

Members:
Ed Donaldson, Chairman
Horace Humphrey, Vice-Chair
Joseph M. Dykes
Vickie Mullins
George Lott



Alternates:
Yvette Carson
Winton McHenry
Nathan Feinberg
Joseph Decosta
Alfonso Ferguson Sr

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

MINUTES
FEBRUARY 20, 2014
7:00 P.M.

Members Present

Ed Donaldson, Chairman
Horace Humphrey
Joseph Dykes
Vickie Mullins
George Lott
Winton McHenry (non-voting)
Alfonso Ferguson Sr. (non-voting)

Absent Members

None

Staff/Others Present

Patti Speicher
Robert Haigh
Betty Lynd
Ken Sykes
Robert Hasty, Jr. (Assistant
County Attorney)

Chair Donaldson called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. ROLL CALL

Mr. Haigh called the roll and stated a quorum was present.

2. OATH OF OFFICE

Mr. Haigh stated that the oath was to be administered to Joseph Decosta; however, he was unable to attend the meeting.

3. SWEAR IN STAFF

Chair Donaldson swore in staff members.

4. ADJUSTMENTS TO THE AGENDA

Chair Donaldson made a motion to hear case P14-01-C first during the Public Hearing, seconded by Mr. Dykes. The motion passed unanimously.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

5. APPROVAL OF THE DECEMBER 19, 2013 MINUTES

Mr. Lott made a motion to accept the minutes as submitted, seconded by Ms. Mullins. The motion passed unanimously.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

6. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES

There were none.

7. APPROVAL OF CHANGES TO THE 2014 DEADLINE/MEETING SCHEDULE

Mr. Dykes made a motion to accept the revised schedule as submitted, seconded by Mr. Lott. The motion passed unanimously.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

8. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

9. POLICY STATEMENT REGARDING APPEAL PROCESS

Mr. Haigh read the Board's policy regarding the appeal process to the audience.

10. PUBLIC HEARING(S)

B. P14-01-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 2.41+/- ACRES; LOCATED AT 3580 GILLESPIE STREET; SUBMITTED BY RALPH HOLLOMAN (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

Chair Donaldson read the case heading.

MS. SPEICHER: Excuse me, Chair. Can we back up a little bit and. Staff had to modify some of the dates on the deadline schedule.

CHAIR DONALDSON: Oh, I didn't even see that.

MR. LOTT: Number 7

MS. SPEICHER: Also, did you have the abstentions, did you call for that?

CHAIR DONALDSON: I did. There was none. Has everybody looked at the deadline dates?

MR. LOTT: I did.

CHAIR DONALDSON: Anybody want to be heard on them?

MR. LOTT: I'm good with it.

[See Item 7: APPROVAL OF CHANGES TO THE 2014 DEADLINE/MEETING SCHEDULE]

CHAIR DONALDSON: Okay, now going back to this case. Who is here on this case? Mr. Needles. I'm sorry, not Mr. Needles. Mr. Vick, are you here sir?

MR. VICK: How are you doing?

CHAIR DONALDSON: Fine. Come on up. Go ahead.

Mr. Haigh reviewed zoning, sketch map, and land use of the area surrounding subject property. He briefly reviewed board packet material.

CHAIR DONALDSON: And this is not the same property that we've been dealing with for the last three months?

MR. HAIGH: No sir. The property is further north.

CHAIR DONALDSON: Okay.

MR. HAIGH: This is along the same road, Gillespie Street.

CHAIR DONALDSON: Alright, go ahead.

Mr. Haigh continued reviewing packet material.

MR. HUMPHREY: One question. Roughly how far does the location of this billboard from the airport entrance? I can't think of the name. What is it Airport Drive?

MR. DYKES: Airport Road.

MR. DONALDSON: Airport Road

MR. HUMPHREY: Airport Road. Yes, roughly how far is that?

MR. LOTT: Right across the street from Snow Hill Road, which is right in there where the old Betsy Ross [motel] used to be I think didn't it?

MS. MULLINS: Yes.

MR. HUMPHREY: In terms of blocks/mileage.

CHAIR DONALDSON: Distance.

MR. HAIGH: I'm not exactly sure.

MR. HUMPHREY: Roughly.

CHAIR DONALDSON: Well let's

MS. SPEICHER: Roughly three and a half to four miles

MR. HUMPHREY: Three and a half to four miles. Thank you.

CHAIR DONALDSON: Ms. Mullins.

MS. MULLINS: I have no questions.

MR. LOTT: Is this any relation to the study that's going to be done on the airport overlay?

CHAIR DONALDSON: This is outside that zone.

MR. LOTT: This is outside.

MR. HUMPHREY: This is outside? Okay, that was my next question.

MR. HAIGH: Well, it is within the airport overlay district, but it is outside of the study area. The coliseum district where the other sign was.

CHAIR DONALDSON: Where the city and county are working on a new ordinance now. It is outside of that. Did you want to say something Mr. Dykes?

MR. DYKES: No.

MR. HUMPHREY: Did I hear you say, Chair Donaldson, that what the city and county is working on, that this is outside of that area?

