

BOARD OF ZONING APPEALS

March 2, 2005

1
2
3
4
5 *[Members Present: Branham, Dorsey, Young, Brown, Tolbert, Perkins; Absent: Myers]*

6
7 Called to Order: 1:00 p.m.

8 CHAIRMAN BROWN: We'll call the March meeting of the Board of Zoning
9 Appeals to order. I'd like to welcome all of you that are here either as participants or
10 witnesses. And before I ask Mr. Farrar to make some preliminary remarks, I'd like to
11 note and welcome back Mr. Harold Branham. Mr. Branham was a Member of this
12 Board about 2 1/2 years ago and then left us to take on another responsibility and has
13 now rejoined us to fulfill the term of Mr. Formyduval who left due to other commitments.
14 So welcome back.

15 MR. BRANHAM: Thank you very much, Mr. Brown.

16 CHAIRMAN BROWN: Not you, Geo. We're not welcoming you back. And now
17 I'd like to ask Mr. Farrar from the County Attorney's Office to make some preliminary
18 procedural remarks if he would.

19 MR. FARRAR: Thank you, Mr. Chairman. Good afternoon. I'm Brad Farrar from
20 the Richland County Attorney's Office. I'll briefly explain the Board's process and take
21 any questions you may have. This is about the smallest group we've had in a while so
22 the agenda should move rather quickly today. The Board is what they call a quasi-
23 court. It's not a court of law, but it's similar in terms of things like taking testimony and
24 issuing decisions. The Board process – essentially anybody who's got a special
25 exception or a variance, those are the types of cases that we'll hear today. The
26 applicant for that request has 15 minutes to present his or her case. You don't have to

1 take the whole time but you have that time. You can essentially do whatever's
2 appropriate to present the material - testimony from the podium, if you have a video
3 presentation that's fine as well. Anyone in opposition has three minutes per person to
4 state the opposition. But since it's a small group, you know, take as much time as you
5 want to if you're opposed to it; that's fine up to the three minutes. And then the
6 applicant has five minutes of rebuttal. So if you'll notice the order of presentation, it's
7 applicant, opposition, and then applicant again. The reason for that is the applicant
8 carries or bears the burden of proving why he or she should get the special exception or
9 variance they're trying to get. It comes back to that quasi-court nature of the
10 proceedings. The effect of the Board's decision, the Board will render its decision in
11 open session here this afternoon. But that decision does not become final until the
12 minutes from which the action was taken have been approved. So, for example, at the
13 March hearing, today, the Board will make a decision but they won't approve their
14 minutes until the April meeting at the earliest. And most likely it'll be the next meeting.
15 So 30 days after the Board's decision, typically the next meeting, the minutes are
16 approved. You have a final decision. The reason I mention that is just so you'll be
17 aware that the decision isn't final until the minutes have been approved so that you
18 won't take any - or you'll be aware before you take any action. For example, if you
19 expend some money in reliance on that decision before the minutes have been
20 approved, you kind of take a little bit of a risk there. Usually you will know whether or
21 not there's an issue with your case, if there's any opposition. You can kind of handicap
22 whether or not you're going to face opposition in a case. But still, just be aware of that
23 approval process before the decision is final. Once the minutes have been approved,

1 and if there's no reconsideration of the case, you do have a final decision of the Board.
2 However, someone can still appeal that decision to the Circuit Court under Title 6 of
3 South Carolina law, essentially, if you're aggrieved by a decision of the Board. And you
4 state in your petition why it is that you disagree with the Board's decision. And you'll get
5 a hearing. And the Court is essentially sitting as an appellate court at that point. And
6 they'll review what happened at the proceedings here today. A person does not have
7 an unlimited amount of time, though, to file such an appeal. You have 30 days from the
8 date that the decision of the Board is mailed. So just keep in mind those two things. I
9 think that's the most important thing I'll say is that once the minutes have been
10 approved and once the appeal period is run you absolutely have a final decision of the
11 Board. Just keep those two things in mind. Other than that, you'll have what I call a
12 conditional decision issued today. It's a little bit different than a court. Sometimes you
13 have to wait awhile to get an order from a court. But you'll actually have one this
14 afternoon. The only time the Board will not be sitting in open session is if they take a
15 recess or if they go into Executive Session. This is something that's provided for under
16 the Freedom of Information Act if a public body, such as the Board, wants to discuss a
17 matter of legal concern or, for example, contractual, personnel. Probably the only thing
18 you're going to see is the legal issue. If the Board wants to take to me as its attorney
19 they can do that. But they can't take any action in Executive Session. You can't take a
20 vote. Or you can't take a straw poll and say, "Gee. How are you leaning?" You know,
21 that type of thing. They'll come back in open session and take a vote. You have that
22 decision at that point. The Board will consider evidence that you present. If it's been
23 presented prior to today it should be in the agenda packet. If you have any last minute

1 submissions let us know and we'll try to get that available to the Board. Testimony will
2 be under oath. In a moment I'll swear everyone in as a group to kind of expedite things.
3 But just keep in mind, testimony is under oath. It will be recorded in the event that we
4 need a transcription of the proceedings. A couple of housekeeping points, if you do
5 have a cell phone or a pager, if you could turn that to off or vibrate so we don't pick that
6 up on the recording that would be appreciated. The Board consists of seven members.
7 We have six here today. That's certainly a quorum to conduct business. If you want to
8 wait for all seven members, I suppose you could make that request when your case is
9 called and the Board would entertain such a motion to defer your case. But right now
10 you do have enough people to decide the case. Since we do have an even number of
11 people, I'll mention the somewhat unusual provision about tie votes. In the event of a
12 tie vote, rather than having the matter be defeated for lack of a majority, for example,
13 the case essentially can be carried over to the next meeting of the Board. So just – if
14 that comes up I'll explain a little bit more about it. But just keep in mind that a tie vote
15 does not necessarily defeat the request. It'll just carry that over to the next meeting.
16 Somewhat unusual proceeding, but it is what's in the County Code. Sometimes I get
17 this question about, "Well, gee, do I have to sit here for the whole meeting?" This is an
18 open session. You can come and go, as you like. Just ask that you not make a lot of
19 noise when you do leave. You just – if you need to step out for a moment that's
20 perfectly fine. Cases will be called in the order of the agenda unless the Board reorders
21 the agenda. So just keep that in mind. But you are certainly free to excuse yourself if
22 you need to step out for a moment. If you have not signed up to speak to the case that
23 you want to speak to this afternoon, you do need to be on the signup sheet. It's not too

1 late. Just need you to make sure you do that before the case is called. Is there anyone
2 who hasn't signed up who would like to speak to a case today? Okay, just let us know if
3 that – you need to get on the sheet?

4 AUDIENCE MEMBER: [Inaudible]. The case is opposite my own and there's a
5 question that they may have. Is that open for discussion or do I have to get on the list
6 and respond?

7 MR. FARRAR: If you want to come to the podium and give any testimony you
8 need to be signed up.

9 AUDIENCE MEMBER: I'm sorry. If they had any questions for me, is it open to
10 discussion or do I have to be on the list and respond? Does that make sense?

11 MR. FARRAR: I'm –

12 AUDIENCE MEMBER: Okay. [Inaudible]

13 MR. FARRAR: I mean when you're – you will be asked questions from the Board.

14 AUDIENCE MEMBER: Okay.

15 MR. FARRAR: I mean they may not. But I mean if they and you don't, you know,
16 there's nothing more that you need to do other than to sign up to speak to a case.

17 AUDIENCE MEMBER: Okay.

18 MR. FARRAR: Sir.

19 AUDIENCE MEMBER: Are the signup sheet's outside?

20 MR. FARRAR: I think they're in, now. Yeah. Any – I think I've covered the gist of
21 what I wanted to talk about. Is there any questions about the Board's procedure or
22 anything that's going to take place here this afternoon? Okay. We'll give him a chance
23 to finish signing up.

1 CHAIRMAN BROWN: The gentleman in the back row, are you an applicant?

2 AUDIENCE MEMBER: Yes, sir.

3 CHAIRMAN BROWN: Did you sign in?

4 AUDIENCE MEMBER: I'm sorry. No.

5 CHAIRMAN BROWN: Okay. You need to do that if you would please.

6 AUDIENCE MEMBER: Thank you.

7 MR. FARRAR: Okay. At this time if you've signed up or haven't – we can still get
8 you on the sign up sheet – but if you're going to speak to a case, if you would, please,
9 at this time stand and raise your right hand, I will swear you in as a group. Anybody
10 who's going to testify. Do you swear or affirm the testimony you shall give shall be the
11 truth, the whole truth, and nothing but the truth so help you God?

12 AUDIENCE MEMBERS: I do.

13 MR. FARRAR: Please be seated. If anyone ever says anything other than 'yes'
14 or 'I do' please let me know. Otherwise we'll consider you sworn as a group. At this
15 time I'll turn it back to the Chairman and thank you very much.

16 CHAIRMAN BROWN: Thank you, Mr. Farrar. Mr. Price, the first case, please.

17 **CASE 05-35 SE:**

18 MR. PRICE: Alright. The first item is Item A, Case 05-35 SE. The applicant is
19 requesting the Board to grant a special exception to permit the establishment of a family
20 daycare on property zoned RS-2. The applicant is Dianne Nwokolo. The location is
21 1842 Malcolm Drive. It's about a fourth of an acre tract. The subject property is an
22 existing single-family residential structure located at the end of Malcolm Drive. It kind of
23 goes right into like a dead end. There's not a distinguishable driveway and the fence

1 encloses approximately three-fourths of the property. The applicant proposes to
2 establish a family daycare for a maximum of six children. The ages of the children will
3 range from newborn to 12 years of age. The proposed hours of operation are 2:30 p.m.
4 to 7:30 a.m. This case came before the Board last month and it was deferred until a
5 letter was received from the actual property owner. I believe she might be renting the
6 property. But we did receive that letter. We have it in the file.

7 CHAIRMAN BROWN: Alright, Ms. – how do you pronounce it? Nwokolo?

8 MS. NWOKOLO: Nwokolo.

9 CHAIRMAN BROWN: Nwokolo. If you'd tell the Board what it is you'd like to do,
10 please.

11 **TESTIMONY OF DIANNE NWOKOLO:**

12 MS. NWOKOLO: I'd like to open a daycare in my home. I have six children.
13 Actually it'd be only five children because I do take care of my grandson.

14 CHAIRMAN BROWN: Alright. And then would you elaborate on that a little bit as
15 to what hours, days and –

16 MS. NWOKOLO: It'd be in the evening from about 2:30 to 11:30 in the evening.

17 CHAIRMAN BROWN: Now in the information we got it indicated that it was going
18 to be from 2:30 in the afternoon until –

19 MS. NWOKOLO: 7:00 in the morning.

20 CHAIRMAN BROWN: 7:00 or 7:30 in the morning. Have you changed your mind
21 on that?

22 MS. NWOKOLO: Well, they told me that I needed a special education for that for
23 nighttime. So -

1 CHAIRMAN BROWN: I see. So now it's only until –

2 MS. NWOKOLO: 11:30. The children would have to be picked up before
3 midnight.

4 CHAIRMAN BROWN: Yes, ma'am. Any questions from Members of the Board?

5 MR. TOLBERT: What do you plan to do with – we discussed that last time you
6 were here - what do you plan to do with some of that stuff in the backyard, the debris?

7 MS. NWOKOLO: It's being cleaned up now. The landlord's there. He's fixing the
8 house. He's painting the house. He's taken down the structure that was the basketball
9 court and repairing the back wall now.

10 MR. TOLBERT: Also, I saw – I don't see it now – but there was a kind of a brick
11 wall that looked like it was kind of [inaudible] back there?

12 MS. NWOKOLO: He's taken it down. He's fixing it.

13 MR. TOLBERT: Huh?

14 MS. NWOKOLO: He's fixing it.

15 MR. TOLBERT: He's fixing it.

16 MS. NWOKOLO: He's at my house right now.

17 MR. TOLBERT: Is the complete back yard fenced? I saw dogs and stuff back
18 there. Are they -

19 MS. NWOKOLO: That's the next door neighbor's dogs. And his house is all
20 fenced in.

21 MR. TOLBERT: What do you plan to do to prevent a child from sticking his hand
22 in that fence if the dogs are next door there because –

23 MS. NWOKOLO: The children don't go outside.

1 MR. TOLBERT: - there's going to be a temptation?

2 MS. NWOKOLO: There're not outside - the dogs don't bite in the first place. But
3 the children would not be outside by themselves at all.

4 MR. TOLBERT: You know, you need to have something to protect the child. All it
5 takes to turn your back and stick their hand in that fence, the dog'll have it.

6 MS. NWOKOLO: My grandson sticks his hands in there all the time. He goes
7 over there and plays with the dogs.

8 CHAIRMAN BROWN: Yes, ma'am. But there's a difference. The dogs know
9 your grandson and they don't know other children who you're simply caring for. Do you
10 intend to fence your back yard?

11 MS. NWOKOLO: It's all fenced in except for one little section. And the landlord
12 said that he would put a door there me, a gate.

13 CHAIRMAN BROWN: Um-hum (affirmative). And the remainder of the yard is
14 fenced in?

15 MS. NWOKOLO: Um-hum (affirmative).

16 MS. DORSEY: I saw some gaps in the - or I thought they were gaps - in the
17 cement block [inaudible]. Is that what he's repairing?

18 MS. NWOKOLO: Right. The ice storm took down the stalks that are back there.
19 It took down that - bent everything down. And he's going to repair it.

20 MS. DORSEY: Are there any plans to secure that shed?

21 MS. NWOKOLO: The shed is secure, really. It's been all boarded up and it's
22 where he puts - my grandson puts his toys.

23 MS. DORSEY: Okay.

1 MS. NWOKOLO: They don't play in it. They put his bikes and stuff in there. The
2 other shed that was there was removed.

3 CHAIRMAN BROWN: You say – did I understand you that that building that we
4 see in that picture there is where your grandson stores his –

5 MS. NWOKOLO: Bikes.

6 CHAIRMAN BROWN: Bikes? Is that building secure?

7 MS. NWOKOLO: Yes.

8 CHAIRMAN BROWN: Then has it been changed from what we see in that picture
9 because it doesn't look secure to me in that picture, frankly?

10 MS. NWOKOLO: It is. Well, the door has been repaired on it. The door was
11 falling off and it's been repaired.

12 MR. BRANHAM: I noticed you've got your time to keep the kids from 2:30 until
13 11:30 but you had originally planned, as you mentioned a few minutes ago, to 7:30.
14 Where are these kids coming from when they come to your house at 2:30?

15 MS. NWOKOLO: Probably from school. It depends on how old they are.

16 MR. BRANHAM: Well, what ages are you going to be keeping?

17 MS. NWOKOLO: Up to 12.

18 MR. BRANHAM: From 0 to 12?

19 MS. NWOKOLO: Yes.

20 MR. BRANHAM: I guess my question is why would they still be there at 11:30 or
21 why did you want your exception to include 11:30 at night?

22 MS. NWOKOLO: Because I feel that in our community that there a lot of single
23 parents that need to work and it's hard for them to find daycare for that shift. If I do it in

1 the morning then I won't have free time to go see what my children are doing in school.
2 I won't be able to go to my grandson's plays and things like that.

3 CHAIRMAN BROWN: So all these children won't necessarily show up at 2:30.
4 They may be staggered –

5 MS. NWOKOLO: Yes.

6 CHAIRMAN BROWN: - to come in.

7 MS. NWOKOLO: Some will probably get there at 4:00 or, you know, 3:30.

8 CHAIRMAN BROWN: Yes, ma'am. Any other questions by Members of the
9 Board?

10 MS. NWOKOLO: And I do have help, also. I have a teenage daughter who will
11 help me after school with kids.

12 CHAIRMAN BROWN: Any other questions by any Members of the Board? Okay.
13 Thank you, ma'am.

14 MS. NWOKOLO: Thank you.

15 CHAIRMAN BROWN: There's no one else signed up either in favor of or in
16 opposition to this request. The Board can now entertain discussion.

17 MS. DORSEY: I'm always concerned about dogs. And I guess the main
18 condition that, if I were able to put a condition on it, would be there'd be a privacy fence
19 put up for the dogs so that there wouldn't be any fingers.

20 MS. NWOKOLO: His dogs don't go in the backyard. He has [inaudible] the front
21 yard fenced in.

22 MS. DORSEY: I'm sorry.

23 CHAIRMAN BROWN: Come back up if you would, ma'am, please.

1 MS. NWOKOLO: His dogs don't go to the backyard at all.

2 MS. DORSEY: Okay.

3 MS. NWOKOLO: He has - right there. His dogs - that's the front yard.

4 MS. DORSEY: Okay.

5 MS. NWOKOLO: And they cannot go into the back yard.

6 MS. DORSEY: Okay. So there's no direct contact -

7 MS. NWOKOLO: No.

8 MS. DORSEY: - between the kids and the dogs in the back yard?

9 MS. NWOKOLO: There's a - he has a double fence. His back yard and his front
10 yard are fenced off.

11 MS. DORSEY: Okay. I didn't notice that.

12 MS. NWOKOLO: Those are only in the front.

13 MS. DORSEY: So they're separate?

14 MS. NWOKOLO: Um-hum (affirmative).

15 MS. DORSEY: Okay.

16 MS. NWOKOLO: And that dog right there's about 13 years old.

17 MS. DORSEY: Yeah. I know. But we just have to worry. [Laughter]

18 MS. NWOKOLO: Of course. I understand.

19 MS. DORSEY: So you're saying there's no direct contact?

20 MS. NWOKOLO: Where the children would be playing, the dogs don't come back
21 that way.

22 MS. DORSEY: Yeah. But there's no direct contact? If the children are in the
23 back yard there's no direct contact?

1 MS. NWOKOLO: No. No.

2 MS. DORSEY: Okay.

3 MS. NWOKOLO: He has them fenced off. About halfway in between his house
4 there's another fence where the dogs can't go back. And on the other side it's all
5 fenced in and there's a cage where he puts them in at night.

6 CHAIRMAN BROWN: Thank you, ma'am. Any other discussion?

7 MS. PERKINS: Just to wrap it up, she did say that there's double fencing in her
8 neighbor's back yard. That structure that you were – that I saw, where her son keeps
9 the bicycle – it does not look stable to me.

10 CHAIRMAN BROWN: Well, it didn't to me, either. But she indicated that they've
11 repaired the door on it.

12 MS. PERKINS: Okay.

13 CHAIRMAN BROWN: Because it looked to me like the door was hanging off, off
14 the frame.

15 MS. DORSEY: May I ask if – is there anything besides toys kept in there? Any
16 kind of tools, power equipment, anything like that?

17 MS. NWOKOLO: No.

18 MS. DORSEY: Well, it - I would like to see it more stable. And I understand that
19 point. But you're saying that – has it been made stable?

20 MS. NWOKOLO: It's all been boarded up. At one side [inaudible].

21 CHAIRMAN BROWN: Any other discussion?

1 MR. TOLBERT: Yeah. I'm still curious about this fence in the applicant's yard. Is
2 it blocked up on both sides because the front there it's not a gate? And the picture that I
3 have, I'm not sure if that's a fence on the side of the house.

