

MINUTES
ORANGE COUNTY BOARD OF ADJUSTMENT
OCTOBER 11, 2010

MEMBERS PRESENT: Thomas Brown, Chair
Dr. Dawn Brezina, Vice Chair
David Blankfard, Alternate
Mark Micol, Alternate
Dr. James Carter, Full Member
Dr. Larry Wright, Full Member, Planning Board Liaison

STAFF PRESENT: Michael Harvey, Zoning Enforcement Officer
Debra Graham, Board Secretary

OTHERS PRESENT: Sahana Ayer, Staff Attorney

1. CALL TO ORDER

The meeting was called to order by Chair Tom Brown.

Tom Brown: Welcome to this regularly scheduled meeting of the Orange County Board of Adjustment. The Board of Adjustment is a quasi-judicial administrative body governed by North Carolina General Statutes and the Zoning Ordinance of Orange County. For everyone who plans to speak tonight during the proceedings, including applicants and witnesses, you will be called forward in a few minutes for swearing in. Swearing in is required for all testimony given before the Board. The voting members for tonight will be Dr. Carter, Dr. Wright, Dr. Brezina, Mr. Blankfard, and myself. For staff and Board members, are there any additions to the agenda?

2. CONSIDERATION OF ADDITIONS TO AGENDA

There were no additions to the agenda.

3. APPROVAL OF MINUTES

a. August 9, 2010

Tom Brown: Next on the agenda is approval of minutes from August 9, 2010. The minutes are on pages 1 through 52 in your packets, which we review incrementally. Would you please take a look on pages 1 through 5 and please indicate any corrections or modifications.

James Carter: Mr. Chairman you have said it verbally, but a line on page one, line 29, they have got it as "Mr. Carter", it should be addressed as Dr. Carter please.

Tom Brown: On line 36, midway in the sentence, 12 months and until, strike 'for'. Pages 6 through 10.

Larry Wright: I have some corrections, page 7, line 14, the property fronts, strike 'is'. Page 8, line 37, it should read the span of years of property's existence. Then Mr. Knight said, "that's correct" and that's omitted.

Tom Brown: Back on page 7, line 46; about midway; "with a swell" it should be 'swale'. On page 9, line 25, the sentence "In the past, I have watched him clear a six foot fence" should be moved down to line 26 after "trained". Page 10, line 31, "Lime disease" l y m e. Does anyone have any changes 11 through 15?

Mark Micol: Page 13, line 9, "document" should read 'documentation'.

1
2 Tom Brown: Line 16, same page, it should be 'consecutive' weeks. On page 12, line 18, there is 'no' doubt that
3 percolates'. Line 37, page 12, the word 'tendrum' does not exist, I would strike "entire tendrum" and just say "here
4 changing our lovely rural neighborhood" and strike entire tendrum and then 'of' and that will make more sense. Page
5 15, line 7, Davis Road property 'more' than, insert 'more'. Okay, pages 16 through 20?
6
7 David Blankfard: Page 16, line 27, the initials are 'BMP'.
8
9 Tom Brown: Also on line 10, the last word 'statistically'.
10
11 Mark Micol: Page 18, line 1, change "residents" to 'residence'
12
13 Tom Brown: Pages 20 through 25.
14
15 Mark Micol: Page 20, line 48, Would you agree 'that', add 'that' after agree. Page 21, anything attributed to David
16 Blankfard should be Mark Micol, line 6, line 10, and line 15. Then on that same page, line 45, strike 'that' and strike 'so'.
17 So it would read "remain intact even if that land is developed" a period after 'developed.' and then I would add a
18 question, 'Will that vegetation stay in its current state' strike 'will' before 'stay'.
19
20 Tom Brown: Ok, pages 26 through 30.
21
22 Larry Wright: Page 30, line 46, "the county is" "Most revenue to the county is 'returned by' small businesses"
23
24 Mark Micol: Back to page 22, line 25, "Even if we allow the 150" strike "the 150" and change to 'them'. "Even if we
25 allow them to forgo the 150 foot setback,".
26
27 Tom Brown: Ok, 31 to 35. Pages 36 to 40.
28
29 Mark Micol: Page 37, again, anything attributed to Mr. Blankfard needs to be changed to Mark Micol.
30
31 Tom Brown: Also on line 18, last word, "By the 'literal' word of the ordinance".
32
33 Larry Wright: I have one on line 40 on page 37, strike "stuff" and it would be "happens to 'be' that the easement" on line
34 39, "and the buffer then the 'approved setback'. Strike "stuff" and put 'approved setback'.
35
36 Tom Brown: Page 39, line 26, the next to last word 'by' and strike "with".
37
38 Dawn Brezina: Page 38, line 8, "talking about that back border and only 'with' respect to that."
39
40 Tom Brown: Pages 40 to 45.
41
42 Larry Wright: Page 43, line 30, "Eddie Kirk, on 9/8/98 he signed," it should start with quotes. "I hereby certify that the
43 land shown and described here is not a subdivision" end of quotes. And then on line 31, it should read "divided into the
44 four 'parcels?'" question mark, the whole statement is a question. Another one line 48, 'My argument is' "if it never
45 conformed"
46
47 Tom Brown: Pages 46 to 50.
48
49 Mark Micol: Page 46, line 5, spelling on allude 'elude'.
50
51 Tom Brown: Line 20, page 46, toward the end of the sentence 'covenant' not "convent". Pages 50 to 52. If there are
52 no further changes or corrections is there a motion to approve the minutes as amended?

1
2 **MOTION** made by Larry Wright to accept the corrected minutes. Mark Micol seconded.

3 **VOTE:** Unanimous

4
5 *(These changes have been made.)*

6
7 Tom Brown: The minutes of August 9, 2010 are hereby approved as amended.

8
9 Tom Brown: To familiarize those in attendance with the general rules for the conduct of public meetings, I will read the
10 public charge used in Orange County:

11
12
13 **4. PUBLIC CHARGE**

14
15 *The Board of Adjustment pledges to the citizens of Orange County its respect. The Board asks its citizens to conduct*
16 *themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At any time should any*
17 *member of the Board or any citizen fail to observe this public charge, the Chair will ask the offending person to leave the*
18 *meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the*
19 *meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell*
20 *phones, pagers, and computers should please be turned off or set to silent/vibrate.*

21
22 **5. A-3-10 – Appeal of a decision made by the Zoning Officer submitted by Maple View**
23 **Agricultural Center LLC**

24 In accordance with the provisions of the Orange County Zoning Ordinance, the applicant has appealed the decision of
25 the Zoning Officer finding that there has been a modification and expansion of uses at the Maple View Agricultural
26 Center at 3111 Dairyland Road (TMBL 6.13..10D / PIN 9851-50-8691).

27 On April 14, 2008 the Orange County Board of Adjustment approved a Class B Special Use Permit application allowing
28 for the development of a Camp/Retreat Center on the property. The permit allowed for the development of a facility
29 providing educational seminars and classes focusing on farming activities and practices.

30 Within a letter, dated June 22, 2010, the Zoning Officer issued a finding that the facility had been expanded to allow for
31 land uses that were inconsistent with the approved Special Use Permit in violation of the Orange County Zoning
32 Ordinance.

33 The applicant is appealing the determination that the use of the center has been expanded in violation of the Ordinance
34 and that there are uses operating on the property in contradiction of the previously approved Special Use Permit.

35
36
37 The following individuals were sworn in:

Mike Parker, Applicant's Attorney	Nancy Oglesby
Marilee McTigue	Meredith Berry
Susan Walser	Judy Mitchell
Bill Waddell	W. Chapman
Lynne Jaffe	Tammy L.T. Jordan
John Hartley	Judith Wegner
Marcia Chapman	Allison Nichols

1 CASE NUMBER A-03-10 REVIEW of an INTERPRETATION made by the Orange County Current Planning
2 Supervisor concerning the operation of a Camp/Retreat Center at 3111 Dairyland Road (TMBL 6.13..10D / PIN
3 9851-50-8691)
4

5 **GENERAL INFORMATION:**
6

7 **APPLICANT:** Maple View Farms LLC
8 3111 Dairyland Road
9 Hillsborough, NC 27278
10

11 **STATUS OF APPLICANT:** The applicant is the owner of the aforementioned property located at 3111
12 Dairyland Road.
13

14 **PROPERTY INFORMATION:** 1. The property is located within the Bingham Township
15 2. TMBL 6.13..10D / PIN 9851-50-8691
16 3. The property is twenty (20) acres in area,
17 4. The property is zoned RB Rural Buffer and University Lake Protected
18 Watershed,
19 5. On April 14, 2008 the Orange County Board of Adjustment approved a Class B
20 Special Use Permit application allowing for the development of a Camp/Retreat
21 Center on the property. The permit allowed for the development of a facility
22 providing educational seminars and classes focusing on farming activities and
23 practices Hereafter 'the property'
24

25 **REQUESTED ACTION:** The applicant appeals the Zoning Officer's determination, contained within a
26 Courtesy Notice dated June 22, 2010 indicating that the applicant has modified the
27 permitted uses a the aforementioned property in violation of the provisions of the
28 Orange County Zoning Ordinance.
29

30 **PURPOSE OF REQUEST:** The application requests that the Board of Adjustment overturn the decision of the
31 Current Planning Supervisor as detailed within the June 22, 2010 courtesy notice.
32

33 **BACKGROUND:** On April 14, 2008 the Orange County Board of Adjustment issued a Class B Special
34 Use Permit (hereafter 'SUP') in accordance with Article Eight (8) *Special Uses* of the
35 Orange County Zoning Ordinance (hereafter 'the Ordinance') allowing for the
36 development of a Camp/Retreat Center on the property to include the following:
37

- 38 1. The development of an educational facility providing the following program elements:
- 39 o Seminars/Classes providing '*hands on experience*' for learning about the '*natural world in the context*
40 *of seasonal farm activities*',
 - 41 o Program focus would be on elementary school students that are designed to help '*teachers meet*
42 *objectives that are found in the North Carolina Standards Course of Study*,
 - 43 o Hands on activities including planting/transplanting crops, harvesting, spinning/weaving, milk and
44 dairy production, canning and preserving, and composting,
 - 45 o Educational seminars on the 'science' of farming including soil types and properties, fertilization,
46 rotation of crops, weather issues, and other similar issues,
 - 47 o Animal observation,
 - 48 o Farm tours for seminar/class attendees (i.e. hayrides)

2. The development of an approximately six thousand (6,000) square foot building housing the proposed educational facility,
3. The location of three (3) gravel bus parking spaces, twenty (20) feet by sixty (60) feet in size, south west of the proposed building to accommodate bus traffic resulting school field trips and other similar activity busses,
4. The location of thirty-six (36) parking spaces to the south of the facility to support the facilities parking needs,
5. The reserving of approximately fifteen (15) acres for continued farm use, and
6. The preservation of existing buffers along the perimeter of the property.

According to the approved SUP, the development of the Project as well as all necessary site improvements, both internal and external, shall be developed in accordance with:

- a. The provisions of the Orange County Zoning and Subdivision Regulations,
- b. Any and all applicable Federal, State, and local regulations,
- c. The Mapleview Educational Facility Class B SUP application including any and all project narratives, site plans, reports, renderings, architectural and/or engineering design renderings, comments, commitments, and supporting documentation contained therein, and
- d. The approved Mapleview Educational Facility Class B SUP application and project file for the aforementioned project on file within the Orange County Planning and Inspections Department

As staff noted within their June 22, 2010 Courtesy Notice, the following additional activities were documented/noted as occurring on the property:

- i. Yoga instruction/classes,
- ii. Special events/fundraisers (i.e. The Great Dane Rescue Society),
- iii. Retail sales (i.e. Maple View Country Store),
- iv. The Hands-on Farm Labs and instructional classes (i.e. soil science, animal science, plants and horticulture, insects, etc.),
- v. Space rental for private events (i.e. family reunion, wedding receptions, birthday and holiday parties, etc),
- vi. Field trips from local schools, and
- vii. Hayrides

In reviewing the SUP application and the testimony from the public hearing held by the BOA some of these activities were not proposed or approved by the BOA as part of the SUP, specifically the use of the facility for fundraisers, private events (i.e. birthday parties, wedding receptions, etc), non-farm related classes (i.e. yoga instruction), retail sales, and all other similar activities.

Staff determined that:

- The additional uses of the facility, as referenced herein and detailed within our June 22, 2010 Courtesy Notice, constitute a modification to the approved SUP based on the requirements of Section 8.7 of the Ordinance, and
- The addition of such land uses to the property requires the review and approval of the Board of Adjustment as detailed within Section 8.7 of the Ordinance.

The applicant disputes this finding and argues that they have not modified the allowable land uses in contradiction to the Ordinance (please refer to their application contained within Attachment D of this packet).

1
2 Please find attached copies of the following:
3

- 4 1. Application proposing the Camp/Retreat Center approved by the Board of Adjustment on April 14, 2010
5 (Attachment A),
- 6 2. Minutes from the April 14, 2010 Board of Adjustment meeting (Attachment B),
- 7 3. Courtesy Notice – June 22, 2010 (Attachment C),
- 8 4. Appeal Application (Attachment D),
- 9 5. Section 8.7 of the Ordinance (Attachment E),
- 10 6. Section 8.8.5 of the Ordinance (Attachment F),
- 11 7. Section 23.2.4 of the Ordinance (Attachment G),
- 12 8. Copy of approved Special Use Permit (Attachment H).

