm and the order in which these are
3 presented. You already have chestnuts growing on the farm, is that correct?
4

5 Kara Brewer: That is correct.
6

7 Andy Petesch: And how many trees are currently on the Morrow Mill property?
8

9 Kara Brewer: 36. And then we're doing 40 more in the spring.
10

11 Andy Petesch: And do you already have bees and apiary on the property?
12

13 Kara Brewer: We do. We have three beehives currently on the property and we're adding two every spring
14 until we get up to 20.
15

16 Andy Petesch: And you had some test flower beds?
17

18 Kara Brewer: Yes, while we were under construction.
19

20 Andy Petesch: But you're going to start... And I would ask the Board to turn to tab 15. Could you describe
21 what this is?
22

23 Kara Brewer: Yes, this is just an overview of our farm plan and how we have everything situated. So you
24 can see where the apiary is, where we're going to have our hives, where we're putting the chestnut
25 orchard. You can see the barn. Up to the barn there, that's where our cut flower beds are going to be. Just
26 above the parking area and then off to the side. I want to start growing the flowers to see what does well
27 and what I might want. Also, in that area one of those buildings will be a cooler. Probably a converted
28 shipping container because we will need a lot of cold storage. And there's cold storage in the barn as well
29 because the chestnuts have to be refrigerated, as do the flowers.
30

31 Andy Petesch: And would you talk about the processing portion of the chestnut business?
32

33 Kara Brewer: Sure. So the way we process the chestnut is we collect them from the field. We have to take
34 them out of the burr, you rinse them off and then you actually have to dip them in a hot water bath at 120
35 degrees for 20 minutes and then you take them back out, you dry them off and you package them up per
36 pound, depending on who you're giving it to and what your poundage is. So essentially we'd be putting into
37 15-20 pound bundles.
38

39 Susan Halkiotis: The forestry certificate is a very handy thing for people who have over 20 acres of land it
40 can save you a lot of money in taxes. And so I just wondered. I see that the letter came from the N.C.
41 Forest Service on January 25th. Did you apply in January?
42

43 Kara Brewer: It might have been right around there or just before. I think I contacted them maybe a month
44 or two before hand and then it just took a while to get the process started.
45

46 Susan Halkiotis: Does the USDA offer similar property tax cut whenever a property is deemed to be
47 farmland?
48

49 Kara Brewer: I'm not 100% sure. I don't know that.

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Barry Katz: Can you locate the septic field on this property?

Kara Brewer: Sure. That is where the wild flower and meadow habitat is.

Barry Katz: And that's not for commercial use?

Kara Brewer: No.

Barry Katz: So in your cut flower area do you have an irrigation plan? And for your chestnuts as well?

Kara Brewer: Yes, that's key. Especially for my flowerbeds, we'll be using drip irrigation. With the chestnuts it's not quite as important, they do better when they're dry.

Barry Katz: Do you have any idea what the capacity on your property is for actually pumping water?

Kara Brewer: I don't, we're working with a well service now to try to figure all that out. So we're in the process of doing that.

Barry Katz: So it's possible that you really wouldn't have enough water on that property to actually...

Kara Brewer: We've done some preliminary so we should be fine but again, I don't know until they actually start drilling.

Matt Hughes: I did find my other question buried in my notes. Some of the concerns that have been raised are centers around people who may be visiting the farm at night in conjunction with weddings and nighttime events and trespassing on property. What measures would your farm undertake to try and keep folks from where they should not wander off?

Kara Brewer: We are hiring off duty police officers as security. Depending on what's going on they'll be 1-2.

Matt Hughes: And so would that also involve maybe some sort of patrol beyond the barn, just to make sure or just being watchful.

Kara Brewer: Sure. While I'm out there I'll be communicating with them and whatever is needed that's what we'll do.

Matt Hughes: And I'll assume also off duty because there might also be alcohol, and isn't it standard practice that if you're serving liquor that you have someone who can be law enforcement on site?

Kara Brewer: Well I think that's probably just a good thing to do generally. And we'll also have shuttle services available.

Susan Halkiotis: I had one other question that I'm just kind of puzzled by because you mentioned that this had been the plan all along, that you had looked for this property with the intent to establish a farm and this property met the criteria that you were looking for. Why then, on January 5th 2016 when the original building permit application was submitted was the proposed use a farm event building with the use category assembly?

1 Kara Brewer: I just clicked the wrong X. I thought the because we were having people assemble onto the
2 property that that's what it would have to be but it was not the case.

3
4 Barry Katz: And going back to the original request that we faced last year; there didn't seem to be any
5 vision at all like this involved then. You were just having a barn to have weddings and other special events.

6
7 Kara Brewer: I was specifically told that I could not bring up any farming aspect at all for the SUP
8 application process. It had to be completely two separate things.

9
10 Barry Katz: You have an apiary and you have all these wild flowers and everything. Do you have any
11 particular special liability insurance and materials on hand to deal with the people who are allergic to
12 stings?

13
14 Kara Brewer: Yes, we do have comprehensive farm insurance that covers all of our activities and yes we
15 will have a medical kit there. And of course we'll be giving warnings too.

16
17 Karen Barrows: Correct me if I'm wrong but I thought I heard you say earlier that when you were looking
18 around for property you were looking around for property that would meet criteria that would allow you to do
19 this wedding venue?

20
21 Kara Brewer: And some of the farming aspect as well. The flowers and the trees, again we hadn't select the
22 chestnut trees yet but we knew we need large enough acreage to accommodate all that if I just wanted to
23 do weddings. I would have saved a lot money and bought the 2 acre property.

24
25 Matt Hughes: Where were you referring to where you checked the wrong X?

26
27 Kara Brewer: There's so much paperwork. I think there's one particular section where it says assembly and
28 I just checked it.

29
30 Matt Hughes: And I was just wondering, who helped you fill out the forms?

31
32 Kara Brewer: County staff. They would help me and talk me through it. I had never done it before.

33
34 Susan Halkiotis: I have another question. So going back, I think that it's admirable to do things and pursue
35 things that your children can be involved in and you mentioned that starting a farm would allow you time
36 with them outdoors, and this was something they could participate in. But you don't live on the farm. I
37 mean, most of the time people do live on their farms so that they can...

38
39 Kara Brewer: We live in Chapel Hill; we're very close by. And that's part of it. And we'll be there as much as
40 possible and I'll be there after I drop the kids off at school, and go to the farm property and work as long as
41 I can and pick them back up. So we'll figure it out. I live about 15-20 minutes away.

42
43 Andy Petesch: And what part of the barn designed to include a comfortable office space to work since you
44 were going to basing a lot of time there?

45
46 Kara Brewer: Yes and it has space for the kids to do homework and things like that as well so it does give
47 them an area to be off the farm if they needed to.

1 Barry Katz: Well your kids are about to enter into organized sports, and other social events and I think it
2 seems inconceivable that they're going to spend much time out there. So you have down here 10 staff
3 during events and when there are no events the number of staff is 5?
4

5 Kara Brewer: Approximately, it depends on what we have going on?
6

7 Barry Katz: What are they going to be doing? What did you anticipate them doing?
8

9 Kara Brewer: Helping me with the flowers, flower harvesting and that sort of thing. General maintenance.
10 As the chestnuts come into maturity we'll need help with the harvest. Just things like that.
11

12 Barry Katz: Ok.
13

14 Karen Barrows: Ok, Andy?
15

16 Andy Petesch: And I'll just finish up a few things with Ms. Brewer here. I understand it's already getting late
17 and I don't want to slow this process down at all. But I do need to have her testify to a few more facts. So
18 we went ahead and talked about some of your farm plan specifics, if you could just discuss the agricultural
19 activities in a little more detail in terms of what you're doing with the flowers?
20

21 Kara Brewer: Sure. So we are using the barn as the storage for the flowers. As we harvest the flowers we
22 come into the barn, we section everything out into our buckets, that's where we wrap and put them in
23 bouquets or however it is that we're going to do it. And so we will be storing the flowers in there as well. We
24 are doing you pick operations with the flowers as well so that's part of everything.
25

26 Andy Petesch: And are you using any specific technique in terms of growing the seeds?
27

28 Kara Brewer: Yes. So I'm doing a technique called soil blocking. It's actually really fascinating. Something
29 that they use in Europe quite a bit and what it does is it cuts down on your plastic waste. So when your
30 seed starting and we'll be doing thousands of seed starts per season we start and you essentially block up
31 the soil and that's the container that the seed germinates in so then when they're ready we take that into
32 the barn and we have racks and growing lights available, and then we take that block directly out into the
33 field and plant it and because it's in a block the transplant shock is much less as well. And like I said, we
34 have been experimenting a little bit on the property now just to see how the soil blocking method works and
35 it's actually been doing really well compared to the direct seeding. So I'm excited about that as well. I think
36 that's going to increase our flower production.
37

38 Barry Katz: You had quite a large area there where you're going to grow flowers. Do you have any estimate
39 about how many blocks you would need to fill that up?
40

41 Kara Brewer: Thousands, yes.
42

43 Barry Katz: How many?
44

45 Kara Brewer: Thousands. Because just one bed is 70 foot by 4 bed, depending on the type of flower and
46 depending on the spacing of course it varies. It could be anywhere from 400 to 900 plants in just one bed.
47

48 Barry Katz: The size of the plot was 70 by what?
49

1 Kara Brewer: Each bed is going to be 70 by 4.

2

3 Barry Katz: So that's 280 square feet.

4

5 Kara Brewer: Yeah. And that's roughly. I mean in some areas.

6

7 Barry Katz: Right. And how many blocks per square foot?

8

9 Kara Brewer: It depends on the type of flower and the spacing that I have to do. It could be, let's say 5.

10

11 Barry Katz: Ok, so that's 1,400 per bed. And how many beds do you have?

12

13 Kara Brewer: We're going to do at least 22 to start...

14

15 Barry Katz: 22 beds?

16

17 Kara Brewer: Yes.

18

19 Barry Katz: So you're into about 20,000 or more blocks?

20

21 Kara Brewer: Yes. And that's not all at once. You do it succession so that you have blooms year round.

22

23 Barry Katz: Excuse me but, I assume that different beds... So you're only planning on using certain beds to
24 grow certain flowers and then they're fallow the rest of the year. You're not going to plant them over again
25 and put in anything else?

26

27 Kara Brewer: Correct, not right now. Getting started imp just going to see how everything works and on
28 seasonal.

29

30 Barry Katz: Managing 20,000 blocks is a massive undertaking.

31

32 Kara Brewer: It is, yes.

33

34 Andy Petesch: And so will you hire people and employ them in the area to work on the farm?

35

36 Kara Brewer: Yes.

37 Barry Katz: Right. It's all expenses and you're assuming no loss through infection in seedlings, or anything
38 like that. I mean, it seems like as in a lot of optimism in what it is that you're planning on doing. And I don't
39 really see that you really reconcile the costs and the amount of labor that's going to be involved in doing
40 this. Do you have expectation that they'll be weeds in this bed?

41

42 Kara Brewer: Yes. What we're doing to try and stop that is we're putting down landscape fabric. So what
43 you do ahead of time is you have to burn holes into the landscape fabric and then put that down. So that
44 does help. It's not full proof but.

45

46 Barry Katz: Ok.

47

48 Andy Petesch: You've already talked about the bees and you've talked about the agritourism activities. You
49 mentioned workshops. Are you integrating workshops within the wedding events as well?

50

1
2 Kara Brewer: Yes, we are. So specifically for the weddings we're integrating a couple of different things.
3 We're doing farm chores for the guests, honey tastings, floral workshops. For example, if the brides or the
4 bridesmaids or flower girls wanted to do floral crowns you could do something along those lines, yes. We're
5 integrating that into each of the weddings.

6
7 Andy Petesch: And then you talked about some of the operational activities there that would involve the
8 farm and the barn itself. It's going to be utilized for storage of farm equipment?

9
10 Kara Brewer: Yes.

11
12 Andy Petesch: And you discussed a little bit about the processing equipment. Obviously, when you're
13 starting the farm that's a slow process that gets layered in at a time, but you do expect that those numbers
14 for processing the chestnuts is not just your family peeling these things apart.

15
16 Kara Brewer: No, of course not.

17
18 Andy Petesch: Ok so there's some pretty substantial equipment out there that can process these,
19 mechanically?

20
21 Kara Brewer: Yes.

22
23 Andy Petesch: Ok. And could you just tell the Board. You've met with quite a few people throughout this
24 process trying to educate yourselves and as you move forward with this business plan. Could you just run
25 through a list of some of the folks you've spoken with and asked for assistance?

26
27 Kara Brewer: Sure. Well within Orange County there have been several people that have been very helpful.
28 There's an agri-business agent, I guess I'll call him, who I've spoken with and who I was in talks with even
29 during the sup process. So he was very helpful. Mike Rotoski, I believe is how you pronounce his last
30 name. So he's been very helpful. He introduced me back in, I believe it was, September of 2015 to Annie
31 Bagget who is the state agritourism person. So she's been very helpful.

32
33 Andy Petesch: Is she with the North Carolina Department of Agriculture?

34
35 Kara Brewer: Yes, and she got us listed on the state agritourism websites and we're under weddings and
36 you pick and all that so that was tremendously helpful. We've talked to extension agents. Both in Orange
37 County and in Chatham County. In Chatham County Debbie Rues has this beautiful pollinator garden out
38 by the Chatham market place. So of course because we're doing so many things with bees I was
39 particularly interested in that, so she gave me a really fantastic tour of those garden and the specific types
40 of plants. She actually has a workshop that she does. We're interested in doing composting, of course, so
41 specifically we went to a workshop a couple months ago. It's fascinating with the worm composting. They
42 have a worm barn over at NC State and so we've done that. Next month I have a flower farmer workshop
43 for beginning flower farmers that I'm going to. There are just a lot of different resources in our area that's
44 good for people starting out like me.

45
46 Barry Katz: Have you ever lived on a farm?

47
48 Kara Brewer: I have not, no.

49

1 Barry Katz: And so you've never run a farm?

2

3 Kara Brewer: I have not, no.

4

5 Barry Katz: Ok. But you're about to start like three different farms?

6

7 Kara Brewer: We are. We've already.

8

9 Barry Katz: And run an event facility and everything, and you're a mother of two kids?

10

11 Kara Brewer: Yes.

12

13 Barry Katz: And how many hours are there in a day?

14

15 Kara Brewer: Not enough.

16

17 Karen Barrows: Is there anything else, Andy?

18

19 Andy Petesch: That's all I have for Ms. Brewer.

20

21 LeAnne Brown: Yeah, I have a few questions for you, Ms. Brewer.

22

23 Kara Brewer: Sure.

24

25 LeAnne Brown: You have an exhibit number 15 in the notebook. You testified that the wild flower and
26 meadow habitat is also your septic field, is that correct?

27

28 Kara Brewer: That's correct.

29

30 LeAnne Brown: And when was this farm plan illustration prepared?

31

32 Kara Brewer: We just prepared it. It was just finished. You can see the date down there on October 6,
33 2016.

34 LeAnne Brown: Right, and it's not scale. Is that correct?

35

36 Kara Brewer: It is not, no.

37

38 LeAnne Brown: Alright. And the farm plan summary exhibit 16. When was that prepared?

39

40 Kara Brewer: Exhibit 16. Let's see. Oh, this has been ongoing.

41

42 LeAnne Brown: When was this particular draft prepared?

43

44 Kara Brewer: I finished up this draft, I guess, yesterday. Up to yesterday I was adding things in it.

45

46 Andy Petesch: But the information.

47

48 LeAnne Brown: Excuse me, excuse me.

49

1 Andy Petesch: I apologize.

2

3 LeAnne Brown: Thank you. You testified that you bought this property with the idea of forming a farm. Did I
4 understand you correct?

5

6 Kara Brewer: That is correct, yes.

7

8 LeAnne Brown: Alright. And you purchased the property when?

9

10 Kara Brewer: In the end of March 2015.

11

12 LeAnne Brown: And the property is owned by Southeast Property Group LLC. is that correct?

13

14 Kara Brewer: That's correct.

15

16 LeAnne Brown: Do you recall forming an LLC for Southeast Property Group LLC?

17

18 Kara Brewer: I do.

19

20 LeAnne Brown: Do you recall filing with the North Carolina Secretary of State an annual report?

21

22 Kara Brewer: I do.

23

24 LeAnne Brown: Do you recall what the purpose of the business was in 2015?

25

26 Kara Brewer: I do not recall.

27

28 LeAnne Brown: Let me show you what I've marked as Exhibit 13. Do you recognize that document; have
29 you ever seen that before?

30

31 Kara Brewer: I do. I think you do it and register it online.

32

33 LeAnne Brown: Alright, were you involved in registering that document online?

34

35 Kara Brewer: Yes, ma'am.

36

37 LeAnne Brown: Did you intend to report accurately to the North Carolina Secretary of State the purpose of
38 South Property Group LLC in 2015?

39

40 Kara Brewer: Of course.

41

42 LeAnne Brown: And what is the purpose listed on that form?

43

44 Kara Brewer: It says real estate investment.

45

46 LeAnne Brown: Thank you. And you in fact changed that in 2016 to farm, is that correct?

47

48 Kara Brewer: I'm sure that I did, yes.

49

1 LeAnne Brown: Changed it to farm, after your SUP was denied; is that correct?

2

3 Kara Brewer: Correct.

4

5 LeAnne Brown: The Barn of Chapel Hill LLC. Is that an LLC in which you're associated?

6

7 Kara Brewer: Yes, Ma'am.

8

9 LeAnne Brown: Do you recall forming that LLC?

10

11 Kara Brewer: I do.

12

13 LeAnne Brown: Do you recall when it was formed?

14

15 Kara Brewer: I do not recall exactly when it was formed.

16

17 LeAnne Brown: Was it in or around 2014?

18

19 Kara Brewer: Probably so, yes.

20

21 LeAnne Brown: Was it in or around March? Around the same time as your formed SPG LLC?

22

23 Kara Brewer: Yes, Ma'am.

24

25 LeAnne Brown: Perhaps the same day?

26

27 Kara Brewer: Probably so. It could have been, I don't recall.

28

29 LeAnne Brown: And do you recall filing with the NORTH CAROLINA SECRETARY OF STATE an annual
30 report?

31

32 Kara Brewer: Yes, Ma'am, I'm sure I did.

33

34 LeAnne Brown: In 2015, do you recall what you listed as the purpose description of the nature of the
35 business of The Barn Of Chapel Hill LLC?

36

37 Kara Brewer: I do not.

38

39 LeAnne Brown: Andy, what I've marked is Exhibit 14 and would you look at that? Do you recognize that
40 document?

41

42 Kara Brewer: I do.

43

44 LeAnne Brown: What is that document?

45

46 Kara Brewer: It is the annual report.

47

48 LeAnne Brown: And what is listed as the description of the nature of the business of The Barn Of Chapel
49 Hill LLC on the annual report you filed with the North Carolina Secretary of State?

1
2 Kara Brewer: Wedding and special events venue.

3
4 LeAnne Brown: So your testimony today was that you bought the property with the idea of having a farm
5 but, in fact, when you incorporated the entity that bought the property and you incorporated the entity to
6 operate the property you identified it as a real estate investment for wedding and special events venue.
7 Isn't that correct?

8
9 Kara Brewer: That is correct.

10
11 LeAnne Brown: When is your you-pick going to be open?

12
13 Kara Brewer: We're hoping in June.

14
15 LeAnne Brown: And what is it people would pick in June on your property?

16
17 Kara Brewer: It depends. I do hope to have some sunflowers out there by then. I do want to do Cynthia's;
18 we're going to do a lot of those. Solutia might not be up and running by then. I just have a whole list of
19 various ones.

20
21 LeAnne Brown: And when do you finalize your plans for what you plant for you pick that would be open for
22 operation in 2017.

23
24 Kara Brewer: We're finalizing now. We've already ordered a couple thousand tulip bulbs because we have
25 to get those in as soon as possible. They'll be shipped out in another two weeks. So they're coming soon
26 and then we'll be finalizing our spring plantings now, I mean we're looking through that now.

27
28 LeAnne Brown: How large an area does it take to plant 2,000 tulip bulbs?

29
30 Kara Brewer: A very large area. What you do is you have to dig, for the tulips specifically, it's almost like
31 you dig a ditch and then you drop each one in so I'm assuming... You actually have to put them in there
32 pretty tight so even though it seems like a lot we'll probably have 2-3 beds of tulips.

33
34 LeAnne Brown: Actually, Ms. Brewer, it doesn't seem like a lot to me at all. How large a container does it
35 take to hold 1,000 tulip bulbs?

36
37 Kara Brewer: I don't know, I haven't seen the container.

38
39 Barry Katz: May I ask, these beds... Are these beds prepared already?

40
41 Kara Brewer: No, we have to prepare them?

42
43 Barry Katz: Who's doing that work?

44
45 Kara Brewer: I am.

46
47 Barry Katz: Those 22 beds? You're going to do that work?

48
49 Kara Brewer: Yes.

1
2 Barry Katz: You're going to bring in the soil?
3
4 Kara Brewer: Yes.
5
6 Barry Katz: And get rid of whatever is there? Because everything that's out there is going to grow right
7 through your beds.
8
9 Kara Brewer: Yes.
10
11 Barry Katz: I mean, I don't know if you've ever worked like that but I can tell you right now it's going to take
12 several of you to do this. More than several of you to do this.
13
14 Kara Brewer: Well, sure.
15
16 Barry Katz: If you can do it. I don't see you doing 22 beds. I don't know how many beds you can do next
17 year. But it's not going to be anything like that. It's just impossible.
18
19 Karen Barrows: Why don't we let LeAnne finish maybe.
20
21 Barry Katz: Please... You're right, I'm sorry.
22
23 LeAnne Brown: Ms. Brewer, when did you do your first business plan with regard to this property?
24
25 Kara Brewer: Probably years ago.
26
27 LeAnne Brown: How many years ago?
28
29 Kara Brewer: My first business plan was probably 2013, or 2014.
30
31 LeAnne Brown: And that was for this particular property you ultimately purchased.
32
33 Kara Brewer: Yes.
34
35 LeAnne Brown: Do you have a copy of that business plan with you?
36
37 Kara Brewer: I do not.
38
39 LeAnne Brown: Do you recall if that business plan, in fact, comported with what you represented on the
40 information to the North Carolina Secretary of State? That you were preparing a wedding and special
41 events venue?
42
43 Kara Brewer: I'm sure it did, yes.
44
45 LeAnne Brown: That is correct? That's what your business was around?
46
47 Kara Brewer: Yes.
48

1 LeAnne Brown: When exactly did you discover chestnuts? You said that you discovered them but when did
2 you discover them?

3

4 Kara Brewer: So let's see. We bought the property in March. We started and had gotten rid of the almond
5 idea so it was probably September or summer 2015.

6

7 LeAnne Brown: Before the hearing?

8

9 Kara Brewer: Yes.

10

11 LeAnne Brown: How many acres are in your forestry management plan, do you know?

12

13 Kara Brewer: I can look. It's right here.

14

15 Andy Petesch: It's under tab 17.

16

17 Kara Brewer: So you're looking specifically for the total number of acres?

18

19 LeAnne Brown: Yes, Ma'am. How many acres do you have in your forestry plan on your property?

20

21 Kara Brewer: It's for the entire property and they divided it out separate. There's area one and area two but
22 I don't...

23

24 LeAnne Brown: It's, in fact, the size of your property, isn't it?

25

26 Kara Brewer: Correct.

27

28 LeAnne Brown: So how does the barn fit into your forestry plan? Or the parking lot or the septic area that's
29 all cleared or the flower area that's all cleared? How does that fit with the forestry plan that you've
30 represented would cover the entirety of the acreage?

