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Ms. Brown: I don't understand, what do you mean? Who is abusing discretion? Where did that come from?

Ms. Bertoldi: Because that's how appeals work. I mean there is, you know, when you go to trial and there's a trier of fact, which in this case would be the Administrator, they bring down and fourth decision and they come to us for appeal. Same in court you go, you go before a judge, there's a trial and then if they appeal they go before an appeal Board. The appeal only looks at the record and whether or not that the judge could have made a reasonable decision based upon the evidence that they had. And that is what an appeal Board does. That is what we are here to do, based upon what is before us and the Ordinances that are before us. Whether or not that they could come up with their conclusion and their decision and they did. And that is what our role is. I agree with you. I personally think this is a great facility.

Ms. Brown: I did not say that, I did not say that.

Ms. Bertoldi: No, and I don't know whether or not this is a great location for this or not. Maybe if they were before us looking for that, you know, those are all issues and that is not the issue here. It is what our role is and our role truly is only if it is... only if they abuse their discretion meaning...

Ms. Brown: *Inaudible, speaking at the same time.*

Ms. Bertoldi: ... that there you look at this and say...

Ms. Brown: I think it's community use; the County says it's not, I disagree. I think it meets the defi... the County's definition of community use. This thing about abuse, I don't know what you're getting that from. I'm strictly going on... my vote is because I believe it is a community use in my understanding of the County definitions.

Ms. Bertoldi: Okay.

Mr. Jenkins: And again, I'm with Dana. I do believe they've met the definition the way I read it.

Dr. Larson: Okay.

Mr. Jenkins: The property has bounced back and forth between several different things. They could just apply for maybe rezoning again. I mean maybe let them continue on as is and then apply.

Ms. Bertoldi: Yeah, I think that they have other avenues to be able to continue this. I mean, I don't think that, you know what... I don't think this is our role in telling them that you know they have to leave tomorrow.

Dr. Larson: Okay.

Ms. Bertoldi: That's not again our role.

Dr. Larson: So just for everybody else it's a here to understand we're trying we're discussing whether community use which is listed in the Zoning Ordinance as part of the R-1, which is where he lives. We're... that's where... we're discussing community use so much because that's the key. That's... whether this is a community use or not. The problem I have and we've read it before, it does say conducted by a property owner or homeowner or similar organizations, would sound like owner type

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organizations. Then it says also community clubs or centers, amphitheater, civic or cultural centers not a public ownership. I don't know what public ownership, in this context means. I don't know if it means non-government, it could mean either, government or non-government. Nobody can tell me. That's unfortunate. And that's where I think the applicant's attorney is perhaps rightly complaining the code is not clear enough there. And probably deserves to be clearer. And that, we can probably take that under advisement for our advising Board of Supervisors. Okay, so I haven't... I have not heard proof of... I haven't heard a preponderance of evidence to show that the appellate has proved their case. But I see their problem. So, I'm having difficulty with this. And that's where I am right now. Any other discussion?

Mr. Apicella: I think, as with any definition, it can always be better always be clearer and when you read the definition in the context of the zoning code and what I believe was meant and sometimes that's what you have to do. It ... community use means a facility or an activity that occurs in a neighborhood for the benefit of that neighborhood. This to me seems more like a business and a great business and I have no problem with this activity occurring anywhere in Stafford County, except perhaps in somebodies backyard in an R-1, where it might be more likely to be a business than a community use as it was intended to be in the Zoning Ordinance. When my son, and I'll just give a correlate. When my son was taking a martial arts class, he was taking it in a in a warehouse in an urban... not an urban... in an industrial area. And I have to think that when the when the Board decided on this definition, as they do with any definition, they're thinking about how a particular use would impact the neighborhood. These are very small lots, R-1 one could be as small as or less than a quarter of an acre. So you're pretty close to your neighbor in an R-1 lot. And you have to ask yourself again, this might not be an allowed activity. I don't know, but if it were again a chorus club or some other club that made a lot of noise. Would that be appropriate with somebody who might be living or whose side yard I think is 10 feet away from you. And I don't think that when the Board decided on the definition of a community to use that they were anticipating this kind of an activity occurring as well intended as it is and as important as it might be, for the people who participate. We also have to look at how this activity might impact the immediate neighbors. So, I also think that when we're sitting here as an Appeals Board, as Ms. Bertoldi said it's the responsibility of the applicant and their agent by a preponderance of the evidence to demonstrate that the decision made by the staff or the Zoning Administrator was an error. And while they made a good argument I don't think it was a great argument and I certainly don't think by a preponderance of evidence that they provided, I heard a lot of could be and maybe and this is my interpretation. I didn't see any case law or any other examples provided where this occurs in the county where it has been upheld that a similar activity occurring in somebodies backyard was allowed because it was determined to be a community use. So, I have to go, based on again the evidence that was provided by staff, by the applicant and also some reasonable determination on my part where there might be some gray area as to what was intended by the Board when they adopted this definition. For those reasons, Mr. Chairman, I'm most likely going to support Ms. Bertoldi's motion to deny.

Ms. Brown: Mr. Chairman?

Dr. Larson: Any other discussion?

Ms. Brown: Go ahead.

Mr. Jenkins: Uh Mr. Chairman, I drove by the property and I sat there for quite some time but directly across the street is a business. This particular property used to be a business. It's... I mean, it's got some surrounding homes, but it's got a very large parking area. I don't see a lot of noise coming out of this particular building, if you look at the pictures of it, it's a big steel building. Whether or not the gentleman is making money, we don't know, unless he can produce some tax records. But he could very

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well be putting all the money back into the lease the utilities maybe insurance to cover himself. I don't know what an LLC might cost him annually. I honestly don't know. But he may very well not be making any money maybe even though he hasn't applied for a non-profit.

Dr. Larson: The one thing has been nagging at the back of my mind is does that mean that if I live in a neighborhood I can stand up a business and if I can get people to... my customers to come in and say okay, well you're part of Sam's Club or Dean's club or whatever does that make it a club and now is at a community use and that is that legitimized my business?

Mr. Jenkins: We would all see through that. I think we would all see through that.

Dr. Larson: I heard I heard legitimate testimony that that pretty much convinced me it's a club, but then okay, is it a community club? How do how do you how close do you have to be to be part of the community?

Mr. Jenkins: Again, what's the definition of community, I suppose. I mean...

Dr. Larson: And is the wrestling community a community?

Mr. Jenkins: It is a community.

Dr. Larson: So, umm...

Mr. Jenkins: From what it sounds like the folks need a place to go. This is a cost effective way, the building seems to fit the need. It was residential, it was business as it is now residential again. They could rezone. They could look...

Dr. Larson: Again, we're not here in a special exception hat. We're here to consider an appeal to the Zoning Administrator's decision. So we can't... it whether ... no matter how good this idea is, it really doesn't matter. The question is, is it allowed in this zoning district? Dana.

Ms. Brown: I appreciate what you said Mr. Apicella, I really do. Because I probably feel the same way you do, but I'm not going to second guess or try to interpret what the Board of Supervisors may or may not have been thinking when they wrote this. Our job is only to go on what's written, what's actually written in there and I think that they have proven that they actually meet that definition. I do think we need to re-evaluate as a county, perhaps maybe not putting that into by-right use, because I don't think it belongs there. And again that's listed separately as needing a CUP. But again I wouldn't put that there myself. So, I'm in disagreement with you but on that, but they meet the definition as we have written and whether the Supervisors actually, you know, meant something else. I'm only going on what's actually written and they meet what's written and my recommendation would be to grant the appeal and then perhaps have the Supervisors take another look at if they want to keep community uses in by-right.

Dr. Larson: Is there any other discussion or we'll vote on the substitute motion first via Robert's Rules. Any other discussion? Alright the substitute motion goes first, Robert's Rules and uh the motion was to deny the appeal and was seconded. All those in favor say aye.

Mr. Apicella: Aye.

Ms. Bertoldi: Aye.

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Mr. Gibbons: Aye.

Mrs. Stefl: Aye.

Mr. Grimes: Aye.

Dr. Larson: Aye. Opposed?

Ms. Brown: No.

Mr. Jenkins: No.

Dr. Larson: The appeal is denied 5 to 2. Alright, we'll go to the next case.

Ms. Musante: Mr. Chairman, can we take a five minute break?

Dr. Larson: Yes, we certainly can.

Ms. Musante: Great, thank you.

Recessed at 8:30 pm

Reconvened at 8:39 pm.

2. A19-02/19152747; H. Clark Leming agent for Barrie Peterson - Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated March 28, 2019, regarding noncompliance with Stafford County Code, Sec. 28-39(o), "Cemeteries," on Tax Map Parcel No. 36K-C. The property is zoned A-1, Agricultural, and is located in the Liberty Hall Estates Subdivision.

Dr. Larson: I'll now ask the secretary to read the next case.

Ms. Musante: A19-02/19152747, H. Clark Leming, agent for Barrie Peterson. Per Stafford County Code, Sec. 28-349, "Appeals to board generally," the applicant is appealing a notice of violation dated March 28, 2019, regarding noncompliance with Stafford County Code, Sec. 28-39(o), "Cemeteries," on Tax Map Parcel No. 36K-C. The property is zoned A-1, Agricultural, and is located in the Liberty Hall Estates Subdivision. You have the application; owner's consent form; a copy of the violation notice dated March 28, 2019; photos of the cemetery; headstone placement from May 6, 2019, inspection; copy of construction plan; Stafford County Code Section 28-39(o); Stafford County Code Section 28-349; copy of the tax report record; and copy of the public notice. The cemetery is located on a 1.5-acre parcel in the Liberty Hall Estates subdivision. This parcel is designated as Common Area C on the recorded plat. The attached pictures depict the current conditions of the cemetery. The Property is zoned A-1, Agricultural, and is part of the recorded subdivision named Liberty Hall Estates. The cemetery is known as the Wallace Cemetery and is located in the recorded subdivision Liberty Hall Estates. The cemetery is located on a separate lot recorded as Common Area C and consists of 1.5 acres. The construction plans were submitted April 25, 2016, and reviewed by all the applicable county departments. Comments were made concerning items that needed to be corrected prior to approval of the plan. One of the comments stated the need to add the location of the cemetery, the 35-foot buffer, and the fence on the plans. Final approval of the development plan was on December 12, 2016. The plats were recorded in October 4, 2108. A complaint was received in March 2019 stating that the cemetery had been disturbed.

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Staff conducted a site visit on March 27, 2019, and documented the condition of the site. It was observed that the cemetery had been disturbed and a Notice of Violation was issued to the property owner via registered and first class mail. According to the USPS tracking system, the Notice of Violation was delivered on April 4, 2019. Shortly thereafter, the property owner contacted the County and voiced his disagreement with violations listed in the Notice of Violation. The property owner contracted with an attorney, Leming and Healy, PC, who filed an appeal of the Notice of Violation on behalf of the applicant. The applicant, Barrie Peterson, Jumping Branch Farm, LLC, is appealing the Notice of Violation received on April 4, 2019. The Notice of Violation states violation of Section 28-39(o) "Cemeteries" was noted and the following corrective measures were required. In the justification for the appeal, the applicant responded to these corrective measures as shown in italics, and the staff responses to the applicant are listed below in bold italics.

