

**Board of Adjustment Meeting Minutes
October 9, 2006**

The Siler City Board of Adjustment met on Monday, October 9, 2006 at 7:20 p.m. Larry Mendenhall called the meeting to order. Minutes of November 14, 2005 meeting were unanimously approved by a motion from Ethel Coble and seconded by Harold Hart.

Members Present

Larry Mendenhall, Chairman
Ethel Coble, Vice Chair
Cindy Bray
Richard Caviness
Harold Hart
Mickey Pore
Dan McMasters, Alternate
Jerry Martin, Alternate

Members Absent

Arnold Headen

Staff Present

Jack Meadows, Planning Director
Joel J. Brower, Town Manager
William C. Morgan, Town Attorney
David M. Rook, III, Attorney
Dee Lee Thompkins, Administrative Support Specialist

BUSINESS SESSION

Agenda Item III

A. Appeal – Harvey Harman

Mr. Mendenhall explained to the members that all testimony given tonight will have to be sworn in. Mr. Meadows was then sworn in.

Jack Meadows reviewed the following events with the members:

- August of 2006, Joel Brower, Town Manager, was reviewing the NCDOT Encroachment Agreement, NCDENR Water Main Extension Permit, and NCDENR Wastewater Collection System Extension Permit for the Village Neighborhoods at Bray Park. During his review, Mr. Brower asked me when the conditional use permit for Village Neighborhoods at Bray Park was approved. Staff determined that the Town of Siler City Board of Commissioners granted a conditional use permit CUP 03-03 to Harvey Harman of Walk Softly, LLC for a 54 lot architecturally integrated subdivision on August 2, 2004.
- August 3, 2006, CUP 003-03 expired per Section 58 of the Town of Siler City's Unified Development Ordinance.
- August 4, 2006, Staff called and informed Mr. Harman that the CUP 003-03 had expired and asked Mr. Harman to review Section 58 of the Unified Development Ordinance.
- August 14, 2006, Mr. Harman submitted a letter that explained his company's expenditures on the Village Neighborhoods at Bray Park project. After receiving Mr. Harman's letter, staff realized that shortly after CUP 003-03 was approved the architecturally integrated ordinance Section 173 was removed from the UDO on December 20, 2004. In light of this fact, an interpretation of Section 58 by the Town's Attorney was requested by staff.

Mr. Meadows added that the Town's Attorney, William Morgan, advised that only physical work completed on site such as grading, installing erosion controls, installing stormwater controls, installing water lines, installing sewer lines, constructing roads, etc. would count toward the ten percent requirement of Section 58 of the UDO. He then explained that the intent of Section 58 is if a permit expires, then the Town should have the opportunity to reconsider a development when an ordinance relating to that development has changed.

- August 22, 2006, in response to Mr. Harman's letter Dated 8-14-06, Staff called Mr. Harman and sent a letter dated 8-22-06 that reaffirmed that CUP 003-03 had expired.
- August 30, 2006, Mr. Harman submitted an appeal of an administrator application. The appeal is of the "...Expiration of Conditional Use Permit CUP 03-03 for the Village Neighborhoods at Bray Park Project" and "...regarding The Town of Siler City's ruling on or about August 22, 2006 denying the Water and Sewer Permit Applications and the Road Encroachment Agreement for the Village Neighborhoods at Bray Park Project."
- September 8, 2006, Staff submitted a letter to Mr. Harman that stated two reasons why Staff was not signing the NCDOT Encroachment Agreement, NCDENR Water Main Extension Permit, and NCDENR Wastewater Collection System Extension Permit for the Village Neighborhoods at Bray Park. First, CUP 003-03 had expired and second, the NCDENR permits that were submitted included design for Phase 1 & 2 - 53 lots and several months ago, staff had informed Mr. Harman that the NCDENR permits should only include the design for Phase 1 - 23 lots.

Mr. Meadows reported that the following items are additional information requested by Mr. Harman:

1. Mr. Harman requested that Staff determine that Village Neighborhoods at Bray Park project be considered in compliance with Section 58 of the UDO, using the same criteria used in determining that Cardinal Chase Apartments and Tripp Cottages were in compliance with the Section 58.

The conditional use permit CUP 006-99 for Cardinal Chase Apartments was approved on September 7, 1999. The developers of Cardinal Chase Apartments received four extensions for their conditional use permit from the Town Board 9/01, 3/02, 9/02, & 3/03. Natalie Connell submitted a request for a fifth extension on August 22, 2003. Staff asked Ms. Connell if her company could meet the requirements of Section 58 of the Town's Unified Development Ordinance.

Ms. Connell submitted emails to Staff on August 26, 2003 and September 1, 2003 explaining her company's expenditures on the Cardinal Chase project. Based on the information submitted by Ms. Connell, staff determined that the project was in compliance with Section 58.

The conditional use permit CUR 002-02 for Tripp Cottages CUR was approved on December 16, 2002. In April of 2005, Staff called Darvin Schroeder and asked him if his company had met the requirements of Section 58 of the UDO.

Mr. Schroeder submitted an email to Staff on May 7, 2005 explaining his company's expenditures on the Tripp Cottages project. Based on the information submitted by Mr. Schroeder, staff determined that the project was in compliance with Section 58.

Any misinterpretation that may have occurred with Cardinal Chase Apartments and Tripp Cottages regarding Section 58 does not mean that this misinterpretation will continue for the Village Neighborhoods at Bray Park or any other development.

2. Mr. Harman requested a six month extension from the Town Board for CUP 003-03;

Town staff in conjunction with the Town Attorney determined that CUP 003-03 expired on August 3, 2006. Any consideration for an extension should have been considered by the Town Board in July which would have been prior to the August 3, 2006 expiration date. The Town Board's last meeting in July was on the 17th. Mr. Harman's request should have been received by July 10, 2006 for inclusion on the July 17, 2006 Town Board agenda. Mr. Harman's formal request for extension was not received until August 30, 2006, which was over seven weeks too late.

Staff recommends the Board of Adjustment affirm the decision of Town Staff.

The decision is that Town staff in conjunction with the Town Attorney determined that CUP 003-03 expired on August 3, 2006. Therefore, Town staff cannot authorize a NCDOT encroachment agreement, NCDENR Water Main Extension Permit, or NCDENR Wastewater Collection System Extension Permit on a project without a valid conditional use permit. Second, the NCDENR permits that were submitted include design

for 53 lots Phase 1 & 2. Several months ago, staff informed Mr. Harman that the NCDENR permits should only include the design for Phase 1- 23 lots.