31

32 Kara Brewer: Right. So my choice with the forestry plan was to completely clear-cut, which I did not want to
33 do or it was to leave some of the trees, which that is what I wanted to do. So, that's what we ended up
34 doing?

35

36 LeAnne Brown: But you can't really have a forestry plan that covers the entirety of your acreage if you have
37 a disturbed area of over two acres, not including your septic field and not including areas you cleared. Is
38 that correct?

39

40 Kara Brewer: I'm not exactly sure what you mean.

41

42 LeAnne Brown: Alright.

43

44 Kara Brewer: I just opted not to clear-cut because I didn't want to do that.

45

46 LeAnne Brown: I'm not asking you about clear cutting. I'm asking you about the inconsistency between
47 having a building and a septic system and a parking lot and a drive way on a piece of property that you
48 have represented to the government would be fully used for your forestry plan. I'm trying to understand that
49 contradiction.

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Kara Brewer: You can have a forestry management plan and still have buildings and a farm.

LeAnne Brown: Not if you represent you're covering an amount of acreage that includes those buildings and properties. Not the way your forestry plan reads. Let me ask you another question. You are already advertising for weddings for The Barn Of Chapel Hill, is that correct?

Kara Brewer: That is correct.

LeAnne Brown: Who writes the information that's included on your website for The Barn of Chapel Hill?

Kara Brewer: I do.

LeAnne Brown: Do you recall writing this information and writing it on your website, "At The Barn of Chapel Hill we specialize in southern charm and elegance. We are proudly working to give new life to our amazing antique barn containing over a century and a half of history and we're thrilled to offer what is now farm guests the opportunity to make their own joyful memories within the walls"? Do you remember writing that?

Kara Brewer: I do.

LeAnne Brown: Do you remember writing this? "On you wedding day you'll enjoy exclusive use of the farm and all of our facilities"?

Kara Brewer: Correct.

LeAnne Brown: "After a picturesque garden ceremony wedding guests are served appetizers and cocktails on the barn's spacious covered veranda while you and your wedding party take photos". Is that language that you wrote and advertised for The Barn of Chapel Hill?

Kara Brewer: That is correct.

LeAnne Brown: How much space does it take in your barn to store your chestnut flour today?

Kara Brewer: We don't have any chestnut flour. We don't have a barn.

LeAnne Brown: How much space will it take to store chestnut flour in your barn when your barn is completed?

Kara Brewer: It depends on how much chestnut flour we actually have. I don't know yet.

LeAnne Brown: How much space are you planning in your business plan for the storage of chestnut flour in your barn?

Kara Brewer: Well like I said, it depends on how much chestnut flour we actually produce and I don't know that so...

LeAnne Brown: It's fair to say at this point that you don't know how much space in that part you would need for chestnut flour, isn't that correct?

1 Kara Brewer: That's correct. That's why the barn is a barn. It's big open space. It's very flexible and can
2 accommodate us as we scale up.

3
4 LeAnne Brown: How many square feet is your barn?

5
6 Kara Brewer: Approximately 4,200 square feet.

7
8 LeAnne Brown: How much square footage do you need to store the flowers you anticipate growing from
9 your thousand bulbs and (inaudible)?

10
11 Kara Brewer: We're going to need quite a bit of space. And again, because it's such a big wide open space
12 it allows me to set up tables, get in there and divide out the flowers. So, yeah.

13
14 LeAnne Brown: So if on your wedding day you have exclusive use of the farm and all the facilities are you
15 hauling around the flour and crawling around the cuttings, crawling around the buckets, crawling around the
16 farm material or do you move all that out?

17
18 Kara Brewer: I mean if there's an event then obviously we will work to clean things up and get things out of
19 the barn if that's what's being used.

20
21 LeAnne Brown: So when you're having wedding events then you can't really be using that barn for any of
22 your farm activities because you have to clear it out to move it for your wedding guests. Is that correct?

23
24 Kara Brewer: During the duration of the event, yes.

25 LeAnne Brown: Where's all of that stuff go when you're using the barn for weddings?

26
27 Kara Brewer: I'm just going to have to cram it into different areas. I might have one of the... I mentioned a
28 storage container off to the side; we might have another one where I can put things in. I do have a couple
29 of options for storage that I can add on if I need it later. So again, it's just a work in progress. We're going to
30 have to figure that out as we move forward.

31
32 LeAnne Brown: Ms. Brewer, did I understand you correctly or did I misperceive your testimony? Did you
33 testify that Michael Harvey told you which blocks to check on your application for the building permits?

34
35 Kara Brewer: No, Michael Harvey did not.

36
37 LeAnne Brown: I just misunderstood you. Did you testify that Mr. Harvey told you that you were not allowed
38 to mention a farm while you were presenting at your SUP?

39
40 Kara Brewer: He didn't say I wasn't allowed. He said that with the SUP that you just had to stay away from
41 farm use, essentially.

42
43 LeAnne Brown: Were you represented by legal council when you were going through the process of the
44 SUP?

45
46 Kara Brewer: Yes, I was.

47
48 LeAnne Brown: Were you also working with an architectural firm that had done a fair amount of this type of
49 work in Orange County? Weren't you working with Phil Post and Associates?

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Kara Brewer: I was. Yes.

LeAnne Brown: Do you recall Mr. Harvey telling you that you needed a SUP?

Kara Brewer: I do, yes.

LeAnne Brown: Do you disagree with his testimony that you did appeal within 30 days of his decision that you were required to have a SUP?

Kara Brewer: I'm not exactly sure what that means. I mean I never disagreed or never thought that I was not going for the SUP.

LeAnne Brown: Alright. Did you testify truthfully before the Board of Adjustment when you testified at the hearing on the SUP?

Kara Brewer: I did.

LeAnne Brown: Have you reviewed the Minutes of the Board of Adjustment hearing?

Kara Brewer: I have.

LeAnne Brown: Do you recall when you read them that any of your testimony was misrepresented?

Kara Brewer: I do not recall.

LeAnne Brown: Is this an accurate reflection of your testimony at the hearing: You're attorney asked you, "And Kara, why did you choose this specific property as the site?" and you testified, "Right, so I had looked at probably over the course of two years 20-30 properties, walking different ones. When we came across this particular property, it's just a beautiful property and like I said the size itself was very important to me. The fact that is was 22 acres, it allows me to have very private events in the middle of the property, and that was important to me. It is important to clients and also I think it will benefit the neighbors as well." Do you recall testifying to that effect?

Kara Brewer: That is correct.

LeAnne Brown: Do you recall the following testimony: You were asked by your attorney, "And can you just tell us a little bit about how often you expect to be holding events at the barn, like weddings?" do you recall the following testimony, "So, wedding season is primarily from May to October so it does run about six months and during that time I do expect to have 1-3 events per week on the property. Off-season, which is November through April, will be less on where there isn't anything going on there will be the occasional winter wedding, perhaps early spring wedding. When the barn isn't used for weddings and wedding related events that's when I anticipate we could do more charity and more fundraising events on Friday or Saturday night when it isn't being used for weddings. During the off-season there will be weeks where there is nothing going on. There will be a few weeks where there's one or two events per week.". Do you recall that testimony?

Kara Brewer: That is correct.

1 LeAnne Brown: Would you agree that what you identify as the spring wedding season would also be the
2 planting season for flowers.

3
4 Kara Brewer: That is correct.

5
6 LeAnne Brown: Ms. Brewer, how does a wedding and event center, which would include charity and
7 educational events. Would you tell me how that is incidental to the farming operation?

8
9 Kara Brewer: Absolutely. So what we're doing specifically with the weddings is we are offering farm tours.
10 It's what attracts people to want to book, is the farm itself. So we offer farm tours, we offer honey tastings;
11 we offer the floral workshops. That is what they want. That's why they want to come out to the farm. So
12 yes, it's a part of that.

13
14 LeAnne Brown: So these activities that you are planning you are planning as being incidental to the
15 weddings that you plan to hold?

16
17 Kara Brewer: No. The farming is the primary. Obviously. The farming is the primary activity. The wedding
18 and agritourism is incidental to that.

19
20 LeAnne Brown: I see. So it's your testimony that you intend this to be primarily a farm?

21
22 Kara Brewer: Yeah.

23
24 LeAnne Brown: With a mere 22-30 weddings. And how many special events to you plan to have?

25
26 Kara Brewer: Well it depends on what you mean by special events. Workshops, educational events. As far
27 as special events I would like to do some charity events if possible.

28
29 LeAnne Brown: How many would you do a year?

30
31 Kara Brewer: I don't know. Maybe three or four. It just depends on again what we have time for and what
32 we can do.

33
34 LeAnne Brown: There's no limit on how many you can do as you understand your building permit, is that
35 correct?

36
37 Kara Brewer: That's correct.

38
39 LeAnne Brown: You could have an event every day. Is that correct?

40
41 Kara Brewer: That's correct.

42
43 LeAnne Brown: I've got no further questions for this witness.

44
45 Andy Petesch: I just have a few follow up questions. Ms. Brown asked you about the language in your
46 website, is that marketing language?

47
48 Kara Brewer: It is.

49

1 Andy Petesch: Ok and so that's intended to include some puffery in it and not be strictly literal?

2

3 Kara Brewer: Sure.

4

5 Andy Petesch: And you have a degree from UNC. What is your degree in?

6

7 Kara Brewer: Bachelor in Journalism and Mass Communication.

8

9 Andy Petesch: So marketing is one of your specialties?

10

11 Kara Brewer: It is, yes.

12

13 Andy Petesch: And she also asked you about your first business plan and that was roughly how many
14 years ago?

15

16 Kara Brewer: Several. I mean, it must have been 2013-2014.

17

18 Andy Petesch: And the plans evolved over time?

19

20 Kara Brewer: Yes.

21

22 Andy Petesch: And she also asked you about your LLC's that you formed. The Southeast Property Group
23 and that you had initially included a purpose, a nature of the business as real estate investment. That was
24 right when you purchased the property. Is that correct?

25

26 Kara Brewer: Right. Before...

27

28 Andy Petesch: And so at that time you could have changed, you could have found something that worked
29 different from that, you could have sold that property. Correct?

30

31 Kara Brewer: Right.

32

33 Andy Petesch: But when you recently filed the updated 2016 annual report, as she indicated, was changed
34 to farm?

35

36 Kara Brewer: Correct.

37

38 Andy Petesch: Does that indicate where you are now in the process and that you've committed to this
39 property?

40

41 Kara Brewer: Correct.

42

43 Andy Petesch: And The Barn of Chapel Hill LLC is the business that runs your special events?

44

45 Kara Brewer: That's correct.

46

47 Andy Petesch: And that's separate from SPG LLC or you and your husband individually. Is that correct?

48

49 Kara Brewer: That's correct.

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Andy Petesch: And it's you and your husband individually that are running the farm?

Kara Brewer: Correct.

Andy Petesch: And so the nature of the business for The Barn of Chapel Hill LLC was correct?

Kara Brewer: That's correct.

Andy Petesch: And also discussed, the preparation for the farm plan summary, which is under tab 16, and you indicated that you had completed this summary in the last few days. Is that correct?

Kara Brewer: That's correct.

Andy Petesch: But the information that's included in this summary... What period of time has that been put together?

Kara Brewer: I would say a bulk of it was right around the time that we purchased the property so probably around summer 2015, roughly.

Andy Petesch: Ok. And your testimony at the November 9th SUP hearing, which Ms. Brown reference, again you've testified it was your understanding that you could only speak to the camp retreat use that was being used during that hearing so you did not address other uses that you had intended for the farm?

Kara Brewer: That is correct, yes.

Andy Petesch: And finally, how are you going to start your seedlings? I believe you testified earlier that they were going to start inside the barn?

Kara Brewer: Correct. Yes.

Andy Petesch: So, physically, what will that look like?

Kara Brewer: So we start and we just have tables set up where we all go in and we do the soil blocking and then we put in the seeds and then we're going to have these racks and you just put the soil block on a tray and then you put the tray on the rack and you wait for the seed to germinate and then you take it outside when it's ready.

Andy Petesch: So where's the light source?

Kara Brewer: The light is attached to the rack.

Andy Petesch: And how many racks do you anticipate you will be using, once you're at full capacity?

Kara Brewer: At least 15, maybe more. And again, we'll be going in and out so we'll empty one and fill it back up.

Andy Petesch: Alright. No further questions.

1 LeAnne Brown: I just have a couple follow up from what you asked. So you and your husband run the farm
2 but the LLC runs the wedding events?
3

4 Kara Brewer: The Barn of Chapel Hill LLC runs the wedding events. And that's just for liability issues. You
5 have to divide it up that way.
6

7 LeAnne Brown: So, when you say you and your husband run the farm you mean Southeast Property Group
8 LLC runs the farm?
9

10 Kara Brewer: Correct.
11

12 LeAnne Brown: And it's your testimony that The Barn of Chapel Hill LLC runs the wedding events. Is that
13 correct?
14

15 Kara Brewer: Correct.
16

17 LeAnne Brown: Does it rent the property from the other LLC?
18

19 Kara Brewer: It does.

20 LeAnne Brown: So you're renting the barn out, the owner of the barn is renting the barn out for a wedding
21 venue event to this LLC. Is that your testimony?
22

23 Kara Brewer: That's correct.
24

25 LeAnne Brown: Alright. 15 racks of flowers, seedlings, takes up how many square feet?
26

27 Kara Brewer: I don't know.
28

29 LeAnne Brown: No further questions.
30

31 Karen Barrows: Are we ready for closing arguments?
32

33 Matt Hughes: I do have a few questions. As you understand it in order for something to be agritourism
34 that's secondary to the primary purpose of the property. Is that right?
35

36 Kara Brewer: Yes.
37

38 Matt Hughes: So as you understand it the property that you have would be a bona fide farm because the
39 agritourism is not the primary purpose of the property?
40

41 Kara Brewer: That's correct.
42

43 Matt Hughes: And then that there's five criteria that would constitute a bona fide farm purpose and you,
44 according to statute, have met three of those five criteria?
45

46 Kara Brewer: Correct. And we'll need a fourth once we turn in our taxes for 2016.
47

48 Matt Hughes: Now, what sort of documentation did you have to present to the North Carolina Department
49 of Revenue and the USDA to receive the tax exemption certificate and the farm ID number?

1
2 Kara Brewer: So for the farm ID number I had to go in and write up a summary of the farm use to get the
3 farm ID number, which I did. And then to get the sales tax number I then used the farm number to get the
4 sales number is what I did. I don't know if there's another way but because I already had the farm number I
5 could then get the sales farmer exemption number.

6
7 Matt Hughes: So according to these two agencies they basically vetted that your land would be a functional
8 farm and would be operating as such?

9
10 Kara Brewer: Yes.

11
12 LeAnne Brown: May I ask a follow up question to Mr. Hughes question?

13
14 Karen Barrows: Yes.

15
16 LeAnne Brown: Ms. Brewer, is it, in fact, true that you were granted a farm number because the property
17 you owned had had a farm number previously?

18
19 Kara Brewer: I don't know. That's interesting that you brought that up. That has come up before. While I
20 was there they did not indicate to me that that was the case and that they were giving it to me based on my
21 description of what I was doing. Now I do think that it was former farmland as well. So, it could have been. I
22 don't know. But that's not what they indicated to me.

23
24 LeAnne Brown: Did anybody come out to vet that there was actual farming going on, on your property,
25 before you got your farm number?

26
27 Kara Brewer: I do not know.

28
29 LeAnne Brown: Did you meet anybody on your property before you got your farm number so that they
30 could vet it?

31
32 Kara Brewer: I did not.

33
34 LeAnne Brown: If, in fact, farm services indicated that farm number was granted because you had a prior
35 farm number would that surprise you?

36
37 Kara Brewer: No, it would not surprise me.

38
39 LeAnne Brown: No other questions.

40
41 Karen Barrows: Susan?

42
43 Susan Halkiotis: One last question, and I hate to prolong it but I'm still bewildered about the January 5th
44 filing. Because I thought you said a while ago that somebody in planning did advise you to check that box
45 that said assembly.

46
47 Kara Brewer: After. So I did it and then they advised me that I did it incorrectly and so then that's why I had
48 to turn it back in.

49

1 Karen Barrows: Are we ready for final arguments?

2

3 Andy Petesch: I do have one more witness. I will move through it as quickly as possible.

4

5 Karen Barrows: Ok.

6

7 Andy Petesch: I would like for Ms. Brewer before I let her go, if she would just identify two photographs
8 here under tab 19. Do you know what these photographs are? Would you describe that for the Board ?

9

10 Kara Brewer: The first one is our chestnut orchard and the second one is the beehives.

11

12 Andy Petesch: Ok. I'd like to submit those photographs to be bona fide farm documentation under tab 17,
13 farm plan summary and the farm plan illustration under tab 16 into evidence on behalf of the Brewers'.

14

15 LeAnne Brown: Tabs 15,16,17 and what?

16

17 Andy Petesch: I'm sorry. 15,16,17, and 19. Next, I would like to ask Mr. White, if he could be sworn in?

18

19 *Karen Barrows swore in Erin White.*

20

21 Erin White: Erin White. I live in Raleigh, North Carolina.

22

23 Karen Barrows: Thank you Erin.

24

25 Andy Petesch: Mr. White, could you tell the Board what your education background is?

26

27 Erin White: Sure, in 1995 I received a Bachelor of Arts from **Inaudible** college, in biology and
28 environmental studies and in 2011 I received a masters in architecture from NC State.

29

30 Andy Petesch: And could you tell the Board about your work employment history?

31

32 Erin White: Sure. So currently I'm the principal and founder of a design and consulting firm based in
33 Raleigh that's focused on healthy food systems. It was started in 2013 as I found myself doing more
34 freelance design work on food system projects such as school systems, district farms, healthy corner store
35 projects, things like that. This would come out of my architectural thesis work, which focused on food
36 systems and community revitalization tools. So looking at ways that parts of the food system could actually
37 be used intentionally to provide jobs, other economic opportunity, community relationships, social value,
38 and psychological value to neighborhoods that are distressed. Before my architectural education I worked
39 for about four years at an architecture and urban design firm in Boston and prior to that I worked as a
40 framing carpenter here in Chapel Hill for a couple years. I was a line cook and a chef in a number of places
41 across the country. I spent a year as a public health statistician in Raleigh, North Carolina studying
42 Pediatric Cancers and then my undergraduate experience and the in high school I actually spent a summer
43 working as an on-site farm manager. So in a sense, this really divers background has prepared me to be a
44 food systems consultant.

45

46 Barry Katz: What are food systems?

47

48 Erin White: A food system refers to all of the parts and relationships that get food from a farm to your table.
49 And often includes how food is dealt with as waster afterwards. A food system includes how we produce

1 foods on all kinds of farms, how we distribute food through any number of kinds of distribution and logistics
2 channels, processing food either in massive industrial scale warehouses or in your own kitchen, how we
3 consume food, how we choose to purchase food, the behaviors around eating food together, and then food
4 waste to a landfill or composting or diverting food waste that could otherwise be used to feed people that
5 are hungry. A food system also includes the social and political economic factors that pressed on all of the
6 parts of the food systems and as a designer I see a food system as a set of interrelated parts and
7 relationships that we can look at as ways to build outcomes that we want to in our communities. Whether
8 those are local food values, whether they're more economic values, whether they're ways to ultimately
9 affect climate change and so as a designer the relationship between a farm and a distributor, the
10 relationship between a consumer and their food are all opportunities for design to create better
11 relationships, and better value for the communities that all eat food.

12
13 Andy Petesch: And under tab 7 of the notebook, is this your CV, your bio?

14
15 Erin White: It is.

16 Andy Petesch: And could you talk a little bit about your experience other than education or work?

17
18 Erin White: Yes. So in addition to client based projects at the community food lab we also generate
19 publications helping communicate of local food systems to different populations. I've had articles and
20 publications in numbers of places. And actually, going back to 1999 when I was just out of Undergrad had a
21 first author peer review paper on pediatric cancer. And service that I do know includes a number of things
22 around food policy. I represent **inaudible** for local food in a health coalition in Wake County as a Board
23 member and I'm also a co-founder of a food policy council in Wake County called the Capital Area Food
24 Network.

25
26 Andy Petesch: And what was your final project in your masters program?

27
28 Erin White: It was actually looking at the role of the architect in local food systems so I looked at a two
29 square mile area of Durham, North Carolina looking at it at three different levels. One was created a food
30 systems theory that all the parts of a food system had value that could be applied in a design sense.
31 Second, looking at it from an urban design standpoint and thinking about where circulation was, where
32 investments might go, where different kinds of food systems projects such as food hubs, or community
33 gardens, or urban farms might have the best value for the neighborhood. And then architecturally looked at
34 the ways that individual projects could be expressed physically to realize the maximum benefit for the
35 particular project. So a market would want to be visible. A community garden would want to engage people
36 as they walked past. Stuff like that.

37
38 Andy Petesch: At this time I'd like to ask the Board to recognize Mr. White as an expert in food system
39 policy.

40
41 LeAnne Brown: I'm going to object at this point for the record. The standard for the acceptance of an expert
42 is two fold. One, you have a peculiar expertise and two, does it have some relevance to a decision that's
43 going to be made by the trier of fact, which is you, such that the testimony for you to form your opinion and
44 I'm struggling with how this testimony may have relevance to this issue you are here to decide. Which is
45 whether the wedding use to this property is incidental to the farm. So I'm not understanding the purpose of
46 the witness.

47
48 Andy Petesch: The purpose of the witness is... The issue before this Board is what the use is, non-farm or
49 bona fide farm purpose. That's what the decision was made. The statute says if you're doing agritourism

1 then you're doing bona fide farm purposes then you are exempt from all zoning regulations in the county
2 and Mr. White is an expert in both education and his work and training in analyzing food system policy,
3 especially with experience in Orange County specifically, so that's the purpose of this highly relevant,
4 couldn't be more relevant, to the issue that this Board is facing tonight. And his testimony can be very
5 beneficial in the Board making its determination with respect to affirming Mr. Harvey's decision. Mr. White
6 could you tell the Board about your work in this region, in this County?
7

8 Erin White: Sure. I've been working with the conservation trust in North Carolina on a farmland protection
9 plan for the Triangle region. It's in final draft stages now. It's getting reviewed by all of our stakeholders.
10 And the plan has studied Chatham, Orange, Durham, Wake, and Johnston Counties through GIS analysis
11 expert interviews, focus groups, developing a strategy to bring a comprehensive farm land protection effort
12 that could be coordinated at the regional level that draws on County level wisdom, local knowledge, local
13 farm conditions and especially on each County's existing farm land protection plans. Which is a fairly well
14 organized body of knowledge about how each County approaches agricultural preservation issues.
15

16 Andy Petesch: So I would again call for Mr. White as an expert in farm system policy.
17

18 LeAnne Brown: I remove my objection and it's your decision.
19

20 Barry Katz: We have to make a decision about whether he's an expert? I don't understand this. And also
21 what is the relevance... are you going to get to what the relevance of all of this is?
22

23 Andy Petesch: He will testify as to Orange County state policy with respect to exact issues that are before
24 this Board in terms of the role of agritourism and the activities that are planned for this farm and whether
25 that would fit within the statutory definition of agritourism, which would make this exempt.
26

27 LeAnne Brown: Well, I have an additional objection which is this: If he's going to testify about what
28 agritourism means and whether this is agritourism then that evidence would be inadmissible because that's
29 the ultimate decision for this Board to decide and you're not allowed to receive expert testimony on the
30 ultimate issue for which you're about to decide. So if that's the purpose of his testimony that's my additional
31 objection.
32

33 Karen Barrows: What do you think James?
34

35 James Bryan: So the attorney's make some really interesting arguments. One thing that this Board should
36 keep in mind is it's quasi-judicial. You're not actually judged with law degrees and stuff like that so what the
37 statutes allow you to do is accept a lot more evidence into the record and then at your deliberations you do
38 findings of fact and you say what you relied upon and what you did not rely upon. So you might recall
39 different hearings when you had a lot of people testify stuff that was irrelevant and you let them speak and
40 then at deliberations you did not use that in your decision. Because of the time and because of what this
41 Board has already done there's probably a lot of testimony that you've already heard that might not be
42 relevant to this. We went into very great detail for everybody so I would say out of the sake of fairness to let
43 them introduce their evidence and if you find that afterwards it was irrelevant then do not base our decision
44 on that.
45

46 Barry Katz: But we don't have to decide whether he's an expert for these purposes?
47

1 James Bryan: Right now you don't have to. If you use his testimony you will have to have a finding that he
2 is an expert witness and that's just a specialized knowledge more than the average person would have as
3 evidence through education, experience, and things like that.

