

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
November 28, 2018

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) of Wednesday, November 28, 2018, was called to order with the determination of a quorum at 7:06 p.m. by Chairman Robert Grimes in the Board of Supervisors Chambers of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Robert Grimes, Steven Apicella, Heather Stefl, Dana Brown, Robert Gibbons, Dean Larson

MEMBERS ABSENT: Ernest Ackermann, Adela Bertoldi, Danny Kim

STAFF PRESENT: Susan Blackburn, Melody Musante, Stacie Stinnette

DETERMINATION OF QUORUM

DECLARATIONS OF DISQUALIFICATION

PUBLIC HEARINGS

NONE

UNFINISHED BUSINESS

- Code of Performance

Mr. Grimes: We'll get this started here. Thanks everybody for their... for your patience and I apologize for being late. Had to stop and get some gas otherwise I wasn't getting home. Yeah, it's a little cold tonight. Since we have no public hearing, I'm just going to skip over the preamble section; we'll just go right to the unfinished business section. Code of Performance -- I brought this up, I don't know, back earlier this year sometime, I don't remember exactly when. And we had discussed that we wanted to discuss this further. I think everybody's read it. I don't know what everybody's opinion is on this. I know there were some questions about, you know, well what do you do if somebody violates one of the requirements of the code, and we stated in here that we would review it on an annual basis, if I remember correctly.

Ms. Brown: I think Dr. Ackermann brought that up. I was okay with most of it. I had a couple questions on a couple things. Number 10... number 8 and number 10. I didn't really understand those really well. What... can you give me more clarity on those?

Mr. Grimes: Actually, this came directly from a document that the Board of Supervisors created, so I really didn't go through and change anything in it other than changing BOS to Board of Zoning Appeals. So, to speak to the... what it actually... what they were trying to get out of that I couldn't give the exact reasoning.

Ms. Brown: Yeah, because I... I mean, I don't know what their rules are as an elected official versus us who are volunteers, but I don't know what federal laws affect my elected office. I'm not elected so I kind of think we shouldn't have that in there. And that's on number 8.

Mr. Grimes: Right, well we all do take an oath when we are appointed...

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Ms. Brown: Right.

Mr. Grimes: ... which we basically say that we will uphold all of the same local, state, and federal laws as part of our appointment, if I remember correctly. It's been awhile since I took the oath.

Ms. Brown: I don't remember federal laws being in there, but...

Mr. Gibbons: Inaudible - microphone not on.

Ms. Brown: Yeah, it was just confusing. It says federal laws affecting my (inaudible) like there was some particular federal laws, you know, for elected officials. And I just... I don't know what those are and I don't know that they apply to us. That was... of course, I would uphold the things I took an oath in the office for. But I think we should change the elected, because we're not elected. And I don't know if we have any federal laws affecting our position. It was just 8 and 10 I was a little unsure of.

Mr. Gibbons: Inaudible - microphone not on.

Ms. Brown: Yeah, but do we have any federal laws affecting our...?

Mr. Gibbons: Inaudible - microphone not on.

Mrs. Stefl: (Inaudible) remarks? I mean, all these things that could be construed as violations of peoples' civil rights could fall under, I believe, federal laws.

Ms. Brown: Well, we should get told that; I never knew that. I mean, you know, just common sense stuff but, I mean, I don't remember taking an oath, not that I wouldn't but, you know, I'm gonna respect everybody's civil rights, I'm just...

Mr. Grimes: Do you happen to have a copy of the oath that we take, Melody, anywhere?

Ms. Musante: No. That's straight from the court and I don't know that I've ever laid eyes on it.

Mr. Grimes: Okay.

Ms. Musante: I can certainly try to get a copy of that if we want to discuss this at the next meeting.

Ms. Brown: Well, I want to know what federal laws I'm subject to; I do. If any. I'm not... like I said, if it was written for the Supervisors, it may be different for an elected official, you know, I don't know.

Mr. Grimes: I mean, do you really think there's any federal laws that may be there, even if they're anything that you think you are going to violate?

Ms. Brown: I think I need to know what they are so I don't.

Mr. Grimes: Okay.

Ms. Brown: That's my concern. I've never been given anything and I'm okay with it, but I need to know what I'm expected to conform to.

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Mr. Grimes: Number 10 again, I think this is what Dr. Ackermann was referring to was that we would review this at the annual meeting and basically I think it's a once a year if we have any issue with any Board member's performance as it relates to this code, that's where it would be discussed. But there was no vehicle or no method to sanction or put something on someone for that violation other than noting that it was witnessed and that, you know, would hope that it would be corrected in the future.

Ms. Brown: Maybe we should take it out, because I do know the Supervisors can sanction each other and, if we can't, then it probably shouldn't be in there. I didn't know this came from theirs and that could be why some of it may not apply to us. I don't know -- do we want to give each other annual reviews?

Mr. Grimes: Well, again, I don't think it's necessarily an annual review. It's more with this if we see behavior by a particular Board member that doesn't fit within this, then we can talk to that person as a Board to see if we can correct that behavior or, at least, point it out so it that it doesn't happen again. Again, there's no sanctions, there's no vehicle to or vehicle for sanctions against another member but, pointing it out, for example, not being respectful of the folks that come before the Board or something to that effect, where we can have that discussion.

Ms. Brown: Would that be something better to be done (inaudible) or...?

Mr. Grimes: Well, we can do it a closed session at the annual meeting, whatever that's going to be, whatever form that takes.

Mrs. Stefl: So, you can't censor a particular Board member or something if...?

Mr. Grimes: I don't think there's anything in the by-laws that allow that. And, you know, what form would that take? You're not allowed to attend for a meeting or you have to go take a course in ethics?

Mrs. Stefl: Well, I mean, I know like the Board of Supervisors, they can censor another member but it doesn't mean that they lose the position or anything, it's just more of a, I don't know how to...

Ms. Brown: Well, I say we take it out. It doesn't apply to us like it applies to the Board of Supervisors. They have a vehicle to do something, we don't. Personally, I don't think that I'm comfortable discussing someone's behavior in front of everybody. I don't know that that would be a good thing. I don't know -- my thing is I think we should take 10 out, but that's just me.

Mr. Grimes: Anyone else on the Board have thoughts about that?

Dr. Larson: Mr. Chairman, I have a thought.

Mr. Grimes: Yes sir.

Dr. Larson: I think I would... I agree with Dana in that I don't... I'm not comfortable with criticizing somebody in public... in a public forum, somebody on the Board. I think what I would prefer, and I'm not... I understand what we're trying to do here. I think I would prefer the first step to be the Chairman talk with the person offline and suggest that they, I don't know, correct what they're doing wrong. I can't really go somewhere that I don't have particulars on. And then, if the Chairman doesn't get, you know, a response that makes sense, in other words, the member's not willing to correct, then maybe we can go into closed session and talk about it as a Board.

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Ms. Brown: Yeah, I'd feel more comfortable doing it in a closed session, but I really don't feel comfortable doing it in an open session with open minutes and, you know... I just... I don't know that we should be criticizing each other publicly.

Mr. Grimes: Okay. Anybody else have any thoughts on that?

Ms. Brown: I don't mind having a yearly group (inaudible), if that's what they're looking for, you know, a closed session one.

Mr. Apicella: I think Dean's onto something. I think if the Chairman feels that a particular member isn't adhering to the Code of Performance, that he or she should work with the individual person or persons and, first of all, not wait until an annual meeting. And the same is true -- if the behavior just continues or the lack of adherence to this Code of Conduct, then maybe it's something that we all could discuss in a closed session format. But I agree, I don't think it's something we would want to do in public view.

Mr. Grimes: I don't have any problem with that. Do our by-laws have anything to address those issues? I don't think that they do.

Mr. Apicella: I don't think the State Code provides that authority of the BZA. I mean, it's up to the Court to decide what to do with a member if he or she isn't... I think there's specific...

Ms. Brown: We have to hold... the Code says we have to have a public hearing about it to remove someone.

Mr. Apicella: No, I think the court does it in public.

Ms. Brown: Right.

Mr. Apicella: I don't think the BZA has any authority to get rid of a member on its own. I mean, you can certainly address it with the court.

Ms. Brown: No, but we can complain to the court if that's what we want to do and there would have to be a public hearing. There is a process.

Mr. Grimes: Yeah, there's definitely a process set in the Code of Virginia on how to take up a grievance against a Board member, but that applies to just about anybody. It could be done from the public, not just the Board. So there's definitely...

Mrs. Stefl: But I thought... I mean, there was a member who was removed and it had to be through the court system. There was no public hearing or anything like that.

Mr. Apicella: Well, that happened because... that was Mr. Ortiz, and that was because he had taken a position before it became vacant. He was appointed the position before it became vacant.

Mrs. Stefl: Right, but that's what I'm saying. So there was no public hearing, there was no thing, it was through the courts and that's the only...

Mr. Gibbons: What case was that?

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Ms. Brown: Ortiz.

Mrs. Stefl: Ortiz. It was Paul Ortiz.

Mr. Gibbons: I (inaudible), I held that hearing.

Mrs. Stefl: I don't remember us having that hearing.

Ms. Brown: I don't think we do, I think the courts do.

Mr. Gibbons: Inaudible - microphone not on.

Mrs. Stefl: Oh, the Board of Supervisors had it and then Mr. Leming took up Mr. Nageotte's case to the courts. Well, it was Nageotte who technically was the client and who sued to have Mr. Ortiz removed from the Board of Zoning.

Mr. Gibbons: Ortiz was represented by (inaudible).

Mrs. Stefl: Yes, he was represented. What I'm saying, it was Clark who represented Mr. Nageotte who sued to have Paul removed. And it was through the courts. I don't remember it going to the Board of Supervisors...

Mr. Gibbons: The Board of Supervisors removed Ortiz from the Planning Commission.

Ms. Musante: I can remind you all to speak in your microphones please.

Mrs. Stefl: Alright. I mean, I remember it being...

Mr. Apicella: There is a court case. I mean, I've seen it and I had a copy of it.

Mrs. Stefl: I remember the court case. Yeah, I remember the court case and I remember when it happened, because he was appointed after the election, I want to say the November or December meeting, and then there was this whole ordeal because they were suing the Board of Supervisors who did the action to appoint him at the time.

Ms. Brown: That might be different because he hadn't been appointed by the courts. What I read... I was reading it today; I was going over the code...

Mrs. Stefl: Well, he was sworn in and everything.

Mr. Apicella: Yeah, he was appointed by the court.

Mrs. Stefl: Yeah, he was appointed.

Mr. Apicella: The court didn't know at the time that there wasn't a vacancy when he went.

Mrs. Stefl: Right, right. But, it never... we never... we, the Board of Zoning Appeals, I don't recall having a hearing or anything. That was all through the Circuit Court when that happened.

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Ms. Brown: Yeah, I just read today the procedure. It has something to do with 15 days, there had to be a public hearing within 15 days and blah, blah, blah, and I was assuming that the court was doing the public hearing but I don't know. But there is a procedure...

Mr. Apicella: Yeah, I'm reading Section 28-343, Removal of members, that's our County ordinance, it says, and it stems from the State Code, members of the Board of Zoning Appeals shall be removable for cause by the appointing authority, I'll put in parenthesis (the court) upon written charges and after a public hearing, which again I presume it's the court that's going to have the public hearing.

Mrs. Stefl: Right, so it was all done through the Circuit Court. We, the Board of Zoning Appeals, or the Board of Supervisors don't have anything to do with that. They recommend to the court our appointment.

Mr. Grimes: Well, as it applies to number 10, it sounds like we've got several opinions that they'd like to take this out and we'll just... I have to agree with Dr. Larson that, you know, it's the Chairman's job to address the issue as soon as possible with the member in private, so it's not part of any public meeting. And then, if there's no relief given there, then we can bring it up in a closed session of the Board and I would imagine there would be something pretty serious if it wasn't addressed, that we could schedule a closed session to take care of that. So I have no problem taking number 10 out of this completely so that it's just not simply there and we'll just deal it inside the Board. And then on number 8, Dana, I understand your position, you know. If you don't know what it is, therefore how can you agree to it? So, we'll at least do some research on that to find out what their thought was on that for the federal laws. I think it's just kind of more of an all-encompassing statement, similar to the oath that we took. And if you could get us a copy of the oath because I believe that, as part of that oath, you basically state that you are here to uphold the Constitution of the United States is one of the statements.

Ms. Brown: I thought it was the state laws of Virginia. That's kind of what I remember saying, but I don't know.

Mr. Grimes: Again, I don't remember either, so better just to get the oath, we can all review it then, and then we can revisit it at the first meeting next year.

Ms. Musante: That's fine.

Mr. Grimes: Yeah, okay. But, with that said, anybody else have any comments on any other item in this Code of Performance?

Ms. Brown: I'm good.

- By-laws Review

Mr. Grimes: Okay. I apologize for my typing that you'll pick up in the microphone. Alright, so, next item - By-laws Review. I had Melody add this to the agenda. I don't actually recall, from our work session, any comments from any Board member on changes or proposed changes to the by-laws.

Dr. Larson: Mr. Chairman, there was one item that I remember that came up and that might warrant discussion, and that was participation of alternate members in votes not case related. So, things like this, voting on the by-laws, perhaps voting for officers, non-case-related votes. There was a question last spring I think was the last meeting I attended, about whether alternates should be allowed to participate in those votes, to cast a vote in those cases.

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Mr. Grimes: I remember that; that came up actually during one of the meetings that we were having. That's right, it wasn't from the work session, it was actually... it came up yet again about who can vote and when they can vote.

Ms. Brown: I have comments on that because I do remember that. I pulled the State Code again, I have it with me. The State Code is very specific. It says we can have 5 or 7 member board, and the Board of Supervisors, the governing body, can appoint up to 3 alternates. As much as I think it can help me on certain things, I don't think we should give alternates voting rights because I think that we would be making decisions as a 9 member board, not a 7 member board. And if some policy change that we made or by-laws decision change that we made affected one of our cases, I think we could be in a lot of legal jeopardy on that and the attorneys could drive a truck through that, because it was made. And you know, when they're here before us and we're ruling on a case and they don't win because it's only 7 members and they might have been voted again, but if they'd had 9 members they might have won their case because the 9... the other two members had voted for this particular policy change. I did talk to just... you know, I didn't pay anybody, just some attorney friends and my representative on the Board of Supervisors, they agree. I just... I think it could land us in court. And, you know, I try to remember that, you know, that the Board of Supervisors, you know, they donate to make our legal fund, and if we start making decisions that might put us in peril, I think they might cease defending some of our decisions which would affect our rulings going forward. I just think that it has a good chance of some change of policy, change in a form, change of our by-laws, how we operate and if we do it as a 9 member board, not a 7 member board, that we could be in trouble for that later. So, I'm sticking with that.

Mr. Apicella: Mr. Chairman, I've been on both sides of the fence here. And we talked about it and I think the first part of 2-6 was sort of the compromise, except as stated in paragraph 2-5, which is about participating in cases; any alternate member may, and the word is "participate" in all business of the Board. So, they can certainly advocate for a position and they can certainly make their, you know, best case, they just can't vote. And I appreciate the situation having been an alternate, but I hear what Dan is saying and I, too, would be concerned about doing anything that could wind up backfiring and causing us problems downstream if someone would say we changed the makeup of the Board by giving the alternates voting privileges went beyond their participation as an alternate substituting for a regular member.

Ms. Brown: Yeah, I agree with Steven. I mean, I definitely want them to participate; we get a lot of insight that's helpful to me. But I just think if we make a decision as a 9 member board, not a 7, that's going to cause us a problem.

Mr. Grimes: I wasn't here when this section of the by-laws was amended to make this statement, but I always felt like the 2-6 did say, you know, an alternate member may participate in all business of the board, alternated members may vote only if substituting for a regular member. So, again, I think that's... I thought that was very well done that alternates, if they're here for this type of meeting, can participate all they want. But they still don't vote unless they're sitting for a regular member.

Ms. Brown: Well, yeah, and tonight they would vote if they were sitting for a regular member.

Mr. Grimes: Correct. So I think it doesn't matter whether it's a case or just business, if they're sitting here as an alternate they get to vote. And, you know, if that drives participation by other members to get here and participate and vote, then that's a benefit, too. So, I don't see that there's a change that needs to be made unless somebody has other thoughts on that. I mean, it would have been nice to have the

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other alternate here to hear because I'm sure she has her own opinion on that but, we have one of the alternates here tonight.

Ms. Brown: Do you want to weigh in?

Mr. Gibbons: I think we're fine.

Mr. Grimes: Okay.

Mr. Gibbons: Because originally, we used to make them sit in the audience and didn't call them up. I know Ms. Bertoldi has said on many times that we've been treated very well so.

Mr. Apicella: We'll have to work on that then. Mr. Chairman, I don't know if the by-laws is the appropriate place for this, but obviously it came up this year in two cases - the issue of dismissal of cases for lack of standing. We do have provisions on the process for hearing cases. I'm wondering... it's under Article 7 - if that's an appropriate place to amend or consider amending our by-laws.

