



**MOORE COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
MONDAY, AUGUST 1, 2022, 4:00 P.M.**

The Moore County Board of Commissioners convened for a Special Meeting at 4:00pm, Monday, August 1, 2022, in the Commissioners' Meeting Room of the Historic Courthouse, 1 Courthouse Sq., Carthage, NC.

Commissioners Present:

Chairman Frank Quis, Vice Chair Catherine Graham, Jerry Daeke, Otis Ritter, Nick Picerno

Chairman Quis called the meeting to order. The purpose of the meeting was to continue a quasi-judicial hearing regarding a request by Tri South Builders, Inc. for a Special Use Permit for a Major Conservation Subdivision Preliminary Plat approval for 53 lots on 73.77 acres, ParID 00034394, located on Union Church Road, Carthage, owned by James and Carolyn Ring, per Deed Book 2368, Page 240. The hearing was originally opened on May 16, 2022, and was continued to June 2, 2022, June 23, 2022, July 18, 2022, and then to this day, August 1, 2022. Chairman Quis gave the floor to County Attorney Misty Leland to continue the proceedings. Planning Director Debra Ensminger was sworn in by the Clerk. No other witnesses were sworn.

Attorneys Michael Parker and Nick Robinson continued their cross examination and redirect of Ms. Ensminger.

Mr. Parker introduced several additional exhibits to ensure they were on record.

Mr. Robinson and Mr. Parker provided their closing statements.

Ms. Leland provided the Board opportunity to ask questions and Commissioner Picerno inquired regarding the ability to review exhibits. Ms. Leland offered that they would be available in the office of the Clerk to the Board. Commissioner Ritter offered comments to Mr. Parker.

The commissioners discussed whether to close the hearing or leave it open to the next date when they anticipated deciding on this matter and concluded they would leave it open. Upon motion made by Chairman Quis, seconded by Commissioner Graham, the Board voted 5-0 to continue the hearing to August 23, 2022, at 10:00am.

There was discussion amongst the attorneys regarding production of the proposed findings of fact and conclusions of law and who would prepare those, and it was agreed that Ms. Leland would do so.

Chairman Quis expressed his appreciation to everyone for the respectful manner in which the hearing had been conducted.

A transcript of the hearing is hereby incorporated as a part of these minutes by attachment as Appendix A and documents for the record and the recording are hereby incorporated by reference.

There being no further business, upon motion made by Commissioner Graham, seconded by Commissioner Ritter, the Board voted 5-0 to adjourn the August 1, 2022, Special Meeting of the Moore County Board of Commissioners at approximately 8:45pm.



Francis R. Quis, Jr., Chairman



Laura M. Williams, Clerk to the Board



Appendix A
08/01/2022

BEFORE THE
MOORE COUNTY BOARD OF COMMISSIONERS
August 1, 2022

TRANSCRIPT OF QUASI-JUDICIAL HEARING/PLANNING
SPECIAL USE PERMIT REQUEST
MAJOR CONSERVATION SUBDIVISION PRELIMINARY PLAT APPROVAL
(UNION CHURCH ROAD)

Frank Quis, Board Chair

Catherine Graham, Vice Chair

Otis Ritter, Commissioner

Jerry Daeke, Commissioner

Nick Picerno, Commissioner

Debra Ensminger, Planning Director

Misty R. Leland, County Attorney

Nicolas P. Robinson, Attorney at Law

Michael Parker, Attorney at Law

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P R O C E E D I N G S

CHAIRMAN QUIS: I'd like to call to order this continued hearing. Welcome everyone. And I will promptly turn it over to Ms. Leland to conduct the continuation of this public hearing.

MS. LELAND: Okay. Good afternoon. So when we finished at the last session, Mr. Parker was cross-examining Deborah Ensminger, the planning director.

Mr. Parker, are you going to call Ms. Ensminger back up?

MR. PARKER: Yes. My only question is do you want her resworn? We've resworn everybody, every time. I just don't know.

CHAIRMAN QUIS: Is that going to be the only witness?

MR. PARKER: I don't know. She's not my witness.

MS. LELAND: Okay.

MR. PARKER: I don't intend to call anyone else right now.

MS. LELAND: I don't think Mr. Robinson does.

MR. ROBINSON: I do not.

MS. LELAND: Okay. Yes, we do want her resworn.

(Oath administered by the clerk.)

MS. LELAND: Okay. I didn't hear that very well, so for the record, she was sworn in. And Mr. Parker, you can

1 continue on.

2 MR. PARKER: Thank you. You're going to -- yeah.
3 She's not there.

4 MS. LELAND: You got to give her one minute.

5 THE WITNESS: I have no idea what you're going to
6 ask me so I had to bring my stuff.

7 MR. PARKER: Okay. May I proceed now?
8 Ms. Ensminger are you ready?

9 THE WITNESS: Yes.

10 MR. PARKER: All right. Thank you.

11 CONTINUED CROSS-EXAMINATION OF DEBRA ENSMINGER BY MR. PARKER:

12 Q Now, ma'am, we talked about a lot of stuff last
13 time, and before I start I want to say I hope you're feeling
14 better.

15 A Yes, I am. Thank you.

16 Q Good. So we talked about a lot of things, and
17 I'm -- I went back and tried to reduce what we had so I
18 wouldn't -- I don't want to duplicate it if I can help it,
19 but I want to go back and ask you this.

20 Now, a major subdivision in Moore County, that is
21 not a check box type of item in Moore County; is it? In
22 other words it's not automatic; is that correct?

23 A That's correct.

24 Q It's got to go through a certain process before it
25 comes to the board for them to issue a special use permit; is

1 that correct?

2 A There are guidelines set forth in the ordinance,
3 yes.

4 Q Right. Okay. Those are the ones I wanted to talk
5 to you a little about and make sure I understand and I know
6 how it goes.

7 So when an applicant applies they submit an
8 application and a preliminary plat; is that right?

9 A They submit -- depends on the process. If it's --
10 talk to me about or ask me specifically about what part of
11 the process are you asking? Is it in the beginning?

12 Q In the beginning.

13 A Yes, they have to submit, there's a PRT meeting,
14 project review team meeting that they have to submit a
15 concept plan, and they meet with every department within the
16 county, and we go over all the requirements for them to move
17 forward with this major subdivision.

18 Q All right. And then you review the plat, and if it
19 has errors you submit it back within ten days for them to
20 make corrections?

21 A That's correct.

22 Q And once those corrections are made it comes back to
23 you and it goes to the subdivision review board?

24 A Yes.

25 Q Who is on that subdivision review board?

1 A It consists of staff, myself, the public works
2 director, the public safety director, GIS, a local surveyor,
3 Moore County Schools, NCDOT, and environmental health.

4 Q Okay. And is there anybody there from the Corps of
5 Engineers who does wetlands and stuff like that?

6 A No, sir.

7 Q So your whole reliance on the wetlands issue is
8 based on the applicant?

9 A Well, actually the preliminary plat is -- they have
10 to share with us that there are wetlands, and if there are
11 any other flood plain or anything, and then if the
12 preliminary plat is approved, and before construction can
13 begin, they have to go through all of that review through the
14 North Carolina Department of Environmental Control, the Army
15 Corps of Engineers. They have to spend the money to do those
16 things at that time.

17 Q All right. So the -- but the plat is reviewed by
18 the subdivision review board and they're looking at it to
19 make sure it's in compliance with all of their requirements
20 in the UDO?

21 A That's correct.

22 Q All right. And then once they review it and are
23 satisfied with it then they either -- they pass it out to the
24 commissioners; is that right?

25 A No, we do, with the planning department brings it

1 forward to the board of commissioners.

2 Q And but there's a recommendation made by either you
3 or -- by who, you or the subdivision board?

4 A It's the subdivision review board that says it's --

5 Q Makes --

6 A -- move forward.

7 Q Makes a recommendation to them to --

8 A To move the application forward to the commissioners
9 to review. There's no approval/denial.

10 Q Okay. That's good. Now I want to talk to you --
11 that's what I thought was happening. I just wanted to make
12 sure I understood it so when we argue it, I don't want to
13 misstate something to the commissioners. Thank you.

14 All right. So I want to go back and talk to you
15 about the land use plan a little bit.

16 A Okay.

17 Q And the future -- the future use of it.

18 Mr. Robinson introduced a very nice exhibit, I believe it was
19 Exhibit Number 110.

20 MR. PARKER: Do you have that one available,
21 Mr. Robinson? It's the one with the RA-40 designation on it,
22 the big one, had -- it's a big poster.

23 MR. ROBINSON: (Indiscernible.)

24 (Indiscernible discussion.)

25 MR. PARKER: Can I see it, Ms. Williams? And for

1 the commissioners, while we're finding this, I want to tell
2 you how much I appreciate Ms. Williams. She agreed to meet
3 with me for about two hours today to go through exhibits to
4 make sure that we had everything accurate and right. And so
5 I just wanted to appreciate that.

6 All right. Let me hold this a minute. She can't
7 see it from over there. (Indiscernible discussion.)

8 BY MR. PARKER:

9 Q So. All right. So. All right. I'm going to point
10 to it. Can you see the front of it? Well, you're going to
11 have to be near a mike because you're going to have to be
12 able to talk.

13 MR. PARKER: Matt, can you turn that just a little
14 bit for her? Okay. Not that much. I got to see it, too.

15 BY MR. PARKER:

16 Q Okay. Now, this is Defense Exhibit 110; is that
17 right? Yes. It is. I just -- she don't want to misstate
18 it, I'm sure.

19 MR. ROBINSON: No, I'm just saying I'm not the
20 defense.

21 MR. PARKER: That's true, you're not, you're the
22 applicant. I apologize, Mr. Robinson.

23 MR. ROBINSON: That's okay.

24 BY MR. PARKER:

25 Q So this is the applicant's 110. Okay? And this was

1 introduced to show the current area that's zoned RA-40; is
2 that correct?

3 A Yes.

4 Q And so this brown section here is what's currently
5 zoned RA-40; is that right? Am I interpreting that right?

6 A Yes, sir.

7 Q Okay. Now, you have been with the zoning department
8 for a long time; is that right?

9 A Seventeen years.

10 Q Okay. You noted in, I think it's the other exhibit,
11 I think it's the small one in the book, that this has been
12 zoned RA-40 since 1987; is that right?

13 A That's correct.

14 Q Okay. So I don't know when zoning began in Moore
15 County, but this whole area has been RA-40 since at least
16 '87; right?

17 A Per our records, yes.

18 Q Okay. All right. The property of this subdivision
19 is currently located in RA-40?

20 A Correct.

21 Q Okay. But the future, the land use plan from 2013,
22 okay, that one was done after this 1987 zoning; is that
23 right?

24 A Correct.

25 Q Okay. Do you have a copy of the land use plan with

1 you?

2 A I do.

3 Q Okay.

4 MR. PARKER: No, I want -- it's in here.

5 Garren, I want the map that we just did. It's -- on
6 page 83, you got the map, right? I'm going to put it up on
7 the board, up on the screen. That's the same map. Can you
8 make it full screen, Garren? Okay. All right. And click
9 the button one time. There you go. Okay.

10 BY MR. PARKER:

11 Q So. All right. Now, Ms. Ensminger, this was the
12 map that was generated in 2013 for use in the land use plan;
13 isn't that right?

14 A That's correct.

15 Q You were here then?

16 A Yes, I was.

17 Q Okay. And the board who put together the land use
18 plan from 2013, they knew about the zoning from 1987?

19 MR. ROBINSON: Objection.

20 THE WITNESS: I don't know if they were told or not.

21 BY MR. PARKER:

22 Q Okay.

23 A I don't recall that we told them that it had been
24 zoned RA-40 since 1987.

25 Q All right. And what --

1 A I just know that a lot of infrastructure has changed
2 since 2013 in that area.

3 Q Okay. Well, that's fine. I just want to make sure
4 that we understand one another, because what we've got to go
5 by is the land use plan from 2013, because as you told me
6 once before, the 2020 one hadn't been adopted; right?

7 A That's correct.

8 Q Okay. So we're using the one from 2013?

9 A That's correct.

10 Q So the commissioners and the planning board at that
11 time who evaluated this and passed it, they set forth in this
12 map that's up on the screen what their goal was for the
13 future land use of Moore County; isn't that right?

14 A That's correct.

15 Q Okay. And in fact, they posted in the white areas
16 on there that that would remain RA, or residential -- or
17 rural agricultural; isn't that right?

18 MR. ROBINSON: Objection.

19 THE WITNESS: At the time they did.

20 BY MR. PARKER:

21 Q Yes. And that's still what we're going by today,
22 it's the 2013 land use plan. Now, the area that we're
23 dealing with is where that red arrow is; isn't it?

24 A Yes.

25 Q Okay. That is in the rural agricultural area that

1 the commissioners in 2013 and the land use plan said should
2 remain residential agricultural; isn't that right?

3 A At the time, yes.

4 Q Okay. And they knew -- and this was in place at the
5 time, RA-40?

6 A Correct.

7 Q All right. So I want you to -- do you have the land
8 use plan with you?

9 A Yes.

10 Q Turn to page 82 for me.

11 A Okay.

12 Q They define what those general broad categories are;
13 right?

14 A Yes.

15 Q They told -- they state in there what they intend
16 for -- can this be turned down just a little bit? Because
17 it's -- it's really loud.

18 Okay. They -- they state in there what their
19 intention is for those areas to be defined. They state in
20 there or define what rural agricultural is; isn't that right?

21 A Yes.

22 Q Can you read that part for me?

23 A Yes. It says, "The primary use of the land is to
24 support rural residential life associated with agricultural
25 uses, row crops, forestry, horticulture, grazing, poultry,

1 dairy, swine operations, and intensive agricultural uses in
2 certain areas, and other rural activities. Major
3 subdivisions of land are strongly discouraged; however,
4 family subdivisions and subdivisions of four or less lots
5 would be considered."

6 Q Okay. So they defined that there as -- so they say
7 that in this area that major subdivisions are strongly
8 discouraged, even though it was zoned RA-40 at the time?

9 A RA. Well, it's -- it's classified as RA in the land
10 use plan.

11 Q No. This is not classified as RA. This is not the
12 zoning.

13 A Here it is.

14 Q Right there. This is the future land use plan with
15 the land use categories. Those are not zoning categories.
16 Look on page number 8 --

17 A I understand that.

18 Q -- 81. Okay. So that's why there is a distinction
19 between RA-40 and RA in the land use plan; isn't that right?
20 Because one's categories, one's zoning?

21 A Yes.

22 Q Okay.

23 A One's allowable, different uses are allowed in each
24 zoning district.

25 Q Right. Okay. But this indicated their intent of

1 what they wanted to keep the property like in 2013?

2 MR. ROBINSON: Objection.

3 BY MR. PARKER:

4 Q Yes or no?

5 A Yes.

6 Q Now -- and they also said in here that wasn't this
7 land use plan designed to build out to 2030?

8 A Yes.

9 Q Yes, it was. Okay. Now, would -- now, let me ask
10 you this. Would this subdivision be considered high density,
11 medium density, or low density based on the categories?

12 A Well, there's 53 lots, they're 40000-square-foot
13 lots, so it would be -- they could get two dwelling units
14 because they're 40 -- 20,000 square foot lots.

15 Q So would they be considered --

16 A Medium density.

17 Q Medium density?

18 A Uh-huh.

19 Q What is high density?

20 A High density is much larger than that.

21 Q Well, look at it, it's on page 81.

22 A Density, four to eight dwelling units per acre,
23 single-family detached or attached.

24 Q Okay. So that would be high density?

25 A Yeah.

1 Q All right. So this would be then considered medium
2 density but a major subdivision?

3 A Uh-huh.

4 Q All right. Now, in the -- in the medium density
5 one, could you read for me under medium density, right here,
6 does it have any description or what is needed for sewer
7 there? In the middle of that paragraph, density would
8 require engineered sewage disposal systems?

9 A Says, "Public infrastructure and facilities such as
10 roads, water, sewer, schools, fire rescue, open space must be
11 adequate to" -- "adequate to accommodate development."

12 Q Okay. And then it says and the density would
13 require engineered sewage disposal; doesn't it?

14 A Could. It could.

15 Q What do you mean --

16 A Would require --

17 Q It either says it or it doesn't. What's written in
18 it? Do you see it?

19 A Yes, but the ordinance doesn't require that.

20 Q I'm not asking about the ordinance. I'm asking
21 about the land use plan. It says in there that density would
22 require engineered sewage disposal systems; doesn't it?

23 A Yes.

24 Q Okay. Now, you spoke recently at the land summit
25 here in Moore County; didn't you?

1 A Yes.

2 Q And do you recall at that time you talked about
3 septic tanks?

4 A Yes.

5 Q And you said that septic tanks were unsustainable in
6 Moore County?

7 A In some areas they are.

8 Q Can you tell me why?

9 A Because they're not created to last forever.

10 Q Okay. So the runoff from them doesn't bother you,
11 53 in one section that's like 30 acres doesn't bother you?

12 A For septic?

13 Q Right.

14 A Well, it's -- they have to go through the proper
15 channels to have a soil scientist to confirm, the developer
16 does, that they meet the North Carolina state requirements.

17 So in Moore County you can, the current ordinance
18 allows for you to have to provide one or the other, public
19 water or public sewer. And so the developer is opting to
20 supply public water because water is available.

21 Q Okay.

22 A My opinion doesn't count in this, as far as public
23 sewer. That was just a statement that I made.

24 Q I know, and I was wanting to understand why. You
25 were the expert here on planning that was offered by the

1 applicant?

2 A Right.

3 Q And you've made statements that sewage systems are
4 unsustainable for continued growth in Moore County, and I
5 just wanted to understand from your expert perspective why
6 you consider that to be true. And you're saying it's only
7 because they won't last forever?

8 A Well, what we see is over time the repair areas need
9 to be repaired. We see that very frequently, and, you know,
10 for a development to be sustainable they do fail, septic
11 tanks do fail over time. So with smaller numbers of lots it
12 would be more reasonable to allow smaller lots versus 1200
13 lots, 3,000 lots, on public sewer.

14 Q Okay. But there is no public sewer at this
15 location?

16 A There is not.

17 Q There is no plan to put engineered sewage disposal
18 systems there?

19 A No, sir. They plan to use individual septic tanks.

20 Q And what happens when the septic tanks fail?

21 A They have to go through the process with
22 environmental health to try to locate another site on the
23 system.

24 Q How --

25 A The house can be -- they can ask to be removed from

1 the house until their septic is --

2 Q But -- are you done?

3 A -- replaced.

4 Q I didn't mean to cut you off. I'm sorry. Can I ask
5 my next one?

6 So my question is, when they fail, the sewage leaks
7 from them --

8 A Uh-huh.

9 Q -- isn't that right?

10 A Yes.

11 Q That's how you know it fails?

12 A Yes.

13 Q Right? And that sewage then has a tendency to
14 contaminate our water systems?

15 MR. ROBINSON: Objection.

16 THE WITNESS: I can't answer that a hundred percent.

17 BY MR. PARKER:

18 Q Okay. All right. But 53 in one place you said, as
19 you said before, that is unsustainable for future growth in
20 Moore County?

21 MR. ROBINSON: Objection.

22 THE WITNESS: No, I didn't -- I just said that
23 public sewer, on and on and on, large tracts of land, I don't
24 feel like 53 lots is unreasonable to 1200 lots, or a thousand
25 lots, 3,000 lots.

1 BY MR. PARKER:

2 Q Okay.

3 A I think that that could be manageable.

4 Q Okay. Do you still have the land use plan with you?

5 A Yes, I do.

6 Q Turn to page 51, please, under "Future Land Use
7 Map." Sorry. Page 81. Thank you. Thank you. It's the
8 second paragraph under "Future Land Use Map."

9 A Uh-huh.

10 Q Do you see the sentence midway down that starts, in
11 that regard?

12 A Yes.

13 Q Can you read the rest of that sentence for me?

14 A "The plan seeks to encourage" development --
15 "developers to locate developments primarily within the
16 municipal jurisdictions of the community and/or to propose
17 viable and appropriate mixed-use developments within the
18 county's planning jurisdiction."

19 Q Okay. So this multi -- this major subdivision is
20 not within a municipality's planning jurisdiction; is it?

21 A No, it's not.

22 Q And you heard the neighbors here who talked about
23 their homes in this neighborhood; didn't you?

24 A Yes.

25 Q You saw the actual exhibit from Mr. Robinson of the

1 58 homes nearby?

2 A Yes.

3 Q And you would agree that in this neighborhood
4 there's a lot of variety among homes; wouldn't you?

5 A There's a lot of mixed uses, yes.

6 Q There's a lot of variety among homes?

7 A There's a lot of mixed uses, yes.

8 Q The variety there includes mobile homes, ranch
9 homes, two-story homes, one-acre lots, multi-acre lots and
10 smaller -- and some lots smaller than an acre?

11 A And large tracts of land.

12 Q Right.

13 A Churches.

14 Q Okay.

15 A Churches.

16 Q Right. And you heard -- you heard them describe how
17 the multi -- how this major subdivision would not fit in
18 their community and they considered it to be an eyesore. You
19 heard that testimony; didn't you?

20 A Yes.

21 Q All right. I want you to go to page 81, the first
22 paragraph, and read the very last sentence that begins with,
23 When developments, in the future land use map, please, under
24 that?

25 A The second paragraph?

1 Q No, the first paragraph, I believe it's the last
2 sentence.

3 A Okay. "When developments are proposed away from
4 existing municipalities they should seek a form that yields a
5 sense of place and reinforces a character indicative of Moore
6 County's uniqueness while avoiding a generic style
7 subdivision."

8 Q Okay. So the land use planners at that time
9 specifically recognized the unique variety in Moore County,
10 particularly in a rural areas, and they were opposed to
11 generic style subdivisions. That's what that sentence says;
12 isn't it?

13 Is there anything that you've seen in this case that
14 makes you believe this is going to be anything other than a
15 generic subdivision?

16 A Mr. Parker, it's no different than the major
17 subdivision that this -- these -- this particular board has
18 approved within the last two years.

19 Q I'm sorry, what was that?

20 A I said it's no different than this board has
21 approved in the last two years. It's the same type of
22 subdivision, but much less lots.

23 Q We're going to talk about that shortly.

24 A Okay.

25 Q But my question now is, there is nothing that you've

1 seen that makes you believe this subdivision is going to be
2 anything other than a generic subdivision that it's signed up
3 to be; isn't that right? Yes or no.

4 A It will be a major subdivision.

5 Q And it would be a generic one; isn't that right? Is
6 there nothing individual, unique about those homes other than
7 being on half-acre lots?

8 A I can't answer that question.

9 Q Okay. But it's just like all the others you've
10 seen; is that right?

11 A Not a hundred percent, no.

12 Q Okay. Now I would like for you -- I want to do a --
13 I'm going to talk to you about another thing here. I'm going
14 to do a little math with you.

15 This is an RA-40 subdivision; is that correct?

16 A Yes.

17 Q It's in RA-40. The RA stands for residential and
18 agricultural; isn't that right?

19 A That's correct.

20 Q All right. RA-40 -- but it's a conservation
21 subdivision, and that will basically change it from 40 --
22 40,000 square foot lots to 20 000; isn't that right?

23 A Yes.

24 Q All right. And these lots will have 10-foot
25 setbacks; correct?

1 A Could have less.

2 Q They could have less?

3 A If they had more open space they could allow for
4 more density.

5 Q Didn't these --

6 A But -- but they're going to ask for 10-foot
7 setbacks.

8 Q 10-foot setbacks. And they will have private septic
9 tanks?

10 A That's correct.

11 Q And a three-bedroom home will usually require about
12 10,000 square feet of septic field; isn't that right?

13 A It's 20,000.

14 Q 20,000 square feet?

15 A Uh-huh.

16 Q No. I'm asking you how many square feet is needed
17 for a septic field?

18 A For a septic field?

19 Q Yes.

20 A Not a septic tank. A lot for private septic is
21 required to be 20,000 square feet.

22 Q I understand that's the size of the lot. Okay?

23 Now, you have reviewed everything in the staff report that
24 you've given to the commissioners about this; haven't you?

25 A Not the houses that have been -- that will be placed

1 on the lots, no.

2 Q You've reviewed -- but the houses aren't listed in
3 the staff report. I'm talking about the staff report that
4 the commissioners saw with all of this information in it?

5 A You asked me --

6 Q You're familiar --

7 A -- how large of a septic field is required --

8 Q Uh-huh.

9 A -- for a three-bedroom home.

10 Q Yes.

11 A I said a 20000-square-foot lot --

12 Q Right.

13 A -- is required for a private septic system.

14 Q How much space will a septic tank take up, a septic
15 tank and the field take up? How much are you allotting for
16 that?

17 A Well, they have to be so far from the house, they
18 have to be so far from the well.

19 Q Okay. Have you reviewed Southeastern Soil and
20 Environmental Associates' letter that came in the staff
21 report?

22 A Yes.

23 Q Okay. Do you know whether these are going to be
24 three-bedroom or four-bedroom homes?

25 A I have no idea.

1 Q Okay.

2 MR. PARKER: May I approach?

3 MS. LELAND: Yes.

4 BY MR. PARKER:

5 Q Unfortunately we have to share the mike now. And
6 I'm sorry, I'll try not to get too close to you. Okay,
7 because I don't -- I know how things are today.

8 Okay. I want to show you this right here. Does
9 this appear to be the Southeastern Soil and Environmental
10 Associates' report?

11 A Yes.

12 Q Okay. And this report was to Mr. Wes Caddell, and
13 it's concerning this Ring property?

14 A Yes.

15 Q Okay.

16 A It's just an evaluation.

17 Q I want to direct you to this -- to this sentence on
18 the second page right here, it's in your staff report if you
19 want to see it. It begins with, A three-bedroom home. Could
20 you read that for me?

21 A It says, "A three-bedroom home would require
22 approximately 10,000 square feet of this soil area for drain
23 field and repair areas exclusive of setbacks from lot lines,
24 houses. A four-bedroom home would require approximately
25 12,000 square foot."

1 Q So this then, on that 20,000 square foot lot,
2 they're going to have to have 10,000 square feet of it,
3 excluding the setbacks, reserved for a septic tank?

4 A Correct.

5 Q Unless it's a four-bedroom home, and that's 12,000?

6 A 12,000.

7 Q All right.

8 A Correct.

9 Q So. All right. Thank you.

10 MS. LELAND: And let's clarify, Mr. Parker.
11 You're -- she based that answer off of that letter.
12 Obviously she does not have the expertise that is required to
13 answer that. Otherwise, soil scientist is an expert-type
14 field.

