Board of Adjustment
Minutes
June 20, 2016

Members Present	Alternate Members Present	Alternate & Members Absent
John Kurek, Chairman	Cynthia Chamblee	Judy French
John Lotspih		David Cox
Gary Plough		
Vada Palma		

Staff Present
Michelle Shreve, Planner
Derek Taylor, Town Attorney
Kim Tynes, Secretary

Others Present
Zack Taylor, Applicant
John King, Applicant Attorney
David Walker, Town Manager
Arrington Moore, Manager's Assistant
Donna Turner, Inspector
John Harrell, Inspector

CALL TO ORDER

The Board of Adjustment for the Town of Atlantic Beach is now called to order at 7:00 p.m. on Monday, June 20, 2016. I'd like to introduce the members of the Board who are present tonight to consider the requests before the Board: Gary Plough, John Lotspih, Vada Palma, and myself, John Kurek, Chairman. Alternate member Cynthia Chamblee will move up to the panel, sitting in for David Cox.

Also present tonight are Michelle Shreve, Planning Director, Derek Taylor, Town Attorney, Kimberly Tynes, Secretary to the Board of Adjustment, Kevin Miller of Future Homes, applicant, and Zachary Taylor, appellant. Others that may be present will be asked to introduce themselves when the time is appropriate.

APPROVAL OF MINUTES

John Kurek made a motion to approve the minutes from the November 16, 2015 Board of Adjustment meeting. Motion by John Lotsiph and was seconded by Gary Plough and the vote was unanimous. Motion carried.

OPENING REMARKS: VAR-16-01

The North Carolina State Supreme Court requires this Board base its decisions only on testimony given under oath. Any other comments can only be used as arguments and not as evidence in the cases being presented tonight. This is a quasi-judicial hearing and as such will be conducted according to special rules we must follow. This citizen volunteer Board cannot make ordinances or change them, but can only act on the ordinances that have been voted on and approved by the Town Council and interpret them based on evidence presented for each case.

We will now hear a request by Kevin Miller of Future Homes for a variance on setbacks for a septic system on 406 Tryon Street. The hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards.

CALL FOR DISCLOSURE OF CONFLICTS:

Before opening the hearing I would like to give Board members a chance to reveal possible conflicts and to withdraw from this proceeding if necessary. A Board Member is considered to have a conflict if any of the following are true:

1. He has a financial interest in the outcome of the case. A Board member shall have a "financial interest" in a case when a decision in the case will:
    a. cause him or her or their spouse to experience a direct financial benefit or loss, or
    b. cause a business in which he or she or their spouse owns any interest to experience a direct financial benefit or loss; or
2. A Board Member will have a conflict if he or she has a personal interest or close family, business or associational tie with an affected person. A Board member shall have "personal interest" in a case when it involves a member of his immediate family (i.e. parent, spouse or child); or
3. Finally, a Board Member will have a conflict if he or she has a fixed opinion on this case prior to its hearing which is not susceptible to change.

Chairman: Does anyone have a financial interest in the outcome of this case? Unanimous no from Board

Chairman: Does anyone have a conflict due to a personal, family, business, or associational tie with an affected person? Unanimous no from Board

Chairman: Does anyone have a have a fixed opinion about this case which is not susceptible to change? Unanimous no from Board.

Chairman: "Have any Board Members had any conversations or received any correspondence regarding this matter prior to this hearing? If so, please disclose those communications now." Unanimous no form Board.

Chairman: "Are there any Board members who may have any information or special knowledge about this case that may not come out at the hearing tonight? If so, please describe that information for the record so that interested parties will know about that information or special knowledge and can respond." Unanimous no form Board.

If not, swear in witnesses.

Derek Taylor asks is applicant has problem with these five members of the Board standing in for the hearing of this matter. Applicant does not.

SWEARING IN:
Chairman: "All persons who wish to testify in this case should now step forward and be sworn in. After swearing you in, we will ask that you state your name for the record and then you may return to your seat until you are called on to speak."

Chairman: "Do you solemnly swear or affirm that the testimony that you are about to give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?" Both stated I do.

- Kevin Miller, Agent Future Homes – 205 Gemini Court, Cape Carteret, NC 28504
- Billy Whitford – 225 Vance Street/PO Box 438, Vanceboro, NC 28586 .