1. An archaeological delineation conducted by a professional to determine the limits of the cemetery needs to be submitted.
2. *An archaeological delineation was submitted and reviewed by the county in 2016. It is attached as an exhibit.*

An archeological delineation was submitted with the construction plans as requested by the plan reviewer at the time of review.

3. Ensure all headstones and footstones are in original locations and match all footstones to an appropriate headstone.

The applicant has not disturbed or removed any headstones or footstones. Some are not present, and were not present when the applicant acquired the property.

The zoning inspector conducted a site visit on May 6, 2019. During that visit, it was observed that the names on the headstones did not match the location of those shown on the archeological delineation survey; therefore headstones appeared to have been relocated. Attached is the survey with the notes of the inspector's findings.

4. Go through debris pile and obtain all missing pieces of headstones/footstones.

Debris piles did not contain missing pieces of headstones/footstones.

The existence of a debris pile indicates that disturbance did occur which is a violation of Sec. 28-39(o)(2)k. and such disturbance, which appears to have been grading conducted within the cemetery buffer area, is the reason for all the corrective measures. Sec. 28-39(o)(2)j. states "preservation of grave markers, including repair or cleaning shall comply with the Virginia Department of Historic Resources standards." According to photos taken on June 6, 2019, the debris pile has been removed making it impossible to retrieve any missing pieces of headstones/footstone unless the debris pile has been safely relocated elsewhere, but staff has not received any indication that the missing pieces may be retrieved by applicant. No information has been provided by the applicant to substantiate such claim that missing pieces of headstones/footstones are not in the debris pile nor has any statement been made that a thorough search of the pile was conducted and, therefore compliance with this measure will not be possible and the applicant is in violation of these Code sections.

5. Repair all broken head and/or footstones.

Repair is not possible because applicant does not have missing pieces.

Sec. 28-39(o)(2)j. states “preservation of grave markers, including repair or cleaning shall comply with the Virginia Department of Historic Resources standards.” No information has been submitted to this office to validate the status of repairing broken head and/or footstones. As stated previously, the debris pile has been removed and the possibility of finding missing pieces in the debris pile is no longer possible. Therefore, the applicant is in violation of this Code section. Additionally, applicant has already violated Sec. 28-39(o)(2)k., which violation is impossible to undo through a corrective measure since grading has already occurred inside the buffer and cemetery area.

6. Install temporary fencing around limits of cemetery prior to any further construction activity, in accordance with County Code Sec. 28-39(o)(2)f.

The site plan did not require temporary fencing. The applicant has now installed temporary supersilt fencing, even though it was not required during site plan review. Subsection f of the cemetery ordinance requires installation of temporary fencing only when shown on the construction plan or plat. Staff did not require the applicant to install temporary fencing.

The comment indicating the location of the cemetery, the required buffer, and the requirement to install the fencing was made in both the Planning and Historic review of the construction plan. The construction drawings approved in December 2016, page 4B of 19 shows the cemetery, the 35-foot buffer, and a fence with the comment: “fence in accordance with Stafford County Zoning Ordinance Sec. 28-39(o).” This section of the Code includes the regulations for the temporary fencing as well as the permanent fencing. The requirement was addressed and acknowledged by placing the information regarding such requirements on the plans. Not installing said fencing is a violation of Sec. 28-39(o)(2)f, and g. as stated in the NOV.

7. Replace the existing fence that was originally on site, in accordance with County Code Sec. 28-39(o)(2)g.

There was not a complete existing fence when the Applicant acquired the property. The delineations refer to the existing remnants of the iron fence. Subsection g. of the Cemetery Ordinance does not require replacements of the original fence. It requires installations of a permanent fence after all development is complete. Such a fence is referenced on page 12 of the site plan. Development is not complete.

Replacement of the existing original fencing is to correct the actions of removing it, which is a violation of County Code Sec. 28-39(o)(2)k., which specifically states that no grading shall occur inside the buffer and cemetery area. The existing original fence would not need to be replaced if such prohibited grading and disturbance of the cemetery had not occurred. According to the photos dated June 2010, the fence was not complete but was upright and in the ground. The photos taken on March 27, 2019 shows the fence no longer in the ground but twisted and in between headstones.

8. Install a sign identifying the family association by name, in accordance with County Code Sec. 28-39(o)(2)h.

Subsection h of the cemetery ordinance does not identify a time of erection of the sign. The sign will be erected upon completion of the development.

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The sign design, location, and size are included on the approved construction drawings and placement of such sign upon completion of the development will be in compliance with this measure.

9. Plant grass seed upon completion.

Grass seed will be planted upon complete of development.

Photos taken on June 6, 2019 shows seeding has been done and the site is stabilized.

The applicant states that he is in compliance with Sec. 28-39(o) and that issuing the Notice of Violation was premature, reckless, and unreasonable. However, the applicant ignores the citation included in the Notice of Violation of County Code Sec. 28-39(o)(2) k.: *No grading shall occur inside the buffer and cemetery area.* Grading shall not be sloped at a ratio more than 3 to 1 from the existing grade of the cemetery for a distance of 50 feet beyond the perimeter of the buffer area. The photos taken in June 2010 show a cemetery that has fallen trees, overgrown vegetation, and head/ footstones upright and located at the appropriate gravesites. The wrought iron fence sections are upright and in the ground. There are concrete slabs located throughout the site and a few unrooted trees. The photos taken on March 27, 2019, show all vegetation removed from the site, track marks from equipment or vehicles are visible throughout the site, portions of the wrought iron fence removed and the remainder twisted and leaning up against a headstone, headstones pulled from the ground, and no temporary fence in place. The photos taken in March 27, 2019, illustrate a site that is not in compliance with the code and Sec. 28-39(o)(2)k. has already been violated. The site has not been protected by a 35-foot buffer and a temporary fence. The disturbed soil, the removed vegetation, concrete slabs, and wrought iron fence, the headstones/footstones pulled from the ground, and the impermissible grading are just a few examples of activities which are a violation of Sec. 28-39(o). Issuing the Notice of Violation was not premature, reckless, or unreasonable. It was done in a timely manner to prevent additional damage to the site and properly cited violations of the Code that had already occurred.

Dr. Larson: Any questions for staff?

Ms. Brown: Yes, I have a couple.

Dr. Larson: Go ahead.

Ms. Brown: This is a corner lot, Melody. How many public hearing notice signs should have been up?

Ms. Musante: First of all, we are not required by code to install or put up public notice signs. So, the one was fine. We possibly should have put the two up there but, again, we are not required by code to install the public notice signs at all.

Ms. Brown: Okay. And then the last question I had is do you know when Mr. Peterson of Jumping Branch Farm acquired the property? I looked at the tax records and all the parcels just showed like 2019. And I... I don't think that that was when they were, you know, split and cut off. I couldn't find out when he actually bought the property. Okay, so a better way to rephrase that is when did the current owners acquire the property?

Dr. Larson: Are you finished?

Ms. Brown: Mm-hmm.

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Dr. Larson: Any other questions for staff?

Ms. Bertoldi: Yeah, I just have a quick question because I really don't know the answer. When a cemetery is purchased, and maybe you don't know the answer either, is there a requirement that they're... like in a purchase of a cemetery, that there be documents about plots and names that are associated with it? Like is it regulated or can someone just buy a cemetery and as is so to speak? Does my question makes sense?

Ms. Musante: Mm-hmm. We don't know the answer to that right offhand.

Ms. Bertoldi: No, I would appreciate an answer because I think that that will help in this case. Thanks.

Dr. Larson: While she's looking, any other questions?

Mr. Apicella: I guess this would kind of go into both the questions that were just asked and answered. So, at some point time, was the applicant the owner of the parcels that included the cemetery both at the time the development was established up to now? Or was there some other owner of the property prior to that point?

Ms. Brown: Thank you, Mr. Apicella, that's why I asked when he acquired it.

Ms. Musante: Can you repeat the question?

Mr. Apicella: I guess I'm trying to understand where they fit into the history of this subdivision and cemetery. So, have they been the owners of the property from the time that the site plan was developed to now or was there some other property owner prior to that point?

Ms. Blackburn: It's my understanding that they were the owners when they submitted for the construction drawings for the subdivision.

Mr. Apicella: Okay. If you'll bear with me. So ,it's my understanding that the county's cemetery requirements are under Section 28-39 part o and part 2 gets into the preservation of existing cemeteries; is that right?

Ms. Blackburn: Yes sir.

Mr. Apicella: Can I read or at least paraphrase some of these and tell me if I'm correct in the way that I'm reading it. Parcels containing cemeteries and, I'm going to the end of the sentence, shall be required at the time of site or subdivision plan review to have a professionally prepared archaeological delineation of the limits of burials within the cemetery.

Ms. Blackburn: Yes.

Mr. Apicella: Is that correct? B says the perimeter of cemetery shall be indicated on the site development plan, subdivision plan, and subdivision plat.

Ms. Blackburn: Yes sir.

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Mr. Apicella: Part D says a minimum 35-foot wide buffer area shall be established around the perimeter of the cemetery as delineated per sections... subsections 2A and B directly above and indicated on a site development plan, subdivision plan, and subdivision plat.

Ms. Blackburn: Yes sir.

Mr. Apicella: Temporary fencing shall be installed around the perimeter of the cemetery and buffer area as indicated on the plan or plat prior to receiving construction or grading plan approval. The fence shall be located outside the exterior edge of the buffer area and not within the buffer area.

Ms. Blackburn: Yes.

Mr. Apicella: Perimeter fencing between 2... 3 and 4 feet tall shall be placed around the boundary of the cemetery including the buffer after any surrounding site work is completed. The fencing shall be located outside the exterior edge of the buffer area and not within the buffer area.

Ms. Blackburn: Yes sir.

Mr. Apicella: Part H says signage identifying the cemetery by its family association as recorded in the Stafford County Cultural Resource database or by any other name deemed appropriate by the county agent. It goes on to talk about the signs. Cemetery grounds, fence, and buffer area shall be maintained and the responsibility for maintenance shall be established either on the site plan, subdivision plan, or subdivision plat or by a separate recordable document submitted to the county agent along with the plan and plat.

Ms. Blackburn: Yes sir.

Mr. Apicella: Let me go back to that one in a bit. But preservation of grave markers including repair or cleaning shall comply with the Virginia Department of Historic Resources standards.

Ms. Blackburn: Yes sir.

Mr. Apicella: No grading shall occur out... inside the buffer and cemetery area.

Ms. Blackburn: Yes.

Mr. Apicella: Grading shall not be sloped at a ratio no more than 3 to 1 from the existing grade of the cemetery for a distance of 50 feet beyond the perimeter of the buffer area.

Ms. Blackburn: Yes sir.

Mr. Apicella: All cemeteries shall be recorded at the county and state level.

Ms. Blackburn: Yes sir.

Mr. Apicella: Going back to the maintenance, who... who is identified as the party responsible for maintenance of that cemetery?

Ms. Blackburn: Well, it's the owner of the property in which the cemetery is delineated.

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Mr. Apicella: So, that's what it says on the subject... on the site plan, subdivision plan, or subdivision plat?