Ms. Brown: Say that again Steven? What did you...?

Mr. Apicella: So, we've had two cases this year that resulted in a dismissal because the applicants lacked standing.

Ms. Brown: Right.

Mr. Apicella: And we don't cover that in our by-laws. I saw it in another jurisdiction's by-laws; I wish I would have brought it with me. But just to make sure we're covered and nobody can say we're deviating from our...

Mr. Gibbons: Should that be done before the thing ever comes to this Board?

Mr. Apicella: Well, we had that conversation and it was who's going to make that decision if not the Chair and the Vice Chair.

Ms. Brown: Well, it's in the preamble, it's in the preamble.

Mr. Grimes: Well, and the preamble...

Ms. Brown: We changed that, right?

Mr. Grimes: ... kind of gets its information that we convey to the public from our by-laws.

Ms. Brown: Okay.

Mr. Grimes: In this particular section that Steven's referencing with 7...

Ms. Brown: I don't mind... I don't mind putting it in there if you think we need to; I'm fine with that.

Mr. Grimes: Well, and that's the thinking because now that we include that in the preamble and one of the cases after we did the... well, actually we hadn't done it yet, but the attorney for the applicant was very aware that we were going to question the jurisdiction and whether or not he had the right...

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Mr. Gibbons: My point is, should that standing question be dealt with before we even have a public hearing?

Mr. Grimes: There's... I think several members of the Board believe it should be. But, in the particular case, the flag case, we thought it should have been dealt with before it got to us. But there was no appetite from the County...

Mr. Gibbons: I understand that, but...

Mr. Grimes: ... to make that call.

Mr. Gibbons: ... but maybe we can do it ourselves.

Ms. Brown: Right. And I think we... I think we said in our by-laws that before we open the public hearing, before we you know start discussing the case, the first step I thought was to determine if they had standing.

Mr. Grimes: That is in the preamble.

Ms. Brown: Yeah.

Mr. Grimes: But I think what Bob was saying, should it happen before it even gets to the public... or to this point where they're in front of us. And the only way to stop that or do that in my mind is for the County intake office to make that decision, and I don't think - I'm not speaking for you, but I don't think you're going to do that.

Ms. Brown: Yeah, I don't think legally they could. I don't think legally... because it's coming to us as an independent body.

Mr. Gibbons: (Inaudible) given these monies aside for legal advice and to me that ought to be done before you ever do the public hearing, you advertise it. I mean, that one we had that night went on for what, two hours, and we said the public couldn't speak?

Mr. Grimes: Yes.

Ms. Brown: Well, that was what prompted us to say we need to do that going forward which we didn't know before then.

Mr. Grimes: I don't know what mechanism we could use to do that. I mean, is for every case that comes before the BZA or that the County does intake on, does it then go to somebody to make that decision?

Ms. Brown: No. No, because we're an independent body, it can't.

Mr. Grimes: Right. We would have to convene to make that decision.

Ms. Brown: And they're buying their day in court, so I think it has to happen the day of the meeting before we hear the case.

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Mr. Gibbons: I don't think you have to. If you're allowed to hire an attorney, and the Board has been good about that, then I think that that lawyer represents us, there ought to be a screening. We do these things before you ever put them on public hearing.

Mrs. Stefl: But, just like a court of law though, I mean, you can file a case and every judge will then review whether that case has standing to go to court or not. And so he or she, so the board in essence looks, they say yes, you can proceed with this case, is I think all we're trying to be so it doesn't waste, in essence, the applicant's time or the attorney's time, we're going to decide yes, we'll hear this case and not waste... like for instance, the flag case, we were here for what, almost two hours before we then dismissed it. There were a lot of people in the audience that I think we could have fizzled out that frustration within the first 15-20 minutes if we had just established whether we had standing or not and then go on.

Ms. Brown: Right, but we agreed to do that going forward after the flag case.

Mrs. Stefl: Right. But I think what Steven's trying to say here is, just like we're having rules, like this is what we're going to do on the case, I think this is where you're suggesting we just... we'll establish standing and then we'll go into the applicant has 10 minutes, you know, 3 minutes for a speaker...

Mr. Apicella: I think... I don't want jump, you wanted to say something, sorry.

Dr. Larson: I did. I don't think that it's a good idea to have questions of jurisdiction in standing decided offline by a single person. If we're gonna... if somebody's gonna present the BZA with a case and we decide not to consider it due to either lack of jurisdiction or lack of standing, they deserve to hear the arguments that we hear for that and the basis of our decision for that. So, there's the first point. Second, I agree with Steven that we should have it in the by-laws. In fact, probably the place to put it is between 7-1 and 7-2, which is right before the public hearing is described. And I would suggest, just something to consider, that it could be as easy as the Chairman saying, does any member of the BZA think we need to discuss jurisdiction or standing in this case? Because normally we don't have to -- but if somebody on the BZA, including the Chairman, the Chairman could say I think we need to discuss this and off we go.

Mr. Gibbons: So, the public hearing doesn't start until after the determination of the (inaudible).

Dr. Larson: Correct.

Mrs. Stefl: Correct, correct.

Dr. Larson: And I think that was your point, Bob. Yeah, I agree with that.

Mr. Grimes: And, where I was going was that Clark asked us, or actually it was the probably the second case where the jurisdiction issue was coming up, they wanted to see a copy of our by-laws. I think they were looking to see if it was written in the by-laws that we could challenge the jurisdiction and standing.

Ms. Brown: I'm fine with doing that, but one question. Under 7-1 I'm reading and it says applications and appeals to the Board shall be in accordance with Sections, and you know, it cites the code section, does it provide a section of code for us to have a standing determination?

Mr. Apicella: Well, again, I think we could, when we add the provision there, we could cite the specific State Code. To me, that has certain prevalence over our process. What we have, you know, in addition

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to that is fine, but the code says we have to... the parties have to be aggrieved. That's what the code says. I mean, that was the whole conversation that we had in both those two cases.

Ms. Brown: Right. Oh, I agree... Steven, I totally agree with you. I'm just saying that we need to, because in the line above it at 7-1 it says we will handle applications and appeals with accordance of the Stafford County Code sections. So, if that's in conflict, that's what I'm asking.

Mr. Apicella: I don't think it's in conflict.

Ms. Brown: I don't know.

Mr. Apicella: I mean, again, as long as we cite the State Code section, I think we're going to be okay in a new (inaudible).

Ms. Brown: And the other problem I can see us running into is, you know, we come in, we start, we sit down, we determine right away there's no standing, nobody gets to talk, there's no public hearing, and they've just spent six or seven hundred dollars, whatever it is.

Mr. Apicella: Well, it only applies for appeals. It doesn't apply in the case of variances, it doesn't apply in the case of special exceptions. So, again, we can even caveat it. With regard to appeals to the Board, the BZA shall first determine whether or not the applicants have proper standing, or whatever the right language is. I do agree, though. I think we need to provide some due process so it's just not a matter of us on our own making that determination. We had some give and take...

Mr. Grimes: Well, and where I see that if we started to... if we did that outside of a meeting, I could just see the attorneys lining up to sue us directly. Even though we have protections, we are now making a decision outside of the Board as a whole; I can just see that opening it up to whoever's in charge of that process getting themselves in some kind of legal jeopardy. So I would definitely want it to be a Board decision, much like we've done with the two cases that we've had so far.

Mrs. Stefl: I mean, I'm all for taking, you know, if there's even a question, you know, a vote, a quick vote, hey, do we wish to proceed and, you know.

Ms. Brown: Well, I thought we had to vote for standing or not?

Mr. Grimes: I think that's what we did for the last case.

Ms. Brown: Yeah, I think we should vote for standing.

Mr. Grimes: Can you bring up the preamble, Melody, on the screen?

Ms. Brown: It was worded great in the preamble I thought.

Mr. Grimes: I'm trying to multitask here.

Mrs. Stefl: Like Dean was saying, you know, this is part of our procedures, you know.

Mr. Grimes: Yeah, well absolutely because...

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Mrs. Stefl: We'll vote on standing, we'll allow 10 minutes for the application, 5 for, you know, or 3 for you know members or the public, things like that.

Ms. Brown: Okay, I've got it. It's under number 3 and it's the first bullet under number 3. It says, hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator. And what we added was, hearing of appeals will be conducted in two parts. The first will be a review of jurisdiction and standing. The second will be a hearing on the merits of the case. I think that was worded fine. I didn't have any issues with that. I don't mind just taking that and putting it in the by-laws if you want.

Mr. Grimes: Yeah, I think that one that you brought up on the screen is the old one.

Ms. Brown: Here, here's the new one. Well, the bolded section is what we added.

Mr. Grimes: I don't think you have it.

Ms. Musante: I don't think I do.

Mr. Grimes: I gave it to you guys on that Google drive thing, so.

Ms. Musante: Yeah, okay. The last one I have on here is 2016.

Ms. Brown: Yeah, it's number 3 bullet, the first bullet under number 3.

Mr. Grimes: Yeah, it's the first bullet... got it.

Mrs. Stefl: It's the one that's October 29th, right?

Ms. Musante: Yeah, I don't have it on here for some reason, okay. Do you want that back?

Ms. Brown: I would like it back, yeah, thanks.

Mrs. Stefl: So, if we're going to add that, do we need to also then change Article 6 where it says the order of business?

Mr. Apicella: Yeah, I think so.

Mrs. Stefl: And 7?

Ms. Brown: Yeah, I think she's right.

Mrs. Stefl: So, right between (d) and (e), so a new (e), vote on standing?

Ms. Brown: Yeah, before each case. I think each case should get it separate, too. Or do you want to do it all at the beginning of the meeting so they don't have to wait around all night, I don't know.

Dr. Larson: I still would suggest that we not have a procedure for each case or each appeal on this because if a member of the Board wants that, then we should do it. Otherwise, I don't think we need to consider it; I mean, just assume we have this jurisdiction and standing and press on.

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Mrs. Stefl: I don't want a particular... or anyone to challenge us and say, why did you vote on standing for this case but you didn't vote on my case or (inaudible)...

Dr. Larson: Because there was no question.

Mrs. Stefl: ... versus another case?

Dr. Larson: There was no question in the other case.

Mrs. Stefl: (Inaudible) do it for everybody then there's no question of favoritism or that we were trying to single any one particular (inaudible).

Dr. Larson: That's a good point, but again...

Ms. Brown: Mark the day, I agree with Heather.

Dr. Larson: ... if there's no question then why would we discuss it?

Mrs. Stefl: Oh! Dana and I agree! Whoa!

Ms. Brown: I'm supporting Heather on this. I think it should be written in. I also think it might be a deterrent, people, if they know that they're going to be questioned on that, that's going to be looked at; they might rethink or double think before they apply for an appeal.

Mr. Apicella: Well, you know, it's a small thing but a couple times we've challenged folks on not having their paperwork right, like not having signatures...

Ms. Brown: Well, I want to address that, too; that's coming up.

Mr. Apicella: No, I'm just saying, but to me that's also a matter of standing. If Joe signed the paperwork but he has no interest in the property, even if it's for a variance, right? Then they really shouldn't be in front of us because they don't have grounds to have their variance considered.

Dr. Larson: Okay, well that's fine, and we can do it that way. But then I think we should give the applicant a chance to argue why they think they have... we have jurisdiction and why they think they have standing.

Mr. Apicella: Oh, absolutely. That's why I said I think there has to be due process. I don't think we could, on our own, make that determination without giving the applicant an opportunity to speak. We did that twice, in both those cases -- you weren't here for the August case, but we did the same thing. Like, in the flag case, I think I hammered it home multiple times if you go through the minutes; I gave that guy several bites of the apple and, you know, he still didn't answer the question. So, I agree. I think we're all kind of in agreement. I hear you that it maybe takes a couple of minutes, but I think it's easy if it's very clear.

Dr. Larson: I understand the equal treatment of all cases argument; it's a very good argument. It's just that if nobody on the Board questions either jurisdiction or standing, then I'm not sure what we're talking about. Why... what questions would we ask?

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Mr. Grimes: I think kind of putting it into the by-laws where we say, at 7-2, that the Board will review for each case presented to the Board the applicant's jurisdiction and standing to bring that case in accordance with County Code section... or State Code section that talks about parties being aggrieved.

Dr. Larson: Well, and if we all agree that there's no question of jurisdiction or standing, then maybe we could just have a vote right now instead of having...

Mr. Grimes: Absolutely.

Mr. Apicella: We did that. There was a case in front of us where Dr. Ackermann jumped in right away and said, I vote to acknowledge that the applicant has standing. And we took a vote and we spent less than 30 seconds on it.

Mrs. Stefl: Yep.

Mr. Grimes: Perfect. And it only applies, again, to appeals, so if we write it in there in 7-2 that, you know, all appeals before the Board will be reviewed for jurisdiction and standing in accordance with State Code... you've got the number there, Steven.

Mr. Apicella: Yeah, it's 28-2311(A).

Ms. Brown: And Steven mentioned it actually could apply in a wild way to a variance. I don't mind putting it in for everything. You know, you could get people in here, you know, like we had that one down, I think it was in Falmouth, you know, the mother and the son. The son didn't have ownership in the property but, you know, he was here. I mean, there could be something where they screw it up. I don't mind putting it in for that. I'm still a believer we should put it on our, you know, our paperwork, our initial paperwork when they file so they can know that we're going to look at standing right away before we hear a case. Susan, do you have a question?

Ms. Blackburn: Well, I think this is a lovely discussion and I'm so glad you all are having it. I do want to caution between what is aggrieved and what is a complete application, and they are different things. And just not to start interchanging terms, because we all kind of have ideas of what we think some of that stuff is. But it may not actually be the same out in that legal world. And then I also have a suggestion which you'll probably all just go eek. Because we're getting in... you all are getting into discussing when things of an aggrieved person actually is, you know, has that standing, is maybe actually have your attorney, when you're done with this, go over the by-laws and make sure they don't... he doesn't find any conflicts with any of it that will, you know, that will again keep y'all out of trouble -- not that you're not in it but, you know.

Ms. Brown: Robert, I think that's a great idea to have our attorney look at it.

Ms. Blackburn: Just make sure you don't get there.

Mr. Grimes: I absolutely agree 100% on that one.

Ms. Brown: But I still want to add it. I want to add it to the by-laws that we're going to do it. I want to let everybody know up front we are gonna establish that before we open the public hearing.

Ms. Blackburn: Well, and it may be that you ask if an application is complete. You know, it may not have anything to do with so-called aggrieved standing, but those are the types of things that I think the

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attorney can help guide you with so you get to the page that they have a reason to be before you. And, like when you're talking with the appeals, one time an attorney told me, he said don't presume anything, that is not your job. They have the right to get legal counsel. They have the right to be advised by someone else. You are just there to listen. And I just... because we're always trying to help, we're always trying to, you know, assist people and no, that's not your job this time. Your job is just to listen, and it was dealing with sending out notices of violations. They said you don't tell them a thing. You tell them this is what it is. They have the right to get all the legal counsel they want. Just throwing that out.

Mr. Grimes: Yeah, on the complete application though, I think you know as the Board itself, you know, we're a bit handcuffed, right? I mean, you're the intake office. You really decided when it's complete and when it's not. And we had this discussion about the flag case in particular. You know, like how are you taking this when it's... we really believe... it just doesn't make any sense. And the answer was, well, if they checked all the boxes and they signed all the right things, we're going to take it. It doesn't matter what we think or we're not even going to weigh in on the jurisdiction issue.

Ms. Blackburn: But that, in particular, was an appeal case.

Mr. Grimes: Right.

Ms. Blackburn: It wasn't a variance case. It wasn't a special exception case. So, yes, that is unique to that. As with the last appeal case we had, there is question that the route that was taken maybe wasn't really the correct route to take, but... for the applicant... but the application was complete and then it was for you all to be your judges, your quasi judges to determine whether or not this really needed to be before you all.

Ms. Brown: Yeah, I think they bought their day in court. I think it does have to come before us for a vote.

Mr. Apicella: So, again, I think there are some well taken, well-articulated points here. I don't think it hurts to, after 7-1 and maybe adding something to 7-1, but a new 7-2 would be a determination of the completeness of the application, and that could be just as simple as are all the signatures there. If everybody hasn't signed all the paperwork, you know, why proceed forward there beyond that. So that would be a new 7-2, and then a new 7-3 would be establishment of standing in conformance with, and I gave you that State Code section, for appeals to the Board. And then what is now 7-2 would become 7-4.

Ms. Brown: Well, how are we gonna... my only question to that, I'm fine with the standing part, but the completeness of the application, how are we gonna handle that? Because we've had two cases recently - or at least one - the locksmith case where it wasn't signed right but we lucked out because the other owner was in the audience and we were able to get her to sign; we had a notary here to go ahead and proceed. I can see one of the attorneys out there, well, you're not going to hear this case, we've advertised it, we're all here, we paid the money because...

Mr. Apicella: We can defer the case, right?