4 MS. NWOKOLO: You want me to go and show you?

5 MR. TOLBERT: Mike, can you go back to the front? Okay. Okay. There on the
6 side -

7 MS. NWOKOLO: Okay. This is his fence. This is part of my fence. Over here,
8 further, is where his [inaudible]. Okay. This is his fence and our fence together. Okay?
9 But, up here further, he has another fence in his yard that stops. It's up, way up here.

10 MR. TOLBERT: But what I'm asking you, is there a fence to keep the kids from
11 coming from the side of the house straight into the front yard?

12 MS. NWOKOLO: There will be. There'll be a gate right there.

13 MR. TOLBERT: That answers my question. Thank you.

14 CHAIRMAN BROWN: Any other questions or discussion by Members of the
15 Board? If there is none then the Chair will entertain a motion.

16 MS. DORSEY: I move that case number 05-35 Special Exception be approved
17 with the conditions as set forth by the Zoning Administrator in our packet.

18 CHAIRMAN BROWN: Would you accept an amendment to that that the business
19 license not be issued until such time as all of the fencing is in place?

20 MS. DORSEY: Yes, sir.

21 MR. TOLBERT: Second.

22 CHAIRMAN BROWN: It's been moved and seconded that Special Exception 05-
23 35 SE be approved with the conditions suggested by the Staff as well as a special

1 condition that all fencing be in place prior to issuance of a license for this business to
2 operate. All those in favor of the motion signify by raising their hand. Opposed, none.

3 *[Approved: Branham, Dorsey, Young, Brown, Tolbert, Perkins; Absent: Myers]*

4 CHAIRMAN BROWN: You have your request, Ms. Nwoloko, with the conditions
5 that I mentioned earlier.

6 MS. NWOLOKO: Thank you.

7 CHAIRMAN BROWN: Next case, Mr. Price.

8 **CASE 05-54 V:**

9 MR. PRICE: Item B has been deferred. That was cell tower on Lower Richland
10 Boulevard. So we're now with the Item C. That's Case 05-53 Special Exception.
11 Excuse me, that also has been deferred. We're at Case D, Item D, 05-54 Variance.
12 The applicant is Keith Eubanks. The location is 1300 Polo Road. The applicant is
13 requesting the Board to grant – excuse me – to grant a variance to reduce the number
14 of required parking spaces in a C-3 zoned district. The proposed use for the property
15 will be for a multi-family development. The applicant proposes to reduce the required
16 off-street parking by 29 spaces from 493 to 464. The surrounding area is comprised
17 primarily of undeveloped parcels. I believe the rear of it kind of goes back towards –
18 what is it? Cresthill? On the side is where the school – District 2 is building an
19 elementary school. And on the left side is a warehouse of BlueCross/BlueShield.
20 There was one other thing I wanted to mention. The applicant, even with this reduction,
21 he had proposed to add 20 other spaces with this use. So that's how we got his actual
22 request. The subtotal for the proposed number of spaces is 444. That's with the
23 reduction. But he's going to add 20 more. So - I'm kind of confusing you there.

1 CHAIRMAN BROWN: So what are we looking at, now?

2 MR. PRICE: To reduce it to 464 parking spaces from 493.

3 MS. DORSEY: Where are the additional ones being added? Is it – they're being
4 taken away from –

5 MR. PRICE: The applicant can explain it to you.

6 MS. DORSEY: Oh, okay.

7 CHAIRMAN BROWN: Alright. The first person I have signed up is Kevin
8 Eubanks. You Mr. Eubanks?

9 **TESTIMONY OF KEVIN EUBANKS:**

10 MR. EUBANKS: Yes, sir. Good afternoon. Kevin Eubanks, engineer for
11 Applegate Company, my client who owns the property. Code requires, right now, two
12 units per – I mean, excuse me – two spaces per unit at this time. And request a
13 variance for reduction of that. Actually we would be reducing - the number of spaces
14 will be coordinated with the one-bedroom units. They would be reduced down to 1.5
15 per unit for the one-bedroom units. And the rest of them would have the two spaces per
16 unit. The hardship we have is that we have over three acres of wetlands, which
17 includes a 25' buffer area around those wetlands, which are the shaded area on this
18 drawing, to set aside. So we don't have to develop any of that area.

19 CHAIRMAN BROWN: Alright. So the total required is 493 and you're going to
20 have 464. Is that correct?

21 MR. EUBANKS: Yes, sir.

22 CHAIRMAN BROWN: And the reduction will be by reducing the number of
23 spaces for the one-bedroom units?

1 MR. EUBANKS: Yes, sir, to 1 ½.

2 MR. TOLBERT: How many one-bedroom units do you have?

3 MR. EUBANKS: Seventy-two.

4 MR. TOLBERT: How many?

5 MR. EUBANKS: Seventy-two.

6 MS. DORSEY: Can you not reduce the density of the one-bedroom units?

7 MR. EUBANKS: Um -

8 AUDIENCE MEMBER: It's not really possible based upon the configurations.

9 MR. EUBANKS: I'm sorry. This is Arthur Applegate, the owner of the property,
10 and he can speak to the -

11 MS. DORSEY: I mean change the plan to reduce the density so that it fits the
12 required parking.

13 MR. TOLBERT: They don't want to do that.

14 ARTHUR APPLGATE: Yeah. In general -

15 CHAIRMAN BROWN: Excuse me. Would you state your name for the Record?

16 **TESTIMONY OF ARTHUR APPLGATE:**

17 MR. APPLGATE: Yeah. My name's Arthur Applegate.

18 CHAIRMAN BROWN: Okay. Thank you.

19 MR. APPLGATE: I was the third person listed on the deal. Under normal
20 circumstances - and we do apartments a lot of places - the requirement is to have two
21 parking spaces for all of your two-bedroom and three-bedroom units. The requirement
22 that y'all have, which is two parking spaces for all units regardless of whether it's a one-
23 bedroom, two-bedroom, or three-bedroom, is, you know, it is high by most standards.

1 But what we're doing is we're doing 1 ½ parking spaces for every one-bedroom unit. So
2 we're doing 50% more parking for those 72 units. But we have - if you look at the
3 property, the wetland area is what causes us to have – we're required to have very
4 significant buffers. And so that's why we have to do [inaudible].

5 MS. PERKINS: Give him the mic.

6 MR. APPLGATE: We wouldn't do anything to compromise our ability to lease
7 our units. If we just have sufficient parking [inaudible]. In other words, we'd be sort of
8 cutting our own throats if we didn't have enough parking. We have more parking than
9 we would normally have.

10 MS. DORSEY: Than you would normally have less than what is required?

11 MR. APPLGATE: That is correct. That is correct.

12 MR. EUBANKS: So we're trying to preserve these buffers and these wetland
13 areas instead of trying to encroach on them.

14 MR. APPLGATE: But I think this will help [inaudible].

15 MR. FARRAR: Y'all need to be at the microphone. We're not picking up any of
16 this.

17 MR. APPLGATE: Okay. I think that this might help you to understand the way
18 this wetland section –

19 MR. FARRAR: Can you hold this?

20 MR. APPLGATE: Yeah, sorry. This may help to show you the impact that the
21 wetlands have on this site. It dissects the entire – it, basically splits the property in half.
22 And so we're operating under fairly tight areas. And yet, we're preserving large
23 greenbelt areas and little park areas. The reality is we probably could put more parking

1 spaces in here. If you see this area, it's a green area. This area's here. There are
2 areas where we could add more parking but the aesthetics, I mean, in other words, we
3 would be creating more paved area than we would green area. And because it's more
4 – we want to preserve these park areas that we have sort of scattered around on the
5 property. And for us to create more parking, when, in fact, we already have an
6 excessive amount of parking at 1 ½ space for the one-bedroom units.

7 MR. EUBANKS: We just don't want to add any more pavement than we have to.

8 CHAIRMAN BROWN: Well, I question whether you have more parking than you
9 need. I've lived in apartments. And I've never seen an apartment where one parking
10 space per apartment was adequate. You've got two out-parcels there. What are those
11 for?

12 MR. APPLGATE: That is not part of this.

13 CHAIRMAN BROWN: Is it your property?

14 MR. APPLGATE: It's in a different partnership. This has no relationship to that.

15 MR. TOLBERT: Help me to understand this scenario based on giving what you're
16 talking about a one-bedroom, 1 ½ spaces for that.

17 MR. APPLGATE: Right.

18 MR. TOLBERT: Then you look at a three-bedroom.

19 MR. APPLGATE: Right.

20 MR. TOLBERT: What's your equation for that when you might have three cars?

21 MR. APPLGATE: Right. Well, in that you have two per unit. So –

22 MR. TOLBERT: I understand that.

23 MR. APPLGATE: Right.

1 MR. TOLBERT: But, you know, you've given your equation of a one-bedroom,
2 but then two-bedroom could equal that equation.

3 MR. APPLGATE: Right. Well, if you took the half space, if you added up all the
4 half spaces on the one-bedrooms and applied those to the threes, then the threes would
5 have, effectively, three spaces per unit.

6 MR. TOLBERT: That might have been an old trend. But new trends are different
7 this time, but - one more question. Am I - can I do it?

8 CHAIRMAN BROWN: Go right ahead.

9 MR. TOLBERT: Okay. Given the scope of this whole land purchase when you
10 bought it -

11 MR. APPLGATE: Right.

12 MR. TOLBERT: - and before you made your designs and your engineers plotted
13 out this, you all were aware at that time what the requirements are. But, yet, still you all
14 have designed this not to meet the county standards.

15 MR. APPLGATE: Right.

16 MR. TOLBERT: Is there any particular reason that you did that?

17 MR. APPLGATE: The answer to that question is you don't, until you get into the
18 planning and the design of it, you don't understand and there's no way you know the full
19 impact of this wetlands. This is an extremely large wetland area. And the 25' strip that
20 you have to preserve around that wetlands has the impact. I mean the reality is if you
21 said to me today that we're not going to grant this, what we would do is we'd go back
22 and we'd put the 30 spaces on this site plan. And what the net results were would be
23 we would have an excessive amount of parking. And the net results would be that from

1 an aesthetic standpoint, rather than maximizing our green space, we will have
2 maximized our paved area. If you look at this site, you will see that there're lots of little
3 areas where we can add the spaces. And to do so will result in something that will be
4 less pleasing, aesthetically, to Richland County. I mean – so I'll do it either way you
5 want me to do it, I just think it's in the interest of the County. It's in my interest from the
6 standpoint of trying to have a nice complex. And we have a number of private garages
7 on the parking area, as well, so. But, you know, what ever you want me to do I'll do.

8 MS. PERKINS: Well, we're not saying – I don't think – to reduce the green space.
9 The question would be the original one that Mrs. Dorsey asked you, reduce the density.

10 MR. APPLEGATE: Well, I'm not in position to reduce the density. I mean so
11 what will happen –

12 MS. PERKINS: But you do have another choice other the one that you just
13 stated.

14 MR. APPLEGATE: Well –

15 MS. PERKINS: You can reduce the – you cannot reduce the density. You could
16 take the schematic plan that you have before us back to the person who has an
17 investment on it –

18 MR. APPLEGATE: Yeah.

19 MS. PERKINS: - and ask –

20 MR. APPLEGATE: Right.

21 MS. PERKINS: Just asking you a question.

22 MR. APPLEGATE: Yeah.

23 MS. PERKINS: That certainly we don't want you to reduce the green space.

1 MR. APPLGATE: Right.

2 MS. PERKINS: Certainly you have three acres of wetland -

3 MR. APPLGATE: Right.

4 MS. PERKINS: - that you can't do anything about. Certainly there is a buffer.

5 What we're asking is can you reduce – not asking you to answer that question –

6 MR. APPLGATE: Right.

7 MS. PERKINS: Can the density be reduced so that you could get the amount of
8 parking spaces that you need? A lot of times in a one-bedroom you do have two cars.

9 MR. APPLGATE: That's correct.

10 MS. PERKINS: That is a concern.

11 MR. APPLGATE: Yeah. And I don't disagree with you. But if the – Kevin, if
12 you'd help me with the numbers a little bit. The total number of one-bedroom units we
13 have.

14 MR. EUBANKS: There are 72.

15 MR. APPLGATE: Seventy-two one-bedroom units. And we're providing 108
16 space for those 72 one-bedroom units. So what we're basically saying is that half of the
17 one-bedroom units will have two cars and half of the one-bedroom units will have one
18 car. And we know from many, many complexes that that is more spaces than we need.
19 We would be cutting our nose off to spite our face if we did not provide adequate
20 parking because we're in a very competitive rental market in Columbia. This is not the
21 greatest apartment market in the world. And so for us to do things that would put us at
22 a competitive disadvantage makes no sense whatsoever.

23 MR. BRANHAM: By the same token, you've got 48 three-bedroom units.

1 MR. APPEGATE: That's the other side of the coin.

2 MR. BRANHAM: Yes. And you allowed two parking spaces per unit for those.

3 MR. APPEGATE: That is correct.

4 MR. BRANHAM: And if you had half of those that needed three parking spaces –

5 MR. APPEGATE: Then we'd be 24 off. We'd have to take 24 out of the ones
6 which would then make it more like 75 – 25.

7 MR. BRANHAM: You're not making any provisions in this request for those if you
8 do have three car units.

9 MR. APPEGATE: That is correct.

10 CHAIRMAN BROWN: Any other questions of these gentlemen?

11 MR. APPEGATE: I will add that in the three-bedroom units it's very unusual that
12 we would have three cars for those three-bedrooms. And another point is many of the –
13 not many but certainly a percentage – of the two-bedroom units only have one car
14 because a lot of people – or I won't say a lot of people – but there's a percentage of
15 people that are families that only have one car in that two-bedroom unit. Furthermore,
16 some of the people in the two-bedroom units use the second unit for a study. So I say,
17 genuinely, that the total parking we have is really, in my opinion, as excessive as we
18 have it – for what that's worth. But I –

19 CHAIRMAN BROWN: Any other questions of these gentlemen? Okay. Thank
20 you.

21 MR. APPEGATE: Thank you, sir.

22 CHAIRMAN BROWN: So have a Gerald Ives signed up. Did he wish to speak?

1 **TESTIMONY OF GERALD IVES:**

2 MR. IVES: Yes. Yeah, my name is Gerald Ives. I am the park manager of
3 Sesquicentennial State Park. And I didn't know what I was getting myself into when I
4 came down here. And if you ever felt like you got caught between a rock and hard
5 place? Just so y'all understand, my interest here is primarily, and 100%, for the
6 protection of Sesquicentennial State Park's natural resources. You have a decision that
7 you have to make based on the regulations that you have to go by. And any time that
8 there's ever a situation where there's development around Sesqui, you know, there's
9 going to be an impact on the Park. What we want to make sure is that if there is any
10 chance at all if we can decrease the number of parking spaces, decrease the amount of
11 concrete and the amount of runoff that's going to run into the State Park, you know,
12 we're for that. I mean if I had wished that there was a way that we could not have any
13 development around the park at all that would be where I would stand right here. But I
14 just want to make sure that y'all understand that, you know, the more parking spaces
15 you have the more impact there's going to be. So please consider that as part of your
16 decision. You know, however you have to do it, but keep us in mind because we will be
17 impacted by that because we're adjacent to that property. And that wetlands area is in
18 the Park. And the runoff from that development is going to run into our streams so it's
19 going to have an impact. So please try to understand when you make those decisions.

20 MR. TOLBERT: How far is this project from the Park?

21 MR. IVES: It borders the Park. It's right at the back side of Sesquicentennial.
22 We're on the back side corner. You know where the school development is?

23 MR. TOLBERT: Yeah.

1 MR. IVES: That whole back side of that from there all the way down to the trailer
2 park there is all part of Sesquicentennial State Park. The stream that – you got it right
3 there?

4 CHAIRMAN BROWN: And the topography of that is such that that is going to run
5 back into the Park?

6 MR. IVES: Yes, sir, it will.

7 CHAIRMAN BROWN: Rather than away from the Park?

8 MR. IVES: It's going to run into the park. In fact the stream that runs behind both
9 of those developments runs in the Park. That is our Park. That stream. It runs right
10 down – all the way down to Alpine Road, across Alpine Road, into Windsor Lake.

11 CHAIRMAN BROWN: Yeah, but that - maybe I'm still not picturing it correctly.
12 I'm not arguing with you. I'm just trying to picture it in my own mind. It seems to me, for
13 that very reason, rather than running into the Park, it's running away from the Park.

14 MR. IVES: Well, the runoff's got to go downhill.

15 CHAIRMAN BROWN: Right.

16 MR. IVES: And the only stream that it's going to run off to it's going to eventually
17 run into the streams in the Park which runs back behind that development.

18 CHAIRMAN BROWN: Okay. What impact is the school going to have when they
19 put in all their hard stands.

20 MR. IVES: Well, I was here for their zoning meeting, as well, and expressed that
21 concern, as well. I understand they're going to have what is called a settling pond.

22 MR. TOLBERT: Retention.

23 MR. IVES: Retention ponds. They're putting retention ponds in.

1 CHAIRMAN BROWN: I think I see a retention, or detention, pond here.

2 MR. IVES: Is there going to be one for here, too, as well?

3 CHAIRMAN BROWN: If this plan is to be believed, I believe that's what that is,
4 isn't it?

5 MR. EUBANKS: Yes, sir.

6 MR. TOLBERT: Right here.

7 CHAIRMAN BROWN: In fact there's two of them.

8 MR. APPLGATE: Can I? I just was going to make one comment that might
9 help answer your question.

10 CHAIRMAN BROWN: Get the microphone if you would, please.

11 MR. APPLGATE: Obviously not very adept at this. Where – if you see the
12 property line that backs up to the Park, it's - could you come back to help me or
13 somebody hold this for me? What I was going to show you was this. What he was
14 referring to is that there's a stream back here. You have this wetland area where things
15 drain this way. But the entire back of the property the elevation goes from high to low.
16 And there's a stream that runs along our property line by the Park. And so what he's
17 referring to is the runoff from this part of the project running that way.

18 CHAIRMAN BROWN: But in that back corner, if this plan is accurate, you have a
19 detention pond, don't you?

20 MR. APPLGATE: That is correct. But –

21 CHAIRMAN BROWN: Which you [inaudible].

22 MR. APPLGATE: But that alleviates part of problem. But, in reality, you're
23 exactly correct. You always have some amount of runoff.

1 CHAIRMAN BROWN: I understand.

2 MR. APPLGATE: And the more surface area you have – the more paved
3 surface, impermeable surface – the more runoff you have.

4 CHAIRMAN BROWN: Alright. Thank you.

5 MR. IVES: Thank you for your time.

6 CHAIRMAN BROWN: Thank you, sir. There's no one signed up in opposition to
7 this request. The Chair will entertain a discussion.

