

**Town of Zebulon  
Joint Public Hearing  
Minutes  
September 23, 2019**

**Matheny:** Robert S. Matheny, Mayor  
**B. Clark:** Beverly Clark, Commissioner  
**Beck:** Dale Beck, Commissioner  
**Strickland:** Curtis Strickland, Commissioner  
**A. Moore:** Annie Moore, Commissioner  
**Bumgarner:** Don Bumgarner, Commissioner  
**Slater:** Sam Slater, Town Counsel  
**Markland:** Lisa Markland, Town Clerk  
**M. Clark:** Michael J. Clark, Planning Director  
**Bradshaw:** Meade Bradshaw, Assistant Planning Director  
**J. Moore:** Joe Moore, Town Manager  
**Blount:** Gene Blount, Planning Board Member  
**Baxter:** Shannon Baxter, Planning Board Member  
**Nowell:** Stan Nowell, Planning Board Member  
**Luther:** Jessica Luther, Planning Board Member  
**Johnson:** Laura Johnson, Planning Board Member  
**Jenkins:** Stephanie Jenkins, Planning Board Member  
**Ray:** Larry Ray, Planning Board Member  
**Hayworth:** Tim Hayworth, Police Chief  
**Hollander:** Reed Hollander, Applicant Attorney  
**Weeks:** Mike Weeks, Applicant Attorney  
**Natelli:** Michael Natelli, Applicant, Natelli Communities  
**Goodman:** Jasper Goodman, Applicant, Landstar Investment Group  
**Massengill:** Brian Massengill, Natelli Communities  
**Pike:** Adam Pike, Site Designer, Stewart Engineering  
**Kirkland:** Rich Kirkland, MAI, Kirkland Appraisals  
**Reinke:** Josh Reinke, Traffic Engineer, Ramey Kemp  
**Pearce:** Dallas Pearce, Realtor  
**Boykin:** Brooks Boykin, Wakefield Mercantile  
**Grizzard:** Jason Grizzard, Resident  
**Amerault:** Jim Amerault, Resident  
**Roberts:** Richard Roberts, Resident  
**Desper:** Amanda Desper, Resident

[INAUDIBLE]

Matheny: Okay, call the meeting to order, and welcome everyone here this evening. This is for the purpose of two public hearings, the Town Board sitting here, the Planning Board across the front. Just so that you understand how it works, first let's—let me back up. Let's just get the agenda approved with a manager report added just in front of the adjournment. Do we have a motion on that?

Clark: So moved.

Bumgarner: Second.

Matheny: All in favor. Motion carries. Okay, thank you. We have two hearings that are quasi-judicial hearings, and the reason I want to talk about that for a minute is to be sure that everybody understands this is not like a public hearing, where somebody just gets up and speaks their piece and life goes on. It is run like a court of law. You might want to think of me as being the judge and the panels here being the jury.

Sitting next to me is our town attorney, and he will be the parliamentarian, to make rules, if necessary, or to interpret those rules. But it is an evidentiary hearing. And it's very much, again, like a court proceeding, and all persons giving evidence must be sworn in or affirmed and state their name, address, and be sworn or affirmed. And you need to come to the podium to do that.

Speaking to both boards, you must request to be recused if you have a fixed opinion on the matter, any undisclosed ex parte conversation. And if so, that needs to be shared. If you have a close familial business or other associational relationship with the applicant, any financial interests in the outcome, and the board must agree to recuse someone by motion and vote before

they are excused. So I'll ask both boards if you have any of these problems. If so, speak up now.

Beck: I had one of the owners who—does the accounting for us, to ask us [ph], after the annexation, whether we would approve the annexation or not, and I told them I had no idea.

Matheny: Okay. But it did—you don't think it affected your—

Beck: No.

Matheny: Okay, thank you.

Again, and I know I'm being a little redundant here, but decisions are to be made on the evidence presented, not hearsay or unsubstantiated personal opinion. If you're concerned about being able to consider any testimony, then ask our attorney for an opinion before proceeding. After each speaker has finished, then questions may be asked, first by the boards and then by interested parties. Once the hearing is closed, there's no further evidence can be presented. Any board member absent from the public hearing must become familiar with the evidence before voting on the issue, most commonly by listening to or hearing the tapes. So if anybody has any problems with any of that, or lack of understanding, speak up.

SU 2019-08 – Pearces Road

Okay. Having said all of that, I will call the first public hearing to order, SUP 2019-08, Pearces Road, and request a staff report.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Bradshaw: I do.

Markland: State your name and address, please.

Bradshaw: Meade Bradshaw, Town of Zebulon Planning Department. Good evening, board members, Planning Board members. The first case before you tonight is SUP 2019-08, Pearces Road. This will be the last special use permit that will require—the last subdivision that will require a special use permit. We recently adopted a text change that require subdivisions to have a conditional zoning. So subdivisions will not have to go through this quasi-judicial procedure anymore.

But getting on with the case, the request is Stewart, Inc. The property owner is Zebulon Investment Properties. The site addresses are 1309 and 1333 Pearces Road, looking right around at 112 acres. The current use is vacant. And the existing zoning is Residential-13. That was—rezoning was approved by the Board of Commissioners earlier this month.

The request before you today is to obtain a special use permit for a major subdivision consisting of 377 dwelling units. This is a vicinity map. The parcels outlined in red, you have a vacant property in the county to the adjacent north, the Weaver's Pond subdivision within town limits to the adjacent west. To the adjacent south, you have a county subdivision, the Hunters Greene, and then you have Pearces Road running north and south in this location. And this property is just north of the intersection of Pippin and Pearces Road.

This is the zoning data. Current zoning is R-13, within town limits. To the north, you have R-30 zoning, which is county zoning. To the east, you have



R-30 county zoning. To the south, residential 30 county zoning. And to the adjacent west, you have R-13 zoning within the Town of Zebulon.

So, the sign posted looking south on Pearces Road, this is looking north on Pearces Road. As you can see, Pearces Road is a two-lane road—single-family detached dwellings on Pearces Road. This is a posted sign where the existing stub street is in the Hunters Greene subdivision. These are single-family detached dwellings within the Hunters Greene subdivision. And this is the posted sign at the stub street of Weaver’s Pond to the west. And these are single-family detached dwellings within the Weaver’s Pond subdivision.

This is the concept plan that the applicant submitted, to kind of orient yourself. Pearces Road is running right along this area, and you have the single-family detached dwellings within the county to the adjacent south, Weaver’s Pond to the adjacent east—or west, I’m sorry.

Some features of the subdivision. There will be a 30-foot perimeter buffer around the property. The only place you would not see this 30-foot buffer is along Pearces Road, and they would have additional—just a different streetscape along Pearces Road.

The road improvements the town is calling for in the transportation plan is along Pearces—on Pearces Road is a three-lane ditch-to-ditch section, which is 44 feet width in pavement. And the ultimate right-of-way dedication is they’re dedicating half of 100 feet of right of way, which, ultimately, will be a five-lane section.

Throughout the subdivision, all streets will have sidewalks on both sides of the street. Of the homes within the subdivision, they'll be slab on grade. They will have a 24-inch masonry water table along all the single-family detached dwellings. The townhome units would have an 18-inch masonry water table. All of the—all elevations will have windows on all exterior sides. All front windows will have shutters and trim. Any corner side yard—corner side yard elevations will have windows, and they'll be treated as a front elevation.

There are stub streets to adjacent properties. This plan is showing an adjacent—two adjacent stub streets to the parcel to the adjacent north. They're showing a stub to the existing Weaver's Pond, to the west, and a stub to the adjacent south to the Hunters Greene subdivision.

The minimum open space provided is 20%, roughly 20 acres of the development will be open space, and the site's main access will be on Pearces Road. Looking at—looking around about 170 townhome units and then right around 200 single-family detached dwelling units. These are the findings of fact that you'll be used to evaluate the case when it is time for a vote. And the staff's recommendation is, well, we won't make a recommendation. That concludes my presentation. I'm available for any questions.

Matheny: Questions? From either board.

[INAUDIBLE]

Baxter: Is this on? Okay. So this one right here, Meade. This map. Talk to me about the wetlands that are pictured throughout. It looks like they are going to be building the road over a portion of the wetland.

Bradshaw: In this location?

Baxter: Yeah.

Bradshaw: Okay.

Baxter: Yes, they are?

Bradshaw: Yes, the street is—will impact the wetlands.

Baxter: Has there been any kind of analysis done as to what kind of impact that's going to be for the wetlands?

Bradshaw: I'll let the applicant elaborate on what kind of approvals or what kind of conversations they've had with the Department of Environmental Resources.

Baxter: Okay. And the stub street that is going down into Hunters Greene, does that mean that that's going onto county property from town property, to the south?

Bradshaw: Yes, that street will connect with a county—it's not a county street, but it's surrounded by county property, but it's public right of way.

Baxter: Okay. And then, to the east of the long row of townhouses on the eastern portion of that map, is there going to be a 30-foot buffer there, as well?

Bradshaw: In this location?

Baxter: Yes.

Bradshaw: Yes. There will be a 30-foot buffer here.

Baxter: And is that a question for the applicant, as to what's going to be placed in that buffer?

Bradshaw: The plan is to keep it—the existing vegetation there.

Baxter: Okay.

Bradshaw: But for whatever reason, if it does need to be disturbed, then the town would require a Type C buffer in place of the existing vegetation.

Baxter: Okay, thank you.

Matheny: Other questions? Other questions by any interested parties?

Grizzard: I have a question about the property—

Matheny: You have to come up here and be sworn in.

Grizzard: I'm Jason Grizzard. I live off Pearces Road.

Matheny: You have to be sworn in, sir. No. Put your hand on the Bible. Raise your—

Markland: Left hand on—

Grizzard: First time doing this, sir.

Matheny: I know. That's fine. I'm trying to help you.

Markland: Left hand on the Bible. Raise your right. Do you swear—

Grizzard: Left and raise the right. That's great.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Grizzard: Yes, ma'am.

Markland: State your name and address, please.

Grizzard: Jason Grizzard, 1304 Pearces Road. My concern is, are y'all going to take property from the residents on the eastern side of Pearces Road? Or are y'all going to use y'all's property to extend Pearces Road?

Matheny: I can't answer that question.

Grizzard: Well, who could?

Matheny: I know. I understand.

Bradshaw: The only road improvements would be along the site's frontage.

Grizzard: Yes, so I'm to the east. I want to know if y'all are going to try to take my property from me.

Bradshaw: Okay. Where—can you point where you are, up there?

Grizzard: Sure. So I'm right here.

Bradshaw: Okay. So no.

Grizzard: So I could go ahead and start planting trees?

Bradshaw: You would have to call NCDOT.

Grizzard: Well, if I plant on my property, I don't need to talk to them, right? If y'all aren't going to take it.

Bradshaw: Yeah, that's a conversation with NCDOT. Everything involved with this case is in this location, right here, on this side of the street.

Grizzard: So you aren't going to be moving the right of way over to the east?

Bradshaw: The right of way that's currently there is there, and if there is dedication, then that'll be done at a future date. But with this project, it's not—there's no impact on the west or the east side of Pearces Road.

Grizzard: Okay, that's a good thing. And one other concern, is all these loaded dump trucks going to be turning onto Pearces or possibly going down Hunters Greene? That's going to tear the road all to pieces—at least, definitely Hunters Greene. So is there a plan in place to maintain these roads?

Bradshaw: Usually they'd get a construction entrance. I don't know.

Grizzard: It's just that curve, they're going to have to turn really sharply. And all that weight is going to tear the road up.

Bradshaw: I don't know where the construction entrance would be. That's something maybe the applicant can elaborate on.

Grizzard: Okay. Just wanted to bring those things up.

Matheny: Okay.

Slater: Thanks. I want to remind everybody and counsel them (the Boards) as to the nature of this hearing. I appreciate the concerns and the turnout from everybody. The inquiry at this time is into the findings of fact that the board has to make as to the four issues. And so, you know, the town wants to hear the questions and concerns, but to the extent it's a question and not competent, material, and substantial evidence to be offered, related to one of the findings that this—these boards have to make tonight, that is what we're here to consider, so.

