

MINUTES
BOARD OF ADJUSTMENT
NOVEMBER 11, 2013
REGULAR MEETING

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

MEMBER ABSENT: Samantha Cabe, Alternate Member

STAFF PRESENT: Michael Harvey, Current Planning Supervisor
Debra Graham, Board Secretary
James Bryan, Staff Attorney

OTHERS: Geoffrey Gledhill, Attorney Representing Orange County
David Rooks, Attorney Representing the Board of Adjustment

AGENDA ITEM 1: CALL TO ORDER

Larry Wright called the meeting to order at 5:00 pm. Mr. Blankfard previously read the public charge at the previous meeting so I don't think that needs to be read again.

AGENDA ITEM 2: CONSIDERATION OF ADDITIONS TO AGENDA

AGENDA ITEM 3: APPROVAL OF MINUTES

A. SEPTEMBER 10, 2013

Michael Harvey: On page 2, line 43 should read, "There will be further testimony from the county with respect to this appeal...". On page 6, line 36 should read, "To page 56". On page 7, line 5 should read, "Geof Gledhill: I get it, so now we are on a different document which is Appellant Exhibit 4 (PowerPoint presentation). On page 7, line 13 should read, "set of critical findings and those findings must be supported by substantial competent and...". On page 9, line 8 should read, "Michael Harvey: Mr. Buck, technically, the special use permit is in Attachment C. You referenced the SUP in Attachment A but the approved copy is in Attachment C. Michael Buck: I would like to...". On page 9, line 42 should read, "What Dr. Wright was referring to in 2007 is, I believe...". On page 11, line 14 should read, "I will now move to the developers...". On page 13, line 18 should read, "(Walkways and bridges are not connected, logical, convenient or safe). On page 17, line 43 should read, "I will do my best to offer evidence without making whatever argument is purported to...". On page 18, line 2 should read, "enacted after 1986 and the two cases I would like to show are..." On page 18, line 20 and 21 should read, "...women involved in this correspondence (that is an expression). It is not evidence, nothing to identify it as a planning document...".

Michael Harvey: On page 20, line 10 should read, "Is that in the ordinance for a special use....". On page 21, line 8 should read, "Michael Buck: It is referenced on page 41 called freemaptools.com and it is a planimeter..." On page 21, line 48 should read, "The ordinance that applies in my opinion, and that is a point of

1 debate we...". On page 22, line 5 should read, "Are you contending that the surveyor is incorrect in what he
2 states...". On page 23, line 35 should read, "That is the tot lot we just looked...". On page 23, line 44 should
3 read, "Geof Gledhill: It doesn't matter. [How much acreage can be used as a field?]. The reason for that is
4 clarification and that was the point of the discussion. Mr. Gledhill's comment was basically how much acreage
5 can be used as a field? On page 24, line 19 should read, "unsuitability is a point". On page 24, line 34 should
6 read, "Geof Gledhill: For one thing I can't read it and digest it in two minutes. Second it is apparent to me that it
7 is some kind of contemporaneous negotiation going on with the planning department and this developer." On
8 page 24, line 43 should read, "Larry Wright: It discusses special use permit in paragraph 3, the multi-family
9 parcel will...". On page 25, line 2 should read, "Larry Wright: Submit it into evidence and once you make your
10 summary claims I would come...". On page 28, line 11 should read, "Michael Buck: Here is the county's estimate
11 which is argumentative which we will skip...". On page 29, line 39 should read, "David Blankfard: Can we hear
12 from the county and then move the deliberations in the next session...". On page 30, line 15 and line 16 should
13 read, "meaning I will flesh out the questions so he can answer as many in a yes or no format as possible to save
14 time. On page 30, line 16, begin new paragraph, "Geof Gledhill: Through the recorded SUP included those
15 document incorporated to it by reference together with recorded plats memorialize this Scotswood Planned
16 Development special use?". On page 30, line 23 should read, "documents incorporated by reference?". On page
17 30, line 36 should read, "Michael Harvey: Yes sir. They do". On page 30, line 39 should read, "Churton Grove,
18 Braddock Park, the commercial area satisfies the complained about recreation...". On page 30, line 48 should
19 read, "This includes parking, property located in required setbacks...". On page 31, line 9 should read, "Geof
20 Gledhill: Have you also prepared a document that connects the various PINs that you show...". On page 31, line
21 24 should read, These names become synonymous depending on which plat you are looking at.". On page 31,
22 line 27 should read, "Phase IV is referred to on Plat book 103, phage 63 and 64." On page 31, line 32 should
23 read, "specifically in an open grass play area according to the plat that is on plat book 103..." On page 31, line
24 35 should read, "We have 2.381 acres per the approved plat and on the next page we have the Phase II..." On
25 page 31, line 38 should read, "includes dedication of open space around..." On page 31, line 50 should read,
26 "The document has been entered into record, Attachment I." On page 32, line 1 should read, "The required ratios
27 denoting how much recreational area is required is listed on the approved site plan and I am referencing the
28 condition of the approved plat." On page 32, line 21 should read, "Geof Gledhill: With all due respect, Mr. Buck
29 is cross examining. Begin a new paragraph, "Geof Gledhill: When Scotswood was..." On page 32, line 23
30 should read, "were County Zoning regulations and subdivision regulations contained in the zoning...". On page
31 32, line 28 should read, "Geof Gledhill: Are those documents in the record?". Page 32, line 32 should read "Geof
32 Gledhill: Explain the reason for the "1981" draft ordinance...". On page 32, line 37 should read, "the ordinance
33 that existed on the day this project was approved in the public record or in our files.". Page 32, line 39 should
34 read, "ordinance and compared it to a copy of the ordinance that was in force and effect the day...". Page 32,
35 line 42 should read, "We included both the draft and actual zoning ordinance in the record...", On page 33, line 8
36 should read, "speaks extensively about Section IV-B-7-b of the Orange County Subdivision Regulations...". Line
37 13 should read, "Geof Gledhill: Prior to the adoption of Section IV-B-7-b of the County's subdivision regulations".
38 Line 19 should read, "in Section 6.12.2.6 of the Zoning Ordinance requiring a specific recreational space ration of
39 .019." Line 20 and 21 should read, "The process to determine required recreation was to take the gross size of a
40 project and multiply it by the ratio that would give you the acreage required." Line 34 should read, "approved
41 were not detailed and not as specific as the IV-B-7-b and essentially the recreation...". Line 39 and 40 should
42 read, "Geof Gledhill: Condition 27 of the special use permit relating to the recreation is couched in what terms."
43 On page 34, line 8 should read, "Michael Harvey: The current subdivision regulation, Section IV-B-7-b...". Line
44 20 should read, "6.12.2.6 of the zoning ordinance..." Line 28 should read, "Geof Gledhill: August 4, 1986, is your
45 testimony as to when the recreation components were fleshed out in the adoption of Section IV-B-7-b in the
46 subdivision regulations". Line 41 should read, "Geof Gledhill: The recreation component IV-B-77b was being
47 discussed while Scotswood was going...". On page 35, line 1 and 2 should read, "Geof Gledhill: In my argument
48 I will quibble with the planning director's use of the term exempt. Another term is legally correct and yes that is

1 your evidence." Begin a new paragraph: "Geof Gledhill: Is it true that at the time the...". Line 17 should read,
2 "Geof Gledhill: That was negotiated between the developer and the planning staff, correct?" Line 21 should
3 read, "Geof Gledhill: On the basis of the negotiation were the county's negotiating point...". Line 32 should read,
4 "The plat does not indicate locations or easements for SUP mandated...". On page 36, line 1 should read, "have
5 a network of trails across including under the bridge...". Line 10 should read, "Michael Harvey: On the cover
6 page, Conditions 27, this is paraphrased for you referenced the installation of pedestrian access points off
7 Graham Drive, Cameron Circle to allow for access to the". Line 13 should read, "terms of brining this appeal
8 forward was for you to understand that Graham Drive....". On page 37, line 26 should read, "not cross Nancy Hill
9 Creek." Line 41 should read, "That includes all applicable necessary infrastructure...". Line 51 should read, "him
10 neither did they require Mr. Collins to write an ordinance to require Scotswood to be excluded."
11

12 **Motion** to accept minutes with corrections made by Jeff Schmitt. Seconded by Karen Barrows.

13 **Vote:** Unanimous.
14
15

16 **B. OCTOBER 14, 2013**
17

18 Larry Wright: Member present for the October 14th meeting was Larry Wright and staff present was Michael
19 Harvey. I affirm that the minutes as presented on this page are correct.
20
21

22 **AGENDA ITEM 4: PUBLIC CHARGE**

23 *The Board of Adjustment pledges to the citizens of Orange County its respect.*
24 *The Board asks its citizens to conduct themselves in a respectful, courteous*
25 *manner, both with the Board and with fellow citizens. At any time should any*
26 *member of the Board or any citizen fail to observe this public charge, the*
27 *Chair will ask the offending person to leave the meeting until that individual*
28 *regains personal control. Should decorum fail to be restored, the Chair will*
29 *recess the meeting until such time that a genuine commitment to this public*
30 *charge is observed. All electronic devices such as cell phones, pagers, and*
31 *computers should please be turned off or set to silent/vibrate.*
32

33 *The Board of Adjustment is a quasi-judicial administrative body established in*
34 *accordance with the provisions of local regulations and State law to perform*
35 *specified functions essential to the County's planning program. Action(s)*
36 *taken by the board are based solely on competent, substantial, and material*
37 *evidence presented during a previously scheduled and advertised public hearing*
38 *on a specific item. As detailed within Section 2.12.2 of the UDO the Board*
39 *chair reserves the right to exclude evidence and testimony that is deemed:*
40 *'incompetent, irrelevant, immaterial, or unduly repetitious' and therefore*
41 *fails to reasonably address the issues before the Board of Adjustment. While*
42 *it should be noted there is no time limit on the presentation of evidence, the*
43 *Chair asks that the presentation of evidence be consistent with established*
44 *policies, rules of procedure, and acceptable levels of decorum to ensure a*
45 *fair and equitable hearing for all parties.*
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1 **AGENDA ITEM 5: A-3-13 – Appeal of a decision made by the Zoning Officer submitted by Michael Buck**

2 In accordance with the provisions of Section 2.3.7 of the Orange County Zoning Ordinance, enforced at the time
3 the appeal application was submitted (now contained within Section 2.11 of the Orange County UDO adopted
4 April 5, 2011), the applicant has appealed a decision of the Zoning Officer related to the Churton Grove, formerly
5 Scotswood, Planned Development within the Hillsborough Township of Orange County.

6 The appeal arises out of the recordation of a plat within Plat Book 103 Pages 63-64 of the Orange County
7 Registrar of Deeds Office for the final phase of the aforementioned development.

8 The applicant alleges the provision of recreational amenities within the development is inconsistent with existing
9 County regulations and has appealed staff's approval of the aforementioned plat.

10

11 Larry Wright: At the September 10th meeting, both Mr. Buck and Mr. Gledhill presented evidence to the board. In
12 September, I asked to have staff contact Mr. Buck and Mr. Gledhill and have them submit bullets of evidence that
13 was submitted to and approved by the board. Mr. Gledhill's summary is in

14

15 Michael Harvey: Mr. Gledhill's summary is in Attachment 2 beginning on page 5.

16

17 Larry Wright: Mr. Buck, did you submit?

18

19 Michael Buck: Yes I did.

20

21 Michael Harvey: Mr. Buck's comments are contained in Attachment 3 beginning on page 37.

22

23 Larry Wright: These bullets span from page 37 to page 92? All these were approved as admissible evidence?

24

25 Michael Buck: That is my belief, yes.

26

27 Geof Gledhill: I cannot understand Mr. Buck's format. I think what Mr. Buck got into evidence....

28

29 Larry Wright: While Mr. Gledhill is looking this up, Mr. Buck, I specifically requested to have this in bullet format to
30 make it easier because we have a limited amount of time and it is not that I am restricting the time but that is why
31 I asked for it in bullet format.

32

33 Geof Gledhill: What the county contends... the evidence that Mr. Buck presented begins at page 12 of your
34 packet and ends on page 36 and that is in bullet format with the exhibits that are referenced in the bullet format.

35

36 Larry Wright: Mr. Buck, do you have a response to that?

37

38 Michael Buck: I'm sorry... I did not understand the requirement for bullets. I understood the requirement for a list
39 of evidence that I thought was admitted which is what I provided so I am sorry it is not in bulleted format.

40

41 Larry Wright: Mr. Gledhill stated that on page 12, this is what the county deems admissible evidence on your
42 behalf, do you agree with that looking at page 12?

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44 Michael Buck: I do agree with what the County says is admitted. I think it leaves out some things I thought were
45 admitted.

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47 Larry Wright: There is confusion here. Do members of the board have any questions?

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Karen Barrows: On the memorandum we got, it says this is to overturn the decision of the Planning Director. Other stuff states the Zoning Officer, so whose decision are we actually looking at?

Michael Harvey: In the UDO, the term Orange County Planning Director/Zoning Officer are synonymous.

Larry Wright: Let me ask each person...Mr. Buck, do you have any additional evidence that directly relates to Attachment B. Attachment B is your appeal.

Michael Buck: I know what you mean.

Michael Harvey: Attachment A from the September meeting is the appeal application. We have also included here in 6 for edification as you requested.

Larry Wright: (To Mr. Buck). Do you have any additional evidence that was not covered on September 10?

Michael Buck: I do.

Larry Wright: Could you briefly present that evidence please. You have testimony as well?

Michael Buck: I do have two items of testimony I would like to present, two brief paragraphs. Is there a preference on the order?

Larry Wright: Just make sure it is evidence.

Michael Buck: I appreciate the fact, I did not understand that last time. The digitized email view...I believe the county has accepted the digitized view that was previously submitted but the county made a claim that it was a purported document provided by the current planning supervisor.

Michael Harvey: That's Appellant Exhibit 8 from the September meeting on page 35 of this packet.

Michael Buck: The county acceptance of the evidence, the claim was this was a purported view perhaps indicating it is not from the current planning supervisor so I have the emails I received from the current planning supervisor in 2008 in which that view was given to me. I would like to submit that if there is any concern about the validity of that view and its source.

Geof Gledhill: In the evidence, on page 25, lines 5 through 19, the statement made by Mr. Buck was that it was prepared by the County's Engineer's office showing community recreational area acreage. Our contention is that is what Mr. Buck purports where this came from. There was nothing about the county planning director in earlier testimony.

Michael Buck: I want to make sure that we are in agreement that it was a document that came from the county to me via the current planning supervisor in 2008.

Michael Harvey: Mr. Chairman, if I could ask, could Mr. Buck clarify for the record who that was.

Michael Buck: It was Robert Davis.

1 Geof Gledhill: What I understand is that what Mr. Buck is going to present to you is evidence that the document
2 was prepared or given to him by Mr. Davis.

3
4 Michael Buck: That is correct. I want to make sure I am doing things properly.

5
6 Larry Wright: You are presenting factual evidence.

7
8 Geof Gledhill: I have seen it.

9
10 Michael Buck: It is an email I received from Robert Davis in 2008. It is part of the email chain. Again, I am just
11 trying to establish... the digitized view which claims 3.77 acres.

12
13 Geof Gledhill: The only part of this email you are relying on in this context is the Robert Davis to Michael Buck, is
14 that correct so the rest is not part of this?

15
16 Michael Buck: That is correct.

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18 Geof Gledhill: Then I do not object to the first part of that first page. It is an email from Robert Davis to Michael
19 Buck.

20
21 Larry Wright: You will have a rebuttal time Mr. Gledhill. (To Mr. Buck) Go ahead and proceed.

22
23 Michael Harvey: For the record, what should we label the exhibit? Would it be reasonable to say Applicant
24 Exhibit 1-A November 11, 2013?

25
26 David Rooks: I suggest all exhibits tonight be labeled Applicant's 1-A, 1-B, 1-C and County's 1-A, 1-B, 1-C.

27
28 Michael Buck: I have a memorandum from the Zoning Officer, Robert Davis, from October 10, 2007 which was
29 presented to the Board of Commissioners in their October 23, 2007 meeting.

30
31 Larry Wright: Please repeat that.

32
33 Michael Buck: It is a memorandum from the zoning officer, Mr. Davis, reporting to the Board of Commissioners,
34 dated October 10 and was presented to the Board of Commissioners in their October 23, 2007 meeting.

35
36 Larry Wright: This is Applicant Exhibit 1-B.

37
38 Geof Gledhill: The only objection I will raise is that I don't know there is any evidence that Robert Davis is a
39 zoning officer. This document identifies him as current planning supervisor.

40
41 Michael Buck: I apologize if I said zoning officer, current planning supervisor.

42
43 Larry Wright: Go ahead Mr. Buck, Mr. Gledhill, you will have a rebuttal time.

44
45 Michael Buck: I have the Board of Commissioners meeting minutes from June 26, 2003 with regard to the
46 approval of the Outdoor Lighting Standards which are in Section 6.31 of the Zoning Ordinance. I only have one
47 copy. My purpose in submitting this was to establish the date in which the lighting ordinance was established. It
48 is not indicated in attachments we have before us because it was enacted after Attachments H and I.

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Geof Gledhill: The street lighting?

Michael Buck: It is called the Outdoor Lighting Standards. My printer ran out of toner so...

Michael Harvey: Mr. Chairman, this amendment was dated the July 2, 2003, the ordinance that is in the record, the last effective date of the ordinance was 2008 when Mr. Buck submitted his appeal, this was already in the record in the ordinance.

Michael Buck: It is, but it says amended and I want to make sure it is clear that it wasn't a previously existing ordinance, it was enacted on the date you stated on June 26, 2003.

Jeff Schmitt: Mr. Chairman, if we could go back to the previous packet of information, what you are trying to provide with this is a comment relative to what? As opposed to me reading all this and trying to ascertain what is in here?

Michael Buck: During argumentation, I was going to cite a number of different places within that document where Mr. Davis made some claims about the recreation amenities and I will highlight them in detail.

Larry Wright: We have applicant Exhibit 1-C, what is this again?

Geof Gledhill: There is only one copy of it, I will circulate it. It is an excerpt about something that is already in evidence.

Larry Wright: This is already in evidence.

Michael Buck: What I am trying to be clear on is on Attachment I, page 683 it states the Outdoor Lighting Standards were amended on June 26, 2003. I want to make sure that it is clear that is when they were enacted and they did not previously exist prior to that date with a change that took place on that date.

Larry Wright: Can we circulate that and send it back to Mr. Gledhill so he will have it for his rebuttal.

Michael Buck: It wasn't a change to an existing section of code but an enactment. I have Board of Commissioner meeting minutes from June 27, 2002 which is Attachment 10-B to those minutes. My printer ran out so I don't have extra copies. I am asking to submit Attachment 10-B which is the Board of Commissioner meeting minutes on June 27, 2002.

Larry Wright: So this would be Applicant Exhibit 1-D. While this is circulating, could you please briefly state what Applicant Exhibit 1-D is.

Michael Buck: This is Attachment 10-B from Board of Commissioner Meeting minutes dated June 27, 2002.

Larry Wright: How is that relevant?

Michael Buck: It contains a memorandum from the planning director regarding the recreation amenities in the development.

Larry Wright: This is dated when?

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Michael Buck: June 27, 2002.

Larry Wright: Do you have another piece of evidence.

Michael Buck: Mr. Harvey, I don't mean to step on your toes but I have taken the evidence you previously submitted and added something to it. It is the walkways in the development. I have made some corrections and you indicated you made corrections to it as well. I also added, because there were questions about sidewalks, I added the locations of sidewalks.

Geof Gledhill: I am not going to comment on every piece of evidence you submit.

Larry Wright: This is Applicant Exhibit 1-E.

Michael Buck: In our last session, Mr. Harvey submitted the number of ...

Larry Wright: This is a graphic of what?

Michael Buck: The planned development with walkways, asphalt, paths and I have added a number of corrections where there are paths missing from what was submitted and I have also highlighted in yellow the location of sidewalks.

Larry Wright: We have seen this haven't we?

Michael Buck: You have seen the picture before and my additions are highlighting the location of sidewalks. Sidewalks only exist on one side of each street.

Larry Wright: Okay. This is characterization. Can we go on to the next one please?

Michael Buck: That was labeled 1-E.

Larry Wright: Right.

Michael Buck: I would like to offer the Manual of Acceptable Practices, 1973 Edition from the U.S. Department of Housing and Urban Development, and Chapter 3 of that document. I would like to submit this document as well as one other. If the county has a different version they would like to submit, I am more than happy to defer to that.

Larry Wright: And your rationale for submitting this?

Michael Buck: The ordinances cited by Mr. Harvey as being applicable to this development highlight the use of these two documents, the Manual of Acceptable Practices and the Minimum Property Standards as providing guidance for the interpretation of ordinance.

Larry Wright: This would be Applicant Exhibit 1-F.

Michael Buck: There is a second one.

1 Larry Wright: We have Applicant Exhibit 1-F and 1-G.
2

3 Michael Buck: For clarity, I would propose that 1-F be Manual of Acceptable Practices (MAP) and 1-G Minimum
4 Property Standards. To be clear, these are only excerpts from much larger documents. I am acknowledging
5 these are excerpts; I did pull out the relevant portions.
6

7 Geof Gledhill: It is probably clear, I am reserving my ...
8

9 Larry Wright: Yes. Each of you will have a rebuttal.
10

11 Geof Gledhill: I am reserving my comment on their admissibility or whether or not I will object until you have them
12 all.
13

14 David Rooks: He's allowing the applicant to identify each of the exhibits and then you will respond.
15

16 Michael Buck: I would like to submit into evidence pages from the shorter Oxford English Dictionary with the
17 definition of the word 'either'.
18

19 Larry Wright: This is Applicant Exhibit 1-H. Do you have another exhibit?
20

21 Michael Buck: I do. I am not quite sure how to handle these. These are photographs. I showed photographs
22 and there was a lot of objection to them because, my understanding of the objections were not related to the
23 photographs, when I read through the minutes and as I recall from our last discussion, the objections were to the
24 words that surrounding it as I put them on the screen so I have taken the photographs, they are actual
25 photographs as opposed to being put on the screen. There was also concern about relevance of the
26 photographs and I have provided date stamps for photographs so I have a set of photographs I have taken...
27

28 Larry Wright: Are these duplicates?
29

30 Michael Buck: I wanted to divide them out because I figured there may be concerns about the dates, etc. I do
31 have multiple sets and I don't know the best way to put them forth so objections can be made.
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33 Larry Wright: Let's call your photographs a collection, which will be one exhibit... Applicant Exhibit 1-I and please
34 hand those to....
35

36 Michael Harvey: 1-J.
37

38 Larry Wright: This would be 1-I and please give them to ... unless a board member wants to look at them. You
39 will be able to mention these in your final argument. Please give those to Mr. Gledhill.
40

41 Michael Buck: Should I explain these?
42

43 Larry Wright: Explain what each of the envelopes are.
44

45 Michael Buck: These are pictures of various recreation areas, areas planned to be active recreation, taken in
46 2007 and there are actual dates on the back of each picture; 2008, 2009; there are pictures of the same location
47 over time. I have another division of the photos based upon what I felt as previously submitted so this is what I
48 thought was in the record. It contains mostly pictures concurrent to the filing of the appeal but it does contain

1 more recent pictures so I wanted to set those aside. This is a package of the current state of the newly built
2 picnic area which is in Phase II so these pictures were taken recently. Finally, this was an oversight since we are
3 talking about bridges, etc. but I failed to take pictures, I have taken pictures of all the wooden structures along the
4 pathway including the pedestrian bridge as well as other built objects. I have two paragraphs I would like to read.
5

6 Larry Wright: Is this evidence? It can't be hearsay. It has to be direct evidence, direct testimony. Do you have
7 that direct testimony?
8

9 Michael Buck: Please give me guidance. If I was told something by someone, not they are telling me something
10 someone else said but I had a conversation with the zoning officer and was told a fact.
11

12 Larry Wright: He can do that can't he (to David Rooks)?
13

14 David Rooks: Yes. He can.
15

16 Larry Wright: Proceed. You are under oath.
17

18 Michael Buck: Mitch Barron of Newland Communities met in late 2007 on November 26 and then again on
19 December 10 during a homeowner's board meeting. Mitch Barron of Newland Communities directly told me that
20 Newland was not planning to provide any pedestrian only bridges. He told me that Newland's opinion was they
21 were obligated to provide any pedestrian bridges. He said Newland would do what the county required them to
22 build, he went on to say that on both November 26, 2007 and again on December 10, 2007 that the county had
23 not required any bridges beyond what we are calling the Motorized Vehicle Bridge. He mentioned in both
24 meetings and I understand this may be questionable so, he mentioned in both meetings that the county did not
25 want pedestrian bridges because of current environmental reasons. These statements were made to me on
26 November 26, 2007 and again at the Churton Grove HOA meeting on December 10, 2007 and I will also...I
27 understand there may be questions about my recollection of events. I took notes after that meeting as well as
28 meeting minutes from the HOA were provided so if there is any question about the validity of those statements
29 and my recollection then I would like to offer the contemporaneous notes into the record.
30

31 Larry Wright: Is this the end of what you are submitting into evidence?
32

33 Michael Buck: I have one other statement.
34

35 Larry Wright: Is that evidence?
36

37 Michael Buck: Same thing but with regard to a conversation I had with Robert Davis, Current Planning
38 Supervisor.
39

40 Geof Gledhill: Who was that conversation with?
41

42 Michael Buck: Mitch Barron of Newland Communities.
43

44 Geof Gledhill: That is not under the rules of evidence, admissible. I'll object to everything altogether.
45

46 David Rooks: Mr. Chairman that is a statement of someone that was not a party. He can testify to statements
47 made to him by representatives of the county but the testimony he has just relayed to you has to do with
48 statements made by third a party that is not admissible.

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Larry Wright: Okay.

Michael Buck: Fair enough.

Larry Wright: Do you have any other evidence or testimony?

Michael Buck: I have one other statement and you can let me know if it is admissible.

Geof Gledhill: This is a statement made to you from?

Michael Buck: Robert Davis, Current Planning Supervisor of Orange County. In late 2007 or early 2008 leading up to my filing of the appeal I had a chance to have multiple conversations on the phone and in person with Robert Davis. In one of those conversations, he told me that there were originally supposed to be three walk bridges.

Larry Wright: That is Applicant Exhibit 1-K. Your comments (Mr. Gledhill).

Geof Gledhill: Mr. Chairman, on behalf of county, I object to 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, and I object to the photographs, I object to the conversation between Mr. Buck and the representative from Newland and I do not object to the Robert Davis thing.