4
5 Karen Barrows: Should we hear what he has to say?

6
7 Barry Katz: Yeah, sure. Let's hear what he has to say.

8
9 Karen Barrows: Ok.

10
11 Andy Petesch: So could you just tell the Board quickly what you reviewed in preparation for today?

12
13 Erin White: Sure. I've looked at the General Statutes that have been discussed. The Orange County UDO,
14 the sections that have been listed in the brief. The Orange County Comp plan, especially section 6; the
15 agriculture section. And also, information about the barn; photographs, GI's, mappings, site plans, and the
16 farm summary and agricultural census data.

17
18 Andy Petesch: And what about a document by the American Farm Land Trust?

19
20 Erin White: Yes. The American Farm Land Trust, which is a resource and advocacy group at a national
21 level, has put together a document called "Planning for our Agricultural Future". It's a guide for North
22 Carolina farmers and local government and they have some **inaudible** input on agritourism.

23
24 Andy Petesch: Would you please tell the Board what the challenges are for agriculture in this state, region,
25 and county?

26
27 Erin White: Sure. The main agricultural challenges for North Carolina, Triangle Region, and Orange County
28 also, are the ages of our farm population. The average age of farmers across all of North Carolina is in the
29 upper 50's. Here in Orange County it's about 58.9 years old. And so that presents challenges in finding the
30 next generation that will actually become our farmers. Another threat to agriculture are the patterns of land
31 development that include residential pressures to develop land. As land prices go up it's much, much
32 harder for new farmers to get into agriculture. And as land prices go up existing farmers have an incentive
33 to sell out and new farmers have a disincentive to buy in because land is too expensive. We're also
34 experiencing a cultural shift away from farming. We're getting further and further away from our food as a
35 population. Most people, you hear stories about it all the time, have very little idea of where the food
36 actually comes from. And what this leads to is a lessening of value for rural lands across the Board . If
37 people don't know where their food comes from and don't understand farming then you actually see a
38 phenomenon whereas people don't really value open space, rural areas and the rural character that defines
39 Orange County. And finally, there's a globalized food system that's built on economies of scale and federal
40 policy that decreases the competitiveness of local farms. And so when you look at Orange County, which
41 has a strong agricultural heritage, all these challenges really conspire to make it difficult for Orange County
42 to look down the road at a future where agriculture is a big part of the economy and the landscape.

43
44 Andy Petesch: And what role does agritourism play in addressing those challenges?

45
46 Erin White: So with local farms facing lots of challenges then really the easiest way to measure that is in
47 profitability and if a farm can't be profitable then it's just not going to continue as a business. Agritourism
48 offers opportunities for farmers to supplement their on farm income. So not having to have an off farm job,
49 which more than half of Orange County farmers do. And make money doing other activities on their farm

1 and at the same time agritourism introduces visitors to the whole idea of farming. Agritourism gives new
2 people an opportunity to experience farming, to understand the importance of rural land and open space,
3 and also get introduced to why we would preserve rural land in the first place. So agritourism is actually a
4 really important key in creating a viable, local farm sector and future.

5
6 Andy Petesch: And did you review the Orange County Agriculture and Farm Protection plan?

7
8 Erin White: Agricultural Development and Farm Protection Plan?

9
10 Andy Petesch: Yes.

11
12 Erin White: I did.

13
14 Andy Petesch: Ok and what are some of the principles in that plan?

15
16 Erin White: Well they talk about a lot of the threats to farming that I just discussed. A number of the ideas
17 presented in that plan, which was developed in 2009, are also represented in the comprehensive plans to
18 agriculture section.

19
20 Andy Petesch: So this is a copy of the Orange County Agricultural Development and Farm Protection Plan.

21
22 Erin White: And this plan lays out a number of areas where Orange County Agriculture can be developed.
23 Specific sets of actions that will support agricultural development into the future of Orange County. In
24 particular for this project Orange County has decided that it needs to attract and train new farmers and new
25 farming operations, adopting a more proactive approach for attracting these new farmers. Orange County
26 has decided that it needs to foster greater recognition and public support for agriculture. And again,
27 agritourism is an excellent way to Foster this greater appreciation.

28
29 Andy Petesch: and are you referencing excerpts in our tab 6 of the notebook?

30
31 Erin White: Yes, I'm sorry. And it talks about a lot of things but one of the final things that I want to mention
32 is that it also points out the need to develop stronger connections between schools and local farms. Getting
33 kids, getting youth onto farms is actually a way to establish good eating habits, it's a way to build physical
34 activity, it can change behavior patterns in school, and by having educational activities on the farm I think
35 that's an opportunity to start doing that here.

36
37 Andy Petesch: And finally, can you discuss your analysis of the Brewer farm plan?

38
39 Erin White: Yes. I think it's a plan that still getting worked out. This is typical of new farmers. I think that's
40 why we have so many workshops and training opportunities for Farms including incubator farm sites such
41 as the one here in Orange County. And looking at the plan I think that it is a thoughtful approach towards
42 building a diversified cash flow that looks at short-term opportunities through agritourism. Understanding
43 the flowers hopefully come in the next couple years in a meaningful way and then really looking longer-term
44 at these chestnuts. And the idea that investing all this time and money and chestnuts as a single operation
45 for a farm would require a really massive capital to wait out a period of time before you go to return. And so
46 to me diversifying this **inaudible** flow makes a lot of sense. I also recognize in talking to them that there's
47 still a lot of things to work out and in my work I haven't met, certainly a young farmer, many farmers at all
48 that honestly feel like they have everything worked out. I think farming in general is honestly a lot about
49 design. It's a lot about solving problems as they come up. Markets change, technologies change, farmers

1 are always learning. And this farm plan, to me, looks like something that is getting closer and I think as far
2 as a new farmer goes it seems like it's at an appropriate state of development. And in addition to that, I kind
3 of touched on it already but I think that this farm plan in particular supports many of the objectives of
4 Orange County's comprehensive plan and many of the objectives in Orange County's agricultural
5 development and farmland preservation plan.

6
7 Andy Petesch: Could you describe or summarize some of the purposes behind the agritourism policy for
8 encouraging Farmers to participate in agritourism. What benefits does that provide?

9
10 LeAnne Brown: Objection. Whose policies? Are you asking his opinion about agritourism, are you asking
11 him about policies adopted by others? I'm not sure what you're asking.

12
13 Andy Petesch: Has the state adopted a policy to encourage agritourism that you are aware of?

14
15 Erin White: Absolutely. I think it was added to their definition of farming and there's a General Statute
16 specific to agritourism that defines it and makes it an acceptable practice for a bona fide Farm

17
18 Andy Petesch: And why would that be a policy that the state would want to endorse?

19
20 Erin White: I think that our agricultural system is facing a lot of challenges and agritourism presents a lot of
21 opportunities to stabilize and strengthen agricultural sector.

22
23 Andy Petesch: And with respect to the role of the barn on the farm could you discuss that? Because you
24 analyze that from a design standpoint.

25
26 Erin White: My first response to the barn was that it's just big, open flexible space. I think that that's a really
27 important attribute for any agricultural operation and an open building is inherently more flexible than one
28 that starts to get built out with more detail. And I think, that through the seasons as they learn more about
29 the farming operations and the volume that push and pull on their space having, that open space will be an
30 important attribute.

31
32 Andy Petesch: And in studying the plan on wedding activities what did you reach a conclusion about that in
33 relation to the farm operations?

34
35 Erin White: Sure. I think it would reflect with what Miss Brewer said or kind of support it that my
36 understanding in reading the plan a wedding there will be an important kind of rural activity. I think it would
37 give the opportunity for people to spend that time and the rural landscape of Orange County time to
38 experience activities on the farm and be an important way to connect the farming activities to the
39 experience of the visitor.

40
41 Andy Petesch: Alright, and so based on your experience, education, and training does this fit within the
42 Orange County Farm preservation plan?

43
44 LeAnne Brown: Objection.

45
46 Andy Petesch: You can answer.

47
48 Erin White: Absolutely. Yeah I think it supports much Agricultural Development Farm Land Protection Plan.

1 Andy Petesch: Alright. Any questions by the Board?

2

3 LeAnne Brown: Do I get to ask questions? Thank you. You mentioned challenges to agriculture? Is it fair to
4 say that one of the challenges to agriculture for existing farmers is the encroachment of urbanization on
5 Farm properties?

6

7 Erin White: Yes.

8

9 LeAnne Brown: Thank you. No further questions.

10

11 Karen Barrows: Any questions from the Board? If not we can entertain closing arguments.

12

13 James Bryan: If I may, Madam chair. I've noticed the time; it's nearly midnight. I know that the attorneys for
14 both parties have advocated for their parties very zealously, very well, very thoroughly. They still have yet
15 to get to their legal arguments. I suspect that that might take a while plus then you all will have
16 deliberations. I could go on but I think everybody's tired. And if you all want you have the right to continue
17 this to another time. Either to your next Board meeting or to another time that you all decide.

18

19 Barry Katz: I think that's terrific because I'm losing my concentration and I would like to be able to be in
20 sound mind when we deliberate on this.

21

22 Matt Hughes: I would favor just moving forward and resolving this tonight.

23

24 Karen Barrows: Susan?

25

26 Barry Katz: We could do it tonight if you want. This is going to go on another hour, at least, right?

27

28 James Bryan: In my experience the attorneys, myself included when I was in private practice, will say "Oh it
29 only Take 5 minutes" and that means a half an hour.

30

31 Barry Katz: Ok fine. If we want to go ahead... You want to go ahead?

32

33 Karen Barrows: Not particularly.

34

35 Barry Katz: No. See three of us don't really want to go on right now. Sorry about that.

36

37 Susan Halkiotis: But I am interested in hearing what you were going to say. Something as we were...

38

39 LeAnne Brown: It's a housekeeping matter because I am tired too. I'm not positive whether I moved my
40 exhibits 1-14 into evidence. If I did not I'd like to move them into evidence on the record and ask that the
41 Board receive them. I do not have an objection, I may have held it to the back of my head but I do not have
42 an objection to deliberating, making legal argument and deliberating at later date. I am concerned that I
43 filed this application many, many months ago, one of our prayers for relief was a stay and until you could
44 decide whether this should be built. It has been built hot and heavy as fast as folks could go and I would
45 ask that we stay any further activity until we can come back again so that it doesn't get farther down the
46 pipe. There's tremendous economic waste involved in the continuation so that would be my request to you,
47 that we stay it.

48

1 Andy Petesch: If I could respond to that this Board has no authority to stay an action that's an approval.
2 The only stay that's provided in statute or in the ordinances is when there is a violation and that there's an
3 appeal. That stays for their action on it. The Superior Court has that power but the Board simply does not
4 have the authority to stay this matter.

5
6 James Bryan: It's in your discretion. I'm not quite sure. This is a fairly unique situation with a building permit
7 and I found some things but to be honest I'm not quite sure and one thing is that I think the property owner
8 I've noticed they are proceeding at their own risk so I think if you all were to schedule something relatively
9 soon in the next few weeks I think that the parties might be amenable.

10
11 Barry Katz: Would Mr. Harvey be the one to schedule this?

12
13 James Bryan: So actually you all would schedule it. And staff has to show up whenever you tell us.

14
15 Barry Katz: Can we do this during the day? Can you do it during the day?

16
17 Matt Hughes: No.

18
19 **MOTION** by Susan Halkiotis to continue meeting on Monday, October 24th at 7:30 in this room. Seconded
20 by Barry Katz.

21 **VOTE: Unanimous**

22
23 Barry Katz: So if we go ahead with this, do you have some rules for us? As far as discussing things,
24 etcetera. Please go through all of that so everybody hears what has to happen.

25
26 James Bryan: I'd be happy to do that. So this is a quasi-judicial proceeding. That means that the modified
27 rules of evidence apply. One of this is the prohibition against ex-party evidence. I would ask this Board to
28 not speak to anybody, including other Board members, staff, the parties, the public about this matter. I
29 would ask everybody here in the public to please not speak to the Board members about this. If someone
30 were to corner you in public try to cover your ears as much as possible and then disclose it at the next
31 meeting and do not allow that to sway your judgment. I am available for your legal questions if you have
32 any. I won't be advising on anything in particular for this but if you just have procedural questions in general
33 I am this Board's attorney and I would be happy to answer any questions like that.

34
35 *Meeting was adjourned by consensus.*

36
37 **Monday, October 24, 2016**

38
39 *Karen Barrows called meeting to order.*

40
41 Karen Barrows: Did you have something you wanted to say?

42
43 Matt Hughes: Yes. Before we got started I did want to indicate that I had some ex partake communication
44 that I was very clear. I don't know the gentlewoman here with the red shirt on but she did try to speak to me
45 at a community event.

46
47 Member of the Public: It was a joke.

1 Matt Hughes: It was a joke maybe but I just want to make sure that folks do know. But I did say that I would
2 only be considering what I heard in this meeting and our previous meeting.
3

4 Karen Barrows: I think when we left it we were at final closing arguments. Is there anything else we need
5 to?
6

7 Andy Petesch: Before moving onto the arguments I'd like to complete my rebuttal and redirect of witnesses
8 and make sure all my evidence is moved correctly into the record by the Board. If I could have a few
9 minutes to do that?
10

11 Karen Barrows: Ok.
12

13 Andy Petesch: Thank you. I'd like to have Mr. Brewer respond briefly to some questions that arose to Ms.
14 Brewer's testimony with respect to chestnut operations. I'd like to ask Mr. Harvey a few questions and then
15 I thought given the hour at which Mr. White was testifying the density of the matter that he was testifying to
16 I've asked him to prepare a written report summarizing his testimony and so I'll have him address that with
17 you briefly. I have prepared and organized the exhibits that are in the notebook and labeled them SPG 1-
18 21. They don't include the UDO excerpts or the General Statute excerpts. They speak for themselves. And
19 so I can move all of those into evidence at this time to ensure that everything in the notebook has been
20 admitted.
21

22 LeAnne Brown: Madam chair for the record we would like to object to a number of the exhibits. There are a
23 number of items included in the exhibits, which appear to be documents from other agencies. There's been
24 no evidence put before us to the source of those documents with the veracity of those documents and so
25 we would object to those documents. At the tail end of the last hearing several of the exhibits were moved
26 into evidence but they were the exhibits from which Ms. Brewer had testified. I understand that you function
27 under relaxed rules of Evidence but in order to preserve the record I need to be clear that we are objecting
28 to those and ask that your consideration of them reflect the fact that they have no foundation and no real
29 probative value as to any witnesses particular testimony in the hearing.
30

31 Karen Barrows: What are you referring to LeAnne?
32

33 LeAnne Brown: In the notebook of exhibit that you have... Mr. Petesch, I just want to be sure that I know
34 which ones you're moving into evidence?
35

36 Andy Petesch: It would be to have to have three and then have five through 19.
37

38 LeAnne Brown: Alright. Tab 2 is an excerpt from a book by Professor David Owens. I would ask that to the
39 extent you receive that that's simply a legal treatise and you would receive them the same way as any other
40 ordinance provisions, cases, legal treatises that you're given so I just objected that it's not an exhibit it's
41 simply an authority offer to you. I don't have any objection to your reviewing it.
42

43 Barry Katz: I have a question. So you're introducing this into evidence and we haven't read this? So should
44 we go home and read these things that you're putting into evidence?
45

46 Andy Petesch: It is an excerpt and I'll be referring to it during the arguments.
47

48 James Bryan: So if I may, to the Board, one thing that I'll get handed out is something that I drafted up. I
49 worked with the attorneys since we had that break I thought it might be a good opportunity that we don't

1 normally have to get something in writing to the Board about what we looked at and decisions we're going
2 to make. Usually we have to do this on the fly so we tried to work it out as much as we could. It wasn't all
3 that I hope for. I had hoped that we would have had the findings of fact worked out between all the
4 attorneys but because more of it's being presented tonight it just didn't work out that way. So if you don't
5 mind, and I think this is going to help Andy with his thing, I'll go ahead and just explain what I've done here.
6 So I call it a deliberation cheat sheet and just so you know that this is just something that your attorney is
7 providing for you. It is not necessarily an argument for one way or the other. On the cover it explains what
8 the different pages are and it's got a few notes of general rules to consider. The next page is the summary
9 of evidence presented and this includes two items, 5 C and D, those come straight from the attorneys and I
10 asked them, I said "Look I know that stuff put in their abstract, what did you all put in?" so this is what they
11 presented. At the close of testimony by our rules the chair is supposed to read the summary of evidence
12 and then give the other parties an opportunity to amend or correct that. Then the next page indicates that
13 that's when we would close the hearing and enter into deliberations. I reprinted the question presented.
14 That's really just a reminder what's at issue here. And then I've got the three questions for jurisdiction. The
15 questions of standing, final determination, (**inaudible**). And then the next page is the findings of fact and
16 conclusions of law. This is what I really hoped that it would get a page or so. The two attorney's agreeing
17 that this is what we need them to decide one way or another. Normally if you've got an SUP permit it would
18 be that the property value increased or the property value decreased and it's very clear. You need that
19 finding of fact. Here, this is actually what I wrote: three undisputed findings of fact that I would say is the
20 bare minimum that the Board would have to have. The attorney's may have their own proposed findings of
21 fact that they offer. If not the Board will have to come up with the facts that they believe are necessary in
22 order to make whatever decision they have. And the last page is that decision's the ruling and you've got
23 three options: Either affirm, reverse, or modify. And this is some of the proposed wording for that. The
24 reversal incorporates the appellant's request for a stay and things of that nature.

25
26 Karen Burrows: Thank you for your work James Bryan.

27
28 Leann Brown: Ms. Burrows, I can answer your question now. First of all at the tail end of the last meeting
29 Mr. Petesch entered into evidence certain documents that carry different exhibit numbers so we need to be
30 sure that the record reflects that those numbers are not the numbers of the exhibits as he has offered them
31 today, unless you use this set as opposed to that set so we're not confused. Second, with regard to the
32 exhibits that have been offered we object to exhibits 10 through 21, exhibit 11 and 12 are excerpts from
33 Orange County's comprehensive plan. I certainly think that the Board is entitled to review the County's
34 comprehensive plan if that has relevance, which you would receive that in a different way and you should
35 be able to receive that as you wish, but Mr. Owens is a treatise. I do not have an objection to you reading
36 his Treatise but it is not technically an exhibit. It's not evidence. It's legal authority. The other exhibits that
37 are offered are a combination of things that have been printed from the internet which have no probative
38 value to any of the facts and evidence before you nor are they, in my opinion, documents that would be on
39 legal authorities and so I would ask that you not consider those and exhibit 17 is instead of giving you a
40 statute it's sort of a chart excerpt from the statute and while we can all make legal argument to you, and I'm
41 sure we will, that again it's not an evidentiary exhibit so for the record I object to those exhibits so. And
42 again I recognize that you are not working under the strict rules of evidence and a quasi-judicial setting but
43 in order to preserve these objections and any subsequent proceeding I wanted to make them now.

44
45 Karen Burrows: What's the Board feeling? We consider the objections **inaudible**.

46
47 Craig Benedict: Excuse me, I'm just trying to make sure that everybody can hear so please speak up to the
48 microphone because the back of the room can't hear it that well. I'll try to adjust this without getting
49 feedback.

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Andy Petesch: To help perhaps make this clear these exhibits are listed on page 3 of the deliberations paper that Mr. Bryan handed out if that makes it easier for you to review. And as I'm introducing them as exhibits I'll leave it up to the Board to assess their evidentiary value. Some of this is for a illustrative purpose or reference to either primary or secondary authority. I would object to characterizing Mr. Owens work as tertiary in the state, and so those are the reasons either that I'll be referring to these to age you in my argument and understanding my argument or that they are evidentiary. I would submit that for example the printout from the web sites are evidentiary, they are probative and the 393 which governs evidence under these proceedings specifically says the term competent evidence shall not preclude reliance by the decision-making Board on evidence that would not be admissible Under The Rules of Evidence as applied in the trial division of the general court if the evidence was admitted without an objection or the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that was reason for their decision-making Board to rely upon it. And those web sites are all government website and believe I do have the indicia of reliability on them.

Barry Katz: This suggests that we're relying on this material. When in fact we are probably not relying on most of the stuff. But if we accept this as part of this case, if this goes forward at any other venue will the fact that we have accepted this have any consequential impact if this was more than any kind of litigation?

James Bryan: so they're sort of two thresholds. First there's just hearing it at all. So there might be something that so prejudicial that you hear it and you'll be like "oh, once I heard it I can't unhear it ". That doesn't happen very often in zoning. That's more in the criminal world type of thing. The second threshold is your findings of fact. You say, "okay I heard this we will add some speakers to come speak" and you know that you can't rely on opinion. You have to rely on fact. So that's when the findings of fact come into play. You say, "Look, we decided before against this, these are the reasons for it". So that's why I suggest that the Board be rather lenient with accepting it during the hearing but the key I think is for it to be clear that if there's some sort or record that you guys did lay eyes on it. But other than that, accept it and then when you get into deliberations you can sort it out.

Barry Katz: Just to be clear I gave this package that we received last time back to their attorney. So I didn't read this material. Ok?

Susan Halkiotis: We all did.

Barry Katz: Well I haven't read it and for me I see it's all there but I'm not sure this has any bearing on our decision because we investigated what agritourism is in other context here, related to this hearing. These don't have any bearings as far as I'm concerned on this hearing. I don't know where that stands. I can't accept this myself because I haven't really digested this, except that I can see what's highlighted in there.

James Bryan: yeah and I think that's fine. I think that's one of the reasons why you give a little bit of latitude to let it in and then you say now show me again why that's relevant. And they might fail and they might but it does not convince you of it.

Karen Barrows: Do you have something?

Matt Hughes: Yes, I do. For Mr. Petesch what is the relevance of the Orange County 2030 comprehensive plan, chapter 3 and 6 excerpt?

1 Andy Petesch: Those were documents that Mr. White reviewed in conducting his analysis of the farm
2 project. That's a lawfully adopted policy of Orange County jurisdiction and it references farms and the policy
3 for farm preservation. And so it has relevance. And I would just read the definition of relevant evidence
4 under the state statute 401, relevant evidence means evidence having any tendency to make the existence
5 of any fact that is of consequence of the determination of the action more or less probable than it would be
6 without the evidence. And the question here, as identified in this deliberation cheat sheet, is what is a non
7 farm use versus a bona fide farm purpose and all of these items do tend, I would submit, to show to some
8 degree more likely or less likely that that fact exists that would support an understanding of what the Board
9 is asked to determine here today.