Matheny: Okay, thank you. Anybody else? Yes, sir.

Amerault: My name's Jim Amerault.

Matheny: You need to be sworn in, sir.

Amerault: That's what I'm waiting for.

Markland: Left hand on the Bible. Raise your right. Raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Amerault: I do.

Markland: State your name and address, and speak into the mic, please.

Amerault: My name's Jim Amerault, I am a resident of Hunters Greene, 9209 Hunters Greene Drive. My question for everyone here, is it necessary for this development to have an entrance onto Hunters Greene Drive, and if so, why?

Matheny: Okay, we are not in a position to answer those questions. The people that will be testifying can answer those questions, if you want to come back and ask them later. But this—neither of these boards have any say-so in that at this point.

Amerault: Because of the great impact that more traffic coming down Hunters Greene is going to have, I would like to have that, perhaps, in the record, as to why, when you have another entrance on this new development, 150 yards down the street, why does Hunters Greene have to be saddled with this extra entrance?

Matheny: And I understand your question. Again, the person to ask is the developer, when they come forward and testify, because we do not make that—

Amerault: Would you ask—

Matheny: No, sir. It—

Amerault: Would you ask that question for me?

Matheny: No, sir. It's up to you to come up and ask it. And you can come up, you're welcome to come up and ask the question. I'm not trying to fend you off, here; it's just not our responsibility to interpret, at this point in time. That time will come, but it's not right now.

Amerault: Tonight?

Matheny: It'll come later. The Planning Board may meet tonight, they may not. But they will meet, have a—I know, I'm sorry. But this is the way it is. They meet. They have a discussion, and then they make their recommendations back to this board, and then this board makes the final decision. And so in either case, there can be discussion.

Baxter: But, Mayor, he can come up and ask that question tonight.



Matheny: That's what I just said. You can come back and ask it.

Baxter: You can come back up tonight.

Matheny: We can't ask it. You can ask it.

Amerault: Tonight?

Matheny: Yes, sir.

Amerault: Thank you.

Matheny: Sorry, that's just the way it is.

Amerault: Yeah.

Matheny: I know, okay. Thank you. Anyone else? Okay. I'm sorry, folks, that's just the way the rules—the way this quasi-judicial—a regular public hearing is not run this way, but a quasi-judicial is, so I'm sorry. It's my job to interpret the rules. Okay, do you have anything else for me?

Amerault: No, sir.

Matheny: Okay. All right, then I would call forward anyone wishing to present evidence in favor of this development.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Hollander: I do.

Markland: State your name and address, please.

Hollander: My name is Reed Hollander, and my address is 4140 Parklake Avenue in Raleigh.

Matheny: All right, sir.

Hollander: Good evening, Mayor Matheny and members of the Town Commissioners and chair and members of the Planning Board. As I said, my name is Reed Hollander.

I'm an attorney representing Natelli Communities with regard to this special use permit hearing. I'm here tonight to respectfully ask that the Planning Board recommend the Town Commissioners' approval of the Pearces Road Subdivision Special Use Permit 2019-08.

Meade did an excellent job of describing the project, so I won't go over the things he already said. Joining me tonight are a few people I'm going to call up as witnesses in support of this project. We have with us tonight Michael Natelli and Brian Massengill of Natelli Communities, who are the developers of the project. Adam Pike with Stewart Engineering, the civil engineer and site designer who designed the site plan for this project. Josh Reinke, traffic engineer with Ramey Kemp, who performed the traffic impact analysis for this project. And Rich Kirkland, MAI appraiser with Kirkland Appraisals, who prepared a report that I will provide to you at the appropriate time, regarding the impact of the project on the value of adjoining and abutting properties.

As you've already said, and as these boards both know, this special use permit request is a quasi-judicial hearing, meaning that the Town Board acts like a judge in hearing the case. As the applicant, we have the burden to prove by competent material and substantial evidence the four required findings of fact under your ordinance at the time of our application. And those findings are set forth in Attachment 12 of your agenda items and were shown a moment ago on the screen.

I'd like to do so with our experts, and if I have your permission, Mr. Mayor, I'd like to call Adam Pike as a witness first.

Matheny: All right.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Pike: I do.

Markland: State your name and address, please, and speak into the mike.

Pike: Adam Pike, 608 Chapanoke Road, Raleigh.

Hollander: Mr. Pike, will you briefly describe for these boards your education and background?

Pike: Yes, sir. Adam Pike, graduated from NC State University with a Bachelor's in Science of Civil Engineering. Been practicing land development for over 13 years now, with various experiences, throughout the Triangle.

Hollander: And do you hold any professional licenses in the State of North Carolina?

Pike: I do. I'm a professional engineer in the State of North Carolina.

Hollander: Are you familiar with the area encompassed by this project?

Pike: I am, I am very familiar.

Hollander: Okay. Did you have any involvement in the site plan that's been submitted to the town planning staff?

Pike: I have. I worked with Natelli and the Town of Zebulon to create a site plan that was both in harmony with neighboring communities and also to—excuse me—to a standard to the standard of ordinances that they have provided.

Hollander: And just so the record is clear, which company do you work with?

Pike: Stewart, Incorporated.

Hollander: And you submitted the application for the special use permit?

Pike: I did, I did.

Hollander: Can you briefly describe the plan, beyond the items that have already been discussed?

Pike: Mm-hmm. Yes. Meade did a wonderful job giving a brief explanation of the site. To add to it, we have met all roads to the standards of the Town of Zebulon. We have included greenways connection and activity and recreation for the proposed lots that will have opportunity to have an experience around some of the natural features that we are preserving. We also are meeting the lot size requirements as specified in the code. As mentioned, connectivity is being provided that is key for a life safety standpoint and also for just sharing neighboring communities. That is the intent for the number of connection points that has been requested by the Town of Zebulon. And we also provided future connection points for any future development to the north so that there would be no issue on a later date with that connection point.

From a utility standpoint, we've coordinated with the City of Raleigh, done the necessary due diligence to understand that there will be adequate water and fire suppression present for the proposed development of 377 units, and also with a sewer capacity for downstream improvements, as necessary. That has been vetted out with the City of Raleigh. And as you can see in the site plan, those gray spaces, we have necessary storm water control measures throughout the site that will detain runoff during an event so that it will be less than or equal to—at a minimum equal to the runoff predevelopment. So ensuring that we don't have any negative impacts downstream.

Hollander: There was a question earlier about one of the roads—

Pike: Yes.

Hollander: —that crosses that blue section. Can you just speak to that?

Pike: Absolutely. We've had a preliminary analysis done. These wetlands were flagged by a professional, S&EC, and we took the information—the flagged information—and put it on our plans and we'll be crossing wetland. We have not yet engaged the Army Corps or NCDEQ as far as for necessary permitting, but that will be a requirement. And their requirements require us to make it as minimal as possible without very expensive mitigation costs. So it will be as minimal as physically possible to construct the road. That is the only crossing we have shown, so with the amount of features present, we feel the site does a good job in preserving the environmental features present.

Hollander: All right. Now, have you evaluated whether this proposed use would materially endanger the public health, safety, and welfare?

Pike: I have. As mentioned through necessary storm water features, maintenance, and open space provided, all efforts were put forth to ensure that the development not be a negative impact to the Town of Zebulon and neighboring parcels.

Hollander: So is it your professional opinion as an engineer that the proposed use would not materially endanger public health, safety, and welfare?

Pike: It is my opinion, yes, sir.

Hollander: And how is the site located with respect to things like fire and police protection, water and sewer? You spoke to that a bit, but can you just describe briefly?

Pike: Water will be—water mains will be—have a connection on Weaver’s Pond. The water main will run along the street inside the right of way, for the entirety of all collector and subcollector streets. Sewer will be captured mainly through gravity to the southwest, with the remainder having being gravity-fed to the northernmost part, where a lift station—a proposed lift station—will be installed. And a force main would then pump the wastewater to the sanitary sewer that connects to Weaver’s Pond.

Hollander: And are all the public safety facilities that you’ve described adequate to serve the site?

Pike: They are. They’re sized appropriately.

Hollander: Okay. And have you analyzed whether the site—the proposed use would be in conformity with the town’s ordinances and policies and land use plans?

Pike: I have. They meet or exceed all requirements specified in Town of Zebulon’s code. We are providing two sidewalks on both sides of the street. Only sidewalks present are required on one side of the street. Along with additional parking scattered throughout the site to help with visitors who would come to the subdivision, not create a potential concern with life safety or just connectivity. These spaces will help keep the roads in good travel—and provide good travel.

Hollander: All right. I have no more questions at this time.

Matheny: Thank you. Any questions from the board?

Baxter: Yep. All right, so the storm water runoff measures, none of those are going to be run off into any of the wetland areas?

Pike: They should not. We will have a discharge to the buffer to the north, but it will have to meet necessary diffuse flow requirements. That is a Department of Environmental Quality requirement that we'll have to meet.

Baxter: Okay, and the pump station that you were talking about, or you called it a lift station—you're talking about the pump station?

Pike: Yes, ma'am.

Baxter: And when you were talking about significant areas in this 20 acres of open space for recreation, can you point, on the map, where that's going to be? Because there's an awful lot of wetlands in this area.

Pike: Understood. If you look to the south, there's a dashed line with a gazebo shown. That's implied to be active, open space for the community's use. We also have an amenity center that is planned that will be for the town along with, I think, our multiple micro parks scattered throughout, just to give an opportunity for green space, for people to enjoy something.

Baxter: Are any of those micro parks going to be infringing on the wetland space?

Pike: None of them will be infringing on the wetland space. We are not allowed to encroach in that area.

Baxter: Okay.

Matheny: Other questions from either board? All right, questions from any interested party?  
Yes.

Roberts: Richard Roberts, 3232 Lacewing Drive, Zebulon.

Matheny: Okay.



Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Roberts: I do.

Markland: Thank you.

Matheny: Go ahead.

Roberts: Using your pointer, right here, my residence is approximately right about here. My understanding is that Weaver's Pond development provides from our rear lot line a 30-foot buffer to the new property. And from what you're saying, there's going to be, then, additional 30 foot to the back of those lot lines. So are you saying that you can assure that there's going to be roughly a 60-foot buffer from our lot line to the lot line right there?

Pike: It's code requirement to provide that, yes, sir.

Roberts: Okay. In this area right here, within our 30-foot buffer and your 30-foot buffer, there's a stand of trees that runs approximately 150 yards, and I'm not a botanist or anything like that, but I say these trees are at least 30 to 50 years old. Are you going to clear/cut all of those trees?

Pike: I cannot say for certainty. We'll do our best efforts to maintain them, but we have yet to dive that level into the grading plan to understand what impacts there'll be.

Roberts: Okay, and one last question is that, somebody from—I'll have to, for no other word, assume, which I don't like to use, but somebody came in and put in survey stakes approximately right here, here, and here. Those survey stakes are actually on the rear of all the Weaver Ponds residents' lot lines. Can you identify what those stakes are?

Pike: I cannot, without visually seeing them.

Roberts: Because those stakes encroach the 30-foot buffer that Weaver's Pond has.

Pike: Well, this project will have no ability to encroach into that land. We would have to meet that 30-foot requirement.

Roberts: Well, I guess my concern is, did Weaver's Pond build inappropriately to their plans?

Pike: I can't speak to that. I would have to look.

Roberts: I would like the board to be aware of that, that there are survey stakes from this organization that actually come within and encroach into the back of the lot lines on Weaver's Pond. Thank you.

Matheny: Thank you. Other questions? All right, sir. Call your next witness.

Hollander: Thank you, Mr. Mayor. I'd like to ask Josh Reinke from Ramey Kemp to come up.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Reinke: I do.

Markland: State your name and address, please.

Reinke: Joshua Reinke, 5808 Faringdon Place, Raleigh, North Carolina, registered professional engineer in the State of North Carolina and North Carolina traffic lead at Ramey Kemp & Associates, and I performed the traffic impact analysis for this.

Hollander: Well, you just went through three questions.

Reinke: Sorry, I blew through you.