15 MR. PARKER: Okay. I understand.

16 MS. LELAND: Okay.

17 MR. PARKER: This was in her packet.

18 MS. LELAND: Okay. I'm just -- let's clarify that.

19 THE WITNESS: That was supplied to environmental
20 health for their review. They sit on the subdivision review
21 board.

22 (Indiscernible discussion.)

23 BY MR. PARKER:

24 Q All right. So, Ms. Ensminger, I want to draw a --
25 we're going to draw a diagram of this lot. I just want to

1 make sure I understand how much land we're dealing with.

2 All right. I've drawn here a rectangle that
3 would -- that is designed to illustrate a 20000-square-foot
4 lot. Those lots would be approximately 200 feet long by 100
5 feet wide; you would agree with that, right?

6 A Yes.

7 Q Now, if we were to take off the 10-foot setbacks on
8 either side, that would be 10 feet times 200, which would be
9 2,000 square feet apiece; right?

10 MR. ROBINSON: Objection.

11 BY MR. PARKER:

12 Q So that would be 2,000 square feet apiece taken from
13 the 20,000 square feet, leaves them approximately
14 16,000 feet; correct?

15 MR. ROBINSON: Objection.

16 THE WITNESS: Mr. Parker, the -- the soil evaluation
17 report that you have is a preliminary. I just would like to
18 explain before you get too deep into this that when the -- if
19 the preliminary plat is approved the applicant will have to
20 submit a soil evaluation report that could decrease the
21 number of lots, that could decrease because of what you're
22 saying, but what you have is just a preliminary saying.

23 BY MR. PARKER:

24 Q Ms. Ensminger, I think you misunderstand where I'm
25 going. I'm not --

1 A Yeah, I do. But I'm trying to help you along to let
2 you know that --

3 Q They --

4 A -- this is not the final all, what you're trying to
5 explain.

6 Q I understand that, but that's not what my intent is.
7 I have another purpose for this.

8 A Okay.

9 Q And I'm not trying to embarrass you. I'm just
10 trying to get these facts out so that we all understand and
11 we're arguing from the same thing.

12 A Well, you're not embarrassing me.

13 Q Okay.

14 A I was just trying to help you.

15 Q Well, I appreciate that.

16 A Okay.

17 Q So what my point is, is that we've taken out the
18 setbacks --

19 A Uh-huh.

20 Q -- that leaves them about 16,000 feet?

21 A Correct.

22 MR. ROBINSON: Objection.

23 THE WITNESS: Square feet.

24 BY MR. PARKER:

25 Q We're going to now take out the setbacks on either

1 end, which would be 80 feet times 10, which would be about
2 800 apiece, that's 1600?

3 MR. ROBINSON: I renew the objection.

4 BY MR. PARKER:

5 Q If we take that out, that would leave us about
6 14,400 useable feet without the setbacks; correct?

7 A Correct.

8 Q If we then take the soil scientist's report and
9 assume it's a three-bedroom home, we're going to lose 10,000
10 square feet for the septic field; right?

11 MS. LELAND: Mr. Parker --

12 MR. PARKER: Yes, ma'am.

13 MS. LELAND: -- you're teetering on ground that
14 you're asking her something that only a soil scientist can
15 answer.

16 She's not -- environmental health is not something
17 that she does. There's a lot of qualifications to be a soil
18 scientist. The law specifically states you have to have an
19 expert in this field to be able to discuss this, and I feel
20 like you're trying to tear into this letter based on what
21 Ms. -- she's not qualified to answer these questions.

22 MR. PARKER: Ms. Leland, I totally agree with you,
23 but I'm not tearing into the letter at all. My whole purpose
24 for asking these questions is to show that when you're
25 finished with this, the people who buy these lots in this

1 rural area are going to have 4400 square foot of space that
2 they're going to have to put a driveway and a house on, and
3 this is listed as residential and agricultural, and they have
4 no room left to be agriculturally related, which is not in
5 harmony with the remainder of the -- of the neighborhood.
6 That's the purpose for that.

7 I'm not arguing whether how much space they need for
8 drain fields. It could be more, it could be less, depending
9 on the soil type.

10 But if you're looking at the average home, the
11 average people who buy these are going to have 4400, at the
12 most, useable feet they can make use of this property, which
13 is absolutely uncharacteristic of the remaining 58 homes that
14 he's shown us on the diagram who surround it who can do
15 anything they want and have more land that they can actually
16 use. That's my point of making this argument.

17 And I'm not trying to argue about the soil scientist
18 part of it. I don't care about that. I'm interested in how
19 much it's going to take to do it and how much those people
20 are going to be able to actually use that land for
21 agricultural purposes, which is where it's at.

22 MS. LELAND: I understand, but the drain field,
23 where the septic goes, all that is really a soil scientist
24 needs to answer that question because they move things around
25 quite a bit when it -- when it gets right down to it, as

1 Ms. Ensminger was trying to tell you, and it's subject to
2 change. So the way you have it configured there is one
3 example, but that's not necessarily how it may end up.

4 MR. PARKER: Well, I understand, and it also assumes
5 a 20,000-square-foot lot, and I will stipulate for the record
6 that the lots in this diagram, some of them -- most of --
7 none of them less than 20,000, some of them are a little more
8 than 20,000, some of them may be a little more, but the point
9 is, is that you're talking about 4400 square feet or so of
10 space, and that's with a three-bedroom home. They go to
11 four, you're now down to 2400 square foot of space that
12 you've got to accommodate everything on to be able to do, and
13 it does not make it in characteristic with the remainder of
14 the neighborhood. That's my point.

15 MS. LELAND: So your point here is just you're not
16 talking about the fact that the sub -- or the UDO allows it
17 specifically but just that it's inconstant with the land use
18 plan --

19 MR. PARKER: That's my whole.

20 MS. LELAND: -- that one section?

21 MR. PARKER: That's my whole point, yeah.

22 MS. LELAND: Okay.

23 MR. PARKER: I'm not arguing the other -- I don't
24 need her to have a master's degree in mathematics or soil
25 science. I just wanted to do the math to show where it was

1 coming out at.

2 MR. ROBINSON: I renew my objection to all of this.
3 It's -- reflects the fundamental misunderstanding of setbacks
4 and of the locations wherein septic fields are allowed to be,
5 and so it's a -- it's a house of cards where it's going to --

6 MS. LELAND: And I --

7 MR. ROBINSON: It's going to --

8 MS. LELAND: -- certainly agree with you, for the
9 record.

10 BY MR. PARKER:

11 Q Okay. So now, Ms. Ensminger, now, the defendant
12 also provided -- the defendant -- the applicant,
13 Mr. Robinson, Mr. Robinson also provided us with a map of
14 lots that were showing that were less than half an acre, I
15 think they're in tab 5. Do you have those there?

16 A This?

17 Q Yeah, I think so. Do you have that one there?

18 A Yes.

19 Q Okay.

20 MR. PARKER: Do you -- do you have that one, Madam
21 Clerk? Oh, y'all all have one? Okay. All right. Yes.
22 There we go.

23 BY MR. PARKER:

24 Q Okay. Are you familiar with any of these
25 Ms. Ensminger? Individually --

1 A The lots?

2 Q Yes.

3 A Not specifically.

4 Q Okay.

5 A I mean, I could go out there and point them out to
6 you if we drove out there.

7 Q No. Let me -- I can point them out, too. I've been
8 there. Here's my question to you, though. You told me that
9 you had talked to Mr. Robinson on at least two occasions in
10 preparation of your testimony; right?

11 A Yeah.

12 Q Did you prepare this exhibit for him?

13 A No, I did not.

14 Q Okay. So he prepared this and then he introduced it
15 through you, but he prepared it and then brought it to you
16 and asked you to swear to it?

17 A He asked me the questions.

18 Q He asked you the questions?

19 A Right.

20 Q And you swore to it; right?

21 A Yeah.

22 Q All right. So I'm looking over here at point seven.
23 So you just swore that these are all the ones that are
24 showing on the land -- on the maps; right?

25 A Yeah.

1 Q You don't know what they're used for?

2 A I could pull it up and see what they're used for.

3 Q Okay. Well, look at the one that's .76 acres over
4 here that's long and skinny on the left. Do you see that
5 one? Yep, right there.

6 A Uh-huh.

7 Q Are you aware that that's a driveway to somebody's
8 house?

9 A No.

10 Q Huh-uh. All right. How about the one up here? Do
11 you see where Henderson Road comes -- Ring Road comes into
12 Henderson Road up there?

13 A Yes.

14 Q Do you see that little bitty one there that's
15 .46 acres?

16 A Yes.

17 Q Do you know what's on that?

18 A No.

19 Q You've never been to the Henderson Cemetery?

20 A No, sir.

21 Q That's their cemetery. Okay. How about these
22 others here? The one over here, the upper left, Edith Frye's
23 house .71 acre. Yeah.

24 A Uh-huh.

25 Q Did you Google to see how much land Edith Frye owns

1 around there?

2 A No, sir.

3 Q Hundreds of acres. And that's her home lot. You
4 didn't know that, though?

5 A No.

6 Q All right. Did you know any of these others where
7 they may have been cut off from family land which was allowed
8 under the land use plan and anticipated; you don't know which
9 ones were?

10 A No.

11 Q All right.

12 A I think I -- if I recall, he asked me about the 58
13 lots. I didn't know anything about these.

14 Q You don't know anything about those?

15 A No.

16 Q Okay.

17 A I don't know anything about those lots.

18 Q All right. So you don't know -- you don't know when
19 they were cut off?

20 A No.

21 Q You don't know how many of them have \$300,000 houses
22 on them?

23 A No, I do not.

24 Q You don't know how many have mobile homes on them?

25 A No.

1 Q You don't know how many of these all -- you don't
2 know how many houses of them are 20 foot apart --

3 A No.

4 Q -- like this subdivision? You don't know how many
5 have -- and do you know that -- how many have restrictions
6 preventing them from having chickens on them? That would be
7 none.

8 MR. ROBINSON: Objection.

9 THE WITNESS: That would be none of them because
10 they're in the country.

11 BY MR. PARKER:

12 Q They're in the country. There you go. And
13 they're -- or how many of those people pursue other
14 agricultural activities?

15 A No.

16 Q All right. Yet you would -- you still are of the
17 opinion that the major subdivision is in general conformity
18 with the land use plan here; is that right?

19 A Yes.

20 Q All right. Now, let's go back and talk about in
21 your report, in your staff report, you indicated that there
22 were two main reasons that you supported this major
23 subdivision; is that right?

24 A Yes.

25 Q You cited one as being infill; is that right?

1 A That's correct.

2 Q All right. Excuse me. Now, and you said that it is
3 infill and it promotes a mixed use; those were your two --

4 A Yes.

5 Q All right. Now, you've been qualified as an expert
6 in planning; is that right?

7 A Yes.

8 Q All right. How do you keep current with the
9 planning world? Do you take classes, or study, or read
10 things up on the internet?

11 A We're required to be current with the current law
12 with the school of government and take those required
13 courses.

14 Q Okay. Now, as an expert do you ever do research on
15 planning issues or questions?

16 A Absolutely.

17 Q All right. Are you familiar with a -- with a --
18 with a product called Planopedia?

19 A Yes, I am.

20 Q Okay. And are you familiar with Planetizen?

21 A Yes, I am.

22 Q Those are the two things that planners use that
23 define -- that help them define articles and keep current;
24 isn't that correct?

25 A Yes.

1 Q All right.

2 A Some of it.

3 Q Some of it?

4 A Yeah.

5 Q Have you ever researched the definition of infill on
6 Planopedia?

7 A Well, Mr. Parker, infill development in the rural
8 Moore County would be where existing infrastructure is and
9 that there's a property owner that would like to develop said
10 property, and so in the rural Moore County that would be
11 considered infill development, because there's infrastructure
12 that's there already.

13 Q So you're saying that the definition of infill
14 differs by county?

15 A It differs from rural to city, yes.

16 Q Okay. Where is that in the UDO? Can you point me
17 to that definition?

18 A No, it's not in the UDO.

19 Q Can you tell me where that definition is written
20 anywhere other than -- anywhere else?

21 A No.

22 Q Okay. I want to show you what the definition -- I
23 want to show you the Planopedia on infill, and we're going to
24 mark this --

25 MR. PARKER: What's my next exhibit number?

1 Ms. Williams, is it 75 under in your records?

2 (Indiscernible discussion.)

3 MR. PARKER: Okay. So let's -- that's Harbeck's
4 report. Okay. So that we're going to do, so -- 73 and 74
5 are UDO sections, so we're going to go with 75. All right.
6 So this will be Exhibit 75. All right.

7 (Exhibit No. 75 identified.)

8 MR. PARKER: May I approach? (Indiscernible.)

9 THE WITNESS: Thank you. Thank you.

10 BY MR. PARKER:

11 Q Okay. So, ma'am, you're familiar with Planopedia
12 and Planetizen; is that correct?

13 A I am.

14 Q All right. Have you ever -- I want to give you a
15 minute to review this. This comes from that website. You
16 can tell that; can't you?

17 A Yes.

18 Q Okay. And I want to ask you to review this, and if
19 you'll look at the paragraph right below the picture where it
20 defines infill development?

21 A Uh-huh.

22 Q Can you read that sentence for me?

23 A I'll be glad to. It says, "Infill development
24 refers to the construction of buildings or other facilities
25 on previously unused or underutilized land located within an

1 existing urban or otherwise developed area."

2 Q Okay.

3 A "This type of development is meant to encourage
4 density and accommodate environmentally sustainable urban
5 growth by making use of existing utilities and transportation
6 infrastructure."

7 Q Okay. Now, I also want you to -- can you tell me
8 what a benefit is to infill development? What are the
9 benefits of it from a planner's perspective?

10 A It's to utilize property where there is existing
11 infrastructure.

12 Q Okay. Is it also to reduce distances people travel?

13 A It can be.

14 Q All right. Look at the first -- the first sentence
15 in the third paragraph, as they define it. Would you read
16 that for me?

17 A "Proponents of infill development claim that
18 well-designed projects can reduce the distances people need
19 to travel and their need for car trips and bring public
20 transit" within each of -- "to within reach of more
21 households using existing infrastructure resources to
22 redevelop sites at a lower cost with greater efficiency."

23 Q Okay. And that is the definition that Planopedia
24 gives for infill; isn't that right?

25 A Yes.

1 Q Okay. Now, looking at that you say now that that
2 definition doesn't apply in the country, in Moore County?

3 A I explain what infill development would be. RA-40.
4 That area is very close to Vass. It's very close to
5 Carthage. It's very close to Whispering Pines. So it is
6 very close to urban areas.

7 Q Okay. So -- so but it's also designed, the purpose
8 of it is to reduce travel; right?

9 A It can be.

10 Q Yeah. All right.

11 A But not a one size fits all.

12 Q Okay. I want you to look at sec -- the defendant
13 produced the item under tab -- the applicant introduced the
14 item 7 under his tab.

15 MR. PARKER: Mr. Robinson, I'm going to owe you
16 lunch or dinner for calling you defendant for the last five
17 weeks. I apologize for that.

18 BY MR. PARKER:

19 Q So I want you to go to section seven, in fact, he's
20 got it right down here.

21 MR. PARKER: Have you introduced that one,
22 Mr. Robinson, on the floor?

23 MR. ROBINSON: No, no.

24 MR. PARKER: You have not introduced that yet?

25 MR. ROBINSON: No, but I'd be happy to.

1 MR. PARKER: This one or the big one? Can I
2 introduce that one? Or no you don't want to introduce it?
3 Can we use it?

4 MR. ROBINSON: Yes, feel free.

5 MR. PARKER: Okay. What number do you want to give
6 it?

7 MR. ROBINSON: For me, I think that would be -- I've
8 got a 111 that I'm going to use tonight, so 112.

9 THE WITNESS: I've got it over here so you don't
10 need to bring it to me.

11 (Exhibit No. 112 identified.)

12 MR. PARKER: Here's the benefit of it. We -- oh.

13 BY MR. PARKER:

14 Q So I put it up here because sometimes if I can point
15 to it with a pointer I don't have to keep running back and
16 forth over there.

17 So this is what -- these are the four subdivisions
18 that Mr. Robinson introduced to justify this one, and you
19 were kind enough to list -- now, did you prepare this or did
20 he prepare it?

21 A No, he prepared this.

22 Q Okay. Did you select these subdivisions or did he
23 select them?

24 A We gave him a list of the most recent ones that have
25 been approved by the board.

1 Q Okay. Did he ask for these or did you just pick --
2 he asked for them and you gave them to him?

3 A Yes.

4 Q All right. So, and did you set out the distances or
5 did he calculate those?

6 A No, they calculated all of those.

7 Q Who is "they," the applicant?

8 A L -- LKC.

9 Q Do you have any reason to dispute those numbers?

10 A No, I do not.

11 Q All right. Then I would like for you to look at
12 those, please, and for the record, can you show us on here,
13 these are the four subdivisions you say you've approved most
14 recently, all right, and each of these subdivisions shows
15 that they are seven to 15 miles to the closest shopping;
16 isn't that correct?

17 A The average, yes.

18 Q Okay. Which is the furtherest from shopping?

19 A The Leatherwood.

20 Q Leatherwood? That's 13 miles. How about the Union
21 Church Road subdivision?

22 A Union Church is 15 miles.

23 Q So that's actually the furtherest?

24 A Yeah.

25 Q Okay. So that's the furtherest. None of them,

1 though, are within walking distance to any schools or
2 shopping; are they?

3 A That could be debatable.

4 Q Okay. How far are you willing to walk to go to a
5 grocery store? I mean, they're showing me like 13 miles,
6 seven miles?

7 MR. ROBINSON: Objection. You asked about schools
8 not shopping center.

9 THE WITNESS: You asked about schools.

10 BY MR. PARKER:

11 Q I was asking about schools and shopping, actually,
12 but let's limit it to schools -- to schools.

13 A Okay.

14 Q Okay? So what's the closest one to a school?

15 A Closest one to a school is the Bibey Road.

16 Q 2.5 miles?

17 A Uh-huh.

18 Q You want your kids walking 2.5 miles every morning
19 to Farm Life with no sidewalks?

20 A I can't answer that question, Mr. Parker. It's
21 irrelevant.

22 Q So then basically you would agree with me that none
23 of them within convenient walking distance to a school? You
24 would agree with that?

25 A I can't answer that question.

1 Q Okay. So there is one of these, though, that is
2 within walking distance to an amenity. Do you know which one
3 that is? And when I say walking distance, I'm estimating a
4 half mile?

5 MR. ROBINSON: Objection.

6 THE WITNESS: Laurel Ridge.

7 BY MR. PARKER:

8 Q Laurel Ridge. That's a -- and a half mile actually
9 comes from the land use plan when it talks about walking
10 distances. It is a half mile from a gas station; isn't that
11 right?

12 A Per their information, yes.

13 Q Okay. So now I guess since these are the last four,
14 people who work here are going to be traveling; isn't that
15 right?

16 A Yes.

17 Q To get to essential services?

18 A Yes.

19 Q Okay. And that's why our traffic has increased and
20 become so congested; you would agree with that?

21 MR. ROBINSON: Objection.

22 BY MR. PARKER:

23 Q All right. So how would you define sprawl, ma'am?

24 MR. ROBINSON: Mr. Chairman, I have to wonder how
25 much longer this can go on. I don't know what finding this

1 relates to or any way in which --

2 MS. LELAND: Mr. Parker, can you tell us what you're
3 trying to get at? Because also there's more than that
4 definition of infill development, so please --

5 MR. PARKER: I am -- what I'm getting to is the fact
6 that the planning staff presented to the board two bases for
7 conformity of the land use plan. Both of those bases are
8 misapplication of infill and the term mixed-use development.
9 They have since submitted 25 new reasons they think it
10 complies with it, which we'll discuss here shortly.

11 My purpose is, is to be able to show that these are
12 not infill developments in the term of traditional infill
13 development descriptions. And --

14 MS. LELAND: Mr. Parker, unless -- do you have a --
15 do you want to ask Ms. Ensminger about other definitions of
16 infill development? It seems like you're hung up on what
17 that one site says about infill development.

18 MR. PARKER: Well, I do. I actually have another
19 one that I'll ask her about.

20 MS. LELAND: Okay.

21 MR. ROBINSON: I object to all of it. It's hearsay
22 to begin with.

23 MR. PARKER: She was an expert who's familiar with
24 it.

25 MR. ROBINSON: Doesn't matter.

1 MR. PARKER: Uses it in her job as a --

2 MR. ROBINSON: She didn't solicit it. You brought
3 two sheets of paper from somewhere you printed off the
4 internet. It's hearsay and it's not admissible. I haven't
5 objected yet because you haven't moved to admit it, but I
6 will.

7 MR. PARKER: All right. Thank you.

8 MS. LELAND: And she has, for the record she's
9 provided the definition of infill that she applies in Moore
10 County.

11 BY MR. PARKER:

12 Q Okay. So then let me ask you this. When we go to
13 the land use plan, Ms. Ensminger, it lists goals,
14 recommendations and actions; is that correct?

15 A Yes.

16 Q Each goal has a list of recommendations which is
17 designed for the purpose of accomplishing that goal; correct?

18 A Correct.

19 Q And each recommendation then is supported by actions
20 that would help you to reach that recommendation; isn't that
21 right?

22 A Yes.

23 Q Okay. So then each action is designed to meet the
24 recommendation to meet the goal; correct?

25 A Yes.

1 Q Yes. Okay. So let's look at where you got the
2 infill. I want you to look at the land use plan, if you
3 would. Your infill development is one point -- let me find
4 it.

5 A 1.8.5.

6 Q 1.8.5, right?

7 A Yes.

8 Q Okay. That is in the first goal and the first
9 recommendation; is that right?

10 A Yes, it's under, "Preserve and protect the ambiance
11 and heritage of the county of Moore inclusive of areas around
12 municipalities."

13 Q That's the goal; right?

14 A Yes.

15 Q The recommendation is 1.8?

16 A It says, "Discourage undesirable or unattractive
17 land uses especially with high visibility areas."

18 Q And then it sets forth the actions to do that?

19 A Yeah. It says, "Identify commercial nodes for
20 development at major crossroads."

21 Q Okay.

22 A "Encourage major developments to locate in existing
23 municipalities wishing to host it. Control signage along
24 major highway corridors. Select appropriate locations for
25 industrial development and zone them as such using factors

1 such as soil suitable, proximity to water and sewer, rail and
2 highways. Support and promote infill development that will
3 optimize the use of existing infrastructure."

4 Q Okay. So when you're using this term "infill," do
5 you see any similarities between the actions above? I'll ask
6 you if all of those actions above do not refer to commercial
7 and large scale, and large thoroughfares and major highway
8 corridors, not rural areas?

9 A It says where existing infrastructure is. Existing
10 infrastructure in Moore County is in different places. It's
11 along Union Church Road, NC Highway 73, Highway 211.

12 Q But --

13 A So that's why that specific goal and action was
14 chosen.

15 Q But the whole purpose for this is to accomplish the
16 recommendation which is to discourage undesirable and
17 unattractive land uses?

18 A That's correct.

19 Q You're not saying that farming is unattractive or --

20 A No, I'm not.

21 Q -- useful? Okay. All right. But this, then it
22 seems that this -- you've sort of taken that infill out of
23 context when it refers to this, because it's referring to
24 commercial areas and major thoroughfares?

25 A Not necessarily.

1 Q Okay.

2 A It's talking about preserving and protecting the
3 ambiance. If you go back and look at all of this about
4 continue to utilize a voluntary ag district, we do that.
5 That property is surrounded by those --

6 Q Okay.

7 A -- properties.

8 Q So we --

9 A We can go back and go through each one of these
10 actions items --

11 Q It --

12 A -- and see how all of it's being applied, and it's
13 being applied correctly.

14 Q Okay. So in a rural -- all right. So in this
15 proposed subdivision you keep going back to the
16 infrastructure part; is that right?

17 A Yes, public water.

18 Q Okay. Public water, that's the only infrastructure,
19 and the highway that you're relying upon; is that right?

20 A And there's a major road, Union Church Road that --

21 Q You consider --

22 A -- tie into.

23 Q You consider Union Church Road a major highway?

24 A It's a highway.

25 Q It is a highway.

1 A It's a highway.

2 Q All right. Can you tell me if there are any --
3 there are no sidewalks leading to this property?

4 A No, sir, there's no --

5 Q No bicycle facilities leading to it?

6 A No, sir.

7 Q No regular public transit services leading to it?

8 A Well, it -- public transportation can be provided to
9 any resident in Moore County through Moore County
10 Transportation.

11 Q If you call and ask for it.

12 A If you call and ask for it. It's available.

13 Q All right. There are no schools within walking
14 distance?

15 MR. ROBINSON: Objection.

16 THE WITNESS: Well, that's debatable.

17 BY MR. PARKER:

18 Q The closest public park is about three miles away?

19 A Correct.

20 Q The closest fire EMS station is over three miles
21 away. There are no centralized sewer services.

22 And are you familiar -- I want you to turn to page
23 56, and let's talk about that water for a minute, since
24 that's the only infrastructure there --

25 MR. ROBINSON: Objection.

1 BY MR. PARKER:

2 Q -- on the land use plan. Middle column. Do you see
3 from the bottom the sentence begins with, The intent of?

4 A Yes.

5 Q Can you read that for me?

6 A It's talking about the Eastwood water district, and
7 since that time frame, since 2000 the intent of the system is
8 to supply water to rural residents to improve their quality
9 of life. The system was not necessarily designed to promote
10 growth or support large subdivisions in the district.

11 Q But that's what you've been doing for the last few
12 years; isn't that right?

13 A That is correct.

14 Q Building out in violation of what that says?

15 MR. ROBINSON: Objection.

16 MS. LELAND: Sustained.

17 BY MR. PARKER:

18 Q All right. So let's talk about the mixed-use
19 development. All right. You say that your definition of
20 mixed use is different types of homes; isn't that right?

21 A It's different types of uses. This is a major
22 conservation subdivision that will be the use of the
23 property.

24 Q Okay.

25 A The uses around the area are individual lots that

1 are owned by individuals that consist of farms, that consist
2 of individual homes, churches, so that's mixed uses.

3 Q Okay. Would you -- would you agree that a mixed-use
4 development involves easy access to work, services and home?

5 A It -- it can and it does. It's -- like I said
6 earlier, it's not far from Vass, it's not far from Carthage,
7 it's not far from Whispering Pines, and it's not far from
8 US 1 for people to commute to RTP, to Sanford, to Laurinburg,
9 wherever they would like to commute.