8 MS. DORSEY: My first thought, again, goes back to cutting density to solve the
9 issues. But what I see is a very sensitive area and a desire to maximize return in that
10 area. And I feel a responsibility to always make the right decision while I'm up here.
11 And at this point I don't know what that is. I have a thought to ask that it be deferred so
12 that we could study this more and realize if – or find out if - if we can - I don't want to
13 increase any environmental impact. But I also don't want to be stuck with apartments
14 that don't have enough parking. And I am not convinced that what's being done is
15 enough. I'd ask to defer this for more study.

16 MR. APPLGATE: Excuse me. May I just ask - I forgot to point out one thing
17 that I think's very important to understand that addresses your concern. This property is
18 – the zoning will allow for 260 units. Okay? That's the number of units that I can
19 legally build on this site. We are sensitive to environmental issues. And we are
20 sensitive to not putting too much development on the property. So the reality is that the
21 property is zoned and will permit 260 units. We're doing 240 units to maximize the
22 green space. Yes, there are economic considerations in all of these deals. But it is not

1 purely a maximization of the use, of the site. I just want to make that one point that I
2 think is important.

3 CHAIRMAN BROWN: Alright. Thank you. Actually, to me that's a non-starter.
4 They've crammed about all they can cram on to this property. And with given the
5 wetlands and the parking considerations that they've met, I'm unpersuaded by the fact
6 of what the maximum might be, theoretically, that could be put on the property.
7 Personally, I'm not in – not in – personally, in favor of deferring it. I, too, I share the
8 concern of Mr. Ives – I think his name was – with not having any type of adverse impact
9 on the Park. But I really am skeptical that an additional 29 parking places is going to
10 have any significant impact, particularly compared with what impact the school is going
11 to have with the amount of –

12 MS. DORSEY: Right.

13 CHAIRMAN BROWN: - impervious surface that they're going to have. It strikes
14 me that they have designed this to suit their own objectives and now come face to face
15 with the fact that their objectives don't happen to coincide with the county's objectives.
16 And so rather than give up anything, they want the best of all worlds, which I guess all
17 of us do. But I'm just unpersuaded, personally.

18 MR. TOLBERT: Mr. Chairman, one of the things in building the project – and like
19 the ranger said – that even though they have a retention pond over there, that concrete
20 is going to dump that right in the retention pond so it's going to be affected by the Park
21 any time it rains or any type of excess water's going there it's going to drain into that
22 whatever they're using on those places. But my concern would be is that, as you said,
23 they got it to the fullest of impact, units to meet their needs. But I think putting it to the

1 fullest units the impact that they have for their needs, again, piggybacking what you said
2 that that's not complying to what we need and to preserve the Park area. Because
3 once you start putting wastewater into the stream other than natural you're going to
4 have a problem. And, you know, people are going to be washing cars and all that so
5 that's going to trickle down into the Park area. So, again, you're going to be affected by
6 whatever that would do to that retention pond, which will then drop into the stream
7 which will be affected by the Park.

8 CHAIRMAN BROWN: Any other discussion? If not, the Chair will entertain a
9 motion.

10 MR. APPLGATE: [Inaudible], may I make one last –

11 CHAIRMAN BROWN: No, sir. I'm sorry. That's over. We're past that point.

12 MS. PERKINS: I have a question. Even – this is for the Board. Just help me
13 kind of clarify something in my head. The school is there. And I know that there is a lot
14 of pavement and covering of green space in that area. And, even though, as I
15 understand it, it's just for the reduction of 29 spaces, is that total of 29 spaces that all of
16 that in combination of that not have – I mean an impact on how it's going to affect the
17 overall – just the little community, you know, with the Park?

18 CHAIRMAN BROWN: I'm not sure I understand your question.

19 MS. PERKINS: You know, I think I heard him say that he could put 260
20 [inaudible].

21 CHAIRMAN BROWN: That's what the ordinance would allow in that zoning
22 district.

23 MS. PERKINS: Yes. In that zoning district.

1 CHAIRMAN BROWN: Whether he could physically do it or not is a different
2 question.

3 MS. PERKINS: Yeah. That was my question. And he does not – and I
4 understood – he does not have the authority to reduce the density and the number of
5 units that has gone up. And I know there's a cost factor. There's a cost factor in the
6 design tie-in. And it doesn't seem – 29 units does not, if you look at it, singularly, it does
7 not look like a lot. But then when you take into consideration all the other development
8 that's coming in around Sesqui, I'm not sure – we haven't asked him if he would defer
9 and see what he could do about the density if there could be – if they would accept a
10 lower density.

11 MS. DORSEY: That was my thought at first. However, I believe it would have the
12 same effect if this were voted on and were not approved. The same effect would be
13 you've got to go back and either change your density or you're going to - he even said,
14 "Well, we'll put in the parking but we'll take away the green space." So at that point, you
15 know, what's the point? So they, in effect, have kind of made their decision. And at first
16 I thought, well, yeah, maybe we should defer. But after hearing Mr. Brown and Mr.
17 Tolbert's discussion, I'm not sure that there's much point to that.

18 MS. PERKINS: I did not – I do recall him saying that, so.

19 MR. TOLBERT: One other thing that I think I'm missing. They had another piece
20 of property to the other side of that that he don't have full rights to.

21 CHAIRMAN BROWN: You're talking about these out-parcels?

22 MR. TOLBERT: Yeah, out-parcels.

1 CHAIRMAN BROWN: He says that's under, essentially, a different ownership
2 because it's a different partner.

3 MR. TOLBERT: Okay.

4 MS. PERKINS: So he's giving us – okay, if you don't do it then I'll do the parking
5 spaces, then the green space will be taken.

6 CHAIRMAN BROWN: Will be reduced.

7 MS. PERKINS: Smart move.

8 CHAIRMAN BROWN: Well maybe – maybe not.

9 MS. DORSEY: Yeah.

10 CHAIRMAN BROWN: If he reduces the green space, he's got to look at it from
11 an economic standpoint and a marketability standpoint. And I suspect there is some
12 middle ground there where those parking spaces can be made up. And I still remember
13 living in apartments. And I've never lived in an apartment complex where there was
14 enough parking. Regardless of what their experience may be, mine, personally, is
15 different. Any further discussion? Again, the Chair will entertain a motion.

16 MS. DORSEY: Mr. Chair, I move that case number 05-54 for variance be denied.

17 MR. BRANHAM: Second.

18 CHAIRMAN BROWN: It's been moved and seconded that the request for
19 variance case number 05-55 (sic) be denied.

20 MS. DORSEY: I'm sorry, 54.

21 CHAIRMAN BROWN: Fifty-four, you're right, I'm sorry, be denied. All in favor
22 indicate by raising their hand. Opposed? Zoning Administrator will be in touch with
23 you.

1 *[Approved to deny: Branham, Dorsey, Young, Brown, Tolbert, Perkins; Absent: Myers]*

2 CHAIRMAN BROWN: Next case, Mr. Price.

3 **CASE 05-55 V:**

4 MR. PRICE: The next item is Item E, Case 05-55 Variance. The applicant is
5 requesting the Board to grant a variance to encroach into the required rear yard setback
6 for an accessory use in an RS-1 zoned district. The applicant is James Wenger. The
7 location is 533 Cabin Drive. It's a single-family residential structure. Well, there is a
8 single-family residential structure located on the property. There's an accessory
9 structure, kind of a storage building, that encroached 2.3' into the required 5 yard rear
10 yard setback.

11 CHAIRMAN BROWN: Mr. Wenger, if you'd state your name for the Board and tell
12 us what it is you need and why.

13 **TESTIMONY OF JAMES WENGER:**

14 MR. WENGER: My name is Jim Wenger. This is my residence. What's in
15 question, or of issue, it not the house but the shed itself, that's in the picture there.
16 Based upon the documentation I provided to you, although it's kind of lacking from - I
17 talked to Steven Mungo and actually he's the gentleman that kind of facilitated having
18 them write a letter and the homeowners association's provided, too, just to show you
19 that there's no objection from the developer or the homeowners association with the
20 structure. What had occurred, basically, is – a brief explanation is – Shumaker Builders
21 built the house. The placement of the pin, which in the back which marked the corner
22 property, was actually a survey stake for Cox and Dinkins. It wasn't actually a property
23 line. And, I'll be honest with you, it was a misrepresentation on my behalf completely.

1 And not until they came out to do the - well, I mean the inspection, that's when it was
2 actually caught. And my whole world stopped. So, basically, what has happened is that
3 the issue is on the back far corner, in other words, the extreme back right corner on that
4 picture. It's 2.5' from the property line. It's supposed to be 5' off the property line. That
5 green space in behind there, the trees, actually is a wetland area. There's no public
6 accessibility. There's a sewer line back there. That's about the extent of it.

7 CHAIRMAN BROWN: Alright, sir. If I understand correctly, when you first
8 erected or started to build this building it encroached on both the side and the rear yard.
9 And you bought an additional -

10 MR. WENGER: Correct. I worked with the neighbor.

11 CHAIRMAN BROWN: And -

12 MR. WENGER: That's why I had it replotted. Yes. I worked with the neighbor. I
13 can show -

14 CHAIRMAN BROWN: Well, it's on the plat here.

15 MR. WENGER: That little stake that's kind of shadowed, sticking on there. This
16 - I let that go. That's actually the property line. But when it was actually a site survey
17 from Cox and Dinkins, it was over here. That's what happened.

18 CHAIRMAN BROWN: But you didn't have the same option on the rear because
19 that's common property.

20 MR. WENGER: Right. I asked Steven Mungo if I could purchase it. And he said,
21 based upon the legal fees and transfer of property, he says it would never be worth my
22 financial ability to afford what it will take to do. So he just said - he, basically, told me to

1 go through this process is what it came down to. Yes. It's been a fun project. Strictly –
2 I'm sorry.

3 MR. TOLBERT: First time ever constructing a –

4 MR. WENGER: No, sir. I'm originally from Ohio. My father, well, for lack of a
5 description, I grew up on a farm. My father's actually a contractor by trade. And I've
6 actually done a lot of home renovation and everything else. Billy - well, the gentleman
7 that actually built my building, he kind of gave me some pointers and some directions.
8 But the inspection from the inspections downstairs had no problem with the structure,
9 structural integrity. Their problem was with regards to the property set. That was it.

10 MR. TOLBERT: That was leading up to my question. If you've built before and
11 one of the things that I think would be –

12 MR. WENGER: Oh, I'm sorry. I never have built a building in the sense of - I've
13 always done like renovation and stuff like that. I'm sorry – for clarification. But same
14 thing.

15 MR. TOLBERT: Irregardless, we go by – you go by plans and follow those
16 procedures. And it should have been indicated on your plans as to where the property
17 line - given even if it was mis-marked wouldn't it be a true indication of where it would
18 be to make sure? I mean it would be in your best interest. You building something to
19 make sure that –

20 MR. WENGER: I won't disagree with you. It was blatant my fault as to where I'm
21 in this situation right now. I'm not trying to make it difficult for you anymore than myself.
22 But I just, as I said, I tried to talk to Steven Mungo about buying the property. And he
23 just doesn't seem to be - he just, like I said, he said that cost was astronomical

1 compared to just trying to get the waverance from yourself. So I figured I'd – what he
2 suggested.

3 CHAIRMAN BROWN: How long after you purchased your home did you start on
4 this storage building?

5 MR. WENGER: Well, I had requested an allowance to build the structure from
6 the homeowners association. Moved in in October. Several months, let's put it that
7 way, after I had moved in that I had requested from the homeowners association. After
8 that it was probably – it was in the summertime. July-ish timeframe?

9 CHAIRMAN BROWN: Well, when you went to closing didn't you get a plat of your
10 property?

11 MR. WENGER: Yes, sir. And actually that was in dispute because there was -
12 there's a much longer explanation I don't think I want to bore you with it. But basically
13 there was a dispute with Shumaker in regards to the plot that was done. Cox and
14 Dinkins came back out and did a resurvey. That's when we clearly found out. And Ron
15 Fisher, which is the gentleman that did the survey the first time and did the second time,
16 they didn't find the problem except for the marker. And that's, once again, where
17 everything kind of snowballed from there. But, once again, it's my fault. I should have
18 had a better or more clarified understanding of what the markers meant in my back
19 yard. I just didn't know.

20 MS. DORSEY: But you're saying the marker was in the wrong place.

21 MR. WENGER: It wasn't a property marker. It was a site survey mark. In other
22 words, they can stick those pretty much anywhere to site a building. And that was my
23 misunderstanding as to what the marker meant.

1 MS. DORSEY: You thought it was a property marker.

2 MR. WENGER: I clearly did, yes. Because there's other markers similar to that
3 which are property line markers. So Ron Fisher, once again, from Cox and Dinkins
4 admittedly admitted that it was an easy misunderstanding. But it still doesn't – it's not
5 an excuse. Let's put it that way. And as soon as I found out I was in violation that
6 building's been sitting that way since October. Mungo's is a very slow organization to
7 get any response from.

8 MR. BRANHAM: How did you find out you were in violation?

9 MR. WENGER: Basically when the inspectors came out to do the survey. Part of
10 the process of the site inspection, that's when they discovered. Because Cox and
11 Dinkins they come out and resurvey because the house next door had finished and they
12 needed an updated print. Well, of course, my shed was new to the area so they started
13 shooting the lines and that's when I found out, based upon the inspection and that
14 process it was - as you can see, the footage is there, clearly, too close. So.
15 Shumaker's really kind of made it difficult. They planted trees on my property actually in
16 the neighbor's yard because they didn't know where the property's lines were. They put
17 sod in my neighbor's yard. It just – the markers that were put out there were not,
18 obviously, either they were moved – and I doubt it – or something. Yes, ma'am.

19 MS. DORSEY: Who's responsibility was it to put the markers for your property
20 line?

21 MR. WENGER: Well, the originals I'm assuming Cox and Dinkins because, once
22 again, they're the ones that did the plot survey. And they're the ones, also, based upon
23 the zoning they have to submit that at the end of the completion of development. But,

1 as I was told from both the Zoning and from Cox and Dinkins, that those could be
2 because of ground construction. Things get moved and bumped and moved and not
3 intentionally, necessarily, but that's kind of whatever. So the front pin was right. It was
4 the back pin, that little marker as I tried to show you a second ago, that turned out being
5 the whole culprit of the whole thing. So I thought I actually had 15 more square feet to
6 my back property and I didn't.

7 MS. DORSEY: But you're saying it's structurally it's sound.

8 MR. WENGER: Correct. As I said, the Zoning had no issue except for the
9 placement of the property. I could not proceed any further with the structure. The
10 building's been sitting that way – you can ask my neighbor – since October of last year
11 to go through this whole process of applying for you, talking with the homeowners
12 association, with yourself, and my neighbors to make sure, buying the property from my
13 neighbor just to make sure I can at least show faith of effort that I screwed up. I'm
14 admitting it. And I'm trying to resolve it.

15 MS. DORSEY: You admitted it enough [laughter].

16 CHAIRMAN BROWN: This building built on a slab?

17 MR. WENGER: Yes, it is.

18 CHAIRMAN BROWN: Did you have an inspection before the slab was poured?

19 MR. WENGER: No, sir. I have to – no. So, talking to the Zoning Office,
20 basically, I – talking to the Zoning I have a structural engineer, as soon as I know what
21 you guys are or aren't going to do, whether I have to move it physically, they have to
22 come out and basically do a site survey and to sign off. I preliminarily spoke with
23 actually two different structural engineers. They're fine with it. The problem is I don't

1 want to pay them for their survey costs until I know whether or not you're going to let the
2 building stay where it's at or I have to move it basically 3' forward, which is not going to
3 be much fun. But I'll do what I have to do, basically.

4 CHAIRMAN BROWN: So you went ahead and poured the slab but didn't get the
5 inspection that's required for the foundation.

6 MR. WENGER: Yes. My – once again, I don't build buildings. I actually do other
7 business application stuff for commercial businesses, telephone systems and such. To
8 be honest with you, I got a little – I knew what I was doing but I got ahead of the horses.
9 I didn't know you actually did a survey of the footer before you poured the slab. And
10 I've learned a few things. And I'm not going to do this again. [Laughter]. So for
11 whatever it's worth.

12 MR. BRANHAM: You don't operate like that in Ohio?

13 MR. WENGER: I've never built new construction, so –

14 MR. BRANHAM: Do you operate like that?

15 MR. WENGER: No, no, no. But, once again, I've never built new construction. I
16 never actually worked with my dad in the sense of doing new construction. It's usually
17 been renovation. A house exists. You go in and you gut it and renovate it - that kind of
18 application. Other than fixing some structural stuff - and hopefully it's not the foundation
19 or we didn't usually buy the house to renovate. So.

20 CHAIRMAN BROWN: Any more questions for Mr. Wenger?

21 MR. WENGER: Thank you.

22 CHAIRMAN BROWN: Thank you. There are no other witnesses either in favor of
23 or in opposition to this request. The Chair will entertain a discussion.

1 MR. YOUNG: I can definitely understand if a marker was there. He'd had the
2 survey done by Cox and Dinkins, you know. He relied on information he received from
3 experts in that field. So I can see how the mistake could be assuming that that was a
4 property line marker. But, you know, we're talking 2.3' into a 5' rear set back with
5 common areas at the rear. So it's not like it'll bother any neighbors or anything behind
6 it. It's an unfortunate situation but at this point, you know, I think it's fairly simple to - I
7 would definitely make a motion to go ahead and approve the request for variance.

8 CHAIRMAN BROWN: Are you making that motion?

9 MR. YOUNG: I will. Yes, sir.

10 MR. TOLBERT: I'm not ready.

11 CHAIRMAN BROWN: You're not ready. Okay.

12 MR. TOLBERT: I just want to make sure we understand the severity of these
13 type things because if it happens now somebody else decide that they want to do the
14 same thing, we got the same issue here. And, you know, people that pour concrete
15 know that these are standards here in Richland County. If they're pouring it in the
16 county they need to follow these guidelines. And we see this all the time. I understand
17 and I sympathize with his explanation. He just said he's just fully guilty of not
18 understanding the procedures and the laws that are required by even not having the
19 slab inspected. That, too, is - you know - we know that that's a rule. But people that
20 pour concrete all the time know that these are the standards and rules to make sure
21 they're not in violation of county rules. I mean so you're looking at a subdivision. So
22 what's going to happen to the next person coming down the line that says that I want to

1 build something but uh-oh! I didn't pay attention and I put it on the end. We're going to
2 have a – we're setting a precedent here.

3 MR. YOUNG: We get a lot of things like that, anyway. And we base each case
4 on its merit and situation, so.

5 MS. PERKINS: And I don't think – I kind of – it's not so much – I don't see it as a
6 precedent. I just see it as an honest mistake. He's not in – you know, he's not in
7 construction. That's what I heard him say. He has been around a lot of people that are
8 in construction. And he does have a letter from the homeowners association and which
9 that document, to me, you know, they're saying, you know, they're [inaudible].

10 MS. DORSEY: They'll do it for each other. [Laughter] We've had them –
11 [laughter].

12 MR. YOUNG: Yeah. They've conveyed the corner that border's the neighbor's
13 property to him. So all we're dealing with is 2.3'.