[LAUGHTER]

Hollander: Moving along. So I would tender Mr. Reinke as an expert in traffic design. You said you conducted a traffic impact analysis?

Reinke: Correct. I've worked with the town and NCDOT from the scoping, through the review process with the traffic impact analysis. I have received comments back from DOT that we're in agreement with the mitigation we showed in the traffic impact analysis.

Hollander: Okay. And the traffic impact analysis is part of the information that, I believe, is in the agenda materials that both boards have before you. So you prepared a report that was provided to the town staff?

Reinke: Correct, yes. So—oh, sorry.

Hollander: And after it was provided to the town staff, did you discuss it with them or get their feedback?

Reinke: We've been working with—they have an on-call consultant that does their review.

Hollander: Okay, and who is that?

Reinke: WSP.

Hollander: That's a company name?

Reinke: Yes, correct. And I believe Sravya is out of town, I believe, but she has been working with us on the review.

Hollander: All right. And did you receive comments or feedback from her with regard to your report?

Reinke: Nothing that had anything to do with a difference in the recommendations.

Hollander: Okay. So she agreed with the recommendations that—

Reinke: Well, we haven't gotten the final from the town or WSP, only from DOT, to be implemented in the driveway permit. So we have gotten the DOT's comments back. They are in agreement, and the town's, we have not gotten the official, final comments.

Hollander: So the DOT is in agreement with the plan you've—

Reinke: Correct, yes.

Hollander: Okay. Had you analyzed whether the proposed special use would endanger public health, safety, and welfare?

Reinke: Yes, we have.

Hollander: And what conclusion did you come to?

Reinke: In my professional opinion, with the current layout and the mitigation provided in the traffic impact analysis that was agreed upon with DOT, it would not cause any safety concerns.

Hollander: All right. Now, as part of the site or the traffic study that you performed, there were certain discussions that took place between the town staff and the developer regarding certain special conditions? And are you familiar with those?

Reinke: Yes, I am. Go ahead, sorry.

Hollander: And did you review those special conditions?

Reinke: I did. In particular, one that differed from the traffic impact analysis and the DOT's approval was at the site driveway itself. And it was the southbound right-turn lane that showed in the—it showed a hundred-foot southbound right-turn lane, where DOT and the traffic impact analysis, due to the small number of vehicles expected to make that turn, did not recommend a turn lane there.

Hollander: Okay, so your analysis and the DOT's review both indicated that no right-turn lane was going to be needed. And can you show, using this—

Reinke: Yes.

Hollander: —diagram above, what right-turn lane you're—right-turn area you're talking about?

Reinke: Okay. Correct, yes, I can. So that is correct. So in the conditions, it showed the left-turn lane into the site, which was recommended in our traffic impact analysis and agreed upon with DOT. And then there is also a right-turn lane shown there, so it would be coming down and then turning right into the site. That was nothing that was needed to meet the town's development ordinance, any DOT standards, definitely not a safety concern, a capacity issue. It is something that, you know, like I said, was kind of a surprise when I saw that, as it wasn't recommended in the traffic impact analysis, wasn't brought up at any point, and wasn't part of the DOT's comments.

Hollander: Okay. So with respect to that piece, our request to the Town Board and the Planning Board is that that requirement of a 100-foot right-turn lane at that intersection be removed from the special conditions, based on the testimony that it's not needed. It wasn't part of the original traffic impact analysis and isn't required by NCDOT requirements. Are you—

Reinke: Yes, I—

Hollander: —in agreement with that?

Reinke: I agree.

Hollander: All right. And there was a concern expressed earlier about possible traffic congestion. Can you speak to that?

Reinke: Sure. And I think it was the potential connection—

Hollander: —into a neighborhood.

Reinke: Yeah. And that—not really my area of expertise as to why there’s that connection. I think it has to possibly do with the development ordinance, typically, that would have to do with safety concerns if there were something at another driveway that blocked that off, to make sure that emergency vehicles can respond within the site. We did actually study. One of the study area intersections in the traffic impact analysis was the connection of Hunters Greene to Pearces, and that showed to be at acceptable levels of service. We did assume some of the site traffic would utilize that, and that was considered in the traffic impact analysis.

Hollander: No further questions.

Matheny: Okay, thank you. Questions by either board?

Baxter: Okay, Josh. So on E2, under number four, it says that the town and NCDOT had determined a 3% growth rate, and that’s with regards to how you performed your study, yes?

Reinke: Correct, yes.

Baxter: Okay. So does that take into account the increase that’s going to occur with the added traffic from the proposed development, or is that just current conditions now, without the development?

Reinke: That's a good question. It's going to be a little complex of an answer. So it is a growth rate that we use. So we go out and get existing counts for the traffic impact analysis. We'll take that growth rate to the buildout year. Then we also included some adjacent development. So typically, if there are known developments in the area that you say, "We know this is going in. It has nothing to do with general growth." It's pretty specific to that area. We include those, also. Then, on top of that, we include our site traffic. So it is a combination of the growth rate, adjacent development traffic, and our site's traffic, are all in the traffic impact analysis.

Baxter: So just so I'm clear, it's—you've also taken into account the developments that are on the books but not necessarily built out yet?

Reinke: Correct, yes.

Baxter: Okay. All right. And so on some of these, I'm seeing the current LOS, level of service, for some of these roads are F's and E's and D's. And then, with the proposed conditions—let me just find the—

Reinke: Probably the Proctor Street one, I think, is one of the worst ones that shows.

Baxter: Correct. Correct. It still shows that the level of service is going to be pretty dismal.

Reinke: So, what we did there is it shows, you're correct, in background conditions—that's without the site but with the growth and the adjacent development, you start to see levels of service F. That's always a red flag for us. Obviously, when we look at combined conditions with the site traffic, it doesn't get better; it gets worse. So we looked at providing turn lanes there. Additionally, we looked at



signalization there. So when we look at a traffic signal, it must meet certain NCDOT warrants. Typically in residential areas, areas near school, it hits peak-hour warrants because there's a lot of traffic in a concentrated time.

What DOT prefers to see, but it isn't always just the case, is a longer time period of bad traffic. So four eight-hour warrants are other things they consider. So what we've recommended in this study, essentially, is saying, "You need a signal to make this work in an acceptable level of service." We recommend turn lanes. That's good for safety. To get to the level of service that's desirable, we need a signal. We recommend, essentially, this be monitored for signalization. So if you see these delays, do a signal warrant analysis, that DOT could potentially then require the installation of a signal.

Baxter: So do we still—we need signal analysis studies done for it?

Reinke: Correct. It would be monitoring, and I think some of this might come up in the—is it possibly the site plan, where they'd say, "Okay, some of these off-site things," I believe, and I don't want to misspeak here. But I know it is something that it is—DOT has indicated that, also, that we're going to monitor for signalization there.

Baxter: And what can we expect as far as improvement goes, if signalization occurs?

Reinke: Well, it's—at that particular intersection, we're looking at left-turn lanes for the eastbound and westbound, and then the potential traffic signal there, at the intersection. So then it would be at an overall level of service B with no approach worse than a C, which is better than existing conditions. That—sorry—that I'm

talking as Pearces and Proctor. And I'm not sure—is there another intersection, in particular?

Baxter: I was looking, also, at Zebulon and Pippin. And just so I have an understanding of what you consider acceptable—

Reinke: Yeah.

Baxter: —what level of service is that?

Reinke: So typically, level of service D. So we follow the town's development ordinance and the NCDOT guidelines, and I think at, once again, at Zebulon and Pippin, that—and I think E5 is a figure that'll show there are some improvements at that intersection that are part of the Weaver's Pond. So it starts to actually look better in background conditions, because they will be required to put in some improvements there. So it's actually—looks worst in the existing conditions, and it starts to get slightly better.

Baxter: Just from the flow that's going to happen from the development being put in, or—

Reinke: It's from the improvements that are tied to Weaver's Pond. So Weaver's Pond has improvements tied to their traffic study, much like our traffic study will have improvements tied to it.

Baxter: Okay. So—and there are a couple of these, where the level—the service level is an F. And where does it tell me what—[OVERLAPPING]

Reinke: Sorry, which intersection is the—?

Baxter: Pearces and Proctor.

Reinke: Okay. So that's, once again, as you work your way down, it has the existing background combined. And then, the ones with bold, with improvements, that's

where you start to see the level service improve. So we looked at the left-turn lanes there, as part of this site, installing left-turn lanes there. And you can see the F's go away. We still have D's and one E. And then we said, we ran an analysis with a signal. Once again, I can recommend a signal, but the NCDOT ultimately controls whether that's installed.

Baxter: And that's where it brings it up to a B?

Reinke: That, correct. Overall, yes, yes.

Baxter: All right. Okay. Thank you.

Reinke: So we're saying it is necessary. It's something that's outside of our control, so we looked at any other mitigation that can go in there that could help, knowing that the signal is the ultimate, but it's something that we can't just say, "Put in a signal." I wish I had that power, but I don't. DOT ultimately has to make that call, so we made other recommendations and kind of split it out there.

Baxter: Okay, so more studies need—the signalization study needs to be done.

Otherwise, we might still be at—

Reinke: It looks like—

Baxter: An E?

Reinke: An E for one of the approaches in the a.m. It looks like it's C or better in the p.m. Once again, better than even in background conditions without our site, because we're providing some mitigation. So it more than compensates for our site's traffic. It even helps what would happen just with the growth and the other developments in the area. But it doesn't get it to that level service D or better without a signal.

Baxter: Okay, thank you, Josh.

Reinke: No problem.

Matheny: Okay. Other questions by board members?

[INAUDIBLE]

Johnson: Okay, my question is regarding that traffic on Pearces and Proctor.

Reinke: Yes.

Johnson: And you were saying it's not enough for a signal, but what about a roundabout?

Reinke: Well, now, I don't want to say it's not enough. I don't want to be misquoted here. I'm saying the NCDOT essentially—as things build out, because there's a lot of unknowns right now. It's the growth continues to grow at that, Weaver's Pond comes in, our development comes in, and typically, before our development would build out, they'd say, "Now that we're closer to that future year, we want you to study it and show that that traffic still exists that you projected." And whether we should have a signal out there.

In terms of a roundabout, I don't—it's not something that the DOT talked about throughout the process or the town. I don't want to say it would work or didn't, because we haven't analyzed that. It could be a potential alternative that could be brought up with DOT, but right now, they are considering a signal, I'd say. But I like your way of thinking outside the box. We need that quite often.

Matheny: Okay. Questions? Any other questions from the board? Questions from an interested party? Yes, sir.

Amerault: Is this the time for my question?

Matheny: Yes, sir. Now is your time. Come on up.

Amerault: Do I need to be sworn in again?

Matheny: You've been sworn in. You're fine. Thank you.

Markland: Please just state your name, for the record.

Amerault: Jim Amerault. My question is regarding the entrance of this new development onto Hunters Greene—Hunters Greene Drive. Is that entrance necessary for this development to take place?

Reinke: Once again, I think this is really coming down to a development ordinance requirement more so than a capacity, but no, it's not necessary from a capacity, because we're providing mitigation at our driveway to accommodate traffic, and obviously, more mitigation could be provided if it was necessary. We did analyze it as such. It was our understanding that's a requirement, is the connectivity, and typically that is safety concern, is they want to make sure emergency vehicles can access. So we're required to study that as well as Hunters Greene where it connects to Pearces, to see if there would be any mitigation necessary there, because we would have some traffic that, likely, would go through that development.

So, I don't want to say it's necessary from a capacity, because it's not. I think it's just more of a safety concern that the town has put in their development ordinance to promote that connectivity and not force everything to come out at individual points on more major roads, and allow for emergency vehicles. But once again, you know, I'm not sure I'm the best, other than from a traffic capacity analysis standpoint, it would not be necessary.

Amerault: That would not be necessary.

Reinke: From a capacity standpoint. And once again, I'm not sure if this is really as much of a traffic question, here, as a development-ordinance-specific question.

Amerault: So where does my question go now for an answer? I wouldn't make such an issue out of this, but it's going to change my whole neighborhood. This entrance and exit is going to change our whole neighborhood, here. And I would sure like to know why it's necessary to put that entrance in there.