CHAIR DONALDSON: It is to be outside of that area too from what I, because I asked that question of staff.

MR. HUMPHREY: Okay. Thank you.

CHAIR DONALDSON: The 35 foot maximum height, that's the top of the sign right?

MR. HAIGH: Yes

CHAIR DONALDSON: Not the beam itself.

MR. HAIGH: Correct. It is the very top of the sign. The highest point.

CHAIR DONALDSON: What's your name sir?

MR. VICK: Grey Vick.

CHAIR DONALDSON: Do you want to be sworn in?

Chair Donaldson swore in the speaker, Mr. Vick.

[Public Hearing opened.]

CHAIR DONALDSON: What is it you wanted to say Mr. Vick?

MR. VICK: Well,

CHAIR DONALDSON: Well the first question is how far is it from the other sign we've been dealing with?

MR. VICK: Yea. I think like Ms. Speicher said I think it is about three and a half miles or so.

CHAIR DONALDSON: Okay.

MR. VICK: That's a guesstimate. I'm really not one hundred percent sure on that. It is quite a ways down in comparison to where [inaudible].

CHAIR DONALDSON: Alright. Well go ahead sir. Tell me whatever you wanted me to hear.

MR. VICK: Can you guys hear me okay?

MR. HUMPHREY: I'm having a little difficulty. Closer to the mike if you would please. Thank you.

MR. VICK: That'd be fine. So, the billboard site is located at 3580 Gillespie Street. All the same things we've just kind of gone over: 480 square feet, 35 feet overall height, steel construction. The NCDOT tax evaluation of the sign structure is \$42,350. That equates to somewhere about \$400/year for the county tax on the sign and personal property tax on the sign. The 50 foot front and side setback as you've already seen on the map. This is the photo of basically the exact same sign that we would be interacting on Mr. Holloman's property. It is a 480 square foot sign. Maybe 32 feet overall height and as you can see it is steel construction. You know, steel frame. Here is where the requirements were that the use would not materially endanger the public health or safety if located according to the plan submitted and recommended. The proposed use fits this requirement. The use meets all required conditions and specifications that are required by the county and obviously we are agreeing to all the conditions associated with this property as well. Maintaining or the use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity. The transient area, Highway 301, is will make the use a public necessity and will enhance the value of adjoining properties, so the proposed use fits both of the requirements. Also, the location and character of the use, if developed is according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan. As the commercial area is in conformity with the Land Use Plan, also the 2030 Growth Plan provides

for limited signage on this corridor. The proposed use fits this requirement as well. I think we've kind of went over this before with you guys about Highway 301 being a real transient area and also be able to let people know who are coming in and out of Fayetteville and the county where local businesses are. We are a small billboard company so we deal mainly with local companies. Not really the national advertisers like some of our bigger competitors will deal with. We mainly just deal with local businesses. I think that Highway 301 is the perfect area for billboard signage. With airport traffic and directing people to the county and city businesses, we consider that to be prosperous for the city and the county. Some of our local customers, the Richardson Law Firm, Cedar Creek Fish Farm, Baldino's, Fullers BBQ over on, right on Highway 301 are some of our local customers that we have. Other people that are using signs: the City of Fayetteville, a lot of local businesses, attorneys, doctors, new businesses. And then also with this site that we're working on, some of the conditions are requiring us to remove an old structure on the property and to provide vegetation on this site as one of the conditions for the approval of this billboard site. Which I just stuck up there. Consistent regulations: This is conforming, I have to get a DOT permit as we went through in the meeting I believe it was October/November when I was at the meeting. The transient area and then no vegetation interference. The vegetation we are going to be adding is going to be on the private property so we will be able to keep it maintained versus there being some type of city vegetation blocking the sign which that's not an issue here. Just the basic overall economic impact of outdoor advertising is driving sales, helps guide mobile customers to goods and services, and supports local businesses in the county and the city. And obviously small business is the jobs engine of the economy and that's who we are here to support is the small local businesses and to get them notice as people are coming into the city. Some other considerations: a Florida study that they had said increase billboards increase the property values in certain areas and other research is saying that banning signs is a negative impact. You can skip the next one. That's it. You guys have any questions let me know.

CHAIR DONALDSON: Mr. Humphrey.

MR. HUMPHREY: No. Not at this time, might later.

CHAIR DONALDSON: Any questions? You mentioned that there's an oral agreement on some stipulations?

MR. HAIGH: Yes sir.

CHAIR DONALDSON: What are they?

MR. HAIGH: Well it's the condition sheet that came with the packet.

CHAIR DONALDSON: Okay. Just these? Just these stipulations, nothing else?

MR. HAIGH: Yes sir. Forty-two conditions that go along with this site.

CHAIR DONALDSON: Okay. And you're in agreement with every one of these conditions sir?

MR. VICK: Yes sir.

CHAIR DONALDSON: Okay. I don't think I've ever seen a list that long of stipulations.

MR. LOTT: It's not in that study area.

CHAIR DONALDSON: Huh? Anybody have any questions about the stipulations?