13
14 Michael Harvey: Mr. Chairman, very briefly first of all I would like staff's abstract entered into the record for this
15 proceeding, I would further like a copy of the Orange County Zoning Ordinance that is in effect and enforced at the time
16 of this hearing as well as the approved Special Use Permit for the Ag Center entered into the record in order to establish
17 the regulatory standards that were in force during the time this permit was approved and during this review of this
18 appeal. What you have before you, as the Chairman has already pointed out, is an appeal of a decision referenced with
19 a June 22, 2010 courtesy notice.
20

21 I am going to call your attention to page 54 of your abstract where we provide you the background on how we got to this
22 stage. Essentially, on the 14th of April, 2008, a Class B Special Use Permit was issued allowing for the development of
23 the Mapleview Farm Agricultural Center for the various uses that have been summarized on page 54. You will note that
24 staff's concerns are that there are additional activities occurring or that has been allowed to occur on the property that
25 we have determined are inconsistent with this approved Special Use Permit. For the record, I will stipulate, on page 55,
26 after reviewing the Special Use Permit and having a meeting with the applicant where they have provided some
27 additional detail on the nature of the facilities operation, there is no longer any contention with respect to the ability of
28 the applicant to hold a hands on farm lab and instructional classes for visitors to the facility. There is also no issue with
29 the field trips or hayrides that are in association with those activities. We believe those are consistent with the Special
30 Use Permit.
31

32 Our focus for you this evening, and I believe going to be the point of contention amongst the staff and the applicant, is
33 going to be the addition of yoga instruction and classes, the holding of special events and fundraisers at the property,
34 and the provision of rental of the space for private events such as family reunions, wedding receptions, birthdays, and
35 holiday parties.
36

37 As you know, in reading Article 8, which is the guiding chapter of the Zoning Ordinance dealing with Special Use
38 Permits, there is a procedure you have to go through to modify Special Use Permits. It is our contention this section has
39 not been adhered to and as such the applicant was directed in a June 22, 2010 letter to come back before the Board of
40 Adjustment to modify this Special Use Permit to include the additional uses. They initiated their salutatory and
41 ordinance right to appeal this decision which is why we are here this evening.
42

43 In conclusion, Mr. Chairman, I will call to the Board's attention the attachments that we have included. Attachment A is
44 the original application proposing the development of the camp retreat center as approved by the Board of Adjustment.
45 The minutes from that meeting, a copy of our courtesy notice, a copy of the appeal application, which is attachment D, a
46 copy of Section 8.7 of the Ordinance, Attachment E. There is a copy of Section 8.8.5 of the Ordinance, which is
47 attachment F, a copy of Section 23.2.4 of the Ordinance, which is attachment G, and a copy of the approved Special
48 Use Permit, attachment H. Let me also state that on page 56 we have a typo, under numbers 1 and 2, the date should

1 be April 14, 2008 which is when the Special Use Permit for the ag center was issued as reflected not only within the
2 application but the minutes which are contained in attachment B. Mr. Chairman, I don't have anything else at this
3 juncture.

4
5 Tom Brown: Ok, thank you. Would the appellant like to present their case?

6
7 Mike Parker: Absolutely. First of all let me ask you, is there a copy of the Special Use Permit itself in the record?

8
9 Michael Harvey: Part of my packet, yes.

10
11 Mike Parker: I would like to begin by drawing your attention to, what is in my copy. The second page is a description of
12 the development. By the way, I am Mike Parker. I am an attorney here in town, I am also Bob Nutter's son-in-law. The
13 description of the development I think is critical to look at to begin this process because it describes the facility itself,
14 6,000 square foot building housing the proposed educational facility with class and meeting rooms. I would like to point
15 that out to the Board of Adjustment. You can read the rest of the provisions. We feel that we have complied with each
16 and every provision set forth in the Special Use Permit. With all due respect to Mr. Harvey, and he's been very good to
17 work with, we've had several meetings about this and he and I go way back. I think he's taking too restrictive of a view
18 of what we consider to be this facility's intended purpose and what is covered by the Special Use Permit itself. This
19 facility is designed for education and there is nowhere in the Special Use Permit that I am aware of or in anything else
20 that says it will only be used for field trips which I think is what, if I'm understanding the planning staff's position, they are
21 trying to restrict what the facility is used for. I would like to pass out some pictures of the facility. If you'd just take a
22 moment and look through here.

23
24 Tom Brown: Mr. Parker, do you wish to enter this into the record?

25
26 Mike Parker: Yes, I would like to.

27
28 Tom Brown: Madame Secretary, enter that into the record as exhibit one.

29
30 Mike Parker: We have a description on this page of birthday parties which is one of the bones of contention, as I
31 understand it, with the activities that are occurring at the center. We have in the back of this booklet that I given you a
32 couple of letters from parents of children who have held birthday parties at the facility. You'll see if you look at the
33 description that there are a lot of educational activities going on at this facility. Bob Nutter is, as probably all you know,
34 a very initiative farmer. In spite of the fact that he is now in his 80s, he has for the last 15 years started bottling his own
35 milk rather than closing down his dairy as many have done in this county. A few years ago he opened up an ice cream
36 store on the premises and started making ice cream from that milk.

37
38 One of the things that has long concerned him is the fact that children today do not realize that the food they eat doesn't
39 just come from Food Lion. It comes from the farm and with less and less farming activity around he considers it very
40 important to educate children about what is going on and where the food begins and comes from before it reaches your
41 table. He's had this idea in his head for a good many years and the birthday parties, quite frankly, are simply one way
42 to reach children, offer them fun activities, something that they will enjoy, and to educate them at the same time, sneak
43 up on them with some education. You'll see some pictures in here from activities at the birthday parties on the farm and
44 that hayrides occur during the birthday parties as well.

45
46 We have also in here a list of all the room rentals of the facility since it was opened and that list is only one page long.
47 Yes, some of those are fund raising events, mostly for nonprofit organizations. For example, one of the things that we
48 propose to do, you may have heard about the tragic death of Rob Hogan here in the last few weeks, that family had
49 planned to have an event to raise money for seeing eye dogs which is a charity that they have supported for years on
50 their farm but because of his unfortunate and untimely death, they have asked to use the facility at Mapleview. That
51 event will include activities just like field trips, just like birthday parties. We're doing the same thing for those activities

1 as we do on the field trips and educational activities. You'll also find in this packet a letter from Pat Rhodes, who is the
2 Superintendent of the Orange County Schools, in support of the facility.
3

4 I would also like to enter one other thing in the record, paper wise, and that is a document that was submitted when we
5 originally applied for the Special Use Permit to describe the activities at the Mapleview Agriculture Center, the staff, the
6 reservations, admission fees, and payment methods basically sort of a general description of that. On the last page of
7 that document, features of a building include the event room at Mapleview Agricultural Center. It says it can be rented
8 out for special occasions, the event room is open year round, ideal for off site meetings, family reunions, rehearsal
9 dinners, corporate events, seminars, and holiday parties. Again, I would stress to you and I would like to enter this into
10 the record as well, that everything that we do has an educational component to try to teach not just children but also
11 adults about the importance of agriculture.
12

13 We've had some complaints from some of the neighbors. One of the major complaints that I have heard about was a
14 pump that is used to pump water from a pond that is located partially on this site, Mapleview farm and partially on
15 common area owned by the adjoining Landowners Association. The pump in question is a five-horse power Honda
16 motor pump that is used to pump water to the garden located on the center, which is used in activities for educational
17 purposes. We've also heard complaints from some of the neighbors about the buffer. We content that not only have we
18 maintained the buffer, we have improved it, we've planted at least 41 trees to try to help with the visual, to block the
19 view from the neighbors, for the neighbor from the west. If I could I would like to pass these pictures around.
20

21 Michael Harvey: Mr. Chairman, if I could interrupt real quick. The letter that Mr. Parker was talking about was the last
22 two pages of the packet he handed you from Orange County Schools.
23

24 Mike Parker: I also have a picture that I'd like to pass around of the hayride and some of the photographs that were
25 taken during birthday parties to show that there is actually education in the classroom going on and in the barnyard out
26 behind the facility where the animals are located. The last pictures I have, as you may be aware, Duke Power or Duke
27 Energy has located a solar field on the site. Tying the past with the future, this solar power generated by this solar field,
28 I think they said would light 243 homes. It's right there beside the facility, the children and the adults can look at that
29 and see the cows in the background. They can look across and see where the milking parlor is where the cows are
30 milked. They can look across the field and see the ice cream center where the ice cream is made. We are asking you
31 not to limit the philosophy of the ag center and not restrict what we consider to be nothing more than marketing efforts to
32 reach as many people as possible with the educational opportunity that we provide there. It is a unique concept, this is
33 a first class educational facility, it has four classrooms, it offers courses that meet the standard course of study for the
34 North Carolina Department of Public Instruction and a menagerie of animals most of which are farm animals, pigs, cows
35 and goats. This gives children and adults an opportunity to see the agricultural experience up close and personal.
36 We'd like to get to that before the last plowed field is paved over with a parking lot or a street. I appreciate your time, I'd
37 be glad to answer any questions.
38

39 Michael Harvey: Mr. Chairman, for the record, I would like to state that the solar panels were part of a permitted site
40 plan application for the property. Staff had reviewed the proposal and deemed that it was consistent with the operation
41 of the farm facility and allowed the permit to move forward in accordance with Section 8.7 of the Ordinance.
42

43 Tom Brown: Do any of the Board members have a question for Mr. Parker at this time?
44

45 Larry Wright: Yes, Michael, you referred to the documentation of approval for the previous Special Use Permit, where is
46 that in our packet?
47

48 Michael Harvey: It's attachment A which is the application and attachment B which is the minutes. I think Mr. Parker
49 had entered into the record a handout that they had produced or had indicated they had produced as part of that
50 application. I can address some concerns I have with that once I take another look at it. I'll let the Board ask other
51 questions.
52

1 Mark Micol: So the use of the facility, the original approval was for educational purposes, it had to have an educational
2 component to it?

3
4 Michael Harvey: If I can call your attention to attachment A of this document and quite honestly I will agree with Mr.
5 Parker on certain elements of his presentation and respectfully disagree on others, beginning on page 59 of your
6 abstract which is the original Special Use Permit application proposing the development of the Ag Center, and I also
7 refer in general to a copy of the minutes which is attachment B of your packet. The purpose of this facility was an
8 educational ag center that would provide seminars, meetings, and educational opportunities for people to learn about
9 farming. I certainly would agree with Mr. Parker that they could hold a special seminar for members of the general
10 public to come out and learn about farming activities, I think that's consistent with the Special Use Permit. I also believe
11 that there can be field trips. That was a big component of their testimony that evening and it's listed quite literally within
12 their application.

13
14 Where, unfortunately, Mr. Parker and I are going to respectfully disagree is the use of this facility for non-farm related
15 activities. I think that they have an argument, which they are presenting, staff has articulated why we don't believe that
16 argument in this packet. When you look at the application, and you look at the testimony offered during the public
17 hearing it is our considered opinion that the use of this facility for non-farm related purposes was not going to be the
18 primary focus and was not going to be a major component of this facility. We believe it has become one and as such,
19 as we go through the rest of our presentation this evening, we believe it represents a modification of the Special Use
20 Permit as defined by Article 8.7 which is why we asked the applicant to come back before the Board of Adjustment to
21 modify this Special Use Permit.

22
23 Tom Brown: Any additional questions at this time?

24
25 James Carter: Yes I have, in mentioning about being the education component and if there are some aspects involved
26 in the North Carolina standard course of study, could you tell me what component of the standard course of study is
27 offered at that facility? You just mentioned the North Carolina Standard of Course of Study, what activity relates to the
28 North Carolina Standard of Course of Study are you talking about?

29
30 Mike Parker: I will defer to someone else to answer that question, some of the folks that operate the facility. I would
31 rather for them to get the answer correct than for me to even come close.

32
33 Allison Nichols: The activities that we do are aligned with the North Carolina Standard Course of Study. My mother and
34 I are both teachers, and what we do is we take the Standard Course of Study and we teach the goals and objectives
35 that are laid out by the Department of Education and we find lessons that are age appropriate for children preschool all
36 the way up to middle school or sometimes we have very few high school groups that come out. We teach a lesson that
37 connects those goals and objectives and find hands-on applications to test the children's knowledge to see if they
38 understand the concepts. For example, a kindergarten curriculum goal would be animal movements and sounds and
39 characteristics of how they walk around. When I taught public school in Durham, I couldn't teach how a cow walks
40 around unless I had a cow to bring into school for them to make that connection. At the learning center we are able to
41 talk and do our animal lessons and then take the kids outside so they see an actual cow and how cows move and how
42 they interact with their environment. Does that make sense?

43
44 James Carter: It is sort of vague because I am quite familiar with the Standard Course of Study, I am a curriculum
45 specialist. That's why I asked that question.

46
47 Allison Nichols: What we do is when taking lesson plans and you tie in how you are going to meet your objections, that
48 is how we do it. Like in the school science room we try to find as many hands on applications as we can to convey what
49 we are trying teach the kids.

50
51 James Carter: Ok, thank you very much.