Matheny: Does staff want to try to answer that question?

Bradshaw: All right, so we have a Code of Ordinances Section 152.181(A)(3). Whenever a subdivision street continues an existing street that formally terminated outside the subdivision, or when it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of this street will be based upon the street in its entirety, both within and outside of the subdivision. What that means is, this street, Hunters Greene, the plan for it was never a cul-de-sac. It was a dead-end street, and it was always meant to be continued for when this parcel came in for development.

Matheny: Meade, can you speak to the safety issue?

Bradshaw: Well, as far as the safety component, we always want different access from different areas to get into the site. So if something were to ever happen to this entrance, right here, emergency response would need another way to get into the subdivision. So whether that's, if they're coming from the west, they can come in from Weaver's Pond, or if they're coming up Pearces Road, this would provide another way to get into this subdivision for emergency access.

Matheny: Okay, thank you.

Amerault: There's no way that I can truly tell you what safety issues you're bringing to Hunters Greene. Twenty years ago, when Hunters Greene was built there, they ended it in the road ending and not a cul-de-sac simply from a standpoint of the cost. They didn't know that there was going to be a Weaver's Pond back there, 25 years ago. They simply ended the road. If we need several entrances to get into a subdivision, we've existed for 25 years with a single entrance. So in our subdivision, for 35 homes and 35 families in there. But a single entrance was enough for us. You have several.

Matheny: Thank you, sir. Anyone else with a question?

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Desper: Yes.

Markland: State your name and address, and speak into the mic, please.

Desper: I'm Amanda Desper, 9009 Hunters Greene Drive. I live in the last, the triangle lot, right there on Hunters Greene. So it's going to be right there at my property line, where the road adjoins. I just have a question. Since we are not in the town, and my understanding is it won't be taken into the town, who will maintain or fix our road based on the added traffic that will be using our road? Who—I mean, that neighborhood is going to have the sidewalks and all that for the safety, but all of those cars that are now going to impact our road, you know, where does the safety come for our neighborhood and the—what it's going to do to just the wear and tear on our road. That's a lot of extra cars on a road that's not really maintained now. So I don't know if—



Matheny: Meade?

Bradshaw: So in the county, the streets are maintained by NCDOT. The streets within this subdivision would be maintained by the Town of Zebulon.

Desper: So is—will the county then actually start coming out and watching there? Because right now, there's really no need. Nobody ever really comes on our road to check anything, really.

Bradshaw: It won't be the county. It will be the State of North Carolina, or North Carolina Department of Transportation.

Desper: So we—when there starts being wear and tear on that, we have to contact them, or—?

Bradshaw: Yes.

Matheny: Okay?

Desper: Okay.

Matheny: Thank you. Other questions from interested parties?

Grizzard: I just have one more quick question. Jason Grizzard again. There's a lot of speeding going on Pearces Road—I would say some cars in excess of 65 miles an hour—and I would like y'all to consider dropping the speed limit down to 35, and possibly putting a four-way stop or something at Pippin, because the school is right there. I think that's an area that really needs to be looked at, and I just wanted to bring that up.

Matheny: Let me try to respond to that.

Grizzard: Yes, sir.

Matheny: Pearces Road is a state road.

Grizzard: Yes, sir.

Matheny: So we do not have the authority to modify the speed limit. What we can do is request modification by NCDOT. And we have done that in other cases. But a lot of people think that we can just say, "Oh, we're going to change the speed limits," and we can't. It's a little more complicated than that. To look at it, sure. You know? But just to get it done, it has to go through DOT.

Grizzard: I understand.

Matheny: They're usually fairly cooperative, especially if development comes along.

Grizzard: I think there was recently a wreck on Pippin and Pearces, and we know there's been four or five accidents along that curve, where y'all want to put the entrance. And I would foresee more accidents occurring and it's just—it really needs to be looked at.

Matheny: Well, I just wanted you to understand the process.

Grizzard: I understand, sir.

Matheny: Okay, thank you. All right, other questions.

Baxter: Could we have, Josh, could you speak to that a little bit as far as, like, traffic and speed? Is that anywhere in your wheelhouse?

Reinke: I'm going to say it's one of those things that I'd say I can—you know, it could be mentioned to DOT. It probably actually pulls more weight coming from the town than, you know, me. It's something that would ultimately be the DOT, so I couldn't make any promises, any which way, with that.

Baxter: Is that going to affect, of course, the level of service for all of the different—  
[OVERLAPPING]

Reinke: The speed limit, it would be minimal. Like I said, we do have the left-turn lane at the site driveway, which, you know, is always a good safety thing, to get a left turner out of the main line of traffic. And it would be designed based on the speed of the road, so that means a longer taper, those sort of things come into play. But right now, all those assumptions are based with the speed limit as it currently is.

Baxter: Thank you.

Matheny: Okay. Other questions?

Nowell: One, I got one from a development standpoint, I guess. Is there street parking, internally?

Reinke: Tag off to the site engineer.

Pike: We have five local spaces with various amounts of parking spaces scattered throughout the site. On-street parking is not expected.

Nowell: Will there be any type of limits as far as how many vehicles a homeowner can have?

Pike: We have to meet the Town of Zebulon's parking requirements based off single-family lots. So there will be a space—a number of spaces that are required to meet based off bed count.

Nowell: Is there any way that visitor parking can be managed or—to make sure, what I'm trying to get to, the homeowners are not occupying the visitors parking to where there is no visitors parking available, when needed.

Pike: The signage can be placed notifying that it's visitor parking spaces only, would be one approach. But as far as providing fines for it, I don't think that's in our purview.

Nowell: Okay, that's all. Thank you.

Pike: You're welcome.

Strickland: I want to ask him something. Adam, look, in my map, I cannot read—either my eyes is going bad or I can't read anything. Even that, I can't read. What is in the middle, the green in the middle, right there? What is that?

Pike: The—

Strickland: Is that a pool or—?

Pike: Let me see. You're talking about this right here?

Strickland: Uh-huh. What is that?

Pike: That's going to be the mini center, a clubhouse with a pool.

Strickland: Okay. And where's the mail kiosk? Is that—

Pike: The mail kiosk would be in that general vicinity, too, associated with the clubhouse.

Strickland: In that area, too?

Pike: Yes, sir.

Strickland: Okay, I just couldn't figure out what that was right there.

Pike: Fair enough.

Strickland: Thank you.

Pike: You're welcome.

Matheny: Okay, other questions. Yes?

Roberts: Richard Roberts, again. I just wanted to clarify and ask—not ask a question. I have no objections, whatsoever, to the subdivision. There’s—I mean, it is what it is, and I’d like to see our community grow. But my concern again about the buffers and with the developer.

Our prior meeting—and I failed to mention it—I spoke to the property owner, and I spoke to some of the representatives that were there. But still, I have a concern about the survey flags. They have pink and blue flags on them, the survey stakes. Speaking with the developer, this evening, nobody knows what these pins are. Nobody knows who’s put it in. I spoke with representatives of Weaver’s Pond. They did not do it. They assured me that our lot lines have a 30-foot buffer, from our lot to the property line of your property. These pins, again, encroach it. Can the Planning Department validate if Weaver’s Pond built per the specifications of the original approval that we’re going through now for Pearces Landing? Because I would like to see that 60-foot buffer from my lot line to their lot line and not it only being 30 feet.

And it concerns me that nobody knows what these survey flags are. And they’ve been out there twice. And the surveyors will not speak with us.

Bradshaw: Town staff can look to see what the buffer requirement was to Weaver’s Pond. Off the top of my head, I can’t tell you what that is.

Roberts: They said they were 30 feet.

Bradshaw: Okay. Town—we can look at that and provide feedback to you. If I can get your contact—

Roberts: Richard Roberts, 3232 Lacewing.

Bradshaw: Phone number?

Roberts: 770-825-2369.

Bradshaw: Okay.

Roberts: And I am speaking with approval from fellow members that live along Lacewing Drive, where those pins actually encroach our lot lines. Thank you.

Baxter: And Adam, you don't know anything about this, right? Nobody was dropping pins or surveying that portion?

Pike: I do not. I know that we require, through the SUP, to do a boundary survey, which legally determines the property and its location. I can't verify if those stakes were work that was done on our part or someone else. I don't know [ph].

Baxter: Do you know the last time you had guys out there, shooting lines?

Pike: We did the boundary survey, I think, in the winter, February or so would be—

Baxter: Okay. And, sir, you said that this has happened post-February, so after they—

Roberts: No, this is prior, why they were—when you cut the road in the back, to do the parking to see if it was buildable? That's when those—

Amerault: That was a number of years ago.

Roberts: All right.

Matheny: Wait a minute, look. If somebody wants to testify, you've got to come forward.

Roberts: I'm sorry.

Matheny: We can't just have open [OVERLAPPING] discussion.

Roberts: These pins were put in approximately three months ago, and they were out there again probably three weeks, maybe four weeks ago.

Baxter: Okay.

Matheny: So you know, if somebody wants to try to answer his question, you're welcome to come forward.

Roberts: My apologies for not following—my apologies for not following protocol.

Matheny: No, that's fine. I'm just trying to get everybody back and do the right thing because, again, it's different. It's a different type of hearing, and I'm sorry. But I want to get your answer—your questions answered. But you may have someone that could answer that, speaking to the attorney.

Roberts: Well, it's surprising that all the representatives are here, and nobody knows what these pins and flags are for.

Matheny: Okay.

Roberts: Somebody had to pay for them.

Matheny: Right. Okay.

Roberts: And it was done during the same timeline that somebody did the exploratory road into the back of the proposed Pearces Pond, and they came in there, I'm going to say, about two-and-a-half months ago, and cut a road into the back of it. It was at the same time. Thank you.

Matheny: All right. Other questions for either of the witnesses? Do you have others to call, sir?

Hollander: One more.

Matheny: Okay. All right.

Hollander: Thank you, Mr. Mayor. I'd like to call Rich Kirkland.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Kirkland: I do.

Markland: State your name and address, please.

Kirkland: Rich Kirkland, 9408 Northfield Court, Raleigh, North Carolina. Kirkland Appraisals.

Hollander: Mr. Kirkland, will you describe briefly your education and background?

Kirkland: Sure, I graduated from UNC Chapel Hill. After that, I went to appraising, went through an apprenticeship through that process. I've been a North Carolina certified general appraiser for about 23 years now. I've been working in the Triangle that entire time. I've also received my MAI through the Appraisal Institute, which is a national degree put out through the Appraisal Institute.

Hollander: And I'd like to tender Mr. Kirkland as an expert in appraisal. Mr. Kirkland, did you prepare an impact analysis with respect to this property?

Kirkland: I did.

Hollander: Okay, and I have copies, Mr. Mayor, if I may approach and hand out copies.

Matheny: You can give them to the clerk, if you'd like, and she can distribute them.

Hollander: Mr. Mayor, I'd like to request that the document that's just been handed out be added to the record in this matter. Mr. Kirkland, can you briefly describe what this report was designed to look at, what it was you did in preparing this report?

Kirkland: Yeah, certainly. This is an impact analysis, which really relies on a matched pair, or paired sales analysis. Paired sales analysis is really what the Appraisal Institute shows, is how you measure whether there's an impact on property value. It's simply where you look at a property that, you're looking for whatever you're testing for. In this case, I was looking at adjacency of large-lot subdivision next



to a small-lot subdivision, to see if there was any impact on property value. And so you look at a large lot in this case that's next to a subdivision, small lots, and you compare it to other places and other comparables that are not in that same situation. And you just measure for all other differences. You check for, you know, whether they have the same type of garage, or fireplace, square footage, things of that nature. But once you've netted everything else out, if there's anything left over, you would attribute that impact to the impact of that adjacency or that thing you're testing for.

So, I've gone through and I've done that analysis, looking at a couple of different types of properties in similar situations to this. And I've also looked at just general development patterns showing that this type of ongoing subdivision townhome mixed community is very common and typical in the area.

Hollander: Okay. What conclusions did you draw from the analysis that's shown in this report?

Kirkland: I found no impact on adjoining property values due to that ongoing daisy chain of subdivisions, as well as the mix of uses in that location.