Mr. Brian Pearce, Attorney for Mr. Harvey Harman asked Mr. Meadows the following questions:

Mr. Pearce – *“Who is Bill Lester?”*

Mr. Meadows – *“The town engineer with Hobbs, Upchurch.”*

Mr. Pearce – *“What did you send Mr. Lester?”*

Mr. Meadows – *“Mr. Lester was sent a copy of a memo that was sent to Mr. Joel Brower, Town Manager from Harvey Harman dated August 14, 2006 with attached construction cost to date on the money that Mr. Harman has spent on the project.”*

Mr. Pearce – *“Clarify what he sent to Mr. Lester and if it was the first two pages of section 3 of the Evidence Packet for Walk Softly LLC-Village Neighborhoods at Bray Park?”*

Mr. Meadows – reviewed those pages – and stated, *“yes”*

Mr. Pearce – *“What did Mr. Lester think of those estimates?”*

Mr. Meadows – reviewed Mr. Lester email dated August 29, 2006.

Mr. Pearce – *“As an employee of the town do you value Mr. Lester opinion?”*

Mr. Meadows – *“He is the town’s engineer.”*

Mr. Pearce – *“Does that mean you value his opinion?”*

Mr. Meadows – *“Yes Sir.”*

Mr. Pearce – *“Did you talk to Mr. Harman six months ago – say roughly March or April?”*

Mr. Meadows – *“I think so – there is a letter that was submitted to Mr. Harman dated February 20, 2006 – Construction Plan Review.”*

Mr. Pearce – *“Did you talk about the expiration of the permit?”*

Mr. Meadows – *“Not to my knowledge we did not talk about expiration of the permit.”*

Mr. Pearce – *“Did you talk to him about physical work need to get start on site?”*

Mr. Meadows – *“No we didn’t.”*

Mr. Pearce – *“Do you normally give notice to a conditional use permit holders when their permits are about to expire?”*

Mr. Meadows – *“No Sir.”*

Mr. Pearce – *“Do you call after they have expired?”*

Mr. Meadows – *“We notify them.”*

Mr. Pearce – *“When you have a question about conditional use permit interrupting the ordinance, do you usually ask the town legal counsel for their opinion?”*

Mr. Meadows – *“From time to time we do.”*

Mr. Pearce – *“Have you ever had to interrupt section 58 of the Siler City Ordinance before?”*

Mr. Meadows – *“Sure with Tripp Cottages, Cardinal Chase and some others.”*

Mr. Pearce – *“Did you ask the town counsel at that point?”*

Mr. Meadows – *“I don’t think so but I don’t remember.”*

Mr. Pearce – *“Why did you do it this time?”*

Mr. Meadows – *“Well, in discussing the permit had expired of course and with Mr. Harman, the provision that had applied to his permit had been removed from the ordinance.”*

Mr. Pearce – *“What section of the ordinance?”*

Mr. Meadows – *“Architecturally Integrated Subdivision.”*

Mr. Pearce – *“Did the 10% clause in section 58 mention anything about Architecturally Integrated Subdivision being removed?”*

Mr. Meadows – *“Let me clarify, Mr. Harman’s permit had expired and discussion with staff, we discussed that since it has expired there have been others things that had happen since his permit had been approved. One of things was Mr. Harman’s permit for Architecturally Integrated Subdivision, that section of the ordinance had been changed or removed. I will just go back to my commentary and that is why we want the attorney advice.”*

Mr. Pearce – *“Did the Tripp Cottages permit expire?”*

Mr. Meadows – *“Yes Sir, well no it didn’t expire they were in compliance.”*

Mr. Pearce – *“How were they in compliance because they had spend 10%? Now when they spend the 10% was that all in physical work?”*

Mr. Meadows – *“Our interpretation they had spent the 10% cost.”*

Mr. Pearce- *“Was it physical cost?”*

Mr. Meadows – *“No physical work.”*

Mr. Pearce – *“There was no physical work.”*

Mr. Meadows – *“No”*

Mr. Pearce – *“Cardinal Chase had their permit expire and made a decision on them?”*

Mr. Meadows – *“No it had not expired and it was determined they were in compliance.”*

Mr. Pearce – *“Why was it in compliance?”*

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Mr. Meadows – *“Our interpretation was they had spent 10%.”*

Mr. Pearce – *“Now when they spend 10% was that in physical work?”*

Mr. Meadows – *“No Sir”*

Mr. Pearce – *“Staying on Cardinal Chase did you allow their architectural engineering survey count toward their 10%?”*

Mr. Meadows – *“I think we included all project cost.”*

Mr. Pearce – *“You include land acquisition?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Let go over these parallels –did you used their architectural engineering survey was that counted?”*

Mr. Meadows – *“What ever was included in the design.”*

Mr. Pearce – *“I am going thru everyone of the cost. I am on an email from Natalie Connell dated September 1, 2003 architectural engineering survey do you have that?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Land acquisition?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Interest on land loan?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Appraisal?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Market study?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Traffic study and aerial photos?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Market study?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Soil report and phase one?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Real estate attorney?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Other attorney?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Other misc?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Is there anything else that was included?”*

Mr. Meadows – *“I’m thinking that the other email dated August 22nd there were some costs.”*

Mr. Pearce – *“Were those costs the grant from the Federal Home Bank?”*

Mr. Meadows – *“Yeah”*

Mr. Pearce – *“A loan from North Carolina Housing Finance Agency?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“A state tax credit?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“A reservation of tax credits from the NCHFA?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Of all these things that we have mentioned account for Cardinal Chase are they for physical work?”*

Mr. Meadows – *“There was no site work at that time.”*

Mr. Pearce – *“So at that point you evaluated that the permit had not expired?”*

Mr. Meadows – *“Correct”*

Mr. Pearce – *“You didn’t seek a legal opinion?”*

Mr. Meadows – *“No sir”*

Mr. Pearce – *“Do you know why you didn’t seek a legal opinion?”*

Mr. Meadows – *“Discussion thru staff and at the time the cost of construction – cost incurred by the developer.”*

Mr. Pearce – *“But none of those cost physical?”*

Mr. Meadows – *“No sir”*

Mr. Pearce – *“Can you go to Tripp Cottages and go thru a couple of cost with you – did you include cost of market study?”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“Feasibility study”*