Ms. Brown: Hmm?

Mr. Apicella: We can defer the case until they get all the appropriate documentation signed.

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Ms. Brown: So, now is that us deferring it so it doesn't count against them asking for the deferral?

Mr. Apicella: Yeah.

Ms. Brown: Okay. Because sometimes, like I said, like in that... the locksmith case, we fixed it because the person was here. Are we willing to do that again? I would be, but, I don't know. We need to be consistent.

Mr. Apicella: I just think that's by vote of the entire body to decide what they want to do in that case. Even if it's here, I mean, someone can... if the majority of the Board says let's proceed, then we proceed, right. It's not... it's not one person making that decision. It's the entire majority.

Mr. Grimes: And we've done that in the past, I mean, where there was a question of ownership or somebody didn't sign something or there was some land title that was... didn't have the right name or both parties' names on it, and the application had one name but the land was owned by two people and we made that conscious decision to go ahead and proceed. And it was a discussion with the Board. So I think all those apply. So, I don't think it's necessarily something that's cast in stone; we make that decision on each individual case.

Ms. Brown: Well, I'd like to run that particular part by the attorney. I'm a little uncomfortable. Because we need to tell him, I mean, if... are we... if in every case we're going to reject it if it's not complete but not in some cases that could look like favoritism or discrimination. That's, you know... if the application's not complete, we're either going to hear it or we're not. Otherwise, I think we should not put it on there and just leave it to how we've been dealing with it.

Mr. Apicella: What I remember counsel telling us is each case is determined on its own merits. So, you know, whatever the facts are specific to that case. Again...

Ms. Brown: Then I think we should leave it off.

Mr. Apicella: ... we acted by a majority of the Board, not by one person's view. That's how we've been doing it, so.

Ms. Brown: Right. I'm not advocating that at all. I'm just... one of the attorneys that comes before us a lot, well, why do you put that on there if you're, you know, going (inaudible).

Mr. Apicella: All it's saying is determination of the completeness of the application. It's not providing a standard; it's just saying that that's one of the hoops that we're going to go through. So, and I think, just as part of our deliberative process, we can all make our own case as to why we think it's either complete or not complete, and then the Board would vote if there was any issue. So... Anyhow, I think what I heard is we're potentially going to put it in and we're going to run it by the attorney. Is that fair, Mr. Chairman?

Mr. Grimes: I don't have any problem with that approach. I mean, putting it in there, having the attorney review it; if he has a problem with it was can always revise the by-laws and take it out.

Ms. Brown: I'm fine with that.

Mr. Apicella: Or provide more clarification. Maybe that's what he'll say.

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Mr. Grimes: Yeah, that'd be fine. So, let's get to the meat of it then, which would be the language that we include in the by-laws. 7-2, which is determination if the application is complete. How would we like to phrase that?

Ms. Brown: Just like that. Plain and simple.

Mr. Apicella: Determine completeness of application.

Ms. Brown: I like what he said; determine if the application is complete. I don't know. I'm all for short and sweet and to the point.

Mr. Grimes: I think we have to... yeah, I'd say, the Board shall make a determination of the completeness of the application. Yes? No?

Mr. Apicella: That works.

Ms. Brown: Fine.

Mr. Grimes: So that becomes the new 7-2. 7-3, review of the case...

Mr. Apicella: Review of the applicant's standing...

Mr. Grimes: Or jurisdiction.

Mr. Apicella: It would be the Board's jurisdiction, yeah.

Mr. Grimes: Go ahead, sorry.

Mr. Apicella: Yeah, review of the applicant's standing...

Mr. Grimes: To bring the case?

Mr. Apicella: ... for appeals to the Board pursuant to 15.2-2311(A).

Mr. Grimes: So, it's 15.2-2311(A).

Mr. Apicella: Right.

Mr. Grimes: Okay.

Dr. Larson: What do you have on jurisdiction there? Do you have any wording on jurisdiction? And confirm the BZA's jurisdiction in the case, for the case, in this matter. Something like that.

Mr. Apicella: Well, how about in determining, just at the end of that, the tail-end of it, in determining the BZA's jurisdiction.

Ms. Brown: To determine I thought sounded better, but.

Mr. Grimes: Review the applicant's standing to appeal to the Board pursuant...

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Dr. Larson: Okay, (inaudible - microphone not on) - I think jurisdiction's more in the (inaudible). I think they are separate, although standing applies some jurisdiction (inaudible).

Mr. Apicella: Well, I mean, based on what? I mean, we have something kind of (inaudible - microphone not on) in 2311(A) (inaudible). Inaudible - microphone not on.

Mr. Grimes: Stacie, is it possible... Stacie? Is it possible to bring up a word document and type out what we just said so that we all can see it and then wordsmith it a bit?

Mrs. Stefl: Yeah.

Mr. Grimes: I know exactly where you're going because I'm starting to overwrite stuff.

Talking - microphones not on.

Mr. Apicella: We haven't said (inaudible - microphone not on); all we've said is for appeals to the Board. We haven't said what kind of appeals, so it's pretty global, and it has to be in conformance with 2311(A) which requires a person to be aggrieved.

Talking - microphones not on.

Mr. Grimes: That's wonderful, thank you. Take a look at the screen, see what she's printing there.

Mrs. Stefl: I have no signal. I think this got unplugged.

Talking - microphones not on.

Ms. Blackburn: The only thing I can think of is if they were appealing a different chapter of the County Code.

Mr. Apicella: So, let's just say... I'm going to throw out a hypothetical. I hear what you're saying; I haven't seen it. There are times I've questioned whether or not something is rightfully in front of us, but let's just say somebody decided that they... so this is kind of a question to staff... they're appealing something that needs to go to the Board of Supervisors but they demand that it goes to the BZA. How would you guys handle that?

Ms. Blackburn: Well, first of all, we'd of course consult legal to see if there was anything that would back us up as to not accepting it, which would then go into, and I'm trying to find it and I thought it was in here but it may be in the State Code about a person can aggrieve any written order, determination, or decision by any Officer, but I think it's pertaining to this chapter.

Dr. Larson: But we still have jurisdiction over that.

Ms. Blackburn: Right. So, I'm wondering...

Dr. Larson: So, I guess... I remember cases in the past where we've questioned whether we have jurisdiction or not for the question.

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Mr. Apicella: Okay, if it helps, I don't know that it's going to come up, but can we just change the end of it? Review the applicant's standing for appeals to the Board pursuant to yadda-yadda-yadda, or on other matters in determining the BZA's jurisdiction.

Ms. Blackburn: Here it is. It's actually done, an appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by an officer, department, board, or bureau of the county affected by any decision of the zoning administrator. So, I mean, that's the language of it and I'm thinking to say...

Mr. Grimes: That section still all relates back to the Board of Zoning Appeals specifically.

Ms. Blackburn: Right. Or the enforcement... it's under 28-349(A), and it says, made by an administrative officer and then the administration or enforcement of this chapter. So it is the zoning ordinance chapter, and that would probably be the line that says you are appealing something that is not out of Chapter 28. You're appealing something out of Chapter 4 or out of, you know. Now, we do have a couple of things that we manage, like trash and grass and inoperative cars, and they're in totally separate chapters of the County Code. But there's actually appeal language in there that does not bring it to you all. So, that line in itself...

Mr. Apicella: Right, but I guess my point is what if they were, again, somebody came in and said I disagree with you, I still think the Board of Zoning... my opinion is that it's something that needs to be heard by the Board of Zoning Appeals.

Ms. Blackburn: Then what would happen, I suspect, is that whoever the Zoning Administrator would say is due to this line, due to this section of our code, you cannot... it is not the appropriate process for you to go through; then they would appeal my decision. But they could then appeal my decision that I made the decision, so yes. Then you can hear that. Then it will be, I'm appealing her decision because she said I couldn't come before you all, and then you read all the reports that we do and da-da-da-da-da and then you would decide whether or not to uphold the decision or that no, we feel that because it's da-da-da-da-da you could hear it. So, it becomes really legal stuff, just little bits and pieces along the way.

Dr. Larson: What if... what if a different Zoning Administrator, maybe your, I don't know, successor or 2 or 3 successors removed, had the same situation but did not see that it was not part of that paragraph and forwarded it to the BZA?

Ms. Blackburn: Well, then shame on them. Then again, it would be... I would suspect that if it was the same group of individuals, you all would zero in on it like there was no tomorrow because you would be extremely experienced in what needs to come before you, talk to your attorney, and then that would be that. I mean, some of it you can't, you know, human error is human error but you hope that they pay attention to what is in their books when it comes from other codes when it comes to stuff like this. And Melody knows that when we get stuff in, that's the first thing; we go over them and see, you know, what are they doing, you know, things like that.

Mr. Grimes: I actually like the add, the way this is written up here now. I know that we don't have a lot of specifics and it's probably not going to be an issue, but it allows us that avenue to have that conversation by it being in the by-laws to say.

Dr. Larson: I remember a case many moons ago where there were some serious discussion on jurisdiction, and I don't remember what the case was. But it was an issue. It's probably rare; I know it's rare. But I think it can come up so, yes, I think we should have it in there.

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Mr. Grimes: And, you know, if it doesn't, again, it's just a catch for us to allow us to have that conversation. And any applicant coming before us that reads are by-laws would know that. So, I like adding that in there.

Mr. Apicella: Again, if it's not clear enough, Dean, I think in sending this over to the attorney I think you can, or in a conversation you have with the attorney, you can explain why this additional verbiage is there and what we're trying to get to. Maybe he has some better way of phrasing it.

Dr. Larson: Sure, sure. Let him read it, see if there's an issue with it, if he has better wording, great. You know, you can convey what we're trying to get at.

Mr. Grimes: Absolutely. Wonderful! I was gonna ask you to do that, put 7-2 up there.

Ms. Brown: What about Heather's idea about putting it up in section 6, between (d) and (e)? It's kind of redundant, but, it's... it probably should be in there if it's in the bottom.

Mr. Grimes: I don't have any... I don't have any problem adding that between (d) and (e) and just, you know, determination of applicant standing. Or review, excuse me, review of applicant standing.

Ms. Brown: Just to cover ourselves.

Mr. Grimes: Because that is going to be the order of business.

Mrs. Stefl: Is it a review or is it a vote?

Mr. Apicella: I don't think you have to get that specific. I mean, it's just summarizing so, and I'm also concerned that we've already been at this for an hour and we've got some other stuff. Again, I think when the attorney looks at it, he can suggest any additions or changes.

Mr. Grimes: So, under 6-1, we're going to add a new item (e) and that would be review of the applicant's standing. We'll just keep it nice and short. And under 7-3 when you're citing the Code section, I think it's a capital A. Wonderful. Any other comments on the by-laws?

Ms. Brown: Yes. Yes, yes. We skipped ahead before I could get all my stuff in. Oh, procedures of hearing a case. I didn't notice that there was mention that they would take an oath in there, because we always have them do that and maybe that should be listed in there. You know, somewhere in 7-2. It's not mentioned in any of our stuff, because you make them take an oath. If anybody's going to be speaking (inaudible). I think we should probably tell them that up front, or put that in our procedures so they can know to expect that.

Ms. Musante: Section 28-346 of our Zoning Ordinance requires that, so I don't know if you just want to state that or.

Ms. Brown: I don't know. I just wanted to have something in there about that, that's all. I don't really care how we address it but. It's part of the procedure that we do, I just think it should be in there.

Mr. Grimes: I'm not opposed to it. Again, this document is for us that becomes our kind of road map to do cases and it is public information and, as we've seen from some cases this year, the attorneys are asking for it. So, I mean...

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Mr. Apicella: I think it could be covered under (a), right? So, each applicant or representative of the applicant or appellant shall take an oath, right, and shall appear at the public hearing and present evidence to the Board.

Ms. Brown: Well, it's people in the audience that want to speak on their behalf as well. Anybody that wants to speak, he makes them take an oath. So it's part of the procedure of hearing the case. I don't know where it should go; I just think it should be in there somewhere, that's all. I was thinking under 7-2 somewhere, but if you want to put it up in 6 under (a), that's fine. Administration of oath for anybody who's going to be speaking tonight -- I don't know.

Mr. Grimes: Yeah, I think it would be the first entry, because that's the first thing we do based on the preamble. I think; let me double-check. I'm bringing up the preamble again. Actually, the way the preamble's written, it says it is the custom of this board to require that any person who wishes to speak before this board shall be administered an oath. You're saying that it's actually required as part of the code. So the preamble needs to be changed, too. So, it should... we should change the preamble to say that it is a requirement.

Ms. Musante: It says, authority of chairman to administer oaths and compel attendance of witnesses, is what it reads.

Mr. Grimes: Okay. Can you state that one more time?

Ms. Musante: Okay, it's Section 28-346, Authority of chairman to administer oaths and compel attendance of witnesses. The chairman of the board of zoning appeals, or in his absence the vice chairman, may administer the oaths and compel the attendance of witnesses.

Mr. Grimes: Okay. So it's not actually a requirement, okay. So, the way this is written, it is a custom is appropriate, okay, because we don't have to do it.

Ms. Brown: How about after (a), just put administer oaths? How about that? That makes me happy and then it's in there. Under (a), just make a new (b), or however... whenever you do it, whatever order it is and just say administer oaths.

Mr. Grimes: Yeah, because the way it's in the preamble, it's the last thing we do before we start hearing cases.

Ms. Brown: But it's for everybody that's going to speak...

Mr. Grimes: But it's really the first thing that we do before they start speaking, which... so I have no problem...

Ms. Brown: Right. That's why it kind of goes in procedure of hearing, I don't know.

Mr. Grimes: I have no problem putting (a) up there, administer oaths.

Ms. Brown: Well, under, you know, like another (b) or do we need to put it down under procedure? I don't care. I just... I want it in there somewhere, that's all. And it can be short; administer oaths, nothing else.

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Mr. Apicella: Because that's not the order. Because the order is, you call the meeting to order, you call the roll call... because the first part is for us, right, determine a quorum, board members disclose any communication. Then you do your preamble, right.

Mr. Grimes: Which describes how the hearing will be conducted.

Mr. Apicella: Right. So, it would be after (d), right, and you do it once. You don't do it for each public hearing.

Mr. Grimes: Correct.

Ms. Brown: That's fine.

Mr. Apicella: I'm just trying to get to the order; I don't think it would be (inaudible - microphone not on).

Mr. Grimes: Well, if we're going to go with the way that we actually do it, it's not...

Ms. Brown: So put it right before public hearings.

Mr. Grimes: Yeah.

Ms. Brown: We already added a new one in there.

Mr. Grimes: Well, we actually have added two...

Ms. Brown: Okay, so we're at...

Mr. Grimes: ... 7-2, 7-3. It would be...

Ms. Brown: So, (g).

Mr. Grimes: ... 7-4. But since we don't have to do it, should we put it in the by-laws? Sorry, not to drag this out, but it's not a requirement.

Ms. Brown: We're going to do it. We do it every time. I think we should put it in there. Is there some point where you're going to say we're not going to do oaths tonight? If we're going to do it, it should be in there. And we do it every single time. I don't recall one time we haven't done it.

Mr. Apicella: Yeah, I think we should administer oaths just because we're trying to get the facts and not have people tell us untruths during the conduct of the public hearings so.

Mr. Grimes: Not that we have any mechanism for enforcement.

Ms. Brown: Just... I say put it under section 6 right above public hearings. I don't know what letter that would be because we've got them all out of order now but, right before the public hearings just put administer oaths, and then the next thing would be public hearings and unfinished business, blah, blah, blah, blah, blah. Because that would match the preamble. And you're right, we don't do it for each individual case so they would just go there and not in section 7.

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Mr. Grimes: So...

Mr. Apicella: So, it's before we do the applicant's standing.

Ms. Brown: No.

Mr. Apicella: Yes.

Mr. Grimes: She's talking about moving it up into section 6 and taking it out of section 7.

Ms. Brown: Yeah.

Mr. Grimes: Because it's really not part...

Ms. Brown: Individual case.

Mr. Grimes: ... it's not part of the procedure to hear the case, because it's... you're talking about...

Ms. Brown: It's a procedure meeting... it's part of the meeting procedure.

Mr. Grimes: ... it's order of business, right.

Ms. Musante: So, the new (e) is going to be administer oath...

Mr. Apicella: Right.

Ms. Musante: ... the new (f) is going to be review of the applicant's standing...

Mr. Apicella: Yes.

Ms. Musante: ... and then, okay.

Mr. Grimes: Yep, and then (g) becomes public hearings and moves on from there.

Ms. Brown: Okay, that's good. I had another one that I'd want to stick in under article 5. I would like to put in between 5-4 and 5-5 about our meeting minutes. I'd like to put something in there that all meeting minutes will be approved at the next board meeting. I mean, sometimes we don't meet for 3 or 4 months, sometimes we meet the next month, but I think we need to put something in it. We've got minutes in here tonight, they're almost a year old.

Mr. Apicella: I hear you, Dana, but I think that's beyond the control of the staff. And how would we enforce that?