Hollander: So do you have a professional opinion whether the proposed special use would or would not substantially injure the value of adjoining or abutting property?

Kirkland: I do.

Hollander: Okay. What's your opinion?

Kirkland: It's my professional opinion that the proposed project here will have no impact on the adjoining property values.

Hollander: And do you have an opinion about whether the proposed special use is in harmony with the area in which it's located?

Kirkland: I do.

Hollander: And what is that?

Kirkland: It's my professional opinion that this is in harmony with the area. It's consistent with the patterns you would see anywhere.

Hollander: No further questions.

Matheny: All right, sir. Questions from either board?

B. Clark: When you did this analysis, did you take into account that, if they put that road through, how that would affect Hunters Greene?

Kirkland: I looked at that, but again, any—the question that I'm looking at in this is—whether this development, anything unique about this one. Because given the zoning that's located on that property, any development of this property would require using Hunters Greene at a similar density. So there's nothing specific about this development that would be different from—that would have an impact on those—that would be any different from any other use of that same tract, to the highest, best use.

Matheny: Okay. Other questions?

Strickland: My question is, when you do appraisal—I read your report [ph]. But what does it do to farmland, a subdivision next to farmland? What does it do to that farm? Does it raise the value or—

Kirkland: Well, I appraise subdivisions and obviously appraise them in Wake County, this area, all the time. There's not a lot of farmland actually in Wake County. Most

of the farmland in Wake County is really subdivision land waiting to be developed. And you'll find that to be the case. And so that subdivision encroaching, go in that direction, is generally speaking, it's talking about increasing value, because it's bringing the development closer and closer to it.

Strickland: I didn't know if you took that in consideration when you did this report. I'm just curious because there's a lot of farmland in that area right there.

Kirkland: Right, again, but the land specifically in Wake County—most of the land in this county is really—it's land currently being used in agriculture as opposed to land that will be agriculture for the ongoing future.

Strickland: I'm afraid I know that.

Matheny: Okay, other questions from the board? All right, questions from interested parties? Okay, thank you, sir.

Kirkland: Thank you.

Matheny: Oh, I'm sorry. Excuse me.

Desper: Amanda Desper, again. And I'm in the triangle lot. And I don't guess I really have a question, just confusion. Because, like I said, I'm at the dead end of the road, and I don't see how adding all of those cars—we have a very safe neighborhood right now. We have little children who run up and down the road, people who ride their bikes and walk. And with—again, with us not having the sidewalks and all, and you add all these cars coming through our street—that's got to—I don't see how my lot right there is not going to decrease in value, with adding all this in my backyard, but also now the traffic coming through. I don't see how my—the value of my lot will stay the same.

And our neighbors at the end lot just sold as soon as they knew this was happening, and they're going to—the new people don't even know yet, but they're going to have four backyards coming up to their side yard. I don't see how that is going to—it's not—I don't see how—it's not harmonious to us as a neighborhood, and I don't see how that can't decrease the value of my property, putting all that compacted right beside my two acres. That doesn't make sense to me. So it's more a statement. I don't really have a question, I don't guess.

Matheny: Okay.

Baxter: Can you explain a little bit about how that can increase or have no impact, please?

Kirkland: Well, again, as I was saying before, given the requirements for interconnectivity, this land was always going to require that. Once it's got that zoning on there, any development this site is going to have that type of interconnectivity, and the zoning density allows for—even if you came down, even a little—you'd still have a similar situation, no matter what happens on this site. So that's neither here nor there.

Baxter: But that's also kind of not answering what I asked.

Kirkland: Well, what I can say is that the interconnectivity and that—that you've gotten that, it's typical; it's common in the area to have that interconnectivity—excuse me. You're going to have traffic that may use that road, and I would suspect it would. I think that anyone who bought along that road in the near—especially, I know that specifically. I looked at that end unit I think she was talking about that recently was purchased. They purchased it backing up to Weaver's Pond and having, again, when I looked at that, analysis-wise, it didn't have any impact on

the purchase or sale of that property. I don't know whether nor how knowledgeable that person was about interconnectivity, as far as it goes, but it's not a cul-de-sac. It's a dead-end road that's, clearly, going to have future development next to it.

You can just look at the same thing—any of the homes inside Weaver's Pond, itself. The homes that are out there that have later phases, that are going to be developed past it, all those are going to have additional traffic that come past them, as well. But people who bought homes in the early phases of phase one are clearly buying into all of the homes that sell after them.

Baxter: I can't speak for the woman that just came up, but I'm assuming that you're doing appraisals with the understanding that all of the streets that are going to be built out will have, like, sidewalks and all of these things that Hunters Greene doesn't currently have. And you're saying that that doesn't make any difference as far as the appraisal rate goes?

Kirkland: Again, I don't have—see a basis for that, no.

Baxter: All right.

Matheny: Other questions? All right. Thank you, sir.

Kirkland: Thank you.

Hollander: I have no further witnesses, Mr. Mayor, just a few concluding remarks, members of the Planning Board. The applicant, in hearings such as this, has the burden of proving the four required findings of fact by substantial, competent, and material evidence. I would note that the town planning staff, in their report, indicated that they found that number four of the four findings is met. They recommended that

you find that the proposed special use is in general conformity with the town's ordinances and policies, land use plan, et cetera.

The other three requirements are to find that the special use would not materially endanger the public health, safety, or welfare and not substantially injure the value of adjoining or abutting property, and that it will be in harmony with the area in which it's to be located.

You've heard today from three expert witnesses who testified, to their professional opinions, that the special use, as proposed, would not cause any of those harms, and that it meets the requirements of the town's ordinance. The burden then shifts to any opponents. There were a number of people who made comments, or rather, asked questions. No expert testimony was presented on behalf of any opponent, and they presented no evidence to contradict any of the findings that these boards require to make with substantial, competent, and material evidence. And as the North Carolina courts have said, competent evidence is not unsupported or speculative claims or unsubstantiated fears.

So we respectfully ask that the boards determine that the permit be issued as a matter of law and that the Planning Board recommend to the Town Board approval of the permit. Thank you.

Matheny: Thank you, sir. Okay, now we'll call for anyone wishing to present evidence in opposition to this permit. Okay, hearing none, we will close the public hearing, and I will remind the board that only testimony backed up with evidence is to be considered. So we will close the public hearing, and refer the matter to the

Planning Board that will come back with a recommendation to us at some future date.

SU 2019-10 – 1701 N. Arendell Avenue

Matheny: Okay, next, we have special use permits. Same rules apply. I'm not going to read them to you again, but Special Use 2019-10, 1701 North Arendell Avenue. I'll ask for staff report. And you'll probably need to be sworn in again; it's a different hearing.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Bradshaw: I do.

Markland: State your name and address, please.

Bradshaw: Meade Bradshaw, Town of Zebulon planning staff. All right, this is Special Use Permit 2019-10, 1701 North Arendell Avenue, internet café. The request is by Landstar Investment Group of NC, Inc. The property owner is Wakefield Mercantile, Inc. The site address is 1701 North Arendell Avenue. We're looking at a parcel that's just over an acre in size. The current use is a vacant building. The existing zoning is heavy business, and the proposed use is an internet café.

The applicant is seeking approval for a special use permit for an internet café. This is a vicinity map, outlined in red. You have North Arendell Avenue, running along to the northwest here. And it's right at the intersection of Green Pace Road, which runs to the southwest.

The subject's site is a discontinued commercial use. To the adjacent north, there's another discontinued commercial use. To the south, across Green

Pace Road, is an office complex, which is a BB&T, and then to the adjacent west, we have vacant property. This is a zoning map. Parcels to the north are zoned heavy business. As I stated earlier, the subject's site is heavy business. To the adjacent west, you have Residential-40, which is a watershed. Across Green Pace Road, to the south, you have heavy business. And then to the east, across North Arendell Avenue, you have heavy business and Residential-20.

This is a posted sign along North Arendell Avenue. This is the existing building on the property. This is looking northwest on North Arendell Avenue. This is looking southwest on Green Pace Road. This is the adjacent property, to the west, and this is that discontinued use, to the adjacent north.

This is the concept plan submitted by the applicant. The existing building is in this location, right here. You have North Arendell Avenue shown on this concept plan, at this location, and Green Pace Road located in this location.

The Code of Ordinances Section 152.1466, these are the general requirements for all internet cafes. Hours of operation, Monday through Thursday are 7:00 to 11:00, Friday through Saturday, 7:00 a.m. to midnight, and Sunday, 1:00 p.m. to 8:00 p.m. Another regulation is no screens, curtains, blinds, partitions, or other obstructions shall be placed between the entrance to the room where games are played and the rear wall of the room. So that a clear view of the interior may be viewed from the street. Standard C, there must be an adult, 18 years of age or older, managing the business on the premises at all times during the hours of operation. Standard D, the maximum number of machines, terminals, or computers for any operations business is 20. Standard E, no alcoholic



beverages shall be served or consumed on the premises of the operation. Standard F, there shall not be more than one internet café on the same property or in the same building structure or portion thereof. Standard G, no internet café shall locate within a thousand feet of the front door of any other internet café, school, adult establishment, or sexually oriented business. And Standard H, no one under the age of 18 can enter the premises.

Based on the photo that you previously saw, staff has determined that this is a discontinued use. To kind of summarize this bullet is that any use that has been discontinued for a consecutive period of 80 days shall meet all current code regulations. The town staff contacted the City of Raleigh Public Utilities, and the last water reading on the property was May 24<sup>th</sup> of 2018. Staff is of the opinion that, because of this, this property and building has been discontinued for more than 180 consecutive days.

If this were approved, to bring this up to all code regulations, on Green Pace Road, staff would require additional right-of-way dedication and street construction and bike lane construction or striping. Along Zebulon Road, we would require a right-of-way dedication, road construction, a 10-foot sidewalk, and light pole installation that mirrors the North Carolina 96 study cross-section. We would require a curb and gutter along Green Pace Road and north—Zebulon Road or North Arendell Avenue. This would create a controlled driveway access on Green Pace Road and Zebulon Road. Staff would require paved parking and striping for the vehicular service area. In doing so, this would have to conform to our parking ordinance. We require the site to be brought up [ph] to all

landscaping ordinance requirements, solid-waste conformance, lighting ordinance or conformance, and then any restrictions, because a portion of this property is in the watershed.

These are the findings of fact, and then, because of conversations between the applicant and staff and the concept plan submitted, staff does not feel it means finding of fact number four. That concludes my presentation. I'm available for any questions.

Matheny: Okay. Questions from either board? Questions from any interested party?

Weeks: Mr. Mayor, commissioners, members of the Planning Board. I got to be sworn in first.

Matheny: You need to be sworn in. There you go. Thank you.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Weeks: I do.

Markland: State your name and address, please.

Weeks: My name is Mike Weeks. I live at 612 North Wakefield Street in Zebulon. Mr. Mayor, commissioners, members of the Planning Board, I'm here on behalf of the applicant today, and we do take exceptions to the findings by the staff that this property has, in essence, been—has not met—has been abandoned for 180 days, and therefore much of our evidence will be presented in that respect.

I will make these general statements, as of what I'm aware of. This building on this property was owned by the Boykin family, who've been members of this community for many years. The actual building itself was constructed in

1973 and was owned by Mr. and Mrs. Boykin for that period of time. And based on the information—well, actually, based on my observation, it was always operated as a convenience store. 1995, Mrs. Boykin, the last surviving parent, died, and at the time she died, it was still being operated as a convenience store, and the name of it was La Campaña. And it continued to be operated as a convenience store until a night of 2018. And—am I out of order at this point? Making these statements?

Matheny: Are you what?

Weeks: Out of order.

Matheny: I don't think so.

Weeks: Okay. In any event, in 2000—prior to 2018, our evidence will show that the property, the Boykin family made the decision because of their ages, the fact that they had some—they lived some distance from town, that they wanted to sell this property. So in January of 2018, they placed it with Dallas Pearce, and much of the testimony that you will hear today with reference to what took place after 2018 will be presented by him. And the evidence will also show that in May of 2018, La Campaña closed almost—in fact, the owners of the property didn't discover it until they came back to sell and to check on the building and to see where the rent was, and they found that it had been closed.