10 Q Would you agree that primary uses should be for the
11 purpose of reducing the demand on travel and services?

12 MR. ROBINSON: Objection. I have to object to this
13 strenuously. There is no place in Ms. Ensminger's report or
14 in action 3.1.1 cited in the report in which the term
15 mixed-use development is ever used. They have gotten totally
16 confused about that. 3.1.1 refers to mixed land uses, not
17 mixed-use development, and those are very different.

18 And so until Mr. Parker can find a place that she
19 cited wherein she's asserted that this is a mixed-use
20 development, then it's an irrelevant line of questioning.

21 MS. LELAND: I agree, Mr. Parker. There's hardly
22 any subdivision in Moore County, at least in the
23 unincorporated, that would have easy access to schools and
24 bike paths, sidewalks, et cetera. So this is not a
25 requirement, but I'm sure you have some point. Can you tell

1 us what it is?

2 MR. PARKER: Well, the point is, is that if you look
3 at the mixed use, that -- you look at the mixed uses, the
4 land use plan actually says that what the purpose is, is that
5 when you are developing areas outside of the municipal areas,
6 those land uses should be large high-density mixed-use
7 developments. That's not what we got here.

8 The contention is, is that when you look at the land
9 use plan, it's referring to areas such as Wooklake, Seven
10 Lakes and to Little River. Those are -- in fact, when you
11 look at, on page number 81, it refers to high-density
12 residential with mixed use. It refers to that as well in the
13 future land use planning.

14 The use of mixed use here is not accomplishing what
15 the mixed use is designed for, which is reduce travel.
16 Instead, it's increasing travel by increasing sprawl and
17 spreading this out and dropping little pieces of the city in
18 rural areas around the county in clear violation of the land
19 use plan.

20 MR. ROBINSON: I object.

21 MS. LELAND: Are you comparing this as a comparable
22 development to Seven Lakes and Wooklake?

23 MR. PARKER: No. I'm saying that the land use plan
24 anticipated those. The land use plan does not, and it
25 discourages these type of developments in rural areas. It

1 clearly states that repeatedly throughout the land use plan.

2 MR. ROBINSON: And what I'm saying is that
3 Mr. Parker has totally and completely erroneously conflated
4 the concepts of mixed-use development, which does happen in
5 urban areas where you have residential over retail and
6 walking to stores and things of that, with the phrase that's
7 actually used in our land use plan, which is adopt policies
8 that encourage development of mixed land uses as appropriate.

9 And in this case there's a church nearby, there's
10 homes nearby, there's farm land nearby, and that's what
11 Ms. Ensminger was referring to in her staff report.

12 MR. PARKER: Ms. Ensminger has said that her
13 definition of mixed use is the fact that there are mobile
14 homes nearby, there's single -- single-story homes, there's
15 ranch homes, there's two-story homes.

16 MR. ROBINSON: There's mixed land uses, not --

17 MR. PARKER: That's not mixed land use.

18 MR. ROBINSON: -- mixed-use development.

19 MR. PARKER: That is mixed resident -- that's mixed
20 residences.

21 MR. ROBINSON: Yeah, but, no -- but -- well, that's
22 the argument is that we're down a rabbit trail here about
23 something that's completely irrelevant, which is the
24 definition of mixed-use development.

25 MS. LELAND: And Mr. Parker, and if we need to try

1 the look at the record we can, but I don't think
2 Ms. Ensminger said that. You asked her about the two-story
3 houses and the mobile homes and whatnot, but what I heard her
4 say repeatedly back to you is the fact that there's churches
5 in the area, that there's different home sites, and whatnot,
6 and that's enough to have a mixed use, in her opinion, that I
7 didn't hear her say what you just said.

8 MR. PARKER: Okay. Well, I recall it from the last
9 hearing, and I'm sure the transcript will reflect that.

10 MS. LELAND: Well, she could clarify it right now.

11 THE WITNESS: I already have.

12 BY MR. PARKER:

13 Q Okay. All right. So then I will move on to the
14 next issue.

15 All right. So, now, in -- Mr. Robinson has
16 presented 25 new reasons for why this complies. You said
17 originally that when you wrote the staff report you did it
18 with a broad brush; is that right?

19 A That is correct.

20 Q All right. So when he submitted these, you said
21 you'd met with him, talked with him twice.

22 MR. ROBINSON: Objection.

23 THE WITNESS: I said he sent them to me.

24 BY MR. PARKER:

25 Q Huh?

1 A He sent them via e-mail to me.

2 Q Okay. So you didn't pick them out?

3 A No, I did not.

4 Q He picked them out?

5 A He picked them out.

6 Q He asked --

7 A I have not chosen any other -- I will at the end of
8 this hearing when the board order is prepared, I will prepare
9 all of the statements that is in compliance with the land use
10 plan.

11 Q All right. So you will prepare that --

12 A After the fact.

13 Q -- after the fact?

14 A After the facts, yes.

15 Q All right. So you -- so you didn't approve -- so
16 you don't agree with the ones he did?

17 A He has shared them with me. I mean, I have -- I
18 don't -- I mean, no, I want --

19 MS. LELAND: Mr. Parker, that's for his argument to
20 make, just like you're trying to make your argument. She's
21 just answering the questions. She's not trying to make an
22 argument --

23 THE WITNESS: No. I have presented mine --

24 MS. LELAND: -- to the board.

25 THE WITNESS: I presented mine with those -- a very

1 broad brush, and at the end, after all the facts are
2 considered, in the board order will be all of the facts, or
3 the land use plan, how it's consistent will be listed.

4 BY MR. PARKER:

5 Q So you're saying that you don't -- you're not making
6 a statement that you support those 25?

7 A No, I am not.

8 Q You are not?

9 A No.

10 Q That's just for his argument sake?

11 MS. LELAND: She's not advocating here.

12 THE WITNESS: No.

13 MR. PARKER: That's what I wanted to clarify. I
14 wanted to make sure, because the way it came out, I was
15 afraid she was. That's what I was afraid of.

16 THE WITNESS: No, I am not.

17 BY MR. PARKER:

18 Q All right. So now I want to talk with you, please,
19 a little bit about the -- the land use plan and these four
20 subdivisions that Mr. Robinson found; you know the ones I'm
21 talking about?

22 A Yes, Gretchen Pines, Leatherwood, Bibey Road, Laurel
23 Ridge.

24 Q Now, I requested from you earlier this week the
25 staff reports on all of those?

1 A Correct.

2 Q Did you bring those with you?

3 A No, I did not.

4 Q All right. I have the -- mine with me, okay, and I
5 would like to show them to you and ask you to -- and ask you
6 a few questions about them.

7 A I also provided you with the board order.

8 Q Yes, you did. I appreciate that. I didn't ask for
9 that, but thank you very much.

10 A You're welcome.

11 Q I appreciate that. Okay. So the first one is
12 Laurel Ridge. Are you familiar with that one?

13 A Yes, I am.

14 Q Okay. I think it's on this diagram here, when we go
15 to that one y'all can see Laurel Ridge. Okay. The Laurel
16 Ridge one, you're familiar with that? That one was done in
17 2018?

18 A That's correct.

19 Q All right. And that is located at the intersection
20 of US 15/501 and McCaskill Road?

21 A Correct.

22 Q That confused me a little bit until I looked at the
23 map. That's actually Eastwood; isn't it?

24 A Correct.

25 Q All right. That's right near the intersection of

1 15/501 and Highway 73?

2 A Correct.

3 Q Now, Eastwood is an unincorporated community in
4 Moore County; isn't it?

5 A Correct.

6 Q Eastwood is a major intersection in Moore County;
7 isn't it?

8 A Correct.

9 Q Eastwood has -- it's at the intersection, we've
10 already said that, of 15/501 and 73. Eastwood has a church?

11 A Yes.

12 Q It has a fire station?

13 A Yes.

14 Q Has a Harley Davidson dealership?

15 A Yes.

16 Q A gas station? And there are a lot of smaller
17 businesses across the road, all within about a half a mile;
18 isn't that right?

19 A Correct.

20 Q All right. You would agree then that Eastwood is a
21 major crossroads community on a major thoroughfare in Moore
22 County?

23 A Correct.

24 Q And Laurel Hill -- Laurel Ridge went in right there
25 at that area; isn't that right?

1 A That's correct.

2 Q All right. Now, look at Gretchen Pines. You're
3 familiar with that one?

4 A Uh-huh.

5 Q That was a 2019 subdivision; right? Gretchen Pines
6 is on Highway 73, and that's near the intersection with 211;
7 isn't that right?

8 A Correct.

9 Q That's in West End?

10 A Correct.

11 Q West End is an unincorporated community in Moore
12 County?

13 A Correct.

14 Q And West End is at a major intersection as well;
15 isn't it?

16 A Yes.

17 Q All right. West End has a gas station?

18 A Yes.

19 Q Fire department?

20 A Yes.

21 Q Church?

22 A Yes.

23 Q Several businesses, and it's just a few miles from
24 Seven Lakes which is a large mixed-use gated community?

25 A Correct.

1 Q Right. And you would agree then that West End is a
2 major crossroads community in Moore County; right?

3 A Yes.

4 Q Okay. Now look at Bibey Road. That subdivision was
5 done in 2021; isn't that right?

6 A Correct.

7 Q Bibey Road had 12 lots, but it was only on 34 acres.

8 A Right.

9 Q Isn't that right?

10 A Right.

11 Q The lots are concentrated in the front of that
12 tract; isn't that right?

13 A Correct.

14 Q In fact, the plat leaves 25.64 acres of open space
15 in the back, open land.

16 A Uh-huh.

17 Q Isn't that correct? You have to Say, "Yes," Or,
18 "No."

19 A Yes.

20 Q Yeah, okay. And that would leave them 72 percent of
21 land open?

22 A Correct.

23 Q All right. And the land, that was buildable land
24 and not just wetlands; isn't that right?

25 A Correct.

1 Q Okay. And you used in that one the same
2 justification as you did in this one?

3 A Uh-huh.

4 Q And now this intersection on Bibey Road, it's near
5 the old Matthews Market, which is on Vass-Carthage Road?

6 A Uh-huh.

7 Q Correct?

8 A Yes.

9 Q Now, that intersection, you're familiar with the
10 Matthews Market intersection; aren't you?

11 A Yes, I am.

12 Q It's now a four-way stop?

13 A Yes.

14 Q They have got businesses that have gone up around
15 it?

16 A They have a church.

17 Q They have a church? It's --

18 A The Vass, very close to Vass, very close to
19 Whispering Pines.

20 Q And Whispering Pines has almost swallowed it up over
21 there; hadn't it? I mean, they're coming pretty close to
22 Vass-Carthage Road; aren't they?

23 A Absolutely.

24 Q So it's right there, there; isn't that right? Okay.
25 So that's another subdivision in a major crossroads area in

1 Moore County?

2 A Uh-huh.

3 Q All right. Now let's talk about Leatherwood. That
4 was the fourth one. Now, Leatherwood was the 2020 one; isn't
5 that right?

6 A Yes.

7 Q Now, it is actually on Vass-Carthage Road closer to
8 Vass than Bibey Road.

9 A Uh-huh.

10 Q Isn't that right?

11 A Uh-huh.

12 Q In fact, it is probably the closest to the Ring
13 property; isn't that right?

14 A Uh-huh.

15 Q Now let's talk about Leatherwood. Now, this has a
16 subdivision, has five lots on 12.7 acres; isn't that right?

17 A Yes, sir.

18 Q All these lots open onto Vass-Carthage Road; they
19 don't have a single entrance to it.

20 A That's correct. They share driveways, some of them.

21 Q And this was a conventional subdivision.

22 A No, it was a -- it was a conservation subdivision.
23 No, it was conventional, excuse me.

24 Q It was a conventional subdivision.

25 A Yes.

1 Q Yes, it was.

2 A Yes.

3 Q And the lot sizes there were very different than the
4 subdivision we're talking about here; aren't we?

5 A Yes.

6 Q The lots there were 2.01 acres; do you remember
7 that?

8 A Yes.

9 Q 2.33 acres.

10 A By design.

11 Q Two -- yes, by design.

12 A By design.

13 Q 2.56 acres, 2.74 acres, and 2.97 acres. That's what
14 you recall; isn't it?

15 A Uh-huh.

16 Q All right. And in fact, this subdivision is
17 basically on the same creek that runs through the Ring
18 property?

19 A Correct.

20 Q All right. All right. And that subdivision fits in
21 wonderfully with that community. You would agree with that;
22 don't you?

23 A Yes.

24 Q Because it has arable agricultural land, it has
25 houses on a larger lot, and it's not a half-acre subdivision?

1 A Well, a conventional subdivision can only use --
2 they have to leave 25 percent of it as undisturbed. That's
3 the part of the conventional.

4 Q Okay. All right.

5 A That was what the developer chose to do.

6 Q Right. Okay. And those are the four subdivisions
7 here that were compared to this one; right? Okay.

8 A Well, not compared to this one, but compared to what
9 the board has approved --

10 Q Right.

11 A -- over time.

12 Q Okay.

13 MR. PARKER: I'm sorry, I couldn't see the light.
14 That's all the questions I have at this time.

15 MS. LELAND: Okay.

16 THE WITNESS: Thank you, Mr. Parker. Thank you.

17 MS. LELAND: Mr. Chair, can we take a short
18 five-minute bathroom break?

19 CHAIRMAN QUIS: Take a five-minute break.

20 (Recess.)

21 MS. LELAND: Okay. So Mr. Robinson, are you going
22 to redirect?

23 MR. ROBINSON: Just a few short, hopefully, redirect
24 questions.

25

1 REDIRECT EXAMINATION OF DEBRA ENSMINGER BY MR. ROBINSON:

2 Q Ms. Ensminger, just to follow up on a couple things
3 that Mr. Parker brought up.

4 So the land that is the subject of tonight's
5 proceeding, and the prior four nights' proceedings, is still
6 zoned RA-40; is that correct?

7 A Correct.

8 Q And since the land use plan was adopted in 2013, it
9 has not been rezoned to some other designation; is that
10 correct?

11 A Correct.

12 Q Okay. With regard to septic systems, let me just
13 say how I think the system works and you can then tell me
14 whether that's accurate, or correct me.

15 So in this case, if this project were to be
16 approved, the -- the applicant would then submit a proposed
17 septic treatment system for each lot, and then that would be
18 reviewed by Moore County Environmental Health Department, if
19 it's a conventional septic system; is that correct?

20 A Yes. They would have to hire someone to do a
21 lot-by-lot soil evaluation report to determine if the lots
22 would perk for a septic system.

23 Q And then if -- if it -- if every lot perks for a
24 septic system and that checks out with Moore County
25 Environmental Health, then Moore County Environmental Health

1 would issue a conventional septic permit for each lot; is
2 that correct?

3 A Correct.

4 Q But it's also possible that on some lots there might
5 not be perkable soils?

6 A That's correct.

7 Q And there are other alternatives to a conventional
8 septic system that an owner of land could pursue that might
9 be issued by the state Department of Environmental Quality;
10 is that correct?

11 A That is correct.

12 Q And at this time at the preliminary plat stage we
13 don't have any idea how that's going to turn out; do we?

14 A No, we do not.

15 Q In your experience as the planning director here for
16 so many years, do you have faith and confidence in the fact
17 that either the Moore County Environmental Health Department
18 or the applicable state agency will adequately and
19 protectively approve septic systems for these lots?

20 MR. PARKER: Objection.

21 THE WITNESS: Correct.

22 BY MR. ROBINSON:

23 Q You do?

24 A Yes.

25 Q Okay. Is that based on your experience?

1 A Yes.

2 Q Okay. There was a line of questioning that
3 Mr. Parker had about -- about the process by which there
4 would be an order prepared for the board, and is it your role
5 as the planning director to prepare an appropriate order for
6 the board, irrespective of whether they approve or deny a
7 particular special use permit request?

8 A If they approve or deny the request it is my
9 responsibility to work with the county attorney to prepare a
10 board order, yes.

11 Q Okay. And you would do that whether in this case
12 this application for a special use permit is approved or if
13 it's denied?

14 A Correct.

15 Q Okay. And the contents of that order would be based
16 on the decision that the board makes, not any decision that
17 you make?

18 A That is correct.

19 Q Okay. Mr. Parker also asked you about what was
20 behind tab 7 in our list of exhibits -- sorry -- which is the
21 map that showed the four other residential subdivisions that
22 had been approved by this board?

23 MR. PARKER: Mr. Robinson, it's on the floor if you
24 need it.

25 MR. ROBINSON: That's fine. I'm just looking at the

1 one behind tab 7. Thank you.

2 BY MR. ROBINSON:

3 Q And do you understand the purpose of that exhibit to
4 be to show the average distances of those subdivisions to
5 schools, gas and grocery, shopping and retail?

6 A That's correct.

7 Q That fourth or fifth column from the left shows the
8 average distances of those four approved developments from
9 the various different schools, grocery stores and shopping;
10 is that correct?

11 A Correct.

12 Q And is it fair to say the fifth column, the Union
13 Church Road subdivision shows distances that are in line with
14 the average distances for the other four approved
15 subdivisions?

16 A Yes.

17 MR. PARKER: Objection.

18 THE WITNESS: Correct.

19 MR. PARKER: Shows what it shows.

20 BY MR. ROBINSON:

21 Q Okay. And all four of those examples are located in
22 what is designated as a rural agricultural zone on the future
23 land use map; is that correct?

24 A I'll have to look and see.

25 Q Okay.

1 A Yes, you're correct.

2 Q Okay. All right. At the prior hearing there was a
3 lot of questioning from Mr. Parker about the extent to which
4 the preliminary plat as submitted did or did not contain
5 certain elements that might be listed in the checklist for
6 preliminary plat; is that correct?

7 A Correct. I have a big one behind you.

8 Q What's that?

9 A I have a very large one behind you that can show
10 what was deficient.

11 Q Okay.

12 A If you'd like, if the board would like to see it.
13 It's very minimal.

14 Q Yeah, I haven't seen that one. But we have prepared
15 an exhibit from LKC that I'd like to show the witness.

16 A I could tell you what, you know, he said that was.

17 MR. PARKER: I want to -- I'm going to be prepared
18 to object to this. I don't know what it is. I hadn't seen
19 it.

20 THE WITNESS: You said the owner was incorrect on
21 the plat, but the owner at the time the application was
22 submitted in our GIS records had not been updated to reflect
23 the deed that was recorded in January, so that's the reason.

24 BY MR. ROBINSON:

25 Q Okay.

1 A So he said it was an incorrect deed reference and
2 owner information, the approximate grades were not listed,
3 but there is a note, the stream location, there is a little
4 squiggly line at the -- I could show you -- but he did not
5 show the stream, and that the street cross-section on the
6 back of the --

7 MR. PARKER: Well, wait a minute. I'm going to
8 object. Is she -- are you -- is she answering -- what was
9 the question?

10 BY MR. ROBINSON:

11 Q She, I think she is giving testimony --

12 A I'm saying what you pointed out that was
13 incorrect --

14 MR. PARKER: Oh. Okay. I gotcha. Okay. I'm
15 sorry.

16 THE WITNESS: -- on the preliminary plant.

17 MR. PARKER: Oh, I have the dia -- I have the
18 exhibit.

19 THE WITNESS: That's okay. I've -- we've got it.

20 MR. PARKER: If you want that.

21 THE WITNESS: We've got it. And in the
22 cross-section in the back it had public streets, but in the
23 note they're private streets. So.

24 MR. ROBINSON: Okay. And if I may approach the
25 witness?

1 (Exhibit No. 111 identified.)

2 BY MR. ROBINSON:

3 Q I've just handed you an exhibit, which is a
4 four-page exhibit, 11 and a half by 17 each page, and I've
5 marked it as Exhibit 111. The first two pages, do you see--

6 MR. PARKER: I'm going to object to this for the --
7 I mean, I'm going to object. So.

8 MR. ROBINSON: Okay.

9 MR. PARKER: All right.

10 MR. ROBINSON: I hear your objection.

11 BY MR. ROBINSON:

12 Q So the first page of this exhibit has red clouded
13 items on it, circled items, and have you seen this exhibit?

14 A Get that one on my desk. You can have that one.
15 That's yours, you can have it.

16 Q Have you seen this exhibit?

17 A Me?

18 Q Yes.

19 A Yes.

20 Q So what do the red clouded items depict?

21 MR. PARKER: Whoa, whoa, whoa. I object. Is
22 Mr. Picerno here to present what those things are?

23 MR. ROBINSON: We can get him here if you want to
24 but, she's looked at it and conferred with Mr. Picerno.

25 MR. PARKER: Well, yeah --

1 BY MR. ROBINSON:

2 Q So what's your understanding of what those are?

3 A Well, I didn't, my staff did. I had my staff to
4 confirm.

5 Q And what is the -- what is your understanding of the
6 red circled items?

7 A The red circles are the things that have been added.
8 The stream up in the far left where the red circles are, the
9 perennial stream down to the left, and then at the bottom it
10 says, you know, about the storm water management, see note 5,
11 and so they have that highlighted under the general
12 development notes.

13 Q Uh-huh.

14 A And then if you look at all the things that have
15 been highlighted under the general development notes they
16 have added what the final grades will be, and that's
17 typically what you see on a preliminary plat.

18 Q Okay.

19 A And then the Department of Environmental Quality,
20 you know, about the storm water, the plan, and then number
21 16, "The wetlands and stream locations were delineated by a
22 licensed environmental scientist as of signing of the
23 preliminary plat. The environmental scientist has submitted
24 a jurisdictional determination request to the U.S. Army Corps
25 of Engineers."

1 Q Okay. And so it has changes that are intended to
2 address some of the issues that --

3 A Yeah.

4 Q -- Mr. Parker raised at the prior hearing?

5 MR. PARKER: Well, objection to what it's intended
6 to do.

7 MS. LELAND: Mr. Robinson, can you clarify for
8 everyone --

9 MR. ROBINSON: Yeah.

10 MS. LELAND: -- what you're attempting to do?

11 MR. ROBINSON: Yeah, yeah, I'd be happy to. And I
12 was going to get to that. If I could just finish describing
13 the last two pages?

14 MS. LELAND: Okay. As long as you're going to get
15 to it.

16 MR. ROBINSON: Yeah.

17 BY MR. ROBINSON:

18 Q And so the last two pages, do you understand those
19 to be the same as the first two pages just with the -- the
20 red clouds removed so that it's a clean exhibit?

21 A Right.

22 Q That's a yes?

23 A Yes.

24 Q Okay. Yeah. So it's true, isn't it, Ms. Ensminger,
25 that under your ordinance, and under, specifically under

1 section 12 regarding conditional use permits, and 12.2(C),
2 there really, there are two ways that there can be changes
3 made to a preliminary plat that has been submitted under
4 12.2(C), the board can adopt certain conditions to allow
5 those changes to be incorporated into the final plan; is that
6 correct?

7 A That is correct.

8 Q And isn't it also true that under your UDO under
9 section 12.2(E) called minor changes -- do you have your UDO
10 there?

11 A I do. I have so much stuff up here.

12 Q I know.

13 MS. LELAND: Is it -- does anyone on the board have
14 a question? Just making sure everyone -- we're all good?
15 Okay.

16 MR. ROBINSON: Yeah, and I'll explain in just a
17 moment.

18 THE WITNESS: You said 12 point --

19 BY MR. ROBINSON:

20 Q Yes, it's on page 99 of the UDO.

21 A Okay. Yes.

22 Q And you're the administrator under the UDO; is that
23 correct?

24 A Yes.

25 Q Could you read 12.2(E), "minor changes"?

1 A Okay. "Should the administrator, building
2 inspector, Department of Environmental Health, public safety
3 or public works or NCDOT identify minor changes the
4 administrator shall be authorized to accept such minor
5 modifications to site plan as necessary."

6 Q Okay.

7 A "Such minor changes may include, but not limited to,
8 small alterations, such as realignment of streets and
9 relocation of utility lines due to engineering necessity."

10 Q And are you familiar with the state statute that
11 allows for such changes to be made?

12 A Yes, I am.

13 Q Just so long as they don't involve changing the use
14 or the density?

15 A That is correct.

16 Q Okay. So in your opinion would it be appropriate
17 prior to approval of a final plan -- plat, if this
18 preliminary plat were approved, for you to recommend changes
19 such as those shown on Exhibit 111 prior to approval of a
20 final plat?

21 A Yes.

22 Q Okay. And is that something that happens in the
23 ordinary course for you with other matters?

24 A Absolutely.

25 Q Okay. Thank you. I'd go ahead and move the

1 admission of Exhibit 111.

2 MR. PARKER: I object.

3 MS. LELAND: As an exhibit only, but certainly not
4 as a updated modified plat.

5 MR. ROBINSON: That's right. It's merely intended
6 to -- as illustrative to explain how the process can and will
7 work.

8 MS. LELAND: Yes.

9 (Exhibit No. 111 offered.)

10 BY MR. ROBINSON:

11 Q So I'm going to -- I'm going to wrap this up pretty
12 quickly here because I think folks are probably interested in
13 getting to the end of the line. I mean, I appreciate your
14 patience and diligence. You've been examined, cross-examined
15 by Mr. Parker.

16 Based on everything that you've heard, including his
17 cross-examination, do you have -- have you changed your
18 opinion about the extent to which you believe that this
19 proposed conservation subdivision is in general conformity
20 with the land use plan?

21 A No, I have not.

22 Q And is it still your opinion that you do believe it
23 is in general conformity with the --

24 A I do.

25 Q -- with the land use plan? Is that based on your

1 experience in Moore County as the planning director?

2 A Yes.

3 Q Okay.

4 MR. ROBINSON: Those are all the questions I have.

5 Thank you.

6 MR. PARKER: Ms. Ensminger --

7 MR. ROBINSON: Sorry, I apologize for interrupting.

8 I wrote a big note at the end of my thing to remember that I
9 also wanted to make sure that I introduced these larger
10 Exhibits, 112 and 113, which are just larger copies of the
11 ones that are behind the tabs in the book let I gave you last
12 time.

13 MS. LELAND: Okay.

14 MR. ROBINSON: Without objection, I assume.

15 MR. PARKER: I haven't seen 113. I mean, I don't
16 object to it if it's just what's in there. Yeah, I'm fine
17 with that. I object to that one, 111, but the others I'm
18 okay with.

19 (Exhibit No. 113 identified.)

20 (Exhibit No. 112 and 113 offered.)