NEW BUSINESS

DESCRIPTION OF PROCEEDING:

Chairman: "I now open the hearing of item "Variance 16-01." In this hearing, we will first hear from the Planning Staff, and then from the applicant, and then from other sworn witnesses that may be for or against the application. The Planning Staff, applicant, and other sworn witnesses shall give testimony which shall include those requirements listed in the Variance Evaluation form provided to the applicant prior to this hearing and which is in the agenda packet of each Board member. A copy of that evaluation form is available in the back of the room for all witnesses to review prior to their testimony. Parties will be provided an opportunity to ask questions of witnesses after the witness testifies. If you want the Board to receive into evidence such items as reports, maps, writings, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. Attorneys should not give factual testimony unless they are sworn in, but they may summarize their client's anticipated testimony and case. Before you begin your testimony, a witness must clearly identify yourself for the record."

"Witnesses are cautioned that this Board may only consider "competent" evidence. The term "competent evidence," means evidence that appears to be sufficiently trustworthy for us to rely upon it. We will not consider hearsay evidence regarding important facts. Hearsay is repeating a statement, written or oral, made by someone that is not here tonight for us to ask questions of. Opinion testimony of non-expert witnesses on matters requiring expertise is not competent evidence. Examples of evidence that must be presented by an expert includes testimony regarding how the use of property in a particular way would affect the value of other property and how an increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety. Unless this Board makes a determination on the record that testimony or other evidence is not competent for our consideration, if an opposing party fails to object to submission of any testimony or other evidence, the Board may accept it as competent evidence and consider it in its determinations. If an opposing party objects, the Board will act upon the objection by majority vote."

PRESENTATION OF APPLICATION BY STAFF

Chairman: "We will begin this variance hearing by calling upon the Town's Planning Director, Michelle Shreve, to further introduce the matter."

The first case I am presenting tonight is Variance #16-01.

James and Mollie Brown of Indiana have worked with Future Homes out of Hampstead to develop a three bedroom, three bathroom, three story single-family residence at 406 Tryon Street, in the Money Island Subdivision. The Money Island Subdivision is in the Resort Mixed Use zoning district, which allows development setback five feet from the side property lines, ten feet from the rear property lines, and the front setback is the average of the setbacks of the two adjacent structures, which in this case is twenty feet. This lot is fifty feet wide by 100 feet long, which is considered conforming under current zoning ordinances.

The full set of plans came to the Planning and Inspections Department for review on April 28, 2016. While under review for zoning compliance, it became evident that the septic infiltration field was planned for installation in the rear setback. The septic field is approximately fifteen feet wide by approximately thirty-five feet long. Five feet of the width of the field exists in the rear setback, which is not compliant with Section 2.25(B) of the UDO: "Encroachment Into Setbacks. No structure (except fences) or any part of a septic system shall be allowed within any setback area, except in encroachment areas of public rights-of-way approved and recorded in accordance with Section A. Setback lines shall be measured from the owner's property lines and not from adjoining easement lines"

The Carteret County Health Department, which regulates the septic systems in Atlantic Beach, issued a septic permit to the property owners based on their proposed plans. The Health Department requires five feet of separation between any part of a septic system and development or property lines. The proposed development at 406 Tryon Street follows this requirement.

I would be happy to answer any questions that the Board may have for me at this time.

Chairman: "Are there any other questions for Michelle from the Board.

John Lotsiph: Is drainfield going to back of lot line, not toward house?

Shreve: That is correct. I created this this kind of doodle on top of the proposed site plan. The green area is the septic infiltration field. It is underground completely and it is the dripfield that releases water from septic system after it has been treated.

Lotsiph: Without the color on the paper we have it's hard to tell.

Shreve: Red line is the maximum building line which is setbacks.

Chairman: Any questions from the Town Attorney?

Derek Taylor: Maybe for applicant, does the Town want to address each one of the criteria now or later?

Shreve: I submitted report to the Board of Adjustment in the Agenda Packet. So within the report I go over it, I personally sent out notice and posted the property with procedural requirements from Section 3 of the UDO. Practical difficulties are unnecessary hardships regarding this variance. The ordinance disallows any part of the septic system to be installed within the setbacks of the property but without an approved septic system, this property cannot be developed. This variance is in harmony with the general purposes and intent of the ordinance. The Planning and Inspections Department allows for an engineered stormwater infiltration system also underground to exist within the setbacks. It would be practical to allow the septic infiltration field to be within the setback as well.

In complying strictly with the provisions of the Ordinance, the applicant will not be able to build a single family home. First step for most development within Atlantic Beach is authorization from the Health Department for wastewater system use or construction. This hardship is suffered by the applicant rather than by neighbors in the general public because the septic system only serves this one property and the development on it.

The hardship relates to the applicants land rather than personal circumstances because the applicant has no impact on ordinances regarding setbacks. This hardship is unique being that the parameters of the development of this lot including the 20' front setback, the septic system can only be located in the area approved by the Health Department. The hardship is not the result of the applicants own actions and staff is unaware of any actions the applicant could have taken to contribute to this unique situation.