Ms. Blackburn: Um, I'll have to look and see.

Mr. Apicella: Or a separate recordable document submitted to the county agent along with the plan and the plat.

Ms. Blackburn: Yes. Excuse me?

Mr. Apicella: I'm just... there's more to it; it's not just those documents that says it can be on a separate recordable document.

Ms. Blackburn: Right, yes.

Mr. Apicella: So, it meets one of those. Whoever is responsible for the maintenance...

Ms. Blackburn: Yes.

Mr. Apicella: ... was somehow established by some document.

Ms. Blackburn: And that was reviewed at the time of site plan (inaudible).

Mr. Apicella: Just two more questions, Mr. Chairman. So, I'm looking at several photographs that were provided, I'm going to reference to you right now Attachment 4, page 6 of 58, and Attachment 4, page 1 of 58... and I'm saying that out of order but... are these... am I citing the right photographs? So, these were... this was the cemetery at some point in time prior to any disturbance on that cemetery.

Ms. Blackburn: Yes.

Ms. Musante: Correct.

Mr. Apicella: There are certainly a lot more pictures about the cemetery prior to any disturbance as well in our packages. But I'm also now looking at two more photographs, Attachment 4, page 18 of 58, and Attachment 4, page 19 of 58. Are these the two photographs showing disturbance on the property?

Ms. Blackburn: Yes sir.

Mr. Apicella: And this is in part why the notice of violation was issued?

Ms. Blackburn: Yes sir.

Mr. Apicella: Alright. Thank you, Mr. Chairman.

Dr. Larson: Any other questions for staff?

Ms. Bertoldi: I think she's still looking up the answer of my question.

Dr. Larson: Is she still looking?

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Ms. Bertoldi: Do you even remember my question?

Ms. Blackburn: Can you repeat it please?

Ms. Bertoldi: Do you know whether or not the sale of a cemetery, whether or not it's required that there be documentation regarding the plots? And kind of as a tag along question to that is, is Stafford County at all involved in the, you know, purchase sale of a... an existing cemetery? Like do they have to set anything up? Like is it heavily regulated on a private sale of a cemetery? I'm trying to understand the...

Ms. Blackburn: Well, as you saw in the ordinance, we require an archaeological study. We have a cemetery committee who does have a database of the known cemeteries that we have. And as far as all the legal documents about when you... when you purchase cemeteries, Mr. Harvey might be able to answer this better. He's been much more involved with cemeteries in the county.

Ms. Bertoldi: Okay. Alright, and then archeological review has to be done every time it's purchased or at what point? Like how often does it have to be done? Like when it goes from one owner to another, does it have to be another review?

Ms. Blackburn: When we end up with a development plan it would be done. That was one of our requirements that when you come in with a development plan that you do do a current study so we have a baseline for when you (inaudible).

Ms. Bertoldi: Okay. So, if you buy one and you do nothing with it... so if you buy a cemetery and you said you're not going to do anything in it, you're not going to do any development plan, you don't need to do that. You can just leave it there and it's on your property?

Ms. Blackburn: Again, Mr. Harvey knows much more with the cemetery committee.

Ms. Bertoldi: Okay.

Dr. Larson: Any other questions for the applicant? Or I'm sorry, the staff?

Mr. Apicella: Mr. Chairman, it's not really a question per se. We were provided at our desks tonight a copy of an email from Miss Anita Dodd who's the Chairman of the Stafford County Cemetery Committee. I would ask if it hasn't already been provided to the applicant and their agent, if we could do that, and also if we could add it to the record of tonight's case.

Ms. Musante: It has been provided to the applicant.

Mr. Apicella: Okay, thank you.

Dr. Larson: Okay, any other questions for the staff? Hearing none. We go to, since this as an appeal, jurisdiction and standing. Any comments on jurisdiction? I believe we had... we have jurisdiction. It's an appeal to the Zoning Administrator's decision. I think we have jurisdiction. Any comments on standing?

Ms. Bertoldi: I think they have standing.

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Dr. Larson: I agree. Any disagreement? Okay, jurisdiction and standing are valid. I'll now open the public hearing. Will the applicant or his or her representative please come forward and state the case.

Ms. Karnes: Good evening Mr. Chairman, members of the BZA, staff. My name is Debrarae Karnes. I'm a planner and an attorney and I work for Clark Leming. So, first of all, point of clarification. Mr. Chairman, I'm going to try to progress through this at my best pace possible. I'm not sure I'm going to make it in 10 minutes. Could I have extra time if I need it?

Dr. Larson: Please try and we'll see where it goes.

Ms. Karnes: Okay, I'll try. Okay. So, as a preliminary matter, I'm going to answer two questions that were asked. Jumping Branch Farm, who owns the subdivision, acquired it in 2015. A question was asked, what is the responsibility of maintenance? Now, for your ordinary cemetery in the middle of the woods, there is no responsibility of the owner to maintain. That's why so many of these old family cemeteries are falling in disrepair because the families aren't around. In addition, they're subject to vandalism. So, the County passed an ordinance a few years ago that requires certain additional safeguards when the property is developed. And so the obligation is usually triggered at site plan or at rezoning. Really it's because, you know, there is this requirement of a buffer outside of the cemetery area; it used to be that people would bury people outside of the perimeter of the cemetery for various religious reasons, and so no one was really sure, even with a delineation done by an archaeologist, that they were protecting all the graves. And so the protection requirements that Mr. Apicella read were passed, adopted by the County, and they are enforced as they should be. The... this is a cluster subdivision with the cemetery and its buffer and additional land placed on its own open space lot which will ultimately go to the homeowners association. This I know because I drafted the documents. But the homeowner... the lots have not been sold yet and so the obligation to do the routine maintenance falls on the developer... the company, Jumping Branch Farm. Now, one of my concerns about speed is I was trying to identify the issues that the County is still concerned with. I believe, and the County may correct me if I'm wrong, that there are five issues on the citation that the County is no longer concerned with, some of which were done but the County apparently didn't know it when they issued the citation. The archeological delineation was done, reviewed, and accepted by the County. The installation of temporary fencing was done after the citation was received. The installation of permanent fencing, which is sited, I think the County has now conceded that can be done at the end of... at the completion of development. Same goes with installation of the sign identifying the name of the family cemetery at the completion of development. And planting grass seed, the ordinance says upon completion of work but it's done. Okay. These... am I accurately representing the County here? The citations that the staff believes are not resolved is they are asking the relocation of the headstones and footstones to their original positions. The applicant... the manager of Jumping Branch Farm says that he did not relocate the headstones. He says nobody that worked for him on the property relocated the headstones. He's not required to maintain those headstones in their exact location. He just is prohibited from touching them... or anyone under his direction. And the reason I'm making such a big deal of this is simply that doing so in addition to being a violation of the county ordinance is a violation... is a criminal violation of state law, and it might get so bad if it's willful as to be a level 6 felony. So, these are serious accusations the County is leveling. I will tell you right now that the applicant has told me he's willing to work with the County to get what the County desires in terms of improvements, but he did not disturb the cemetery. The second issue, the County says go through debris piles and locate missing headstones. He's gone through them. He says the missing headstones, the material of the headstones, is not there. The debris pile is still on the property. I have talked to an archaeologist who says maybe the concern is that people, amateurs are distrusted because they may not recognize what would be material that would be relevant. The County is welcome to come on the site and look through. The applicant does not believe there is any portions of any headstone, footstone, whatever, in the debris pile. So, this is my question on these

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two and the other two points. What evidence does the County have that the developer, or any of his employees or contractors, moved anything... disturbed anything? What's their evidence? One of the things I'm going to ask you, Mr. Chairman, is the ability to cross examine the zoning inspector and Miss Dodd. Neither are here. So it's really not possible, even though we would characterize their reports as hearsay. But moving forward, because I'm trying to move on, the accusation is that Jumping Branch Farm disturbed not only the headstones but the 35-foot buffer. They deny it. I'm going to bring up an engineer in a minute. He says there's no evidence of disturbance. You don't know when the disturbance happened. Was it before 2015 or earlier? Again, what proof do you have Jumping Branch Farm did it? The County is asking the developer to repair all broken headstones. The developer is not an insurer of headstones, some of which were documented to be broken in the cemetery delineation. Excuse me. Replace broken fence. The fence was broken previously. The photos in the delineation study showing... show it lying on its side curled around a headstone. What proof is there the developer, his agents, or contractors did this, because you're talking about potential criminal charges occurring if you find, um, on behalf of staff's allegations. Okay. Now, what I'd like to do at this time is bring up an engineer who did a site visit last week. His name is Ryan Foroughi and he's going to keep it real short he's promised me. Okay, and I'm going to ask the questions...

Mr. Foroughi: Let me say who I am.

Ms. Karnes: Okay.

Mr. Foroughi: Ryan Foroughi, Professional Engineer with Bagby, Foroughi and Goodpasture. Stafford County resident.

Ms. Karnes: Mr. Foroughi, you're an engineer, correct?

Mr. Foroughi: Yes.

Ms. Karnes: Okay. And you oftentimes turn in site plans and you have worked on portions of this development as well, correct?

Mr. Foroughi: I am currently the engineer of record for this project.

Mr. Grimes: Ms. Karnes? When you prompt him with a question, can you speak in the microphone? You guys are gonna have to share it but...

Ms. Karnes: I'm sorry.

Mr. Grimes: ... this is a unique approach to actually ask questions of somebody you're bringing up to testify so.

Ms. Karnes: I'm usually accused of having too loud a mouth.

Mr. Grimes: Not this time.

Ms. Karnes: Okay. So, did you have occasion to... okay, I've asked you did do a site inspection last week. Was a 35-foot buffer there surrounding the perimeter of the cemetery?

Mr. Foroughi: Yes.

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Ms. Karnes: Was a temporary fence erected in closing the cemetery and buffer?

Mr. Foroughi: Yes. There's a combination of supersilt fence and silt fence.

Ms. Karnes: Did the buffer area and cemetery, including the headstones, appear to have been disturbed?

Mr. Foroughi: It did not appear that the physical cemetery had been disturbed. The grass was about 5-foot tall. The buffer area did appear that it looked disturbed in the fact that it looked like trees and just lapped wood and just rubbish was pulled off the buffer area.

Ms. Karnes: I mean dead trees?

Mr. Foroughi: Dead trees it appeared.

Ms. Karnes: Did the... are you familiar with violation number 8 which reads, grading shall not be sloped at a ratio more than 3:1 from the existing grade of the cemetery at a distance of 50 feet beyond the perimeter of the buffer area. It... from... it's not supposed to be disturbed with a grade more than 3:1.

Mr. Foroughi: So, I visited that site Friday afternoon. I've probably submitted more development plans in this County than most engineers. That site does not have any disturbance within 50 feet at a 3:1 slope, existing, proposed, or otherwise. It's not there.

Ms. Karnes: Now, when we were talking in the hall, the developer pointed out that where there is... there is higher slope on one side of it that was pre-existing slope prior to development. He... he described it as a ravine. I don't think that's what these regulations are supposed to be in controlled. They... they are intended to prevent grading so that the property, the cemetery, can be easily accessed from the road to allow visits by the family. So, Mr. Foroughi, are you familiar with the construction plan?