21 MS. LELAND: And again, it's not as a --

22 MR. PARKER: I understand.

23 MS. LELAND: -- modified plat.

24 MR. ROBINSON: Yes. I'm sorry. That was it.

25

1 RE CROSS-EXAMINATION OF DEBRA ENSMINGER BY MR. PARKER:

2 Q Ms. Ensminger, did you talk to Philip Picerno about
3 fixing this plat?

4 A I did not talk to him specifically, but I had my
5 staff to review it and asked them to share with him what was
6 incorrect with the plat, and so they worked with him, and I
7 trust their judgment.

8 Q So you worked with your -- now, are they the same
9 ones who reviewed the first plat that went to the subdivision
10 board?

11 A Yes.

12 Q Okay. And now this one you said fixes all the
13 problems.

14 Do we have that diagram, the exhibit? We just going
15 to put it right there.

16 (Indiscernible discussion.)

17 MS. LELAND: Go ahead and take this one back. That
18 one's not highlighted.

19 MR. PARKER: I apologize to the chairman. I don't
20 think he was here for this, so I don't know that he got to
21 see or hear that. I'm not going to repeat it again. I'm
22 sorry. So.

23 MS. LELAND: He will listen to it if he hasn't
24 already prior to making a decision.

25 MR. PARKER: I'm sure he will. I'm sure he will. I

1 just wanted him to know I wasn't going to go back through it
2 all over again.

3 MS. LELAND: Yes, and please. Thank you.

4 MR. PARKER: You're welcome. You're welcome.

5 (Indiscernible discussion.)

6 BY MR. PARKER:

7 Q So, Ms. Ensminger, this is the one you're talking
8 about, this exhibit right here? What's my next number?
9 Madam -- Ms. Williams? Is it 76? Can you write Exhibit 76
10 on that one?

11 (Exhibit No. 76 identified.)

12 MR. PARKER: Yeah, Ms. -- let Ms. Ensminger look at
13 it if she needs to but go ahead and write it up there Matt?

14 THE WITNESS: (Indiscernible.)

15 MR. PARKER: Okay. Yeah. I'd like that -- yeah,
16 that would be great.

17 THE WITNESS: (Indiscernible.)

18 BY MR. PARKER:

19 Q Whoa, whoa, whoa, whoa, whoa. There's a problem.
20 We either got to have that wireless mike for her or we got to
21 move -- otherwise it's not going to make the record, and I
22 know that Mr. Robinson wants it on the record.

23 Okay. All right. Go ahead.

24 A Okay. The name of the property owner has been
25 changed.

1 Q Okay.

2 A Okay? Okay.

3 UNIDENTIFIED MALE SPEAKER: It's the only thing that
4 was changed on here?

5 THE WITNESS: Well, you don't need name, addresses,
6 telephone number, I mean, it's on there.

7 BY MR. PARKER:

8 Q Ms. Ensminger, I can't hear you.

9 A It's on there.

10 Q I'm sorry.

11 A If you review the preliminary plat, Mr. Parker, it
12 is on there.

13 Q Well, I'm -- okay. This is the first time I've seen
14 it.

15 A Okay. Well, take a few minutes and look at it.
16 It's on there.

17 Q Okay. All right.

18 MS. LELAND: What is on there? Because we missed
19 that part.

20 THE WITNESS: The owner's name, address and phone
21 number.

22 MS. LELAND: Okay. Thank you.

23 THE WITNESS: It's on there.

24 UNIDENTIFIED MALE SPEAKER: Go to the next page?

25 THE WITNESS: Yeah.

1 MR. ROBINSON: If I can interrupt just a second.

2 Mr. Parker, do you have an eight-and-a-half-by-11 of
3 that exhibit? I don't know that I've ever gotten one.

4 MR. PARKER: Okay. It's in the land use plan.

5 MR. ROBINSON: Okay.

6 MR. PARKER: And I may have --

7 MR. ROBINSON: I mean, the marked up one.

8 MR. PARKER: It's in the UDO, and I do have an extra
9 one. If you give me a minute I'll see if I can find it.

10 MR. ROBINSON: Yeah, I mean, marked up the way
11 you've marked it.

12 MR. PARKER: Oh, no, it's -- I have mine that's
13 marked that way.

14 MR. ROBINSON: Okay.

15 MR. PARKER: I mean, you can look at mine if you
16 want but -- okay. All right. So I'm going to introduce that
17 so you'll have it -- it will be there for your argument.

18 THE WITNESS: (Indiscernible.)

19 MR. PARKER: Okay. If she's talking to the sheep,
20 we can't hear her.

21 THE WITNESS: Well, I'm talking to him.

22 (Indiscernible discussion.)

23 UNIDENTIFIED MALE SPEAKER: I appreciate that
24 (indiscernible).

25 THE WITNESS: Okay. This is not required. The

1 perimeter buffer's not required.

2 BY MR. PARKER:

3 Q Okay. Why not?

4 A It's not required in the ordinance.

5 Q Okay. It's required on that sheet, though, ain't
6 it?

7 A No, sir.

8 Q Okay. All right. So it's not required -- all
9 right. Go ahead.

10 A Don't have a perimeter -- I mean, it's not required
11 in this subdivision.

12 Q Okay.

13 A Okay? The wetlands, all that is -- is on the plat.

14 Q Hey, well, wait a minute.

15 UNIDENTIFIED MALE SPEAKER: It's not a plat?

16 THE WITNESS: It's a preliminary plat.

17 UNIDENTIFIED MALE SPEAKER: It's not a plat.

18 BY MR. PARKER:

19 Q It's -- you mean on the --

20 A (Inaudible.)

21 Q -- on the exhibit?

22 A Well, it's whatever he presented.

23 Q Yeah, it's an exhibit.

24 A Exhibit.

25 Q It's not a plat. It's an exhibit.

1 A What you're asking me to --

2 Q Yeah, I am.

3 A -- what you said was incorrect.

4 Q Yeah. Let me ask you this on that. On the
5 wetlands, how do you know they're right now?

6 A Because it says, "The wetlands and stream locations
7 were delineated by a licensed environmental scientist."

8 Q Okay.

9 A "As of signing of this preliminary the environmental
10 scientist has submitted a judicial determination request to
11 the U.S. Army Corps of Engineers."

12 Q Okay.

13 A As I shared with you, if this preliminary plat is
14 approved, they will move forward with all the applicable
15 state, federal requirements, applications, storm water, Army
16 Corp of Engineers. That's what they'll do at the -- if it's
17 approved. This is just preliminary. It's just preliminary
18 approval.

19 Q Okay. All right. So the only thing you got to go
20 by is what's written on there; right? Okay. Because nobody
21 in the subdivision committee's reviewed this; is that right?

22 A No, sir.

23 Q All right. So what else is -- has he fixed?

24 A It says the storm drains that he has here under 5,
25 "Detailed design calculations and construction drawings will

1 be submitted to Moore County and North Carolina Department of
2 Environmental Quality. This subdivision shall adhere to
3 Moore County storm water requirements for the pre/post runoff
4 of ten year design storm prior to start of construction. A
5 storm water permit shall be obtained from the Department of
6 Environmental Quality."

7 Q Okay. All right. So what else?

8 A Okay. They labeled the streets private. They
9 indicated on here a note about the grading. So final grades
10 will be determined during the detailed design and
11 construction drawing phase. So that will be submitted, if
12 it's approved, they will go through all the expense of
13 getting all those drawings. Okay. That's required at final
14 and preliminary.

15 Q Okay.

16 A Impervious surfaces. So there's a note -- I think
17 there is. Where is the impervious calculations? Said it's
18 two dwelling units. Let's see on that. I don't see the --
19 yes. Okay.

20 Up here, the density calculations, the ordinance
21 requires that it has to be -- it's in a WS3, which is
22 24 percent impervious calculations, or, two dwelling units.
23 So they put on here that it tells you what they can have.
24 73 acres, that will be able to, it says the property is
25 within the Little River WS3 watershed. The density to two

1 dwelling units per acre, or 25 -- 24 percent maximum
2 impervious area.

3 Q So --

4 A So they're required to meet that requirement.

5 Q Where is the impervious surface totals?

6 A They're not required to have that.

7 Q So that's not on here. It's right there. He didn't
8 fix that; did he?

9 A It tells you what they're going to -- they don't
10 know what they are yet. He has the roads.

11 Q Why does he not know what they are?

12 A Because he doesn't know what he's -- the impervious
13 calculations. He has to meet either the two dwellings
14 units --

15 Q He has to --

16 A -- or the 24 percent of the 74 -- 73 acres.

17 Q He has to --

18 A That would be --

19 Q But doesn't he have to estimate it?

20 A No, he doesn't.

21 Q Can you --

22 A He's saying what he'll meet.

23 Q Can you show me on here where the proposed buildings
24 are?

25 A No. He's not required to.

1 Q Can you -- Matt, is there -- can you look at the --
2 the list right there?

3 A He's not required to.

4 UNIDENTIFIED MALE SPEAKER: (Indiscernible.)

5 BY MR. PARKER:

6 Q Look on -- it's listed as page 150. What's that
7 say, under 18.15, page 150. It is the --

8 A It says location of all existing and proposed
9 buildings. He doesn't know what they are yet.

10 Q But the ordinance requires him to put the proposed
11 ones on there?

12 A But he doesn't know what they are yet.

13 Q So you're just not going to comply with the
14 ordinance. It doesn't say what they actually are, it says
15 proposed ones; doesn't it?

16 A He has the setbacks.

17 Q Isn't that what that says?

18 A He has what the setbacks will be. He has what the
19 setbacks will be.

20 Q Does that --

21 A What they're required.

22 Q Does the UDO right there at 8.15 [sic] say that he's
23 supposed to list proposed buildings? Yes or no.

24 A It says it.

25 Q And you're just not going to require it?

1 A Well, did we require it with the other subdivisions?

2 MR. ROBINSON: Object.

3 BY MR. PARKER:

4 Q Well, I don't know. If you're violating the UDO on
5 this one, I don't know why it wouldn't --

6 (Simultaneous talking.)

7 A -- don't know what they are.

8 Q Let me ask you this. Where is the proposed
9 topography? That was one. Where is that one? He didn't fix
10 that, either.

11 A He does have the delineation, the numbers.

12 Q Proposed topography is the grades --

13 A Yeah, he has --

14 Q -- in order to calculate the storm water?

15 A He has them.

16 Q That is the gradations of the streets. I'm talking
17 about the --

18 A No, not the grades of the streets.

19 Q -- topography of the lots.

20 A He has the topography of the land.

21 Q This is the existing ones, or do you know? Because
22 he testified --

23 A He doesn't have to --

24 Q -- these were existing?

25 A He does haven't to do that right now.

1 Q What does it say right there?

2 UNIDENTIFIED MALE SPEAKER: What page is that? Do
3 we have to go forward or back? No, that's wetlands.

4 THE WITNESS: Well, that's what he's asking me about
5 topography and the wetlands.

6 (Indiscernible discussion.)

7 BY MR. PARKER:

8 Q Bottom of page 150.

9 UNIDENTIFIED MALE SPEAKER: (Indiscernible.)

10 MR. PARKER: Second from the bottom.

11 UNIDENTIFIED MALE SPEAKER: Oh, there we go.

12 BY MR. PARKER:

13 Q Existing and proposed topography.

14 A Topography of tract and a hundred feet beyond
15 property showing contour (shuffling sounds) no greater than
16 five feet.

17 Q Right. He didn't do that, did he?

18 A Well, if he didn't it can be a condition.

19 Q So we can fix all the problems; is that what you're
20 telling us? All we got to do is get this passed through, we
21 rubber stamp it and we fix all the problems later; is that
22 what you're telling me?

23 MR. ROBINSON: Objection.

24 BY MR. PARKER:

25 Q Ms. Ensminger, I don't mean to be -- to get upset

1 with you. I understand you did not redo this plat, and the
2 man who did it did not come here to defend it. I apologize
3 for asking you these questions. I appreciate your effort of
4 trying to make it right for the citizens of the county.

5 MR. ROBINSON: Is this a question?

6 BY MR. PARKER:

7 Q But once -- this is our -- we can't -- I apologize
8 and thank you for that.

9 MR. ROBINSON: That wasn't a question. Okay.

10 MR. PARKER: I'm done.

11 MR. ROBINSON: Okay. Hold on. No, I'm also done.

12 UNIDENTIFIED MALE SPEAKER: Are we going to hand
13 this in as an exhibit?

14 MR. PARKER: We are, yes. No, it was marked. We
15 haven't introduced it.

16 MR. ROBINSON: So I don't have any other witnesses.
17 As far as I'm concerned, I think we've concluded.

18 MS. LELAND: Mr. Parker, have you concluded your
19 questions of Ms. Ensminger?

20 MR. PARKER: I have, yes, and I appreciate her
21 patience with me.

22 MS. LELAND: Do you want to make sure you got --
23 have all your exhibits in at this time?

24 MR. PARKER: I do, and I'm about to do that.

25 MS. LELAND: Okay.

1 MR. PARKER: If -- if the commissioners can stay
2 while we do it, I've talked to Ms. Williams, she wants me to
3 read off each one individually and make sure that it's right
4 in the record. It could take a little bit.

5 MS. LELAND: Well, we definitely have to have three
6 here to keep the hearing.

7 MR. PARKER: We have to have what?

8 MS. LELAND: We have to have three here to keep the
9 hearing going.

10 MR. PARKER: That's fine. I did not know that rule.
11 And I appreciate you for telling me.

12 So can I have the list in the front up there? And
13 my paper right there?

14 (Indiscernible discussion.)

15 MR. PARKER: Okay. All right. Okay. So where I'm
16 going to start is on the ones that we have, I've made a list
17 of them here. Exhibit Number 1 is the major subdivision
18 application. I think I have offered that. And if it's not
19 introduced, I move to introduce it.

20 1A was Mr. Robinson's staff report; is that correct,
21 Mr. Robinson?

22 MR. ROBINSON: Yes. We -- so are you going through
23 the list that Ms. Williams provided?

24 MR. PARKER: I'm going through the list that I've
25 got -- I've got all of ours on it. I was going to do each of

1 yours as I go through it, unless you don't want me to, so we
2 can do them all at one time.

3 MR. ROBINSON: Well, no, but I was going to suggest
4 that if you're comfortable with the list that she gave, which
5 is broken out by which hearing each exhibit was introduced
6 in --

7 MR. PARKER: Oh, I haven't seen that list.

8 MR. ROBINSON: Then -- oh, okay.

9 MR. PARKER: Yeah, I went through -- my list is
10 numerical, and I'm sorry.

11 MR. ROBINSON: Okay. That's fine.

12 MR. PARKER: I mean, we moved through them today.

13 All right. So --

14 MS. LELAND: Is there any way, for the sake of time,
15 that we can share your list around and see if he agrees and
16 then we just submit the list?

17 MR. ROBINSON: I would be more than happy to --

18 MS. LELAND: To save time.

19 MR. PARKER: It's got a lot of handwriting on it.
20 If we can agree to it, and would you let me make a more
21 accurate -- I mean --

22 MR. ROBINSON: Yeah, yeah.

23 MR. PARKER: -- clean it up a little bit and then
24 make sure? As long as we got everything in, I'm okay with
25 that.

1 MR. ROBINSON: I don't know if the board intends to
2 vote tonight.

3 MS. LELAND: It's my understanding that the board
4 does not intend to vote tonight because there's a lot to
5 consider.

6 MR. ROBINSON: So what I would suggest, if I may
7 presume, is that after we close the hearing that Mr. Parker
8 and I will just agree on the list of exhibits with
9 Ms. Williams between now and whenever you tell us to finish
10 that. It could be tomorrow, if you want to, rather than walk
11 through every exhibit right now. But that's --

12 MR. PARKER: The only issue I have with that is if
13 there is some that he wants to object to, well, since we're
14 not making a ruling on them, they would come in.

15 MS. LELAND: Under objection.

16 MR. PARKER: The objections would be noted anyway.

17 I do know, though, that for the -- for the record,
18 these are ones that I don't have admitted that I haven't made
19 the motion for. I want to do that just to clarify.

20 MR. ROBINSON: Okay.

21 MR. PARKER: Mr. Harbeck's Power Point is number 72,
22 I submitted a copy of that to Ms. Williams and to
23 Mr. Robinson. That was the one that Mr. Quis was absent for
24 and we agreed to introduce that so that he could use that to
25 refer to the testimony.

1 (Exhibit No. 72 identified and offered.)

2 MR. ROBINSON: Okay.

3 MR. PARKER: And I would move to introduce those
4 exhibits.

5 The item 73, which is the 18.15 blowup of the UDO
6 18.15, I would move to introduce that. And that also
7 includes 18.16 on the back of it.

8 (Exhibit No. 73 identified and offered.)

9 MR. ROBINSON: I would just object. I don't mind it
10 being admitted, but I'm going to enter for the record the
11 objection that -- that the -- there are big Xs on there, and
12 those represent some kind of conclusion about whether
13 something is right or wrong, which we dispute. So.

14 MR. PARKER: Is it sort of like the one with all of
15 the 25 reasons that are highlighted that I dispute?

16 MR. ROBINSON: No, I'm just saying --

17 MR. PARKER: Okay.

18 MR. ROBINSON: -- I don't agree with the red Xs.

19 MR. PARKER: Okay. Well, I don't agree with the
20 yellow highlights, but yours came in, too.

21 MS. LELAND: You're objecting to the red Xs on that
22 exhibit?

23 MR. ROBINSON: Yes.

24 MR. PARKER: All right. And next is item 75 is the
25 Planopedia infill definition document. I offered it. I

1 would move to introduce it. I understand he is going to
2 object to it.

3 (Exhibit No. 75 offered.)

4 MR. ROBINSON: Yeah, I do object. That shouldn't be
5 admitted. It's hearsay and there's no exception for it.

6 MR. PARKER: I disagree with that, but I'd offer it
7 anyway.

8 MS. LELAND: Okay. It's all going.

9 MR. ROBINSON: Okay.

10 MR. PARKER: I'm sorry?

11 MS. LELAND: It -- all of these exhibits are going
12 to be admitted.

13 MR. PARKER: Okay.

14 MR. ROBINSON: Okay.

15 MR. PARKER: Subject to the objections, what we're
16 talking about?

17 MS. LELAND: Yes, absolutely.

18 MR. PARKER: Okay. All right. The next one I have
19 is -- can I have my sheet of paper with those on it? Yeah.

20 Exhibit 27, I did not have -- I had that I
21 introduced. This is the one dealing with that I
22 cross-examined -- I used with my traffic expert dealing with
23 Union Hills, and the marketing issue about it being in a
24 Fayetteville community. I showed him and offered at that
25 time. I'd move to introduce 27.

1 (Exhibit No. 27 offered.)

2 MR. ROBINSON: Okay.

3 MR. PARKER: All right. Exhibit 11 and 12, those
4 were the Vass and Carthage letters that I used with the
5 expert. He referred to them and referenced them, and I would
6 move to introduce those.

7 MR. ROBINSON: Yeah, no objection.

8 (Exhibit No. 11 and 12 offered.)

9 MR. PARKER: Exhibit 2B, which is the second report
10 from the traffic expert I would move to introduce. I
11 questioned him about it.

12 MR. ROBINSON: Yeah, I thought that was already
13 admitted.

14 MR. PARKER: Okay, well, it -- I didn't have it on
15 my list, but -- then I would move to admit it again.

16 (Exhibit No. 2B offered.)

17 MR. ROBINSON: Okay.

18 MR. PARKER: Item 32 is Dr. James Gregory's CV. I
19 moved -- I did not -- the clerk did not have that I moved to
20 introduce that. I thought I had. I would move to introduce
21 it and offer that in evidence.

22 (Exhibit No. 32 offered.)

23 MR. PARKER: Item 72. I did that one. And the last
24 one that I have that I know hasn't been addressed is item,
25 Exhibit 46, I listed it as B. It was the redacted report of

1 Nick LaSala that we were -- yeah, that one right there.
2 That's the one that redacted and didn't bleed through and
3 take out the pages on the back. And I would move to
4 introduce that one.

5 (Exhibit No. 46B identified and offered.)

6 MR. PARKER: Okay. And subject to our agreeing
7 later to a corrected list, Mr. Robinson, that's the ones that
8 I had that I needed to address.

9 MR. ROBINSON: Okay. Yeah, same here.

10 MS. LELAND: So from -- Mr. Parker, you'll prepare a
11 much better exhibit sheet that you're going to share?

12 MR. PARKER: Yeah, it won't have the scratches on
13 there.

14 MS. LELAND: Okay. And can you e-mail that out?

15 MR. PARKER: Yes.

16 MS. LELAND: Okay.

17 MR. PARKER: Can I do it tomorrow?

18 MS. LELAND: Yes, of course. Please don't do it
19 today.

20 MR. PARKER: Okay. Thank you.

21 MS. LELAND: You won't have time.

22 MR. PARKER: Okay. Thank you.

23 MS. LELAND: So we are now at closing arguments,
24 which I understand from talking to both Mr. Robinson and
25 Mr. Parker, that it's going to be quite some time. You're

1 going to be at least 40 minutes or more?

2 MR. ROBINSON: I would think 30 to 40, something
3 like that.

4 MS. LELAND: And Mr. Parker thinks less than two
5 hours?

6 (Indiscernible discussion.)

7 MR. PARKER: Less than two hours, but I probably
8 will not use my auctioneer's voice because it needs to be
9 transcribed.

10 MS. LELAND: Okay. Well, it would certainly make it
11 more entertaining for us, but, we understand.

12 MR. PARKER: We may do that in sections.

13 MS. LELAND: Okay. Before they get started, is now
14 a good time to use the bathroom one more time? If not, I'm
15 going because I've got to go. I'm sorry.

16 CHAIRMAN QUIS: Well, it hasn't been so long since
17 we had a break. I'll tell you what, if you would excuse
18 yourself very briefly, we'll just pause for a couple of
19 minutes and continue -- who's going first. Mr. Robinson?

20 MR. ROBINSON: I'd be happy to go first.

21 CHAIRMAN QUIS: Well, have you all discussed it?
22 I'm --

23 MR. ROBINSON: We did. We did.

24 CHAIRMAN QUIS: Okay. And perhaps after your
25 closing remarks we can take a little longer break for

1 everyone's benefit, if it's 30 minutes, 35 minutes, whatever
2 you have to do.

3 Very good. Well, we'll just pause for a little bit.

4 MR. ROBINSON: Okay great. Thank you. I'll go
5 ahead and get set up.

6 (Pause in proceeding.)

7 MR. ROBINSON'S CLOSING ARGUMENT

8 MR. ROBINSON: Great. Thank you. Can I be heard?
9 Yes. Okay. Good.

10 Good evening, Mr. Chairman, board of commissioners.
11 Mr. Chairman, welcome back. I hope you're feeling better.

12 I want to thank everybody for the opportunity to
13 address you in closing this evening with respect to this
14 matter, and I very much appreciate all of your patience over
15 the course of this long proceeding, and in particular the
16 professional manner in which you all have administered it,
17 along with your staff, you know, a pretty complicated and
18 lengthy hearing. I thank you for that.

19 I do, though, think, having said that, that this
20 should have been a much simpler matter, but it has burgeoned
21 into what I view as an unnecessarily drawn-out process.

22 Don't mistake me, I believe the folks that have come
23 out to testify against the proposal are well meaning and well
24 intentioned and good people, but the law requires you to put
25 that aside and to consider only competent, material and

1 substantial evidence that's in the record, and although this
2 public hearing has persisted through five nights, the
3 opponents have offered precious little in the way of
4 competent, material and substantial evidence on the five
5 findings.

6 I'm reminded of something that a wise man once told
7 me. He said be careful not to mistake motion for action.
8 Sometimes you can have a lot of motion and not a whole lot of
9 action, and I think that describes what has happened here in
10 the opposition to this straightforward, 53-lot conservation
11 subdivision in an area which is zoned exactly for that kind
12 of development.

13 Rather than confining themselves to evidence that's
14 competent, material and substantial to the five findings,
15 Mr. Parker has used hours and hours getting good folks to
16 testify about matters that are plainly not material, over my
17 objections, not substantial and oftentimes not competent.

18 But before I summarize our case, I want to briefly
19 say what the case is not about, though that's hard to tell
20 from the evidence that is put in the record.

21 The case is not about a bag of trash, the origins of
22 which trash are completely unknown to everyone, including
23 those who collected the trash and submitted it as an exhibit
24 in this proceeding.

25 The case is not about agritourism. It's not about

1 voluntary agricultural districts. It's not about a small
2 number of automobile accidents on a stretch of road that has
3 an accident rate that is less than half the Moore County
4 average. It's not about photos of farm equipment. It's not
5 about the length of church services and the volume of the
6 music and the joyous vacation Bible school at that church.

7 It's also not about, and should never ever be about,
8 generalized fears that this neighborhood would be, quote, out
9 of place, end quote, or, an eyesore, end quote. The courts
10 have categorically excluded this kind of speculation and
11 generalized fear as completely immaterial to the legal issues
12 that you're supposed to decide in determining whether or not
13 to approve this subdivision.

14 It's not about whether a Raleigh NC State Ph.D.
15 professor of hydrology would prefer that there be no
16 subdivisions because, in his opinion, they all cause damage.

17 It's not about whether this is a mixed-use
18 neighborhood, nor about whether children can ride their
19 bicycles to school like they might be able to do in an urban
20 neighborhood in Wilmington, North Carolina where Mr. Harbeck
21 has been a planner.

22 So why are we here? This case is about a very
23 simple determination of whether this proposed 53-lot
24 conservation subdivision on 73.77 acres of land with 38 acres
25 of open space in a district zoned precisely for this use

1 meets the five findings set out in the UDO Section 12.2(B)
2 for a special use permit.

3 The case is about an objective clinical review of
4 the five findings required to be proven by competent,
5 material and substantial evidence in the record.

6 So, without further ado, let's go through the five
7 findings together, and there's a Power Point on the screen
8 that you all can see as we go through.

9 Finding number one: You have to conclude that the
10 use will not endanger the public health or safety.

11 The evidence in this matter on traffic is as
12 follows:

13 Travis Fluitt of Kimley-Horn, licensed professional
14 traffic engineer in North Carolina, submitted an updated
15 June 21, 2022 report, Exhibit 101, that shows that the
16 project raises no traffic concerns from the safety
17 standpoint.

18 And you probably can't read that, but this is a copy
19 of the page from that report, which I've highlighted, which
20 addresses the questions of whether or not Union Church Road
21 has adequate capacity, and whether or not there are safety
22 concerns from a traffic standpoint. And quoting his report
23 with regard to -- oh, sorry. Oh. Wrong -- wrong mouse.

24 With regard to roadway capacity, he states,
25 "Therefore, Union Church Road has more than adequate capacity

1 to accommodate the proposed development traffic."