BOARD MEMBERS: No.

CHAIR DONALDSON: I'll give Ms. Mullins a few minutes.

MS. MULLINS: I don't have anything.

CHAIR DONALDSON: Any discussion?

MR. HUMPHREY: I don't have any.

OTHER BOARD MEMBERS: No.

CHAIR DONALDSON: Alright. Then anything else you want to say sir?

MR. VICK: That's it.

CHAIR DONALDSON: And anything, any further from, any input from the staff on it or anything?

MR. HAIGH: No sir. I think we've covered it all.

[Public Hearing closed.]

CHAIR DONALDSON: Then do we have a motion to either approve or disapprove the use the request for special use permit?

MR. HUMPHREY: I will offer a motion sir that we approve the special use permit based on them fulfilling the requirements set forth by the department.

MR. LOTT: Second.

CHAIR DONALDSON: Any other motions? All those in favor?

The motion passed unanimously.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

CHAIR DONALDSON: Alright, going to the special use permit, the approval.

MR. LOTT: Thank you. [to Mr. Vick]

MR. DYKES: Thank you. [to Mr. Vick]

CHAIR DONALDSON: Well, I still got to read it. I've got to put it into the form of an order. Unless you want to do it.

MR. LOTT: No.

CHAIR DONALDSON: I'm going to start parceling these out so y'all need to pay attention so y'all can do them when I'm not here.

MS. MULLINS: You're going to be here.

CHAIR DONALDSON: Mr. Humphrey has done one. Mr. Dykes has done one. Right? Y'all are going to get one next. Just so y'all can do it if y'all have to fill in up here.

[Chair Donaldson continues] In granting the Special Use, the Board has found that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

There has been no evidence to indicate that there would be any danger to the public and based on where the sign is situated and the setback and it's on private property and no public use there.

2. The use meets all required conditions and specifications.

In with the exception that it's in, in exception to the rule there to the zoning there, but it is under the new Land Use thing, heavy commercial use, and I'm not going to itemize all 42 of these, but it meets, it will meet all those required conditions and the 42 itemized specifications that the petitioners asked for.

3. The use will maintain or enhance the value of adjoining or abutting properties, of that the use is a public necessity;

There has been no evidence that it would detract from the value of the properties or any other. In fact based on the specifications and the stipulations would enhance the value because it's going to be cleaned up and remove some of the old signage, that from the way I looked at it was an eye sore. Those temporary roll-out type signs.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan:

As stated before, this isn't zoned heavy commercial. It's in keeping with the businesses that immediately surround it and across the road from it and does not really change the character of the environment where it's at.

CHAIR DONALDSON: And based on all of that we will grant the special use permit for the signage, incorporating number 1, 2, and 3 on the thing and on number 4 add that the petitioner is to comply with the 42 stipulations as submitted with the plan. Anything else? Anything from the staff? Anything else you want in there? Thank you, Mr. Vick. Good luck to you.

MR. VICK: Thank you very much.

A. CONSIDERATION OF MOTIONS TO STAY/DEFERRAL

P13-14-C: CONSIDERATION OF AN APPEAL SUBMITTED UNDER ARTICLE XVI SECTION 1604, ADMINISTRATIVE REVIEW WITH THE BASIS OF THE APPEAL CONCERNING ISSUANCE OF A ZONING PERMIT FOR AN OUTDOOR FIRING RANGE TO TIGERSWAN INC AT 2850 TIGERSWAN DRIVE, OWNED BY PRECYTHE PROPERTIES, LLC; SUBMITTED BY KEVIN WEST ON BEHALF OF OK FARMS OF CEDAR CREEK, LLC; SAMUEL D. & DORIS M. FORT; RAEFORD B. LOCKAMY II; JULIA K. FAIRCLOTH; ARNOLD DREW SMITH; AND ROBIN CURRIN, ATTORNEY.

Chair Donaldson read the case heading.

CHAIR DONALDSON: And whose, this is a motion by the county actually isn't it?

MR. HASTY: Yes sir. By the county and Tigerswan.

CHAIR DONALDSON: Okay. Well, before we go any further, we had already made a ruling last month when this thing came up we were not going to hear this case again until the county decided what they were going to do and all the Court of Appeals cases were done. It is the policy of this board, and we unanimously passed it, twice actually. The last two times up we were not going to hear any more matters on this case until the County Commissioners decided what they were going to do, since they took the authority away from us on this with the new permitting and with the Court of Appeals it's like, I think now what'd you say Ms. Speicher, there's three different cases now, court cases?

MS. SPEICHER: Three different cases on Tigerswan. Yes sir.

CHAIR DONALDSON: And we still, I've not received an order yet from the Superior Court case. Has he even issued an order yet, a written order?

HASTY: Yes your honor. That's what was on last the last meeting. He stayed his order so [inaudible].

CHAIR DONALDSON: That's right. Has he lifted it yet?

HASTY: No your honor. It's not been.

CHAIR DONALDSON: Well I don't see any reason why we even need to be here today then. Do you Mr. Hasty?