Ms. Brown: How is it beyond the control of the staff?

Mr. Apicella: Because they didn't have the capability to get the meeting minutes done. They had to hire somebody to do them. So, if they're backlogged -- they do minutes for the Board of Supervisors, they do minutes for the Planning Commission, they do minutes for the BZA. I presume they do minutes for other bodies as well. So, to say from one month to the next that we're going to require them to have the minutes ready...

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Ms. Brown: From one meeting... from one meeting to the next. And the reason I say this, because the Board of Supervisors, the Planning Commission, their minutes are all posted in a timely fashion. If the staff can't get it done, then our secretary needs to do them. We can't be having meeting minutes posted a year later.

Mr. Apicella: I'm going to have to disagree with you. Our meeting minutes for the Planning Commission -- I can't speak to the Board of Supervisors -- are not necessarily provided to us at the next meeting or in two meetings or in three meetings.

Ms. Brown: Are they like 10 to 12 months out?

Mr. Apicella: No, but you're saying they should be done within a month and I...

Ms. Brown: No, I'm not, Steven. The next meeting.

Mr. Apicella: The next meeting could be one month.

Ms. Brown: And I said, I very specifically...

Mr. Apicella: The next meeting could be...

Ms. Brown: I said it could be 3 months, 4 months, or the next month.

Mr. Apicella: And the next meeting could be next month. I'm going to disagree with you on that one so.

Ms. Brown: Okay, well, I think we need to have something on there. We are behind, we're not professional, and we don't have our stuff posted in a timely manner. I mean, we heard that case on the flag last February. It's going to be December.

Ms. Musante: There's also been times though that you all have looked at the minutes and said, you know what, we're not ready to vote on them yet, bring them back for next month. So it's not always the staff's issue that you're not getting them. They've been provided in your packet; you just didn't have time to review them so.

Ms. Brown: Okay. That's my thought. I think we need to have... we're not getting our stuff on a timely fashion, so I think we should put something in. And since we're being disagreeable, I'm going to go ahead and do my last thing, and that was under, and I've talked about this before, under 4-3. We're going to... you know, Melody is going to be retiring next year, people are leaving, we have unspoken, unwritten agreements. I think the stuff about the secretary is like I believe last year. The secretary needs to do the duties or we need to designate in here as code provides that we can designate someone else, i.e., a staff person or someone not on the board, and that we should mention that in there. Because right now it looks like Heather's doing all this and somebody could complain or come to her when something's not done right that she didn't do. And right now it's saying that our secretary is doing this and I... I don't feel comfortable the way it's written. I mean, the code provides that we don't have to have a board member being the secretary. And that's fine if we want to, but I... they need to do the duties. Because when the new person comes in for Melody, I don't know that they're going to do all the things that Melody's doing for us. And that's going to be next year.

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Mr. Grimes: I think the section says, the secretary shall be a member of the board and shall, with assistance of designated administrative staff, be responsible for the following duties.

Ms. Brown: Yeah, but that's not what State Code says though.

Mrs. Stefl: The code allows either a board member or a staff member.

Ms. Brown: Correct. Or, even if they're a person we could have as somebody else too.

Mrs. Stefl: Right. So, I guess I don't understand your heartburn right now because yes, I am...

Ms. Brown: The secretary is not doing it.

Mrs. Stefl: (Inaudible) all of this, but I do it with staff.

Ms. Brown: Well, I've been secretary and the only thing I ever did as secretary was sign a writ. That's it. I didn't get to, you know, do anything else and the way it's written, the secretary is doing all these things. And that's fine if the secretary is doing all these things but, if not, we should say that we have a staff person designated to do this and we probably should have an MOU. Because again, we're not going to have the same person in here all the time. If anybody takes our by-laws, one of our attorneys in Stafford County comes in and says, well, to the secretary or whoever it is at the time, um, I want to see where she notified all the members of the meetings, I want to see all the minutes, why hasn't all the... you know, I just...

Mr. Grimes: Right, but again, the agreement with the board as it's constructed now is that that's all basically delegated and designated to staff, period. There's no change required. If somebody came in and asked, I don't care who it was, so did you notify all the members of the meeting? No, that's designated to the staff member from the County. Did you prepare all the meeting minutes for last month? No, that's delegated to the designated staff member from the County. We have an answer to that question. It doesn't violate the code.

Ms. Musante: Mr. Grimes?

Mr. Grimes: Yes.

Ms. Musante: It could say, the secretary or his designee, if we want to change that language.

Mr. Grimes: Yeah, I have no problem, you know, wordsmithing this language, but I don't need to change anything that's happening. Now, if, when Melody retires and the County decides that they're not going to provide us that assistance, then we will need to change the way we do business. But for right now, we don't. And the way the by-laws are written right now, we can do either or. So, I just don't see...

Ms. Brown: Okay, that's fine. I just want to be on the record I am not agreeing with that so. I know your guys are going to stick with that but I think that's incorrectly written and I just want everybody to know that I've said that.

Mr. Grimes: Not a problem.

Ms. Brown: Okay.

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Mr. Grimes: That's why we have minutes.

Ms. Brown: Okay, that's great. Then we can move on. Um, are we going to talk anything about 7-2 (a) about the 10 minutes we talked about, you know, a hard 10? You know, sometimes we let them go on and on and on.

Mr. Grimes: Again, I think that's been left up to the discretion of the chair.

Dr. Larson: I think it should be continued to be the discretion of the chair. I think that... I've always felt that it was more important for us to give people a chance to present themselves and present the information. If they needed a little more time, they can request it. But I still think that's the realm of the chair.

Mr. Grimes: And we did talk about the work session that, you know, that I expressed as the chair at the moment that I have let some of those things go and that I was going to start working on that. Unfortunately we haven't... well, fortunately we've not had a lot of cases this year so I haven't had to exercise that, but there was, you know, the same issue with the decorum issue. So I think that that all applies to the discretion of the chair to make that decision, because there are sometimes I can when they're rambling and when they're not. And to make that decision when they're obviously trying to make a point, then we can go... let them take that extra time.

Mr. Apicella: And also I think it depends on the complexity of the case. Because we... you know, it serves everybody's purpose if they need to address issues that they obviously can't address in 10 minutes and they're not filibustering, then it probably is worth everybody's time to give them a little bit more breathing room.

Dr. Larson: And the chair could always ask them for the relevance, you know, if they're ongoing on and on, ask them for the relevance of the case.

Ms. Brown: Okay. And under 7-4, we had talked about... and I think we talked about putting it on the application like the special exceptions, you know, the extra voluminous amounts of material we get at the meeting sometimes. I think it's kind of soft in here. Do we want to keep it that soft or do we want to be more specific? It says in here the board may accept additional relevant material; however, large amounts, you know, may require a deferral. I don't know if I want to defer a meeting or just say you didn't get your paperwork on time, we're proceeding as is but. What's the pleasure of the board? We talked about this a lot because it is a problem that we do have. My thought was we were in favor of tightening it up but maybe I misread you all.

Mr. Grimes: I just... I'm of the opinion that I don't want to not allow it. There are people that come before us that gravely abuse it and, you as it... absolutely, but we as individual board members I think have to look at that information. And again, I'll just go back to the flag case, that was the most obvious. We got handed something that was as thick as the meeting minutes we have tonight, and it was nothing but articles about hate and this and that and absolutely nothing to do with what they were actually trying to appeal. Well, as soon as I flipped through those pages, I just discounted everything that was in that package. That was my choice.

Ms. Brown: But could we be sued for if we, you know, didn't have time to read through that inch thick, because I didn't, I mean, we were conducting testimony and that kind of stuff, could they come back, the attorney, and say they didn't consider the information that I gave them that night that they accepted because they didn't... they didn't have time to read it, I didn't get a deferral, you know.

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Mr. Grimes: I'm sure that anybody that comes and present in front of us could sue us or sue the board for just about anything, so I'm not overly concerned about that because they're providing it in the... the simple answer, if you ever had to ask... be put on the spot to answer the question, under oath, they handed it to us in the meeting. It was 144 pages. We were in the middle of the hearing.

Ms. Brown: Well, according to our by-laws, we have the option to defer. That's not something I would want to defer over more than likely, you know...

Dr. Larson: Actually, the...

Ms. Brown: ... the junk material but.

Dr. Larson: ... applicant can ask for a deferral. If they get substantial relevant information at the last minute, they can ask for a deferral based on that to give us the change to read it.

Ms. Brown: Well, it says in our by-laws at the board's option. It says...

Mr. Grimes: Well, it says that the deferral on behalf of the applicant and at the board's option is we can either grant that or not grant it. I believe that's the intent of that.

Ms. Brown: Yeah, but I don't think that's ever been a time where we've been asked to, because I've given you so much new information, I'd like a deferral. I think it's just been here's new information and, like Heather said, it's a...

Dr. Larson: Yeah, I have mixed emotions on this because I agree with being as flexible as possible and allowing information to give everybody a fair hearing...

Ms. Brown: I do, too, from your average Joe Citizen, but...

Dr. Larson: ... but I think it has been used as a tactic in the past and sometimes fairly obviously. But it's... I agree with the chairman on this. I think that we can accept it and if there's... we don't have a chance to review it during the meeting, then that's the chance that they take when they give us hundreds of pages of new information at the hearing. They should... it's a human thing. You can't read it and hear the case at the same time.

Ms. Brown: Well, we could say something along that line, you know. We will accept additional materials at the hearing... I don't know how to word it, you know, but we cannot commit to reading it during the hearing, you know. I don't know. If somebody, you know, a citizen that doesn't have a lot of legal background, you know, look, I found this letter, I found this thing on my title, yeah, I want to see that. But, like you said, I don't want to see a bunch of articles on hate and it's just not really relevant I don't think to what we're doing when we're trying to hear people talk. And I want to somehow screen that out and I thought the rest of the board did too, but I'm hearing now that no, we're just going to go back to like it was.

Mr. Grimes: I think the reality is we'd all love to screen it out.

Ms. Brown: Okay.

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Mr. Grimes: But, I don't know how we do that without, again, the issue of fairness. Who decides that it's relevant or it should be accepted? I mean, if it's 144 pages, are we just going to stop the meeting and say, alright, we're going to pause for 15 minutes while the board members read this material?

Ms. Brown: But we'll be expected to if we accept it. That's my...

Mrs. Stefl: Mr. Chairman, I'm having a real heartburn here because the applicant has... there's no timeline for him or her to file their application. And I think that...

Ms. Brown: No, I think there is.

Mrs. Stefl: ... once you... if you're going to file, it's almost like you need to turn in all your homework at the time, not then oh, by the way, I found this, oh, by the way teacher, I found this. It's almost... I'm with Dana. I have no problem with the general public, you know, citizens, neighbors, you know. There's relevance, someone you know has an opposing view, things like that. But when the applicant who here's my case; oh, and by the way, I forgot this -- it's almost like they didn't prepare properly everything, you know? There's no... I don't know. I just... they can always go into the County and say, wait a minute, I don't want to be in the December meeting. I have one more thing I want to get, because they have 30 days, right? So, say today's meeting would be for December's case. So, they had plenty of time to put their best effort and all their relevant information I feel before they come to us. And I don't like the strategy and the... you know, the MOS or whatever, the mode of operations on particular applicants who they come and they overload us almost looking for that referral to now give them another 30 days when they should have already done it in the beginning.

Mr. Apicella: Well, we don't have to give them the deferral, and I think it's up to each one of... I got kind of mixed emotions here because there's some people who may have some really valid information that they just came on at the last minute and it's not a gaming tactic, just that they, hey, I wasn't aware of this and I thought you might want to know about it. I think it's up to us, collectively as a body, to accept it but individually to determine whether or not we're going to take it into account as part of our own deliberation when we decide how we're going to vote on the issue. And I think one way to also deal with it is a member or members should feel like, hey, I just want it for the record, say Mr. Chairman, we just got a stack of paper an inch thick that we've never seen before and, you know, while I'll do my best to try and absorb it, I can't guarantee I'm going to know every word and, you know, fully understand what the consequences are in relationship to this matter. I mean, I hear ya...

Mrs. Stefl: Well, one or two things is great, but when a big stack is brought to me, it's almost like why didn't you give that to me 30 days ago to the staff?

Mr. Apicella: I wish Adela were here, because I think we would need to get a legal perspective on this on whether or not we could really say, you know what, we're not going to take it.

Ms. Brown: Well, I don't know that we can say...

Mr. Apicella: Too bad, so sad.

Ms. Brown: ... we got it. I'm not comfortable saying I got it and I'm not sure... I don't have time to take this into account and then we don't defer it, could they come back and sue us saying she said, Ms. Brown said she didn't have time to take it into account so, and they went ahead and they didn't defer, they made a ruling so we want to... we're going to appeal to the courts now. I don't think that's a good idea.

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Mr. Apicella: No, I don't think we... we don't owe them a deferral. They owe us...

Ms. Brown: So I don't think I should say...

Mr. Apicella: ... a reasonable amount of time to absorb the information that they provided us.

Ms. Brown: Right.

Mr. Apicella: If they dropped it on us at the last minute, just like if they dropped it on the court at the last minute, the court can decide whether or not it's going to take it into account or not.

Ms. Brown: Right.

Mr. Apicella: We're a lot like a court, you know. (Inaudible - being talked over).

Ms. Brown: Yeah, well then we need to... maybe we should vote on it if we're going to take in information.

Mr. Apicella: (Inaudible - being talked over) dropped on them, you know, all 300 pages, at that given moment. They're going to, okay, thanks.

Mr. Grimes: And that's where I come back to my position. I think it's each individual board's member's choice to take that additional information and decide whether or not it's relevant. If they think it's relevant, then that's when they raise the question and say I'd like to discuss a deferral because there's some relevant material in here I want to review.

Ms. Brown: Well, to do that I'm going to have to read it. And I can't read it, it's very distracting. I think it's what the motive operandi is, is to distract us. If I'm going to have to flip through it to see if it's relevant, I'm reading it so I'm not listening to the testimony. Maybe we should take a vote if they're going to hand us a big stack of stuff, if we're going to take it... accept it or not.

Mr. Grimes: Right, but when I'm looking at a stack of papers out there, I have no idea of the relevance. I don't.

Mrs. Stefl: Right.

Mr. Grimes: So, I mean, to vote to accept it?

Ms. Brown: Right, so we're going to have to read it so...

Mr. Grimes: It's got to come to us.

Ms. Brown: Then we're going to have to read it.

Mr. Grimes: It's either going to come to us or not come to us, one of the two.

Ms. Brown: Well, if we're gonna accept it, I think we're obligated to determine if it's relevant, and to determine that we're gonna have to read it.

Mrs. Stefl: What happens at the Planning Commission when an applicant comes before...

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Mr. Apicella: No, we do get last minute information and sometimes significant changes, like in a proffer package. While the staff is presenting, I've got the new proffer package in front of me that I've got to read while they're presenting at the same time to see what's changed. Literally dropped on the dais right then and there.

Ms. Brown: I've heard Crystal say that she's not going to, and I've watched, and Darrell would support her and the Board would vote not to do it because they just got it and don't have time to review it.

Mr. Apicella: That's... I would say that's been very rare. I mean, I've been doing it for 7 years...

Ms. Brown: That was recent.

Mr. Apicella: I've been doing it for 7 years, I can't remember that happening very often. There might be other reasons why a case gets deferred, but not because we got new information or changed proffers. If you've been on the Planning Commission, if you've been on the Board of Supervisors, just because you got new information by itself wasn't necessarily a reason why we punted on that. We might not have liked the changes or we wanted to, you know, go down a different direction or we wanted them to reconsider a proffer, you know, that didn't sound quite right to us or a condition that we wanted to have them revisit, but not because of the timing of the information in front of us.

Ms. Brown: It was a proffer change. It was Crystal and it was recently, and I can't remember if the whole Board decided...

Mr. Apicella: I must not have been there because I, again, I've been through over a hundred cases...

Ms. Brown: Yeah, it was something in her district, it was something in her district but, the point is, is if we're going to accept it, we gotta read it to determine relevancy.

Mr. Apicella: I think that's an individual member's decision.

Mr. Grimes: Again, in several cases, and again, you almost know the source, where it's coming from. I can look at it very quickly and decide whether it's relevant. I may... I can't read... I'm not going to read all 144 pages. But if there's...

Ms. Brown: And neither can I.

Mr. Grimes: But, you know, you start getting into, again, the flag case, it was real obvious what it was. So, that information, from my perspective, would discount it. Most of the time, you know, like the guy brings in, oh, I've got this site plan that's bigger, it's a bigger version of the site plan or it's a newer version of the site plan or... I mean, we've taken information from the public. You know, the guy came in with his sound study when we were talking about the Glasgow case. Or it wasn't Glasgow...

Mrs. Stefl: It was a wedding venue that he was trying to prove (inaudible).

