

**MINUTES
ORANGE COUNTY BOARD OF ADJUSTMENT
MARCH 8, 2010**

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MEMBERS PRESENT: Jeffrey L. Schmitt, Chair
Tom Brown, Vice Chair
David Blankfard, Alternate
Dawn Brezina
James Carter
Mark Micol, Alternate

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

OTHERS PRESENT: John Roberts, County Attorney

1. CALL TO ORDER

Jeffrey Schmitt: This is the regularly scheduled meeting of the Orange County Board of Adjustment and we have a quorum. Let me make a comment about voting, David, I believe you are the senior alternate so when it comes to voting, it will be five of us.

2. CONSIDERATION OF ADDITIONS TO AGENDA

Jeffrey Schmitt: Are there any additions to the agenda? Hearing none, the next item is the approval of the minutes.

3. APPROVAL OF MINUTES

a. February 8, 2010

Jeffrey Schmitt: I am going to delay the approval of minutes to the next meeting due to time limitations.

4. A-8-09 CANINE COLLEGE – CLASS II KENNEL AT 719 NEW HOPE CHURCH ROAD.

Jeffrey Schmitt: This is a continuation of the hearing deferred from last month on February 8. I have a couple of comments before I read the summary of this case and we have the presentation.

I am going to swear in everyone at the beginning. If you are going to make comments and/or offer testimony here we are going to swear everyone in at once. This is a quasi-judicial meeting. These minutes will be recorded and approved and available to anyone and the courts if this case is appealed to a higher level.

I would also remind everyone that there is no hearsay evidence so if there is a member of the audience who is going to talk; you have to talk about things you know first hand and not things you have heard someone else talk about. In addition, the evidence presented here needs to be competent and substantial. It can't be your opinion about something, it needs to be documented and approved by people who have a record of being in the profession or working in an industry that they can document that they have done that and they are competent to talk about that stuff.

As we proceed in the case today, in the essence of trying to make this go as quickly as we can understanding we will be here for a while, after each witness, if available, that witness will be cross-examined by Mr. Maitland and/or Mr. Herman, whichever it may be at that time and then the board will also have the opportunity to ask the witness questions before we go any further to keep everybody aware of the points and comments made.

I remind the board that after we have heard all the evidence and all the rebuttal testimony, we will close the public hearing and we will vote and discuss the case. I bring the board's attention to page 142. There are three findings which we will talk about. The maintenance and promotion of the public health, safety and general welfare, property value and the location and character if developed according to the plan so that it will be in harmony. Those are the three areas you need to keep in

1 mind as you are hearing testimony either from the applicant and/or from the attorney for the neighbors as we go through this
2 case. If there are no other comments or issues to be brought forward, this is a case that is being brought forward by Mr.
3 Gene Lonsway. Schmitt read the following:
4

5 *Mr. Gene Lonsway, owner/operator of Canine College, is requesting the issuance of a Class B Special Use Permit*
6 *to allow for the development and operation of a Class II Kennel at 719 New Hope Church Road.*

7 *As detailed within the application, Mr. Lonsway is seeking to construct a 3,200 square foot boarding/training building*
8 *to house up to twenty (20) dogs as well as a 1,600 square foot storage building. The project also involves the*
9 *fencing in of a 1,800 square foot area of the property to serve as an exercise area for the animals.*

10 *Access to the proposed facility is proposed to be through an existing driveway onto New Hope Church Road.*

11 *Mr. Lonsway is proposing to reside within an existing single-family residence already located on the property to*
12 *provide twenty-four hour care for the animals boarded at the facility.*

13
14 Nick Herman: We call Mr. Tony Whitaker.

15
16 Jeffrey Schmitt: All the folks who will offer testimony today, can you come forward.

17
18 Robert Maitland: Mr. Chairman, one of the logistical is that some of the neighbors won't be here until they get off work so the
19 folks that are here can be sworn but some of the others would be sworn in later. Is that okay?

20
21 Nick Herman: I have list of the people who are anticipating coming.

22
23 Jeffrey Schmitt: If you have not signed up already, make sure you do sign to testify after we swear in.
24

25 Individuals sworn in

26 Harold Southerland

27 Tom Trolley

28 Kevin Morley

29 Mark Hance

30 Christie Boros

31 Joan M. Austin

32 Noral D. Stewart

33 Vick Knight

34 Gene Lonsway

35 Michael D. Harvey

36 M. Travis Blake

37 Bobby Mauer

38 Kevin Hunley

39 Robert Maitland

40 G. Nicholas Herman

41 Tony M. Whitaker
42

43 Nick Herman: Mr. Whitaker, state your full name for the board and for the record.

44
45 Tony Whitaker: My name is Tony Morris Whitaker.

46
47 Jeffrey Schmitt: You have been sworn in Mr. Whitaker?
48

49 Tony Whitaker: I have.

50
51 Nick Herman: Where do you live Mr. Whitaker?
52

53 Tony Whitaker: I live at 3725 Clover Meadow Drive, Hillsborough.

1
2 Nick Herman: Are you employed?
3
4 Tony Whitaker: I am employed by Civil Consultants and the Land Development Consulting Engineering Firm in Durham.
5
6 Nick Herman: How long have you been employed with Civil Consultants?
7
8 Tony Whitaker: For 16 years.
9
10 Nick Herman: What capacity are you employed by that firm?
11
12 Tony Whitaker: I am the president of that firm.
13
14 Nick Herman: And generally, tell us what that firm does.
15
16 Tony Whitaker: The firm provides engineering and land development consulting services to those involved in real estate
17 development activity whether it is non-profits, enterprises for private property or for governmental projects.
18
19 Nick Herman: Do you hold any state licenses?
20
21 Tony Whitaker: I am a licensed professional engineer in the state of North Carolina and in Virginia and Tennessee.
22
23 Nick Herman: Were you employed on behalf of Mr. Lonsway in connection with the preparation of his application for a
24 Special Use Permit?
25
26 Tony Whitaker: Yes.
27
28 Nick Herman: What were your tasks to do in that regard?
29
30 Tony Whitaker: My task for the applicant was to advise him regarding the zoning ordinance requirements for his proposed
31 project, to advise him about specific design issues and to help him prepare an adequate design and Special Use Permit
32 application for county approval.
33
34 Nick Herman: Did you prepare an application on his behalf with supporting materials?
35
36 Tony Whitaker: Yes I did.
37
38 Nick Herman: In connection with this case, have you had any communication with any of the sitting board members either
39 orally or in writing about the Special Use Permit application?
40
41 Tony Whitaker: No I have not.
42
43 Nick Herman: Let's look at applicant's Exhibit 1. Is this part of the application submitted to the Board of Adjustment?
44
45 Tony Whitaker: Yes.
46
47 Nick Herman: I would like for you to talk about... is this the site for the Special Use Permit application that is the real
48 property on which it is to be located?
49
50 Tony Whitaker: Yes.
51
52 Nick Herman: That consists of how many total acres?
53
54 Tony Whitaker: Approximately five acres.

1
2 Nick Herman: What I want you to talk about is what exists on the property today in the absence of the issuance of the
3 Special Use Permit. If you would, by using this exhibit, take the board through all the features of this property in terms of
4 what exists on it, perhaps by starting with the roads and entranceway into the property.
5
6 Tony Whitaker: If you are standing at New Hope Church Road looking into the property, the most prominent feature you will
7 see is a split level residence that is served by a loop driveway with two points of connection onto New Hope Church Road.
8 There is the loop driveway and the single family residence and just behind the residence, to the west, is a swimming pool
9 with a deck and a fenced area around the swimming pool.
10
11 Nick Herman: Who lives in the residence?
12
13 Tony Whitaker: The applicant, Mr. Gene Lonsway and his wife. Also, behind the residence is an existing structure marked
14 as number six on your exhibit. That structure appears to be an old barn or some sort of non-residential building that is in a
15 state of disrepair. The siding is torn off; it is not habitable, and not really usable. Further to the southwest, there is an
16 existing garden area with a chain link fence and a concrete path that has no current use. To the west side, there is a row of
17 tall evergreen trees that form a dense hedge for about 120 feet back into the property. Along the southern property line,
18 there is a stream that has Orange County Stream Buffers and the State of North Carolina proposed stream buffers. Along
19 the east property line, there is another stream with those same buffers plus a published flood plain.
20
21 Nick Herman: What is the shaded area?
22
23 Tony Whitaker: The shaded area is the stream buffer area, the totality of the stream buffers.
24
25 Nick Herman: Point out to us the adjoining, the immediately contiguous property, to this property and any other houses that
26 are on properties contiguous to this property shown on this exhibit.
27
28 Tony Whitaker: To the west, there is an existing single family residence located on the adjacent property and the distance, I
29 am going to give distances that are measured from the proposed new kennel facility, measured about 180 feet away from
30 that proposed kennel facility. To the southwest, in this general area, is an existing residence about 408 feet away. To the
31 south, another residential property that is about 350 feet away, that house is not on an adjoining property but is on property
32 that is one lot over that is intervening between this residence and this property.
33
34 Nick Herman: Are you saying that residence is on property that is contiguous to that property or not?
35
36 Tony Whitaker: Not.
37
38 Nick Herman: In other words, intervening is another piece of property?
39
40 Tony Whitaker: Right. To the east, there is a residence from this location, about 500 feet away and this residence is about
41 350 feet away.
42
43 Nick Herman: There are a total of three residences that are on properties directly contiguous to this property? Three
44 houses?
45
46 Tony Whitaker: I count them as four, west, southwest, and east and to the east.
47
48 Nick Herman: Did you, as part of the application for Mr. Lonsway, submit to the board, plans for how this facility would be
49 constructed if a Special Use Permit were approved?
50
51 Tony Whitaker: Yes. I did.
52
53 Nick Herman: Let me show you, applicant's exhibit number two. Are those part of the plans that you have submitted to the
54 board to get this proposed Special Use?

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Tony Whitaker: Yes.

Nick Herman: I would like for you to do with this Exhibit number two, perhaps beginning again with the driveway as you go in, take us into the property and point out the features, structures, plans for this use. In other words, what improvements would you make, what improvements would be deleted, etc.

Tony Whitaker: Standing at New Hope Church Road looking into the property, the plan involves removing the eastern most driveway, closing it off and leaving the asphalt pavement that is there, enhancing the existing driveway on the western side of the property to have that wider width that is required for safety codes and to consolidate and funnel all the ingress and egress traffic movements from the property into one location. The new driveway will be widened and extended along the west side of the house back into an area behind the swimming pool to an area containing five new parking spaces. Those parking spaces will be surrounded by two buildings. This building being a Phase I kennel building where the administrative support area is and the Phase II training facility attached to the kennel building. Those can be built as one building together or phased into two separate buildings as well. The third phase is a storage building that would be located to the west of the training room. In addition to that, we are proposing an outdoor exercise area that is fenced in accordance with county regulations for that sort of area. That fenced area is intended for dogs to be exercised, one or two at the time occasionally, as needed during the day and that location is designed to be at least 150 feet away from any property line which is a county regulation.

Nick Herman: How high is this fence?

Tony Whitaker: The fence is six feet high.

Nick Herman: And the Kennel Phase One that you talked about, what is the function of that? What is its purpose?

Tony Whitaker: The Kennel Building Phase One I could refer you to the exhibit that shows the floor plan.

Nick Herman: I'll get to that. Why don't you tell us the purpose, what is in the kennel?

Tony Whitaker: Dogs. The kennel is intended to board up to 20 dogs.

Nick Herman: The training facility is another phase. What happens in the training facility?

Tony Whitaker: That is a separate large room that the trainer can bring dogs in small groups into and conduct various training exercises and training activities that are a part of his business model.

Nick Herman: I take it that the dwelling, the deck and the pool will remain.

Tony Whitaker: Yes. The dwelling remains unchanged. The existing residential parking will have to be modified very slightly to accommodate the new driveway and the existing swimming pool, as noted on your plans, has the possibility of being reconditioned or slightly expanded in the future without any real impact on the area surrounding the pool.

Nick Herman: Ok. Was it our firm that came up with this design in terms of where these facilities would be located?

Tony Whitaker: Yes.

Nick Herman: And what did you take into account in connection with deciding where to locate the various facilities?

Tony Whitaker: When I first met with Mr. Lonsway, he had a well organized set of ideas and design principles that he wanted to have in this kennel. Of course, he has a certain idea about his business operation and what he wants to accomplish with it. He articulated this to me. He wanted the kennel facility behind the house and not to be visually identifiable from the roadway. He wanted it to look more residential in nature rather than industrial. He didn't want it to look industrial. He wanted it to fit in the neighborhood in terms of its appearance. He wanted the area to be completely enclosed.

1 In other words, the dog runs, places where the dogs are housed and where they stay, he wanted those to be indoors. He
2 wanted a small number of parking spaces. He was very adamant that whatever the county regulations were that he knew he
3 did not need many parking spaces because of the way he understands through his business model. He noted to me that we
4 may need to take some precautions regarding noise control and noise prevention and a good screened buffer. In addition to
5 that I added a few things to that. I think we should make sure we don't do any impact near the stream buffer. I think we
6 should try to keep the buildings configured in a way that does not require excessive grading and clearing and we ought to
7 look at the resources that are already available on the site. An existing septic system that is not for the house is a separate
8 septic system that has never been used. It could be refitted and used for this kennel facility. That system had a certain size
9 which actually put a limit on the number of dogs that could be housed in the facility because the number of dogs is
10 proportional to the amount of waste water expected to be generated.

11
12 Nick Herman: Where is the septic system on the plan?
13

14 Tony Whitaker: That doesn't show up on this plan. There are two septic systems for the property. One for the house
15 located in the front of the house. Between the house and New Hope Church Road and totally separate not connected is a
16 separate waste water system that has never put into service located in the southern part of the property just north of that
17 stream buffer.
18

19 Nick Herman: I am going to move to another exhibit. The exercise area that is six foot fence, how many square feet is that
20 area?
21

22 Tony Whitaker: About 1,800 square feet.
23

24 Nick Herman: Now I am going to show you Applicant's Exhibit Number 3. Mr. Chairman, I am through with these exhibits
25 but I will provide them to the clerk so the records show that they seen to admit into evidence for the purposes of this
26 received. Let me show you the Applicant's Exhibit Number 2A. Exhibit 2A is a chart or drawing called Landscape Plan, is
27 that part of the application submitted to the Board of Adjustment?
28

29 Tony Whitaker: Yes.
30

31 Nick Herman: What I would like you to do with the board is using Applicant's Exhibit 2A is to show this Landscape Plan, its
32 feature for this proposed use. You might want to start with the area towards the road, move to the west and to the south and
33 take us around the property.
34

35 Tony Whitaker: In the northeast part of the property, along the roadway frontage, working from the creek and a bridge that is
36 along New Hope Church Road. There are existing trees in this area that are fairly mature. A mixture of hardwoods and
37 pines and different kinds of trees that are just natural wooded forestland. If you move up toward the house, there is less of
38 that existing vegetation and more landscape proposed for installation as shown on the plans. As you move to the western
39 frontage corner and start working down that western property line, those tall evergreen trees are there that we talked about
40 earlier. Moving on down along that property line, existing are a couple of nice black walnut trees toward the back as you
41 start working toward the creek and as you get to the back of the stream buffer area, it is really mature woodland again, a
42 mixture of hardwoods and softwoods that predominate along the stream buffer. That is true pretty much along both edges of
43 the stream. As you get into the interior part of the property that is stream buffer but not really at the creek and not really on
44 the high ground, there are intermediate trees, some of them old trees and some younger. There are some lawn areas where
45 the sun gets through and grass has grown. As you move back up toward the place of our beginning, there are more
46 scattered trees of different ages, some more mature, some less mature in there.
47

48 Nick Herman: Have you been describing what exists on the site today?
49

50 Tony Whitaker: Those are what exist on site today.
51

52 Nick Herman: You have circles that would indicate trees?
53

54 Tony Whitaker: Yes.

1
2 Nick Herman: Does that indicate trees that exist today or trees that will be planted?

3
4 Tony Whitaker: Trees that exist today.

5
6 Nick Herman: Now having described what exists today on this property today in terms of its landscaping features, tell us
7 what, if any, landscaping features will be put in place if this use is approved.

8
9 Tony Whitaker: We did an analysis of the county ordinance for landscape and tree coverage and tree protection and
10 purposes and we determined that for the frontage of the property where there is a requirement to have a substantial number
11 of trees with those stream tree requirements, really all of these existing trees in this area do in fact meet those requirements
12 so those trees give us credit, really more than enough credit, for meeting the county street tree requirements. Along the
13 western property edge, we took advantage of the resources already there. We were required to have a type B landscape
14 buffer. It is a very opaque buffer to act as a screen to the adjacent property so we took advantage of those existing trees to
15 say they are really a very fine screen already and we will keep those in place. From this point working down, there is really
16 not a significant amount of buffering requirements. We are proposing to replant or plant all new vegetation along the
17 property line from this point down to the stream buffer and the type B requirements that allow certain mixtures or variations of
18 ways you can accommodate that, we have chosen to use entirely evergreen plantings to make sure that whatever is true in
19 the summer of that screening, it is also true in the winter in terms of that vegetation. These are plantings, some are taller,
20 some are smaller but they work together to form that hedge that screen. Also, just to be more concerned and more
21 responsive to neighbors concerns about that, we have also, at the request of Mr. Lonsway, provided a wooden fence along
22 that property line that will be a solid screen by itself. Even if the landscaping were not there, that fence would be that solid
23 screen but we have also proposed and the county regulations do require vegetation in addition to the wooden screen and so
24 we have proposed screening on both side so no one is looking at just a wooden fence, everyone is looking at a wooden
25 fence behind some evergreen vegetation.

26
27 Nick Herman: I have no other questions about this. Applicant's Exhibit number 2A and having used it and if there is no
28 objection from Mr. Maitland, I would pass that to receive that into evidence. Now what I want to show you is a series of
29 Exhibits called 3A, 3B an 3C. Are these elevations of the Phase I facility?

30
31 Tony Whitaker: Yes they are and floor plans and elevations.

32
33 Nick Herman: Let's start with 3A. I'll hold this up. Are Exhibits 3A through 3C part of the application?

34
35 Tony Whitaker: Yes.

36
37 Nick Herman: Do you see 3A?

38
39 Tony Whitaker: Yes.

40
41 Nick Herman: Tell us what exhibit 3A is?

42
43 Tony Whitaker: Exhibit 3A is what we call sheet number A1 at the lower right hand corner in the packet and it is the
44 preliminary floor plan for the kennel building, Phase 1 and the Training Room, Phase 2.

45
46 Nick Herman: Describe what is what on these elevations?

47
48 Tony Whitaker: To the left side of the page is kennel area. You see the kennel area with the dog runs; there is a center aisle
49 where the staff members walk up and down with the dog runs off to each side roughly 10 runs on each side of that centered
50 walkway. The runs are separated by a divider wall that is up to a certain height, five or six feet; it may be four or five feet
51 high. All the dog runs are separated by solid walls not just by fencing. If you look to the left top, you will see an exit door
52 from the kennel area to the outdoor fenced exercise area. That is way to get to that exercise area without having to do
53 anything other than walk through the doorway from the kennel. To the right of the kennel runs is the middle section of the
54 building which is still in Phase 1 which is the reception are for the customers to walk in where the administrative services are

1 done. There is a restroom, a utility room, a bathtub for the occasions where a dog gets himself in a position and needs a
2 bath. That is a central core area, administrative support area that will be built as part of Phase 1. To the right of that is
3 Phase 2, the training room, which is one big room. Totally open, just a lot of square footage for dogs to be trained and be
4 put through their activities which are part of the training and also for customers who want to observe their dogs to meet with
5 Mr. Lonsway to talk about the dog's progress.

6
7 Nick Herman: In the construction of this, is Phase 1 or Phase 2 that is all in the same building?

8
9 Tony Whitaker: It could be in the same building or it could be built separately.

10
11 Nick Herman: Either way, are all of these facilities fully enclosed?

12
13 Tony Whitaker: Yes.

14
15 Nick Herman: In connection with the design with the design of what I will call Phase 1 and Phase 2 that you have on Exhibit
16 3A, is there any part of the construction of this that takes into account acoustical considerations?

17
18 Tony Whitaker: Certainly there is.

19
20 Nick Herman: Would you explain those?

21
22 Tony Whitaker: They might be better explained if you look at the second page of Exhibit 3B?

23
24 Nick Herman: Tell the board what that is and explain these acoustical considerations.

25
26 Tony Whitaker: This Exhibit is shown as drawing #A2 in the lower right hand corner. These are elevations of the Phase 1
27 and Phase 2 building so if you look at the elevation along the top which is what we call a front elevation of the kennel to see
28 you park in the parking lot and got out of your car and looked at the building. To the left you see the kennel area where the
29 dogs would be behind that wall. You can see that wall looks a little different in that from the ground to a height of six feet, the
30 construction is masonry block wall which is an eight inch thick masonry block with the voids in that wall filled with vermiculite
31 for sound dampening so really a solid fill concrete, masonry wall up to six feet high and above that you see some small
32 windows that are designed to let light in to the kennel area and then they are also designed, this drawing doesn't show it, but
33 it is a part of our application, those windows have special design considerations a large air gap between two panes of glass
34 and some special sealing to be sure that no unnecessary sound might get through that otherwise could be a weak point for
35 sound purposes. The roof is a typical residential style gable shingle roof. What you don't see on this elevation but is a part
36 of our application is inside the building, the ceiling above the dog areas is a flat ceiling that is a drop ceiling that is the same
37 kind of stuff designed for use in operating rooms. Very high quality sanitary kind of material that is waterproof. In other
38 words if it gets wet from the wash down activities, it won't deteriorate that material and on top of that is sound baton
39 insulation. Above that is the attic space and the soffits and the ridge fit of that attic space has been designed to have the
40 very minimal openings for ventilation that the code allows to minimize how much sound might be able to get through those
41 areas. Then the doorways that lead from the dog area are heavier, denser door material as to limit the sound. What I have
42 described as an envelope around the dog areas that is an extraordinary sound damping in envelope.

43
44 Nick Herman: In connection with the features of this facility or the construction of it to take into account acoustical
45 considerations, did your firm consult with any experts in connection with this design?

46
47 Tony Whitaker: We did.

48
49 Nick Herman: Tell the board who that was and the nature of the consultation.

50
51 Tony Whitaker: We consulted with Mr. Noral Stewart of Stewart Acoustical Consultants. Mr. Stewart, as we understand it, is
52 an expert in this field and is nationally recognized and was locally available and was available to consult on this project. He
53 took a look at what we had already proposed after we were into the design. He said it was a good basic design but he

1 suggested a few things we could do to improve it. Mr. Lonsway readily agreed to do that and then Mr. Stewart formed some
2 numerical analysis on the design in terms of sound proofing and determined we had a very good sound dampening design.
3

4 Nick Herman: He is here and he will testify. Did he make certain additional recommendations to the design for acoustical
5 purposes?
6

7 Tony Whitaker: Yes.
8

9 Nick Herman: Did you, in connection with your then, construction plans, incorporate those recommendations?
10

11 Tony Whitaker: Yes.
12

13 Nick Herman: Did you incorporate all of them?
14

15 Tony Whitaker: Yes.
16

17 Nick Herman: Do you remember what they were?
18

19 Tony Whitaker: I remember some of them. The ones that I recall, to be sure, I mentioned this earlier, that the soffits and the
20 ridge vents are absolutely minimal in their opening size so as not to let unnecessary sound through to also line the ducts or
21 HVAC system with a material that actually reduced the sound that might travel through the HVAC system to the outside.
22 Also, the window design that I described and the heavier door design that I described were his suggestions.
23

24 Nick Herman: In Applicant's Exhibits 3A, 3B and 3C. What does 3C depict?
25

26 Tony Whitaker: 3C labeled as A3 which is the storage building, not Phase 1 or Phase 2 but the Phase 3 storage building
27 which is essentially a large space for utilities and storage purposes.
28

29 Nick Herman: No dogs in the storage room?
30

31 Tony Whitaker: No.
32

33 Nick Herman: If there are no objections, I am going to introduce and make part of the record Applicant's Exhibits 3A, 3B and
34 3C. Mr. Whitaker, did you prepare a statement for the applicant as to how the applicant believes that his application
35 complies with all the Special Use Permits requirements?
36

37 Tony Whitaker: Yes I did.
38

39 Nick Herman: Is that statement of the applicant what I have marked as Applicant's Exhibit 4.
40

41 Tony Whitaker: Yes.
42

43 Nick Herman: And is that part of the application file?
44

45 Tony Whitaker: Yes it is.
46

47 Nick Herman: Want to ask you a few questions about that. Is there any rule of the Orange County Control Department in
48 connection with overseeing or regulating this use if approved by the board?
49

50 Tony Whitaker: Yes. The county does have regulations regarding Animal Control and uses the County Animal Control
51 Office to administer those. This case, it is required before a building permit is issued that the County Animal Control Office
52 review and approve the building plans to make sure they comport with their regulations and I believe there is continuing
53 oversight by the Animal Control Office having at least annual inspections that I understand are randomly carried out.
54

1 Nick Herman: You had mentioned the septic system to service the property; will that system need to be approved by any
2 governmental entity?
3

4 Tony Whitaker: Yes. The Orange County Health Department has jurisdiction over that system and the Orange County
5 Health Department approved that system originally developed for the house and now that we are going to use it for a kennel
6 facility, they have imposed additional requirements that are unique and specific for kennel facilities which the applicant has
7 agreed to.
8

9 Nick Herman: Did you mention, the Orange County Animal Department, in addition to licensing the facility, they have to
10 approve the site plan?
11

12 Tony Whitaker: Yes.
13

14 Nick Herman: Would you briefly explain to the board, since you wrote this statement on behalf of the applicant, why you
15 believe this application meets the criteria that the use will be in harmony in the area in which it will be located.
16

17 Tony Whitaker: Yes. As you know it is a requirement to show that the use will be, if built and operated in accordance with
18 the application, will in harmony with the surrounding neighborhood. I have taken a look at the different elements, the site
19 design, the elements of the property itself and the use itself and accessed incrementally for each of those, whether I think
20 those uses will lead toward harmony and disharmony. I have found that in all those cases, the use will be harmonious.
21 Number one, the use is a permitted use in the rural buffer zoning conditions. Some of those conditions have to do with
22 property and the specific design, which I believe and can verify are met.
23

24 Another condition is there will be a Special Use Permit granted by this board for that use. I believe that all the findings
25 required for that Special Use Permit have been met so I believe in terms of land use, the use is inherently appropriate given
26 the conditions that have been met or can be met as a result of this hearing.
27

28 I think the size is important. This is a small facility housing only 20 dogs. By kennel standards, that is small so I didn't see
29 any use or discontinuity or disharmony related to the scale of the facility. I thought the size being small led toward a condition
30 of being in harmony. Low visibility, I think it is important to realize that this facility won't be visible from the road very much.
31 You might get a little view if you turn your head the right way at the right time driving by. This is not a prominent facility
32 visually. It is behind the house and other features associated with the house and behind trees, etc. so it does not present
33 itself to the road as a conspicuous as commercial use or anything that conspicuously or unharmonious with the
34 neighborhood.
35

36 It has adequate buffering to the adjoining properties. We have not been able to identify any reason to think that the adjacent
37 properties would be adversely impacted from a visual or any other condition associated with use because of that screening
38 and the physical separation that exists.
39

40 It is a low traffic generator where there really is not, by virtue of the business model, that Mr. Lonsway employees there is
41 really not much traffic that comes in and out. The average customer will bring their dog on a certain day and drop that dog
42 off for several days and pick the dog up at the end so the person is not driving in and out everyday.
43

44 We have talked about the noise and the sounds down beneath that proposed building and we believe that the lack of any
45 adverse noise condition really does go a long way to providing the harmonious presence of this facility in the neighborhood.
46 It is a controlled environment. The operator and owner lives in the house on the property. The fact can be said that the
47 closed house to this facility is occupied by the owner and operator so it is a very controlled environment and we think that is
48 a mitigating factor. That is minimal grading and clearing and land developer work needed to get this facility in. In fact, we
49 are taking away a very ugly, unpleasant structure that is already on the site and replacing it with new construction and we
50 think that is a positive thing.
51

52 We had to take a look at what happens outdoors in that fenced exercise area as part of the application and the applicant has
53 committed to only having one or two dogs at the time would be in that area. To me it felt like a residential use where a
54 person is exercising and playing with their own dogs once a day which is certainly an appropriate in a rural area.

1
2 As we look at all these elements as we added them up and looked at them, we talked about, is this harmonious with the
3 neighborhood and we felt like in the end, on every point, that we found things that would not to disharmony. I think about
4 harmony for land use purposes like I do for musical purposes. There are some similar elements where the different
5 components of musical harmony really are different and really not the same or uniform but they blend together and work
6 together well so each part is fulfilling its role without adversely affecting the other parts or adversely affecting the whole. I
7 think of land use harmony in the same way whereas different land uses in an area can be very different but can blend well
8 and work well together as long as they don't hurt each other so I think that is the case we have. I find that the use is
9 harmonious.