14 MS. PERKINS: Yeah.

15 MR. YOUNG: The rear setback to the common area.

16 MS. DORSEY: I completely agree with Mr. Tolbert as far as the frustration of
17 these cases. And I try very hard not to be – to look at each case individually. But I can't
18 deny that we've sat up here and there have been builders who have come up and said,
19 "Oh, gosh! I know I did it. But it's just 2' and it's going to cost me \$7000!" And –

20 MR. TOLBERT: That's what my issue is.

21 MS. DORSEY: - and they are very frustrating. And this gentleman is in a pitiful
22 situation. I'm more afraid of that building being on the side there and looking like it's

1 going to topple. But he's saying it's structurally sound and that's not my call, either. I
2 can't be too harsh on this.

3 MS. PERKINS: Did he say that he would be willing to move it? Is that – I didn't
4 hear that.

5 MS. DORSEY: He did. He did say that.

6 MR. YOUNG: Depending on which way we voted. If he didn't have a choice, he
7 have to look and see what costs were involved.

8 MS. PERKINS: Oh. What costs.

9 MR. WENGER: Either that or tear it down.

10 CHAIRMAN BROWN: I guess the only thing that really concerns me is that had
11 he had the inspections that he was supposed to have this would have been caught
12 before it was at a point where we are now.

13 MS. DORSEY: Right.

14 CHAIRMAN BROWN: It's either – now it's become, regardless of what happens,
15 there's going to be a significant economic impact that could have been avoided –

16 MS. DORSEY: Yes, and should have.

17 CHAIRMAN BROWN: - with the appropriate inspections. That's the only thing
18 that bothered me is that we get backed into a corner for lack attention to the
19 requirements.

20 MS. DORSEY: Detail.

21 CHAIRMAN BROWN: Not that that's the first time it's ever happened. I'm not
22 suggesting that.

23 MS. DORSEY: Oh, I know.

1 CHAIRMAN BROWN: But that does bother me. Any further discussion?

2 MS. PERKINS: When the slab was poured, who should have notified the county?
3 Should it have been the concrete pourer or the homeowner?

4 CHAIRMAN BROWN: No. It should be whoever took out the building permit,
5 which I assume was probably Mr. Wenger.

6 MS. PERKINS: And he is made aware at that time.

7 CHAIRMAN BROWN: Yeah. When you get your permit, they give you a sheet
8 that tells you –

9 MS. PERKINS: What the steps are. So I'd like to ask him –

10 CHAIRMAN BROWN: You want him to come back?

11 MS. PERKINS: Yeah.

12 CHAIRMAN BROWN: Mr. Wenger, would you come back up, please.

13 MR. WENGER: Yes, ma'am.

14 MS. PERKINS: You were given a sheet. Did you not look at that sheet that
15 instructed you to –

16 MR. WENGER: No. I'm sorry. What happened was is I had the footer dug out
17 and such. And they came out and inspected that aspect. I called them out too early. I
18 misunderstood what the sheet represented. I had the footer dug out so when they
19 poured it was going to be ready to go. They said, of course, call me back out once it's
20 done. I took that meaning as once – the footer, obviously, wasn't the issue because I
21 had it dug out. So I took that and misunderstanding, well, I don't know. My excuse.
22 But, once again. So what I did is I figured he meant, okay, have the slab poured so he
23 can come out an inspect it. Whereas he meant actually have the footer poured for the

1 inspection. Then I could have the slab finished. So there was - does that make sense?
2 I'm sorry.

3 MS. PERKINS: Yeah. Because you were – yeah – you –

4 MR. WENGER: So I got ahead of the horse calling them out. But then I got
5 behind the horse afterward because I had misunderstood what he meant by having the
6 inspection done, so.

7 MS. PERKINS: Okay. Thank you.

8 CHAIRMAN BROWN: Any further discussion? If there is none, the Chair will
9 entertain a motion.

10 MR. YOUNG: Mr. Chair, I move that case number 05-55 Variance be approved.

11 MS. DORSEY: I second.

12 CHAIRMAN BROWN: It's been moved and seconded that case 05-55 V be
13 approved. All those in favor indicate by raising their right hands. Opposed.

14 *[Approved: Branham, Dorsey, Young, Perkins; Opposed: Brown, Tolbert; Absent:*
15 *Myers]*

16 CHAIRMAN BROWN: Mr. Wenger, you have your variance. The Zoning
17 Administrator will be in touch. Next case, Mr. Price.

18 **CASE 05-57 V:**

19 MR. PRICE: The next item is Item G, Case 05-57 Variance. The applicant is
20 requesting the Board to grant a variance to encroach into the required side yard
21 setbacks in an RU zoned district. The applicant is Carolyn Peake. The location is
22 10950 Two Notch Road. It's about an acre tract. There's a manufactured home on the
23 subject property. The proposed structure will encroach into each required side yard

1 setback by 7'. The subject property is located in an area that's comprised of residential,
2 that's single-family and manufactured homes and commercial structures. It's stated in
3 your agenda that the lot is non-conforming in the lot width requirement. It's only 100' in
4 lot width when the requirement would be 120'.

5 CHAIRMAN BROWN: Alright. Mrs. Peake, if you'd tell the Board what it is that
6 you want to do, please.

7 **TESTIMONY OF CAROLYN PEAKE:**

8 MS. PEAKE: Yes, sir. Our lot is an acre-sized lot but it is 100' wide, as Mr. Price
9 said. And it is angled at the road instead of facing Two Notch Road straight, it goes at
10 an angle like this just like all the other properties on that that are adjacent to it. They all
11 are angled. And all of the other homes are facing Two Notch Road straight. And in
12 order for me to put the home on the property and be within the 20' clearance, whatever
13 that's called, on each side, instead of the home facing Two Notch it'll be twisted and
14 facing like the back of another house, almost. Not the back but very, very twisted. And
15 just aesthetically wanted to put it on the property and get a variance so that it would be
16 facing Two Notch Road and not twisted. There's a 20' setback on each side and
17 currently where I have it, it is like 16' from one of the property lines and whatever that is,
18 20 something, from the other property line, in excess of 20'. So because of the angle of
19 the lot it doesn't fit the 20' requirement.

20 CHAIRMAN BROWN: Are the lots on both sides of you do they have dwellings
21 on them?

22 MS. PEAKE: They are both nonconforming. They both have dwellings. The one
23 to the right has a brick home on it, happens to be my mother's. And the one to the left

1 of it has a singlewide trailer on it that is going the length of the lot. That belongs to my
2 uncle. So, as far as neighbors having a problem with it, no one has a problem with the
3 way it's set up and the way I have it put on the lot is in agreement with the way all of the
4 other properties are placed on their lots, again with the exception of the single-wide
5 home that runs lengthwise.

6 CHAIRMAN BROWN: That was the point I was trying to get at.

7 MS. PEAKE: I'm sorry.

8 CHAIRMAN BROWN: The houses on the adjoining lots or nearby lots all are
9 situated so as to face Two Notch Road basically, with the exception of your uncle's or
10 whoever it was?

11 MS. PEAKE: Yes, sir. There are four homes on that road that are all facing Two
12 Notch Road. And all of their lots are the same as mine as far as being crooked.

13 CHAIRMAN BROWN: Okay. Any other questions for Ms. Peake? Okay. Thank
14 you, ma'am. There's no one else signed up either in favor of or in opposition to this
15 request. The Chair will entertain discussion.

16 MS. DORSEY: Mr. Chair, seeing that it's a nonconforming lot, that many of the
17 lots around it are nonconforming, as long as I'm assured that it's not going to cause
18 problems on the adjoining lot to have it facing that way, then I have no problem with the
19 variance.

20 CHAIRMAN BROWN: I agree with you and we have this situation in some other
21 areas, too. And there's a couple of areas in Lower Richland where all of the lots are
22 nonconforming and every time somebody wants to put something on them it present a

1 problem for the owner who's simply trying to use the lot to it's advantage. I tend to
2 agree. Any other discussion? Hearing none, the Chair will entertain a motion.

3 MR. BRANHAM: Mr. Chairman, I'd like to make a motion that variance number
4 05-57 be approved.

5 MR. YOUNG: Second.

6 CHAIRMAN BROWN: It's been motioned and seconded that 05-57 V be
7 approved. All in favor signify by raising their hand. Opposed.

8 *[Approved: Branham, Dorsey, Young, Perkins, Brown, Tolbert; Absent: Myers]*

9 CHAIRMAN BROWN: Ms. Peake, you have your variance. The Zoning
10 Administrator will be in touch. That takes care of the cases for today. On to, I guess,
11 the next item on the agenda is approval of the February minutes.

12 MS. PERKINS: So moved.

13 MR. TOLBERT: Second.

14 CHAIRMAN BROWN: It's been moved and seconded that the February minutes
15 be approved. All in favor signify by raising their hand.

16 *[Approved: Dorsey, Young, Perkins, Brown, Tolbert; Abstained: Branham; Absent:
17 Myers]*

18 CHAIRMAN BROWN: Thank you. Next under Other Business we have a cell
19 tower discussion. Is that deferred along with Mr. Yates?

20 MR. PRICE: Yes, it has been.

21 CHAIRMAN BROWN: All right. Then I guess the last item is the review and
22 approval of the By-laws and Rules of Procedures. Mr. Farrar, how would you like to
23 handle that?

1 MR. FARRAR: Yes. Thank you. These were submitted some time ago and
2 we've been trying to get as many folks here as we can to consider them. The By-Laws
3 and Rules are set up such that, you know, this is kind of a work in progress. If you don't
4 feel like, you know, if we adopt something today it can't amended because there's a
5 very simple amendment process in both the Rules and the By-Laws. Essentially, if
6 anybody wants an amendment, all I have to do is, you know, send that in writing to all
7 the Members at least five days before the next meeting. And then you can take up the
8 amendment at that time. What I did was I looked at, over the past several years, how
9 some issues have come up, particularly things like reconsideration, docketing of cases,
10 trying to make it a little bit easier to deal with kind of administrative deferral or
11 withdrawal of cases – give a little bit more flexibility. And that's what, you know, we
12 tried to make it into this draft. If there's any – I don't know if anybody's had a chance to
13 look at it and make comments, but they have to be what you want them to be. I mean
14 it's not going to bother me if you wanted to kill the entire thing, change any portion,
15 whatever. We'll just try to get it the way y'all need it to be.

16 CHAIRMAN BROWN: Well, maybe the way to do this is to take up the By-Laws
17 first.

18 MR. FARRAR: Okay.

19 CHAIRMAN BROWN: And if any Members have any concerns, suggested
20 changes, or questions, whatever regarding the By-Laws as they're presented by the
21 Legal Department. I had one question on Page 3, Section 5.3.

22 MR. FARRAR: Okay.

1 CHAIRMAN BROWN: The third sentence I had trouble understanding. "All cases
2 docketed not later than the last business day of the month preceding our regular
3 meeting shall be set for hearing at such meeting."

4 MR. FARRAR: Okay. Yeah. I think it had been – rather than the last business
5 day of the month it was something like I don't know if it was the 10th of the month or
6 something. That does represent a change. I think what this is getting at is if, for
7 example, you want your case to come at the, say, April meeting. Well, if you got it in on
8 the last business day of March – I'm sorry – of February because that's the month
9 preceding a regular Board meeting.

10 CHAIRMAN BROWN: But the next meeting actually would be the March meeting.

11 MS. PERKINS: Yeah.

12 MR. FARRAR: Well, that's true. Okay. So "docketed on the last business day of
13 the month preceding a regular Board meeting." Okay, yeah. Because I think what
14 we're trying to get at is if you got it in – if you wanted to get on the April agenda, for
15 example, you would have to have your request in by February 28th. So that needs to be
16 [inaudible].

17 CHAIRMAN BROWN: But I don't think that's what it says.

18 MR. FARRAR: Yeah. I think you're right. I think I need to retool that one.

19 CHAIRMAN BROWN: If somebody could just look at that and –

20 MR. FARRAR: Okay.

21 CHAIRMAN BROWN: - and rewriter it. Say what we actually want it to say and
22 intend that it say.

1 MR. FARRAR: And I'm recalling this now because it seems like Geo and I talked
2 about this. And they need, in order to get their agenda and their posting done – that's
3 right - it would have to be – essentially we give them a whole month of planning.

4 CHAIRMAN BROWN: Instead of by the 10th day of the month.

5 MR. FARRAR: That's it. That's it because they were running into some time
6 problems. And it's been so long since I drafted that. But that's right. That needs to be
7 cleared up.

8 CHAIRMAN BROWN: Okay. Any other concerns with the By-Laws?

9 MR. TOLBERT: I have one down that, you know, we had a couple of situations
10 where the citizen was not fully aware that a meeting was cancelled. I don't know what
11 procedures they have in place for Council to meet. And I think the Board would have
12 enough Members and I don't know what kind of procedures we have for notification.

13 MR. FARRAR: Seems like we did have that one meeting where we didn't have a
14 quorum.

15 MR. TOLBERT: Didn't have a quorum.

16 MR. FARRAR: Yeah. And I think the problem on that was we didn't know that
17 until the time of the meeting. And, you know, I wonder if I even – let's see – I've got 5.5
18 just says what a quorum is. But maybe something along the lines of "Members," you
19 know, "shall notify the Chair or in his absence the Vice-Chair as soon as a conflict
20 becomes apparent." It's almost just kind of like a –

21 MR. TOLBERT: Pre-warned situation.

22 MR. FARRAR: Yeah, I mean it's like – it's like, you know, let's just make sure we
23 communicate with the Chair. Because I mean if you have an absence, you have an

1 absence. If it's an emergency, that's one thing. But if you know you're going to be, you
2 know –

3 MR. TOLBERT: In advance.

4 MR. FARRAR: Yeah. "If the Chair's out, Chair in the Chair's absence." Or –

5 MR. PRICE: I think it's better in this case that you inform Staff.

6 MR. FARRAR: Secretary. Maybe inform the secretary or the Staff. We could do
7 that. We could put a section in there about - because I don't think that's in the By-Laws.
8 Let me check the Rules right quick.

9 CHAIRMAN BROWN: Any other concerns with the By-Laws.

10 MR. TOLBERT: Let's see. I wrote some notes down here. I've got to go back.
11 They got a little cold. Oh, yeah! Let me go back to 5.5. On 5.5 is – what other means
12 do we have – again I'm talking about notification – as to rescheduling as noted in 5.5?

13 MR. FARRAR: Yeah. The reason that's in there, if, for example – and it's been a
14 long time since we've had one of these, but, you know, if we went way into the evening
15 with a really long agenda, rather than having to readvertise you could just essentially
16 recess and reconvene, you know, at the next day, really essentially, if you wanted to do
17 it at 1:00 or if you wanted to do it first thing in the morning, this would be something to
18 point to and say, "Look. We don't need further advertising of this." Because I don't
19 think, you know, you could look at an agenda and say, for example, that you're going to
20 carry over to the next day. You could say this may take us a long time but I don't know
21 that you're going to be able - I mean you could look at an agenda and say there's 20
22 cases. But if they're uncontested and they're pretty straightforward you could wrap that
23 up pretty quickly. So this is just a mechanism to not have to give further notice because

1 the public's on notice of the meeting. And you're kind of – I mean really it's kind of like if
2 you did a deposition, for example, in a civil case, once that notice is given, you could
3 keep going around the clock if the parties would agree to do that. Or you could just pick
4 it up the next day, so.

5 CHAIRMAN BROWN: Anyone who's case wasn't heard would still be there at the
6 time you adjourned so they'd know they needed to come back.

7 MS. PERKINS: There would be an announcement. Yeah.

8 MR. TOLBERT: Now all I'm doing – you know – it probably perceivably would
9 never happen. But we had one we got out of here at 6:00 o'clock. Just for reference.
10 Because like you said, you're talking about a free, open area to walk and go as you
11 please. Anybody said, "Well, it's long. I'll come back." And they get back and we're
12 gone.

13 CHAIRMAN BROWN: Oh, well. I think this is what's actually in the ordinance,
14 too. Isn't it? Doesn't the ordinance say the same thing?

15 MR. FARRAR: I think that's correct, sir. You know, it's just a – this is to avoid a
16 situation where somebody runs in and says, "Well, you didn't advertise this." And you
17 know –

18 CHAIRMAN BROWN: You didn't advertise in the newspaper. You didn't repost
19 the property.

20 MR. FARRAR: So we didn't have to call a special called meeting 15 days later
21 after you post the property again. It's just to avoid some goofy complaint that you didn't
22 get notice of it. And you know –

1 MS. PERKINS: And at the adjournment, the Chairman would certainly direct that
2 the Board is in recess.

3 MR. FARRAR: Yes.

4 MS. PERKINS: We will reconvene at such and such time.

5 MR. FARRAR: Yes.

6 MS. PERKINS: Yeah. Okay.

7 MR. FARRAR: Now it would be a problem if you didn't announce the time. You
8 just want to make sure we're done for the day. "I'll see you here tomorrow at 9:00.
9 Same place." You know. Okay. So 5.

10 MR. TOLBERT: 5.7.

11 MR. FARRAR: Okay.

12 MR. TOLBERT: Help me on Robert's Rules of Order to relate to that.

13 MR. FARRAR: Okay. Yes, sir. We can't account for everything that's going to
14 come up. So Robert's Rules of Order, which, you know, I put newly revised, latest
15 edition, most recent edition. If there is something that is not contemplated under these
16 Rules or By-Laws, what do you do? Well, this is kind of standard. You just fall back on
17 Robert's Rules of Order. It's the kind of backup plan if we don't have it covered in these
18 Rules, basically.

19 MR. TOLBERT: Yeah, I know what you mean. It's just a real broad - Robert's
20 Rules gets real long.

21 MR. FARRAR: Oh, yes! Yes, sir.

22 MR. TOLBERT: It's real long. So it's a generic cover for anything that we don't
23 have in the By-Laws.

1 MR. FARRAR: Yes, sir. And if it's not covered there then –

2 CHAIRMAN BROWN: [Inaudible] question we don't cover.

3 MS. DORSEY: Is the tie vote? Is that – do we have any control over the tie vote
4 or is that just what we have to follow by County Ordinance?

5 MR. FARRAR: The tie vote is, unfortunately, a County Ordinance problem. And
6 if you want to suggest that that be changed, I mean, we could propose ordinance
7 changes through Staff. I mean if you want to direct Staff to say, "Let's please take a
8 look at the tie vote," or any other aspect of the ordinance that pertains to your
9 functioning, we can do that. I mean that would not bother me at all to suggest.
10 Because that tie vote is just kind of cumbersome. Like, for example, with the fellow
11 here with the last case for the variance, if it had been a three-three tie all it would have
12 done is meant that we come back in the next month. And I don't know what you have
13 gleaned from doing that. I mean nothing's going to change a month from now on that
14 case. But you would have had to have done that under the Ordinance.