Mr. Grimes: A wedding venue case. And, you know, the public brought in stuff and we accepted that. Again, I think the normal mode is to take it and then each member makes that decision on whether the information is relevant or not, and if you feel like, again, you as the member, you take a few minutes or time, seconds, whatever it is to just kind of start flipping through it and say, I've got to read this to have a better feel for this. And then that's when you ask for a deferral, or say Mr. Chairman, I'd like to discuss whether or not we should defer this case because of this additional information.

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Ms. Brown: Well, just personally I'm not in the deferral business for a junk thing, just for sake of a deferral. I don't want to do like Steven suggested. I don't want to say I don't have time to review it.

Mr. Apicella: You can say whatever you want.

Ms. Brown: I don't want to say that. I think that would put us in legal.

Mr. Apicella: You can say whatever you want to say and I'll say whatever I want to say. If I think somebody's dropping on me at the last minute and I can't take it all into consideration and I want the court to know, if it goes to them, that hey, this guy dropped an inch and a half worth of material on me at the last minute, there's no way I can properly absorb it, that's my choice to make that statement.

Ms. Brown: I agree, I agree. But will that land us in legal jeopardy if we don't defer it.

Mr. Apicella: It's still my choice to make that point. You make whatever point you want to make. I'm going to make whatever point I want.

Ms. Brown: But we're going to get sued as a board, not as you.

Mr. Apicella: Well, you, again, you make whatever points you want to make, Dana, and likewise.

Mr. Grimes: As a matter of fact, I think in a case recently, Dean, you actually said that. You said something... you were like...

Dr. Larson: It was the flag case.

Mr. Grimes: ... there's no way I can go through...

Mrs. Stefl: I think it was the flag, yes.

Dr. Larson: I just read the minutes, it was the flag case. I made the comment we were just given a substantial amount of material here and we're trying to listen to the case and read this material at the same time. I was going to suggest possibly, if it applies, discretion of the chairman, if something like that happens, the chairman might say can you summarize the substance of this in a few minutes for us, because you've given a substantial amount of material during the hearing. If you can't, would you like to have a deferral for us to consider the information.

Ms. Brown: That's alright.

Mr. Grimes: I'm not opposed to also asking when we pose the question; do you have any other relevant material or they start to offer it.

Dr. Larson: Right.

Mr. Grimes: I can just challenge them right there on the spot, as the chair. What is the relevance of this material?

Ms. Brown: Can you summarize, I like that.

Dr. Larson: Can you summarize.

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Ms. Brown: I like that.

Mr. Grimes: I have no problem. I think that would be a decent compromise...

Ms. Brown: I'm good with that.

Mr. Grimes: ... to at least get some feedback from the applicant of what it is.

Ms. Brown: That I think would cover us.

Mr. Grimes: I don't know how Clark would have summarized that work.

Ms. Brown: But you gave him the opportunity and I think that might give us a legal cover, I like that.

Mrs. Stefl: But he did. He did basically summarize during that case, I'm giving you material of how people feel about this.

Dr. Larson: Oh, he did.

Mrs. Stefl: So, he summarized basically that stack of papers that we were presented. So...

Mr. Grimes: Yeah, that it's not just these members in the audience, but it's a broader... yeah.

Mrs. Stefl: Right, right. So, I mean, it was, like you said, I mean, I did the same thing. I'm like great, something for the recycling bin, because there was no way to totally absorb. And I think it was a strategy. I think it was a total strategy to give...

Mr. Grimes: To get it in the record.

Mrs. Stefl: ... to get it into the record and to give another 30 days to build up the case. That is a personal opinion so.

Dr. Larson: But they can always ask for that, right?

Mrs. Stefl: Right, right.

Ms. Brown: What does staff think? What do you guys think? You've done this many more years than I have. What's your recommendation? You know what the problem is. Do you have any suggestions for us? I'm talking like on special exceptions, things you could weigh in on.

Ms. Blackburn: On many instances I think it's rude that they are giving you information that they think is, at least on the surface, supposed to sway your opinion or give you additional information on making a decision on whatever you're doing. And there's, you know, as you've all stated, there's no way that you can read it and digest it. I know that the State Code requires that, I think... is it with just variances that they hear them within 90 days?

Ms. Musante: Appeals.

Ms. Blackburn: Appeals.

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Ms. Musante: Hear and decide.

Ms. Blackburn: You know, that you should just have...

Mr. Apicella: And that's not mandatory. That's not mandatory. We got an opinion on that, that 90-days.

Ms. Blackburn: Okay, hmmm. But, you know, you may as a group as you're talking about it, they give you stuff like that, you can just say well, we can't really need to proceed any further. We need to defer this case in order to digest the information that you've given us, and then pretty much you're just done with it then. And you go back and read what they've given you.

Ms. Brown: Does it cost money for the applicant if we do that, for the re-advertisement and all that?

Ms. Musante: No.

Ms. Brown: No? Okay.

Mr. Grimes: But what it does do...

Ms. Blackburn: And as far as that goes, it's something they've done. The cost to them, you know, you should have had your stuff together ahead of time. And they do have an awful lot of time, particularly if it is doing anything as far as a notice goes, they have 30 days before they have to do an appeal for that. And for the special exceptions it's, you know, they go over a whole meeting with staff on what needs to be submitted; they're told bring anything you feel will, you know, make your case understandable, points of interest, things like that. And I know Melody and I have talked about it and we just kind of go really? That's all we got? You know, they're coming before a board to ask permission to do something, particularly with special exceptions and sometimes we're quite surprised at what little they present. But, you know, it's... and sometimes there are just things that they can't control. I mean, there's always that, that's why we have you as a Board of Zoning Appeals because the ordinance cannot touch base with everything and you are the relief valve for a lot of that kind of stuff to deal with the unique things that come up that just don't quite fit in here, particularly with variances and stuff. So, you know, you can decide if you want to truly give them the full review of what you can do for it, I would think you would defer it and that would just be the price that they pay for not getting a decision that night.

Dr. Larson: The thing that I've sensed in the past is when there's a controversial topic, and there's a crowd of people that is clearly voicing support for one side and not the other. The side that is in trouble with the crowd can execute this tactic and the obvious decision is deferral. What we decided to do back then was keep the public hearing open, let the people that are present speak, and leave the public hearing open until the next meeting so that... because my objection to that tactic is people have taken time out of their busy schedules to come here and be heard and they can't be heard if we defer the case. So, sure, defer the case or continue it to the next time, but allow the people that are here to speak so that that tactic doesn't pay off for whoever tried it.

- Code of Conduct - Decorum, Fairness and Scheduling

Mr. Grimes: And the next... it's actually the next topic of business but I'll bring it up because it kind of builds on this. If you've read the Code of Conduct that we were going to discuss of whether or not this could be included or given to applicants when they come in to do an application, the last item on there, number 5, is not provide any additional evidence or other supportive documents during the hearing that

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unfairly limits the BZAs ability to listen to testimony or which may, in any way, preclude the BZA a reasonable opportunity to review said evidence or other supportive documents. This was the document that Adela created when we were talking about fairness, scheduling, and decorum. And we were trying to come up with a way to let the public know that as an applicant, this is what they expect. We've already added something to the preamble that talks more about conduct and respect for the board and presenting information to avoid those back and forth arguments that we've had at some cases. But, the idea behind this document was to include it to be handed out in the application package so that the applicants know what their expectations are.

Dr. Larson: I don't seem to have that in my packet.

Ms. Brown: I was looking for that, too. I was like I don't have it.

Mr. Grimes: I'm sorry.

Dr. Larson: Could you project that or could somebody project it? It sounds like a good idea.

Ms. Musante: It was actually not provided to me when I sent out the email, hey, if you've got something regarding this, but I did find a copy of it so I have two.

Mr. Grimes: If I email it to you or Stacie, you can bring it up?

Ms. Musante: Yep.

Ms. Brown: Would it be on the drive?

Mr. Grimes: Yeah, it is.

Ms. Brown: Okay, let me try to get it. Is it part of reference documents?

Mr. Grimes: Um, I don't know. Click back. It's under special session 2-2018 Special Session, BZA Code of Conduct. Let me see if I can email it.

Mrs. Stefl: Isn't that it? At least it's the one from the drive.

Mr. Grimes: Yeah, it looks like it, if you can open it. You're faster than I am; you did it from your phone.

Mrs. Stefl: I've got a 16 year old, he's mastered the Google Drive with me. He's taught me well. Now he just needs to teach me about radicals and math; I'm clueless.

Mr. Apicella: Mr. Chairman, I know this is what's proposed for the application itself, but I wonder if we might want to add on the first line, all attorneys, applicants, respondents, speakers, and audience participants, because going back to that flag case there was some folks in the audience who were less than...

Mr. Grimes: The challenge will be the audience that shows up for the public hearing will never see this.

Mr. Apicella: I understand. But... but, I mean, you could call... yeah, you could refer to it and say hey, we're going to defer it because there's disorder in the chambers.

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Mr. Grimes: Yep.

Mrs. Stefl: We could always post it.

Ms. Brown: Could we post it online?

Mrs. Stefl: We could post it online or have it...

Ms. Blackburn: We could post it back there.

Mrs. Stefl: I mean, it could be a little 8½ by 11 sheet of paper at the speaker's podium.

Mr. Grimes: On the back table.

Ms. Brown: You could do it to the preamble, Robert.

Ms. Musante: It could be attached with the agenda.

Mrs. Stefl: Or with the agenda. It's just a quick little...

Ms. Musante: We could put it back there.

Mrs. Stefl: ... yeah.

Mr. Grimes: We could read it as part of the preamble.

Ms. Brown: I like that. I think that's a good idea, because then it... it's everybody that's here. And that way in case they miss it at the back table, it's just part of the preamble.

Mr. Grimes: Again, the more places we put it out there so everybody knows the rules... yes ma'am?

Ms. Blackburn: They state something before the Planning Commission meetings about treating the board as a whole and not speaking individually to the individual members, and I think you should add that to this.

Ms. Brown: Yeah, the School Board does the same thing. I think the Board of Supervisors does as well.

Dr. Larson: Yeah, in the preamble we talk about you won't address individuals in the audience, you always directly direct your comments to the board. And maybe you could just add to the board as a whole. That would be... that's a really good idea.

Ms. Brown: I like reading the Code of Conduct.

Mr. Grimes: Were you able to mark up?

Ms. Musante: I could not... I can't get into my folders on my email. Could you email it to me again and we can pull it up. The preamble.

Mr. Grimes: Yeah, for some reason I'm having trouble actually emailing anything from the drive, so I'm going to defer to Heather...

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Mrs. Stefl: The secretary will do her job!

Mr. Grimes: So, it's under the folder Preamble for meetings...

Mrs. Stefl: And it's the August 31st one?

Mr. Grimes: Correct. It's on the bottom of page 2; it says we ask that each speaker present their views directly to the board and not to the applicant or other members of the public. We require that the applicant, speakers, presenters, and audience to act with a level of decorum and respect appropriate of courtroom setting. So, Dean, you were saying...

Dr. Larson: Yes, almost exactly that except maybe the board as a whole or something like that when we talk about referring to the board, speaking to the board. Isn't that what you were suggesting, Susan?

Mr. Apicella: I can give you the language when you pull it back up and maybe suggest where you might put it.

Mr. Grimes: The bottom of page 2. Yep, it's that last 2 sentences.

Mr. Apicella: Well, we ask that each speaker present their views directly to the board as a whole.

Mrs. Stefl: Right.

Mr. Grimes: Yep.

Mr. Apicella: And not to individual members or the applicant or other members of the public.

Ms. Musante: Say it again, Steven?

Mr. Apicella: We ask that each speaker present their views direct to the board as a whole and not to individual members. The applicant...

Mrs. Stefl: Comma, the applicant...

Mr. Apicella: ... or other members of the public.

Mr. Grimes: So, are we going to then fold in the entire section from that Code of Conduct that we were just reading prior to that and read it as part of the preamble?

Ms. Brown: Can we see it again? Can we flip back to that screen?

Mr. Grimes: Because I tried to basically and simply take what was in this document and just make it a couple sentences.

Ms. Brown: I think our Code of Conduct is very succinct and clear and I like it, and I think that's more clearer. I don't know. I'd like to have the people in the audience understand that; no abusive language, conduct, disrupting the hearing. Because that's what was happening, we were having disruptions. And our little paragraph is good but it doesn't address that, and this does. I'd like to at least include some of it. That's all I had to say.

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Dr. Larson: Is that... so, you had other language in the preamble that sounds like this. Were you proposing to just remove and replace or was there more that you wanted to convey in this regard about decorum?

Mr. Grimes: Again, I was just trying to boil those major points down into a couple of sentences that could be read to the public. But, again, my idea, and I'm not saying it's the right idea, was that this document of Code of Conduct was something standalone and, again, from my perspective, it was more for the people and the applicants. It wasn't necessarily going to be for the public, but now that we've talked about it, I love the idea of putting it on the back table, putting it on the speaker's dais up here so that they see it, it's kind of a reminder. But again, I also, as the chair at the moment, I wouldn't mind adding further or building on that further, but it was really just... I was trying to boil it down to something simpler.

Ms. Brown: How about this, Robert? How about when you have the first person come up to speak, you just read it then.

Mr. Grimes: Oh, I got it! Here's the way to do it! We reference this Code of Conduct in these two sentences. And I can reference that it's at the back of the room for all the members attending to read. Then I don't have to read it.

Mrs. Stefl: Yeah, yeah, I'm all for that.

Mr. Apicella: Yeah, because it's already pretty long.

Ms. Brown: I think they're not going to read it at the back of the table myself but.

Mr. Grimes: No, but it gives... it gives the chair at the time a tool.

Mrs. Stefl: Yes.

Mr. Grimes: Because as soon as the public or, it doesn't matter who it is, let's say it's public like happened in that other case starts shouting and saying things. I'd say, you know, I'd like to refer the public to the Code of Conduct posted in the back of the room and, if this continues, we may have to defer this meeting.

Ms. Brown: Yeah, but the person shouting is probably not going to get up. You don't like the idea of just reading it one time when the first speaker gets up like...

Mrs. Stefl: No.

Ms. Brown: That's how the other boards do it.

Mrs. Stefl: No, no.

Mr. Grimes: Again, I was just trying to boil it down and get it out there for everybody.

Ms. Brown: Yeah, that's what I mean.

Mr. Grimes: Because it's already a lot to go through.

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Ms. Brown: Well, pick a couple of them. Pick like maybe number 2 and number 3 and number 4.

Mrs. Stefl: No, I think if he says this meeting we have a code of conduct that we conduct this meeting. If anyone wishes to read the full length of it, it's at the back of the room or you may ask staff for a copy.

Mr. Grimes: And all we have to do it add right to the end of that second sentence, decorum and respect appropriate to a courtroom setting as defined in the Code of Conduct posted in the back of the room.

Dr. Larson: I like that for another reason...

Mrs. Stefl: Back of the room and online, absolutely.

Dr. Larson: ... because when I saw that in the preamble I thought, well, okay, are they supposed to call you Your Honor? No, it's not what we mean. But if you say it exactly as you just said it, then I think that's good.

Mrs. Stefl: Right. Keep it simple.

Mr. Grimes: So, if you wouldn't mind editing that last sentence. I will try, because I do it better off the top of my head first time. Level of decorum and respect appropriate of courtroom setting... no, that's alright, I'm sorry, I'm starting you from the middle of that second sentence because we're going to add to that last sentence. So, if you want to back space, get rid of that period, we will continue. So, starting from the middle of the sentence, a level of decorum and respect appropriate to courtroom setting as defined in the Code of Conduct posted at the back of the room.

Mrs. Stefl: And online.

Mr. Grimes: And online; I love that because... I don't know where you're going to post it but...

Ms. Brown: With our by-laws and anything else online.

Mrs. Stefl: Yeah, it can be part of our page.

Mr. Grimes: Beautiful. Okay? Now, to circle back around to the by-laws, since we've talked about adding these things but we want to have the attorney review them, do we want to defer voting on these by-laws until we get that commentary?

Mr. Apicella: Yes.

Dr. Larson: Yes.

Mr. Grimes: Okay.

Ms. Brown: We already voted to defer to the attorney, right? Because I want to do that.

Mr. Grimes: Well, that's what I'm asking. I'm asking, do we want to not accept these until we talk to the attorney or do we accept them and then have the attorney review them and revise them if we have to?

Mrs. Stefl: I'd like to give a... I'd like to give the...

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Mr. Grimes: Heather, I didn't hear Dana, sorry.

Mrs. Stefl: Sorry.

Ms. Brown: Well, I'd like to accept them so we have something to give him.

Dr. Larson: We can do that but...

Ms. Brown: Accept them... you know, we could accept them, you know, pending review from our attorney or something.

Dr. Larson: We can do that but we have to vote on the by-laws once they are finalized. We have to do that.

Mr. Grimes: Right. And that's literally what I'm asking. Do we want to vote on them tonight or do we want to send them to the attorney first...

Dr. Larson: No, let him...

Mr. Grimes: ... let him make comments and then we'll vote on whatever that final revision is.