Larry Wright: We have testimony 1-K that you do not object to.

Geof Gledhill: 1-K is not an exhibit. I do not object to Mr. Buck's recollection of the conversation with Mr. Davis.

David Rooks: I hate to do this.

Geof Gledhill: The problem is exactly that unless this board wants to recess this meeting for one hour, I can't go through this stuff.

David Rooks: As I'm looking at the application from starting point and the issues are before this board. If you are objecting for other than technical reasons, relevancy would be your objection.

Geof Gledhill: I would object for technical reasons. I am also objecting for relevance. Let's see, photographs, there has been no foundation laid for the photographs. That is based on me not knowing what is in the document, number 1, number 2, relevance, number 3, in the case of the photographs no foundation laid for them and in the case of the conversation of Mr. Buck and a Newland representative is hearsay.

David Rooks: I believe the Chair has already ruled that is hearsay and it has been stricken.

Geof Gledhill: Okay.

David Rooks: You could go through and spend hours. I would say receive the exhibits and give them the weight you choose to give them.

Larry Wright: Please explain that.

1 David Rooks: That means you can read everything in great detail and make your decision based on that exhibit if
2 you choose to and if you choose to look elsewhere to make your decision feel free to look elsewhere to make
3 your decision.

4
5 Larry Wright: And how would you define elsewhere?

6
7 David Rooks: The rest of the record. It is like any other trial where you receive a great mass of evidence. There
8 are parts that are important and parts that are not.

9
10 Larry Wright: I'm not comfortable at all. I want a discussion on this from the board.

11
12 Jeff Schmitt: What would be an example of the technical objection?

13
14 David Rooks: The classic was the hearsay where he attempted to....a technical would be that it is somehow
15 privileged or ... quite frankly if you had the conversation the conversation will be on relevancy. It is whether the
16 exhibit is actually relevant to an issue before this board to determine. I go back to the application and the basis
17 for the appeal which is where I think you should look for that. You could take a long time and go through and
18 make that decision or you can make a blanket decision to receive all of it or none of it. I tend to resolve that in
19 favor or receiving all of it and making your decision on the evidence you choose to make your decision on.

20
21 Jeff Schmitt: From my perspective in deference to the plaintiff in this case, something that has gone for how
22 many years, I would not object to this being entered into evidence. I would give latitude to us being able to utilize
23 bits and pieces as we deliberate.

24
25 Mike Micol: I concur.

26
27 Larry Wright: We will accept with the exception of the testimony we specifically denied. The testimony with the
28 Barron. We will accept the rest. We are now starting the rebuttals. Mr. Buck, you will be first. Do you have a
29 rebuttal of the evidence that the county brought to the board?

30
31 Michael Buck: I have no objection. I am in favor of putting everything into the record.

32
33 Larry Wright: Okay, do you have a rebuttal of the evidence that Mr. Buck presented to the board.

34
35 Geof Gledhill: We do. We have a rebuttal which includes some additional new items.

36
37 Larry Wright: I didn't ask you for evidence, I am sorry. Would you present that at this time?

38
39 David Rooks: Remember, he is entitled to cross examine through evidence.

40
41 Geof Gledhill: We had labeled the documents that I want to present to you tonight as County Handouts 1, 2, and
42 3. We can change that to conform to the nomenclature you have just set up. That would be C-1-A, C-1-B, and
43 C-1-C. C-1-A, I would like to ask Mr. Harvey to clarify one correction we want to be made to C-1A and then want
44 to offer that into evidence. Mr. Harvey, would you please tell the board what that correction is.

45
46 Michael Harvey: On page 2 which is in front of you, also in your packet, you also got a copy of this last month
47 and we are reintroducing it. The correction is on page 2 under notes, "regulations in place at the time the special

1 use is approved most notably those establishing the requirements through the provision of recreational amenities
2 are detailed within Article 6 of the Zoning Ordinance. This should be Attachment H not Attachment I.
3

4 Geof Gledhill: With that correction, we offer this document into evidence. The next document is what was
5 referred to by Mr. Harvey when he testified is County Handout 2 which will we now call C-1-B and that is the
6 document that now the reorganization with relocation of the streets and also the amenities including foot bridges
7 and other bridges. Essentially this is also a document that Mr. Harvey testified to and we offer C-1-B into
8 evidence. It is labeled as Attachment 5 County Handout is now called C-1-B. The next document is C-1-C. It is
9 sheet 9 of the Special Use Permit which Mr. Buck testified concerning but was not in Attachment C. It was
10 overlooked when we put Attachment C together. It is the phasing plan for this project. We want to correct that
11 oversight and put into evidence Exhibit C-1-C. Last, we will call this one C-1-D. It is another color map with a
12 legend on the left. As to that I will ask Mr. Harvey, this is new evidence, I am going to ask Mr. Harvey to explain
13 what this document shows and testify concerning what it is.
14

15 Michael Harvey: Handout C-1-D is a supplemental map denoting trail locations. Mr. Buck has indicated that we
16 provided you a map with your September meeting and one of the trails was improperly noted and one trail was
17 missing. We have corrected those errors after conducting a GPS survey of the trails throughout Churton Grove.
18 The green line denotes project boundary, the black lines obviously denote trails. We have identified the two
19 pedestrian bridges; specifically the corner of the project over the flood plain, Nancy Hill Creek and the pedestrian
20 bridge incorporated Churton Grove Boulevard. Also reminding you as we did last month, there is a pedestrian
21 trail under the bridge connecting trails throughout the area. There are approximately three miles of trails
22 throughout the project. The trails are approximately five feet in width meaning there is 1.8 acres of trails
23 qualifying as active recreation per Condition 27 of the project. We had not previously calculated trail area. We
24 will also stipulate that this does not include sidewalks. Sidewalks are a separate condition in the SUP.
25

26 Geof Gledhill: We offer into evidence C-1-D.
27

28 Larry Wright: Any objection to this? Mr. Buck.
29

30 Michael Buck: I have no objection to C-1-D but I would offer at least one correction, there is another path
31 between Foreman Street and Dunn Place that is not reflected in here.
32

33 Michael Harvey: I understand. Mr. Chair, all I will offer is that it didn't appear open when we were doing our
34 survey so we didn't capture it. It doesn't change the fact that there is approximately three miles of trail, 1.8 acres
35 of active recreation encompassing the trail.
36

37 Michael Buck: I don't object to the map, I don't object to the distance, I do object to the second to the last
38 paragraph in yellow that qualifies the acreage as being active recreation. That is an interpretation that I disagree
39 with so I will object to....
40

41 Larry Wright: We are on C-1-D?
42

43 Michael Buck: Yes.
44

45 Larry Wright: The last paragraph that begins "staff had not previously calculated..."?
46

47 Michael Buck: I object to that characterization.
48

1 Geof Gledhill: I would address your attention to Attachment C which is the approved special use permit and
2 particularly Condition 27 and particularly that
3

4 Mark Micol: You just said that it was not put in the survey, the trails at the time and that is why it is left off, can
5 you reiterate what you just said.
6

7 Michael Harvey: When we did the GPS assessment walking the trails, a trail did not appear to be open, didn't
8 appear to be a trail. We didn't walk it because it looked like it was on private property. If Mr. Buck is attesting
9 that it is a public trail, it doesn't change the fact from my standpoint, staff's testimony which is there are three
10 miles of trails.
11

12 Mark Micol: There has always been the contention there has been three miles of trails. In Exhibit 1-B from
13 October 2007, on page 17, it talks about three miles of trails with roughly 2.9 acres which adding these two areas,
14 seven acres, pretty much the same conversation, same thought.
15

16 Geof Gledhill: Our contention is that it is correctly characterized as active because Condition 27-B lists a
17 minimum of seven acres developed for active recreational purposes to include the following and included in that
18 listing are bicycle paths throughout and these trails are available for bicycle use.
19

20 Larry Wright: You are addressing which of your C-1s?
21

22 Geof Gledhill: Mr. Buck has objected to characterization of this as active recreation. Our contention is that it is
23 active recreation because that's what the special use permit says it is.
24

25 Larry Wright: Is there a rebuttal on that?
26

27 Mark Micol: You are not saying sidewalks are active recreation?
28

29 Michael Harvey: We have not counted sidewalks because sidewalks are technically a separate condition in the
30 SUP.
31

32 Geof Gledhill: Sidewalks are not in these calculations.
33

34 Larry Wright: Do you have any more evidence?
35

36 Michael Buck: I do. I was going to object to others as well. What is the status of C-1-D?
37

38 Larry Wright: Let's wait.
39

40 Geof Gledhill: I am finished with C-1-D.
41

42 David Rooks: You need to rule on whether it comes in or not? I think this is an explanation of his interpretation
43 and I think he is in entitled to tell you that.
44

45 David Blankfard: That is the definition set up by the special use permit....
46

47 David Rooks: The applicant can disagree and argue to the contrary.
48

1 David Blankfard: How do you disagree with the definition being in the SUP?

2
3 Michael Buck: That is what is at issue here and what I would like you to decide.

4
5 David Rooks: Now is not the time for that argument.

6
7 Michael Buck: But if the characterization...I know that is the characterization....

8
9 David Rooks: Mr. Buck, now is not the time for that argument, the county is still proceeding with its evidence.

10
11 Larry Wright: That will be with your closing statement. We are in evidence, rebuttals, and then closing
12 statements. That is how we proceed.

13
14 Geof Gledhill: Is it in evidence?

15
16 Larry Wright: Yes.

17
18 Geof Gledhill: Mr. Harvey, is there evidence in the county files on Churton Grove that Orange County required
19 Scotswood/Churton Grove Planned Development to comply with amendments to County subdivision regulations
20 Section IV-B-7-b related to the specific recreation standards raised in Mr. Buck's appeal?

21
22 Michael Harvey: No, with one exception.

23
24 Geof Gledhill: What is that exception?

25
26 Michael Harvey: There is a November 2006 letter already entered into the record authored by Craig Benedict,
27 the Planning Director, to Mitch Barron where standards with respect to acceptable areas for recreation was
28 utilized as part of a negotiation on satisfying Condition 27 with respect to required recreational amenities. While
29 the standards were not utilized to discount or exclude, they were utilized and as we testified to the last meeting as
30 well in a contemporaneous negotiation.

31
32 Geof Gledhill: Based on your review of county files pertaining to this planned development, do you have an
33 opinion as to whether any phase or part of the planned development was subject to the IV-B-7-b regulations?

34
35 Michael Harvey: Yes sir, I have an opinion.

36
37 Geof Gledhill: What is that opinion?

38
39 Michael Harvey: They do not apply.

40
41 Geof Gledhill: They were not applied?

42
43 Michael Harvey: They were not applied, they do not apply.

44
45 Geof Gledhill: That is all I have Mr. Chair.

46
47 Michael Buck: I am trying to make sure I understand the order. I don't have an objection to that but I did want to
48 object to C-1-B and C-1-A.

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David Rooks: Mr. Buck, if I may, just to keep things moving, what is your objection to C-1-B?

Michael Buck: That the last paragraph on the first page, the open space passive area is consistent with requirements of Condition 27. I stipulate that the plats say what they say what ...

David Rooks: Mr. Buck, you disagree with the conclusion stated, is that correct?

Michael Buck: I don't object to anything else.

David Rooks: That is not an objection that is an argument, so you will have your time to make the argument that that is incorrect.

Michael Buck: Okay.

David Rooks: And your objection to C-1-A?

Michael Buck: Same thing, note two.

David Rooks: I think it is the same response. That is an argument you are privileged to make.

Larry Wright: Do you have any more evidence or testimony?

Geof Gledhill: Are these admitted into evidence? All these exhibits?

Larry Wright: Yes.

Geof Gledhill: That's all the evidence we have.

Larry Wright: You have no further testimony?

David Rooks: Mr. Chairman, typically in an adversary proceeding, the party with the burden of persuasion gets to argue last and I believe you are at the point of argument. If that is the case, Mr. Buck would get the last argument and it would be up to the county to make any argument it chooses to make at this point and then Mr. Buck has the last word.

Geof Gledhill: Before I begin, I am passing out the document which is Geof Gledhill piecing together plats that are in evidence. It is very hard to see what this project looks like from looking at these incredibly complex plats. I have tried to compile enough of these plats so that this recreation area stands out in its totality. This is not evidence but part of my argument. This is the original. I have cut and pasted the original plat pieces so you can capture this project.

David Rooks: Were your cows neglected while you were in the process of doing this?

Geof Gledhill: My cows are being neglected as we speak. I have shown, on these maps, the different phases, parts of this project that are in the maps that have been admitted into evidence. Let me begin by saying that Mr. Buck's appeal alleges the failure of Scotswood, now Churton Grove, Braddock Park and whatever the commercial development portion of this is called, particular recreation requirements of subdivision regulations.

1 Let me ask you to go to Mr. Buck's appeal application. Grounds for this appeal – Violation of site suitability
2 requirements Regulations IV-B-7, Violation of site suitability unity requirements Subdivision regulations IV-B-7. I
3 can continue to read or summarize. Essentially, every one of these concerns with respect to the plat recorded in
4 Book 103, page 63 and 64 which is the subject of this appeal relates to recreation related issues and the
5 calculations thereof. What Mr. Buck is saying is that this plat he is appealing from shows that there is a failure of
6 Scotswood to meet these recreation requirements of the subdivision regulations. There is also contention that
7 Scotswood has not met the SUP recreation requirements. In part this contention compares what was done in the
8 development with subdivision regulation requirements and zoning ordinance requires not with SUP requirements.

9 The documents contained in the record before together with Mr. Harvey's testimony confirm that in all respects,
10 the Scotswood Planned Development meets or exceeds the recreation requirements of the SUP approved by the
11 Board of County Commissioners. The actual acreage committed to recreation as stated on the development
12 plats passive and active, this is all coming from Mr. Harvey's testimony. In Phase I, passive, 5.266 acres, Phase
13 IV, 4.98 acres, Phase IIA, south of Nancy Hill Creek, 9.059 acres. That is a total shown of 19.3 acres. Illustrating
14 where the passive recreation is on the handout essentially follows Nancy Hill Creek is where the bulk if not all of
15 this passive recreation is, right through the center of this project. Active recreation, Phase IV, the top lot, .292
16 acres, Phase IV, 5.4 acres, in the upper corner, a private active recreation space that you can see and the multi
17 family, which is not shown on this map, that is 2.381 acres and in Phase Ila has 7.068 of active recreation. That
18 is a total of 15.2 acres excluding the trails. All but the 2.38 acres, well, of those 7 acres is right in the center of
19 the project. And 5 acres is up in the northeast corner and the top lot is somewhere in the midst of all that but the
20 bulk of the passive and active recreation is in the middle of that complex housing development. In addition, you
21 have heard testimony tonight that there are 1.8 additional acres of active recreation in the form of trails that go
22 throughout the project for a total of 15,000 linear feet by Mr. Harvey's testimony calculations 5 feet wide gives you
23 about 1.8 acres so you have a total shown on these plats and part of this project of 17 acres of active recreation
24 space, 19 acres of passive recreation space. Except for the trails, the bulk of it, trails in this one outlying parcel,
25 the bulk of it is in the center of this project.

26
27 Larry Wright: Does that 19 include the 17 as well?

28
29 Geof Gledhill: Let me see.

30
31 Larry Wright: The 17, you added those up, the 1.8 and 15.2 which was 17 and then you talked about 19.

32
33 Geof Gledhill: No. Those are separate. By my rough calculations, 19.3 acres of passive recreation and 17 acres,
34 including the trails, of active recreation. Our contention is there are 17 acres from this project that are committed
35 to active and there are 19.3 acres committed to passive recreation. Let's talk about what the special use permit
36 requirements are for recreation. First of all, let's go to Attachment H which is the 1981 new ordinance that was in
37 effect when this special use permit was approved in 1986 and you heard testimony about how we got to that,
38 couldn't locate it but the 1981 draft ordinance was the same with respect to these requirements. That is in
39 evidence.

40
41 Geof Gledhill: Let's go to Section 6.12.2.6 which is that page 6-8 of Attachment H. Attachment H is the 1981
42 Draft Ordinance. Under Recreation Space, 6.12.2.6, Minimum Requirements, "Minimum recreation space
43 required shall be not less that the number of square feet derived by multiplying gross residential land area by the
44 recreation space ratio applying to the lot". That recreation ratio is found at 5.1.1 of the same ordinance. And for
45 a PD 2 it is .019, for PD 2 for an R5 district, it is either .3036 or .039. Those are the ratios that apply for this case.
46 That is before I take you to what the special use permit says. Let me take you to Section 7.6 which is the same
47 zoning ordinance on page 7-9, "Approval of final plans and reports shall be based on compliance with regulations
48 applying at the time the land was zoned PD status including such specific modifications as were made by the

1 BOCC in its amending action. Our contention in that regard is that, the Board of County Commissioners set the
2 special use permit standards and this ordinance provision makes that so.

3
4 Larry Wright: The date of that is?

5
6 Geof Gledhill: This is the ordinance that was in effect at the time the special use permit was adopted. I think it
7 was May 20, 1986. Now, let's go to Attachment C, which is the special use permit itself and the relevant site
8 plans. The first one of the site plans is page 1 of 9 revised on January 2, 1986 which is the site plan that is
9 referred to in the narrative of the special use permit. You can see at the top in the middle that the minimum
10 recreation space ratio is .022. I don't have a clue where that number came from because the Ordinance says
11 .019. We are on page 1 of 9 under the general notes, number 7, Minimum Space Ratio. I don't have any idea
12 why that says .022, it should say, in my opinion, .019 but what is important is that it is more than .019 for this
13 purpose and further more number 8 says, "Fifteen of open space recreation area have been provided which
14 calculates to a .025 which exceeds twice what is required by the ordinance that was in effect which this special
15 use permit was approved. What does all that mean in acreage? Those same notes say there are, proposed
16 Zoning Districts R2 is a single family which is what that note refers to, 290.03 acres. You multiply 290.03 acres
17 by 019 you get 5.51 acres. That is the requirement in the zoning ordinance. If you multiply 290.03 by 022, the
18 number that is there, you get 6.388 acres. If you multiply 290.03 by .052 you get 15.08 acres which is what is
19 shown on this plat as being committed to recreation.

20
21 Jeff Schmitt: Prior to putting in the walking trails.

22
23 Geof Gledhill: Without the walking trails, this development has over 15 acres of recreation space which is more
24 than twice what the ordinance requires. The ordinance has a slightly different standard for multi-family and I read
25 that standard to you as well. That standard is .036. For some reason, if you go to the next page in the multi-
26 family section, for some reason, the recreation space ratio that is used is .040. I don't know where these
27 numbers are coming from but in any event, if you use .036 which is what the ordinance standard is, and there is
28 29.5 acres of multi-family space and that is also in that note, you end up with 1.062 acres of required recreation
29 space in the multi-family or if you use the .040 which is what is shown on this map, you end up with 1.18 and all
30 the testimony is that the recreation and the multi-family area is 2.38 acres so it too is twice as much as the
31 ordinance required when this special use permit was approved. Does anyone have any questions?

32
33 Jeff Schmitt: When we do the multiplication of 290 acres times the .19 or .052 or whatever it is and you get the
34 math, that includes from the edge of the street through the sidewalks to wherever, it does not just include a
35 swimming pool where a tennis court, it includes all the grounds that surround that activity or that play thing, right?

36
37 Geof Gledhill: You are right. It includes the tract that is committed to recreation. Either passive or active and
38 that is because at the time of this approval, that is what the ordinance said.

39
40 Mark Micol: It is the plaintiff's contentions that open space is inferior because of easements, etc.

41
42 Geof Gledhill: I understand that. Our argument to you is I get that but it wasn't part of what the county was
43 working with on May 20, 1986. Those requirements to make, for lack of a better word, quality open space, came
44 later. And they were under discussion, you have heard testimony about this, contemporaneous with the approval
45 of this project. We have also seen with testimony and seen in exhibits that the county commissioners were told
46 by the planning director that Scotswood was not subject to those changes and I will talk more about that in a little
47 bit. Let me take one more minute with you on this special use permit and ask you to read with me on, Attachment
48 C, second page of the special use page, third page of the special use permit, third paragraph reads, 'The 410

1 single family lots, the 216 multi-family units and the 65,460 square foot of commercial complex shall be
2 constructed in accordance with the site plan dated October 19, 1985 and revised January 2, 1986 and all
3 commitments shall be contained in the narrative statement of the project all of which are incorporated herein and
4 made a part of this special use permit". That means that these ratios in these plans are the ratios that apply to
5 this special use permit. This special use permit is incorporating the regulations that were in place when it was
6 approved. Mr. Collins, in his comment to the County Commissioners in 1986 when the IV-B-7-b regulations were
7 being considered, talked about this project being exempt were his words. I commented at the time that I may
8 quibble with that term but he was on the right track. Essentially, our contention is this project was vested in those
9 regulations that were in effect at the time it was approved. I will tell you this is a variation of the vesting principle
10 that is, in my experience, never been looked at by the courts. Normally, the way vesting comes up in court is the
11 developer complies with or there is an argument as to whether the developer has complied with some statutory
12 vesting principles or whether the developer has complied with what is called common law vesting. The argument
13 is always between the developer and the government and that is what the vesting principle does, it protects the
14 developer from losing the benefit of their permit because of changes in regulations over time That is fairness, due
15 process or whatever you want to call it but in this case, both the permit holder and the government agree that the
16 permit holder has the right to build this development according to these recreation standard in effect when this
17 project was approved. There is no disagreement. There was no challenge to that conclusion and the recreation
18 requirements were amended between the SUP approval and its recording in 1998. Nobody raised this point.
19 The first time it comes up is 2008, ten years after this permit was recorded and over 20 years from the time it was
20 approved and after \$100 million dollars and that is just Geof making up a number. You pick the number about
21 what this project is worth. One hundred million dollars later, somebody says wait a minute; you didn't apply the
22 right recreation standards. That is the underpinning the vesting concept. It's not fair; I would contend to you that
23 Mr. Buck lacks standing to raise the issue he raised. He lacks standing complained about the county's
24 application of recreation standards that existed at the time this project was approved. Multiple plats were
25 recorded, multiple site plans were approved and then in 2008, wait a minute, you didn't do it right. That flies in
26 the face of due process and it is not the county's position and the developer has not agreed to that change and
27 there was no disagreement among the two of them. We looked at the appeal document that is Exhibit A, Mr.
28 Buck's appeal, every one of these itemized concerns has to do with compliance with subdivision regulations.
29 This board doesn't have jurisdiction over subdivision. You don't have jurisdiction to resolve subdivision
30 regulations issues like you do zoning regulation issues. The underpinning of Mr. Buck's appeal is the subdivision
31 regulations if you ignore for this purpose when they were adopted and he is complaining about subdivision
32 regulations not being applied. That is not within the Board of Adjustment's power to determine whether that is
33 true or not. That has to go another place to get a remedy and there is lots of stuff that Mr. Buck has talking about
34 efforts made to go to the County Commissioners or where ever about these concerns, none of which were fruitful
35 and that is the end of that so Mr. Buck cannot raise the subdivision concerns with you in this appeal. That is
36 everything he is complaining about. If you look at the zoning ordinance, every one of them, it has you, this group.
37 If you look at the subdivision regulations, it is completely absent. You are not part of the subdivision regulations.
38 A complaint that the SUP did not meet county subdivision requirements when it was approved, not appealed
39 must go to superior court. Let's look at the heart of Mr. Buck's, now he has put a whole bunch of new stuff in
40 here that I have not had time to look at. I am going to look at what he had in here when he presented into
41 evidence last time. His contention in the evidence he has presented to you. Let's look at the documents that Mr.
42 Buck presented to you in his evidence. Now look at Exhibit K...something you received from Mr. Buck and it was
43 admitted into evidence. What he called Exhibit K. Essentially it is a November 1, 2006 letter from Mr. Benedict to
44 Mitch Barron, Newland Communities about the recreation requirements. In this letter, Mr. Collins is making a
45 point that in their view, there are deficiencies in the recreation and because of those deficiencies; the
46 development currently lacks much of the 7 acre active recreation area required by Condition 27. That is part of it
47 but from the county's perspective what is particularly important is Mr. Benedict's reference to the county holding
48 public hearings with changes in these regulations that came about later after the permit was approved and his

1 statement in that letter. This information is provided for perspective regarding the origin and importance of the
2 recreation recommendation of Condition 27 since the rules were not adopted at the time the SUP was approved.
3 Our argument to you about this letter is this is a negotiation between the planning department and the developers
4 over what recreation should be in this development. It is a negotiation because the condition of the special use
5 permit nowhere makes a requirement for recreation except in the ratios we have talked about before. In the
6 gross land area ratios we have talked about before. The entire recreation component of the special use permit is
7 couched in recommendation terms. Mr. Benedict is fighting for additional recreation over what the ordinance
8 required in the spirit of these later adopted regulations. Mr. Harvey's testimony earlier tonight, nowhere in the
9 county's files is there evidence that the county was requiring the later adopted recreation standards in this
10 project; they were using those to negotiate a better deal in the project.

11
12 Jeff Schmitt: That is the essence of this Attachment K.

13
14 Geof Gledhill: That is the essence of Attachment K. Let me go to Attachment L which is the next one in Mr.
15 Buck's package. It is May 22, 2002 letter from...this is funny because I have no recollection of signing this letter
16 but I signed it. John Link wrote this letter, Geoffrey Gledhill and Craig Benedict wrote this letter to James Moore
17 in 2002 and that is my signature so I fess up to having written this letter or at least signing it. What this letter is
18 about wholly and exclusively is the importance and significance of both the timing and phasing of this project.
19 Remember the reason why there was a delay between the special use permit approval and the recording of it
20 was Hillsborough did not have public water supply adequate to serve this project. The phasing and timing of the
21 aspects of the development of this project were intended to coincide with Hillsborough's water supply expansion
22 getting up and running. The bottom line is this letter concerned solely and exclusively the phasing and timing of
23 the project so that it would not be developed to outstrip the public water supply. It happens to use maps that
24 show the phasing plan that show bridges. I argue to you from the bottom of my heart, those bridges on those
25 maps are meaningless. This map is about phasing and timing and has nothing to do with bridges across Nancy
26 Hill Creek. Let me take the opportunity to take you back to the special use permit and that is Attachment C. I
27 want you to go to the conditions that are in that special use permit which begin on Book 1709, page 104. There
28 are 44 of them. I am going to illustrate this and then tell you what it says. Reading number 1, "The grantee of
29 this special use permit shall post, number 2, Security shall be provided, number 3, All necessary easements to
30 permit utility.....search shall be provided, the grantee shall promulgate roads, parks, etc. shall be, shall be, shall
31 be, every single one of these conditions except Condition 27 says "shall be". Number 27 doesn't say shall be, it
32 says, "the following recommendations apply to the recreation area and facilities". The county didn't have the
33 authority to say "shall be" when this special use permit was attached. The county did the best it could and said
34 we recommend that you do this. The planning staff took that and ran with it in the negotiations in the process of
35 getting these plats developed and put on record and did the best it could to get as much consistency between the
36 recreation supplied by these developers and the recreation recommendations contained in this special use
37 permit.