10
11 Nick Herman: I take it that, in your professional capacity, an engineer and principal of Civil Consultants, that you are familiar
12 with all the county requirements for a Class B Special Use Permit for a Class B in the county?
13

14 Tony Whitaker: Yes.
15

16 Nick Herman: Is it your opinion, professionally, that this application, everything we have gone through here, is it your opinion
17 that this proposed use meets all those requirements?
18

19 Tony Whitaker: Yes. That is my opinion.
20

21 Nick Herman: That is otherwise summarized in Applicant's Exhibit 4?
22

23 Tony Whitaker: Yes.
24

25 Nick Herman: Without objection I will introduce Exhibit 4. Is there anything else you need to share with the board for them to
26 understand this application and its principal uses?
27

28 Tony Whitaker: I don't think so.
29

30 Rob Maitland: My name is Rob Maitland and I represent the Sutherlands who live in the home next door to the applicants
31 property. I want to get some things clear on your background. You used to be the chairman of this board?
32

33 Tony Whitaker: I had three terms of tenure on this board. There are some years I was chair and one year I was vice-chair.
34 In more years, I was simply an alternate member or a regular member.
35

36 Rob Maitland: Thank you for your service. Just to be clear, what years did you serve on the board?
37

38 Tony Whitaker: There were about five years back in the late 90s and there were, I believe, about three years, leading up to
39 the year 2000-2008.
40

41 Rob Maitland: Your most recent term on the board ended when?
42

43 Tony Whitaker: I am not sure
44

45 Michael Harvey: If I am not mistaken, I believe it was June 2008.
46

47 Rob Maitland: I forget the name of the firm you are with?
48

49 Tony Whitaker: Civil Consultants.
50

51 Rob Maitland: When did Mr. Lonsway engage Civil Consultants to help him with this project?
52

53 Tony Whitaker: We started in 2008, around spring.
54

1 Rob Maitland: It is true that your company was working on behalf of Mr. Lonsway while you were still a member of this
2 board.
3
4 Tony Whitaker: Yes. It is true.
5
6 Rob Maitland: And you see no conflict with that?
7
8 Tony Whitaker: No. I was very careful to make sure there was no conflict. When Mr. Lonsway first came to me, in our initial
9 consultation, I said to him, you know that you will need a Special Use Permit from the Orange County Board of Adjustment.
10 He said fine. And I said you know that I am a sitting member of that board. He said no, I had no idea. So we talked and had
11 an immediate conversation of that and we were very careful to talk about the boundaries that must be observed.
12
13 Rob Maitland: If my memory serves me correctly, didn't you leave the board on the very night that Mr. Lonsway's application
14 was initially presented?
15
16 Tony Whitaker: I didn't leave the board, my term expired.
17
18 Rob Maitland: Your term expired on the very night that his presentation was made to the board?
19
20 Tony Whitaker: I believe that is correct.
21
22 Rob Maitland: From the perspective of the average person living next to the door kennel, you don't see how perhaps, it can
23 be interpreted that you being hired before you leave the board and bringing the application on the night you do leave the
24 board isn't somehow a little convenient.
25
26 Tony Whitaker: I completely understand that. People can think all kinds of things. My goal, my requirement was to maintain
27 the proper boundaries between my volunteer service to the county and my professional association. I have made this type of
28 choice my whole career and many people have and do every day and I make good choices and proper choices and yes I do
29 expect that some people could misinterpret that.
30
31 Rob Maitland: Can we go back to the first exhibit.
32
33 Jeffrey Schmitt: Mr. Maitland, you are representing the folks that live in the house directly to the west of this property?
34
35 Rob Maitland: I represent the Southerlands who live in this home. The Southerlands have also engaged the support of their
36 neighbors who are in the surrounding area but as far as the actual petition, I represent the Southerlands. Before we get
37 started, I want to make sure we are all on the same page, no matter how good your plan is or how nice and crafted it is, if Mr.
38 Lonsway cannot meet his burden tonight that this project, however nice it may be will not negatively impact the value of the
39 Southerlands. This board, and you are the former chairman, cannot approve his request for a permit?
40
41 Tony Whitaker: That is my understanding.
42
43 Nick Herman: I object to that. It is an incorrect statement of the law. The standard in this case is not whether his property
44 would in any way negatively impact other people's property.
45
46 Rob Maitland: The standard is to maintain or enhance, right?
47
48 Nick Herman: The value of contiguous property.
49
50 Rob Maitland: Maintain or enhance. You mentioned earlier they are going to remove this driveway. Why is that?
51
52 Tony Whitaker: First of all it is not a driveway Mr. Lonsway installed; he bought the property with the driveway there. He
53 found it was not necessary for his purposes for one.
54

1 Rob Maitland: What do you mean not necessary for his purposes? The driveway?
2
3 Tony Whitaker: Having a second driveway in addition to his primary driveway was not necessary. The other thing we
4 discovered working through the process with the County Health Department is they felt it would be better for this existing
5 septic system that is in front of the property to not have that driveway over it. Current standards don't allow driveways over
6 septic fields.
7
8 Rob Maitland: That is where I was getting to. This septic area, this driveway on top of it is a violation of the current
9 regulation.
10
11 Tony Whitaker: It is a violation of current regulations, yes.
12
13 Rob Maitland: So he really has to move this driveway. He is not doing it by choice.
14
15 Tony Whitaker: Yes. The county felt so strongly about that they asked us to remove the asphalt driveway.
16
17 Rob Maitland: When he bought this home, he bought it without knowing he had a driveway on top of the septic system so
18 now he has to remove the driveway and funnel traffic on this side of the property which would actually increase traffic on the
19 Southerland's side of the property?
20
21 Tony Whitaker: I don't know if it would increase traffic or not.
22
23 Rob Maitland: Right now they could just around the circle here but now they will have to go all the way down here and park
24 in, where is the parking lot?
25
26 Tony Whitaker: This is
27
28 Rob Maitland: What I am asking you is just common sense. If cars are going like this, isn't that less of an impact on the
29 Southerland's than if the cars have to go all the way down here and park in the parking lot?
30
31 Tony Whitaker: I am not sure that constitutes an impact on the Southerland's side. There is a different way to drive into the
32 property that I would say about that. I think it is fallacy to say that people turn in here and circulate this way and in my
33 experience when I drive on the property and I have seen other people do that, it seems to come in this driveway that is closer
34 to the Southerland's now.
35
36 Rob Maitland: How far down can they go currently on the existing pavement?
37
38 Tony Whitaker: To approximately the back side of the house.
39
40 Rob Maitland: About right here right?
41
42 Tony Whitaker: Yes.
43
44 Rob Maitland: Where the cars will be parking, the five parking spots with the handicap parking, where are they going to be?
45
46 Tony Whitaker: Down in this general area.
47
48 Rob Maitland: Which area is closer to the Southerland's house, this parking lot or up here?
49
50 Tony Whitaker: The future parking lot.
51
52 Rob Maitland: You have been looking at this for a long time and it has never occurred to you that this parking lot would be
53 closer to the Southerland's house.
54

1 Tony Whitaker: Of course it occurred to me.
2
3 Rob Maitland: I just ask you that.
4
5 Tony Whitaker: No you didn't.
6
7 Rob Maitland: I said isn't this more of an impact on the Southerland's property if they are going to park down here close to
8 the home.
9
10 Tony Whitaker: You ask me if it was an impact on the property and I don't believe that is an impact on the property.
11
12 Rob Maitland: Even though that is not going to be an impact, that is where we are going to build all this landscaped area and
13 the proposed wooden fence.
14
15 Tony Whitaker: I believe the landscaping that both exists and the landscaping provided will work together to take away
16 whatever impact might have otherwise been caused.
17
18 Rob Maitland: I understand. The existing septic tank that is not being used, is that this one?
19
20 Tony Whitaker: That is the existing septic system where the septic lines exist, yes.
21
22 Rob Maitland: That is located immediately on the property lines of the Southerland's.
23
24 Tony Whitaker: I am not aware that it is on the property line.
25
26 Rob Maitland: But it is pretty close.
27
28 Tony Whitaker: Yes it is pretty close.
29
30 Rob Maitland: But it is not being used at this time.
31
32 Tony Whitaker: No it is not.
33
34 Rob Maitland: But with this project, it will be used?
35
36 Tony Whitaker: Yes.
37
38 Rob Maitland: Why was that septic field first put in.
39
40 Tony Whitaker: I don't know. I have heard a reason that was given to me but I haven't verified it. I understand it was for the
41 possibility of putting a second residence on the property.
42
43 Rob Maitland: That is my understanding too but they couldn't get a permit, for a mother in law house or something.
44
45 Tony Whitaker: I don't know the zoning implications but the septic system was approved and a permit was issued for that
46 but never put in service.
47
48 Rob Maitland: Basically, this septic tank they put in for a mother in law house but they couldn't build it, it is now easier for
49 them to get a permit for the dog kennel?
50
51 Tony Whitaker: As I described, the size of the existing septic system was used as a constraint for the design of how many
52 dog runs should be as a maximum placed in the kennel.
53
54 Rob Maitland: The stipulation of your application is 20 maximum dogs, right?

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Tony Whitaker: Yes.

Rob Maitland: Didn't you say that was based on the limit of the septic?

Tony Whitaker: It was based on two things, one was Mr. Lonsway's initial criteria to me that he wanted a relatively small facility but he was non-specific as to the exact number. Then as it became clear the septic system was a reasonable constraint so we didn't have to get into the business of asking for an additional sizing for that septic system we decided to leave the limit at 20.

Rob Maitland: So, to be clear, on your application you are limiting your application to 20 dogs, you are not going to come back for more dogs later?

Tony Whitaker: I can't predict the future but I have had no conversation with Mr. Lonsway about expansion. We are not building any expansion into the facility itself. There appears to be not much potential of expansion from the waste water system perspective so the idea of expansion is not one we have seriously or ever really thought about anyway and not one that we are planning or contemplating.

Rob Maitland: Where is the sheet with the inside design of the building? I am looking at 3A, it says Phase I and Phase II and we also have Phase 3 for a storage shed that will not have any dogs, right?

Tony Whitaker: Right.

Rob Maitland: In Phase I, I count 20 dog kennels, if they are not looking to expand anything, what is Phase II here for?

Tony Whitaker: Mr. Lonsway is, at heart, a trainer not a dog keeper. He does both but his heart is in training and so his primary focus in terms of his business model is to keep dogs he is training and so the training is a big part of it and that room is for that purpose. In his training, he does activities with one or small groups of dogs and they need a place to run, a place to work and that is what that room is for exclusively.

Rob Maitland: And that is where all the work with the dogs will be is and the training going to go on?

Tony Whitaker: That is where most of it, there is the outdoor area where dogs will get their exercise but because the decision is made to keep the training and boarding activity indoors, then that is explanation for why that room needs to be so spacious.

Rob Maitland: Your application is to build Phase I, when is Phase II going to be built?

Tony Whitaker: Phase II could be built with Phase I. We are in a very dynamic market condition right now. Financing for new ventures is not as easy as it used to be so this is a means by which Mr. Lonsway is building flexibility into his application to say that I really want to build Phase I and II together but if some financial or business constraint doesn't allow me to do it, I can at least build Phase I and Phase II separately.

Rob Maitland: There is no guarantee that Phase II will be built at the same time as Phase I?

Tony Whitaker: No. There is no guarantee of that.

Rob Maitland: Let's pretend that is the case and we are just looking at Phase I. All the training and all that work he is going to do with the dogs, all the stuff that is critical to his business model where is that going to happen?

Tony Whitaker: He is not going to be able to have that part of his business.

Rob Maitland: Isn't that his business? I thought you said he not a dog keeper, this is a dog keeping facility with no place to train.

1
2 Tony Whitaker: I said at heart he is a trainer primarily so his passion is in training. He has experience and lots of experience
3 of keeping dogs but his heart is in training dogs.
4

5 Rob Maitland: The area on the outside, going back to 1A, there is an outside dog kennel run area next to the creek, right?
6

7 Tony Whitaker: Yes.
8

9 Rob Maitland: You mentioned when you are talking about harmony there is lots of pieces and everything has got to work
10 together and that Phase II, the indoor training place, looks pretty good when Phase I is built, if there is no Phase II being built
11 at the same time as Phase I, there is an outdoor area for the dogs, right?
12

13 Tony Whitaker: Yes.
14

15 Rob Maitland: Are there any outdoor big flood lights that will be lighting this area?
16

17 Tony Whitaker: Are there any big flood lights?
18

19 Rob Maitland: Are there going to be flood lights. Is Mr. Lonsway going to be conducting his activities after dark?
20

21 Tony Whitaker: You will have to ask him that? I don't know.
22

23 Rob Maitland: On Exhibit 2, where is the outdoor area the dogs will be in when they are outside?
24

25 Tony Whitaker: Right here.
26

27 Rob Maitland: This is Phase I here and Phase II here and this is Phase III here?
28

29 Tony Whitaker: Right.
30

31 Rob Maitland: Let's assume these two buildings aren't built and Mr. Lonsway is going to have Phase I and all 20 of those
32 dogs will be in those 20 kennels. There will be no place for him to train the dogs and do all the things he described other
33 than this open area over here? You also said that he will only let one or two dogs out at one time and unless he is going to do
34 this after business hours, 9:00 to 5:00 that is only eight hours. Twenty dogs, eight hours, assuming you need an hour a dog,
35 there is no chance there is just going to be one dog out there. Even with eight hours and two dogs you only 16 hours to train
36 the dogs outside not in an indoor noise abated facility? It doesn't make sense to me.
37

38 Tony Whitaker: I can understand how if you put down criteria you described you could deduce that but I think those are
39 faulty criteria.
40

41 Rob Maitland: You said 20 dogs only going to be trained indoors but there is no guarantee there is going to be an indoor
42 facility going to be built so the dogs can't be trained indoors they have to be trained outdoors but you are only going to let
43 one or two dogs out at a time maximum. It just doesn't work.
44

45 Tony Whitaker: There are several things I need to clear up and also Mr. Lonsway may be able to add some color to my
46 analysis. I never said the dogs would be exercised from nine to five. The business day doesn't matter to a dog so if a dog
47 needs to go out and if it is dark, that dog needs to go out, if it is day light or raining that dog may be taken out for exercise.
48 The package that Mr. Lonsway is proposing is for a maximum of 20 dogs. He has described that in the world of dog
49 boarding, the maximum is usually not achieved on an every day basis, certainly not regularly achieved. The 20 is for times
50 of the year when more people are away and keeping the dogs there. It is not something that you would have as a matter of
51 course, 20 dogs every day. The other thing is that the supposition of dogs only being trained inside, I don't think I ever said
52 that. Dogs are predominately trained inside. When a dog is taken outdoors by a trainer for exercise, there is training that is
53 going on. It is purposeful exercise; it is not just let the dog run. This is a very purposeful program that Mr. Lonsway has.
54 Even in the outdoor activity that might pass to the casual observer as exercise, the dog is being trained in some ways.

1
2 Rob Maitland: It looks like this building is designed perfectly to put some more kennels later when Mr. Lonsway decides to
3 expand the business. I can't know that or you can't know that but if you never spoke to Mr. Lonsway about expansion then I
4 will ask Mr. Lonsway stipulate that the maximum number of dogs that he will have here is 20 dogs because that seems to be
5 what this is designed for.

6
7 Tony Whitaker: Absolutely. The thought that you just explained never occurred to me.

8
9 Rob Maitland: You said very emphatically that you thought this was in harmony with the neighborhood. In your process of
10 designing this, how many of the neighbors did you interview and talk to about their expectations about what their
11 neighborhood should be like?

12
13 Tony Whitaker: None.

14
15 Rob Maitland: You never spoke with the Southerland's about what there preference would be on this landscaping design?

16
17 Tony Whitaker: No.

18
19 Rob Maitland: You never ask them about any of the building placements? You never ask these people over here that are
20 going to be listening to the dogs? Nobody ever contacted them?

21
22 Tony Whitaker: Whoever will be listening to the dogs? Who are those people?

23
24 Rob Maitland: When the dogs are outside or noise seeps out of those small soffets?

25
26 Tony Whitaker: I have never talked with any of the neighbors regarding project.

27
28 Rob Maitland: You decided the scale of it fit in the neighborhood. You never had a neighborhood meeting and ask what
29 they thought.

30
31 Tony Whitaker: You ask me about my interaction with the neighbors. I can't speak for Mr. Lonsway. I know he has had
32 interactions with the neighbors. In my opinion, this is a small scale facility, I don't need to talk to the neighbors to have that
33 opinion.

34
35 Rob Maitland: Your statement that you think it will be in harmony is based without any discussion with any member of the
36 neighborhood.

37
38 Tony Whitaker: Yes. That is right.

39
40 Rob Maitland: Signage, did you discuss with Mr. Lonsway about having signage for this facility?

41
42 Tony Whitaker: Yes. We did.

43
44 Rob Maitland: Where will the signage be? He didn't mention that.

45
46 Tony Whitaker: There will be two signs. On Exhibit 2, there is a location just to the right of the entrance drive, just behind
47 the right of way the sight line trial that we like to preserve for sight lines for a small sign that meets county criteria for
48 identification of the project.

49
50 Rob Maitland: To make people aware of the facility?

51
52 Tony Whitaker: Right. To have the name of the facility on a small low sign.

53
54 Rob Maitland: Two signs?

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Tony Whitaker: One sign there. The other sign that is required that is located further back into the property near the property area which is a sign required by county regulations to advise the public regarding the owner of the project and a phone number to contact the owner. That is a public welfare sort of sign that is mandated.

Rob Maitland: This is going to be commercial operation?

Tony Whitaker: I don't know if it will be considered commercial by any classification of that word. That is a very generic term.

Rob Maitland: It is a business for profit?

Tony Whitaker: Absolutely.

Rob Maitland: To attract people to come to it.

Tony Whitaker: Mr. Lonsway has never said people will come to me because they can see me from the road. It is not a drive by impulse purchase.

Rob Maitland: My old boss told me all the time I know 50% of my advertising is working I just don't know which 50 it is. You don't know if it is the sign or newspaper ads, or television or the radio but somehow people will get it. What is the minimum requirement of acreage for someone to build a house in this neighborhood?

Tony Whitaker: Two acres.

Rob Maitland: And this one is 4.86 acres, right?

Tony Whitaker: Just under five acres.

Rob Maitland: What is the total square footage of the existing home? I mean the footprint. It looks to me like this house is smaller for sure or about the same as Phase I or smaller than Phase I and for sure all three of the buildings will be existing structure.

Tony Whitaker: Maybe around 1,400 square feet, footprint, the total is about 2,300 square feet.

Rob Maitland: How many square feet is all this?

Tony Whitaker: All this meaning?

Rob Maitland: Phase I, II and III.

Tony Whitaker: That information is found on the drawings, 4,800 square feet.

Rob Maitland: Basically we are going from a property with 1,400 square foot footprint on the house to we are adding 4,800 square feet right next to a stream buffer. This was Toll Brothers, what requirements did we have for them? The last question is about the open area for the dogs; by the way, what are the two little boxes in the shaded area, inside the stream buffer?

Tony Whitaker: One is a septic tank and one is a pump tank.

Rob Maitland: We already have an existing septic tank in the stream buffer. We will remove that and replace it with an open area for 20 dogs to exercise. How is it that Mr. Lonsway is going to minimize his impact on this environmentally protected area?

1 Tony Whitaker: I would go back to the previous comments made regarding floor area. There is an existing structure that will
2 be moved so the property has more than the existing house foot print.
3
4 Rob Maitland: A barn?
5
6 Tony Whitaker: A barn that is a substantial structure that will be taken away. There is a foundation for an existing, what
7 used to be a silo, that silo is gone and we will take that foundation out. There are more things happening on the property
8 right now other than the house that will be taken away. Your question about the house is a very good one.
9
10 Rob Maitland: I don't think we have talked about that but in the application there is talk about how he is going to mitigate....
11
12 Tony Whitaker: He is not going to mitigate because he is not going to have any impact on the stream buffer to mitigate.
13 Regarding the stream buffer, we are striking a line to say this stream buffer is off limits. We are not going to get into it with
14 clearing activities or grading activities or impervious surfaces or buildings. In fact, we are going to keep our fenced area for
15 that outdoor fenced area not right up on the edge of it but several feet away from it.
16
17 Rob Maitland: What about the dog's do-do and other things in the stream buffer.
18
19 Tony Whitaker: Yes.
20
21 Rob Maitland: What about that. Let's say the dogs go out there to do their business and it starts to rain, how will that not get
22 into the stream buffer?
23
24 Tony Whitaker: Mr. Lonsway has committed in the application to scooping all the solid waste. That is a part of the
25 application. You know, I suppose there is wildlife that will traverse that stream buffer and answer the call of nature and I
26 don't think that is necessarily a bad thing. In terms of harmony in the neighborhood, if one of the allowable uses of the
27 stream buffer is to let your dog walk it so if Mr. Lonsway was a private residence and he didn't not have a commercial activity
28 in the county, his personal dogs could defecate in the stream buffer without any concern or any consequence so this
29 application holds him to a higher standard.
30
31 Rob Maitland: One other thing you said was this facility was 180 feet from the Southerland's home.
32
33 Tony Whitaker: Approximately.
34
35 Rob Maitland: How close is this big building?
36
37 Tony Whitaker: I don't have that number but I can approximate that. It is about 115 feet.
38
39 Rob Maitland: I guessed 115 feet.
40
41 Tony Whitaker: A little bit more.
42
43 Rob Maitland: That is considerably closer than 180 feet.
44
45 Tony Whitaker: To the storage building.
46
47 Rob Maitland: I have a couple of questions on the noise issue. I need my counterpart. For expediency, Mr. Blake will testify
48 on behalf of the Southerland's. Or I can ask the question.
49
50 Jeffrey Schmitt: Do you have any redirect?
51
52 Nick Herman: Depends on what he has, I don't have any right now.
53
54 Jeffrey Schmitt: Based on the questions, you have nothing now.

1
2 Nick Herman: No.
3
4 Rob Maitland: I have one other question about the Noise Impact Study Report. Nick, do you have any objections to him
5 asking questions about the sound.
6
7 Nick Herman: No, it is up to the chair.
8
9 Jeffrey Schmitt: No. Why don't you go ahead and ask the other questions about the sounds.
10
11 Rob Maitland: The applicant has the burden of proof that this facility will maintain or enhance the value of the property
12 surrounding it. Did you engage Vic Night to do that Impact Study or who hired him?
13
14 Tony Whitaker: Mr. Lonsway hired Vic Knight.
15
16 Rob Maitland: Have you done projects with Mr. Knight before?
17
18 Tony Whitaker: Yes.
19
20 Rob Maitland: How many times?
21
22 Tony Whitaker: It depends on what you mean by "done projects". We have collaborated on projects before probably less
23 than one half dozen times. He has also been a client of mine as a member of the development group he was a part of. That
24 development group hired me for a project some years ago.
25
26 Rob Maitland: It is not unusual for you to work Mr. Knight on this type of project?
27
28 Tony Whitaker: I have a comfort level with his knowledge and it is not unusual at all for us to work together.
29
30 Rob Maitland: That is all the questions I have on the sound.
31
32 Jeffrey Schmitt: What I would prefer would be for you to get the questions that this gentleman has?
33
34 Michael Harvey: Staff has a comment to remind the board and the audience of something. You are here at a public hearing
35 to review an application submitted on the December 3, 2009. All references to a previous public hearing or a previously
36 submitted application are not germane to this public hearing. What that also means is that any testimony, public comment or
37 concerns raised at previous public hearings have no bearing on this case unless they are brought forward here tonight.
38
39 Jeffrey Schmitt: Thank you.
40
41 John Roberts: It is for the board to determine if what they have heard is material.
42
43 Rob Maitland: Regarding the building design for sound, are those plans set in stone or they can be changed?
44
45 Tony Whitaker: They can be changed to some degree.
46
47 Rob Maitland: What would motivate you make the change, why type of feedback?
48
49 Tony Whitaker: I can think of two things that would cause us to make a change. One might be any condition that might
50 imposed as part of the Special Permit approval might be something that we do change the building or add something or take
51 something away from the building. Any change the building code officials might require as we prepare construction drawings
52 and submit those to building permit, any change the Animal Control Services or department might require any changes the
53 health department might require, regulatory requirements in general.
54

1 Rob Maitland: It looks like you tried to anticipate the sound issues as much as you can. What about people leaving the
2 doors or doing things that leave things unsound proof. Is there any way to mandate that? Or have you considered that? Do
3 the doors automatically shut?
4

5 Tony Whitaker: These are preliminary drawings; they are not construction ready drawings so some of that detailing has not
6 yet been applied. We have taken the application much further than the standard application requirement of merely showing
7 elevations. We thought that was appropriate and we have done that. Whether the doors could automatically close or not, it
8 would only be certain doors, not every door but the ones that might lead from the kennel to the outdoors, that is something
9 that could be evaluated.

10
11 Rob Maitland: Since these are not final drawings, there is no guarantee the building will look like it does today?

12
13 Tony Whitaker: I think there is a form of guarantee, I think we are submitting things into the record that is part of the
14 application and I think the burden is to build it that way. I also think the regulatory environment is designed to ensure that.

15
16 Rob Maitland: What is the current impervious surface grading of the property, has anyone determined that?

17
18 Tony Whitaker: We have not determined that. My sense of it is that it is less than 15% impervious but we have not
19 determined it because we don't need to. It is not a parameter that has a minimum threshold or maximum amount so we
20 have not calculated that. We calculated other parameters that have to do with how much open space, how much pedestrian
21 landscape area, ethos things but we have not calculated impervious surface.

22
23 Rob Maitland: When you are dealing with a project in the rural buffer zone, how is it different? What is your interpretation of
24 the rural buffer zone? How does it impact your design?

25
26 Tony Whitaker: It is very similar to how I look at any project because any project will be proposed in an area, at least in this
27 state, an area that has zoning. Zoning restrictions, a zoning designation which implies that the group that decided that
28 zoning had a certain idea in mind about what would be appropriate and permissible and permissible with special approvals in
29 that zoning district so it is not unlike any other zoning district.

30
31 Rob Maitland: Were you able to look at any other dog kennel operations in a rural buffer zone?

32
33 Tony Whitaker: Was I able to look?

34
35 Rob Maitland: Did you compare?

36
37 Tony Whitaker: I did not.

38
39 Rob Maitland: The Fiscal Impact Study completed by Mr. Knight talks about a dog kennel in a commercial park. It talked
40 about Wal-Mart and Home Depot but it doesn't talk about a dog kennel in a rural buffer zone so I wondered if you were
41 aware of a dog kennel operation in a rural buffer zone?

42
43 Tony Whitaker: Yes.

44
45 Rob Maitland: Where?

46
47 Tony Whitaker: I understand there is one. I have not visited it. I understand there is one in an area south of this proposed
48 site on Highway 86.

49
50 Rob Maitland: Existing?

51
52 Tony Whitaker: That is my understanding that there is a small kennel in that area.

53
54 Rob Maitland: Did you ask Mr. Knight why he didn't use that as one of his comparisons?

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Tony Whitaker: We had a conversation about that.

Rob Maitland: Do you recall what he said.

Tony Whitaker: Yes I do but I think he should explain it.

Rob Maitland: Alright we will ask him. I have no further questions.

Jeffrey Schmitt: Questions by the board.

Tom Brown: Mr. Whitaker, the exterior of the buildings, how would you describe those? You said they would blend into the environment, how would you describe that exterior so that it would do that?

Tony Whitaker: I am looking at drawing A2 and I described the finishing there and some of them are shown. I talked about where the kennel is there is a masonry wall up to a height of six feet. Above that is a conventional wood construction with a twist. The twist being that instead of normal four inch stud wall, it is a six stud wall with two by fours with staggered with insulation wrapped through which is a superior insulating approach so the outside of that is covered with a siding. Not vinyl but a cement fiber siding commonly known as hardy plank and other kinds.

Tom Brown: At some level to get to the wood block and brick below.

Tony Whitaker: The roof is a residential look kind of roof. Asphalt shingles, gable roof, not a metal roof. We considered metal roof but decided it wasn't appropriate for the neighborhood. Also, I would say the windows and the doors are, even though they are commercial construction, they are selected to be like the kind of construction that one might have as a side exit door on the garage or something like that to try to be as residentially appropriate as possible.

Tom Brown: Question on the sewage. The kennel allows 20 or more animals.

Tony Whitaker: Yes.

Tom Brown: But you said the sewage system will limit the number of animals. Is that in writing or has that been presented by the county in that there is a limitation and did they give you a hard number?

Tony Whitaker: I do believe that hard number is embedded in the permit we have. I have to search the fine print on that permit. It should be in the packet but the calculation was done to show a certain number of dogs times a certain number of gallons per day per dog plus a little bit of extra for the occasional bath of a dog all adds up to 240 gallons per day which is the size of the system. That is embedded in the Orange County Health Department permit if it is explicitly stated there, I am not sure.

Jeffrey Schmitt: How high is the fence that will be constructed in between the property here and the Southerland's?

Tony Whitaker: We are showing that as a six foot high fence. Just to give you a better answer, the effective height of that fence is greater because if you look at the ground elevations, the ground is about five feet higher than the floor elevation for the kennel so relative to the kennel, the ground is about five foot higher and the fence is six feet above that so effectively 11 feet higher than the floor elevation of the kennel.

Jeffrey Schmitt: You are going to have evergreen plantings on both sides of this fence, you are not going back to the regulations. Those are spaced how far apart and what kind of trees are they?

Tony Whitaker: They are spaced at various intervals apart. Examples are Southern Magnolia, Red Cedar trees that we are all familiar with, Wax Myrtles, Nellie Stevens Holly and Carolina Cherry so these are common, some native, some not so native but common evergreen plants that have a lot of bulk and height to them. They are spaced at various spacings. Some are as much as 12 feet and as close as about 8 feet.

1
2 Jeffrey Schmitt: There was a question raised about the proximity of the storage shed to the property line. I presume that if
3 an individual was to come in and buy this piece of property, one could construct a house in that location and you would be
4 within the zoning requirements of distance from the property lines?
5

6 Tony Whitaker: That is my understanding.
7

8 Jeffrey Schmitt: Mr. Harvey?
9

10 Michael Harvey: I think you need to finish with this witness and let him finish his testimony. Reserve that question for staff
11 latter.
12

13 Tony Whitaker: That was a side setback established by zoning for that property line for any structure and doesn't distinguish
14 between residential or commercial structures to my knowledge. They are the same setback.
15

16 Jeffrey Schmitt: Other questions?
17

18 Mark Micol: How long would it take the landscape modifications to have the full streaming effect?
19

20 Tony Whitaker: Great question. The full effect will occur many, many years down the road. These plants, especially these
21 Wax Myrtles and Magnolias can grow for years and continue to get larger so decades would be the answer of full maturity.
22

23 Rob Maitland: Are you going to have additional testimony on noise abatement?
24

25 Nick Herman: Yes.
26

27 Rob Maitland: I will reserve my questions until then.
28

29 Jeffrey Schmitt: No other questions from the board.
30

30 Robert Maitland: Mr. Chairman I have an additional questions, Mr. Whitaker the track is 4.683 acres, correct?
31

32 Tony Whitaker: I am not sure that is exactly right but it is slightly less than five acres.
33

34 Robert Maitland: It is my understanding that only 2.683 of this area is buildable because of the stream buffer. You count the
35 whole five acres or 4.6 acres you are taking in all this land here that you couldn't build on because of the stream buffer?
36

37 Tony Whitaker: Absolutely.
38

39 Robert Maitland: to make my point, it is a minimum of two acres required for a home in this neighborhood, you only have 2.6
40 build able. We are talking about taking this 1,400 square foot house and adding 4,800 on a 2.68 parcel where you are
41 supposed to have two acres per house. That is the key here. You are counting half of this property that is unbuildable on all
42 the numbers. That is a key point.
43

44 Tony Whitaker: My understanding of that is the two acre minimum lot size in the rural buffer, I could be incorrect about this,
45 but my understanding is that it does not discriminate as to the quality of the land or the buildability of that land. The only
46 requirement is two acres of land, not two acres of non-stream buffer land.
47

48 Robert Maitland: So you are saying that if they split this property right down here that someone could build a house in this
49 stream buffer?
50

51 Tony Whitaker: No. Other regulations would prevent that but from a zoning perspective they would have enough land area
52 to do it.
53

54 Robert Maitland: I am talking about reality.

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Tony Whitaker: The reality is there is enough land area with this lot to have two residences.

Jeffrey Schmitt: Other questions by the board? Thank you Mr. Whitaker. Your next witness, Mr. Herman, will be?

Nick Herman: Mr. Noral Stewart.

Jeffrey Schmitt: How long do we anticipate with this gentleman?

Nick Herman: Fifteen minutes for me. While I am putting this away Mr. Stewart, provide your full name for the record.