MR. HASTY: Well this is a separate permit and

CHAIR DONALDSON: I understand that but it's all part parcel the same thing and I'm not going to piecemeal it.

MR. HASTY: Well I understand we're certainly [inaudible]

CHAIR DONALDSON: Ms. Currin, do you want to be heard on it?

MS. CURRIN: Yes sir. I do want to be.

CHAIR DONALDSON: Okay.

[Public Hearing Opened.]

MS. CURRIN: As Mr. Hasty said, this is a separate permit that has been issued since the judge's decision. It's for a whole different use. We've appealed that to this board. It's an independent Board of Adjustment appeal and they have asked basically that this board stay their decision pending the decision in a different case at the court of appeals. It is our position that the board does not have authority to enter this kind of stay. If I could get a

CHAIR DONALDSON: We can defer from hearing it though or continue it. We can continue it indefinitely until we get further guidance from the Court of Appeals.

MS. CURRIN: Well then, you won't get guidance from the Court of Appeals on this because Court of Appeals is not deciding this issue. They're deciding a completely different.

CHAIR DONALDSON: I understand what you're saying, but I'm just saying to you Ms. Currin, we're not going to hear this unless the board over, but I know my feelings and I don't know what the board's feelings are, but we're not going to hear any more on Tigerswan. Until the County Commissioners decide what they're gonna do and a court above us tells us what the law is on this.

MS. CURRIN: Well the Board of Commissioners has made a decision to rezone it. It's our position that the decision of the court requires that prohibits them from operating right now. That's why we have appealed it. Now North Carolina General Statute 160A-388 was just amended about six months ago and that particular statute sets forth that the limited situations where they can where this board can stay something and this isn't one of them and as a matter of fact, what the statute now says specifically is that the Board of Adjustments has to make a decision in a reasonable time. It has to hear it and it has to make a decision in a reasonable time and we don't think waiting a year and a half for the Court of Appeals to make a decision is a reasonable time. Your own rules of procedure require that you hear a case when it comes in front of you within a reasonable time. So, basically and I've got cases to say if there's no specific authority to stay that you can't. So basically what their asking, the last time we went to the Court of Appeals it took a year and a half and so what basically they're asking to do is that we wait to hear this case until it meanders through the Court of Appeals and then we start the new case over which could take another year and a half.

CHAIR DONALDSON: Well what's this permit that was, what did this permit do?

MS. CURRIN: This permit gave them permission to operate a firing range. The first permit was for a school. We went all the way to the Court of Appeals; they said it's not a school you can't operate.

CHAIR DONALDSON: I understand that.

MS. CURRIN: The second permit was for outdoor recreation.

CHAIR DONALDSON: Which we heard.

MS. CURRIN: Which we heard. Which has now been reversed by a judge.

CHAIR DONALDSON: That's on appeal also.

MS. CURRIN: Right and as a part of that order, the judge made a specific ruling that this was a vocational school and it was not a firing range. Since that time, they've issued yet another permit saying that they can operate as a firing range. It is our

CHAIR DONALDSON: Under the new

MS. CURRIN: Correct

CHAIR DONALDSON: Zoning.

MS. CURRIN: Correct. It's our position that the judge's order controls and if the judge says it's a firing range, I mean says it's a vocational school then that's what it is. There is a case that came down from the Court of Appeals this week, this Tuesday, that talks about the preclusive res judicata effect of that type of a decision. It's our position that once the judge said it was a vocational school they can't come back and permit them as a firing range because there has been a judicial determination.

CHAIR DONALDSON: Well it's my understanding that with the new zoning ordinance the appeal was to the Board of Commissioners not us.

MS. CURRIN: That's, that was a rezoning. This appeal is to this board as to whether that permit is proper in light of the judge's ruling. What the stay is gonna do, it's gonna add about a year and a half to this litigation instead of running them concurrently and our people have been fighting for years. They've won everything along the way. Basically the entire time they

CHAIR DONALDSON: Well that's not true either.

MS. CURRIN: Well

CHAIR DONALDSON: But go ahead.

MS. CURRIN: Well we won at the Court of Appeals and we won at the Superior Court. And both, both of the permits that have been issued, the courts have declared them to be invalid. So now we are on the third one and we would like a ruling as to whether or not it's valid or not. We don't want to come back. If we prevail, the Court of Appeals, we've gotta come back and start all over again and then and go back up the ladder.

CHAIR DONALDSON: It doesn't make any judicial sense to me to piecemeal this and us do something here that you're not gonna like or the county is not going to like and it gets appealed anyway. No matter what we do it's going to get appealed. Right?

MS. CURRIN: Well honestly, what you do today, if you stay it, that's going to get appealed too, because we think it's in violation

CHAIR DONALDSON: That's what I said. Whatever we do today is going to get appealed. Is that not true Mr. Hasty?

MR. HASTY: Yes. That's very likely.

CHAIR DONALDSON: Well it's more than likely.

MS. CURRIN: [to Mr. Hasty]: So you will appeal if they don't, if there's not a stay in there?