10
11 Matt Hughes: Ok, I have a motion if you all are ready for it.

12
13 Susan Halkiotis: Well I think in order to discuss it we have to have a second, is that true? If I want to ask a
14 questions it has to be seconded? Because if these things were introduced... My question is, and I want to
15 reiterate what Barry said, I haven't read this either. I handed it back in and I didn't know that we were to
16 keep it. So that wasn't the impression I had at all. So my question, having said that, is if these things were
17 admitted into evidence last week that wasn't the time to object to it?

18
19 LeAnne Brown: They were not entered into evidence at the end of your hearing last week. They were
20 placed in the notebook. The exhibits that were entered into evidence were the exhibits, what are now 1-10,
21 which are the exhibits from which Ms. Brewer had testified. The remaining exhibits were not entered into
22 evidence at the end of the last hearing. There is relevance issues related to them and, again, a couple of
23 those are your comprehensive plan, the David Owens document, it's not evidence, it's something else. It's
24 information as opposed to evidence. Others of these you also create significant due process problem when
25 you start introducing information into your record as evidence that is something someone has printed from
26 the internet or picked up from some agency or anything else and the reason it's a due process problem is
27 that the other party cannot then ask questions about the document. Where'd it come from, how was it
28 created, what information went into your writing what you wrote in this document? There is no one here
29 about whom we can ask those questions. And so, that's the other problem with it. I don't disagree with your
30 attorney's thought processes that you may or may not end up in error if you have something before you but
31 if you don't end up considering it or it doesn't weigh in your final decision that's there but that's the reason
32 that I need to object because my objection needs to be of the record. And I truly can't tell you what Harnett
33 County has done with regard to their definition of agritourism and for you to receive that and for that to be
34 probated to you as to what the ultimate decision you must make as a Board . You get to be the group of
35 people who interrupt the meaning of this term and the context of how Orange County is applying it. And
36 you can listen to us make legal argument, you can look at legal authorities that we may provide to you
37 including, Professor Owens, who by the way is a dear friend of mine so I'm not insulting him but I think he
38 would agree with me that he is neither case law nor statute. You certainly can consider legal argument from
39 both of us, and you should. But you can't substitute your job and your judgment in interrupting what the
40 statute mean by reading something somebody out there may have written and may have posted on a
41 website for a government entity or for any other reason. In this proceeding or in any other legal proceeding.
42 And so that's my concern. I don't want to get you hung up on an evidentiary issue for an extended period of
43 time. I have to object for the record. But that's what's going into my deciding that I need to make an
44 objection.

45
46 Karen Barrows: Does that answer your question?

47
48 Susan Halkiotis: Well, it begs another question. Which is, why wasn't it introduced 2 weeks ago?

1 James Bryan: If I may also to maybe cut short the argument a little bit. It's my opinion that anything that
2 gets handed up to you guys, if you accept it and take physical possession of it then it's in the record.
3 What we're actually doing would be striking from the record. Pretending that we didn't see it. But the
4 reviewing court wants to know what you all saw and what you based your decision on out of what you saw.
5 Did you see it and then did you base your decision on it? So again, I would urge great latitude in accepting
6 for the sole reason of expediting the process. To make it go quickly. But this is of the Board of Layman; I do
7 not have the legal background so you give yourself great deference in accepting it and then review it with a
8 much stricter eye.

9
10 Barry Katz: Can we just simply state for the record then that whatever decision we make will not be based
11 on certain elements that are in this folder?

12
13 James Bryan: You can do that now or you can do that later, in deliberation.

14
15 Barry Katz: Ok.

16
17 Karen Barrows: I think we have a motion.

18
19 **MOTION** made by Matt Hughes to enter exhibits 1-21 into the record. Seconded by Susan Halkiotis.

20 **VOTE: Unanimous**

21
22 Andy Petesch: Alright, and not to scratch an existing wound but I have 2 other documents. The first is
23 simply, and this may already be in the record but just to be sure, the approved building permit that was
24 issued to SPG.

25
26 Michael Harvey: This would be SPG exhibit 22?

27
28 Andy Petesch: Yes. And the second is SPG 23. This is an email from Mike Ortoski who is the Agriculture
29 Economic Developer from the Economic Development Office here in Orange County. An email to Annie
30 Bagget of the North Carolina Department of Agriculture and to Ms. Brewer.

31
32 LeAnne Brown: Just for the record and let's not get stuck on it but I'm going to object to 23 and let the
33 record reflect that for multiple reasons.

34
35 Andy Petesch: And with that I'd like to ask Mr. Brewer to be sworn in.

36
37 *Michael Harvey swore in Chris Brewer.*

38
39 Chris Brewer: Chris Brewer and I have been sworn. 82 Jordan Hills Drive, Chapel Hill, North Carolina.

40
41 Andy Petesch: And you are married to Kara Brewer, correct?

42
43 Chris Brewer: I am.

44
45 Andy Petesch: And you're a principal in the SPG LLC?

46
47 Chris Brewer: I am, yes.

48

1 Andy Petesch: And you've worked closely on the chestnut operation that's going on with the Brewer Farm
2 project. Is that right?

3
4 Chris Brewer: Initially I helped clear the land, the fields that had the trees that grew through them. We then
5 set out the grid for the chestnuts. We also watered the chestnuts over the summer and planted the chestnut
6 trees, throughout the summer.

7
8 Andy Petesch: And how much do you have invested right now in the chestnut operation?

9
10 Chris Brewer: Over \$50,000 invested.

11
12 Andy Petesch: And is this just on the Morrow Mill site?

13
14 Chris Brewer: So we have an additional property in Caswell County, which we have 319 chestnut trees
15 planted. So that is a total of 354 chestnut trees, which we planted just in the spring and the fall.

16
17 Andy Petesch: Then are you actively working with any productive chestnut trees?

18
19 Chris Brewer: Right, so as Kara spoke earlier; we are still marketing the chestnuts, which we have
20 harvested off of an existing farm in Orange County and we have been selling those to different vendors and
21 also to some retails, to friends and family.

22
23 Andy Petesch: And approximately how many pounds of those?

24
25 Chris Brewer: So far we've sold about 300 so far this year. We have about 1,000 pounds in inventory.

26
27 Andy Petesch: And you're familiar with the financial projections that Ms. > Brewer testified were part of the
28 farm summary? There were some questions about the labor aspects that were incorporated in that?

29
30 Chris Brewer: Right, so I think Mr. Katz had a couple of questions about the labor and just for the 5 year, 10
31 year and 20 year projections: the 5 year we had \$15,000 in labor, which at 5 years there won't be as many
32 chestnuts produced; 10 years we have \$74,000; and 20 years we have \$86,000 in labor in our projections.

33
34 Andy Petesch: And then one other issue that arose was the yield per tree. Could you talk about how you
35 arrived at your estimates?

36
37 Chris Brewer: So there's varying... There's lots of different places we looked. Michigan State University has
38 published an article which they talked about up to 3,500 pounds per acre of chestnut trees. Chestnut Hill
39 Outdoors, which raises Dunstan chestnut trees, have stated that they believe between 50 and 100 pounds
40 per chestnut are possible. The Northern Nut Groves Association have stated in an article that they're
41 between 50 and 138 pounds per tree. For our financials we only use 52 pounds per tree.

42
43 Andy Petesch: Ok.

44
45 Barry Katz: I would just like to ask you... You have other locations where you're harvesting chestnuts so
46 you process these chestnuts as was described? You wash them and raise them to the temperature of 160
47 degrees and then you dry them and all that?

48
49 Chris Brewer: Yes.

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Barry Katz: And what kind of equipment did you have to do all of that?

Chris Brewer: So we actually work at PFab, which is the Orange County commercial kitchen. And we rent so about every 3 days.

Barry Katz: Ok, I understand now. And in the future, do you plan on using that facility or having your own facility?

Chris Brewer: That's what the barn is. That's what we want to transition it to that. Obviously the barn's not built right now so at some point that will transition to the barn. But right now we're at PFab and that's the kitchen we're using.

Barry Katz: And I believe that your expert witness was implying that there was a fair amount of expense involved in having equipment to process these chestnuts?

Chris Brewer: He might have.

Barry Katz: What I wanted to know was this: Is this equipment stationary and permanent? Do you lock it in where it is, or do you not?

Chris Brewer: Well the equipment that's at PFab now is stationary.

Barry Katz: At your barn?

Chris Brewer: So putting in the chestnuts- that equipment will be mobile. You could move it. What we have is an idea that would be a mobile piece of equipment.

Barry Katz: Ok.

Karen Barrows: And can I ask; when you said you had \$50,000 invested, is this just at the Morrow Mill site?

Chris Brewer: Morrow Mill and the property in Caswell. And we have plans for up to 1,300 trees total.

Karen Barrows: LeAnne do you have anything?

LeAnne Brown: I do. I wanted to follow up on the question that you just asked on the \$50,000 to be sure I understand. Of that \$50,000 how much of that is invested in the chestnut operation at Morrow Mill?

Chris Brewer: Let's see. If I had to guess I would say \$5000-\$7000.

LeAnne Brown: So 5-7 is at Morrow Mill and the other \$43,000-\$45,000 is on the property at Caswell County?

Chris Brewer: That's correct.

LeAnne Brown: And you indicated that you plan 1,300 trees total. How many of those do you plan at Morrow Mill?

1 Chris Brewer: I think we have 120.

2

3 LeAnne Brown: 120 is your plan and how many are currently planted?

4

5 Chris Brewer: We had 36 that we planted in the spring.

6

7 LeAnne Brown: You had indicated. There was some question in the last hearing about whether there was
8 labor in the projections that were introduced into evidence through Ms. Brewer's testimony. Where in those
9 materials in that labor indicated?

10

11 Chris Brewer: The materials that she presented?

12

13 LeAnne Brown: Yes.

14

15 Chris Brewer: I don't think that we put the labor in there.

16

17 LeAnne Brown: So it's not in her plan in the materials that you introduced into materials, is that correct?

18

19 Chris Brewer: That's correct.

20

21 LeAnne Brown: You indicated that you had sold about 300 pounds of chestnuts and had 1,000 pounds in
22 inventory. Where are you storing those chestnuts?

23

24 Chris Brewer: The inventory is being store at PFab.

25

26 LeAnne Brown: You indicated in response to Mr. Katz question that although you're working out at PFab
27 that you plan to conduct this operation in the barn and that you were proposing to build at Morrow Mill or
28 have built at Morrow Mill Road. Where exactly in the barn will you be storing equipment?

29

30 Chris Brewer: The processing equipment?

31

32 LeAnne Brown: Yes.

33

34 Chris Brewer: The kitchen area.

35

36 LeAnne Brown: When you say the kitchen area, is that the kitchen area that is also available to be used by
37 wedding caterers.

38

39 Chris Brewer: Yes, Ma'am.

40

41 LeAnne Brown: And how large is the equipment that you plan to store in the kitchen that the wedding
42 caterers will be using?

43

44 Chris Brewer: So what we're using now is probably about 3 feet in diameter and about 3 feet tall. The kettle
45 that we use now. We would probably want to get something a little bit larger than that. As we project to
46 have more chestnuts than what we're producing now. So we would probably want to have a larger kettle.

47

48 LeAnne Brown: In the 4,600 square feet of barn that you are building on Morrow Mill Road how many
49 square feet of that will be devoted to storing this 3 foot by 3 foot piece of equipment in the kitchen?

1
2 Chris Brewer: Well it would probably be a bit larger than 3 by 3 but maybe 5 by 5. So 25 square feet.

3
4 LeAnne Brown: 25 square feet are necessary in order to store the entirety of your equipment for the
5 chestnut operation?

6
7 Chris Brewer: Yes, ma'am. But we also need... The drying the chestnuts is important as well. We have to
8 be able to let the chestnuts sit out and dry for a day before we actually put them in the water bath. And then
9 once we put them in the water bath we need them to dry before we put them in refrigeration. So actually
10 having the space to be able to set the chestnuts out on tables is very helpful.

11
12 LeAnne Brown: And so how do you work that with using this barn for a wedding which Ms. Brewer testified
13 that you have advertised that when a bride uses this as her wedding venue she has the full run of the
14 entirety of your farm? Would you explain to me how those two things work together?

15
16 Chris Brewer: Sure. Well you're not forced the chestnuts every day. So you can accumulate chestnuts over
17 1, 2, or 3 days, which is basically what we've been doing now, and then you can process them all at once.
18 And then go 3 more days before you have chestnuts. So a day or so is very doable.

19
20 LeAnne Brown: And where do you keep all these chestnuts while the bride has full run of your barn?

21
22 Chris Brewer: I think we'll have a kitchen by then and we'll have refrigeration.

23
24 LeAnne Brown: So you will have the chestnuts in the refrigerator in the kitchen being used by the caterers
25 for the weddings?

26
27 Chris Brewer: We don't plan to have caterers using the kitchen. That would be only a setup. So there won't
28 be equipment in the kitchen for a caterer to come in and cook or heat or anything like that. They will be
29 asked to do that off site.

30
31 LeAnne Brown: Well that's interesting. When you submitted your wastewater plan to Orange County and
32 you were required to put in additional septic capacity for the kitchen what was that for?

33
34 Chris Brewer: The septic capacity of the kitchen... I'm not sure what you're referring to.

35
36 LeAnne Brown: Are you denying that your septic permit requires that you have separate septic capacity for
37 the commercial kitchen that you have for use of the wedding barn or are you just not aware one way or the
38 other?

39
40 Chris Brewer: I'm not aware one way or another.

41
42 LeAnne Brown: I have no further questions of Mr. Brewer.

43 Barry Katz: I have a question regarding this operation and your wedding operation. Do you need to have a
44 certificate from the Department of Health for this kitchen, as a restaurant would?

45
46 Andy Petesch: I can't speak for the County on that.

47
48 Barry Katz: I just wondered if they need to have a health certificate. It's like running a restaurant.

49

1 Michael Harvey: I'm afraid I can't answer that. I'm not a sanitarian.

2

3 Barry Katz: I just don't know how processing chestnuts, which are sort of a raw, agricultural product, would
4 interfere with getting approval from the Department of Health for running a restaurant in that facility. I just
5 don't know. One other question. What do you estimate the additional cost of equipment for doing these
6 chestnuts will be over and above the \$50,000 that you mentioned?

7

8 Chris Brewer: So we've acquired the land, which is the largest.

9

10 Barry Katz: Just for processing the chestnuts.

11

12 Chris Brewer: Oh, just for processing. I would say \$5,000-\$8,000.

13

14 Barry Katz: And you plan on growing the bulk of your chestnuts some other place and shipping them into
15 this place?

16

17 Chris Brewer: Correct.

18

19 Barry Katz: Ok. No further questions.

20

21 Andy Petesch: Now I'd like to follow up with Mr. Harvey. He was sworn at the last meeting and remains so
22 now. Mr. Harvey, there was testimony at the October 10, 2016 hearing that you had made a determination
23 that the Brewers' and SPG needed to get, initially in reviewing this proposal, a SUP in order to operate a
24 special event center. Is that Correct?

25

26 Michael Harvey: That is a correct statement.

27

28 Andy Petesch: And in what form did you provide that determination? How'd you communicate that to Ms.
29 Brewer?

30

31 Michael Harvey: Ms. Brewer and the staff had had several different meetings discussing the concepts and it
32 was my determination of what I told her at that point in time based on the information I had available to that
33 what she was proposing was a regulated retreat center requiring the issuance of a Class B SUP in order to
34 develop this on the property.

35

36 Andy Petesch: And so you verbally communicated that information to her?

37

38 Michael Harvey: Yes.

39

40 Andy Petesch: And was there ever a written determination that was sent to her?

41

42 Michael Harvey: No, sir.

43

44 Andy Petesch: Ok thank you. No further questions.

45

46 Barry Katz: Mr. Harvey, can you just say again what you thought they were proposing to do?

47

48 Michael Harvey: As testified to at your last meeting Ms. Brewer had actually come to talk to staff on a
49 couple different occasions prior to the submittal of a Class B SUP on her desire to open a retreat center, a

1 wedding venue specifically. At that point in time we told her the event center she was describing to us, i.e.
2 staff, would require the issuance of a Class B SUP as defined within our UDO.

3
4 Barry Katz: And that's why we went through this process?

5
6 Michael Harvey: Yes, sir. And as I testified not only at the aforementioned hearing but at your last Board
7 of Adjustment meeting the determination that Ms. Brewer had to go through this process, originally, for this
8 parcel of property was that at the time there was no ag activity on same and that this would be, in fact, the
9 principal use if established.

10
11 Barry Katz: Right. That was our impression. So I wanted to just ask you about your apiary. You have 3
12 beehives on the property. And do you plan on actually extracting the honey on the premises?

13
14 Chris and Kara Brewer: Yes.

15
16 Barry Katz: And does anyone have any notion about how many beehives one would need in order to make
17 a viable business out of processing of honey?

18
19 Chris Brewer: Well we just started out and we have 2 beehives at our house and then we have 3 at the
20 property now so we're about a year and a half into beehives. So I wouldn't consider ourselves an expert but
21 we think that if we had 10 hives then we felt like that would be significant enough to at least be able to offer
22 them. I think the beehives. They're very fickle, so it's difficult to... I'm not sure.

23
24 Barry Katz: I don't know how relevant your hives are to the fact that you are purporting to be an agricultural
25 entity, that's all.

26
27 Andy Petesch: And next I'd like to ask Mr. White to provide some testimony. I'd like to remind you Mr. White
28 that you're still under oath. Would you just state your name and address again for the record?

29
30 LeAnne Brown: I need to object here as well. Mr. White testified. I was given the opportunity as I'm required
31 to be to cross-examine him and his testimony came to an end and so I'm not sure why he's being recalled,
32 in the interest of time I would ask the Board not to allow us to re-plow the field that you chose to plow last
33 time. Pardon the farm analogy.

34
35 And Petesch: As I indicated at the opening I asked Mr. White to prepare a written report given the late hour
36 of his testimony and the density of some of the material that he was trying to provide testimony regarding.
37 And so I simply wanted to have him hand this up and have an opportunity for you all to ask any follow up
38 questions that you may have.

39
40 Karen Barrows: How much is in that report Andy?

41
42 Andy Petesch: It is 5 pages and I asked him to do a 3 minute overview and if you have any questions but it
43 may be over assistance to you during your deliberations or to refresh your memory as to what his testimony
44 was from approximately 11:15-12:15 two Monday's ago.

45
46 Karen Barrows: Do we want to see this stuff?

47
48 Barry Katz: It's 3 minutes. We can't deny that, I think, for 3 minutes.

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Andy Petesch: Would you briefly just, for the Board, define food systems quickly.

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Erin White: Sure. A Food system refers to the people and activities that work together to move food from farms to all of our tables. It includes political, economic and social forces. It includes distribution activities, food processing, consumption, food waster management, and at the core of a healthy food system is a diverse set of farms that are profitable that produce all the food that we eat.

Andy Petesch: And at my request do you memorialize your review and analysis of the Brewer Farm project in a brief report? Is that correct?

Erin White: Yes.

Andy Petesch: And is this an accurate copy of that report?

Erin White: Yes.

Andy Petesch: And did anything change with respect to your materials, the information that you reviewed, your process, or your conclusions from your testimony on the 10th to now?

Erin White: No.

Andy Petesch: And so your report accurately reflects and is consistent with your positions before the Board on October 10, 2016?

Erin White: That's correct.

LeAnne Brown: For the record, I object to your receipt of the report. This is the first time I have been handed a copy. I do not have an opportunity to read it and cross-examine the witness, and I renew my objection to your considering him as an expert. If you're going to read and consider this in your deliberations I'm going to need time to read it and be able to determine whether I should cross-examine him on it. And as I said in the last hearing I question whether he's an expert. So I'd like to lodge those objections for your record. And I apologize again for being so formal.

Andy Petesch: This is marked as SPG exhibit 24. And I would simply note that if this report had been provided at the October 10th that Ms. Brown would be in the same position.

LeAnne Brown: I'd have had 2 weeks to read it if I had had a copy of it on the 10th.

Andy Petesch: If you could provide a 2mintue overview of your report?

Erin White: Sure. Thanks for your time tonight. It just goes over again my qualifications and experience, describes the process that I went through in reviewing the farm plan materials. I reviewed the multi-factor analysis that I looked at so really coming at this farm from a number of directions looking at key issues clear to evaluate agreement and consistency between the proposed project and the goals, definitions, and practice of agriculture and agritourism. I looked at the importance of Agriculture to Orange County. I looked at common challenges to agriculture both the Orange County and North Carolina. I looked at the role agritourism, of reaching the larger agricultural roles of new farm development, farm profitability, and public support for rural land preservation. And then more specifically this project classifying as a farm or not is a key question and that classifying each activity proposed in the project as to whether it agrees or not with North Carolina definition of agriculture and agritourism. So, without getting into too much of the detail,

1 Orange County has pretty high priority stated through planning documents, the comprehensive plan, and
2 the agriculture economic plan. High priority on agriculture as a sector. Common challenges to agriculture
3 include age land use patterns especially those residential developments a cultural shift away from farming
4 so in order to replace Farmers that are aging out we don't have younger and new farmers moving in. A
5 globalized food system is creating a really difficult and competitive situation for local and small farms. They
6 can't just compete on price. They have to come up with other activities to help them compete. To explore
7 the role of agritourism and the importance of agritourism to meet these challenges. And then classifying the
8 Brewers' project as a farm; reviewing the farm business plan summary, conducting a site visit, meeting with
9 the Brewers, and really finding that in fact it is a farm. There is agriculture activity in the ground, the plan is
10 consistent with food production, with commercial horticulture, and the fact that they've met the regulatory
11 requirements by 3 different regulatory bodies are to become a bona fide Farm. It seems to me that, in fact,
12 yes they are farm. And then looking at each of 15 activities that are proposed both in the farm plan
13 summary in the building permit application and in the bona fide farm exemption affidavit. 15 different
14 activities that are proposed for the site examining, all of them through the definition of agriculture, and that's
15 using General Statutes, and sub to that the definition of agritourism also in the general statute. And really
16 looking at them carefully found that each of them actually fit the definition of agritourism and agriculture.
17 And both the definitions per se and the commonly understood activities of agritourism certainly include
18 these activities so the report concludes with my own opinion based on my experience and training and
19 education after reviewing the relevant material that in fact the Brewer project is a farm. That all of the
20 proposed activities meet the definition of agriculture and agritourism and that in addition to that the project
21 clearly aligns with the planning priorities of Orange County around agriculture.

22
23 Barry Katz: So the thrust of your argument is that this is a farm, correct? And that the Brewers' are the
24 farmers?

25
26 Erin White: That's not the thrust of the argument but the project is a farm; yes. And the Brewers' as the
27 owners and operators, I guess you would say would be the farmers.

28
29 Barry Katz: Have you ever run a farm. Either of you?

30
31 Chris Brewer: No, sir.

32
33 Barry Katz: Have you ever run a business?

34
35 Chris Brewer: Yes, sir.

36
37 Barry Katz: What kind of business?

38
39 Chris Brewer: Multiple businesses. We have a rental property business. We have 2 different retail
40 businesses on Franklin Street we are 50% owners of. We also had a real estate property investment
41 business.

42
43 Barry Katz: Ok. So you've run businesses but you're really not farmers but now your farmers because you
44 own this place. Ok.

45
46 Karen Barrows: Is that all you have Andy?

47
48 Andy Petesch: Yes, thank you very much.