Noral D. Stewart: Noral Darner Stewart.

Nick Herman: Where do you live?

Noral D. Stewart: 5107 Kate Denson Way, Raleigh, N.C.

Jeffrey Schmitt: Mr. Stewart, have you been sworn in?

Noral D. Stewart: Yes.

Nick Herman: Are you employed?

Noral D. Stewart: Yes. With my firm, Stewart Acoustical Consultants.

Nick Herman: How long have you been employed in that capacity?

Noral D. Stewart: A little over 31 years.

Nick Herman: You said Stewart Acoustical Consultants, are you a principal in that firm?

Noral D. Stewart: Yes, I am the principle of the firm.

Nick Herman: How long?

Noral D. Stewart: For 31 years.

Nick Herman: Would you briefly tell the board what Stewart Acoustical Consultants does.

Noral D. Stewart: We are consultants in acoustics and noise control. I have two guys working for me full time plus other consultants we use occasionally. The majority of our work is for architects or building owners on architectural acoustics problems that are problems within buildings that design a meeting room, design churches, schools. We also work on those projects and other projects with environmental community noise aspects. Any new building will have some degree of outdoor sound or it might be subject to problems from existing outdoor sound or new outdoor sources that come into the community so we work with people on those. A small part of our work also has to do with working with factories to reduce noise to protect people's hearing.

Nick Herman: Are you or your firm affiliated with and national acoustical organizations?

Noral D. Stewart: Yes. I have been a member of the Acoustical Society of America since 1969. Also a member of the Institute of Noise Control Engineering and was chair of their National Noise Conference in 1981 or co-chair of it. I am a member of the National Council of Acoustical consultants. I have been a past president of that organization, our national trade organization or international trade organization of acoustical consulting firms. Also, I am a member of ASTM

1 International, a standards writing organization. Just was informed last week, was very honored to be given an award from
2 ASTM that has been only given to eight acousticians previously so it was a real shock and surprise.

3
4 Nick Herman: Were you employed by Mr. Lonsway in connection with the Special Use Permit?

5
6 Noral D. Stewart: Yes. I was.

7
8 Nick Herman: Tell the board what you were employed to do.

9
10 Noral D. Stewart: I was ask to look at the design of the kennel facility, the facility for boarding the dogs to help ensure it
11 would contain the sound of the dogs to a reasonable level to the point that it would not be an interference to the community.

12
13 Nick Herman: You have heard Mr. Whitaker's testimony and these exhibits we have been showing the board. Have you
14 seen all those exhibits?

15
16 Noral D. Stewart: I believe so.

17
18 Nick Herman: Were you asking to, in connection with your review of all those plans, to make any recommendations?

19
20 Noral D. Stewart: Yes. I will go back and correct one thing, I have seen the building plans, site plans, and I think there was
21 a document I may not have seen.

22
23 Nick Herman: That was the applicant's justification statement.

24
25 Noral D. Stewart: I have not reviewed that statement. I reviewed the plans and upon reviewing the plans, my initial
26 comments were that the basic building design was good. The walls were a good design, both the concrete block and the
27 staggered stud upper walls with hardy plank side on the outside. The basic roof ceiling design was good. It was a good
28 indication that they had a sound absorptive ceiling, a type of ceiling that would both absorb the sound of the dogs that would
29 keep the sound in the kennel from being as loud and would help block the sound getting into the attic and out through the
30 roof. Those were good positive aspects of the design. I identified four weaknesses. The primary first one being the
31 windows needed improvement. Secondly, the ventilation system for the space and the door on the opposite from the
32 Southerland's was a weak design. Finally, the attic ventilation was an area that could be a finishing touch to help a few more
33 db off after taking care of those first three things.

34
35 Nick Herman: Let me summarize that. You talk about a need to improve windows?

36
37 Noral D. Stewart: Yes. The windows were in the basic plan were a common thermal window, typical small air space
38 window. That is much weaker than the walls and with enough windows that would have been the weak link in the building.

39
40 Nick Herman: Did you make a recommendation?

41
42 Noral D. Stewart: Yes. We recommended they use a window that had about a three inch air space between the panes of
43 glass.

44
45 Nick Herman: You understand that recommendation to be accepted by Mr. Lonsway?

46
47 Noral D. Stewart: That is my understanding.

48
49 Nick Herman: What about this improved ventilation?

50
51 Noral D. Stewart: This was not shown on the drawings, on the end of the south end of the building of the space that has the
52 dogs, there is an exhaust vent where air is pulled out of the building and exhausted out. This is sort of a gable vent in the
53 upper part of the gable end of the building and without some treatment of that duct leading to the outside, the barking sound,

1 if you have ever experienced a speaking tube speaking through a cylindrical tube, it can carry sound so we had to treat that
2 to reduce the sound coming out there.

3
4 Nick Herman: Is this in the attic or the ventilation system?

5
6 Noral D. Stewart: The ventilation system duct work, I believe extends up above the ceiling. In other words, there are
7 openings in the ceiling to pull the air up into that duct work which is above the ceiling and exhaust out the end of the building.

8
9 Nick Herman: Did you make any recommendations in connection with improving any doors?

10
11 Noral D. Stewart: Yes. There is only one door that opens into the boarding area and it is on the opposite side of the building
12 from the Southerland's leading to that outdoor exercise area. It was a typical, not very strong door, and I notice the
13 manufacturer they were using had an alternative door that was much better acoustically and I suggested they substitute that
14 alternative door.

15
16 Nick Herman: Did you understand that recommendation to be accepted?

17
18 Noral D. Stewart: That is my understanding.

19
20 Nick Herman: We have the improved windows and doors. We talked about the improved ventilation of the attic space?

21
22 Noral D. Stewart: This was the ventilation of the kennel space which pulls air into the attic and through the ducts and then
23 out. The final step was after doing all this we found the weak link was the attic ventilation. An attic space will typically have
24 some ventilation vents at the ridges and at the soffets to pull air out through the attic and ventilate the attic and there was
25 code requirement for a minimum amount of that. The original design had about twice the ventilation are that is required by
26 code and I recommended it reduced down to just over the minimum required by code which gave us the final two or three
27 decibels reducing the sound.

28
29 Nick Herman: You had a total of four recommendations?

30
31 Noral D. Stewart: Yes.

32
33 Nick Herman: And your understanding is that all those recommendations have been accepted by Mr. Lonsway?

34
35 Noral D. Stewart: Yes that is my understanding.

36
37 Nick Herman: Do you have an opinion as to whether or not these acoustical improvements along with what is already in the
38 plans, what that would mean for this facility in terms of sound control?

39
40 Noral D. Stewart: My estimate is that if you had most of the dogs in the kennel barking at one time which will occasionally
41 occur or all of them, the level outside at the boundary at the Southerland side will not exceed 40 decibels or dba. That is
42 even without taking into consideration any benefit of the trees or the six foot fence that was considered. It is not even taking
43 into consideration the benefit of the absorptive ceiling in the kennel that was assuming that if you had the typical loud level
44 you would find in the kennel with a hard ceiling and estimating level out through the boundary. We get down to less than 40
45 at the boundary and if you go to the house, you will go into the mid 30s. If you take into consideration some of these other
46 factors, you will be even less.

47
48 Nick Herman: How do I get a handle of what 40 decibels is?

49
50 Noral D. Stewart: I did some reference and calculations for something people are typically familiar is a car on a highway.
51 Your typical, normal automobile going 45-55 miles per hour, if you are 100 feet from that car as it passes by, you will hear
52 about 60 decibels. If you are 200 feet, you will hear about 50. If you are 400 feet you hear about 40. The dogs, at the worst
53 case, would be less than the level of a car 400 feet away.

1 Nick Herman: If I am talking to you now, what are my decibels?
2
3 Noral D. Stewart: The average level in this room as we are talking among us is around 60 decibels.
4
5 Nick Herman: In terms of the sound of my voice and what you are talking about, that without any screening or buffering,
6 either with all the dogs barking, assuming 20 dogs barking all at once, that on the boundary of the property, you would have
7 sound that is less than what we are hearing in this room?
8
9 Noral D. Stewart: Much less. This is around 60 and we are talking less than 40. That is less than 1% of the actual sound
10 energy. The ear doesn't hear it exactly that way, it wouldn't be like 1% of the sound but it would be much less than the 60.
11
12 Nick Herman: Do you have any concern about this facility creating any acoustical problems for the neighbors?
13
14 Noral D. Stewart: I am confident that the building will contain the sound of the dogs and that the dogs within the building will
15 not be any problem for the neighbors.
16
17 Rob Maitland: Trying to get smart over here quick. What is the normal dog bark, how many decibels?
18
19 Noral D. Stewart: A single large dog, 50 feet away would measure, outdoors, around 72.
20
21 Rob Maitland: If you have two dogs barking would that double?
22
23 Noral D. Stewart: If they were to bark at exactly the same and they would have the same dog with the same bark, it would
24 go up three decibels.
25
26 Rob Maitland: So each dog would be an increment of three decibels?
27
28 Noral D. Stewart: Each doubling with the amount of dogs would increase three decibels if you assume they are all barking at
29 the same time.
30
31 Rob Maitland: So if you had 20 dogs outside barking, how many decibels is that?
32
33 Noral D. Stewart: If you assume the bark in sync at the same time, going from one to twenty, about 13 dbs higher but they
34 won't bark at exactly the same time exactly together so you're not going to measure that much higher.
35
36 Rob Maitland: You are saying 20 dogs outside barking will be about 85 decibels.
37
38 Noral D. Stewart: If you had 20 dogs continuously barking all the time outdoors, up around 80 or so at 50 feet.
39
40 Rob Maitland: It doesn't seem very loud if you are telling me this is 60 decibels.
41
42 Noral D. Stewart: Well, 80 versus 60 are significantly louder, much significantly louder. If you had continuous sound of 80
43 db at your property line, I often tell people that is shotgun level; you don't want to allow that. Many noise ordinances will
44 allow up to 60 decibels at the property line in residential area in the daytime.
45
46 Rob Maitland: So, 80 is shotgun level.
47
48 Noral D. Stewart: That would be very unreasonable to have a continuous sound level of 80 dbs.
49
50 Rob Maitland: Two dogs would be about?
51
52 Noral D. Stewart: At 50 feet, one large dog, reported level is around 70 so if you had two dogs barking at exactly the same
53 time, dogs aren't known to synchronize so it is not likely you will get them exactly the same. If you could, you would go up 3
54 dbs.

1
2 Rob Maitland: I am amazed; it is like the earthquake scale?
3
4 Noral D. Stewart: The earthquake scale and the Richter scale are very similar to the scales used for sound. It is a 'l' scale,
5 that is a count of a bell Richter scale is based on the sound of pure bells so you hear 7.4 that is like 7.4 decibels that is a
6 different thing, they are measuring the motion of the earth rather than sound.
7
8 Rob Maitland: Just so we have got a baseline, 80 is shotgun level, 72-75 is one to two dogs barking 50 feet and you
9 estimate that it will be 40 decibels worst case scenario coming out of this sound facility?
10
11 Noral D. Stewart: Yes. At the boundary.
12
13 Rob Maitland: If the neighbors dogs were outside, don't dogs hear better than humans, will they be able to hear it?
14
15 Noral D. Stewart: They hear higher frequencies that we do. The smaller animals can hear higher frequencies than bigger
16 animals.
17
18 Rob Maitland: If they hear 20 dogs inside these sound enclosed things, couldn't that get them to start barking too?
19
20 Noral D. Stewart: They might hear them. They won't be barking at one time. When you get down to 40, your normal sounds
21 in the community will be louder than that typically. Cars going by, etc.
22
23 Rob Maitland: How loud are normal highways?
24
25 Noral D. Stewart: We just said an individual car at 200 feet is around 50 dbs and 400 feet you get down to 40 dbs.
26
27 Rob Maitland: It would be about the same as a highway.
28
29 Noral D. Stewart: Fifty to sixty is probably what you are going to see in most of these residential areas if one car goes by at
30 45-55 miles per hour.
31
32 Rob Maitland: When you were doing your study, you were trying to determine what would be acceptable for the
33 neighborhood?
34
35 Noral D. Stewart: Yes. I have an opinion on the acceptability?
36
37 Rob Maitland: Did you talk to any of the neighbors?
38
39 Noral D. Stewart: No. I did not.
40
41 Rob Maitland: So you haven't talk to anybody?
42
43 Noral D. Stewart: No. I have not.
44
45 Rob Maitland: Your plan looks impressive. What steps are there that the builders comply with the plan? Do you come out
46 and test it afterwards.
47
48 Noral D. Stewart: If someone were to ask me to do that I could.
49
50 Rob Maitland: That is not a requirement?
51
52 Noral D. Stewart: That is not something that is part of my contract right now. If someone would like to impose a requirement
53 I would do it but right now it has not been imposed so it is not a part of the plan.
54

1 Rob Maitland: After that we would know whether the plan is working or not?
2
3 Noral D. Stewart: I have confidence it in.
4
5 Rob Maitland: If they build it in accordance with your recommendations?
6
7 Noral D. Stewart: With the recommendations.
8
9 Rob Maitland: Who makes sure they build it?
10
11 Noral D. Stewart: I am not sure
12
13 Rob Maitland: Did you consider adding a sealed attic to this facility?
14
15 Noral D. Stewart: No. We really did not consider that.
16
17 Rob Maitland: How come?
18
19 Noral D. Stewart: We had gotten it down to where it was quiet enough and I am not aware if even a sealed attic is even
20 permitted by code.
21
22 Rob Maitland: A sealed attic would minimize the sound even more?
23
24 Noral D. Stewart: Slightly more.
25
26 Rob Maitland: No further questions.
27
28 Jeffrey Schmitt: Questions by the board.
29
30 Tom Brown: How did you arrive at your acoustical analysis, was it all numeric calculations, did you do any measurements or
31 did you do previous measurements?
32
33 Noral D. Stewart: We have had previous experience with kennels. This is not an unusual or unique problem. Kennels in
34 neighborhoods are a problem we have come across in the past so we have experience as to what sound levels are inside
35 kennels and have measured dogs inside kennels before and have some idea of what we are dealing with. We are aware of
36 the acoustical properties of the materials being used for the ceiling, roof, walls, windows, we have information those are
37 common materials and methodologies that we know how to predict, sound blocking ability of these so it is a fairly straight
38 forward matter to do this kind of analysis we do for various sources and various kinds of building noise sources and buildings
39 all the time.
40
41 James Carter: You mentioned earlier about sound absorbed ceiling and thermal windows, will that have impact on the dog's
42 sounds with those two things being involved.
43
44 Noral D. Stewart: The sound absorptive ceiling will help reduce the sound level within the kennel since it is similar to the
45 ceiling we have here. When the sound hits it, it doesn't just all reflect but a significant portion of it is absorbed and not
46 reflected. It helps reduce the sound level in the kennel so you have less sound that comes out. The windows, yes. We
47 looked at the window design to assure that we significantly reduce the sound level. We also know, for instance, that a dog's
48 bark is concentrated in a certain frequency or pitch range so we try to optimize the windows and construction to make sure
49 we block sound in that frequency range where the dog bark is concentrated.
50
51 David Blankford: You said you had done work with kennels, has it been retrofit work or new construction?
52
53 Noral D. Stewart: Both. We do get called in where there are existing problems sometimes.
54

1 Tom Brown: Can you say whether the applicant intends to comply with all the noise abatement recommendations of Mr.
2 Stewart?
3
4 Nick Herman: He does and that is what he testified to. The intent was to make four recommendations all of which were
5 incorporated in the plan.
6
7 Tom Brown: That will go on to the final plans?
8
9 Nick Herman: Correct.
10
11 Jeffrey Schmitt: The board will recess for 15 minutes.
12
13 (The Board recessed for fifteen (15) minutes at this point)
14
15 Jeffrey Schmitt: We will now reconvene. Mr. Herman please present your next witness.
16
17 Nick Herman: Mr. Knight, state your name for the recorder
18
19 Vic Knight: Everett Victor Knight.
20
21 Nick Herman: Where do you live?
22
23 Vic Knight: I have recently relocated to Raleigh, North Carolina.
24
25 Jeffrey Schmitt: Have you been sworn in Mr. Knight?
26
27 Vic Knight: Yes sir.
28
29 Nick Herman: Prior to that, where did you live?
30
31 Vic Knight: In Hillsborough.
32
33 Nick Herman: For how many years?
34
35 Vic Knight: 28.
36
37 Nick Herman: What is your profession?
38
39 Vic Knight: I am a real estate appraiser.
40
41 Nick Herman: How long have you been a real estate appraiser?
42
43 Vic Knight: About 30 years.
44
45 Nick Herman: Do you have your own firm?
46
47 Vic Knight: Yes sir.
48
49 Nick Herman: What kind of appraisals do you do?
50
51 Vic Knight: We do both residential, commercial, non-residential appraisals.
52
53 Nick Herman: How long have you been doing that?
54

1 Vic Knight: Roughly 30 years.
2
3 Nick Herman: Did you do an appraisal analysis for the proposed kennel in this case?
4
5 Vic Knight: The Impact Analysis of the proposed canine college, yes sir.
6
7 Nick Herman: Was the impact analysis completed pursuant to the Uniform Standards of Professional Appraisal Practices
8 more commonly referred to as USPAP?
9
10 Vic Knight: USPAP would not apply to this particular component except under the condition of consulting and without going
11 into a litany of that, there is no appraisal opinions of value developed in the report.
12
13 Nick Herman: Were you ask to evaluate whether this proposed kennel would maintain or enhance the value of contiguous
14 property?
15
16 Vic Knight: Yes.
17
18 Nick Herman: Was that the focus of your Impact Study?
19
20 Vic Knight: Yes sir.
21
22 Nick Herman: Did you reach a conclusion on that question?
23 Vic Knight: Yes sir.
24
25 Nick Herman: What was your bottom line?
26
27 Vic Knight: I can find no evidence, historically speaking, from any of the real estate information that there is a negative
28 impact by this proposed design of this particular structure.
29
30 Nick Herman: You have heard the testimony from Mr. Whitaker and Mr. Stewart. Were you familiar when you did your
31 Impact Study with the plans for this facility as set out by those witnesses?
32
33 Vic Knight: Yes sir. Mr. Whitaker provided those drawings to me over a course of time and other documents as well.
34
35 Nick Herman: Did you have the benefit of the input of Mr. Stewart in connection with his opinion?
36
37 Vic Knight: Yes.
38
39 Nick Herman: You took that into account as well?
40
41 Vic Knight: I did.
42
43 Nick Herman: Would you summarize for the board, now that you have given your bottom line opinion, the analysis that you
44 have conducted to serve as the basis for your opinion.
45
46 Vic Knight: The report is developed essentially into two parts. The first part is essentially a description of the existing
47 conditions are you see them today, today being the day that I first visited the property. In addition to that, there is additional
48 description of the proposed facility as I saw them off the drawings and the other reports that were made available to me.
49 Once those things were understood, you have a clear picture of what the proposed facility would look like then you go about
50 a process of trying to derive what impact similar properties might have on or surrounding properties that might exist where
51 those facilities are located.
52
53 What I did was, initially start off with a location called Wildwood located at NC 86, just south of interstate 85. There was a
54 reference earlier that is where the Wal-mart and Hope Depot location happens to be. The reason for choosing that is three

1 fold. One is it is not overly large, but a well-defined community but in addition to that there is a nearby commercial
2 component that was constructed after the residential component was there. In addition to that aspect, the third component is
3 that it also is extremely close in proximity to Interstate 85 so you will get some affect of being in close proximity to a
4 residential component from Interstate 85. The reason being that the subject property being located about halfway between
5 here and Chapel Hill is roughly three quarters of a mile or so from I-40 so there is somewhat of a similar component of traffic
6 patterns that would be close by. In going through that analysis by reviewing some of the close sales in the Wildwood
7 Subdivision over the course over eight or ten years what you are attempting to derive is not just a sale of a piece of property
8 but a resale of the piece of property. If you have purchased your home 10 years ago and sold it today, you would hope it
9 would be some appreciation of that property. So you are trying to gauge with a sufficient amount of data, what the actual
10 appreciate rate is in a particular development that has various characteristics that have some externalities to those
11 components of those sales. Those externalities are the existence of a commercial operation but also the interstate. That
12 component is pretty much covered in the next section of the impact analysis. From that standpoint, we then took a look at a
13 variety of other kennel facilities to see first of all, what other kennel facilities existed in and around Orange County. There
14 are certainly multiple kennel facilities that exist; some of them are of much smaller scale. There is essentially only one that is
15 of any equal or greater scale. That is the ones we chose. That is fructuous that in this case, there is also a near proximity to
16 I-85. It is located essentially on the Durham County line or very close to the Durham County line off US 70. US 70 and I-85
17 essentially parallel each other as you get closer to that area. It is actually a larger physical facility. What I mean is the
18 actually acreage that the kennel is located on is actually 14 acres or so. The building structures are within reasonable
19 similarity to what is being proposed. They are probably a little bit larger; they have multiple buildings in different locations. If
20 you look at that particular location, there is a residential development that has been existence for many number of years
21 essentially southwest of this particular location about four tenths of a mile. I looked at sales and resales in the same fashion
22 as we did the other. Once you compare those two, you are trying to determine what impact might be of a nearby kennel
23 facility on a residential neighborhood and it certainly showed from the information that I have determined that it was
24 consistent appreciation in those properties. In addition to that comparing that location with the baseline location which would
25 be Wildwood, there appeared to be relatively similar appreciation levels so there is kind of a two fold purpose to that aspect.
26 The conclusion to that is there does not appear to be from a historical sales standpoint that there is any negative impact on
27 the residential components that are close to the facility located off of US70.

28
29 Nick Herman: Is that basically a summary of the Impact Analysis that has been submitted as part of this application for Mr.
30 Lonsway?

31
32 Vic Knight: One other component that was dovetailed into this would be the additional information that was received through
33 Mr. Whitaker of the various revisions to the drawings as it relates to the recommendations that came from Mr. Stewart, the
34 acoustical gentleman that was here earlier. My conversations with Mr. Whitaker was those recommendations were
35 incorporated into the design and therefore, in addition to what statistical information is out there, it appeared to me with the
36 two professionals that are involved in this, they seem to concur that the impact of this is exceedingly small from any noise
37 that might exist being generated from this facility. In addition to that, I spent some time looking at the noise level as I
38 experienced it when I was at the property from the nearby interstate, more specifically the noise that was generated from the
39 traffic that already exists on New Hope Church Road incorporated some reference documents into he report because I
40 thought that was actually significant, the noise generation from the existing traffic and when you compare the two, in my
41 opinion, any impact that might exist from any noise generation from this facility is minuscule compared to the noise
42 generation that already exists on New Hope Church Road.

43
44 Rob Maitland: Are you a sound expert? Did you take any measurements?

45
46 Vic Knight: That is my conclusion.

47
48 Rob Maitland: You have no credentials....

49
50 Vic Knight: Other than my ears, yes.

51
52 Nick Herman: I am trying to understand what you are saying. Is it fair to say there is a lot of noise generated apparently on
53 New Hope Church Road?

1 Vic Knight: The traffic level ranges from about 2,300 to 2,800 vehicles a day.

2
3 Nick Herman: Okay. You have heard the testimony of Mr. Stewart in terms of assuming 20 dogs are barking at the same
4 time what the noise level would be at the boundary of the property, you heard him testify to that how loud it would sound.

5
6 Vic Knight: Yes.

7
8 Nick Herman: You are saying that what you have experienced out there from the traffic alone that far exceeds what Mr.
9 Stewart is talking about.

10
11 Vic Knight: That would be my anticipation. The noise was certainly audible and I referenced that in the report.

12
13 Nick Herman: You have included and considered, I take it, looking at your Impact Analysis, there was the site plan that we
14 had up here, we had a landscaping plan, and we had the kennel facility floor plan, 3A, 3B and 3C. The elevations, right?

15
16 Vic Knight: Yes sir.

17
18 Nick Herman: And the storage floor plans and the storage elevations. All of those are attached to your impact analysis?

19
20 Vic Knight: Yes sir.

21
22 Nick Herman: Is Exhibit #5 the Impact Analysis that was submitted in connection with the application?

23
24 Vic Knight: Yes sir.

25
26 Nick Herman: I am going to introduce that. Your analysis, as I understand it, took into account, in part, any kind of impact of
27 the Sunny Acres kennel in the Whispering Pines area. Is that right?

28
29 Vic Knight: Yes sir.

30
31 Nick Herman: In part, it took that into account. To your knowledge, does the Sunny Acres kennel, is that designed in the
32 same way that this kennel that Mr. Lonsway is proposed to be designed.

33
34 Vic Knight: As I understand the construction drawings, it doesn't appear to be that similar. It is a fairly significant dated
35 facility that has been in existence, as far as I can determine from records, for over 30 years.

36
37 Nick Herman: Someone, I think it was Mr. Whitaker on cross examination, made reference to some kennel off 86, do you
38 know what he was talking about?

39
40 Vic Knight: There is an existing kennel called Green Valley Farms.

41
42 Nick Herman: Since that was raised, was that a kennel worth considering in terms of your analysis at all?

43
44 Vic Knight: I did spend some time looking at the facility. There are not very many residential properties that are around it in
45 terms of density. Most of the lots that exist are relatively scattered so their proximity to the facility could be fairly distant.
46 Certainly off the road services this particular location, there could be hundreds of feet further away than the closest nearby
47 residence. There is a local development that is in somewhat proximity to this that I had an opportunity to talk to the
48 developer about that to ask him were there any considerations given about this particular dog facility when he decided to
49 develop but other than that, I couldn't find enough sales information to go through similar extensive analysis that I did on the
50 other two occasions.

51
52 Nick Herman: So given the lack of proximity of residences to that, the 86 facility, there is nothing about that would provide
53 you with any useful data to incorporate here?

54

1 Vic Knight: There is simply not enough frequently closed sale dates to develop an analysis.
2
3 Nick Herman: Right because we are trying to talk about the impact, if any on a kennel facility on surrounding residences,
4 right?
5
6 Vic Knight: Right.
7
8 Nick Herman: In this case, we are talking about Mr. Lonsway's facility, not Sunny Acres Pet Resort?
9
10 Vic Knight: Correct.
11
12 Nick Herman: Those are my questions.
13
14 Unknown Speaker: Do you know each other?
15
16 Rob Maitland: Yes we do. You created this Impact Analysis that has been submitted.
17
18 Vic Knight: That is correct.
19
20 Rob Maitland: Basically, it was three prongs we are looking at. Is this facility harmonious, does it maintain public health and
21 the third thing is does it maintain or enhance the value of the surrounding neighborhood and that is basically what you are
22 report is focused on , the impact on the value of the property?
23
24 Vic Knight: At least the potential impact, yes.
25
26 Rob Maitland: To put it in laymen's terms, you are trying to find as close as you can, similar data to bring to this situation, so
27 that we can get some kind of gauge of the impact a kennel like this might have on the surrounding neighbors?
28
29 Vic Knight: Correct.
30
31 Rob Maitland: You just said there was a dog kennel that is located in the rural buffer zone in Orange County but you didn't
32 use that one.
33
34 Vic Knight: Correct.
35
36 Rob Maitland: Because there was not enough data to support any findings?
37
38 Vic Knight: That is correct.
39
40 Rob Maitland: Wouldn't you say that Paws and Claws kennel we are talking about is probably more closely situated to the
41 proposed Lonsway than the one you picked, Sunny Acres Pet Resort?
42
43 Vic Knight: It may be in the rural buffer but the methodology that is use is that you have to go out and discover information
44 out there that would generate sufficient sales to give you a credible conclusion. If there are no sales, then any conclusion
45 you would generate would not be as credible as a location where such information is much more readily available.
46
47 Rob Maitland: If I could show there was no data available, there is no way you could make your report, is that correct? If
48 there was no relevant market data for you to work with by definition there is no way you could do a report?
49
50 Vic Knight: You could do a report.
51
52 Rob Maitland: It just would not be worth anything?
53

1 Vic Knight: I think it would generate some piece of information but the degree of credibility would not be what it needed to be
2 using sales data that actually creates credible information.
3
4 Rob Maitland: Your report that was based on two sets of data, one is related to the Hampton Point neighborhood and the
5 other is related to the Wildwood?
6
7 Vic Knight: No. Those are essentially the same. Hampton Point is the name of the commercial component that is adjacent
8 to

9
10 Rob Maitland: Wildwood is the residential area and Hampton Point is the commercial zoned, Home Depot and Wal-Mart.
11
12 Vic Knight: Correct.
13
14 Rob Maitland: When did the Wal-Mart go in there?
15
16 Vic Knight: I would have to go back and look up that information. I could guess but I can't tell you exactly what day it was.
17
18 Rob Maitland: That is what you are measuring is the impact that Wal-Mart had on these?
19
20 Vic Knight: Correct.
21
22 Rob Maitland: Do you know when the Home Depot went in?
23
24 Vic Knight: They are virtually the same. They went in within 12 months of each other.
25
26 Rob Maitland: When you did the study, you didn't find out the date that those stores opened?
27
28 Vic Knight: That is not what you are looking for. You are looking for the overall impact of appreciation levels that were taking
29 place from an earlier date, earlier before the existence of those commercial operations, which this information goes back
30 nearly 20 some years and this particular commercial facility is much younger than that. You are gauging the effect that it
31 actually had between it started and whenever you stopped that process.
32
33 Rob Maitland: Right. That is what I figured. Since you are looking at the impact that Wal-Mart and Home Depot had on
34 these homes that unless a home sold after they opened there is no way to know the impact?
35
36 Vic Knight: Actually, this data shows that.
37
38 Rob Maitland: If a house has never been sold after Home Depot and Wal-Mart, there is no way to actually gauge the impact
39 on that particular property.?
40
41 Vic Knight: That is not what we are doing.
42
43 Rob Maitland: It doesn't do me any good if you know what a house sold in 1950 and what it sold in 1990 if it sold before the
44 Wal-Mart or the Home Depot.
45
46 Vic Knight: It has nothing to do what it sold for, it is not the sales price, and it is an appreciation aspect. It is the difference
47 between the most recent sale and the most subsequent sale prior to that; whatever the last sale and the most recent sale
48 would be.
49
50 Rob Maitland: My point is, if y'all want to turn to page 10 of the report....
51
52 Michael Harvey: Please refer to page 80 in your abstract packet.
53
54 Rob Maitland: The key to this report is the credibility of the numbers, right?

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Vic Knight: Yes.

Rob Maitland: I am no appraiser but I had someone look at this and what would you tell me if out of the 35 houses you listed, 28 of them did not sell before the Wal-Mart and Home Depot was open.

Vic Knight: That establishes a base line.

Rob Maitland: How? What relevance if it of a house that sells in 2000, let's look at number 34, this house last sold on July 10, 2000 and Home Depot and Wal-Mart didn't even open until 2004 and 2005. By the way, I have an exhibit out of the County's records that show you when they did open. The point is that if you are looking at a house that sold in 2000, how can you possibly gauge the value or the impact of the Wal-Mart and Home Depot if it happens five years later?