52

1 Michael Harvey: Dr. Carter, if I can be allowed to expand just a little bit, if I can call your attention back to your packet.
2 Beginning on page 61 of the Board's abstract, the original application talks about their general guidelines for success
3 and how they are going to be moving forward with the various development activities on the property. While I don't
4 know if there is sufficient detail here to answer your question in its entirety, I will call your attention to attachment B the
5 minutes of the original public hearing where there was lengthy testimony about how this group wanted to begin the
6 process of working and identifying special curriculum activities that not only provided educational opportunities on the
7 farm but hands on educational opportunities and that this curriculum would morph and change over time as the needs of
8 the centers and the needs of the students change. In fact, there was a lengthy discussion about how the curriculum
9 component of this operation would be fluid so you wouldn't have classes just in one particular issue or section for ad
10 infinitum that the ag center would be able to morph that curriculum and add new elements based on the concept of this
11 being an education and hands on farming center.
12

13 Tom Brown: Do we have any citizens that wish to speak on behalf of the appellant?
14

15 Mike Parker: Could I hand these out? This is nothing more than the Orange County GIS site for informational
16 purposes.
17

18 Michael Harvey: Mike, your attachments or exhibits so far are one exhibit which is the green colored folder, exhibit two
19 which is the entire set of pictures, and then exhibit three is this document.
20

21 Larry Wright: Michael, let's refer to page 55 of the abstract please. This is as staff noted within their June 22, 2010
22 courtesy notice the following additional activities are documented and noted on the property then we have list 1 in
23 roman numerals through 7. Could you list which roman numeral we are directed to which roman numerals, which
24 activities they are please?
25

26 Michael Harvey: Yes, after several meetings with the representatives of the ag center and Mr. Parker, the focus of my
27 concern as to illegally expanded uses on the property would be roman numeral one, yoga instruction classes; roman
28 numeral two, special events and fundraisers; I am willing to, after having Allison explain the retail sales component
29 which is actually occurring at the Mapleview Country Store and not on the property, roman numeral three I believe is no
30 longer an issue. Roman numeral four is no longer an issue, roman numeral five, which is the space rental is a concern
31 for me; roman numeral six should not have been listed as a concern that was my error,; and then roman numeral seven,
32 hayrides, as long as the hayrides are in conjunction with the activities, educational activities on site as part of that
33 component, I have no concerns. What I am concerned with, and I don't have any evidence that it has occurred, is
34 hayrides for hayrides sake for financial purposes, you pay for a hayride.
35

36 Larry Wright: I'd like to follow up on this. So, what is our concern off this list? One, two, and five or one, two, and
37 maybe seven? I'm not really clear what is going on here.
38

39 Michael Harvey: One, two, and five.
40

41 Larry Wright: Ok, thank you.
42

43 Michael Harvey: The applicant has addressed my concerns on three, four, six, and seven by submitting sufficient
44 documentation during the months leading up to this hearing that the activities were consistent with the approved SUP.
45

46 Tom Brown: We will return to that later with Mr. Parker, I am going to have some questions specifically on those three
47 items but before we finish up I want to see if there is any other testimony on behalf of the appellant. Seeing none is
48 there testimony opposed? For those that are signed up if you wish to speak on behalf from your perspective as a citizen
49 or a neighbor please do so.
50

51 Michael Harvey: The next person on the list to speak, no we don't have to go in this order, but the next person that is
52 listed is Marilee.

1
2 Marilee McTigue: My name is Marilee McTigue and I am speaking this evening on behalf of Orange County Voice.
3 Orange County Voice's mission is to educate and build awareness of rural Orange County. Mapleview Farm and the
4 Nutter family have inspired our work from the start. The Mapleview Ag Center is a gift to our community. It's a beautiful
5 facility, it's nicely buffered from the surrounding neighbors, and like everything else at Mapleview it's well managed and
6 impeccably maintained. Most importantly, it is a continuation of a tradition of good will and generosity that has become
7 synonymous with the Nutter family and Mapleview Farm. The well designed classrooms and the barnyard are fun and
8 informative ways for people of all ages to learn where our food comes from. There is no place like it in Orange County
9 or surrounding areas and it has become a destination for schools, church groups, and community groups to visit and
10 connect with farm and agriculture.

11
12 Orange County Voice uses the educational center all the time for meetings and informational sessions. In support of
13 our educational mission, we tour elected officials, community leaders, and others through our rural areas. Our tour
14 starts at the ag center. This involves a few cars driving up and a group of people walking through the facility and touring
15 the barnyard. Last month when Mapleview dedicated their new solar array, they allowed us to go on a hayride. In
16 exchange we learned how Mapleview handled its large milking herd, how it controls the quality of our milk, and protects
17 us against disease and an important education in what local family farms must do to ensure our safety and quality.

18
19 Mapleview has never charged us to use this base and it is unlikely they will ever recover their investment but for
20 Mapleview this has never been about money. This is about a continuation of a tradition that they've done for decades.
21 Teaching every one of us where our food comes from. A lesson that is more important than ever today. We hope that
22 the Board will consider expanding the permitted use for the agricultural educational center. Our group is researching
23 ideas for a rural heritage program. We'd love to hold them at the ag center because it's a great space and would attract
24 visitors. In addition, we'd like to hold more community events like a breakfast or a barn dance or something because
25 every time someone gives to the ag center, they enhance their connection to the farm and our rural community.

26
27 Orange County Voice and the residents of rural Orange County are grateful to Bob and Chris Nutter and to Allison
28 Nichols for their commitment to agricultural education and to rural Orange County. We strongly support the agricultural
29 center and the value it has brought to our community. We hope Mapleview will be allowed to continue to operate this
30 incredible facility and expand the permitted uses so that we can find more ways to encourage visitors to come out and
31 learn where their food comes from.

32
33 Michael Harvey: The next person on the list to speak is Susan Walser.

34
35 Susan Walser: Hi, I'm Susan Walser and I live in Bingham Township. I've known Bob and Chris for many years.
36 They've been very supportive of me personally and I think they are a huge asset to the county not only from putting their
37 land in a land conservancy to preserving the rural character of that area, to the ice cream store, to the beautiful cows, to
38 their beautiful ag center. I'd like to reiterate every thing Marilee said from Orange County Voice. I have been to many
39 fundraisers and other activities at the ag center. It always includes some type of educational component. The people
40 there love learning about the environment, the soil, the geology of the area, the animals, and the kids learn a lot about
41 the animals. I've been on the hayride and learned tons about the farm that I didn't know before. I've met Allison and
42 her mother Susan. They are very committed to education, I am so impressed with Allison, the way she talks about
43 educating children and how important it is to her. I really think the community needs a place like this not only for the
44 education of our children to further the children to learn where their food comes from but also it's so important for the
45 community to have a place to gather. Being involved with Orange County Voice and the fight against the airport and the
46 fight against the waste transfer station, the community needs a place where you can educate each other about what's
47 happening and where you can meet and talk about things and the ag center provides this wonderfully. I'd like to thank
48 the Nutters for all they do. Thank you.

49
50 Michael Harvey: Mr. Bill Waddell.

1 Bill Waddell: I am actually a past Chair of the Orange County Board of Adjustment, twenty years ago, I have some fond
2 memories of this place. When I came here I wasn't really sure what I was going to be talking about and I am still not
3 sure exactly, having listened to the discussion, I like you Mr. Wright I am somewhat concerned about the long list of
4 complaints that seem to be vanishing one at a time. If I got the comments correct, there were three things remain at
5 issue. One, yoga classes, fundraisers, and rentals, am I understanding that correct?
6

7 Michael Harvey Yes
8

9 Bill Waddell: Ok, it's sort of changing every minute so I'm just trying to catch up. Of those, I have been at the facility for
10 various meetings. I wouldn't really call them fundraisers. I would call them public meetings where people have come to
11 discuss several issues including agricultural, educational issues. One thing I think I'm seeing here tonight is that when
12 one takes a simple one word description of an event as fundraiser or rental, one tends to overlook the educational
13 components of the activities within the particular meetings. I would stress that this educational facility interjects into all
14 of those and educational concept or heart that really isn't present in just about any other meeting space.
15

16 This is unique to my knowledge, I haven't seen one anywhere else in Orange County or any of the neighboring
17 counties. It is a concept that Mr. Nutter came up with much to the surprise I think of everyone that was around there.
18 Nobody really thought it would work but it sure seems to be working now. It's working, I believe, because he is
19 consistent with his view that anything and everything that is done within that building is focused upon the agricultural
20 impact that agriculture has to those activities. So, to simply say that some meeting is a rental or is this or that, I think is
21 shortchanging the activities Mr. Nutter is undertaking. Lots of other people to talk, thank you.

22 Tom Brown: Thank you.
23

24 Michael Harvey: Next individual is Lynne Jaffe.
25

26 Lynne Jaffe: Good evening, thank you for your time. I'm the yoga teacher. I just want to say up front that they barely
27 charge me anything to teach there. It's really pretty much donated so I just want to say that. I don't think I've had more
28 than eight people at one class, usually less than five. We don't play music, we're inside, we're very quiet but that's not
29 the law, I understand that. That still doesn't fit in with the law, this special use allocation. So, yoga means union, means
30 to unite. I am going to stretch this a little bit and that's what we do in yoga, we stretch. Agriculture, I don't know what
31 the term agri means?
32

33 Dawn Brezina: Soil
34

35 Lynne Jaffe: Soil culture. I was thrilled to death to have a place to teach classes on embodiment. All of us are nothing
36 but earth, air, water, fire and this great mystery that grows food and people at the same time. Yoga is a form of
37 nourishment. It is nourishment for the soul, food for the body, we have food for the soul. I very much, in my classes,
38 incorporate 'what does it mean to be in this body', 'how are we related to the earth', 'how do we embody the air or the
39 water' any of these elements that are also what feed the plants.
40

41 In my mind, and in the mind of my students, and I have a few supporters here whether they are in my classes or not,
42 yoga is an agricultural activity. Maybe not by standard definition, but the classes that are happening there, we go out
43 into the land and we, 'what is it like to be corn', 'what is it like to come into a posture of corn', 'what is it like to go out and
44 see the animals'. We go back and see the animals, see how they move, 'what is it like to move like a cow or a goat'.
45 This might all sound silly to you, but we are creatures too. We are animals too. I am just here to say that it would be a
46 shame for this activity that is just a different of coming into relationship with the land, with the environment, with the
47 creature that we are not to have a home. Most of the yoga studios are downtown, in a building with parking lot, I and all
48 of my students don't have to spend all that gas to go all the way into town to go to a parking lot. We can go and be in
49 relationship with the fields, the sky and that is very much a part of what this educational experience is of yoga. So,
50 thank you for your time.
51

52 Michael Harvey: The next person signed up to speak was John Hartley.

1
2 John Hartley: My name is John Hartley, I share a common border with Mapleview Farm to the north. With sincerest
3 respect of Michael Harvey and the planning staff, it is incredulous of taking on a whole new meaning where this
4 educational building would be restricted in any way. I would for this opportunity to be for this educational facility to be
5 expanded to serve the community more not less. I would love to see fundraisers there, I would like to people use this
6 for receptions. I have never heard any noise coming off of the facility except for on a Saturday afternoon where they
7 were doing a fundraiser for adopting Great Danes that didn't have homes. I would like to see that expanded. I would
8 like to see the facility used as much as possible.

9
10 When Bob first told me about the facility, I said 'Bob what do you want to do that for?' He said 'well, just gotta pass it on
11 to the next generation'. We need to do that. This man is, well it's hard to express what he is to this community. He
12 should have carte blanc on that property. It should be expanded it should be absolutely anything that he wants on there
13 with the blessings, I would hope, of the planning staff and Mr. Harvey. There is no noise coming off that place. I hear
14 the road noise, I hear airplanes, I hear my neighbors who have probably complained about the facility, dogs barking, but
15 I have not in any way heard any disturbance from that farm.

16
17 Michael Harvey: The next individual was Marsha Chapman.

18
19 Marsha Chapman: That was a mistake. I thought people were signing in to show they were here. I am here to support
20 the Nutters and in gratitude for all that they have done when there have been other battles in this part of the county to
21 keep it rural. That's what I am saying. Everything has been said and I just thought that people were supposed to sign
22 in.

23
24 Michael Harvey: Thank you. Nancy Oglesby.

25
26 Nancy Oglesby: Should I stand? Hi, I am one of the residents of one of the four houses that is closest to that ag center.
27 I have known the Nutter family for a long time and I am a big supporter of the farm. I think that the ag center was a
28 great idea and when we had neighborhood meetings before it was built and it was described to us, we were fully
29 supportive. We didn't come to speak at the hearings when it was proposed. I would like to point out that somewhere in
30 the permit it also says that there won't be any negative impact on surrounding neighbors. I think that it is a great facility
31 and it's a great addition to the community and as a source for education about agriculture and the way it was described.
32 And if people need to raise money by expanding the use to have quiet activities like children's birthday parties and yoga
33 classes and even groups, larger groups coming out, I just think it's nice that we have it there but I don't see any reason
34 that we need to have loud rock and roll concerts with speakers and amplifiers and stages outdoors that are directed
35 towards my house.

36
37 I also don't understand why we need to damage the environment which I thought was one of the things that we are
38 trying to protect here. I will be more specific. There have been several of these fundraisers on the weekends and at
39 least one party that had an outdoor band. I think that the topography is really significant here. The ag center is built
40 next to a pond there. There's these two ponds and the way the speakers are usually set up they point back across the
41 water. The sound is amplified and then our house is on the side of a hill, it's like a little fish bowl. We got the full brunt of
42 the sound of the speakers. The first one was so loud that even when I went inside my house and closed and locked all
43 my doors and all my windows, it was so loud that I could still hear every word loud enough that I could sing along inside
44 my house. I totally respect that not all houses are impacted this way but our house is and I thought, based on
45 conversation with the neighbors and after reading the permit when it was first approved that we were protected from this
46 sort of thing.