49

1 LeAnne Brown: Can I ask Mr. White just a couple of questions... You are providing an opinion reportedly as
2 an expert in this hearing and what I heard you say is that you have read the North Carolina General
3 Statutes and that it's your opinion that this operation meets the statutory definition of agritourism. Is that a
4 legal opinion you're reporting to provide?

5
6 Erin White: It's not.

7
8 LeAnne Brown: And you are not trained as a lawyer, is that correct?

9
10 Erin White: Correct.

11
12 LeAnne Brown: With regard to Orange County's interest in preserving farmland; would that interest in
13 Orange County extend to other individuals, and farming communities, and their properties, and their use of
14 their property for agricultural purposes? Or does it only extend to new farmers?

15
16 Erin White: Well to your last question certainly not. Orange County has a demonstrated interest in
17 preserving farmland and building viability in existing farm operations and values alongside the addition of
18 new farmers and new operations to help build the agricultural sector.

19
20 LeAnne Brown: So if the property owned by SPG is surrounded by properties that are also farm properties
21 that meet their criteria of the statute to be classified as a farm would you not agree that Orange County has
22 an interest in preserving the lifestyle of all of those individuals as well?

23
24 Erin White: I don't know how the documents I reviewed to speak to the lifestyle of any particular farmers or
25 property owners. It speaks to economic activities. It speaks to agricultural activities. But to the question
26 specifically of lifestyle I'm not sure how to answer that based on what I reviewed.

27
28 LeAnne Brown: Well let's take it apart. With the documents you read speaking to the importance of
29 preserving the other farms in the area, in the general vicinity of the property owned by SPG, are those
30 farms as important as what you refer it to be to the farm by SPG under Orange County's planning
31 documents?

32
33 Erin White: So the planning documents do not speak to any of these properties specifically to your first
34 question. And under the planning documents none of the properties would have a greater importance than
35 any of the others.

36
37 LeAnne Brown: Nor a lesser importance?

38 Erin White: Correct.

39
40 LeAnne Brown: I have no further questions.

41
42 Andy: Thank you that concludes our presentation of evidence.

43
44 Karen Barrows: So are we up to our closing arguments?

45
46 LeAnne Brown: I have just a tiny bit of rebuttal evidence, and I mean very tiny, based on a document that
47 was marked tonight I would like to. And I didn't plan to introduced this but I'm going to. Let me show this to
48 you Andy so that you have it.

49

1 Andy Petesch: Is this the only copy?

2

3 LeAnne Brown: It's the only copy I've got. You're now raising an issue that I need to use that for that I
4 hadn't really planned on. Mr. Harvey I would like to call you back for the sole purpose of showing you this
5 document and that document may be in the record and just to be sure I have marked it as exhibit 15. Do
6 you recognize that document?

7

8 Michael Harvey: Yes ma'am.

9

10 LeAnne Brown: What is that?

11

12 Michael Harvey: This is a copy of the letter that you sent to myself and the County Attorney's Office on the
13 19th of January concerning the Southeast Property Group off Morrow Mill Road.

14

15 LeAnne Brown: And does that letter make a request of you in Orange County?

16

17 Michael Harvey: It does.

18

19 Leanne Brown: What does it request?

20

21 Michael Harvey: That you be provided written notice of any decision made regarding the application or
22 building permit for the property.

23

24 Leanne Brown: And did you in fact provide written notice that a decision had been made regarding this
25 property?

26

27 Michael Harvey: Yes, I did.

28

29 LeAnne Brown: And when did you do that please?

30

31 Michael Harvey: On the 18th of May and it's on page 76 of staff's abstract which has already been entered
32 into the record.

33

34 LeAnne Brown: Alright and the appeal was filed on what day? As detailed in your staff report.

35

36 Michael Harvey: Attachment 1 of the staff abstract, page 71, of your October 10th packets. The date the
37 application was filed at my office was June 17th 2016.

38

39 LeAnne Brown: and was that within 30 days of the date of your email?

40

41 Michael Harvey: Yes ma'am.

42

43 LeAnne Brown: that's my last question of Mr. Harvey, unless Andy had a cross-examination question about
44 that.

45

46 Andy Petesch: Mr. Harvey was your email notifying Miss Brown of the building permit? Was that the
47 question that your email was notifying applicants Council of the building permit approval?

48

1 Michael Harvey: No. I will read the email for the record as it appears on page 76. "Ms. Brown, as an update
2 to the barn project on Morrow Mill Road I would like to offer the following: As you may already be aware the
3 applicant has filed a building permit application proposing Construction of an agricultural structure (i.e. A
4 barn) along with an affidavit indicating the structure will be used for agricultural purposes exempt from
5 zoning. As a result from the submitted documentation no zoning approval of the project was required for a
6 building permit. Future zoning enforcement will be dependent upon actual use of the property and whether
7 it is consistent with the County's UDO or state statutory exemptions. The permit itself, as detailed on SPG
8 exhibit 22, was issued on the 2nd of June 2016". We were informing Miss Brown of the planning
9 departments review of the project and this statement was derived after consultation with the County
10 Attorney's Office on whether or not there was zoning Authority as defined by the statute to review a zoning
11 component of the project as submitted with CB16-00020 of the building permit application.
12

13 Andy Petesch: Okay thank you very much.
14

15 LeAnne Brown: I have no for the questions. Thank you.
16

17 Karen Barrows: So I think we're up to closing arguments.
18

19 LeAnne Brown: I did prepare findings of fact for you to consider and look through as I make my argument. I
20 was handicapped slightly by the fact that we were not as through as I thought we were when we left last
21 time so I don't obviously have findings of fact related to what happened tonight. But I want to go ahead and
22 hand it up to you so that you have something to look at as I'm talking to you. I also want to pass out to each
23 of you a notebook. This is an index of authorities. These are not exhibits. These are the legal authorities I
24 am going to talk about. And I want you to have a copy so that you can look at it if you want to while I'm
25 talking to you about it. And if the Board doesn't mind I can see better if I sit down and try to talk to you from
26 a seated position. The findings of fact that I have prepared and proposed are largely chronological. My
27 argument will not be totally chronological so bear with me on that please. The first thing I need to talk about
28 to you is one of the questions on your sheet that you'll be answering tonight. Whether the appellants have
29 demonstrated standing to proceed in this matter. With regard to standing we had a short discussion about it
30 last time. Does the Board believe it's decided on standing or do you need to hear me on standing?
31

32 Karen Barrows: **inaudible**
33

34 LeAnne Brown: If you have decided you have you don't need to hear me argue about why you're right so I'll
35 move on. The first thing I want to talk to you about is the document is the doctrine of estoppel. Included in
36 the materials I've handed to you is an unpublished opinion in a recent case, as recent as 2010. It's a case
37 called Marsh B Newman County and I provided it to you because I think it has an interesting parallel to this
38 case. In the Marsh case the landowner had been before the Board of adjustment with regard to a rodeo
39 operation that he wished to operate. He had a permit, it was revoked, he appealed, and the Board of
40 Adjustment upheld revocation. He did not choose to appeal and the court in looking at that said "you're
41 estop from bringing that back. You've already exercised your legal rights, you've lost, and you're done".
42 That's really the case that I think you have before you tonight and I first want you to think about this from a
43 pure estoppel point of view. Do you consider, and remember well, a SUP application for a design that looks
44 like, walks like, talks like, acts like the exact application for which a building permit it was granted? The
45 findings of fact set forth the information that's in your record that shows that the applications are virtually
46 identical with some change of wording on them. They are in fact the same plan with a few changes of
47 wording made on them. You will know that the disturbed area remains 85,000 square feet throughout. You
48 will note that the number of parking space is required for the wedding event venue remains the same for
49 125 to 150 people. The building actually grew a little bit between the SUP that you denied and the final

1 plans because I think the Loft got a little bit bigger. But basically what was ultimately granted a building
2 permit is ultimately the same set of plans that you reviewed and that you denied a SUP. Under the Orange
3 County UDO there is a provision of the UDO that prohibits you from filing an application for the same or
4 similar project for at least one year after denial. What happened here is that you denied this project and
5 within a couple of months you had a building permit application back before the county that Mr. Harvey
6 reviewed and still felt required a special use permit in January. Undeterred you have a property owner that
7 goes on forward with permits, with NCDOT and applying and then comes back and changes a couple more
8 words, adds some information which purports that the wedding venue is no longer the chief purpose of the
9 very design we looked at for wedding venue, and moves forward. I believe under the holding in the Marsh
10 case in the spirit of the Marsh case and under the provisions of 2.2.7 and 2.2.8 of the UDO this property
11 owner is estopped from proceeding with this building within the application. She went through the special
12 use permit process and she was denied. When I filed the original appeal what I said to you in the appeal
13 was that she did not appeal your decision. I was wrong. I didn't know she did because Orange County
14 didn't know she did. But she in fact appealed the decision, did not serve a copy to Orange County, which is
15 required, and then on March 6th dismissed with prejudice the appeal. A dismissal with prejudice means that
16 you cannot take that back before the courts. You couldn't have taken it back anyway, as appointed fact,
17 because it had not been time and perfected since it was served on Orange County. But the concept that
18 you get your day for your hearing, you've got your day before this Board, you did your best shot, you
19 presented a full hearing, your SUP was denied, you started to take it to court, and then you decided just to
20 simply reapply in violation of your UDO is not conduct that is appropriate for proceeding. The Brewers' took
21 your time and went before you. The neighbors took their time and they came before you. You made a very
22 difficult decision on the evidence and this applicant is estopped from erasing something on this
23 application and bringing it back to you and under the doctrine of estoppel alone I think that you can
24 determine that this application should have never been received by Orange County. Before you ever get to
25 the question about a farm and what's incidental to a farm, which I'm going to talk about in a moment. So
26 that's the first thing that I really want you to think about as you deliberate tonight on this application. Can
27 you come in, be told you need an SUP, not appeal that decision, and Mr. Petesch is going to argue that
28 that decision wasn't in writing so she didn't have to appeal it, but she knew that a decision had been made,
29 she needed to apply and she went forward with the application process. I don't think you stand on the form
30 of whether that was a written decision. She knew that was the decision and she went forward with it, came
31 before you and lost, appealed and then decided to just reapply. That should not work under your ordinance
32 and I encourage you to think about that as you are deliberating tonight. Let me go on to the second thing
33 that we need to think about tonight and that's the farm exemption, which you've heard a great deal about.
34 And we've had a lot of conversation about whether this is a farm. I have included in your materials a copy of
35 a portion of NCGS 153a-340. 153a-340 is the grant of the zoning power to counties. Under North Carolina
36 law the legislature has the zoning power. It grants back that power to counties and to municipalities and to
37 different statutes right now. And when it granted the power to Zone to all of the counties in North Carolina in
38 1959 it contained a farm exemption. As do many states. And so what you're here looking at is what that
39 means. What does that farm exemption mean to Orange County? Why do we have a farm exemption? Let
40 me ask that question first because I want you to be thinking about that as you deliberate tonight. We have a
41 farm exemption trying to strike a balance between the need of the farmer to be able to move fairly freely in
42 a controlled zoning environment. And you balance that against the need of the county to control land use
43 and growth. And so the legislature struck a balance in thinking about that. What balance did they strike?
44 Well the balance that they struck is a nuanced balance that no one wants to talk to you about, but I'm going
45 to talk to you about it. And this is how it works. The legislature said, look there are certain things we do that
46 makes something a farm. And after some case law they actually came up and they have a little list of things
47 that make you a bona fide farm. SPG has obtained a farm number for this piece of property. Under the list
48 that made it makes it a bona fide farm. And everybody wants you to then say okay well that's all I have to
49 do. But it's not. That's step one. That's the easy step. We are not here talking about whether she has a farm

1 number. We are not talking about whether she has a forestry plan. Although I'm curious about a forestry
2 plan that keeps it all forested while we're doing everything else on the property. Be that as it may, we are
3 not here talking about whether it meets that threshold test. That threshold test is the test that causes the
4 County to say, okay I have to look beyond this, I now have to look and say does it need the farm
5 exemption? And the farm exemption is broad and I'm not going to argue that it's not broad. There is one
6 exception to the farm exemption. Zoning power still applies when the use is for a non-farm purpose. That
7 has always been the law. It is the law today. So if the use is going on, on a bona fide farm, but it is for a
8 non-farm purpose the zoning power still applies. The county has the authority to exercise its zoning power.
9 Orange County's UDO pick up that language out of the statute and it acknowledges that in the statute. The
10 affidavit that Miss Brewer signed about her farm contains the caveat that the farm exemption does not
11 apply to non-farm use. Okay, what does that mean? What that means is that when you are looking at
12 whether the farm exemption applies you have to look to see if the activity has a farming purpose. You
13 cannot rely alone on whether there's farming activity going on, but is the use that is proposed for a non-
14 farm purpose? I've provided you several cases. I'm going to talk about a few of them here. One of them I'd
15 like to point out now is the case called Ball B. Rooter, Randolph County, in your materials. In the Ball case
16 the person who own the property was using farm equipment to till petroleum-contaminated soil. And the
17 court looked at that and said, well you know there's a farm there and that's where equipment and it's
18 making some money for the farm, but it is a non-farm used because it was really soil remediation. It was
19 not farming. What the ball case tells us is twofold. Number one is just because it is happening on the farm
20 does not mean that it is a farm purpose. And number two, the courts have demonstrated that we need to
21 look behind the use to be sure that the use is not a use for a non-farm purpose. That then causes you to
22 ask the question of what is a farm purpose? You look at 150a-340 and it talks about activities related to and
23 incidental to the production of agricultural products. Is the activity related to and incidental to production of
24 agricultural products? This statute then incorporates the definition of agricultural in NCGS 106-581.1. I've
25 given you a copy of that as well. That statute makes clear it has a litany of things that constitute farm
26 purposes. But if you read it all the way through that statute also says those things are farm purposes when
27 they are related to or incidental to a bona fide farm purpose. One of those things is agritourism. What does
28 it mean to be related to or incidental to? Well the dictionary definition, which you use of your capacity as
29 interpreters of this statute, is it happens as a minor part or as a result of something else. So in the context
30 of the statute the activity that is claimed to be exempt must be a minor part. Let me say that again. It must
31 be a minor part or directly related to the exempt farm purpose. If not it falls under the zoning regulations. It
32 falls under the zoning regulations that an event center in Orange County in the AR zone must have the
33 special use permit. You will recall just a moment ago facts not listed in my findings of facts that I had asked
34 Ms. Brewer on the 10th how many square feet of this 4,600 and some odd square foot structure were
35 needed to store any of her farm products and in your findings of fact indicate that she couldn't answer that
36 question as to flowers, or as to chestnut flour, or chestnuts. She couldn't answer as to equipment. She
37 couldn't tell us what she was going to do with the equipment and the flour in order to keep her promise to
38 brides that she had a full run of the farm. Mr. Brewer tonight answered the question about the machine. Let
39 me go back to my note. He indicated that the machine that we need to do store in this 4600 square foot
40 barn would be possibly 5 feet by 5 feet. Just going to stick in the kitchen. With the caterers. Who may or
41 may not be in the kitchen. A 4,600 square foot barn, with a septic system designed to accommodate 250
42 people 3 days a week, with a parking lot designed to accommodate 125 cars, with a service entrance
43 identified in the plans for things like caterers and florists is not a barn that was built for farm purposes.
44 We're not going to clean out the barn and have an occasional wedding. We're going to clean out the farm
45 all the time to have a wedding event center. It is not incidental. A couple of the other cases I've included in
46 your packet; there's a case called County of Durham V Robert. This case is instructed as is the next one
47 I'm going to speak about because in County of Durham V Roberts there was a one time sale of excavated
48 soil incidental to improving pasture land and expanding the farm. This is somebody who had a horse farm.
49 They flattened it, they dug the pond, and they took the dirt, and they sold it. The Durham County said,

1 "Well, wait a minute. You're selling dirt, that's not farming". That's incidental. That was a one-time thing; you
2 sold it. That's what incidental means. It makes sense. It makes common sense. North **inaudible** County
3 neighbors for a rural life **inaudible** County is the other side of the corn. There, we have a biodiesel
4 production operation. The courts said no. Even if you're using farm equipment to do that that is an industrial
5 use. I think you were handed, and I have included in your packet, was a copy of NCGS 19e-30 and 31.
6 That's not a statute that is cited in 153a. It's not the statute that the legislature sent you back to find the
7 definition of agritourism or farming or anything else. What that statute is is part of the legislation. There's a
8 section in the statutes for special liability protection. And one of the special liability protections that is
9 offered in North Carolina is a special liability protection for agritourism. And so that statute has been
10 provided to you to say, "Look, see". Agritourism is a kind of farming. Well let's look at that statute more
11 carefully. It defines agritourism as any activity carried out on a farm or ranch that allowed members of the
12 general public for recreational, entertainment, or educational purposes to view or enjoy rural activities
13 including farming, ranching, historic cultural, harvest you own activities, or attractions. And you're going to
14 have that read back to you to say, "See, we do that". What else does that statute say? That statute then
15 goes on because this is a liability statute. They're not trying to define for you for your purposes tonight what
16 agritourism means but, they're trying to define it in order to say when you get liability protection. And if you
17 read on in the statute, which is in your packet in the notebook, it talks about inherent risks. And it defines
18 inherent risks and damages or hazards that are an interval part of an agritourism activity such as the
19 natural conditions of land, vegetation, and water, the behavior of wild or domestic animals, and the ordinary
20 dangers of structures or equipment ordinarily used in farming or ranching operations. In other words, within
21 this statute the legislature continues to pick up the concept that the activity has to be incidental to an
22 agricultural operation and incidental to what the agricultural activity requires. If there is no agricultural
23 activity that leads the way you don't have agritourism, you have tourism. There's nothing wrong with
24 tourism. But it's not exempt from zoning. Let me speak to you once more about the North Iredale Case. I
25 mentioned it a moment ago and said I would come back to it. It's instructive here as well. A farming
26 operation there required 100,000 gallons of biodiesel fuel per year. If they had added an industrial process
27 to produce the biodiesel fuel for their farm then maybe that would be incidental. However, they decided that
28 instead of producing 100,000 gallons they would produce 500,000 per year. And the courts said, "No, no.
29 That's not related to the farm use. It's not incidental to the farm use. You are now manufacturing bio diesel".
30 I would submit to you that the concept here is really the same. If you build a facility that's large enough to
31 accommodate your wedding planning business, if you build a facility that's large enough to park a wedding
32 for 250 people, you build a full size service road, you give DOT figures for an event center in order to
33 determine your traffic counts then you're really like the biodiesel farm. You've built a facility for a wedding
34 purpose. And you may incidentally stick some chestnuts in it from time to time. It's the tail wagging the dog.
35 It's not the way the statute is designed to work. It's not the way it does work. There are other cases in the
36 packets that I won't dwell on. The Balkum case and the Steadman case are both cases involving flowers.
37 And they were cases that looked at whether... Steadman, for example, looked at whether a driveway for
38 large trucks that was needed to take the plants in and out was for farming purposes. And the courts said,
39 "Well yeah, if that's what you've got to have to take the plants in and out that road makes sense." But if
40 your road doesn't make sense but to accommodate your wedding guests then, again, it's a different test.
41 And I think that all of these cases really help up see how the courts have looked at when activity is
42 essential or important to or incidental to the farming activity. All of these cases repeat the premise that the
43 non-farm use is never exempt from zoning. Another thing that I find interesting in the North Iredale case
44 that I simply want to point out to you that in that case the land owner had sought and received a re-zoning
45 and had gotten a conditional use permit and then claimed an exemption. The court admonished the land
46 over in the opinion that the new characterization offered by the landowner really undermined the exemption
47 claim. In other words, the court looked at what this land owner had done within the County and said, "Well,
48 you called this something else and now you're doing the same thing and calling it a farming operation and
49 we're not buying into that". So as you begin to make your decision tonight the reason that I believe you

1 should find that it was an error for the Planning Supervisor to determine that the SUP or zoning compliance
2 permit were not required for this use is that the Planning Supervisor got it right twice. He looked at the
3 plans and he said, "This is a wedding venue. It's been talked to me as a wedding venue. It was an honest
4 application with an honest reflection of what the property owner wanted to do on the property. And, based
5 upon the representations that were made, the determination was made that is what was needed was a
6 SUP." That was correct. As the people who decide SUP's and I actually put the definition of SUP in the
7 UDO section that I gave you. Because a SUP means that you have to make special findings to determine
8 that the use is appropriate in the particular location and in that case you found it was not. You found it did
9 not maintain or enhance the value of the contiguous properties. You found it was not in compliance with the
10 general plans for the physical development for Orange County. You found that none of the 4 findings were
11 supported by evidence and then on that basis you denied that permit. When the permit came back to the
12 Planning Supervisor and there had been a little bit of a change in the description he said, "No, it still needs
13 a SUP" and he was right. He was right it needed a SUP and had it been an application for SUP he would've
14 said, "Well, under the ordinance you can't bring it back yet because you have to wait a year". It came back
15 the third time and some words had been changed and an affidavit had been filed. And the error that was
16 made is that the County did not look behind the representations made to see if this was still the same use,
17 to see if the size of the building, the size of the parking lot, the size of the septic, the traffic counts, the
18 driveway, to see if any of that was supported by the farming purpose that was there or whether the farming
19 is somehow incidental to the weddings. If you're planting flowers so that your brides can pick flowers the
20 flower farm is incidental to the wedding not vice versa. And that's an important distinction under this statute.
21 Although the burden of proof is on us tonight as the appellants in this case under 2.2.3 the burden of proof
22 was on SPG when it applied for the building permit to show that the use proposed met the exception. That
23 it was not a non-farm use. I do not believe that simply filling out an affidavit that says you're going to do a
24 little work really justifies not looking behind the size, and magnitude of the development that has occurred
25 on this particular tract of land. If you look at section 10.1 of the UDO it picks up the agritourism definition. It
26 fits everything I've just told you about what statutes meet. It requires the business be related to or incidental
27 to the agricultural activities on the farm. That's 10.1 in your package. What we are asking you to do tonight
28 is to look at this in reality. We are asking you to look at what's really happening on this piece of property.
29 What is the real use of this building and this parking lot and this gigantic septic system and this huge road?
30 And if you look at that and it is more than is necessary, if it's not incidental to the farming you heard
31 described to you then it would be your obligation to reverse the Planning Director to go back and look at it
32 and look at those issues. And so what we are asking you to do tonight is to reverse the decision that
33 allowed the building permit application to proceed without going through the SUP process. And we're
34 asking you to remand the matter to the Planning Director that James has set forth for you in these materials
35 of what that would look like procedurally because it's a bit different than many of the kinds of things you
36 would see. We would also ask you to stay this building permit through this process and that this work out
37 there does not continue to go on through the process. There may be some argument made to you as to
38 whether you have the ability to consider what's before you tonight. I have put a copy of 160a-388 in your
39 materials as well. That's the Board of Adjustment statute. It allows you to review decisions made by
40 members of the staff. It would be fool hardy for someone to have appealed to you to say, you need to look
41 at what the building inspector did. The building inspector asked the Planning Supervisor if there was
42 anything more needed before permit is granted. So the decision that is at issue is the decision that we've
43 appealed which is should there have been some requirement for zoning? Unless you have questions of me
44 about the statutes or what I believe to be the legal standard that's before you tonight I would like to reserve
45 the right to, since I have to burden of proof, that I get to go last if I need to rebut anything that Mr. Petesch
46 says. Again, I commend to you the... I know it's long but I commend to you the findings of fact that we have
47 made. I've tried to summarize the evidence you've heard. I've tried to compare it from quotes from Ms.
48 Brewer that are containing your own Minutes from your own meetings since that was sworn testimony that
49 she gave to you and I believe that if you go through those findings of fact that you would determine in fact,

1 that the use is a non-farm purpose on this property. And I do believe that that is a decision that's
2 appropriately before you this evening. Mr. Harvey did state in the email that he wrote to me that has been
3 read to you that the County would look if the use looked like it wasn't that kind of use. That creates an
4 interesting dilemma. What I suppose that means is that each time there's a wedding that someone should
5 call zoning compliance to you that there a wedding out here and I don't think it's incidental to anything
6 going on out here right now. " That's not a good way to approach this problem. I think what the statute
7 intends is for the County to look to see if there's a non-farm use and I think that's what we missed here. So
8 I would ask you to let Mr. Harvey know that he was right twice. And we'll go back to his first two decisions.
9 Thank you.