Mr. Meadows – *“Yes sir”*

Mr. Pearce – *“EPA?”*

Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Meeting with investors?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Surveying?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Civil design?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Financial organizing?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Get drawings done of the site?”*
Mr. Meadows – *“Where is that on there?”*
Mr. Pearce – *“Read the sentence on December 23.”*
Mr. Meadows – *“Okay I see it.”*
Mr. Pearce – *“Did it include drawings?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“What about the price for overseeing the land?”*
Mr. Meadows – *“Yes sir”*
Mr. Pearce – *“Were any of these cost physical cost?”*
Mr. Meadows – *“I don’t think so.”*
Mr. Pearce – *“Was there any physical cost thought of when evaluating whether they apply to section 58?”*
Mr. Meadows – *“Not at that time.”*
Mr. Pearce – *“Did you ask town attorney if you need to include physical cost at this time?”*
Mr. Meadows – *“I don’t think I did.”*
Mr. Pearce – *“You interpreted that section 58 to Tripp Cottages permit was still valid and had not expired?”*
Mr. Meadows – *“Correct”*
Mr. Pearce – *“Had it been more than two years since it was issued?”*
Mr. Meadows – *“Yes it had.”*
Mr. Pearce – *“Why did you decide to treat the Village at Bray Park differently than you did Tripp Cottages and Cardinal Chase?”*
Mr. Meadows – *“The same reason that the ordinance that applies to Village at Bray Park had been removed from the UDO.”*
Mr. Pearce – *“Does section 58 of the UDO mention anywhere that a conditional use permit should be treated differently if the ordinance is removed?”*
Mr. Meadows – *“Let me take a look at it real quick.”*
Mr. Pearce – *“Okay – Let’s talk about the expiration.”*
Mr. Meadows – *“Section 5(c) The permit-issuing authority may extend for the period as defined in the Vested Rights Ordinance the date when a permit would otherwise expire pursuant to Subsections (a) or (b) if it concludes that (i) the permits has not yet expired, (ii) the permits recipient has proceeded with due diligence and in good faith, and (iii) condition have not changed so substantially as to warrant a new application.*
Mr. Pearce – *“Isn’t that provision applying to extensions? Read the first sentence. Can you read (a)? Why don’t you read (a)?”*
Mr. Meadows – *“Special-Use and Conditional-Use permits shall expire automatically after two (2) years.”*
Mr. Pearce – *“Continue with all of it.”*
Mr. Meadows – *“And zoning permits and sign permits shall expire automatically after six (6) months:”*
Mr. Pearce – *“With (a) (1) and (2).”*
Mr. Meadows – *“The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use, or --Less than 10% of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site.”*
Mr. Pearce – *“Does that mention physical work for the 10% anywhere?”*
Mr. Meadows – *“I think the interpretation of the attorney is those are physical work items?”*
Mr. Pearce – *“Is the word physical included?”*
Mr. Meadows – *“I don’t see it”*
Mr. Pearce – *“Does it say similar work?”*
Mr. Meadows – *“It says similar work on any development authorized by such permits has been completed on the site.”*
Mr. Pearce – *“When you are surveying you are working on the site aren’t you?”*
Mr. Meadows – *“There could be some physical work on site.”*
Mr. Pearce – *“Now, that section (a) does it say anywhere to treat this differently if the ordinance has changed?”*

Mr. Meadows – “*I don't think you are going to see it in section (a).*”

Mr. Pearce – “*So it doesn't pertain to it?*”

Mr. Meadows – “*I don't think so.*”

Mr. Pearce – “*But you still thought that meant you needed to treat it differently?*”

Mr. Meadows – “*Yes*”

Mr. Pearce – “*But you had no authority to treat it that way?*”

Mr. Meadows – “*Well there are some other things that are provided.*”

Mr. Pearce – “*What other things?*”

Mr. Meadows – “*Of course we have a model ordinance and that ordinance has some intent.*”

Mr. Pearce – “*You have a model ordinance but the ordinance has actually been approved by the town?*”

Mr. Meadows – “*Right*”

Mr. Pearce – “*Does it say anywhere to be treating it differently?*”

Mr. Meadows – “*That section there is what we are talking about there?*”

Mr. Pearce – “*Yeah but does it say it anywhere*”

Mr. Meadows – “*Section (c) talks about expiration.*”

Mr. Pearce – “*Does it say it in section (a)?*”

Mr. Meadows – “*I don't see it in section (a).*”

Mr. Pearce – “*Is there anything else? You said there was other authority?*”

Mr. Meadows – “*Yeah the intent – The principal reason for having provisions such as those in the foregoing section is to enable the local government to evaluate a proposed development in the light of current conditions and ordinance requirement. A development may be appropriate and meet ordinance requirement one year, but be inappropriate five years later when conditions or the ordinance have changed. If the development has been constructed, nothing can be done. But if it has never been built, the local government should the opportunity, ensured by this section, to reconsider its original approval. A secondary purpose of this provision is to discourage the submission of purely speculative proposals or proposals submitted solely to avoid the effects of possible subsequent ordinance amendments.*”

Mr. Pearce – “*And that –*”

Mr. Meadows – “*That being the intent of the ordinance and referring back to—*”

Mr. Pearce – “*Where did you get the intent of the ordinance and justification for that?*”

Mr. Meadows – “*The law firm that provided that book is our attorney as well, so I was able to talk to our attorney.*”

Mr. Pearce – “*Did the law firm pass that ordinance?*”

Mr. Meadows – “*I'm just saying that our attorney helped give us that interpretation and that is where we got it from.*”

Mr. Pearce – “*To the intent is the Siler City Ordinance identical to what is in that book?*”

Mr. Meadows – “*No it is not identical.*”

Mr. Pearce – “*So you don't know – just because it is in that book doesn't mean it was the intent of the people who passed the ordinance?*”

Mr. Meadows – “*I can't speak for the Town Board.*”

William Morgan, Town Attorney was then sworn in.