Vic Knight: There are houses that did sell subsequent to that.

Rob Maitland: Really then the only houses that matter are the houses that sold after the impact of the Home Depot?

Vic Knight: Your methodology is wrong.

Rob Maitland: Please help me understand that how house number 34 that sold in 2000....

Vic Knight: You have to tell me what house 34 is?

Rob Maitland: That is 2611 Way Anthem Drive.

Vic Knight: Okay.

Rob Maitland: Last time it sold was on July 10, 2000.

Vic Knight: The difference between when it sold and the sale prior to that, same address, same house, which sold in 1992 gives you some appreciation level on one house.

Rob Maitland: Before the impact.

Vic Knight: You can't use one piece of property.

Rob Maitland: You can't use any piece of property that hasn't been sold after the impact you are trying to measure. That is like saying that I own this piece of property in 1970 but in 2000 Wal-Mart will be built here, I wonder what impact, you can only use the house that has only been sold after Wal-Mart and out of these 35 houses, there is only seven and of the seven that are there, every one of them shows a negative impact. We can go through each house if you would like. This report is so favorable for my client's position that I would like to adopt it into my own. I couldn't ask for a better report than this and frankly the first time this was presented, somebody didn't go through the numbers and I will be happy to go through each and every one. Let's start with number one.

Michael Harvey: I am sorry to interrupt but since these are not numbered in the report, can you reference the page number in the abstract so the board can keep up on page 80.

Rob Maitland: We will start with the very first house he has listed which is 907 Alexander Stewart Drive. That house sold in June of 2000, four or five years before Wal-Mart. What possible relevance can that have?

Vic Knight: It establishes a baseline for what is happening in the neighborhood. You have to compare what happens to after and then you have to nail those pieces of information together.

1 Rob Maitland: Let's talk about that. Let's look at house number one. From 1995 to 2000, the house went up 23%. That is
2 in an aggregate, shouldn't you have to annualize this number and tell us how much it went up each year? How can I
3 possibly compare that to house number two if it is not in the same timeframe? You have got to annualize this on an annual
4 basis. I mean 23% means nothing. Did you make any allowance in here for, did the guy add a bedroom, and did he add a
5 garage? It just sold five years later for 23% more. Now, I calculated it out and that is a 4.9% annual return. Does that sound
6 about right?

7
8 Vic Knight: I haven't done it specifically on that.

9
10 Rob Maitland: That is my question. If this is what you are basing your decision on?

11
12 Nick Herman: What is your question? I know you are making an argument here but ask him why he did what he did.

13
14 Rob Maitland: Alright, why did you do that? The next house at 1008 Alexander went up 88%.

15
16 Vic Knight: That is the difference between the two sale dates. In methodology, you can pick one of them and you could
17 annualize that, you could or you could look at all them when you are finished and annualize that number as well.

18
19 Rob Maitland: How, if each house has got a different time frame, in one house you are measuring for 20 years and one of
20 these houses you measuring a sale that was six months apart. You can't weight them all the same, you have to break it
21 down by some common denominator, isn't that standard practice?

22
23 Vic Knight: If you had a list of numbers on the board behind you and whether you multiplying or adding them, you add a
24 series of number horizontally and then you average whatever that number happens to be, you put that number of the to the
25 side, that is the methodology you are describing, right? If you did it on a one by one basis.

26
27 Rob Maitland: At each house, you need to annualize their appreciation, you can't say one house went up 88% and another
28 house went up 10% if they are not the same timeframe and try to average that which it looks like what you tried to do. Is that
29 what you did?

30
31 Vic Knight: I am trying to give you an answer to your first question. If you looked at any one of these, equivalent to having a
32 string of numbers on the board and when you got to the end you decided to average that series of numbers, it would be an
33 average for that particular series. If you have row after row after row after row, which is what we did here and you
34 annualized each one of them or averaged them, when you got to the bottom, what would you have if you summed that
35 number up? It would be just a number and then you could average that number and it would be exactly the same thing. It is
36 just a mathematical mix of how that works.

37
38 Rob Maitland: I went to Carolina. I got to tell you, I don't understand how you can say that if one house didn't sell for ten
39 years and it went up 88%, let's take a look at that one, 1008 Alexander, it didn't sell from 1988 to 1999. That is an eleven
40 year difference it went up 88% and the house right above it you measured five years of a different time frame, how do you
41 mix those apples and oranges. It is not even the same years and on top of that it is an aggregate and on top of that, you are
42 not accounting for any capital improvements that have been made on the properties.

43
44 Vic Knight: That is actually a pretty good point, is that if, as you put it, that capital improvements are being made, I think one
45 reference was that one bedroom was added, garage may have been added, actually shows that people regardless of what
46 may be happening in this particular location and the effects that Wal-Mart and Home Depot brought to it, they are willing to
47 continue to invest in their property.

48
49 Rob Maitland: I am asking which house did the capital improvement.

50
51 Vic Knight: It doesn't have any significant difference on how you arrive at a conclusion when you look at an entire body of
52 data. You can't do it on a house by house basis. You can't look at one house, if that is the case then you would just go pick
53 a house, good, bad or indifferent and say I found three sales and one is here, and one is there and one is there and draw a
54 conclusion but that is not the methodology that is implied.

1
2 Rob Maitland: I am saying that if you want to say that we are going to take the value of these homes from 1990 to 2004 and
3 then take the value of the homes from 2004 beyond after the impact of the Wal-Mart and Home Depot. You admitted you
4 didn't even know the dates that Wal-Mart and Home Depot opened and that is not part of your analysis even though the
5 whole basis of this was to show the impact of the Home Depot and the Wal-Mart. How about we try a highway. Let's go
6 house....

7
8 Vic Knight: Your way is not the way I did it.

9
10 Rob Maitland: Yes. How about we just deal with the numbers.

11
12 Nick Herman: Why don't you ask and let him respond to your argument.

13
14 Rob Maitland: I would be happy to. What is wrong with the analysis of, here is a house that sold before Wal-Mart opened
15 and here is a house that sold after Wal-Mart. What is wrong with that analysis?

16
17 Vic Knight: If you are only picking one point on a, in a graph perspective, you would be picking two points and two points
18 would certainly draw a line but you have no reference as to whether that line has a positive slope or a negative slope or a
19 neutral slope to it. You have to start aggregating pieces of information to determine how that works.

20
21 Rob Maitland: You stand by these numbers?

22
23 Vic Knight: Yes sir.

24
25 Rob Maitland: There is nothing in these numbers you want to change.

26
27 Vic Knight: I don't see anything that gives me cause to.

28
29 Rob Maitland: Okay. These are GIS maps of the subject area that you studied. This is the Sunny Acres Pet Resort, this is
30 the Hampton Point Wildwood Subdivision and this is the proposed kennel. Do you recognize these?

31
32 Vic Knight: I do.

33
34 Rob Maitland: Are they an accurate representation?

35
36 Vic Knight: If they came from GIS I suppose they would be.

37
38 Rob Maitland: The goal of your report was to find similar situated neighborhoods and properties. We could draw an analysis
39 to the Southerland's property versus Mr. Lonsway's kennel.

40
41 Jeffrey Schmitt: Mr. Maitland, I guess you have got to enter these into evidence.

42
43 Rob Maitland: Yes sir. I will mark this first one Proposed Kennel as Southerland's Exhibit 1.

44
45 Michael Harvey: Defense Exhibit 1.

46
47 Rob Maitland: And this will be Defense Exhibit 2, the Hampton Point Subdivision. This is the Lonsway property, correct?

48
49 Vic Knight: I believe that is right.

50
51 Rob Maitland: This is the Southerland property and these are all the other adjoining properties. Directly touching Mr.
52 Lonsway's property, right?

53
54 Vic Knight: Okay.

1
2 Rob Maitland: This is Hampton Point. This is the neighborhood that you studied in your analysis, correct?
3
4 Vic Knight: Yes. Actually you have overdrawn the scale it actually does not include those pieces.
5
6 Rob Maitland: But this is your primary. All the properties you studied are inside this orange box, right?
7
8 Vic Knight: I believe that is right.
9
10 Rob Maitland: This is where the Home Depot and the Wal-Mart are.
11
12 Vic Knight: Yes.
13
14 Rob Maitland: How far of a distance is the Lonsway's proposed facility to the Southerland's property?
15
16 Vic Knight: I don't know.
17
18 Rob Maitland: I think we heard earlier testified about 100 feet to the storage shed and about 180 feet to Phase 1.
19
20 Vic Knight: Whatever Mr. Whitaker said. He would have a better gauge.
21
22 Rob Maitland: You studied this because you said it was similar. How far is this railway right of way, that big strip between
23 Wal-Mart and Home Depot and this house?
24
25 Vic Knight: The rail right of way, I believe is 120 feet or 125 feet.
26
27 Rob Maitland: Maybe 150 which is what I think but we can settle on 125, alright. Right there, the closest that any of these
28 houses could be to this supposed impasse, and we haven't even started arguing about whether Home Depot and Wal-Mart is
29 the same impact as a dog kennel, which I think we can all pretty much say it is not. My mother-in-law would love to have a
30 Wal-Mart next to her house but this 150 foot easement is about the same distance that we are saying that would be how far
31 the Southerland's are but the Wal-Mart and Home Depot on this map, where exactly are they located?
32
33 Vic Knight: Home Depot would actually be right there.
34
35 Rob Maitland: They didn't let them build the two buildings for the two stores right on the property line, they put it in the
36 middle. To minimize the impact to the existing homeowners so do you have a guess as to how far it is from the Home Depot
37 and Wal-Mart to this yellow line? 80 feet? 10 feet?
38
39 Vic Knight: Probably the Home Depot if I take a guess, it might be 50 feet, 40 feet, the setbacks are

40
41 Rob Maitland: Before we even get to these homes, we are already farther away than we would be to the Southerland's
42 house, right? You probably can't see it on this but I did take the liberty of printing out this information. This is a copy of this
43 same map. This might be helpful for everybody.
44
45 Michael Harvey: Are you going to call this Defense Exhibit 3?
46
47 Rob Maitland: It is the copy of this so I don't know if you want to call it 2A or 3?
48
49 Michael Harvey: Call it 2A.
50
51 Rob Maitland: It is hard to blow it up because of the color on that but basically the houses that you looked at that have been
52 sold after 2004 or 2005 would be, we are measuring the impact of the Home Depot and Wal-Mart, the only ones that have
53 sold are down here on this end. In fact, there is not one house in your study, you looked over a period of 10 or 15 years,
54 maybe 20 but not one house sold on this street, this street or these streets that are the closest and have the most likely

1 impact from his theory of the Wal-Mart and Home Depot. There are no sales are there? In fact, the only houses that have
2 sold are at least three times maybe four times as far away as what we are talking about and if you look at the numbers, you
3 will see that each and every one of those homes that were sold after the Home Depot and the Wal-Mart, each and every one
4 of them show a negative decline in appreciation as opposed to the years that lead up to the previous sales. It is inescapable.
5 The fact is that these homes have not been sold, perhaps because they can't, these homes have been sold, at less of a rate
6 of appreciation than you experienced prior to the Home Depot and Wal-Mart so in fact, this analysis supports our argument.
7 I would like to ask you another question. Did you study the appreciate rate of the entire county when you did this study?
8

9 Vic Knight: No.

10
11 Rob Maitland: Again, thinking big picture, what relevance does it have if this neighborhood was going up five, ten, and fifteen
12 or twenty percent if all the other neighborhoods in the county were going up 40, 60 or 80? Unless you have some way to
13 compare, all you are looking at are these homes here in this one little neighborhood. So if we look at it and say these houses
14 went up 3%. We don't know if that is good or bad because other houses in the county, not impacted by Wal-Mart or Home
15 Depot might have gone up 20%. These houses might have been going up 20 if there had not been any Home Depot or Wal-
16 Mart. Let's take a look at the other neighborhood. Here is the Sunny Acres Pet Resort, Defendant's Exhibit 3. When was
17 the Sunny Acres Pet Resort opened?
18

19 Vic Knight: Probably 30 some years ago, maybe 40 years ago.

20
21 Rob Maitland: So this resort was opened 30 years ago and we are trying to determine the impact of these homes that were
22 sold 30 years later. How did you do that? Did you measure this neighborhood against another neighborhood? Did you
23 measure them against the other houses in town?
24

25 Vic Knight: No. I measured them against the properties that are at the Hampton Point location in Wildwood.

26
27 Rob Maitland: Wouldn't all these homes pretty much be equally affected by this? If they are affected.

28
29 Vic Knight: They are affected by whatever that affects may happen to be.
30

31 Rob Maitland: But in this case, the Sunny Acres Pet Resort is actually inside of a commercial park so did your report
32 analysis the affect of the actual pet resort where the effect that these homes are located within a half mile of a commercial
33 park?
34

35 Vic Knight: They are the closest residential neighborhood to that particular location. And that location had a neighborhood
36 that other kennel facilities simply didn't have.
37

38 Rob Maitland: These homes that you picked, how are they similar to the homes that are situated on the minimum two acre
39 lot homes that we are talking about in the rural buffer zone where the Lonsway's and the Southerland's live. How big are
40 those lots?
41

42 Vic Knight: The effect of the sale of those homes with its proximity to this particular kennel facility is about the effect of the
43 sale of those homes.
44

45 Rob Maitland: My question is, aren't you supposed to pick similar homes that are similarly situated? What is similar about
46 these homes? What sizes are their lots?
47

48 Vic Knight: It is a body of sales information.

49
50 Rob Maitland: I am assuming that you are telling me what I already know which is these are quarter acre lots?
51

52 Vic Knight: I think they are a little bigger than that but that is probably about right. They are probably closer to quarter acre
53 lots.
54

1 Rob Maitland: They are not in a rural buffer zone. In fact, they were built after the Sunny Acres Pet Resort opened, weren't
2 they?
3
4 Vic Knight: The tax information shows the existence of buildings here that go back over 30 years. I don't know how long it
5 actually operated but it originally started out as a kennel facility in the condition that it is today because they have assembled
6 prosperities, the owners of that facility have assembled properties over several years to create that entire component.
7
8 Rob Maitland: But each and every home that you put in your report was bought and sold after the pet resort was opened,
9 correct?
10
11 Vic Knight: Probably, yes.
12
13 Rob Maitland: So the impact on that resort, if there is one, would already have been reflected in the buy price before they
14 bought so what is the purpose?
15
16 Vic Knight: Because you are comparing this particular location with what is happening

17
18 Rob Maitland: In the whole county.
19
20 Vic Knight: No. You are comparing that with, in the case of Hampton Point, what happened there.
21
22 Rob Maitland: Where is the pet resort located in the yellow box of that commercial park, do you know?
23
24 Vic Knight: There are actually a couple of residential pieces into here. They have an open facility in here. There are
25 actually a couple of buildings there and as you can tell there are others into here. They actually have several scattered
26 locations. The main facility is further in the back.
27
28 Rob Maitland: It is the very far back right corner, right?
29
30 Vic Knight: There are several buildings that are there.
31
32 Rob Maitland: And they are all for the pet resort?
33
34 Vic Knight: I just said they bought several pieces and they bought these pieces and some of them have residential homes
35 on them.
36
37 Rob Maitland: I am asking where the pet resort is being operated.
38
39 Vic Knight: The main facility is here but there are other buildings they have that appear to be part of the operation. They
40 have driveways and parking areas that are relatively large.
41
42 Rob Maitland: And the distance between here and here as opposed to here and here? About a half a mile?
43
44 Vic Knight: I believe I scaled it about four tenths of a mile.
45
46 Rob Maitland: Okay. What is this area zoned?
47
48 Vic Knight: One of the Economic Development Districts.
49
50 Rob Maitland: This is a district that has developed or has been zoned with the intention to encourage development. This
51 home is located in a zone that is designated rural buffer zone and yet somehow these are similar.
52
53 Vic Knight: It is the body of the sales information that exists, didn't make them up.
54

1 Rob Maitland: When you took a look at your report on page, your number 4.
2
3 Michael Harvey: Page 74 of the abstract.
4
5 Rob Maitland: It says shape and size, you said the property priced on 4.683 acres, how much of that is build-able or how
6 much of that is not in the stream buffer zone?
7
8 Vic Knight: I don't have any idea, I didn't do the survey.
9
10 Rob Maitland: Would your opinion on this have been influenced at all if in fact only 2.68 of the lot were build-able?
11
12 Vic Knight: The analysis, which the various associated with this property are incorporated here look at the existing land use
13 and landscape plans and others so you are looking at an entire piece of property. I have to go on the reliance of the
14 information that is given to me that the buildings that exist or proposed meet the ordinance or in this case the Special Use
15 Permit.
16
17 Rob Maitland: That is what I am asking, you mentioned up here on the Sunny Acres Pet Resort, that the building was all
18 spread out, all on this big park and I am just asking when you look at this, if there ought to be squeezed and shoe horned
19 into 2.6 acres, does that make a difference in your analysis?
20
21 Vic Knight: Not for the existence of a kennel facility.
22
23 Rob Maitland: Tom.
24
25 Nick Herman: I have some more questions. Let me see if this is right, theoretically, if you had somewhere in Orange
26 County, tomorrow, a kennel moving right next door to one or more houses, right. Over a period of time, I guess, maybe in
27 five or ten years from now, one could see whether there was any effect of that kennel on the marketability of the surrounding
28 houses, would that be fair to say?
29
30 Vic Knight: It would take time, yes.
31
32 Nick Herman: That assumes that you have that kind of situation that you can draw upon, right?
33
34 Vic Knight: Right.
35
36 Nick Herman: Okay. But you didn't have that kind of situation, agreed?
37
38 Vic Knight: There are very few other kennel facilities of any size in the county to look at that are have nearby residential
39 developments to gauge the sale and resale values.
40
41 Nick Herman: Right and, I think you mentioned this in your report, and of course, when we were talking about the
42 neighborhood where Mr. Lonsway lives, that is just not any neighborhood, that is a neighborhood near a major transportation
43 corridor and it has houses of certain styles, right?
44
45 Vic Knight: Yes.
46
47 Nick Herman: So what you tried to do, if I understand it correctly, is to do your best with the limited data that was out there,
48 in order to see if there was negative impact, is that fair to say?
49
50 Vic Knight: That is correct.
51
52 Nick Herman: You began by trying to find a group of residences in a subdivision with houses that had a similar mix of styles
53 and age to the residences in the area where Mr. Lonsway lives, right?
54

1 Vic Knight: As much as you can find that, yes.
2
3 Nick Herman: You made an effort to try to find that, right?
4
5 Vic Knight: Right.
6
7 Nick Herman: You didn't go to Governor's Club, right?
8
9 Vic Knight: No I did not.
10
11 Nick Herman: We have got three to five million dollar homes, right?
12
13 Vic Knight: That is correct.
14
15 Nick Herman: So you found the Wildwood Subdivision which had a mixture of homes that were similar to the homes you find
16 in what I will call the Southerland and Lonsway neighborhood, right?
17
18 Vic Knight: There is such a variety of styles, some are similar and some may be less similar. There is no homogeneous
19 home that is in the New Hope Church Road area.
20
21 Nick Herman: What was the purpose of trying to find a control group?
22
23 Vic Knight: To get some determination on what appreciation values are that might have an impact from a more recent
24 commercial development.
25
26 Nick Herman: But the control group you are trying to find an area, first of all it needed something to impact the control group,
27 right, to see if there was an impact?
28
29 Vic Knight: Yes.
30
31 Nick Herman: In this case, Hampton Point, right?
32
33 Vic Knight: Yes.
34
35 Nick Herman: You also needed a neighborhood that had houses of a similar type or at least some of them of a similar type
36 to what was in the Southerland and Lonsway neighborhood?
37
38 Vic Knight: There are some that would be similar to that.
39
40 Nick Herman: That is what was going on in that other chart; you saw that Hampton Point didn't seem to have better, as a
41 major commercial development. Well, it is what it is.
42
43 Vic Knight: One reason for choosing it is the scale of the commercial impact in that area is considered substantial.
44
45 Nick Herman: Right. You have got, what, traffic, right?
46
47 Vic Knight: Right.
48
49 Nick Herman: Traffic, extra traffic means noise, right?
50
51 Vic Knight: Yes.
52
53 Nick Herman: You have got more cars on this, is this a highway?
54

1 Vic Knight: That is actually a railroad.
2
3 Nick Herman: You have got a railroad too, right? And you found no impact of that development upon the appreciation rates
4 here?
5
6 Vic Knight: That is correct. They continue to appreciate.
7
8 Nick Herman: So all that told you was that if you take houses of a similar kind of type as opposed to saying Governor's Club
9 where you are talking million dollar homes, those didn't seem to adversely affected at least by these types of impact, right?
10
11 Vic Knight: That is correct.
12
13 Nick Herman: That was only half of your analysis, right?
14
15 Vic Knight: Yes.
16
17 Nick Herman: Then the other half was to do the best you could which was to find a kennel close to a residential
18 neighborhood, right?
19
20 Vic Knight: Right.
21
22 Nick Herman: And not just any residential neighborhood but a residential neighborhood that at least had homes that weren't
23 Taj ma hal style homes and the like, right?
24
25 Vic Knight: Right.
26
27 Nick Herman: So that is what this is all about, what is that called? Sunny Acres?
28
29 Vic Knight: Yes.
30
31 Nick Herman: And you tried to see whether there was any kind of impact on Sunny Acres.
32
33 Vic Knight: This is the residential component. The kennel.
34
35 Nick Herman: The kennel, you were trying figure out if there was any evidence of impact of a kennel on this, right?
36
37 Vic Knight: There did not seem to be.
38
39 Nick Herman: You were trying to find out if there was.
40
41 Vic Knight: Yes.
42
43 Nick Herman: Your conclusion was that there was no impact that you could discern.
44
45 Vic Knight: That is correct.
46
47 Nick Herman: And it is not your fault that they are space in between the two because you didn't build this.
48
49 Vic Knight: That is correct.
50
51 Nick Herman: You could only go to the data that exists.
52
53 Vic Knight: Right.
54

1 Nick Herman: Would you say that there are imperfections in the data inasmuch as here there is at least a certain amount of
2 distance between these two. Wouldn't it have been nuts if Sunny Acres was right there, right?
3
4 Vic Knight: Yes.
5
6 Nick Herman: Then you could find out a little bit more, right?
7
8 Vic Knight: Likely, yes sir.
9
10 Nick Herman: You didn't build Sunny Acres; you had to deal with what you had. You could find no evidence of impact,
11 anything about a kennel that seemed to impact?
12
13 Vic Knight: I could not.
14
15 Nick Herman: Otherwise, you had the benefit, you have been out there to the Southerland/Lonsway neighborhood, you have
16 been out there in the street and you have seen how much noise there is, you have seen what the houses are like and the
17 like?
18
19 Vic Knight: Right.
20
21 Nick Herman: You have seen the buffer areas and the trees and all that stuff.
22
23 Vic Knight: That is correct.
24
25 Nick Herman: And then, you were made aware of the acoustical aspects of this facility, how much noise was to be
26 generated from it, right?
27
28 Vic Knight: Right.
29
30 Nick Herman: That is in your report, right?
31
32 Vic Knight: Yes sir.
33
34 Nick Herman: You did an analysis of how much traffic there was, right? You noted that in the report.
35
36 Vic Knight: I pulled the NCDOT traffic reports for the year 2007 to get some gauge of what the traffic count was.
37
38 Nick Herman: Things like increased traffic from a commercial enterprise, increased noise from a commercial enterprise no
39 matter what it is, whether you are doing anything from blasting to having a whole lot of people there. Like at Wal-Mart and K-
40 Mart. Those things have potential impact on value, sometimes?
41
42 Vic Knight: They could.
43
44 Nick Herman: They could. In some instances they do, right? In this case, based on everything you know about the so-
45 called Lonsway project, is there anything about that that contains any kind of noise or increased congestion or pollution or
46 anything that would have any conceivable negative impact on value in this neighborhood?
47
48 Vic Knight: Based on the information I was given after doing the analysis, I can't find any historical, statistical information
49 that says there is an impact.
50
51 Nick Herman: Okay. From a common sense standpoint, or even in the absence of data, is there, based upon what you
52 know about the Lonsway facility, is there anything about that facility that would indicate some kind of negative impact on
53 contiguous property value?
54

1 Vic Knight: Once I understood that it is essentially an indoor facility and all of the acoustical improvements were added to it, I
2 can't say there would be.
3
4 Nick Herman: Would your opinion be different, forget the data for a minute because the data is limited to what is out there.
5
6 Rob Maitland: Objection. His full report is supposed to be based on the data and the data is wrong. He is just doing his job
7 to tell you what he wants...
8
9 Nick Herman: We will argue about that in a little while. Setting aside the data for a moment, which I think we have just been
10 through, it is what you can find out there, in terms of what exists.
11
12 Rob Maitland: Objection. If they are going to let him testify without data, then anybody else can come up here.
13
14 Nick Herman: Here is my question. There are certain things that have a negative affects on property value, is that a fair
15 statement?
16
17 Vic Knight: Yes.
18
19 Nick Herman: As a general proposition. For example, is it true that if you a quiet secluded neighborhood, where that is a
20 driving primary amenity for the neighborhood, it drives the market place and you interject into that neighborhood some
21 commercial enterprise that generates a tremendous amount of noise, I want you to assume this, is it likely that additional
22 noise that is interjected into the neighborhood may have an adverse impact on the amenity that drives the market. Is that a
23 fair statement?
24
25 Vic Knight: Yes.
26
27 Nick Herman: Let's assume for the moment that the Lonsway facility meant that you are going to have 20 dogs trained
28 outside in, let's say, a fenced area, all at the same time, with evidence that they would be barking all the time outside. Play
29 outside all day long unless they go inside to eat. Would you suppose there might be a negative impact on surrounding
30 property values?
31
32 Vic Knight: I think there would be.
33
34 Nick Herman: And would that be because there was a tremendous amount of noise being generated by this particular
35 activity in an otherwise relative quiet neighborhood. Would that be the reason?
36
37 Vic Knight: The way you describe it that would be a factor, yes sir.
38
39 Nick Herman: Right. Those kinds of concepts about what drives the market are what real estate appraisers thinks about,
40 right?
41
42 Vic Knight: Correct.
43
44 Nick Herman: And it also fair to say, not rocket science, right? Even people like me can understand that. Is that true that a
45 lot of people understand that?
46
47 Vic Knight: I believe plenty of people do.
48
49 Nick Herman: What I asked you is there anything that you know about the way this facility is being constructed that contains
50 any kinds of impacts, such as noise or congestion or any other impact you can think about that would have an adverse,
51 negative effect on surrounding properties. Is there anything you can think of?
52
53 Vic Knight: The information that you have presented to me, I can't think of anything that indoor facilities negatively impact
54 traffic or otherwise.