2 And then with regard to crash data, he says, "The
3 reported crash rate for this section of the road was 131.93
4 crashes per one hundred million miles traveled. This is well
5 below the reported state-wide crash rate of 239.72 crashes
6 per one hundred million miles traveled for two-lane undivided
7 rural secondary routes." And he says the -- "And it's also
8 well below the reported Moore County crash rate of 302.10
9 crashes per one hundred million vehicle miles traveled."

10 So the crash rate on Union Church Road is both well
11 below the state-wide average and well below the Moore County
12 average.

13 And so he goes on to say, "A review of the crash
14 data does not indicate an existing crash problem in this
15 area. The proposed site is also not expected to create a
16 safety issue at this location or increase the crash rate
17 along this section of Union Church Road."

18 So those are the conclusions of the traffic engineer
19 for the applicant.

20 So what did the opponent's traffic engineer's report
21 say? Well, there was no traffic report provided by the
22 opponent's traffic engineer, Mr. Wan. No written data from
23 Mr. Wan, no written conclusions from Mr. Wan.

24 And if you recall, and these are direct quotes from
25 my cross-examination of him, I said, "Mr. Wan, as you stand

1 here today, having reviewed that report by Travis Fluitt,
2 would you say there are any errors in the report?" Answer,
3 "No errors." That's at time stamp 3:27:50 on the June 23rd
4 public hearing.

5 Mr. Wan said that his -- in his conservative opinion
6 is that Union Church Road has the capacity to handle 9,000
7 vehicle trips per day. So my question to him was, "Even
8 under your conservative estimate using a 12 percent growth
9 rate, is there a scenario under your conservative estimate
10 where the number of trips on Union Church Road exceeds 9,000
11 trips per day?" Answer, "No." That's also on the June 23rd
12 public hearing.

13 And more importantly, Mr. Wan never testified that
14 this project will materially endanger the public health or
15 safety. All right?

16 So on the one hand you have a North Carolina traffic
17 engineer telling you that it will not create any public
18 health or safety issue from a traffic standpoint and that the
19 roadway capacity is sufficient. Then you have their expert
20 who was brought in who gives you no report and no data and
21 agrees with our traffic engineer.

22 Those are the only two people who were qualified to
23 discuss and testify and give competent evidence on traffic
24 issues with regard to this subdivision.

25 Neighbor testimony, as Ms. Leland has pointed out,

1 cannot be considered by state law, 160D-1402(j)(3).

2 MR. PARKER: Objection.

3 MR. ROBINSON: It's conclusively incompetent
4 evidence when they testify about the result of the
5 development creating potential safety concerns. So,
6 therefore, there's no evidence in the record allowing a
7 finding that traffic will cause a public health or safety
8 issue.

9 Conversely, the only competent evidence in the
10 record for traffic health and safety is undoubtedly in favor
11 of the applicant.

12 Another question that was brought up about public
13 health and safety is regarding storm water. The applicant
14 gave testimony from Philip Picerno, professional engineer,
15 that storm water generated by this use will be managed
16 entirely in accordance with state and local requirements.

17 The opponents gave no expert testimony from a
18 professional engineer to the contrary. Their sole offering
19 on this point was Dr. Gregory, who opined that all
20 residential subdivisions are harmful, which in this context
21 is a meaningless statement. Dr. Gregory admitted that he is
22 not a licensed professional engineer, and so by state statute
23 he cannot give any expert opinion on that subject.

24 So the conclusion regarding storm water and the
25 impact of this subdivision -- pardon me, on --

1 MR. PARKER: Objection on that.

2 MR. ROBINSON: -- public health and safety, is that
3 the only competent evidence in the record for storm water
4 health and safety is in favor of the applicant.

5 So we would submit to you that there are -- in terms
6 of competent, material and substantial evidence in the
7 record, it clearly establishes that this finding is met.

8 I would also point out that Mr. -- I'll move on to
9 the next finding.

10 Finding number two: You have to determine that the
11 use meets all required conditions and specifications.

12 Expert witness and Moore County planner -- planning
13 director Debra Ensminger, who presided over the adoption and
14 practice under the UDO, testified that this finding is met
15 and that any needed additional information on the plat can be
16 supplied either by condition or by minor revisions under the
17 UDO.

18 But what did the opponent's testimony bring forward
19 on this point? Mr. Glenn Harbeck, who was their expert
20 witness who came in from Wilmington to tell you what your
21 land use plan means, had to acknowledge on cross-examination
22 that this second finding was met. I asked him, "That's what
23 I'm asking. I'm asking whether you are giving an expert
24 opinion on whether or not finding number two is met, and that
25 is a yes or no question." His response, "I think the

1 findings by the staff are probably boilerplate and in order."

2 MR. PARKER: Objection.

3 MR. ROBINSON: So let's talk more about finding
4 number two, which is that it meets all required
5 specifications.

6 The -- Mr. Parker has made a big issue about the
7 checklist in UDO section 18.15, but I am encouraging you not
8 to fall for Mr. Parker's game of gotcha. Your UDO
9 specifically provides two ways in which any preliminary plat
10 corrections or additions can naturally be made within the
11 process.

12 First of all, section 12.2(C) specifically allows
13 you to impose conditions which assure that the five findings
14 are met, and, secondly, the UDO in section 12.2(E)
15 specifically provides that the planning director can accept
16 minor modifications to the plat. And the state statute
17 specifically defines universe of minor changes as anything
18 that does not change the use or density of the overall
19 development as changes that the planning director can address
20 administratively, and that's in NCGS§160D-705(c).

21 So let's take a step back just from the practical,
22 you know, a little bit, get back from all of the legalese and
23 the jargon.

24 The reality is that there's a process in place
25 that's worked very well in Moore County administered by

1 Ms. Ensminger and her staff, and the way it works is you
2 bring a preliminary plat for review, it gets reviewed, and to
3 the extent there are any elements that need to be added to
4 the plat, including items that only become known after the
5 preliminary plat is approved, for example, the precise
6 location and delineation of the wetlands can be added to the
7 plat by state statute, so long as they don't change the use
8 or density.

9 And that's the way the process has worked, and does
10 work, and will work in this case if you are inclined to
11 approve the preliminary plat.

12 And so we did submit Exhibit 111 this evening, the
13 one with the red clouded changes on it just to show you how
14 that process could work.

15 And applicant submitted that revised plat that
16 addresses many of these minor administrative content
17 issues --

18 MR. PARKER: Objection.

19 MR. ROBINSON: And the staff --

20 MR. PARKER: It wasn't a revised plat.

21 MR. ROBINSON: The applicant has submitted a
22 revised -- an illustrative exhibit of a revised preliminary
23 plat that shows how those issues would be addressed in the
24 future, and there's nothing wrong, there's nothing unusual
25 about that. It happens all the time, because sometimes

1 things get left out, and other times things become known
2 later, and you have to have a process that has sufficient
3 flexibility to allow that to occur. The state statute
4 acknowledges that and creates a process for that to happen.

5 Finding number two, the use does meet all required
6 conditions and specifications. That was testified to by
7 Ms. Ensminger, who's an expert in the area, and the competent
8 material and substantial evidence in the record establishes
9 that this finding is met.

10 Finding number three: The use will not
11 substantially injure the value of adjoining property unless
12 the use is a public necessity.

13 As far as I know the applicant's expert real estate
14 appraiser, MAI Frank Dean, that was a long, long time ago,
15 but he was the only witness that testified as to the impact
16 of the development on the value of adjoining property. And
17 the only competent evidence for sure in the record on this
18 point was the evidence of Mr. Dean, MAI, who testified and
19 reported in Exhibit 8 that there would be no substantial
20 injury to value of adjoining property. Your counsel will
21 confirm for you that any other evidence from a lay person to
22 the contrary by statute is presumptively incompetent.

23 As such, finding number three is conclusively met,
24 there being no other evidence in the record. So the
25 competent, material and substantial evidence in the record

1 establishes that finding number three is met.

2 Finding number four: The use will be in harmony
3 with the surrounding area and compatible with the
4 neighborhood.

5 First, I want to start by saying that the law is
6 clear that since the proposed use here, a residential
7 subdivision, is an allowed use in this zoning district,
8 there's a presumption that the proposed use is in harmony and
9 compatible.

10 Essentially the law says that if a use is an allowed
11 conditional use within the district it is equivalent to a
12 legislative finding that it's in harmony with the surrounding
13 neighborhood. So you start this hearing already with us
14 having proven that the use is in harmony with the surrounding
15 neighborhood simply by virtue of the fact that it's an
16 allowed use in the RA-40 district.

17 And this law is set forth clearly in *American Towers*
18 *V. Town of Morrisville*, which says that, "The inclusion of a
19 use as a conditional use in a particular zoning district
20 establishes a prima facie case that the permitted use is in
21 harmony with the general zoning plan. Competent evidence
22 from the opponents is required to prove that the permitted
23 use is not in harmony with the surrounding area. The
24 ordinance itself establishes a prima facie case of harmony
25 with the surrounding neighborhood."

1 Now, the opponents have tendered testimony from
2 Mr. Harbeck and Mr. LaSala and various neighbors on this
3 question. Both Mr. Harbeck and Mr. LaSala each acknowledged
4 that they're aware of no court case in North Carolina in
5 which a proposed residential subdivision in an area zoned
6 residential has been deemed not to conform with the
7 neighborhood.

8 MR. PARKER: Objection.

9 MR. ROBINSON: Under North Carolina law the types of
10 cases where disharmony has been found is in cases where the
11 difference is stark and harsh. The vast majority of cases
12 where SUPs get denied for lack of harmony are stark
13 contrasting use cases like the ones I'm going to mention to
14 you right now. And this is really an important fact.

15 Where courts have upheld a board of commissioners'
16 denying a special use permit on account of the project not
17 being in harmony with the surrounding neighborhood, the cases
18 are like a giant 1,130-foot tall radio broadcast tower in a
19 residential area. *Davidson County Broadcasting V. Iredell*
20 *County*. The court said that that radio tower is not in
21 harmony with the surrounding neighborhood.

22 A land clearing and inert debris dump proposed for a
23 crossroads community comprised of single-family residential
24 housing, *Hopkins V. Nash County*.

25 A telecommunications tower that was four times

1 taller than anything else around it, *SBA, Inc. V. City of*
2 *Asheville*.

3 A rock quarry near a residential dwellings, all --
4 all the uses within two miles were residential, as *Vulcan*
5 *Materials, Co. V. Guilford County*.

6 An apartment building in a single-family area where
7 there was evidence that other apartment buildings created
8 adverse traffic conditions, none of those here, noise, no
9 evidence of that here, increasing crime because of other
10 apartment buildings, no evidence of that here, and college
11 student apartment dwellers engaged in vandalism, none of that
12 here. That's the Petersilie case.

13 So in that case the Court said there was evidence in
14 the record about vandalism and crime and noise and traffic
15 conditions that made it so that an apartment building, an
16 apartment building in a residence -- single-family
17 residential neighborhood was not in harmony. That's no where
18 near the case that we have here. We have houses located in a
19 residentially zoned district for houses that is very near a
20 lot of other houses.

21 North Carolina courts have uniformly held that
22 evidence of generalized fears and concerns is insufficient to
23 overcome the competent, material and substantial expert
24 testimony from an applicant.

25 In Southern Pines there was a court -- where the

1 court overturned the denial of a special use permit because
2 the noise and odor impact testimony was speculative.

3 And there's a *Habitat For Humanity of Moore County*
4 *vs. the Board of Commissioners of Pinebluff*. The court
5 reversed the denial of a special use permit because it was
6 speculative in general: Fears of trash dumping, that sounds
7 familiar; four wheelers; children in the neighborhood
8 spooking horses; desire for larger lots. The court said none
9 of that is competent testimony about whether or not the
10 proposed development is in harmony with the surrounding
11 neighborhood.

12 Same thing, generalized fears and speculations
13 regarding a rock quarry use were insufficient to overcome and
14 rebut the presumption of harmony.

15 So, a sober look at the evidence that's in the
16 record from the opponent of this 53-lot subdivision is that
17 it's all generalized fear and speculation.

18 Your planning director testified that the proposed
19 use is in harmony and is compatible. But the common sense,
20 it's common sense, really, that settles this question
21 definitively. It doesn't take a rocket scientist or even a
22 paid planner parachuting in from Wilmington to look at the
23 aerial photo of the neighborhood and know that this project
24 is in harmony.

25 Fifty-eight single-family dwellings in very close

1 proximity to the 53 that are proposed here. And to argue
2 that somehow putting 53 houses here is not in harmony with
3 the other 58 that already exist in close proximity is never
4 going to stand up in court.

5 Really, if you analyze it, the opponent's evidence
6 seems to be that proposed residential dwellings are not in
7 harmony with existing residential dwellings. Of course,
8 that's a specious argument.

9 They also seem to argue that these residences are
10 not in harmony with the nearby Falls Memorial Church.
11 Churches and single-family residences coexist all across the
12 great state of North Carolina, and thank God for that. I
13 guarantee you, there's no case in North Carolina that says
14 that a residential subdivision is not in harmony with its
15 neighborhood because there's a church nearby.

16 Plus, there are two single-family dwellings that
17 already exist that are much closer to that church than the
18 vast majority of the houses in this subdivision will be, and
19 if those homes are in harmony, then these have to be as well.

20 So the bottom line is that the fourth finding that
21 the use will be in harmony with the surrounding area and
22 compatible with the surrounding neighborhood is met.

23 The law mandates that you conclude that that is met.
24 First of all, it's presumed to be met because it's an allowed
25 use in the district. Secondly, the applicant has clearly

1 established a prima facie case. You cannot deny that unless
2 there is competent, material and substantial contrary
3 evidence, and there is none.

4 The evidence is that this land is surrounded by
5 single-family residences. The opponents want to ignore that,
6 but you can't. Plus, the proposed project is not a cell
7 tower, a landfill, a rock quarry, or an urban crime-producing
8 apartment building like those other cases that have been
9 found to not be in harmony.

10 I mean, the evidence is overwhelmingly in favor that
11 even without the presumption, the neighborhood is in harmony
12 when properly considered.

13 Finding number five: The use will be in general
14 conformity with the approved Moore County Land Use Plan.

15 And this is where a lot of the energy and attention
16 was focused by the opponents.

17 Again, your planning director, Debra Ensminger, who
18 led the drafting and the implementation of the 2013 land use
19 plan, testifying as an expert in this case, agrees that this
20 use is in general conformity with the 2013 Moore County Land
21 Use Plan.

22 There's a list of 25 ways in which the project
23 conforms to the land use plan, Exhibit 105. And I can walk
24 you through all of those, or you can read them yourself, but
25 it's clear that there are many, many ways in which it

1 complies with the land use plan.

2 Now, the opponent expert planner, Mr. Harbeck, who
3 parachuted in from Wilmington, he did disagree with this, but
4 when I asked him if his opinion should supersede the opinion
5 of Ms. Ensminger on this subject, he acknowledged in his
6 testimony that it's just a difference of opinion.

7 So I submit that the opinion of your planning
8 director, the opinion of a person who shepherded the land use
9 plan and the UDO into existence, and the person who has been
10 implementing both is a more reliable opinion than the opinion
11 of an outsider whose planning experience is almost
12 exclusively in a large urban area in North Carolina.

13 Further, Mr. Harbeck openly acknowledged, first of
14 all, A, that his report never mentioned the fact that this
15 land is zoned for precisely this use. And I cite a time
16 stamp in the hearing where he said that, acknowledged that.

17 And he acknowledged that the -- that zoning has the
18 force of law whereas the land use plan is a mere policy
19 suggestion, and he acknowledged that he failed completely to
20 consider the test that's set out in the land use plan for
21 determining consistency with the plan.

22 And when that test, set out on page 81 of the plan,
23 is properly applied, it's clear and unrefuted at this point
24 that this project meets that standard because it's obvious to
25 all that this project can be approved without compromising

1 another goal for the rural agricultural area, which is to
2 preserve farm land. After all, the evidence shows that there
3 are 296,000 acres dedicated to that potential farm land use,
4 and this project is 74 acres. Exhibit 107. To put that into
5 perspective, it would take about 4,000 projects of this size
6 to occupy all of that space.

7 This is not a binary analysis of either farms or
8 houses. All of the -- all of the experts, Ms. Ensminger,
9 Mr. Harbeck, and even Mr. LaSala, they all testified the same
10 thing, that this is a balance.

11 You look at it and you say can we continue to
12 maintain rural character in Moore County with 296,000 acres
13 of available land to do it and allow housing in an area where
14 it's zoned to be allowed? And can -- can we also not just
15 allow housing where it's zoned to be allowed, but can we
16 conserve open space like the land use plan says is demanded
17 of you?

18 This project preserves more than 50 percent of the
19 land of the 73.77 -- excuse me -- acres in open space, and
20 the land use plan says that should be of paramount concern to
21 you in determining whether or not to approve a particular
22 subdivision. Okay?

23 So it -- just because the land use plan has some
24 components of things it wants to encourage doesn't mean that
25 that's the only way that a project can comply with the land

1 use plan. Of course not. It's much more nimble than that.
2 It gives you the opportunity to say, to balance those
3 factors, and to say, yes, we can allow an excellent
4 conservation subdivision that achieves our paramount purpose
5 of preserving open space in an area where it's zoned to be
6 allowed, and we can still provide for the maintenance of farm
7 land in the balance of the area that is shown as rural
8 agricultural in the county.

9 We went through this during the objection period,
10 another point that Mr. Harbeck made and Mr. Parker has
11 insisted on in questioning is the difference between
12 mixed-use development and mixed land uses, and I won't go
13 into it any further. You can -- you can -- I'm sure you
14 followed that conversation.

15 But, essentially, your land use plan talks about it
16 being important to create a mix of land uses. It doesn't
17 talk about it being important to have mixed-use development.
18 Those are two very different things.

19 Ms. Ensminger testified that the mix of land uses to
20 her in this project is having a church nearby, having some
21 farm land nearby, having some smaller lots and some bigger
22 lots, and we have that here.

23 Mr. LaSala also testified for the opponent, and he's
24 not a planner. He's not a lawyer and holds no
25 certifications. His only qualification seems to be that he

1 lives four miles away and has recently taken an interest in
2 farming and land use planning. And that's -- nothing wrong
3 with that.

4 MR. PARKER: Objection.

5 MR. ROBINSON: It's commendable, but he admitted
6 that he gives no opinion on the question of whether or not
7 the fifth finding was met. He said he just identifies
8 policies within your plan and puts that decision to you.

9 And then he also acknowledged that -- that if this
10 exact same project was proposed by the owners that it should
11 be approved because he's a staunch advocate of property
12 rights, and a property owner should have the right to manage
13 his land as zoned.

14 And his only distinction was, well, this is an
15 application not by the land owners but by the applicant. Of
16 course that is a distinction without a difference. This
17 project is being proposed by the owners with the applicants
18 serving as their agent in this matter. Ultimately, if it's
19 approved, the applicant will be the owner and it will still
20 be zoned RA-40, and so Mr. LaSala and I agree that the land
21 owner should be allowed to use the land for the purpose for
22 which it was zoned. In this case, that's for residential
23 zoning, or uses.

24 And then both Mr. Harbeck and Mr. LaSala completely
25 ignored the portions of the land use plan demanding that

1 property rights be considered equally with other objectives,
2 and entirely ignored the strong recommendations that
3 preservation of natural spaces are of paramount importance in
4 approving developments. This project preserves more than
5 half the total acreage and achieves that goal.

6 So when you get down to it, you really have to
7 decide on this fifth finding whether the land use plan --
8 whether this project is in conformity, general conformity
9 with the approved Moore County Land Use Plan. You have to
10 decide whose opinion about this finding you trust more, that
11 of Ms. Ensminger, who led the design, drafting and adoption
12 of the land use plan, or Mr. Harbeck, who at the time was
13 busy being the planning director for one of the largest
14 cities in the state.

15 You know, she has accepted the 25 general
16 conformities with the land use plan, and they're not denied
17 by the opponents. Those are trustworthy, and those are
18 sufficient reasons. And keep in mind that the fifth finding
19 is not the use will be in conformity with every aspiration of
20 the land use plan.

21 MR. PARKER: Objection.

22 MR. ROBINSON: It doesn't say that. It says the
23 land use will be in general conformity with the approved
24 Moore County Land Use Plan. Your planning director says it's
25 in general conformity. There are many, many ways in which it

1 is in general conformity, and so the competent, material and
2 substantial evidence is there in the record for you to find
3 that the use will be in general conformity with the approved
4 Moore County Land Use Plan.

5 So my conclusion is that the clear weight of the
6 competent, material, and substantial evidence in this
7 proceeding leads you should lead you to conclude that all
8 five findings have been more than satisfied.

9 Keep in mind what I said at the beginning about
10 motion versus action. The other side has had a lot of motion
11 but not a lot of action. The real action is we have experts
12 on every point. Let's go through them.

13 We have expert on traffic who says it's not a
14 traffic hazard.

15 We have an expert on engineering that says that
16 there won't be any health or safety issues with respect to
17 the project.

18 We have an expert on planning, your planning
19 director, who says that this is in conformity with the land
20 use plan and in harmony with the neighborhood.

21 And we have an expert real estate appraiser who
22 testified that this will not have any negative or
23 substantially negative impact on adjoining land use values or
24 property values.

25 That is rock solid, competent, material evidence in

1 the record supporting the five findings. You're not going to
2 find the same on the other side. You're going to find a lot
3 of disparate opinions, very few expert opinions on any
4 subject that controverts the testimony that we've put into
5 the record.

6 So the law, the facts, and really common sense all
7 leads to one conclusion, that the requested special use
8 permit for this preliminary plat of 53 lots on 74 plus or
9 minus acres within a conservation subdivision must be a
10 approved.

11 I thank you very much for your time, your diligence
12 and your attention.

13 CHAIRMAN QUIS: Thank you, Mr. Robinson.

14 MR. ROBINSON: Thank you.

15 CHAIRMAN QUIS: Okay. It's 20 till 7:00. Let's, as
16 I said earlier, have a break of about ten minutes, and
17 hopefully Mr. Parker can wrap his arguments up after that.

18 As was brought up, I will review the transcript or
19 the video or both when they're available to me of the meeting
20 I missed.

21 MR. PARKER: We appreciate that, and we were aware
22 of that when Ms. Graham was the chairman, and I'm glad -- I
23 hope you're feeling better.

24 CHAIRMAN QUIS: Thank you.

25 (Recess.)

1 CHAIRMAN QUIS: -- (audio recording started mid
2 sentence) for his comments for everyone to hear.

3 Mr. Robinson, thank you for your comments and the
4 brevity of those remarks.

5 MR. ROBINSON: Thank you.

6 CHAIRMAN QUIS: Mr. Parker.

7 MR. PARKER: Thank you.

8 CHAIRMAN QUIS: The floor is yours.

9 MR. PARKER: Thank you, Mr. Chairman.

10 MR. PARKER'S CLOSING ARGUMENT

11 MR. PARKER: I'm going to say something you won't
12 hear me say again probably tonight. I agree with
13 Mr. Robinson. I agree with Mr. Robinson. This case is not
14 about trash in somebody's hay field. It's a problem. That's
15 not what this case is about.

16 I agree with him this case is not about agritourism.
17 It's not about that. Testimony wasn't offered for that
18 purpose.

19 What I disagree with him about is what this case is
20 about. What this case is about tonight, what this case is
21 about tonight is the future of Moore County, or where it's
22 been, where it's going, and the decisions you make that will
23 direct that course.

24 What this case is about is empowering you to use the
25 tools at your disposal to do the right thing, to fix a

1 problem that we have in this county, and it's about
2 empowering you to hear out the people and to do what is
3 right.

4 Now, Mr. Robinson talked repeatedly about my experts
5 parachuting in here from Wilmington and Raleigh. Well, I'm
6 not going to do that to him. I'm not going to talk about
7 Travis Fluitt parachuting from Raleigh, and I'm not going to
8 talk about Mr. Robinson parachuting from Chatham County.
9 That's just rude. I'm not going to do that.

10 But I am going to talk about what this case is and
11 about his arguments, and I hope you understand that any
12 attacks he made on me are not personal towards me. I know
13 that. They're personal towards our case and our
14 representation. And things I may say that might be offensive
15 or seem offensive to him are not meant personally. I don't
16 want you to take them that way. I know Mr. Robinson, and we
17 found out we graduated from the same law school class, we
18 were trained by the same professors, and we know to not to
19 take it personal, and I hope that you won't, either.

20 What this case is about is fixing a problem.

21 Now, the planning staff and Mr. Robinson argues to
22 you that the overriding theme of the land use plan is
23 property rights, property rights.

24 But, now, commissioners, you know that is not true.
25 You know that is not true because if that were true there

1 would be no land use plan. There would be no zoning. There
2 would be no hearing here because those property rights would
3 trump everything else involved. If it were only about
4 property rights, you could build whatever you want, wherever
5 you want, whenever you want. Case closed. We're done. Go
6 home. Pull out your hammer and nails, go to work.

7 But that's not what it's about, because Moore County
8 has chosen to exercise the right to organize and to plan for
9 it's growth. It has done that since 1999 with the first
10 plan. It did that before that when it instituted zoning in
11 1987. They did that in 2013 when they passed the land use
12 plan that's before you.

13 Now the law in North Carolina says that if you
14 choose to do that, you must follow that comprehensive land
15 use plan. It must be consistent, and it needs to guide your
16 decisions when it comes to special use permits, when it comes
17 to conditional use permits, when it comes to enforcing your
18 zoning laws. That's what the law says. You have a land use
19 plan and you have to seek to enforce it through your zoning
20 law.

21 Now, we've been arguing about land use plan and the
22 meanings of those things back and forth for, it feels like a
23 year. It ain't a year. But, you know, when I was reviewing
24 it last night I realized there are two people on this board
25 who were here when it was passed the first time. Nick

1 Picerno, you were the chairman of the commission,
2 commissioners, and Otis Ritter, you were on the commission
3 when it was passed. You remember back in the arguments and
4 the things that went on, the importance of safe guarding
5 agriculture.

6 But I want you to remember, though, and this is to
7 my clients who are here, I have had them talk -- I've had
8 them talk bad about Frankie and Dennis for wanting to develop
9 this, and I want to tell you this. Don't do that. It's
10 their property. They have a right to make decisions about
11 what they want to do with it. We may not like it, but they
12 have that right. That's what's in the constitution. It's
13 what I took an oath to defend. It's what he took an oath to
14 defend. And you know what? I've read yours. It's what oath
15 you took, too.