Mr. Morgan stated he has been town attorney for Siler City for about ten, eleven, twelve years now. My first knowledge from any of this, I received a call from Jack around the first of August. I don't remember the exact date and was asked that I take a look at section 58. I was familiar with that section already because it is in the UDO of a lot of the towns that I represent. My boss, Mike Brough wrote this book that Jack was reading from a while ago. Just for record, I want to say that we can provide a copy of what he read to clarify for the record. It is *A Unified Development Ordinance by Michael B. Brough*. Siler City's ordinance is patterned after that. In some cases it is word for word and some cases it is not word for word but it is pretty much that book. The commentary what Jack identified as the intent is called commentary in the book. Some of you may have seen this book before I don't know. It's commentary he gives rationale reasons for certain sections of why the suggested wording is suggest and that is what Jack was reading from. In any event, Jack asked me to take a look at section 58 and I pulled my UDO book out not that book and I took a look at it. He had not told me at that time who it was and I remember asking what's going on and he told me it was Harvey Harman's development. He asked me to take a look at it and it very clearly meant to me for any costs count towards this 10% rule had to be on the site and that what's it said on the site. The ordinance speaks for itself and you all have a copy of it. He read *Special-Use and Conditional-permits shall expire automatically after two years and zoning permits and sign permits shall expire automatically after six months, if after the issuance of such permits: Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site.* I read that literally to mean on site for one thing, not for the site or outside the site and in connection with the site. To me,

construction is clear enough, erection clear enough, alteration clear enough, excavation, demolition, or similar work to those things. I'm getting into a little bit into my legal argument now, but I am trying to explain our rationale, my thought process when I read this. I told Jack my interpretation of this was work had to be work on site, visibly changing the site, to a point where it would be unreasonable to ask someone to stop. If they had started the work on the ground, you can't redo that as easy as you can plans on a new project. So I double checked that with the author of the ordinance Mr. Brough and he confirmed with that and he told me that was precisely what he meant when he wrote it. Whether or not he comes thru that clear or not, we can do an interpretation and argument I suppose, but that was the intent. He referred me to the commentary and I had a copy of his book in my office and I looked up the commentary. I called Jack back and said the way we read it, it is on site and that was that and my involvement in that. I suppose I should say for the record that I have never been consulted about section 58 before that I can recall from Jack or anyone from this town. This includes my comments.

Mr. Pearce – *“You said that the intent behind it reviews physical work and you can't review physical work on site.”*

Mr. Morgan – *“I said that you know it speaks for itself– Jack read it, so I am paraphrasing it, but in my view, the intent of this thing is to once a road has been half built or, you know, you're well on the way of offering the site, if you stop then, wouldn't have - you'd have a job half done that might sit there forever that way or whatnot, so you let them finish it typically. One thing I need to add that this hardly ever happens because most people when they get their CUP they are ready to go, so this is kind of an unusual situation.”*

Mr. Pearce – *“Is there any use to any survey this property if they cannot build on site.”*

Mr. Morgan – *“That depends on what was surveyed if it was the outer boundary or something – I can't answer that because I thought about that and was wondering if one of these things he could still use because I was hopping to see a result where he would come back with a new plan that with perhaps a cluster subdivision which is kind of what he is doing. I don't know the answer to that, I suppose he can use the same road system maybe, but I don't know.”*

Mr. Pearce – *“But there is no guarantee he could?”*

Mr. Morgan – *“No guarantee.”*

Mr. Pearce – *“So you haven't interpreted section 58 before?”*

Mr. Morgan – *“I have done that before but it been several years and not for the Town of Siler City.”*

Mr. Pearce – *“Would you agree that section 58(a) refer to expiration rather than extension?”*

Mr. Morgan – *“I would.”*

Mr. Pearce – *“Do you know of any other cases where the decision you made in this case has ever been made?”*

Mr. Morgan – *“Sorry I didn't understand.”*

Mr. Pearce – *“Do you know of any other cases where your interpretation or similar interpretation of yours has been made since you said this ordinance has been used other places?”*

Mr. Morgan – *“Whether I have made a similar interpretation?”*

Mr. Pearce – *“To other interpretation, has it's been interpreted similar are you aware of any?”*

Mr. Morgan – *“I have but I don't know who it was for and it may have been well I could tell you all the towns that I have represented but I have dealt with section 58 before it wasn't for Siler City and it was a number of years ago. I am sure I have interpreted it the same then to the extent that I gave actually interruption to someone. I don't know and I couldn't tell you the date of that. I am not sure I understood the question correctly. I don't know of any case laws.”*

Mr. Pearce – *“Do you have any other authority for your interpretation beside the book and speaking to Mr. Brough?”*

Mr. Morgan – *“My own legal training, common sense, experience as a municipal lawyer, and working on a lot of land issues. There is no question in my mind anyway at what it means. I have read it a number of times in this case and consult with Mike because I knew the ramifications were not good thereby and I don't think anybody is happy about that but it was my own training. I think the ability to analyze the ordinance provisions that call for in the book and the commentary. The commentary looks sort of an afterthought but any how that was the bases for my opinion.”*

Mr. Pearce – *“Does section 58 (a) have the word physical in it?”*

Mr. Morgan – *“No I don't believe it does”*

Mr. Pearce – *“Does it have the word similar in it?”*

Mr. Morgan – *“Well it speaks for itself, I read it and Jack has read it and it is in the record but it does say work or similar work.”*

Mr. Pearce – *“You think it is vague because it says that?”*

Mr. Morgan – *“No I don't.”*

Mr. Pearce – *“Do you think it is ambiguous at all?”*

Mr. Morgan – *“No I don't.”*

Mr. Pearce – *“Do you think it is clear that it means similar work?”*

Mr. Morgan – *"I do."*

Mr. Pearce – *"It is not up for interpretation?"*

Mr. Morgan – *No, I think everything is open to interpretation. To me it is clear that what it means and I based some of that on the site, if it means walking around on the site. I think if you look at construction, erection, alternation, excavation, demolition so forth on the site my view is it doesn't count the studies and that sort of thing."*

Mr. Pearce – *"Survey work is done on the site though?"*

Mr. Morgan – *"It is done on the site it has to be."*

Mr. Pearce – *"What about traffic studies? You probably go on the site for that?"*

Mr. Morgan – *"I don't know or not and there is a big difference in one traffic engineer's work from another, but I guess you would have to go and look at the traffic on the road."*

Mr. Pearce – *"Erosion Control Plan?"*

Mr. Morgan – *"Yes"*

Mr. Pearce – *"The intent you referred to from Mr. Brough is it in the Siler City Ordinance?"*

Mr. Morgan – *"The commentary section is not part of the ordinance that was adopted."*

Mr. Pearce – *"Do we know if the people who adopted the ordinance agreed with Mr. Brough?"*

Mr. Morgan – *"I don't know"*

Mr. Pearce – *"Did Mr. Brough vote on the ordinance?"*

Mr. Morgan – *"No he didn't."*

Mr. Pearce – *"So he wasn't apart of the decision making process?"*

Mr. Morgan – *"Not to my knowledge – he never lived down here."*

Mr. Morgan then asked the board members if they had any questions for him at this time. Mr. Morgan stated that was all for staff and would now turn it over to Mr. Harman.