1
2 Rob Maitland: Only because they said once chance that somebody teamed me up like this, I gotta do it. You are telling me
3 there is not one factor that you think of that is a negative impact on the Southerland's property from this Lonsway commercial
4 dog kennel operation, not one? What are we here for? You can't think of one, how about the smell of a dog, can you think
5 of that? How about the sounds of the dogs? How about let's make it simple, you are a realtor, aren't you?
6

7 Vic Knight: Yes sir.
8

9 Rob Maitland: Would the existence or the potential existence of a commercial dog kennel operation be a material fact that
10 you would have to disclose as a realtor to any potential buyer of this property?
11

12 Vic Knight: Only if it is that property.
13

14 Rob Maitland: What do you mean only if it is that property? If someone was going to buy the Southerland property right now
15 and there was no dog, we don't even know that there is proof, but there is a pending application for it. If someone wanted to
16 buy the Southerland property, would not the Southerland's be obligated under North Carolina law and particularly at a higher
17 level, you as a realtor, be obligated to disclose that as a material fact?
18

19 Vic Knight: If it is the property that is being sold, yes you have to disclose those things. If is the property down the street, if it
20 is not having a material effect on the property.
21

22 Rob Maitland: You are saying Mr. Lonsway would have to disclose this?
23

24 Vic Knight: If he sold the property.
25

26 Rob Maitland: You are telling me that if you took the listing of any one of these homes that touch this property, you, as a
27 realtor, would not have to disclose the potential change of circumstance.
28

29 Vic Knight: First, you could only disclose what you knew.
30

31 Rob Maitland: It is public record. You are here testifying so I am asking you if you took the listing on any one of these
32 homes right here, and remember your report is based on your credibility tonight. I want to know, do you have an obligation,
33 as a realtor, to disclose this as material fact?
34

35 Vic Knight: If this county issues the Special Use Permit and those, the further you get away from the property, the less the
36 material factor comes. But if it is a piece
37

38 Rob Maitland: What is a material fact? By definition it is a significant factor almost always negative on someone wanting to
39 buy a piece of property. You talk about common sense and using our eyes and our ears. I am asking you, as a board, to
40 have some common sense. Here is an email from the attorney, Tom Miller, Legal Counsel to the North Carolina Real Estate
41 Commission answering this specific question. "A kennel with 20 or more dogs".
42

43 Nick Herman: That is hearsay.
44

45 Rob Maitland: It is not hearsay. It is an email written directly to someone who will testify at a later time. The email basically
46 says what everybody here would know is common sense. If the Southerland's tried to sell their property right now and didn't
47 tell the potential buyer that, hey, we there is going to be a dog kennel next door to them, you don't think they will have some
48 kind of legal claim? All these neighbors, everybody here, everybody in this subdivision now have to disclose this. They don't
49 have to but their realtors do, why, because they have to protect people from buying into a piece of property not knowing
50 about a potentially devastating factor that would in any way materially affect their property.
51

52 Rob Maitland: Defendant's Exhibit 4. I have a problem here tonight when you just said you tried to do the best you could
53 and we can't even agree and yet earlier your counsel just wanted us to go on your common sense and you are not able to
54 tell me that as a realtor, with an attorney for the North Carolina Real Estate Commission, says of course it is. You can read it

1 that is exactly how it is worded. Then we are suppose also believe that you did the best you could. That this was the best
2 and yet your testimony was there is another kennel exactly situated like this in a rural buffer zone and you did use it.
3

4 Vic Knight: There is no sales information.
5

6 Rob Maitland: Exactly. You can't measure it. It is the same reason why we contacted 10 appraisal companies to do it and
7 we couldn't get an impact study because no one said it could be done no matter how much money we offered. But you
8 came up with one and it is based on this thing here, all these homes built even before, this thing was 30 years ago. I mean,
9 when they built it, it was already factored into the impact and this one here you took all the homes that sold before this
10 impact. There is only seven of 35 that sold after and every one of the seven, for the record so I can clarify it on this exhibit, I
11 have marked them in there, unfortunately on your abstract I don't have the numbers so we will have to go through them but
12 on your abstract starting on page 74.....
13

14 Michael Harvey: I am sorry, Mr. Maitland, the sales data you are referencing begins on page 80. Page 74 is a description of
15 subject sites.
16

17 Rob Maitland: I am looking at what is marked page 10.
18

19 Jeffrey Schmitt: What are you going to do now?
20

21 Rob Maitland: I want to go through and give you the seven homes that are on this list that are also on the map that I handed
22 you.
23

24 Michael Harvey: Mr. Maitland, that begins on page 80 of the abstract.
25

26 Rob Maitland: The first three homes, none of them were sold after the day that Wal-Mart and Home Depot, and for the
27 record, I have that. Wal-Mart opened in 2004 and Home Depot opened in late 2005. On page 81, the first three homes,
28 none of them sold, all of them sold in 1997, 1998 or 1999. The first home that has any relevance here is 1100 Joseph
29 Johnston Court and you can see that on your map, marked as number seven right at the end of the cul-de-sac. That one
30 was sold in 1999 for \$115,000 and then it was sold again in 2006 which would be after Wal-Mart and Home Depot opened.
31 The thing about that is the appreciation rate on that property according to Mr. Knight's own testimony was 6.6% up through
32 1999 on an annualized basis so we can talk apples to apples. And afterwards, it was 4.1%. That is an 18% drop in the
33 annual appreciation. Now I don't know if that all has to do with Wal-Mart or Home Depot or if the whole county because we
34 don't have that but his own numbers show that the appreciation rate was less after Wal-Mart and Home Depot than it was
35 before. The next home, number eight is a problem. Number eight is the same house as number 10 on this report, it was just
36 a mistake. You can see that because even though the addresses are different, you can see the lot numbers are 4.45L.6
37 and then 1152 Joseph Johnston Court is also 4.45L.6 and you can tell because the numbers are the same so I don't know
38 how we are supposed to interpret that except the one that says 1152, the last mark he had there was 1998 for \$100,000 and
39 you can see that is the same sale price listed for 1102 Joseph Johnston Court. I think that is just an error. Number nine
40 which is 1103 Joseph Johnston Court that was sold in 1999. Same with the last two on Walter Clark Drive, those were all
41 sold in 1997 and 1998 so they have no bearing. The next home that was sold after the impact was 1007 Walter Clark Drive
42 which is at the top of page 82. You can see it was sold in 2004; well it might be after the Wal-Mart and before the Home
43 Depot. Again, that home was appreciating at 4.14% up through 1998 and then only 3.19% in 2004 so again a negative
44 impact. The rest of that page was also sold before the impact. The next one that matter is on the top of page 83 which
45 would be 1107 John Breckinridge Drive and I labeled that number 23 on your map. Again, that house was appreciating at an
46 annual rate of 5.3%. This one is interesting between 2000 and 2005; it only appreciated 1.24% on an annualized rate. That
47 is a 76% downward impact. Again, how can you measure the impact of the Home Depot and the Wal-Mart unless you
48 measure the houses after they have been sold? Keep going to the last one on the bottom of that page, 2408 Wade Hampton
49 Drive. Once again, you can see it clicking right along with a very high rate of appreciation up through 1999 and then from
50 1999 until 2005, it drops almost in half in appreciate rate. If you annualize it, the annualized appreciation was 8.8% going
51 through 1999 and then after that it was 3.6% after the opening of Wal-Mart and Home Depot. The next one on the top of
52 page 84, 2410 Wade Hampton Drive which I marked number 30 and again, I point out for the record that all these homes are
53 about as far away from the Home Depot and the Wal-Mart as they can be in the subdivision. Again, this house went up only
54 0.9% from 2001 to 2006 which would be exactly the impact time we are talking about. Before that it was going up

1 somewhere between six and 13% a year. The next house 2500 Wade Hampton Drive, same thing, from 1992 to 2000,
2 appreciating at a rate of 5.16% then appreciated 5% so it went down again. That is the least impact of this so far. Then go
3 down to 2610 Wade Hampton Drive. Same thing. 8.7% annually and then the period we measured here after the impact
4 was only 3.7% and then the other two houses were not sold after Wal-Mart which means that either they are so damaged
5 they can't be sold or we don't know. I would tend to agree with the statement at the bottom of page 84, maybe you could
6 explain this. It says you found no evidence that Hampton Point has had a negative influence on the values or marketability
7 of the Wildwood subdivision and therefore would have no negative influence on surrounding property values or marketability
8 and yet the numbers say exactly the opposite. Can you explain that?
9

10 Vic Knight: As I said, if you look at any one sale, there are significant factors that may affect any one sale but you can't look
11 at any one sale because you are still trying to reference two points on a line to define that line. You have look at the entire
12 body.
13

14 Rob Maitland: So the best we can do. Yes, from the Sunny Acres situation, which is in a commercial zone, what area, is this
15 a commercial zone too?
16

17 Vic Knight: The yellow is.
18

19 Rob Maitland: The yellow is an Economic?
20

21 Vic Knight: The yellow is a commercial zone.
22

23 Rob Maitland: We have one pet resort or one kennel in a buffer zone but there was no data you could compare with that
24 correct?
25

26 Vic Knight: There was no sales information. I am not trying to create it. I didn't create it at all. If there is not sufficient
27 information you don't want to make it up.
28

29 Rob Maitland: How many neighbors did you talk to when you did your report?
30

31 Vic Knight: I didn't talk to any.
32

33 Rob Maitland: No further questions.
34

35 Nick Herman: I want to clarify something. I am going to assume because I don't know much about real estate law and I
36 don't want to assume that the Southerlands sought to sell their house and there was an impending Special Use Permit for a
37 different use of the adjacent property that some realtor should tell them that. I am going to assume that.
38

39 Vic Knight: My point earlier was if they know and certainly understand, it could be public record but you can only disclose
40 what you know.
41

42 Nick Herman: What we are talking about here is not whether you disclose something or don't disclose something, the
43 question is whether there is an impact of this proposed use negative on the effect of surrounding properties. What you are
44 trying to say is that you don't have any evidence that there is a negative impact.
45

46 Vic Knight: That is correct.
47

48 Nick Herman: Your attempt to deal with this and that was to use the best data you thought you could use however imperfect
49 that might be, right?
50

51 Vic Knight: Correct.
52

53 Nick Herman: Because the only way you can get perfect is if we have a neighborhood just like that and a dog kennel and we
54 can look at the sales history all around, right.

1
2 Vic Knight: That is correct.
3
4 Nick Herman: We don't have that.
5
6 Jeffrey Schmitt: Questions by the board.
7
8 Dawn Brezina: Mr. Knight, the methodology you used to evaluate the sales prices, is that published methodology or did you
9 just look at it a figure out a way to look at it.
10
11 Vic Knight: There are certainly all kinds of mathematical theories about liner aggression but you could write books and
12 people have written books about it but essentially you have to look at an entire body of information as opposed to any, you
13 and I could make an argument.
14
15 Dawn Brezina: I am just asking is the methodology you used a standard or a published way of making this type of analysis.
16
17 Vic Knight: There is a model is a more accurate way.
18
19 Dawn Brezina: Sometimes there is a name, like the Smith Model.
20
21 Vic Knight: No.
22
23 Dawn Brezina: This would be how anyone would look at that kind of data? This would be the type of presentation?
24
25 Vic Knight: In terms of trying to discover what an appreciation level would be in a defined area, whoever defines that, you
26 would want to look at the sales and resales of properties, residential/non-residential pieces, over some period of time to
27 discover what an appreciation level would be and that is essentially what you are doing.
28
29 Dawn Brezina: Was it looked at or considered what the value of the property, just looking at his property, would be with the
30 older building that exists there versus the newer building?
31
32 Vic Knight: No ma'am. The only thing I looked at was making the assumption, which is defined in the report that the
33 proposed facility is there. You have to make the assumption it is there even though it is not and what impact that might have
34 as if it were there.
35
36 Dawn Brezina: Mr. Maitland, just doing some quick calculations, as you were talking and trying to evaluate the data on the
37 way you were looking at it in terms of before and after, I think you said 2004-2005 was when changes occurred?
38
39 Rob Maitland: I tried to get certified...
40
41 Michael Harvey: Mr. Maitland, could I ask you to step up to the mic.
42
43 Dawn Brezina: Kind of looking at the data at the new rate, the way you were suggesting, I think you need to look at the
44 calculations not the appreciations before 2003 or 2004 were much greater than all the appreciations after that. I only found, I
45 think three, the house that sold in 2002, 2002 and 2004 which I think was predating the construction were in the appreciation
46 ranges per year for those sales. Between 2.0, 2.8 and 3.0% appreciation per year and the ones that sold after 2005
47 scattered between the .9 and 5.2 averaging about the same and I think they look similar to me. You were comparing them to
48 appreciations every time, you were saying the last sale had an appreciation of 3% but before that it was appreciating at 5 or
49 6%. I think that may have been the timing as you had previously said taking into account years that had better appreciation
50 than others.
51
52 Rob Maitland: To answer your first question, I'll tender this as Defendant's Exhibit #5 is a Board of County Commissioners
53 Action Item Abstract dated May 1, 2005 that references here that Wal-Mart had recently opened in 2004 and that Home
54 Depot is unknown at this time but could perhaps take place by late 2005. That was about as close as I could do.

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Dawn Brezina: That is about right then.

Rob Maitland: In a minute, you will see Mr. Tolley, who is also an appraiser will tell you that the average appreciation was about 5.8 on whole prior to those store opening and after that it was 3.6 so there is definitely a drop off.

James Carter: Mr. Maitland, when you look at information on 2610 Wade Hampton Drive, you mentioned the fact that you one was 8.27 and 3.77, where did you get this data from?

Rob Maitland: Which house are we talking about?

James Carter: 2610 Wade Hampton Drive.

Rob Maitland: Yes. What Mr. Tolley did was calculated it. The first range from 9/02/1987 to 10/12/1993 where Mr. Knight says it is a 16.7% difference between 64,000 and 63,000. We calculated what that annual rate of appreciation would be and that is 2.7%. Then from October 1993 to October 1997 that four year period where the house went from \$63,000 to \$85,000 again that is a 34.9% accumulative appreciation but we calculated that over that period that house went up 8.7% per year. Then the next time it was sold, in 2005, the house went up another \$25,000 which is 29.4% in the aggregate, however, if you calculate it over that period of time from 1997 to 2005, the annual rate of return is only 3.7% so that house went from 1993 to 1997 for that four period clicking along at 8.7% and then sometime, and again, this is my whole argument, sometime after the Wal-Mart and Home Depot opened, the average rate was 3.7%. Here is my argument; these numbers aren't really worth the paper they are printed on because you can't compare them to what the rest of the county was doing at the same time. Maybe 3.7% was good, although I don't think it was. But even if you accept their numbers, they work for us in every example and Mr. Tolley will testify that in a minute.

Jeffrey Schmitt: Any other questions? Mr. Knight, sort of along the lines that Mr. Maitland is at here, we have statistics and we can get them cumulative and we can get them annualized, we can get them on a linear regression. There is 15 different ways we can look at this. What did you look at? Did you look at the percentages, what did you focus on after you aggregated this data?

Vic Knight: To see whether there is an appreciation or not.

Jeffrey Schmitt: Whether the numbers were continuing to go up?

Vic Knight: Appreciation as opposed to depreciation. If there is some depreciation in value....

Jeffrey Schmitt: So the numbers continued to go up, not whether the rate of increase was declining, accelerating, staying the same, whatever, none of the variables that Mr. Maitland is trying to interject?

Vic Knight: The standard, as I understood it, is that any particular impact that Special Use Permit might have, if it would have a negative impact, that needs to be discovered so if it maintains or enhances then the level of appreciation wasn't the subject of what I was trying to discover.

Jeffrey Schmitt: Negative in your case means it falls below zero?

Vic Knight: Correct.

Jeffrey Schmitt: Not that the rate of growth declines from what it was in some previous time?

Vic Knight: Correct.

Jeffrey Schmitt: There is virtually no way to isolate one particular element in looking at the aggregate price changes that you have gotten. You have got changes in the economy, changes in interest rate, changes in inflation; these homes are not homogeneous so the data is what it is. Sort of an average in the midst of all these things.

1
2 Vic Knight: The data is what it is. That is one reason you try to incorporate as large a set of data as you can that when you
3 look at all the factors and on an individual basis this certainly could be significant on any one sale. If you look at a large
4 enough set of data, that set of data should give you some information.
5
6 Jeffrey Schmitt: Let's go back to Dr. Brezina's question. Is there a standard methodology that you or your contemporaries or
7 peers employing in doing studies like this?
8
9 Vic Knight: No sir. I wouldn't say there is a standard. There are many different methods by which people analysis data.
10 You choose one and try to be consistent about that.
11
12 Jeffrey Schmitt: What other ways could you have looked at information?
13
14 Vic Knight: There are certainly some very intricate software programs that do the linear aggression part. That is probably
15 the best other fashion. Again, to get an accurate picture of that, you need as large a set of data as you can derive. That is
16 probably the best other.
17
18 James Carter: Isn't the idea of having the software in regards to linear aggression, my understanding in regards to linear
19 aggression is you have to a plus or minus. Are you aware of that when you use linear aggression?
20
21 Vic Knight: There are all kinds of statistical references for various standards of deviation and you have to look at a rather
22 large set of data to get those standards small enough that they have minor effects.
23
24 Jeffrey Schmitt: Any other questions?
25
26 James Carter: Some factors affect the sale of the real estate in that area we are talking about now.
27
28 Vic Knight: A couple of things people had mentioned. Someone had made an addition to a house. That might have and I
29 think it would likely have an effect on the next sale price might happen to be. The other side of that may be that you have the
30 same house and over the ownership period I pick five years, they may have done nothing in terms of maintenance and it
31 may have a fair amount of abuse so its condition could actually deteriorate. If you look at sufficiently large set of data, you
32 will have some of those that will less appreciation, if any, and then you will have some that may have significant amounts.
33
34 Nick Herman: Based about what you guys have been asking, when you are looking at a ____, if a house appreciates, it of
35 course has not lost value so long as it has appreciated, right? By definition, appreciation means an increase in the price,
36 right? The market value, right?
37
38 Vic Knight: Yes.
39
40 Nick Herman: Depreciation, if that occurs, that is a reduction in value, agreed?
41
42 Vic Knight: It could and it would.
43
44 Nick Herman: In all of your data, whether you are talking about one, two, three or ten percent appreciation, by definition, if it
45 appreciates, the value is either being maintained or enhanced, right?
46
47 Vic Knight: Correct.
48
49 Nick Herman: Regardless of the rate of appreciation, right?
50
51 Vic Knight: Correct.
52
53 Nick Herman: The only time the value goes down is if you go evidence of depreciation, agreed?
54

1 Vic Knight: Agreed.
2
3 Nick Herman: So all of your data, Mr. Maitland has talked about some houses appreciating less, at a rate less, than others
4 but in all instances, there was appreciation, agreed?
5
6 Vic Knight: Yes sir.
7
8 Nick Herman: This board, the question before this board, is not whether the proposed project would change the appreciation
9 rate of contiguous properties but whether it would; in fact, depreciate the value of contiguous property?
10
11 Rob Maitland: Objection. That is not an accurate statement of the law. The question is will the use maintain or enhance the
12 value of contiguous property, not depreciate. My opposition is that if other homes situated in the county are going up 10%
13 and because of the dog kennel are going up 2%, you can't say it is maintaining or enhancing the value.
14
15 Nick Herman: If the property appreciates tomorrow from today, it has at least maintained its value, right?
16
17 Vic Knight: Yes sir.
18
19 Nick Herman: In fact, what happened is it went up, right?
20
21 Vic Knight: Correct.
22
23 Nick Herman: It doesn't matter whether it went up one, two or ten percent, it went up, right? It didn't go down.
24
25 Vic Knight: In that example, yes sir.
26
27 Nick Herman: And that is what we are trying to figure out here, is whether this kennel will make the value of contiguous
28 property go down, and is that right?
29
30 Vic Knight: Correct.
31
32 Jeffrey Schmitt: Next witness, Mr. Herman.
33
34 Nick Herman: Mr. Lonsway.
35
36 Michael Harvey: Mr. Maitland, before Mr. Lonsway begins, are you done with your exhibits?
37
38 Rob Maitland: Not yet.
39
40 Jeffrey Schmitt: Have you been sworn in Mr. Lonsway?
41
42 Gene Lonsway: I have.
43
44 Nick Herman: You are Gene Lonsway, the applicant.
45
46 Gene Lonsway: I am.
47
48 Nick Herman: Just to be clear, you live at this residence on New Hope Church Road, is that right?
49
50 Gene Lonsway: Yes it is.
51
52 Nick Herman: Does anyone else live there with you?
53
54 Gene Lonsway: My wife.

1
2 Nick Herman: Do you have any dogs at that house?
3
4 Gene Lonsway: I have three of my own, my two Labradors and my wife's dog.
5
6 Nick Herman: How many dogs do you have in the house?
7
8 Gene Lonsway: I am training two others right now. Five total.
9
10 Nick Herman: Five total. By the way, how long have you lived there?
11
12 Gene Lonsway: About two years.
13
14 Nick Herman: Has anyone ever complained about your dogs?
15
16 Gene Lonsway: No.
17
18 Nick Herman: I need this for the record. Tell us a little about your experience in training dogs. How long have you been
19 doing it, what kind of training do you do?
20
21 Gene Lonsway: I have been a dog person forever. I graduated from the National Canine of Dog Training School in
22 Columbus, Ohio in 1985. I have been employed full time or a little less in dog training since then (1985).
23
24 Nick Herman: Training dogs for what purpose?
25
26 Gene Lonsway: Quit jumping on the kids, don't pee in the living room, and come when I call you.
27
28 Nick Herman: You mentioned the Durham Bulls, what is that?
29
30 Gene Lonsway: One of the mascots.
31
32 Nick Herman: You trained that dog?
33
34 Gene Lonsway: Trained, yes.
35
36 Nick Herman: Have you ever owned or managed a kennel?
37
38 Gene Lonsway: Yes.
39
40 Nick Herman: Tell us a little bit about that, where it was, how long you did and what capacity?
41
42 Gene Lonsway: I graduated dog training school in 1985 and my partner and I bought an old grange hall in Finley, Ohio and
43 transformed that into a very small kennel and maintained that for about two years, a training and boarding kennel and
44 decided there was not going to be enough money for both of us long term so I left for greener pastures, Chapel Hill.
45
46 Nick Herman: Let's talk about your proposed facility. We have heard testimony that you intend to board and train dogs. Tell
47 this board briefly what you mean by that. What kind of dogs are you seeking to board, how long will they be there. On the
48 average, how many will be there is you are going to train them, what are you going to train them to do. How is that going to
49 work?
50
51 Gene Lonsway: I have been a dog trainer about 25 years. I am getting older and about five years ago began working on a
52 plan to build a boarding kennel that would supplement my dog training business and get the dogs I'm training out of my home
53 and into a structure that is properly designed to house them. Maybe to move into old age with more money than I have had
54 the last 25 years. I trained Coki Roberts' son. He came over from Raleigh a couple of months ago. Regular folks,

1 professors and business people and doctors and lawyers. Most of my clients take lessons, I do some lesson work.
2 Jumping, play biting, chewing, getting on furniture, occasionally, things get a little more problematic when dogs like to fight
3 with each other sometimes and they ask me to see if I can do something with those types of things. These are just pets.
4 Just pets.

5
6 Nick Herman: What about the boarding function?

7
8 Gene Lonsway: I do the board and train already and

9
10 Nick Herman: I am talking about your proposed use.

11
12 Gene Lonsway: When people go on vacation, I baby sit there dog. That is really what it amounts to. I anticipate the
13 average stay as being seven to ten days. It is going to be a very high end kennel. There is nothing like it around here. It is
14 all indoors. The runs are all oversized. Ten foot ceilings. The walkway between the two rows of runs on the right, there will
15 be ten runs on the left and ten runs, almost triple the distance it between to give it more spacious feel and can cause the
16 dogs less friction with each other while they are being boarded there. Babysitting. The dogs will be indoors unless they are
17 outside in small groups or one on one being trained in the outside area. They will eat and go to the bathroom in the same
18 oversized run.

19
20 Nick Herman: Let me back up a little on understanding the boarding and training generally. We saw Phase I and II and part
21 of that was the training facility indoors. If I take my pet to you and say either I want you to train my dog to do whatever, be
22 quiet, or behave, and/or I want you to train me to be able to train my dog to behave, where would that be held?

23
24 Gene Lonsway: In the indoor training room.

25
26 Nick Herman: If I left my dog with you to have you train my dog, to behave, and I wasn't there, that would be taking place in
27 the training room, indoors?

28
29 Gene Lonsway: Yes. Primarily.

30
31 Nick Herman: Otherwise, if I wanted to be involved for you to train me how to make the dog heel and the like, same thing?

32
33 Gene Lonsway: Same thing. As I have already mentioned, I have been doing this for 25 years, for the most part outdoors,
34 in the heat, and in the humidity and in the cold with mosquitoes, having to cancel because of rain and I am ready to come in.

35
36 Nick Herman: The exercise area that we heard about that has the six foot fence, the 1,800 square foot area, what is that
37 used for?

38
39 Gene Lonsway: That is for little playgroups, two or three puppies, maybe a workout with me and a dog. Not really for dogs
40 to go to the bathroom, for dogs to go out and literally exercise.

41
42 Nick Herman: How many dogs at a time would go to that?

43
44 Gene Lonsway: No more than three.

45
46 Nick Herman: At a time to go out to that exercise area?

47
48 Gene Lonsway: In that exercise area.

49
50 Nick Herman: Would they be supervised the entire time?

51
52 Gene Lonsway: With the exception of me going back to get the next dog, yes.

53
54 Nick Herman: You are in charge of the kennel, right?

1
2 Gene Lonsway: I am.
3
4 Nick Herman: Do you have any other staff?
5
6 Gene Lonsway: I am contemplating one and one half employees to fill in when I have other things to do.
7
8 Nick Herman: The maximum number of dogs is what?
9
10 Gene Lonsway: Twenty.
11
12 Nick Herman: You don't intend to have more than 20 dogs?
13
14 Gene Lonsway: I am not allowed more than that.
15
16 Nick Herman: Your average boarding expectancy, you said was seven to ten days?
17
18 Gene Lonsway: Yes. It is a projection.
19
20 Nick Herman: The question arose earlier whether you intended to build together or separately Phases I and II. Do you
21 remember that?
22
23 Gene Lonsway: I do.
24
25 Nick Herman: The one I am talking about is the actual boarding area as one Phase and the training area as another indoor
26 facility. Do you intend to do both together?
27
28 Gene Lonsway: Phase I, II and III, I came up with that concept two and one half years ago when I began working on this
29 project because I didn't know how much money I would have or what availability I would have to the money, in what
30 increments, if it was all coming at once or if I had to build part and come and build the others. Since then, the financing has
31 been arranged and Phase I and II are going in together.
32
33 Nick Herman: You are doing them together?
34
35 Gene Lonsway: They are no longer considered separate in my head.
36
37 Nick Herman: We shouldn't be concerned about some hypothetical of not having Phase II built some time after Phase I.
38
39 Gene Lonsway: That was something that was worked on a long, long time ago and the names have stuck but the intent has
40 changed.
41
42 Nick Herman: You have heard a lot about the efforts to have noise attenuation for you facility. Is there anything else you
43 can say to this board about any legitimate concern that neighbors might have about noise from your business?
44
45 Gene Lonsway: From the very beginning of my career as a dog trainer, I have done my best to not cause trouble to the
46 people who live around me. In 25 years of doing this, I have never had single complaint from a neighbor. I have done this
47 indoors in town with dogs staying in my guest bedroom while I train them. This place has been designed in that same tone
48 as to not cause trouble. I put the dog kennel part of the building, Phase I and Phase II on my end. Not on the far end. If
49 there is any barking, I am the closest person. There is not a training room in between myself and the boarding kennel. I
50 started out by talking to Tony, I got him through an architect place, he said you need a civil engineer, I said do you know one
51 and he hooked me up with Tony at that point. I talked to Tony, I said I want to do this, I live property and there are people
52 who live nearby. It is not their burden to put up with my dogs so we need to design a place the best we can. I know we are
53 zoned right for this now we need to build a facility design a facility that fits that matches what it is we want to do, which is, I
54 don't want anybody to see the kennel, I don't want anybody to hear the kennel, I don't want anybody to smell the kennel. All

1 the bathroom business is indoors or the vast majority of it. We are going to every length we can go to make a sound proof
2 envelope around the dogs when they are indoors and decrease the sound level created by the dogs. Each run has panels to
3 decrease the line fighting which is what it is called when dogs bark at each other and run back and forth. Reduce the noise
4 and the noise is containing it. We have done that. I have added the six foot fence just so the people to the west, the
5 Southerlands, they are upset about this. I said I don't want them to have to wait for the bushes to grow tall enough, that they
6 are not visually impacted by this so I ask somebody, to add a fence to the plan. We want to be invisible. We don't want
7 anybody do see us or hear us or smell us. That is a low impact business relative to the amount of people coming and going
8 and that has been my plan right from the start.

9
10 Rob Maitland: Good evening Mr. Lonsway.

11
12 Gene Lonsway: How are you?

13
14 Rob Maitland: Tired.

15
16 Gene Lonsway: Lot of that going around.

17
18 Rob Maitland: You just said that you will have no more than three dogs out at the time and up to this point it has been up to
19 one or two.

20
21 Gene Lonsway: Up to this point, you were talking to Tony and he and I spent about 100 hours last year getting ready for the
22 first hearing which has no relevance today. We have not spent 100 hours refreshing his memory in the past several months.
23 The number has always been several. Tony misspoke.

24
25 Rob Maitland: So the testimony from the sound expert, he talked about one or two dogs that were

26
27 Gene Lonsway: He doesn't have anything to do with the dogs outside; his job was to talk about the building.

28
29 Rob Maitland: There is nothing you can do to control the noise once the dogs get outside.

30
31 Gene Lonsway: That is my job.

32
33 Rob Maitland: Now, Tony Whitaker told us one or two and you are telling us three or several. How many is it?

34
35 Gene Lonsway: Three to me is several.

36
37 Rob Maitland: You said you are going to have a maximum of 20 dogs.

38
39 Gene Lonsway: Yes.

40
41 Rob Maitland: If this court somehow sees fit to approve your application, do you commit to 20 dogs forever at this facility?

42
43 Gene Lonsway: I have already done that. That is part of my arrangement with the county relative to the subject, relative to
44 the property, relative to all

45
46 Rob Maitland: Would you be willing to put that in there so that when you sell the property somebody else

47
48 Gene Lonsway: It is already in there.

49
50 Rob Maitland: Okay. You just mentioned 10 runs. What are the 10 runs?

51
52 Gene Lonsway: A dog run. An enclosure for keeping a dog. There are 20 of them in the facility.

53
54 Rob Maitland: Where are they?