So, having said that as my opening remarks, we would like to call as our first witness, Dallas Pearce.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Pearce: I do.

Markland: State your name and address, please.

Pearce: Dallas Pearce, 434 Rogers Road.

Weeks: Dallas, what is your profession?

Pearce: I am a realtor. I'm the owner of Dallas Pearce Realty here in Zebulon.

Weeks: And in addition to being a realtor, do you also have experience in licensing to be an appraiser of property?

Pearce: I am. I am a certified appraiser. I hold a SRA designation and I also am a general certified appraiser, appraising all types of properties and have been doing that for many years, and I did it full-time for 11 or 12 years.

Weeks: And could you give us some of your educational background—

[OVERLAPPING]

Markland: I'm sorry, Mr. Weeks, I cannot hear you. Can you speak into the microphone, please?

Weeks: Yes, I will. Could you tell us your qualifications and the educational background you have to qualify you as an appraiser?

Pearce: Yes. I went—I graduated in real estate, UNC-Chapel Hill, GRI designation. I'm a broker. I, again, went back to UNC-Chapel Hill and received my appraisal certification and degree, and I am also a general certified appraiser by the State of North Carolina.

Weeks: We'd like to tender that Dallas Pearce as an expert witness in the appraisal of real property. Dallas, when did you first get involved with the property that's now—that's before the Planning Board at this time?

Pearce: When I listed it, you mean?

Weeks: Yes.

Pearce: Yeah, I listed the property January 26<sup>th</sup>, 2018.

Weeks: And, at the time that you reviewed the property and you listed it, what, in your opinion, was the best use for that property?

Pearce: Highest and best use for that property was, in some way, using the present improvement to enhance the value of the property. There's more demand for that type of property than, obviously, it would be if it was vacant.

Weeks: And at the time that you listed it for sale, was the property, in fact, occupied?

Pearce: It was. Right around that time, it was occupied, and then shortly thereafter, the tenant did move out.

Weeks: And at the time, were you involved with the Boykin family and advising them at the time the tenant did move out?

Pearce: Yes. Yes, I was.

Weeks: And when you listed the property, what did you note were the improvements to the property in addition to the building?

Pearce: You mean as far as what they had spent on the property?

Weeks: Yes.

Pearce: Well, there had been a new roof put on, and they'd had some other improvements done inside the building, as well, but the roof was substantial, and a new roof had been put on it earlier—a few years back.

Weeks: And is it your understanding that, since 1990, they, in fact, expended over \$50,000—[OVERLAPPING]

Pearce: Yes, they did. I do.

Weeks: I mean, I'm sorry, 2010.

Pearce: Right.

Weeks: And is in your—to your knowledge, is this property served by a city sewer system or is it served by a septic tank?

Pearce: Septic tank.

Weeks: And was it your understanding, too, when you listed the property, it may very well have been served by a well that was located on the property?

Pearce: Yes, there's a well on the property, and I don't recall, but I think that perhaps Mr. Boykin may have said that it was hooked to city water, at that time, but it definitely was not hooked to city sewer.

Weeks: Now, what would your recommendations have been if you had learned that the property was hooked to city water? Would your recommendations have been that it should be disconnected from the water supply while you had it listed?

Pearce: Yes. It's our policy. Any property, whether it's vacant for a week or time much longer than that, we always recommend to our clients to disconnect the water. And the reason we do that is because of, even in summertime, you can have a water leak. And we have had tremendous problems with water damage. We've had to go in and have it remediated for mold. It's just a mess. So we—it's a whole lot easier just to disconnect the water and not worry about that happening.

Weeks: And that's why you're trying to sell it.

Pearce: Yes.

Weeks: Okay. Now did—to your knowledge, did the Boykin family continue to maintain electrical power to the property?

Pearce: They sure did. They absolutely did.

Weeks: In fact, it's connected now.

Pearce: It's connected now. It was never turned off.

Weeks: And have other parties been making use of this property? Well, was another party also making use of this property prior to the tenant moving out of the building?

Pearce: Yes. There's been, prior to the tenant moving out and to date, to present, there's a food truck that uses this about—I think five days a week. And he also uses the electrical hookup from the building to operate his food truck.

Weeks: And to your knowledge, is he presently paying rent to the Boykin family?

Pearce: He is. I believe he's paying 400 a month. I think that's what I heard or was told.

Weeks: And was it consistent with your recommendations and your efforts to market this property in its current zoning, heavy business, that they not lease the property to another tenant?

Pearce: Yes. We, in going along with our sales approach, we—once the tenant decided he was going to leave, I instructed Mr. Boykin that it would be in the best interest of our marketing plan not to put another tenant in there because—so we wouldn't have to work around the availability of them being there for us to show the building. And many times, if a tenant is occupying the building, most of the time, that make it a little hard for us to get in and out, because we've got to do it on their schedule.

Weeks: Now, in your opinion, based upon your marketing of property and selling property throughout this area, did you ever—did you believe that they ever intended to abandon this property?

Pearce: No. They never did. It was—in fact, almost all the feedback we got from everyone we showed the property to, they were interested solely in the building. That was the main reason they wanted to see the property, was because of the building and the contribution of value that the building placed on that property.

Weeks: And based on your knowledge of the situation since January 1 of 2018, did they intend to discontinue the use of the property by La Campaña?

Pearce: No.

Weeks: That was out of their control?

Pearce: It was out of their control.

Weeks: And are you familiar, generally, with the proposed special use, that the applicant intends to make of this property if the special use permit is approved? In other words, the internet café, are you familiar with—[OVERLAPPING]

Pearce: Yes, I am.

Weeks: —requirements of that? And do you—in your opinion, is it—will the proposed special use by the applicant materially endanger the public health, safety, or welfare of the people around the property?

Pearce: Not in my opinion, no.

Weeks: And in your opinion, would the proposed special use substantially injure the value of adjoining or abutting property?



Pearce: No, there's nothing about the operations of business that would degrade or diminish the value of any adjacent properties.

Weeks: Would it have any more impact on the adjacent properties than the past operation of a convenience store there?

Pearce: No.

Weeks: And based upon your appraisal of this property and your offer of this property for sale and your marketing plan, does the proposed venture—will the proposed venture at least be in harmony with the area in which it is to be located?

Pearce: Yes, it will. It's already zoned heavy business, and it's in the zoning classification that allows this type of business and other types of similar business, as well.

Weeks: And based upon your having lived in the Town of Zebulon and selling real estate here for many years and appraising property in this area, is the proposed best use—will it be in general conformity with the ordinances, policies, land use plan, thoroughfare plan or other plan officially adopted by the Board of Commissioners?

Pearce: It will.

Weeks: And do you agree with the findings by the Planning Department that this property has been abandoned and, therefore, they discontinued their use of the property for 180 days?

Pearce: I do not agree with that.

Weeks: That's all the questions.

Matheny: Okay, thank you. Questions?

Baxter: Mr. Pearce.

Pearce: Yes.

Baxter: Please explain to us your qualifications to speak to number one of our findings of fact? How are you qualified to make a statement about public health, safety, and welfare?

Pearce: Well, the only way I can answer that is in the valuation of property, there is a form of obsolescence. And that form of obsolescence is either physical to the property or external to the property. My estimate of value says that this use will not have any external obsolescence to any adjacent property or anyone else that has anything to do with that property.

Baxter: So again, do you have special training? Do you have any certificates? Do you have any certifications that enable you to make statements about the safety—

Pearce: I have training to make the statement, value of the property, this property is or is not affected and/or properties of any other are not affected or not affected.

Baxter: Okay, so you've given us testimony outside your wheelhouse, then, correct?

Pearce: Not necessarily, I don't think. In my opinion, I don't think it would have any adverse effect on what we're talking about.

Baxter: Okay, thank you.

Matheny: Other questions? Thank you, Mr. Pearce. Mike?

Weeks: Next witness will be Mr. Brent Boykin.

Markland: I'm sorry, can you speak into the microphone? I cannot hear you.

Weeks: Next witness will be Mr. Brent Boykin.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Boykin: I do.

Markland: State your name and address.

Boykin: My name is Brooks Boykin—it's close. Brooks Boykin, 4630 Oakwood Circle, Winston-Salem, N.C. 27106.

Weeks: Mr. Boykin, are you currently involved in the family business that owns the property in question?

Boykin: Yes, as you stated, in 1995, when my mother passed away, the family—immediate family members inherited the property, and we set up the Subchapter S, Wakefield Mercantile, to give us an umbrella under which to operate. And we have bylaws and codes that we all have to agree to, and we have. And I have been serving as the treasurer since 2008.

Weeks: And as part of your duties as treasurer, are you familiar with the operation of this business—the business La Campaña?

Boykin: Yes.

Weeks: And have they—was La Campaña a tenant of this property from the time, from 1995 until May of 2018?

Boykin: Yes, they were.

Weeks: And how was it determined by the business that La Campaña had vacated the property?

Boykin: Well, first I heard of it was from some locals, some of my friends and relatives around here. So I will have to say this was an Hispanic operation. It was an

Hispanic curb market. And communications was difficult. We normally had to send letters. We always had those translated. Sometimes we could talk to Mr. Luis Rodriguez's son, but he was only there some of the time, but bottom line is communication was very difficult. And no one locally in the family, really, wanted to have anything to do with this. So most of the operations were done by me in Winston-Salem, and my other brother—oldest brother—who lives in Dallas.

Weeks: Now, at the time the property was vacated by La Campaña, were you or any members of the family aware that it was—that the water supply came from the City of Raleigh?

Boykin: No. Everything I've known about that over the years, it has a well, and it has a septic tank, and that I was assuming it was continuing to operate that way. But on that topic, I know we did pay for the water/wastewater assessment to the city. The last payment we made on that was in August of 2009. That payment was \$318.88, and the previous yearly amounts were \$333.75. I don't know exactly how many years that went on, but I think it was about 10. So, but we did pay the assessment.

Weeks: So at the time that La Campaña vacated this property, you did not make any inquiries with the City of Raleigh about the water?

Boykin: I did not, correct.

Weeks: Did the family make a decision about whether to continue to have energy supplied to the building by Duke Energy?

Boykin: Yes, we immediately—we assumed the power bill, and it was never turned off.  
And I have bills to prove it.

Weeks: And as part of the services you buy from Duke Energy, do you also have two area lights that are outside the—

Boykin: Yes. There is a general area lot that lights the parking area. It's—they used to be mercury lights up on the poles. And there is also a directional light that shines onto the front of the store to keep it illuminated.

Weeks: And when did the company decide to sell the property?

Boykin: Well, as you previously stated, in January of 2018, we had a contract with Dallas Pearce. But my oldest brother—he likes to do things like this, and I'm grateful for that. He sold his own house, and so for a couple of years, he listed the property himself, including running ads in the Raleigh paper. And that was done 2017 and 2016, I know, and I don't have the exact dates. But it was for about a two-year term, and we had no luck with that. And seeing what was happening, we decided to go with Dallas Pearce, put a professional on it.

Weeks: Okay, at the time that it was listed with Dallas Pearce—which I believe was on January 1 of 2018—La Campaña still occupied the building, is that correct?

Boykin: Yes, yes. And on that point, there has been continuous, uninterrupted economic activity from this site since the building was built in 1973.

Weeks: Now, from 2010 through date, how much money did the family spend on maintaining this building?

Boykin: Okay, you had the total almost correct. The total is \$50,600. And here's how it went. In December of 2010, this building has a flat roof. We had that entire roof

replaced. That cost was \$21,500. I can email receipts, I mean, contracts to anyone who needs to see this, as necessary. Creech Roofing did that. We had to do the guttering the next month, \$500. In September of 2011, we had the parking lot repaved. It had some potholes and so forth. Champs in Wendell did that. That was \$14,762. A year later, per his suggestion, we had the parking lot resealed and re-stripped. That was \$1,393. And if you remember from the pictures that we showed earlier, the front of that building, what you saw was some really good steel put in there. But earlier, it had shingles, and it was in rough shape. So that whole works was rebuilt and recovered in 50-year-guaranteed steel. That—the cost of doing that was \$12,412. That adds up to a total of \$50,600. So that’s what we’ve put into that building over the past several years.