If granted, this variance will not result in non-conformity on the property. I ask that my report be put into evidence.

There were no objections by the board.

Derek Taylor: Now is a good time to ask questions of the Town.

Lotsiph: Area for run-off is due to the size of the house and where located on map?

Shreve: Yes, it's in your agenda packet. The trenches for the stormwater go along the sides of the house to the east and west of the house and it does encroach the setback.

Plough: Have you received letters for or against from any owners?

Shreve: No sir

PRESENTATION OF APPLICATION BY APPLICANT
HEARING FROM THOSE IN FAVOR OF THE APPLICATION

Chairman: "We will now hear from the applicant and other proponents of the request. The applicant has the initial burden of proving every item on the variance evaluation provided to him by competent, material, and substantial evidence, and the Board will review such evidence in its deliberations and determination following all testimony. I ask the applicant to please be sure to offer evidence on each and every item on the list. Does the applicant have a copy of the list?" Applicant responded yes.

"If there are attorneys or other representatives who will give a general summary of the client's position, we'd like you to go first."

Chairman: "Are there any materials you want us to consider as evidence supporting your application? There were none.

Kevin Miller, Future Homes, General Contractor and appointed agent for property owners Mr. and Mrs. Brown. You should have a copy of the survey and septic permit and everything with package as far as evidence showing we meet all requirements to receive a variance. Obviously due to the size of the property the first thing to do is obtain septic permit and Environmental Health determines location and size of system. In order to meet the State enforced setback requirements, we went forward in designing the home that would fit the small amount of area to meet guidelines. Home was reduced to minimal usable size allowed on this property. Please note all of the home structure abides by all setback requirements. Hardship is suffered by these people because each septic system is different for each piece of property and they must also maintain a repair area on property – all must be met to obtain septic permit, in order to build home. Not having this variance will make this property unusable. Obviously this hardship relates to the land because of environmental health issues that deal with the land and it is not a result of the applicant's actions.

Chairman: "Are there any other questions from the Board?

Lotsiph: Why not design home to fit within this variance?

Miller: We did contact Town asking if any part of septic be in the setback and Jessica Fiester stated yes, the septic cannot go in the right-of-way, however, a portion of it can go in set back if necessary. Septic set back is dictated by Health Department so front yard could be available for this. Actual footprint of home is 42'x32', which is a pretty small footprint. Not sure how to build it any smaller than it is now. Homeowners are already $7-$8,000 into this project.

Shreve: Not aware of email from Jessica, I am going by the books so I held him to same ordinances I have held everyone to since I got here. I am not sure if Jessica remembered that ordinance at the time she emailed him.

Miller: Please note in typical fashion, environmental health determines the setbacks, to my knowledge this is the only municipality that requires a more stringent setback on septic systems that what state requires.

There were no other questions from the board.

Chairman: Any questions from the Town Attorney?

Derek Taylor: On screen is the sketch plan that was approved by the Health Dept. and it shows 5' from porch and your survey doesn't show how far it is from porch to septic tank. Is that truly 5'?

Miller: Actually 6'

Derek Taylor: Presumably you could bring it back one foot.

Miller: Yes

Vada Palma: Can you reclaim the 2' the neighbor behind you has? Appears Whitford is encroaching on yours, can you get him to move his storage building off your property and have more footage.

Miller: That would not change septic location.

Lotsiph: Can you move drain field closer to under deck, rather than toward the back?

Miller: No part of the home can be closer than 5' to any part of the septic system and we actually have one foot more than what is required as you see there. We are at 6'.

Derek Taylor: The porch in its current configuration has I presume pilings going into the ground, something in the permit said if you canter lever you can move closer to house. Does that make sense?

Miller: You can canter lever by 2' with new engineer plans and cost to customer and depending on soil and setbacks.

Kurek: Any questions by opposing parties?" None

Chairman: "Are there any others that wish to be heard in favor of the application."

Billy Whitford: I see no problem with the house and my question is will this set back in any way infringe my rights and benefits as a property owner? If I want to build in 5 years, will I be able to put a septic system in my setback?

Shreve: The septic infiltration field can only be as close as 5' from anything so even if he wants to put up a fence, he has to be careful where the system is. So you can build up to your property line, you are safe.

Derek Taylor: If you go thru this process, you may be able to or council may make changes to ordinances. It depends on what the rules are at that time.

CLOSE THE HEARING / DECISION

Chairman: "Does the Staff have a recommendation for any conditions to be associated with the variance if approved?"