1
2 Gene Lonsway: Ten on one side, ten on the other when you get into what has been referred to as Phase I of the kennel.
3
4 Rob Maitland: I need to look at that drawing again but I remember seeing 20 kennels.
5
6 Gene Lonsway: Maybe to get a door and move one. Again, it has been a long time since I spent the 100s of hours. These
7 are runs and these are runs.
8
9 Rob Maitland: Where, I am sorry?
10
11 Gene Lonsway: These are gates that go into the hallway in the middle. This is a dog run, this is a dog run.
12
13 Rob Maitland: I have been calling those kennels. That is not
14
15 Gene Lonsway: It is interchangeable.
16
17 Rob Maitland: A dog run to me is sometimes put on a thing he runs up and down on.
18
19 Gene Lonsway: I think that would be called a runner. I am guessing at that. Sorry for the confusion.
20
21 Rob Maitland: One of our concerns that a big portion of this whole plan is keeping everything indoor and Tony testified
22 earlier that it was unclear whether we build Phase II with Phase I and I raised a questions about that and you just said that
23 Phase I and Phase II, if this is approved, you will build both of them at the same time.
24
25 Gene Lonsway: Absolutely willing to put that in writing.
26
27 Rob Maitland: You would be willing to stipulate that.
28
29 Gene Lonsway: Yes. Again, a part of why I am doing this is because I hate being outdoors in the summer and I hate being
30 outdoors in the winter. There are about two months in the early year and two months in the late year where it isn't awful to
31 be outdoors.
32
33 Rob Maitland: Okay. You mentioned you had been doing this for how many years?
34
35 Gene Lonsway: The first time somebody called me the dog guy I was sixteen. I have been doing it professionally since
36 1985 when I graduated dog training school.
37
38 Rob Maitland: Is this how you plan on making your living.?
39
40 Gene Lonsway: Yes. I have a couple of patents on dog toys. I am writing an obedience book. I am also an amateur
41 photographer and I do a little bit of that. The majority of my money comes from dog training.
42
43 Rob Maitland: You do need this for your income. You have been doing that since 1985.
44
45 Gene Lonsway: The other things are what
46
47 Rob Maitland: Do you have a business permit in Orange County?
48
49 Gene Lonsway: No.
50
51 Rob Maitland: Twenty years and you have never had a business permit, can you explain that?
52
53 Gene Lonsway: Nope.
54

1 Jeffrey Schmitt: Mr. Harvey?
2
3 Michael Harvey: I can't interrupt someone else's testimony.
4
5 Jeffrey Schmitt: Is that relevant?
6
7 Rob Maitland: I think it is. It goes to credibility. Here we are taking this man's word that he is going to comply with all
8 these things and do all these things and yet by his own testimony he is been making income for 20 years and never gotten a
9 business permit or a privileged license or anything else.
10
11 Gene Lonsway: I got approached about a privileged license to do business in Chapel Hill but I don't live in Chapel Hill. As
12 far I have been paying my taxes.
13
14 Michael Harvey: Mr. Chair, given Mr. Maitland's concern, I think I really need to answer this question. There is no privilege
15 or business licensed requirement enforced by Orange County in any way, shape or form as it is enforced with a municipality,
16 i.e. Town of Chapel Hill or Carrboro; there is no business license provision or requirement.
17
18 Rob Maitland: So he is able to do this without the county being involved?
19
20 Michael Harvey: From a business licensing provision, yes sir.
21
22 Rob Maitland: When did you buy this property?
23
24 Gene Lonsway: Some business partners of mine bought it three years ago. I don't know how long exactly and then we
25 remodeled it and painted it. If ya'll have ever been in the neighborhood, it was in pink and orange and green and blue and
26 that didn't suit either me or my wife. The Key West guy who lived there before liked it a lot. My partners bought it, we
27 purchased it.
28
29 Rob Maitland: When did you buy the property?
30
31 Gene Lonsway: I think about two years ago from my business partners.
32
33 Rob Maitland: Who are your business partners?
34
35 Gene Lonsway: Greg and Lori Ireland.
36
37 Rob Maitland: I hold in my hand, a deed from Greg and Lori Ireland through their LLC called GIJOLU and it is deeds of
38 property from them to you and it is dated September 3, 2009. How do you explain that two year difference?
39
40 Gene Lonsway: I don't know. We just moved in and bought it at some point. I am not paying a lot of attention to how long
41 exactly I have owned the property. This is a six year ordeal.
42
43 Rob Maitland: I asked you when you bought the property. An appropriate answer would have been I don't know. You told
44 me two years and you bought it on September 3, 2009, less than six months ago.
45
46 Gene Lonsway: Okay.
47
48 Rob Maitland: How long has this application been pending, would you say two years?
49
50 Gene Lonsway: I think it was about a year ago that we got the first Special Use Permit and I think I started talking to
51 architects and people of that ilk maybe a year before that and I have been doing talks, this financing has been set up in one
52 form another for a great many year, five or six years.
53

1 Rob Maitland: The fact is that you bought this property on September 3, 2009 and you are in the throws of this permit.
2 Wouldn't it have made more sense to do some due diligences and
3
4 Gene Lonsway: Check the date that I bought the property?
5
6 Rob Maitland: No. And decide whether or not before you bought the property whether this is something that you could on it.
7
8 Gene Lonsway: I did do due diligence. This is zoned correctly. Folks keep talking about this rural buffer like it supposed to
9 protect the city from the country. Kennels have always been a rural activity, always. Traditionally, kennels belong in the
10 country and because the city is encroaching on the country, people build little neighborhoods and they act as though raising
11 cattle, which is what this placed used to be is a cattle farm, there is still a pump down at the creek where they pumped water
12 out to feed the cattle. This is the country. I did my homework. I found out what it was zoned. I found out that this
13 appropriate place to put a kennel based on the ordinance. I then talked to some experts and said how can we make a
14 building that will be appropriate for this part of the country, this near town? I think that is due diligence.
15
16 Rob Maitland: Well, there is no doubt, and to the surprise to many, that a dog kennel is a permitted use
17
18 Gene Lonsway: Sir, riding stables need to be in the country, yet near enough to town so the customers can ...
19
20 Rob Maitland: And I bet you it wouldn't be here if we were talking about horses.
21
22 Gene Lonsway: the ordinance is the same. A Class B Special Use Permit puts them both together.
23
24 Rob Maitland: To get that permit, you have to meet certain requirements.
25
26 Gene Lonsway: I believe we have.
27
28 Rob Maitland: A lot of these requirements rely on you to comply with the plans we have talked about tonight, you are going
29 to do all these things and I am pointing out here that I am asking you some pretty basic questions and already in the three or
30 four minutes I have been asking the questions you haven't given me a straight answer. I ask you when you bought the
31 property, you told me two years again and it is not even six months ago.
32
33 Gene Lonsway: You can also ask me when I got married to my wife and that was about a year and one half ago. I am pretty
34 close on that one I suspect.
35
36 Rob Maitland: She didn't sign the applications by the way but I am going to let you slide on that. And you didn't have a
37 license for business...
38
39 Gene Lonsway: Which isn't required.
40
41 Rob Maitland: Which you are not required to do. That is fine. I guess the other question I wanted to ask you was what
42 hours do you plan to operate?
43
44 Gene Lonsway: It is not ascertained yet. I suspect something like 8:30 to 5:30 Monday through Friday. A little bit later like
45 9:00 to 1:00 on Saturday and maybe Sunday I'll pick up and drop off in the afternoon.
46
47 Rob Maitland: You would be willing to stipulate that as part of
48
49 Gene Lonsway: I told you I am not that far in my planning yet.
50
51 Rob Maitland: My concern is there is nothing here that would prevent you from running your dogs out in the middle of the
52 night.
53

1 Gene Lonsway: Other than common sense, I have been doing this 25 years, I don't want to work dogs in the middle of the
2 night. I have got dogs in my house that have to go out.
3
4 Rob Maitland: If they are going to approve this I think we need to have some very strict rules.
5
6 Gene Lonsway: I am willing to be reasonable but I am not willing to decide on hours for business that costing me \$700,000
7 on the spur of the moment because you want to know right now. I am not trying to be impolite but that is a much later bit of
8 the plan as to exactly what the hours will be. I told you approximately what the hours will be.
9
10 Rob Maitland: I would submit, by your own testimony, you said your neighbors were upset about this. Other than the one
11 time you spoke with the Southerlands, how many other times have you talked to them?
12
13 Gene Lonsway: They won't even talk to me. I waved at Mrs. Southerland in the hallway and she won't even wave back. I
14 contacted all the neighbors before I did this because I heard that was a good idea for a business standpoint and it seemed
15 like a decent thing to do. To explain the project. Two people showed up and they thought I was the bee keeper down the
16 road, that is why they wanted to come to see the bees. They realized as they got closer, they were at the wrong place, they
17 came anyway. Two other gentlemen, whose names I don't recall, showed up, acted gruff, went out in the yard and left
18 without saying goodbye but I invited everybody within a quarter mile to come look at the plans, to come talk to me.
19
20 Rob Maitland: Before or after you owned the property?
21
22 Gene Lonsway: Since we have dates now, that was before. That was before I applied for the first Special Use Permit, that
23 was early on in the proceedings and nobody is interested. They all came in to a stereotypical view of what a kennel is and
24 that is not what I am building. This is a very high end facility that is designed to be very low impact. I am going to charge a
25 lot of money and it is a very nice place that we are trying to build.
26
27 Rob Maitland: I guess we will just have to take your word on that. No further questions.
28
29 Jeffrey Schmitt: Questions by the board? Hearing none, Mr. Herman.
30
31 Nick Herman: I don't have anything.
32
33 Rob Maitland: I would like to enter the deed I referenced. Exhibit 7.
34
35 Gene Lonsway: Am I done?
36
37 Jeffrey Schmitt: Yes sir. Thank you. Mr. Maitland, the floor is yours.
38
39 Rob Maitland: I will first call Tom Tolley. Mr. Tolley, please introduce you to the board.
40
41 Tom Tolley: My name is John Thomas Tolley, III. I am 3736 Shaqari Drive in Durham. I am managing partner for Borden
42 Tolley appraisal which is in Durham on Highway 54. We do both commercial and residential appraisal and about a six or
43 seven county area. Some commercial work outside of that, we do go to Charlotte, Wilmington, places like that.
44
45 Jeffrey Schmitt: Have you been sworn in.
46
47 Tom Tolley: Yes.
48
49 John Roberts: Mr. Lonsway, were you sworn in?
50
51 Gene Lonsway: Yes I was.
52
53 Rob Maitland: You are principal in your company?
54

1 Tom Tolley: Yes. I own 70% of the company.
2
3 Rob Maitland: How many years have you done appraisal work?
4
5 Tom Tolley: I have been a certified general appraiser for 10 years and was a trainee for three years before that.
6
7 Rob Maitland: At some point were you contacted by the Southerland's or the neighbors to create a report similar to what Mr.
8 Knight presented earlier?
9
10 Tom Tolley: Yes.
11
12 Rob Maitland: Were you able to do that?
13
14 Tom Tolley: No.
15
16 Rob Maitland: Why not.
17
18 Tom Tolley: I have undertaken some of these reports in the past for basically the same situation, Special Use Permits, and
19 have found that, and most other appraisers will tell you that there is a lack of data in this area. I am not just talking about dog
20 kennels, unless you are doing something like a nuclear power plant or a solid waste dump, it is very difficult to find any data
21 to valid any point, positive or negative or no impact. So typically, what happens is that if you take that assignment, you give
22 them something that really doesn't validate anything or something that invalidates the point they want to make and therefore
23 they don't like you anymore and they basically feel like they got nothing for their money and they report you and the
24 appraiser board steps in. It is a situation that most appraisers like to avoid.
25
26 Rob Maitland: Didn't matter how much they were willing to pay, you couldn't do the report.
27
28 Tom Tolley: Correct.
29
30 Rob Maitland: Did they tell you how many other appraisers had given them the same answer?
31
32 Tom Tolley: They said they had contacted about 10 other appraisers in the area and told them the same thing.
33
34 Rob Maitland: And they all said the same thing, no matter how much you are willing to pay, I am not doing your report.
35
36 Tom Tolley: Correct.
37
38 Rob Maitland: Mr. Knight did the report.
39
40 Tom Tolley: Yes.
41
42 Rob Maitland: Have you an opportunity to review Mr. Knight's report?
43
44 Tom Tolley: Yes.
45
46 Rob Maitland: You're the appraiser. What do you think of Mr. Knight's report?
47
48 Tom Tolley: It is typical of a lot of reports like this I see in that you try your best to find data and that is a statement they said
49 earlier. I did my best to find data and that is typically where the appraiser or anyone else who does one of these impact
50 studies goes wrong. Just as an example, I am sure everyone here is familiar with a house appraisal. If someone from a
51 bank calls me and they want me to appraise your house for a loan then I am going to do whatever I can to find the amount of
52 comparable properties to get you the best estimate of value. Whether I have to go a mile away from your house or 10 miles I
53 have got to go to Hyco Lake because your house is up on another lake, I am going to go where I can get the data where in
54 an impact analysis that is not the methodology. I am not trying to find a value, I am trying to find information that will give me

1 a direct answer, yes, no or no impact so you don't go until you find data, you look at the best possible place to find data and
2 if there is a lack of data that is the end. You don't just go until you can find something. That is part of the problem with the
3 data presented that has been talked about earlier here.
4

5 Rob Maitland: Is that what Mr. Knight was referring to when he said he found the most closely situated county =
6

7 Tom Tolley: I have no doubt about that. That probably was the best place to go but it doesn't make a logical comparison.
8 First, those are normal, what everybody thinks of a subdivision, ¼ acre, 1/3 acre, ½ acre, subdivisions with houses on each
9 parcel. That is not what we have got here. This isn't a subdivision, this is a rural or maybe suburban area and there are
10 really two kennels in Orange County and a couple in Durham County that really meet that. They both have been talked
11 about tonight. One on 86, Greenway or something like that is the name of it and Paws and Claws out on Guess Road in
12 Orange County. Those would have been the places to go for data because they are very similar, similar houses, not
13 necessarily similar houses in age but the stuff up in Orange County, all the houses are about the same age for Paws and
14 Claws and the same with the other and all the ones on New Hope Church Road and I am sure that Mr. Knight looked at
15 those properties and did not find the data. He didn't use them because he didn't want to use them but if there are no sales,
16 there are no sales. That can be for a number of factors, not necessarily because of a kennel. Obviously the economy hasn't
17 been the best lately and house sales are slow and so if there is no data to analyze then you can't draw a conclusion and
18 those would have been the places to go for data, not a subdivision beside Wal-Mart which has a number of impacts primarily
19 traffic more so than noise so that is not comparable. We are not talking about a huge amount of cars coming down New
20 Hope Church Road to go to this kennel. Totally different type of impact. Sunny Acres is a facility that has been there for
21 years. A lot of those houses were built at the same time and many after Sunny Acres came in there and I would suggest that
22 if any board members walked to Sunny Acres and stood out in the back of the yard and yelled as loud as they could, no one
23 in that neighborhood could hear you. That is not really a relevant neighborhood, the Sunny Acres and so the areas that were
24 chosen as comparable properties really aren't just logical comparisons and once again, you don't keep going until you find
25 data, you look at the best place for the data that is going to give you the information and if there is no information there then
26 your only conclusion is that I cannot draw a conclusion.
27

28 Rob Maitland: Mr. Knight had a job to do right?
29

30 Tom Tolley: Sure.
31

32 Rob Maitland: Mr. Lonsway needs to get this kennel approved and he can't get it approved unless the board has something
33 to rely on.
34

35 Tom Tolley: Exactly.
36

37 Rob Maitland: It is that prong about maintaining and enhancing value. You heard me go through my whole song up here
38 and it probably aggravated you as much as it did everybody else. Basically, the first question I am going to ask it, the
39 Wildwood/Hampton Point scenario, the homes by the Wal-Mart and Home Depot. Does that have any relevance that this
40 board could rely on to make a decision tonight as far as the Lonsway application for his commercial dog kennel?
41

42 Tom Tolley: No. I think that data is totally meaningless. For one, not comparable and two, another piece of faulty piece of
43 methodology is that it is not compared to anything else. It is taking those subdivisions in a vacuum and saying that the
44 percentages they are going up whether you look at them annualized and gross whatever you are looking at but you are not
45 comparing them to similar areas in the county. The next step of that methodology would be go five miles down the road from
46 each of those subdivisions and find another subdivision with similarly aged houses and see what their appreciation or
47 depreciation or whatever the fact would be.
48

49 Rob Maitland: Without a Wal-Mart?
50

51 Tom Tolley: Without a Wal-Mart. And that is how you would draw your conclusion is to say, behind Wal-Mart, they are going
52 up 8% or 3% and down the road they are going up 5%.
53

1 Rob Maitland: Even if somehow you wanted to find that neighborhood and Wal-Mart was somehow comparable to the
2 Lonsway situation, that study wasn't done properly or completely because it didn't compare it against another neighborhood
3 without a Wal-Mart.
4

5 Tom Tolley: Exactly. That is the only way to make that determination and I would just say earlier as far as some other
6 testimony during that time, is if I came to you as one of the board members and said look, I just did an appraisal on your
7 house and your house is going up 3% a year and you live behind some negative impact, whether it was a kennel area or
8 anything else and I tell you that five miles down the road, somebody lives in the same size house built the same year as
9 yours is going up 9%, I believe you would feel like you were being negatively impacted.

10
11 Rob Maitland: The other neighborhood, the Sunny Acres Pet Resort, and the other neighborhood, Wildwood, Hampton Point
12 and then Sunny Acres impact on

13
14 Tom Tolley: That was another one with a "w" on it.

15
16 Michael Harvey: Whispering Pines.

17
18 Rob Maitland: Is there any data there, in your professional opinion, that in any way help this board makes a decision
19 regarding the Lonsway application for the commercial dog kennel operation?
20

21 Tom Tolley: No. The fact that there is a kennel there makes it a better selection than the Wal-Mart situation. At the same
22 time, you are talking about a kennel that has been there decades and some of those houses have actually been there a
23 shorter amount of time. Once again, the distance between the two when you are talking a noise issue, not a traffic issue.
24 That is also a factor you need to look at. Is it reasonable to assume that any noise is going to be heard from Sunny Acres in
25 that neighborhood? I don't think it is reasonable. Obviously these houses are close enough to the kennel to where if there is
26 some noise and that is the subject of debate on the outside use of the dogs is, I think it is more reasonable to assume that
27 these houses are within hearing distance of this kennel.
28

29 Rob Maitland: Sticking with the Sunny Acres for a second. Even if you wanted to find the data points that are relevant,
30 again, in your professional opinion just like before, that data means nothing unless it is compared to another control group.
31

32 Tom Tolley: That is correct. You have got to compare it to something similar that is going to give you an idea of whether it is
33 the same, better or worse and actually it was pointed out correctly by Mr. Knight is that you do have to do some sales before
34 the Wal-Mart went in to see just what it was doing. You have to set a baseline and then you would compare the ones after to
35 that but then your comparison can just stop at that. You have got to say, what are other neighborhoods going up? Is this
36 neighborhood going up over here and it is five miles away. Once again, that is another difficult thing to do sometimes.
37 Luckily in this area, we have enough subdivisions that have gone up over periods of years, you probably could go four or five
38 miles away and find a subdivision that would built about the same time with similar size houses and do a study.
39

40 Rob Maitland: Please, if there was someone on the board with a statistics background, I can get confused real quick on
41 some stuff. Someone asked the question earlier, if you get over the two hurdles we just said, data is not relevant and even
42 if it was it is not being in a control group, if you still wanted to use these numbers, your analysis of the numbers showed
43 what?
44

45 Tom Tolley: Basically, my analysis showed that if you accept the numbers for what they are and annualize them, the impact
46 would be, after the Wal-Mart came in, the average annualized appreciation would be 3.7%. Before the Wal-Mart went in it
47 was 5.8%. Median on a median basis, it would be 3.35% versus 5.4% so once again, there is appreciation. I don't think
48 anybody can argue that but once again, I thought of this about yourself, if you were getting less appreciation that you
49 neighbor down the road with the same house then you would not consider that no impact.
50

51 Rob Maitland: In your professional opinion, based on the numbers, even though we have already talked relevance, even if
52 we wanted to use the numbers, your professional opinion is the numbers show there was in fact a negative impact.
53

54 Tom Tolley: In my opinion, that would be a negative impact.

1
2 Rob Maitland: No maintain or enhance but an actual negative impact.
3
4 Tom Tolley: Correct.
5
6 Rob Maitland: In both sets of data?
7
8 Tom Tolley: Correct. Only in the set of data with the Wal-Mart.
9
10 Rob Maitland: Why is it that you can't even compare this?
11
12 Tom Tolley: The Sunny Acres, once again, the age and the distance. I don't think that, I can't find any argument other than
13 there is a kennel involved.
14
15 Rob Maitland: Is it the fact the kennel was there before the houses were built?
16
17 Tom Tolley: Partially. Once again.
18
19 Jeffrey Schmitt: You said there was a negative impact of this?
20
21 Tom Tolley: Based on their numbers.
22
23 Jeffrey Schmitt: Where was the negative impact?
24
25 Tom Tolley: I would consider less appreciation.
26
27 Jeffrey Schmitt: The rate of growth is slower.
28
29 Tom Tolley: The rate of growth is slower.
30
31 Jeffrey Schmitt: It is still above the baseline.
32
33 Tom Tolley: It is above the baseline. Once again, we don't really have a baseline because he hasn't compared to other
34 neighborhoods.
35
36 Jeffrey Schmitt: I understand.
37
38 Rob Maitland: The important thing is the in Mr. Knight's study, he said he found no evidence and therefore, there was no
39 negative impact and what you are saying is different.
40
41 Tom Tolley: What I am saying is that if you use those number, in my opinion, that is a negative impact because I am getting
42 less growth since something happened than I would have had that not happened.
43
44 Rob Maitland: Based on your professional opinion, on average, and what did you say the average was after the Wal-Mart
45 opened?
46
47 Tom Tolley: 3.8% of the sales percent, that is not a general number.
48
49 Rob Maitland: On average, for the county, is that
50
51 Tom Tolley: I would say since 2005, the first year and half of that in 2004, that the impact because of the economy at that
52 time was closer to five percent but since then closer to one or two percent.
53
54 Rob Maitland: In fact, didn't the county on average, raise appraisal values on the homes?

1
2 Tom Tolley: Absolutely.
3
4 Rob Maitland: Twenty four percent if I remember correctly.
5
6 Tom Tolley: I testified at a number of appeal hearings.
7
8 Rob Maitland: I think we are getting to the end. If you looked at that map, I noticed that none of the houses that was closest
9 to Wal-Mart, which would be closest to the Southerland situation, have sold, would that tell you anything?
10
11 Tom Tolley: I think, once again, you are just working with what you have. I think another impact there, which I don't want to
12 minimize but something that hasn't been talked about is development potential. That is another reason for trying to use
13 something like the other two situations that have lots that are three, four, ten, fifteen acre parcels that have development
14 potential. The neighborhoods selected are already established subdivisions which do not have any additional development
15 potential.
16
17 Rob Maitland: What about liquidity? What about the ability for two houses equally situated, same exact house, one sitting
18 next to a dog kennel, one sitting next to Wal-Mart and one not and the one that is not can sell in 30 days and the other one
19 perhaps, has to sit there for two years.
20
21 Tom Tolley: The days on the market, a lot of people consider that a negative, if I have got to take 100 days to sell my house
22 versus the 30 days to sell my house then that would be considered a negative but at the same time, I would even argue that I
23 am surprised that actually happened because once again, I think traffic is the bigger issue at the Wal-Mart and the entrance
24 to that subdivision is the same.
25
26 Rob Maitland: As opposed to the sound of barking dogs?
27
28 Tom Tolley: As opposed to the sound of barking dogs but at the same time my point is, since the entrance did not change,
29 then I am surprised there haven't been more sales sprinkled through the neighborhood. I found it surprising because of the
30 traffic impact but I don't think once again, you use what you have but it was surprising to me that all the sales were on there
31 then.
32
33 Rob Maitland: In your professional, do you concur with the attorney for the North Carolina Real Estate Commission that the
34 dog kennel is a material fact?
35
36 Tom Tolley: I am also a broker and I can tell you that is a material fact.
37
38 Rob Maitland: A negative fact.
39
40 Tom Tolley: You don't have to say it is negative; it is a material fact which implies there is something about this property that
41 people, if they know about it, may or may not want the property. That implies that it is negative.
42
43 Rob Maitland: Again, two properties similarly situated one that has a material fact that has to be disclosed and one that
44 doesn't. Common sense would tell you what?
45
46 Tom Tolley: Common sense it that lowers your pool of potential buyers to people who don't care if it is a dog kennel there.
47
48 Rob Maitland: Doesn't necessarily affect your sales price?
49
50 Tom Tolley: No.
51
52 Rob Maitland: But it is a negative impact.
53
54 Jeffrey Schmitt: Questions by the board?

1
2 James Carter: I understand what you are saying about increasing in value, you have two houses, one near a kennel and one
3 further out, same house, was that 9% or 3%, I understand that. How could you have a control group to have a negative
4 impact?

5
6 Tom Tolley: I don't believe these; I believe these numbers are meaningless. I believe that what was selected and what was
7 looked at cannot provide you any evidence of whether this has a negative, positive or no impact. Now to answer your
8 question, if I believe these numbers, I would say to the board members once again, is if your house is next to a dog kennel
9 and it is going up 3% a year, that is appreciation, your property is going up but if you found out that your brother-in-law three
10 miles down the road has the same size house you do built the same time and he is getting 9% just five miles away and he
11 doesn't own a kennel. I think in your mind that would be a negative impact. That is my opinion as an appraiser and then
12 once again looking at how factors affect the value. I am not going to argue that any of those show depreciation so if you
13 baseline is that it has to depreciate to be negative, then I can't say that but my baseline is that if yours is getting less
14 because once again, there are a lot of other factors that affect appreciation besides the kennel or anything else. The fact
15 that you are in Orange County or Durham or Wake County, your property value goes up more than living in Orange County.
16 The argument would be that my property values are going up because of my location because I am in Orange County but
17 they are not going up as much as your neighbor five miles down the road that doesn't have a kennel. That is my baseline is
18 that there are going up at a lower rate than other homes or than they were before the kennel came in. I just want to clarify
19 that I believe the numbers in this report are totally meaningless. I don't believe you can infer anything from these numbers
20 because the data where it could be collected, there was no data to collect.

21
22 James Carter: If you are going to have both of these factors involved, how do they correlate in property value. You
23 mentioned an Impact Analysis and Data Analysis, my question if that if you are going to have Impact Analysis and Data
24 Analysis, how does that correlate the property value?

25
26 Tom Tolley: I am not sure I understand what you are saying.

27
28 James Carter: You mentioned earlier about an Impact Analysis.

29
30 Tom Tolley: As opposed to an appraisal?

31
32 James Carter: Right. You also mentioned the fact that you couldn't find appropriate dates...

33
34 Tom Tolley: I am not saying always but in a lot of cases, it is very difficult to do. It is very difficult to find data and I have
35 done this for a lot of different types of properties. I have looked at it for kennels, for adult establishments, it is very difficult to
36 find enough sales, and you're a statistics guy, you can't find one or two, you have to find enough data to provide a proper
37 sample in order to make a judgment and I am saying in this case, the best places to go for that data, there was not enough,
38 obviously not enough or I am sure Vic would have used it. I am saying that once you get to that point and go to where the
39 data should be to really give you an answer, if there is no data there, you don't just hunt until you find some as opposed to an
40 appraisal where I have got to go wherever I need to find that data because I have to do an estimate of value for the bank
41 because I am trying to get the best estimate I can, that is my charge when I am doing an appraisal. Once again, this not
42 trying to find a value, this is trying to find what the impact is and you can't just go and accept anything as a dapple.

43
44 Mark Micol: Would you accept Days on the Market liquidity as a data point if you have a lack of sales?

45
46 Tom Tolley: I think you could use Days on the Market.

47
48 Mark Micol: For those two kennels.

49
50 Tom Tolley: If you are seeing a longer Days on the Market but once again, that has to be in a vacuum because right now, in
51 general, you could be 100 miles from a kennel, your Days on the Market are high for most properties.

52
53 Mark Micol: For those two kennels, would you use listing established?

54

1 Tom Tolley: We could.
2
3 Mark Micol: Did you look at that?
4
5 Tom Tolley: No I did not.
6
7 Rob Maitland: Mr. Tolley's sole role was analyzing Vic's
8
9 Tom Tolley: I just did a review of the appraisal. Although I can tell you from another study that I was ask to do years ago, I
10 was actually approached by the people who, Paws and Claws, to do the same type of study for them and they were trying to
11 get their Special Use Permit. I told them the exact same thing that I told Mr. Maitland is that chances of me finding those
12 data points are slim, very slim. Do you want to pay me \$3,500.00 to find out? And the answer was no. My position is this is
13 no good and no one on the board and no one in this room can say positive impact, negative impact, no impact based on
14 available data.
15
16 Rob Maitland: Just to clarify, we did agree to pay and you said we couldn't.
17
18 Jeffrey Schmitt: Other questions by the board?
19
20 David Blankfard: Is there a standard for methodology?
21
22 Tom Tolley: No. Mr. Knight is correct on that and basically it is not rocket science, it is basically a logic tree whether you
23 doing an appraisal on a house or an appraisal on a shopping center or an impact analysis. What you have to decide is how I
24 can logically draw conclusions. That is what it comes down to is to be able to logically follow a path to a conclusion and that
25 is really the only thing methodology is talking about as far as consulting goes. When you go into appraising houses, that was
26 mentioned earlier where you have certain things you have to follow as you go through the process. Again, they don't
27 address things like everybody thinks you have to have three sales to do an appraisal on a house. It doesn't say that.
28 Basically it says that you have to go out and find data, it is the bank that says you have to have at least three so once again,
29 there has to be logic involved but there is nobody sitting at the appraisal board saying this it the way you have to do it so that
30 is typically why appraisers do this. They would look at Vic's work and say he found the data he could, the best he could so
31 from an appraiser's standpoint, there is nothing he did wrong. I just believe that the faultiness lies in you don't just keep
32 hunting until you find it.
33
34 Jeffrey Schmitt: Thank you sir.
35
36 Travis Blake: I am sworn in, my name is Travis Blake, I live at 9668 Highway 15-501 Chapel Hill. I am an environmental
37 consultant and I have got degrees, if you want to hear them. I also have two golden retrievers that go with me everywhere
38 so if I fall down, I push up on. Training is a good example.
39
40 Rob Maitland: Mr. Blake reads lips in case he doesn't respond to your question.
41
42 Travis Blake: You want me to give the degrees?
43
44 Rob Maitland: Yes.
45
46 Travis Blake: BA in Biology Botany, University of North Carolina at Chapel Hill. BSPH, School of Public Health
47 Environmental Management Protection. Master's in Environmental Science and Engineering at the School of Public Health
48 in Chapel Hill. Post Graduate work at Duke University and N.C. State University Engineering and Environment.
49
50 Rob Maitland: I like everything but the N.C. State part. You have had a chance to work with situations like this, dog
51 kennels?
52
53 Travis Blake: I do environmental consulting for developers, vet owners, kennel owners, municipalities in towns who need
54 help writing their zoning regulations, getting some history from other municipalities. I have personally done two

1 developments that incorporated vets and kennels so I know the science and what is expected. I can give you other counties
2 we have put them in, Chatham County, Wake County. But anyway I am very familiar with citing them.

3
4 Rob Maitland: You had a chance to review the application and the testimony tonight, what are your findings?

5
6 Travis Blake: Not speaking as an appraiser or anything, just an environmental engineer or consultant. The first thing I notice
7 is that is an intensely developed site for the small amount of land that is available. It is a commercial site but not residential
8 but it should be residential neighborhood. It would normally not be placed. The applicant is correct that kennels are normally
9 in rural areas for a very good reason. Lately I would say as far back as I can remember, eight to ten years, none of the ones
10 I have cited have been in rural areas, they are all accessible, in towns, in shopping centers and the sound acoustic engineer
11 has spoke, he is very correct, you put these things buildings up and you can't hear them. I would point out that also when
12 you get a number of dogs barking inside these faculties, dogs for a long way, other dogs can hear them outside. They hear
13 what we don't and then sometimes in the neighborhood if they are sensitive dogs. Also, noise is subjective may not be noisy
14 in decibels but if a neighbor is hearing it off in a distance, it is a disturbance. On the impervious, if you subtract the buffer
15 and the waste water, normally, these things are something that is this commercially intensive would be in a shopping center
16 where there is sewer available and where there is storm water available so if you take off the buffer and you take off the
17 waster water area, your impervious is approaching 50% and you're not going to get that even in commercial development.
18 That is very intensive for the small piece of property. The other things I don't see. There shouldn't be much traffic but you
19 have to understand that it is not those 20 animals, it is people coming to check the facility out and everything deliveries,
20 everything that goes with that. That will change the characteristic of that road or the traffic pattern. There is a lot that goes
21 on; it is not just the people. It is all the support. He wants to build 1,800 square feet of supplies. That means there will be
22 big trucks or small trucks or whatever you can get in there delivering dog food or whatever it is. I will change the character
23 of the neighborhood, I believe. I haven't seen anything to address lighting. A security lighting, is there going to be a lot of
24 lighting, how well is it lit while the light is on. That is pretty important; the lighting can be as bad of a nuisance as noise. I am
25 not certain about this and I dint' have a chance to check. There is a six foot high fence; I believe the topography on the other
26 side of that is uphill if I am not mistaken so the fence doesn't have much of an affect. The landscaping, lady and cypress
27 which are existing there are very large but they are temporary plants and they won't be there much longer if they are over 15
28 or 20 years old. They are subject to attacked by a number of insects and they are very shallow rooted and they tend to blow
29 over. That is it.

30
31 Rob Maitland: Thank you Mr. Blake. Joan Austin.

32
33 Joan Austin: My name is Joan Austin. I am here actually wearing two hats, I am a property owner....

34
35 Jeffrey Schmitt: Were you sworn in?

36
37 Joan Austin: Yes. I may be the largest property owner. I don't have a house there but I own 14 acres right here so I got the
38 letter saying that this was happening but I have never had a conversation with Mr. Lonsway about anything. Never gotten
39 any information but I do have 14 acres right there. It is the land that many of you may know as the Pines of Carolina Girl
40 Scout Council. It is Camp Pipsisloff which is a beautiful 14 acres which I bought 22 years ago. I am also a realtor in
41 Durham. My company is Marie Austin Reality and I have been selling real estate for 36 years and I am here for both
42 reasons, as a realtor and a property owner.

43
44 Rob Maitland: Joan, you contacted, as a realtor, you contacted the legal council for the North Carolina Real Estate
45 Commission and that was the email I previously submitted as Defendant's Exhibit 5?