Mr. Pearce then addressed the board members. He stated that he was not testifying to facts, so I don't think I am supposed to be sworn in. Mr. Pearce then went over a cost chart for the Village Neighborhoods at Bray Park with the board. He stated that the members would see how much cost has been spent at Village Neighborhoods at Bray Park as to date October 9, 2006. You see those cost are \$ 397,369.93. You will notice the chart is a little bit different because we actually found a true number for the land cost, so we marked it down into the numbers that are being introduced into evidence. In the overall picture it does not make a big difference. The estimate for the remaining site work is as seen in our evidence is \$365,900.00. When you do the math on this you will see that Mr. Harman and Walk Softly, LLC has spent 52.06% of the cost that it is going to incur on this project. It's \$397,369.93 and that is a lot of money and it is certainly more than 10%. As you saw with Tripp Cottages and Cardinal Chase, they spent money on these exact same costs. The town said we will count those. Now the Village Neighborhoods at Bray Park comes along and the town all of sudden says we are not going to count those. You can't treat people differently you just can't do it. There are several reasons for that. One being when working under this ordinance how are you suppose to do it, if you do not know how you are going to be treated. There is ambiguity in this, it is blatant, it is in the word similar, it does not say physical work. It clearly just does not say that. You cannot treat Village Neighborhoods at Bray Park different. Two other times you did not hear testimony regarding any other projects where this interpretation has been had. You heard interpretation from the town you have not heard that. You have only heard testimony where they have included non-physical work. If the town wants it just to be physical work there is a simple solution to that. Just put the word physical in the ordinance. Very simple just amend the ordinance, I am sure your town does it all the time, that would clear it up, that is the solution to this. The solution is to not hurt one of your own, someone who has got a business in Siler City and employs people in Siler City. Put them out \$397,369.93 just because your ordinance is vague, that is not fair. There is case law in North Carolina that when an ordinance is ambiguous, you make a fair and reasonable interpretation. There is case law in North Carolina, which says the fair way to do this is to look and see if it has a reasonable purpose, look at the effects. Case laws in North Carolina favor equity. It says if there is a question, don't hurt the person. Don't promote forfeiture. There is a way to affect this if you don't want physical work to be done in the future change the ordinance. We are not here to be a problem, Mr. Harman does not want to be a problem for this town, and we do not want this to go any further. The only reason he is here he spent \$397,369.03 and he is now being treated differently than other people. Treat him fair and he will go on to do what he did. Let me remind you there is a Supreme Court case one party has an equal protection claim. If you treat one party differently they have equal protection claim. We do not want it to get to that we do not want to go to court. We want to save the town money, we want to save my client money. Just interpret it fair, if you want a different interpretation change the ordinance.

Harvey Harmon was then sworn in.

Mr. Harman thanked the board for being here tonight and caring about Siler City and giving him the opportunity to speak to them. I would like to do a couple of things mainly just to give a chronology of what has happened as I remember it and written it down, and to share a little bit about what we are trying to do. Mr. Harman then passed to the members a copy of the Sandhills Business Times that features an article about a building program that has started at the community college. There is also a picture on the front page about a homegrown co-op that will fuel Sandhills with bio-diesel plant. A lot of things is happening with sustainability and green business in Chatham County.

Mr. Harman then explained that he got his CUP to do Village Neighborhoods at Bray Park in August 2004. I was committed to work slowly and properly to really pay attention to the environmental impacts and to minimize the environment impacts of doing the development and to minimize the impacts that would have on anyone around the development. So I have worked at that regularly and systematically and keeping the town informed at each step. I had numerous meetings mainly with Mr. Meadows, about issues that have come up with storm waters. The town has a very innovative and progressive storm water ordinance that limits how much storm water can leave a property and the town should be commended on having such a progressive ordinance. It also takes more time to really pay attention to that and that was our goal too, to have no more storm water leaving the property than before I did the development and water be of equal or better quality when it leaves the property as well. That took time and a special engineer that worked specifically on that issue and had the expertise in that. I actually had to hire several engineers and it took us a little longer that what was expected. In February 2006 I got a letter from Jack Meadows after I had turned in their initial engineering plans in January 2006 saying what needed to be clarified. I met with Mr. Meadows on the 24th of February and went over those items and it took two or three meeting to go over them. At that time I stated that I had been reading through the ordinance and asked about section 58 expiration of permits. I wanted to check in with Mr. Meadows because the process was taking me a little bit longer than I expected because my commitment to do a good job rather than a quick job. Mr. Harman said that Mr. Meadows said let's look at that and turn to section 58 of the ordinance. I was sitting across from Mr. Meadows in Mr. Meadows' office and we together read section 58. I told Mr. Meadows that I wanted to do a really good job here and I read about it being a two year limit. I stated that it was not on the permits that it expired after two years and not on any communications and that it was just something I saw and asked Mr. Meadows to clarify. Mr. Meadows informed me after reading section 58 that after he had already been doing so much engineering work and had submitted things and the town was aware of his ongoing effort that it mainly applied to folks who got a permit and didn't do anything with it just sat on it. I summarize that in the letter that is with your packets to the town when it came up again on August 14th. Mr. Meadows was so matter of fact and so certain about it that I did not think anymore about it. Obviously, in retrospect it would have been good to put that in writing or me to email him back and clarified that. I did not realize what a big issue it was. We also read about the 10% rule and I was aware of that I had already spent much more than the 10% so that was another reason why he did not pay more attention to it. I continued on and did the revisions, resubmitted in June with all the revisions and heard back on July 14th with a much smaller second letter from Mr. Meadows saying things still needed to be addressed. I met with Mr. Meadows on the week of July 24th regarding the remaining issues listed on plan review #2. On July 28 I delivered water permits, sewer permits and DOT road encroachment agreement to Mr. Meadows. On July 31st I called Mr. Meadows to confirm that the town had received those permits and ask when they would be signed so I could pick them up. Mr. Meadows stated he would be back in touch in a few days. Regarding the issue of the engineer applied for the full 53 rather than the first phase and that was an oversight on their part and that is an easily fixable problem. I didn't hear from Mr. Meadows again till August 4th when he call me and regretted to inform me that my CUP had expired and I told Mr. Meadows that I would be right over because I wanted to talk to him about that. I came over immediately the same day and asked to see a copy of the section because I did not have my ordinance book with me. Mr. Meadows just said that we have determined that according to section 58, your permit has expired and want to inform you of that. I read over it again and asked him to look at the 10% thing because I had more than met the 10%. I reminded Mr. Meadows that they had talked about this before and what about our previous meeting and was unclear why now we have this issue. Mr. Meadows told me it was their interpretation of section 58, that your permit has expired and we cannot sign your permits. On August 14th I wrote a response mainly outlining the discussion they had in February on the first part and on the second part what I had spent to date on the project including documentation of all of my expenses. I took a copy of that letter and sent it by certified mail to Mr. Joel Brower. I also hand delivered a copy of the letter to Mr. Meadows and asked him to read over it while I was present. He did not make any comments on the first part but on the second part Mr. Meadows stated that this is information that we did not have before and that he would be back in touch with me in a day or two. On August 18th I phoned Mr. Meadows and asked for an update about the permits and when could I pick them up. Mr. Meadows stated he would be back in touch shortly. On August 22nd I received a letter from Mr. Meadows saying it was their interpretation that his CUP