CHAIR DONALDSON: So I mean, so, you know until the court sorts out what is what is legal on this zoning we're in a quandary here. We don't know. You know every time we've ruled it's gone up. One time it got turned around. One time it didn't. You know, we don't and the Superior Court judge stayed his order on this one.

MS. CURRIN: He stayed enforcement of the order.

CHAIR DONALDSON: Right.

MS. CURRIN: Not the ability to have it heard. That's what, that's what we just want to be heard.

CHAIR DONALDSON: He stayed the enforcement.

MS. CURRIN: Correct. He said they

CHAIR DONALDSON: Which to me, tells me that the Superior Court judge, having been a judge myself, knows he made the decision based on what the law was but he was pretty sure it was going to get overturned on the way up the road. Otherwise, he wouldn't of stayed the enforcement. He'd said comply with my order now. Right? Isn't that normally what happens?

MS. CURRIN: I don't think he thinks he's gonna get overturned or I don't know why he would of ever ruled in our favor to begin with.

CHAIR DONALDSON: But he stayed the order.

MS. CURRIN: He stayed the order to allow them to operate. Yes he did. During the [inaudible].

CHAIR DONALDSON: Because of the economic harm that it might cause them if the Court of Appeals actually in the law ends up ruling for them.

MS. CURRIN: Well what's gonna happen to us is if we win at the Court of Appeals we're going to be back here in a year and a half right where we are tonight and then another thing I want to point out is that the county has now, the County Attorney has sent a memo to the Board of Commissioners asking them to change the definition yet again. Now there is a Supreme Court case right on point that says that this board does not rule when it's supposed to rule under the statutes and under its rules that that change cannot take effect that no matter when we come back we get to operate, we need to come back we get to use the rules in effect when we file this appeal. Which means that's just gonna create yet another mess because we're gonna have yet another ordinance in effect. So, I understand where and I'm not you know, I just want to state our position for the record which is we don't think that under your rules or the statute that there is any authority to put this on the shelf for a year and a half and would ask that you not.

CHAIR DONALDSON: Well, what however long it takes at the Superior Court level whatever, I don't have we don't have any control over that, but you know, it's not for me personally to decide whether we hear it or not. I'm just stating what the, what we have on the record stated on two previous hearings when this matter came up which was we were not gonna hear it until the county sorted this stuff out because there was too much conflicting definit[i]ons as you said. You know, what is a firing range? What's a school? What's vocational? What's not? And until we get some guidance from a court that says this is what it is, I don't see why we need to proceed with a

hearing on this at this point in time. All I'm gonna, I'm not saying, all I'm gonna do is continue it off the docket. That's my motion which is to continue it off the docket until we get a ruling at some point in time down the road. Now

MS. CURRIN: A ruling that it is a, a decision whether it's a vocational school or not?

CHAIR DONALDSON: Until we get some further guidance from a court that can tell us and the county yay or nay. I mean, at some point in time conceivably the county could lose this and they come back and say to the county you cannot and the definition you've got will, is not legal and will not apply and Tigerswan is out of business. On the other hand, which I think is highly unlikely, they could, I think that's highly unlikely that Tigerswan is going to go out of business, but on the other hand, I mean they could say no the definition that the county, the County Board of Commissioners has got is definitely good is a valid legal definition and Tigerswan can continue.

MS. CURRIN: Well that's true, but just know that we're gonna have to come back here if we prevail at the Court of Appeals for this board to decide whether or not the judge's determination

CHAIR DONALDSON: You're gonna be back here regardless of what we do tonight.

MS. CURRIN: Well we'll be back here as many times as we need to be back until things we believe are done right.

CHAIR DONALDSON: Well

MS. CURRIN: You know because we're not doing this just to be annoying. We've got two cases

CHAIR DONALDSON: We're not talking about annoying, we're talking about, you know just the economy, I mean when you when you start talking about a hearing here in front of one board, a hearing in front of a Superior Court judge, another hearing in front of a Court of Appeals, you got three different hearings going and everybody is going at cross purposes. We're on the bottom of the totem pole and we can't do anything. Now if the judge, the Superior Court judge had come back and said we're over we're overruling but I want to enforce the order that would have been one thing, we'd of been dealing with it at that point in time because we'd have been required to. But, he stayed it, so we're not doing anything and we said once we got the stay we're not going to do anything at this point.

MS. CURRIN: I understand. All I'm saying is that stay has nothing to do with this case, but I understand.

CHAIR DONALDSON: Well they're all part of the parcel.

MS. CURRIN: They are except for every time that a decision is rendered that they are a certain use, twice it's been said that that was incorrect and we're on the third use now. So, it's a moving target for us and all we're trying to do is enforce what our rights are because these people live there and they live with it every day.

CHAIR DONALDSON: I understand.

MS. CURRIN: We had no choice but to appeal this within thirty days of when that decision came down. We had to appeal it or lose our rights. Now what we're saying is we've appealed it and we're gonna have to wait and if that's what the board says then that's what we'll do.

CHAIR DONALDSON: Well I'm not going to dismiss your appeal. I'm not talking about that. We're not talking about that. We're just talking about continuing the case until we get some further guidance.