Mr. Foroughi: Yes.

Ms. Karnes: And is the cemetery, the buffer, and the grading outside of the buffer consistent with the approved construction plan?

Mr. Foroughi: It does appear so. The buffer area, as indicated on sheet 4b of the construction plan, prepared by the previous engineer. The buffer is right on the right-of-way line, so it does appear to be constructed correctly or consistently with the construction plan.

Ms. Karnes: And that's my... my questions. If the BZA has any other questions, he's very knowledgeable.

Dr. Larson: Any questions for the witness? Robert?

Mr. Grimes: Yes. So, Jumping Branch owns the property, correct?

Ms. Karnes: Yes.

Mr. Grimes: And they're fully aware that the code states that as the owner of this cemetery, because they are the owner of the cemetery until the subdivision is done...

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Ms. Karnes: Right.

Mr. Grimes: ... that they are responsible for the preservation of grave markers including the repair and cleaning and shall comply with the Virginia Department of Historic Resources, correct? They understand that. They're responsible for the upkeep of this.

Ms. Karnes: They are responsible for the upkeep. But I disagree they're responsible for rebuilding markers or cleaning them.

Mr. Grimes: It says, preservation of grave markers, including repair or cleaning, and it goes on that they comply with the Virginia Department of Historic Resources. I think that's pretty clear. Whether they were broken before they bought it or not, they could have identified that, noted it, even gone through when they were doing the plan, plat submittal, and talking to the County that here's the existing conditions that we're taking over. They could have documented it some way but right now the code says they're responsible for it so.

Ms. Karnes: I believe...

Mr. Grimes: Go ahead, I'm sorry.

Ms. Karnes: I'm sorry.

Mr. Grimes: No, no.

Ms. Karnes: I believe that the code is very clear. The... an owner is not responsible for rebuilding markers. And I suggest to you that staff misspoke on this point.

Mr. Grimes: Based on...?

Ms. Karnes: I interviewed an archaeologist last week and that's what I was told.

Mr. Grimes: What did they tell you?

Ms. Karnes: They said that...

Mr. Grimes: Did they provide a letter confirming those facts?

Ms. Karnes: No, and so just like Anita Dodd's letter, this is hearsay. So I'm telling you this to back up my understanding and nothing else. I was told that the concern was the apparent movement of headstones, but not necessarily repair. And that this language was in error. That's kind of why I would really like to cross-examine Ms. Dodd. Now, again, when we first got this violation, I notified the planning office, or maybe I should say the zoning office, that Mr... the Jumping Branch... I need to keep the corporate name in use here... would be willing to work with the County and see what could be done to... because it is in their interest to make this cemetery a pleasant place. And it also... cleaning it up under CPTED principles discourages vandalism. But you are -- hmm, that's not a good way to start a sentence, is it -- the violation makes Jumping Branch a guarantor even when the damages occurred prior to their acquisition of the property, and even though some of the damages are noted in the delineation study. This just simply is not fair when you were talking potential criminal violations. Again, where's the evidence that anyone associated with Jumping Branch Farm either disturbed the cemetery, by omission failed to stop disturbance of the cemetery, by anyone that they have any responsibility for...

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Mr. Grimes: Ms. Karnes, I think you've stated that before. I think you've answered the question I have. I have another one for you.

Ms. Karnes: Okay.

Mr. Grimes: I think you stated that the debris pile is still on site.

Ms. Karnes: Yes.

Mr. Grimes: And you made a statement that the Jumping Branch developer, one of their employees, has gone through this debris pile and said that there are no more stones associated with that cemetery in that debris pile.

Ms. Karnes: The material of the headstone or the footstone, that's correct.

Mr. Grimes: Okay. Is that person an archaeologist?

Ms. Karnes: No it's not. No he's not.

Mr. Grimes: So, we have no way to know... you don't have any factual information that a professional went out there that knows what to look for to see if anything was in that debris pile?

Ms. Karnes: And that's why we're offering the opportunity to the County, either through the Cemetery Commission or the Historical Commission who have offered to do that.

Mr. Grimes: But if they offered to Jumping Branch to do that, why didn't Jumping Branch have them come out and do it?

Ms. Karnes: We... we invited the County. If you read Anita Dodd's letter, she off... she indicates continued interest in doing that, and she indicates that she recommended that to the County.

Mr. Grimes: Well, and I understand that but Jumping Branch could have gone directly to the cemeteries committee and asked for their help, professional help, going through that pile.

Ms. Karnes: So, I understand they did contact Anita Dodd.

Mr. Grimes: Okay.

Ms. Karnes: Okay. And then nothing happened.

Mr. Grimes: Did they follow up?

Audience member: Yes.

Mr. Grimes: Do we have that documented how many times this person was contacted to do this?

Ms. Karnes: I don't have that documentation.

Mr. Grimes: Okay. That's all the questions I have. Thank you.

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Ms. Karnes: Okay. Did I hear a question?

Dr. Larson: Question?

Ms. Bertoldi: I had it on then I turned it off. I actually had a question for the witness. I thought that's what we were doing at the time, so I'm sorry. I had... come back up... when you were up there on Friday, did you happen to take any pictures?

Mr. Foroughi: I did. I actually have... sorry, I do have two or three on my phone.

Ms. Bertoldi: Yeah. Because I think that, you know, when we sit here and have these pictures that are Attachment 4 that show clear grading, you know, of the property and... or of the cemetery and you're saying that there has been no disturbance whatsoever. I mean, are these incorrect? I mean, I am very curious.

Mr. Foroughi: No, no. I'm not stating that there was not any ground disturbance.

Ms. Bertoldi: Okay, then I misunderstood, because I thought you said that there was no ground disturbance.

Mr. Foroughi: No, no, I admit that... I mean, I don't know if I can approach or I can show you...

Ms. Bertoldi: Well, I think it's up to the Chair but I don't mind. I'd like to see what he has from Friday.

Ms. Brown: I've got some, too, from Sunday.

Ms. Bertoldi: Okay, good.

Dr. Larson: Let's see the witnesses from Friday.

Ms. Bertoldi: If you want to hand it to the Chairman first, that's fine.

Mr. Foroughi: *Inaudible - at the dais showing pictures from his phone.*

Ms. Bertoldi: So he is... we're passing those around. How did you determine that there was no disturbance?

Speaker inaudible - microphone not on.

Ms. Bertoldi: Oh, that would be great. How do you... how did you determine that there was no... I'm assuming then you meant there was no disturbance to the actual grave markers; is that what you're saying, that were already there?

Mr. Foroughi: Can I have one second just to email these real quick to her? I'm sorry.

Ms. Bertoldi: Then while you're doing that, I actually have a question for you ma'am. You made a couple of arguments about hearsay and I just want to make sure it's clear on the record. Are you saying that just the email is hearsay or did you also state that the Notice of Violation prepared by the zoning technician was also hearsay? Because you said you wanted to cross-examine both of them and then you said there was a hearsay. So, I just want to make sure that we're clear on what you're alleging is hearsay.

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Ms. Karnes: And I will, at the end of this, make a formal...

Ms. Bertoldi: Right, mm-hmm.

Ms. Karnes: ... objection on this.

Ms. Bertoldi: But... no, no, you're right. I understand what hearsay is. I'm asking you what are you calling hearsay? Are you calling the notice of violation... are you calling the notice a violation hearsay?

Ms. Karnes: Yes.

Ms. Bertoldi: Okay.

Ms. Karnes: And for the reason that there's no opportunity to get further information or clarification, or to judge the demeanor of the person who (inaudible).

Ms. Bertoldi: Okay, so... so... so ma'am, you do know that there is an exception to the hearsay rule; it's called a business record.

Ms. Karnes: I still maintain (inaudible).

Ms. Bertoldi: Okay, but you do know... you are aware that there is an exception to the hearsay rule that is a business record which is documentation that's kept in the ordinary course of business in the way that it's normally done in a business and that is an absolute exception to the hearsay rule. You do know that, right?

Ms. Karnes: *Inaudible, not at microphone.*

Ms. Bertoldi: Right. And that is... right. Okay. So, you do not think that a notice of violation is kept in the ordinary course of Stafford County?

Ms. Karnes: I do not think that a staff report that refers to the inspector's notes that just includes pictures and is not addressed...

Ms. Bertoldi: No, no, no... a notice of violation, which is a notice of violation that is... that is used...

Ms. Karnes: The one-pager.

Ms. Bertoldi: Right, right. Which by the way, this is the first time you've made this argument this evening which I find interesting. But you think that the notice of violation, whether you disagree with the content, that an actual notice violation is not an exception to the hearsay rule as a business record.

Ms. Karnes: I would probably focus in on the violation as combined with the inspector's report that is attached.

Ms. Bertoldi: Okay, but if they attach it as part of the notice of violation... I mean... So, that is what I want to know. So you're claiming though, we can take this up later then if you're planning on making a formal, but I wanted it for the record that you think that the actual notice of violation does not meet the standards of a business exception rule for the hearsay exception.

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Ms. Karnes: No, no, you're putting words in my mouth. Now, I'm just saying that there is a problem because I cannot cross-examine the witness that's claiming he observed disturbance just as you had the opportunity to ask Ryan Foroughi why he felt there was no disturbance.

Ms. Bertoldi: Okay.

Ms. Karnes: That's all.

Ms. Bertoldi: Alright, so, but again that's a witness that you brought forth and throughout the whole definition of a cross-examination is to cross-examine that somebody else brought up for direct.

Ms. Karnes: It is... it is my job as an attorney to raise any possible (inaudible).

Ms. Bertoldi: Right, right, but that's the reason why we get to ask them questions. But I think that we can go down this rabbit hole later on if it goes. But I just wanted... I didn't know she was gonna do that later on or I would have saved it for them. But I just wanted to make it clear for the record of what she was claiming was a hearsay.

Dr. Larson: Okay, thank you. Any other questions for the applicant or representative?

Ms. Brown: Yes, I have two.

Dr. Larson: Dana?

Ms. Brown: In my packet is Attachment 1, page 17 of 27, it's called the Virginia Department of Historic Resources Architectural Survey Form. Did your client pay for that and commission that?

Ms. Karnes: I believe that was done prior to my client's acquisition. Is that true, Mr. Peterson?

Mr. Peterson: No, I commissioned that... the cemetery report's commissioned by me, Jumping Branch Farm.

Ms. Brown: Yeah, it's dated 2016.

Mr. Peterson: I'm sorry.

Ms. Brown: It's dated in 2016; June 15, 2016.

Ms. Karnes: Okay.

Ms. Brown: Okay. So, you did commission it?

Mr. Peterson: Yes ma'am.

Ms. Brown: Okay. And I guess the survey or assessments, I don't know if you aware of this, but they describe what the graveyard looked like at the time and they say that no vandalism was noted and they say that it's covered with the two inch layer of cement and there's trees growing through it. So, that documents the condition at least in 2016 after you owned it.

Mr. Peterson: There's actually pictures on the last page (*inaudible - not at microphone*).

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Ms. Brown: Yeah. Who... who took the trees down? Because they were... according to the survey, they were there in 2016. And when I was out there on Sunday I could see clear tracks of heavy equipment going from the markers to the debris pile.