38
39 Geof Gledhill: In summary, Mr. Buck's appeal fails because the recreation requirements he contends are not met
40 were not in the zoning ordinance when the SUP for this project was approved and not applicable at all. They
41 were adopted after this project was approved. Those commitments were honored by the county when the special
42 use permit was recorded in the language I read to you earlier which was, with respect to the recreation on
43 speaking because that is really the whole...

44
45 Larry Wright: What was honored?
46
47

1 Geof Gledhill: The recreation requirements in the ordinance at the time the permit was approved were honored
2 by the county and that honoring was throughout the evidence you have heard and it is specifically honored in the
3 way the special use permit was written, all commitments shall be constructed in accordance with the site plan and
4 the revised site plan and all commitments shall be as contained in the narrative statement of the project all of
5 which are incorporated herein made a part of this special use permit. The site plan contains the ratio, the
6 recreation requirements, everything else are recommendations. Continuing on that theme, 7.6 of the zoning
7 ordinance at the time, approval of final plans and reports, shall be based on compliance with regulations applying
8 at the time the land was zoned PD status with this important language, "including such specific modifications as
9 were made by Board of County Commissioners in its amending action". The amending action was the recording
10 of the special use permit. Those requirements when this special use permit was recorded are the recreation
11 requirements that were met in this project and all the recommendations with respect to those recreation
12 requirements were a matter of negotiation between the developer and the county. The holistic look at this project
13 is that it has whatever 19 and 17 adds up to, it has over 30 acres of recreation area, passive and active
14 recreation area which far exceeds recreation requirements at the time of the approval of the project. The staff's
15 efforts at getting as much compliance with the recommendations that are contained in the special use permit
16 should be, in my opinion, applauded and this appeal should be denied. Thank you for your attention.

17
18 Larry Wright: Were sidewalks in the zoning or any part of that requirement?

19
20 Geof Gledhill: Michael, do you know off hand?

21
22 Mark Micol: It states, "Sidewalks shall be provided on one side of the street along all streets".

23
24 Jeff Schmitt: Special condition outside of the recreational requirement.

25
26 Geof Gledhill: Let me use that for one more thing I failed to mention. Although, I don't think it is part of Mr.
27 Buck's appeal, he has raised questions about lighting. I read through his appeal document and I don't see any
28 reference about the lighting. I think his contention there is that the lighting standards changed and the county
29 required updated lighting standards be applied. What the special use permit says about lighting standards is that
30 "street lights approved by the Town of Hillsborough shall be installed throughout the development as each phase
31 develops". That is why lighting standards aren't the same as recreation requirements. There is one more thing
32 but I want to make sure I have all your questions answered.

33
34 Jeff Schmitt: The last point here, does that mean the county defers to the town for whatever the lighting is that's
35 needed and there were no specifications. I don't think there are any specifications, street lights, outside of just
36 saying that the street lights shall be in here as approved by the Town of Hillsborough. That's all we've got.

37
38 Geof Gledhill: That is all the special use permit requires. Whatever happened about street lights, you are
39 probably going to hear from Mr. Buck about what happened about street lights and they are not part of his
40 appeal. But whatever you hear about those, it is also a negotiation to the extent that Hillsborough was not
41 involved in the final process about that.

42
43 David Blankford: You made a statement that the County Commissioners could not require the recreation, number
44 27, why can't they require it?

45
46 Geof Gledhill: Because the ordinance at the time did not authorize, I won't say they couldn't have required it but
47 the ordinance did not authorize them to require it. Sometimes the government over reaches.

1 Mark Micol: So when they negotiate, so the SUP has been approved based on the 1981 Ordinance, then they go
2 back and negotiate, what mechanism is in place to hold the developer's feet to the fire to make sure...there is
3 not, right?
4

5 Geof Gledhill: There is none. Here is the answer, when the plat is recorded, they are stuck. Everything else is
6 like preliminary...the last time we were together, there were preliminary plats and there still are preliminary plats
7 in here. All that is just what it is. The only thing that matters is the recorded final plat. Then the negotiation is
8 over. You get what you get when the project gets platted.
9

10 Mark Micol: So your position is like the foot bridges, it says three foot bridges, the reduced to...they got two, so
11 that was all negotiation.
12

13 Geof Gledhill: That is exactly right.
14

15 Mark Micol: Wasn't "a shall".
16

17 Geof Gledhill: It wasn't "a shall in" fact, the foot bridges are in 27d, it is part of the recreation. Three foot bridges,
18 you heard Mr. Buck about how there are some environmental issues that arose but it doesn't matter why there
19 are only two, the two is what they got, the two is what they negotiated and the foot bridge requirement was not a
20 requirement, it was a recommendation.
21

22 Jeff Schmitt: Mr. Gledhill, would you go over the sequence of the dates from when the special use permit was
23 approved to when the development actually started because there is a huge timeline involved.
24

25 Geof Gledhill: The special use permit was approved May 20, 1986. It was in March of 1998, I don't remember
26 the exact date, when the special use permit was approved, excuse me, when the special use permit was
27 recorded.
28

29 Jeff Schmitt: Say that again.
30

31 Geof Gledhill: There was a gap from 1986 until 1998 when nothing happened because everybody was waiting
32 for Hillsborough to have an adequate water supply for this project. I don't want to put it all on Hillsborough, it was
33 more complicated than that. It had to do with Environmental Management. It was a big thing to get this water up
34 and running but the bottom line is that nothing happened that is in evidence between 1986 and 1998 with respect
35 to this project.
36

37 Jeff Schmitt: In this 12 year hiatus, there is no standing that says because of this inordinate time horizon from
38 when something was approved to when it became effective, if I can say it in that way, that when the special use
39 permit became effective 12 years later, all the language contained in it, no matter what had transpired with county
40 rules and regulations in that time period, was still based on when it was put into effect 12 years prior to that.
41

42 Geof Gledhill: That is the county's contention and the way the county operated.
43

44 Jeff Schmitt: That is what Mr. Buck will argue against.
45

46 Geof Gledhill: He will probably argue against that and in support of what the county did, I'll point to this language
47 in the special use permit that refers to these site plans which contain a recreation requirement, the ratios so even

1 though it is 1998 and 1986 and even though stuff has happened with respect to recreation, you still had
2 recommendations and you were referred to the site plans in the special use plan.

3
4 David Blankfard: Do special use permits ever expire?

5
6 Geof Gledhill: They can. There are two answers to that, they can have an expiration date by their terms and
7 under new laws, they are regarded as what are called site development approvals, site specific development
8 approvals and site specific development approvals do have time limits under the law as it is now.

9
10 Jeff Schmitt: Larry, when we did Buckhorn, it had an 18 month horizon on it from the date that was done,
11 correct?

12
13 Larry Wright: Yes.

14
15 Jeff Schmitt: This must be the change in the law that Geof was referring to.

16
17 Geof Gledhill: Probably it was one imposed by the County Commissioners which can be done too. You can do it
18 two ways, you can impose a time limit or you can rely on the county's ordinance which now has the site specific
19 development timelines in them. The County did not have those in 1986.

20
21 Larry Wright: I want to ask a question that has been answered a couple times. I want to ask it this way. I know I
22 am repeating Geof's question so the SUP was what is codified in the SUP as of May 20, 1986. That stands
23 through 1998 and just because it went into effect in 1998, we are still operating on the BOCC SUP on May 20,
24 1986. We have the zoning ordinances that were in effect on that and it is my understanding that was 1986. I
25 have heard that word, the zoning ordinances, when were they...well ordinances are amended all the time.

26
27 Geof Gledhill: There was contemporaneous with the project approval, the process of this project being approved.
28 They were contemporaneous public hearings about, let's get our recreation standards in shape folks, they aren't
29 anything and those, the first step in that was the amendment to the subdivision regulations IV-B-7-b which
30 occurred also in 1986, I think August of 1986, I think August of 1986 after this special use permit.

31
32 Larry Wright: That is what I wanted to know.

33
34 Geof Gledhill: That is what prompted Mr. Collins, I'm sorry, I keep saying Marvin Collins, dear friend, that is what
35 prompted Mr. Collins to say during consideration by the Board of County Commissioners of the IV-B-7-b
36 amendments that they don't apply to Scotswood.

37
38 Larry Wright: Okay.

39
40 Geof Gledhill: Let me leave you with two thoughts. The first is, if you are inclined to use your influence to say to
41 the County Commissioners, don't make any "recommendation" conditions in future special use permits and
42 number two, don't delay effective dates for any reason. If the project isn't ready, the project isn't ready. If you
43 don't have water supply to do it, don't do it. This was the Orange County's first foray in anything like this.
44 Everything else had been three lots here, four lots there. This is a big deal and no one in county government had
45 experience with it but don't let them do it again. Use your influence. If you can pass that on whether up the food
46 chain or down the food chain but pass it along. Thank you.

47
48 Larry Wright: Before Mr. Buck starts I want to take a five minute break and be back in five minutes.

1
2 Michael Buck: Let me start off on a note of conciliation and echo Mr. Gledhill's comments. From all the research
3 I have done, I would concur whole heartedly that whatever influence you have to prevent such long lag times in
4 the development delays and so forth, I think it certainly...as a resident of the community, I can attest to the fact
5 that it has certainly compounded some of the issues we have felt. Let me say if there was any question, I want it
6 to be clear that I am not challenging the validity of the special use permit in any way. I agree with the special use
7 permit, I want its provisions enforced so if there was any concern or question about that I want to be clear that I
8 am not challenging the validity of the special use permit. I am saying that the plat for Phase IV was invalidly in
9 approved and I am saying it was invalidly approved because it makes representations that were inconsistent with
10 applicable ordinance. It makes it impossible to fulfill the special use permit condition so the enactment of that plat
11 makes it impossible to adhere to the provisions of the special use permit. Implementing the plat I would say
12 introducing defacto changes to special use permit condition and so for these reasons, the Phase IV plat should
13 have not been approved when it was approved. I am going to start by talking about what is the relevant date.
14 We have had some of that discussion already. The SUP does mention two dates, May 20, 1986, the date which
15 the special use permit was approved and then on March 31, 1998, the special use permit effective date and the
16 date on which the land was rezoned. The choice of dates, my contention, and the choice of dates effects which
17 ordinances apply. I would argue the later date is applicable. I would further say that the use of the earlier date is
18 essential to the county's case. If you do agree with me that the later date is the proper date to use for all the
19 subsequent conversations we will have, I think it is very difficult for the county's case to prevail. I would like to
20 point out that the use of the later date is not essential to my case. I do believe that you should use the later date
21 as the relevant date for determination of which ordinances apply but even if you disagree with me, I will, using
22 evidence already in the record, I will argue that I can still prevail using the earlier date. What is the evidence for
23 the March 31, 1998 date that I believe is the appropriate date and Mr. Gledhill has already referred us to Orange
24 County Zoning Ordinance 7.6. Additionally, I will point to the special use permit itself. This is a summary of what
25 evidence I am going to get into. I am going to point to the zoning officer's own testimony to argue for the use of
26 the March 31, 1998 date. I am going to point to the fact that the county has already enforced ordinances that
27 were enacted after March 31, 1998 but certainly after the 1986 date that the county wants you to review and I am
28 going to point out that there is a lack of compelling contrary evidence that precludes our use of an earlier date. I
29 also am open to any questions, I see you have dinner in front of you so I hope that I am clear enough with the
30 presentation that you won't have to go through your documents. I am going to try to put it all on the board.

31
32 Karen Barrows: You said something about page 4, not being valid, what are you thinking of when you say that
33 Mr. Buck?

34
35 Michael Buck: My appeal challenges the validity of the approval of the Phase IV plat which took place in 1998 so
36 I am saying the Phase IV plat ought not to have been approved because of the issues I am going to lay out.
37 What is the evidence for the March 31, 1998 date? I am going to point to the exact same ordinance Mr. Gledhill
38 was pointing to and through all the slides, I will highlight where I am getting my information from and put on the
39 screen the actual evidence so this red highlighting will always be the location of the evidence. Attachment H,
40 page 79, "Approval of final plats, plans and reports shall be based on compliance with regulations applying (and
41 this is key) at the time land was zoned to PD status". It is the zoning date that is critical. What was the zoning
42 date? The special use permit specified, in fact, in three different places, the special use permit tells us that the
43 zoning date was March 31, 1998. I am only highlighting one of them there but you will see that it says, "the
44 change in the zoning of the property and the special use permit effective date are March 31, 1998, the date of the
45 recording of this special use permit. I don't dispute the fact that conditions were approved in 1986 but the actual
46 rezoning didn't take place until 1998 on March 31. Additional evidence is highlighted by looking at the special
47 use permit itself. You will see sprinkled all over the last page the dates on which the signatures took place. It
48 was 1998 when the special use permit was put into effect. The other thing you can find in the special use permit

1 is the fact that it refers to ordinances that did not exist in 1986. The special use permit, inside the conditions of
2 the special use permit refers to ordinances not in existence in 1986 specifically Condition 44 refers to Section
3 7.2.8 and 8.4.1.11 which are not in the Orange County Zoning Ordinance that the county has provided in
4 Attachment H. I would also like to point to the zoning officer testimony to provide some evidence for the fact that
5 the March 31, 1998 date is what was being used. The zoning officer stated on the record that ... and let me say
6 one thing here, I have talked with Mr. Harvey over the years and I would like to say that he was not party of any
7 of this, he did not join the department sometime after this occurred so I wanted to be clear that what Mr. Harvey is
8 testifying to took place prior to his involvement in the issues that are disputed here. In any case, he did say that
9 he discovered in 2012 that no 1986 copy of the ordinance existed in county files. When I hear that, it is difficult
10 for me to believe that the county was following the provisions of ordinance for which it had no copy. As additional
11 evidence for the case of the March 31, 1988 dated, I pointed to the fact that the county has enforced ordinances
12 that were enacted after, not only after the 1986 date they claim applies, the county's position is that 1986 is the
13 demarcation point, we can't enforce any ordinance, they are claiming they cannot even enforce the subdivision
14 standards enacted on August 4, 1986 but a few months after the approval of the conditions. They are saying we
15 can't even enforce what happened in 1986 and yet we find they did enforce the Outdoor Lighting Standards,
16 Ordinance 6.3.1 which the record shows was enacted on June 26, 2003. The county is enforcing ordinance
17 selectively if they are enforcing a June 26, 2003 ordinance but not enforcing a 1986 ordinance. This is just
18 further evidence for ... on this slide what I was pointing to is the Board of County Commissioner meeting minutes
19 which talked about the enactment of the Outdoor Lighting Standards. On the next slide ... I have here TBD
20 because I didn't know what it was going to be called. In Exhibit 1B, the zoning officer in a memo to the Board of
21 County Commissioners from October 23, 2007 on page 8 and 9 speaks to the enforcement of the Lighting
22 Ordinance and he said, and I say zoning office and I realize that is incorrect, it is the Current Planning Supervisor,
23 Robert Davis, at the time, he says, "Phases I and IIA have standard fixtures and Phase IIb, IIc and II have cutoff
24 fixtures, i.e. dark skies compliant, the lighting ordinance requiring cutoff fixtures was passed after Phases I and
25 IIa were platted". I content this offers further evidence that the county is enforcing ordinance for 1986. The date
26 on which the county is saying they can't do anything after that. An additional example of an enforcement of a
27 later ordinance can be found by looking at the plat in Attachment B and this is the plat that is at issue here, the
28 Phase IV plat, there is a certification on the plat signed by the developer, and the certification attests that the plat
29 will adhere to provisions of Orange County Lighting Ordinances as set forth in the Orange County Zoning
30 Ordinance. Not to reiterate too much but the ordinance was enacted after 1986 and it was enforced after 1986.
31 Additionally, there is another certification an acceptance of dedication certification contained on that same plat in
32 Attachment D and that plat was signed by the county manager. Well the subdivision ordinance that required the
33 acceptance of dedication certification was enacted with it, Subdivision Ordinance 5D6b which was not enacted
34 until August 6, 1990 per Attachment J so we have multiple examples of county enforcing ordinance after 1986.
35 The county has spoken ... I believe there is no compelling evidence for the use of the May 20, 1986 date and if I
36 recall correctly the only argument the county has offered for the use of the 1986 date, is the statements of Marvin
37 Collins, who spoke in 1986 to the Board of County Commissioners with regard to the subdivision ordinances and
38 the county's contention is that his statement, and it is very small there, in pink at the bottom, he said, "The
39 Scotswood project would be exempt from the ordinance since it was already approved" and I don't dispute that is
40 probably exactly what he said however, if you read the context in the meeting minutes, what I think you will find is
41 he was responding to some questions about specific sections of that ordinance specifically, he was responding
42 and I highlighted here in orange, he was responding to the payment in lieu of dedication, Section IVB-7-b-5 and
43 IVB;7b6 and his statement in response to those sections of ordinance made perfect sense because the payment
44 in lieu of dedication provision requires that the payment in lieu of your dedication happened at the time you
45 submit your planning documents and that you are going through the process of approval. Well Scotswood had
46 already gone through that process so certainly they would be exempt. They can't use that portion of the
47 ordinance because they have already gone through that process. I would further point out that his statement is
48 not this positive and what I mean is that he may have said that but that doesn't make it true. Again, let's go back

1 to Section 7.6 which says, "Approval of final plans and reports shall be based on compliance with regulations
2 applying at the time the land was zoned. It had not yet been zoned. The approval had been made for the
3 conditions but the zoning had not taken place and would not take place until March 31, 1998. I wasn't planning
4 on speaking on this in much detail but since Mr. Gledhill brought it up I would like to point out there is not vested
5 right here. Mr. Gledhill has asserted that a vested right does exist and I would submit to you that it does not
6 according to Orange County Ordinance or North Carolina General Statutes and the reason for that is because the
7 period of vested right cannot exceed five years and let me actually quote here from North Carolina General
8 Statute, Section 153A-344.1 Vesting Right, "Duration and termination of Vested Rights, Number 1, A right which
9 has been vested as provided for in this Section shall remain vested for a period of two years, this vesting shall not
10 be extended by any amendments or modifications to a site specific development plan unless expressly provided
11 by the county. Number 2, notwithstanding the provisions of subsection D1, a county may provide that rights shall
12 be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant
13 circumstances".

14
15 Jeff Schmitt: What is the date of this statute?

16
17 Michael Buck: I believe this should be verified but the date I have in my notes is, it was ... the overall section
18 dates from 1959 but has multiple updates since then so I cannot speak with authority as to whether or not this
19 was in effect at whatever time point we need to talk about but I think becomes a question as well. Does this have
20 to be in effect in 1986 when the conditions were approved, does it have to be in effect in 1998 when the zoning
21 actually took place or is there some later date. The other thing I would point out is that the vesting, there is a
22 process by which the vesting has to happen. There is no evidence before you that shows there was vested right
23 given in this case. I am not immune to the vesting process right. What Mr. Gledhill says is totally correct. If you
24 are a developer, you want to know that for the project you have got, a long term project that you are going to be
25 able to have rules that are consistent for your project. It makes total sense but whatever date we use for this
26 project, there is no way to get around the fact that by 1998, more than five years had passed since 1986 and
27 even if they didn't vest until 1998, the expiration, look at what the General Statutes actually say, you have to have
28 applied for building permits, they had not applied for building permits for subsequent phases. Let's assume for
29 the sake of argument that a vested right did exist. I don't believe that one did and I don't believe there is any
30 evidence whatsoever that a vested right existed by let's assume a vested right did exist. There is no prohibition
31 against additional and I am quoting from North Carolina General Statutes 153A-344.1 Subsection E2, "The
32 establishment of a vested right shall not preclude the application of overlay zoning which imposes additional
33 requirements but does not affect the allowable type or intensity of use or ordinances or regulations which are
34 general in nature and applicable to all properties subject to land use regulation. Nothing of concern here today
35 affects the intensity of the use. I am not challenging the land use intensity statistics, I am saying the active
36 recreation components of the project and the ordinances that describe what is required, and those are applicable
37 even in the face of a vested right. I would say there is substantial evidence that the proper thing to use here is
38 the 1998 date. We have the Zoning Ordinance 7.6. We have the special use permit text itself which tells us that
39 the special use permit was enacted, was rezoned in 1998. We have the zoning officer testimony. We have
40 county enforcement of ordinance enacted after 1986. We have, what I believe to be, the lack of any vested right
41 and we don't have any compelling evidence of a reason to use the 1986 date. As I said, the county's argument
42 requires the use of the 1986 date. The county has put forth no evidence to say that, well the land really is of a
43 quality that is acceptable for active recreation. They have put forth no evidence that lets us use the land in
44 question with the subdivision ordinance enacted in late 1986 so if the county does not prevail on this point, I
45 believe that is a very difficult burden for them to overcome. I am going to show you evidence that even if you
46 disagree with me I think the case is pretty strong that 1998 is proper date but even if you disagree, I would like to
47 show you evidence where I think that I can still prevail on the merits. That is a discussion of the relevant date. I
48 am going to move onto another section where one of my contentions is the inadequate active recreation acreage

1 provided in the project. I am going to set context for Phase IV. Phase IV was the last of the project phases for
2 which Newland, the developer, had an interest in the project. Newland was not working in other areas of the
3 project so it is the last phase for a particular developer. Just for information, concurrent to the work going on in
4 Phase IV, there is ongoing work in the multi-family phase. The only remaining significant area acreage was what
5 was in Phase IV. In 2008, you have got this large tract of land in Phase IV and to the extent that we need some
6 additional active recreation, we need some additional space that is the only place you will get it. You are not
7 going to get it in the areas that have already been built and you are not going to get it in the multi-family. There is
8 just not enough acreage. Additionally, the county had established expectations from one of the prior developers
9 and this will become key. There was some testimony that talked about the fact that the Newland interest in the
10 project was acquired from an earlier developer, Jim Moore and Churton Grove, LLC which is still operating in
11 multi-family area but there was a time when some ownership rights switched but I will show in the record where
12 the county had expectations that they established with that previous developer and yet the new developer comes
13 in and now all of the sudden the county backs off on those requirements they established with the earlier
14 developer to the detriment of residences of the neighborhood. Additionally, and this is key for the reason I have
15 to go into so much detail to paint the picture here. I mentioned when I first spoke before you the mind numbing
16 detail that I was going to get into and I apologize for that but in order to adequately understand the issues with
17 the recreation space, it is important to understand the as built situation with regard to recreation so you can make
18 a determination of ... given what was on the ground with earlier phases and what the plat for Phase IV shows
19 allow compliance with the special use permit so I have to get into some of the understanding of the as built
20 situation. For evidence of the acreage and adequacy, this is the evidence I am going to use to make my
21 argument. The planning director letter which we have already talked about, zoning officer memorandum to the
22 Board of Commissioners, the zoning officer's digitized view, the plan-o-meter estimates, photographic evidence,
23 the developer site plans and Orange County Ordinance citation. After I go through that evidence, I will walk
24 through why again I think it is clear if you use the later date that all this applies but even if we use the earlier date,
25 the argument still holds that the acreage is inadequate. Looking at the planning director letter; this letter is dated
26 from the planning director in 2006. I encourage you to read this letter in its entirety. I am going to quote sections
27 out of it and I don't want to be accused of quoting anything out of context. Please read the entire letter
28 completely. He says, I am quoting the planning director, Craig Benedict from November 1, 2006 in his letter,
29 "Development presently includes approximately .4 acres of active recreation, .4. Number 2, "The site
30 development plan shows five acres in one central area for recreational purposes that has not been installed. The
31 development currently lacks much of the seven acre active recreation area required by Condition 27. Note the
32 word required. Next bullet, In reference to "active recreation plan on Phase IIa plat", page 80, and the planning
33 director says, "Much of this 7.06 acre recreation area was never put on the ground." Let me pause here and say
34 the county has put into evidence the plats and I don't dispute that the plat does say there is 7.06 acres of active
35 recreation on that parcel. It is definitely there in the plat. That plat was filed well before this letter was written on
36 November 1, 2006. Despite what is written on the plat, the county in the guise of the planning director and I am
37 going to show other instances as well, is saying that, yeah it says 7.06 acres of active recreation but we know
38 that is not adequate, you have got to do more. I am showing here a picture of what the active recreation
39 acreage looked like circa 2006 because I want you to see as he is writing this letter; here is what is actually there.
40 To give some provenance to this picture which is already in evidence in Exhibit 7 but how do I know that it is from
41 about 2006 because right here, you see there is no bridge which was built 2007/2008 completed early 2009 so
42 this is what the parcel identified as active recreation contained at the time of the letter and just for purposes of the
43 record and to point it out. We have a parking lot, a club house, swimming pool, a tennis court, a basketball court
44 and a top lot. I am reading now again from the planning director's letter, "Planning staff's interpretation of the
45 SUP and rezoning plan indicates there is currently a deficiency between the acreage provided for active
46 recreation in the development and the acreage necessary for compliance with Condition 27". I am skipping some
47 text now, "In addition to the recreation space referenced above that have been installed, the site development
48 plan shows five acres in one central area for recreation purposes, i.e. play areas that has not been installed;

1 therefore, the development currently lacks much of the seven acre active recreation area required by Condition
2 27.

3
4 Larry Wright: Mr. Gledhill, you just referred to Condition 27, Mr. Gledhill said he went through and I'm sure you
5 have heard the road shall, the road shall and then he said that Condition 7, these are the following
6 recommendations and he contended, his argument was that the county was doing everything that it could to
7 increase this recreational area, could you address that please. I want you to address the following are
8 recommendations where 19, 20, 21, 22, 23, 24 shall and this is a recommendation, could you really differentiate
9 that and what point are you making here with a recommendation rather than a shall.

10
11 Michael Buck: I actually have a fairly detailed rebuttal to the recommendation argument but ..

12
13 Larry Wright: Well, it is right here number 27, you referred to that so this is the point I am trying to make and I
14 want to know what this letter is. It sounds like this is exactly what Mr. Gledhill was saying was going on here.