47
48 Regarding the environmental impact, I'd like to say that this June there was a huge fish kill on the pond that we live by.
49 We came out on Monday morning, we got calls from neighbors, and there were several thousand dead fish floating on
50 the pond. Because it is part of the waterway for University Lake we had someone from the state come out and look.
51 They said basically the only problem with the water is that it has extremely low oxygen. My understanding after doing
52 some research is that low oxygen in water is usually because there is extra nutrients in the water and bacteria feed on

1 the nutrients. They eat up the oxygen and then there is not enough oxygen for the fish and animals and so then you
2 have a fish kill. The neighborhood had introduced some grass eating carp to eat all the algae so the water was nice and
3 clear and all those died that we had bought. The bass and the brim that the pond was stocked with have died.

4
5 The only change to that area in the last three years has been the changes instituted by the ag center which have been
6 to cut down a lot of the trees between the cow pasture and the pond, to cut down the willow trees that were growing up
7 around the pond and I think all that slowed down runoff. There's an introduction of domestic geese and ducks which
8 increase nutrients because of the waste they produce. While they were introduced to the lower pond when there are
9 parties and things they pretty much come up to the upper pond and its gotten to the point where they're mostly living on
10 the upper pond now and most of the waste is going into that pond. Another thing that contributes to that is the low water
11 level. There is a lot of water being pumped off that pond to irrigate the ag center gardens. We totally support those
12 gardens but there is another pond on the other side of the Nutter's driveway that could be used. There could be well
13 water used. I don't know what the other options are but it seems to me it would be really nice if we could talk about it
14 and come up with some compromises about the huge volumes of water being drawn off as that contributes to the poor
15 water quality.

16
17 The combination of that and then the pump; this is the first I've heard that it's only a five horsepower pump. It is very
18 loud. We used to in the spring and fall have our family go down to the pond and have cookouts, have a fire circle and
19 picnic table and a grill and a hammock and go out and have a cookout at least once a week when the weather was nice.
20 The pond, the pump, sometimes, not always but sometimes it runs all day like from noon to six or seven at night.
21 Sometimes it is just on for an hour or two or sometimes it's not on and when we called and asked 'well if we want to
22 cookout down there can we turn it off?' and they were like 'oh no, it's too complicated we don't want you to do that.' I
23 think that we've been negatively impacted in that way.

24
25 The fish kill, we called a lot of environmental clean up places and couldn't find anyone to clean it up so we hired some
26 teenage friends and all the neighbors went out with nets and we spend about four hours scooping up really, really
27 smelly stinky dead fish and digging holes and burying them and getting rid of them because, theoretically, you can just
28 let them rot but then you are increasing the nutrient content to the pond even further and you just compound the
29 problem so we were advised that we should get rid of them and we did. It's just not something that I would like to have
30 to do again. I was told by a neighbor that has lived there much longer that about 11 years ago there was a much
31 smaller fish kill and there was a severe drought and one end of the pond dried up and just there was some dead fish in
32 the mud at that end of the pond but nothing like this has happened as long as anybody that lives in or neighborhood can
33 remember.

34
35 The only other thing I'd like to say about the parties, I think it's great that there are little kids over there and I love
36 walking out in my yard and hearing children's voices laughing and playing and I don't mind the hayrides however, late at
37 night, like 9 pm last winter, my son was home alone and my husband and I had gone out and we got a phone call from
38 him and he said that some of his friends that he knew had come over to our front door and could he let them in. I said
39 'where did they come from' and he said 'oh they were at a party at the ag center but they said it go too crazy and they
40 weren't having fun so they walked over to our house' so basically they walked out the back of the ag center and around
41 two ponds and through the woods and came to up to our front door which I just don't think is a good set up and of
42 course we said 'yes they can come in, tell them to come in and call their parents and they can stay for an hour' but I
43 think what people don't realize is that this isn't just like the back part may not be on the property but its not just the back
44 lot of some production center.

45
46 I was out there the other day with one of my horses and I looked across the pond and one of the workers from the
47 garden was peeing in the grass. I called them the next day and I explained and he said 'oh well we'll make sure that
48 doesn't happen again' and I am not mad about that I want to make that clear but I just want to make it clear that there
49 are families with young children and families who really love living there and we love our neighbor and we don't want to
50 hurt them. We don't want the ag center closed down and we don't want to shut down birthday parties and yoga classes
51 and fieldtrips and hayrides but we would like a little peace and quiet. We don't want music so loud that I can hear it in
52 my house when my doors and windows are closed. I understand there are lots of venues around town that have indoor

1 concerts like the Cat's Cradle and the Blue Bayou in Hillsborough and when they have really loud bands they have them
2 indoors. So if somebody wanted to have a really loud concert why couldn't they have it inside the ag center? They
3 have that beautiful big room in the front. The doors and windows could be closed and they could have their loud party
4 and we wouldn't have to hear it. If there is an outdoor event, I don't understand why there have to be speaker and
5 amplifiers. Blue grass bands are great, I've listened to dozens of blue grass bands that did not use speakers and
6 amplifiers. Rock and roll too, you can hear guitars and you can just do acoustic music. It is not that I object to any one
7 thing it is just that I would like things toned down just the most extreme not all of it. I really do like my neighbors and I'm
8 not here to hurt anybody. I really appreciate you listening. Thank you very much.

9
10 Tom Brown: The ponds that you are referring to on whose property are those ponds?

11
12 Nancy Oglesby: Half of it is the Nutter's and then there's a property line kind of down the middle of the water that splits
13 it and then the homeowner's association on our side. I want to make it clear, I'm not speaking for the homeowner's
14 association. I am speaking on my own behalf. The homeowner's association on our side owns a strip of land around it
15 that our neighborhood shares and then the water is shared.

16
17 Tom Brown: So that's a common area that half of the pond, that portion of the pond is considered a common area for
18 your neighborhood.

19
20 Nancy Oglesby: On our side and on their side it's all theirs.

21
22 Tom Brown: Thank you.

23
24 Mark Micol: The party that you referred to with the amplified music, do you know when that occurred, when it took
25 place?

26
27 Nancy Oglesby: It was the fall and spring fundraisers for the Great Dane rescue which I totally support the cause.

28
29 Mark Micol: I'm looking for that in the packet, Mr. Parker, is that in here? You've got all the ...

30
31 Mike Parker: If you will look on, I think its on page 5, the first page that is not a picture. It is called the MAGDA that is, I
32 don't know what it stands for but it is a Great Dane rescue. That is a brief description of the event. Actually, I think
33 there were two events one in October and one in May.

34
35 Nancy Oglesby: I believe so too and then the night before one of the events they had a party that used the band and
36 the speaker system.

37
38 Mark Micol: I guess my point is that on a rental you wrote down here the rentals and you said specifically indoor music
39 no amplification but on the MAGDA you didn't put that there was any music there. Why did you leave that off of that
40 particular You had amplified music at that event but you didn't put that down on your sheet here. Am I missing
41 something?

42
43 Mike Parker: It was not a rental.

44
45 Mark Micol: I understand but what I am saying is you specifically said on the rental that the music was indoors, no
46 amplification, no music in parentheses, but then on the other where she said the amplified music took place you didn't
47 put that down.

48
49 Mike Parker: I apologize if I did not. You will note that there is another neighbor complained about the noise from the
50 music.

51
52 Mark Micol: It says Ms. Berry complained about the noise from music.

1
2 Mike Parker: If you'd like a listing of the bands that played that day, the people from MAGDA can give you that because
3 when the sheriffs department came over it was kids from AL Stanback.
4

5 Nancy Oglesby: There were multiple bands throughout the day and I believe one of my neighbors, we were told that
6 there were seven calls of noise complaint on one of the days. One of the calls came from someone in our neighborhood
7 and the other six must have come from somewhere else because we talked amongst ourselves and were able to figure
8 that out. I think that between the time that a person called and the time that an officer responded there probably could
9 have been several bands past.

10
11 Mike Parker: We received no notice of any complaint from the Sheriff department. We found out about this because we
12 made an investigation.
13

14 Allison Nichols: The sheriff department came over there and laughed. I mean they told me that I wasn't violating any
15 sort of noise ordinance because that was from 12 to 6. They said they had to stand on the edge of people's property
16 and watch the hayride go by for a few seconds and asked what I need to do and he told me I had not done anything
17 wrong. So there was no formal notice given to me by the sheriff department there was no report made. We called the
18 sheriff department to find out.

19
20 Tom Brown: Thank you.
21

22 Michael Harvey: Meredith Berry.
23

24 Meredith Berry: I'll introduce myself as the person who did make that complaining call. I'm the Ms. Berry that we were
25 just discussing. I had no idea that I was going to be speaking tonight so I apologize if I'm not quite as organized as I
26 would have like to have been. I am a next-door neighbor of Nancy's and I share all of her concerns. I share all of her
27 feelings about the agricultural center as it was originally explained to our community, our homeowner's community, by
28 Bob and Chris Nutter in their home as they were seeking their Special Use Permit.
29

30 I was part of our homeowners group who wholeheartedly backed what they were doing. I love living where I live, I love
31 being out in the country. I love farms, all the animals, I love agriculture. My daughter is a farmer out in Olympia,
32 Washington. Hopefully she'll move back here and become a farmer. I am a teacher, I've taught for over 35 years so I
33 know what education is about. I know why farming and agricultural education is important for children, I know that but
34 when this original proposal came up the Nutters had us over to their home to explain what they wanted to build and
35 what they wanted to have in our community. They showed us their drawings and we stayed for several hours and had
36 several conversations and asked questions. It was very open and what we felt to be a very open and honest afternoon
37 of conversation. I remember hearing 'we'll be down in the corner, you'll never even know we're there'.
38

39 Well that's not what's happened. We do know they're there. Part of the way we know they're there is fine. They have a
40 beautiful building. The school groups are great. The garden is great. I have absolutely no problems with any of that, I
41 really don't. What I have a problem with is what Nancy started describing which no one else had. I feel the brunt of
42 wheat night of nighttime bands, birthday bands, happy birthday eight, nine o'clock at night being sung. I am sitting on
43 my screened porch a quarter of a mile away and I can sing along with happy birthday, eight, nine, or ten o'clock.
44 Somehow not thinking that's an agricultural event, an educational event for kids in school. I am hearing the fundraisers,
45 well they didn't pay for it, it doesn't matter that they didn't pay for it that is was a fundraiser, it still impacting our quality of
46 life if we never know when an event is going to occur. We can be sitting down for nice Sunday or Saturday afternoon
47 outside quiet, rural Orange County countryside and all of a sudden we've got music blaring.
48

49 Nancy is absolutely 100% correct, we have gone inside and closed our doors and windows and we can hear it just as if
50 we are outside. I did not have any idea that type of activity was going to occur when we said to Nutters please build this
51 we're all for you. We meant that but I will say that had I known this and that hindsight, I would have been right here
52 when they applied for this permit and opposing it. If I had know that they were going to advertise for wedding

1 receptions, sweet sixteen parties, special event parties, family reunions. That's not educating school children in Orange
2 County about farming and agriculture. It just isn't. The intent of this Special Use Permit that was granted to them was
3 to educate school children about farming in our county. I guess I don't know any other way to say it but that's how I
4 read it. When I hear the music and then I hear the music again, and then I hear the music again I know there is some
5 good things going on, I love animals, I love the Great Dane rescue. Wonderful people, ok, I just don't want it where it's
6 not supposed to be; where we never assumed it was going to happen.

7
8 You've heard some information about our ponds, the fish kill was pretty bad. I know that can happen to a lot of
9 agricultural ponds. We have spent a good bit of money cleaning up the ponds from our homeowners association.
10 We've spend hundreds and hundreds of dollars putting the grass carp in. The ponds were lime green prior to that filled
11 with duckweed and algae. We're trying to take care of the environment as well. A lot of the brush has been cut. I'm
12 sure it has allowed a lot of runoff. There was a gigantic shrub border between the upper pond which you have on your
13 map and the farm. I understand that's on their property. They left the cedar trees and a lot of the trees trunks but all of
14 the brush in between that totally shielded us from that area which is now the agricultural center with the playground and
15 with the bands and the stages that's all now open. You can see it and doubly we can hear it. It has increased the noise
16 back where we are. I can understand that some houses in the neighborhood are totally not affected; they are much
17 further back. They are far away but we're not. We're right there, we're front and center, we are right on the front line.
18 We did not know that those would be cut.

19
20 We did not know an irrigation pump was going to run like it has been and I have to tell you, we have tried meeting, our
21 neighborhood, has tried meeting with folks from the ag center and we did not want to come to a meeting like this and
22 speak out, had no intention of doing this but we feel like our backs are up against the wall right now. Our talks broke
23 down we couldn't come to an agreement of what would work for both of us. We would have loved to have had that
24 happen. We would love to continue those conversations. We couldn't get anywhere.