Ms. Karnes: I was advised that dead trees would come down... had... were taken out, and limbs that had fallen off were taken out. But no live trees were taken out. I was specifically asked that question.

Ms. Brown: Okay, because when I went out there on Sunday, the only thing out there right now is weeds. There was no trees, no fence, no concrete. All the things that the survey form said was in place on June 15, 2016. So, okay, that answers my question. Thank you.

Mr. Apicella: Mr. Chairman, I have a follow-up on the same page going back to the sentence I think Ms. Brown was alluding to or indicated several of the tombstones have toppled, no vandalism was noted. What I did see in the staff report was that some of the gravestones, and I don't see it here in the... in this in this document, some of the gravestones are not in the same place that they were originally. So, I just want to point that out as a... as an issue. So, can you speak to why that would be? Why it's not in the report but now some of the gravestones don't appear to be in the right place?

Ms. Karnes: We don't know. The developer went out to the site today and he didn't see anything amiss, but I get ... the point I'm making is that he did not relocate these tombstones. Nobody that he supervised did.

Mr. Apicella: In our package, attachments 6 page 2 of 2. This is the site plan or at least one page of the site plan.

Ms. Karnes: Right.

Mr. Apicella: Is that correct?

Ms. Karnes: Yes.

Mr. Apicella: And the perimeter, it says on it fence in accordance with Stafford County Zoning Ordinance Section 28-39(o). So where is the fence?

Ms. Karnes: Well, the temporary fence that they are complaining about in violation is now up.

Mr. Apicella: So, the code speaks to a temporary fence and then it speaks to a permanent fence. So...

Ms. Karnes: And the permanent fence is to be erected at the completion of development. And I believe staff even concurs with that conclusion at this point.

Mr. Apicella: I understand. But the temporary fence at least in the picture is not there. Is that true?

Ms. Karnes: It's there.

Speaker from the audience: No, it's there.

Mr. Apicella: In the picture that we have. Are you telling me these are not pictures of the parcel? This this is this is not the cemetery?

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Ms. Karnes: The temporary fence was erected, I believe, after the fence was... after the pictures were taken. What is the date on...

Mr. Apicella: So it says May 27, 2019. So, when you got that... when the applicant got the Notice of Violation, okay, this is a true and accurate depiction of the site as it existed on May 27... not May, on March 27, 2019.

Ms. Karnes: Mr. Foroughi, when was the fence erected? Do you know?

Mr. Foroughi: I don't. I'm not aware but there is a temporary fence erected now that can be seen in the pictures that that I have.

Ms. Karnes: It was not erected...

Mr. Apicella: I'm just going to when the Notice of Violation was issued, there was no temporary fence.

Ms. Karnes: That's correct.

Mr. Apicella: Okay. Can you help me understand then, this is a picture of the cemetery back from 2010. I realize there's some time that had elapsed. This is a picture again of March 27, 2019. Who did that?

Ms. Karnes: 2019, I believe it was the Zoning Inspector.

Mr. Apicella: No. The ground is clearly not the same. There is a huge difference between this picture and this picture. And I'm not an expert but it sure looks like somebody took a bulldozer or a grader and went through the par... I don't know how you do that without a piece of equipment, a heavy piece of equipment.

Ms. Karnes: The developer denies doing it.

Mr. Apicella: So, somebody disassociated with the property came over with a bulldozer and did that? That's, that's what ... that's what's being asserted here.

Ms. Karnes: I have no better answer for you. My question is.

Mr. Apicella: If a fence had been there... was a fence there before this happened? No. So wasn't it the responsibility of the developer to have a temporary fence there, so this... at least if somebody else did it, that it wouldn't happen.

Speaker from the audience: No.

Mr. Apicella: No it's not... Sir, you need come up if you're going to speak.

Dr. Larson: You cannot respond from the audience. You'll be given an opportunity after this.

Ms. Karnes: I should address comments to the Chairman, I am sorry. But Mr. Chairman, there was normal upkeep of the cemetery. Removal of dead trees. My client has advised me they did not disturb the land. My only question is what evidence the County has to the contrary.

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Mr. Apicella: Okay, thanks.

Ms. Musante: Ms. Karnes, would you please speak into the microphone. Thank you.

Ms. Karnes: Sorry.

Dr. Larson: Are there any other questions... are there any other questions for the applicant's representative?

Ms. Brown: Maybe one more.

Dr. Larson: Go ahead.

Ms. Brown: For clarification. Ms. Karnes you said that the applicant did not do it. Is it possible that the applicant's employees who were out there doing the grading did it?

Ms. Karnes: The applicant questioned the employees and they deny it. The contractors.

Ms. Brown: Okay.

Ms. Karnes: Is it possible they did it? Anything's possible.

Ms. Brown: We've had a lot of rain lately. So, it kind of gets things muddy and washes stuff away. But when I was out there on Sunday night I clearly saw tracks of heavy equipment going from the headstones to the debris pile. And I took some pictures of those. But so that indicates to me they were fairly recent.

Ms. Karnes: So, I guess my whole point is that five of the nine violations have been either resolved by the applicant, were already taken care of before the violation was issued, or the time hasn't come for them to be done. The other four, he hasn't... he tells me he hasn't... there is no responsibility for Jumping Branch. I like to pursue things on a win-win basis. I believe it's important to preserve cemeteries. The developer has told me he's willing to work with the County. He's willing to meet with Anita Dodd and the County and do whatever is necessary to make the County feel that he's done his part. Although I don't know about remaking headstones that apparently were damaged before 2010, but that's the point I want to make. Let him, with the assistance of the County's professionals try to work out a solution satisfactory to him. And maybe that means deferring this until Anita can come in and testify, and until I can have an opportunity to examine the Zoning Technician that issued this. That's my suggestion to get to the purpose of this ordinance.

Ms. Bertoldi: If I may?

Dr. Larson: Go ahead.

Ms. Bertoldi: Yeah, the only part of the request that I want to comment on right now is with respect to counsel's repeated requests to cross-examine Ms. Dodd. We are not a trier of fact. This is not a place to be examining and cross ...for her to be cross examining someone who might be a witness. I'm not saying that maybe Ms. Dodd should come in or not. Okay, and testify, but we don't do that. We don't let counsel just cross-examine members of the County, you know, and such. And so I think that, you know, in that format you keep saying cross-examine, cross-examine. All questions are supposed to go through the Chairman and everything comes through the Board not direct cross-examination by an

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attorney of somebody else. And so that's what I want to say about that, I'm not saying that she shouldn't come in or not. I'm just saying that that is not something that I think that we should entertain.

Dr. Larson: That really isn't our procedure.

Ms. Karnes: And Mr. Chairman, to be frank, I just mention it because as an attorney I'm expected to request it ... make a record of requesting it at the end of the session, or I haven't done my job that's all. But I do think Ms. Dodd has valuable information that would share some insight as to what would be done. I believe she was instrumental in working through the passage of the Cemetery Ordinance.

Dr. Larson: Right. We um... every meeting we read through what we call the preamble and it verbalizes as our procedures.

Ms. Karnes: Mm-hmm.

Dr. Larson: And I'm sure you're familiar.

Ms. Karnes: Yes. Review your by-laws.

Dr. Larson: If we bring a person from the County in to testify before us they'll answer our questions and then you can respond to her. But you can't question her.

Ms. Karnes: Okay.

Dr. Larson: We ask the questions.

Ms. Karnes: And I'm looking at Ms. Dodd's letter now that was given to you. And she talks about some disturbance, now the cemetery presented unique problems as someone down... up poured concrete around the grave markers in an attempt to keep the vegetation down. This only created a bigger problem. It would be really interested... interesting to hear her comments. And I don't think we're getting the full comments here on this very short e-mail message.

Dr. Larson: Okay, thank you.

Ms. Karnes: Okay.

Dr. Larson: Any other questions for the applicant's representative? Okay, hearing none...

Unknown speaker: When you are done, I would like you to testify.

Ms. Karnes: Okay, well they're citizen's time. Thank you very much. We're willing to try to rectify the violations but we don't believe it's fair without evidence that the developer did this stuff, which could be a criminal offense, that the violation be found. Thank you very much.

Dr. Larson: Thank you. Would any member of the public wish to speak in support of the appellant?

Mr. Peterson: I think I can clarify a number of things that unfortunately she's stuck with without the knowledge of. So, I did buy the property in 2014.

Dr. Larson: I am sorry sir, your name and address please.

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Mr. Peterson: Barry Petersen, Fort Lauderdale, Florida, and another address up here as well. But that's my primary address. I bought the property in 2000, excuse me, late 2014/2015. It did have a cemetery on it at the time. The first thing we did was a cemetery study which was required by the County when we put the thing in. When we got the violation, obviously you see the first thing on the violation is you have to go to a cemetery study. We go like, guys we gave you a cemetery study two years ago. Nobody read it. No we looked at it. Nobody knew it existed. When you do a cemetery study the first thing you do at the edge of that cemetery is you bring in a bulldozer. Not me now, this is the State people that do it. And you bulldoze down to bare ground, got plenty of photographs for you can show you how it's done. And that's the only way they can recognize if there is another grave that's outside of that cemetery. All those trees you're looking at got pushed out of the way but a bulldozer. And we have no problems bringing the people that did the report in here to demonstrate that and show you how they're required to do it... norm ... do intelligent cemetery study. Plenty of photographs here if you'd like to see them now. So they come back in to what they actually see is the cemetery which is the 16 graves you see there, right at the edge of those graves they stripped the ground down 6 inches below the topsoil and apparently, not a grave expert, the soil discolors even 6 feet above it. If it's a different color, and that's how they start to recognize whether or not there could be another grave that's not in that same line of graves with the other graves. That takes us back up into the time when... So, that's all cleared around the edges. Apparently nobody either photograph that or cared about it at that time but it was done it was certainly a larger disturbance then, than the disturbance that the contractor did. Three guys went out their hand raked, no machinery was ever taken over a grave site, a body. Nobody knocked over headstones. We're trying to do a \$600,000 house subdivision out here. It's to our advantage to make this thing look is absolutely exquisite as we possibly can, you know, to the point where we had ... we're spending \$100,000 on the entrance sign, getting in the road. We had the same guy, we had him do a stone wall around the cemetery, a little podium that was going to be like this, with a brass sign on it that gave the wall a cemetery history that, you know, all to be done. These guys went out there. They cleared everything by hand. To my knowledge, no headstones removed. I spent last week out there I was out there again today. Now somebody said that there's stones in the debris pile. I've looked three different times. I told the County go out there and look if there's a damn stone thing, take the stone out put it back someplace else where we can put it and figure out what's going on with it. If it's my job and I think, you represented that it's my job to maintain it and I don't probably disagree with that at all. That's all we did. There's no shovel marks, we didn't dig anything, nobody drove equipment over headstones. I mean they wouldn't even exist if that was the case. More importantly you can take that same study and I've got photographs from today, every... to my knowledge the only thing I've saw different from when my guys left that site, not my guys but Steve's guys, is two of the headstones had laid down. Now whether that's the rain, the weather the wind, whatever it is I don't know. Another lady here says one of them broke 10 years ago. It's my understanding that if I stand there and rebuild the headstone if I didn't pick it up she's going to write me a violation say I'm in violation of the Cemetery Ordinance. I'm not allowed to do that. I can mow over the top of it, I can stand there and dig around it, I can take weed whackers to it I can pull the roots out with rakes, I can't play with the headstones. And to my knowledge nobody ever has. And that cemetery study right there that was done in 2016, I'll show you the photographs that were taken out today named by name. All those headstones are in the same place. That's, you know, the only thing ... the only thing I saw different is two of those headstones that were standing up ones like a heart shaped like this. It's somehow been knocked down. But I have a picture of the day my guys left that thing with the inspector there. They were standing up then, they're knocked down now. How that happened, who did it or whatever, I have no idea. But that's as easy as taking them and tilting them back up. There is nothing broken out there. I did it a million photographs again today. Every single crack on every single headstone. I'll show you the pictures of it. It's all weathered it's been that way for 10 years. There's not a new broken piece of granite out there. Really easy to go look at it. You pick the thing up. You look at the side of it. You can tell in two minutes whether it's new broke or it's been that way for 10 years and whether. It's all weathered. I have no problems. I've

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got three other projects I've done cemeteries long in Prince William County. I moved 18 bodies at the county's request, right there on Darby Brook Court. This is the first time I've ever seen anybody complain about getting something cleaned up and not, not sure why.