16 But you know what? I want you to understand
17 something. Those rights are not -- you have defended those
18 property rights for them, because it's not just about
19 property rights, because you've set limits on what we can do
20 with our land because you are looking at a broader thing.
21 You are looking at what is better for the community than just
22 those individual people who want to pad their wallets with
23 that quick dollar, who want to put in that and move on.
24 You have a higher vision. You have a responsibility
25 to look higher than that.

1 But as for property rights, Frankie and Dennis,
2 their property rights have been upheld. I want you to know
3 that, because this hearing is proof of that. Your patience
4 with me, with Mr. Robinson, with these folks here, and with
5 Dennis and Frankie, are proof of your commitment to
6 protecting those rights. It's about due process and the
7 right to come in and have your side heard by impartial
8 decision makers who will follow the law.

9 We've had five hearings on this case. They have had
10 numerous opportunities to correct reports and an opportunity
11 to make closing arguments, just like we have. Their property
12 rights have been upheld. You are not taking anything from
13 them, I would argue and contend to you, by ruling on this
14 case and ruling against them. You're not. It's not about
15 property rights. It's about something more. It's about the
16 future.

17 As for the zoning law and the land use plan,
18 Mr. Robinson, he would like to put the lawyers -- if my thing
19 will work -- the lawyers -- Garren, you don't have to make it
20 work. Point it -- okay. There we go.

21 Yeah, Mr. Robinson would like to put the lawyers and
22 the experts in charge of this decision and use you as a
23 rubber stamp to approve it. Why, if they say it, you must
24 approve it. Quasi-judicial or not, though, that is not the
25 way due process works in America.

1 The parties, my clients in this case, the people who
2 have come here faithfully, many of whom had to leave because
3 they have vacation Bible school tonight, my clients are
4 entitled to know what they must prove. They are entitled to
5 know that if they prove it you will follow the law in
6 rendering a decision. And in this case I would contend to
7 you that we have provided you with the tools you need to make
8 this decision.

9 Mr. Robinson has presented you with a rubber stamp.
10 He told you don't fall for my smoke and mirrors. I tell you,
11 don't fall for his, either. Don't pick up that rubber stamp
12 until you have had an opportunity to review all the facts and
13 consider all of the facts in this case. His stamp is not the
14 law. The facts are there for you to find. The law is there
15 for you to apply.

16 I challenge you now to lay down that rubber stamp
17 and step with me through this hearing and evaluate the facts
18 and the evidence. I challenge you to apply it to the law,
19 and I challenge you to make the tough decisions for which you
20 were elected to make.

21 To do that we're going to look at the five questions
22 that are presented here. The five questions.

23 Go ahead, hit the button, Garren.

24 Then we're going to discuss Mr. Robinson's
25 arguments, and then we're going to look at the problems this

1 case presents for Moore County.

2 And when I'm done, I'm going come back and I'm going
3 to ask you to render the only decision supported by the facts
4 and supported by the evidence. I'm going to ask you to
5 disapprove this preliminary plat.

6 First the question: The use will not materially
7 endanger the public health or safety.

8 Mr. Robinson tells us that he has an expert.

9 Hit the button Garren, make it work. There you go.

10 All right. The use will not materially impact or
11 endanger the public health or safety.

12 We're going to talk about two things with this.
13 We're going to talk about traffic safety. The two witnesses
14 you heard were Travis Fluitt and Boahong Wan. You're also
15 going to hear about water runoff from Gregory, about the
16 impacts of that.

17 So let's start with the traffic safety expert.
18 Travis Fluitt came down from Raleigh. He did a traffic
19 impact study.

20 Keep going.

21 His available -- the available data suggests overall
22 growth; right? You remember from his first -- his first
23 exhibit, his first report, it's right here, Exhibit Number 1,
24 dated May 16th, 2022. His first one --

25 Go ahead and put them all down there.

1 He applied -- he did not use 2020 counts for his
2 road because he said it was Covid related. He was worried
3 about that being off. That's okay. He said he, instead he
4 went back to 2016 and he did as most recent data, he found
5 2400 cars were used in 2016. The available data suggests
6 overall growth rate he said in this area is flat or slightly
7 negative. Overall growth rate in Moore County since 2016 is
8 slight or grow -- or slightly negative or flat. That was his
9 testimony when he introduced the first exhibit. This is
10 Exhibit Number -- Number 2. This was his first example.

11 Right here you go, Ms. Williams. That was the -- I
12 didn't mean to throw it on the floor. Okay? I apologize.

13 That was his first -- that was his first report. He
14 applied conservative two percent increase from 2016, but now
15 we know that that's incorrect. He estimated there would be
16 2500 cars in 2025. Is that correct? The answer is no, it is
17 not.

18 We went back and we located a new figure. We found
19 out on April 20 -- April 11th -- keep going -- April 11th and
20 12th of this year they actually did another axle study on
21 Union Church Road. The most recent data was from there they
22 showed 3400 cars per day. That's 500 more than Fluitt's
23 estimate would be for that section of road in 2025.

24 Does that matter? Well, it's a 41 percent increase
25 in two years, not two percent per year. Now, why is that

1 important? Why does that matter?

2 Well, you know, he did come back and he did the
3 second report when we got these numbers -- go ahead -- when
4 he got that. Why? And he did not consider the Carthage
5 growth that you've heard. 2,000 homes have been added. The
6 Vass growth, 300. He did not consider four high schools on
7 this road. I'd argue and contend to you there's not another
8 highway -- not high schools, you're right. There are four
9 schools. There are two middle schools and a high school and
10 a private Christian school. He didn't know that when he did
11 his report.

12 Now, he went back, though, and he revised his
13 figures. He came out with report number 2, 2B. Right here.
14 The one that we introduced, the second report.

15 Go ahead.

16 He didn't know about that. His second report
17 revised the numbers to start at 3400 cars. He estimated a
18 six percent growth. He estimated 4,050 cars by 2025.

19 Now, the interesting thing about that is he said,
20 well, you know, 4,000 cars are normally what the DOT will
21 look at putting in a turn lane, but it's really not needed
22 here. Now, ain't that odd? That's what we hear a lot. We
23 need it, it says that they say you need it, but I don't think
24 we do. I'm the expert. We don't need one. He didn't put it
25 in there. Is this correct? No.

1 Keep going.

2 Is it correct? He testified in his first report two
3 percent was not wrong. He refused to acknowledge the two
4 percent figure he used was incorrect. Well, it's not right.

5 The number, if you average it over two years, is
6 like 20 percent, according to Mr. Wan.

7 Now, here's the third problem, third problem in this
8 report. He did a capacity analysis.

9 Now, I want you to understand about capacity. I
10 didn't understand it. I appreciate you allowing me an
11 opportunity to hire a traffic expert, and, no, he didn't come
12 in here with a written report, Mr. Robinson. You correctly
13 did that and I stipulate to that. He didn't have a written
14 report. But you know what? He helped us to understand
15 things that were in the applicant's report.

16 Capacity for example. Capacity. Let's talk about
17 capacity.

18 In his first two reports that was what he focused
19 on. It was supposed to be a traffic analysis. It was not a
20 traffic analysis. It was a capacity analysis. He determined
21 that Union Church Road is not at capacity.

22 Well, here's the problem with capacity in dealing
23 with traffic. You never reach it. You've heard that from
24 Mr. Wan when he testified up here. This is the dog chasing
25 the car and he never catches it. You know why? He told you

1 when you start to reach 85 percent of capacity, DOT will come
2 in and add another lane. Guess what? You just increased
3 capacity. You can now carry more cars. You're never going
4 to reach it. It tells you nothing. It doesn't tell you
5 safety on a road. It tells you how many are there.

6 The capacity, what he did, according to Wan, was not
7 a traffic analysis, a safety analysis, it was a capacity
8 analysis.

9 The second problem -- the second problem with
10 capacity is -- is that you estimate it, and it's based on a
11 standard called LOS, level of service.

12 The level of service means is what the public
13 expects, what they expect when they travel on a rural country
14 road. He chose level of service D, and you heard the
15 testimony from Mr. Wan. Level of service D means that you
16 might wait at a stop sign for 35 seconds before you can pull
17 out. Thirty-five seconds. Now, what's that mean? In Cary,
18 that's not unreasonable. I've waited there longer than 35
19 seconds. But when you --

20 MR. ROBINSON: Objection.

21 MR. PARKER: -- go to a two-lane road in Cam --
22 in -- right outside of Vass on Union Church Road in a rural
23 farming area, 35 seconds is a long time. That's what he
24 chose.

25 And you heard from Mr. Wan. People can choose the

1 level of service they want in their community. You have a
2 right to say we want it to be faster. You can choose a level
3 of service different. You haven't done that, but you have
4 that right.

5 Is it misleading that the capacity means safety?
6 You've got to answer that. Is it misleading? It doesn't
7 deal with safety. It deals with capacity of the cars.

8 I want you to think back and consider how many other
9 traffic engineer reports have you seen come through here that
10 have dealt with capacity and been presented to you as traffic
11 safety. I can't answer that because I haven't been here for
12 them. You've heard it.

13 What he should have done was a traffic safety
14 analysis. So we asked for the number of wrecks between Shaw
15 Road and McIntosh Road.

16 Then we get the third traffic report, the one that
17 deals with, oh, there's no problem here, there's no problem
18 here. We have eight traffic accidents. Mr. Robinson gave
19 you the numbers. I trust the numbers he referred to you in
20 his closing argument were right. It's below the state
21 average, according to him. I'm not going to argue that point
22 with you. I'm not arguing that for a different reason, and I
23 want you to bear with me for a minute. He argues to you that
24 it's not because he went back and got it.

25 Now, here's what the problem with this is. Okay?

1 Capacity is not safety. It took us three reports to finally
2 get out of a traffic engineer a safety report for this road
3 for this area up there. We took it. Capacity was driver
4 appreciate -- expectations. Capacity, increased capacity
5 causes us aggression in people because they have to wait
6 longer.

7 And you've heard testimony here and witnesses who
8 were here in the courtroom earlier. They've had to wait as
9 long as five minutes at a stop sign. That argument is, oh,
10 well, the law doesn't allow you to offer evidence on traffic
11 safety.

12 You know what? And all of those witnesses who
13 testified to about wrecks in their yard and wrecks that they
14 saw, that was not offered about traffic safety. That was
15 offered to show that the traffic engineer in this case had
16 not properly done his homework.

17 That was what was presented to you as accurate. He
18 came in here with this. It took us three hearings and three
19 reports to finally get a traffic safety analysis that you
20 should have had the first day.

21 Now, let's keep going.

22 Capacity was -- will never be reached. We talked
23 about that.

24 Keep going.

25 All right. Keep going. Report number three.

1 One and two did not mention crashes at intersection
2 in five years. Fluitt: "I looked at maybe a hundred to two
3 hundred feet, I don't remember which." Do you remember when
4 he said that? He wasn't sure how far he looked from there.
5 Yet we had witnesses who testified that there have been
6 wrecks right in their front yard about a hundred yards away.

7 No, it's not about traffic safety, it's about the
8 fact that you didn't do your job. You didn't look at the
9 things you had to.

10 We asked for crash data. Then he got crash data.
11 Then he came back with the third report. Suddenly we get
12 report three. Mr. Fluitt found eight crashes in five years,
13 well below state average. There's no problem here. Do you
14 notice that? It's not 2400 cars, it's 3400. Oh, there's no
15 problem with that. You're still well below capacity. There
16 was no crashes here in five years. Oh, well, there were
17 crashes here in five years but that's not a problem. They're
18 way below state average.

19 There is nothing that can be presented that will
20 change or alter that, and it's not because he parachuted in
21 here from Cary. That's his job. He works for the applicant.
22 His job is to come in here and tell you and to support this
23 application before you.

24 Keep going.

25 Now, ain't that odd? Every time we find a new piece

1 of evidence he writes a new report finding no problem about
2 it. And you know what? This is a pattern that you've seen
3 in this hearing; isn't it?

4 We just had a new plat tonight. Why did you have a
5 new plat? Every time there's new evidence, there's a new
6 report that nothing's wrong.

7 Keep going.

8 Traffic safety take aways. Mr. Robinson: "Parker
9 has offered no competent evidence to rebut the traffic safety
10 issues." You know what? Nope, I didn't, but you know who
11 did? Travis Fluitt did. Travis Fluitt offered you that. We
12 clarified misleading statements in his report. We did that.

13 Each new piece of evidence necessitated a new
14 report. Every time we added a new piece of evidence it
15 changed the facts and he had to come out with a new one. It
16 took three reports to finally get what we should have started
17 with, and he didn't.

18 Keep going.

19 No matter what new evidence was added, it didn't
20 matter. It didn't change his opinion. You remember? Would
21 this change your opinion? Oh, no, no problem. You can have
22 a subdivision there, not a problem.

23 It is a problem to the people who are there. But
24 you can't consider that. But you know what? Here's my
25 argument to you. Just because an expert says it does not

1 mean that you have to believe it if you find evidence to
2 disbelieve it.

3 Now that's what he's argued to you about Harbeck.
4 He's argued to you the same thing about Mr. -- Dr. Gregory.
5 Well, you know what? The same thing applies to Travis
6 Fluitt. Just because he's been qualified as an expert and
7 says it, he doesn't have to mean it.

8 Now, as to the report, may be right, yes, but you
9 know what he's done? He has so damaged his credibility in
10 this, and I'd argue and contend to you that he's unworthy of
11 belief, and if you take that away then you ain't got no proof
12 of safety. He doesn't meet that burden. Okay?

13 So let's talk about the next one. Let's talk about
14 Mr. Gregory, and the health issue.

15 Now, how is that a health issue? Well, storm
16 water's a big deal. He looked at this thing. He is -- he's
17 the guy that developed the system to find streams and to find
18 their headwaters. He told you, I developed the 27 point
19 system to find streams. Okay. That's great. Okay? I have
20 no idea how to do that. He does.

21 And you know what? You heard him testify when he
22 came down to visit he went straight to where the stream was.
23 And, you know, we argued about it for three hearings until it
24 accidentally got placed on the board and suddenly there's a
25 stream on there, on the diagram we had last week, I think it

1 was. The stream was there.

2 We argued about it. It's not there. Look at the
3 plat. It's not on the first plat. It's not on the second
4 plat. It's on the second one, now, that we found it. He's
5 put it there. But Mr. Gregory found it. Dr. Gregory found
6 it.

7 Storm water's a big deal. And you remember what his
8 testimony was. Is the plat misleading? There are no creeks
9 coming out of this property on the plat. The wetlands on the
10 first plat don't even reach the boarder where the creek comes
11 out. Now on the second one that he just tried to introduce
12 tonight, it does.

13 Keep going.

14 None of them are on the plat. There are other
15 streams coming out of it. None of them on there, according
16 to him.

17 Keep going.

18 Now he says that grades are not noted. The grading
19 is not noted. From your UDO the grading of roads are
20 supposed to be noted. There's two gradings. There's
21 crossways and there's longitudinal grades. He had the
22 crossways noted on the plat. He didn't have longitudinal.
23 He had the grading and the topography showing the runoff from
24 those individual ones on there, Mr. Picerno did, but those
25 were the existing. He didn't have the old ones.

1 And do you remember the exchange? Whenever
2 Mr. Gregory, he showed you in this diagram right here,
3 Exhibit Number 33. Y'all remember? This is an oldie but a
4 goodie.

5 Way back when, he's got the yellow marks showing
6 where the water on each of those tracts is going to run. He
7 said there is no way that all this water is going to be going
8 into these tidal pools. There was an objection. He said the
9 water runs downhill. Objection. It's right there. He's
10 indicated to you where it goes.

11 There was no storm water plan on this plat. There
12 were three little ponds drawn in. There was nothing telling
13 you how it gets there. Why is that important? Because when
14 you look at the UDO, this is the only time you have to
15 approve and to guarantee this. You know, you're not set up
16 here to be a rubber stamp for that -- for the applicant and
17 the developers. You're stood up here to safeguard the life,
18 safety and health of the community, not just these people,
19 but anybody down Little River who's going to drink this
20 water.

21 That's what Jim Gregory's an expert in. And you
22 remember that's what he told you. It ain't here. You
23 remember what else he said about the wetland? Been doing
24 this 42 years, never seen them make right turns and never
25 seen wetlands running uphill. Ain't that odd? Why is it

1 that way on here? It's because he didn't do the job. It
2 ain't on there like it's supposed to be. It's not there.

3 Now, why is that important? It's important to
4 people like Carl Kearns. It's important to people like Scott
5 Smith. It's important to people like Brian Logue who live
6 downstream and use it to water their livestock, because all
7 that runoff is going to go there. They deserve to have it
8 right.

9 And the response from the other side, do you
10 remember what it is? Pay no attention to the man behind the
11 curtain, trust us, you just approve this, we'll fix it.

12 I heard that out of Washington about five, ten years
13 ago. I don't believe them anymore, either.

14 But you got to make that decision. The grades are
15 not noted.

16 Impervious surfaces. Why is that important? We
17 can't tell because the houses, they don't know how big
18 they're going to build them. Bull. Somebody knows how big
19 they're going build them. And you know what? It don't
20 matter.

21 I'd argue to you that the engineer is supposed to
22 estimate those. That's what the UDO says. I mean, after
23 all, for God's sakes, look, he estimated the wetlands and
24 made them out of whole cloth from somewhere. He can't
25 estimate the impervious surfaces on 53 houses and 53

1 driveways? His number may be wrong, but it can't be any
2 wrong than that. But he didn't do it. UDO says he's
3 supposed to. Didn't do it.

4 What else about it? What else about it? If the
5 wetlands aren't accurate, the storm water plan is not
6 accurate. It's not workable. That's a simple fact. You've
7 got to know how much is coming off. A small change makes a
8 huge change in where that water is.

9 And the way storm water works, you know this from
10 being here, you know this from the testimony here, the storm
11 water discharge after development should be no more than it
12 was before. That's why they build the ponds so they can slow
13 release it to keep it the same and not rush it down and flood
14 these people's backyards. That's what it's about. It's
15 important. Why do you think it's on there that you've got to
16 approve it at the preliminary plat stage?

17 Now, I'll guarantee you ain't one of you up there, I
18 don't know, but I may be overstating it, but I doubt any of
19 you up there have a degree in storm water management. So you
20 got to rely on people who do. But you know what? You're the
21 ones who got to approve it and say, you know, I have faith in
22 this. I have confidence in this. I think it will protect my
23 community. I think it will protect the citizens who live
24 downstream. I think it is good for us. That's your job.

25 Do you feel like you can do that from what you've

1 heard so far? Because if you can't, you should deny this.
2 It's a very simple equation.

3 Keep going.

4 If impervious surface and grades are not estimated
5 true runoff can't be considered. A nonfunctioning storm
6 water plan? Not a plan.

7 Downstream wetlands: Residence have a right to be
8 concerned about it. And they have a right to enjoy the high
9 quality watershed they live in, for their animals, for the
10 crops, for their business.

11 So let's go to number two: The use meets all
12 required conditions and specifications. But you know it
13 doesn't. Jim Gregory told you how it does not meet that.
14 Debra Ensminger showed you how it did not meet that. When
15 she did, State's Exhibit Number 73. She did that when she
16 told this.

17 Let me ask you, I went through the process of this.
18 Why? You probably know it because you're commissioners and
19 you know these things. I didn't know it. I want to make
20 sure. I want you to consider what this is.

21 Why this process important? The process is
22 important because the changes and the effect on -- she -- the
23 process works this way, and she told you this.

24 When the application and the plat comes in, it goes
25 to her. Ms. Ensminger's supposed to review it, and she

1 contacts the applicant within ten days to guarantee that all
2 of the defects or problems with this plat are corrected.

3 It then comes back to her, and when she -- and I say
4 she, but I understand she has a staff. When she -- when
5 she's satisfied by herself, or her staff satisfies her,
6 because I was a DA, too, I know how that works, Debra, when
7 they -- when she's satisfied, she then sends it to the
8 subdivision review board.

9 What is the purpose for that? Subdivision review
10 board has all of these people she listed who are supposed to
11 take a deep dive look at this preliminary plat and make those
12 decisions to be able to assure you that everything that's
13 required in the UDO is specified and accurate. And they
14 passed one with all of these deficiencies. All of them.
15 Why?

16 MR. ROBINSON: Objection.

17 MR. PARKER: Why? I'd argue and contend to you, it
18 came out, it came out and went to you. Basically they
19 approved an erroneous plat and they sent it up here for you
20 to evaluate. Now even tonight they're trying to fix it
21 during the hearing.

22 But I want to tell you, this should not be taking
23 place here. This should have happened eight months ago. We,
24 in our notice, are given ten days to prepare for this. They
25 have had months and they can't put together a decent traffic

1 report. They can't put together a plat that satisfies the
2 UDO. Because this is the only time you as commissioners will
3 have an opportunity to pass on it. If there's major changes
4 they're supposed to bring it back, but you heard the
5 testimony, it never comes back. They fix it down there.

6 Mr. Robinson talked about a rubric of four questions
7 in the land use plan, which I would contend to you that this
8 subdivision doesn't meet.

9 He would argue to you that it's king when he's
10 dealing with my expert, Mr. Harbeck. Well, you didn't
11 consider these, you didn't put that in your report, but when
12 the UDO is in question, when it has the force of the law as
13 we've heard repeatedly, it should be ignored when it comes to
14 his plat and his evidence. Ain't that odd?

15 You know, citizens have a right to know the law
16 applies to both sides. If I've offered something that's
17 incorrect, then hold me to it. Ms. Leland has. When they
18 offer something that's incorrect, they should be held to it,
19 too. It ain't a two-tier system. It works both ways. It
20 should be ignored when it comes plat performa. If it's the
21 force of law, then let's enforce it and disapprove this.

22 Now, I know, Mr. Ritter, you told me a while back
23 that I was wasting your time one night, and, you know, on
24 reflection I may have, once I read the law and saw that. I
25 apologize to you if you feel like I did.

1 But I'm going to argue to you that this hearing,
2 I'll agree -- second point tonight I agree with Mr. Robinson.
3 This hearing should not have happened this way. It should
4 not have happened this way because it should have taken 30
5 minutes or so for us to come in here, voice our opposition to
6 it, you to hear it, and you to make a decision on it. I
7 should not have had to attack that plat. I should not have
8 had to attack the traffic engineer. I should not have had to
9 attack the staff report that came from Ms. Ensminger's office.
10 They should have been right when they came to you. But they
11 weren't.

12 How many more have come through like that? You
13 don't know. If you don't look behind them, you don't know.
14 And this opportunity, I told you this is an opportunity to
15 empower you to fix the problems of Moore County.

16 This side is not opposed to development. What we're
17 opposed to is things not being right. If it's going to be
18 developed, let's do it the way it's supposed to be done. We
19 deserve that. You deserve that. So if you want to blame
20 somebody for wasting your time, it ain't on this side.

21 Now, the defense proudly offered to you four other
22 subdivisions to show that this one's in conformity with it,
23 you know, but you know it's not. The others are near major
24 intersections. They're near major intersections, and the
25 fourth one fits nicely into the community. That's

1 Leatherwood.

2 But now I want you to look at that exhibit and shift
3 your eye to the sprawl. The land use plan that you passed,
4 Mr. Picerno and Mr. Ritter, from 2013, its whole purpose was
5 to prevent what has been happening in Moore County for five
6 years. And he uses that diagram, that one right there, to
7 show you how proud they are, that look what we've done. That
8 ain't something to be proud of.

9 How many of these subdivisions had the same problem
10 this one has coming through and nobody noticed? Had we not
11 challenged this one, I would argue and contend to you that it
12 would have been approved without a second thought. You would
13 never have known there was a creek going through there. You
14 would never had any idea that the wetlands weren't accurate,
15 that you don't know where they are. We still don't. You
16 wouldn't have never known who the real owners of this
17 property was. And you wouldn't have known what capacity
18 truly means when it comes to these traffic reports.

19 So if you want to criticize me for wasting your
20 time, I'm good with that, because why I'm doing it is I'm
21 protecting their futures, and that's what they look to you to
22 do.

23 We got a problem. People aren't checking these
24 things. They're not doing what they're supposed to be doing.
25 They're taking what's on paper at face value and they're

1 sending it on and rubber stamping it.

2 Now why is that? I've been in state government,
3 Debra, I know how it is, and I've had those times when in the
4 prosecution world where you've got so much crap coming down
5 the lane you can barely keep your head up. Catherine Graham,
6 I know you know what I'm talking about. You do. But you
7 know what? That's not an excuse for the problems. You got
8 to look beyond that. You got to fix it. If this system
9 ain't working -- Mr. Robinson said it's working. It ain't
10 working. If it ain't working, we got to fix it.

11 They deserve it, you deserve it, and you know what?
12 All but like one or two of y'all are leaving, I think,
13 retiring, the next board's coming up. If y'all don't fix it
14 they going to have to, because I ain't above coming up here
15 and doing this every week if I got to. It's that important.

16 I didn't parachute here. These people didn't
17 parachute here. This is where we live and we continue, and
18 intend to continue living here. It's where these people who
19 move here want to stay. They don't want to go away.

20 Why does all this matter? It all matters because if
21 this plat is not in compliance with it, then it's not in
22 compliance with the UDO. Why is that important to the other
23 side? It's bigger than that. You know, all these prima
24 facie presumptions he claims that he has, I'm not arguing
25 that with you. The law is what the law is. Ms. Leland will

1 tell you what the law is.

2 But you know what's important about it? If it
3 doesn't comply with the UDO, if it doesn't meet the
4 specifications of it, then you know what else he loses? He
5 loses his presumption of harmony.

6 That's why it's important. That's why we had to do
7 the second plat. We don't know what that is. It's not a
8 plat. It doesn't replace the first one. But, oh, yeah,
9 don't worry about it, just pass the second one, we'll fix it,
10 we'll make it right. Don't pay attention to the man behind
11 the mirror -- behind the curtain, we'll fix it.

12 That's number two. It ain't right. Doesn't meet
13 it. She showed you how it doesn't. You got to consider
14 8-15 -- 8-16. There it is right there.

15 Listen, here's the deal. And you know what the most
16 astounding answerer I heard today? I know it says that in
17 the UDO but it's not required. We don't do it.

18 What? Okay. If it's there, you got to do it. If
19 you don't like it being there you got to change it. It's
20 simple, you fix it. Okay? But you know what? Why is it
21 there? It is there so that next time you don't have a
22 five-week hearing with a lawyer who comes in here and does
23 this to you and attacks everything on it. That's why it's
24 there.

25 You know what? They're entitled for you to apply

1 the law. You're citizens. You're entitled to it, too.