had expired. On August 23rd I went to the planning office and asked Mr. Meadows if I could start looking at files to see how they had handled other projects. I discover Tripp Cottages had a permit that had expired and five months later there was an email that was sent, no documentation, and that seemed to be enough to allow them to continue. On August 29th there was an email from Bill Lester to Jack Meadows that has already been talked about. August 30th I went in to look at more files and I found out that Cardinal Chase had a similar situation where they had – it was a little unclear because there wasn't documentation in the files where their permit had expired or about to expire and apparently they submitted numbers similar to the numbers I had submitted and their permit was extended, I think that was in 2003 they actually received their zoning permit in 2005 I am not sure of the exact month approximately two years later so that extension went for two years. As I understand from Mr. Meadows it was all verbal no written documentation of that extension other than emails. On August 30th I hand delivered two letters to the town one a notice to appeal and one a formal request for extension of the CUP based on the fact of that the town should be estopped from assuming my permit had expired because I had the discussion six months before the expiration with Jack Meadows where I had gotten that and I had preceded on the bases on how Mr. Meadows had interpreted section 58 at that time. On August 31st I wrote an email to Jack Meadows asking for an automatic extension based on having already spent the 10% and based on the criteria they used for Tripp Cottages. On September 8th Jack Meadows wrote me a letter saying staff still says my permit has expired and my appeal is set for October 9th. I continued to visit Mr. Brower and Jack Meadows's office and look at documents and see how other people had been treated with other situations. Then I made a another formal letter to Mr. Joel Brower asking that I be heard by the Siler City Town Board because of section 58 as far as extensions it says the permitting issue authority may extend and since my lawyer said the permitting issue authority was the Town Board my request need to go to them not to the town's administrators. I received a letter back from Joel Brower on September 26th saying I would not be on the agenda for the October 2nd, 2006 Town Board Agenda but I would be on the October 9th Board of Adjustment Agenda. He also said any misinterpretation by the town staff of the UDO section 58 as related to Cardinal Chase Apartments or Tripp Cottages does not mean that this misinterpretation will continue for Village Neighborhoods at Bray Park Project.

Mr. Harman then stated he would like for the board members to look at another chart. He knows they have already seen the chart as what he has spent to date on the project. He reviewed with the members the density of Village Neighborhoods at Bray Park, Cardinal Chase Apartments and Tripp Cottages.

Mr. Harman then explained to the members that Earth Renewal Shelter/Walk Softly, LLC is a Siler City based business with five employees and about 20 subcontractors that we use regularly, most of them from Siler City. Not continuing with Village Neighborhoods at Bray Park would be a big setback for our business and force us to scale back our work considerably. We have worked in the manner we said we would, slowly and carefully, minimizing environmental impacts, and minimizing impacts to the neighbors. We have kept the town informed of our progress, and followed the town's directions. Furthermore, we have spent well over the 10% required for automatic extension. By buying locally, employing Chatham County residents, and using local subcontractors we support the local economy. We put about \$600,000.00 per year back into local economy by what we pay in materials and wages and that makes a difference. Investing money locally means that it circulates numerous times, some peoples say 6 to 7 times in the community before it leaves. The profits from a local owned company invested locally rather than going out of state. To lose this permit right now would mean I would have to scale back my business, lay off workers, and have to scale back the business I give to my subcontractors. It would have a big impact on me. I ask for your favorable judgment for an appeal for an extension for my conditional use permit. I have already spent well over the 10% and kept the town well informed and try to work in a straight forward thoughtful careful way. I am not asking for special treatment, I am asking you to treat me the same way you have treated similar projects in the past. I am asking you to treat me the way you would want to be treated in a similar situation and I thank you for your time.

Mr. Pearce stated he had a few questions for Mr. Harman.

Mr. Pearce – *“Are you familiar with the invoices of section 2 of the Evidence Packet for Walk Softly LLC – Village Neighborhood at Bray Park?”*

Mr. Harman – *“Yes”*

Mr. Pearce – *“Are they correct?”*

Mr. Harman – *“They are correct.”*

Mr. Pearce – *“Are you familiar with all the correspondence in the Village Neighborhood at Bray Park packet?”*

Mr. Harman – *“Yes, I am.”*

Mr. Pearce – *“Is that correct – the correspondence?”*

Mr. Harman – *“It's all correct.”*

Mr. Pearce – “You’ve seen it before?”

Mr. Harman – “Yes”

Mr. Pearce – “I believe that’s all I got.”

Mr. Mendenhall – “I’ve got one thing. You have supplied the Town staff with documentation of all this?”

Mr. Pearce – “It’s actually in your binder.”

Mr. Rooks – “I have no questions. I just want to make sure the record had this and can testify to the numbers.”

Mr. Pearce – “You’ve got questions for Mr. Harman?”

Mr. Morgan – “I have a couple of questions. When was that meeting that you were talking about where you recall?”

Mr. Pearce – “Are you here in a representing capacity, though?”

Mr. Morgan – “What?”

Mr. Pearce – “I don’t know that you can ask questions.”

Mr. Morgan – “What do you think?”