25
26 There is a, I believe in the original, and I am going from memory, I believe in the original minutes, I don't know what you
27 call them, there were a couple of statements that this agricultural center would not have a negative impact on the
28 surrounding neighbors. I know that is probably something very hard to prove fiscally but I can't imagine that it hasn't
29 hurt my property values. People move out to the country for quiet. You move next door to a farm, well it's a farm, it's
30 quiet, a rural Orange County is a quiet place. It would be hard for me to say to someone, if I sell my property to sell my
31 home, to say its quiet, it's very rural, it's very pastoral. Well it is except when there is a party. We never know when a
32 party is going to happen. Friday night, Saturday afternoon, Saturday night, Sunday we don't know and that's part of our
33 anxiety levels. Is this going to increase? We feel like it's untenable as it is. Is it going to increase is it going to get
34 worse. I hear people saying we want more and more and more. I understand that the building is there for agricultural
35 purposes. It's great it's wonderful it's a community meeting place to talk about the county, talk about the agricultural
36 issues, the farming issues. I just don't think it's a party center. That is what I'd like to leave you with.

37
38 Tom Brown: Thank you.

39
40 Michael Harvey: Judy Mitchell.

41
42 Judy Mitchell: I am Judy Mitchell and I would like to first comment on the fish kill. If you look back on WRAL's news,
43 Charlotte's big lake had a gigantic fish kill and it was not because of agricultural runoff. It was because of the drought
44 and if you will research that you will find out that is what it was. So of course these small little ponds would have that
45 too because water supply is down. Not just because of the pumping but because of the drought. All that rain that went
46 east, we didn't get that much of.

47
48 Another thing I would like to comment on is some of these people did not buy their places until after the ag center was
49 built. As for the noise level, I live right at the end of Green Rice. Granted there were two bands in the last year, two
50 bands, different occasions, and yes they were loud. I could hear them when I went outside. I could not hear them
51 inside. I went down to join them because it sounded like fun. Two times a year? You can't put up with two times a
52 year. And the kids birthday singing, I mean if you have kids, you know kids are gonna holler and scream and inside you

1 can't hear them. Really you can't. So, and Nancy I am sorry, I have to say this, did the Nutters charge you for riding
2 your horses on their property? (overlapping conversations)

3
4 Tom Brown: Excuse me, one person speaking at a time. This is not a conversation.

5
6 Judy Mitchell: I'm sorry. I think they have bent over backwards to help their neighbors, to be neighborly with them. I
7 just feel that it is very sad that the neighbors have to pick on them the way they're doing.

8
9 Tom Brown: Would you like to respond Ms. Oglesby.

10
11 Nancy Oglesby: May I make a response?

12
13 Tom Brown: Yes

14
15 Nancy Oglesby: Well I agree that this is a really sad situation. I'd like to point out that the fish kill happened in early
16 June before there was any drought and that there can be multiple reasons for a fish kill. In our case this was the only
17 one we could find. I want to say too that I am not against the ag center or against my neighbors. I know that my house
18 is more impacted than yours and I am really glad for you, I am really glad for you that you are not as impacted as we are
19 and I don't think we're talking about just permission for bands twice a year. If you want to sign a contract with me saying
20 we promise we will only have bands twice a year and everything else, there will be no more bands, we could talk about
21 that but my understanding about what we're talking about here is that the ag center wants the right to have a band
22 whenever they want. That the business of the ag center is expanding. People are talking here about giving the ag
23 center carte blanc to do whatever they want.

24
25 I am more than happy to negotiate, I would love it if before there is an amended use permit or any decision, if we, our
26 neighborhood and the ag center group could go to arbitration at the dispute settlement center and try to come up with
27 some understandings. I am not trying to hurt anybody. I just don't want to have to leave my home. I agree, if I know in
28 advance there is going to be a party and I know I can go, I would love to go over there for a couple of hours but I don't
29 want to go hang out where there's loud music from noon to six and when I don't know its happening or if I've planned to
30 have people over myself. I just don't want to characterize this as us against them. We are not against anybody. We
31 really like you guys, we want the ag center to be successful like I said I would think that it would be easy to raise money
32 for dogs without having speakers and amplifiers. Why can't they make it the acoustic? Why can't the music be inside?
33 I am not adamantly against anything. I just like to have a little bit of negotiation and a little bit of quiet on the days that
34 things get really loud.

35
36 Tom Brown: Thank you. Mr. Harvey, we have....

37
38 Michael Harvey: W. Chapman.

39
40 W. Chapman: Same thing

41
42 Michael Harvey: Tammy Jordan.

43
44 Tammy Jordan: I wanted to state the fact that they have brought a very multiple beauty to this whole county. People
45 don't realize the importance of what they serve. They're the most considerate people you would ever know of. I know
46 because they've known me since I was knee high to a jackrabbit practically. I don't know how to explain it but I just feel
47 like people who cannot live with a slight bit of a party at least a few times a year or even ask them or get their
48 confirmation of it about what is going to be taking part. Why does that seem so against your orders? Why does it seem
49 so against it? Because they are not causing an ounce of disturbance whatsoever.

50
51 I've had plenty of... my husband and I are farmers, we raise chickens and we live in even a smaller area than you do
52 because where we live is a trailer park; the one my father started in 1959. First tenant was Rufus Edisto and I

1 guarantee you when we started raising our chickens up there not one person said one negativity about their cock-a-
2 doodle-doo. Not one person. Everybody just acted like 'oh great' we got some farming out here. They were glad to
3 hear it.
4

5 That's the problem with most people nowadays they've forgotten the beauty of it. They need to realize that when you
6 hear stuff like a cock-a-doodle-doo or music, that 's a blessing. Music is a blessing, he who sings prays twice. That
7 comes from Psalms and if you cannot believe or even accept that then you're practically closing your eyes to God. I
8 don't believe that they would ever have anything so loud that it would amplify your area because we live in a smaller
9 area than you do, a trailer. It is a lot easier to hear in that trailer than it ever would be in a house. You hear everything.
10 Nothing has ever bothered us. I know the fact that they've got one of the greatest, their farm is the greatest farm in
11 Orange County. To be honest, Orange County is really proud of them. They're proud to have them. Anyone who ever
12 considers trying to cancel them, to me, all they want to do is turn Orange County into a complete urbanization. You're
13 never going to learn that way. Did you know that Chapel Hill Schools, Chapel Hill-Carrboro City Schools don't even
14 have an FFA? They have horticulture but they won't teach agriculture. Not one school will and they need to because
15 Chapel Hill doesn't even realize the importance of farming. They take advantage of our grocery stores and stuff and
16 forget where everything comes from. If it weren't for the farmer there would be no city. That's a fact.
17

18 Tom Brown: Thank you.

19
20 Michael Harvey: Judith Wegner.

21
22 Judith Wegner: Thank you for letting me speak. I live off Dodson's Crossroads and Pickard Mountain Road, which is
23 fairly close to this facility and I'm a long-term person living there for more than twenty years. I am here to voice support
24 for the Nutters because I think the ag center has very powerful positive impact in the community. I'd like to say that
25 indeed I think that their uses should be expanded because I think they really in fact could function very well as a
26 community center beyond the narrow limits of the permit which I had not had the chance to review because to spite
27 efforts to try to find it online for several hours I haven't been able to find that. I'd like to review that since I am a law
28 professor and I try to do my homework. I apologize for not having had a chance to expound on that in particular since I
29 tried but wasn't able to get hold of it.
30

31 I would say for the neighbors who are unhappy about this they have to understand that farming isn't protected by statute
32 in North Carolina. This is a somewhat different provision than the right to farm and farming but if they were here to
33 complain that the cows make too much noise in terms of mooing, I think they would be out of luck on that count. I would
34 also say that it seems to me the county has a noise ordinance that deals with excessive noise and that's what I
35 understand if the sheriff department is called and they are not out of kilter with the noise ordinance that it should be the
36 kind of standard employed.
37

38 I would say as well that if folks are unhappy about that then I am sure that the Nutters and those using the facility could
39 give them notice so that they'd know ahead of time whether there is going to be an activity but people have weddings at
40 their homes, have graduation parties, other kinds of things of that sort and if they need a Special Permit under the
41 county provisions they can get a Special Permit to do that. If that is required, I am sure that the ag center would be
42 happy to comply with that and people would get notice of that. I used to be on the Carrboro Board of Alderman before I
43 moved out to the county so any time there would be a parade or activity like that people would come and get the permits
44 and I think Orange County is in a position to do that as well and be sure that people are aware of that.
45

46 Putting that aside I want to say that I respect Michael Harvey very much. I know he's very scrupulous and fair in how he
47 tries to apply the provisions of the county ordinance and that it seems to me that the proper solution here is to have the
48 Board of Adjustment invite as a solution to this a submission of a modification to the permit so everybody is clear about
49 what the uses are and there is an ample hearing around those issues but I hope the Board would also approve an
50 expansion of uses because I really do think this is an incredibly valuable resource for the community. It used to be that
51 the volunteer fire fighters would have their halls that people could have community events at, that's where I go over in
52 Orange County that is a wholly suitable use in my mind to have some sort of community center where people can

1 engage in education and gatherings of various sorts including square dances or whatever else but I think what may
2 have been a bit out of kilter here may be that the demand from the community to the Nutters to have a range of uses
3 affiliated with this terrific facility may have grown beyond what was initially anticipated in their application. I would hope
4 that rather than telling them that they're somehow going to be penalized or told that they can't move ahead with this that
5 the Board of Adjustment in its wisdom would invite zoning administrative work with the Nutters and those involved in the
6 ag center to try to provide a clear indication of what in fact be done there and also be sure that the neighbors if they
7 need to have notice should be given notice. I have to say that I appreciate that the neighbors are here who are closest
8 to the facility and have a view about how they prefer there to be absolute quiet in the country but as best I can see, I
9 don't think that its generally the way the world works. I am sure you're wise enough to realize that and will try to do
10 justice here. Thank you very much.

11
12 Tom Brown: Thank you.

13
14 Michael Harvey: Last person I have signed up to speak was Ms. Allison Nichols.

15
16 Allison Nichols: That was because you needed me to speak to the Board.

17
18 Lynn Jaffe: Is it possible for me to say something?

19
20 Michael Harvey: That's up to the Board.

21
22 Tom Brown: So we have Allison Nichols and she's already spoken?

23
24 Michael Harvey: Correct.

25
26 Tom Brown: Lynne Jaffe, yes you may.

27
28 Lynne Jaffe: I just wanted to say that we moved back, we're on the backside of the farm. Moved there in 1994 for the
29 peace and quiet, yes. This is the second farm we've lived next to I will say. Farms are not always quiet, pastoral places
30 that there is kind of a myth around farming so we moved in and the first thing that happened about two months after we
31 moved in was that the neighbors who have a tree farm next to us decided to clear cut that whole 90 acres. That was
32 very noisy, we didn't have anything to say about it but what happened then seven, six years later, I don't know, was that
33 the ice cream store opened. The summer came and our windows were open and all of the sudden, oh my god what is
34 that noise? It was the compressors to keep the ice, keep things cold on the farm, okay, I am going to have to live with
35 this noise. It was pretty upsetting at first and then I thought, I live next to a farm, this is what they need to do to sustain
36 themselves. This is their business, now I understand I don't have any rights perhaps, I don't know but it was just coming
37 to recognize that farms are not always quiet places. There's a lot of noise that goes on farms. I can say that one night
38 last winter, Meredith, on a very cold night, I was out there at three in the morning one night and you left your dogs out
39 and I came over all the way to your house, your dogs were barking incessantly.

40
41 Meredith Berry: Our dogs aren't out at night, our dogs are inside.

42
43 Lynne Jaffe: They were that night because I was there. I walked over there. So I am just saying, dogs bark, people on
44 Saturdays and Sundays use leaf blowers. I understand the issue about the bands, I think you said Nancy, at least once
45 you had to shut your windows.

46
47 Nancy Oglesby: Each time there has been a concert.

48
49 Tom Brown: Let's please keep the comments directed to the Board.

50
51 Lynne Jaffe: So what I am saying is just only that it hasn't been every weekend it's been a couple of times. I know
52 these people; they're not interested in sitting out on their porch and listening to loud rock concerts. It's just not the way

1 they're wired. I think, its seems pretty straight forward, really simple that yes music is not amplified outside at certain
2 times that it can only happen at certain designated times and it mostly happens indoors. This idea that you moved into
3 next to farm ponds that were built by the farm for the farm you are lucky to have that view and that privilege of living on
4 water in this county but when it's a drought, you got to run the pumps, you've got to water the fields. That's the reality of
5 living next to a farm. The privilege of living next to that pond is a wonderful thing. Our pond which is not anywhere near
6 any agricultural runoff turns lime green some years. It's not because of the farm its because the way the water is in
7 North Carolina. I just want to say that it feels like something's been really blown out of portion here. I hope that you
8 channel back to what's really a gift. Thank you.

9
10 Tom Brown: Thank you, are there any others?

11
12 Michael Harvey: Oh, I've got several things I need to say but...

13
14 Tom Brown: I am talking about citizens that are sworn in. Yes, state your name again please.