Weeks: Now, in addition to La Campaña, was someone—did you have another tenant on—or was there another person operating on the property?

Boykin: Yes, as mentioned earlier, I can also get his name to you. I don’t have it in memory right now. But I have all of these records. There was—a food truck was operating, and he was operating on that property. I don’t know exactly when it started, but he was operating also on that property in the year 2017. I know that for a fact.

Weeks: Did he also—was he continue to operate through 2018?

Boykin: Yes, he has operated continuously at that site and still does today. And you were right. He pays us \$400 a month to do that.

Weeks: And do you provide him with electrical power from the property?

Boykin: Yes, we—as I've stated, the electrical power never was cut off. It was continuous. We pay the bills. You know, I have copies of some of the bills. One came as I was leaving my driveway to come up here today. The current bill came, and I can show you that. But we have kept the power on continuously.

Weeks: Now, in addition to having that particular tenant there since May of 2018, have you also arranged for the property to be maintained by one of your nephews?

Boykin: Yes. The two of us who do most of the work—as I've said, I live in Winston-Salem. My other brother lives in Dallas, so we work over the phone a lot. But the truck operator agreed—we have an agreement with him. He agreed, too, for this paying this rent, we supplied the electricity and he agreed that he would cut—keep the grass cut—there's only a little of it around there—and keep the place neat—trash pickup and so forth.

But we also—I have a nephew who lives within two miles of this store. And he's 14 years old now. And any time you offer him a chance to make money, he jumps at it. So once a week he goes by. He's our backstop to make sure the property is in good shape, and he sets out the trash and recycle bins for Monday pickup. So we do have someone locally to be our eyes on the property.

Weeks: Now, since 1995, when your company has owned the property, have you ever had anyone to complain to you or any members of your family that the way you were using the property endangered the public health?

Boykin: No, none whatsoever. To my knowledge, there's never been any adverse incident at this property, ever, in my—since 1995.

Weeks: And had any complaints from others that they were concerned about their safety or welfare?

Boykin: None whatsoever.

Weeks: And have you received any complaints from the adjoining—people who own the adjoining property of which you were an owner of some of the adjoining property until recently, is that correct?

Boykin: That's correct, but it's—it was farmland. It still is. So there were no residents on any of our property living close by. It was only land.

Weeks: And the property was adjoining you to the north when it was actually being occupied. That was also a business, is that correct?

Boykin: The property immediately to the north, I don't think, has had any activity for a long time.

Weeks: Okay.

Boykin: Immediately to the north. Now, just to the north of that, there is a—my best understanding, it's kind of an automotive maintenance facility. You know, they've never complained to us whatsoever.

Weeks: And were you aware that the proposed venture use was not in general conformity with the ordinances prior to being advised to—by me that that was a position that the town staff took?

Boykin: Could you repeat that? [LAUGHS]

Weeks: Were you aware that the town staff was of—said that you were no longer in compliance with the ordinances of the Town of Zebulon because you had discontinued the use of the—[OVERLAPPING]



Boykin: No, the first I knew of that was in the last two or three days.

Weeks: No further questions.

Matheny: Thanks.

Boykin: Can I look over my notes? Could I make—maybe make an additional remark or two? Okay.

Worth noting is that before we—and this is kind of a repeat, but I want to repeat it. Before we listed the property with Dallas Pearce, we tried to sell it ourselves. Now previously, a remark has been made about the age of the owners. The youngest family members in this are in their early 60s. And the oldest is 86, and I'm kind of in the middle of that. So what was mentioned earlier—the fact that we wanted to sell it, was partially for that reason, because of our ages. Also, worth noting is the fact—I mean, we have tried to get someone to buy and operate that property for several years now.

One thing that has happened that is worthy of note is, just a quarter mile to the south—I mean, those of you around here know this—all of where the Sheetz gas station is down there. I mean, there's a lot of development there, and all of that has obsoleted our property in terms of value, in terms of a curb market. So that's just a fact of life, something that, you know, we have no control over, for sure. And you know, it's—it can't compete with what's just to the south.

I also want to say the property taxes are current on this property. And it was in August, I paid the bill. It was in late August. The property passed the fire inspection. We paid that, \$60. And the insurance has never lapsed on the building. So we have not been negligent in any way in those regards. Also, I

would like to state that having a viable economic operation at this location can only help the area. And I don't see what's being mentioned as the purpose of this facility being an internet café, I don't really see the traffic as being any—having any more of an impact from that operation than it did from its operation as an Hispanic curb market.

Matheny: Okay.

Boykin: And I think that's it.

Matheny: All right, thank you. Mike?

Boykin: I mean—

Weeks: No further questions.

Boykin: Okay.

Weeks: We call as our next witness Mr. Goodman.

Matheny: I did not ask if there were any questions from either board. My apology for that.  
Yes?

Boykin: Any questions?

Matheny: No, hold on. I'm asking. Any questions from an interested party?

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

M. Clark: I do.

Markland: State your name and address, please.

M. Clark: Michael Clark. I currently serve as the planning director for the Town of Zebulon. And the question, specifically, is to the current property owner.

Matheny: Mr. Brooks, would you please go back to the podium?

M. Clark: Can you tell me, sir, if the—as the owner of the property, are you aware if the food truck that has been operating there for several years has obtained the necessary permits in accordance with Section 152 of the ordinance, specifically, a mobile food vendor permit?

Boykin: I don't know. I know he may have a permit; you know, whether or not he has a permit for this particular property, I don't know about that. But he has been operating his food truck for some time.

M. Clark: Okay, and can you tell me if the permits have been renewed each year in accordance with the required applicable section of the ordinance?

Boykin: I do not know.

M. Clark: Okay. Thank you.

Matheny: Other questions? Thank you.

Weeks: We call as our next witness Mr. Jasper Goodman.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Goodman: I do.

Markland: State your name and address, please.

Goodman: Jasper Goodman, 4501 New Bern Avenue, Raleigh, North Carolina.

Weeks: Mr. Goodman, are you a principal in the Landstar Investment Group?

Goodman: I am.

Weeks: And have—and is Landstar Investment Group the company that has applied for the special use permit?

Goodman: It is.

Weeks: And is Landstar Investment Group getting into a contract to purchase this property from the Boykin family?

Goodman: Yes.

Weeks: And sir, could you tell us, generally, about what your profession is?

Goodman: I'm a real estate investor. I buy residential and commercial real estate.

Weeks: And in addition to that, do you also have interest in other internet cafés?

Goodman: I do. I managed several for about three or four years, and then I just opened one myself about nine months ago.

Weeks: And where have those internet cafés been generally located?

Goodman: In Raleigh.

Weeks: And as part of your management of the those cafés and the one that you own, are you on the premises very often?

Goodman: I am.

Weeks: And could you tell us generally about what hours of those particular cafés you managed are?

Goodman: 9:00 a.m. to 12:00 a.m. Monday through Thursday, and then Friday and Saturday it's 9:00 a.m. to 2:00 a.m.

Weeks: And was the site plan, which has been submitted to the commissioners and Planning Board, was that site plan prepared at your request?

Goodman: Yes.

Weeks: And was that generally how you plan the number of stations and so forth, you plan to have in the building that you have offered to buy from the family if this special use permit is approved?

Goodman: Yes.

Weeks: Now, can you tell us, generally, so far as traffic is concerned, what type of traffic do you generally have to your internet cafés in your other areas, and at what time of day your traffic is highest?

Goodman: I would say from 9:00 to maybe 4:00 is very minimal. Maybe from about 5:00 p.m. to 8:00 p.m. is maybe, I would say, 10 to 15 cars.

Weeks: There'll be 10 or 15 cars there at any one time?

Goodman: Yes, but basically between those hours.

Weeks: And what—when you designed this building for use as an internet café, how many entrances were you going to have there?

Goodman: How many entrances?

Weeks: Entrances, yeah.

Goodman: Just one.

Weeks: And can you tell us what kind of security you're going to have in the building?

Goodman: We have an armed security licensed firm that we use for all our cafés.

Weeks: And are they going to be—will they be present for all hours of the operation?

Goodman: No, sir. They normally come in from 5:00 to close.

Weeks: And based upon your past management of the internet cafés and your ownership of the current one, have you had any problems with maintaining order in these internet cafés?

Goodman: None.

Weeks: Have you ever had any complaints so far as your operation of other internet cafés, for any activities that took place outside?

Goodman: No, not to my knowledge.

Weeks: And are you familiar with the ordinance that the Town of Zebulon has for internet cafés?

Goodman: Yes.

Weeks: And do you see any problem that you can operate an internet café on the Boykin property that is in compliance with that ordinance?

Goodman: No, I don't see any problems with that.

Weeks: Okay. And in your experience in operating internet cafés, are you aware of any actions that have taken place that have endangered the public health?

Goodman: No.

Weeks: And in your experience in operating internet cafés, have they ever posed, to your knowledge, a threat to community safety?

Goodman: No, sir.

Weeks: Or welfare?

Goodman: No.

Weeks: No further questions.

Matheny: Okay. Hold one second. Questions from either board? Okay, now, questions from—

Boykin: I have one final remark.

Matheny: Now, wait a minute, whoa, whoa, whoa. You have a question for this gentleman?

Boykin: No.

Matheny: Okay, thank you. Does any interested party have a question? All right. Thank you, sir.

Goodman: Thank you.

Matheny: Mike, do you want to call your other witness back? Mr. Boykin?

Weeks: Mr. Boykin?

Boykin: Brooks Boykin, again. Okay. One thing I need—felt like was necessary to mention, and here again, I can provide proof if I need to give—

Matheny: Let me be clear about that.

Boykin: Yes?

Matheny: If you don't bring it here tonight, you can't submit it.

Boykin: Okay. I have it.

Matheny: So, but I mean, if you want to submit it as evidence, you can do so, but you can't do it once we close the public hearing.

Boykin: Right, so I can do that after I make this remark.

Matheny: Yes, sir. You can do so.

Boykin: This is just a monetary statement. I'm the treasurer. Right now, this concern, Wakefield Mercantile, we have a total of \$21,217.50. That is the total financial worth, in cash, of this entity. And the only reason I mention this is if this request is denied, then the food truck guy pays us \$400 a month—the insurance on this property, right now, is \$200 a month; the power bill runs 120 to 170 or \$80. So the money from the food truck basically just keeps us floating in that regard, in terms of those expenses. The property tax on this property currently is \$4,402. This year's bill is \$4,402. So even if the food truck operator continues to operate on that site, we only have enough cash to get us through about three years. So I

just wanted to make that remark, and I will have copies of the statements that prove what I just said, and I will—you know, I don't have copies for everyone.

Matheny: If you want to share any of that with Ms. Markland, over here. It's just, you know, once we close this—[OVERLAPPING]

Boykin: Right. I understand that. That's why.

Matheny: Okay. Mike?

Weeks: Yeah, I was going to see if anybody else had any further questions. I don't have any.

Matheny: Well, I need to do that. Sorry. Does anybody have any questions? All right, thank you. Do you have anything else, Mike?

Weeks: I don't have anything further. I'd like to make some closing remarks after—

Matheny: All right. Okay, is there anyone that would like to present evidence in opposition?

M. Clark: The town would like to call Chief Hayworth up to provide testimony based on his personal experience of the property and similar activities and uses.

Markland: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Hayworth: I do.

Markland: State your name and address, please.

Hayworth: Tim Hayworth, 1001 North Arendell Avenue, Zebulon, North Carolina.

M. Clark: Chief, can you provide a brief description of the previous activities that occurred when the previous business was in operation, in terms of any illegal activity or other events?



Hayworth: Yes, armed robberies have went back at this location for many years. In fact, in 1992, which was before my time as a police chief, but in 1992, the owner of the store at that location, Joe Perry, was killed in an armed robbery at that location. I personally have been at two armed robberies at a location, at the Hispanic grocery store, which was located at Green Pace and North Arendell. And in one of those situations, we had a clerk was shot in the hand and in the face. And another clerk was grazed by a bullet in that particular shooting.