Mr. Pearce – “He’s not here as a representative – as a legal representative of the Town.”

Mr. Morgan – “I’ve only got like two questions.”

Mr. Pearce – “Let me just state an objection to them and ask your questions, and we’ll figure it out later.”

Mr. Morgan – “Okay. When was that meeting that you were talking about, you and Jack when you talked about the Section 58?”

Mr. Harman – “It was on Thursday February 24th, and this is an email that I got from Jack Meadows on that date. Another thing that happened at that meeting where I asked him – he had a list of things that I – you know, a standard list, and I asked him to email that to me, and he did it while we were having the meeting, and this is a copy of that.”

Mr. Pearce – “We’ll enter that information into the record.”

Mr. Morgan – “Just a question about this. This – you say this was written while you were sitting there with him?”

Mr. Harman – “That’s a typical thing that happens when I meet with Mr. Meadows. If there’s something that he has, just – he’ll just email it to me at the same time. It’s a way of making sure it gets done and we don’t forget about it.”

Mr. Morgan – “Were you all talking about what he was putting in here as he did it?”

Mr. Harman – “That’s he pulled up that is a standard list that he pulled up and just emailed to me.”

Mr. Morgan – “Did you ask him to put in something about the extension discussion?”

Mr. Harman – “I did not. That’s he didn’t put anything about our discussion in there.”

Mr. Mendenhall – “This was in February?”

Mr. Harman – “February 24, 2006.”

Mr. Morgan – “Did you bring it up?”

Mr. Harman – “I brought it up.”

Mr. Morgan – “Okay”

Mr. Harman – “And I noticed that with Cardinal Chase and Tripp Cottages, it seemed that the Town brought it up with them.”

Mr. Morgan – “Did you Mr. Harman, did you know what your deadline was when you had conversation with Jack?”

Mr. Harman – “I knew approximately what it was, and after I had that conversation, I just didn’t worry about it again.”

Mr. Morgan – “And that’s the last time and the only time that you guys talked about section 58?”

Mr. Harman – “Yes and like I said, it happened like – we talked about – we opened the book. And I summarized that in a letter to the Town of August 14th.”

Mr. Morgan – “That’s all”

Mr. Pearce – “I’m going to enter this in the record. Does anyone want to see it? Is that all you’ve got?”

Mr. Morgan – “All my question of him – Yes.”

Mr. Pearce – “I’ve got one brief statement. I want to make clear what you’ve seen here is that the permit never expired. Mr. Meadows’ testimony showed 10% costs. If those are spent, it doesn’t expire. We’ve shown that to you in the evidence you’ve got in your packets, that it didn’t expire. The extension was asked for just as a side issue. We’ve made it clear all along our position was it never expired. You’ve seen over 50% of the development costs have been spent on this project. You’ve seen that this is an eco-friendly business and a good citizen of Siler City and Chatham County. You’ve seen they followed the ordinance the way it’s read. It’s not their fault it’s ambiguous. I’ve told you if there’s law out there, if you’re interpreting an ambiguous ordinance, you do it fair, you do it reasonable, you don’t encourage forfeiture. Like Mr. Harman said we’re not asking for special treatment. He wants to be treated the same way Cardinal Chase was, the same way Tripp Cottages was. That’s all he’s asking for. We don’t want an exception. We want the way everyone else has been treated. I would state for the record that the evidence packet submitted by Walk Softly LLC has been submitted and the information has been submitted into evidence in support of overturning the prior decision. All we ask for is you

make the fair decision, the right decision on this. Save my client the money. They've spent enough. Don't make them fight this further legally. Save the Town the money so they don't have to fight this legally. If we have to go further with this, the only one who wins is the lawyers, and I'm sure you don't want myself, or Mr. Rooks or Mr. Morgan to win. Thank you."

Mr. Mendenhall – *"Is there anybody else who wants to speak?"*

Mr. Pearce – *"That is all the testimony."*

Mr. Rooks – *"I'd ask a question of counsel. I want to make sure that we're very clear on what the question is that's being presented to the board. Is the appeal simply over the determination by the planning director and manger that the permit had expired on August 3, 2006?"*

Mr. Pearce – *"Yes"*

Mr. Rooks – *"Pursuant to section 58?"*

Mr. Pearce – *"Yes that is the question before use."*

Mr. Rooks – *"Do you agree, Mr. Morgan that is the question?"*

Mr. Morgan – *"Yes I do. He also mentioned that the permits were not signed, but that was the reason they were not."*

Mr. Rooks – *"That's right. I didn't want to, it seems to me that, if I'm correct, that the issue, all else falls from the answer to that question."*

Mr. Pearce – *"Yes"*

Mr. Rooks – *"And did I hear you say correctly that you did not ask for an exception simply for a reversal?"*

Mr. Pearce – *"We're asking for the ordinance to be interpreted the same way it's been interpreted by everybody else."*

Mr. Rooks – *"Thank you"*

Mr. Mendenhall then asked the board members if they had any questions.

Mr. Church – *"Can I raise a point of clarification? I think that they have filed for an exception as well with the Town Board, is that correct?"*

Mr. Pearce – *"That we've filed for an extension. That is another issue."*

Mr. Rooks – *"Do you think we should get a name to identify who that is?"*

Mr. Mendenhall – *"Please stand, sir"*

Mr. Church – *"Richard Church, attorney fro Kennedy Covington, but I'm just here as an interested citizen, so I'm just trying to follow it all. But I thought I heard that, that there are two statues, really at stake here. Section (a) is the 10% never expired. Section (c) is the Town does have the discretion to make an exception."*

Mr. Pearce – *"Well the extension is another issue, is what I'm trying to clarify."*

Mr. Morgan – *"I think that if I could, the issue is whether or not we agree with Jack that the 10% rule only applies as to costs associated with the physical work taking place on the site. If they have met the 10% rule based on what you find, then they don't need an extension. I mean the extension is a moot point because they've met the 10% rule."*

Mr. Pearce – *"That is right. We've got correspondence between myself and Mr. Morgan saying that the issue could come up later depending on things tonight."*

Mr. Mendenhall – *"All right. So the question is, are we interpreting it the same way in this case as we have in past cases. To me, we have not."*

Mr. Rooks – *"The question is whether the staff interpreted it correctly in this case."*

Mr. Mendenhall – *"Well, interpretation of section 58 as to whether it's physical or not, but in interpretation before, we haven't required physical, right?"*