10
11 Karen Barrows: Thank you. Why don't we hear Andy and then **inaudible**.

12
13 Andy Petesch: Before I begin, would it be possible for us to have a short break?

14
15 Karen Barrows: Certainly. We'll adjourn for 10 minutes please... Andy?

16
17 Andy Petesch: Thank you very much. I think that Ms. Brown covered a lot of ground in her arguments. It
18 still leaves a bit of a question in terms of what is this case about? It's not about a building. First of all. It's
19 not about judging the validity of a business plan where flaws maybe in it. No business plan at this stage at
20 its stage of its life is perfect. It's not about trying, for this Board, to gauge the validity of any of the approvals
21 given by different agencies or government organizations with respect to qualifying as a bona fide farm. It's
22 not about the ownership structure. Those are all out of the jurisdiction of this Board, and it doesn't get at
23 what the real issue is here. Which is the use. Specifically, bona fide farm purposes. Now the Brewers' have
24 started operating a farm. A bona fide farm. That's indisputable given the 3 different pieces of evidence that
25 they have with respect to satisfying the 5 options under 153a-340. The Brewers' made clear on their
26 building permit application, in March, which is the one that has been approved that they intended this for a
27 barn for farm and agritourism. Agriculture and agritourism related purposes. The key question, as I said, is
28 this a bona fide farm purpose? If so, the project is exempt and Mr. Harvey's decision must be affirmed. So
29 what is the difference between a bona fide farm purpose and a non-farm purpose? There is no definition of
30 a non-farm purpose. To understand that you've got to look at what is a bona fide farm purpose. Looking at
31 the plain language of the statute. Looking at rules of interpretation, state policy, county policy and plans, the
32 NCGS, case law, secondary authorities such as the American Farmland Trust report and Mr. Whites'
33 testimony and report. So turning to the specific legal arguments. First of all, with respect to some of the
34 jurisdictional issues in whether this is a final determination I think that that's one of the aspects that this
35 Board has to look at because they have no jurisdiction over rendering advisory opinions. And looking at Mr.
36 Harvey's email, which is the basis of this appeal, that's on page 76 of the agenda. He states that as a result
37 of the affidavit being filed indicating the structure will be for agricultural purposes along with the building
38 permit application they have determined that no zoning approval would be required and in the future zoning
39 enforcement would be dependent on the actual use. So here we're looking at 2 different issues: What is the
40 decision to be made right now? And what's the decision to be made in the future as events start actually
41 happening, as the agritourism actually starts coming online and other uses that may occur on that
42 property? So I would ask the Board to look, first, at that question: What is the decision being made here,
43 right now, given the evidence that the staff has provided? Is their decision that they're exempt from zoning
44 valid? And I would submit that it is. At this point it is absolutely valid. For you to look into the future as to
45 what activities may happen on that site would be rendering n advisory opinion as to the activities that they
46 plan to do and whether that is going to be valid in the future or not. And I would refer the Board to Supreme
47 Court's decision. This is over 60 years of good law in North Carolina, this is Mitchell V Garfield. It's a
48 Supreme Court case, 1950. It says here at the bottom of the first page it is to be noted that municipal
49 authorities and the General Statutes generally make applications of similar provisions applicable to

1 Counties as well have no legal power to refuse a building permit for a cause assigned, even if they had
2 grounds to believing such a cause exists, the law declares that it's the right of the applicant to erect the
3 building for which the permit is sought as otherwise absolute. It is no ground of denial of the permit or
4 mandate to compel its issuance that the applicant intends to put a building when erected to an improper
5 use. The question as to legality of the alleged intended use must await determination and proper
6 proceedings. After such use is attempted to be made use of the building. So to try and analyze and look
7 behind and dig into facts at this stage, when it's still being planned and worked out and evolving, is an
8 advisory decision. They have an absolute right to construct a barn on their property and what the barn
9 looks like, how it's built... If Bill Gate buys the farm, some land, and starts trying to do agriculture he can
10 put a taj mahal barn on it if he wants to. Until that barn starts getting used in a way that is non-farm he is
11 permitted to build that barn. And that's what we're talking about today. A building permit that was issued
12 without being subject to zoning. So my first submission to this Board is that you lack the jurisdiction at this
13 point to make a decision as to future uses on this site. It is clear, both in Ms. Brewer's affidavit and in the
14 email, which is being appealed, that the County will continue to assess the uses that are occurring on that
15 property. Turning to the estoppel argument. Ms. Brown raised the Marsh case. I would submit first of all,
16 there is a jurisdictional issue here as well in that... The power to rule on estoppel claim is an equitable
17 power that this Board does not have.

18
19 Barry Katz: Equitable?

20
21 Andy Petesch: An equitable power.

22
23 Barry Katz: Court?

24
25 Andy Petesch: Yes. That is conferred on our trial courts but the authority of this Board is set out in (North
26 Carolina General Statute) 160a-388. Again, made applicable to counties through a separate statute. And
27 that is your powers are to rule on SUP, Conditional Use Permits, variances, and appeals from staff
28 determinations. From final and binding determinations. It does not include ruling on an estoppel claim. That
29 aside, Ms. Brown's heavy reliance on the Marsh case communicated that the facts were very similar and it
30 should apply here are misplaced. In Marsh what happened is that the gentleman had some land, he was
31 doing some farming on it, he wanted to run a rodeo. He wanted to have rodeo events. And he applied for a
32 SUP and he was granted that SUP. The conditions included, among other, he would only have 1 access,
33 not two accesses to the rodeo events and that he would only have 4 rodeos a year. He violated. He
34 exceeded the 4-rodeo limit and then also created a second access. So the jurisdiction then issued notices
35 of violation and then the staff went to the Board Of Adjustment on their own and requested that the SUP be
36 revoked. The Board of Adjustment then did revoke the SUP and then the owner appealed that to Superior
37 Court and in their appeal he had spent all 5 pages of his brief arguing and claiming the reason why
38 **inaudible** shouldn't matter is that he was exempt under 153a-340. And then the Superior Court ruled
39 against him, affirmed the revocation and in doing so said one of the bases was that he was estopped
40 because he had been granted a SUP and now he was challenges that approval. Something that he had
41 received. And so he did not appeal that decision. So he went on to continue to operate rodeos. He was
42 issued additional notice of violations, he appealed that and it went on to the Superior Court. They held that
43 because he did not appeal that he had his chance, made his argument about the exemption, and then
44 didn't appeal that and then couldn't come back and claim the exemption again. That's not at all what
45 happened here. There was no approval granted in the beginning. And in the process Ms. Brewer never
46 tried to challenge the fact that... She never raised the exemption issue. In fact, when she asked for the
47 exemption to be approved and to be able to go forward under the exemption it was granted by staff. She's
48 not been issued any notice of violations. So for estoppel to apply, especially they type of estoppel called
49 collateral estoppel that was identified by the Court in Marsh, this issue that you're trying to be estopped

1 from claiming in this case that you qualify for the exemption. That has had to have been heard and litigated
2 before and a decision made on it, in order for estoppel to apply. If that issue has never been raised and
3 heard by a judicial body, and decided, then estoppel isn't applicable. So that reliance on the Marsh case
4 and the entire estoppel argument here completely fails because this is the first time that Ms. Brewer has
5 sought approval under the exemption. And I will specifically ask you to turn your attention to the Special
6 Use Agenda abstract. This is for case A2-15, heard on November 9th 2015. So what was introduced by the
7 applicants as a staff report? They're exhibit number 8. I'll read the relevant sections quickly. This is on page
8 8, staff comment: "That farm status of the property is completely separate and irrelevant and has no
9 bearing on this permit process or on the applicant being allowed to pursue a SUP proposing the
10 development of the land issue." It goes on to say, "Staff comment, understands the frustration".. This is
11 under a note that says a permanent process is irrelevant given the farm size of the property and local
12 property owners are being forced to spend money to fight the permit. Staff says, "They understand the
13 community's frustration. From our standpoint we required the applicant, who consented, to go through the
14 SUP process as no agricultural activity currently exists on the property" and then on page 6 they illustrate
15 this point a little further where it says that "it should be noted that the staff first met with the applicant when
16 we determined the project would require the issuance of a SUP. It was during this meeting that the
17 applicant informed staff that the property was in farm status that she believed it was prudent to go through
18 with the permanent review process to ensure local concerns could be address". The Bona fide farm
19 exemption was not ever part of this Special Use process. Again, in the Minutes page 3, this is Mr. Harvey's
20 testimony before this Board.

21
22 Barry Katz: What's the date of all this?

23
24 Andy Petesch: I'm sorry, these are the approved Minutes from the November 9th SUP hearing. This is Mr.
25 Harvey's testimony on page 3 beginning at line 22. "Your charge tonight is not to review, interrupt, or make
26 a decision on this property's status as a farm as defined by the General Statute." A few lines later,
27 "Whether this property is or is not a farm is not material to the discussion that is about to occur. Whether or
28 not this project can be considered part of a farming operation is also not material to the discussion that is
29 about to occur.". A few lines later, line 31, "You will be basing your decision with respect to the issuance to
30 this permit solely on the competent material evidence and sworn testimony entered into the record as to
31 whether or not this project meets the standards of the UDO.". And then finally, on page 40 of same
32 approved Minutes, "It was our determination that we question whether or not any farm activity on the
33 property that warranted it being classified as such." and then Mr. Hughes said, "Just the nature of that land.
34 Does it get any kind of tax break going into those issues?" But what Mr. Harvey said previously was that
35 "there is an argument that can be made that the farm can engage in agritourism activity as part of the
36 common, acceptable, everyday use of a farm parcel. When we first met with Kara we obviously indicated
37 that the information she needed to go through was a SUP process. She agreed and has further indicated
38 she has a responsibility to through that". This is at the end of the hearing at the point where it was denied.
39 You went on to say, "Can an argument can be made that a farm can have a wedding venue as an
40 agritourism activity? The answer is yes. But I want to caution as I indicated at the onset of the meeting
41 Board of Adjustment doesn't have to legal ability whether or not the parcel should or should not be
42 considered farm. The Board of Adjustment should not determine and comment on the appropriateness of
43 the agritourism activity being **Inaudible** part of the farm operation". So it is clear from both the staff report
44 and the testimony before the Board that the consideration of that exemption was not part of that process
45 and therefore the idea of estoppel simply doesn't apply in this case. And so the issue number one outlined
46 in their appeal must fail. I will just go over briefly the prohibition against filing after denial that was the
47 second issue that was raised. I don't believe Ms. Brown addressed it but I will simply bring to the Board's
48 attention section 2.2.8, which, I believe is included under tab 4 of my presentation notebook. No, it is not.
49 But hopefully I have it here. 2.2.8 discusses the effective denial and subsequent application that reads here

1 that if the Board Of County Commissioners denies an application or the application is withdrawn
2 subsequent to notice of the public hearing thereon. Neither of those things happened in this case. This was
3 a Board of Adjustment that ruled on the application, denied the application for the SUP, and the
4 application was not withdrawn. No application can be filed for the following year. North Carolina case law is
5 clear that local governments are required to follow the procedural requirements of their ordinances. And in
6 this case the plain language of this ordinance that that only applies to denials by the Board Of County
7 Commissioners or when it's withdrawn after the public hearing's been noticed and 168-388a clearly
8 indicates despite the appeals indication that the Board Of County Commissioners simply has their authority
9 delegated **inaudible** Class B SUP from the Board Of County Commissioners. It's actually the opposite.
10 That authority is granted to the Board of Adjustment by statute if one is created and it specifically says the
11 ordinance may designate a Planning Board or governing Board to perform any of the duties of a Board of
12 Adjustment in addition to its other duties and designate specialized Boards to hear technical appeals. So
13 that's not a delegated responsibility that can somehow fit under the heading of the Board Of County
14 Commissioners. Now moving on to the key issue here, as I addressed before, of what is the use here? How
15 do we define the use? We've already talked about this jurisdictional issue looking too far into the future.
16 You would be rendering an advisory opinion as to the uses there. One thing I do want to not and I'll get into
17 this quickly; none of the cases that Ms. Brown relied on in her argument dealt with agritourism. They dealt
18 with bona fide farm issues but did not deal with agritourism and that makes a difference once you look into
19 the definitions and we'll get into those definitions in just a moment. So again we've gone through the claim
20 in the email. The question is they determined that these activities that are proposed based on the affidavit
21 and the building permit application are exempt. And the staff themselves, under tab 10 of my notebook, has
22 created a very helpful brochure that really gives a great outline for doing the analysis that's required here.
23 And I've tried to outline in some different colors here to kind of move from step one to step two to step
24 three. Step one is simply just deciding if you're a bona fide farm. And again we talk about those 5 factors
25 that are sufficient evidence to show bona fide farm. Ms. Brewer's presented 3 of those. Those are under
26 tab 17. Interestingly it goes on to say, " Does the County have the right to question or reject any of these
27 methods?" and the answer is a resounding no. State law does not give local governments the authority to
28 question, interpret, or challenge the evidence submitted substantiating a parcel of property as a farm. And it
29 also states, and this is part of 153a-340, please note a farm operation can include multiple parcels of
30 property that are either adjacent to or separate from one another. They don't even have to be in the same
31 County. Which is part of the analysis here in terms of the scope of the operation. The Caswell County
32 property is included in that as if this is one operation, in one place. The second step here addresses the
33 non-farm versus the bona fide farm purposes. Do farms have to comply with any plan use regulations?
34 Generally, no. These are broad exemptions but any number of uses and activities on a property that is
35 otherwise used for bona fide farm purposes may be regulated and restricted by the County. There's some
36 examples given: commercial activities unrelated and adding no value to a bona fide farm activity, purely
37 recreational and/or cultural activities unrelated and adding no value to a bona fide farm activity. Those
38 could be subject to County regulation. And then it references the definitions of farm activities. Bona Fide
39 farm purposes include the production and activities relating to or... And this is where it was cleared during
40 Ms. Brown's arguments. She focused almost entirely on that word incidental. But that is not relating to "and
41 incidental". It is relating to "Or incidental". So if it's relating to it doesn't matter if it's incidental or not. That's
42 an either one qualifies, not... This is the language and this is under tab 1 of my notebook. 153a-340
43 subsection b2: Bona fide farm purposes include the production and activities relating to or incidental to the
44 production of crops, grains, fruits, vegetables, ornamental and flowering plant, dairy, livestock, poultry, and
45 all other forms of agriculture as defined in 106-581.1 subsection 6. So there under the rules of statutory
46 interpretation if there is an "or" then only one of those needs to be complied with for it to be satisfied. If
47 there's an "and" both have to be satisfied. The pamphlet goes on to say that NCGS 106-581.1 further
48 expands the definition of farming agriculture to include marketing and selling agricultural products,
49 agritourism, etcetera. What is considered agritourism is the next step. Although Ms. Brown is correct that

1 there is no direct citation length between 153a-340 and section 99E-30 but, again, rules of statutory
2 construction require that the statutes be read in comparison with the other statutes so they're read
3 consistently. And the liability section lowers the bar of entry for liability concerns with respect to agritourism.
4 Again, consistent with the idea that these are broad exemptions that they are trying to make it easier to do
5 these operations. Not try to be restrictive. Any activity carried out on a farm or ranch that allows members
6 of the general public for recreational, entertainment, or educational purposes to view or enjoy rural
7 activities. Including farming, ranching, historic, cultural, harvest your own activities, or natural activities and
8 attractions. Any activity. Then on the reverse side it references that North Carolina Department of
9 Agriculture is one of the websites that I printed out that I would submit as the imprimatur of reliability. That's
10 under tab 12. North Carolina Department of Agriculture's website on agritourism specifically lists as
11 agritourism: picnics, parties, weddings, and honeymoons. That exhibit is also in the Special Use Agenda
12 abstract on page 107. The exact same webpage showing weddings identified as agritourism in North
13 Carolina by the North Carolina Department of Agriculture. And this last section. So these activities on the
14 brochure are not subject to zoning regulations either per state law: If an agritourism activity is developed as
15 part of the marketing and operation of an established farm operation this activity is not subject to zoning
16 requirements. So what is the evidence that wedding venues are agritourism? Well going back to the
17 Minutes from the Special Used hearing on page 3. Which again is Mr. Harvey's testimony, "It is likely that
18 the applicant has the ability to develop an agritourism operation on the farm, which can include a wedding
19 venue without permits from the County as same as exempt from our review and permitting authority". On
20 page 39, Mr. Katz asked, "Because it's designated agricultural for use of agritourism is having a wedding a
21 legitimate reason for putting in this venue? Is it possible the applicant could simply have put this up based
22 on the permissible use without going through this permit?" Mr. Harvey responds, "Based on the current
23 wording of State law if the applicant demonstrates that there is an actual farm on the property and the
24 proposed venue is connected with the marketing of same the answer is yes". The next page, "The State is
25 granted the County of Orange and other counties certain powers. They have also eliminated certain
26 responsibilities for the lack of a better way to put it. And one of them is regulating farm activities. Like it or
27 not, an agritourist operation, which the State has indicated includes a wedding venue, is a legitimate,
28 recognized agritourist activity. The applicant however, at staff's determination, is going through the
29 regulated process." In the Special Use Agenda abstract, page 6, the staff report states, "Wedding venues,
30 in fact, are specifically listed as recognized agritourism activity by the state. It is true that the applicant has
31 the legal ability to develop an agritourism activity including but not limited to a wedding retreat venue on the
32 property as it is recognized as a farm in accordance with State law". Again I point to the North Carolina
33 Department of Agriculture website under tab 13 you have another Department of Agriculture initiative, the
34 Got To Be NC program specifically lists parties, weddings, honeymoons, as parts of agritourism, and
35 despite what anybody's feelings about Harnett County may be but they, too, include on their website
36 weddings, receptions, honeymoons, as examples of agritourism activities. With respect to the Brewer Farm
37 specifically her documents showing bona fide farm status under tab 17. The affidavit, which you all are
38 familiar with, is page 92 of the application of the appeal agenda. And then specifically the farm plan
39 summary, this is under tab 16, goes into extensive discussion of the chestnut operation, specialty cut
40 flowers operation, the honeybee operation, which is admittedly less significant a component but a legitimate
41 component nonetheless, and the agritourism component. Now, they specifically relate. The activities that
42 are going on at the site they use the agritourism use to the farm activities. In particular, the wedding
43 package options include day of farm tours for wedding guests, honey tastings, seasonal floral workshops
44 using the flowers on the farm and additional agritourism options such as beekeeping workshops are
45 planned in the future. Those are connecting the farm activities to the agritourism in a way that's absolutely
46 contemplated by the statute as interpreted by multiple entities in the state as well as your own County staff.
47 So just to review the definition once more under tab 11, any activity- we can definitely check that off, we're
48 definitely dealing with any activity.- carried out on a farm - that one's settled.- that allows members of the
49 general public, - that's clearly check marked- for recreational, entertainment, or educational purposes, -the

1 farm plan talks about running educational programs for student and the recreational entertainment
2 purposes, I think, is clear.- to view or enjoy rural activities, including farming, ranching, historic, cultural,
3 harvest-your-own activities, -they're having pick your own flowers, you pick flowers- or natural activities and
4 attractions –they fit exactly within the statutory definition as it's provided and would be looked to by any
5 reviewing court following the rules of statutory interpretation, instruction. In this case when agritourism is
6 not defined in the other 2 sections that address it. The applicant's addressed 2 other cases that I would
7 also like to point to as well. That being Balkums' nursery company and versus Mecklenburg County and
8 Steadman versus Rijdes and what I think is significant about these 2 cases is that the courts specifically get
9 into the state policy with respect to agriculture. In Balkum's Nursery, and this is under tab 9 of the
10 applicant's authorities notebook, this starts in the second to last paragraph of the first page, "It is a public
11 policy of North Carolina to encourage farming, farmers, and farmland. The General Assembly has stated as
12 policy in various ways. It's declared to be the interest of public welfare that North Carolina farmers who are
13 producers of field crops and other agricultural products including vegetables, bulbs, flowers, other
14 agricultural products shall be permitted and encouraged and promoted, stimulating increased production,
15 use, and sale". The next 5-6 paragraphs continue to outline this policy in promoting North Carolina
16 agriculture. The last one, which addresses 106-583 is interesting here where it states, "This section
17 sanctions the development of new and improved methods of production, marketing, distribution,
18 processing, utilization of plant commodities, all stages from the original to producer through to the ultimate
19 consumer and the methods of conservation development and use of land." So it's encouraging farmers to
20 take chances, to develop new methodologies, new markets for agriculture in this state, and that's exactly
21 what the Brewers' are doing. When you talk about the Iredale case when it had to do with biodiesel and
22 whether they had asked for a re-zoning or identified their uses as industrial versus agricultural. They were
23 completely different than the related activity of agritourism that's going on here, which is why I think it's an
24 important distinction. But in that case they were producing 500,000 gallons of biodiesel and they only
25 claimed that they would need 100,000 gallons on their farm and the courts said that's too much of a
26 disconnect. Now the disconnect that the applicants have tried to compare here and make a comparison is
27 the size of their barn related to what the uses are. I think it's very hard to pin down the Brewers at this time
28 as to what the capacity and how that barn is going to be used for agricultural purposes when they're maybe
29 a year or less in and we're looking at a 20-year timeline for a farm to develop and 1,300 chestnut trees to
30 be processed and expansions of flowerbeds. There will be an acre and a half or more. And honey
31 operations. The ability once you set up that infrastructure, which Mr. Katz so brightly pointed out, can be
32 expensive. Once you buy the equipment to replace the labor this can become a processing facility for other
33 chestnuts as they develop that market within the state. And that was part of the testimony was that
34 chestnuts are not being grown right now. And it's a growth opportunity that is highly beneficial to Orange
35 County. But the point that I was making there with respect to the use in terms of the square footage of the
36 barn and why that's misplaced is that it completely ignores the fact that the revenue from an economic
37 impact and how the agricultural activities and the production of this is going to be substantial. Planned to be
38 substantial. And is not the cart behind the agritourism horse but the other way around. But it's very
39 important in the interim for a new farm to be able to take advantage of these agritourism opportunities to be
40 able to bridge that gap and create these new markets. And again, North Carolina public policy is to
41 encourage this innovation and agriculture. And so not only do they fit within the definition they fit within the
42 state policy. And that's, again, consistent with the testimony of Mr. White. In terms of a couple of small legal
43 issues that I would be remiss not to mention... Mr. White has demonstrated through his experience,
44 education, and training that he does hold a special knowledge different from the lay community with respect
45 to food systems. He's discussed his methodology, and its reliability. And he's provided his opinion. He
46 should be admitted as an expert on this question of consistency with plans and whether this is a viable
47 farm operation that benefits and is consistent with the plans and policies of the state and Orange County. In
48 addition, Ms. Brown objected with respect to Mr. White's ability to testify on the question of agritourism, the
49 definition of bona fide farm purpose, but rule 704 explicitly allows testimony as to the ultimate questions if it

1 will assist the trier of fact in reaching their determinations. And then, finally, with respect to the extent that it
2 becomes applicable we would ask this Board not to issue a stay. It is North Carolina law that a property
3 owner that proceeds during an appeal is proceeding at their own risk. Mr. Bryan mentioned that at the last
4 hearing and there are no immediate harms to the adjacent property owners, should they choose to appeal,
5 this would be heard in Superior Court before any of these activities begin. Possibly in late spring. But also
6 we're talking about a building permit again. That's what you would be staying, is a building permit. Which is
7 completely separate. That is not the issue that we're dealing with here. We're dealing with the use. So we
8 would request that, if that aspect should become relevant, be denied. But, based on all the other arguments
9 I think we've shown by a substantial margin that jurisdictionally you're very limited in terms of what you're
10 reviewing here and the estoppel argument must fail because that issue has not been raised before and
11 decided, and finally that this absolutely is a bona fide farm purpose, the agritourism, the farm purpose, all of
12 it fits within the exemption. And so we would ask that you affirm Mr. Harvey's decision and allow them to
13 proceed and allow the staff in the future to reassess the activities that are going on on their property. Thank
14 you.