46
47 Joan Austin: Yes. I am very concerned about getting my license because it is my income and so I called the North Carolina
48 Real Estate Commission and asked them if it a material fact, do we have to discuss if we have a property for sale, it is a
49 material fact that there is a dog kennel next door. Tom Miller, y'all saw that email, it is not even a question. It absolutely is a
50 material fact and if you would look at that very first line, it is absolutely a material fact. I think that somebody read the
51 definition of material fact but basically it is something that must be disclosed. The bottom line is actually that if the
52 Southerlands had their house for sale, if they called me and said, I want you to sell my house, there is a disclosure they must
53 fill out and, do you mind if I pass this out?

1 Michael Harvey: Enter this into evidence?
2

3 Rob Maitland: Defendant's Exhibit 8. I believe you are handing out the standard seller's disclosure.
4

5 Joan Austin: The standard seller's disclosure. The very top part that I have highlighted is it is General Statute 47E requires
6 the owners of residential real estate single family homes and buildings with up to four dwelling units to furnish purchasers a
7 property disclosure statement. This form is the only one approved. If you turn to the second page, this statement, I would
8 give to anybody in here that had a house for sale and you have to fill it out. You have three choices; you can say, yes, there
9 is something that I know is wrong with my house or no, I don't know or no representation. The first 12 ask you what kind of
10 plumbing, heating, age of the roof and that sort of thing.
11

12 Rob Maitland: The whole purpose of the form is to let a buyer be informed.
13

14 Joan Austin: Right. You have to tell. The number 13-21, if you will look at number 15, it specifically says, commercial or
15 industrial nuisances, noise, odor, smoke, etc. affecting the property. We know from Tom Miller, who said absolutely it is a
16 material fact, they would have to say down here that yes, I am 50 feet, actually, I take that back, you don't have to say, in
17 Tom's email, he did not say that proximity had much to do with it. I said within 1,000 feet do you have to disclose and he
18 says no, it doesn't have to be within 1,000 feet you just better say it. So I guess it could be 2,000 feet, there is no
19 specification of how many feet you have disclose.
20

21 Rob Maitland: This is a developing area case, like a nuclear power plant, might be 100 miles; a dog kennel might be ...
22

23 Joan Austin: You better disclose it. The bottom line is that actually, the Southerlands would not have to disclose it, they can
24 put no representation and they are perfectly legitimate to do that but as a realtor, if I don't say it, I got a new job coming up
25 and I don't know what it will be but it will not be selling real estate. I cannot not disclose that fact.
26

27 Rob Maitland: I love the way you talk and it is clear for the record. A seller is not required by the form to make
28 representation because the state gives them the option to check no representation but a realtor is held to a higher standard
29 and is held to a higher standard and is part of the obligation of listing to appear to be knowledgeable of all material fact that is
30 associated with the property you are listing, correct?
31

32 Joan Austin: Absolutely.
33

34 Rob Maitland: The email from Tom Miller said what?
35

36 Joan Austin: It was very specific.
37

38 Jeffrey Schmitt: It has been passed around, everyone has read it.
39

40 Joan Austin: Could I just read the first sentence?
41

42 Rob Maitland: Sure.
43

44 Joan Austin: A kennel with 20 or more dogs in close proximity to a nearby residence would be a material fact to any
45 perspective purchaser of the residence.
46

47 Rob Maitland: Joan, in your involvement with this process, how many appraisers did you contact to try to get them to do a
48 study like Mr. Knight did?
49

50 Joan Austin: I called Pickett Straus first of all because they do a lot of development in the New Hope Church Road and in
51 Hillsborough and he said I can't do it. I said I'll pay you to do it. He said I will not do it. I thought okay so I called a
52 gentleman....
53

54 Rob Maitland: You don't need to have all the names just how many you called.

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Joan Austin: I called seven myself and nobody would do it.

Rob Maitland: Was it because the price was too high or anything?

Joan Austin: They said there is no data. Paul Snow said there is no empirical data and I wasn't even sure what that means but I think it means there is no data. He said there is no data, I cannot do it. I said okay.

Rob Maitland: Anything else?

Joan Austin: I have this whole thing done but I am not going to do it. No. I don't think it has been proven that there is no impact. I know as a realtor that Days on the Market certainly impacts property and I guarantee you that if I tell someone they have a dog kennel next door and I have a house up the street that doesn't have a dog kennel, it will impact that property.

Jeffrey Schmitt: Questions from the board?

Rob Maitland: Mr. and Mrs. Southerland, have you two decided which one will testify?

Harold Sutherland: My name is Harold Sutherland. I live on the property adjacent to Mr. Lonsway's property.

Jeffrey Schmitt: Have you been sworn in sir?

Harold Southerland: Yes.

Rob Maitland: How long have you been living at that property?

Harold Southerland: I have lived on the property for six years.

Rob Maitland: How long has that property been in your family?

Harold Southerland: My wife was born on that property, her father owned it and she is 64 years old.

Rob Maitland: Tell the board about your feelings.

Harold Southerland: A lot of what I have written has already been said so I will try not to bore you with that but the property is on New Hope Church Road consists of single family dwellings ranging in price from \$170,000 to over \$400,000. These people paid big bucks to be able to live in a serene country setting away from all the stuff that goes along with commercial business. The property in question is surrounded by housing developments that have restrictions. Those restrictions are in place to permit someone from disrupting the harmony of the neighborhood. They can't go behind their house and put up large buildings and engage in commercial business. Mr. Lonsway came along and wants to put a dog kennel right in the middle of the neighborhood and disrupt everything that these people paid good money for. You can travel the entire length of New Hope Church Road from Old 86 to New 86 and you will not see any property that has two large concrete buildings that total 5,000 square feet with a gravel parking lot complete with handicap spaces and a large sign next to the highway advertising the business. Webster defines harmony as a pleasing combination of elements having a component elements pleasingly or perfectly combined. An example of that is at the symmetry balance and proportion that is evenly done then the finished product appears to be in harmony. From that definition, this dog kennel can in no way, shape, form or fashion be in harmony with the neighborhood out there. Our well, we had trouble a few years ago, our well was contaminate with coli form, which is a bacteria that comes from surface water that is contaminate by animal waste. We had to have our well dug deeper to get a clear of the contamination and now we have animals coming back into the neighborhood and I have papers to certify that. A rural buffer is defined as land adjacent to an urban or transition area which is rural in character and which should remain rural, contain very little density of residential uses and not require urban services. Since when is a dog kennel considered a low density residential use? Everything else I have here, you have already heard it several times. My final comment would be if the data is inappropriate, then the study is inappropriate.

1 Rob Maitland: Besides all these things we have heard in your presentation tonight, how will it make you feel if you have to
2 live next to that dog kennel?
3

4 Harold Southerland: I would be very upset and disappointed. Cause we been living out there and it is a quiet country
5 setting, I don't believe a dog kennel beside you with a six foot wooden fence with trees growing up, with all the sound proof
6 they say it will be, I am still going hear, I have heard dogs from his place already and I have heard him holler at the dog,
7 training or whatever he is doing. I would be very disappointed if the kennel was put out there.
8

9 Rob Maitland: No further questions.

10
11 Jeffrey Schmitt: Questions by the board. Thank you Mr. Southerland. Prior to the attorneys having their closing statements,
12 is there anyone else who is present today who wishes to offer testimony?
13

14 Bobby Mauer: I haven't been sworn in because I came from work.
15

16 Jeffrey Schmitt: You should sign in and be sworn in.
17

18 Bobby Mauer: I am Bobby Mauer.
19

20 Jeffrey Schmitt: And you have been sworn in.
21

22 Bobby Mauer: I have been sworn in. I am the adjacent property on the other side of the creek. The creek separates our
23 property. Carolyn and Harold are my relatives. Our family has been on this property many generations so I guess it will be
24 three. But the creeks are separating his property and my property, I have been a licensed realtor for 17 years so when Joan,
25 Marie Austin, the owner of the company, I can testify to what she is saying about a material fact. It is so true, the first
26 hearing when we had this, I spoke about these things and indicated some of the things that Nick had said and testified that
27 those are true but to make a long story short. I have got two small boys. I am adjacent to his property; I have concerns
28 about the type of dogs he is going to be seeing. I know he is saying that is going to be a kennel that is high tech and
29 something else but I have two small boys. Yesterday, we are playing out by the creek, I am concerned about what is going
30 to happen if these dogs get away and they come toward my kids and they affect my two small boys and to say that we don't
31 hear animals, yesterday I am playing by the creek, I hear his dogs barking and that is okay but if there is 20 dogs I am
32 concerned about that. I live there I love it there but I am going to be honest with you, I am not going to love it so much with a
33 kennel next door to me. And say that I want to sell it, because I am not happy about the kennel being here, it's going to
34 affect the value now. Now I am going to lose money and lose value on my property because there is a kennel next door
35 now. That is not fair. I say put yourself in my position. If you would have lived there and a kennel was trying to come next
36 door to you, how would you feel and if you tried to sell this property and you saw, say you wanted to come look at properties
37 even, if you saw there was a kennel next door and there was another property down the road that was similar, which one will
38 you pick? Let's use some common sense. You are going to pick the one not near the kennel most likely so that is all I had
39 to say was to confirm what Joan had to say and that I am a concerned neighbor, I am adjacent to it and I am a third
40 generation family member that has been there and I don't want this to happen.
41

42 Jeffrey Schmitt: Questions by either counsel? By the board?
43

44 Kevin Hurley: I am Kevin Hurley. I am an adjacent property owner also
45

46 Michael Harvey: Mr. Hurley, could you state for the record that you have been sworn in.
47

48 Kevin Hurley: I have been sworn. The yellow one is the kennel? This is the Southerland's? My wife and I live right here
49 directly across the street from the proposed kennel so I would be looking right out the window at this every day. I actually
50 had originally planned to go through the three requirements that the applicant is supposed to meet for this but I think we have
51 gone through a lot of it in a lot of detail so I wanted to just focus on two. The first one being the public health, safety and
52 general welfare; what I wanted to mention is something that I was just informed of by my realtor who sold me the property,
53 he has actually been out of town and I just talked to him this weekend, and to get him to also agree that I would have to
54 disclose this as a material fact if I ever wanted to sell my property. He mentioned to me, and it is something I think the board

1 should be aware of and maybe check into some more since I have not had the chance to do so. He believes that any kind of
2 commercial development on New Hope Creek flood plain would be in violation of the Orange/Durham County Master Plan for
3 New Hope Creek. No. It was a 1988/1989 Master Plan. Okay. The other key point I wanted to make was that to me it
4 seems like the burden of proof is that the applicant has to show that it will maintain or enhance the property and from
5 everything we have heard and the fact that I would have to disclose to anybody that I might want to sell the property to that
6 this is a material fact, I don't think there is any way that he could be meeting his burden of proof in this case. The final thing I
7 wanted to mention as far as procedural things, I have also was told by someone on the Board of County Commissioners,
8 actually asked to have a public hearing about reclassification from Class B to Class A. I don't know the status of that but I
9 think obviously that is an important enough issue and enough people are upset about this, I would like for you to take that
10 fact into consideration as well. You can see I made a lot of points. I didn't go kind of go point for point for things but I noticed
11 the Southerlands and Bobby did also say this. I actually have also told Mr. Lonsway that I have heard dogs barking. It is the
12 only conversation we had actually when I said "oh, yeah I have heard dogs barking from over there", he said, "couldn't be
13 me, it is not me". People have commented to him about it already. As far as the harmony of the neighborhood, we have
14 talked about numbers and reports, I live there and I know Mr. Herman presented the fact that it is not a Governor's Club
15 house and all this traffic shouldn't matter but it does, I live there. When I wake up at night and I am reading, I don't hear
16 traffic so I don't think that I should have to hear a bunch of dogs because someone thinks there is a lot of traffic there
17 already. What I would ask if you are considering approving this application, come out and sit on the porch with me for a little
18 while and see what a peaceful area it is and then make the decision.

19
20 Jeffrey Schmitt: Questions by counsel? Questions by the board?

21
22 Christie Boros: My name is Christie Boros and I was also sworn in earlier. I am probably somewhere down stream, I think
23 we are here so we are not immediately impacted by this and I really, first of all, that we have a civilized mechanism in place
24 to deal with these kinds of disagreements and I appreciate the fact that you volunteer for this. I feel sorry for people like the
25 Southerlands. They are facing a perceived diminishment in their home. On the other hand, I am a proponent of free enterprise
26 and I appreciate Mr. Lonsway's interest in this and I appreciate the steps he is taking to mitigate any untoward that are on
27 surrounding properties. My concern is actually something completely different and it is that this particular type of application
28 for a permit, it seems to be to affect public policy and the public policy was established many years ago and has been
29 supported, the Carrboro of Alderman, Chapel Hill Town Council and the Board of County Commissioners when they
30 established the rural buffer, those people were all elected representatives. Many of them campaigned, on large part, their
31 ideals of these land preservation, that is how they came to be elected and it seems inappropriate for people who are
32 appointed, and again, I appreciate that you are willing to put yourself through this but it seems inappropriate that people who
33 don't have a direct accountability towards the electorate would be making the decision that is going to impact public policy.
34 Not just in this particular instance but in all the instances and they are going to be many, I am afraid, coming up of variances
35 and rural buffer or Special Use Permits in the rural buffer. If you think about it, the rural buffer is a bucket full of water, the
36 people who are elected can kick that bucket over anytime and they have to face the results, the consequences of that at the
37 ballot box. Appointed people have the responsibility or the authority to poke little holes in it here and there and they don't
38 actually have to answer to anyone at the ballot box and in my opinion, that is not a good way to establish a public policy, or
39 to modify public policy so all I would ask is that you' all, I know that after this kind of meeting, you probably hate to hear me
40 say this but I think decisions such as this that will impact public policy should be kicked back to the people who are
41 accountable to the citizens. That is what I would ask you to do. After six hours, I hate to do that.

42
43 Jeffrey Schmitt: Questions counsel? Board members?

44
45 Nick Herman: You have heard extensive explanation of how this facility has been crafted. Designed to minimize any kind of
46 impact that you otherwise would associate with a kennel or might be associated with a kennel so just pollution, such as
47 noise, if it is a commercial establishment, additional traffic and the like. You have heard at great length, I think, I will say it in
48 a kind of a conclusionary way how, in light of the design of this facility and in light of its scope, those are non-issues. It is not
49 going to be noisy, it is not going be visually obtrusive, and it is not going to add any kind of appreciateable traffic. So there
50 are no adverse kinds of impacts. That is the evidence from our side. What is interesting about this is there is no evidence
51 from the other side to the contrary. Other folks haven't come in here there is going to be a demonstrable traffic impact, that
52 the acoustical engineer is wrong, that it is going to be noisy or there is going to be some kind of pollution. No one else has
53 come in here to say anything to the contrary about those facts. Well meaning people have though, fears, about this. Fear, in
54 large part, is the enemy of reason. You might not even be persuaded it you have enough fear regardless of what anybody

1 tells you about how the facility is going to be constructed. You still have some overall sense or fear of it. On this value
2 question, that is really interesting. I think it is a lot simpler than it has been made out. We all know that you can only do a
3 data analysis based on the data available to you. The data available to Vic Knight is slim; he will be the first to acknowledge
4 that, he did the best analysis he could. Mr. Tolley's opinion is not that the available data is so slim that you can't do any
5 analysis at all and he hasn't come in here to tell you that there would be any negative impact on property values nor has he
6 from the realtor. I should have got two kinds of realtor folks, none of them have come in here to flat out tell you there is going
7 to be reduction in value but look, and you guys have got to decide it and that is the question here. There could never be a
8 Class II kennel in Orange County ever if the data doesn't exist according to Mr. Tolley because nobody could ever render an
9 opinion about it. Not to go too far, a little, just a texture of common sense applied to the value question can help. Value is
10 affected by things that we all associate with being detrimental, demonstrable detrimental to a residential community like
11 unbearable noise, unbearable odor, pollution, right? Large increases in traffic. Those are standard kinds of impacts which
12 significantly adverse to the amenities of a quiet community could cause the value of contiguous property to go down that is
13 what we are talking about. So if it work \$150,000 house today, once you put in the facility, it is work \$149,000, went down
14 but there is nothing you have heard here about any kinds of impacts that would cause such a reduction in value other than
15 pure speculation and you have otherwise heard from the application pack from Mr. Whitaker and the like and then Mr.
16 Stewart everything that has gone into this in order to prevent those kinds of things. All of that is completely uncontradicted.
17 One final thing, sort of a red herring, let's assume, I don't know what the laws are but I am assuming the law here is that if
18 you were some kind of seller that you would want to disclose that there is a Special Use Permit pending or someone is going
19 to put in a commercial use. For example, next door, there was otherwise a residential use, don't be fooled by that, that is a
20 material fact in as much as there is a material change to the property, to the use of the property, other than what it was
21 before. Before it was a house, now it is a house plus a small commercial enterprise. But to all it a material fact, doesn't
22 mean it is a fact that is adverse to property value. That means I ask the question for you to decide because if just calling a
23 material fact means that it hasn't an adverse affect on property value, then you could never have a Class II Special Use
24 Permit anywhere in Orange County because in all instances you would have to disclose that there is going to be a new
25 commercial establishment. They make it out, when they call it a material that is a trick, a way of saying that if you have to
26 disclose a material fact, there must be something woefully evil about that enterprise and therefore automatically reduces
27 value. When no witness has come in this place to say, data or no data, that in their opinion it is going to reduce value and
28 why. That kind of red herring thing is unnecessary. The bottom line is where I have began, I believe a lot of effort has been
29 put in this by this applicant. This Special Use Permit for this use is for a permitted use in this county. There is nothing here
30 to indicate that it would be unhealthy or hurt the welfare of the citizenry. The only evidence that you have before you is that
31 the impact, if any, are virtually diminisheus if not far exceeded by what otherwise goes on in terms of traffic and the like in
32 that community. Therefore, as a matter of common sense, it is not going to diminish the value of any contiguous property so
33 I think all the requested findings you have to make here exist. That is what we ask you to do.

34
35 Jeffrey Schmitt: Thank you Mr. Herman. Mr. Maitland.

36
37 Rob Maitland: First of all I want to say that this is an important and significant case to many, many people because the
38 decision you are making here today will irreversibly change the character of this neighborhood. You can't go back. It is the
39 very essence of this neighborhood, particularly the Southerland's home where she has lived her whole life. So Lonsway
40 since September 3. I do take some exceptions to some of the arguments made tonight. We are not saying he can't have a
41 dog kennel. We are saying it is not appropriate here and that is the decision you need to focus on. What about all the
42 existing, vacant commercial space in this county. Why doesn't he put his dog kennel there? Just like the Sunny Acres Pet
43 Resort is. The reason there is no data out there is there shouldn't be a dog kennel in this situation. That is why it is not
44 available but you can find it in a commercial space. There is a dog kennel on Franklin Street. There is plenty of dog kennels
45 around you can find but they shouldn't be 80-180 feet from somebody's front porch. It doesn't have to be there. I gotta say
46 right up front, I want to apologize for my enthusiasm for this case; there is a lot of pressure on me. I got people here that are
47 counting on me to battle a man who admitted in his testimony, he has got \$700,000 invested in this. I have never done a
48 case like this before. I was the only attorney in town stupid enough to take it because the minimum fee to take a case like
49 this is \$15,000 and you want to know why. Because big money does this kind of cases. That is why they felt like they got
50 ramrodded in front of this board and really, truly from the bottom of my heart give you guys a lot of respect because you have
51 really looked this thing fresh from the beginning. You didn't have to, you could have gone through the motions and I can tell
52 by the questions you have ask, you are doing you job here and it is a job. You are the county, you are to protect the citizens
53 of this county and enforce our rules and regulations for their benefit. It is plain out inconceivable to me and I didn't know it
54 was like this before I took this case but when AT&T wants to build a cellular tower, you know who has to fight it? The Mr.

1 and Mrs. Southerlands of the world. I sat in another case like this and I heard AT&T proudly proccrying that they had been
2 plotting against the neighborhood for almost 20 years to get that tower in, wear those people down. What is wrong with the
3 system? Of course, Mr. Lonsway, whose only evidence today was bought and paid for; there was not one voluntary
4 testimony for him. I could have packed this whole building full of people. Nobody here with any financial interest, just want
5 to keep the status quo. Just want to keep the neighborhood the way it is. Of course, he has all the incentive in the world
6 because he is the one that will make all the profit off everyone else. To me, the system, he should have to come here tonight
7 and you guys should say, okay you have met your burden, and then the Southerlands and all their neighbors should have to
8 go out and chip in \$300, \$400 or \$500 each to raise some money to pay a guy like me \$2,500 for four months of work to be
9 here, right. That is all they can afford and like an idiot I will do it because I like these people. It is the right thing to do and
10 you guys need to know the right thing to do. I am going to go down what Mr. Lonsway's evidence is tonight. Let's not forget
11 the burden is on him, not on us. He is the one that has to convince you, if there is any question, he loses. Let him go open
12 his dog kennel in all the other places he can do it. There is plenty of other places he can do it. There is only place these
13 people can live. The first thing that how someone can say there is no evidence regarding the negative impact on value. My
14 God. How much more evidence did you need me to put on. Even I was getting bored of hearing myself. He didn't meet the
15 burden; he had Tolley's testimony that says that the numbers are meaningless, that if you do decide to grant it, be no doubt
16 that will be appealed. You have got testimony from both an appraiser and your own, you guys have already looked at this
17 once and you didn't see the appraisal numbers. The logic doesn't make sense. How can you possibly measure the impact
18 of something before it is even built You can cite 35 houses and razzle dazzle them and you do your thing and you hope
19 nobody pays attention. Got by me two months or three months before I finally sat down with a calculator and started figuring
20 it out. The two neighborhoods, they barley even relate. One is in a commercial district, almost in another town and the other
21 one is next to a Wal-Mart and a Home Depot, not a dog kennel. As far as health and safety and welfare, you heard Mr.
22 Blake testify, there is a big difference. You are sitting on your back porch and maybe you can hear 140 in the distance and
23 maybe you can hear 540 in the distance but that is a lot different than YAP, YAP, YAP. It is different, it is not the same, and
24 this issue of a dog barking is annoying. It is the primary purpose of why they call them guard dogs. It is scary, it is not
25 pleasant, it is hard to ignore. You can, after a while, ignore a train or a car because you know it is going by and leaving. It is
26 different if you know you are going to have to live for the rest of you life next to 20 barking dogs and you know what, sure it
27 all looks good on paper, but a lot of what you have to assess is creditability. Here is a man who is pretty flip when I ask him
28 some questions. He has admitted, he has had how many years tonight and didn't even know when he bought his own house
29 and you trust him to build that up to specs or will he cut a few corners on that too. You heard Mr. Whitaker, the most credible
30 of everybody here tonight say that he was sure that one to two dogs and yeah, I am not sure about Phase II and suddenly
31 after a break Mr. Lonsway comes up, three dogs, for sure I'll build Phase II. Greet and meet because they didn't have time
32 to check their stories. Look at Tolley. He could have been paid to do a report that full of hot air as the one you have in front
33 of you. He didn't but he came here tonight to testify. Mr. Blake, his credentials, he talked to you about the, frankly, I could
34 barley understand but the one thing he said to me is that this hit home; I have been saying this from the beginning. This
35 whole application, you want to talk about tricks. My tricks are the law, these tricks are, and they keep referring to this as 4.6
36 or almost 5 acres. That is a bunch of bologna. This is 2.6 acres we are talking about that is usable. If that house wasn't
37 built right now and someone was looking to build a house on it today, it would be almost impossible to get the thing built. It
38 would be so many regulations and some many on this guy. You talk about adding on 4,800 square feet on to an existing
39 home with a septic system that was built originally, because they wanted to build a mother-in-law house in the back and they
40 couldn't get that permit. That is why that is sitting out there. You heart Joan Austin, our trick, you know the material fact.
41 The law that requires any realtor discloses a material fact. You also heard Vic Knight say that he couldn't think of one
42 possible reason that there would be a negative on this. If so, why have we been here for seven hours? That is ridiculous.
43 Rule one you never say that. My witnesses were honest and they weighed both sides and they said, yep, that is good, what
44 about this, this and this. They didn't come in here and try to stone wall you. I am sorry but anybody who wants to use
45 common sense, you can't tell me that right now, sitting on the Southerland's front porch, looking at this so called dilapidated
46 barn that somehow their life is going to be better looking into a parking lot with five spaces and a handicap sign and all the
47 other signage required, trucks moving in and out and all the other things you heard Mr. Blake testify to. That is common
48 sense to me. Three prongs, health, safety and welfare. To me, we win on that but you know Mr. Herman is right, you don't
49 really know until he finally does it and by then it is too late. Because let's ask that question, what happens after this thing
50 gets built and it doesn't comply. These neighbors are committed to having to call the sheriff and doing all this and everybody
51 coming out and inspecting and all the while Lonsway is making his money, right. Is that a fair burden to put on that,
52 particularly when there is plenty of suitable other, they are giving a way commercial space now. One thing I want to point out
53 and this was a bit of a trick. I asked each one of them how many neighbors they had talked to. The only one who talked to a
54 neighbor was Lonsway and he talked to the Southerlands once. Nobody talked to their neighbors then the come in and

1 testify to the harmony of the neighborhood. The only people who testify with any knowledge of the neighborhood were the
2 neighbors who came in and told you what the impact would be. It is silo, when will this silo, by design, I mean the plus of this
3 thing is that it will have no sound coming out of it. How do you make that look good? You want to see a sound proof facility,
4 go down to downtown Durham and take a look at the prison down there. That is pretty much what they tried to do to. If you
5 do decide to approve this thing, I beg you to put stringent requirements on this thing. You heard Mr. Lonsway that he would
6 be happy to in perpetuity commit to 20 dogs. It is not fair, two or three years from now when he sells the property, and
7 someone else comes in here and plans change, by that point, what is the impact, we already have 20 dogs, what is 10 more.
8 That is how these things go. Hold him to his word. Require him to do Phase I and Phase II. My question is that if you are
9 not looking to expand, why do you need three phases. Make him put the sealed attic in. It costs a lot of money to do that,
10 you know why, because it works. Then he will have to have an HVAC system that takes care of all the smell. When is the
11 last time you have been down to the dog shelter, tell me what you smell there, where will it go, how do you control that. No
12 one talked about that. Put in some stormwater controls. The same ones you would put in if someone else was trying to build
13 from scratch. A commercial operation next to New Hope Creek. It is unbelievable. All the septic requirements and
14 everything else, then ask yourself the question, will that really be complied with and what is going to be the cost to everyone
15 in the county to make sure that it is complied with and is that something we want or maybe there is a reason why there is no
16 data points for something like this because it is just a bad idea.

17
18 Jeffrey Schmitt: Thank you Mr. Maitland. Are there any other questions by members of the board of the expert witnesses?
19

20 Michael Harvey: I have some housekeeping items and obviously it is my role at this meeting to go over the findings we are
21 required to make some recommendation on. I am not going to belabor some points that have already been made but one
22 correction I need you to make. If you can turn to page 135 in your abstract in the required findings sheet, strike and delete
23 references to Agricultural Residential zoned property and put Rural Buffer instead. That is the actual zoning of this property
24 and then strike and delete all references to a 40,000 square foot minimum lot area, it is 87,120 square feet or two acres. I
25 am now on page 135, number (a), change that 40,000 square feet to 87,120 and strike the references to agricultural
26 residential and change them to read rural buffer. With that correction, I ask that the board accept the abstract as amended
27 into the record, which includes as attachments, , which we will go over in a minute. The findings of fact, which we will also
28 go over as well as order remanding this matter to the Board of Adjustment to review, which is attachment A.

29
30 Jeffrey Schmitt: Hearing Mr. Harvey's request for the inclusion in the record of the items that were included in our package,
31 do I hear a motion for approval.
32

33 **MOTION** by Dawn Brezina made a motion to approve the items included in the packet (staff memorandum, the application
34 requesting the Special Use Permit, aerial photos of the map and the adjacent properties, staff correspondence including
35 correspondence from Sheriff Lindy Pendergrass, the North Carolina Department of Transportation, David Sykes, the Orange
36 County Fire Marshall, and the corrected required findings sheet). David Blankfard seconded..
37

38 **VOTE:** Unanimous
39

40 Michael Harvey: My next request is that you allow staff to enter into the record certified copies of the Orange County Zoning
41 Ordinance and the 2030 Comprehensive Plan as adopted by the Board of County Commissioners on November 18, 2008.
42

43 Jeffrey Schmitt: Mr. Harvey, that will include the definition of the rural buffer and will also include within that definitional
44 context things that are allowed and not allowed to be built.
45

46 Michael Harvey: Correct statement.
47

48 **MOTION** by David Blankfard to include the approvals and recommendations made by Mr. Harvey. Tom Brown seconded.
49

50 **VOTE:** Unanimous
51

52 Michael Harvey: Before I begin reviewing the findings of fact for this case, there is a couple of items of testimony that have
53 been made and that I need to correct or feel that I need to enter into the record, the correct answers, with respect to this
54 application, the zoning ordinance as it has been entered into the record, there has been a long, in-depth discussion about

1 minimum lot size required for the Rural Buffer Zoning District. According to Article 5 of this ordinance, the minimum lot size
2 is two acres or 87,120 square feet, however, the usable area for any lot of record approved through any subdivision process
3 is regulated by Section 6.24.2 of the Zoning Ordinance entitled The Minimum Usable Lot Area for Lots that Utilize Ground
4 Absorption and Waste Water Systems and I quote, "Useable lot for parcels between 40,000 square feet and 1.99 acres in
5 size shall be a minimum of 30,000 square feet. Zoning lots two acres and greater shall have a minimum usable lot area of at
6 least 40,000 square feet'. Translation, you have a two acre lot zoned rural buffer, there has to be 40,000 square feet of
7 useable upland area that is not encumbered by stream buffers flood plains, right-of-way easements, or any other
8 encumbrances recognized by this ordinance in order for it to be allowed to be created through the subdivision process. That
9 is the minimum requirements. There has been testimony back and forth about what the minimum lot size for rural buffer lot
10 has to be. The testimony has been correct that the minimum required lot size is two acres however; the usable area only
11 has to be 40,000 square feet for this section of the ordinance.

12
13 With respect to permitted uses and questions arising about his type of facility, in accordance with Section 4.3, the Table of
14 Permitted Uses of the Orange County Zoning Ordinances, the Board of County Commissioners in 1988, when approving the
15 Rural Buffer Zoning District designated several non-residential land uses to be permitted uses of property subject to the
16 issuance of a Special Use Permit. A Class II kennel is one of those types of uses and it is permitted subject to the issuance
17 of a Class B Special Use Permit. The Board of County Commissioners, in rendering that decision, determined that this and
18 other similar non-residential uses were consistent with the definition of the Rural Buffer Zoning District as articulated within
19 the 2030 Comprehensive Plan.

20
21 There have been comments and questions that have been brought up about the modification or changes of the Classification
22 of Special Use Permit from a Class B to a Class A. As this board is aware, the standards will be the same for a Class B or
23 Class A Special Use Permit, which we will go over. To change the class of Special Use Permit would only change the venue
24 in which it is reviewed and acted upon, it doesn't change any of the requirements or the standards that have to be observed
25 by those in support or opposition to a permit application.