And after that, the store that operated at that time actually hired off-duty police officers because they had—continually—they had issues involved with people entering that store with weapons and trying to rob that store. They hired off-duty police officers for nearly a year. Every single night of the week, a police officer sat in that parking lot from, I think it was 8:00 p.m. until closing.

And it's the location on the edge of town, with many different escape routes for drivers, has just made that a dangerous place to operate.

M. Clark: Okay. The first of the findings of facts notes that the proposed special land use, or proposed special use, will not materially endanger the public health, safety, or welfare. In your professional opinion, have you heard testimony tonight that would lead you to be confident that that finding has been met?

Hayworth: In my professional opinion, the internet cafés are inherently dangerous. And I have, for many years, worked with law enforcement all across North Carolina as we have looked at various legislation involving internet cafés. I've been involved in studies, I've been involved in surveys, I've been involved in conversation with other police chiefs, and I've had personal knowledge of the crimes that occur.

These are cash businesses. There's a large amount of cash on hand. The applicant tonight spoke about a security guard.

In Burlington, in 2018, a security guard was murdered in an internet café in an armed robbery. There's been recent armed robberies in Williamston. There's been recent armed robberies in Raleigh. The fact that these businesses are open late at night and they have cash on hand, and people in the parking lot have cash on hand, make them inherently dangerous.

M. Clark: Thank you.

Hayworth: Thank you, sir.

Matheny: Questions from either board? Questions from interested parties?

Baxter: Chief?

Matheny: Oh, I'm sorry.

Baxter: So considering where this is located and the proximity to the highway, do you think it would be taxing at all on your personnel if they were engaged in other areas of our town, to have to go to a potential armed situation at that location?

Hayworth: I believe so, and because of the fact, this location was taxing on the police department when it was a convenience store. And so where it's located, there are what—we look at 64 as a corridor, and several years ago, I presented, in the town budget, corridor crime that comes off of that freeway. And also the connection between these roadways and Henderson, North Carolina, and Oxford, North Carolina. We have this transient crime that uses the corridor 64 and 96. And with taking those things into consideration, I do believe that location is inherently dangerous for this sort of operation.

Baxter: Thank you.

Matheny: Okay. Other questions from either board?

Strickland: Do we have any more in town, Chief? Any more internet cafés?

Hayworth: Excuse me, I couldn't understand—

Strickland: Do you have any more in town, internet cafés?

Hayworth: There is—there was operating an internet café over on Gannon Avenue, and that's the only one that we've had here.

Strickland: Is it still operating?

Hayworth: It is, I believe. It's a very different location, and it's a different scenario. And I think it's definitely—

Strickland: Location.

Hayworth: That location to this location is apples to oranges.

Strickland: So any problems at that one? Any—

Hayworth: We've had a few. Not very many.

Strickland: Okay. Thanks.

Matheny: Okay. Other questions from the board? All right, interested-party questions?  
Mike?

Weeks: Chief, you caught me off guard.

Hayworth: Good.

Weeks: But I like to cross-examine. But are you aware that PNC Bank in town has been robbed three times over the last five years?

Hayworth: Not in the last five years. It's been robbed, but not three times.

Weeks: That's been the last seven years?

Hayworth: It may have been robbed three times in the last seven.

Weeks: Okay. And by virtue of PNC Bank having been robbed three times in the last seven years—and these were armed robberies, is that correct?

Hayworth: Yes.

Weeks: Does that make that an inherently dangerous operation?

Hayworth: Banking is inherently dangerous. There's a lot of things that banks have set up, with cameras—and the amount of cash that they have on hand—they do a lot to control that. And in fact, but we've had no injuries in any of our banks.

Weeks: The fact that they're inherently dangerous, then, based upon what you're saying, then they probably should have their own security sitting in there, is that correct?

Hayworth: It would not be a bad idea.

Weeks: But they're not dangerous enough that they do that, isn't that correct?

Hayworth: It's correct.

Weeks: And yet we have Mr. Goodman here, says that each one of his operations, that he provides armed security.

Hayworth: Mr. Weeks, it's very different. These banks aren't open until two o'clock in the morning.

Weeks: Well, they actually—the state—the town ordinance won't allow this to be open past 11 o'clock in the evening.

Hayworth: I'm sorry. I thought I heard testimony that it would be open until 2:00 in the morning.

Weeks: He has some that's been open until two o'clock in the morning. He also testified that he hadn't had any problem at either of his establishments, and he's been

managing and he's been operating it for several times. And he operates them in the City of Raleigh.

Hayworth: Is that a question?

Weeks: Well, I'll say, he operates them in the City of Raleigh. Would you say that Zebulon, just by nature of being Zebulon, is inherently more dangerous than the City of Raleigh?

Hayworth: No, I would not.

Weeks: You wouldn't say that?

Hayworth: No.

Weeks: Okay. So it all comes down to a matter of opinion with you, as to whether or not it's inherently more dangerous or not. Is that correct?

Hayworth: It is my professional opinion. I've been on this job for 31 years, so.

Weeks: But you haven't done a detailed study of these things and written reports about how much more dangerous they are.

Hayworth: No. I've done studies, but I've not written a report, no.

Weeks: And you're not recommending that the banks have armed guards in them or be closed in order to justify their existence, are you?

Hayworth: No, I'm not.

Weeks: Okay, and there are other operations in town that do have their issues, as well, such as restaurants and bars and so forth.

Hayworth: Certainly.

Weeks: Okay. But you're not contending that all bars and restaurants be closed because—or not be permitted because they're inherently dangerous, are you?

Hayworth: No, I'm not.

Weeks: Okay. Thank you.

Matheny: Thank you. Other questions? From either of the boards or—yes.

Boykin: [INDISCERNIBLE]. Do I need to go up there?

Matheny: Yes, sir. But it needs to be a question.

Boykin: Brooks Boykin. Do you have stats from lots of different businesses that point to the fact that this particular location is, in fact, inherently dangerous? Can you give us stats from other businesses around town to back up what you're saying?

Hayworth: I've been the chief here 19 years. I know how many times businesses in town have been robbed.

Boykin: Right, but the numbers you quoted, you know, I don't have the stats either, but other places have problems, also, robberies—homes included. So, you know.

Hayworth: We have, outside of the—actually, First Citizens Bank, we've had—there's no place in town that's been robbed more times than that location. And there's been no place in town with the amount of violence that's occurred in the robberies than that place. None.

Boykin: Well, you know, if I don't have a report to see that empirically compares site by site by site, you know, I basically have to take your word for it, and that's it, right?

Hayworth: Yes, sir. Thank you, sir.

Matheny: All right, any other questions? Thank you, Chief.

Hayworth: Thank you, sir.

Matheny: Mike, you had closing remarks?

Weeks: Speaking to, first of all, the question of whether or not it's a danger to the public, I think that the fact that Mr. Goodman has stated that he intends to control the access to this property through one door, that he also has—that he will have security after five o'clock at night and till regular operating hours to prevent any untoward events. And furthermore, the fact that he is an experienced operator and operated in a much larger metropolitan area, and that the evidence from him is that he's never had any problems with these things—that there's nothing inherently dangerous about this particular business that he proposes to operate here under the special use permit.

And the main issue, I think, and one—and the other main issue in front of the boards is the question of whether or not there's been a discontinuation of the use of this property. And for 180 continuous days. And, of course, it is a nonconformity. The property, as it was being used, up until the La Campaña moved out, the property, at that time, was in nonconforming use. But it was not nonconforming when it was first opened. It was a conformed use, and it continues to be a conforming use on a heavy business, continues to be a confirming use on a heavy business as a convenience store.

What made it nonconforming, as so often happens in towns—and no fault of anyone—is as towns grow, they change the requirements for the sites. And the site requirements are what make this, now, a nonconforming use. So it's nothing that the property owners, themselves, have done to create a nonconforming use there. And because, when they opened the property and began using it, it did

conform, they actually have a vested property right in continuing to use this property for uses permitted by heavy business.

So, as I understand it, once we make a prima facie case that we have complied with the four requirements under the special use permit, it is up to the town to carry the burden of proof to prove, by the greater weight of the evidence, that we have failed to prove our case.

The other thing is, on the discontinuance, as required—as the ordinance says, there was a case that was handed down in 1989. It was entitled *Flowerree versus City of Concord*, and that dealt with where there was a nonconforming use of a duplex. And the duplex went vacant for three months. And then when the landlord found a tenant for the duplex, the Planning Department took possession that he had forfeited his right to continue the nonconforming use. And so, of course, he appealed it to the Superior Court and eventually it went to the Court of Appeals. And the head note stated that the Court of Appeals concluded in affirming the decision of the Superior Court that said that they had not forfeited their right to continue as a nonconforming use, that the unoccupancy of property by tenants should not be equated with succession of nonconforming use thereby resulting in forfeiture of entitlement to nonconforming use, so as to preclude consideration of other attendant circumstances.

And then the court went on to remand it back to the Superior Court and back to the Planning Board, for them to look at the total circumstances involved. That's the reason why we have presented evidence to show that the property was vacated by the tenant, and since that date, the owners of that property have made



every extensive effort to try to sell this property and to put someone back in it. And as Dallas Pearce has testified, they have been vigorous in their marketing efforts to put someone into the tenant.

And if they are required to forfeit their vested rights in that property by these happenstance of someone vacating the property, then it puts them in the position that they've lost a significant economic right and such a great economic right that eventually it would be almost—it may be very difficult for them to ever sell the property.

Also, there's been a lot of evidence to show that the property has been somewhat occupied by the tenant that was there running the food truck. There's not been any evidence offered by the town from their records, and they've got the records that this—that the food truck—operator of the food truck did not have a license. And I'll assume that they were aware the food truck was out there because they said it was out there five out of seven days a week.

So, this is an unusual factual situation. The owners of this property have done everything they could to keep this property occupied and to continue to exercise their use on it, including the fact they've kept power to the building and kept the area lights going. They've kept the property cleaned up. All while they were trying to find someone to buy the property or to occupy it.

So, we would submit that we have met all the requirements that, under special use that require—that we have to meet under to be allowed a special use permit to operate this as an internet café. Thank you.

Matheny: Thank you, sir. Anyone have a question for Mr. Weeks? Hearing none, thank you. Any other remarks? Or evidence, I should say. Not remarks. All right. Well, we will close the public hearing. I need to give a reminder that only evidence presented—not hearsay or unsubstantiated testimony—can be considered. You can have no ex parte conversations until this has been decided by this board. So once the Planning Board makes the recommendation, that doesn't mean y'all can go out and talk about it. So it's got to be the decision of this board.

As I stated earlier, no additional evidence beyond tonight, and I think that about covers all of my points. So having said that, I will close the public hearing and refer the matter to the Planning Board for their recommendation. We have a manager's report.

J. Moore: Sorry, I got a little anxious, there. I've been waiting [LAUGHTER]. Thank you, Mayor. We continue to press very hard on completion of the UDO. And in that light, we have a working draft available for you and the Planning Board that both the clerk and deputy clerk are going to pass out. I need to emphasize that this is a working draft. Underline "working." You'll note when you look in here that we don't have the tables for Chapter 3 or 5 complete, and you'll see that Chapter 6 is yet to be inserted. This is really just to get you acclimated with what the book likes—looks like. Get you acclimated with the different parts of it. Our goal, if we're going to keep schedule with having a public hearing on October 14<sup>th</sup>, is we have to provide a final draft to you and the Planning Board and the general public no later than October 4<sup>th</sup>. I don't think that the Planning Board is going to do this,

but Chad is here to present what he presented to you all on Wednesday of last week, and so if you all did not get enough of that presentation, you can certainly hang out and see if the Planning Board is going to have that discussion, as well. And that's it. That's all I've got.

Matheny: All right. Well, appreciate you all hanging in here. Is there a motion to adjourn?

Strickland: So moved.


Clark: Second.

Matheny: We're adjourned.

[END RECORDING]

Adopted this the 1<sup>st</sup> day of February 2021.



  
Robert S. Matheny—Mayor

  
Lisa M. Markland, CMC—Town Clerk