2 Let's go to the third one. Keep going.

3 Preliminary plat's important. Here's the reasons
4 why. It's a final certification process. Most importantly,
5 it's the only opportunity the community has to see what will
6 forever change their community. The least they deserve is
7 that it be accurate when it comes up here.

8 I should be able to find those things and point them
9 out if I disagree with them. If I want to argue that, I
10 should be able to. I can't argue that from this. It ain't
11 right. The plat ain't right. But, yet, it's been approved
12 twice by your planning board, the first one, and then the one
13 tonight, which still ain't right; is it? Doesn't have
14 impervious surfaces on it. Doesn't have the other things on
15 it.

16 That's why the plat's important is because it's
17 evidence that it meets the standards. But you know it
18 doesn't. It may meet them. You got no way of knowing that.
19 You just got to take it on faith, that's what we do, rubber
20 stamp it, take it on faith.

21 Let's go.

22 Third one: The use will not substantially injure
23 the value of adjoining property.

24 Now, I'll tell you something, I told you I was only
25 going to agree with him once, I'm up to three times,

1 Mr. Robinson, congratulations. Okay?

2 I can't attack this one. I didn't offer evidence to
3 attack it. All I can do is remind you that Franklin Dean
4 testified about it. He said it increases everybody's
5 property values. Yay. Okay? But it doesn't injure you,
6 especially farmers, because, remember he told us farmers
7 don't pay taxes, that's why it doesn't hurt you. Yeah? That
8 would not be true. That's incorrect. Okay?

9 But remember, it only helps me if I want to sell my
10 land. If I don't want to sell my land it doesn't help me.
11 Okay? These people who have lived here for a hundred years,
12 that doesn't help them. It doesn't substantially injure
13 them. They have to pay more.

14 But now I will say this. I know what you did, and I
15 saw it in the paper last week. You dropped the tax rate
16 because the tax value went up, and I love y'all for that.
17 The community does, too. We appreciate that. You tried to
18 keep it stable. That's -- I know how that system works. So
19 I can't argue this point. Okay? That's not what this is
20 about. It's not about injuring property values right now.
21 Okay?

22 So I will give him -- Mr. Robinson gets one. You
23 get one, Mr. Robinson. I'll give you one. Okay? That's
24 number three. I'll give you that one.

25 Number four: The use will be in harmony with

1 surrounding areas and compatible with the surrounding
2 neighborhood.

3 If the plat doesn't meet the specifications, if the
4 use does not meet the specifications, then the presumption of
5 harmony is lost. Now, you have to decide that. And that may
6 be in your order if you rule against this -- if you
7 disapprove it. But that has to be there.

8 Now, I'll tell you something, that second night,
9 Mr. Ritter, when you told me I'm wasting your time, you
10 remember, I went home depressed that night. I didn't go home
11 depressed because of you saying I wasted your time. I hope
12 you don't take that personal. I wasn't that upset about
13 that. I was upset about it because when I got home and had
14 an opportunity to read Mr. Robinson's very well written legal
15 memorandum, I will say, I was depressed. I was depressed
16 because it occurred to me that we have not made our position
17 clear.

18 In his memo he tells you that we are opposed to all
19 development. That's not true. And that we -- under our
20 theory farm land would always be farm land. It would never
21 change. That's not what we're arguing. Okay?

22 He also told you in there that this should be
23 approved because it's one-acre tracts and it should be -- and
24 it should be left alone to be allowed to do that.

25 Well, here's the deal. If they were trying to offer

1 one-acre tracts, which is more in conformity and harmony with
2 our community, there wouldn't be near as many people up here
3 fighting it. But it was clear to me that he had
4 misunderstood, and I had probably misunderstood y'all.

5 We are not opposed to development in Moore County.
6 There are people come in, and I meet new people every day,
7 Scott Smith, Brian Logue, all those people, they just moved
8 in. They're fine people. They're military. They're great
9 folks. I love them. We should welcome them. Got no problem
10 with that.

11 But you know what? What we need to do is safeguard
12 the community that they brought. What we're opposed to is
13 the density that's coming into here. What we're opposed to
14 is the sprawl. What we're opposed to that the land use plan
15 specifically and repeatedly, Mr. Picerno, you remember it, it
16 talked about against it, that's what we're opposed to.
17 Because it's like, as Pam Henderson said, it's like taking a
18 little piece of city and dropping it across the road from my
19 house.

20 That's what we're opposed to. That's not Moore
21 County. That's not where I grew up. That's not where I want
22 to live. And you know what? It's where a lot of people who
23 are leaving the city, they don't want to move to that.
24 That's making the difference. That's changing the county.

25 Development's going to change it. We're not opposed

1 to that. What we want is responsible growth. We want you to
2 apply the land use plan. We want it to be used. We want you
3 to fix the problems. That's what we want.

4 Finally, the other thing about it, you remember when
5 I asked Ms. Ensminger in the -- and I may mispronounce your
6 name. My family gets onto me about it all the time, Debra,
7 and I apologize, so I'll go ahead and calling you by your
8 first name because I can't pronounce your last. I'm sorry.
9 Okay?

10 But when I asked her about the section in there that
11 major subdivisions should embrace the variety of the
12 community and not be generically styled, what has gone in in
13 the last five years? That's exactly what is there. Moore
14 County's no longer Moore County. It's becoming a little
15 Fayetteville. It's becoming something else. That's not what
16 we love.

17 Now, the neighbor testified here, you've heard 'em.
18 Most of their homes are on one acre or more. Now, there are
19 several of them that are half, and some -- but I think
20 there's eight that are half around there, and then there's
21 some that are like six of them I think that are less than --
22 between one -- one half and one.

23 I'm not going to argue that point with Mr. Robinson.
24 He brought that to you. A couple of them were a driveway and
25 the cemetery which don't really count. Well, it is a home to

1 some people now, but not really. Okay? So -- but anyway.

2 Most of these homes, they're on one acre or more.
3 None of them are less than 20 feet apart. That's what this
4 will be. It's 20-foot setbacks, put houses -- they can be
5 20 feet apart. They have variation.

6 Pam Henderson lives in a mobile home. She loves it.
7 She told you that. The other people here, Liberty Lane,
8 Scott Smith, he lives in a nice two-story house with a crawl
9 space. How about Teresa Hipp? Teresa Hipp lives in a nice
10 ranch style house. So does her sister. Everybody is
11 different. That's what we love about it. It's not the same.

12 That's what we're opposed to. That's what you were
13 opposed to in 2013, Mr. Picerno, because you put it right
14 there when you signed your name to it. No generic
15 subdivisions. These subdivisions need to have variation.
16 They're being built as quickly and as cheaply as they
17 possibly can to house people in a hurry. You don't have to
18 do that.

19 Remember what I told you, this case is about
20 empowering you to do the right thing.

21 These homes also not only embrace variation, they
22 also embrace agriculture. They have the ability to do
23 chickens, gardens, farms. They have that. Can they do it
24 across the road?

25 I'm not arguing about septic systems, Misty. I

1 don't care about them. What I care about is the land that
2 you got that you can actually use. 2400 to 4400 square feet.
3 And they were going pay \$60,000 a tract of land for that.

4 They can't farm. They can't even have chickens.

5 MR. ROBINSON: Objection.

6 MR. PARKER: That is not in conformity with a rural
7 agricultural area. Remember what the land use plan says.

8 Hit the button. I get to talking and I forget.

9 Ensminger, Harbeck, Robinson's memo, prima facie.
10 Okay. Yeah. I told you about that. He did a good job with
11 the memo.

12 Oh, yeah, and I wanted to tell you this. He's --
13 Mr. -- Mr. -- Mr. Robinson argues to you there's none out
14 there that do that. Well, I'd argue and contend different,
15 and Misty can look them up.

16 *Purcell vs. Boone Board of Adjustment.* They upheld
17 denial of a special use permit for an apartment house in a
18 community of single-family houses. Okay?

19 Now, I'm not arguing to you that that controls here.
20 What I'm arguing to you, though, is the fact that it has been
21 done before, and the main difference is density. That's what
22 we're opposed to.

23 *Davidson County Board vs. Iredell County.* It's
24 permissible to use the plan consistency as a special use
25 permit standard and to use the adopted plan as a guide to

1 determine harmony with the area.

2 You're entitled to do that. You're entitled to use
3 that future land use plan that Mr. Picerno and Mr. Ritter
4 voted on 2013 to make that decision about. You can use it.

5 *Vulcan Materials vs. Guilford County*. I think that
6 was the one with the rock quarry. Wasn't that right,
7 Mr. Robinson? You're the expert, you know, I agree.

8 It was denied because of insufficient evidence that
9 use would be in conformity with the land use plan. Hmm.
10 Yeah.

11 So you do have that power. You know, remember, this
12 is not an automatic check the box thing. This is not
13 something that you have to approve. You have the discretion.
14 It is there for a reason, and whomever passed the UDO
15 recognized that they wanted you, or you, your predecessors
16 wanted the opportunity to pass on each one of these. Why?
17 If it's perfunctory, if it's for rubber stamp, then we don't
18 need to do this. Need to just change it and let Debra handle
19 it with her office and be done with it. Let us find new
20 places to live. That's what you need to do, if that's what
21 you want, but that ain't what's there now. Okay.

22 Keep going. All right. Keep going.

23 Across the road, rural agricultural land, it's
24 RA-40, residential and agricultural, it was effectively to
25 reduce it to RA-20. And I told you about the problem I found

1 in Mr. Robinson's memo.

2 Back up.

3 Neighboring homes vary. I got ahead of myself.

4 Let's just go through. Do-do-do. Neighboring homes vary.

5 We did this. Blah blah blah. Chickens. Okay. Dropping the
6 piece of the city in the country. Doesn't fit.

7 And they testified to you it's an eyesore. Well,
8 you know what? When you read those cases that's what the
9 neighbors testified about that tower. You know, beauty is in
10 the eye of the beholder. I've always heard that. Thank God
11 for it. I wouldn't have married -- my wife wouldn't have
12 married me. Beauty is in the eye of the beholder. Okay?

13 Well, they didn't like a tower. You know what? The
14 people who live there, they don't like what they're hearing.
15 It's an eyesore to their community. It violates the land use
16 plan.

17 Keep going.

18 The theme of the land use plan is town and country.
19 There should be places for town; there should be places for
20 country.

21 Page 81, when developments -- "When developments are
22 proposed away from the existing municipalities they should
23 seek a form that yields a sense of place and reinforces a
24 character indicative of Moore County uniqueness while
25 avoiding a generic style subdivision."

1 I didn't write that. I love it. I didn't write it.
2 You know what? It's policy. It's not the force of law.
3 But, yeah, it is, because in the new 160D your enforcement of
4 zoning actions and the land use -- in your zoning decisions
5 have to be based on the consistency of the land use plan, and
6 if it's not, you have to state why it's not, why you chose to
7 deviate from that. That's pretty clear. That was what the
8 intent was.

9 I ask you now, look around the county. Are you
10 seeing anything other than generic style subdivisions? Union
11 Hills. They put up six houses down there in about two
12 months. They all look the same. That ain't Moore County.
13 There's nothing unique about it.

14 Number five. Conformity.

15 And Misty, so you know, I'm going much faster than I
16 thought I was, so, yay, right?

17 Conformity. Here's the deal. What is the theme?
18 Is it property rights or something more? Okay?

19 Hit the button.

20 The three people who testified about this was Debra,
21 Ms. Ensminger, Mr. Harbeck, and Nick LaSala.

22 Remember the land use themes. What are they? Town
23 and country, preserve agricultural heritage, and he also said
24 property rights. I agree with that. That has to be a theme.
25 But as I told you, we've done that. Land use plan encourages

1 developments in municipalities. It's on page 81 of the land
2 use plan.

3 Keep going.

4 It avoids generic developments in the county. Page
5 81 of the land use plan.

6 Keep going.

7 They're strongly discouraged in RA areas. Now, this
8 to me I literally figured -- I had Harbeck down here, and I
9 know I ain't too bright on this land use stuff, I'm learning,
10 Mr. Robinson, I'm trying to catch up with you. It will be a
11 while. You got years on me.

12 But I was absolutely astounded when I actually
13 figured out what we talked about with Debra today. I want
14 you to go back and look at this.

15 Would you put -- Matt, would you put that poster up
16 right there with the RA-40 on it? Put that up.

17 This is RA-40. The applicant would have you to say
18 that if it's in RA-40, we can do anything that RA-40 says.
19 Maybe. As long as you get a special use permit from y'all if
20 you're going to do a major subdivision. It says that in
21 those areas, in those rural areas it says that you can do
22 family subdivisions, which is those 58 houses and those
23 pieces there.

24 But look at this area right here. Do you remember
25 what she said? This was done in 1987. Mr. Robinson and I

1 were in law school together. That was our second year,
2 wasn't it, Mr. Robinson, probably? Second year maybe in law
3 school up there. Didn't know what was happening back home.
4 1987.

5 And then what happened is the land use map -- keep
6 going -- keep -- there's the land use map on there. I want
7 to see it. Keep going. Wait a minute. Maybe I didn't put
8 it in there. Keep going. We're going to go back. Where's
9 the land use map? He's not -- don't mash it so fast. We'll
10 be at the end. We can't surprise them with that.

11 Here's the point. If you go back and look at the
12 land use map that Mr. -- Mr. Harbeck used, do you remember
13 the ones with all the white on it? He may have -- I think
14 you've got that one. Where is that one?

15 Now, this was Mr. Robinson's, and he shaded in some
16 areas around Union Church Road. I don't remember why he did,
17 but I trust you will. Okay? But --

18 (Indiscernible discussion.)

19 MR. PARKER: Thank you. This I believe is on page
20 83 of your land use plan. That map is on page 83.

21 When that was passed -- this confused me -- when
22 that was passed the county recognized the fact that they
23 wanted to treat those white areas as rural agriculture.
24 That's the ones that they strongly discouraged major
25 subdivisions in. Okay?

1 Now, the importance of that is that when they passed
2 it, they knew that it was already zoned RA-40. Now, if they
3 had not intended that then they should have eliminated those
4 RA-40 sections from what they consider to be rural
5 agricultural, and they did not. They continued to leave it
6 there.

7 Now, what does that mean? What that means is, is
8 that even though it's RA-40, they wanted it to remain RA-40.
9 Read in your land use plan what that means.

10 Residential rural agriculture is supposed to be
11 designed for family plots minor subdivisions, and strongly
12 discourage majors ones in that same area.

13 Now what was the answer when I asked that? But
14 times have changed. Okay. Yeah, they do. They change every
15 day. But you know what? We don't get to make our decisions
16 based on what's changed. We have to make our decisions on
17 the 2013 land use plan, because that's what's there. You
18 know what? If you don't like it, fix it.

19 There's a draft 2020 one out there that I think
20 actually takes that away. If that's the case, you should do
21 it. Pass it. Let's argue that one. But until then we've
22 got to make our decision on this 2013.

23 So the fact is, is that when they made it RA and
24 they wanted to see it RA, they knew that it was already zoned
25 RA-40. And what does Mr. Robinson argue? His client, he

1 tells you, well, if it's RA-40 we can do anything we want.
2 Look at this, you know, the -- you know, with your approval
3 we can put in major subdivisions all over the place. It's
4 RA-40.

5 Well, what's the position of the county? Well
6 there's water there. We can put them. We have
7 infrastructure. You have a water line that wasn't designed
8 for massive sprawl and developments. It was designed to
9 improve the quality of the people who live there. Not what
10 it's being used for now. If that's not the case, then change
11 the plan.

12 Okay. Now, here's the other thing. Okay. Keep
13 going. Let's go back and go through these.

14 There was no general conformity. Planning says it
15 meets two standards. Action, recommendation, maximize
16 accessibility, infrastructure, infill. You heard those. I
17 beat those to death.

18 Keep going.

19 Now here's what concerns me about it. Okay?
20 Infill. Apparently we have two different vocabularies we
21 used. The rules that apply to normal planning have different
22 meanings in Moore County, but they're not written down
23 anywhere. Nobody in the community knows what they mean, so
24 we can apply whatever definition we want to them. Infill
25 means that we can build there.

1 No. If you look at planning -- if you look at the
2 planning information, and Mr. Daeke, I know you were a
3 planner. I'm sure you've heard of the term "greenfield
4 development." Greenfield development is different than
5 infill. Greenfield is where you take former land that was
6 green, that was farmed, and you develop it. Infill is where
7 you take areas that have been forgotten in cities and you put
8 stuff there and you use the infrastructure you got. That's
9 the difference.

10 That's what Mr. Harbeck told you. It doesn't -- oh,
11 but he came from Wilmington. That's a big city. Okay.
12 Mr. Fluitt came from Cary. That's a big city, too. Okay?
13 You got to consider what they tell you. Okay? Infill means
14 one thing everywhere in the world but something else right
15 here in Moore County. It's not infill, I'd argue and contend
16 to you.

17 Action: Support infill development but it will
18 optimize the use of existing infrastructure. Harbeck says
19 it's not infill. Infill is for developed areas. Look at the
20 recommendations in the actions, see where it is. It is the
21 only one underneath commercial nodes, thoroughfares in
22 development. That's what it's talking about. Infill was
23 designed for that.

24 In this circumstance it has been pulled out of
25 context to define what we're doing here, and you know what?

1 This isn't the first time we've heard that. If you look back
2 at those four, nearly every one of them justifies -- is
3 justified -- every major subdivision in a rural agricultural
4 area is justified on the same ones, infill and mixed use.
5 Okay? Every one of them. If you're misapplying it, it don't
6 fit.

7 Keep going.

8 Look at recommendations. Only infrastructure being
9 used is water, and you heard Mr. Harbeck tell you, developing
10 where water is is a bad idea. That is what causes the sprawl
11 that destroys so many communities and the heritage of them.
12 That's what we're doing here.

13 If you want to expand then let's put in the sewer
14 and the resources and the infrastructure. Let's don't build
15 it -- it's not like the field of dreams, if you build it, it
16 will come. We don't do that. Let's do it responsibly. It
17 may take longer, but you know what? You're going to have a
18 better product. You're going to have a place people actually
19 want to move to and live in, not move away from because they
20 can't stand the sprawl that's happening to them.

21 The intent of the system is to supply water to rural
22 residents to improve the quality of life. The system was not
23 necessarily designed to promote growth and support large
24 subdivisions.

25 Fifty-three houses isn't a large subdivision, it's

1 relatively small. No, it's big. It's bigger than the minor
2 ones that the land use plan says are approved there. It's
3 not mixed use.

4 Keep going.

5 Recommendation three: Water line, maximize that,
6 working plans, shopping area. Keep going.

7 Action -- well, I went too fast.

8 Action: Adopt policies and encourage development of
9 mixed use -- mixed land uses as appropriate to provide easy
10 access.

11 Now, look, reduce travel time and improve
12 convenience among uses surrounding the county's established
13 towns and villages. That includes crossroads.

14 Consider those. Laurel Ridge, the one we used an
15 example, Laurel Ridge is at Eastwood. That is a big
16 crossroads community.

17 Gretchen Pines, nice subdivision. I've been through
18 there. It actually -- I like it. It's well designed. It
19 has -- looks like it has space that seems to fit in. But you
20 know where it's at? It's right at the intersection of 73 and
21 211 in West End. Big crossroads community.

22 What is the other one? What's the other one? The
23 next one is -- I can't remember. Oh, Bibey Road. Twelve on
24 there. But it's near Matthews Market, which is becoming a
25 big crossroads community. It's already got a four-way stop

1 there out in the middle -- used to be out in the middle of
2 the country. Whispering Pines is coming to it.

3 Leatherwood. That's the closest one like ours.
4 Leatherwood's unlike any of those other four. It's a
5 conventional one. It has five lots. They have two to three
6 acres of land on them, and those houses fit in with that
7 community. They're in harmony with it. And they're right --
8 literally they're like a mile to two miles, you pull it up on
9 a map, it's like two miles from Ring Road. That is a nice
10 subdivision. And it fits.

11 Keep going.

12 Now, let's talk about that. Mixed use is more than
13 higher density areas. It's on page 81 on the land use plan.
14 In fact, if you look at it, it defines it. It talks about it
15 there.

16 Keep going.

17 This major subdivision does not improve
18 accessibility to living, working and shopping areas. It
19 doesn't. Okay?

20 In fact, you looked at the one from Union Hills.
21 You looked at the one from Union Hills. The one from Union
22 Hills is marketed as a Fayetteville community. That's going
23 to force people driving not to work, but to Fayetteville and
24 out of the county. That's not reducing travel. It's
25 increasing it. That is why the roads are the congestion, and

1 you saw a 40 percent increase on Union Church Road in two
2 years. That's why you have that.

3 Keep going.

4 No services inside the major subdivision here. You
5 know these. I beat them to death.

6 Keep going Garren. Hit the button.

7 No services except one church around it.

8 Keep going.

9 Vass has three miles away. We have one grocery
10 store. We have a Family Dollar, a Dollar General. It's not
11 really helping shopping. We have a hardware store, and I
12 notice I did forget, we do have a Napa, we have an auto parts
13 store. Very proud of that. And a grocery store. We have
14 one. It's not helping. Okay? Not mixed use.

15 Carthage, eight miles away. They have more.

16 Keep going.

17 Southern Pines, 15 miles away. You know these.

18 Keep going.

19 Fayetteville, 28 miles away. This does not improve
20 accessibility to anything. These do not. It's not mixed
21 use.

22 Keep going.

23 Action 3.1, encourage development. We know these.

24 Keep going.

25 No service within walking distance. Must drive to

1 services. Must drive through the voluntary ag district
2 surrounding it. Drive past a school to leave. Requires
3 cars. Increase traffic. You know all of this. And it's
4 nonconforming. Now, think about this.

5 Hit the button. Let me make sure. Okay.

6 Planning puts forth two areas of conformity. We've
7 talked about those. All right?

8 Mr. Harbeck tells you it doesn't comply. It's
9 not -- it's a misuse of the word infill, of that phrase. It
10 is a misuse of mixed use and -- keep going -- and Nick LaSala
11 puts forth multiple areas of nonconformity in his report to
12 you.

13 Now, here's the deal. You can get lost in this
14 minutia. And now Mr. -- Mr. Robinson has put together 25
15 reasons that it does comply with it. Now, I can go through
16 and argue every one of those to you. I ain't going to do it
17 because it's very easy to get lost in this minutia.

18 What you need to do is address the real issue. What
19 is the real issue here? The issue is what do you want Moore
20 County to be? That is what this conformity is about. What
21 do you want it to be? The questions from the land use plan
22 that Mr. Robinson brought up on the rubric, I like them.
23 Let's talk about them.

24 The question is, is the proposal consistent with the
25 vision, themes and policies contained in the plan? Well,

1 here's the deal. We've argued themes. He says it's all
2 property rights. I say it's town and country. It's a
3 mixture of those. But you know who's got to decide that?
4 You got to decide what are the themes. You got to decide
5 what is the vision. And you have to use the 2013 land use
6 plan to guide you in making that decision. That's what it's
7 about. You must decide what those themes are.

8 They said it's about property rights. We say it's
9 town and country. If the only goal were property rights, as
10 I told you, this would have been an automatic decision and
11 we'd all be home right now drinking a beer and watching
12 television, but it's not.

13 It's not, because saying it's only about property
14 rights surrenders the vision for the county to the individual
15 property owners who may only be guided by their own
16 pocketbook and their own best interest.

17 Is that what you want the county to be? That's not
18 what you wanted it to be in 2013, Nick Picerno, Mr. Picerno.
19 It wasn't what you wanted it to be, Mr. Ritter.

20 I'd argue and contend it's not what the residents
21 want. They want some guiding principles. They want smart
22 growth. They want responsible growth.

23 So what do we want in Moore County? I challenge
24 you. Do you want quality or quantity? It seems like that we
25 can't have both at the rate we're going. It seems that we're

1 focused more on quantity of people we can house and not on
2 the quality of lifestyle we can provide them. As the
3 quantity goes up, the quality goes down. Traffic congestion,
4 school overcrowding, insufficient infrastructure,
5 overburdened infrastructure, just to name a few. As one of
6 my clients told me, we've outgrown our infrastructure. We've
7 outgrown our roads.

8 Second question: Is this use being considered
9 specifically designated in the plan in the area where it's
10 location is proposed? The answer is no. Look at the future
11 land use plan map. It's not specifically designated in the
12 plan in the area where its location is proposed.

13 Is it needed? This is the third question.

14 Keep going.

15 Is the use being considered specifically designated?
16 No. Strongly discouraged.

17 Keep going. There it is. That was the map I was
18 looking for.

19 You can see where it's at right there. The white is
20 the RA stuff. That's rural agriculture. That's where it's
21 strongly discouraged.

22 And it doesn't -- the third question, if the use is
23 not specifically designated in the plan in the area where its
24 location is proposed, is it needed to service such a planned
25 use or could it be established without adversely altering the

1 recommended land use and character of the area? No, because
2 it doesn't fit this community.

3 Keep going. There it is. No.

4 And remember, is it specifically needed? Carthage
5 has approved 2,000 units. Vass has approved 300 units.
6 That's where the growth should be. That's what they said in
7 2013. Let's keep it there. It's town and country. That's
8 the theme.

9 Will the community facilities and streets be
10 available at applicable standards to serve the use proposed?
11 No. Union Church Road has, already has four schools on it.
12 It's a winding two-lane country road that hasn't yet reached
13 capacity, and in truth known will never reach capacity
14 because they'll be adding onto it.

15 But here's the problem. When you add onto it, I'll
16 argue and contend to you that you will forever change the
17 substance in the area of this community.

18 When you go from a two-lane country road in a rural
19 area and you put in a four-lane thoroughfare to serve four
20 schools and multiple houses and subdivisions, that area is
21 lost. It is no longer what Moore County and the land use
22 plan was designed to provide for.

23 So let's summarize this.

24 Is this proposed major subdivision infill
25 development? No.

1 Is this proposed subdivision mixed use? No.

2 Is the proposed major subdivision located convenient
3 to urban services thereby by reducing traffic on area
4 roadways? No.

5 Does the major subdivision take advantage of a
6 variety of infrastructure investments? No.

7 Will this major subdivision preserve wetlands any
8 more than the existing use of the land does? No.

9 Does the subdivision satisfy all the requirements
10 and specifications of the UDO? No.

11 Is the location of the subdivision consistent with
12 future land use map of 2013, Moore County Land Use Plan? No.

13 Is this proposed subdivision anywhere near a
14 crossroads location in Moore County? Well, I'm going to tell
15 you, Henderson Road and Union Church Road ain't like
16 Eastwood, West End or Matthews Market. That is not a major
17 crossroads.