Shreve: I would assume the varying the setbacks by 5' only for the septic and infiltration field, not saying they have a 5' rear setback now, but only allowing that one thing to be in that setback.

Chairman: "Are there any other relevant comments or questions from the parties, witnesses, Town Staff, Town Attorney or the Board?"

Chairman: "If there are no other questions or comments from the Board, applicant, or other witnesses at this time, I hereby close the public hearing in this matter *(gavel)* and we will go through the Variance Evaluation to determine what evidence has been presented relevant to the granting or denial of the Variance. For each question or item required, we will discuss and identify for the record the specific evidence found or not found in regard to each requirement that must be met."

Chairman: The following are on the Variance Evaluation Form used for all Variance Applications. Each of these requirements or questions must be met or answered based on the evidence and testimony heard tonight:

Did the applicant gave proper notice to adjoining property owners of the holding of the public hearing to consider the variance? Yes, unanimously

Does the variance result in the extension of a nonconforming situation in, or authorize the initiation of, a nonconforming use of land. Yes, unanimously

Would unnecessary hardship result from the strict application of the ordinance? Yes, unanimously

Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? Yes, unanimously

Does the hardship result from personal circumstances, and not from hardships that are resulting from conditions common to the neighborhood or the general public? No, unanimously

Does the hardship result from actions taken by the applicant or the property owner. No, unanimously

Is the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved? Yes, unanimously

"North Carolina General Statutes require that the applicant receive an affirmative 4/5 vote of this Board in order to receive approval of any variance application. In order for the Board to approve the requested Variance, the Board has to have found that each of the requirements for a Variance have been meet. In this case, the Board has found that all of the requirements have been met by the applicant.

Since the Board has, during its deliberations, determined that the applicant has met its burden to prove all of the requirements for granting of the requested variance, I will entertain a motion to grant the variance request for new home to be constructed at 406 Tryon Street with part of a septic infiltration field within the setback as precluded by Section 2.25(B) of the Atlantic Beach UDO, including any reasonable conditions that the Board may wish to include.

"All in favor of the motion please raise your hand and hold it there for the Secretary to record the vote." Vada Palma and second Gary Plough. Vote was unanimous

"All those opposed, please do the same." None
"The vote is 5 for and 0 against.
"The applicant will be provided a written order within ten (10) days reflecting the determination and findings of this Board. Thank You."

OPENING REMARKS: APP-16-01

Chairman: "We will now hear Zachary Taylor's appeal of the Planning and inspections Department's interpretation of the Unified Development Ordinance by Zachary Taylor regarding development on his properties at 604, 608, and 612 West Fort Macon Road. The hearing on this matter is quasi-judicial in nature and will be conducted in accordance with special due process safeguards that have been described in regards to the previous matter."

Derek Taylor: Just for the Board, you need to understand my role tonight, the Town wants me to sit with this Board so I am here to advise you as to how you are supposed to do your job and I am the Board attorney and not the Town atty. All the evidence that will be presented supporting the Town tonight will be presented by the Town with the Planning Inspections Departments witnesses they choose. I will not be able to answer a question like well Derek what does that statute say, that's your job tonight. You will hear from what the Town has to say, you will from what Mr. Taylor's attorney has to say and you will have to make the decision on your own because I cannot answer that question.

Plough: Why should we not have an atty representing us?

D. Taylor: The Town has decided that paying two attorney's in this particular matter would not be economically reasonable, at least that is what I believe to be the case but never-the-less that was discussed prior and I believe there is a great deal of faith in the staff of the Town to present a case without a mouthpiece. If everybody understands that and if I find myself dodging the question I will tell you that I can't really answer that because that is a decision that you ultimately need to make.

CALL FOR DISCLOSURE OF CONFLICTS:

Chairman: "Before opening the hearing I would like to give Board members a chance to reveal possible conflicts and to withdraw from this proceeding if necessary. A Board Member is considered to have a conflict if any of the following are true:

He has a financial interest in the outcome of the case. A Board member shall have a "financial interest" in a case when a decision in the case will:
1) cause him or her or their spouse to experience a direct financial benefit or loss, or
2) cause a business in which he or she or their spouse owns any interest to experience a direct financial benefit or loss; or
Does anyone have a financial interest in the outcome of this case? Unanimous no.

A Board Member will have a conflict if he or she has a personal interest or close family, business or associational tie with an affected person. A Board member shall have "personal interest" in a case when it involves a member of his immediate family (i.e. parent, spouse or child);
Does anyone have a conflict due to a personal, family, business, or associational tie with an affected person? Unanimous no.