MS. CURRIN: I understand that, but I mean it's gonna be a matter of whether we win or lose and other than that than it really will be back in the board's lap to make that decision.

CHAIR DONALDSON: And hopefully by that time we'll have some guidance from the from the courts about what's gonna, but I make a motion we continue it. It's up to the rest of the board yay or nay. Do I have a second?

MS. MULLINS: I second it.

CHAIR DONALDSON: Any discussion?

MR. HUMPHREY: Let me

CHAIR DONALDSON: Think, go ahead.

MR. HUMPHREY: I want to be perfectly clear and I think I am, but I just want to make sure and that I'm going. We have got this thing at the Court of Appeals. Excuse me for quoting this thing. This case at the Court of Appeals and we're waiting for the Court of Appeals to say yay you can nay you can't. Exactly, that's where we are?

CHAIR DONALDSON: We have that and then we have the Board of Commissioners has the new definition on firing ranges which they've actually given a permit on this and that's going to go up to the Court of Appeals or the Superior Court.

MR. HUMPHREY: That's also going to go to the Court of Appeals after the other? Okay.

CHAIR DONALDSON: Yea, it's all going up to the Court of Appeals eventually.

MR. HUMPHREY: Directly

MR. DYKES: Who will determine whether it's a firing range or a vocational school?

CHAIR DONALDSON: Court.

MR. DYKES: Court of Appeals or the county

CHAIR DONALDSON: Well the Superior Court will and then it will get appealed from there. So, I mean, technically

MR. DYKES: Okay let's say if this case was to go to Superior Court. Okay. Can their decision be overturned or overruled? Can it? Can it?

CHAIR DONALDSON: The Superior Court?

MR. DYKES: Yes.

CHAIR DONALDSON: The Court of Appeals can overrule.

MR. HUMPHREY: The Court of Appeals.

MR. DYKES: The Court of Appeals can overrule.

CHAIR DONALDSON: Yea. I mean technically and we also could say that it is a firing range too. And you would appeal that right?

MS. CURRIN: Yes sir

MR. HUMPHREY: On this package we're saying they're requesting a stay and this and that was kind of to allow the Court of Appeals to rule. Is that correct?

CHAIR DONALDSON: It's to let the dust settle.

MR. HUMPHREY: To let the dust

CHAIR DONALDSON: Until something gets sorted out.

MR. HUMPHREY: And...

CHAIR DONALDSON: Too many too many competing different interests.

MR. HUMPHREY: And of course there is not a time limit on the Court of Appeals to hear it to decide.

CHAIR DONALDSON: They can be quick about it or they can be slow. Their call.

MR. HUMPHREY: So the question in my mind is then if it's at the Court of Appeals why would we make a ruling on it if the Court of Appeals is going to hear it, could be coming right back to us anyway? Is that correct?

CHAIR DONALDSON: Well, my only position is I understand what you want Ms. Currin. I, but my position is why should we get involved in a long knock down drag out hearing about this thing, only to have it appealed and we still don't have any guidance because I'm not going to forecast what would happen, but based on the last hearing assuming the evidence hasn't changed any or is substantially the same, you're gonna lose that hearing too. So, it's still going to end up in Superior, uh in Superior Court. Right?

MS. CURRIN: Well, that's true, but based on the evidence at the last hearing that we lost you have to keep in mind that the judge disagreed with the board and said it was a vocational school.

CHAIR DONALDSON: I don't care what the judge disagreed with.

MS. CURRIN: Well I understand that.

CHAIR DONALDSON: He didn't send us down an order telling us to comply.

MS. CURRIN: I

CHAIR DONALDSON: And until he does something, then we'll do something.

MS. CURRIN: I understand.

CHAIR DONALDSON: Okay. Until that time, we're independent of him. You know, he made his ruling, let him enforce it, but he didn't tell us to enforce it. Now if he'd said for us to enforce it that would have been a different matter. Mr. Hasty, you want to be heard?

MR. HASTY: We believe the uh

CHAIR DONALDSON: I'm not going to deny the stay, I'm not going to grant the stay. I'm just, my motion is to continue it until we get further guidance.

MR. HASTY: That would be fine with the county position. That takes care of this matter.

MR. MEEKER: Yes, your honor, TigerSwan agrees also that these matters are related and taking it off the calendar would be the right thing to do.

CHAIR DONALDSON: Now Ms. Currin, I give you a choice. If you want us to hear it and assuming you know you can. Well I didn't take a vote on whether to continue it or not. How many people are in favor of continuing it?

MR. LOTT: Aye

MR. HUMPHREY: Aye

CHAIR DONALDSON: All?

MR. DYKES: Aye

MS. MULLINS: Yes.

CHAIR DONALDSON: That's unanimous.

MR. LOTT: That's it.

MS. MULLINS: Yes it is.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

The motion passed unanimously.

CHAIR DONALDSON: So, but if you want a hearing I mean you can see the reading on the wall here. We can give you a reading and deny the stay if you want it so you can appeal it.