Mr. Rooks – *"Yes, I understand what you are saying."*

Mr. Mendenhall – *"I mean, in the issues that I get into in business, you know, it's not necessarily how you interpret it. It's how you enforce it. And I think we've got a problem. Do you agree? Has anybody got an opinion?"*

Mrs. Bray – *"I want to ask some questions about the cost, if it's okay."*

Mr. Mendenhall – *"Sure, who are you asking?"*

Mrs. Bray – *"Mr. Harman"*

Mr. Rooks – *"You're asking Mr. Harman?"*

Mr. Mendenhall – *"Mr. Harman, she has some questions for you, please."*

Mrs. Bray – *"I've just got a couple of question about the – you've got – according to this, you've got a loan on the land is that correct?"*

Mr. Harman – *"We have a loan and we've put collateral against it. Yes, that's correct."*

Mrs. Bray – *"Okay so approximately how much do you still owe on the loan?"*

Mr. Harman – *"The full amount. It's an interest only loan."*

Mrs. Bray – *"So how much is that?"*

Mr. Harman – *"\$282,000.00"*

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Mrs. Bray – “\$282,000.00 is the amount that you’ve paid toward the loan is just the interest, is that correct?”

Mr. Harman – “It is all interest correct”

Mrs. Bray – “All right what about project supervision, \$10,000.00? Who supervised your project?”

Mr. Harman – “That is costs that I’ve incurred and it’s just an estimate of what it’s taken and it’s is a very low estimate.”

Mrs. Bray – “So it might be your salary?”

Mr. Harman – “Yes for the time that I’ve put in, you know, overseeing what’s been done to date and that is a very low figure because I didn’t want to exaggerate the figure.”

Mrs. Bray – “Right”

Mr. Mendenhall – “So you’re saying your land costs on here, at this point, you’ve only spent the interest, which is how much?”

Mr. Harman – “I’ve spent it all because I also have collateral against the other part so I have a loan on that, but it’s collateralized. Does that make sense?”

Mr. Mendenhall – “Yes – you’ve put up something of value.”

Mr. Harman – “Right”

Mr. Mendenhall – “Any other questions?”

Mrs. Bray – “Well, with your collateral, is that in addition to what the land costs or is that?”

Mr. Harman – “No, it’s just if for some reason there would be a problem with the loan, they’d take something of that value, other land that I have.”

Mrs. Bray – “Okay what is your payment a month on it?”

Mr. Harman – “\$2,500.00 approximately at present interest rates.”

Mr. Mendenhall – “You’ve been paying that since what date?”

Mr. Harman – “September 2004 well it closed in September 2004, so the first payment, I think was October.”

Mr. Mendenhall – “You’ve paid about \$48,000 to 50,000?”

Mr. Harman – “Say what?”

Mr. Mendenhall – “You’ve paid about \$48,000?”

Mr. Harman – “Yeah, its here, \$49,964.43”

Mr. Mendenhall – “Okay any other questions?”

Mr. Caviness – “Mr. Harman, talked about a date this thing expired, on the 2nd. They informed you on the 3rd rather, on the 4th, they indicated that to you. You’re a business person. How did that date slip by you sir?”

Mr. Harman – “I knew that was coming up and I went and talked to Mr. Meadows six months before that and said I see there is a two year limit on this permit. What do I need to know about that? Is this an issue that I need to be looking at or doing something about? It’s taking me longer to get all the engineering done that I expected and that is when I said we went over and looked at section 58 together. That was February 24, 2006. At that time, he said I already know you’ve put in your engineering reports and you’re ongoing. So we had that discussion.”

Mr. Caviness – “I see your point there sir, but you did know the date that it expired, though?”

Mr. Harman – “Well, I really didn’t. I knew that there was a two year limit. I knew when initially so I checked on it well before that. After I got that interpretation from Mr. Meadows, I just went on with my work and I did not really spend more time thinking about that date.”

Mrs. Bray – “What are some of things that’s happened that you know, things that occurred why your work wasn’t continued like you had thought it would be?”

Mr. Harman – “Well the biggest issue is like I said the Town has a very progressive and I want to commend them on that the ordinance they have now for the stormwater. And that was my goal too is to have minimal impact of the storm, what leaves the property in a big rain. So I hired two different engineers to focus specifically on that. I wanted to even exceed what the Town’s ordinance was. So that involved a lot more than I had initially expected to make that all work and also involved a lot coordinating of their work with the other work that the engineer and the other engineers were doing. Because they were doing road, water, sewer, grading plans. So they had to mesh. The other thing is I spent the first year just doing surveying, wetland delineation, soil evaluation, just doing all the environmental stuff to make sure I was being as careful as I could and as thoughtful as I could. So that took longer than expected but I didn’t want to rush those things because I wanted to make sure I did a really thorough job. That combination is what caused it. I’ve always said that and I’ve spoken to Mr. Meadows a number of times about this. He asked me after our meeting in July what time frame are you on for this? Well, it matters to me more that I do this well than doing it quickly. He said that is very unusual for a developer to have that perspective.”

Mr. Mendenhall – “Any other questions? Are you all through with questions? Harold, any other questions?”

Mr. Hart – “No”

Mr. Mendenhall – “Okay, motion for action as to whether we are going to overturn the planning director’s decision, do I have any comment on that?”

Mrs. Bray – *"I certainly sympathize with Mr. Harman. I know he's got a lot of money involved in this. You can tell that it's costing a lot of money. I was thinking as a businessman, how do you make money if it's costing you this a month? But if he was aware of the date that it expired, then to me, I support Jack's decision."*

Mr. Mendenhall – *"Any other comments? All right is there a motion to affirm the actions of the planning director?"*

Mrs. Bray – *"I make a motion."*

Mr. Mendenhall – *"Is there a second?"*

Mr. Caviness – *"I second."*

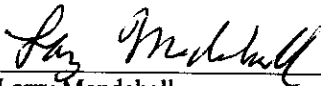
Mr. Mendenhall – *"I have a motion by Cindy, a second by Richard Caviness. All of those in favor say yes."*

Mr. Mendenhall – *"Is that all six, everybody in favor? Okay the vote is unanimous."*

Agenda Item V


Other Business

With no further business, Cindy Bray made a motion for adjournment at 8:55 p.m., a second from Harold Hart followed by unanimous consent.



Larry Mendenhall
Chairman

ATTEST:



Dee Lee Thompkins
Recording Secretary