Dr. Larson: Right.

Mr. Grimes: Plus, that'll give the other board members a chance to read...

Dr. Larson: Absolutely.

Mr. Grimes: ... those proposed changes. Okay, wonderful. I just wanted to make sure we were all on the same page.

Ms. Brown: No, I wasn't on that page. What I was saying was we had talked about before; use the attorney that we would vote as a board and I think we're all in agreement but we should probably vote that we are going to send it to the attorney.

Mr. Grimes: Okay, so are we all in agreement that we want to send these to the attorney to review?

Ms. Brown: Yes.

Mr. Grimes: All those in favor?

Mr. Grimes: Okay, alright.

Mrs. Stefl: No, I was disagreeing. I just... I was having a feeling as if we should have an actual this is our voted upon by-laws review and if he comes back and says, you know, you need to revise, then we revise but I...

Ms. Brown: That's what I said and you said no.

Mrs. Stefl: No, I was like no, wait a minute. I'm like... I wanted an actual voted upon here's our by-laws so there is something that we have for him to actually truly give us a, you know, an opinion on.

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Mr. Grimes: I'm of the opinion that I'd rather not have something published online that we don't have the feedback from the attorney on...

Mrs. Stefl: Okay.

Mr. Grimes: ... in case there is something in there. And if for some reason we get a case in January and we haven't met to approve these, or we have approved them without the attorney's comments and we have a case, then that's what's online. And we could have created some jeopardy for ourselves not knowing so.

Mrs. Stefl: Okay, okay.

Mr. Grimes: Right? So.

Mrs. Stefl: Yeah, yeah, I understand your thought process, okay.

- Final preamble review

Mr. Grimes: Alright, great. So, I had the final preamble review. I think we've added several things that I already was concerned about or wanted to talk about. Is there anything else in the preamble that anyone has seen, thought about?

Mr. Apicella: Yeah, you just need to move the discussion of standing to before the Chair will ask the case... well, I don't know, I guess... I guess the staff could still read the case.

Mr. Grimes: And I believe that's what we've done every time, is that the case is read, and then we have the discussion from the board to get the motion on standing.

Mr. Apicella: Right. So you just need to move that bullet up then, that's all.

Mrs. Stefl: So, the board will then discuss the merits will move to what, number?

Mr. Apicella: The second bullet.

Mr. Grimes: It's basically the second bullet.

Mrs. Stefl: Will be the number 2 bullet and then everything shifts down.

Ms. Brown: Where's the swearing in part on here?

Mr. Grimes: It is way down at the bottom.

Ms. Brown: Like on the last page?

Mr. Grimes: Yeah, because this...

Ms. Brown: Okay, that's fine.

Mr. Grimes: ... again, this is the preamble where I basically go through what we're going to do and then right before we start it that's when I give the oath.

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Ms. Brown: Yeah, I knew it was in there; I just wanted to make sure it was in there.

Mr. Grimes: Yeah, it's in there.

Ms. Brown: Okay, good. I'm fine.

Ms. Musante: So, we're on item number 6.

Mr. Grimes: Yep.

Mrs. Stefl: Right. So that one moves...

Ms. Musante: One bullet needs to be moved where?

Mr. Grimes: You got it; she's got it, perfect.

Mrs. Stefl: That's it. That's all, and then move it down. That's it. That's perfect. You just insert... flip-flop.

Mr. Grimes: And again, you'll see some of these notes in here and whoever is the next Chair may make their own, but there's formatting and stuff in there that everybody can see. Sometimes it's just for me to remember, so I'll do certain things in there like bolds or...

Mrs. Stefl: Yeah.

Mr. Grimes: So, again, is there any other items in the preamble that anybody has issues with or would like to discuss?

Dr. Larson: I have a real quick one.

Mr. Grimes: Yes.

Dr. Larson: After the last bullet under 6, we ask that each speaker present their views directly to the board, not to the applicant. You mentioned that before. The next sentence; we require the applicant, speakers, and presenters, that one?

Mr. Grimes: Yes.

Dr. Larson: I thought if we could start that with given the quasi-judicial nature of the BZA, we require the applicant, speakers, and the audience to act a level of decorum with respect appropriate to a courtroom setting. That sort of justifies why we're saying that.

Ms. Brown: Where you at? I'm sorry. Number 6?

Dr. Larson: Right after... okay, you have item 6, the hearings will be conducted in the following order?

Ms. Brown: Right, right.

Dr. Larson: The last bullet...

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Ms. Brown: After all public comments?

Dr. Larson: ... the paragraph after that, it starts with we ask that each speaker.

Ms. Brown: Okay.

Dr. Larson: Next sentence - we require the applicant, speakers, and presenters... start that with given the quasi-judicial nature of the BZA, the rest of it as it stands.

Mr. Grimes: I don't have any issue with that.

Ms. Brown: I don't either.

Mr. Grimes: I'm not sure most people will understand that but.

Dr. Larson: I think attorneys might understand it.

Mr. Grimes: Right. And they're the primary ones that we're trying to...

Mrs. Stefl: I had an issue with one.

Mr. Grimes: Okay, yes Heather.

Mrs. Stefl: It says, after all public comments have been received, the applicant shall have 3 minutes to respond. I'd really like to say something to the effect of 3 minutes to respond, rebuttal, and closing remarks, so then they know that this is their last chance before then we close it.

Mr. Grimes: So, the applicant shall have 3 minutes to respond and provide closing remarks.

Mrs. Stefl: Have 3 minutes for rebuttal and closing remarks.

Ms. Brown: That's fine.

Mr. Grimes: Yeah, I like that. Works for me.

Mrs. Stefl: Then, like you said, it's written for attorneys so they know, this is your last chance dodge.

Mr. Grimes: Okay, any other comments on the preamble?

Mrs. Stefl: Nope.

Mr. Grimes: Before we take the next step, just before I forget about it, are we going to take all these edited documents and then you will send them around to the board for out for all the members especially those that aren't here, to review so that when we get together the next meeting we can actually... because the preamble doesn't... I don't know that we need to vote on it. Only the by-laws have to be voted on, but I'd at least like their input.

Ms. Musante: Okay.

- Westlaw request letter to county

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Mr. Grimes: Okay. The Westlaw letter to the County - do you have that?

Mrs. Stefl: That was in here.

Ms. Brown: I just have a bullet list. Adela and I have asked a couple times and we've been turned down. I don't know why. It's like a license, you know. The county's already bought it and it can have as many people on it. I don't know. Did we have a letter we were sending to someone?

Mr. Grimes: Yes. Adela wrote a letter, it should be under that 2018 Special Section. I believe that she called it her Westlaw subscription wish list.

Ms. Brown: Right. This thing? This is the letter?

Mrs. Stefl: She has the wish list...

Ms. Brown: Yeah, that's what I have is the wish list. It's a bullet.

Mr. Grimes: Okay, I thought she wrote a letter already. I might be mistaken because basically what I wanted to settle on this is I want her to create the final letter that we could actually send to the County making the formal request.

Mrs. Stefl: I thought we did?

Ms. Brown: Do we have any money of our own besides legal money? That's it, right? Okay.

Dr. Larson: We're lucky to have that.

Ms. Brown: Well, no, I mean like when we have training we have to ask for that, right? We don't have like a training budget or anything, it's just...

Ms. Musante: Our zoning division has a training budget that your training comes out of.

Ms. Brown: Okay.

Mr. Grimes: If you could bring up her wish list because I think you did have that, right?

Ms. Musante: I don't have it.

Mr. Grimes: Oh, I'm sorry.

Dr. Larson: I think we all have it though.

Mr. Grimes: Okay. Does anybody take any exception to what she's proposing?

Ms. Brown: I thought some of it was a little too much.

Mr. Grimes: I do, too, but I'm not opposed for asking for the moon.

Mrs. Stefl: Yes.

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Mr. Grimes: And settling on halfway there.

Mrs. Stefl: Yeah.

Ms. Brown: I don't want to look like we're reaching to do something out of our purview and get turned down because of that.

Mr. Grimes: I'm sure that's possible but I think that we've got to really try to, you know, reach as far... as much as we can. And if they say no we can revise our request, right? I mean if they come back and just go, oh, I just think you're just you're asking for too much. Well, okay, then we really need just this.

Ms. Musante: I'm sorry, Mr. Grimes, I do have it but the first time I'd seen it is when you sent it to me.

Mr. Grimes: Okay. Because I'll be honest, I don't know anything about Westlaw and so I, unfortunately with Adela not here, she can't explain it.

Ms. Brown: It's kind of hard to use. I'm okay getting into Westlaw but I don't think we should ask for the stuff at the bottom. I think that's just over the top. We're not attorneys, we're not supposed to be attorneys, and I don't want to act as an attorney. But I don't mind asking for Westlaw. It would be helpful, I guess, you know.

Mr. Grimes: Right, and I don't know what level of subscriptions there are. Right, that's my point it's like I don't know what you get on level a or b or c.

Ms. Brown: Well, the county... the county... the county has the general subscription where you have access to cases and that's what she's looking for. And I'm fine with asking for that. I said we've been turned down and we asked the courts, we asked, you know, Kathy Stern's office. Who else did we ask? I think we went to our... to our Supervisor, too, didn't we? She was supportive but it never went anywhere after that. I don't want to ask for these things at the bottom. I don't want to ask for those. I think that the bullets are just supporting reasons why we should have access to the Westlaw and it's a little much but I'm okay. I mean, if we want to enclose that in her letter. But can you read her letter out loud?

Mr. Grimes: No, she doesn't... she hasn't written it yet.

Ms. Brown: I thought she said you just found it.

Mr. Grimes: No, no, she's... the wish list.

Ms. Brown: Oh, oh, oh okay.

Mr. Grimes: I was mistaken. I thought there was a letter written but there's not.

Ms. Brown: Well, let's wait till the letter's written but I say take out the bottom bullets.

Mr. Grimes: Alright, well I'll reach out to Adela and ask her to write up the letter and then circulate that letter amongst the board, and then we'll send it off to the County and see what happens.

Ms. Brown: Can we... can we... is that like a violation (inaudible)? Are we okay doing that?

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Mr. Grimes: Hmm?

Ms. Brown: Is that a violation of the meetings law if we circulated amongst the board and then make a decision to send it on?

Mr. Grimes: Not as long as I get individual comments and we don't discuss it. Like if I send it to you, you make your comments, I send it to Heather she makes her comments.

Ms. Brown: Yeah. But then what do we do... what if...

Mr. Grimes: I'm just going to then take all those comments and send them to Adela and say please review these and work these into the letter and send it off.

Ms. Brown: Okay.

Mr. Grimes: And if she has a question about those individual items, she can go to each individual.

Ms. Brown: Who's signing the letter?

Mr. Grimes: I was gonna ask Adela to sign it or I can sign it, I don't care.

Ms. Brown: I think you should sign it. I think it'd be more powerful coming from the chairman of the board versus an alternate. But that's my opinion.

Mr. Grimes: You're probably right. Yeah, I can sign the letter. I have no problem doing that.

Ms. Brown: I'd like to see the final thing before it goes out though, because since we're not going to be able to know what's... what's been taken out, I'd like to see the final before it goes.

Mr. Grimes: Yeah, that's not a problem.

Dr. Larson: I don't know a lot about some of... a lot of these but it strikes me that some of this stuff might be redundant with how we use our research attorney.

Ms. Brown: Yeah, that's... and that's why I didn't want to say like we're acting like an attorney because then they may think we might not need one.

Dr. Larson: Yeah, I mean, you float that by Adela and maybe she can strike a few of these based on that.

Mrs. Stefl: No, but it could possibly... if we could do our some of our own research, it might save us also some money on utilization of our attorney, too.

Ms. Brown: Well, but things like the practice law materials, forms, briefs, expert material, continuing legal education access, I just... that sounds like a non-starter to me. I mean, we'd be lucky to get the Westlaw and that's what our objective is. I don't want to throw in stuff that might hinder us from getting anything, but I'll put that in my comments to Adela.

Mrs. Stefl: I'm all for asking for the moon and ending in the stars.

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Ms. Brown: Keep in mind we've already been turned down.

Mrs. Stefl: Alright.

Mr. Grimes: Yeah, and I think those were just informal requests. You know, they came from individual members. I don't think they actually came from the board.

Ms. Brown: Yeah, well...

Mr. Grimes: Which is easier to turn down.

Ms. Brown: I think we asked them if we could get access and first they told us yes, and then they told us no.

Mr. Grimes: I seem to remember that.

Mrs. Stefl: Well, I mean, we also don't know what the cost is.

Ms. Brown: It's no cost. The County has already bought the license to Westlaw.

Mrs. Stefl: Right.

Ms. Brown: And they can have as many users on there as they want. So, there's no reason why they couldn't add us. They said... when they turned us down they said we would have to have our own because we're the BZA and that would be too expensive to buy it again which we didn't think we'd... it's only a read access. It's not anything else. So, there was no reason that we felt that we couldn't use it. It's just like using the County website. We don't have to have our own website but that was what we were told.

Mr. Grimes: Kind of given the progression of the support of this board from the County and legal issues with that, I could see why they did that. I understand why they did it.

Ms. Brown: You think?

Mr. Grimes: Yeah, because they don't want to have any... when it comes to legal support from the County for this board, it's pretty much... it's on us now. That's why they gave us the money.

Ms. Brown: And maybe we shouldn't ask anymore. We've already been told two times.

Mr. Grimes: We'll still ask. I don't care. We'll ask again. Again, what's the worst thing they can do? Say no?

Ms. Brown: Yeah, but again they could, you know, that's why we give you an attorney and cut back our attorney money like Dean says.

Mr. Grimes: I think we'd be shooting ourselves in the foot.

Ms. Brown: I'll ask for Westlaw. I'll ask for Westlaw because it's free. This other stuff is gonna cost additional money. I don't want to ask for that.

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Dr. Larson: Yeah, if it's only read access, they're not advising us, so I don't know.

Ms. Brown: And that's what we felt.

Mr. Grimes: And I agree.

Ms. Brown: But they... they didn't feel that way but I agree with you. It's only read access.

Dr. Larson: But I second what Robert said. They're very, very hands-off as far as giving us any sort of legal advice.

Ms. Brown: I think we asked the Commonwealth Attorney's Office and then the clerk of the board, that's who... that's who we asked. That's who we were told to go to, because they're the ones that actually have the subscription.

- Staff report checklist final review

Mr. Grimes: Alright. So, last one and probably the most important one - probably should have did this first - staff report checklist final review. Well, staff report checklist... and I guess review of the application packages. We have... where is... do we have the checklist? Did you give us the checklist?

Ms. Musante: It should be in your packages.

Mrs. Stefl: Yep, checklist, issue summary, parcel, applicant, application, key details. It was after the blue. Well, it was blue for me.

Ms. Brown: You're talking about this thing, right?

Mrs. Stefl: Yeah.

Mr. Grimes: I swear I went through this thing.

Mr. Apicella: I think it's past the blue colored.

Mrs. Stefl: Yeah, it's past... it was blue for me. It was after the Westlake...

Mr. Grimes: I didn't have a blue.

Ms. Musante: I've got an extra one.

Mr. Grimes: Okay.

Mrs. Stefl: Do you have your... where is your Westlake? It was right after the Westlake.

Dr. Larson: Do you have a copy you have this checklist? I do. I was going to ask you a question, you guys. Well, I'm going to ask, the second to the last bullet in the first section that calls for staff findings, conclusions, and recommendations. What do you think of that?

Ms. Musante: But there are a few of these items that we are not going to do.

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Dr. Larson: Well, I thought maybe that was one of them.

Ms. Blackburn: Yeah, when it comes to...

Ms. Musante: We're not going to do a recommendation for sure, so.

Ms. Brown: I thought you always do a recommendation?

Ms. Musante: We do not do recommendations.

Ms. Brown: In our packets for special exceptions?

Ms. Musante: No.

Dr. Larson: They recommend conditions if we approve the special exception.

Ms. Blackburn: We do conditions, suggest conditions if it is determined that it potentially could be a use you like.

Ms. Brown: A what?

Ms. Blackburn: A use that you feel is fine, or whatever it is.

Dr. Larson: So, which of these do you guys not like? What bullets do you not like?

Ms. Blackburn: Case law.

Dr. Larson: Okay. We have an attorney for that.

Ms. Blackburn: What was detailed evaluation criteria?

Mr. Apicella: So, for a special exception there's a criteria that's supposed to be (inaudible).

Ms. Blackburn: Oh, yes. Yeah. Okay, okay. Alright, alright.

Ms. Brown: Who wrote the checklist? I'm sorry.

Mr. Apicella: I wrote the checklist.

Ms. Brown: Steven, I did want to add something in attachments, probably under the second bullet under attachments. Something about all correspondence must be dated. I know we've had some trouble with that on a couple of cases. Just want to, you know, make sure that everything has a date on it.

Mr. Grimes: So, just add the word dated in front of correspondence on that last bullet?

Mrs. Stefl: Dated correspondence...