15
16 Michael Buck: Please read the letter in its entirety because again, I want to be quoting accurately and making
17 sure you have a proper understanding of the letter but I will point you to Mr. Benedict's concluding statements in
18 the letter, "I regret that we are unable to agree on a mutually agreeable resolution at our last meeting that would
19 satisfy the county regulations, existing SUP and Newland's goals for the project. ... If Newland believes that
20 staff's insistence on the inclusion of recreational areas in conjunction with the development of Phase IV contrary
21 to the intent or harmony of the board originally approving and having jurisdiction over the SUP, i.e. the County
22 Commissioners, then Newland may appeal the determination to the board. We can provide you with the appeal
23 application material upon your request." That is key I think the planning director is doing exactly what he should
24 be doing, he is saying to them, here is what is on the ground; here is what you have to provide in order to
25 proceed. If you don't agree with us, you may file an appeal and seek a provision from the approving board to do
26 what you wish to do that you think we as the planning board are improperly interpreting. That was the
27 appropriate tact for him to take at that point.

28
29 Larry Wright: How do I know this isn't just a snap shot in time? I can read the letter but it can be snap shot in
30 time and I don't know what happened before or after and I don't think we are really addressing this. This could be
31 a series of negotiations.

32
33 Michael Buck: It certainly could be but if you read the letter and I will show you what was developed, you will see
34 that the negotiation wasn't a negotiation ...

35
36 Larry Wright: Proceed.

37
38 Michael Buck: I don't want to lose sight of this. On page 3 of his letter, under past discussion, I am going to
39 quote the planning director, "Planning staff did receive an early proposal from Newland locating an open grassed
40 area of 100 feet by 240 feet with parking comprising a total of less than one acre. This open grassed area is
41 located underneath high voltage electric transmission lines. Although it may be reasonable to permit some
42 overflow recreation area parking under such areas, it is less than desirable for the majority of the active recreation
43 area in this development to be located underneath high voltage lines. The current county code supports that
44 premise by not permitting recreation activities in public utility transmission easements. Further, the small size of
45 this open grassed area is insufficient to satisfy Condition 27". There is part of the negotiation that you are asking
46 about where he is laying down the marker that says what you have proposed, this field of 100 feet by 240 feet
47 insufficient, not going to fly. If you don't like it, provide more land or go to the County Commissioners and seek a
48 dispensation. What you will see when we get to, and I hope I have a picture of it, what was actually, in fact you

1 can see it on the plat, what was actually provided is an open grassed area of 100 feet by 240 feet with parking so
2 to the extent that this was a negotiation it was unfortunately a capitulation entirely on the part of the county.
3

4 Mark Micol: Was that site underneath the high power lines?
5

6 Michael Buck: It is slightly off to the side of the power lines. The power line easement encroachment partly on it.
7

8 Unidentified Board Member: It sounds like the county got that is what negotiations are. Everybody gives up a
9 little bit so it sounds like that what negotiations is going on that the county wanted it totally off and Newland said
10 well I'm not going to be able to use that land so let's use it as an open so let's meet somewhere in the middle
11 where part of it is there and part of its off. I am saying it sounds like it is still negotiating.
12

13 Michael Buck: I understand there was negotiation. Please read the letter in its entirety. The small size of this
14 open grassed area is insufficient to satisfy Condition 27 so it's partly the fact that it was under a high powered
15 transmission line but it is also the small size which didn't change in the negotiation. Continuing with the planning
16 director letter so the Phase IIA acreage inadequacy was recognized as early as June of 2001 and I am showing
17 here is the plat for Phase IIA. It is evidence as Attachment D, Book 88, page 80 and it does indeed say on the
18 plat 7.0688 of active recreation area but going back to the letter from the planning director, "Our discussions
19 included reference to the Phase IIA plat that contains written language showing 7.06 acres of active recreation
20 area where the clubhouse, tennis and basketball courts are located however, much of this 7.06 acre active
21 recreation area was never put on the ground, furthermore, concurrent with the Phase IIA plat recordation, Jim
22 Moore, principal of Churton Grove LLC brought in sketches for Phase IV that were shown to Robert Davis and
23 me. These future Phase IV sketches included three to four acres of open areas for soccer or multi-purpose field.
24 Each soccer or multi-purpose field is typically 1.5 to two acres. Planning staff did not require that all the
25 recreational area called in Condition 27 be included in Phase IIA because the original developer evidenced his
26 intent to provide sufficient open areas in conjunction with the development of Phase IV. So this is an example of
27 that promise over time that I talked about. The original developer was going to do some stuff in Phase II shown
28 here and for whatever reason they decided, no we are going to shift some of that Phase IV, the county says okay
29 we can do that that is fine. We see on your concept plan, you are going to provide there to four acres of open
30 areas for soccer and multi-purpose fields.
31

32 Unidentified Board Member: I'm like Larry; you are taking a lot of these correspondences out of context. We
33 have sat here and watched over a five year period letters that were written ... the bottom line is what is on the
34 ground today so you do disagree with Mr. Gledhill's math where he came up with 17 acres of active open space;
35 do you disagree with that total?
36

37 Michael Buck: That total comes from the plats and I agree that ...
38

39 Mark Micol: So how is this relevant, all these letters, correspondence. If what is on the ground today is 17 acres,
40 then are you arguing quality or quantity?
41

42 Michael Buck: I am arguing that the quality of the acreage provided doesn't meet the quantity requirements so
43 their 17 acres according to plat what is called active recreation but if it called active recreation in the plat, it is not
44 active recreation according to ordinance.
45

46 Larry Wright: Can I ask our attorney, is this within our jurisdiction?
47

1 David Rooks: There is an argument that none of this is in your jurisdiction that this is actually not subject to a
2 matter over which this board has jurisdiction. This is a subdivision issue, not a zoning issue. You have
3 jurisdiction over appeals from zoning decisions. This is an appeal of a subdivision decision. I can't site the case
4 but I reasonably certain that you do not have jurisdiction over it if you chose to decide it on that basis.
5

6 Larry Wright: I am at a loss here.
7

8 David Rooks: You can inform the applicant whatever you think about the argument he is following and he can
9 make his decision how far he wants to go with that. He can make his own decision about whether he wants to
10 continue making the argument.
11

12 Jeff Schmitt: Before this board or withdraw it or go back to superior court or the planning board or someone else.
13

14 David Rooks: Yes.
15

16 Mark Micol: Basically, the SUP called for 7 acres, both the plaintiff and the county agree that there is more
17 acreage on the ground today that what the SUP approved so basically he is talking about quality.
18

19 David Rooks: You could ask the applicant to move on to his next point.
20

21 Larry Wright: Could you move on to your next point please.
22

23 Michael Buck: With regard to jurisdictional questions and you are going to make the decision you are going to
24 make, I understand that. I would like to point out two things; I am following the process prescribed to me by
25 Orange County. When I raised the concerns I raised beginning in 2007 and up to, including and following the
26 time of the filing of the appeal, I was in contact with Orange County officials. Orange County officials provided
27 me with the appeal process we are in now so that would be my first point that I am following a prescribed process
28 that the county gave to me. My second point is that the delays in this process, I would put almost entirely on the
29 part of the county. I have attempted multiple times in excess of 50 or 60 times over the intervening five and one
30 half years to move the process forward with letters, emails, phone calls, meetings and so forth with the county so
31 the extent that I am in the wrong venue, I would say that I have been directed to the wrong venue by the county.
32 Additionally, I would say with regard to the powers of this board, Section 2.3.2 say that this board can hear,
33 review and decide appeals from and review any order, requirement, decision or determination made by the
34 zoning officer on the performance of official duties. I will try to move this along in terms of the character of what
35 notes I am making here. Zoning officer memorandum from 2007 which I have entered into evidence and that was
36 Evidence 1-B. The claim is that "the SUP requires seven acres of active area". Again, the definition becomes
37 key, active recreational area. I would like to read this one in detail and again let's keep in mind the date on this.
38 This is a report made to the Board of Commissioners in October of 2007 so we are three, four, five months from
39 the submission of the Phase IV plat. "Staff determined that that the areas shown in Phase II plat were not
40 adequate to meet", again this is not a letter, this is a report to the Board of Commissioners, "Staff determined that
41 the areas shown in Phase II plat were not adequate to meet the SUP's seven acres of active requirement even
42 though the surveyor designated on the plat (skipping). Everyone understood that the topography limitations of
43 the clubhouse lot would require additional land to meet the entire seven acre SUP requirement. Then we get to
44 the digitized view which is Exhibit 8 and this digitized view as I showed with Exhibit 1A was provided to me by the
45 county on March 10, 2008 and the digitized view makes the claim that it is not really 7.06 acres on the Phase II
46 site but really 3.77 acres so to your question, I don't dispute shows 7.06 acres but the county as of March 10,
47 2008 after the Phase IV plat had been submitted is saying that it is not 7.06 acres but really 3.77. I claim that

1 3.77 is excessive as well but the point is that the county's 7.06 acre claim ended here at the time of the appeal is
2 inconsistent with what they presented to the Board of Commissioners in 2007 and 2008.

3
4 Jeff Schmitt: How many acres are there?

5
6 Michael Buck: In red or the total?

7
8 Jeff Schmitt: Outlined in red.

9
10 Michael Buck: 3.77. Again, I understand the idea of a negotiation but let's take a look at the change in County
11 recreational active recreational claims over the years. In 2006, we are at .4 acres of active recreation, in 2007,
12 we are at about 3.35 and that is from a document that is in evidence but I am not showing right now. Then it
13 goes to 3.77 acres in 2008 and I will actually point you to the zoning officer's response to my appeal and this is
14 the current, Mr. Harvey's response to my appeal dated September 4, 2013 in Attachment B, page 8 (unmarked).
15 He also cites the 3.77 acre claim. Then we jump to 7.06 acres so there is changing claim the county is making
16 over time when nothing changed on the land. Between 2006 and the building of this picnic area in early 2009 but
17 certainly after July 17, 2008, nothing changed and yet the interpretation of the acreage allowed did change. That
18 is key. I mentioned last time that if we were talking about a tenth of an acre, a quarter of an acre or even half an
19 acre, there probably would not be concern here but I contend there are orders of magnitude between ...

20
21 Larry Wright: Where is this going? I don't want to cut you short, I want you to make your point but I really want to
22 know where this is going. What is the end point here?

23
24 Michael Buck: I make a claim that the Phase IV acreage is inadequate to satisfy the special use permit. In order
25 to understand that claim, you have to know what was on the ground prior to Phase IV and so I am trying to paint
26 the picture what was on the ground, what the County understood to be on the ground, what the County was
27 willing to count as already built active recreation was a number that whatever was added in Phase IV did not
28 allow compliance with the special use permit so I can move on from here to further that claim but we are talking
29 about an inadequate active recreation claim according to the special use permit.

30
31 David Blankford: Is there a definition in the 1986 building code that says what "active" is... I want to ask Mr.
32 Harvey first.

33
34 Michael Harvey: I am not sure I can legitimately answer because of where are in these proceedings. This is his
35 closing argument. I think if you want to ask a clarifying question, I will give you an appropriate answer.

36
37 David Rooks: I would allow the applicant to finish his presentation and then you can ask each of them follow up
38 questions if you wish.

39
40 Michael Buck: I will make an argument on evidence about that. I will move this along. We look at the plan-o-
41 meter estimates last time. I don't think there is any dispute that the clubhouse, pool, tennis court, basketball
42 court, subsequent built gazebo and the top lot all certainly eligible. There is question as to whether the parking
43 lot is countable and areas that are sloped and not otherwise suitable for recreation can be allowed. Again, we
44 are looking at broad numbers, the plan-o-meter numbers were introduced as estimates so it is a little over an
45 acre. If we look at what the planning director noted in his 2006 letter, he is saying it is really closer to a little over
46 half an acre, almost three quarters of an acre. I will note the question came up before as to what counts as active
47 recreation, is it the entire land up the curb and so forth. The planning director's 2006 letter was doing an acreage
48 calculation on the individual pieces. Now I think that cuts the acreage a little too close, I don't think you want to

1 calculate it that way but that is what the planning director was doing in 2006. The point of all this is there is a
2 range of potential what is allowed active recreation. It could be as low as .7 acres or as high as one and one half
3 acres if certain remediation activities were to occur on the land as it exists today. The bottom line is that the
4 historical claims of either 3.77 acres which were the claims made at the time of the appeal and for or the current
5 claim was 7.06 acres, those are invalid and if those are invalid, what is the range of acreage that was properly
6 built at the time and I would say the subtotal ranges. The subtotal before Phase IV is somewhere between two
7 and three one half acres built so in order to Phase IV to properly meet the requirements of the special use permit,
8 they need to provide somewhere between 4.9 and 2.7 acres to get ... 2.7 to 4.9 acres to get to the total seven. I
9 have already submitted the photographic evidence, you have seen it, and the photographic evidence shows
10 slopes, asphalt parking lots, gravel parking lots, sewer easement, metal storm drain, high tension lines, developer
11 construction debris, damage and/or incomplete landscaping, silk fencing, dirt paths, general unsuitability for
12 active recreation according to code. The one thing I would say in regard to the dates of the pictures is that the
13 pictures begin in 2007 to the extent that the situation was improving, the developers were delivering what they
14 needed to deliver, you would expect that 2007, 2008, 2009 up to the present day, at least some of these
15 situations would be ameliorated, you do not find that in the photographic evidence. You find that it wasn't right in
16 2007 and 2008 and still not right today and again I did date stamp the photos so you can make your own
17 determination. I would like to briefly talk about the developer recreation area site plans. You have in evidence in
18 Attachment D and also Attachment K, the County has submitted the same documents twice, the developer's
19 recreation area site plan. For Phase II, they submitted an existing conditions map, they submitted a site plan for
20 the active recreation space, they submitted a grading and drainage plan and the dates of those were 2002, 2003,
21 2003 and 2008. Newland, the developer for Phase IV submitted a plan to describe their picnic area
22 improvements in Phase II. What I want you to understand is the developers in pursuit of their claims of this is
23 active recreation, went through the process of creating these site plans, submitted them to the County, they are in
24 evidence for you, the same process occurred for the multi-family site. You have in evidence in Attachment D and
25 Attachment K a site plan, after the date of the appeal but dated April 24, 2008 and a planting plan. What
26 evidence do you have of a recreation plan, site plans related to active recreation or recreation of any kind, what
27 evidence do you have before you for a corresponding acreage claimed in Phase IV? You have none. There
28 were no conditions, existing conditions map submitted. There was no grading and drainage plan submitted. No
29 recreation site plan submitted. No landscaping plan submitted. I would argue with you that the failure of the
30 developers to provide and the failure of the County to demand active recreation site plans for Phase IV as were
31 demanded and provided for the previous phases evidences a lack of intent to "appropriate equip the land for
32 active recreation land and improve the land for active recreation use." Failure to update the approved site plan
33 with modified recreation proposal is also a violation of the ordinance. More on that later. With regards to
34 developer's site plans, I just want to point out to you that the as built drawings you have in your evidence in
35 Attachment, they are not precisely correct. The orientation of the basketball court is different and the location of
36 the top lot was shifted down the hill. I didn't want you to be confused as you look at the Attachment D and
37 Attachment K site plans that they don't quite match reality on the as built document. There was a question or
38 concern raised that I am not a certified engineer surveyor and therefor I am unable to speak to the sloping issues
39 on the Phase II parcel and it is true I am not a surveyor however like everyone in this room, I have completed the
40 eighth grade where we learned that slope is rise over run and I a submit to you that if you pull out your ruler and
41 you look at the contour line on the grading and drainage plan map that you will find that the areas that I claim are
42 excessively sloped are in fact sloping in excess of the allowed slope according to ordinance and the pictures I
43 provide show locations, on the back of the tennis court, the back of the basketball court and the upper portion of
44 the grassy areas. I would like to repeat what the current planning supervisor said "everyone understood the
45 topography limitations at the clubhouse lot would require additional land to meet the entire seven acres SUP
46 requirement" and that is a statement that was made in 2007. Now let's look at what the actual ordinance
47 requirements are. I claim that you should be looking at the ordinance enacted in August of 1986 with regard to
48 what is applicable. The County has already spoken to this so I will try to be brief. Section IV-B-7-d-3 concerns

1 site suitability requirements which say that land provided or dedicated for active recreational purposes, active
2 recreational purposes shall be of a character slope and location suitable for use as play areas, tennis courts,
3 multi-purpose courts, picnic areas, ball fields and other similar recreation uses. The type of recreation area shall
4 be located on land that is relatively flat, 07 and one half percent slope free of wetlands, free of flood plains,
5 easements for public utility, transmission lines and otherwise capable of accommodating active recreation uses.
6 One thing I would like to point out to you and this will persist on some of the further slides; active recreation has a
7 specific connotation. The County has tried to say that the walking paths can count as active recreation. That is
8 not the intent of ordinance and that is not what it says. Active recreation is intended for your sports type of
9 activities, tennis courts, play areas, multi-play areas, picnic areas and so forth. Passive recreation certainly,
10 walking, jogging, reading, similar quiet activities. The paths can certainly be construed as passive recreation, no
11 problem. There is an additional requirement in the same section of code regarding location. I will not read the
12 whole ordinance to you but it basically says that you need to properly locate your active recreation space.
13 Parking has been a question I want to make sure we are clear on. I did point out the significant area of the lot
14 which is encumbered by parking spaces and the 1986 code specifically excludes parking spaces from counting
15 as active recreation. It says, "In addition to land provided or dedicated for active recreation purposes, sufficient
16 area must be provided to make available parking lot spaces". The parking lot spaces have to be in addition to
17 whatever is allocated for active recreation. The implications of all this are that it is clear that if you decide that the
18 1998 rezoning date is the relevant date and its ordinances in effect as of 1998, if you find that is the case, then
19 the 1986 site suitability ordinances I have sited and the other active recreation claims, those all are in effect and I
20 think it is very hard to argue that the active recreation has been met. If the August 1986 ordinance applies, some
21 quantity of the claimed active recreation must be deemed invalid. The plan-o-meter gives you some reasonable
22 estimates but you are free to make your own determinations there. Again, the County has offered no evidence to
23 dispute the land characteristics. Their only contention is none of this matter because the ordinance wasn't in
24 effect. I think that is not true but so be it. I believe that the County incorrectly claims that the 1986 ordinance
25 does not apply. What if you agree with the County? Really it is the 1986 ordinance. It is before the site
26 suitability and other subdivision changes are in effect. What does that mean? I am going to walk you through Mr.
27 Harvey's testimony where he describes what parts of the ordinance he is using to justify his claims. He points to
28 Section 6.12.2. What does 6.12.2 say? Here I am going to quote, regarding definitions and methods of
29 measurements relating to standard land use intensity ratios, "Subject to modifications made herein specifically or
30 in general where further detail is needed in connection with standards, definitions, or methods of measurements,
31 referral shall be made to appropriate sections of MPS or MAP." Mr. Gledhill made a big point about the
32 importance of the word shall so there is no provision for the County not look at the definitions if there are any
33 questions about what does something mean if, in fact, those definitions are more fully explained in MPS or MAP.
34 What is MPS or MAP? Section 6.12.1 of the ordinance and this is the ordinance in 1986 at the time the County is
35 claiming this is what we must follow. MPS and MAP are document provided by the U.S. Department of Housing
36 and Urban Development and I am going to quote 6.12.1, "Accept as generally or specifically modified herein
37 minimum property standards and manual of acceptable practices in their current editions as published by the U.S.
38 Department of Housing and Urban Development together with related standards and explanatory material shall
39 be a supplementary guide on site and building planning and related definitions, measurements, ratio and
40 requirements". I have submitted the minimum property standards and minimum acceptable use practices but I
41 am going to show you the key portions on the screen. Looking at the Manual of Acceptable Practices and this is
42 Attachment 1F for the record and it is on what they call in the document Section 3.14-1, "Active Recreation Area
43 (Title). Active recreation space design should include appropriate locations for sports such as baseball, football,
44 basketball, volley ball and tennis." Looking at the minimum property standards, Attachment 1G, Section 3.14-2.1,
45 Recreation, "Adequate recreation space appropriately equipped shall be provided, consisting of open areas for
46 active recreation such as playgrounds or major sports" and goes on to talk about passive recreational
47 requirements as well. So that is what is in effect in 1986 to the extent there are any questions about what is
48 active recreation. The implications of this are that sites that are encumbered by the items I previously described,

1 slopes, stumps, tension lines, etc. they are also excluded in the 1986 code. They are clearly excluded in the later
2 code but they are also excluded in the earlier code as well. I am trying to point out is the importance that the
3 Manual of Acceptable Practices and the minimum property standards, it is not just sufficient to give you land but
4 land that is appropriately equipped. You can't just make a provision for space; you have to do something that
5 makes it viable for use an active recreational component. It must be appropriately equipment, "appropriately
6 equipped" and appropriately improved. I have already shown how the developer's failure to provide recreation
7 site plans into evidence demonstrate that lack of intent to appropriately equip and appropriately improve and I
8 would further say that what exists on the ground today in 2013 furthers that case. That hasn't been appropriately
9 equipped and improved. There was no intent in 2008 and hasn't been completed in 2013.

10
11 Larry Wright: I think we have gone astray here.

12
13 David Rooks: That argument has nothing to do with Mr. Davis' decision to approve the plat which is the only
14 thing that is before this board. I think if you would direct your arguments concisely and directly to that point, I
15 think you would find the board receptive.

16
17 Michael Buck: I disagree vehemently. The reason I disagree vehemently is because you can't approve the 2008
18 plat and the acreage that it will supposedly provide without knowing how much acreage is already accounted for.

19
20 David Rooks: You have made that argument.

21
22 Larry Wright: You have made that argument. Can you go on?

23
24 Michael Buck: I will move on but I need to directly rebut something Mr. Harvey said regarding 6.12.2 so this goes
25 directly to his interpretation of his validity of the 2008 plat using the 1986 code. Mr. Harvey indicates that he
26 relies on Section 6.12 of ordinance for recreation area interpretation. Section 6.12 is specifically cited as support
27 for allowing parking within the recreation areas. I won't reread what he said but he is saying parking is allowable
28 because the ordinance allows it. I would like to point out the section he is citing 6.12.2.6 with regard to open
29 space says that recreation space which is part of "total and livability open space is exterior area appropriately
30 approved for common recreation use", recreation use part of total and livability open space. It is hard to see
31 there but what is the definition of livability space? Livability space is part of total open space appropriately
32 approved, etc. and shall not be used for vehicles except for incidental service, maintenance or emergency action,
33 none of which parking is. Here is a diagram that shows how it all works together but we are talking about
34 recreation space which is part of livability space as livability space precludes and prevents the use of vehicles for
35 parking so it must also be that recreation space cannot allow parking to encumber it as well.

36
37 Larry Wright: I would like to know what incidental service is. I would argue, not that I believe that that none of
38 those vehicles are permanently parked there. It is incidental, dropping somebody off there, swimming or
39 whatever. I mean, we are making a point here and I would like to ... I am making an issue that I don't know what
40 one of knows what incidental service is.

41
42 Mark Micol: He is referring to the MAP and MPS standards, was the developer compelled to abide by those
43 standards in 1986 or 1998?

44
45 David Rooks: Only if the ordinance required him to do so.

46
47 Mark Micol: We talked about the terms recommended versus shall and under 27 it says recommended a
48 minimum of seven acres so were they compelled to offer up any recreational acreage at all in 1986?

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David Rooks: You would have to ask Mr. Harvey that question. I don't know the answer as to whether the subdivision ordinance required mandatory open space.

Mark Micol: That is a key point because if they weren't required to offer up any open space ...

Larry Wright: Let's let him make his point.

Mark Micol: All of his argument is irrelevant if it based on that.

Larry Wright: I understand what you are saying.

David Blankfard: I think the 1986 code says you have to have a certain percentage of recreation space.

Mark Micol: He argued the recommended versus shall and why would they put recommended seven acres if it is a shall seven acres.

Michael Buck: To summarize on the inadequate active recreation acreage, what is in evidence before Phase IV exists is less than what is required, the shortfall is not met by what is being put in Phase IV and allowing the plat to proceed with such a shortfall is a defacto modification of the SUP. Before I get to the next section, I wanted to get into a side bar with the question of negotiation. Negotiation is not a power granted to the planning department, not in the code, it is not allowable to the zoning officer ...

Larry Wright: How much longer of a presentation do you have? We need to get an idea, we have people waiting here. Is this another hour or two?

Michael Buck: I hope that I have 20 to 30 minutes left.

Larry Wright: We have to adjudicate this. I have to confer with our attorney.

Conversation with Larry Wright and David Rooks.

Larry Wright: There is a lot of repetition here.

David Rooks: I think you need to ask him come directly, he has made two points and if he has any other points that directly bear on the decision made by zoning officer, make those and then ...

David Rooks: Mr. Buck, your points need to come directly. You have a very tired board on your hands; you do yourself a disservice by talking longer than you should. You need to come directly to the point you need to make about anything that was wrong with the decision by Mr. Davis when approved the plat, very specifically and directly. Twenty or thirty minutes is probably not satisfactory to this board.