15
16 Meredith Berry: I am not sure why Nancy and I sitting here being attacked. It is a very uncomfortable feeling. I didn't
17 think I was coming to a Board of Adjustment meeting to have people stand and point fingers at me. I really didn't and I
18 am very upset about that. There is a great distinction of what we are saying and its very careful. We understand living
19 by a farm. Farm, its noisy, there's animals, there's tractors, that 's not coming from our mouths. There's a difference
20 between the farm and the agricultural center. The agricultural center is not 'the farm' and I think people here are trying
21 to make them one and the same and they are not. They really aren't. I want to say one more time, the original intent of
22 this center was to teach children and schools in Orange County and the surrounding counties about farming. Sounds
23 like all we are talking about is parties because that is our issue. Our issue is not the agricultural education, it is not. It's
24 the parties and some folks here are saying its only a coupe of times a year, how do they know that? How do we know
25 that? People here want to give them carte blanc and let them do whatever they want, okay does that mean Monday
26 night, Tuesday night, Wednesday night, Thursday night, Friday night, Saturday night, and then start all over again?
27 Because if you do, then that's what you're saying, you can do whatever you want whenever you want. That's our
28 concern as homeowners that live across from the agricultural center, not the farm, the agricultural center. Thank you.

29
30 Tom Brown: Thank you. Mr. Parker.

31
32 Mike Parker: I will be very brief. As far as the ducks and geese, they have six ducks, they originally had six ducks and
33 six geese. As ducks and geese do they have multiplied and now they have 12 ducks and 12 geese. That's all the
34 ducks and geese we are talking about. Again it is a five-horse power pump motor that is shown in that picture. It is
35 much smaller than your average riding mower about the third of the size of a motor in a riding mower. I grew up on a
36 farm, I've spent a lot of time dragging irrigation pipes, big irrigation pipes, and I don't believe five horse power motor
37 would pump that pond down enough to cause a fish kill. I am not an expert, I admit that, but I saw big tractors run
38 irrigation pumps almost night and day and not cause fish kills.

39
40 I counted the events, if I am counting correctly including the two Great Dane fund raising events, there were a total of 21
41 events; four of those were public bodied, either OWASA or the Orange County Board of Education; two of them were
42 farm tours which is conducted, I think by Orange County every year; ten had an educational component, make that 12 if
43 you include farm tour; seven had music including the Chapel Hill orchestra where they sat and played duets and solos
44 inside the building. If we have grown beyond the Special Use Permit we apologize to you. We understood it to be an
45 educational facility and that's what I think you'll see that the primary use has been.

46
47 One last thing, Bob Nutter, who is the owner and Allison Nichols, who is a manager has not been contacted by but one
48 neighbor with an olive branch to lets sit down and talk about that and my understanding is that neighbor no longer lives
49 in the subdivision.

50
51 Tom Brown: Thank you. Mr. Harvey.

1 Michael Harvey: First I think that what I would like to do is remind the Board that we have a parcel of property that is
2 only allowed to be utilized in accordance with an issued Special Use Permit. That Special Use Permit spells out exactly
3 what can and cannot occur on this property. It makes reference to an application, to testimony, and site plan that was
4 offered into evidence by the applicant at a previous public hearing. We have a courtesy notice that has been issued by
5 me expressing concerns over what we perceived to modifications of the uses allowed on that property in direct
6 contradiction to that existing Special Use Permit. This notice was issued on the 22nd of June of this year. We identified
7 seven concerns.

8
9 In the months preceding this meeting, I have met on numerous occasions with Mr. Parker and I met with Mr. Nutter and
10 Ms. Nichols who have been working with me to address my concerns. As I have testified already, they have addressed
11 the majority of them with several exceptions. This courtesy notice gave Mr. Nutter and Ms. Nichols, the ag center
12 manager, several options in terms of how to address this problem. The first was that they come back before the Orange
13 County Board of Adjustment to modify their existing Special Use Permit to include an expanded list of uses, what I
14 consider to be inconsistent with the original purpose and intent of the facility as articulated within their approved Special
15 Use Permit. The second was to cease all disputed activities and the third was to appeal. They chose to appeal which is
16 their right guaranteed by the North Carolina General Statute and this Ordinance to do. In fact, they appealed based on
17 my recommendation to appeal since they felt so strongly that they could argue that I was incorrect.

18
19 We are here this evening to exercise their right to appeal this decision and ask you as the appointed body as
20 established by North Carolina General Statute and this ordinance to determine whether or not I have exceeded my
21 duties in the interpretation of enforcement of this Ordinance.

22
23 In order to determine whether or not there has been an expansion of uses inconsistent with the Special Use Permit, staff
24 utilized, and I am referring now to beginning on page 89 through 91 of your packet which is a copy of my courtesy notice
25 that was sent to Mapleview Ag LLC. Section 8.7 of the Ordinance deals with minor changes to approved by Zoning
26 Officer modifications require action by the approving board. The Zoning Ordinance allows me in my capacity or any
27 member of the planning staff in their capacity as an enforcement officer of this Ordinance to allow for minor
28 modifications to an existing Special Use Permit so long as staff can make an affirmative finding of a necessary finding to
29 all the standards detailed within Section 8.7.1. If we cannot by definition it becomes a modification, which can only be
30 approved by the board that issued the permit. In the case of the Class B Special Use Permit that is this body. In the
31 case of a Class A Special Use Permit that would be the Orange County Board of Commissioners.

32
33 As I articulated on page 89 of the packet, the first condition, is there any in the condition imposed during the approval of
34 a Special Use Permit shall constitute a modification. It is my contention the expansion of operational characteristics by
35 allowing for additional uses beyond what is detailed within the approved application constitutes by definition a
36 modification. I offer into evidence Mr. Parker's exhibit which details the activities that have occurred, some of which by
37 at least my estimation, in the applicant's admission did not have an agricultural component.

38
39 B. Any change in use or enlargement of existing use shall constitute a modification. The uses allowed to occur on the
40 property, in my determination, have increased the scope of what was detailed within the approved application.

41
42 C. Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to
43 be an increase in usable floor area, an increase in the number of dwelling or lodging units. It is my determination that
44 the site, including all support facilities such as parking, septic, and well capacity, was designed around the
45 class/seminar concept as referenced within the application which I'll refer you back to attachment A of this document. I
46 have a concern of whether or not the site can properly support the additional uses that have been added as its never
47 been assessed. In my determination that constitutes a modification, it has to be re-reviewed by this Board and other
48 entities of the county responsible for the review and approval of Special Use Permits.

49
50 To save us time, subsection d through j, I think found no alteration that in my opinion would constitute a modification.
51 There have not been any alterations to the structure, there have not been any changes to signs, and I don't believe
52 there's been any other alterations on the property.

1
2 What we have here is an agreement at this juncture to disagree on several components of this operation. Your decision
3 tonight will not shut down the ag center. Your decision tonight will either be to affirm my determination as documented
4 within this courtesy notice, will be to modify that determination based on the testimony heard this evening, or to refute it
5 and accept the position of the applicant.
6

7 In any case the applicant has a valid and viable Special Use Permit that allows him and her to continue operations
8 consistent with that approval. So no matter what your decision tonight, the SUP is not voided or invalid. The operation
9 will continue. The debate tonight and the disagreement tonight focuses on whether or not all the uses that are currently
10 operating on the facility are consistent with the original approval. Unfortunately, this is an adversarial process where
11 staff takes a position and the applicant takes a counter position. I'd like to think that Mr. Parker, Mr. Nutter, Ms. Nichols,
12 and I have worked diligently to try to address the majority of my concerns and I applaud them for addressing the
13 majority of them. Unfortunately, they have not addressed all of them and that's why we're here. I'll answer any
14 questions you have at this time.
15

16 Tom Brown: Mr. Harvey, would you agree that based on what you have testified thus far, on page 88, that at a
17 minimum we would have to modify before any offer of determination to eliminate item number 3, 4, 6, and 7 from your
18 list of items?
19

20 Michael Harvey: I would testify for the record, as I already have, that the applicant has addressed my concerns and any
21 action by the Board tonight if it is to affirm the decision as referenced in this letter would exclude the numbers you've
22 just listed.
23

24 Tom Brown: So an affirmation would automatically exclude those items that you have specified?
25

26 Michael Harvey: If that is your recommendation, it should be part of your recommendation but I am testifying that those
27 have been addressed to my satisfaction.
28

29 Tom Brown: Thank you.
30

31 James Carter: You've mentioned several times about modification, what needs to be done for the modification to meet
32 your satisfaction?
33

34 Michael Harvey: Dr. Carter, with all due respect, it's actually spelled out in the Ordinance, it's not to my satisfaction, it's
35 to the Board's satisfaction. Obviously I am going to defend the Nutter's, and Ms. Nichols, and Mr. Parker in this
36 instance, they obviously chose an option they felt best prepared for in terms of cost because essentially what this boils
37 down to is a whole new Special Use Permit application. Which means, as this Board is fully aware, a new public
38 hearing, submission of a revised application, submission of a revised site plan, submission of a revised narrative the
39 provision of supporting documentation proving compliance with the Orange County Zoning Ordinance with respect to
40 compliance to Section 8.2.1 which is the three mandatory requirements that have to be found. That the use promotes
41 the public health, safety, and general welfare, that the use enhances or maintains the value of adjacent property and
42 that the use is consistent with the Orange County Comprehensive Plan.
43

44 They will also have to re-file separate applications with various county departments, most notably the Orange County
45 Health Department, in order to determine whether or not the existing septic system can support any expanded uses that
46 they purpose to offer. Do I have a concern that is the case? No, I don't however, they would still have to go through that
47 process. You are essentially talking as if this would be almost a virgin application. In the several meetings I had with Mr.
48 Parker to discuss this we both determined that it would probably be their best course of action initially to seek your
49 guidance in terms of an appeal just because the potential cost of re-filing an SUP application.
50

51 Tom Brown: Mr. Harvey, on a new SUP you would only be dealing with the additional uses, correct? Not be retrying...
52

1 Michael Harvey: That is a correct statement, as the additional uses are to be incorporated into the existing Special Use
2 Permit and how the additional uses comply with the various standards as articulated in Article 8 of the Ordinance.

3
4 Dawn Brezina: So, again when we come finding of fact in the decision making process here, we can add amendments?

5
6 Michael Harvey: It is my estimation, and I'll let Sahana, the attorney break in because I think also she may want to
7 answer part of this question. The Board has several options, you can affirm my decision as modified, as I have testified
8 to this evening, finding that there has a modification inconsistent with Article 8, Section 8.7, and that the applicant has
9 two options, cease and desist all activities inconsistent with the original approval or apply for a modified Special Use
10 Permit. You can find that I have erred in my interpretation and that the expanded uses do not constitute a modification
11 as defined by subsection a, b, and c of Section 8.7.1 and that the additional uses do not change a condition imposed
12 during the approved Special Use Permit. That it does not represent an enlargement of the existing use and it is not an
13 increase in the level of intensity of uses on the property. The Board can technically find that staff has not been in error
14 but they want more and additional information on the potential impacts, I think some one used the term this evening,
15 mediation. You can make a recommendation that technically the applicant engage in a mediation process to address
16 both staff and the adjacent neighbors concerns, if they are so inclined to do, to provide additional information to either
17 help you make a decision to affirm or refute staff's contention. Essentially that's how I see it and I am not going to
18 speak for the applicant on that last item that is their decision.

19
20 Tom Brown: In that case you're simply deferring decision until subsequent meeting..

21
22 Michael Harvey: You're deferring decision, you're adjourning the public hearing to a date/time specific in the future
23 where you hear additional arguments and information submitted by both the applicant and the staff to address any of
24 the concerns that have identified here this evening consistent with this courtesy notice. We have heard discussion this
25 evening about issues that in my opinion are not germane to the courtesy notice that are not germane to this hearing.
26 While the ag center staff may want to address those, your concern is with I have identified in here because that's what
27 they have been cited for at this time.

28
29 Tom Brown: Thank you.

30
31 David Blankford: Mr. Harvey, the original Special Use Permit, was it granted for doing agricultural education only? Or
32 was it for education in general?

33
34 Michael Harvey: To answer that question sir, I will refer you both to attachment H and attachment A, which is their
35 application. Attachment H is the Special Use Permit begins on page 121, if you'll note, this is a point that Mr. Parker
36 had brought up, 122 through 123 the provision of educational programs designed to provide a hands on experience for
37 learning about the natural world and concepts of seasonal farm activities which is a statement taken from their
38 application. On page 123 you will see that the terms of condition of the Special Use Permits are based on the
39 provisions of the Orange County Zoning Ordinance and Subdivision Regulations, applicable state, federal, and local
40 regulations. The Maplevue Educational Facility Class B Special Use Permit application including any and all project
41 narrative, site plans, reports, renderings, architectural and/or engineering design renderings, comments, commitments
42 and supporting documentation contained therein, and the approved Maplevue Educational Facility Class B Special Use
43 Permit application project file for the aforementioned project.

44
45 Now, if I can refer you back, to the application which we have included in your packet, you will note, it begins on page
46 59, the narrative which begins technically on page 61 talks about, as I have already testified and Ms. Nichols has
47 testified, a hands on educational operation where it would not only be focused on fieldtrips, day trips for students but
48 seminars, educational opportunities teaching people about farming. There are proposals in their application. On page
49 68, for example, where individuals will be taught about pickle and salsa making, canning and preserving, backyard
50 composting, hands on instruction spinning, weaving, observing a beehive, sorting beans there are a myriad of different
51 activities associated with what is considered for the purpose of this application an educational opportunity.
52 Unfortunately, where the applicant and I do differ in our opinion is where that line ends.