Ms. Brown: Well, correspondence like not from interested party but like some... like when we mailed the letters out, you know, to the neighbors one time that didn't have a date.

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Mr. Grimes: Oh, you want to add a new bullet.

Ms. Brown: Yeah.

Mr. Grimes: Just to note that all attached...

Ms. Brown: All correspondence, yeah. Somehow... somewhere work it in there. In and out, everything in and out needs to have a date on it. Mostly going out because we can't control what's coming in; but anything that the County sends out or we send out needs to have a date on it.

Mr. Grimes: So, since this is a checklist, the checklist... I would move that up to the top and put it under the actual checklist and just note that verify all documents, correspondence, and correspondence is dated.

Ms. Brown: Yeah, I guess, we can't control what's coming in but I think the County does a stamp when they received it.

Mr. Grimes: You guys okay with that?

Ms. Blackburn: Yeah, fine.

Mr. Grimes: You mentioned something about case law in here? Am I just reading past it?

Ms. Musante: Legal analysis including case law.

Mr. Grimes: Including case law. Okay. So, we're going to take that off?

Ms. Blackburn: Yes, please.

Mr. Grimes: Anything else on here that there's concerns with?

Ms. Blackburn: What were you looking for with the last one with alternative motions, resolutions for BZA consideration?

Mr. Grimes: You want to take that?

Mr. Apicella: I'll let you give it a shot and then I'll piggyback off of it.

Mr. Grimes: Okay. In speaking with our attorney, he mentioned that quite often BZAs will get recommendations from, or recommendations for the appropriate language for either approving or denying a particular item. It's not asking for a judgment from you. It's just simply giving us some nice language to use that says the board has decided to approve this motion and cite the reasons that are relevant to the materials that were presented to us, and then the same thing for a denial side of it. And then it gives us a chance to...

Mr. Apicella: And the reason why I bring that up, in talking to our previous... or to a county attorney, one of the risks when we go to court is there's no clear determination from the BZA as a body. Individual members are making their rationale. And so when a court looks at this, they're not, and certainly a good attorney is going to say well, they didn't really say why they were against it. One person said this. Another person said this. Another person said that.

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Ms. Blackburn: And I think... and I agree with you. I think possibly that will be a question for your attorney to almost put that language, that beginning language, which would be something that you would always use and then you would list for this reason, this reason, this reason, and this reason. And that way it's not something that we're just coming up with that we hope sounds good.

Dr. Larson: Yeah, I kind of like that idea because I was trying to figure out how we would do (inaudible) before we had the discussion of the board on each case, which is always different. So, that would...

Mr. Apicella: Right. But once the attorney comes up with that boilerplate, what I guess what we're asking for is that every single package has that in there so we can all look at it as we're kind of making our (inaudible). We can write our notes on it, you know; if we're gonna say yay, here's my five reasons.

Ms. Blackburn: I know I have seen other final approval letters that have that boilerplate information on it. And then it would be for the reasons that, you know, they are basically filling it in with the final approval letter. Now there was also discussion that you not make that determination until the next meeting. There was consideration about that at one point in time. And you may want to ask your attorney, you know, how... we need to do a finding of fact when we are doing our approvals or denials, and what he or she suggests is the best way to deal with that. And we'll put it in the final approval letter and that will make it all nice and official and, you know, we'll just go from there. Because basically the approval of what you all decide on will be for we found and lots of times they're very simple, particularly, say for a wedding venue. We found that this particular use would not be an impact to, you know, the neighboring properties when followed these suggested conditions to mitigate the impact on the neighbors. And then you would have your approved conditions that would be listed there. But I think just to make sure we get it right, that would probably be a nice little exercise for your attorney just to get that... those boilerplate pieces in. And then we could do that.

Mr. Grimes: I actually think we may have that.

Ms. Blackburn: We may have a lot of it, yeah.

Mr. Grimes: Well, we do because of the flag case itself.

Ms. Blackburn: Yeah.

Mr. Grimes: Yeah, so I could share that...

Ms. Blackburn: Okay, okay.

Mr. Grimes: I can cut and paste that out of there and then share that with you, because it would be nice to be able to do that, at the end of it, once we all you know kind of get to that point. These are our findings of fact for rejection, approval, denial, whatever it might be, and then bang, bang, bang, bang, because as Steven pointed out, we all like to give our piece but it's not a consensus of the board.

Dr. Larson: But shouldn't we come to that consensus while the applicant is here to hear that?

Mr. Grimes: I think we should.

Dr. Larson: Yeah.

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Mr. Grimes: So, I actually... I think there's a little bit of a combination that the board can change the way we kind of close these things and, instead of just everybody kind of speaking their peace and then we vote, we say we want to come to a resolution of finding of facts and these facts are and we can discuss and debate them, you know. But I don't know what order that has to happen yet because I don't quite have the feel for it. Like should we have the vote to whether we're going to approve or deny and then have another discussion for the finding of fact? Or do we do the finding of fact prior to the vote? Because I don't think we can because we don't know the vote's going to go, right.

Ms. Brown: I would do it later.

Mr. Grimes: The cart/horse thing.

Ms. Brown: I would do it after, but are you saying that when we vote we have to pick from the boilerplate? I'm voting yes because this; is that what you're saying?

Mr. Apicella: No, we're just a format, okay. And then it's fill in the blank. Here are the three reasons, here are the five reasons that we've decided to deny this case or approve this case or modify this case...

Ms. Brown: So when I vote, what do you want me to say?

Mr. Apicella: ... so that we're sticking to a format rather than having this kind of Lucy goosey, you know, look through the minutes and figure out what did we actually do in (inaudible) this case.

Ms. Brown: So, I can't say I'm voting for this because I think that the fence has been out of compliance forever. I have to pick from one of the boilerplate things.

Mr. Apicella: No, it's some format. It's a format, it's not words. Here's the format and we're gonna try to stick to a format, we're going to kind of force ourselves into doing what we're supposed to be doing which is identifying findings of fact which we're not doing in our cases which has been a risk issue for us when these cases go to court.

Ms. Brown: I was there when you were talking to them and I remember the conversation. But I didn't take from it that we weren't supposed to state... you know, I understand he wanted a finding a fact but I took that to mean as a separate thing. We could still, you know, everybody has their reasons why they're doing it and then we summarize it after the vote as we're going to decide the finding of fact as it's going to be this, based on everything.

Mr. Apicella: The finding of facts is the facts, here are the facts of the case. That's it. It's just the legal term of art, right.

Ms. Brown: Right. So I can still say why I'm voting against it.

Mr. Apicella: Absolutely.

Mr. Grimes: Oh, absolutely.

Ms. Brown: Okay, that's what I didn't understand. I was thinking I really want to say why I am or not.

Mr. Grimes: No, no. I think we should encourage every member of the board to provide their reasons...

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Ms. Brown: Even if it's different.

Mr. Grimes: Yes.

Ms. Brown: And then do our finding of fact. That's what I think.

Mr. Grimes: Yes. And where it comes down to the legal issue is that when this board is sued, it goes to court and what they argue is the finding of fact. And since we don't make that statement, their argument is actually, it's very simple for them to argue against us because while this person said that and this person, there's no real concise opinion.

Ms. Brown: Well, then I propose we vote and then we do the finding of fact while we're here.

Mr. Grimes: Well, I think that's the way it has to be done, so I think we need to change that procedure. I just... I'm going to have to kind of mull it a little bit and figure out how we'll do that but...

Ms. Brown: Probably in our procedure thing that we wrote.

Mr. Grimes: It needs to be in the preamble.

Ms. Brown: Yeah, in the order of how the hearing's conducted.

Mr. Grimes: Well, I think in the preamble we'll just add that. As a matter of fact, can you bring that preamble back up because I think we could add that in there so that, again, it reminds the chair to make sure that it happens.

Ms. Brown: How about in the by-laws we state the procedure of a hearing? Should that be at the bottom? But we just went over that. We have the whole section 7.

Mr. Grimes: Well, take a look at that while we pull this up here. So if you could go to basically the very end, I think it should be the end. Alright, so, yep, keep going. Motions; okay. So, right after 14 B this is where we should... let's go ahead and just go down, let's create a new line. Yeah, that works; (c), whatever, 15, doesn't matter. BZA to create a resolution of findings of facts. Yes? No? Thoughts?

Ms. Brown: Yeah, I'm fine.

Mr. Grimes: Again, speaking from being in this position I sometimes forget what are we supposed to be doing, what are we going to do next. I don't want to forget and move on. So we would vote we approve or deny and then we would create this resolution. We should have the boilerplates, all of us should have the boilerplates of an approval and denial to get us the first couple sentences that creates the resolution and then we provide the bullet points for those individual items. Yes? No?

Dr. Larson: Yes. And I think the first time is gonna be interesting...

Mr. Grimes: Difficult.

Dr. Larson: ... but I think once we understand what we're doing we'll be throughout the hearing making notes to ourself of what the findings of fact should be.

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Mr. Grimes: Right. Because I don't know if we're going to vote on each individual finding or if it's going to be an agreement of the board or, you know, or somebody is gonna go, well, here's the five things that I propose as our particular facts to this.

Ms. Brown: I think that.

Mr. Grimes: And then we vote on that because I think we're gonna have to vote on it. I don't think it's going to be unilateral.

Dr. Larson: Maybe whoever makes the motion says here are my proposed findings of fact.

Mr. Grimes: That would be fantastic.

Mr. Apicella: Read the minutes from the February 27 and the August 2018, I tried to lay out findings of fact just to kinda put that out there. I'm not saying those are absolutely perfect but just kind of make sure that we start doing that more religiously to kind of help the court. Because ultimately, when these things go to court, that's the only thing they look at are our findings of fact. The rest of the case is considered anew.

Mr. Grimes: If you could add to the end of that item (c), and you could put it in parentheses - again, this is more for me, somebody else may do it differently - the member making the motion shall suggest the facts.

Ms. Brown: Well, you know, until I'm getting used to doing this, I would feel more comfortable if Steven did it because he's more familiar with it and I would... I don't want that to prevent me from making a motion.

Mr. Apicella: Don't put that in there though, Steven shall (inaudible).

Ms. Brown: No, but I'm telling you (inaudible). Well, that's what I... I don't want to be bound by that so I can't make a motion because I have to know how to do the finding of fact.

Mr. Grimes: This is not binding anybody to anything. This is a note for me.

Dr. Larson: (Inaudible - microphone not on). Here's my suggested starting point for findings of fact (inaudible - microphone not on).

Ms. Blackburn: Y'all but pretty much do it when you're stating why you're voting for a case; you just don't present it that way.

Mr. Grimes: Right. But we present it as individuals.

Ms. Blackburn: Right. But, you know, you all go down the line and lots of time shall y'all are saying the same thing. You know, it's for this reason and that reason.

Ms. Brown: So, we're going to get a canned finding of facts little scenarios we can pick from?

Mr. Grimes: Yeah, we actually have it from Mr. Roberts.

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Ms. Brown: Okay. I just... I don't want to be afraid to make a motion because I don't understand how to do the finding of facts the first time or something.

Mr. Grimes: If you pull out the... Steven's point is very well taken... if you pull out the information from the BZA attorney on the flag case, in the back three or four pages, he actually has those statements. If you... proposed motions...

Ms. Brown: Weren't they for that case particularly though?

Mr. Grimes: Yeah, but the first part of the language is universal.

Ms. Brown: Okay. I'll look for that. I did find in the, what is it, the by-laws where it probably should go. I'm thinking between 7-3 and 7-4, that would be the logical order but.

Mr. Grimes: Can you pop those by-laws up again? Sorry. I need about another 6-foot of desk space here.

Ms. Brown: It's gonna come after a vote but we don't have a vote in there. Well, maybe not there. I'm reading farther down and you're not going to see this. These will come after the vote. Maybe after 7-5. Yeah, I'll say between 7-5 and 7-6. Robert, just in case I don't have those things from the attorney, I think I still have that stuff, but could you resend that to me?

Mr. Grimes: It's on that Google Drive I sent you the link to. It's posted.

Ms. Brown: When I went in there that last time, I hadn't been there in a long time, there was like a lot of documents; it was very confusing. What does it say? What was the name of it?

Mr. Grimes: So, Dana's proposing that we add to the by-laws that the board present a finding of facts or present... how about if we just shorten it to the board will...

Ms. Brown: Will decide (inaudible)?

Mr. Grimes: ... provide a resolution. Mr. McRoberts was referring to it as a resolution, statement, finding of facts, kind of two or three different things but. Is anybody opposed to adding that in there?

Ms. Brown: You're talking about the by-laws right?

Mr. Grimes: Yes.

Ms. Brown: Okay. Because you were looking at that other paper; I was confused.

Mr. Grimes: Oh, no, because I was looking for the wording. It should be under BZA attorney documents.

Ms. Brown: (Inaudible) because when I pulled it up there was just documents everywhere and there was different drafts of different ones and I... (inaudible) it's probably in your email, right?

Mrs. Stefl: You see, I just accept it. It's just automatically on my drive.

Ms. Brown: Yeah, I don't keep one.

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Mrs. Stefl: Oh, you don't have Google?

Ms. Brown: I do, but I don't keep it... I don't keep it... Google Drive. I have everything (inaudible).

Mr. Grimes: Okay, so moving on to...

Ms. Brown: So, did we put it... did we put it in the by-laws?

Mr. Grimes: Yeah, we did just put it up on the screen.

ADOPTION OF MINUTES

February 27, 2018

Mr. Apicella: Mr. Chairman, can I suggest that we go out of order and look... review and approve the minutes and then come back to the applications, just so we can get that out of the way.

Mr. Grimes: That's fine by me.

Ms. Brown: Where did we put it Robert?

Mr. Grimes: Between 7-5 and 7-6.

Ms. Brown: Okay.

Mr. Grimes: Just a simple one line statement.

Ms. Brown: Okay, I see it now, okay, okay.

Mr. Grimes: Yep. Okay, so February 27, 2018 meeting minutes.

Mr. Apicella: Motion to approve.

Ms. Brown: Hang on, hang on, hang on. Yeah, I'm fine with that one. I have... I went through a lot of work and went through all of these. I even came down today and listened to the meetings on the recording just to make sure.

Mr. Apicella: Is there a second?

Mr. Grimes: Second to approve the February 27, 2018 meeting minutes?

Mrs. Stefl: Second.

Mr. Grimes: All in favor say aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

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Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Dr. Larson: I actually had a couple of typos. You want me to just handle those offline?

Mr. Grimes: That would be wonderful. Okay. Approved with corrections...

Dr. Larson: Aye.

Mr. Grimes: ... provided by Dr. Larson.

April 23, 2018

Mr. Apicella: Motion to approve the April 23, 2018 minutes as written.

Mr. Grimes: Second to approve the April 23, 2018 meeting minutes?

Ms. Brown: Second.

Mr. Grimes: All in favor say aye. Aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Mr. Grimes: Aye.

August 28, 2018

Mr. Apicella: Motion to approve the August 28, 2018 minutes with the exception of swapping pages 61 and 62, which I think they're currently backwards.

Ms. Brown: Well, I had some... I had some corrections on those meetings. Did anybody else have any or...?

Mr. Grimes: Ms. Brown to provide your corrections.

Ms. Brown: Okay, a little concern about this. On line 30. It was when Robert was reading the record in the preamble. It says the members present and voting tonight including alternates who will be voting are, and it names 8 of us. And we did have 8 because we had alternates on different cases but I think we need to make an addendum to clarify what we meant on that, because it... so it doesn't look like we had too many voting.

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Mr. Grimes: Let the record reflect that we have a quorum tonight with seven members voting for the first case and six members voting for the second case.

Ms. Brown: I don't care how we do it.

Mr. Grimes: Well, that's what it says.

Ms. Brown: Wait, where are you?

Mr. Grimes: Twenty-nine and thirty.

Ms. Brown: Okay. Okay, I missed that. It just sounded like we had too many voting. Okay, I'm fine then. And then I had some other ones. On line 1509...

Mr. Apicella: Can you cite what page you're on?

Ms. Brown: Page 30 of 62, line 1509. At the end of the sentence between not and maintain, just add the word been. I did check that today. And let's see... and Robert I found one on yours too. You know what, I didn't highlight it so I can't find it. But it was when Robert was talking about a light fixture, a 3 or a 4. They put 304.

Mr. Grimes: Type 3 or 4; I remember the (inaudible).

Ms. Brown: Yeah, but they... but they just wrote it as 304 and I just thought that should be fixed but I did listen to that and that's what you said. I thought I highlighted it out. It'd be like page 32 or 33. Oh, here it is. I found it. Page 30 and it's on line 1520 toward the end of the sentence. Instead of 304, 3 or 4. That's it.

Mr. Grimes: Okay, second to approve August 28, 2018 meeting minutes as marked up.

Mrs. Stefl: Second.

Mr. Grimes: Alright, all in favor say aye.

Mr. Apicella: Aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye. The meeting minutes are done.

Dr. Larson: Abstain. I wasn't there.