15 MS. DORSEY: In Robert's Rules a tie vote is a denial, right?

16 MR. FARRAR: I believe that's correct because I just recently looked up
17 something with reconsideration. And they're – I mean standard parliamentary
18 procedure is something fails for want of a majority. So if it's a tie vote that's – yeah.

19 MS. DORSEY: Yeah. It's not a majority. I think that that makes sense.

20 CHAIRMAN BROWN: I think it makes sense, too.

21 MR. TOLBERT: But now it's not a – that's kind of questionable situation, okay. If
22 it's a tie vote and you know the Board is made up of seven members, it is to his

1 advantage the way that the Ordinance stands now for him to come back. Then if he's
2 denied, then you have a full Board.

3 MS. DORSEY: A clear vote.

4 MR. TOLBERT: It's a clear – it's a clear denial, then now. Because if you do it by
5 Robert's Rules of Order the way you have it said now that says it is an denial, what
6 would stop the other person that would have been present to say he would have voted
7 one way or the other?

8 MR. PRICE: I believe –

9 CHAIRMAN BROWN: The luck of the draw. He wasn't [inaudible].

10 MR. TOLBERT: But I'm just saying, you know, you have the chance of going
11 forward which is stated in that he has the right to withdraw. So I don't know.

12 MR. PRICE: But the opportunity – yeah, right – the opportunity's given to the
13 applicant. Brad does his little spiel at the beginning of the meeting that, you know, we
14 have an even number so this could happen. So they do have the opportunity before to
15 think about what they're doing, especially if they might deal with a controversy, to defer
16 it themselves until the next month or until they get a full Board.

17 MR. TOLBERT: They're not going to think about that until something like this
18 happens and that's when that comes up. They're not going to think of it. They don't
19 see any reason for it not to be approved based on that. When it happens then they're
20 looking for every angle they can get to try to get it changed.

21 CHAIRMAN BROWN: Well, even if they get into the merits of the case and they
22 can see it's going against them, they're still free at that point to say, "Well, I think I'd like
23 to request a deferral."

1 MR. FARRAR: Yeah, the problem is – this is kind of a strategic thing from the
2 applicant's standpoint – but the – I guess you do take a risk if you come before a Board
3 with an even number that you could have a tie vote. But you've always the
4 reconsideration process. If some member feels like, you know, let's give this another
5 shot, you can still do that. Now the problem with if you had six, but then you come next
6 time and you have seven, you get into a problem that we really haven't run into. But a
7 Member who did not participate in the initial hearing, who participates in the subsequent
8 hearing, if I were going to appeal that I would attack that. I would say, "Listen." Even if I
9 lost, I'd say, "Listen, you weren't here to hear." And that's just – that's not anybody's
10 fault. It's just if you weren't – if you come in after the case is already proceeded that's
11 always an issue that somebody could attack. And if it were me, I would, you know,
12 recuse myself and say that I didn't participate last time. I'll sit this one out. Then you've
13 still got the even number of people, so. I don't know that this is a real huge problem
14 that's come up a lot. But the way the tie vote situation is set up now it's counter
15 intuitive. It's not what you would normally – I have a difficult time explaining it to people.

16 MS. PERKINS: But you know you could say – we could sit and say that and
17 never have a full Board. I mean, you know, you could come back –

18 MR. FARRAR: Right.

19 MS. PERKINS: - actually the next month, the next scheduled Board meeting, and
20 not have a full Board and you could actually have less members than you had and still
21 have a quorum.

1 CHAIRMAN BROWN: Well, I seem to recall a case where the guy came back for
2 three months before we finally a full Board. He just kept delaying, delaying until he
3 finally got a full –

4 MR. TOLBERT: The guy with the shed that he didn't want to move.

5 CHAIRMAN BROWN: I don't remember who it was but –

6 MS. DORSEY: Mr. Via?

7 MR. TOLBERT: Yeah.

8 MR. PRICE: Actually it was the cluster housing.

9 MS. DORSEY: Oh, gosh!

10 MR. FARRAR: And that is a good point because [inaudible] –

11 MR. TOLBERT: In other words it's –

12 MS. PERKINS: And then do you not give the applicant the benefit of the – is that
13 the reason for it? Not the applicant, the public. Is that the reason for - what was the
14 move behind a tie vote being, automatically being set on the agenda, do you know?

15 MR. FARRAR: I think this goes back – and you, Mr. Branham, may have been on
16 the Board years ago when this – I think at one time the Board actually got down to
17 about four Members. And I mean that's - if everybody showed up there were four
18 Members. So there're a lot of 2-2 votes. And I think this was something – I believe it
19 was Councilmember Morris had suggested or proposed. And this is a really –

20 MS. PERKINS: Suggested or proposed what?

21 MR. FARRAR: What's in the Ordinance now about the -

22 MS. PERKINS: Okay.

1 MR. FARRAR: But, if you recall, those of you who were around for the Johnathan
2 Yates case several years ago that was an absolute debacle that ended in a tie on a cell
3 tower case, and this is probably what made Mr. Yates do the job that he does now
4 where he just has this kind of almost like appeal-proof presentation where he hits every
5 wicket in the Ordinance. The reason he does that is he had one case that ended in a tie
6 vote and ended up being appealed and it was a real mess. But we started looking at
7 what's in the code now. We researched it and did the minutes. It was never actually
8 approved. I mean it's some question about whether that's even valid. And we went
9 through this history. And I've got, you know, the memos to everybody about it. But it
10 would not bother me if you wanted to see that changed in the Ordinance.

11 MR. TOLBERT: Well, then, Brad, I've got a question for that same theory. And
12 it's open to ask questions. What happens if you do a – if it's denied? And that becomes
13 a tie vote. How do Robert's Rules of Order then work?

14 MR. FARRAR: No, I think – you see the – we would only resort to Robert's if
15 wasn't covered in the existing By-Laws, Rules, or Ordinance.

16 MS. PERKINS: That's what he's saying. If there's a tie vote now –

17 MR. TOLBERT: But the tie –

18 MS. PERKINS: - you know, it'd go on the next agenda.

19 MR. FARRAR: Yeah. It doesn't matter what the motion is. It's like - the way it
20 reads – and this is – I've looked at this so many times, I know it. But if somebody
21 makes a motion to approve and that ends in a tie, it's a requirement, under the
22 Ordinance as I see it, for somebody to make the contrary motion, which is odd because
23 I don't know that you can force somebody to make a motion, but it's what it says in the

1 Code, to make the counter motion to – we started out with approved – to deny it. And if
2 that ends in a tie, which is, you know, why wouldn't it because you just have the same –
3 you style the vote differently but it's the same sides – for and against. Then that
4 automatically triggers the next month having a hearing on the same thing. And unless
5 something changes between then and, you know, the first time and second time, I just
6 don't know that you're going to have a different result. So rather than quite simply
7 having a tie vote as a denial, you know, that's – you have this cumbersome process.

8 MR. PRICE: I guess by default, starting on July 1st, we're going to - what we're
9 talking about now as far as a potential tie vote, we going to resort to Robert's Rules
10 because – I'm just kind of flipping through the new Code – that part about a tie vote with
11 the Board is not addressed. And since it's not addressed it probably will go
12 automatically to Robert's Rules.

13 MR. FARRAR: Okay. Okay. Well that's good.

14 CHAIRMAN BROWN: Maybe we ought to address it in our Rules.

15 MS. DORSEY: Yeah.

16 MR. PRICE: Yeah. Unless you address it in your Rules.

17 MR. FARRAR: We could do that.

18 MR. TOLBERT: To me it takes so much time. If it's a tie vote either for or against
19 it's put back on the agenda. Are you saying you're going to sit here say -

20 MS. PERKINS: Now it's put back on the agenda.

21 MR. TOLBERT: - if you have a tie vote you've got to have another vote to –

22 MR. FARRAR: Yeah. Right.

23 MR. TOLBERT: - deny and you're still on the agenda.

1 MR. BRANHAM: That's what happened with the cell tower, Brad, if you
2 remember.

3 MR. FARRAR: That's it.

4 MR. BRANHAM: We didn't ask for a counter motion on that.

5 MR. TOLBERT: Yeah. And that's why –

6 MR. BRANHAM: And they accepted that as a vote for the cell tower and went
7 ahead and started the erection on it. And we had to call another Board meeting to
8 reverse our decision on what we had done before. I remember that.

9 MR. FARRAR: Yeah. This was in the paper. It was all over the place when this
10 thing was just – you know. It was not any great episode. But that's fine if it's not in the
11 new Land Development Code, which, I understand, is going to take effect July 1st, then
12 if you want to address it in your Rules that'd be fine. I can just put something in there
13 about the effect of a tie vote.

14 MR. TOLBERT: What would you do? I mean –

15 CHAIRMAN BROWN: I think it ought to be a denial.

16 MR. TOLBERT: You know, Brad, if you put it back on the agenda, you could run
17 the same risk next time.

18 CHAIRMAN BROWN: I think a tie vote ought to be a denial.

19 MS. DORSEY: But the logic of if it's not approved, the logic of Robert's Rules is,
20 basically, if it's not approved it's automatically denied. That's the beauty –

21 CHAIRMAN BROWN: That has some logic to it, at least.

22 MS. DORSEY: - or the simplicity of it.

23 MR. TOLBERT: That has logic.

1 MS. DORSEY: Simple logic of it. And on these votes, I can't even begin to totally
2 comprehend Robert's Rules or follow it. But I get confused when I'm up here with the
3 okay. We've got to make the motion to approve and then we've got to counter it with
4 the motion to deny. And –

5 MS. PERKINS: I was just last month –

6 MR. TOLBERT: I hate to keep asking so many questions. What would happen
7 according to Robert's Rules if the motion was to deny it?

8 MS. DORSEY: Then it'd be denied.

9 MR. BRANHAM: And it was a tie vote?

10 MR. TOLBERT: But then it was a tie vote.

11 MR. BRANHAM: Then you ask for a counter motion.

12 MS. DORSEY: Then it's - is it approved?

13 [Inaudible discussion]

14 MR. FARRAR: Yeah. It doesn't matter what the motion is. If it doesn't get a
15 majority of votes, it's going to die. So then you –

16 MS. PERKINS: It's denied.

17 MR. FARRAR: But, you know, if you want to under the Rules of Procedure – I
18 know we're on the By-Laws, now – but if you want to under Disposition, which is 3.5, I
19 could just add a sentence that just –

20 CHAIRMAN BROWN: I think we should do that, personally.

21 MR. FARRAR: - that just says –

22 MR. TOLBERT: Under Rules and Procedure>

1 MR. FARRAR: Yes, sir. 3.5, which is Page 5 of the Rules of Procedure, top of
2 the page.

3 MS. DORSEY: But, Mr. Tolbert, if it weren't for the provision of – I wouldn't like
4 this either except for the provision of you can bring it back as a reconsideration. That's
5 kind of the, for me, that's kind of the safety net for us and the applicant that, okay, if we
6 do that they've still got another shot at it. If we feel like we've made a mistake -

7 MR. TOLBERT: They can appeal it.

8 MS. DORSEY: - you know, if my vote – I go home and went “Oh! I completely
9 missed that.” I would come back. I'd have that opportunity rather than to –

10 CHAIRMAN BROWN: And so does the applicant.

11 MS. DORSEY: And so does the applicant.

12 MR. TOLBERT: So in other words it would be a denial which still gives
13 everybody, even the Board and the applicant, an opportunity to appeal it.

14 MS. DORSEY: Reconsider. You find out some new information or you –

15 MR. TOLBERT: I agree with that.

16 MS. PERKINS: Brad, I, you know, one of the questions. What do you mean in
17 the Disposition section of 3.5?

18 CHAIRMAN BROWN: Wait. We haven't gotten to that yet.

19 MS. PERKINS: Oh, I thought he – yeah, I thought he went – I'm sorry. I am so
20 sorry.

21 CHAIRMAN BROWN: We need to finish these By-Laws and we got sidetracked
22 into –

23 MS. PERKINS: Here I am. Jumping at – building that building.

1 MR. FARRAR: That was my fault.

2 MR. TOLBERT: We were talking about adding that into that –

3 MS. PERKINS: Oh, okay.

4 MR. TOLBERT: - adding it into that when we get to it. I think that's what you're
5 saying.

6 CHAIRMAN BROWN: Yeah. That's what I'm saying.

7 MS. PERKINS: Okay. I'm sorry.

8 CHAIRMAN BROWN: Let's finish the By-Laws first. Does anyone have any –

9 MS. PERKINS: So, what did we decide with that section?

10 CHAIRMAN BROWN: That we're going to -

11 MS. PERKINS: Leave it as it is? Is that what we're –

12 CHAIRMAN BROWN: Which section?

13 MS. PERKINS: The ones that we're talking about with the tie votes.

14 CHAIRMAN BROWN: No. We're going to change it when we get into the By-
15 Laws.

16 MR. TOLBERT: We were talking about Robert's Rules.

17 MR. FARRAR: We're on 5.7.

18 MS. PERKINS: I just heard.

19 MR. FARRAR: I think we're on 5.7.

20 MR. TOLBERT: Yeah, we were at 5.7 when I asked a question to explain
21 Robert's Rules of Order.

22 MR. FARRAR: Yes. Yes.

23 MR. TOLBERT: That's what happened.

1 MS. PERKINS: Oh, okay.

2 CHAIRMAN BROWN: We're going to address it when we get to that section in
3 the Rules of Procedure.

4 MR. TOLBERT: And that was my question. And I don't have any more
5 questions.

6 CHAIRMAN BROWN: Anyone else have any questions?

7 MR. TOLBERT: I didn't write down any more notes.

8 CHAIRMAN BROWN: Let's go to the Rules of Procedure, then.

9 MR. TOLBERT: Mr. Chairman, can I make a motion that we accept these By-
10 Laws now that we've made the correction on them?

11 CHAIRMAN BROWN: Sure. Certainly.

12 MR. TOLBERT: I'd like to make a motion that the By-Laws presented by
13 Richland County for the Zoning Board of Appeals be approved with the corrections that
14 were stated.

15 CHAIRMAN BROWN: Alright. And the correction was to be to – well, actually a
16 clarification – in Paragraph 5.3. Is that correct, Brad?

17 MR. FARRAR: Yes, sir. I was going to do that. I believe there was a suggestion,
18 also, about if a Member has advance notice of a conflict to give notice of that to Staff.

19 CHAIRMAN BROWN: You're correct.

20 MR. FARRAR: And I will work that into –

21 MR. TOLBERT: 5.4.

22 MR. FARRAR: I can work that into – yes, that'd be a good spot. I can work that
23 into 5.4. And then, also – well, that's it for the By-Laws, those two things.

1 CHAIRMAN BROWN: Okay. Alright. There's been a motion to accept the By-
2 Laws with those modifications. Is there a second?

3 MR. BRANHAM: Second.

4 CHAIRMAN BROWN: It's been seconded. All in favor indicate by raising their
5 hand. Okay.

6 *[Approved: Branham, Dorsey, Young, Brown, Tolbert, Perkins; Absent: Myers]*

7 CHAIRMAN BROWN: Let's move on to the procedural rules. I've got some
8 things on Page 4 in Section 3.3 in the second paragraph, the 2nd sentence, which starts
9 out "Testimony that's irrelevant, immaterial, conjectural, embarrassing, degrading,
10 hearsay, that assumes facts not in evidence, misquotes a witness, or misstates a
11 witnesses testimony, violates a privilege, or is prejudicial ...". After "... violates a
12 privilege", I'd like to see the words "is cumulative or repetitive" added into that.

13 MR. FARRAR: Okay.

14 CHAIRMAN BROWN: Another subcategory, if you will.

15 MR. FARRAR: Yes, sir.

16 CHAIRMAN BROWN: Because we get an awful lot of instances where
17 homeowners will come in and they all say the same thing about traffic or noise or
18 whatever it may be. And at some point it would be nice to just say, look, we understand
19 that's a concern and just sort of cut that off rather than hear everybody say exactly the
20 same thing.

21 MR. FARRAR: Okay, sir.

22 CHAIRMAN BROWN: Then, in the next subparagraph, are we now going to take
23 petitions, which we haven't taken previously?

1 MR. FARRAR: We got – and I'm trying to think who – what case it was. It may
2 have been the Mungo cluster housing situation where somebody came in with a big
3 petition and they commented on the fact that, well gee, you know you should accept
4 that we – here's what we did. And so what I essentially did is, under typical procedures
5 in a court, for example, if you had sworn testimony that would be given greater weight
6 than unsworn testimony. For example – and I just know this from doing so many court's
7 marshal – but you can have a defendant who is convicted and on sentencing wants to
8 say something to the judge or to the panel. And if they do it under oath they can be
9 subject to cross examination. So some folks don't want to do it under oath so they want
10 to do it, you know, unsworn. But it's not as – you can't cross examine it. It doesn't carry
11 as much weight. So that's why I put with petitions – I contrast a petition with an
12 affidavit. If somebody submitted an affidavit that's testimony given under oath. Even
13 though it's not going to be cross examined, we don't really have that requirement in this
14 quasi-court nature. But I would give an affidavit, if it were me, more weight than an
15 unsworn statement or a petition. And that's just kind of why it's in there. And nobody
16 can tell you but, you know, yourself how much weight to give a piece of testimony or
17 not. That's an individual decision. So that's all that that's getting at. I'm not sure where
18 the not accepting petitions policy came in.

19 CHAIRMAN BROWN: That came in a long time ago. And it was premised on the
20 fact that, although a petition is presented and there's heading on it that tells what the
21 purpose of the petition is, the concern was there was no way of knowing what the
22 persons signing it were actually led to believe or told, regardless of what it may say
23 because - normally speaking, somebody that presented a petition like that, rather than

1 reading it, they listen to whoever is presenting it to them and they sign it based on the
2 representation made, which may or may not bear any resemblance to what's actually in
3 the petition. So I think that's why – well, I know that's why it came about. So your
4 point's well taken, I guess, that the Board is in the position, individually, to give it
5 whatever weight or lack of weight they choose in comparison to other evidence that's
6 available to them.

7 MR. DORSEY: I think a petition is, you know, a valid form of expression or
8 protest at times. But anything you sign your name to you'd better know what it is.
9 However, I think – and I think it should always be expressed – that a letter should bear a
10 whole lot more weight than a petition just because it is that form and the reality is you
11 just go, you sign it.

12 CHAIRMAN BROWN: Yeah, you want to get them off your doorstep so you sign
13 the –

14 MS. DORSEY: Right! [Laughter] And I've been on the doorstep. And I like giving
15 it lesser weight.

16 MR. BRANHAM: Go ahead and finish. I'm sorry.

17 MS. DORSEY: I'm finished.

18 MR. BRANHAM: I was hear when we changed the By-Laws to reflect that
19 petitions would not be accepted. And one of the things that prompted that was that we
20 had – I don't remember the situation – but we had some people that had signed in 'For'
21 the situation and 'Against' the situation on different petitions. The same name was on
22 the petitions. And they indicated they didn't know what they had signed. And that's
23 when the Board opted to change the By-Laws not to accept them. I don't have a

1 problem with accepting a petition with the option that we could accept it if we wanted to.
2 But it would not have any bearing, a whole lot of bearing, on the case. I mean I really
3 don't have.