Finally, a Board Member will have a conflict if he or she has a fixed opinion on this case prior to its hearing which is not susceptible to change.

Does anyone have a have a fixed opinion about this case which is not susceptible to change? Unanimous no.

"Have any Board Members had any conversations or received any correspondence regarding this matter prior to this hearing? If so, please disclose those communications now." No from all except Kurek.

Kurek: I had one, I emailed Jessica to see if, been on this board so long, I couldn't remember, I thought we might have heard this before the Board of Adjustment before and she replied no.

D. Taylor: Any objection to that communication?

King: No

Chairman: "Are there any Board members who may have any information or special knowledge about this case that may not come out at the hearing tonight? If so, please describe that information for the record so that interested parties will know about that information or special knowledge and can respond." Unanimous no.

"In spite of prior communications you have had or special knowledge you may have, do you think you can rule fairly and impartially based only on the testimony and evidence presented here tonight in regards to this case?" Unanimous yes.

"All persons who wish to testify in this case should now step forward and be sworn in. After swearing you in, we will ask that you state your name for the record and then you may return to your seat until you are called on to speak."

Chairman: "Do you solemnly swear or affirm that the testimony that you are about to give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?" Witnesses include Kim Tynes, Secretary to the Board of Adjustment.

D.Taylor: Mr. King, any objections to the panel tonight?

King: No, but for clarification for the record, I assume the panel received a packet from Ms. Shreve ahead of this hearing. Not that I care that you have that, just the fact there was some documentation presented prior to this hearing.

D. Taylor: Once the Town has made their introductory remarks and position last that will be part of the record. Although it probably is already.

Tynes: Who is the person in the t-shirt?

D. Taylor: For our record purposes, we know everyone except you.

Willis: Russell Willis, 409 Merril Drive, Newport

Lotsiph: Question – inaudible

D. Taylor: Lawyer is not making any factual testimony. He will summarize and make arguments but presents no factual evidence and does not have to be sworn in.

- Inaudible –

D. Taylor: If he crosses the line, we'll get him to swear in.

DESCRIPTION OF PROCEEDING:

This is an appeal of a decision of the Planning and Building Inspection Department. If an appellant does not agree with a decision of the department, he or she may appeal such a decision to the BOA in the form of a request for Administrative Review. The BOA is required to interpret and apply what the City Council has written in its ordinances and apply those ordinances and State Statutes to the case. The BOA may not rewrite or modify the ordinances to fit their view of what they should be. The BOA must look to the intended meaning and intent of the ordinances involved. The questions to be answered are:

- What is the plain meaning of the words contained in the ordinance?
- What did the Council have in mind when they passed this ordinance?
- Having determined the meaning of the ordinance, do the facts presented by the applicant meet the ordinance requirements or not?
- And therefore, did the planning and inspection department get it right, part right, or wrong?

The Board may accept testimony from the Town, the appellant and from those that may have standing to present their opinions regarding the meaning and purposes of the relevant ordinances and statutes.

After determining the meaning and intent of the relevant ordinances and statutes, the Board of Adjustment will apply the facts of the case to those ordinances and statutes. For this purpose, the Board will hear testimony and consider evidence presented through a quasi-judicial process. The BOA must make its decision based on the facts presented at the hearing and the arguments presented. Facts are presented in the form of actual written or hard copy evidence and/or sworn testimony. Only "competent, material and substantial" evidence should be allowed and considered. The Board should not allow someone to testify as to what some other person said; this is hearsay.

The BOA's decision must provide for one or more of the following:

- It may uphold the official's determination (in part or in whole), or
- It may overturn the official's determination,
- It may modify the official's determination.

The BOA will make findings of fact that support its determination which will be recorded in the record of this hearing. For example:

- We interpret the applicable ordinance or statute to require an applicant to do or not to do.
- The Town's Official has shown (or has not shown) that the Appellant has failed to meet the ordinance or statute because of the evidence presented.
- The Appellant has shown (or not shown) that he or she has met the requirements of the ordinance because -

_____.

"With this background, I hereby open the hearing of item Appeal Number 16-01 *(gavel)*.

In this hearing, we will first hear from the Planning Staff who have the initial burden of showing why their decision should be upheld, then from the Appellant to show why the staff made an erroneous decision, and then from other sworn witnesses that may offer testimony to be considered by the Board. Parties will be provided an opportunity to ask questions of witnesses after the witness testifies. If you want the Board to see written evidence, such as reports, maps, cases, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. Attorneys should not give factual testimony unless they are sworn in, but they may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record."