18 Does the proposed major subdivision offer any
19 substantive protection to adjoining wetlands? No.

20 Is the subdivision compatible with surrounding
21 agricultural uses? No.

22 And I could go on and on.

23 But that's why we said, they failed to meet those
24 five -- four of those five. They got one. I'd argue and
25 contend to you that you can't find from those four.

1 The first one I'd argue and contend to you, Travis
2 Fluitt has no -- you should have no faith in his -- in his
3 testimony as to safety. I mean, it's just, it's -- I'd argue
4 and contend to you it's bad.

5 Number two, it doesn't meet the specifications.
6 That's probably the clearest thing that you've heard in this
7 hearing is how this land use, this offered proffered use does
8 not meet it. It might, but you got no way of knowing that
9 because it doesn't meet the standards that you've set forth
10 for the plat that you yourselves are supposed to use to
11 redefine it.

12 Number three. Yeah, they got that one.

13 Number four, it's not in harmony.

14 Number five, it's not in conformity.

15 So let's talk about the defense arguments for a
16 couple a seconds. And I'm almost done.

17 Here's the first one for us. Don't have it up there
18 because I didn't know what he'd argue. I'm very proud I hit
19 most of them, though. I'm real proud of myself.

20 Mr. Robinson argued to you, but, look, approve it.
21 We're only affecting two percent of farm land in Moore
22 County. Yeah, that won't matter. Would have you believe
23 that we're only affecting two percent and there's plenty
24 left, and no one, this one won't -- won't cause any more
25 harm. It won't harm anything.

1 Well, I'm going to tell you something. In the
2 criminal world that's one of the worst arguments ever heard.
3 I've heard it from lawyers before. My client only broke into
4 one house. He didn't affect anybody else. He only killed
5 one person. He didn't affect anybody else. He only raped
6 one. Yeah, there's 50,000 more he didn't. He can't be that
7 bad. No harm was done.

8 No, one is harm. You heard Harbeck. It gains
9 momentum. You look at the orders that even came out that
10 you've signed based on other subdivisions. The one from
11 Bibey Road, you actually found as a justification it was near
12 other major subdivisions. When you start one, they continue
13 to flow. That's how it works. That's where we're at now.
14 That's why we got the sprawl. That's why people are upset.

15 It doesn't take -- how much -- how many would it
16 take to change the character of the community? How many? I
17 don't know. You're going to set a limit, say, oh, we'll do
18 50, no more? Okay. Well, here's the deal. You need to
19 start now. You can't fix what's been done. People are
20 living there. Let them be. You need to start looking at it
21 now.

22 Mr. Robinson speaks of farm land in Moore County as
23 if it's a disposable, unlimited commodity, ready for
24 consumption by development anywhere, everywhere, any time,
25 rather than the finite irreplaceable resource and essential

1 part of the economy and the culture of Moore County that it
2 is.

3 Remember the quote from the board order in Bibey. I
4 told you that. It's near others. It's in harmony. And I'd
5 argue to you that one bad decision leads to another. It
6 gains momentum. Let's make the right decision this time.
7 Let's do what's right.

8 Mr. Robinson: This is about property rights. I've
9 talked about it. You know, if this is all it's about we
10 wouldn't be having this hearing.

11 Look at the exhibit from Mr. Robinson showing all
12 the subdivisions approved around Moore County. He'd argue
13 and say if you've approved all these and deny ours, it's
14 arbitrary and capricious.

15 I'd say no, that's not so. The evidence supports
16 the fact that the planning -- that you've been operating
17 under misnomers, infill, and others, that have been used to
18 justify it, and you've got to look at the overriding purpose
19 of the land use plan.

20 In the criminal world when we realize we've been
21 misinterpreting something, we don't keep doing it because we
22 did it that way before. We fix it now. That's what we ask
23 you to do.

24 He'd argue to you this is in harmony, there's 58
25 homes nearby with 14 -- 14 of them having less than an acre,

1 but all these homes are not the same. They're family tracts,
2 cemeteries, driveways. We've talked about that.

3 And, you know, here's the funny thing. When I had
4 my witnesses up here on that Tuesday night, Mr. Ritter, that
5 you thought I wasting your time, and they were talking about
6 their individual homes, that was the reason for it was to
7 show you the variation in that community. I wasn't clear
8 about it, but that was their purpose so that you could see
9 how that community's different.

10 Of those, when my witnesses were testifying,
11 Mr. Robinson would attack them. He didn't really attack
12 them, he attacked me, and that's fine. He attacked us for
13 wasting your time because this was unnecessary. Mr. Picerno
14 even told you, Philip, I don't have to look at other ones,
15 it's in harmony. I don't have to look at that.

16 Then, last hearing we get a whole stack of new
17 exhibits including 58 houses showing, oh, look, they're on
18 similar size lots. Nothing we can offer is good enough to
19 satisfy that. If it's not -- but my people talking about it
20 wasn't good enough, but he can offer an exhibit to rebut what
21 wasn't good enough. There is something to it.

22 These people have a right to their opinion. They
23 have a right to live where they want to live. And he says we
24 provided 25 ways it complies. When you review those 25 ways,
25 the strongest one really is, and the only argument he has

1 really that he come up with in support of it is retention of
2 wetlands, that it can't be built on anyway.

3 What other development would cost us these wetlands?

4 Is there any other one that would? No.

5 So if it's all about open space or use of
6 infrastructure, which is what most of those, I challenge you
7 to look at that on those 25 when you review it, because I
8 know you're going to go back and review it.

9 When you review those, and I encourage you to do
10 that, whether it's for us or whether it's for them, and
11 Mr. Robinson will -- I tell people this, and everyone, we
12 expect you to look at every piece of evidence that came in
13 here. You've got to draw your own conclusions from it. You
14 may disagree with me or with what I say or what Mr. Robinson
15 says, but it is your duty to review that and to consider them
16 all. You can give them whatever weight you choose to. And
17 I'm pretty sure Mr. Robinson would agree with me that you
18 have a duty to look at all of them, whether I offered them,
19 whether he offered them, and you've got to make your
20 decisions on that. I know you'll do that.

21 When you look at his, look at how many talk about
22 open space. And open space there? It's a swamp. It's
23 wetlands. We don't know how big it is, but that's the open
24 space they want to retain.

25 Keep going.

1 So, our conclusion. The problems. Why it's a
2 problem for Moore County. Why it's a problem for the
3 citizens.

4 There's due -- there's a lot of due process problems
5 here. You got a mess. Okay? Here's what your mess is. The
6 UDO is out of date and it doesn't comply with the law of
7 North Carolina. It still refers to 153A, 160A, and they've
8 replaced it with 160D.

9 I will tell you that is largely, and I told
10 Ms. Leland this, this is one of the reasons why I spent
11 Tuesday doing that because I misunderstood the application of
12 the law because I was relying on the old statutes, not the
13 new one. When she pointed that out to me I retooled it and
14 we went about it a different way on the third night.

15 So Mr. Ritter, as I told you, I apologize for
16 wasting your time. I do know now what it is. I didn't know
17 that before.

18 But here's the thing, I'm a friggin' lawyer. Okay?
19 If these people right here wanted to do this on their own?
20 No. That ain't right. That ain't due process. They should
21 have a right to be able to read it and know what it is and
22 come up here and do it, and they can't do it right now.

23 Now, I'm not telling you to get rid of the whole
24 thing. I'm telling you you've got the fix this. Okay?
25 You've got to fix it. And to rule on it is a problem because

1 you've got that problem here. That's the first one.

2 What's the next one? The UDO does not provide clear
3 guidance to the parties on how to be heard in this hearing.
4 It doesn't provide clear evidence.

5 Third, you have no policies or procedures for even
6 conducting this hearing. That's a problem. You need those,
7 because I'm going to tell you, if it ain't fixed, you're
8 going to have more of these. We need to know. We're making
9 the rules up as we go along.

10 I'm almost done, Mr. Robinson. I'm almost done.

11 But I'll tell you, we need to know what we're
12 allowed and what we're not allowed. That needs to be fixed.
13 The system is not working. It was designed to provide
14 accuracy in the plats and to guarantee the community that
15 their UDO and the law that covers these things have been had
16 and it's not working.

17 Planning departments have approved two plats, the
18 one, and then the second one illustrating, they've even
19 reviewed that and it ain't right with that. It's not
20 working.

21 So, why should we -- why should we seek to sustain
22 and retain agricultural lands? Is it for beauty? Is it for
23 serenity? Is it because people from the city may want to see
24 what it's like before cities when they fly here to play golf;
25 is that what they want to see? Is it because one dollar of

1 agricultural infrastructure brings you in a dollar
2 thirty-seven, one of home land brings you in 75 cents,
3 housing. The answer is yes to all of those. That's why you
4 need to.

5 The people of Moore County are waking up to the
6 danger of unrestrained growth, but you cannot decide this
7 case based upon petitions or public discontent. Mr. Robinson
8 will agree with that. You cannot. You must base your
9 decision on the facts and the evidence that you've heard over
10 the last two months. Actually, it's probably three months
11 now. Over the last months. You can't base it on petitions.
12 You can't base it on that.

13 To approve this special use permit you must find
14 each of the five points in favor of the applicant. But you
15 know what the correct decision is? You have been given the
16 answer to it in the land use plan itself.

17 Mr. Robinson wants to stress that the zoning
18 ordinance has the force and effect of the law, and the land
19 use plan is only the policy. Well, we agree with that.
20 That's four.

21 But what does the zoning ordinance enforce? The
22 zoning ordinance is not a standalone document in support of
23 only itself. What is its purpose? The zoning ordinance are
24 the tools of the land use plan. They till, they plow, they
25 excavate, they clear, they plant, and they build the county

1 under the direction of the land use plan. That's what your
2 zoning laws do.

3 Just like a farmer who uses his tractor to shape the
4 landscape into a farm in harmony and conformity with the
5 landscape, but that tractor has no heart and no soul. The
6 tractor cannot act on its own. It is merely a tool used by
7 the visionary. In that case a farmer, in this case the
8 county commissioners. Our land use plan is visionary. It is
9 a good and noble document.

10 Mr. Ritter, Mr. Picerno, you should be proud of what
11 you passed. It lays out a town and country vision for our
12 future, and the zoning ordinance is its tool that you, the
13 county commissioners, must use to preserve and protect the
14 ambiance and heritage of the county of Moore, the number one
15 goal of that whole plan.

16 The general assembly believes the same thing. In
17 160D they actually state that a local governing body may not
18 enforce the zoning ordinances without a comprehensive plan.
19 160D-501. That's a condition of adopting and applying zoning
20 regulations. Under this chapter: A local government shall
21 adopt and reasonably maintain a comprehensive plan of land
22 use. A comprehensive plan sets forth goals, policies and
23 programs intended to guide the present and future physical,
24 social and economic development of the county. A land use
25 plan is intended to guide, coordinated efficient and orderly

1 development within the planning and development regulation
2 jurisdiction based on an analysis of present and future
3 needs.

4 It is there. It's right there. I told you what
5 this case is about. It's about empowering you to enforce
6 that. It's about empowering you to do the right thing. It's
7 about empowering you to direct the future of this county.
8 This is but the first step.

9 So while the zoning ordinance has the force of the
10 law, it may not be wielded without a land use plan to ensure
11 it's productive, that it's a productive tool and not a
12 destructive one.

13 Mr. Robinson wants you to see only the tool in its
14 parts and pieces without the context, without purpose,
15 without a soul.

16 However, you are decision makers. You're obligated
17 to your constituents and the law to apply the tools at your
18 disposal in a comprehensive manner, always keeping in mind
19 the vision of the plan, the vision of the citizens of Moore
20 County when you served them as chairman in 2013.

21 A plain understanding of the land use plan applied
22 to this proposed use in its proposed location should lead you
23 to decisively rule against this proposal. This proposal puts
24 the town out into the middle of the country, and that is an
25 action that the land use plan is staunchly against.

1 I want to finish with this story. I tell it
2 sometimes in my jury arguments, but I really like it.

3 An officer and a soap maker were walking one day
4 down the street, and as they walked the soap maker turned to
5 the officer and said, Ha, your laws do not seem to be working
6 since there still seems to be a lot of crime and wickedness
7 and evil in the world.

8 The officer made no response and yet they continued
9 to walk.

10 Little while later they came upon a young child
11 making mud pies. She was covered from head to toe with mud,
12 her clothes soiled, mud all over her face. The officer turns
13 to the soap maker, Mr. Soap Maker, it seems your soap does
14 not seem to work since there is still a lot of filth and
15 dirtiness in the world.

16 Ah, said the soap maker, but to make it work, you
17 must use it. So, too, with the laws we live by, said the
18 officer.

19 So too, with the land use plan that is enacted in
20 this county. It is a good and noble document. It provides
21 all the answers you need. It provides the direction you
22 should follow, but you must use it to make it work.

23 My clients thank you for your patience. I thank you
24 for your patience. I appreciate your tolerance, your
25 attention, and I ask you to do the only thing that the law

1 demands, that the evidence supports. We ask you to
2 disapprove this plat.

3 Thank you.

4 (Applause.)

5 MS. LELAND: While the board is thinking, do you
6 have any questions before -- I think what you may want to do,
7 and you will clarify this, is that you're not going to decide
8 tonight, and Chair Quis is going to review the transcript and
9 recording of the meeting he missed due to his sickness, and
10 that perhaps the board might want to continue this meeting,
11 this hearing until the second meeting in August. And but
12 first I think before we -- you tell me if that's what you
13 want to do.

14 Do you have any questions? Because I think it would
15 be appropriate that you go ahead and close this
16 quasi-judicial hearing, but obviously reserving your ruling
17 however you're going to decide at the second meeting in
18 August. That -- do you have questions of the attorneys or
19 anyone before you do that? I think you should ask now.

20 MR. PICERNO: My question would be, if we want to
21 review these exhibits, when are we allowed to do that?

22 MS. LELAND: You can certainly review them whenever
23 you want to come up here and look at them. Laura will be in
24 control of all those exhibits.

25 MR. PICERNO: So we don't have to have -- we're not

1 in a meeting --

2 MS. LELAND: No, as long as you don't have three
3 commissioners here at one time. You can have two, and I'm
4 happy to come and go over them with you, and we can get any
5 answers for you regarding those exhibits, because there's a
6 lot of exhibits.

7 MR. PICERNO: Yes, there was. Thank you.

8 MS. GRAHAM: I have a question regarding the
9 transcript. When will we be able to review that?

10 MS. LELAND: Some of it's already prepared. Laura
11 can answer this better than I can because she's been working
12 with Cynthia Hall. We have received parts of it.

13 When do you think she will have it completed, Laura?

14 MS. WILLIAMS: We communicated some today. I think
15 it will still be a few weeks before we have a complete
16 record. It's a lot, as you well know, so she's having to do
17 this, you know, outside of her normal working hours. So I
18 can provide you the first two meetings right now, and then as
19 soon as I receive the remaining three I'll certainly be glad
20 to share those.

21 MS. GRAHAM: So then we probably won't have time to
22 review the transcript before our second meeting in August
23 since it's not complete yet. Thank you.

24 CHAIRMAN QUIS: There is video available?

25 MR. RITTER: I'd like to make a statement to

1 Mr. Parker, if I could.

2 I'm 82 years old and been in this county all 82
3 years except a hitch in the Navy. I remember back in 1960
4 when we decided we wanted to see people stop dying from
5 shock. Simple shock was killing people. We started out
6 after I got out of the Navy to try to get advance life
7 support in this county. Do you remember?

8 MR. PARKER: Mr. Ritter, I don't remember that. I
9 was born in '64, but my father would remember that because --

10 MR. RITTER: Big Parker, I been knowing him all my
11 life.

12 MR. PARKER: Yes, sir.

13 MR. RITTER: Okay. Let me finish. I'm not going to
14 drag this group around anymore.

15 MR. PARKER: It's okay.

16 MR. RITTER: Okay? I remember a young man showed up
17 there, just got his law degree, I think, and an old
18 briefcase, and started trying to kill advance life supports.
19 Do you remember that?

20 MR. PARKER: No, I don't remember that. But I don't
21 like it. I don't like it.

22 MR. RITTER: Okay. I'd like to tell you if I had
23 those numbers (indiscernible) to you have so many of, and I
24 don't have any because I'm speaking from the heart.

25 MR. PARKER: Yes, sir.

1 MR. RITTER: The number of people that our EMS folks
2 has saved and put back out on the street, we don't count them
3 if they die in the hospital.

4 MR. PARKER: Right.

5 MR. RITTER: Once they walk out of the hospital
6 they're part of that number.

7 MR. PARKER: Yes, sir.

8 MR. RITTER: You singled me out while ago saying
9 that the UDA -- UDO, I come on in 2013.

10 MR. PARKER: The land use plan was in 2013. The UDO
11 was before that, I think.

12 MR. RITTER: UDA -- UDO was being worked on, too.

13 MR. PARKER: Okay.

14 MR. RITTER: When I left that night an individual on
15 that board asked me do you -- has (indiscernible) got his UDO
16 copy, UDO yet? And I said what in the God's name is a UDO.
17 Okay?

18 MR. PARKER: Uh-huh.

19 MR. RITTER: It was a book this big.

20 MR. PARKER: Right.

21 MR. RITTER: When we have a planning committee that
22 takes information from the citizens (indiscernible) them in
23 the planning committee meeting and then if it merits it they
24 pass it on to us.

25 MR. PARKER: Right.

1 MR. RITTER: That's how we find out things. We
2 don't know about drainage --

3 MR. PARKER: Oh, I know it.

4 MR. RITTER: -- all this stuff.

5 MR. PARKER: Yes, sir.

6 MR. RITTER: But we need the input from the citizens
7 of this county. If things are going wrong in your backyard,
8 tell us. I got to December and you won't have to tell me.
9 Okay? But I have never, never, not since I been on here in
10 2013, refused to answer my telephone. Anybody can tell me,
11 you call my house, you know you're going to get an answer.

12 Now, I appreciate your education and what you're
13 able to do. I appreciate what this county is trying to do.
14 We take it in piecemeal at a time. We can't do it all at one
15 time.

16 MR. PARKER: I know that.

17 MR. RITTER: Now, I suggest, if people don't want
18 growth, don't want -- go on to West Virginia somewhere. But
19 this county's going to grow, and we're going to grow it
20 right, you know. We're not going to do it haphazard. We
21 haven't done any of this haphazard.

22 MR. PARKER: No, we're in favor of that. We want
23 responsible growth.

24 MR. RITTER: Ms. Ensminger took a beating the other
25 night, and I heard it, but she was right. She had went what

1 was required of her. So, anyway. I got a long memory.

2 MR. PARKER: Well, thank you, Mr. Ritter. I
3 appreciate your attention, and on behalf of my clients, thank
4 you for your consideration.

5 MR. RITTER: Thank you. You've got a good team
6 about you.

7 MR. PARKER: Thank you, sir.

8 CHAIRMAN QUIS: Thank you, Mr. Ritter.

9 Any other questions? We need to continue this;
10 correct? And we need to pick a date; correct?

11 MS. LELAND: Yes.

12 CHAIRMAN QUIS: It's been clear that we'll not have
13 the transcript for several weeks. Should we continue for a
14 month and -- I'm speaking for myself, I can probably look at
15 the video and get the information I have. I did miss one
16 part of this hearing, but I don't want to delay this because
17 of missing one. I can get the information from the video
18 that I need in order to move this along. But I need some
19 guidance on a date.

20 MS. GRAHAM: The fourth Tuesday is August the 30th.
21 We got, one, two, three, four, five Tuesdays in August.

22 CHAIRMAN QUIS: Fourth Tuesday?

23 MR. PICERNO: Fifth Tuesday is what she's talking
24 about. But I just want to suggest the fourth Tuesday. It's
25 not fair to both sides to -- we need to get together, because

1 what happens is the longer we -- the longer the time, the
2 less you remember and you can't treat people fairly. I mean,
3 with all these facts, I mean, we've heard so much. I think
4 sooner the better that we can address this and get it -- get
5 it put behind us is better.

6 So I would -- I'd recommend the 23rd, if that's
7 possible. I know --

8 MS. GRAHAM: That's the fourth --

9 MR. PICERNO: That's the fourth Tuesday.

10 MS. GRAHAM: I just want to move away from our
11 regular upcoming meeting because we're going to have other
12 things to --

13 MR. PICERNO: Absolutely. And I would move -- we
14 won't have the transcripts, so that should give us a week
15 with the transcripts. I think that would be the earliest we
16 could get it solved.

17 CHAIRMAN QUIS: I'm in hundred percent agreement
18 with you that we should move this along and not delay it
19 unnecessarily.

20 Is there another suggestion?

21 MS. GRAHAM: I think (indiscernible) suggested the
22 23rd.

23 MR. PICERNO: Twenty-third, that keeps it on a
24 Tuesday, and that's consistent, and it should give us
25 hopefully a week with the transcript of the whole shebang,

1 all four, five nights, six nights, I don't -- I can't -- how
2 many we've been here, five. Five. Yeah. So.

3 (Indiscernible discussion.)

4 CHAIRMAN QUIS: We need to -- we need to pick a
5 date, a reasonable date.

6 MR. PICERNO: Check with Jerry and Otis as well now.

7 MR. DAEKE: August 23rd's all right with me.

8 CHAIRMAN QUIS: Otis?

9 MR. RITTER: Fine.

10 CHAIRMAN QUIS: Twenty-third? Okay. I'll work to
11 accommodate that and make it happen.

12 MS. GRAHAM: What time?

13 CHAIRMAN QUIS: 10:00 o'clock? 10:00 o'clock? Is
14 that agreeable?

15 MR. ROBINSON: 10:00 a.m.?

16 CHAIRMAN QUIS: 10:00 o'clock on the 23rd, that's a
17 Tuesday.

18 MR. ROBINSON: That's agreeable with me for sure.
19 That's agreeable with me for sure. Thank you.

20 MR. RITTER: Regular meeting?

21 CHAIRMAN QUIS: It will not be a regular meeting.
22 This is this fourth Tuesday. It's not a regular meeting,
23 just for this hearing.

24 Mr. Parker, is the 23rd okay with you at
25 10:00 o'clock?

1 MR. PARKER: Yes, sir.

2 CHAIRMAN QUIS: All right.

3 MS. LELAND: Okay. And can we go back to, before a
4 motion's made, the board should consider going ahead and
5 closing the quasi-judicial hearing if you do not anticipate
6 hearing anything else from the attorneys or any other
7 witness. You can reopen it, you can make a motion to reopen
8 it if you need to ask additional questions of anyone out
9 here, but if the only thing you're going to be doing is
10 making a decision, then it's okay to go ahead and close it.

11 CHAIRMAN QUIS: Uh-huh. Okay.

12 MS. LELAND: You can keep it open if you want to.

13 MR. PICERNO: What's the harm in keeping it open in
14 case we need to ask a question?

15 MS. LELAND: There's really no harm in closing it or
16 keeping it open. Some people get probably too wrapped up in
17 that, but you can always reopen it as well.

18 CHAIRMAN QUIS: I suggest we keep it open.

19 MS. LELAND: Okay.

20 CHAIRMAN QUIS: And continue it until the fourth
21 Tuesday, the 23rd of August, 10:00 a.m.

22 We need a motion to --

23 MR. RITTER: Motion to adjourn.

24 CHAIRMAN QUIS: -- consider -- no, not yet. I made
25 the motion, we have a second --

1 MS. GRAHAM: Second.

2 CHAIRMAN QUIS: -- by Ms. Graham. All in favor.

3 (Commissioners respond aye.)

4 CHAIRMAN QUIS: Very good. As far as this evening's
5 proceedings, can we now close the meeting?

6 MR. ROBINSON: May I ask one clarifying question?

7 CHAIRMAN QUIS: Yes, sir.

8 MR. ROBINSON: Mr. Chairman, so everybody does that
9 a little differently, but I've often been in the custom of
10 preparing proposed findings of fact and conclusions of law
11 from the perspective of my client and submitting those to
12 your county attorney or to you for your consideration as you
13 make your decision. I'm more than happy to do that. But I
14 don't also want to submit it if you don't intend to -- to
15 feel that that's a helpful tool.

16 MS. LELAND: I would recommend either both parties
17 prepare it if you want them to consider in advance of their
18 decision. If not, then nobody does. And I appreciate you
19 being helpful. We usually prepare it ourselves, but
20 certainly if both parties wanted to prepare something for the
21 board, that would be appropriate.

22 CHAIRMAN QUIS: And that can be done after this
23 evening, the two of you can communicate perhaps through
24 Ms. Leland and decide if that's --

25 MR. ROBINSON: Okay.

1 CHAIRMAN QUIS: -- the course of action?

2 MR. PARKER: I trust that Ms. Leland would be able
3 to write an order sufficient to reflect the commissioners'
4 opinions regardless of which way they decide.

5 MR. ROBINSON: So is that a no?

6 MR. PARKER: When you say no, I'm just saying if you
7 want to do it, I'll write one, but I'm just saying I trust
8 that she's going to -- she's going to write what they -- what
9 they say.

10 MR. ROBINSON: Yeah, I do, too.

11 MS. LELAND: Okay.

12 CHAIRMAN QUIS: Okay. That's settled.

13 So before we conclude, let me just say, I appreciate
14 very much the respect both sides have had for one another.
15 I'm very appreciative of the folks, the citizens that have
16 come out tonight concerned about this, or just here to
17 observe. Appreciate everyone's civility and respect. It's
18 the way to conduct business in Moore County, and I'm very
19 appreciative of that.

20 Okay. So we've continued the public hearing. Date
21 and time is set. Do we need a motion to adjourn this part of
22 the hearing?

23 MS. GRAHAM: So moved.

24 CHAIRMAN QUIS: Thank you, Ms. Graham, with the
25 motion. Is there a second?

1 MR. RITTER: Second.

2 CHAIRMAN QUIS: Mr. Ritter with the second. All in
3 favor?

4 (Commissioners respond aye.)

5 CHAIRMAN QUIS: We are adjourned.

6 (Audio recording stopped.)

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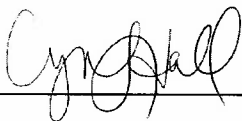
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CERTIFICATE OF TRANSCRIPT OF AUDIO RECORDING

This is to certify that the foregoing transcript of proceedings taken at the August 23rd, 2022, meeting of the Moore County Board of Commissioners is a true and accurate transcript of the proceedings recorded by the Clerk of the Moore County Board of Commissioners and transcribed by me to the best of my ability.

I further certify that I was not personally present during said proceedings, I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This the 16th day of October, 2022.



Cynthia L. Hall, RPR
Official Court Reporter