Dr. Larson: Sir, I going to have to... you have used your time allotted.

Mr. Peterson: Can I have another two minutes?

Dr. Larson: One minute.

Mr. Peterson: One minute. So, this didn't start off as a zoning violation. Started off as an environmental violation. I called the zoning guy up when he sent me the violation. He said well the environmental people told me to give you a violation. I said, what do you give me in violation for? He said, I don't know. Three conversations, that same individual. I got the receipt back he says you need to call Anita Dodd because nobody in Zoning knows the Cemetery Ordinance well enough to tell me how to correct what was done. Called Anita Dodd three different times, had a lovely conversation with her. She was going to get back to me and set up a meeting with me and the County, never heard back from her. We did as much as we can do. If the County wants to take that cemetery and do the bloody heck it wants with it, I couldn't care less and they have my blessing. But tough to ask somebody for me to clean it up on one side and be responsible for things that we haven't done. Thank you.

Dr. Larson: Okay, are there questions?

Ms. Brown: I do.

Dr. Larson: Sir. Sir, could you come back? We have a few questions for sure.

Mr. Peterson: Sure.

Ms. Brown: Thank you for coming back. So you're saying that all the trees are gone due to the delineation... the boundary survey that you had to do the trenches?

Mr. Peterson: Yes ma'am we have pictures of you if you'd like to see them.

Ms. Brown: Okay, because I... in your in the report it says that the west side was excluded from that due to the precipitous drop off.

Mr. Peterson: Yes, the west side...

Ms. Brown: (Inaudible) the trees on the west side.

Mr. Peterson: Right. The west side is the side that the attorney was talking about that drops off so steeply into a ravine, that's never been touched the trees are still there everything else is there so.

Ms. Brown: Because I was looking at the map and to me when I was out there...

Mr. Peterson: It's actually the north side.

Ms. Brown: Well the west side, well it says west in here. The west would be toward the driveway of the new house that's there. Kind of angles.

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Mr. Peterson: Right, you are correct. That would be west.

Ms. Brown: Yes.

Mr. Peterson: The ravine, obviously the ravines where the ravine is, it's actually in the north. It doesn't, you know.

Ms. Brown: Yeah. Because the...

Mr. Peterson: You can't change the ravine.

Ms. Brown: Well, the report said the west side was excluded to this grading to find out delineation so I just wondered what happened to the trees on the west side. And it also says you did trenches.

Mr. Peterson: I think if you look in the photograph on the west side, there's only those two trees that come out on that side and then the rest of it was just grass. There was no there was no trees there. So maybe it was cleared or pasture once upon time. The whole first hundred acres coming in was all pasture.

Ms. Brown: Yeah, it's talks about them when they do the trenches that they go up in a row. They don't like clear cut. It was just like they'll do it. They'll do a row.

Mr. Peterson: Well, they take it... it was a D-4 bulldozer with a 10-foot blade and they just went pshhhh (sound effect).

Ms. Brown: It says a 3-foot bucket was used...

Mr. Peterson: No.

Ms. Brown: ... to investigate the area starting near the southwest corner.

Mr. Peterson: That's the backhoe bucket. That's not the dozer that cleared the ground.

Ms. Brown: I don't know, it says a mini excavator.

Mr. Peterson: That's the... yeah. Mini excavators... hydraulic excavator with the bucket on the front. But to clear the ground to get to the bare ground using a dozer.

Ms. Brown: Yeah, I didn't think you had a clear ground but okay. That was my question. I just wondered what happened to the trees on the west side. Thank you.

Dr. Larson: Sir, I had a question as well.

Mr. Peterson: Sure.

Dr. Larson: The plowing that was done to delineate, I think you used the word, was that outside the 35-foot buffer?

Mr. Peterson: No it's actually ... if these are... where the gravestones are, they start at the last visible gravestone because what they're really looking for is more graves.

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Dr. Larson: Okay, so you're saying it was plowed up to pretty much the existing graveyard itself.

Mr. Peterson: That's correct. Would you like me to show you a photo?

Dr. Larson: Yes please.

Ms. Brown: Dean, it does say in the report 10... a maximum of 10 feet from the perceived cemetery edges.

Mr. Peterson: I'm sure you saw this in your report as well which is the body markers. That's the pile of debris that's still there as of today.

Ms. Brown: Can you hold that up? I couldn't see.

Mr. Peterson: Sure. Yes ma'am.

Ms. Brown: Okay.

Mr. Peterson: I apologize, I got a...

Ms. Brown: When was that picture taken of the debris pile?

Mr. Peterson: I'm sorry. Pardon me.

Ms. Brown: When was that debris pile picture taken again? The one you just held up, yeah.

Mr. Peterson: I'm not sure today or Friday.

Ms. Brown: Okay.

Mr. Peterson: When we were up there Friday or today, one of the other. It's still there. I mean you can know...

Ms. Brown: No, I was out there on Sunday night. That's why I wanted to look at it.

Mr. Peterson: Yeah, it's right there at the corner next to the big oak tree.

Ms. Brown: Yeah, it looked a little bigger than that on Sunday night. But maybe I am mis-remembering.

Mr. Peterson: Well, its spread out. It looks like somebody went through it...

Ms. Brown: It looked pretty high to me, it didn't look spread out. It looked kind of high and, but...

Dr. Larson: Dana, where in the report does it talk about the 10 foot?

Ms. Brown: *Inaudible, microphone not on.*

Dr. Larson: I see it.

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Ms. Brown: It's in the second paragraph.

Dr. Larson: Yep, I got it. Okay, thank you. Any other questions for this witness?

Ms. Bertoldi: I have one. Just for clarification, are you, and just for the record I am referring to Attachment 4, page 18 of 58 and page 19 and page 20, specifically. But when you were talking about the State that you said came out with their big heavy equipment. Are you saying that they're the ones that did this?

Mr. Peterson: No ma'am. No. What they... they didn't. They did the perimeter, in other words, if this is what you're looking at in this drawing with the shows the grave... in this drawing right here.

Ms. Bertoldi: Okay.

Mr. Peterson: Okay. So, they came out and went to the edge of the headstones and did an eight foot wide swath around the whole thing with the exception of the north side, which drops off so fast that they didn't think it was practical to think a body was buried there.

Ms. Bertoldi: Okay, so these pictures of the 18, 19... page 18, 19 and 20 of Attachment 4 that I'm referring to and you've seen these you know which ones I'm talking about right? This one.

Ms. Peterson: Yeah, I've got very similar photographs.

Ms. Bertoldi: And this one, okay...

Mr. Peterson: And then we took all the foliage with hand rakes, off...

Ms. Bertoldi: Okay, you say hand rakes. But there are and I really I'm just trying to clarify. But, I mean, there's clearly like marks of heavy equipment there.

Mr. Peterson: There may be a wheelbarrow mark. But there's no heavy equipment going across any stone there. And if it was, you see on narrow those stones are and close together they are? Heavy equipment would break them up in three minutes. You couldn't drive a piece of heavy equipment over it if you wanted to.

Ms. Bertoldi: What about all these stones that are laying flat?

Mr. Peterson: If you look in the in the original photographs from the cemetery study.

Ms. Bertoldi: Yeah.

Mr. Peterson: They were laying flat. Now, in a photograph taken the day my contractor's people finished, which is this one you'll see two stone standing up there.

Ms. Bertoldi: Mm-hmm.

Mr. Peterson: These two stones right here.

Ms. Bertoldi: Mm-hmm.

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Mr. Peterson: Those stones for some reason are now laying flat.

Ms. Bertoldi: If you had a guess what would you think hap... I mean obviously something happened to them maybe it would do you...

Mr. Peterson: Well, the wind could have gotten them. It's potentially possible. You know, whatever.

Ms. Bertoldi: Because I think you said earlier, I think you said earlier that to knock these over would take something heavy to do.

Mr. Peterson: No, not these stones because these are just marginally there. These right here, where you're seeing somebody moved stones, nobody can move those stones.

Ms. Bertoldi: What's the difference between the marginal stones and then the other stones?

Mr. Peterson: These right here are 2 inches wide and they're kind of placard type things. These other things are huge granite markers. I mean me and every guy in this room can't move them. And if you look at them, they are in the exact same position and the exact same tilt that they are in the cemetery study.

Ms. Bertoldi: What about this fence on page 20, it's mangled. Was that like that before when you purchased the property?

Mr. Peterson: Yes, again if you take a look at the bottom of the cemetery study the little, the little picture down on the right hand corner. I think it says southwest view or something like that. If you look real hard you'll see a portion of that fence. Now understand this fence, there's only half of it there. It's 50 years old. It's wrought iron. It was in 4-foot sections. To my knowledge, during the cemetery study there was only one piece of 4-foot that was standing.

Ms. Bertoldi: Okay, and my last question with respect to the headstones is, there is one headstone its page 21 of Attachment 4. And it's actually one of those that think big ones you were talking about they are directly behind the other ones that fell over.

Mr. Peterson: Right.

Ms. Bertoldi: And the cross is completely severed off and broken itself.

Mr. Peterson: It is.

Ms. Bertoldi: Do you know what happened to that?

Mr. Peterson: Yes ma'am. It fell on her foot in 2010.

Ms. Bertoldi: And it....

Mr. Peterson: And it's been like that ever since.

Ms. Bertoldi: And how... so it was... so it fell... what caused it to fall?

Mr. Peterson: I wasn't around in 2010 ma'am, you would have to ask her.

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Ms. Belles: It was already busted, it's been busted. I've been there since 2000 and it's been...

Ms. Bertoldi: She has to come up here.

Ms. Brown: Can she step up, yeah.

Ms. Bertoldi: Yeah, can you come ... step up ma'am?

Ms. Belles: Okay, my name...

Ms. Bertoldi: State your name, yeah.

Ms. Belles: Okay, I'm going to get a turn. Just I want my turn. But that made sense, okay. Anyway I've...