Michael Buck: I will do this as briefly as I can in terms of another major point. Invalid recreation segmentation so I have talked about the inadequacy of the acreage provided. The argument here is that the acreage is inappropriately divided and the point being that sum of the parts is less than the whole. If you have a provision for five acres in a centrally located site but you have said to implement that as five different tracks of one acre each around the neighborhood, that makes it less useful as active recreation space and if you go and look at the minutes of the meetings that approved the special use permit, you will find the board looked at this issue and

1 specifically made some determinations as to where the location of the active recreation should be, how much
2 should be there and the movement of portions of that acreage is in violation of the intent ...
3

4 David Blankford: Where is that in the special use permit? Is that in the commentary or the minute meetings? Is
5 it in the SUP? Specifically the five acres requirement?
6

7 Michael Buck: Attachment C, approved site plan, page 1. The site plan specifically says, recreation area 15
8 acres, five acres of recreation centrally located and I will not read through all the meeting minutes from the
9 November 25, 1985 meeting where they talked about what recreation should be provided by if you read through
10 the minutes of November 25, 1985, you will see that the applicant made certain proposals as to what was going
11 to be provided, where it would be provided and those requirements have not been met. The approval hearings
12 provide context for the importance of the central location of the active recreation and putting some of it to the
13 Phase IV area violates that intent and harmony with the approving board's decision. In addition it violates the
14 intention of the original applicant who made multiple revisions to the site plan in order to address the concerns of
15 the board. The approving board was well aware of the Duke Power easement that runs through the property that
16 is not attempting to be used as the active recreation component. It is on the site plan. If you read through the
17 minutes, you will find they specifically rejected the "North end location" that is now being used for the active
18 recreation in Phase IV so in terms of the active recreation in terms of what was approved versus what was
19 delivered, the mandate was for a single primary parcel in the single family, multiple parcels have been provided.
20 The mandate was for a centralized large parcel undivided, instead, divided smaller parcels have been provided.
21 The board specifically rejected the use of the north end location instead we have gotten left over lots at the north
22 end and the development or the approving board specifically mandated on the site plan a five acre plot and that
23 has not been provided. Let me make that clear, five acre active recreation. That is in violation of the special use
24 permit and the intent of the approving board. If you find that the relevant date is after 1986, then there is a similar
25 claim that can be made through ordinance because the ordinance does have a unity provision. I won't go
26 through that again because that is incumbent upon whether or not you choose to agree with the 1986
27 determination. Moving this active recreation to this central area to the more distant area creates a ... there was a
28 reason the central area was chosen because it is accessible to everyone in the neighborhood, the multi-family as
29 well as all the single family. Moving it farther away is an imposition to those who are remotely located.
30 Pedestrian bridges, I maintain that the failure to provide the three pedestrian bridges substantially changes the
31 number of SUP required bridges, it substantially changes the pedestrian traffic pattern, it changes the condition
32 imposed during the SUP approval, it resulted in an unlawful defacto modification of the SUP and it violates the
33 internal relationships provision of 7.14 of the Planned Developments District Ordinance which was in effect in
34 1986 as well as subsequently so this argument is independent of what your determination is on the relevant
35 date. Here is a picture of the creek, the bridge that has been provided, a picture of the foot path bridge that is
36 about six feet and the county is not claiming that is one of the bridges but there was a question last time as to the
37 fact that the corner here was showing, what is over Nancy Hill Creek and it clearly is not traversing the sides of
38 the creek so I am showing that for completeness. This is the only pedestrian foot bridge that has been built
39 understanding there is a claim the vehicle bridge, which I did not have a chance to get a picture of, also does
40 exist and does have a sidewalk. The special use permit says that you shall install bridges across the creek at
41 either end or midway in conjunction with the public walkways. Either is a curious word, I have provided you the
42 definition and the reason I provided you the definition because everyone thinks we know what either means but
43 then you realize that it can have ambiguous meanings. The definition from the Oxford English Dictionary, the first
44 definition is "each of two, also both". It does have an alternative definition, one or the other but its primary
45 definition according to the Oxford English Dictionary is each of two or both so if you reread that claim, install
46 bridges across the creek at both ends and midway that is how you get to the need for the missing bridges. I
47 realize there may be concern that well that is not frequently use of the word either. I encourage you to look at
48 your United States Constitution, Article 1, Article 5 and you will see that either is used in that exact same context.

1 North Carolina General Statutes also has multiple uses... meaning both and the Orange County UDO also has
2 an example of either implying both. What was the original approving board's intent with the wording?
3 Conveniently, the word either is used twice in that section. The first usage can literally signify as both when it
4 says along either side of Nancy Hill Creek designate 100 foot, so forth. Beyond reliance on the word's primary
5 definition, it is logical to use the second usage also that the same meaning has the first.

6

7 Larry Wright: I think you have made your point here.

8

9 Michael Buck: The context of the word either has changed when you think about how the community has
10 changed. Originally, there was supposed to be a road at this corner, now that road, that Berryman Bridge has
11 shifted so the context of the work either shifts based upon whether you are using one end as your reference point
12 or whether you are centrally located. Can a motorize vehicle bridge be counted as a pedestrian bridge? I argue
13 that is an invalid interpretation because Condition 27 is entirely concerned with recreation as we have seen
14 before recreation space is part of livability space and it shall not be used for vehicles. I don't think anyone can
15 claim that a group of cars crossing a bridge is an incidental use of the space. I maintain there is a consistent
16 understanding on the part of the original developer, the county prior to this appeal that there were requirements
17 for three walk bridges and I have submitted evidence to that effect. With regard to the inadequacy of the walkway
18 surrounding the bridge, I would point you to Section 7.14 Planned Development Housing District and the
19 provisions ways for pedestrian and cyclist. Walkways shall form a logical, safe and convenient system of
20 pedestrian access to all dwelling units and walkways shall be used by substantial numbers of children shall be so
21 located and safeguarded as to minimize contacts with normal automotive traffic. The revised document I have
22 provided which has sidewalks in conjunction with the walkways. I would encourage you to try to see if you can
23 move from one section of the development to another without substantial numbers of road crossing and if you
24 imagine you have a child you want to send from Phase I to send a friend in Phase IV or a Phase IV child you
25 want to send the recreation area, it is not possible to do that without multiple road crossings.

26

27 Larry Wright: Isn't that a function of a cul-de-sac development? That is a common characteristic of cul-de-sac
28 development.

29

30 Michael Buck: Perhaps it is.

31

32 Larry Wright: When you move into a cul-de-sac development, isn't something you expect?

33

34 Michael Buck: This is implemented as a planned development district and this is specifically an ordinance for
35 planned development. This is not another ordinance; it is a planned development ordinance.

36

37 Larry Wright: ...or this planned development? Proceed, I am holding things up. I am reading through this and
38 see so much ambiguity even though; you are making your point.

39

40 Michael Buck: Condition 27 is optional. I think that is a novel argument certainly coming from the County's chief
41 enforcement officer. I don't find it credible; it is not consistent with general statutes or ordinance. It is an
42 argument being made for the option of the appeal and it is not reflected in historical record. If there is a question
43 of why the approving board put the condition there in the first place, if it is optional, why have it at all. It is counter
44 to the intent of the approving boards, it is counter to the intent of the original applicant and to interpret as to use
45 the recommendation word, it give the zoning officer excessive authority outside of what they are empowered to
46 have. I will briefly point out that North Carolina General Statutes as well as Orange County Ordinance has a
47 predisposition to enforce the higher standards. The planning director's memo talks about requirements,
48 requirements, and requirements are repeatedly used in all the documentary evidence preceding this appeal.

1 Your reliance on the word recommendation does not come up until 2012 and 2013 in discussions with regard to
2 the appeal. What was the applicant and approving board's original intent? If you go back to the meeting minutes
3 to conclude the approving board's interpretive that a condition is optional. The applicant came forward and said,
4 here is the project I want to build. I am proposing a swimming pool, two tennis courts, a recreational building to
5 serve the community. I have proposed these other items. The negotiations that would have taken place at that
6 time. There were some things the applicant got and some things the applicant didn't get but what was put into
7 the special use permit, I don't believe there was an applicant or a member of that board who intended that you
8 don't really have to do these things, we are just putting it in there but if you don't want to don't worry about it. I
9 would point out that the site plan and the pictures represented in the site plan carry with them certain
10 requirements in addition to what is written in text. As an example, I would point you to Condition 27 which says
11 that fence shall be erected around the swimming pool but there is no requirement in text for a swimming pool,
12 why is there no requirement in text for a fence around a swimming pool that is not reference. It is because the
13 swimming pool is reflected on the picture. The picture and the words have to go together. You can't build a
14 fence around a pool that doesn't exist so you have to look at the picture as well. I would also point out that the
15 approving board and the Board of Commissioners were concerned about just this type of creative
16 reinterpretation. I am going to quote from the meeting minutes of January 6, 1986. Commissioner Marshall
17 expressed concerned about the specificity and conditions and understanding of all parties over time of the
18 conditions imposed. She further enquired about the process that would assure these objectives would be met.
19 She noted that there is not protection in the statement. I would argue that the County's position is internally
20 inconsistent. The County wants you to say it is really just a recommendation but the county has also said that the
21 SUP is the sole standard. Everything you need to govern this development is in the SUP but it is a
22 recommendation but it can't be both. It can't be both because it leaves open the power to the planning
23 department legislatively policy making that is reserved to the board. You ask me to point to a single point to say
24 this plat is invalid. I don't want you to find this plat is invalid. What I want is the recreation that we deserve as a
25 community to be provided. If I had wanted to quickly say here is a reason to invalidate the plat, I would have
26 pointed you to this. Condition 7 and I realize this is not in the grounds for appeal, as I said, my goal is not to find
27 the plat invalid, although it clearly is. My goal was to try to make sure we got the active recreation we require.
28 Condition 7 says Graham Drive and Hamilton Way shall have a 60 foot right of way with a 41 foot paved cross
29 section. There is Hamilton Way. As you know, the community was changed around. They moved road and did
30 different things. Now, they moved roads and did those things without following the proper procedures for dealing
31 with modifications and minor changes to the site plan. Nevertheless; if you look at what was previously known as
32 Hamilton Way, you will see that it does not have 60 foot right of way and a 41 foot paved cross section. Hamilton
33 Way is now known as West Hadley Avenue and the plat shows 50 foot right of way so you want a single reason
34 the plat is invalid, here it is but that was not my intent in doing this, my intent was to address the fact that we did
35 not get the active recreation we were promised in the SUP. We don't have the pedestrian bridges we were
36 promised in the SUP.

37
38 David Blankfard: Where is the definition of active and passive?

39
40 Michael Harvey: Thank you for your understanding as to why I couldn't answer. There is no distinguishing in the
41 PD standards for active/passive. It is broken out as part of the approval for this project. Active recreation as
42 defined in Condition 27 and all the uses that were recommended as satisfying active recreation component which
43 includes swimming pools, tennis courts, bicycle path, a grassy playing and the like. The ordinance doesn't
44 provide that level of specificity with respect to planned development approvals.

45
46 Larry Wright: I have a question for Mr. Gledhill. We have heard from Mr. Buck about his arguments for using
47 1986 as a basis and then when the plat was submitted in the register of deeds that this is when it legally should
48 be, and he gave all this evidence. Could you respond to that?

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Geof Gledhill: The effective date and the rezoning and the recording of the plat are the key to Hillsborough water supply being available. The county's contention and it believes the evidence supports that is that the county at all times, particularly with respect to the recreation requirements and recommendations took the position that the 1986 ordinance standards were the only ones that pertained and that everything else was recommendation were therefore ongoing negotiations that took place to try to meet as many of those recommended recreation standards, recommended recreation amenities as were possible. Does that answer your question?

Karen Barrows: To follow up on what Mr. Buck said, a lot of this is predicated on when the rezoning happened? In 1998?

Geof Gledhill: That is correct, that is when this property was rezoned to PDH in March 31, 1998 but the permit was approved in 1986 and by its terms the project shall be constructed in accordance with the site plan dated October 1985 and revised January 2, 1986. I am quoting from the special use permit so essentially what the special use permit does is relates back to the approval date in order to determine what the requirements are.

David Blankfard: Essentially it was grandfathered.

Mark Micol: You put a lot of emphasis on the shall versus recommended but in his testimony, he started his closing arguments, he talked a lot about county officials had used requirement in their correspondence until the year 2012 so why do you think that was? Why did the county use requirement when it says in the SUP recommended?

Geof Gledhill: Why didn't the developer say, wait a minute, you can't require that because the special use permit is only making recommendations. I think the answer to your question is that is the best way to get the best deal.

Mark Micol: On number 27 in the SUP it says the following recommendations apply but then it lists a minimum of seven acres. You said in your testimony that the seven acres was part of a ratio that if the developers are compelled based on the ordinance so why that would be listed under recommendation when that is part of the ordinance.

Geof Gledhill: The site plan ratio they used is .52 open space recreation. It is not divided between active and passive. The division between active and passive occurs only in the recommendations and I don't think there is any question there is more than 15 acres of recreation area in this project. It may not be the quality that Mr. Buck would like or the community would like but nevertheless it is recreation.

Larry Wright: But he addressed slope and what is your counter to the slope. He doesn't give grades but we listened quite a bit on a poor quality of recreation space so what is your take on that.

Geof Gledhill: I have three grandchildren, six, four and two and you let them play tag on a hill, they will love it.

Larry Wright: They will play in a parking lot too.

Geof Gledhill: They will and furthermore, this polygon Mr. Buck has used because he has been provided by the county planning staff ignores some of the significant portion of this recreation area that shows in the central of this project.

Larry Wright: And that is along the creek?

1
2 Geof Gledhill: Not along the creek. It is to the south of the creek. It is part of the active recreation parcel. It may
3 be in trees, let's play tag again, let's do swimming, let's do basketball, let's do tennis, let's play tag in the trees.
4 That is active recreation.
5
6 Larry Wright: Is that in a flood plain?
7
8 Geof Gledhill: I am looking at a small portion is in the 100 year flood boundary but most of it is outside of even
9 that boundary so it is a question of quality versus quantity and our argument is that quality was not in this special
10 use permit. The regulations in effect at the time it was approved are recommendations.
11
12 Larry Wright: You heard his comments on the parking lot and whether that was considered part of the recreation
13 area or not and could you go over those calculations again.
14
15 Geof Gledhill: I think the parking area is in the active recreation part of this project are within the polygon that
16 makes ...
17
18 Larry Wright: And why is that?
19
20 Geof Gledhill: Because its, the point made by another members of the board, you have people coming in and
21 out, it is not a permanent occurrence of parking for any particular vehicle. It is intermittent use and I can
22 understand the other way, I am just making the argument that the entire gross, the entire gross land area
23 qualifies. The ratio is calculated by multiplying the required ratio times the gross land area.
24
25 Jeff Schmitt: Mr. Buck makes the point that Mr. Harvey relied on three separate sections in the code, one of
26 which relates to the parking and I think the comment was made something to the degree about incidental use,
27 how is that referred to ... we don't provide 20 parking spaces for incidental use, do we?
28
29 Geof Gledhill: I am reading from Condition 27; provide 10 parking spaces to serve the above activities within the
30 15 acre recreation area.
31
32 David Blankfard: When was this plat modified to its current condition? Did that void the special use? How does
33 that process work?
34
35 Geof Gledhill: I don't think I understand the question.
36
37 David Blankfard: What was the issue with the SUP dated 1986, October and it is different ... How does that
38 relate back to the SUP?
39
40 Geof Gledhill: The final plats that were recorded fleshed out the site plan that was part of the special use permit.
41 Changes that were made in the minds of the planning staff, changes that were made from the site plan look to the
42 final recorded plat look were minor changes that did not require a modification of the special use permit.
43
44 Larry Wright: Minor as defined by the ordinance?
45
46 David Blankfard: Which ordinance?
47
48 Geof Gledhill: I would argue that it is the 1986, the ordinance in effect when the special use permit was adopted.

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Jeff Schmitt: Roads and everything are different. In the 1998 resubmission, they changed the roads, names, etc.

Mark Micol: How much was done by the developer and how much by DOT and I know he mentioned the 60 foot easement, I know that changed from 50 to 60 sometime in the 80s. That wasn't done by the developer but by the DOT standard. Is there a difference between the developers changing the plat versus the ordinance or DOT change?

Geof Gledhill: I don't know. The answer could be all of what you just said. DOT could have said, well this site plan looks great but these road angles don't meet ...

Larry Wright: The cul-de-sac itself has to meet fire code.

Geof Gledhill: There are other laws that may have impacted the way the final plats were recorded... were developed. The answer is I don't know the answer to why in every case but it could be all those things.

Jeff Schmitt: How does the county respond to the federal requirements which were enumerated by Mr. Buck in relation to what the county approved? Are they saying it is consistent with the federal standards?

Geof Gledhill: What I heard were not hard requirements for recreational purposes. What I heard was the same thing that went on in this development.

David Blankfard: I would say that the definition of active recreation is in the SUP and that takes precedence over further standards down the line.

Geof Gledhill: Especially when those standards are not ... I may have heard different than you did but they sounded very subjective to me. They are polar star if you will not something that can be reduced to requirements.

Larry Wright: What standards are we addressing now?

Geof Gledhill: HUD standards.

Jeff Schmitt: Mr. Chairman, what is the process here. After we finish answering questions, are you going to close the public hearing and then we are going to deliberate?

Larry Wright: I am going to afford you ample opportunity to ask questions you have so once we go into closed session, then everything will be addressed you feel you need to do. Then Mr. Rooks has some guidance for us and then I would like to make a five minute break and then we will come back and start the closed session.

Jeff Schmitt: Do we have jurisdiction?

David Rooks: That is an interesting question. There is a very good argument that you do not. I think in fairness to Mr. Buck who has put an awful lot of work into this that maybe what you should do is not pull a technicality and go ahead and decide it on the merits.

Geof Gledhill: I would argue you could do both.

1 David Rooks: You could do both if you want to. The jurisdictional question is whether you may sit in hearing on
2 appeal a subdivision question. The enabling legislation deals directly with the development ordinance and
3 speaks directly to your authority to hear appeals arising under that ordinance, the zoning ordinance, not the
4 subdivision ordinance.

5
6 Larry Wright: Can we not say that understanding that this may not be within our jurisdiction, we will proceed to ...

7
8 David Rooks: You can choose to do whatever you choose to do.

9
10 Geof Gledhill: An alternative is, it isn't within our jurisdiction but if it were, this is what we would do.

11
12 Larry Wright: Any other questions. What should we do in respect to the scheduling? We have had people who
13 have been very patient that are waiting to hear their cases. It is now 9:30 a.m.

14
15 Geof Gledhill: I would request that you close the public hearing.

16
17 David Rooks: And I would suggest that you close the public hearing. It is now time to do that.

18
19 **MOTION** made by Karen Barrows to close the open session of this meeting. Seconded by Mark Micol.

20 **VOTE:** Unanimous

21
22 Larry Wright: We have talked about this informally with the board and what we will do is... we have had people
23 patiently wait here... we will recess the closed session and proceed with the 7:30 p.m. agenda.

24
25 Larry Wright: I am going to dispense with the public charge and we are looking at Agenda item A-4-13 Class B
26 Special Use Permit for the riding stables.

27
28 Larry Wright: Do we adjourn the second part of the meeting.

29
30 David Rooks: My understanding is that this has been one meeting of the board and you have recessed that
31 particular agenda item without any particular process.

32
33
34 **AGENDA ITEM 6: A-4-13 – Class B Special Use Permit – Riding Stables**

35
36 Michael Harvey presented the case.

37 In accordance with Section(s) 2.7 *Special Uses*, 5.2.2 *Table of Permitted Uses*, 5.3.2 *Application of Use*
38 *Standards – Special Uses*, and 5.6.6 *Standards for Riding Stables* of the UDO the North Carolina Therapeutic
39 Riding Center (NCTRC) has submitted a Class B Special Use Permit application seeking a permit to operate a
40 therapeutic riding center on a 28 acre parcel of property at 4705 Nicks Road further identified utilizing Orange
41 County Parcel Identification Number (PIN) 9822-81-4391.

42 The property in question is zoned Agricultural Residential (AR) and Cane Creek Protected Watershed Protection
43 Overlay District. The proposed use is permitted on the property subject to the issuance of a Class B Special Use
44 Permit. The property was a farm operation with existing stables and horse rinks.

1 NCTRC is looking to assume ownership of the property and utilize the existing infrastructure to operate a
2 therapeutic riding facility designed to offer riding and animal care opportunities as part of a therapy program for
3 children and adults with physical, emotional, mental, and social disabilities.

4 None of the clients will stay on the property overnight but accommodation for staff, who will care for the animals,
5 will be available. Access to the site will be through an existing driveway off of Nicks Road.

6
7 The following individuals were sworn in by Debra Graham, Board Secretary:

8 Robin Barefoot

9 Jay Zaragoza

10 Lara Katz

11
12 Jeff Schmitt: Is there anybody here in opposition to this?

13
14 Michael Harvey: No. There have been no comments indicating opposition to this particular case. First, you have
15 my abstract, relevant information concerning development of this property, you have a property map and
16 Attachment 1, you have the Application package in Attachment 2, you have staff comments from various county
17 agencies that have reviewed this request in Attachment 3, Notification and certification materials in Attachment 4
18 and of course, last you have our special use permit findings of fact in Attachment 5. I move that this abstract and
19 all the attachments be entered into the record.

20
21 **MOTION** made by Jeff Schmitt to accept abstract and attachments be entered into the record. Seconded by
22 David Blankfard.

23 **VOTE:** Unanimous

24
25 Michael Harvey: Mr. Chairman, the applicant is represented here this evening by Ms. Kim Steffan, a local
26 attorney. I am going to summarize this and allow her to make any presentation she wishes and review the
27 findings of fact contained in Attachment 5. (Reviewed Abstract).

28
29 Larry Wright: On page 93, Attachment 5, this is the second item, specific regulations governing the development
30 of a telecommunication tower, could you explain that please.

31
32 Michael Harvey: Yes. It is a typo. You are looking at a riding stable.

33
34 Larry Wright: Just substitute a riding stable for a telecommunication tower. I will fix that at the appropriate time.

35
36 Kim Steffan: Hopefully we are presenting something tonight that is something pleasant, easy and short. I have
37 brought two people from the North Carolina Therapeutic Riding Center. I will introduce them to you and make
38 them available to you. Lara Katz has been with NCTRC for 21 years, she is the board co-chair and behind me is
39 Robin Barefoot who is a volunteer and past board member and she helps them with legal and policy issues. If
40 you have any questions, we would be happy to answer those.

41
42 Karen Barrows: I am not sure if it is a question to you or Michael. I notice there is a septic tank that didn't have a
43 permit; there is a well that is too close... Have they been stamped and in use?

44
45 Kim Steffan: The remedies to that are in the works and that is in coordination with the Orange County Health
46 Department and the parties are working together on solutions to that. My clients began leasing the property in
47 2009 for the therapeutic riding center and the improvement we are speaking of are improvements that were made
48 by the property owner, not my clients because my clients are tenants there now and wish to purchase the

1 property. The property owners had made those improvements at an earlier time prior to my clients taking over
2 the property under lease arrangements so it didn't happen on my client's watch but we will be happy to, as part of
3 getting the special use permit and purchase the property, happy to get those remedied within all departments
4 involvement.
5

6 Michael Harvey: In Attachment 3, we have several letters and detailed correspondence from Orange County
7 Environmental Health establishing the process and procedures they would have to go through in order to address
8 these problems. Health department is no issue with the permit being issued as long as the applicant makes good
9 on their continued work to address the concerns you have articulated. In fact one of the conditions we are
10 recommending is that has to be done within a specific period of time as part of this approval.
11

12 Larry Wright: Is there anybody to testify for the riding stable?
13

14 Robin Barefoot: I have no testimony to offer unless I can answer a question. Kim introduced me and Lara Katz,
15 we are long time volunteers, current board member, former board member.
16

17 Larry Wright: Jay Zaragoza.
18

19 Jay Zaragoza: 1870 Home Road, Hillsborough, N.C. I am a resident of Orange County for about 30 years or
20 more. I would like to use this as an aid. I own 185 acres including along this property line. I think their operation
21 which I have observed for the last several months is an excellent operation and they have never caused any
22 noise or any reason for complaint and I highly recommend the approval of the application. The Cases' (the
23 current owner of the Nicks Road property) will continue (to live) on a 20 acre parcel if they don't have access they
24 will be land-locking themselves if they don't obtain some type of an access easement.
25

26 Michael Harvey: Mr. Zaragoza brought this to my attention and a week ago, we brought it to the attention of Ms.
27 Steffan. The applicant is willing to grant some form of easement so I will be recommending an additional
28 condition of the granting of this SUP if this board chooses that an appropriate easement location shall be
29 referenced on the site plan and Mr. Zaragoza and I have been neighbors and friends longer than we want to think
30 about going back to my freshman year of high school.
31

32 Mark Micol: Is he the largest property owner?
33

34 Jay Zaragoza: I probably am the largest property owner. There is a 10 acre tract here owned by a bank due to a
35 foreclosure and the property next to it is being sold.
36

37 Michael Harvey: Reviewed staff's recommendations.
38

39 Michael Harvey: We have recommended approval subject to these nine conditions with the addition of Condition
40 10 indicating that an easement shall be provided allowing access to the Cases' for their adjacent property.
41

42 **MOTION** made by David Blankford to close the public hearing and go into closed session. Seconded by Jeff
43 Schmitt.
44

44 **VOTE:** Unanimous
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**FINDINGS OF THE ORANGE COUNTY BOARD OF ADJUSTMENT
PERTAINING TO A REQUEST SUBMITTED BY
NORTH CAROLINA THERAPEUTIC RIDING CENTER INC. (NCTRC)
PROPOSING DEVELOPMENT OF A RIDING STABLE AT
4705 NICKS ROAD (PIN 9822-81-4391)**

As required under Section 5.2 *Table of Permitted Uses* of the Orange County Unified Development Ordinance (UDO), a Class B Special Use Permit is required for the development/operation of a commercial riding stable, in accordance with the provisions of Section 2.7 of the UDO. Such permits shall comply with general and specific standards as set forth in Section(s) 5.3.2 and 5.6.6 of the UDO.

Section 5.3.2 (A) (2) of the UDO requires written findings certifying compliance with the following:

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and
- (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

In addition, the Board shall make findings certifying that the application is complaint with the following specific standards:

- (1) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 2.2 and 2.7 of the UDO,
- (2) Specific regulations governing the development of a riding stable as set forth in Section 5.6.6 of the UDO,
- (3) Section 5.3.2 (B) relating to the method and adequacy of the provision of:
 - a. Sewage disposal facilities,
 - b. The adequacy of police, fire, and rescue squad protection, and
 - c. The adequacy of vehicular access to the site and traffic conditions around the site
- (4) The general findings outlined within Section 5.3.2 (A) (2).

Listed below are the findings of the Orange Planning staff regarding the application in question. The findings have been presented by Article and requirement to assist the Board of Adjustment in its deliberations.