1
2 Dawn Brezina: Mr. Harvey is there any importance in this application, page 59, where it says the facility is to serve as
3 an educational and social center? That was part of the application.
4

5 Michael Harvey: That is a statement made of the base page of the application by the applicant and I put it in context of
6 what they submitted as part of their justification of the facility on the subsequent pages.
7

8 Mike Parker: I'd like to address this question, the word agricultural in the Special Use Permit only appears in the name
9 of the owner of the property before the property's description. Everywhere else it's referred to as just education. Which
10 I think is your question.
11

12 David Blankfard: But I think, from the Special Use it incorporates this application as well.
13

14 Mike Parker: Right, if I understood the question, I understood it to be the Special Use Permit.
15

16 Tom Brown: One comment on this, Mr. Harvey, would you look on page 59 please. Is this the original submission?
17

18 Michael Harvey: Yes
19

20 Tom Brown: Ok, in that submission, in the very first paragraph, it states the development of camp retreat center on the
21 property the purpose of the facility is to serve as an educational social center providing information and assistance to
22 local property owners on farming issues. That is in the handwriting of the applicant, so that is what we have on record.
23

24 Michael Harvey: Technically, Mr. Chairman Brown, I must tell you that this is my handwriting. I provided assistance to
25 Mr. Nutter and Mr. Parker in filling out the application that is my handwriting.
26

27 Tom Brown: Signed by Mr. Nutter
28

29 Michael Harvey: Correct, all due respect to Mr. Nutter, I was the one that wrote that section.
30

31 David Blankfard: Mr. Harvey, on the minutes from 2008, page 72, it talks about the 6,000 square foot educational
32 building and then it says 'some concerns of calls' on line 23 'some concerns of calls that I received were that a camp
33 was not wanted like New Hope or Chestnut'. I am assuming Chestnut Ridge. What were those complaints at the time?
34

35 Michael Harvey: Specifically, my recollection of my testimony here this evening sir, is they did not want a traditional
36 summer camp with tents, with cabins, with children sleeping over with there being four week summer camp program.
37 That is not occurring on the property. That was the concern and obviously we went to great lengths to make sure
38 everyone was comfortable that its not what Mr. Nutter was proposing.
39

40 Let me also add before we continue, as we were meeting to discuss this facility, we put it in a category that the
41 Ordinance supported. That best suited the Ordinance. When people heard the word camp they automatically had in
42 their mind what it was going to be. Camp retreat center by the Ordinance is grouped as one use. We can debate that
43 another evening whether or not it should or shouldn't be but that's what it is according to our code.
44

45 Tom Brown: Do the Board members have any other questions?
46

47 Michael Harvey: Mr. Chair, let me remind you obviously that at the conclusion of this meeting once you close the public
48 hearing there will be no more additional comments from the public. You will not be able to ask questions of myself, Mr.
49 Parker, Mr. Nutter, Ms. Nichols, or any other individual.
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51 Dawn Brezina: If I may, the issue of the fish kill, was not one of your concerns or was it, there was no expert testimony
52 one-way or the other concerning that. That's not an issue to be addressed.

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Michael Harvey: It's not an issue for me only because obviously it was not referenced in that letter and there is no zoning issue associated with it. That I know of.

Dawn Brezina: Ok, so that's not to be addressed.

Tom Brown: We are coming to the end, I will let you make some brief comments as long as we are not retracing past information.

Nancy Oglesby: Yes sir. I just wanted to respond that I brought up the fish kill because I thought it related to trees and brush being cut down. Even though they are not on the ag center property, we were told they were cut down so that ag center visitors could see the pond. There was a statement in the application saying that no vegetation would be cut. I didn't make that connection very clear before.

Tom Brown: Thank you, and that was Ms. Oglesby for the record.

Tammy Jordan: The only thing I want to state is the fact that Maplevue is to Dairyland Road what New Hope is to our area and in the sense if you think about it, Maplevue is like the improvement association of Dairyland Road. Just the way New Hope is off Whitfield Road it's New Hope improvement association. That's what it's used for to try add to the community and get the community involved. That is what Maplevue should be not just the agriculture but also the community.

Tom Brown: Thank you, Board members, any other questions of staff, of the attorney before we close the public hearing portion of the case? One final question for you Mr. Harvey. The way I am understanding our path forward, affirmation of your decision with the caveats that you have described on the record, reversal or arbitration. Would you call it arbitration? That of course defers this hearing to the next regular scheduled meeting but what is your experience with that?

Michael Harvey: I am going to answer this question but also ask Mr. Parker as the applicant's attorney to comment as well. Once you close the hearing you are going to make very specific findings that staff was either erred or is correct in their determination based on the testimony and we're focusing essentially on subsection a, b, and c of Section 8.7.1.

In terms of if you want to delay action until more information can be provided, I think that both the applicant and I need to know what you are looking for if it is to attempt a meeting with the adjacent property owners to address some of their concerns with respect to this order, for them to supply additional information on how they either a. ensure there is a component of an activity that complies with the SUP or whether you might be seeking additional information on their justification for how it complies with the provision of the SUP or if you are going to be asking staff to supply additional documentation demonstrating how the decision was made on subsections a, b, and c. If you want to recommend arbitration, as its been suggested, I think it should be fashioned in a manner that it's a mediation rather than arbitration because arbitration has a specific connotation to it; that you don't impose on the applicant or staff a condition that incur cost, and that you set some perimeters that the applicant and staff can agree to could be adhered to and that we can respond back to you as you have requested because obviously without speaking for Mr. Parker. If I am Mr. Parker, his concern is that you ask us to go to a mediation to discuss these things and there's no perimeters on how this issue could be resolved and then we come back to the Board we can't report anything back or we can't address your concern.

Tom Brown: I am not advocating that I just want to understand your position on that. Mr. Parker would you...

Mike Parker: I would agree. I think that if that were the inclination of the Board that we would like to have some guidance as to the process and what you expect. If there is additional information required, tell us what you need to hear that you have not heard tonight. I am sure you don't want to re-plow the same ground twice.

Tom Brown: Exactly, I just wanted to make sure I understood if that was a path forward.

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2 Michael Harvey: Mr. Chairman, I would just add one final statement. I think that if the inclination of the Board is to do
3 the final option, I don't think you can technically close the public hearing. I think that you would have to agree that it's
4 what you wish to do, discuss the alternatives in terms of what would be required or what could be achieved with Mr.
5 Parker's input, my input, and then you would adjourn the public hearing to a date/time certain because once you close
6 the public hearing there can be no further evidence entered into the record. I think, you may be looking to do a straw
7 vote in terms of if mediation is something you wish to pursue.

8
9 Tom Brown: Thank you.

10
11 Dawn Brezina: Mr. Harvey, one more question, if we were to rule that staff had erred then can we add certain
12 restrictions to the issues as we go down the list?

13
14 Michael Harvey: That may be a better question for Sahana. However, my opinion is that no you cannot because you
15 would be determining that I erred and my determination you can't impose conditions to address perceived issues. I
16 either interpreted the Ordinance correctly or did not. To impose conditions would almost be to affirm my decision in a
17 reverse manner.

18
19 Dawn Brezina: Ok, so that's not an option, is that correct?

20
21 Sahana Ayer: Yes

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23 Tom Brown: Before we close the public hearing I just want to get a sense of the Board. As I said to Mr. Harvey, I am not
24 advocating that we go the mediation route. I am not at this point confident that we would not be rehashing all the same
25 issues over again, so I am not seeing that the mediation really is viable. I think we need to address either affirmation or
26 reversal as a clean decision on the zoning officer's determination. That would be where I see this right now but seeking
27 your guidance before we close the public hearing because once that's done it will be done.

28
29 James Carter: What are the logistics involved, you mentioned earlier about arbitration, what would be the position
30 involving that? Sahana?

31
32 Sahana Ayer: Well, it's not arbitration like Michael said, it has to be mediation. You would bring the two parties together
33 and you would go over what the issues are basically and try to reach a conclusion of what can be resolved with
34 conditions. If they are going to come back with the same issues but the trees, it's not going to work out. You have to
35 say try and resolve what uses can be permitted, whether they can use it for the yoga center or not. You have to be fairly
36 specific. You can't just let them go out and talk about it and come back with the same problems again.

37
38 James Carter: I like Mr. Parker's analogy he said earlier about plowing the same ground twice. How can you avoid
39 that?

40
41 Sahana Ayer: Like I said, we're talking basically about three issues here, whether they can use it for rental property,
42 whether they can use it as a yoga center, and the fund raising so they'll have to go out and discuss those issues and
43 see how they can either not conduct those activities or conduct them so that they comply with the conditions of the
44 Special Use Permit.

45
46 Dawn Brezina: But that would be part of mediation, right?

47
48 Sahana Ayer: Yes

49
50 David Blankford: The way I am seeing this is that some of these things are allowed under the Special Use Permit and
51 some of the things are not. How can we say Mr. Harvey is correct and then not incorrect at the same time?

1 Tom Brown: Well he has modified some portion of it.
2

3 David Blankfard: I am talking about the space rental for private events, birthday parties for little kids where they're doing
4 the education portion of it would be part of the Special Use Permit. However, the wedding receptions would not.
5

6 Tom Brown: Staff has made the position that they don't believe that is part of the approved operational characteristics
7 of the facility and it constitutes a modification. That is what we are here to decide either we agree with that or we don't.
8

9 David Blankfard: So if we agreed we affirm.

10
11 Tom Brown: We affirm.
12

13 David Blankfard: Ok then we have to approve for modification, or not.
14

15 Tom Brown: Then the appellant, their choice is to cease and desist on any activities that are in the determination from
16 the zoning officer if they wish to start those activities once more they would have to come before the Board with a
17 Special Use Permit for those additional uses. It would be a separate thing with testimony and then we would have to
18 decide how to deal with those additional uses. Would you have anything to add to that Mr. Harvey?
19

20 Michael Harvey: The Board has the authority as I've stated to obviously take a look at the breadth and width of this
21 decision and modify it and determine what they believe if your decision is to affirm, what constitutes a modification what
22 doesn't constitute a modification.
23

24 Again, the example I am going to use, and I am not trying to direct the Board in any one direction. You've heard
25 testimony this evening from the applicant that they believe the birthday parties are consistent with the SUP. They have
26 provided documentation they think makes that argument, this Board could conceivably find that they will affirm a
27 decision that there are certain aspects of rentals that are not consistent with the approved Special Use Permit excluding
28 x, y, and z if that is your decision. You could one respect affirm portions of my decision while negating others.
29

30 Dawn Brezina: Then those portions that are negated those would go to mediation? Is that correct?
31

32 Tom Brown: No, that's a separate issue.
33

34 David Blankfard: It would be part of another Special Use Permit.
35

36 Dawn Brezina: It would be a new Special Use Permit.
37

38 Mark Micol: Mr. Chairman could we just take one issue at a time and start with the yoga instruction and then affirm that
39 based on his comments and then special events, affirm or not affirm, and kind of go one at a time? Is that how you
40 would do it?
41

42 Dawn Brezina: We have to have a motion, there has to be a motion.
43

44 Tom Brown: The way this is going the way it would play out, number one is we don't believe mediation is not the route to
45 go which that means we would close the public hearing then the discussion amongst ourselves will begin. We will look
46 the zoning officer's determination and then we will specify whether we affirm but we can modify. So if it's a modification
47 of the zoning officer determination then we can look at those specific events and see if we have a consensus on
48 whether they should be included or not. That's really the bottom line but we have to do it in conjunction with Section
49 8.7.1 of the Zoning Ordinance so we cannot deviate from the spirit or the word in the Zoning Ordinance, otherwise we
50 are making policy. Would the sense of the Board be that we close the public hearing and then we decide on the merits
51 of this case and the zoning officer's determination?
52

1 David Blankfard: I would say yes, close the meeting.

2

3 Dawn Brezina: I would say yes.

4

5 Mark Micol: I agree.

6

7 Tom Brown: Now this is going to be your last opportunity to ask any questions of counsel or staff or Mr. Parker or the
8 appellant before we close the public hearing portion. Ok, the public hearing portion of this case is now closed. We will
9 begin the Board deliberation on case A-3-10 at this time.

10

11 Before us is the zoning officer's determination that modifications have taken place and there are activities that should
12 not be allowed and that is what the list is if you look on page 88, staff has already resolved number 3, number 4,
13 number 6, number 7. They're allowed to have hayrides, they're allowed to have fieldtrips, they're allowed retail sales in
14 the country store where they currently take place. They have the hands on farm labs and social classes all that is good
15 to go and approved. Things that are in question are from staff's perspective the yoga instruction and classes, which are
16 out of scope in their opinion. The special event fundraisers and the space rental for private events for things like family
17 reunions, wedding receptions, birthdays, holiday parties, etc. Those are the areas of contention. Before we go further in
18 our deliberations first of all I would like to thank staff and the appellant and the citizens for their time and their thoughtful
19 testimony. It is evident that Maplevue has been proactive in forward thinking in devising new approaches to sustain
20 farm activities and farm profitability. While these actions in Maplevue's positive contribution to the community are
21 noted and appreciated it is also important for Maplevue to adhere to proper procedure for utilization of Special Use
22 Permits within Orange County as specified in Section 8.7 of the Zoning Ordinance. Past cases have shown, past cases
23 of camp retreat centers that we have heard on this Board that the Special Use Permits can generate significant negative
24 feedback from neighbors and activities in rural areas become noisy when substantial increases in traffic are
25 encountered. When users of the camp retreats encroach on nearby properties, when the activities occur late in the
26 evening, or when alcohol use is involved. So all of those issues we have dealt with before and those are the reasons
27 why we have to discuss the uses in particular and whether we have approved those by that Special Use Permit because
28 the impact on the citizens can be substantial. With that said I open to the Board their comments on what you think or
29 your ideas. If we affirm the zoning officer's decision point blank then those three events: one, two, and five will not be
30 permitted, period. Now, if we modify his decision we could make some modifications in there but we would have to be
31 very specific.