MS. CURRIN: Well at least we would have a decision that that would run concurrently with each other and we wouldn't have to come back and you're telling me right now before we even have any evidence that I'm going to lose.

CHAIR DONALDSON: I'm not saying that. I'm just saying you can look from you know based on. As I said if the evidence is not substantially different than what it was before and we're talking about noise, impact, all of that that hasn't changed any has it?

MS. CURRIN: That's not, but that's not the issue

CHAIR DONALDSON: I understand. The question is the definition of firing range.

MS. CURRIN: No the issue in this appeal, respectfully, is whether or not the judge's order which says it's a vocational school will permit them, the county, to reclassify as a firing range. That's it. There's like no evidence.

CHAIR DONALDSON: Okay

MS. CURRIN: It's a question of interpreting.

CHAIR DONALDSON: But he stayed his order right?

MS. CURRIN: He stayed his order. That's

CHAIR DONALDSON: So you're asking this board to interpret what he or overrule what he said.
Or

MS. CURRIN: I'm not asking to overrule. It will still be stayed until the Court of Appeals makes a decision but if we win at the Court of Appeals and we're right, then then that will be disposed of much quicker than if we come back again in a year and a half and start over again. That's all we're saying.

CHAIR DONALDSON: This case might be mute by that point in time.

MS. CURRIN: I, based on, I don't think it can be. If you continue it indefinitely, if you look at Robbins vs. Hillsborough then we're gonna come back and it can't be muted; we're gonna, we're gonna we're frozen in time. No ordinance changes, nothing will apply. But we're fine; I mean I understand where you come from.

CHAIR DONALDSON: But now, I mean, you understand. If you want me to give you, if you want us to have a hearing we'll give you a hearing and we'll rule. I'm not saying what but I'm just saying if you project the facts based on the last hearing, and the only question is whether it's a firing range or vocational, but you've already said he determined that it was vocational right?

MS. CURRIN: Correct

CHAIR DONALDSON: But he stayed his order.

MS. CURRIN: Correct

CHAIR DONALDSON: So, in effect he said well it's vocational but we're not, I'm not going to enforce it.

MS. CURRIN: No because that can't be enforced. That is that decision. We've appealed a separate decision. Not whether they're a vocational school or not. The new decision is giving them a permit as a firing range. It is

CHAIR DONALDSON: Which is under the new

MS. CURRIN: Correct

CHAIR DONALDSON: Okay

MS. CURRIN: Correct. According, and according to them that they can be a firing range even though the judge says they're a vocational school. We say no, you've got to do what be, what the judge said. Now the judge stayed it pending appeal but if we get affirmed on appeal then that's we're gonna come back and have to make that decision.

CHAIR DONALDSON: Well we'll do that then.

MR. HUMPHREY: Yea.

CHAIR DONALDSON: We'll do that then. There's no because if he says it's a vocational it's affirmed by the Court of Appeals, we're gonna come back here, we're gonna have a whole brand new hearing again on firing range. Is it a firing range or is it not?

MS. CURRIN: Well I

CHAIR DONALDSON: Does it comply with the new county ordinance?

MS. CURRIN: Well I think our issue is very very straightforward. Is that res judicata or is it not? And that's it.

CHAIR DONALDSON: It won't be because the county commissioners will come up with a new ruling and you know it

MS. CURRIN: Well if they come up with

CHAIR DONALDSON: And I know it.

MS. CURRIN: Well that's what I'm saying. You know we got a case then that, that's not gonna apply, but I guess we'll deal with that when it comes up but

CHAIR DONALDSON: But, you know what they're gonna do. Once the county gets the ruling they're going to change it to comply with whatever the ruling is.

MS. CURRIN: Well, respectfully we wish they would. You know. Get it right one way or the other because from our perspective as long as it's being done wrong then we have no choice but to challenge it.

CHAIR DONALDSON: Well I understand that. I'm not faulting you for that. I'm just saying we're talking about you know just the mechanics of handling all this stuff when you got. You know this is the third time. Actually there's more than that. I've lost count how many times this thing has come up. It's the third time for a hearing on stuff and it started three years ago.

MS. CURRIN: Almost four.

CHAIR DONALDSON: Has it been that long now? But, you know, you've lost here every time.

MS. CURRIN: Correct.

CHAIR DONALDSON: You won at Superior Court.

MS. CURRIN: Yes.

CHAIR DONALDSON: You won in the Court of Appeals but this the first time you won at Superior Court this time, but he stayed his order. If he was in, if in my, whole thing is that, if he thought so strongly about it he would have enforced the order and sent it to us and said enforce the order.

MS. CURRIN: Well that could very well be, but I don't

CHAIR DONALDSON: But when he stayed the order I think he was saying the same thing that we're saying which is let the Court of Appeals sort this mess out between the Court of Appeals and the county commissioners.

MS. CURRIN: I understand but you understand if we win at the Court of Appeals that they still gotta get another one, another theory, and that's why we're here. So we can win at the Court of Appeals and that's all fine and we're going to be right back here.

CHAIR DONALDSON: Well I understand that. We knew that, but what we're saying is we don't see why we should do anything at this point in time until we get some guidance. He didn't give us any guidance. He just said I'm overruling it but I'm not, I'm going to stay it.