4 MS. PERKINS: But I think, also, [inaudible] if you get people – and sometimes
5 we do - you know, they do not understand the process, it will give them a false sense of
6 hope about, if we're accepting this, that it's going to bear some merit on their case
7 because they got it. So I think from that perspective it kind muddles, you know.

8 CHAIRMAN BROWN: Well, I think this could be addressed by Mr. Farrar in his
9 opening remarks that, you know, different forms of testimony can be given different
10 weight by whoever the person examining it.

11 MS. DORSEY: I think a petition should always be lesser weight than a letter.

12 MS. PERKINS: [Inaudible], even, it is addressed now as I see it. And they still
13 bring petitions up even though Brad addresses it. If I read the minutes correctly, you
14 talk about it. And each and every time citizens will come before that podium and they
15 will say, "I have a petition." And they'll walk over and they'll give you a copy of the
16 petition. So I'm not certain that they understand that everyone is as sophisticated as
17 the Board is to understand that, you know, a petition may not have the weight or the,
18 you know, that we, as Board Members, sitting up here talking about it. I'm just saying
19 the total audience is not as sophisticated, just from my experience asking some of the
20 citizens questions. They are not as sophisticated to understand that that petition is not
21 going to bear that much weight.

22 MS. DORSEY: Then we go back to not accepting.

23 MS. PERKINS: Yeah.

1 MR. FARRAR: Yeah, I mean I think – I’m sorry, go ahead.

2 MR. TOLBERT: Go on. Go ahead.

3 MR. FARRAR: You know I think that, you know again I’m trying to play devil’s
4 advocate and say what would I attack as an appeal basis, if I say, well, I came in with a
5 list of, you know 100 people and, you know, I wasn’t even given the benefit of the doubt.
6 They just flatly said no, you can’t submit your list. Well, it turns out that if you, you
7 know, interview my 100 people, they were fully informed about the issue and this wasn’t
8 a coercive thing. This was legitimate. So I wouldn’t want somebody to say, well, they
9 didn’t fully consider. Because if you come back there are specific requirements for
10 special exception or variance, but there’s that kind of catch-all requirement that talks
11 about the public good, the public, you know, interest. And that’s where I would, you
12 know, kind of pigeon-hole the weight of a petition. But I mean it’s not going to – I don’t
13 think – hurt the process to accept it and say thank you for the petition. But it doesn’t
14 mean that you’re going to say, “Based on this petition, I’m going to rule X, Y, and Z.” It
15 just means it’s additional. Because there’s constantly a, not only weighing the
16 evidence, but an assessment of the credibility. And I, again, come back to this case,
17 this last case, with a variance. I mean this guy was just, you know, straight as 6:00
18 o’clock. He messed up. He stated that. Honest mistake, you know. And you can
19 assess his credibility. He could have come and had kind of shaded it and you probably
20 would have noticed that, too. So it’s a constant assessment of the weight of the
21 evidence and the credibility of it.

22 MS. PERKINS: Well, I would reiterate - I hear what you’re saying, but I don’t think
23 our audience is sophisticated as you and I are sitting here, you know, having a

1 conversation from – and I'm not saying that all of the public that get's up. But I'm saying
2 I can almost feel that even with your introductory remarks that petitions are not
3 accepted, you say that as part of your spiel, for lack of a better word, and they will come
4 up at the podium and hand out petitions because, in their mindset, having their
5 neighbors – they presented whatever in whatever manner – they think that it has some
6 merit. And I think when you're - that's just my opinion. I mean I just think that even the
7 mentioning of it, you know, saying that it will be given lesser weight and then you have
8 all these other conditions. And then they're going to want to bring in covenants. And
9 then they'll want to - where're you going to put those in the perspective? And I
10 understand, you know, what you're saying. But they will do that. We will say covenant
11 are not accepted and they will inevitably bring up.

12 MR. FARRAR: You know, a couple of things that, once we get the Rules the way
13 you want them, I do think that in working with IT we ought to put these on the Internet
14 and let people just who are interested and, also, at the Zoning counter have copies.
15 And I don't know how hard it'd be to tinker with the application, but these ought to be
16 available. And so some – you know.

17 MR. PRICE: Actually, probably the easiest way – you just hit on it – is when
18 someone comes up to the counter –

19 MR. TOLBERT: Can't hear you.

20 MR. PRICE: - now we give them all kind of information more than just – I'm sorry,
21 I thought I was Ms. Perkins for a moment there [laughter]. When some one comes up
22 to the counter we do give them a lot of –

23 MS. PERKINS: Hurts my back. Get me a chair so that I can sit in properly.

1 MR. TOLBERT: Yeah, we give them \$100 chair.

2 MS. DORSEY: That's a \$1000 chair!

3 MR. PRICE: We give extra information that probably, you know, a lot times they
4 don't even need. And it really wouldn't be a problem to attach the By-Laws and Rules
5 of Procedure with the application itself, and give that to them.

6 CHAIRMAN BROWN: I don't know that you need to give them the whole
7 shooting match. But you could have, sort of, a synopsis of the important things that –

8 MS. PERKINS: Yeah.

9 CHAIRMAN BROWN: - really are going to be of interest to an applicant. A lot of
10 this is of no interest to the applicant.

11 MR. PRICE: No, but they can't say they didn't get it, though.

12 CHAIRMAN BROWN: Some of the evidentiary stuff might be –

13 MR. FARRAR: Well, it's almost like you could on the applicant – I don't know how
14 – you know I haven't talked to Geo about this – but if it would be a one-line thing at the
15 bottom of the application, you know. "View all the Rules and By-Laws at this Web site,"
16 you know, "Have a nice day." That way they can go do the research themselves
17 because I mean, you know, we're not taking these people to raise. And I'm not going to
18 make their case for them. But the information's there if they want to go get it. And
19 that's kind of what I'm - the other thing I've toyed with, you know, in terms of the lighting
20 and the availability, I'd like to do a PowerPoint presentation of this. You know, I think I
21 can do it faster. And kind of people, you know, probably pay more attention to
22 something they could see rather than - but setting it up and the lighting and everything, I
23 just don't know that this room's necessarily the best for that because it would be a

1 screen in front of you. I guess we could shoot it on the back wall but then they've got to
2 turn around. I've just never found this room to be user-friendly for something like that.

3 MS. DORSEY: I think the comments are simple enough. You know, if you're
4 paying attention you understand. They're pretty basic. Everybody's got a certain
5 responsibility. And I like to spoon-feed people as much as possible. I think it's a
6 complicated process and they need a lot of help to understand it. But there's a, you
7 know, you go back and forth, but there's a line there where we've done enough. But I
8 don't like throwing out petitions, I really don't. And I understand what you're saying, Ms.
9 Perkins. But I think, also, that the flipside of that is that you also might frustrate people
10 because they feel they have no way to express that it - there might be some way -
11 there's two sides to it. I thought maybe the balance was that, yes, we accept it but, no,
12 it's not as much weight as a letter.

13 MS. PERKINS: Then I would say that they're going to present to us, also, they're
14 homeowners' covenants.

15 MS. DORSEY: Well, the covenants are covered -

16 MS. PERKINS: And how much -

17 MS. DORSEY: - because we can't - they're - you got to take them to civil court.

18 MS. PERKINS: But a petition, though, I think it has the same, in my mind, in my
19 mindframe, it has the same weight because, actually, you're saying you don't know how
20 the petition was presented to the person who signed it. And even though we may sit
21 here and say a lot of times there're people moving into their neighborhoods and, you
22 know, they don't even know that there's a covenant and that they have to abide by it,
23 you know. I'm going to build me a little outhouse and I don't care what my neighbor's

1 say. I think we've had that. And so I think we're going to get into - and I understand,
2 too, that that is, you know, that's a way of saying that how much merit are we going to
3 give. This Board has had individual letters -

4 MS. DORSEY: I see what you're saying. I can go either way. It doesn't mean - I
5 understand.

6 MS. PERKINS: - to come up [inaudible]. Yeah. Yeah. I mean we could go on
7 and on and on and how is the public going to perceive what we will accept -

8 MS. DORSEY: You'd rather -

9 MS. PERKINS: - and what they think is -

10 MS. DORSEY: You'd rather they know that if you're going to support or oppose
11 this we need a letter from you and leave it at that -

12 MS. PERKINS: Um-hum (affirmative)

13 MS. DORSEY: and not have - I can accept that.

14 CHAIRMAN BROWN: Alright. What is the pleasure of the Board, then?

15 MR. FARRAR: And I put "... may be accepted." And I supposed you could come
16 up and say we're not going to accept this, you know, if it appears to you that, you know,
17 it's just a - it's a disconnect, you know. What the title of the thing is so misrepresents
18 what's before the Board, you may just say I'm going to rule this - you know, I gave you
19 the flexibility and said, "... may be accepted and given lesser weight." So by the time
20 you get through that it's so watered down that you can give it whatever weight you want
21 to.

22 MS. DORSEY: Oh.

1 MR. FARRAR: I've never had anybody object saying, "Well, I lost my case
2 because you know you didn't consider my petition." And so that's kind of, you know, the
3 nightmare scenario. But I don't think anybody's going to - if you do accept a petition,
4 what are they going to say? I mean, you know, you didn't give it enough weight? I
5 mean I just don't think that's going to go anywhere. I mean if you accept it into
6 evidence.

7 MS. PERKINS: But I'm saying if we do that then I feel obligated - I think as a
8 Board Member I feel obligated to put into motion, as we've done letters. And you're
9 saying that - so you're saying that petitions and unsworn statements, we're accepting
10 them. So I would argue that point that covenants should be accepted, too.

11 MR. FARRAR: Oh!

12 MR. PRICE: Whoa!

13 MS. DORSEY: That's -

14 MS. PERKINS: I would argue that.

15 MR. TOLBERT: You can't -

16 MR. FARRAR: You're talking about the type of evidence. You're talking about -

17 MS. PERKINS: Why? Okay. And the difference for me - the difference for me -
18 the difference for me would be they're both legal documents that could, you know,
19 eventually go to court. And who are we to say that that petition, when I sign that petition
20 I'm listening and not reading the words?

21 CHAIRMAN BROWN: But the covenants don't necessarily even represent the
22 views of the present homeowners.

23 MR. FARRAR: Oh, yeah. This is just entirely out of the -

1 MS. PERKINS: Well – well – well –

2 MR. FARRAR: Yeah. This is entirely –

3 MS. PERKINS: You don't have to be a part of the homeowners association. But
4 within the covenants – there're covenants that you have to abide by, I mean. And then
5 if you do not abide by that covenant you seek legal remedies for not abiding by that
6 covenant. And –

7 MS. DORSEY: The covenants are set up beforehand. It's not like a discussion or
8 you decide to or not to.

9 MS. PERKINS: I understand and that's what I'm saying. It's not up to you. He's
10 saying you don't have to abide by them. Yes, you do. If it has to do with the size of
11 fencing, the type of windows, or the size of trees, whatever the covenant has.

12 MR. TOLBERT: Well, I didn't say you didn't have to abide by them. I said you
13 don't have to join.

14 MS. PERKINS: You don't have to join.

15 MR. TOLBERT: But they could put restrictions on - join it.

16 MS. PERKINS: Not a covenant. The homeowners association.

17 MR. TOLBERT: I mean the covenant – I mean homeowners association.

18 MS. PERKINS: Okay.

19 MR. TOLBERT: Yeah. You don't have to join the homeowners association. But
20 a covenant is for that community – for that development, only, isn't it?

21 MS. PERKINS: I understand that. And that's what I'm saying. I'm saying like if
22 that covenant is there and people come in and the covenant says, you know, we don't
23 want this and we don't want that and then we have a petition on the other hand that

1 says, well, you know the people want this and then you're saying don't - you know, the
2 covenant is one issue and the petition is another issue.

3 MR. FARRAR: Yeah, I mean this is under the section entitled "Evidence". This is
4 what you would accept as evidence of somebody - a petition is, essentially, the absence
5 of somebody -

6 MS. PERKINS: Well, I would say - all I'm going to say - I'm not going to argue
7 that. I would have difficulty with this if it is the Board's pleasure to, you know, to give
8 lesser weight to petitions and unsworn statements than affidavits or live testimony.
9 Given it all said, it's the Board's pleasure. But I would object to that because I think
10 you're introducing - and I want it on Record - I think that you're, in my opinion, from
11 what I've seen the reaction - to the public you're saying we've always said it's - you're
12 not going to consider it. And they do it all the time. They bring covenants and ask us to
13 consider it. We say, "No, we're not going to do that." And I just don't think that they're
14 sophisticated enough to understand it. That's my only objection. It's Board pleasure to
15 do it. But I want to say my objection.

16 MR. FARRAR: Okay, but a restrictive covenant is an enforceability issue. It's not
17 an evidence issue. It's whether or not you have the authority to enforce a covenant,
18 which we do not. I mean we absolutely don't have the authority to enforce a restrictive,
19 private covenant. A petition is just simply a substitution for live testimony. And it's a
20 fairly weak substitution because all it is is a name saying 'yes' or 'no'. It's no particular -
21 I mean if you had to orderly rank these, you would put, you know, sworn testimony,
22 unsworn testimony, affidavit, maybe letter, and then petition at the bottom. It's
23 something that, you know, is, okay, thanks for turning in your list but, I mean, I'm going

1 to give it whatever weight I want to give it. And you've got every right to do that. You're
2 talking about restrictive covenant, that's like whether or not you can enforce the law of a
3 neighborhood. That's just not even – I mean those two things are so different.

4 MS. PERKINS: Well, that may be true, Brad, but I know that, you know, when
5 you're doing government and people sign petitions and they want to find out whether or
6 not your signature is legible – I mean did you really sign this – and that is my - and I just
7 see things differently. See, you have seven Board Members here and we all see things
8 differently. And I don't have a problem with it if the Board - but I'm just saying that, you
9 know, I would object to that. I think that we're getting into a - if we want to do the letters
10 and somebody does an individualized letter with a signature on file, you know, I don't
11 have a problem with that.

12 MR. FARRAR: If I say, "The Board doesn't accept petitions," and somebody
13 asks me why, I can't say – I mean I wouldn't –

14 MS. PERKINS: But that's not my job. All I'm doing is just voicing my opinion and
15 [inaudible].

16 MR. FARRAR: I understand.

17 MS. PERKINS: You know, I'm not going to get in to the trying to look for a
18 rationale on why I shouldn't – you know – why I don't –

19 MR. FARRAR: You know, if I say, "The Board doesn't accept petitions," and
20 somebody says, "Why?" Then I can come back and say because the Board doesn't
21 enforce –

22 MS. PERKINS: Before? What'd you say before?

23 MR. FARRAR: No. If I say, "The Board doesn't accept petitions," –

1 MS. PERKINS: No. I'm asking you a direct question. What did you say before?

2 MR. FARRAR: I did say, "The Board doesn't accept petitions." And nobody ever
3 asked my why. If they had asked my why I wouldn't know what to tell them. Just
4 because that's the policy of the Board. I mean I can't defend it. I can just tell you what
5 it is. But, I mean, if somebody said, "Why don't you accept them?" Then I couldn't
6 come back and say, "Because the Board doesn't consider restrictive covenants." I
7 mean that just is a disconnect. I don't see what petitions and restrictive covenants have
8 to do with one another.

9 MS. PERKINS: As a legal person, you may not. As a lay person, from a legal –
10 and you're looking at it from an attorney point of view. And, as a lay person, what I
11 keep reiterating is you say that in your opening statement, that's your spiel.

12 MR. FARRAR: Right.

13 MS. PERKINS: And each and every time the public will present us with a
14 covenant and with a petition. I just - to them they may see them as equal pieces of a
15 document.

16 MR. FARRAR: Right.

17 MS. PERKINS: That's my only argument. That's my only argument – but – I
18 mean that's my only question. But it's whatever the Board's pleasure. That's enough.
19 Let's move on, please.

20 MR. FARRAR: Alright.

21 CHAIRMAN BROWN: Yeah. I think we've – this horse is about dead.

22 MS. PERKINS: Yeah.

1 CHAIRMAN BROWN: We've given a pretty good beating. I think the time has
2 come to make a decision as to whether we're going to leave the term "petition" in there
3 or remove it. Is there a motion one way or the other?

4 MS. PERKINS: For the whole thing? We're voting on the whole thing?

5 CHAIRMAN BROWN: No. Just for the matter of petitions.

6 MR. BRANHAM: Mr. Chairman, I'd like to make a motion that we leave it in there
7 as stated. It's saying, "Petitions and unsworn statements may be accepted." And I
8 think that's giving us the leeway to accept it or not accept it.

9 CHAIRMAN BROWN: Alright. Is there a second?

10 MR. YOUNG: I second.

11 CHAIRMAN BROWN: There is a second. All in favor of leaving it as presented,
12 signify by raising your hand. Opposed.

13 *[Approved: Branham, Dorsey, Young, Brown, Tolbert; Opposed: Perkins; Absent:*
14 *Myers]*

15 CHAIRMAN BROWN: Okay. It will be left in. In 3-4, subsection C, where it says,
16 "Presentation by opponents: three minute time limit per opponent." I'd like to add
17 something like, "However, a spokesperson representing a group of persons present at
18 the meeting will be given five minutes, provided no other members of that group testify."
19 In other words, if you've got one person testifying in lieu of an entire group, I don't think
20 it's unreasonable to give them a little more time than you would give just a single
21 individual.

22 MS. DORSEY: That's good. I see where you're going. Just between that and
23 being repetitious I want – because I've been on that side – I want to be sure that we're

1 not giving the impression that we will not take any testimony of anyone who wants to
2 listen. But if there's a group and that group decides this is our spokesman, give him five
3 minutes, I'm okay. I'm okay with that.

4 CHAIRMAN BROWN: Then that's their decision and they're stuck with it.

5 MS. DORSEY: Right. Right. Exactly.

6 MS. PERKINS: And it be so worded that way.

7 MS. DORSEY: But I –

8 MR. TOLBERT: What constitutes a group?

9 CHAIRMAN BROWN: Well, that's –

10 MS. PERKINS: Yeah. What constitutes a group? You're right.

11 CHAIRMAN BROWN: Something less than a mob.

12 [Laughter]

13 MS. DORSEY: Okay.

14 MR. TOLBERT: But then you're getting into if that's a homeowners association
15 coming as a group.

16 CHAIRMAN BROWN: But, maybe, that's –

17 MS. DORSEY: Well, they have a chairperson for their group leader.

18 MR. TOLBERT: That would be more defined. Saying if the home – like when
19 Greenview came.

20 CHAIRMAN BROWN: Alright, why don't we say a spokesperson representing an
21 association?

22 MS. DORSEY: Established group.

23 CHAIRMAN BROWN: Established –

1 MR. TOLBERT: [Inaudible] association.

2 MS. DORSEY: Established group or association. Okay.

3 CHAIRMAN BROWN: An established –

4 MR. TOLBERT: You know what I'm saying?

5 MS. DORSEY: Right.

6 CHAIRMAN BROWN: Yeah.

7 MR. TOLBERT: That way –

8 CHAIRMAN BROWN: Established body.

9 MS. DORSEY: [Inaudible] Okay. Alright.

10 MR. TOLBERT: Because they have time to meet and put an agenda together.

11 CHAIRMAN BROWN: That's a good point.

12 MS. DORSEY: Right. And agree. Okay. Yes. An established body.

13 CHAIRMAN BROWN: Can we do that, Brad?

14 MR. FARRAR: I just think you're going to have to be prepared to make a ruling
15 and be case by case and flexible on it because I can just see that – I mean I actually
16 had something about spokespersons. But I can just see somebody saying, "Well, that
17 person didn't say the things I wanted him to say," or, "This isn't going the way I think -."
18 I mean I just think that's a great idea and I actually had something like a spokesperson
19 in an original draft of this. But I just thought like from an enforcement standpoint I could
20 just see some issues with it. But I can put it in there. I mean that's not a problem.