Witnesses, please be advised that this Board may only consider competent evidence. The term "competent evidence," means evidence that appears to be sufficiently trustworthy for us to rely upon it. We will not consider hearsay evidence regarding important facts to be competent evidence. Hearsay is repeating a statement, written or oral, made by someone that is not here tonight for us to ask questions of. Opinion testimony of non-expert witnesses on matters requiring expertise is not competent evidence. Unless this Board makes a determination on the record that testimony or other evidence is not competent for our consideration, if an opposing party fails to object to submission of any testimony or other evidence, the Board may accept it as competent evidence and consider it in its determinations. If an opposing party objects, the Board will act upon the objection by majority vote."

PRESENTATION OF APPEAL BY STAFF

Chairman: "We will begin this hearing by calling upon the Town's Planning Director, Michelle Shreve, to provide the Town's position regarding the relevant statutes and ordinances, the Planning and Inspections Department's interpretations of those statutes and ordinance, and then the facts they considered when making their determination

that is being appealed. Once her presentation is completed, she may call any witnesses she may wish to testify regarding this matter. The Appellant may ask questions of the Planning Director and any witness she may call after they have completed their testimony."

Shreve: My second presentation tonight is regarding Appeal #16-01. I am giving this presentation as the UDO Administrator as well as representation for the Planning and Inspections Department.
The request for Administrative Review by Zachary Taylor and his attorney, John King, is in appeal of the decision of the Planning and Inspections Department made on March 29, 2016. Several years of interactions have transpired to lead up to this decision, so I will do my best to describe the facts in chronological order.

The UDO Committee met throughout 2008 to create the Unified Development Ordinance, or UDO, and the rezoning of the entire Town. The Planning Board reviewed the UDO and new zoning map and unanimously recommended both to the Town Council on February 9th, 2009. Following several special meetings, work sessions, and regular meetings with public hearings, the Town Council unanimously approved the implementation of the Unified Development Ordinances and new zoning map on August 24th, 2009. Projects underway could be completed as originally permitted, but all new development would be made to comply with the new ordinances and zoning designations.

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In 2009, Zack Taylor, Eugene Anthony, and John Taylor, Zack's son, owned the three properties seen on the screen, and Zack acted as the primary agent on with development initiatives. These three lots are 604, 608 and 612 West Fort Macon Road. The lots are currently owned by East Bay Farms, LLC and Kershaw Investments, LLC. Mr. Taylor is an authorized agent on behalf of the ownership of these three lots.

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These three properties were previously located in the Resort Residential zoning district and the proposed zoning map located them in the Conservation district, based on identification as conservation area in the 2008 Land Use Plan. Mr. Taylor found out that the zoning maps and ordinances would be changing, and that his plans to develop single-family homes on those lots would require a Conditional Use Permit under the new zoning designation and ordinances. In effort to retain the use by-right, he submitted plans to construct three single-family homes and was issued permits for these projects on August 12th, 2009, two weeks before the UDO and new zoning map were put into effect by Council.

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Once a permit is issued, work must commence and be inspected within six months. Following an inspection, that permit is valid for twelve more months. Due to the effects of the economic recession that began in 2008, the North Carolina State Legislature created the Permit Extension Act (PEA), and it became effective on August 4, 2009. This PEA held the timeline of Mr. Taylor's permits at a standstill, rather than expiring after six months. The 2010 PEA amendment extended this period to include 2011 as well. These two pieces of legislation afforded several years of inactivity on the permits, and the permits were subsequently extended until August 12th, 2012.

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On June 14th, 2012, sixty days before the original permits expired, pilings were inspected for all three structures. On June 21st, 2013, underground plumbing was inspected for all three structures. On June 18th, 2014, a T-pole to serve the three structures was inspected. On July 1st, 2014, partial framing on the pilings was inspected for all three structures. On July 1st, 2015, the final trade of the three sets of original permits expired, as no inspections were completed in order to lengthen the validity for another year.
On June 26th, 2015, three new permits were issued to install above-ground sewer pipes from the pilings to the manhole on Needle Rush Drive. This project was permitted separately from the plumbing of the original permits, which allowed for plumbing for the single-family homes. On July 2nd, 2015, this project passed final inspections, and as such the scope of work was completed and the permits were closed. These new plumbing permits did not lengthen the validity of the original permits.

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On March 29th, 2016, the Planning and Inspections Department served notice to Mr. Taylor and the owners of the three properties that the permits were expired and that Mr. Taylor would have to come to the Board of Adjustment either for a Conditional Use Permit or to appeal that decision. The Planning and Inspections Department serves as an administrative decision-making body, as we implement the codes and ordinances that are advised upon by the Planning Board, laid out by the Town Council, and interpreted by the Board of Adjustment. We are here tonight in

an Administrative Review of the Planning and Inspections Department's enforcement of the codes and ordinances that are the basis of the Department.