MS. CURRIN: Well actually it's that he remanded it with an order that it be revoked and that's what stayed.

CHAIR DONALDSON: Well, so,

MS. CURRIN: So, as soon as if the Court of Appeals rules in our favor then that's gonna go back into effect.

CHAIR DONALDSON: Well what was he going to do if the board voted not to revoke it?

MS. CURRIN: Well I don't know. I guess you're a judge. You should know if you don't obey an upper court what happens I mean.

CHAIR DONALDSON: It's a, you know I'm just saying we'd have to take a vote and if we voted against it, what's he going to do?

MS. CURRIN: I don't know, I think I probably wouldn't do that if I were in your shoes but maybe you would.

CHAIR DONALDSON: But, no, the, his hands are tied. We're not judicial officials. We're not under his authority. We're not public employees. We're volunteers.

MS. CURRIN: But the Board of Adjustment is subject to the rule of the

CHAIR DONALDSON: I understand but I'm just, I'm tossing it out there for argument's sake. If he sent it back and told us to revoke it we'd have to take a vote on whether to comply or not.

MS. CURRIN: Well I guess. Well what would happen when you're a judge if the Court of Appeals told you, you know, remanded something and gave you an order would you, I guess the circumstances are the same, if you decided not to obey their

CHAIR DONALDSON: I'm not a judge here.

MS. CURRIN: Right. Well this is a quasi-judicial board.

MR. HUMPHREY: Right.

CHAIR DONALDSON: I understand that.

MS. CURRIN: So.

CHAIR DONALDSON: But what would he do if the entire board just resigned?

MS. CURRIN: And there was no Board of Adjustment?

CHAIR DONALDSON: And there was no board?

MS. CURRIN: I don't know and if you want to go that far to get them a permit then I guess we'll have to take that up when it happens.

CHAIR DONALDSON: No, that's not it I'm just saying. You know, if the judge is going to stay the order we're not going to get involved.

MS. CURRIN: Well I

CHAIR DONALDSON: It's just that simple. I've already, you know, this is a situation where the county commissioners wrote the new zoning law. They took us out of it. Y'all, we don't we're not the appeal process anymore on that on the new.

MS. CURRIN: You are the sole arbiter of that of that interpretation of the zoning ordinance.

CHAIR DONALDSON: Ms. Speicher, who does it go to now?

MS. MULLINS: Who does it go to?

MS. SPEICHER: From the county commissioners it would go to the Superior Court.

CHAIR DONALDSON: Now, on this parti- on the new one, the appeal is to the County Commissioners isn't it?

MS. SPEICHER: But, the county commissioners are the approval authority on the new one and any appeals from that will go to the Superior Court.

CHAIR DONALDSON: Right. When they get their new one, we're out of it. They've already told us, they've took us out of it on purpose. That right Mr. Hasty?

MR. HASTY: Frankly I'm not involved at that level. Mr. Moorefield handles the Commissioners but that's my understanding.

CHAIR DONALDSON: We were, we were advised they were gonna take us totally out of the picture on it. We weren't going to have any more authority on it which was fine with us. We thought we'd seen the last of it.

MS. CURRIN: Well I've said all I can say. It's our position

CHAIR DONALDSON: Well I, but I mean you understand we're being taken out of the picture anyway.

MS. CURRIN: The appeal that's in front of you right now if we win at the Court of Appeals, it will be within your authority to make the decision of whether or not they can operate or not because it's an interpretation of the zoning ordinance and that's what you do. So we will be back if we prevail so that's all I can say

CHAIR DONALDSON: Let's wait until then.

MS. CURRIN: And if we have to wait we will and if we decide to appeal this decision we'll have to do that as well so.

[Public Hearing closed.]

CHAIR DONALDSON: Alright the motion is still to continue. Yes or no? All those in favor?

MR. LOTT: Yes.

MS. MULLINS: Yes

MR. DYKES: Yes.

MR. HUMPHREY: Yea, I'm in favor of waiting until the Court of Appeals hears this thing.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

CHAIR DONALDSON: Alright, we will continue it off the docket and we won't, don't recalendar it. Well let me amend the motion and not to recalendar it until we get some guidance from the court.

MS. MULLINS: I second it.

CHAIR DONALDSON: Second there.

MS. MULLINS: I second it.

CHAIR DONALDSON: Motion is we're not recalendaring it until we get some guidance from the courts.

MR. HUMPHREY: Are we talking about the Court of Appeals or any court?

CHAIR DONALDSON: It doesn't matter. Superior Court or Court of Appeals. Someone's got to tell us what they want us to do.

MR. HUMPHREY: Okay. That's fine. I'm fine with that.

CHAIR DONALDSON: All those in favor?

The amended motion passed unanimously.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	
LOTT	YES	

11. DISCUSSION

There was none.

12. UPDATE(S)

There were none.

13. ADJOURNMENT

Mr. Lott made a motion to adjourn the meeting at 8:05 p.m., seconded by Mr. Dykes.