21 MS. DORSEY: Would we –

22 MR. TOLBERT: Well, only one thing to do though, Brad, it would it would give,
23 when the –

1 CHAIRMAN BROWN: Yes. It's an option.

2 MR. TOLBERT: - Chairperson asked if there's – at that point he could ask that
3 question. At least it's in the Rules that he has the option of asking that. To give that
4 because if they – just like -

5 CHAIRMAN BROWN: And they have an option whether they're going to use a
6 spokesperson or not.

7 MS. PERKINS: Exactly.

8 MR. TOLBERT: [Inaudible] they give it then. But if they say, "No," then that
9 throws it out the window.

10 MR. PRICE: Well, let me ask a question. If there was a group here, whoever,
11 Ballentine Association, and it was brought up to them that you could have your
12 spokesman speak for five minutes and they agreed, but then later on a couple of them
13 say, "Whoa. Well, that's not what I'm saying. I want to speak now." Are we eliminating
14 their –

15 MS. DORSEY: No. Absolutely.

16 MR. PRICE: - ability to come and speak?

17 MS. DORSEY: I wouldn't agree to that. I will not agree to that.

18 MR. PRICE: Right. Then what else for them – I'm trying to understand.

19 MR. TOLBERT: Yeah. Let's keep that open.

20 MR. PRICE: You know, given a spokesperson –

21 MS. PERKINS: But see, what I'm saying is is that all of this – we go through this
22 process every month. I mean, you know, you say, "Is there a spokesman?" There is
23 nothing that is in this By-Laws that I haven't heard represented to the public not since

1 I've been up here as a Board Member. And it's either they don't understand, they don't
2 hear, or they want to talk. And each time, you know, a lot of times – and I'm not saying,
3 you know – they say the same thing over and over again. Then I'm wondering how can
4 we not allow the public, when we're supposed to be sitting up here as impartial
5 whatever we are, Board Members, and sometimes the testimony does get a little
6 redundant. But then, do I have – that's the same thing – do I have the right to deny that
7 person? I would love to have the right to deny them. "You know I've heard that before.
8 Can we get to the next one now?" But is that fair to the public? Because in his or her
9 mindset it's, "Well, you hadn't heard it from me."

10 MS. DORSEY: Rejected.

11 MS. PERKINS: Yeah. "You hadn't heard it from me."

12 MR. FARRAR: How about – I think Council does this. If you had three minutes
13 per opponent but like cumulative 30 minutes, or something like that, of opposition? And
14 if you're one of the first 10 people –

15 MS. PERKINS: Well, I would agree with that. Yeah. You know, to make it –
16 yeah. Put an end.

17 MR. FARRAR: And then, maybe, after that allow like – I don't know – two
18 minutes or something. I mean we haven't this in awhile. But every once in awhile you
19 do get a case where you have a ton of people out the door and, you know, I don't know.
20 I mean that –

21 MR. PRICE: I found that most of the – even when that's happened when you've
22 got a large group of people, they will defer to a spokesman, most of them anyway. I
23 don't think we've ever had a problem.

1 MS. DORSEY: Sometimes.

2 MS. PERKINS: Sometimes. Not here – not –

3 CHAIRMAN BROWN: Well, usually. I agree with Geo. Usually the majority of
4 that group will go with a spokesman. There may be some individuals that still want to
5 express their own thought. But, still if that person is representing a large group, part of
6 the group, you've saved a lot of time if you give that person five minutes, even if a few
7 more of them end up speaking. So, maybe, just take out the part about ". . .provided
8 no other members of the group testify." And just say that a spokesperson representing
9 an established body present at the meeting will be give five minutes as opposed to the
10 normal three minutes.

11 MR. BRANHAM: Say "if he's representing three or more."

12 CHAIRMAN BROWN: Yeah. And that will at least encourage them. It may not
13 eliminate all of the actual testimony but it will at least encourage them to sort of
14 consolidate their testimony.

15 MR. TOLBERT: But you can't say three or more.

16 CHAIRMAN BROWN: I'd just say an established body or –

17 MR. BRANHAM: Yeah.

18 MR. TOLBERT: You can't define a number. You just have to make that known or
19 let that be known.

20 MR. PRICE: I mean we can try it. And then, you know, then if something comes
21 up and say, "Well, that didn't work very well."

22 MR. FARRAR: Well, think about this now. If you had two people speaking they
23 get a total of six minutes. If you have one person speaking that person says he's a

1 spokesman then you just have five minutes. So if you have somebody speaking on
2 behalf of one other person you've already made some progress. And I just think if you –

3 MS. PERKINS: I can remember a – I'm trying to think Olympic.

4 MS. DORSEY: Olympia.

5 MS. PERKINS: Yeah, Olympia. Yeah. No – not her. The trucking company or
6 something. I can just remember every one of those who - I can remember the Cedar
7 Creek people. Every one of those people wanted to talk. And I thought that they were
8 sophisticated, very knowledgeable, and, you know, understood everything. I see you're
9 eyes.

10 MR. PRICE: No. Just saying that I was trying to remember – you said Cedar
11 Creek. I was just trying to remember. Was that the soccer field people?

12 MS. DORSEY: No.

13 MS. PRICE: No. I don't remember. I just remember – I don't remember what in
14 particular the case was. I just remember events. And –

15 CHAIRMAN BROWN: Well, it may not work perfectly every time. But I think it
16 would be a step in the right direction.

17 MS. PERKINS: And I agree with what you've just said. I mean I don't – I don't – I
18 don't, you know.

19 MS. DORSEY: Yeah. We just have to be careful, like Ms. Perkins says, not to
20 give the impression that we're at all, because I never would, try to restrict people from
21 speaking. I would rather it go on for an hour than we give that impression that we were
22 pulling -

23 CHAIRMAN BROWN: Oh, sure. I think we all would. I think any of us want –

1 [Inaudible discussion]

2 MR. TOLBERT: I'm going to be ready to make a motion. Let me say this. The
3 only thing would happen is that people will conduct theirself – and like Brad said, we
4 would save some minutes. You're not going to make the impression that they could not
5 do it.

6 MS. DORSEY: Right.

7 MR. TOLBERT: But most time people will be more careful and say, "Well, okay
8 they already spoke at the meeting." And they won't say anything.

9 MS. DORSEY: That's right. And they do now. They have the, you know, after
10 the first person speaks they still have the right to say, "Hey, I've got something else I
11 want to say."

12 MR. FARRAR: Yeah. And I think this is something where we've kind of got to
13 take folks at face value. And this is where the Chair could really come in and say, "Do
14 we have any spokespersons for, you know, a group of whomever," however many
15 people. And then you ask –

16 MR. TOLBERT: I've asked that several times.

17 MR. FARRAR: Then the Chair asks, "Okay, who are you speaking on behalf of?"
18 And then if somebody gets up who you thought already had a spokesperson, the Chair
19 could step in and say, "Well, now, you know, didn't you just tell us you wanted a
20 spokesperson?" I mean you can have a little give and take here. And then put it back
21 on the person to say, "Well, yeah. I actually did do that, but I'd like to say something."
22 So I mean, you know, it's something that can be controlled. And it's an option. It's not
23 restricting you in any way.

1 MS. PERKINS: Okay.

2 MR. TOLBERT: It worked several times on a couple of subdivisions we had.

3 MS. DORSEY: Yeah.

4 MR. TOLBERT: Greenview and over there off Broad River Road. Those two
5 subdivisions said, "Yeah. We're going to let the president speak."

6 MS. DORSEY: Yes. There was an understanding that we were not being
7 restrictive.

8 MR. TOLBERT: But it's not written in stone the rest of them couldn't speak.

9 MS. DORSEY: Right.

10 MR. TOLBERT: But with given that, I'd like to make a motion that 3.4 Section C
11 be changed to five minutes as the spokesperson for that group with the others still
12 having the option to speak.

13 CHAIRMAN BROWN: For three minutes.

14 MR. TOLBERT: With the option to speak for three minutes.

15 MS. DORSEY: Right.

16 MR. FARRAR: Okay. I can deal with that.

17 CHAIRMAN BROWN: Is there a second to that?

18 MS. DORSEY: Second.

19 CHAIRMAN BROWN: All in favor. Okay.

20 *[Approved: Branham, Dorsey, Young, Brown, Tolbert, Perkins; Absent: Myers]*

21 MR. TOLBERT: Next.

22 MR. FARRAR: Can I just go back? I hate to do this but this might clear up this
23 problem. On the evidence, I can put in there in the Rules it says that, you know, the

1 Board cannot enforce restrictive covenants. And I can brief that in the opening remarks.
2 And if anybody's got any questions about it –

3 MR. TOLBERT: I didn't hear that. Say, what, now?

4 MR. FARRAR: Just going back, again, on this – because I think we can solve this
5 problem on the petitions versus restrictive covenants. If I just, in the opening remarks,
6 say, "The Board cannot, by law, enforce restrictive covenants." And anybody with a
7 problem with that can at that point say, "Well, gee. Why not?" And I can explain why
8 not. Because that's just not something we're allowed to do. It's a private enforcement
9 mechanism. But that would actually be in – I could put it in the Rules and I could state it
10 in the opening deal.

11 MS. PERKINS: Well, that was a – if you put it in, then I think that would be good
12 because I don't want anybody coming back and saying, you know, you accept some
13 things and some things you don't accept.

14 MR. FARRAR: Right.

15 MS. DORSEY: That's good.

16 MR. FARRAR: I mean is that –

17 MR. TOLBERT: 3.38?

18 CHAIRMAN BROWN: The Board doesn't have the legal authority.

19 MR. FARRAR: I mean is that –

20 MS. PERKINS: And I think that would be – I think that would address that we
21 don't have the legal authority to –

22 MR. FARRAR: You may be right. They may come in and say, "Well, you
23 accepted my petition but not –," you know, so. I could do that if you –

1 MS. DORSEY: Yeah.

2 MS. PERKINS: I would like to go back and revisit and ask him to add it on there if
3 y'all don't -

4 CHAIRMAN BROWN: I don't have one.

5 MS. PERKINS: - any problem.

6 MR. BRANHAM: I'll accept that it be added to it.

7 CHAIRMAN BROWN: Do you have a problem with that?

8 MS. PERKINS: He said no.

9 MR. TOLBERT: No, I don't have a problem.

10 CHAIRMAN BROWN: Okay.

11 MS. PERKINS: So moved.

12 MR. FARRAR: I mean just – I think just get all the changes you want me to make
13 and at the end make one motion to approve the changes. Yeah, I don't –

14 MS. PERKINS: Thank you.

15 MR. TOLBERT: All right. That's cool.

16 MR. FARRAR: That'll work. We'll make a note of it.

17 MS. PERKINS: And then it would be on the Internet and then they would know
18 that you said to do it.

19 MR. FARRAR: Yeah. And I'm not saying that in my opening remarks. And it
20 hasn't come up in awhile but I can certainly add that. Okay. I wanted to call your
21 attention right, on 3.4 D, right underneath that. I put in this little comment about public
22 comment may be made.

23 CHAIRMAN BROWN: Where are you, Brad?

1 MR. FARRAR: This is 3.4 under the "D", under "Rebuttal." It says, "Public
2 comment not made under oath may, but is not required, to be permitted by leave of the
3 Board for two minutes per witness." Yeah, I don't know where that came from. I just
4 kind of was thinking, "Well, do you want to hear unsworn comment?" I'd be inclined to
5 take that out if you don't have a problem.

6 MS. DORSEY: Yes.

7 MS. PERKINS: Thank you.

8 MR. FARRAR: Thank you. Okay. Yeah. That would just - Geo asked if I was,
9 you know, what was I doing when I put that in there.

10 [Laughter]

11 MR. FARRAR: That's been a year, I don't know. I don't remember what I was
12 doing.

13 CHAIRMAN BROWN: If we're going to address spokespersons up above, maybe
14 in the next paragraph we ought to take that second sentence out, then.

15 MR. FARRAR: After "yielding and seeding time"?

16 CHAIRMAN BROWN: Yeah.

17 MR. FARRAR: You want to take that out?

18 CHAIRMAN BROWN: Don't you think?

19 MR. FARRAR: Okay. We can do that. That's more of an opening remark,
20 anyway.

21 MS. DORSEY: Oh, okay.

22 CHAIRMAN BROWN: Take out this sentence since we've addressed
23 spokespersons up above.

1 MS. DORSEY: Oh.

2 MR. FARRAR: Okay. That's good.

3 CHAIRMAN BROWN: On page 6, the top, the sentence following all the little
4 lettered subparagraphs I just thought was kind of difficult. I think it might read better if it
5 said something like, "Requests for reconsideration should be judged and enacted based
6 entirely on the facts presented in writing in the request."

7 MR. TOLBERT: Trying to say that mumbo-jumbo there's too heavy for them?

8 CHAIRMAN BROWN: It's too heavy for me.

9 MS. PERKINS: And I like the written. I like it that it be written. And is it on new
10 evidence?

11 MR. FARRAR: So you don't want to allow anybody to testify at all if they come for
12 their reconsideration?

13 CHAIRMAN BROWN: No. We never have. It's always been based on a written
14 request.

15 MR. TOLBERT: Wait a minute, now.

16 MS. PERKINS: Yeah, wait.

17 MR. TOLBERT: Wait a minute, now. We're missing something. What did you
18 say, again, Brad? I didn't quite understand what you said.

19 MR. FARRAR: Well, it seems like that, yeah, we have had written requests. But
20 then somebody – I think, maybe, Mr. Van Shaik, for example, came in and then he
21 wanted to brief his. And he wanted to say something. And it's – it's almost like
22 something – this needs to be in the By-Laws or Rules how you want it to be because
23 I've seen people come in with attorneys and they're here and they're ready to make a

1 big presentation. They're really deflated when they find out "Well gee, I can't even
2 speak to this. I just have to rely on my letter." Which is fine, but it's just if you wanted to
3 allow testimony I don't know that you'd want to handicap yourself and say that you won't
4 take any.

5 MR. TOLBERT: I would have to simply make it because sometime - what are you
6 going to do if a person comes to make a request that can't write? You can have that.

7 CHAIRMAN BROWN: Get a friend to write it.

8 MR. TOLBERT: That's not in your own words.

9 MR. PRICE: The same person that wrote the application.

10 MR. TOLBERT: How can somebody explain something? You're better - you
11 might not can write it but you can explain it.

12 MS. DORSEY: Are you saying that rather than any onhand evidence just a verbal
13 explanation of why they're wanting a request for a reconsideration? We accept that
14 alone? Brad? That would –

15 MR. FARRAR: No. The way it's drafted is the – on 3.7 A I'm starting on Page 5.
16 "Requests for reconsideration shall be delivered to the Zoning Administrator in writing . .
17 ." And that's a requirement. ". . . setting forth the reasons for it." And it lists, you know,
18 eight or 10 common justifications for the request.

19 MS. DORSEY: Right.

20 MR. FARRAR: But then the last paragraph on Page 6 under that section,
21 "Testimony is allowed only by leave of the Board." I think that gives you the option if
22 you have a question, "Well, gee, I noticed here in your writing you said this. Can you
23 please explain what you mean by that?" And it gives the option "The Board may call

1 witnesses if needed to develop an understanding.” But you don’t have to. So if that’s
2 the part that’s, you know, not desired we can take that out. And I still think you could
3 allow testimony even though it would not be in the Rules because you can hear from
4 whomever you want to hear from. But I can envision a scenario where you might want
5 to hear from somebody but you don’t have to.

6 MS. DORSEY: Sure.

7 MR. FARRAR: And I think they need to understand that, look, you know, you
8 need to set forth in writing and then the Board’ll consider it. You could make a motion
9 out of hand and say, “Look. Based on this I move that we don’t reconsider it.” And
10 have that be it.

11 MS. DORSEY: Okay.

12 MR. FARRAR: It’s just that - I don’t know if we had – it seemed like there was
13 one guy came in from like four hours away or something. And he was all ticked
14 because he didn’t get to – “Gee. I came four hours and I didn’t get to say what I had to
15 say.”

16 MR. SPEARMAN: That was the gentleman from Maryland.

17 MR. FARRAR: Yeah. See. Yeah. It’s kind of difficult to explain, but you don’t
18 know it’s a problem until it’s a case by case thing. But when a person’s sat for, you
19 know, maybe for the whole meeting and they’re all geared up and ready to go. And all
20 of a sudden you don’t get to talk. And that’s fine. You can do that. It’s just kind of a – I
21 don’t know.

22 MS. DORSEY: So it just gives them a way to say, “Can I speak? I came here.
23 Can I . . . ?”

1 MR. FARRAR: If you want them to. Yeah.

2 MS. DORSEY: Right. Right.

3 MR. PRICE: Do you want to just say can they speak or do you have questions for
4 them?

5 MS. DORSEY: Yeah. There's a big difference between.

6 MR. PRICE: I think if you have it in writing. You know they need to turn in
7 something in writing whether, you know, they can do it themselves or not.

8 MS. DORSEY: Right.

9 MR. TOLBERT: Right.

10 MR. PRICE: And I respect that part. But then you can look at that and then if you
11 have some questions –

12 MR. TOLBERT: And then if you have some questions.

13 MR. PRICE: - again, you can call them up for questions.

14 MR. TOLBERT: Right.

15 MR. PRICE: I think one of the problems we've had before is we've had people –
16 after a while they just go on and on. They're going to keep saying something until
17 maybe you – you know, they hit a spot and you say, "Okay. We're here. We're here.
18 Just leave."

19 MR. FARRAR: And that's why I put the paragraph above that says, you know,
20 you can't have another hearing just because you want another hearing. We've run into
21 that before. People just want a second – "Gee. Do you like me better this month?"
22 "Well, no. You're request still is as deficient as it was last month." So that one I wanted
23 to be in there just to explain to folks that rationale. But, you know, it says testimony's

1 allow only by leave of the Board. I think that contemplates that it would be the
2 exception, really, to have testimony.

3 MS. DORSEY: Right.

4 MR. FARRAR: And you could point to that and say, "Look. There's no right of
5 testimony. It says it's only by leave of the Board and it's not our pleasure that we hear
6 from you."