Mr. Chairman, I would like to submit all of my reports, findings, and presentations to evidence for this case.

D.Tayor: Including the packet that was provided to the board members previously?

Shreve: Yes sir, including the agenda packet.

D. Taylor: Any objections?

King: Yes, at this point I would object, I don't know this witness has first-hand knowledge of the things she has testified to or with. I don't know who prepared that summary and I would like to (inaudible) the witness regarding those matters at the appropriate time.

D. Taylor: Is the basis of what you have provided in your summary contained within the packet? As with permits, timelines and everything else, is there documentation in the packet to support what you (inaudible)

Shreve: Yes. All of the timelines and everything are based on documentation that I have, I wasn't there for anything so all I have is documentation.

D.Taylor: This is getting technical but we are talking to an attorney so I have to get a little technical so – presuming that you are talking about your testimony is based on business records that are kept in the normal course with the Town.

Shreve: Yes sir.

D.Taylor: I'm sorry to do the lawyering process, you are still are going to have your opportunity to cross examination, that was just purely for the record.

King: I understand.

Chairman: "Are there any other questions for Michelle from the Board?

D. Taylor: Do you understand what she said? The timelines, what happened, how we got here, what they did.

Chairman: I have a general question. What does a building permit constitute? Why is there a plumbing separate and electrical separate, why aren't they all in the building permit?

Shreve: Not sure I understand the question.

D. Taylor: Well if we are saying the building permit expired yet we approved a plumbing permit which extended the building permit then we, the Town, said oh we've made a mistake, the plumbing permit, even though you are working on the house doesn't extend the building permit. Well what about the electrical permit, why aren't they all listed under a building permit? I just don't understand that part.

Shreve: I'd like to call the boards attention to this document which is a summary of the permits that were given and when permission to build via permit is given, there are several different benchmarks that are hit, there is electrical, plumbing, mechanical, structural and they are separate in permits because they are different trades because they are different trades, there are different types of people that can do those works, there are different inspections.

D.Taylor: John, do you know where we are, the document we are talking about?

Kurek: Yes

Inaudible chatter –

Shreve: Yes, it's one of the first documents.

Kurek: Still not clear as to what the building permit does.

Inaudible chatter

Kurek: Just not understanding why the plumbing, mechanical, electrical aren't in with the building permit.

Shreve: If I may ask for the building inspector to explain that a little bit better, she can explain the trades a little bit better than I can.

Turner: Town of Atlantic Beach Inspector. The permits were issued at separate times most of the time because these trades start at different times. The building permit starts with the pilings then framing, if the electrical permit was at the same time, which it may have been, then if this does not go on the time line like he is going on then their permit starts again at a timeline of six months. If they don't start within six months then those permits will be expired. That's why we go back at different times, we start with the building permit, then when it's time for plumbing, we get a plumbing permit and electrical, get an electrical permit. If you know how long the process is going to take, then you can get a blanket permit but the timeline on this apparently he knew is going to take a long time because he had some initiated time to finish it any point. So that's why a lot of people don't get all permits at one time simply because of the timeline of six months. The building takes quite a long time before you get to the trades, plumbing, electrical, insulation, mechanical and such and such are all on a timeline.

Kurek: So the building permit comes first, then basically saying go ahead and start the process and these others come in along after.

Turner: Right, yes.

D. Taylor: I do not want to create greater confusion but I believe it will interjected at some point, is there another permit, a zoning permit which was issued.

Turner: Yes there is.

D.Taylor: Is building and zoning permit done at same time or different times?

Turner: They can get the zoning permit at any time but before we can issue a building permit we have to have that zoning permit.

D.Taylor: Just wanted to throw another permit in the mix so you would have more fun.

Kurek: inaudible

D. Taylor: It's a little out of order but Donna, while you are there are there any questions from Mr. King?

King: I would prefer to let Ms. Shreve finish and then try to keep it together otherwise I think we would be flipping back and forth and I think that would add confusion to the process perhaps.

D. Taylor: That would be fine.

Kurek: Any other questions for Michelle?

Kurek: Any questions by the applicant?

King: Yes, thank you Mr. Chairman. Ms. Shreve, you have identified that chart that you just showed, that showed 3 different permits there.

Shreve: Yes sir

King: Is that a chart that was prepared for this hearing?

Shreve: This chart has been prepared for this issue specifically and was used for this hearing.

King: So that is not a chart that is normally kept in your business records in every building case.

Shreve: No sir

King: It's not part of the normal building process to have this part of your files.