Dr. Larson: I am sorry, you were just about...

Ms. Bertoldi: Your name and address.

Ms. Belles: Linda Belles in Hartwood. Okay, I've been going to that cemetery off and on for like since 2000, and it was all concrete around it. Heavy duty concrete didn't make any sense. It looked like... the concrete is healthy, like really thick. And somebody had to... that cross was broken. It's in so many little sections that anything a tree branch, anything could and did over in sections and trying to be a good doer, I picked up the top put it up there and it fell my foot and broke it a bunch of spots, and now I have a plate in it. But it was busted, so the only thing that was really busted that he's talking about is that cross. But I have pic... I must have 50 - 60 snapshots of that cemetery. I've been there so many times that the pieces that... whoever got that concrete out there, there is no way of moving the concrete without disturbing the headstones. Not all of them just some because you couldn't have gotten it up. I've got the pictures, I mean real clear of everything. Now, I don't know which ones are yours that... but...

Mr. Peterson: (Inaudible) the same.

Ms. Belles: Oh yeah, yeah. The ones that are really old, 1822 I believe, that lay flat, those have been like that. It's the standing ones; if you look at the footstones and you look at the... and you look at the headstones, they're not in the same area. There's... it's like somebody re-put 'em in because they had taken up the concrete and they scooped them around, didn't know where to put them. Some were laying against... where they weren't. I've been... I've got a survey from 2006, 2010, and pictures from 2000, and the concrete was there till now. And there's no way in God's green earth that you could have gotten that concrete out of there. I'm not saying you did it. I'm just saying somebody did it. Got that concrete out that there, maybe a 3-foot bucket loader. I'm not talking about the big scooching... what is it, a bulldozer? I'm not talking about that. Somebody, whoever carried that concrete over to the pile, had to have had some of these headstones in it. In fact, on the way over, which I didn't move, I have a footstone that was busted, laying in the ground. I got a picture of it, I even got a GPS to the inch of where that piece is. It's busted into, not that...which is marble footstone that is halfway between the pile and the graveyard. And right in where the tracks are. Somebody had it in a bucket loader or something and it fell out when they were moving the concrete.

Mr. Jenkins: And it's still there?

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Ms. Belles: It's still there. I could take you there with flashlight tonight and true, I know exactly.

Mr. Peterson: Then you need to pick it up. I mean if...

Ms. Belles: Well I'm not allowed, I am not allowed to touch anything without okay with everybody or I would be in trouble. But I can tell you I got pictures of everything. So somebody came in with something and it is very obvious as they were getting the concrete out they had to. It was so thick, so touching the headstones that they had to have like knocked them over. There are two missing pieces of footstones, one is granite I believe and ones like sandstone, and they're missing. And as what you were saying trying to get a hold of Anita, I just saw Sunday that is first thing I knew about everything. So she's... and everybody blames everybody else, but she has been trying... she said none of this would've happened, I tried to get everybody together, nobody would get in contact. The usual stuff, nobody would call anybody nobody would get together. She said if we all could have sat... I'm sorry, I've lost my voice from yakking, but if everybody would have sat down at the table to begin with and she said the County, the developer, her and a couple of people, I don't know who all is involved. But if they would have done that, none of this would've happened. But it didn't happen, nobody would communicate. Everybody says...

Mr. Peterson: I gave her a bunch of phone calls.

Ms. Belles: I know, and she said she called you and see here we go. He said, she said. But you know it goes, unfortunately with the County, nobody gets back with anybody. And so here we are. Anita is at conference, she left yesterday morning. She said would you go in, they've got the info they need. Anything above my pay grade I'm not involved. I go to all the cemeteries and I've been too personally, in this county alone 450 cemeteries, not headstones and they're all documented are on 3rd floor of the Courthouse. And all our surveys, I've got 50-60 pictures of this cemetery because I do stone rubbings on some of them, the (inaudible). So what we personally want is what you just said, we just want to go through the pile. And I think when I first saw that now... I can't remember for sure because I wasn't paying that much attention, it was taller.

Mr. Peterson: The pile.

Ms. Belles: The pile. But tha... I could be wrong on that big time.

Ms. Brown: I agree with you.

Ms. Belles: You thought it was bigger?

Ms. Brown: Just in disclosure, this is the lady they ran to on the road on Sunday night.

Ms. Belles: And I found that so, as you walk, the grass is high, as you walk between all the cement that's in the pile, and there had to be more than that because there is so much in there, so thick. But I don't know. I don't know who to accuse, but I'm saying it was moved and if it wasn't moved recently and the pile wasn't there a while back. How did he get there? It had to have gotten there recently.

Mr. Peterson: Oh no, I'll give you pictures, three guys broken up with sledgehammers. It's not that thick. The concrete is still there, so you can see how thick it is. It's actually not concrete it's slurry.

Ms. Belles: Whatever it is.

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Dr. Larson: Okay.

Ms. Belles: My time's up by now, but I am just saying...

Mr. Peterson: There's just being difference.

Dr. Larson: I have questions for the...

Ms. Belles: Me?

Dr. Larson: Yes.

Ms. Belles: Oh sure.

Dr. Larson: Does anybody have any questions for the gentleman.

Ms. Brown: I have some questions.

Mr. Apicella: Yes, I have some.

Ms. Belles: Yes. Yes. Stay put, we're both getting it.

Ms. Brown: Well I am for the gentleman.

Ms. Belles: Okay, if I'm...

Dr. Larson: Okay, I think Steven (inaudible).

Mr. Apicella: I am going to go back through some of the ordinance requirements. So again, the perimeter of the cemetery shall be indicated on a site development plan and subdivision plan. So this is the subdivision plan, and I... would you agree that the inside box, I know it's kind of hard to see, that's the perimeter of the cemetery, the inside box on the site plan.

Mr. Peterson: Whatever, yeah. I'm going (inaudible) that from here.

Mr. Apicella: Well it's in the package. I mean your attorney has it. She can obviously show it to if she if need be. But again there's a box inside, that internal box is this the boundary of the actual cemetery, okay. Then it says a minimum 35-foot wide buffer area shall be established around the perimeter of the cemetery as delineated per subsections 2A. So that's the second box, okay, that's the bigger box.

Mr. Peterson: Okay.

Mr. Apicella: Okay? And then it says temporary fencing shall be installed around the perimeter of the cemetery and buffer area as indicated on the plan. And then there's a note on the site plan that says fence in accordance with Stafford County Zoning Ordinance Section 28-3(O). That's on the site plan.

Mr. Peterson: Two different fences, yes. That's the permanent fence that goes around the cemetery when all... everything's done. Okay? And the other 35-foot buffer fence that is a silt fence was asked for by the erosion control people, not by Zoning, because he wanted to protect the soil in the cemetery from running off. I go like, it's a 35-foot circle how much soil are you...

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Mr. Apicella: Okay, I'm gonna have to disagree with you. It's this temporary fencing shall be installed around the perimeter of the cemetery and buffer area. It says and, it doesn't say one or the other it says both.

Mr. Peterson: No, but on the site plan that's actually, I believe, bigger than 35 feet. If you look at the flight plan I think that's 60 feet and takes you all the way to the road edge.

Mr. Apicella: Well it's 35 feet from each one of the corners of this of the cemetery.

Mr. Peterson: Yes.

Mr. Apicella: I am just reading you what the code says and what's on the site plan, okay.

Mr. Peterson: But what I'm saying is that the 35 feet is where the silt fence is now. When you put the permanent fence in there it will be larger than that.

Mr. Apicella: I'm just trying to go to what the code says and what's on the site plan. That's all I'm trying to establish at this point time, respectfully. So if you just bear with me, okay. And the last thing I want to want to point out is, it says no grading shall occur inside the buffer and cemetery area. Grading shall not.... Well, again no grading shall occur inside the buffer and cemetery area. So I'm looking at this picture,

Mr. Peterson: And if somebody has hand written something, is considered grading? Because if that's the case...

Mr. Apicella: I'm looking at this picture would you say that the orange clay area is inside the cemetery perimeter? Not the boundary but the cemetery perimeter?

Mr. Peterson: I promised not to ask you any stupid questions if you don't ask me...

Mr. Apicella: I don't think it's a stupid question because it's inside... it's pretty close to me...

Mr. Peterson: Gravestones all around.

Mr. Apicella: I see a gravestone right there. It's pretty close to the edge of the boundary of the cemetery...

Mr. Peterson: But even inside the cemetery it's the same orange color.

Mr. Apicella: That's not what I'm getting to. I'm just saying is the orange area, would you say that's inside the cemetery perimeter?

Mr. Peterson: And the cemetery, the whole thing is all right?

Mr. Apicella: Sir. I see... I see a potential box, imaginary box like you were playing football and you're watching a Sunday night game and they were showing you where the 30 yard line is. Anyhow...

Mr. Peterson: You are correct.

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Mr. Apicella: I am getting to a point here, the orange area seems to be inside the cemetery perimeter. On this picture I see, and maybe you're your attorney can pull it up, its Attachment 4, page 19 of 58. I see what clearly looks like a heavy equipment tread inside the cemetery boundary. That's not a wheelbarrow.

Ms. Brown: *Inaudible, microphone not on.*

Mr. Apicella: It's clearly a piece of heavy equipment...

Dr. Larson: I'm sorry, could you tell us again what picture you're looking at.

Mr. Apicella: I'm looking at Attachment 4, page 19 of 58.

Dr. Larson: Okay, thank you.

Mr. Apicella: If you look to the right hand side, I mean it's the closest thing I can see in the picture.

Mr. Peterson: And that's in this package?

Mr. Apicella: In our package Attachment 4, page 19 of 58.

Mr. Peterson: I apologize (inaudible).

Mr. Foroughi: It might help if that could get put on the screen.

Mr. Apicella: I'm not sure how we do... I mean it's in the package so...

Mr. Foroughi: His is just not color. That's, I think it's all...

Mr. Peterson: The pages aren't numbered.

Mr. Foroughi: Right, yeah.

Mr. Apicella: You can have my copy.

Ms. Bertoldi: You can have mine.

Discussion from the audience, no microphone

Mr. Apicella: You look to the right hand side close to where the date is, 03/27/2019 and you can clearly, see in my opinion, a heavy equipment tread.

Mr. Peterson: (Inaudible) stand here and tell you, my company does not have a piece of equipment to its name. We don't own anything.

Mr. Apicella: So some nefarious person decided to drive a bulldozer around the cemetery. That's what you all are...

Mr. Peterson: Let me say this, it wouldn't be a bulldozer no matter what happens.

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Mr. Apicella: So nobody affiliated with your company, no direct staff, indirect staff, contractor, subcontractor would have had any reason to be on the parcel anywhere with a piece of heavy equipment in the last couple of months.

Mr. Peterson: That's correct.

Ms. Belles: (Inaudible).

Mr. Peterson: I am not saying they weren't, I'm just saying, certainly not in my direction and I don't know when it was done. If I had seen it I would have told them...

Mr. Apicella: But as the developer, aren't responsible for any activity that occurs on the site?

Mr. Peterson: I have no idea, no.

Mr. Apicella: No.