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SECTION 2.2 AND 2.7.3 CLASS B SPECIAL USE PERMIT APPLICATION COMPONENTS ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Section 2.2 The application for a Class B Special Use Permit shall be on forms provided by the Planning Department.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 2 of the abstract package contains a completed Orange County Class B Special Use Permit application for the project.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.2.4 (D) Applications must be accompanied by the fee amount that has been established by Board of County Commissioners. Application fees are nonrefundable.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Staff will stipulate the applicant submitted the required application fee for the permit application.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.3 (B) (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 2 of the abstract package contains a completed project narrative describing the proposed use and operational characteristics of the riding stable.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.3 (B) (2) The names and addresses of the owners of the property	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 2 of the abstract package contains information concerning the names and addresses of the owner of the property where the riding stable is to be located.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 2.2 AND 2.7.3 CONTINUED ("Yes" indicates compliance; "No" indicates**
 2 **non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
2.7.3 (B) (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use	<u>X</u> Yes	___ No	Attachment 2 of the abstract package contains various documents, including a site plan, containing the necessary information establishing compliance with the provisions of the Ordinance.	<u>x</u> Yes	___ No
2.7.3 (B) (4) Ten (10) copies of the site plan prepared by a registered N.C. land surveyor, architect, or engineer.	<u>X</u> Yes	___ No	Attachment 2 of the abstract package contains the required site plan completed by Alois Callemyn, a local land surveyor.	<u>x</u> Yes	___ No
2.7.3 (B) (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.	<u>X</u> Not Applicable		The project does not involve or propose a subdivision. As a result no preliminary plat is required.	<u>x</u> Not Applicable	
2.7.3 (B) (6) A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.	<u>X</u> Yes	___ No	Attachments 2 and 4 of the abstract package contains a complete list of property owners as maintained by Orange County Land Records.	<u>x</u> Yes	___ No
2.7.3 (B) (7) Elevations of all structures proposed to be used in the development.	<u>X</u> Yes	___ No	Attachment 2 of the abstract package contains the required elevations, specifically photos of the existing structures	<u>x</u> Yes	___ No

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1 **SECTION 2.2 AND 2.7.3 CONTINUED ("Yes" indicates compliance; "No" indicates**
 2 **non-compliance)**

Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
2.7.3 (B) (8) Ten (10) copies of an Environmental Assessment or Environmental Impact Statement as required by Section 6.16 of the UDO	<input checked="" type="checkbox"/> Not Applicable		Per Section 6.16.3 <i>Environmental Assessment</i> of the UDO the project will not involve the grading of more than 40,000 sq. ft. of property (exclusive of roads), involve more than 10,000 gallons per day of water usage.	<input checked="" type="checkbox"/> Not Applicable	
2.7.3 (B) (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 2 of the abstract, as well as the submitted site plan, contains sufficient detail denoting construction or land clearing debris generated on-site will be disposed of in accordance with the County's Solid Waste Management Ordinance.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.3 (B) (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 2 of the abstract package contains the required information.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.3 (B) (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum)	<input checked="" type="checkbox"/> Not Applicable		The applicant is not requesting vesting of the project.	<input checked="" type="checkbox"/> Not Applicable	

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1 **SECTION 2.7.5 CLASS A SPECIAL NOTIFICATION REQUIREMENTS ("Yes" indicates**
 2 **compliance; "No" indicates non-compliance)**
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Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Section 2.7.5 (a) The Planning Director shall give public notice of the date, time and place of the public hearing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 4 of the abstract package as produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.5 (b) Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days not more than we days prior to the date of the hearing.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The legal ad for the November 11, 2013 BOA public hearing was published in the News of Orange and the Herald consistent with the requirements of the UDO.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.5 (c) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 4 of the abstract package as produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.5 (d) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose manes and addresses are currently listed in the Orange County tax records.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 4 of the abstract package as produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.6.6 – STANDARDS FOR RIDING STABLES**
 2 ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
5.6.6 Riding Stables (A) (1) In addition to the information required by Section 2.7 the following information shall be supplied as part of the application for approval of this use					
(a) Plans for all barns, boarding facilities, exercise yards, riding arenas, and related improvements, including signage.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The submitted site plan provides required detail. Also the application in Attachment 2 contains pictures of the structures and the operation in general.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(b) Site plan showing the improvements listed in a) above, other structures on the same lot, and structures on adjacent property.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The submitted site plan provides required detail.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(2) Standards of Evaluation					
(a) The site is of adequate size to protect adjacent properties from adverse effects of the riding stable	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Staff has determined the site is of adequate size to protect adjacent properties from any adverse effects	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(b) No part of any building, structure, exercise yard, or riding arena, in which animals are housed or exercised shall be closer than 150 feet from a property line, except property occupied by the owner/operator of the facility. These minimum distances shall not apply if all portions of the facility, in which animals are housed, are wholly enclosed within a building.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The submitted site plan provides required detail.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(c) The site plan shows parking, access areas and screening devices for buildings, riding arenas, and boarding facilities.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The submitted site plan provides required detail. Also the application in Attachment 2 contains pictures of the structures and the operation in general.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
(d) A sign clearly visible from the ground shall be posted at the main entrance to the facility and shall contain the names, addresses, and telephone numbers where persons responsible for the facility may be contacted at any hour of the day or night. The sign shall comply with dimensional requirements as set forth within this Ordinance.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The submitted site plan provides required detail. The sign already exists and has been approved by staff.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.3.2 (B) – SPECIFIC STANDARDS – SPECIAL USE PERMITS ("Yes" indicates**
 2 **compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> _Yes	___No		<u>_x</u> _Yes	___No
Section 5.3.2 (B) (1) Method and adequacy of provision for sewage disposal facilities, solid waste and water service.	<u>X</u> _Yes	___No	Attachment 3 of the staff prepared abstract contains memorandum/emails from Orange County Environmental Health outlining the various septic issues for the project. A condition of approval is that the applicant addresses all of these concerns within the next 24 months. There is also an e-mail from Jeff Scouten, Orange County Solid Waste, indicating his approval of the project.	<u>_x</u> _Yes	___No
Section 5.3.2 (B) (2) Method and adequacy of police, fire and rescue squad protection.	<u>X</u> _Yes	___No	Fire protection will be provided by the orange Grove Volunteer Fire Department, rescue service by the Orange County Emergency Management, and police protection by the Orange County Sheriff's Department. Attachment 3 of the abstract package contains an e-mail from Jason Shepard of Orange County Emergency Management concerning approval of the project. Orange County Sheriff's office has also indicated they can support the project.	<u>_x</u> _Yes	___No

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1 **SECTION 5.3.2 (B) CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
Section 5.3.2 (B) (3) Method and adequacy of vehicle access to the site and traffic conditions around the site.	<u>X</u> Yes	___ No	The submitted site plan shows the required access points. The property already has a valid NC DOT driveway permit.	<u>x</u> Yes	___ No

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MOTION made by David Blankfard to agree with staff's findings for pages 94 through 101. Seconded by Jeff Schmitt.

VOTE: Unanimous

1 **SECTION 5.3.2 (A) Special Uses – General Standards ("Yes" indicates compliance; "No"**
 2 **indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Will	_ Will Not		<u>X</u> Will	_ Will Not
In accordance with Section 5.3.2 (A) (2), the Board of Adjustment shall also consider the following general conditions before the application for a Special Use can be approved:	NOTE: Planning Staff does not provide a recommendation on these items as the Board is expected to act based on the sworn testimony provided at the hearing.				
Section 5.3.2 (A) (2) (a) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement: <ul style="list-style-type: none"> • The application package and project narrative contained within Attachment 2 of the abstract. • Attachment 2 of the abstract contains an impact analysis, completed by Scott Dorset, indicating the project will not impact the value of adjacent property. • The submitted site plan denoting the projects compliance with the UDO. • Attachment 3 of the abstract contains approvals from County EMS and Sheriff's office. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3
 4 **MOTION** made by Mark Micol to find in favor of Section 5.3.2(A)(2)(A) that the use will maintain and promote the
 5 public health, safety and general welfare as the NCTRC provides therapeutic services to children and adults from
 6 the community who have physical, emotional, mental and social disabilities. Seconded by David Blankfard.
 7 **VOTE:** Unanimous
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 9

1 **SECTION 5.3.2 (A) Special Uses – General Standards ("Yes" indicates compliance; "No"**
 2 **indicates non-compliance)**
 3

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>x</u> Will	_ Will Not		<u>x</u> Will	_ Will Not
Section 5.3.2 (A) (2) (b) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement: <ul style="list-style-type: none"> The application package and project narrative contained within Attachment 2 of the abstract. Attachment 2 of the abstract contains an impact analysis, completed by Scott Dorset, indicating the project will not impact the value of adjacent property. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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 7 **MOTION** made by Jeff Schmitt to find in favor of Section 5.3.2(A)(2)(b) that the use of the property will continue to
 8 provide for increased or enhanced from contagious as so indicated by information submitted by Scott Dorsett, a
 9 realtor and appraiser doing business in Orange and Alamance County for several years. Seconded by David
 10 Blankfard.
 11 **VOTE:** Unanimous
 12

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<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u> </u> x <u> </u> Is	<u> </u> Is Not		<u> </u> x <u> </u> Is	<u> </u> Is Not
<p>Section 5.3.2 (A) (2) (c)</p> <p>The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.</p>	<u> </u> x <u> </u> Is	<u> </u> Is Not	<p>Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement:</p> <ul style="list-style-type: none"> • The application package and project narrative contained within Attachment 2 of the abstract. • Attachment 2 of the abstract contains an impact analysis, completed by Scott Dorset, indicating the project will not impact the value of adjacent property. • The submitted site plan denoting the projects compliance with the UDO. 	<u> </u> x <u> </u> Is	<u> </u> Is Not

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MOTION made by Karen Barrows to find in favor of Section 5.3.2(A)(2)(c) that the use will maintain the character of the use and will be in harmony with the area. Seconded by Jeff Schmitt.
VOTE: Unanimous

RECOMMENDATION:

Staff has not received any information that would establish grounds for making a negative finding on the general standards as detailed above. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, the use being in harmony with the area in which it is to be located, and the use being in compliance with the general plan for the physical development of the County.

Staff has reviewed the application, the site plan, and all supporting documentation and has found that the applicant **complies** with the specific standards and required regulations as outlined within the UDO

Provided the Board of Adjustment finds in the affirmative on the specific and general standards, the Board could make a positive finding on this application. In the event that the Board makes a recommendation to issue the permit, staff recommends the attachment of the following conditions:

- 1
- 2 **1.** The granting of the Special Use Permit shall not prohibit or in any way prevent the property
- 3 from being utilized to support farming operations/activities. The permit, and conditions herein,
- 4 shall only impact the operational characteristics of the riding stable.
- 5 **2.** No activity shall be allowed within the identified conservation easement currently in place on
- 6 the western boundary of the project as detailed within Deed Book 1376 Page 236, and as
- 7 shown on a plat recorded within Plat Book 84 Page 194, of the Orange County Registrar of
- 8 Deeds.
- 9 **3.** Those paddocks and fenced in pasture areas not meeting the 150 foot setback required to
- 10 allow for the operation of a riding stable shall not be used as part of the overall therapeutic
- 11 riding operation. This does not, however, prohibit horses from using these areas to feed or
- 12 roam freely.
- 13 **4.** The applicant shall address all outstanding issues associated with obtaining required
- 14 Environmental Health permits to allow for the continued operation of the facility within 24
- 15 months from the date of permit approval.
- 16 **5.** All existing vegetation along the perimeter of the property shall be preserved it its natural
- 17 state.
- 18 **6.** No client shall be allowed to remain on the property after hours.
- 19 **7.** Existing residential structure(s) can be utilized by the applicant for office and living space to
- 20 ensure the perpetual maintenance of the facility and care of the animals housed on the
- 21 property.
- 22 **8.** The Special Use Permit will automatically expire within 12 months from the date of approval if
- 23 the use has not commenced or construction has not commenced or proceeded unless a
- 24 timely application for extension of this time limit is approved by the Board of Adjustment.
- 25 **9.** If any condition of this Special Use Permit shall be held invalid or void, then this Special Use
- 26 Permit shall be void in its entirety and of no effect.

27

28 **MOTION** to approve the Class B Special Use Permit made by Jeff Schmitt with the recommendations provided by

29 staff items 1 – 9 and item 10 be approved and be an inclusion of this special use permit. Seconded by David

30 Blankfard.

31 **VOTE:** Unanimous

32

1 **AGENDA ITEM 7: A-5-13 – Class B Special Use Permit – Telecommunication Facility**

2 In accordance with Section(s) 2.7 *Special Uses*, 5.2.2 *Table of Permitted Uses*, 5.3.2 *Application of Use*
3 *Standards – Special Uses*, and 5.10 *Standards for Telecommunication Facilities* of the UDO American Tower and
4 AT and T Mobility have submitted a Class B Special Use Permit application seeking a permit to erect a 199 foot
5 telecommunication tower on a 34 acre parcel of property at off of Saddle Club Road further identified utilizing
6 Orange County Parcel Identification Number (PIN) 9826-76-9834, which is owned by Murray Lynch.

7 The property in question is zoned Agricultural Residential (AR) and Back Creek Protected Watershed Protection
8 Overlay District. The proposed use is permitted on the property subject to the issuance of a Class B Special Use
9 Permit. The property is currently utilized as a farm.

10 As detailed within the application, the applicant wishes to erect a telecommunication tower within a 100 foot by
11 100 foot leased area on the aforementioned parcel. There will be an equipment cabinet at the base of the tower
12 to house equipment for the various communication providers utilizing the tower within a 60 foot by 60 foot fenced
13 compound.

14 Access to the proposed facility shall be through an easement running through property, also owned by Murray
15 Lynch, with direct frontage along Saddle Club Road. This property is further identified utilizing Orange County
16 Parcel Identification Number (PIN) 9826-66-7738.

17
18 The following individuals were sworn in by Debra Graham, Board Secretary:

Karen Kemerait	Murray Lynch	Rusty Monroe
Gurpreet Singh	David Smith	

19
20 Michael Harvey: Reviewed abstract. I would like to ask that our abstract including all attachments and the
21 applicant's application be entered into the record.

22
23 **MOTION:** made by Jeff Schmitt to enter information into the record. Seconded by David Blankfard.

24 **VOTE:** Unanimous

25
26 Michael Harvey: There have been no comments from the general public with respect to this tower. We did
27 receive a phone from Mr. Carl Singley who lives in the area and heard a cell tower was coming and certainly
28 recommends you approve it. The applicant is represented by Ms. Karen Kemerait who would be happy to answer
29 any questions or additional testimony.

30
31 Larry Wright: Could you please explain the graphic on page 127 of the packet.

32
33 Michael Harvey: This is an attachment that goes in the neighborhood notification letter we send to everyone
34 within 1,000 feet giving them a graphic representation of where the meeting is being held.

35
36 Karen Kemerait: My understanding is there have been no concerns or opposition to this cell tower. It will be in
37 an area where coverage is needed in the rural area of the western part of the county. It will provide coverage in
38 the western part of the county and north of the Mebane area. The property owner, Mr. Murray Lynch, is here to
39 support the application. I believe we have met all the ordinance requirements.

40
41 Larry Wright: The people who have signed up are just for reference in case you have any questions.

42
43 **MOTION** made by Karen Barrows to close the public hearing and go into closed session. Seconded by Jeff
44 Schmitt.

45 **VOTE:** Unanimous

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**FINDINGS OF THE ORANGE COUNTY BOARD OF ADJUSTMENT
PERTAINING TO A REQUEST SUBMITTED BY
AT AND T / AMERICAN TOWER
REQUESTING A CLASS B SPECIAL USE PERMIT APPROVAL
FOR A TELECOMMUNICATION TOWER AT
SADDLE CLUB ROAD PINS 9826-76-9834 (location of tower) AND
9826-68-1313 (location of access easement)**

As required under Section 5.2 *Table of Permitted Uses* of the Orange County Unified Development Ordinance (UDO), a Class B Special Use Permit is required for the erection of a telecommunication tower, over 75 feet but under 200 feet in height, in accordance with the provisions of Section 2.7 of the UDO. Such permits shall comply with general and specific standards as set forth in Section(s) 5.3.2 and 5.10.8 of the UDO.

Section 5.3.2 (A) (2) of the UDO requires written findings certifying compliance with the following:

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and
- (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

In addition, the Board shall make findings certifying that the application is compliant with the following specific standards:

- (5) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 2.2 and 2.7 of the UDO,
- (6) Specific regulations governing the development of telecommunication tower as set forth in Section 5.10.8 (A) through (B) of the UDO,
- (7) Section 5.3.2 (B) relating to the method and adequacy of the provision of:
 - a. Sewage disposal facilities,
 - b. The adequacy of police, fire, and rescue squad protection, and
 - c. The adequacy of vehicular access to the site and traffic conditions around the site
- (8) The general findings outlined within Section 5.3.2 (A) (2).

Listed below are the findings of the Orange Planning staff regarding the application in question. The findings have been presented by Article and requirement to assist the Board of Adjustment in its deliberations.

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SECTION 2.2 AND 2.7.3 CLASS B SPECIAL USE PERMIT APPLICATION COMPONENTS ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Section 2.2 The application for a Class B Special Use Permit shall be on forms provided by the Planning Department.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab 2 of the application booklet contains a complete Orange County Class B Special Use Permit application for the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.2.4 (D) Applications must be accompanied by the fee amount that has been established by Board of County Commissioners. Application fees are nonrefundable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab 1 of the application booklet contains a copy of the checks submitted for the required fees. Staff will stipulate the applicant submitted the required application fee for the permit application.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.7.3 (B) (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab 3 of the application booklet contains a complete project narrative describing the proposed use and operational characteristics of the proposed tower.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.7.3 (B) (2) The names and addresses of the owners of the property	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 4 of the application booklet contains information concerning the names and addresses of the owner of the property where the tower is to be located.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 2.2 AND 2.7.3 CONTINUED ("Yes" indicates compliance; "No" indicates**
 2 **non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
2.7.3 (B) (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use	<u>X</u> Yes	___ No	The application booklet contains various documents, including a site plan, containing the necessary information establishing compliance with the provisions of the Ordinance.	<u>x</u> Yes	___ No
2.7.3 (B) (4) Ten (10) copies of the site plan prepared by a registered N.C. land surveyor, architect, or engineer.	<u>X</u> Yes	___ No	Tab 6 of the application booklet contains the required site plan completed by Tower Engineering Professionals of Raleigh, NC.	<u>x</u> Yes	___ No
2.7.3 (B) (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.	<u>X</u> Not Applicable		The project does not involve or propose a subdivision. As a result no preliminary plat is required.	<u>x</u> Not Applicable	
2.7.3 (B) (6) A list of all parcels located within 1000 (Staff Note – telecommunication tower applicants are required to observe a 1000 foot area) feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.	<u>X</u> Yes	___ No	Tab 10 Tab B of the application booklet contains a complete list of property owners within 1000 feet of the subject property as maintained by Orange County Land Records.	<u>x</u> Yes	___ No
2.7.3 (B) (7) Elevations of all structures proposed to be used in the development.	<u>X</u> Yes	___ No	Tab 6 of the application booklet contains the required elevations	<u>x</u> Yes	___ No

1 **SECTION 2.2 AND 2.7.3 CONTINUED ("Yes" indicates compliance; "No" indicates**
 2 **non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
2.7.3 (B) (8) Ten (10) copies of an Environmental Assessment or Environmental Impact Statement as required by Section 6.16 of the UDO	<input checked="" type="checkbox"/> Not Applicable		Per Section 6.16.2 <i>Exemptions</i> of the UDO projects involving less than a total area of two (2) acres or less are not required to produce an Environmental Assessment. The proposed project will not impact more than 2 acres of land area (lease area is only 100 ft. by 100 ft. in area). Per Section 6.16.3 <i>Environmental Assessment</i> of the UDO the project will not involve the grading of more than 40,000 sq. ft. of property (exclusive of roads), involve more than 10,000 gallons per day of water usage.	<input checked="" type="checkbox"/> Not Applicable	
2.7.3 (B) (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Tab(s) 3 and 6 of the application booklet contains the a detailed narrative and site plan which notes construction or land clearing debris generated on-site will be disposed of in accordance with the County's Solid Waste Management Ordinance.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.3 (B) (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Tab 6 of the application booklet contains the required information,	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

1 **SECTION 2.2 AND 2.7.3 CONTINUED ("Yes" indicates compliance; "No" indicates**
 2 **non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	<u>EVIDENCE SUBMITTED TO SUPPORT FINDINGS</u>	<u>BOA FINDINGS</u>
2.7.3 (B) (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum)	<input checked="" type="checkbox"/> Not Applicable	The applicant is not requesting vesting of the project.	<input checked="" type="checkbox"/> Not Applicable

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1 **SECTION 2.7.5 CLASS A SPECIAL NOTIFICATION REQUIREMENTS ("Yes" indicates**
 2 **compliance; "No" indicates non-compliance)**
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Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Section 2.7.5 (a) The Planning Director shall give public notice of the date, time and place of the public hearing	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 3 of the Abstract package produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.6 (b) Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days not more than we days prior to the date of the hearing.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The legal ad for the November 11, 2013 BOA public hearing was published in the News of Orange and the Herald consistent with the requirements of the UDO.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.6 (c) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 3 of the Abstract package produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2.7.6 (d) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose manes and addresses are currently listed in the Orange County tax records.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Attachment 3 of the Abstract package produced by staff provides the necessary detail outlining compliance with this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES**
 2 **("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<i>Section 5.10.8</i> Wireless Telecommunications Support Structures – Submittal and Review Requirements					
5.10.8 (A) (1) (a) A site plan and site plan application package prepared in accordance with Section 2.5 shall be presented for approval to the Planning Division including all requirements for site development plan approval as required.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab(s) 6</u> of the application booklet contains the required information, specifically the required site plan.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (b) A detailed description of the proposed telecommunication support structure (i.e. monopole, self-supporting lattice, etc.) including a detailed narrative description and explanation of the specific objective(s) for the new facility including a description as to the coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage for the proposed telecommunication support structure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab 3</u> of the application booklet contains a complete project narrative describing the proposed use as well as an explanation of the specific objective(s) for the new facility. <u>Tab(s) 6, 7, 15, 16, 17, 19, 20, 21, 22</u> of the application booklet contains other supporting documentation satisfying this requirement.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES**
 2 **("Yes" indicates compliance; "No" indicates non-compliance)**

Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	X Yes	___ No		_x Yes	___ No
5.10.8 (A) (1) (c) Elevation drawings and color renderings of the proposed tower showing: (i) The vertical rendition of the telecommunication support structure(s) identifying all users and attachments, (ii) All related fixtures, structures, appurtenances and apparatus including the height of said structures above the lowest adjacent pre-existing grade, (iii) The materials that will be used on site for said structures including their color and any proposed lighting and shielding devices, and (iv) If the facility is intended to be a stealth, as defined herein, the colors and screening devices for the Planning Director to verify consistency with applicable definitions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tab(s) 3, 6 and 7</u> of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES**
 2 **("Yes" indicates compliance; "No" indicates non-compliance)**

Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	X_ Yes	___ No		_x_ Yes	___ No
5.10.8 (A) (1) (d) A signed statement from the applicant certifying that the proposed telecommunication support structure: (i) Shall be maintained in a safe manner, (ii) Is in compliance with all conditions of all applicable permits and authorizations without exception, and (iii) Is in compliance with all applicable and permissible local, State, and Federal rules and regulations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 28 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.10.8 (A) (1) (e) A statement, prepared by a professional engineer licensed in the State of North Carolina, which through rational engineering analysis, certifies the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, and any associated regulations; and describes the tower's capacity, including an example of the number and type of antennas it can accommodate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 26 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES**
 2 **("Yes" indicates compliance; "No" indicates non-compliance)**

Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (f) A statement stating how the proposed tower will minimize visual intrusiveness to surrounding properties in the area. Criteria that may be used for such evidence may be height and type of existing trees surrounding the proposed tower, and local topography.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 7 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.10.8 (A) (1) (g) A copy of the installed foundation design including a geotechnical sub-surface soils investigation, evaluation report, and foundation recommendation for the proposed wireless support structure.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 of the application booklet contain required information. A final geotech report is required prior to the issuance of a building permit. Staff will recommend this become a condition of approval.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.10.8 (A) (1) (h) The existing cell sites (latitude, longitude, power levels) to which this proposed site will be a handoff candidate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 13 and 18 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.10.8 (A) (1) (i) Propagation studies of the proposed site and showing all adjoining planned, proposed, in-service or existing sites. This will include all of the modeling information used to produce the study including, but not limited to, any assumptions made about ambient tree height.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 13, 15, and 17 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES

("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (j) The search ring utilized in finding the proposed site.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab(s) 3 and 13</u> of the application booklet contains the required information. The County telecommunication's consultant, CMS, has reviewed the information and concurs with the applicant's assertions. Their comments are detailed within <u>Attachment 2</u> of the abstract.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (k) The number, type, height, and model of the proposed antennas along with a copy of the applicable specification sheet(s).	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab(s) 3 and 6</u> of the application booklet contains the required information.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (l) The make, model and manufacturer of the tower and antenna(s), antenna heights and power levels of proposed site. This will include documentation establishing the azimuth, size, and centerline height location of all proposed and existing antennas on the structure.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab(s) 3, 6 and 15</u> of the application booklet contains the required information.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.10.8 (A) (1) (m) The frequency, modulation and class of service of radio or other transmitting equipment.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Tab(s) 3, 15, and 19</u> of the application booklet contains the required information.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES**
 2 ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (A) (1) (n) The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier.	<u>X</u> Yes	___ No	Tab(s) 3, 15, and 19 of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.10.8 (A) (1) (o) The actual intended transmission and the maximum effective radiated power of the antenna(s).	<u>X</u> Yes	___ No	Tab(s) 3, 6, 15, and 19 of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.10.8 (A) (1) (p) The direction(s) of maximum lobes and associated radiation of the antenna(s).	<u>X</u> Yes	___ No	Tab(s) 3, and 19 of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.10.8 (A) (1) (q) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC.	<u>X</u> Yes	___ No	Tab(s) 3 and 19 of the application booklet contains the required information.	<u>x</u> Yes	___ No

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SECTION 5.10.8 (A) – STANDARDS FOR TELECOMMUNICATION FACILITIES
 ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (A) (1) (r) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices.	<u>X</u> Yes	___ No	Tab(s) 3, 14 and 20 of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.10.8 (A) (1) (s) A written affidavit stating why "the proposed site is necessary for their communications service" (e.g., for coverage, capacity, hole-filling, etc.) and a statement that there are no existing alternative sites within the provided search ring and there are no alternative technologies available which could provide the proposed telecommunications service need without the tower.	<u>X</u> Yes	___ No	Tab(s) 3, 11 and 34 of the application booklet contains the required information. The affidavit was prepared by Jerry Jones of AT and T	<u>x</u> Yes	___ No
5.10.8 (A) (1) (t) A copy of the FCC license applicable for the intended use of the facility as well as a copy of the 5 and 10 year building out plan required by the FCC.	<u>X</u> Yes	___ No	This information will be provided prior to the issuance of a building permit. Staff is recommending it become a condition of approval.	<u>x</u> Yes	___ No