15
16 LeAnne Brown: Ok, I will try to be brief. Let me start with the public policy of the state of North Carolina.
17 The reason that we have a farm exemption is to protect farms. It protects not only this applicant's operation
18 or whatever she may be doing there but it protects every other farm in the state. It is not the public policy of
19 the state of North Carolina that the farm exemption be used to allow commercial use masquerade as a farm
20 use to detriment to the farmers that live around it. That is not now nor has that ever been the policy of the
21 state of North Carolina. If you look at the Balkum case and the Steadman case, which Mr. Petesch
22 referenced, they talk about the public policy of the state of North Carolina and the public policy is to protect
23 farmers. My clients live on farms as well. They have someone pretending to be a farm dropping a wedding
24 event center in the middle of their farming community. To the detriment to their poultry, to the detriment of
25 their horses, and that is not the public policy of the state. That was not what the statute was designed to
26 protect. It makes a mockery of the statute that exists. The creativity in Balkum and in Steadman deals with
27 producing plants. Steadman is described as operations involving large-scale production and sale of
28 ornamental and flowering plants. There's no wedding here. There's no wedding venue. There's no
29 agritourism in these cases. These are cases involving the production of plants. Balkum is the same. The
30 tract was used for raising agricultural products, which included the facility to sell those products. Not exactly
31 what we are talking about here. Mr. Petesch said something very interesting when he started. He said this
32 wasn't about a building, or a parking lot, or why you built it for 250 people to use it. Oh, yes it is. That's
33 exactly what it's about. What does land use control? It controls the use of property, including the use of
34 buildings. If you look in your ordinance you would see that we distinguish between single-family and multi-
35 family dwellings. That's a use. It's whether a single family lives in it or a multi-family lives in it. Is the use an
36 event center, or is it something else? It's all about what the building and the property is going to be used
37 for. What the statute says is that the statute does not limit regulations with respect to the use of farm
38 property for non-farm purposes. So absolutely, the decision that the County has to make is whether the
39 farm property is going to be used for non-farm purposes. Mr. Petesch provided a case to you from 1950. I'll
40 point out that that's 66 years old. I don't usually see cases cited that are old than I am. It's a case that
41 predates the actual statute we're talking about, by 9 years. It predates the grant of the zoning authority to
42 the counties, by 9 years. It's a case that talks about the fact that what was in place was a building permit
43 process and nothing else. The building permit requirements had been met and the County thought that the
44 landowner was going to build one thing and then he used it for something else. That has nothing to do with
45 the current modern context of how we apply zoning. The other thing about this case that's interesting, if we
46 want to talk about it and cite it as authority, it says that the court found that there's no competent evidence
47 to support such a conclusion. The conclusion that he was going to build a hotel and use it for a nursing
48 home. And there's no basis in fact to show. And that the conclusion is arbitrary and unreasonable. That's
49 not your facts either. If you look at the citations from the Minutes of your meeting on the SUP where Ms.

1 Brewer testified about her plans it goes on for a full page, single-spaced, about the fact that this is a
2 wedding venue. It is designed as a wedding venue for 250 people. "And what kind of events do you expect
3 to be hosting?" her lawyer asked. And she responded, "Primarily weddings and wedding rehearsals on
4 Friday and Saturday nights. I'm wanting to give back to the community as much as possible so I do want to
5 do a lot of fundraisers and charity events. I have a lot of connections from work with UNC to both non-
6 profits and charity organizations. Additionally, because the use is so low and it will be empty most of the
7 time, 80%-90% of the time, if there's a community group, a youth group, a school group that needs a space
8 during the day I'm more than happy to donate this space to them as well." She goes on to say later, "During
9 the off-season there will be weeks where there's nothing going on. The barn is only in operation during
10 events", she testified. It's not a situation where there's no competent material and substantial evidence that
11 the building, as designed and proposed, met this County's definition of an event center in its UDO and
12 consequently was required to have a SUP in order to be built because this County has determined
13 legislatively that a use of that magnitude needs special consideration by this Board to determine whether
14 the special findings can be met. It is akin to the very example in the brochure that Mr. Petesch wanted to
15 read to you that Orange County had prepared. Examples of uses and activities that may be regulated or
16 restricted include commercial activities unrelated and adding no value to the bona fide farm activity. There
17 is no evidence before you that the use of this facility 3 days a week during the season to provide weddings
18 to brides who have full run of the farm in any way increases the sale of the honey or the chestnut flower or
19 the 1,000 bulbs that have been planted on this farm. It is a commercial use. It's the very thing that the
20 statute is designed to carve out. You have not been asked to make an advisory opinion. You have been
21 asked to take absolute facts and determine, on those facts and on sworn testimony you received over
22 several hearing, that this is a wedding venue and the use of this property as a wedding venue is neither
23 related to nor incidental to 3 beehives, 1,000 flowers, and some chestnuts. We had some discussion in Mr.
24 Petesch's argument about the case I cited for this. The Estoppel argument. And he said that there had
25 been no judicial body that had considered anything in this case. I'm looking at you. You held a quasi-judicial
26 hearing. You were the judicial body that made the decision that the SUP should not be granted. An appeal
27 of your decision to Superior Court is an appeal on your record as the finders of fact. There's a difference
28 between this case and the case that I cited to you because he went far longer but the underlying premise
29 remains the same. He went for a permit, he used the property more than he was supposed to, he got his
30 permit revoked, and then he came in and said, "Oh, I didn't need it in the first place". It's the same facts. It
31 really is the same facts. And you do have the authority to determine that. Orange County has delegated to
32 you certain special use permit reviews, under 160a-388. In your UDO the fact that it refers to the
33 Commissioners means you in the case of something that has been delegated to you to make the initial
34 findings of fact. That ordinance provision applies to you. The County applies it to you all the time and I
35 suspect you've seen that over the years. Mr. Petesch said that none of the cases I cited to you dealt with
36 agritourism. That's true. North Carolina has not yet had a published appellate decision that strikes the
37 balance that you have drawn the short straw to get to deal with today. But I believe that the cases that
38 North Carolina has looked at are instructive because all of those cases involve a great deal of farming. And
39 still the courts determining from time to time that those uses are not farm related activities. Mr. Petesch, in
40 his own argument, told you it would be 20 years before this is a productive farm. I do not read either
41 chapter 153a or chapter 106 to mean that you engage in agritourism activity not related to or incidental but
42 primary for 20 years while you're trying to decide if you're going to be able to make a farm go. You get the
43 farm first. I was at the orchards at Alta Pass this weekend, there's 108-year-old orchard there. Apples
44 everywhere. Selling bag upon bags of apples. They also sell some jellies and they had a band play. That's
45 agritourism. It's agritourism because it was agriculture for 108 years and the extra little tourism piece gives
46 it an extra push to keep that orchard there. If they had put up a venue to play music and decided to plant an
47 apple tree that would not be an agritourism use. We talked earlier about Professor Owens and I did include,
48 in your notebook that I gave you, a blog that Professor Owens wrote that's on the issue before you. The
49 case law is clear. The case law under rule 704 is clear. That a trier of fact cannot receive testimony from an

1 expert that tells a trier of fact how to interpret the law. The trier of fact has to do that. And the cases are
2 clear about that and you're the trier of fact. You can consider, of course, legal authorities. Whether they're
3 primary, secondary or perhaps even tertiary. I stand by saying the blog may be tertiary but what Mr. Owens
4 says in his blog and what I'm saying to you about the statute actually match. He points out in his blog that a
5 produce stand to sell produce for a farm may be incidental to the farm. The planting of the tomatoes outside
6 the Walmart to sell inside is not. Clearing out a barn for a wedding occasionally is incidental. Usually there's
7 some junk on the floor that demonstrates you cleaned out yesterday. Clearing out a wedding occasionally
8 to use it for a farm is not. If you compare the building permit materials to the SUP application you will see
9 that the use of this property as an event center as that is defined in the UDO. You will see that the building,
10 the driveways, the septic system, are all designed for use as an event center. Event centers require SUP in
11 the AR zone. This event center's SUP was denied. It was an error to then let a building permit be issued
12 without that SUP in hand. I'm just asking you to fix it. And I appreciate your time and attention.

13
14 Karen Barrows: Ok, thank you.

15
16 Andy Petesch: Could I respond?

17
18 LeAnne Brown: With all respect, unless you want to say that you've got the burden of proof here I believe
19 that I have the last argument.

20 Andy Petesch: This is a quasi-judicial proceeding.

21
22 Karen Barrows: James, can I ask? Because this could go on all night, and I have to work tomorrow. Do we
23 have to repeat this back and forth or can we say we're done?

24
25 James Bryan: So it's a little complicated. I do not believe that either party has the right to the last statement.
26 I believe both parties have a right to rebuttal, however there's still the issues of materiality, relevancy, and
27 unduly repetitious so you can say, "do you have anything new to say?" and if they say yes, then I would
28 allow them but as soon as you hear a word that you've heard before you could tell them, "I've heard this
29 before. You're repeating yourself.". But if they're not repeating themselves I would offer that they should
30 both allow as much rebuttal as they have to offer new information to the Board.

31
32 Karen Barrows: Do you have new information?

33
34 Andy Petesch: I have clarifying information. And if you decide not to hear from me as I start please cut me
35 off and I will end my comments. But I just want to clarify that my argument was not that this farm was going
36 to take 20 years to become productive. The timeline set out in the farm summary is going to be productive
37 much earlier than that. But the timeline in terms of its full capacity was 20 years. The Estoppel argument,
38 two things have to have happened.

39
40 Karen Barrows: I think we have heard this before.

41
42 Andy Petesch: Very well.

43
44 Karen Barrows: Thank you. Are we finished?

45
46 LeAnne Brown: Yes ma'am. You heard Ms. Petesch's argument. You decide what it meant.

47
48 Karen Barrows: I have a question of staff (**inaudible**). Michael, is there any process within the Planning
49 Department that deals with issues like this? Specifically questioning actions of the staff?

1 Michael Harvey: I'm sorry I didn't hear the last part?

2

3 Karen Barrows: Questioning actions of the staff.

4

5 Michael Harvey: With respect to?

6

7 Karen Barrows: Is there a process within the department to deal with this?

8

9 Michael Harvey: Well, to be blunt, the decision was made in consultation with other staff and the Attorney's
10 office in this particular instance we determined we had no zoning review authority over the project as
11 submitted.

12

13 Karen Barrows: I guess what I'm asking is there nothing internally?

14

15 Michael Harvey: This was discussed amongst the staff. That discussion included the County Attorney's
16 Office and our reaction to this permit is articulated in the email.

17

18 Karen Barrows: Are there questions from the Board members?

19

20 Barry Katz: I have a question for you, sir. From the November 9th 2015 Minutes, was there a designation
21 that that property was a farm at that point or were the applications done subsequently?

22

23 Michael Harvey: There was a farm number that existed on the property. As I testified at that November
24 hearing, and it's detailed in our abstract, we still made the determination and informed Ms. Brewer she had
25 to go through this process because we didn't see any ag activity on the property.

26

27 Barry Katz: Right. Ok. And the barn. Where's the barn? Where does it come from?

28

29 Kara Brewer: It was an old barn built in the 1860's from upstate New York.

30

31 Barry Katz: That you're transferring down here?

32

33 Kara Brewer: Correct.

34

35 Karen Barrows: Any other questions from staff for lawyers?

36

37 Matt Hughes: So when you had said that you had determined you had no zoning authority. Did that mean
38 looking into the application and comparing it to the SUP that Ms. Brown has articulated that, in her opinion,
39 the two applications are fairly identical?

40

41 Michael Harvey: The only way I'm going to answer that question is looking at the (**inaudible**) of what was
42 submitted in March and consultation with staff members, that also included the Attorney's Office. The
43 decision we made is articulated in the email.

44

45 Karen Barrows: Anything else? If there is nothing we can close the public hearing and deliberate.

46

47 Barry Katz: May I ask our attorney, the issue of Estoppel. It's still somewhat confusing. Do we have
48 standing to even consider that? If we are the representatives of the County Commissioners then I suppose
49 we do.

1
2 James Bryan: Yeah, this is very confusing. So you guys are not here as representatives of the Board Of
3 County Commissioners. This is a separate Board, a separate entity so that's one thing. You're supposed to
4 be impartial, finders of fact here. The other thing... so the estoppel arguments are kind of complicated. I
5 think that this Board does have some equitable powers. I didn't do extensive research on equitable powers
6 before coming in here. I didn't realize... But I believe that this Board does have equitable powers. I think
7 **inaudible** this Board cannot hear the same matter twice. But, that is very precise. So, a SUP? We've got
8 something in the UDO that says you can't bring it back in 1-year. I would say that that application can never
9 be brought back if there's no material changed to it, there has to be material change. And our UDO goes
10 one step further; even if there is a material change you can't do it in 1-year. So I think that equitable powers
11 apply. I could be off on that but I think this Board probably has enough information to realize that this is an
12 appeal of Michael's decision. This is not the SUP.

13
14 Barry Katz: Right.

15
16 Karen Barrows: Is there a motion to close?

17
18 James Bryan: Madame Chair, and if we can just give a quick summary of the evidence presented? If you
19 want, given the time and if there's no objection, I think you can just cite the pages 2 and 3 of the cheat
20 sheet and I can give that over to (**inaudible**).

21
22 Andy Petesch: If I may interject, to also include exhibits SPG exhibits 22,23, and 24? And I believe Ms.
23 Brown had an additional exhibit as well.

24
25 James Bryan: So do I understand that there's a motion to summarize the evidence as presented in this
26 cheat sheet in addition to exhibit 15? What was number 15?

27
28 LeAnne Brown: 15 is the request to Mr. Harvey to notify us when a decision had been made, in January
29 2016.

30
31 James Bryan: Ok, and what was 22,23,24?

32
33 Andy Petesch: 22 was the approved building permit, 23 was an email by Mike Ortoski, and 24 was Mr.
34 White's report.

35
36 James Bryan: Yeah. A motion to include all those.

37
38 **MOTION** made by Barry Katz to include evidence presented in the cheat sheet, exhibit 15 (LeAnne
39 Brown's),22,23,and 24(Andy Petesch's). Seconded by Susan Halkiotis.

40 **VOTE: Unanimous**

41
42 Susan Halkiotis: So how do we proceed?

43
44 James Bryan: So a part of it is that we've heard so much and we're kind of tired. But there's a number of
45 ways to go about it. You can just have an open deliberation and just talk generally about what you think.
46 That may prompt some questions. Or you can go through the sheet, if you guys are just confident. I know I
47 wouldn't be but you can just...
48

1 Barry Katz: The question that is presented. This is what the focus of all of this is. Is whether Mr. Harvey's
2 zoning approval was correct or not.

3
4 James Bryan: Right. Well, and wrapped into that is some jurisdictional questions. That was at least posed
5 to you about whether he made statements at all in that email. So keep in mind that it must be an affirmative
6 action of staff. The lack of action is a totally separate thing that this Board does not have jurisdiction of.
7 Now there are questions about this last email, about the barn status long ago about whether that's in writing
8 or not, that's different and I don't know the answer to that.

9
10 Barry Katz: So the fact that he did not take action speaks to what you just said. We can't consider the fact
11 that his idea was that there was no zoning approval required?

12
13 James Bryan: What you have to reconcile is what he did. And he has multiple writings and multiple
14 testimony, and there's some confusion between the public about what he actually did. So it's this Board's
15 job to say.

16
17 Barry Katz: Ok. I do believe I have a gist of what you just said and we may find out whether I do or not. So
18 now you suggest that we proceed 1,2,3 as far as this goes? Address standing?

19
20 James Bryan: If you don't want to address standing, if you don't want to address the final determination
21 that's a jurisdictional question. It's the last page that is really what it is. It's just simply do you affirm, reverse
22 or modify his decision? But to get there you have to understand what are you modifying? What was the
23 decision? Was his email, was that a decision? Was something else a decision?

24
25 Susan Halkiotis: So Mr. Harvey's decision was that no zoning permit was required, based on the
26 documentation that was submitted? So, this is what we're discussing, his decision?

27
28 James Bryan: Yeah I think at least one party has offered that it wasn't a decision. That he was merely
29 relaying that information.

30
31 Barry Katz: So there was no decision?

32
33 James Bryan: That's what...

34
35 Barry Katz: Oh, ok. That's fascinating.

36
37 Karen Barrows: I think the building permit comes through the building department so perhaps the question
38 is whether Mr. Harvey should have had more input into that, prior to the issuance or not?

39
40 James Bryan: So the issuance of the building permit is outside of this body's jurisdiction. That was issued
41 by the building inspector who applies a different statute with the North Carolina State Building Code. In that
42 he may or may not have relied upon Michael.

43
44 Susan Halkiotis: But he does rely on him. He does rely on what the Planning Department's decision is with
45 regards to zoning approval. Right?

46
47 James Bryan: That I can't speak to because... And I apologize if I'm making this hard. So I can't testify. I
48 can't give you any information that's useful.

49

1 Barry Katz: Well on May 18th, this indicates that there was an application filed for building permit. Along with
2 an affidavit indicating the structure would be used for agricultural purposes exempt from zoning. And this is
3 what Mr. Harvey is saying. As a result of the submitted documentation no zoning approval of the property
4 was required for a building permit. So because they had demonstrated that they're an agricultural entity
5 they made their application. This wasn't about whether they were approved or not approved. This was just
6 about their application. And he said that there's no zoning because of the submitted documentation that this
7 is an agricultural entity. Am I right on this? That's the clearest reading I can get on this. And that's what he
8 says, that future zoning enforcing will depend on actually use because submitted documentation indicates
9 that this is an agricultural entity. That's why how the building permit was filed... So what our question is
10 becomes maybe a little bit more confusing but because as your attorney said, it's based on current
11 evidence. Not future evidence.
12

13 James Bryan: Yeah so, again, I can't give you testimony but I can give you legal advice. Everything is going
14 to look at the case of act and when you're reviewing the applications, the application on its face. So for
15 instance, there was an application that started this appeal and it says, "Here are the applicants, here is the
16 issue" and they're allowed to expand upon that when they're at their hearing but you take it at face value.
17 And that's the same thing for the building permit, for zoning compliance permits, and stuff like that. And a
18 SUP comes to you guys and says, "I want to build a daycare". If you say, "Actually, you're going to build
19 eldercare." You can't do that. You have to look at what I'm asking for. I'm asking for a permit for a daycare.
20 Then you issue me the permit for a daycare and as soon as I have eldercare, when I have nurses running
21 around, and I have retired people then you can be like, "Whoa, that's a notice of violation". Because the
22 notice of violation is when that use occurs but the permit is issued on its face about what these people are
23 alleging and what they're asking for.
24

25 Susan Halkiotis: But in a case like that the damage is done. What you've built is for a daycare and what
26 you're using it for is an eldercare. And there are specific regulations for both of those thing and one doesn't
27 fit the other.
28

29 James Bryan: And that gets tricky. So let's go to building permits. I ask for a building permit for childcare
30 and it turns out to be eldercare. If there is a change in use the permit would not be valid anymore and if
31 there's not a valid permit the building inspector can condemn the building.
32

33 Susan Halkiotis: But if the change in use occurs after the building has been built.
34

35 James Bryan: And that's why there's an issue later on we may get to about the state and while the property
36 owner is mentioned to that they're proceeding at their own risk. There's been cases where people spend
37 millions of dollars on this mountain home and then it's an inch over the property line, "I'm sorry, you're
38 going to have to tear it down" type thing. And it's a big waste of funds. For you guys: just decided what is in
39 front of you and what the UDO requires of you guys.
40

41 Barry Katz: We do not take into consideration the substance of this submitted documentation in this case,
42 correct? What I mean is... The submitted documentation would purport that this was an agricultural entity
43 for agricultural purposes. The argument that we heard is that the agritourism aspect is potentially not
44 incidental but in fact is the actual purpose of this whole activity. That the farming is secondary to the
45 wedding venue. Not that the wedding venue is sort agritourism related to an agricultural activity. We'd
46 already been through this, we'd looked at this building, the septic field, and the parking, and all of that stuff.
47 None of that has changed. That doesn't enter into this, is that correct?
48

1 James Bryan: It may depending on how you guys go about it. The critical to think about is we've had so
2 much testimony, so much evidence, and it's not advisory. It's not about anything in the future, it's not about
3 anything what should be done in hypothetically cases. It's about what Michael should have done. Put
4 yourself in his shoes on May 18th, when he wrote that email, what should he have written? Put yourself in
5 his shoes and say, "Well by the UDO he's supposed to this do" and you should be able to say where in the
6 UDO the current Planning Supervisor must do this. For instance, one thing is that if there is an appeal staff
7 has to present it to the Board . They cannot make a determination that this isn't worthy of the Board of
8 Adjustment. They all get there. So if that gets appealed you would say, "yes, I could read in the UDO where
9 it says you give this to the Board of Adjustment. That's what you should've' done". What should've Michael
10 done at what date?

11
12 Susan Halkiotis: I can't start at that level. The level that I start at is that I believe that the farm is incidental
13 to the wedding venue, not the other way around. And I come to that feeling about it just based on my
14 question to Ms. Brewer at our last meeting, which was that if the farm was driving the whole thing then why
15 in January those questions weren't answered differently than they were? Which I think in the January
16 application that the answer was that it was a special events building for the purpose of assembly
17 something. I might be getting those quotes wrong. And then when I asked why that was Ms. Brewer had
18 answered that she was advised to that by the Planning Department, which I didn't quite understand. So
19 that's where I start with this; that the whole, to me, is just an effort to get around the decision that was made
20 last November. That's the way it feels from where I sit. Now I've got to reach and make a decision about
21 Mr. Harvey's findings? Correct?

22
23 James Bryan: Yes. What's on appeal is Mr. Harvey's determination.