Mr. Peterson: If a guy gets his hand caught a piece of equipment that's not my fault. But I... we paid 3 off of the billing list that was supposed to do that all by hand, with sledgehammers and wheelbarrows. That's how they were...

Mr. Apicella: That may be how they were supposed to have done it. But you paid somebody to do some kind of work on the cemetery parcel.

Mr. Peterson: Yes I did.

Dr. Larson: In the interest of time, could we wind this up?

Mr. Apicella: I am done Mr. Chairman.

Dr. Larson: Okay. Any other questions for this witness? Quickie?

Ms. Brown: Mine are always quick. Why did you take up the concrete with the slurry? Why did you do that?

Mr. Peterson: Just because it was a concrete truck, when they clean their drum they spray water in it and then they dump the slurry out. And it's in that, you'll see it, it's in that concrete pile because you can't plant grass, you can't make anything neat, you can't maintain it with broken concrete on it.

Ms. Brown: Okay, good. The only reason I was... I was reading the section of code, 18.2-127, about what can and cannot be disturbed and touched. So, that's why I was asking. Okay, thanks. Done.

Dr. Larson: Okay, if there are no questions, more questions for this witness, I'd like to ask...

Ms. Belles: Me?

Dr. Larson: ... you, I forgot your name. I'm sorry. Could you restate your name again for the record?

Ms. Belles: Oh, I'm sorry.

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Dr. Larson: So they know who you are. State your name please.

Ms. Belles: Linda Belles. It's Linda.

Dr. Larson: Linda, okay Linda. My question is, you seem to be really familiar with not only this cemetery, but I think you do a lot of this. So you mentioned the cement layer around the cemetery which is consistent with the Wallace cemetery boundary investigation where it says the cemetery had been paved, parenthesis, overlaying in cement into which a bow and picket fence had been set along the outer perimeter. So, could you describe what that meant? Was there cement supporting the headstones?

Ms. Belles: They were, the headstones apparently, a course with their first and then somebody... I don't know how else it could be, and then somebody put cement in there, it however they did it. But every headsto... the entire area in 2000 and even up 2010 was... if you would just put grass there and it was real nice imagine cement there in place of it. Some of the stuff is that thick and it started eroding because it's the ground shifted and stuff started cracking, but not all of it but a good portion of it.

Dr. Larson: I think what I, at least I have seen in some of the refuse piles appear to be chunks of cement in the pile.

Ms. Belles: Okay,

Dr. Larson: I would guess.

Ms. Belles: Yeah, in 2000 that wrought iron fence was really nice but trees had knocked everything over and the fence was, some of it was up, some was laying down. But none of it was, you know, messed up, all twisted and stuff like that was very nice. It was like somebody would have a good time grabbing that and taking it to an antique place.

Dr. Larson: Do you have any idea when the cement may have been disturbed?

Ms. Belles: No. I know in 2010 it was fine. I mean it's still there. And after that I think I have some pictures of 2016, but I'm not positive on that.

Ms. Brown: Dean, in our report, the historical report, it says...

Dr. Larson: I just read it.

Ms. Brown: ... that it was there.

Dr. Larson: Yeah, I just read that part.

Ms. Brown: Oh, okay. Did you say you have pictures?

Ms. Belles: I have like that much.

Ms. Brown: How it looked? Did you bring them with you?

Ms. Belles: Oh yeah. They're not in order but I do have. And I just know that one so well because it was a farm, you know, an active farm, not cattle and hunters. And that was scary but there was no road

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leading to the cemetery in 2000. Everything was overgrown. There was an old little shanty house behind. And that went down, it was so bad.

Dr. Larson: Okay, let me let me interrupt you.

Ms. Belles: Okay.

Dr. Larson: Because we are running late. So my I guess the gist of my question is do you know what time period between this report which is 2016 and now when the cement may have been disturbed.

Ms. Belles: No, I would have no idea.

Dr. Larson: Okay, thank you. That was my question.

Ms. Belles: But it definite...

Ms. Brown: Are you part of the cemetery committee?

Ms. Belles: Yes.

Ms. Brown: Or were you? Okay, thank you.

Ms. Belles: Still am, that's why I'm here. Anita will be back on the 5th. But just one statement, what we really wanted, I don't know about this whatever they're going to after you guys, court thing. But really what we wanted was access to the cemetery and because now that they own, it we kind of have that permission unless your family then you don't have to get permission. We wanted to go up there have pictures, many pictures and diagrams of where each stone should be, where each footstone should be, what's missing, so when someone goes up and says it doesn't... it matches. No it doesn't, it didn't match when I saw you there. I don't know if you noticed but some of the footstones didn't belong with those headstones, where they did before.

Dr. Larson: Okay, so you're saying you have a record of what it should be.

Ms. Belles: Many.

Dr. Larson: And you're willing to help...

Ms. Belles: That's what we wanted to do. We wanted permission to go around and to the pile, in the pile because a lot of people look in there. And it doesn't look like anybody looked it it's got hard dirt growing and it just dumps. It doesn't look like... it looks like someone might have scanned over it and said, no I don't see anything. Well, if you don't know what you're looking for, you don't know what kind... if it's busted, you don't know what you're looking for.

Dr. Larson: Okay, thank you.

Ms. Belles: As the stone slinging halfway there.

Dr. Larson: Okay. That's good information.

Ms. Belles: Okay.

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Dr. Larson: Does anybody else, Adela?

Ms. Bertoldi: Yeah, I just want to

Ms. Belles: Be nice.

Ms. Bertoldi: Yeah, I'm nice. Are you still wanting to work with...

Ms. Belles: Absolutely.

Ms. Bertoldi: ...them? I mean do you think that this can be resolved...

Ms. Belles: Absolutely.

Ms. Bertoldi: ... and that everybody can walk away and...

Ms. Belles: Happy, yes. Because a delineation was done. So, nobody was on the outside of it. It's just whoever did that concrete screwed it up. I mean why would it not be in that... why would it be in that pile if it wasn't just done? That pile hasn't been forever. So it's been done. But if we can get stuff back and put it everything where it belongs and as far as that fence it's been so... you know, wrangled and missing. There's nothing can be done with that. But you know there's cheap, nice looking iron ones that are hollow and a sign. Even if we were just thinking it was...

Dr. Larson: Okay.

Ms. Belles: ... be a nice gesture....

Dr. Larson: I'm sorry...

Ms. Belles: ... if they'd fix the stones, that is what we were saying.

Dr. Larson: We need to get on with the hearing.

Ms. Belles: Oh good, because I got a headache.

Dr. Larson: I very much appreciate you... very much appreciate your testimony.

Ms. Belles: Any pictures you want Dana, any pictures I can show to you.

Dr. Larson: Thank you very much. Okay, we're still in the public hearing. Would anybody else like to speak in opposition to the... I guess it was in opposition. Sir.

Mr. Silleck: Opposition?

Dr. Larson: Okay, I think that's where we were.

Mr. Silleck: I hate to follow that. My name is Gordon Wallace Silleck and my family owned the cemetery. And I can corroborate everything Linda has said 100%. I retired down to Fredericksburg, I'll try to make this quick, and the first thing I want to do was to take care of the cemetery. And I contacted Anita Dodd and I said what do I have to do, what are the laws and all this. And at that point it was

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overgrown, there was the concrete that was broken and looked very heavy to me. And there were three stones that were on the ground at that time. And I told a friend of mine I was going to help restore it, and he said oh they're doing work on it. Are you doing the work with them? And I said what. I'm thinking of anybody is doing work. And I went up there and saw that it had been totally graded off. Everything was gone and there was a large debris pile which is about half the size right now. And a construction worker, I was with on one of the visits, said there is definitely marble pieces and granite pieces in that pile. He knows the difference between concrete and stuff that would be in the cemetery. I have pictures of those pieces of marble and in the field and I did notice that the footstones were in the wrong places and it looked to me like the entire thing... I don't know how you get around those stones with the concrete and all that. And I have to say this is hearsay now, I was with somebody the very first time when I saw this and he said he saw people moving the stones into a pile. And that was just outrageous to me. I didn't get his name unfortunately, so I can't corroborate but that's... it makes sense when you think about everything that was done to it.

Dr. Larson: You said that when you... at one point you said everything was gone. Does that include all the grave markers and everything?

Mr. Silleck: No, the stones were there.

Dr. Larson: Stones were still there.

Mr. Silleck: Somebody told me that they had moved them off in order to do that grading.

Dr. Larson: And well it's...

Mr. Silleck: But its hearsay, I can't...

Dr. Larson: Okay, in what timeframe was that?

Mr. Silleck: I would say last November.

Dr. Larson: Okay, did you... when you when you were there last November.

Mr. Silleck: Yeah.

Dr. Larson: And what you saw. Did you see this cement still laying there or was it graded off at that point into the pile.

Mr. Silleck: It was in the pile then.

Dr. Larson: Okay.

Mr. Silleck: Yes, yes. There was nothing but the headstones and the footstones there. But you could tell by the red dirt that, if you know anything about Virginia dirt, you got to dig down a certain number of inches to get that red dirt. And it was totally red. They had gone... and how do you do that with stones? I don't know if that's... it doesn't make sense to me.

Dr. Larson: Thank you. Any other questions for this witness? Thank you sir.

Mr. Silleck: Okay.

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Dr. Larson: Alright. I don't know if I missed anybody, but does anybody else want to speak on this topic? That hasn't spoken yet. Okay, thank you. Okay. Does the applicant wish to respond to anything said by the opposition?

Ms. Karnes: (Inaudible) just leave. Mr. Chairman, I'll make this short and sweet. I think the issue is whether the applicant, the developer has intentionally and willfully disturbed, damaged and I think he's shown a willingness to work with these people. And although, I got to tell you I'm I admit that this is very unusual. I think that fact finding and fairness would allow all these people to meet and make recommendations. And see what the developer is willing to fund. And that is going to be more productive than issuing a citation at this point.

Dr. Larson: Any questions for this witness? Thank you.

Ms. Karnes: Thank you.

Dr. Larson: I am going to close the public hearing and bring it back to the Board.

Mr. Apicella: Mr. Chairman, may I ask some questions of staff?

Dr. Larson: Go ahead.

Mr. Apicella: On page 2 of the Notice of Violation, it identifies what the County believes are corrective measures. Can you go through that list and from your vantage point indicate which ones you think are still operative? Yes, it's Attachment 1, page 26 of 27.

Ms. Blackburn: Okay, I am on that page...

Mr. Apicella: Yeah, I'm asking which ones you think still need to be taken care of.

Ms. Blackburn: Well, if you go back to the staff report, there was a request for the archeological delineation and that was found.

Mr. Apicella: So that one's been taken care of.

Ms. Blackburn: Then it was to ensure all headstones and footstones are in the original location.

Mr. Apicella: And that's not been from your vantage point.

Ms. Blackburn: Yes, that statement was that we do not believe that that's where they're supposed to be. Then it was to go through the debris pile and obtain missing pieces.

Mr. Apicella: So, you think that still needs to be done?

Ms. Blackburn: Yes.

Mr. Apicella: Okay.

Ms. Blackburn: And repair all broken head or footstones.

Mr. Apicella: Still needs to be done.

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- Briefing on Changes to Home Business/Home Occupation

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 10:47 p.m.