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1 **SECTION 5.8.10 (A) (2) ADDITIONAL SUBMITTAL REQUIREMENTS – CO LOCATION OF**
 2 **ANTENNAS ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS
5.8.10 (A) (2) In addition to the requirements denoted herein, applications for the co-location of antennas on existing structures shall be required to submit the following:	<input checked="" type="checkbox"/> Not Applicable	The applicant is not proposing the co-location of antenna with this application. The proposal is for a new tower, not for the co-location of equipment. As a result the requirements of Section 5.8.10 (A) (2) are not applicable to this application request. This section will be applicable in the future where co-locations are proposed for the tower if approved.	<input checked="" type="checkbox"/> Not Applicable

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SECTION 5.8.10 (B) GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS

("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	X Yes	___ No		x Yes	___ No
<p>5.8.10 (B) (1) (a) and (b) Overall Policy and Desired Goals</p> <p>The overall policy and desired goals for Special Use Permits for wireless telecommunications support structures shall be promoting and encouraging, wherever possible, the following:</p> <p>(a) Alternatives to constructing new wireless support structures, including but not limited to the co-location of wireless telecommunications equipment and mitigating the visual effect of a wireless telecommunication support structure to an extent not commercially impracticable; and</p> <p>(b) The placement, height and quantity of wireless telecommunications towers and equipment in such a manner, including but not limited to the use of stealth technology or camouflage techniques, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications support structure, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><u>Tab(s) 3, and the entire booklet</u> contains the required information addressing this requirement.</p> <p>There are no existing towers in the area to address service needs, so co-location opportunities were not available.</p> <p>There are no County pre-designated sites in this area affording a pre-screened/sanctioned location for a telecommunication facility.</p> <p><u>Tab(s) 3 and 6</u> provides sufficient information denoting compliance with subsection (b).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
<p>5.8.10 (B) (2) Balloon Test</p> <p>(a) The applicant shall, at least six weeks prior to a Class B Special Use Permit public hearing and at least 11 weeks prior to a Class A Special Use Permit public hearing, conduct a balloon test whereby the applicant shall arrange to fly, or raise upon a temporary mast, a minimum of 10'3" in length, brightly colored red or orange balloon at the maximum height of the proposed new wireless support structure.</p> <p>(b) The balloon test shall be flown for at least four consecutive daylight hours starting sometime between 10:00 A.M. and 2:00 P.M. on the dates chosen.</p> <p>(c) A notice of the dates (including a second date in case of poor visibility, weather or atmospheric conditions on the initial date), times, and location of the balloon test shall be mailed, by certified mail, return receipt requested, by the applicant, to all persons owning property within 1,000 feet of the subject parcel no less</p>			<p>Tab(s) 3, 7, and 10 (Tabs A-D) of the application booklet contains the required information.</p> <p>The balloon test was completed on August 17, 2013 – 13 weeks prior to the November 11, 2013 BOA public hearing. This date did not fall on a holiday and is consistent with the requirement of Section 5.8.10 (B) (2) (d) of the UDO as detailed herein.</p> <p>Tab 7 contains pictures of the balloon test, which was held from 10:00 a.m. until 2:00 p.m. on August 17, 2013.</p> <p>Notices of the balloon test were sent to property owners within 1000 feet, of the subject property, via certified mail on July 25, 2013, 23 days prior to the scheduled balloon test.</p> <p>The list of property owners within 1000 feet utilized by the applicant was generated utilizing data maintained by Orange County Land Records as required by the UDO.</p>		

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<p>than 14 days in advance of the first test date. The data contained within the office of Orange County Land Records shall be used as the primary source for determining which residents are to receive notice of the balloon tests.</p> <p>(d) The primary date shall be on a weekend (excluding legal holidays), but to prevent delays in the processing of the application, and in case of poor weather or atmospheric conditions on the initial date, the secondary date may be a weekday.</p> <p>(e) The applicant shall inform the County Planning Staff, in writing, of the dates and times of the test at least 14 days in advance.</p> <p>(f) The applicant shall also post a sign on the subject property, and directional signs posted at locations to be determined by Planning Staff. The signs shall measure no more than nine square feet in area and no less than four square feet in area, giving the contact information of the County Planning Department, the proposed dates, times, and location of the balloon test. The signs shall be posted to meet the same time limits as provided for in the balloon test notification as stated above.</p>				<p>The test was held consistent with the requirements of Section 5.8.10 (B) (2) (d) as detailed herein.</p> <p>Planning staff was informed of the test as required by Section 5.8.10 (B) (2) (e) as detailed herein.</p> <p>Signs were posted on the property, as well as off-site directional signs, on August 2, 2013.</p>			

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.8.10 (B) (3) Submittal Requirements					
5.8.10 (B) (3) (a) (a) A site plan showing the following: (i) The entire site (including property boundary lines) and size of all existing structures within 500 feet of the site, (ii) Existing and proposed structures on site, (iii) The fall zone of the tower, (iv) Existing and proposed topography at a contour interval of five feet and (v) Any officially designated floodways and floodplains, or the presence of alluvial soils.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Tab(s) 3 and 6 of the application booklet contains the required information. Sheet C-1 of the site plan contained in Tab 6 provides the size of all structures within 500 feet of the site as well as denoting the fall zone of the proposed tower and the existing/proposed topography lines. There is a statement on sheet C-1 indicating there are no floodways/floodplains on the property. Staff concurs with this finding.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.8.10 (B) (3) (b) Plans, and elevations for all proposed structures and descriptions of the color and nature of all exterior material, along with the make, model, and manufacturer of the proposed structure, maximum antenna heights, and power levels.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Tab(s) 3, 6 and 26 of the application booklet contains the required information. Sheet C-3 of the site plan contained in Tab 6 provides information about the tower and antennas.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.8.10 (B) (3) (c) A Landscape and Tree Preservation Plan drawn at the same scale as the site plan, showing the existing and proposed trees, shrubs, ground cover and other landscape materials. This plan shall minimize adverse visual effects of wireless telecommunications support structures and antennas through careful design, siting, landscape screening and innovative camouflaging techniques.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 6 of the application booklet contains the required information. Refer to Sheet C-2 for additional information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.8.10 (B) (3) (d) Evidence that the applicant has investigated the possibilities of placing the proposed equipment on an existing wireless support structure. Such evidence shall consist of: i. A listing of all wireless telecommunications support structures within a two mile radius of the proposed wireless support structure site and a listing of all wireless support structure, utility poles and other structures in the vicinity of the proposed facility that are technically feasible for utilization by the applicant to fill all or a substantial portion of the telecommunications service need identified by the Applicant pursuant to section 5.10.8(A)(1)(s). Documents shall be submitted at the time of application filing that indicates the applicant's ability or inability to co-locate on the identified tower(s) and reasons why.	<u>X</u>	___	<u>Tab(s) 3, 7, 10 (Tabs A-E), 13, 14, 19, 20, 26, 28, 30 and 31</u> of the application booklet contains the required information. <u>Tab(s) 14 and 20</u> contains affidavits indicating there are no existing towers, buildings, or other useable structures within a 2 mile radius in which antennas could be attached. <u>Tab 13</u> contains a search ring map.	<u>x</u>	___

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>		PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS		BOA FINDINGS
<p>5.8.10 (B) (3) (d) (continued)</p> <p>ii. Delineation of the boundaries of the maximum search ring within which the telecommunication equipment can function as intended. The following information shall be provided for all existing wireless support structures within the search ring:</p> <p>a. Wireless telecommunication support structure height;</p> <p>b. Existing and planned wireless support structure users;</p> <p>c. Whether the existing wireless telecommunication support structure could accommodate the telecommunication equipment to be attached to the proposed wireless support structure without causing structural instability or radio frequency interference; and</p>					

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
<p>5.8.10 (B) (3) (d) (continued)</p> <p>d. If the proposed telecommunication equipment cannot be accommodated on the existing wireless telecommunication support structure, assess whether the existing wireless support structure could be structurally strengthened or whether the antennas transmitters and related equipment could be protected from electromagnetic interference, and generally describe the means and projected cost of shared use of the existing wireless support structure; and</p> <p>e. Any restrictions or limitations of the FCC or FAA that would preclude the shared use of the wireless support structure;</p> <p>f. Propagation studies of all adjoining planned, proposed, in-service, or existing sites, and;</p> <p>g. Any additional information requested by the County.</p> <p>iii. A summary explanation of why proposed telecommunication equipment cannot be located on any of the existing wireless support structures in the search ring.</p>					

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.8.10 (B) (3) (e) Documentation from applicable state or federal agencies indicating requirements, which affect the appearance of the proposed wireless support structure, such as lighting and coloring.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 31</u> of the application booklet contains the required information. There is no lighting required for the proposed tower.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (f) Draft bond which will guarantee the removal of the wireless support structure in the event that it is abandoned or unused for a period of 12 months.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 30</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (g) A listing of, and current tax map identifying, all property owners within 1,000 feet of the parcel and addressed, first class stamped envelopes to the property owners for notifications of the public hearing in accordance with Sections 2.7.5 and 2.7.6 of this Ordinance.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 10 (Tabs A-E)</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (h) A report containing any comments received by the applicant in response to the balloon test along with color photographs from various locations around the balloon.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 7</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.8.10 (B) (3) (i) Evidence that the balloon test requirement has been met, including a notarized statement and listing of the property owners notified of the test, a copy of a current Orange County Tax Map showing the subject property and all properties within the notification ring, and copies of the certified mail returned receipts from the mail-out.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 10 (Tabs A-E)</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (j) A notarized statement that the sign posting requirement has been met.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 10</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (k) Photographs of a clearly visible balloon floated at the proposed tower location to the maximum height of the tower, as well as photographs with the proposed tower and associated antennas superimposed upon them showing what the proposed tower will look like. Photographs shall be taken from locations such as: property lines, and/or nearby residential areas, historic sites, roadways, including scenic roads and major view corridors, and other locations as deemed necessary by the Planning Staff to assess the visual impact of the proposed tower.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 7</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.8.10 (B) (3) (l) The Special Use Permit application shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.	<u>X</u> Yes	___ No	<u>Tab(s) 3, 19 and 28</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.8.10 (B) (3) (m) An Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum. Based on the results of the Analysis, including the Visual addendum, the County may require submission of a more detailed visual analysis. The scope of the required Environmental and Visual Assessment will be reviewed at the pre-application meeting.	<u>X</u> Not applicable		The applicant was not required by staff to complete the additional information	<u>x</u> Not applicable	
5.8.10 (B) (3) (n) If required, a Visual Impact Assessment, which shall include:	<u>X</u> Not applicable		The applicant was not required by staff to complete the additional information. As a result the provisions of this section do not apply.	<u>x</u> Not applicable	

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.8.10 (B) (3) (o) All applications shall contain a demonstration that the wireless support structure is sited so as to have the least visually intrusive effect reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the telecommunications tower.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 7 of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.8.10 (B) (3) (p) A statement, prepared by a professional engineer licensed in the State of North Carolina, which through rational engineering analysis, certifies the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, and any associated regulations; and describes the tower's capacity, including an example of the number and type of antennas it can accommodate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 26 of the application booklet contains the required information. Tab 26 contains a statement authored by Michael Plahovinsak	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
Section 5.10.8 (B) (4) Standards of Evaluation					
5.10.8 (B) (4) (a) (a) The telecommunications equipment planned for the proposed wireless support structures cannot be accommodated on an existing wireless support structures due to one or more of the following reasons: (i) The planned equipment would exceed the structural capacity of existing and approved wireless support structures, considering existing and planned use of those wireless support structures and the wireless support structures cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost. (ii) The planned equipment would cause radio frequency interference with other existing or planned equipment for these wireless support structures, and the interference cannot be prevented at a reasonable cost. (iii) Existing or approved wireless support structures do not have space on which the equipment can be placed so it can function effectively and reasonably in parity with similar existing or approved equipment. (iv) No tower or other suitable facility exists in an area where the equipment to be placed on the tower will function in its intended manner.	<u>X</u> Yes	___ No	Tab 3 of the application booklet contains the required information. There are no existing towers in the area to address service provision needs. As a result the antenna proposed for the site cannot be located elsewhere. The application in its entirety provides the necessary documentation outlining why the tower has to go on this property.	<u>x</u> Yes	___ No

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**SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –
CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (b) Location of Wireless Support Structures: (i) Applicants for facilities shall locate, site and erect said facilities according to the following priorities, in the following order: a. On existing County-owned facilities without increasing the height of the tower or structure. b. On existing Facilities without increasing the height of the tower or structure. c. On County-owned properties or facilities. d. On properties in areas zoned for commercial or industrial use. e. On properties in areas zoned Agricultural Residential (AR). f. On properties in areas zoned for residential use.	<u>X</u> Yes	___ No	Tab 3 of the application booklet contains the required information. There are no 'County' owned facilities in the area allowing for antenna to be located. There are no existing towers in the area to address service provision needs. There are no 'County' owned properties where a tower could be located. There are no commercially and/or industrially zoned properties in the area where a tower could be located. There subject property is zoned AR. This property is zoned for residential use.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (b) Continued (ii) If an Applicant proposes to place telecommunications equipment at a location that is not a preferred priority 1 site, then the Applicant must provide a detailed explanation as to why a higher priority site is not proposed. The explanation shall be in the form of a written report demonstrating the Applicant's review of the above locations in order of priority and the reason(s) for the site selection. The explanation shall, at a minimum, include the information required by section 5.10.8(B)(3)(e). (iii) The application shall not be approved unless it demonstrates that the telecommunications equipment may not be sited at a higher priority site because of commercial impracticability or because no higher priority site is available that would serve to provide the telecommunications service need identified by the Applicant as provided for in section 5.10.8(A)(1)(s).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This property represents the lowest priority site per Section 5.10.8 (B) (4) (b) (i) (f) as detailed above. The proposed tower is located: <i>'On properties in areas zoned for residential use'</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

Ordinance Requirements		PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS
<p>5.10.8 (B) (4) (b) Continued</p> <p>(iv) An Applicant may not by-pass sites of higher priority merely because the site proposed is the only site leased or selected. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability.</p> <p>(v) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, an application shall not be approved if it conflicts with the provisions and requirements of this Ordinance.</p>			<p>The applicant is not by-passing a 'higher priority' site with the proposal to erect a tower on this property. There are no higher priority sites in the area where a tower can be located.</p>	

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
<p>5.10.8 (B) (4) (b) Continued</p> <p>(vi) Wireless support structures shall not be located within one-half (½) mile of any existing monopole, lattice or guyed wireless telecommunications support structure.</p> <p>a. An exception may be allowed when the applicant can sufficiently demonstrate that:</p> <p>i. Appropriate space on the existing telecommunication wireless support structure is not available; or</p> <p>ii. The applicant has made good faith effort to negotiate an agreement with the owner of the existing wireless telecommunication support structure and has been unsuccessful, which must be documented in writing; or</p> <p>iii. The telecommunication equipment on the existing wireless telecommunication support structure is not compatible with the proposed telecommunication equipment of the applicant; or</p> <p>iv. Adequate coverage by the applicant cannot be met at the location of the existing wireless telecommunication support structure; or</p> <p>v. The existing wireless telecommunication support structure cannot be reasonably modified to accommodate additional co-location by the applicant.</p>			<p>There are no wireless support structures within ½ mile of this property.</p>		

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS
5.10.8 (B) (4) (b) Continued b. Exceptions shall only be allowed after a thorough analysis of the search area, provided by the applicant is performed by the County's consultant or Staff, indicating that coverage is not possible on an existing wireless support structure at the four-carrier capacity or other user capacity that can be achieved. There must be an 80% approval vote of the deciding board for this specific finding to pass the exception criteria.			

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (c) Setbacks (i) Within or adjacent to residential zoning districts, minimum setbacks from the base of the wireless support structure to the property boundary shall be equal to 110% of the wireless support structure height. (ii) If the wireless support structure is proposed as an accessory use to a residential use, the setback shall be 110% of the wireless support structure height from any residence or dwelling unit on the subject property. (iii) Adjacent to non-residential uses or non-residential zoning districts, minimum setbacks from the base of the wireless support structure to the property boundary shall be the greater of 20% of the tower height, or the minimum required setback. (iv) All buildings and other structures to be located on the same zoning lot as a telecommunication tower wireless support structure shall conform with the setbacks established for the zoning district or as established through the subdivision process, whichever is greater.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Tab(s) 3 and 6 of the application booklet contains the required information.</p> <p>Sheet C-1 of the site plan contained in Tab 6 indicates setback of the tower from the property line.</p> <p>The application package indicates there are no residential 'houses' on the site.</p> <p>There are also no adjacent non-residential land uses or zoning districts per subsection (iii) as detailed herein.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (d) Access (i) At a wireless telecommunications support structure site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. (ii) Maximum use of existing roads, whether public or private, shall be made to the extent practicable. (iii) Road construction shall, at all times, minimize ground disturbance and the cutting of vegetation. (iv) Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 and 6 of the application booklet contains the required information. Sheet C-1 and C-2 of the site plan contained in Tab 6 contains sufficient detail denoting compliance. Existing roads will be utilized to the maximum extent possible. Road construction shall follow, to the greatest extent possible, the existing contour of the land and minimize the removal of vegetation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (e) Landscape and Buffers (i) A Type C Landscape Buffer shall be provided between the wireless support structures and its accessory structures and adjoining property/properties. (ii) Existing vegetation may be removed only to the extent necessary to accommodate the wireless support structures, equipment buildings, and support structures such as guy wires. (iii) Plantings around the compound perimeter, outside of any fence or wall, shall be composed entirely of fast growing evergreen vegetation. (iv) New plantings and existing vegetation used for screening shall be at least six feet in height or greater at planting. (v) Proposed plantings (name, type, height) shall be shown on the Landscape Plan for the facility. (vi) Landscaping shall provide a screen on a year-round basis.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tab(s) 3 and 6</u> of the application booklet contains the required information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (f) The visibility of the balloon to adjacent properties and the surrounding area shall not constitute sole justification of denial of a permit application but is an indication of what location on the site may be less visually intrusive.	<u>X</u> Yes	___ No	The applicant acknowledges the condition. Balloon Test information, including visibility pictures/renderings are contained within Tab 7 of the application package	<u>x</u> Yes	___ No
5.10.8 (B) (4) (g) The applicant shall demonstrate and provide a description in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed facility.	<u>X</u> Yes	___ No	Tab(s) 3, 6, and 7 of the application booklet contains the required information. Sheet C-1 of the site plan in Tab 6 provides information on the landscaping. Tab 7 provides information related to the balloon visibility.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (h) The site plan shall indicate a location for at least two equipment buildings in addition to that proposed for use by the applicant.	<u>X</u> Yes	___ No	Tab(s) 3 and 6 of the application booklet contains the required information. Sheet C-1 of the site plan in Tab 6 provides the required information.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (i) All utilities at a facility site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.	<u>X</u> Yes	___ No	Tab(s) 3 and 6 of the application booklet contains the required information.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (j) All wireless support structures shall satisfy all applicable public safety, land use, or zoning issues required in this Ordinance, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 6</u> of the application booklet contains the required information.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (k) Fences and Walls (i) An eight foot fence or wall shall be required around the base of any wireless support structures. This fence or wall shall encompass all accessory equipment within the compound. (ii) Fences shall be required around guy wire tie downs (iii) A fence or wall may be placed around the perimeter of the facility to include guy wire tie downs and associated equipment should the applicant/owner wish to do so.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 6</u> of the application booklet contains the required information. Sheet(s) C 1, 3, and 4 of the site plan contained in <u>Tab 6</u> contains the required information on proposed fences and walls.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (l) The communications tower is structurally designed to support additional users as provided for in Section 5.10.8(A)(3)(d), and the Special Use Permit includes a statement that the owner of the wireless support structure is willing to permit other user(s) to attach communication equipment which do not interfere with the primary purpose of the wireless support structure, provided that such other users agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment.	<u>X</u> Yes	___ No	<u>Tab(s) 3 and 29</u> of the application booklet contains the required information. <u>Tab 29</u> contains the required co-location certification document.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (m) To minimize the number of antenna arrays and thus the visual impact, the County may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will not work technologically and that such would have the effect of prohibiting the provision of service in the County.	<u>X</u> Yes	___ No	The applicant acknowledges the condition. Staff is recommending this as a specific condition of approval. Language within the application allows for this if required by the County.	<u>x</u> Yes	___ No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> _Yes ___No	___No		<u>x</u> _Yes ___No	___No
5.10.8 (B) (4) (n) Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings.	<u>X</u> _Yes	___No	The applicant acknowledges the condition. Language within the application indicates the proposed monopole will be constructed of galvanized steel, grey in color, and will <i>'harmonize and blend with and into the environment and natural color of the background'</i>	<u>x</u> _Yes	___No
5.10.8 (B) (4) (o) Both the wireless telecommunications support structure and any and all accessory or associated telecommunication equipment and related facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth technology as may be required by the County.	<u>X</u> _Yes	___No	Tab(s) 3 of the application booklet contains the required information. Language within the application indicates the proposed monopole will be constructed of galvanized steel, grey in color, and will <i>'harmonize and blend with and into the environment and natural color of the background'</i>	<u>x</u> _Yes	___No

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (p) Antennas (i) All new or replacement antennas, except omnidirectional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible on any facility, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the applicant can prove that it is technologically impracticable. (ii) If attached to a building, all antennas shall be mounted on the face of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Tab(s) 3 and 6 of the application booklet contains the required information.</p> <p>Sheet C-1 of the site plan contained within Tab 6 indicated the antennas will be located on the proposed monopole tower will be flush mounted.</p> <p>Language within the application indicates this condition will be adhered to.</p> <p>Subsection (ii) is not applicable to this application.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (q) Lighting	<u>X</u> Not Applicable		As detailed within the application the tower is not required, or is it going to be, illuminated.	<u>x</u> Not Applicable	
5.10.8 (B) (4) (r) The tower and antenna will not result in a significant adverse impact on the view of or from any historic site, scenic road, or major view corridor.	<u>X</u> Yes	___ No	Adjacent roadways are not designated as scenic roads or major view corridors. According to a memorandum from Orange County DEAPR staff, contained within Attachment 2 of the staff abstract, there are no issues with respect to detracting from historic sites.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (s) Facilities, including antennas, towers and other supporting structures, such as guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.	<u>X</u> Yes	___ No	The applicant acknowledges the condition. Language within the application indicates this condition will be adhered to.	<u>x</u> Yes	___ No

3

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (t) All abandoned communication wireless support structures shall be removed within 12 months of the cessation of use. A bond or other security guaranteeing the removal of the tower in the event that it is abandoned or unused for a period of 12 months shall be posted. A cost estimate shall be provided by a qualified General Contractor licensed in the State of North Carolina. The amount of the security shall be 110% of the estimate.	<u>X</u> Yes	___ No	The applicant acknowledges the condition. Language within the application indicates this condition will be adhered to. This will be addressed prior to the issuance of a Certificate of Occupancy of the structure and shall become a condition of approval.	<u>x</u> Yes	___ No
5.10.8 (B) (4) (u) A determination shall be made that the facility and its equipment will comply with all federal, state and local emission requirements, and the Special Use Permit shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.	<u>X</u> Yes	___ No	The applicant acknowledges the condition. Language within the application indicates this condition will be adhered to.	<u>x</u> Yes	___ No

3

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (v) Electro-magnetic radiation levels. (i) The Special Use Permit shall include a condition that the electro-magnetic radiation levels maintain compliance with requirements of the FCC, regarding emission of electromagnetic radiation. (ii) Within 30 days of installation of equipment on the tower, and within 30 days of the installation of any additional equipment in the future, the tower owner shall provide documentation of emission levels in relation to FCC standards. (iii) In addition, the tower owner must provide documentation of emission levels within five working days if so requested by Orange County. (iv) Orange County may make such requests at any time, not to exceed two times per year.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The applicant acknowledges the condition. Language within the application indicates this condition will be adhered to. This will become a condition of approval for the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
<p>5.10.8 (B) (4) (w) "High Voltage", "No Trespassing" and Other Signs</p> <p>(i) If high voltage is necessary for the operation of the telecommunications tower or any accessory structures, "HIGH VOLTAGE - DANGER" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.</p> <p>(ii) "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.</p> <p>(iii) The letters for the "HIGH VOLTAGE - DANGER" and "NO TRESPASSING" warning signs shall be at least six inches in height. The two warning signs may be combined into one sign. The warning signs shall be installed at least five feet above the finished grade of the fence.</p>			<p>Tab(s) 3 and 6 of the application booklet contains the required information.</p> <p>Sheet C-4 of the site plan contained within Tab 6 provides the signage details for the project, demonstrating compliance with this provision.</p>		

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4

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (w) Continued (iv) The warning signs may be attached to freestanding poles if the content of the signs would, or could, be obstructed by landscaping. Signs noting federal registration (if required) shall be attached to the tower structure in compliance with federal regulation. (v) Facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. (vi) A sign no larger than four square feet containing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s) shall be installed. The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Tab(s) 3 and 6 of the application booklet contains the required information.</p> <p>Sheet C-4 of the site plan contained within Tab 6 provides the signage details for the project, demonstrating compliance with this provision.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3
4

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (4) (w) Continued (vii) On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. (viii) The use of any portion of a tower for signs or advertising purposes including company name, banners, streamers, etc. shall be strictly prohibited. (ix) Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless repairs to the tower are being made.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Tab(s) 3 and 6 of the application booklet contains the required information.</p> <p>Sheet C-4 of the site plan contained within Tab 6 provides the signage details for the project, demonstrating compliance with this provision.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (5) Bond Security (a) The applicant and the owner of record of any proposed facility property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Section and conditions of any Special Use Permit issued pursuant to this Section. (b) The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit Tower Inspection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tab(s) 3</u> of the application booklet acknowledges the condition and indicates it shall be adhered to.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

Ordinance Requirements	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	X_ Yes	___ No		_x_ Yes	___ No
5.10.8 (B) (6) Liability Insurance (a) A holder of a Special Use Permit for a wireless support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in the following amounts: (i) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate; and (ii) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate; and (iii) A \$3,000,000 Umbrella coverage; and (iv) Workers Compensation and Disability: Statutory amounts. (b) For a wireless support structure on County property, the Commercial General Liability insurance policy shall specifically name the County as an additional insured. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 of the application booklet acknowledges the condition and indicates it shall be adhered to.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (6) Liability Insurance Continued (c) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice in advance of the cancellation of the insurance. (d) Renewal or replacement policies or certificates shall be delivered to the County at least 15 days before the expiration of the insurance that such policies are to renew or replace. (e) Before construction of a permitted facility is initiated, but in no case later than 15 days prior to the grant of the building permit, the holder of the Special Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the County shall not be deemed to comply with this Section.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 of the application booklet acknowledges the condition and indicates it shall be adhered to. This shall become a condition of approval for the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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4

1 **SECTION 5.10.8 (B) – GENERAL SUBMITTAL REQUIREMENTS – SPECIAL USE PERMITS –**
 2 **CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
5.10.8 (B) (6) Liability Insurance Continued (c) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice in advance of the cancellation of the insurance. (d) Renewal or replacement policies or certificates shall be delivered to the County at least 15 days before the expiration of the insurance that such policies are to renew or replace. (e) Before construction of a permitted facility is initiated, but in no case later than 15 days prior to the grant of the building permit, the holder of the Special Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the County shall not be deemed to comply with this Section.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tab(s) 3 of the application booklet acknowledges the condition and indicates it shall be adhered to. This shall become a condition of approval for the project.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3

1 **SECTION 5.3.2 (B) – SPECIFIC STANDARDS – SPECIAL USE PERMITS ("Yes" indicates**
 2 **compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
<p>Section 5.3.2 (B) (1)</p> <p>Method and adequacy of provision for sewage disposal facilities, solid waste and water service.</p>	<u>X</u> Yes	___ No	<p>Attachment 2 of the staff prepared abstract contains memorandum/emails from Orange County Environmental Health indicating there are no septic systems required for the support of the proposed telecommunication tower.</p> <p>There is also an e-mail from Jeff Scouten, Orange County Solid Waste, indicating his approval of the project.</p>	<u>x</u> Yes	___ No

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1 **SECTION 5.3.2 (B) CONTINUED ("Yes" indicates compliance; "No" indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>X</u> Yes	___ No		<u>x</u> Yes	___ No
<p>Section 5.3.2 (B) (2)</p> <p>Method and adequacy of police, fire and rescue squad protection.</p>	<u>X</u> Yes	___ No	<p>Fire protection will be provided by the Efland Volunteer Fire Department, rescue service by the Orange County Emergency Management, and police protection by the Orange County Sheriff's Department.</p> <p>Tab(s) 32 and 33 of the application booklet contains an e-mail from Mr. David Sykes of Orange County Emergency Management concerning approval of the project.</p> <p>Orange County Sheriff's office has also indicated they can support the project.</p>	<u>x</u> Yes	___ No
<p>Section 5.3.2 (B) (3)</p> <p>Method and adequacy of vehicle access to the site and traffic conditions around the site.</p>	<u>X</u> Yes	___ No	<p>The submitted site plan shows the required access points.</p> <p>A recommended condition of approval is the applicant secure a NC DOT drive permit allowing for the project to be accessed via New Sharon Church Road</p>	<u>x</u> Yes	___ No

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MOTION made by David Blankfard to agree with staff's findings for pages 130-180. Seconded by Jeff Schmitt.
VOTE: Unanimous

1 **SECTION 5.3.2 (A) Special Uses – General Standards ("Yes" indicates compliance; "No"**
 2 **indicates non-compliance)**

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u>Will</u>	<u>Will Not</u>		<u>Will</u>	<u>Will Not</u>
In accordance with Section 5.3.2 (A) (2), the Board of Adjustment shall also consider the following general conditions before the application for a Special Use can be approved:	<p>NOTE: Planning Staff does not provide a recommendation on these items as the Board is expected to act based on the sworn testimony provided at the hearing.</p>				
<p>Section 5.3.2 (A) (2) (a)</p> <p>The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.</p>	<u>Will</u>	<u>Will Not</u>	<p>Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement:</p> <ul style="list-style-type: none"> • The application package and project narrative contained within Tab 3 of the application booklet. • Tab 36 of the application booklet contains an impact analysis, completed by David Smith, indicating the project will not impact the value of adjacent property. • Tab 6 of the application booklet contains a site plan denoting the projects compliance with the UDO. • Tab(s) 32 and 33 of the booklet contains approvals from County EMS and Sheriff's office. 	<u>x Will</u>	<u>Will Not</u>

3

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<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
Section 5.3.2 (A) (2) (a) Continued			<ul style="list-style-type: none"> The application booklet contains evidence demonstrating the need for the tower, provisions for guaranteeing the public's safety and general welfare. 		