24
25 Matt Hughes: Well I approach it from a different perspective. Take me from where we were in November all
26 the way through today so I think we've clarified that because previously that was a SUP, we're talking about
27 another process altogether, that they're not the same issue. And my feeling from that meeting in November
28 is that the UDO is broadly written and we applied it regarding welfare or safety and some other things. I
29 cannot remember exactly the terminology that the UDO calls for. In this meeting and the last meeting we
30 talked about the business plan and how viable it was. My belief is I can see why that was discussed at
31 different points, especially what was predominantly driving this in some way. In the previous meeting Ms.
32 Brewer said that the way in which her farm plan summary is that the chestnuts and flowers, the order in
33 which those were presented in the plan is... The primary focus will be chestnuts and then flowers and then
34 honey and then event space. At least that's how I interpreted her answer to my question. Now whether or
35 not that all works out, that's free enterprise. The farm may fail, what have you. I don't think that it really
36 matters. But what's interesting to me is that the email from Mr. Ortoski in October of last year it does
37 mention to the official over at the agriculture department that this barn would be part of a bona fide farm
38 that would have some agricultural use to it. Now it doesn't say which is primary; the barn event space or is
39 it the growing, at the time, of herbs and flowers in addition to the agricultural events. So I do believe that
40 that was part of the plan all along. From where I sit I do think it meets the criteria for a bona fide farm. It
41 may not be what I think of as a farm, it just doesn't but there are a lot of farms that aren't what I think of as
42 a farm. I do think that what's obviously driving this is the agritourism part but from what I can tell it does
43 meet the criteria for that. Even though that's not necessarily what we're deciding. I will agree that it is
44 interesting that there's all this extra capacity for things like the septic system and the space but I would also
45 assume that it would be like building a highway. At 2 o'clock in the morning the highway doesn't have a lot
46 of cars on it. But you're not building it for then. You're building it for when you think you might need extra
47 capacity, whenever that might happen to be. I don't know how much tourism there would be but I would
48 assume that there would be that need or that desire to be able to do it at some point. But I do believe that it
49 is, based on the question I asked in regards to the farm plan, that the tourism piece would be secondary to

1 the farming operation. Especially with the information that we received today; that a farm can be in multiple
2 locations. But I'm certainly sympathetic to what the neighbors are saying about the disruption that this
3 would really cause everyone. So I do feel conflicted. I think the key piece here is that there is an
4 enforcement mechanism and if it comes to find out that the farming activities is not the primary of the land
5 then someone might be out of business.

6
7 Barry Katz: It's hard to view the agriculture as a primary use. You take 150 year old barn from upstate New
8 York and bring it down here, putting in 2 roads, parking for 250 people, septic field for the capacity of
9 running events, which was all presented to us as an event center, and you're using 25 square feet to cook
10 some chestnuts and etcetera. It was like back filling the agriculture use after the SUP was rejected. And
11 trying to reposition themselves as a farm merely to get this event center approved, as a farm. That's what
12 we heard. With people who really don't have any experience in this but, they're allowed to enter into this
13 thing and fail but as result of this submitted documentation... Perhaps he had inadequate documentation
14 for what we're considering now and for the testimony we've heard to be able to make a determination. You
15 know?

16
17 Matt Hughes: That's very possible.

18
19 Barry Katz: And that, in fact, this was destined to end up here because of that.

20
21 Karen Barrows: And I think to your point of letting them go ahead and then afterwards Michael might have
22 to say, "Now it's not being used as a farm speaks to what Susan was talking about. You've already built the
23 building and said it was going to be a daycare and now it's not". **Inaudible**

24
25 Barry Katz: With the way I read that email I read Mr. Harvey basically telling them future zoning
26 enforcement is a hammer that you really have to face and do you want to face that hammer under these
27 circumstances? But it's plain as day that this is a wedding venue. That's what it is. It has some agricultural
28 curlicues on the outside but they're not relevant to the wedding venue, particularly. And the wedding venue
29 is not particular relevant to what they purport in their agriculture. It's a separate use. It's a use that would be
30 appropriate for zoning. As it was when it was introduced without the fig leaf of the agricultural suggestion of
31 chestnuts, bees, and flowers. But we're not asked to determine that, are we? You have to tell me, are we
32 asked to determine this?

33
34 James Bryan: The only thing for the Board to consider tonight is to affirm, reverse, or modify Michael's
35 determination. If there was a determination made.

36
37 Susan Halkiotis: What would a modification look like? What does that mean?

38
39 James Bryan: That's straight from the UDO. I don't have anything in mind, I don't recall either party offering
40 any modification but the Board has that prerogative. If they think that Michael's determination could be
41 affirmed if it was modified in some way we could do that.

42
43 Susan Halkiotis: I want to reconcile one thing, and that is the question presented and on page 82 of our
44 packet, which was the prayer for relief... So the point that they intersect is reverse and vacate the May 16th
45 decision?

46
47 James Bryan: Right.

1 Susan Halkiotis: Is that what's before us? We're not modifying this decision, we're either accepting it or
2 we're reversing it?

3
4 James Bryan: That's their prayer for relief but this Board always has the ability to affirm, reverse, or modify.

5
6 Barry Katz: Based on the testimony we heard today?

7
8 James Bryan: Right. The appellant has the burden to prove that there was an error made.

9
10 Barry Katz: So on the rulings, which is really what we're dealing with here, 2A Orange County Planning
11 Director **inaudible** shall review the March 16th 2016 building permit application and make a determination
12 as to whether the structure identified will be used for bona fide farm purpose and whether the use as a
13 wedding event is related or incidental to the bona fide farm purposes, if any. It's a request that **Inaudible**.
14 So 2 really begs to the question whether the building permit, approved for agricultural purposes, was based
15 on the fact that it was agriculture purposes is an error? Or questions whether it is?

16
17 James Bryan: No. So the building permit issued is outside the jurisdiction of this Board. It's whether Michael
18 should have told them, "Hold up. I need to tell you yes or no on this" instead of allowing it by doing nothing
19 and saying, "No, I'm going to hold off on a decision".

20
21 Barry Katz: How does that relate to the rulings? On you your last page is we were to consider number 2
22 and the basis of reversal would be based on the testimony we heard here tonight. Correct?

23
24 James Bryan: You have to make findings of fact about what caused you to believe that Michael was in
25 error. That he should have made a determination. And you don't have to make that determination, you're
26 telling him that he has to make that determination.

27
28 Barry Katz: Oh, ok. So we're not making that determination. The Planning Director will revisit this, correct?

29
30 James Bryan: Right.

31
32 Barry Katz: I understand now. Ok. So we have to state what the basis of a reversal would be?

33
34 James Bryan: Right. You'd have to say, "Yes, you have to make this call in telling the building inspector that
35 this is or isn't a farm".

36
37 Barry Katz: it's whether or not it will be used for bona fide farm purposes and whether the use of the
38 wedding and event center is related to or incidental to the bona fide farm purpose. That would be the basis.
39 If we determined that that would be what we would suggest that he go back and reconsider? I'm
40 excessively worried about this because this is new territory for me.

41
42 James Bryan: It's new territory for a lot of us. I didn't quite follow that last one.

43
44 Barry Katz: My point is this, that here we are, we heard testimony tonight which one side or the other was
45 defending or purporting that the barn and the wedding venue was not incidental to the purported farm.
46 That's what 2A speaks to. And therefore, if we were to consider reversing the decision we would have to
47 state why we thought the evidence that we heard supports the idea that the barn was not incidental to an
48 agricultural use.

49

1 James Bryan: Perhaps but not necessarily... Because what you could say is that, "I heard a lot of testimony
2 if this is a farm or not and we have to rely of competent, substantial, and material evidence. But that was
3 immaterial. It's immaterial about whether it is a farm or not because regardless if it's a farm Michael always
4 has to tell the building inspector what it is. So I'm not going to decide that, that's for Michael to decide".
5 That's one way the Board could find.

6
7 Barry Katz: Obviously, I've pretty well made it clear that I think the intent of the farm is to have a wedding
8 event. Clear and simple, the wedding is the foremost element in all of this. How does that relate to the
9 purported agricultural activities? Does this sort of supplement the agricultural activities, or do the wedding
10 activities supplement the wedding event? I mean are these questions we have to deal with or just say bring
11 it back to the plan director for reconsideration? What are we supposed to say? How do we vote on this?

12
13 Matt Hughes: I certainly hear what you're saying. I'm not sure of all the mechanics that's involved but I think
14 we're approaching the issue from different points of view and we may come to different votes on the issue. I
15 guess to some extent I'm a little confused as to where Mr. Harvey weighed in, if at all, that there was a
16 permit that was submitted because there was an affidavit attached to it that it wasn't required to have a
17 weigh in from our staff. I could be wrong on that but that's how I read the email. I agree with you. It's
18 ambiguously worded. But I could also see why if that were the case why no zoning approval was required.

19
20 Susan Halkiotis: So can I restate Barry's question one more time? It says here under 2a that the current
21 County Planning supervisor that no zoning approval was required... that decision was reversed... Orange
22 County Planning director or their designee reviewed the application and make a determination as to where
23 the structure identified will be used for bona fide farm purpose and whether the use as a wedding and
24 event center is related to or incidental to such a purpose. So is this an option? This is written here, is this
25 one of our options?

26
27 James Bryan: Ok so there's 3 options. 1; to affirm. That's Andy. Andy is saying just affirm what he's said. 2;
28 reverse. That's what LeAnne is saying. LeAnne is saying, "Hey. Michael said something. Reverse him".
29 Now, she's praying for 2 things; to reverse him and then you tell him how to correct it. You tell him how to
30 correct, he has to look at it and he has to make a determination one way or the other. No more kicking the
31 can. You have to tell me whether this is a farm or not. And then you tell the building inspector that. And the
32 second part to that is until you tell that building inspector what it is the building permit is stayed.

33
34 Susan Halkiotis: Well it's not just whether it's a farm or not. It's whether or not the use is related to or
35 incidental, right?

36
37 James Bryan: Yes. Ok so...

38
39 Susan Halkiotis: So is one of our options to send it back for reconsideration? With our finding that, with our
40 opinion, it's not incidental or related. That it's the other way around.

41
42 James Bryan: So you can't give it to Michael and tell him what to do. You can cut him out the picture and
43 you can say, "This is something" or you can kick it back to Michael and say, "You make the call". But you
44 can't kick it back to him and say, "do this" because that's just you making that call right now.

45
46 Barry Katz: How hard is it to give it back to him so he can reconsider this. Whether or not this requires any
47 kinds of permits. That's what option 2 is, we say reconsider whether this needs zoning approval. Is that
48 clear?

1 James Bryan: Right. So one theory is that Michael made a determination of saying, "I'm not going to decide
2 whether this is a farm or not" so option 2 says, "That was wrong. You need to go back, look at it, and say
3 whether it's farm or not".

4
5 Susan Halkiotis: And whether it's incidental or related?

6
7 James Bryan: Yeah, sorry I keep using shorthand for that. So the bona fide farm purpose is not as clean as
8 anybody wants it and that's what's causing a lot of this grief here. So you look at bona fide farm purposes
9 are exempt from zoning. Bona fide purposes include agriculture, which includes agritourism. It also includes
10 other things; miscellaneous undefined things incidental or related to agriculture. So the ultimate decision is
11 whether it's a bona fide farm purpose, how does it get there, and what category of agriculture is it? The
12 appellant is arguing that a wedding center is not, by itself, agriculture and it is not, in this instance,
13 incidental to it.

14
15 Barry Katz: Right, but we don't make that determination. We just make the determination, the suggestion,
16 that Mr. Harvey reconsider his decision. Is that correct?

17
18 James Bryan: Right, that's what option 2 is.

19
20 Matt Hughes: Can I ask a process question? So let's say we reverse this. It goes to Mr. Harvey, he makes
21 a determination, the Brewers' don't like it, and the appeal and does that come back to us?

22
23 James Bryan: Yep.

24
25 Matt Hughes: Ok.

26
27 Barry Katz: And they have a right to go to court over this, I assume?

28
29 James Bryan: Yeah, so there's always a right after this Board decides either way to go to Superior Court.

30
31 Matt Hughes: So they could appeal our decision to Superior Court?

32
33 James Bryan: Yes. Every decision by Michael is appealable to you all and every decision by you all is
34 appealable to Superior Court.

35
36 Barry Katz: And who defends our decision in Superior Court, us?

37
38 James Bryan: You guys all have to go there.

39
40 Barry Katz: When it comes to these rulings... Are we ready to talk about it?

41
42 Susan Halkiotis: I think so.

43
44 Barry Katz: I certainly would propose that we consider the reversing the decision as it was stated in number
45 2a and b. Based on the testimony that I heard today. Now do I have to state specifically?

46
47 James Bryan: Yes.

48

1 Barry Katz: Well I listened to the attorneys talk about whether or not this was a bona fide farm and is
2 intended for agritourism in general as the approved use for agriculture. And considering that this property
3 that's being developed with a huge investment in roads, and septic, and parking capacity. They're moving
4 150 year old barn, which was designed, from our testimony last year, to be "An old barn that would
5 attractive for having weddings", not for agriculture as such. You could do agriculture in an old barn like that
6 but the investment is intended to appeal as a wedding venue. That's the impression I get from what I heard
7 last year and what I heard today. They're proposing to enact some agricultural activities and I understand
8 but I don't see how those activities are that germane to the wedding venue. They're justifying the fact that
9 it's a farm and that this would be incidental to the farm. But from what my impression is that is not incidental
10 to a farm and in fact the purpose of this is that you want to view or enjoy rural activities in agritourism but
11 people are going there to have a wedding. They're not going there to pick flowers. They're going to be
12 having 250 people there having a wedding in a property that marginally is a farm. That's the impression I
13 get from all that I've heard, 2 weeks ago and tonight. And can other people add to what I've said about
14 this?

15
16 Susan Halkiotis: Well I agree with Barry.

17
18 Matt Hughes: I have a question .so what happens... Let's say two of us vote against a motion, what
19 happens then?

20
21 James Bryan: We really hope that it doesn't get to that... So there's a difference between motions and the
22 actual ruling. Let's focus on the ruling. The ruling requires 3 votes and that's the easiest way to explain it.

23
24 Matt Hughes: And if there are not 3 votes?

25
26 James Bryan: Then you all do not reverse Michael's decision and it is de facto affirmed.

27
28 Matt Hughes: So basically we're the Supreme Court?

29
30 Karen Barrows: So the fact that this is a 5 person Board and 1 person's not here doesn't mean that
31 **inaudible**

32
33 James Bryan: It's majority.

34
35 Karen Barrows: **inaudible**

36
37 Barry Katz: Have we discussed this enough? Do you have a cautionary tale for us?

38
39 James Bryan: I do have a cautionary tale for you. However you guys decide it the findings of fact are going
40 to be very important. If there are undisputed facts I don't think that you guys need to regurgitate that. But
41 there should be some indication for the reviewing court if this were to get reviewed. About what,
42 particularly, did you hear? Now if you were to reverse the decision that would be what LeAnne was arguing.
43 LeAnne has provided you guys with substantial findings of fact and you could read through all of them. If
44 there were any that strike you that Andy objected to or on your own volition not substantial, immaterial, or
45 incompetent then you could exclude those.

46
47 Barry Katz: Alright, so my comments that I made in support of number 2 relate to these findings of fact? Do
48 I need to identify? I will if that's what you want?

49

1 James Bryan: Yeah.

2

3 Barry Katz: I mean, I'm doing this one at a time I haven't had the chance to reconsider this but the fact is
4 that I indicated that the application for the SUP, essentially, is the same as the later applications that were
5 filed in there for developing it. So it's clear that this is intended to be a wedding venue, based on the
6 materials that were presented to us last year and this year. She's essentially say, like by 15, that the farm
7 event barn and the electrical costs, etcetera were identical to the SUP application that she made. It's
8 consistent with that. All indicating that, in fact, the primary purpose of this is as an event center. Traffic
9 impact analysis, driveways, all of this was the same.

10

11 Karen Barrows: And Ms. Brewer stated it.

12

13 Barry Katz: Yes, that's what she said. In 24 she's just reiterating that, in fact, it's the same property. Mr.
14 Harvey testified that the March 16th plans were essentially the same as the January 15th plan and the May
15 18th plan. The wastewater, guests, staff, all of these things were identical. So essentially you're trying to
16 create an event space, which is really the primary purpose... Somebody else.

17

18 Karen Barrows: Well you might want to look at number 4. About square footage, and parking spaces,
19 emergency service personnel.

20

21 Barry Katz: Everything in it is related back to the event center. And I guess 35 as to Ms. Brewer's
22 testimony, "Started looking up my business plan for this project 3 ½- 4 years ago doing some initial market
23 research into local wedding venues", it goes on. She testified the barn could be the center of the property,
24 the fact that there were substantial trees I think is amazing. Again, it's the appearance for a wedding venue.
25 It's not agricultural... And the fact that she has connections with people that she might actually be able to
26 solicit more business with this. It was the focus of what all this is.

27

28 Susan Halkiotis: All of that is regurgitation but there's one sentence that strikes me and it is that the barn is
29 only in operation during events. So to me that says that the barn's only in operation during events. Not for
30 drying, or cleaning chestnuts, or flour distribution.

31

32 Barry Katz: That speaks to 46: Kara Brewer confirmed, on the website states, on your wedding day you will
33 enjoy exclusive use of the farm and all our facilities. I don't know if that has any bearing on the agricultural
34 space, the 25 square foot space that was identified. The whole scale of effort seems so focused on this use
35 to make it look not simply incidental. There's really no evidence taken into account about cost of farm labor
36 or anything in the plan, there's no plan for all of that. Or the capacity of water. Whether there's enough
37 water in there to actually irrigate this stuff. It's so different than a farm that allows some activity like a
38 country band to come over once in a while so they can sell more apples. They're not trying to sell more
39 apples, or more flowers by having a wedding there. That's not what's happening. They're not offering
40 chestnut flower as an appeal for the wedding.

41

42 Karen Barrows: It seems to me that Ordinance to allow agritourism, **inaudible** to me, it means places like
43 Maple View and stuff like that. It gives them an opportunity to diversify it but this is not that.

44

45 Barry Katz: Then, near the end. The appellants. Fair use of their property. They also have a right to fair use
46 of their property and they basically testified that the use of their property is interfered with by the activities
47 that would happen related to the events. And their fair use is a valid point on this.

48

49 Susan Halkiotis: So is this a motion where you're saying that all of these are findings of fact?

1
2 Barry Katz: I'm pointing to these findings as suggested by our attorney because going forward there will be
3 some relevance to these findings in future activity related to this.

4
5 James Bryan: Yeah, and as a reminder this is going to be reduced to writing and the Chair has to sign it. So
6 if you could, if you were going by this, list numbers for the secretary to jot down. That might be easier.

7 Barry Katz: Let's call out the numbers. Did you say 4?

8
9 Karen Barrows: I said 4.

10
11 Barry Katz: 4. I'm sorry, I have to go through all of this again to make any kind of sense of what I...

12
13 Susan Halkiotis: Well 11 and 12.

14
15 Barry Katz: Yeah, 11 and 12. 13. This is essentially the same building so that would be 14 and 15. The
16 whole traffic analysis, etcetera, DOT, the driveway, all of this is related to the events, 19.

17
18 Susan Halkiotis: It might be easier to see if there are any you want to exclude.

19
20 Barry Katz: Well I don't know about that. Well I would put in 24. Yeah, well 25. And 26, 27, 28, and 29
21 relates the wastewater treatment, which again speaks to the fact that this is reiteration of the plan that we
22 saw last year. I would put in 35 because this is where the testimony of Ms. Brewer comes in, as far as the
23 intent of what it is that she had in mind all the time that she was developing this plan.

24
25 Karen Barrows: Do you have an issue with 49?

26
27 Barry Katz: Well I mentioned 49, that's true.

28
29 Susan Halkiotis: 46 and 47?

30
31 Barry Katz: 46, and 47. And then we get to the appellants. I would certainly include 56, 57, 58, as it relates
32 to the fact that they also have rights to their property, their agricultural property. And whether the purported
33 use would interfere with their rights.

34
35 Karen Barrows: We're here to entertain a motion. Matt did you have anything?

36
37 Barry Katz: I move that we adopt the ruling number 2 that reverses the decision and as it states there, do I
38 have this right? Orange County Planning Director or the designee shall review the building permit
39 application, make a determination as to whether the structure identified will be used for a bona fide farm
40 purpose and whether the use as a wedding and event center is related to or incidental to such bona fide
41 farm purposes, if any. Ok? And then part b, the appellant has requested that this Board grant a stay of
42 building permit effected by the issue being appealed until such time that the determination is made by the
43 current Planning supervisor that is either a structure that will be used as a bona fide purpose or there is a
44 related valid zoning compliance permit.

45
46 Karen Barrows: Can I just ask James, do we have the power to stay?

47
48 Barry Katz: Can we really do that?

49

1 James Bryan: It is quite malleable. But it is in the statute that you guys have the ability to stay a permit. I
2 couldn't find much case law and I don't know how often it's done but I believe that this Board does have the
3 authority.

4
5 Karen Barrows: Ok.

6 Barry Katz: Do we want to consider that? B? How do you feel about it?

7
8 Susan Halkiotis: It seems to go hand in hand with the first one, to me. You're sending it back for a decision,
9 and the decision could be changed, which would invalidate the first one. Is that correct?

10
11 Barry Katz: Will this be going back to you?

12
13 Michael Harvey: I can't speak sir.

14
15 Barry Katz: Oh, ok. I'm sorry. James, who would be reviewing this?

16
17 James Bryan: So if you guys go for 2 and you reverse, the Planning Director or his designee. His designee
18 is Michael.

19
20 Barry Katz: And do you know what the timeframe is on the reconsideration of this?

21
22 James Bryan: So there isn't anything in the UDO for this because what normally happens is it's all
23 applicant driven. So I want to build something so I apply for several permits at the same time. Septic,
24 building permit, and a zoning compliance permit. The building inspector then says, "ok, show me your
25 zoning compliance permit" so it's all the applicant driving everything. I don't know if there's any policy that
26 they have to turn it over in a certain amount of time.

27
28 Barry Katz: I would hope they would be expeditious in this, to resolve this and get it to the next level. Ok so
29 the motion is that we adopt number 2 in the ruling; that we reverse the decision. Both in a and b.

30
31 James Bryan: Ok, so it can't be verbatim because there's a month, day and year. You can cut off that first 3
32 words so it just starts, "the current planning service provider made a decision that.. " and then verbatim.

33
34 Barry Katz: So you want us to read this?

35
36 James Bryan: No.

37
38 Barry Katz: As long as we cut off "on month, day, year" and start with the current planning.

39
40 James Bryan: Yes.

41
42 Barry Katz: Ok that would be the move.

43
44 James Bryan: And have you guys voted on the findings of fact? I'm sorry I can't remember.

45
46 Susan Halkiotis: Well we called them out.

47
48 James Bryan: And that's fine. But we just need a vote on the findings of the fact. And I could repeat the
49 numbers I've got if you want.

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Barry Katz: Please.

James Bryan: Ok so I've got 4, 11, 12, 13, 14, 15, 19, 24, 25, 26, 27, 28, 29, 35, 46, 47, 56, 57, 58, and 49. And these were as proposed by the appellant.

MOTION made by Barry Katz to accept findings of fact listed by James Bryan. Seconded by Susan Halkiotis.

VOTE: 3-1 (Matt Hughes opposed)

MOTION made by Barry Katz to use the wording in number 2, starting with "The Current Planning Supervisor", reverses the discussion. A and B. Seconded by Susan Halkiotis.

VOTE: 3-1 (Matt Hughes opposed)

Karen Barrows: Would you care to state the reason?

Matt Hughes: The reason is that I, based on the evidence that we have reviewed, do believe that the current planning supervisor made the decision that no zoning approval was required for the building permit application.

Karen Barrows: Thank you.

AGENDA ITEM 6: ADJOURNMENT

Meeting was adjourned by consensus.

KAREN BARROWS, VICE CHAIR