26
27 I need to move to Article 8 and begin reviewing with you what has to happen. As both Mr. Herman and Mr. Maitland have
28 articulated, you are in a quasi judicial process where you have to make various findings of fact and conclusions based on the
29 evidence provided to you. Specifically, the board has two jobs tonight, you are going to be certifying the application
30 compliant with specific standards as articulated in Section 8.2.4 relating to the method and adequacy of the provision of the
31 sewage disposal facilities, the adequacy of police, fire and rescue squad protection and the adequacy of vehicular access to
32 the site. You will be making specific findings regarding whether or not the applicant met their burden with respect to
33 submission of Special Use Permit application as detailed under Sections 8.6 and 8.8 of the ordinance. You are going to be
34 rendering a finding on the applicant's compliance with specific regulations governing the development of individual special
35 uses, that set forth in Article 8, specifically section 8.8.11 which is the regulation regarding the development of kennels or
36 riding stables/academies of the Orange County Zoning Ordinance. You will also be making specific findings as to whether or
37 not the applicant complies with provisions of Article 5, Dimensional Requirements and Article 6, Application of Dimensional
38 Requirmetns.

39
40 Then, in conclusion, you are required to make findings whether or not the applicant has met the three prong test that both
41 Mr. Maitland and Mr. Herman have talked about specifically covered in Section 8.2.1b, number 1, the use will maintain or
42 promote the public health, safety and general welfare, if located where proposed and developed and operated according to
43 the plan as submitted. Number 2, the use will maintain or enhance the value of contiguous property and number 3, the
44 location and character use, if developed according to the plan submitted, will be in harmony with the area in which it is to be
45 located and the use is in compliance with the general plan for the physical development of the County as embodied in these
46 regulations or in the Comprehensive plan, or portion thereof.

47
48 As you know from past experience and from the confines that this ordinance staff does not make recommendations
49 concerning these three items because they are to be based on sworn testimony that you receive at this meeting. Per
50 Section 8.2.2 of the ordinance, where the boards finds compliance with the general standards, the specific rules governing
51 that specific use proposed within an application and that the use complies with all the required standard and regulations
52 including the three I just alluded to, you are obligated to approve the permit period. If you find they have not met any of
53 these standards or they have not adhered to or proven as is there burden that they meet the three general standards I have
54 just alluded to, you have to deny the application.

1
2 Section 8.2.2 of the ordinance further stipulates that those opposing the approval of the application on the grounds that the
3 use will not promote the public health, safety and general welfare or they have not met their burden of establishing
4 compliance with the ordinance, have to do so also with the submittal of competent sworn testimony. You have to weigh
5 whether or not A, the applicant has met their burden and if they didn't, B, did the opposition also meet their burden as well.
6

7 Any questions. With that Mr. Chairman, I am going to go through the specific findings that we are required to make a
8 recommendation on. The first finding is Section 8.6, The application was submitted on forms providing full and accurate
9 description of the proposed use, including location, appearance and operational characteristics. Planning staff has indicated
10 that a complete application form, as we require to be filled out, was submitted and contained within this abstract. Section
11 8.8a, 10 copies of the site plan prepared by a registered land surveyor, architect, or engineer were provided. We stipulated
12 they were.
13

14 Jeffrey Schmitt: Members of the board, as Mr. Harvey goes through each of these articles (8.6 and 8.8), as he reaches the
15 conclusion of Article 8.8, we are going to vote on each of those, that will save us some time. What we are voting on is the
16 technicalities of this application, if you will, to make sure they have been followed.
17

18 Michael Harvey: 8.8b) Elevations of all proposed structures to be used in the development. As you will recall elevations
19 were submitted, not only with the application but entered into the record. 8.8c) Ten (10) copies of the Environmental
20 Assessment and/or Environmental Impact Statement, if required, by the Orange County Environmental Impact Ordinance.
21 Staff has determined this is not applicable as it is not disturbing the required requisite land area in order for an environmental
22 impact study to be generated so we are asking that you make a finding that it is not applicable. 8.8d) A fee, as set by the
23 Orange County Board of Commissioners. Yes, that fee was paid.
24

25 Jeffrey Schmitt: Mr. Harvey just covered 8.6 and 8.8 included on pages 133 and 134 of the application. The
26 recommendation was a vote of yes that the applicant has met the specific requirements of the filing.
27

28 **MOTION** by Dawn Brezina to approve the findings 8.6 and 8.8 on pages 133 and 134. David Blankford seconded.
29

30 **VOTE:** Unanimous
31

32 Michael Harvey: Page 135, Article 5. This is the corrected page. Essentially what you are asked to make findings on is
33 whether or not the proposed lots in the proposed development complies with any and all setbacks minimum lot standards,
34 etc. for the rural buffer zoning district and without reading it all, we are going to stipulate that a) through e) have been met
35 that the lot is a minimum lot area of 87,120 square feet according to the application contained in your packet. The minimum
36 lot width is 150 feet according to the site plan, the minimum lot width is actually 440 feet, the required front setback, per
37 Article 5 for the Rural Buffer Zoning District is 40 feet, there are different standards for kennels, however, we will point out
38 that the existing single family residence meets a front yard setback of 64 feet and that the proposed kennel is 210 feet from
39 the front yard. The required side and rear setbacks are 20 feet per Article 5 for the rural buffer zoning district. Again,
40 kennels have a different standard, however, we are going to stipulate for the record that the proposed kennel facility is
41 approximately 230 feet from the eastern property line, 95 feet from the western property line and the proposed kennel facility
42 is approximately 155 feet from the rear property line. Maximum building height is limited to 25 feet based on the renderings
43 that we stipulate they comply with the maximum building height for Article 5.
44

45 **MOTION** made by Tom Brown to accept recommended findings of staff as annotated on page 135. David Blankford
46 seconded.
47

48 **VOTE:** Unanimous
49

50 Michael Harvey: The next required findings deal with Article 6, specific findings that apply to various types of development
51 dealing with land use intensity, compliance with the land use intensity system. There has been testimony about compliance
52 with impervious surface standards. I want to remind the board that in accordance with Article 6, as it is not located within a
53 protector of critical watershed is not obligated to impervious surface limitations or requirements. It is required to adhere to a
54 maximum floor ratio of .088, a required minimum open space ratio of .84 and a minimum pedestrian landscape ratio of .21.

1 To go through the information with the board, the maximum floor ratio is 19,133 square feet based on Article 6 of the
2 ordinance. As the applicant has testified to this evening, they are well below this number, and staff stipulates based on this
3 information provided in the site plan, that are compliant with this standard. The required minimum open space ratio is .84
4 requiring a minimum open space of 182,631 square feet. Staff has utilized the submitted site plan and calculated the existing
5 open space on information provided by Mr. Tony Whitaker on the site plan. That indicated there will be approximately
6 211,518 square feet of open space on the property. Page 137 e) Required minimum pedestrian/landscape ratio is 2.1 which
7 equals a total of 45,658 based on the information provided on the site plan by Mr. Whitaker, the property is going to be
8 providing 197,000 feet of pedestrian/landscape area as defined Section 6.12.3 in the Orange County Zoning Ordinance. Mr.
9 Chairman, we find that the application submitted complies with the provisions of Article 6 as we have detailed herein.

10
11 Jeffrey Schmitt: Accordingly, the technical requirements for the submission for Article 6.1.2 have been met for the staff and
12 Mr. Harvey's comments here. Do I hear a motion for approval?
13

14 **MOTION** made by Dawn Brezina to accept the findings on pages 136-137. James Carter seconded.
15

16 **VOTE:** Unanimous
17

18 Michael Harvey: Now we are getting into specific standards for all special uses. Specifically Section 8.2.4 a), b) and c). As
19 to the method and adequacy of provision for sewage disposal facilities, solid waste and water service. Within your
20 application, there was a copy of the waste water permit issued by the health department indicating that Mr. Lonsway can
21 develop a Class II kennel on his property limited to 20 dogs and also limiting the number of baths that could be given. There
22 are some specific requirements associated with the issuance of that permit that will be enforced by the Orange County
23 Health Department. They have deemed the proposed installation septic system and use of the proposed installation septic
24 system and use of property of this purpose to be adequate.
25

26 Solid waste, as Mr. Lonsway has already testified is detailed in his application. He will be contracting with a private firm for
27 removal of the waste. He is going to remove solid animal waste from the property by hand.
28

29 Section 8.2.4 b) Method and adequacy of police, fire and rescue squad protection. I will refer to the memorandums that have
30 been provided to you, the letters by Sheriff Lindy Pendergrass and David Sykes, the Orange County Fire Marshall, indicating
31 they have no issue with the proposed kennel. I should point out that Mr. Sykes has requested an opportunity to review
32 comment and approve the building permit plans prior to the issuance of a building permit. This is a recommended condition
33 if you see fit to approve the permit. 8.2.1 c)
34

35 Method and adequacy of vehicle access to the site and traffic conditions. The same packet of information you have an email
36 from Deangelo Jones of the North Carolina Department of Transportation indicating they have reviewed the site plan and can
37 issue a driveway permit subject to the county approving the Special Use Permit.
38

39 Jeffrey Schmitt: Mr. Harvey has just gone over 8.2.4. Staff's conclusions are that the applicant has met the burden of proof
40 for all three of these specific things.
41

42 **MOTION** made by David Blankfard to approve Section 8.2.4 (page 138) as staff has recommended. Tom Brown seconded.
43

44 **VOTE:** Unanimous
45

46 Michael Harvey: Page 139 starts dealing with requirements as specific standards detail with 8.8.11, number 1 and 2. These
47 are specific design criteria for kennel and/or riding stable facilities developed in Orange County subject to a Class B Special
48 Use Permit.
49

50 The first requirement is for Plans for all kennels, barns, exercise yards, riding arenas, pens and related improvements
51 including signage are provided on site plan, they were. Site plans show any improvements listed above other structures in
52 the same lot and structures on adjacent property. You will recall from the site plan that was also provided in several different
53 sheets. I am now dealing with provisions and requirements on 8.8.11.2 The site is of adequate size to protect adjacent
54 properties from adverse affects of the kennel or riding stable/academy. That is a decision you will be making as part of the

1 three tiers. We have provided you a comment from us as this meets the minimum lot requirements of the rural buffer we
2 can't recommend anything else other than approval.

3
4 I am now at 8.8.11.2 b) but I want the board to remember that even though you are making this finding, that does not
5 preclude you from denying a permit if you so discern that they have not met the three general requirements. Number
6 8.8.11.2 b) No part of any building, structure, runway or riding arena, in which animals are housed or exercised shall be
7 closer than 150 feet from a property line, except property occupied by the owner/operator of the kennel. These minimum
8 distances shall not apply if all portions of the facility, in which animals are housed, are wholly enclosed within a building. If
9 you will refer back to the site plan, the open air exercise is far from 150 feet from all property line and the kennel building
10 itself is 150 from all property line. The storage facility which will not house any animals doesn't necessarily meet the 150 feet
11 setback but as it is not housing the animals it is not required to.

12
13 On page 140, 8.8.11.2 c) Any kennel which is not whole enclosed within a building shall be enclosed by a security fence at
14 least six feet in height which shall include primary enclosures or runs. The site plan denotes that an open air exercise will be
15 enclosed by the required six foot high fence. Subsection d) The site plan shows parking, access areas and screening devices
16 for buildings and animal boarding facilities. The site plan denotes the required buffers and denotes the parking area and
17 access lanes.

18
19 Section 8.8.11.2 d) The site plan shall be reviewed by the Orange County Animal Control Department and found in
20 conformation with XIX of the Animal Control Ordinance. Animal Control has reviewed the site plan and determined it is
21 compliant but they cannot issue final approval until we have a Special Use Permit so that will be a condition of approval. If
22 Animal Control suddenly reviews it and says it doesn't comply it won't comply with the standards of the SUP and the SUP will
23 be revoked.

24
25 Jeffrey Schmitt: That particular item is included with the conditions of approval should this board approve this SUP.

26
27 Michael Harvey: Section 8.8.11.3 a) Building plans for all kennel facilities shall be reviewed and approved the Director of
28 Animal Control prior to issuance of any building permits. That is a recommended condition of approval as we can't issue a
29 building permit until we have an SUP.

30
31 Section 8.8.11.3 A sign clearly visible from the ground shall be posted at the main entrance to the facility and shall contain
32 relevant information detailed in the ordinance. The applicant has indicated in the site plan there will be a sign that is shown
33 on the site plan at the entrance. We are still recommending as a condition of approval that sign has to be erected within 180
34 days of the SUP being approved if it is approved.

35
36 Section 8.8.11 3c) Where required by the Animal Control Ordinance a Class II Kennel Permit shall be obtained for the
37 Department of Animal Control within the first 30 days of occupancy. Failure to obtain and maintain a valid Class II permit of
38 other related permits which may be required will result in a revocation of the Special Use Permit.

39
40 Jeffrey Schmitt: Staff has covered Sections 8.8.11.1 through 8.8.11.3 technical specifications showing that the applicant has
41 met the requirements.

42
43 **MOTION** made by Tom Brown to accept the findings on pages 139, 140 and 141, Sections 8.8.11.1 through 8.8.11.3. Dawn
44 Brezina seconded.

45
46 **VOTE:** Unanimous

47
48 Jeffrey Schmitt: We are going to move to page 142 and I am going to close the public hearing.

49
50 Michael Harvey: Before you close the public hearing, if the board has any questions they need to ask them now but I also
51 need to remind them on page 143 we have recommended eight conditions if you choose to approve it and any other
52 conditions you choose to impose.

1 Tom Brown: You made a comment on the storage area not housing animals, if that storage area ever did house an animal,
2 what impact would that have on the Special Use Permit.

3
4 Michael Harvey: It would technically invalidate the permit and Mr. Lonsway would have to abandon the use of the storage
5 shed for the housing of animals. If he did not, we would revoke the Special Use Permit.

6
7 Tom Brown: Would that same methodology apply to all major changes that they would potentially want to make to the
8 Special Use Permit, must they come back?

9
10 Michael Harvey: Per Section 8.7 of the Orange County Zoning Ordinance, we define what constitutes a minor or major
11 change or modification. A minor change is something that can be approved by staff; there are 9 to 12 different criteria. To
12 boil it down to its basic bare essentials, any modification of the condition, any modification of a requirement or any increase
13 in use above and beyond what was testified during the hearing constitutes a modification requiring a Special Use Permit
14 resubmitted, application to be resubmitted and the governing body to review and approve. The example I will give you is that
15 if Mr. Lonsway decides to increase his number of dogs to 21, as it has been testified to, he is limiting it to 20 and the Health
16 Department permit says he is limited to 20 and to go to 21 requires this board to re-review and determine if they want to
17 allow that to occur.

18
19 Jeffrey Schmitt: Other questions by the board of staff. Close the public hearing. Let me begin by thanking all of you folks for
20 coming. Thank you for your time and efforts in regards to this. This has been a very long process. I appreciate all the input
21 you have provided. The board will now deliberate and I am going to bring everybody's attention to page 142 and the three
22 articles that have been mentioned by both the applicant and the defendant and the neighbors. We have to go through each
23 one of these, and I will ask for a motion for approval or disapproval. It depends on who makes the motion in the midst of this
24 and when we do this, we will need to make sure we include references to the expert testimony and to the testimony provided
25 by staff with the technical specifications that substantiate or do not substantiate all these articles we have here. The first one
26 is 8.2.1 and 8.2.2. The use will maintain or promote the public health, safety and general welfare, if located where proposed
27 and developed and operated according to the plan as submitted.

28
29
30 Tom Brown: While we are going through this, I know at least some of this I might want to have a little discussion among the
31 board to make sure we can have a consensus on what we think the definition on certain areas might be.

32
33 Jeffrey Schmitt: We can do that and we have council here to help us do that. Mr. Brown has brought the issue up, are there
34 questions that any board members have from a definitional perspective. Anything that is included in the first article? Tom, I
35 assume you did since you brought it up?

36
37 Tom Brown: No, mine is on the second one.

38
39 Jeffrey Schmitt: We are going to have clarification from the council on the second one before we even start.

40
41 **MOTION** made by Tom Brown to accept Article 8.2.1 and 8.2.2 that the Class II Kennel will maintain or promote the public
42 health and safety and general welfare if located where proposed and developed and operated according to the plan as
43 submitted with the relevant findings of fact that we have the Orange County Animal Control will provide licensing and ensure
44 the appropriate regulations are followed for the use and operation of the kennel That the kennel will be served by a
45 dedicated waste water system also approved by Orange County Health Department. That the Sheriff's department has
46 stated in writing that the law enforcement services can be provided to maintain and promote health within the community.
47 That the emergency services will be able to provide fire and emergency services in the area and the additional
48 correspondence from NCDOT that they can support the addition of the driveway to support the kennel. David Blankford
49 seconded.

50
51 **VOTE:** Unanimous

1 Jeffrey Schmitt: Article 8.2.1. The use will maintain or enhance the value of contiguous property (unless the use is a public
2 necessity, in which case the use need not maintain or enhance the value of contiguous property). Council, could you spend
3 a minute and educate all of us into the phrasing here so we all know specifically what these words say.
4

5 John Roberts: The definition of maintain or enhance the value of contiguous property, there has been a lot of testimony that
6 you have heard about differences in appreciation rates. The language in this section of the ordinance does not refer to the
7 appreciation rights; it refers to the actual value of the property. Whatever testimony you have heard that has referred to
8 appreciation in the comparison samples, there is no evidence presented that the value of the surrounding properties, this
9 parcel will depreciate and the only consideration for you is will this lower the value or will it maintain the value or enhance the
10 value.
11

12 Jeffrey Schmitt: As a matter of law, the definition of maintain from a perspective as it is here is that the value of the property,
13 whatever it is in some point in time, will not fall below that level.
14

15 John Roberts: That is correct.
16

17 Jeffrey Schmitt: Any other questions for council and/or between ourselves. Was that your question Mr. Brown?
18

19 Tom Brown: Just to make sure we get to the nub of it because we have been discussing maintaining and then appreciation
20 values and all these other things. I wanted to make sure we are clear and what is that value that we are required to look at
21 and that is my main concern. WE don't get a choice to look at all these other things. I want to know what is required and we
22 have to look at.
23

24 Jeffrey Schmitt: Can I ask for a motion on Article 8.2.1?
25

26 **MOTION** made by David Blankfard that we do not believe that the use of the kennel will not maintain or enhance the value of
27 contiguous properties based on the fact of Mr. Tolley's appraisal testimony that we heard tonight.
28

29 Jeffrey Schmitt: It is your motion that the use will not maintain in the midst of that stuff. Do I hear a second for that motion?
30 Not hearing a second for that motion, I ask another member of the board if they wish to submit their motion for 8.2.1.
31

32 David Blankfard: The reason I think we should not is because we have not heard any testimony tonight that says in either
33 way that it will maintain or will not maintain the current value. There is nothing on the record that says; in fact we have heard
34 two different things. One that the data that was presented in the report impact study is invalid so that throws that whole
35 impact study. In my mind there is no impact study.
36

37 Tom Brown: I guess the problem I have with that is just because you have a lot of conflicting data does that always mean
38 you can't make a decision.
39

40 David Blankfard: My decision is no.
41

42 Tom Brown: That is my point, do we have enough that we can look at and say we have a reasonable thought that values
43 can be maintained and I guess you are saying you don't think that data contained will be enough to meet that burden.
44

45 David Blankfard: Correct. I don't think there is any data.
46

47 Jeffrey Schmitt: Other questions regarding that.
48

49 David Blankfard: Also, there is no data that says it will go down or loose value either. I have heard nothing whether having
50 the kennel there will maintain or depreciation the value from either side. Mr. Tolley says he cannot make a decision about
51 this. All I can tell you is the report is no good.
52

53 Jeffrey Schmitt: So we have conflicting opinion if you will. We have Mr. Knight's data which was submitted and all the
54 issues that are attendant with Mr. Knight's data but it is the data we have in regards to that and then we have Mr. Tolley who

1 is also a certified appraiser who says while that data may be correct arithmetically and for the areas that are picked out, its
2 relevance to this neighborhood is not pertinent.

3
4 David Blankfard: Not applicable.

5
6 Jeffrey Schmitt: But it is the only data we have.

7
8 James Carter: Mr. Chairman, there was not enough data to justify either way.

9
10 Jeffrey Schmitt: It would seem to me that doing studies like this is almost an impossibility for any situation like this. There
11 are 20 variables that will affect the value of property that you have, where they are located, everything that is going on and
12 isolating one aspect of that and trying to pull that out and saying whether it does or doesn't is very difficult and that is why the
13 data we have has some generalities in involved but again, it is the only data we have.

14
15 David Blankfard: Who had the burden of proof to submit that data? To prove that...

16
17 Jeffrey Schmitt: The applicant has provided the data to us. The applicant has provided what they think is relevant. If it is
18 seen as not relevant or incorrect, then that is the issue we have in front of us. I think they have met their burden in regards
19 to providing information in relation to Article 8.2.1.

20
21 John Roberts: The applicant has the burden to prove that statement. The use will maintain or enhance the value. The
22 proponents of the applicant then have the burden to prove by the same standard, competent materials and substantial
23 evidence that the applicant has not met his required burden.

24
25 Jeffrey Schmitt: The operative word here is competent material and substantial evidence of which I don't believe there was
26 any in regards to this. We heard from Mr. Tolley but he provided no empirical data at that point in time to us.

27
28 Tom Brown: The only empirical data was what was provided by the applicant. Actual numbers, the only numbers provided
29 on paper. This sales dates and things like that and I guess that the, I keep going back and forward on that. Where is the
30 preponderance of doubt or

31
32 David Blankfard: I could give you sales data on my neighborhood and say that applies, here is some numbers, is that what
33 you mean.

34
35 Jeffrey Schmitt: I don't think it was that bad. Is it agreed that it was contiguous to a large, economic, commercial
36 development, whether or not that is right, I think both of the witnesses, there is no absolute in regard to this. David has made
37 a motion; I have asked for a second and did not receive a second. At this particular case, I will ask for another motion. Mr.
38 Brown, can I call on you.

39
40 Tom Brown: I can see both sides and there is uncertainty but when I am looking at the evidence, the most empirical was
41 provided by the applicant and not by the community and that is where I am coming down with that looking at the numbers.

42
43 **MOTION** made by Tom Brown to accept the motion that the kennel will maintain or enhance the value of contiguous property
44 based on the findings of fact of the professional testimony of the historical sales in the community near the dog kennels and
45 that the property values will be maintained.

46
47 John Roberts: There needs to be more in the findings on that particular motion.

48
49 Jeffrey Schmitt: We had the testimony of Mr. Knight in regards to what has happened here and maybe elaborating on pieces
50 of the testimony of the two neighborhoods. It adds to the issue in regards to this.

51
52 **MOTION** made by Tom Brown to accept the motion that the kennel will maintain or enhance the value of contiguous property
53 based on the findings of fact of the professional testimony of the historical sales in the community near the dog kennels and
54 that the property values will be maintained. Also, the empirical data provided by the applicant showed there is an

1 appreciation in value on properties in somewhat similar circumstances within the community although allowed there is no
2 exact measurement or exact circumstance we can compare it to but the appreciation does exist on subsequent sales.
3 James Carter seconded.

4
5 **VOTE:** 4 in favor, 1 opposed (David Blankfard)

6
7 Jeffrey Schmitt: Article 8.2.1, The location and character of the use, if developed according to the plan submitted, will be in
8 harmony with the area in which it is to be located. Mr. Carter, can I look to you for a motion on this one please.

9
10 **MOTION** made by James Carter that the location character of the use, if developed according to the plan submitted will be in
11 harmony with the area it is to be located and its use will be in compliance with the general plan for the physical development
12 of the county as adopted by the board.

13
14 Jeffrey Schmitt: Can you cite some of the specifics regarding Mr. Whitaker's testimony in relation to the size, character,
15 structure of the building, the fencing, the landscaping provided to shield as much of any of these structures as possible from
16 any traffic on the road or from the neighbors, if you would please. Maybe something in regards to the construction of the
17 building, the insulation and all the factors that they are doing to decrease the level of noise that may come from the building.

18
19 **MOTION** made by James Carter that the location and character of the use, if developed according to the plan submitted will
20 be in harmony with the area it is to be located and the use is in compliance with the general plan for the physical
21 development of the county as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by
22 the Board of County Commissioners. Also, the height of the fence, location and, the additional shrubbery that will be added
23 to the fencing of the property for that area. Also, the acoustics and the sound absorptive ceiling and also the windows.
24 Seconded by David Blankfard.

25 **VOTE:** Unanimous

26
27 Jeffrey Schmitt: In accordance to the regulation of the county, the board for the Article 8.2.1 and 8.2.2 has been approved.
28 We now draw your attention to page 143 in our recommendations as addendums to the three findings that are being
29 provided by the planning staff. Do I need to read all these?

30
31 **RECOMMENDATION:**

The Planning Staff has not received any information that would establish grounds for making a negative finding on the general standards. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, and the use being in compliance with the general plan for the physical development of the County. While staff has received numerous complaints from several adjoining property owners concerning the use of this property as a Camp/Retreat center no formal documentation has been submitted indicating that a negative finding should be made regarding this project.

The Planning Staff has reviewed the application, the site plan, and all supporting documentation and has found that the applicant **does** comply with the specific standards and required regulations. Specifically, the submitted site plan shows an encroachment into the required buffer area. While this encroachment can be removed, staff can not make an affirmative finding based on the applicant as submitted.

If the applicant agrees to a condition indicating that all encroachments into the buffer area will be removed, and provided the Board of Adjustment finds in the affirmative on the specific and general standards, the Board could make a positive finding on this application. In the event that the Board of Adjustment makes the determination that the permit can be issued, Planning Staff recommends the attachment of the following conditions:

- 32
33 (1) That the applicant complete and submit a formal application to the Orange County Inspections
34 Department requesting authorization to commence construction of the proposed kennel facility.
35 The application, including all applicable fees, shall be submitted within one hundred eighty
36 (180) days from the approval of the Special Use Permit. Further, the building permit application
37 shall be reviewed and approved by the Director of Animal Control for compliance with any and
38 all applicable animal control regulations in accordance with the provisions of Section 8.8.11.3 of
39 the Zoning Ordinance,

- 1 (2) That the Orange County Fire Marshall's office shall review and approve the building plans, as
2 part of the normal building permit review process, and that any and all modifications to the
3 structure be made to address fire code issues prior to the issuance of the permit authorizing the
4 commencement of construction activities,
- 5 (3) That the required buffer, as shown on the submitted site plan, be installed and approved by the
6 County within one hundred eighty (180) days from the approval of the Special Use Permit,
- 7 (4) That the applicant complete, submit, and receive approval for a Class II Kennel application from
8 the Orange County Animal Control Department within one hundred eighty (180) days from the
9 issuance of the SUP,
- 10 (5) That the applicant be required to submit a sign rendering for review and approval by the
11 Planning Department within one hundred eighty (180) days from the issuance of the SUP and
12 that the approved sign shall be installed prior to the issuance of a Certificate of Occupancy
13 allowing for kennel operations to commence.
- 14 (6) That the applicant apply for and receive a driveway permit from NC DOT within one hundred
15 eighty (180) days from the issuance of the SUP and provide planning staff with a copy of the
16 issued permit,
- 17 (7) If any condition of this Special Use Permit shall be held invalid or void, then this Special Use
18 Permit shall be void in its entirety and of no effect, and
- 19 (8) The Special Use Permit will automatically expire within twelve (12) months from the date of
20 approval if the use has not commenced or construction has not commenced or proceeded
21 unless a timely application for extension of this time limit is approved by the Board of County
22 Commissioners as provided in 8.4.11 of the Orange County Zoning Ordinance.

23
24 Jeffrey Schmitt: added this as number 9. In addition, there are four specific sound engineering requirements that were stated
25 by Mr. Stewart are to be incorporated and explicitly noted in the detailed construction plans when submitted to the Fire
26 Marshall's office.

- 27 1. Acoustic windows with the three-inch air gap.
28 2. The solid door construction.
29 3. The acoustic ceiling.
30 4. The acoustic ductwork vent.

31
32 Tom Brown: What is a buffer yard?

33
34 Jeffrey Schmitt: The hearing is closed so Michael can't provide anything.

35
36 Tom Brown: Just buffer. I haven't seen anything that says buffer yard.

37
38 Jeffrey Schmitt: If we change that to say something about distance and landscaping.

39
40 Tom Brown: I am just looking at the definition of buffer.

41
42 Jeffrey Schmitt: Does it say that in here?

43
44 Tom Brown: It screened by its use to moderate both impacts of one land use and one another.

45
46 Jeffrey Schmitt: Would you prefer that to yard?

47
48 Tom Brown: Just say required "buffer" on number 3.

49
50 Jeffrey Schmitt: Are there any addendums or additions to these?

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Tom Brown: Council stated that Mr. Lonsway intended to construct Phase I and Phase II concurrently as one construction, can we add that, legitimately based on that testimony as a condition.

John Roberts: You can add conditions to the Special Use Permit.

Jeffrey Schmitt: I don't know if we can tell a person how to construct their business. I don't think we can do that.

John Roberts: You can add conditions to the Special Use Permit.

Tom Brown: He made the statement that was his intention and he was going to do Phase I and Phase II then that, to me indicates that you have a coherent plan.

Dawn Brezina: This would make a substantial difference in the amount of noise. You don't think we can.

Jeffrey Schmitt: If he meets the requirements of when he begins construction in regards to this, us telling him how fast he needs to proceed or whether or not per specifications as to whether or not he builds it today or tomorrow or the next day, I feel uncomfortable.

John Roberts: Just as a point, you can add conditions, this would be similar to adding a condition of acoustic controls. You can add conditions to the Special Use Permit.

Nick Herman: There is no objection to building concurrently Phase I and Phase II.

Jeffrey Schmitt: Tom, have you got suggested wording for that?

Tom Brown: Yes. Condition number 10. The construction of the Class II kennel, Phases I and II will progress concurrently.

Dawn Brezina: Being limited to 20 dogs, is that already in there.

Jeffrey Schmitt: That is inherent in the midst of this stuff because if he goes above 20 dogs, then the septic system doesn't work for him at that point. I am going to get a vote on these footnotes to the Section 8.2.1. I have read items one through eight and we have added two items in regards to that, do I hear a motion for the approval for these to be attached as conditions to the SUP.

MOTION made by David Blankfard to add these 10 amendments to the conditions of the SUP. Seconded by Tom Brown.

VOTE: Unanimous

Jeffrey Schmitt: Mr. Lonsway, the Board of Orange County Adjustment grants you your Special Use Permit for the construction of your kennel.

5. Adjournment

MOTION: Dawn Brezina moved to adjourn the meeting. Seconded by James Carter.

VOTE: Unanimous

The meeting was adjourned at approximately 11:15 p.m.

Tina Owen, Minutes Preparer