2

3

4 **MOTION** made by Mark Micol to find in favor of Section 5.3.2 (A)(2)(a) that the use will maintain or promote the
 5 public health safety and general welfare based on the fact the additional tower will encourage the expansion of
 6 high speed internet in the county and provide equitable access to the rural underserved areas. Seconded by
 7 David Blankfard.

8 **VOTE:** Unanimous

9

10

11

1 **SECTION 5.3.2 (A) Special Uses – General Standards ("Yes" indicates compliance; "No"**
 2 **indicates non-compliance)**
 3

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	<u> </u> Will	<u> </u> Will Not		<u> </u> Will	<u> </u> Will Not
Section 5.3.2 (A) (2) (b) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).			Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement: <ul style="list-style-type: none"> • The application package and project narrative contained within Tab 3 of the application booklet. • Tab 36 of the application booklet contains an impact analysis, completed by David Smith, indicating the project will not impact the value of adjacent property. • Tab 6 of the application booklet contains a site plan denoting the projects compliance with the UDO. 	<input checked="" type="checkbox"/>	

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 6 **MOTION** made by Jeff Schmitt to find in favor of Section 5.3.2 (A)(2)(b) as a result of the information provided by
 7 David Smith regarding adjoining property and surveys that had been done that this construction will continue to
 8 enhance the value of contiguous property or will not diminish it in any manner and will conform will the Uniform
 9 Development Code. Seconded by David Blankfard.

10 **VOTE:** Unanimous
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 12
 13
 14

1

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS		EVIDENCE SUBMITTED TO SUPPORT FINDINGS	BOA FINDINGS	
	___ Is	___ Is Not		<u>x</u> Is	___ Is Not
<p>Section 5.3.2 (A) (2) (c)</p> <p>The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.</p>			<p>Staff will remind the Board there is the following information available, as submitted by the applicant, related to addressing this requirement:</p> <ul style="list-style-type: none"> • The application package and project narrative contained within Tab 3 of the application booklet. • Tab 36 of the application booklet contains an impact analysis, completed by David Smith, indicating the project will not impact the value of adjacent property. • Tab 6 of the application booklet contains a site plan denoting the projects compliance with the UDO. 	<input checked="" type="checkbox"/>	

2

3

4 **MOTION** made by Karen Barrows to find in favor of Section 5.3.2 (A)(2)(c) that the location and character use if
 5 developed according to plan will be in compliance with the plan. Seconded by Jeff Schmitt.

6 **VOTE:** Unanimous

RECOMMENDATION:

Staff has not received any information that would establish grounds for making a negative finding on the general standards as detailed above. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, the use being in harmony with the area in which it is to be located, and the use being in compliance with the general plan for the physical development of the County.

Staff has reviewed the application, the site plan, and all supporting documentation and has found that the applicant **complies** with the specific standards and required regulations as outlined within the UDO

Provided the Board of Adjustment finds in the affirmative on the specific and general standards, the Board could make a positive finding on this application. In the event that the Board makes a recommendation to issue the permit, staff recommends the attachment of the following conditions:

- 1
2 1. The height of the tower shall not exceed a height of 199 feet above pre-construction grade
3 as detailed within the approved application package as reviewed and acted upon by the
4 Board of Adjustment at their November 11, 2013 meeting.
- 5 2. Existing vegetation, as detailed on the approved site plan reviewed and acted upon by the
6 Board of Adjustment at their November 11, 2013 meeting, shall be maintained as
7 indicated.
- 8 3. The facility and its equipment shall comply with all federal, state and local emission
9 requirements.
- 10 4. The electro-magnetic radiation levels shall be maintained compliance with all federal, state
11 and local requirements, including the requirements of the Federal Communications
12 Commission regarding emission of electromagnetic radiation. Within 30 days of
13 installation of equipment on the tower, and within 30 days of the installation of any
14 additional equipment in the future, the tower owner shall provide documentation of
15 emission levels in relation to FCC standards to the County for review. In addition, the
16 tower owner must provide documentation of emission levels within five working days if so
17 requested by Orange County. Orange County may make such requests at any time, not
18 to exceed 2 times per year.
- 19 5. Two ten pound 2-A:20-B:C dry chemical portable fire extinguishers shall be installed at the
20 site at a conspicuous location for use during an emergency event.
- 21 6. As required within Section 5.10.8 (A) (1) (g) of the UDO, the applicant shall be required to
22 provide a final copy of the installed foundation design including a geotechnical sub-surface
23 soils investigation, evaluation report, and foundation recommendation for the proposed
24 wireless support structure prior to the commencement of land disturbing activities
25 associated with the construction of the telecommunication facilities.
- 26 7. The applicant shall obtain a driveway permit from the NC Department of Transportation
27 approving the driveway access for the project off of Saddle Club Road.
- 28 8. Final assignment of a street address shall be completed by Orange County Land Records
29 prior to the issuance of any permit authorizing land disturbing activity on the property.
- 30 9. The applicant shall obtain all necessary development permits from the County prior to the
31 initiation of and land disturbing activity associated with the construction of the
32 telecommunication facilities including, but not limited to: Building Permit, Erosion
33 Control/Stormwater Management Permit, Zoning Compliance Permit.

- 1 10. Any proposed co-location of antenna on this tower shall be reviewed, acted upon, and
2 installed in accordance with the provisions of the UDO.
- 3 11. A co-location site shall be offered to the County for the placement of antenna in support of
4 local emergency communication needs.
- 5 12. The applicant shall submit all necessary bonding/financial security documents to the
6 County Attorney's office for review and approval guaranteeing the removal of the tower in
7 the event it is abandoned or unused for a period of 12 months. A cost estimate shall be
8 provided by a qualified contractor. The amount of the security shall be 110 percent of the
9 estimate. This must be completed before building permits are issued.
- 10 13. Telecommunication tower owners shall submit a report to the County Inspections Division
11 certifying structural and electrical integrity upon completion of the initial construction and at
12 intervals as specified within the UDO.
- 13 14. Inspection records shall be kept by the tower owner and made available upon request to
14 the County Inspections Division during regular business hours. Inspections shall be
15 performed as specified within the UDO.
- 16 15. In those cases where an inspection is required, which is not performed by Orange County
17 Inspections, the applicant is required to notify the Planning Department and any applicable
18 County telecommunication consultant of the inspection and its results.
- 19 16. Nothing associated with the approval, development or use of the property in support of the
20 proposed telecommunication facilities shall be construed as impacting the use of the
21 property for bona-fide farm purposes. Expansion of farming activities shall not constitute a
22 modification of the special use permit as detailed within the UDO requiring a re-review of
23 the project by the Board of Adjustment.
- 24 17. The County's telecommunications consultant shall issue a final Certificate of Completion
25 upon the completion of a final inspection of the constructed telecommunication facilities.
26 Commercial service cannot be provided/initiated until this final Certificate is completed and
27 issued.
- 28 18. The Special Use Permit will automatically expire within 12 months from the date of
29 approval if the use has not commenced or construction has not commenced or proceeded
30 unless a timely application for extension of this time limit is approved by the Board of
31 Adjustment.
- 32 19. If any condition of this Special Use Permit shall be held invalid or void, then this Special
33 Use Permit shall be void in its entirety and of no effect.

34
35 **MOTION** made by David Blankford to approve the Special Use Permit with the recommendations #1-19
36 presented by staff. Seconded by Jeff Schmitt.

37 **VOTE:** Unanimous

38
39 **CONTINUATION OF BUCK APPEAL – A-3-13**

40 Larry Wright: I would like to reconvene our closed session on Agenda item A-3-13, the appeal of a decision
41 made by the zoning officer submitted by Mr. Buck. You were going to give us counsel (to David Rooks). I was
42 going to offer a method of reaching a resolution in the sense of framing the question for making this decision.

43
44 David Rooks: My suggestion is that you frame it in terms of three questions as if you were doing an appeal as to
45 what this really is. The first would be and I am assuming that Mr. Davis was the development officer when he
46 signed this plat. Question number 1, did the development officer err in failing to apply the subdivision ordinance
47 recreation space requirements in effect on March 31, 1998 in the decision to approve the Phase IV Churton

1 Grove plat. Did he err by not applying the 1998 standards? Question number 2, did the development officer
2 approve the Phase for Churton Grove plat in violation of the active recreation requirements of the subdivision
3 ordinance in effect on May 20, 1986, which is the date the special use permit was approved so those are the two
4 dates. March 31, 1998 which is the date the permit was actually issued and the date of rezoning and May 20,
5 1986, the date of the special use permit. Question 3, did the development officer approve the phase for Churton
6 Grove plat in violation of the special use permit. That goes to the argument he was making about the quality of
7 the open space provided did not meet the standard. Question number 1, did Mr. Davis commit an error in
8 approving it without complying with the ordinance in effect on March 31, 1998 in Phase IV.

9
10 Jeff Schmitt: Phase IV has been appealed.

11
12 David Rooks: That answer will be yes or no. Did the development officer approve the phase for Churton Grove
13 plat in violation of the active recreation requirements of the subdivision ordinance in effect on May 20, 1986 then
14 the third question, did the development officer approve the Phase IV Churton Grove plat in violation of the special
15 use permit. This is an up or down vote. This is not like a special use permit.

16
17 Larry Wright: Could you address the jurisdiction? This is a point that has been tossed around that, could you
18 please address that?

19
20 David Rooks: The County actually raised the question as to whether this board has jurisdiction to hear this
21 appeal at all. That flows from the fact that the state enabling legislation allows a county to have a Board of
22 Adjustment and grants it authority, said that its authority is to deal with planning not subdivision, zoning not
23 subdivision so there is an argument that you have no authority to hear a decision on an appeal to grant or deny a
24 subdivision plat.

25
26 Jeff Schmitt: Subdivision meaning in this case, Phase IV?

27
28 David Rooks: Right. All that is being appealed is the approval of a plat.

29
30 David Blankfard: Where are they in construction?

31
32 David Rooks: Done.

33
34 Jeff Schmitt: I find myself in two separate cans about this. I find it hard to believe that the county and the
35 developer would think that they could either live with and/or go forward with a special use permit 12 years after it
36 was put into effect. The world has moved on. This thing was put in holding pattern for that time period and I think
37 it is almost naïve to think he could go forward with these very limited and unstructured things but conversely I
38 hear Mr. Gledhill's comment about what that is and what the law is in this case. I don't know if anything like this
39 has every come up. I have a lot of empathy as to what is going on. Part of the issue is there has been no zoning
40 enforcement about what is going on. They submitted a plat and nobody has paid any attention to what has
41 happened to it. They have put this stuff out there and nobody has come along and said that is not right.

42
43 Mark Micol: Is there any precedence for this?

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45 David Rooks: I have not seen anything like this ever.

46
47 Karen Barrows: I am of the opinion this is beyond our jurisdiction. It is a subdivision thing and that is not what we
48 are here for.

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Mark Micol: Mr. Gledhill actually made the comment that we can state that in the resolution but then we can also say we can answer these 3 questions he has proposed.

Larry Wright: Mr. Buck has gone through a lot of work, we owe him that. Whether he likes our decision or not, we owe him this.

David Blankfard: The County Commissioners were planning to put this in a time capsule to make it happen after the water issue was resolved.

Larry Wright: We did that with Buckhorn.

Jeff Schmitt: Buckhorn had an 18 month time horizon; you had to begin construction within 18 months.

David Blankfard: If you put this in a time capsule, so it would work, the county negotiated all these things with the previous owner and then they sold it to Newland and said you have to finish all this we didn't build out in the first place, you are stuck building it and they got a great deal because they didn't have to build any of this stuff. The county had to start re-negotiating with Newland to get all these items put in. That's the way I am reading all the correspondence.

Jeff Schmitt: So it is your contention that the commissioners knew that in granting this permit and having a hearing and all that stuff in 1986, they knew water would not be there for at least 10 years but they did it anyway.

David Blankfard: And they knew the new 1986 ordinance was coming out as well and that would change all the requirements again so they purposely put in what active recreation was. They put that definition in the SUP.

Mark Micol: It is hard to get into the minds of those board members from 30 years ago. That is taking things out of context.

Jeff Schmitt: I think if we were dealing with the whole shebang but after Phases I, II, IIa and 3b have been completed and done and now we are dealing with the residual from what was or was not done regarding this one section, I find it difficult we can do that simply because I think it is a subdivision thing.

Larry Wright: I am right where you are. I really feel it is not within our jurisdiction and I feel somehow that needs to be said but then we get to these three points that our counsel has suggested... Did Mr. Davis err? That would be more of an interpretation of zoning.

David Rooks: That is just taking the appeal as it was presented and listened to what he argued and then trying to boil it down to a central point, I think summarizes the three bases.

Larry Wright: Then you are saying the Phase IV applied to 1998 standards so that would be... is that within our jurisdiction.

Mark Micol: I think it is a leap to think one person erred when so many eyes were on this. This was big deal. A lot of people signed off on this.

Jeff Schmitt: This was Economic Development which the county has been inadequate on and tried to push away for years. This was a lot of tax dollars, a lot new people, a lot of revenue coming in.

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Mark Micol: What is the remedy? If we agree with Mr. Buck, where do we go from there?

David Rooks: Obviously, there is nothing you can do about that plat. People have bought houses and live there now. What he said in his argument and that is what I was really waiting for was that the remedy was looking to the county to make all the recreation improvements that aren't there in his mind.

Larry Wright: I never could get that... so all these mistakes so what. What is the end point and I asked him what the end point was.

David Rooks: All you can do is say that there was or was not an error and that you uphold it or overturn it. At that point, I am not sure what happens next.

Jeff Schmitt: Let's go back to the state statute that relates to ...

Larry Wright: How long you can have it?

Jeff Schmitt: Vesting... the five years. What precedence does that have on any of this?

David Rooks: I don't think that has a lot of bearing on this. I think a lot of bearing is there is a statutory vesting that both sides talked about which is if you have a permit issued to you, you essentially have the right to rely on it for a period of time but at some point, a local government is entitled to cut you off if they have a provision doing that. There was no sunset in the ordinance in 1986 on a permit, is that correct?

David Blankfard: A lot of times these sunsets are imposed on contractors to get them to move on. The contractor was ready to go in 1986. He had to wait until the county was ready.

David Rooks: Chatham County does not have a local ordinance sunset for SUPs.

David Blankfard: I think that sunset is for making contractors move. You get a special use permit, use it, build.

David Rooks: If you wanted to avoid the special use permit is where it comes into play. It was approved in 1986 but not issued until 1998.

Jeff Schmitt: What is the legal document from the court's perspective? Is it the Special Use Permit? Is it the filing of the plat? The filing of this thing with all the stuff behind it relation to what's going to be done by the contract?

David Rooks: If you got into a litigation of the validity of the special use permit, among the things the court would look at is the special use permit itself and the documents it incorporates by reference which is typically a set of plans, and the plats issued in reliance in the special use permit later on.

Jeff Schmitt: They not filed until 1998.

Larry Wright: But they were the same as they were...

Jeff Schmitt: No. We had a different developer at that point in time. What was filed in 1998 I believe was different, streetwise...

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David Blankfard: They are minor changes that didn't necessitate a revisiting of the SUP.

Jeff Schmitt: But are those minor changes enough that it effectively opens up the whole thing from the court's perspective.

David Rooks: I think it is long gone, it is too late.

Larry Wright: Why?

David Rooks: Passage of time. This plat was approved in 1998.

David Blankfard: Phase IV was approved in 2008.

David Rooks: Houses are there and for all intents and purposes, it is moot.

Jeff Schmitt: That is Larry's question, if we vote for the applicant, what happens? Will he ask the contractor to buy some more property someplace else?

David Rooks: I don't know what remedy he has.

Karen Barrows: I would like to say that I think Mr. Buck's situation is, I have a lot of empathy, however, I would not be comfortable saying Robert Davis made mistakes back in 2008. I don't know if he did or didn't but the evidence here has not convinced me one way or the other. I would not be comfortable with resending SUPs from years ago. I think it is beyond us.

Jeff Schmitt: I would agree with Karen.

Larry Wright: I do too. I have spent days on this.

Jeff Schmitt: It is laden with inconsistencies.

Mark Micol: Can we make a motion?

Larry Wright: You can make a motion but I want to have discussion on it.

MOTION made by Mark Micol to deny the appeal made by the applicant and it is this body's belief that the county staff did not err with respect to the approval and execution of the site plan and special use permit.

David Rooks: The applicant is appealing from the approval of the plat.

Mark Micol: Not site plan.

David Rooks: He is appealing from the approval of that particular plat.

Debra Graham: Your three questions are: Did the development officer err in failing to apply the subdivision ordinance recreation space requirements in effect on March 31, 1998 in the decision to approve the Phase IV Churton Grove plat?

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2 Jeff Schmitt: And your answer would be no.

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4 Mark Micol: Yes.

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6 Debra Graham: Number 2: Did the development officer approve the Phase IV Churton Grove plat in violation of
7 the active recreation requirements of the subdivision ordinance in effect on May 20, 1986 the date the SUP was
8 approved?

9
10 Several responses of no.

11
12 Debra Graham: Number 3: Did the development officer approve the Phase IV Churton Grove plat in violation of
13 the SUP?

14
15 Several responses of no.

16
17 Larry Wright: We have a motion on the floor.

18
19 **MOTION** made by Mark Micol to deny the appeal made by the applicant and it is this body's belief that the county
20 staff did not err with respect to the approval of the Phase IV plat.

21
22 Larry Wright: How do we know he didn't err?

23
24 Mark Micol: It is our belief... We can have further discussion or bring finding of fact or notes.

25
26 David Blankfard: They applied the standard that was in effect. The one that was pre 1986.

27
28 Larry Wright: I have been on planning board; Jeff and Karen have been on planning board. I have worked on
29 subdivisions. I would like to know that if someone like Mr. Davis signs off on this, is there a sense of consensus
30 among staff and the supervisor and who else, is there a sense of consensus or does Mr. Davis work unilaterally.

31
32 David Rooks: I'm not sure we can answer that, it is almost a public hearing kind of question.

33
34 Karen Barrows: There is some inconsistency. Craig said one thing in his letter and then Robert ...

35
36 Mark Micol: You are going over a 15 year period. You can take letters from one day to the next and during
37 negotiations you will get different viewpoints. I don't put a lot of validity in correspondence over a 15 year period.
38 Can we bring the three questions in to make a motion and answer the questions and have an up and down vote.

39
40 Jeff Schmitt: I was going to suggest that we take your comments and add as addendum to them in addition to
41 this, the following three questions were looked at by the board and supporting the previous paragraph. Putting
42 these three as an addendum and those are the three questions we ask in answering the comments that were
43 made here. I would like to add at the end. This is a very unusual circumstances and it is questionable as to
44 whether or not the board has jurisdiction over this to go forward.

45
46 Larry Wright: I heard what you said and I agree with it.

47

1 David Rooks: May I make a suggestion that you treat the 3 questions that I drafted as findings and then your
2 motion as the conclusion based on your findings.
3
4 Larry Wright: Changing this to findings, are we making the decision that is being asked of us?
5
6 David Rooks: Yes. That is the reason I wrote those questions the way I did because those are essentially what
7 he appealed on.
8
9 Mark Micol: We have established a find of fact, the three questions.
10
11 Jeff Schmitt: The Board of Adjustment finds for the following three as a result of these ...
12
13 Larry Wright: We have a motion on the floor. Do you want to withdraw your motion or do you want to state it later
14 or is this where we want to put it? Let's have a friendly amendment.
15
16 Jeff Schmitt: After hearing all the evidence, the Board of Adjustment, in consideration of these three questions,
17 which are ...
18
19 Debra Graham: Number 1: Did the development officer err in failing to apply the subdivision ordinance recreation
20 space requirements in effect on March 31, 1998 in the decision to approve the Phase IV Church Grove plat?
21
22 The board votes unanimously NO.
23
24 Debra Graham: Number 2: Did the development officer approve the Phase IV Churton Grove plat in violation of
25 the active recreation requirements of the subdivision ordinance in effect on May 20, 1996, the date the SUP was
26 approved?
27
28 The board votes unanimously NO.
29
30 Debra Graham: Number 3: Did the development officer approve the Phase IV Churton Grove plat in violation of
31 the SUP?
32
33 The board votes unanimously NO.
34
35 **MOTION** made by Mark Micol to deny the appeal made by the applicant and it is this body's belief that the county
36 staff did not err with respect to the approval of the Phase IV plat. David Blankfard seconded.
37
38 Karen Barrows: I will vote in favor of it but I must say I am torn. I don't know if there were errors made.
39
40 Larry Wright: Could you please read that again because I don't know how I will vote.
41
42 Mark Micol: I will summarize. We deny the appeal made by Mr. Buck and it is this body's belief that the county
43 staff did not err with respect to the approval of the Phase IV plat.
44
45 Larry Wright: Do you want to withdraw your second so we can discuss this.
46
47 Jeff Schmitt: I would like to discuss this.
48

1 David Blankfard: I withdraw my second.

2

3 Larry Wright: Can I hear that again.

4

5 **MOTION** made by Mark Micol to deny the appeal made by the applicant and it is this body's belief that the county
6 staff did not err with respect to the approval of the Phase IV plat.

7

8 Jeff Schmitt: You could add at the end of that the SUP signed on May x, 1986 was still in effect notwithstanding
9 the passage of twelve years.

10

11 Mark Micol: That is what I asked earlier, do we need to add supporting detail. I have notes we could add for our
12 decision.

13

14 Larry Wright: My issues are, the county did not err and there is so much to the county I don't know how I can
15 define county.

16

17 David Rooks: May I help you? The issue before you is whether Mr. Davis erred.

18

19 Larry Wright: We already did that.

20

21 David Rooks: That is the only issue before you is to whether Mr. Davis erred.

22

23 Larry Wright: We have already voted on that in number 1.

24

25 David Blankfard: That is all we were voting on.

26

27 Mark Micol: I meant Mr. Harvey, Mr. Davis or whoever was in charge at the time. This was a huge project so for
28 us to say Mr. Davis, if somebody erred it was more than one person. This was a 15 year project.

29

30 **MOTION** made by Mark Micol to deny the appeal made by the applicant and it is this body's belief that the county
31 staff did not err with respect to the approval of the Phase IV plat. David Blankfard seconded.

32 **VOTE:** Unanimous

33

34 Larry Wright: Weren't we going to make some sort of statement about jurisdiction?

35

36 David Rooks: I think you have now decided it.

37

38 Mark Micol: That was included in the three questions.

39

40

41 **AGENDA ITEM 6: ADJOURNMENT**

42

43 **MOTION** made by Karen Barrows to adjourn. David Blankfard seconded.

44 **VOTE:** Unanimous

45

46 Meeting was adjourned at approximately 11:00pm.