- Applications

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Mr. Grimes: Alright, I know it's late everyone but we have these two packages we actually marked these up. I believe everybody has had a chance to review it prior to this meeting, I would like to hope, because it's been marked up for some time. Mr. Larson and I think Adela was helping you with this.

Dr. Larson: Yes, Adela was.

Mr. Grimes: They did a very nice job in my opinion of marking these up. I'd ask if the County has any issue with the red lines provided on the packages.

Ms. Musante: I'm sorry, which application are we on?

Mr. Grimes: Let's start with the variance application package. I don't know why I have two.

Ms. Musante: That was what I asked you if you wanted both of them printed. There were two different drafts.

Dr. Larson: There were... the one called June 2018 was the one that we needed to have printed up. Do you remember which one of these?

Ms. Musante: I do not. I can probably tell because one of them already had some of the...

Dr. Larson: Ah, okay. It's the one... I'm pretty sure it's the one that on page three it has the threshold for BZA in considering an application for a variance; that change in the second paragraph.

Ms. Musante: Yes and the other...

Dr. Larson: Right, that's the one.

Ms. Musante: ... the other variance application, some of the stuff that you have in red in that one has already been put into black.

Dr. Larson: Right, right. We had a discussion in one of the meetings before I turned this in and some of those changes were already approved by the board by consensus. So, this last one represents what we approved before plus the new stuff is in...

Ms. Musante: So, the one that starts with the red, the threshold, is the new one.

Dr. Larson: Yes. The one on page 3 where it says, the second paragraph, is the threshold for the BZA in considering an application for variance. That's the one that we're considering.

Mr. Grimes: Yeah, and what I wanted to verify tonight was, was that first one, those changes were all accepted and that the county is using that presently?

Ms. Musante: No.

Mr. Grimes: Okay.

Ms. Musante: We have not made any changes to the application at all.

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Mr. Grimes: Okay. So, that was why it was kind of critical to have both so that everybody knew what the changes were, especially the County. I personally don't have any objection to any of the changes, but I wanted to find out how the County felt about them since you are the ones issuing these documents. And the idea in the discussions is to refresh them and update them and try to make them better for everyone.

Ms. Brown: Why did we take county residents out of number 3 on page 3? On page under number 3...

Mr. Grimes: You're on the wrong one.

Ms. Brown: I'm on the wrong one?

Mr. Grimes: Oh, no, no, no. Heather is. I'm returning the favor.

Mrs. Stefl: Okay, so this is the one we're actually going to use?

Mr. Grimes: No, no. This was the original set of changes. These were the changes that happened after these.

Mrs. Stefl: Oh, okay.

Mr. Grimes: Yeah.

Mrs. Stefl: Thank you.

Mr. Apicella: Yeah, the updated version...

Ms. Brown: Has County. Okay, I see. I'm confused, I'm looking at both. Okay.

Mr. Grimes: I just wanted everybody to be aware of the changes that's why I gave it. The one that has on page 3, the red paragraph, middle of the page, the threshold for the BZA, this should be the one that we're kind of making the final decisions on. But I want, again, input from the County staff because it's not... it's not our document as much as we use it and rely on what comes via it.

Dr. Larson: I remember that... I think this is where (inaudible - microphone not on).

Mr. Apicella: What page are we on?

Ms. Blackburn: The threshold statement.

Mr. Apicella: Yeah, what page?

Ms. Musante: Three.

Mr. Grimes: Page 3.

Ms. Blackburn: Where did all reasonable beneficial uses of the property taken as a whole come from? Did it come from the Cochran decision?

Mr. Apicella: Yeah, I believe so.

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Ms. Blackburn: Well, they have actually changed some of the stuff in the State Code since then and it's not as rough. It says a def... because the definition now and I can do some more work on this just to make... just to make sure because I, you know, I was looking at it for whatever reason one day. It deals with the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property. And that's ... yeah.

Dr. Larson: It is the Cochran. Cochran versus Fairfax. I can show you...

Ms. Blackburn: Oh, no, no. And I figured that's exactly where it came from. And some of this... some of this has... in fact, when did they change this?

Ms. Brown: I think they changed that when I first came on the BZA.

Ms. Blackburn: The Cochran decision was when? What year?

Mr. Apicella: I don't know but that's not... that's from a... Yeah, that's from a case; I don't remember what the date of the case was.

Dr. Larson: Cochran versus Fairfax.

Ms. Blackburn: I want to say it was maybe 2008. Was it 10 years ago? It could have been.

Mr. Apicella: Right. I didn't get that from looking at the Cochran case. I got it from looking at somebody's application.

Ms. Blackburn: Oh, okay.

Mr. Apicella: It referred to the Cochran case.

Dr. Larson: Yes. It was somebody's, some other county's application, that's right.

Ms. Blackburn: Because the verbiage in the State Code has kind of been lessened a little bit.

Dr. Larson: Okay, so we cribbed that from another application. It may be out of date.

Ms. Blackburn: So, I'll look into that and see if we want to... because it's not all reasonable but I don't think it's that way anymore. Because the code, the state code, doesn't state it that way.

Mr. Grimes: (Inaudible - microphone not on.)

Ms. Blackburn: Yes, yes, yes I do. And so we need to... yeah.

Mr. Grimes: Any other items in here that...?

Ms. Blackburn: Well, I wanted to change the number of plats. Do we have the number of copies of that?

Ms. Musante: No. We can fix that.

Dr. Larson: Yes. I think Melody made that comment a long time ago that these are a little out of date.

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Ms. Musante: So that's definitely going to change.

Ms. Blackburn: Yeah, that would be the same thing. I think that's it then.

Mr. Grimes: (Inaudible - microphone not on.)

Ms. Brown: Okay, where because I was just... while you were talking I was looking at the special exception one because that was my comment on that. We're on page 11 of the variance? Because we didn't have signature blocks for multiple owners.

Dr. Larson: (Inaudible - multiple people talking). Which I agree should be changed but I think... I think we may... Adela and I may have discussed this and we put the BZA may not have the authority. We didn't say does not, we said may not. I think that's how we worked our way down it. But anyway, if the quote's not good then... or the reference isn't good then we should change it.

Ms. Brown: Robert?

Mr. Grimes: Yes.

Ms. Brown: On that page 11 is the same thing I wanted to bring up on the special exception under the owner's consent form. I think we should put make it a little smaller and put additional signature blocks because it does say all owners must sign and usually there's at least two.

Dr. Larson: Where are you, Dana?

Ms. Brown: Page 11 on the variance.

Dr. Larson: The variance? Okay.

Ms. Brown: We're still on that one, right?

Mr. Grimes: Yeah, I kind of made an assumption on that that if there was more than one owner there would be a second copy of this made. So, I don't...

Ms. Musante: We have done that, make a second copy. I can add a second signature line.

Mr. Grimes: You want to save a piece of paper, put a second signature block on?

Dr. Larson: Yeah, yeah.

Ms. Brown: Or if additional signatures, sign on the back. I don't know. But just so it doesn't indicate we only need one. And I just want to do the same thing on special exception.

Mr. Grimes: So, any other comments on the variance package? You guys are good with it? Board, your good with this going forward for all future cases? Wonderful. Special exception.

Ms. Brown: I want to add multiple signature blocks and add that same little red thing at the top - all owners must sign. I didn't see that in this one unless I missed it. Yeah, I don't see it in there anywhere.

Dr. Larson: What was the comment again? I can't hear you.

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Ms. Brown: Add additional signature block as well.

Dr. Larson: Oh, yeah.

Ms. Brown: And where is it... does it say anywhere on here that same little thing at the top, all owners must sign? I didn't see it.

Mr. Grimes: Yes. It's at the very top of the owner's consent form, right underneath it in red.

Ms. Brown: Oh, okay, okay. And then on page... these aren't numbered... it'll be the third page in the packet, letter (f). A little rough on that language down there about does not automatically run with the land. I thought it just doesn't run with the land. By saying does not automatically that leaves that it might.

Dr. Larson: Not a bad point. I think we were just, you know, compare and contrast variance, special exceptions. It automatically does with...

Ms. Blackburn: Conditional use permits.

Dr. Larson: ... a variance and does not...

Ms. Brown: Can we just say not and just take out automatically so they don't think that there's room for it might?

Dr. Larson: Yeah. I can see where that might be an interpretation. Yeah, we could do that.

Ms. Brown: That's all, I just wanted to delete that.

Mr. Apicella: So, I have a question about this page. This is proposing changes to the county ordinance. These would have to be approved through the normal process. So we couldn't just change the application. We'd have to go through a process of changing the language in the ordinance, if this is not what's in the ordinance now.

Ms. Musante: That's what I was just telling her.

Mr. Grimes: Yeah, I mean I think we can add these items.

Mr. Apicella: No we can't. Not in the application.

Mr. Grimes: No, no, no, no, no. Not in this particular section, right? You're absolutely right. This shows it as a section of the code but you could add it as information.

Mr. Apicella: I'm fine with that, I just wanted to (inaudible).

Mr. Grimes: Right, and so putting it somewhere else in this package, which I don't know where that somewhere else is.

Ms. Brown: So the owner's consent form, we can't put all owners must sign?

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Mr. Grimes: Oh, no, that's fine. We're simply referring to this particular (inaudible) which is actually an excerpt from the code and we had made edits on it, which we can't do.

Ms. Brown: The one that I talked about that just said we want to remove automatically?

Mr. Grimes: Yes.

Ms. Brown: But we were adding that.

Mr. Grimes: We can't modify the code.

Ms. Brown: So we can't add the whole thing.

Mr. Grimes: We can add those sentences somewhere else in this package. Right now it kind of conveys the other part of the code.

Ms. Blackburn: Yes or take out the title.

Dr. Larson: We don't have to quote the...

Ms. Blackburn: And don't cite it as a code section.

Mr. Grimes: I like having the code section in there just for... for everyone of these...

Ms. Blackburn: I mean, you can still list it all and just... and list it how you've done and just don't put the title up there.

Mr. Grimes: Yeah, but from my perspective I like to know that this is the code and then I don't know how we put this underneath it. I don't care if you put another title on it. Call it additional information or something. Additional information.

Ms. Blackburn: Alright.

Mr. Grimes: And so the only one... only one... the one part that then can't be changed is D 1 because that's actually part of the code.

Dr. Larson: Right.

Mr. Grimes: So that would just be nixed.

Dr. Larson: And that was a clarification. It's not something that's really substantial. The other two are good substantial comments.

Mr. Grimes: So, if the county is good with just calling that additional information right below it, then everything else would work. Any other comments on this? Everybody good with that?

Ms. Brown: Yeah, just on that same one I talked about, (f) - we need to take out the word is after exception; just the special exception does not run with the land. You know, we took out automatically but that is doesn't make sense in there. That's it for me. Unless we want to put it on the application; is that something we can change now that we're adding an extra signature block? There didn't seem to be

room on this one. I don't know what page; it's page 4 I guess. I wanted to put under owner information, if more than one owner please add on the back or use additional paper or something because it implies there's only one owner and after that locksmith... I think it was the locksmith case - I want to make sure that we're checking for this because it got by all of us. I mean, it just... and I think it's happened another time as well. Unless we just want to put a space in the name block to make it look like two lines. But I still think we should put a tiny little...

Ms. Musante: That would be easier.

Ms. Brown: Well, a tiny little thing if there's more than one owner please use an extra sheet or the back or something. Just some little, you know, it could be really tiny but in that block.

Mr. Grimes: Alright ladies and gentlemen, 10 o'clock on the nose.

Ms. Blackburn: Oh, but wait.

ZONING ADMINISTRATOR'S REPORT

Mr. Grimes: Well, that's why I was like 10 o'clock on the nose, we got through our list. So, Zoning Administrator's Report.

Ms. Blackburn: Zoning Administrator's Report. It's been a good year. I thank you all for your due diligence on all the cases that have come before you. I think you've all done a really good job. There was a request by one of your members concerning language in the zoning ordinance about revoking special exceptions. And we have it in the State Code but we don't particularly have it in the zoning ordinance. And I can send this to you so you can see what it has to say. It will take a text amendment and I suggest that we work on that for 2019. And it basically I think we'll just be lifting stuff out because you are allowed to revoke special exceptions. And then there was also something that we found, and I think you all will just go really. In part of the State Code, 15.2-2310, which I will also send you copies. There is a statement in there that we shall transmit a copy of the application, and this is for special exceptions and variances, to the Planning Commission which may send a recommendation to the board, being you all, or appear as a party at the hearing. And that's another thing to work on for 2019. We have to send them the information, and from what Melody has said we used to do it and for some reason I don't know maybe because it's all gotten electronic we think everybody's reading it, and if we want to go forward with really making it available for them to make some recommendations to us. And I know there has been discussion about that on some of the special exceptions because the statement was we are not Planning Commissioners, we are not used to this idea, and there may be some changes in the zoning ordinance that will bring more special exceptions to y'all's venue because, particularly because of the time limit that only you can place on these permits. The board cannot.

Dr. Larson: So, what are you suggesting that we send to the Planning Commission?

Ms. Blackburn: Well, we'll talk about it within our next meetings. I have to figure out logistically how this can be done with filing deadlines and hearing dates and things like this, and see what's going on. But there is provisions within the State Code that the Planning Commission can make recommendations to you all concerning special exemptions. And just to investigate that further and see how and if that can actually really be possible. And in some of the situations I think it would be a great help because some of them get complicated and you all are not used to that. I know Mr. Apicella is but when you don't do it all the time, yes, it is a lot to think about and what is important and what isn't important and that kind of thing. And so those are my suggestions for working on for 2019.

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Mr. Grimes: Okay. Will you be keeping track of those since you have some homework to do first?

Ms. Blackburn: Yes.

Mr. Grimes: Okay. So you'll bring that up whenever it's appropriate at that point.

Ms. Blackburn: Yes sir.

Mr. Grimes: Because I might forget.

Ms. Brown: Do we have any new cases next month?

Ms. Musante: No.

Ms. Brown: And we don't even have a meeting scheduled anyway, right?

ADOPTION OF MINUTES

February 27, 2018

April 23, 2018

August 28, 2018

Discussed before Applications bulletin

OTHER BUSINESS

- 2019 Meeting Calendar

Ms. Musante: Right. And you'll see the 2019 calendar in front of you. January 22nd there is a conflict. It's a Board meeting day.

Ms. Brown: Again?

Ms. Musante: So, do we want to change that date to the 29th?

Ms. Brown: It's just the next Tuesday?

Ms. Musante: Mm-hmm.

Mr. Grimes: It's fine by me.

Dr. Larson: Which month is that?

Mr. Grimes: January.

Ms. Musante: January. And then December the 24th, we always cancel our meeting in December anyway. Do we want to go ahead and cancel that now? That is an actual holiday for us and we're closed.

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Mr. Grimes: Yeah, all in favor of canceling the December meeting say aye.

Ms. Brown: Aye.

Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Dr. Larson: Aye.

Mr. Grimes: Aye.

Mr. Apicella: Nay. Just kidding.

Mr. Grimes: On the by-laws, Stacie, if you could remember to remember to edit the headers on the cover page to note that they're for 2019 and the date of revision so that when you send those to me I can know that they're the right ones, and then I can send them off to our attorney. Alright, any other issues folks?

Mrs. Stefl: I have a personal, I guess, question. My term is expiring so I don't know... will the board recommend me in January or... I just don't remember procedurally.

Ms. Musante: I honestly don't remember either. I do know that I have been contacted by County Admin to find out if the two that are up are interested, and I sent the e-mail to those. You should have received an e-mail...

Mrs. Stefl: I did and I responded. Yeah, yeah.

Ms. Musante: And I sent that up. So, I believe what happens is whoever is... normally the Board... we're not supposed to say the Board makes the recommendation, but whoever did is okay with you pulling another term and they will do that at the January Board meeting.

Mrs. Stefl: Okay. Alright. Well, if I'm not reappointed, I, you know, just want to give my farewell. I've been doing this for quite a few years now.

Ms. Brown: Well, you would have to stay until they found somebody even if you weren't so. That's what our... that's what the rules say.

Mr. Grimes: You're locked in till you get a replacement.

Mrs. Stefl: Yeah, well, I don't know... I don't know the Board's wishes but if I should not, it's been enjoyable being with all of you. You know, sometimes even good fights bring out a lot of good things.

Ms. Brown: I didn't think she was that up. I didn't think... I thought you had like three years or something.

Mrs. Stefl: No, no. My term is up and I think, you know, (inaudible)?

Ms. Musante: Danny.

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Mrs. Stefl: Danny. Danny's the other one. Okay.

Mr. Grimes: We had fun, thank you.

Mrs. Stefl: Cross your fingers, (inaudible).

ADJOURNMENT

Mr. Grimes: So, motion for adjournment? Say aye. Adjourned. Thank you all. Thank you staff, you guys have been wonderful. We appreciate everything you do.

With no further business to discuss, the meeting adjourned at 10:07 p.m.

Heather Stefl, Secretary
Board of Zoning Appeals