32

33 Dawn Brezina: If we make modifications... that was what I had asked before, and I understand that we could not make
34 modifications but we can make modifications?

35

36 Mark Micol: I think we can make modifications if we affirm what the zoning official has said, and then say with the
37 exception of....

38

39 Tom Brown: Which means we would determine that activity does not denote a modification per 8.7 so we would need to
40 look at that and say, ok well we looked at yoga classes and we don't think this meets the 8.7....

41

42 Mark Micol:the yoga classes.....talk about that because that's probably the easiest one.

43

44 Dawn Brezina: That's the easiest place to start.

45

46 Mark Micol: In looking on page 68, under where the applicant put other ideas, music in a barn is not agricultural
47 activity. I think that you could almost put yoga in the same classification as music in a barn. Not everything listed under
48 ideas has an agricultural component to it. If we're talking yoga, could we not say, based on the testimony, that yoga has
49 a very close relationship to what they are trying to do with the retreat?

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Dawn Brezina: I would agree with that. I would agree on the basis of the statement that actually Mr. Harvey wrote of the camp retreat which is fairly broad and what you do at a camp retreat. Education and social and I think yoga is educational it may not be agricultural but it is education.

Larry Wright: I would take issue of music in a barn, there are studies that show that music in a barn does enhance milk production.

Mark Micol: I would say that fits in with the social retreat.

David Blankfard: And then also the instructor stated that they were also saying how a cow or corn would grow as also on page 68, activities that tie into school subjects, the study of animals, the study of plants, in an active manner.

Tom Brown: You could certainly, I think make an argument that at least the particular item would not contravene the intent of 8.7.1.

Mark Micol: Right, and so the next easiest one is going to be the fundraiser. If we keep it to animal related.

Dawn Brezina: Particularly animal related, Great Danes....

Mark Micol: If we stipulate that the fundraisers have to have animals or ag, it has to be related to what the center is there for which could be dogs it could be other types of animals.

Tom Brown: My concern with these is there has not been discussion specifically on the uses as far as entertainment, indoor, outdoor it's not specified. Other issues that go along with that, big events, waste, bathroom facilities, sewage I mean these have not been addressed because they have the parking, exactly, these could be potentially an increase in intensity specifically addressed in Section 8.7.1. I think two and five are....

Mark Micol: Five is the one that is probably going to be problematic. The wedding receptions, the family reunions, that's parties, that's music, a fundraiser could be five people it could be 50 people and we

Dawn Brezina: But you can limit that the other thing is that people have weddings and family reunions and fairly large parties at their homes.

David Blankfard: Maybe once a year though.

Mark Micol: The fundraiser, that's probably going to be limited to twice, three times a year.

Dawn Brezina: It seems perhaps the number of times is something that would be appropriately addressed, the number of events.

James Carter: What about, you have it under staff development, that's indication. Does that come under special rentals? Under staff development, Orange County Schools and different schools, you bring your staff off campus and go on another location.

Tom Brown: I see that's one use, if we allow all of that it would not specify it to one use, we would, I think it would be more appropriate to have the community weigh in and then testify that they would like to modify a special use and here's what really what we want to do and here's what we think, how many events we're going to have year. What is it 50 or a 100? We have absolutely no control now because it hasn't come before the Board.

Larry Wright: And how many people, I think the number of people per event would be important as well. You can have a wedding with eight or you can have a wedding with 800.

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Mark Micol: ...for a fundraiser its not going to be any different than 50 kids or 75 kids coming for a field trip and it depends on what your definition of fundraiser is. To me, five is the biggest issue with the wedding receptions and the birthday parties, and even the complaints that we heard were around that sort of activity. I think even the folks that spoke against could live with two fundraisers a year, I think that having open ended wedding receptions, and parties, and advertising that to the community is where the complainants had the biggest issue.

Tom Brown: Where we miss this is special events/fundraisers. So, I have a problem with two and five.

David Blankfard: I have a problem with two and five as well.

Tom Brown: One I can go along with but two and five I have a problem.

Larry Wright: So, what would the options be?

Tom Brown: Well, what we would do is we would have a motion to affirm the zoning officer's determination with the exception of one, yoga instruction classes which we deem does not constitute a modification. If we had that motion, then items two and five would have to, they would have to cease and desist on items two and five until a new Special Use Permit would be submitted to the Board and then we would have a hearing on those particular uses specifically.

James Carter: So if you go that route they can continue with two and five until...

David Blankfard: They can go with one.

Tom Brown: The zoning officer has made a determination so if we affirm that he is stating that I don't believe these to be in consonance with 8.7.1 therefore, we can say that we think yoga does not fall in that category but the other two would. Which means they cannot have those activities without a modification.

Larry Wright: So affirming Mr. Harvey on staff's position on two and five and then this would resolve and a reapplication of another Special Use Permit then the applicant must go through the steps that Mr. Harvey outlined, all of those steps.

Tom Brown: A brand new Special Use Permit for those specific uses.

James Carter: He also stated that there was a certain avenue they go to without going through all these steps unless I heard it wrong.

David Blankfard: That's if you want to do mediation.

Tom Brown: Now we affirm or we reverse that is our only choice, well actually we would be modifying because we affirm the zoning officer's determination in this scenario we're talking about with the exception of yoga instruction.

James Carter: So what's the question for the Board Mr. Chairman?

Tom Brown: At this time, after discussion, unless there are more issues that we need to discuss, we would be entertaining a motion on either affirming or reversing the zoning officer's determinations for this particular case.

David Blankfard: I think that before we get to that point, I think for number five, the space rental for private events, I would say that the birthday parties that have the educational component is in line with the SUP.

Dawn Brezina: I would agree.

Larry Wright: I would agree with that.

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Tom Brown: Ok, so we could make that an exception for that.

Sahana Ayer: Let me remind the Board that you can make exceptions for specific events like Mr. Blankfard said. Birthday party with educational component, you could make the determination that the zoning officer erred on that aspect. Similarly, you can make a determination, conceivably that a wedding party that involves farming activity for instance complies with the Special Use Permit.

Mark Micol: A wedding with a hayride would be appropriate.

David Blankfard: I would say that's probably stretching it.

Tom Brown: ...want to serve both, the applicant and the community. We're trying to do both things. We're trying to make sure that the applicant gets as much as reasonable use of their property but at the same time we want the other citizens of the county to not be encroached upon. That's a tough balance, that's why we're here.

Mark Micol: If we have them go back through the SUP process, we are going to hear this again and so if we agree that these uses should be allowed, having them spend the additional time and money to come back for us to affirm these seven things to me is just... If we can somehow tonight get an answer to allow these uses.

Dawn Brezina: That's was why we were trying to when we started talking about being able to put any modifications.

Mark Micol: Like I said we're going to have to say we affirm Mr. Harvey's decision and then have him come back with an SUP and then approve the SUP.

Tom Brown: ...we would allow public testimony and a delineation of the uses that they want to have which we do not have at this time. We have special events, well what's a special event, how many?

Mark Micol: Well, that's what I was suggesting if we could modify and list those then if they didn't agree with our modifications they would have to go back through the SUP anyway.

Tom Brown: I would try to keep it as clean as we can and uncomplicated as possible.

Mark Micol: That is going to require the SUP.....

David Blankfard: That is going to have to go through the Department of Health and make sure the septic systems are up to speed or all the parking is enough, if their access is

Larry Wright: I just feel that is unfortunate.

Dawn Brezina: I feel that is unfortunate too.

Tom Brown: But we've had past camp and retreat centers where we've had these very same issues arise ...

Dawn Brezina: I still don't understand, I should have asked Mr. Harvey when we could have but...why it wasn't presented as a new SUP this time.

Mark Micol: Because of the expense and the time. He brought that up.

Tom Brown: The appellant, it's their decision to appeal or not and they chose to appeal so now its in our court to decide. My sense of where we are right now, I am just saying this is not to form a motion, is that we would affirm the

1 zoning officer determination with the exception of one, the yoga instruction classes which we deem not to be considered
2 a modification per 8.7.1 and birthday parties with an agricultural component.

3
4 David Blankfard: Can we do one, two, and five separately. Approve or disapprove.

5
6 Tom Brown: It is the zoning officer's determination that we are affirming and then we modify. We can modify that if it is
7 appropriate according to 8.7.1. That's what we are doing with number one, we're saying....

8
9 David Blankfard: I know but can we handle each one of the separately?

10
11 James Carter: You can't.

12
13 Mark Micol: No, you'd have to do all three of them.

14
15 Dawn Brezina: Is there any inclination for to say that the officer has erred? We would move forward with the

16
17 Tom Brown: I am not of the notion that would be case.

18
19 Larry Wright: May I ask a question, I know this is going to drag us back another five or ten minutes in our discussion but
20 I have to ask this. What would happen if they had a fundraiser for Future Farmers of America? And we say that this
21 special event and this fundraiser does not conform, this item two does not conform with the Special Use Permit. I think
22 that we could be challenged on that. I just don't think when you go through two and four in a real cavalier way. I
23 shouldn't use the word cavalier, I'm sorry. I think we really need to think about two and five.

24
25 Tom Brown: Well, your uses have to be iterated. They have to be approved. These uses were not approved.

26
27 David Blankfard: Any thing that we approve, I mean at the dog kennel we approved last month, couldn't they have a
28 fundraiser? It doesn't say we didn't approve that they couldn't have a fundraiser.

29
30 Tom Brown: If it's not in the Special Use Permit, spelled out, they can't have concerts, they can't have other things that
31 are not spelled out in, that needs to be part of the discussion for the Special Use Permit. Otherwise, there's going off
32 and they're expanding the use without out control and without debate without citizen input.

33
34 Mark Micol: I just look at the fundraisers and big wedding receptions. I think someone made the point that a resident
35 could have a fundraiser, I could have a fundraiser at my home, I don't need any particular permit for that but a wedding
36 reception to me is

37
38 Tom Brown: You have a lack of debate and control over that particular item. We have no idea of facilities available,
39 parking available, that has not been studied and has not been decided by staff.

40
41 Mark Micol: It has to a point because we are allowing busses of school children to go out there. We know that there are
42 kids using facilities currently so we could just say limit the fundraiser to 50 people.

43
44 Tom Brown: I think that is a modification. If there is a consensus, and I'll remind everyone that it takes four out of five
45 votes to either modify or reverse the Zoning Officer. If there are only 2 or 3 votes the Zoning Officer's decision stands
46 and his determination is approved entirely. The Zoning Officer rules if we don't have four out of five, that's the way it
47 works. It behooves us to have a consensus or it is going to revert to the worst-case scenario. I don't mean worst-case
48 scenario, it reverts to the zoning officer determination.

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50 Larry Wright: So then if it reverts to the worst case scenario, then the applicant can come back and mediate, right?

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52 Dawn Brezina: No, they can still come back with a Special Use Permit.

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Tom Brown: We need to affirm, I don't think there is a mind to reverse. I think we need to affirm the zoning officer's determination now the question is how. If it needs to be, at least four of us agree. If you want the yoga, there are five of us here, the full members, that have to vote. Is there a sense of a motion? Do we need any further discussion?

Dawn Brezina: David, what are your thoughts on this?

David Blankfard: I think that they should be allowed to have yoga, I don't they should have the special events, I don't think they should have the special rental for private events except for birthday events with an agricultural component.

Tom Brown: I would agree with that.

Larry Wright: When you take a look at 8.7 we can't amend zoning, or ordinances. So I'm sorry but we... It's a poison pill.

David Blankfard: Mr. Harvey said that the only ones in play were a, b, and c.

Tom Brown: I think at this point we're probably waiting for a motion along the lines of what we propose affirming the zoning officer's determination with modifications as specified.

Larry Wright: We don't have a choice.

Tom Brown: Are you all ready?

Larry Wright: Unfortunately.

MOTION:

David Blankfard: Mr. Chairman, I make a motion to affirm staff's decision to review the interpretation of this Special Use Permit approved on April 14 of 2008 based on the testimony of Mr. Harvey, the additional uses of the facility constitute a modification to the Special Use Permit, except with respect to the teaching of yoga classes that meet the county ordinance of 8.7.1 and the space rental for private events for birthday events with an agricultural component.

Tom Brown: Is there a second?

Dawn Brezina: Would a friendly amendment include, also including perhaps holiday parties and some other, parties that would an agricultural theme?

Tom Brown: I think we are going down a bad path.

David Blankfard: I wouldn't agree with that, sorry.

SECOND: Motion was seconded by Dawn Brezina

VOTE: 4 in favor (Blankfard, Brezina, Brown, Wright), 1 against (Carter)

Tom Brown: There are four aye votes, one nay vote. Based on the following determination, the zoning officer's formal determination on Case A-3-1 appeal of a decision made by the zoning officer submitted by Mapleview Agricultural Center, LLC has been affirmed with the modifications as specified in the motion.

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6. ADJOURNMENT

Tom Brown: Is there any other business that the Board would like to consider at this time? Is there a motion to adjourn?

MOTION: Larry Wright moved to adjourn the meeting. Seconded by David Blankfard.

VOTE: Unanimous

Meeting was adjourned at approximately 10:20 p.m.

Prepared by: Tina Love, Administrative Assistant, OC Planning Department