7 MS. DORSEY: Okay.

8 MR. FARRAR: But you can take – it's whatever you want. You can take it out if
9 you want.

10 CHAIRMAN BROWN: Alright. So you want to put in the sentence "Unmeritorious
11 requests ...", etc., and then follow with something saying "Requests for reconsideration
12 shall be based on facts presented in writing"?

13 MR. FARRAR: Yeah. That's the language you put. "Shall be judged and acted
14 upon based entirely on the written request."

15 MS. DORSEY: Right.

16 MR. FARRAR: Well, yeah. How about "... based upon the written request"? And
17 then –

18 CHAIRMAN BROWN: Then you have the sentence afterwards that ". . .
19 testimony is allowed by leave of the Board."

20 MR. FARRAR: Right. And I think that –

21 CHAIRMAN BROWN: Takes care of the exception case.

22 MR. FARRAR: And I think that you're almost better off having that in there
23 because if you don't then somebody could say, "Well, gee. I wanted to speak." And if

1 it's in here you can say, "Well, look, you know, you only can speak if we let you on this
2 issue because there's no right to appear on a reconsideration." I do think, though, that
3 this is - if a reconsideration comes up we're going to be prepared for it. But let's, you
4 know, this is going to get - take direction from the Chair or, you know, "Brad, please
5 explain what their rights are under this." And I can do that. But, I mean, I want to be
6 able to point to something and say, look, here's the scope of what you - and we have, I
7 think Geo's got this reconsideration letter that we gen'ed up sometime ago that tells
8 them, you know, if you don't have fraud or new evidence or something don't bother
9 coming. I mean don't come in because you just want another shot at it.

10 CHAIRMAN BROWN: Okay.

11 MR. TOLBERT: Brad, I hate to [inaudible] but I don't want to lose this. Is there
12 anywhere in this that we could put that when we make conditions on property or
13 different things that it's somewhere forwarded to people - to the officers in that area that
14 they will check and do a research and make sure these conditions are checked on?

15 MR. PRICE: He's here.

16 MR. TOLBERT: But he can't do the whole - he's going to do the whole place?

17 MR. PRICE: Well, we have - right now we have one officer that goes out and
18 does -

19 MR. TOLBERT: I know I can't help you get another one. But I'm just trying to say
20 how do we follow - for instance, if you give somebody a condition and you give them a
21 certain amount of time, who says that somebody go check it?

22 MR. PRICE: Well, I know when I'm out in the field, you know, doing the Board - if
23 I'm in an area I will go by it and check it. And Mike does that, too. You do, right?

1 MR. TOLBERT: Don't put Mike on the spot. Don't put him on the spot.

2 MR. PRICE: Well, all I'm asking - you've followed up on [inaudible]?

3 MR. TOLBERT: I'm just saying how do you do? What do you do? That's
4 something that needs to be followed up because that's a condition that we place. And if
5 we're allowed not to be taken care of then we're not doing our job.

6 MR. FARRAR: We had – yeah, you're talking about follow-on, oversight of it. We
7 had the case of Mr. Heightman - I don't know if you recall that - with the fabricated,
8 antique car, "antique car", but it was really like he was taking, you know, a 1975 Nova
9 and souping it up. And it wasn't really antique. It was, you know, that type of thing.
10 And that was a real contentious situation with the neighbors. Ms. Volstromer, I think,
11 was a neighbor. And that was a case where John, when John Hicks was here, he
12 actually sent a letter to the Heightman's and said, "You have, essentially, violated the
13 terms of your special exception." And the special exception had been given years
14 earlier. And, you know, I take the position that that's fine because it's continued
15 oversight. And that's why I stress to people, "You're under oath. If you come up here
16 and you say, 'I'm going to do x, y, and z,' and you don't I think you've violated the terms
17 of what the Board's granted." So you've got continuing jurisdiction. But I think it's going
18 to take a Zoning Administrator sending a letter, sort of like a stop work or a cease and
19 desist letter, and then we rescind it. But that's not really – that's not addressed in here.
20 We could do that. Maybe more of an ordinance thing, but we could –

21 MR. TOLBERT: It's in, like you said, part of the sworn testimony. And it's part of
22 condition of them receiving their business license. If nobody's following up on it –

23 MS. PERKINS: Void permission to do what they're –

1 MR. TOLBERT: Right.

2 MR. PRICE: Well – most of – you know – yeah – what you do when you make
3 one of the conditions based on a business license, then that would trigger us to go out
4 and look at a site once they submit the business license. Just as when you do it for a
5 commercial structure, say a variance or some sort, you know, we look at it once the site
6 plans are submitted. So I mean - when they come in to make it official, that's when we'll
7 trigger an investigation.

8 MR. TOLBERT: I just think something needs to be done. I know Terry, today,
9 maybe said, you know, that would be before the business license is granted those
10 conditions must approved.

11 MR. PRICE: Correct. Right. And if she submits her business license that's when
12 we can, before it's signed off –

13 MR. TOLBERT: Those conditions.

14 MR. PRICE: - we can go out and take a look at it. But as far as just going out,
15 you know, checking to see if they've done something, you know, they haven't even
16 started. You know if somebody gets a daycare and they haven't even started six
17 months from now, you know, we can't just keep going out there just to see if they put in,
18 you know, fenced in the yard yet.

19 MR. TOLBERT: But that's just the point. I mean – so if you put that in the
20 conditions and you never check it what happens?

21 MS. PERKINS: But I think he's saying – what Brad is saying – is like I remember
22 that antique car dealer. And I remember vividly him asking and I think Mr. Hicks did
23 send a letter and that's how he appeared.

1 MR. TOLBERT: But that was a year later.

2 MS. PERKINS: Yeah, but I'm talking – well, I mean you're not going to have
3 enough – well. I don't know. Well. That's a Staff problem.

4 CHAIRMAN BROWN: Well, you know, actually there aren't that many cases the
5 Board puts conditions.

6 MR. TOLBERT: Right!

7 CHAIRMAN BROWN: It doesn't seem to me that it's overly onerous to expect
8 somebody to go out afterward and see if those conditions are complied with.

9 MR. PRICE: [Inaudible]. When do we go out? You know, once you put
10 conditions on, you know, daycares are a good example, you know, when should we go
11 out there and take a look?

12 MS. DORSEY: We should have a time limit. We should say this has to be –

13 MR. TOLBERT: A couple of them we did put time limits. We put four months on
14 one with a fence.

15 MS. DORSEY: Yeah.

16 MR. PRICE: Right.

17 MS. DORSEY: And then –

18 MR. PRICE: And then, you know, you'd say, okay, it's been - you've not begun
19 operation of, you know, your request and you will void -

20 CHAIRMAN BROWN: If they don't comply with the time limits the special
21 exception is voided.

22 MR. PRICE: Okay. Well then you have to establish what that time limit is to get
23 started. What you have right now – what you've been –

1 MS. PERKINS: Operating under the assumption is that they're going to do it
2 within –

3 MR. TOLBERT: Well, you know I think in order to get it – Brad, if you would put it
4 with those - we have to make it in some kind of condition that it won't just, say, prompt
5 somebody to go out, every time you do one, to keep running back and forth. We need
6 to make a motion that states some kind of conditions that will prompt it to be checked.

7 MR. PRICE: Well, what I'm saying is if, under your conditions, you state
8 something like "You have six months to begin," or "One year to begin. Failure to begin
9 will void the special exception." Then we'll at least know. We can kind of stack them.
10 In six months we need to go ahead and check this pile and, you know, in a year we
11 need to go check this pile.

12 MS. PERKINS: How would that be in the ordinance. I mean if we start setting a
13 timeframe and then the timeframe they give you a year if you don't do it – or something
14 like that.

15 MR. FARRAR: Yea, it's part of a policy thing, I think, because it's a question of,
16 as I understand, you know – talked to Mike about this before – I mean they have so
17 many – only so many things they can do. And a lot of it's responses to, like the
18 Ombudsman's calls or the complaints. And I don't know if there's a regular inspection
19 of every property in the county, if they could even do that. It's almost like a response
20 type situation. But if you look in - well, I think you've got jurisdiction that doesn't cease.
21 And I think you can come back 20 years later and say, "Well, we told you you could do
22 this 20 years ago and you're not doing it." I mean I think the jurisdiction would continue.
23 There is a section – and I hope this doesn't get lost in the Land Development Code –

1 but 26-510, on penalties – it says that if you violate a condition or requirement in
2 connection with a special exception or a variance it's a misdemeanor. So they actually
3 can be cited for that. So it's in the penalties, the enforcement side of it. It's almost the
4 question, though, from a timing and a policy standpoint, are they going to be able to,
5 you know, get out and see all the properties. I mean I guess if you had – you know, we
6 put conditions on two or three cases per month, you know, I guess you could ride out to
7 two or three properties per month. I don't know.

8 MS. PERKINS: When you say misdemeanor, Brad, is that financial?

9 MR. FARRAR: Yes.

10 MS. PERKINS: Because I was just reading the other day, you know, there was in
11 the City of – and this has nothing to do with the county – but a guy - he got fined a
12 couple of hundred dollars – a couple of thousand dollars, you know, for having too many
13 cars, just citing that.

14 MR. FARRAR: On the misdemeanor, it's through Magistrate's Court. By the time
15 you get court costs in there it's like \$1,085 per violation or 30 days in jail.

16 MS. PERKINS: Okay.

17 MR. FARRAR: But there's also this each day constitutes a separate offense. So
18 really, if you wanted to, you could pop somebody with a pretty good fine. But it is
19 misdemeanor, and the judge, unless the person is just a repeat offender or just
20 contentious about it, he's not going to put them in jail for something like that. But there
21 will be a fine. But you got to stand in line with everybody else at the court. It takes a
22 while.

23 MR. TOLBERT: Long while.

1 CHAIRMAN BROWN: Well, I'm not sure that's something that should be
2 addressed in the Rules of Procedure. That's a side issue that needs to be addressed
3 between the Zoning Administrator and the Board – the enforcement.

4 MR. FARRAR: Yeah, I mean there's nothing preventing, you know, the Board
5 saying, "You know we had this case six months ago. Can you give us a status on their
6 progress?" And just report back the next month. I mean unless there's some – you
7 know – and I know – you know – well – I'm not talking about a list of 100 cases. But just
8 saying, "Can you, you know, check on this. You know, we said, you know, there's a pit
9 bull there and they're supposed to get a fence. Could y'all check on that?" You know.

10 CHAIRMAN BROWN: Or if a Board Member goes by a property where he or she
11 knows that there was a condition and sees that it hasn't been met, he can simply give
12 that back to the Zoning Administrator for appropriate action.

13 MR. FARRAR: Yeah. And I think this is the point is that it is much better and
14 easier to enforce if you do specifically state the condition rather than - I still take the
15 position that you've got to live by what you state.

16 MS. DORSEY: Right.

17 MR. FARRAR: And if you come in and say, "Here's what I plan to do."
18 Sometimes people will make the mistake of going beyond what they need to do in their
19 testimony and they make promises that I think –

20 MS. DORSEY: That's not valid, though. I mean if it's not in our conditions it
21 really doesn't –

22 MR. FARRAR: Well, but see –

23 MS. DORSEY: It can't be imposed upon them.

1 MR. FARRAR: But, see, I take the position, though, if you say – you could say
2 that your vote was conditioned upon their testimony and I wouldn't have given you the
3 special exception if you had, you know, not -

4 MS. DORSEY: Ah.

5 MR. FARRAR: - you know you led me down the path and this is what I thought
6 your special exception was going to be. Your testimony was material to me. I think
7 legally you can get to the point you say, "Not only you may have perjured yourself,
8 which is a separate problem, but you misrepresented what you wanted to do to the
9 Board." But it is better if you specifically state the condition.

10 MS. DORSEY: Right. That what I'm saying.

11 CHAIRMAN BROWN: I think if it's that important to a Member of the Board then
12 they ought to make it a condition.

13 MS. DORSEY: Exactly. I think there's a certain responsibility for the Board to
14 make it conditions.

15 CHAIRMAN BROWN: And, based on this conversation, also put a time limit.

16 MS. DORSEY: Because they can come back and say, "Well, I said that but you
17 didn't make it a condition, so -."

18 MS. PERKINS: And I think we recap. I think a lot of times, at least I notice that
19 you do, you recap a lot of what the public says.

20 MS. DORSEY: Well, I try to because I believe if it's not in that condition then it
21 can't be enforced.

22 MS. PERKINS: The approval – the motion – if it's not in the motion. So you're
23 thinking if it's not in that motion.

1 MS. DORSEY: Yes. It can't – they have no way. It can't be enforced because of
2 me if I were –

3 MS. PERKINS: Board Member.

4 MS. DORSEY: – if I were standing out there and you gave me the special
5 exception, but no matter what I said y'all didn't include that in the condition, I would
6 think, "Well, they let me get away with that." The burden becomes upon us to include it
7 in the conditions.

8 MR. TOLBERT: But, Ms. Dorsey, the reason I'm saying it's the same thing that
9 we had at Cedar Creek. And I asked him would he make a – did he guarantee that that
10 buffer would be around that. And you came back the next meeting and wanted to know
11 did you mean that you were going to put [inaudible].

12 MS. DORSEY: Because it wasn't in the condition. It was not in the – it wasn't – it
13 wasn't made a condition. The motion was made but it wasn't made a condition of the
14 motion.

15 MR. TOLBERT: It was a part of his sworn testimony that he would not cut any
16 more timber.

17 MS. DORSEY: Yes.

18 MR. TOLBERT: But you made him make - the owner make a commitment.

19 MS. DORSEY: Right. Exactly. That's right.

20 MR. TOLBERT: But it was a part of his testimony.

21 MS. DORSEY: But I don't think you can enforce it if it's not a condition – if it's not
22 set up as a condition.

23 MS. PERKINS: I think what I –

1 MS. DORSEY: Because the applicant can then say, "Well, I said that but
2 apparently it didn't – they didn't mean it or they didn't mean for me to abide by that
3 because they didn't make it a part of -."

4 MR. TOLBERT: But why would you make - that's a sworn testimony. You're
5 swearing under oath that you make a testimony. If he said he's not going to cut that
6 timber down, that's a sworn - he says, "I will not cut it down." That's a sworn testimony.

7 MS. DORSEY: Yeah.

8 MR. TOLBERT: Am I right or wrong?

9 MR. FARRAR: I think that we can do kind of a catch-all and say that all decisions
10 of the Board, you know, may or may not include special conditions, however,
11 representations of a party shall be – I mean I guess the decision is contingent upon any
12 conditions attached to it along with representations of the applicant.

13 MS. DORSEY: Okay.

14 MR. FARRAR: And that way you come back and say, "Well, you know, here's
15 what you said. And whether we specifically – you know, rather than recap your
16 testimony, I can point to the record where you said under oath that you were going to do
17 this particular thing. And whether you know it or not, that may be the thing that did it for
18 me to give you my vote."

19 MS. PERKINS: Sometimes that is what does it. I'm looking at weighing it. Yeah.
20 But then I think -

21 MR. TOLBERT: Thank you, Mr. Chairman, for letting me go there for a minute.

22 CHAIRMAN BROWN: Certainly. It's important.

1 MR. FARRAR: And I think, you know, Mike's got a good point. If you've got
2 somebody who misrepresented, you can bring him back and say, you know, "We're
3 going to revisit this case and you're invited to participate as you would, you know, you
4 can or you'd like to at the hearing. And if you don't show that's a further, you know,
5 indication that you're not going to comply with what we're asking you to do." And you
6 can, basically, grill them and say, "You know, here's the transcript" and we get it
7 prepared "what you told us, you know, two years ago. And what's the story now?"
8 You've got these type of powers if you want to do that.

9 CHAIRMAN BROWN: Anything further on the Rules of Procedure. If not – I'm
10 sorry, go ahead.

11 MS. DORSEY: Just so I'll know what we – if we ask for a reconsideration, it
12 needs to be in writing, too. If we ask for – we have to abide by the same [inaudible] –

13 MR. FARRAR: No. I think –

14 MS. DORSEY: - consideration.

15 MR. FARRAR: No. I think this - the reason I put this section in about
16 reconsideration is 3.7 is kind of the Board Member reconsideration.

17 MS. DORSEY: Oh! I see. I see. I'm sorry.

18 MR. FARRAR: And 7A is - because we get this – we really didn't have this
19 before. "What do I do if I want my case reconsidered? I can't communicate with the
20 Board in an *ex parte* fashion."

21 MS. DORSEY: Right.

22 MR. FARRAR: "What's my mechanism?" 3.7A, I think is something new.

23 MS. DORSEY: Okay.

1 MR. FARRAR: And, no, you don't have to put yours in writing. You can say –
2 any time before the minutes are approved you can state, you can state your request.

3 CHAIRMAN BROWN: Anyone have any further comments with regards to the
4 Rules of Procedure?

5 MR. FARRAR: How about –

6 CHAIRMAN BROWN: Is there a motion to – I'm sorry.

7 MR. FARRAR: No. I'm sorry. How about I just make all these changes, put them
8 in the packet, give you a fresh look at it, and the start of next meeting you can adopt
9 them? That way you don't even have to mess with, you know, making a motion.

10 MS. PERKINS: I want you to define something for me since we're just going to
11 put all this in a fresh document. And I've forgotten where it was. I wanted you to define
12 a term for me, Brad.

13 MR. FARRAR: Okay.

14 MS. PERKINS: "Qualified to vote." What is 3.5, page 5?

15 MR. FARRAR: Yeah. This pertains to – okay, I think I put that in there because
16 –

17 CHAIRMAN BROWN: You had a member absent when a vote -

18 MR. FARRAR: No. No. That's the "present" part. I think this is kind of
19 something that I brought in from – like, for example, if you're a Councilmember, but you
20 haven't been sworn in yet. You may be at the hearing but you may not have met the
21 qualification for – you know, there's oath for the Board. But it would be difficult for me to
22 imagine a Board Member who hasn't been appointed who is not also qualified to vote.
23 So I'm not concerned about that term, but I really can't tell you, necessarily, what the

1 qualifications would be other than being appointed. Maybe I should just put “present”,
2 “a vote of members present.”

3 MS. PERKINS: Yeah. Because I’m not sure what that means so I’m –

4 MR. FARRAR: “... present and qualified to vote...”

5 MS. PERKINS: If you can find out and it makes sense it’s fine with me, Brad. I
6 just –

7 MR. FARRAR: Well, I mean - you know – when I did this I was like, “Well, there
8 must have been a reason.” But I’m trying to –

9 MS. PERKINS: Yeah.

10 MR. TOLBERT: It’ll come back to you.

11 MS. PERKINS: It’ll come back to you.

12 MR. FARRAR: Okay. Yeah. It’s just not coming to me.

13 MS. PERKINS: It’ll come back, Brad.

14 CHAIRMAN BROWN: Alright. Are there any other matters to come before the
15 Board? If not, then the meeting is adjourned. Thank you.

16
17 *[Adjourned: 3:45 PM]*