Shreve: No sir, this issue required a little bit of extra documentation.

King: Ok, did you prepare this?

Shreve: No sir.

King: Did you prepare the summary you read?

Shreve: Yes sir

King: Did you receive any assistance in preparing that summary?

Shreve: No sir

King: Who prepared this chart?

Shreve: Kim Tynes

King: To your knowledge, is it accurate?

Shreve: Yes sir, she has access to the permitting software that has all of this information in it.

King: If I go down the chart briefly and I will attempt to back this up with another written, but just looking at this, you have expired in the far right hand side and the second item says zoning expired August of 2012, is that correct?

Shreve: Yes sir

King: Is it typical for a contractor to call for a new zoning inspection every six months?

Shreve: No sir, not when the project continues

King: So the project had continued after August 2012 correct?

Shreve: Correct

King: So to show this as expired is incorrect.

Shreve: I see what you are saying.

King: Do you know the answer?

Shreve: I don't have a hard no or a hard yes.

King: But to the best of your knowledge, the building continued after August 2012 and nobody objected that there was no zoning permit. Is that correct?

Shreve: Correct

King: Nobody indicated in any correspondence that the zoning permit had expired after August 2012 to your knowledge, is that correc?

Shreve: Correct

King: Now you testified that the zoning changed with the August UDO, correct?

Shreve: Yes sir

King: August of 2009. Then after that the legislature came in and because of the poor economy basically extended all permits for about 3 years, is that a correct statement?

Shreve: Yes sir

King: That was not Mr. Taylor's fault, that was just the economics of it, the legislature did that to protect all the builders and citizens that had outstanding permits, is that correct?

Shreve: Yes sir

King: Now, when the zoning passed, you have indicated that it was changed to conservation.

Shreve: Yes sir

King: What was the exact title of that?

Shreve: R1-C Conservation

King: And isn't it correct that based on recent hearings there was one lot that had not been rezoned?

Shreve: Correct

King: And you initially presented the Planning Board that was scriveners error, correct?

Shreve: Yes sir

King: It turned out that was not a scriveners error was it?

Shreve: I don't have sufficient evidence to prove that it is a scriveners error.

King: Ok so you had to go back before the Planning Board and they made a recommendation that be zoned at this time, is that correct?

Shreve: Yes sir

King: But is it currently correct that of the three parcels, the middle one is currently not zoned at all?

Shreve: That is correct.

King: The other two are

Shreve: Correct. I will however say that development has occurred on this property regardless of zoning. Inspections were made, development ensued, despite the oversite that wasn't seen until this year.

King: Ok, so inspite of whether it was zoned or not rezoned development on this parcel continued and nobody noticed.

Shreve: Correct

King: And development continued inspite of your chart that shows has 1,2,3,4,5,6 different permits showing expired, is that correct?

Shreve: Development continued on certain trades, yes.

King: You've indicated that there is no zoning inspection that would renew the zoning, it continued development.

Shreve: A Certificate of Occupancy has a zoning inspection.

King: Are you looking to somebody else for the answer to that?

Shreve: Kim does have an intimate understanding of permitting as a permit technician and she is trained year after year and she understands a little bit more about how permits work.

King: So what you are telling me is your testimony about permits is not from your own personal knowledge, its what you've been told from somebody recently.

Shreve: It's what I've been presented from documentation.

King: How long have you been with the Town?

Shreve: Since January 4, 2016.

King: So this year?

Shreve: Yes sir

King: And when does the Town contend that the permit expired?

D. Taylor: Could you be more specific? I see a whole bunch of permits.

King: The building permit expired

Shreve: The building permit or zoning?

King: Building permit. We've already discussed the zoning that expired according to your chart in 2012 yet the building continued with the Town's consent so when did the building permit expire in the Town's opinion?

Shreve: July 1, 2015

King: And why that particular date?

Shreve: Because framing was inspected on July 1, 2014 and in 12 months no work was done on those permits.

King: Ok, if you look back at the previous inspection under the building permit, when was the previous inspection?

Shreve: 2014 under the electrical.

King: No I'm talking about under building permit.

Shreve: Under the building permit 2012

King: Ok so from June 2012 to July 1, 2014 there were no "inspections" under the building permit, correct?

Shreve: Correct

King: So what kept that permit alive beyond 12 months?

Shreve: Kim can answer that.

King: You don't know the answer?

Shreve: I do know the answer and it's in several emails based on Kim's decision on issued a permit that she – may I allow Kim to answer the question?

King: Well I'm asking you if you know the answer.

Shreve: I do know the answer.

King: Ok, is it correct that the other inspections that were done kept the other permit alive?

Shreve: Yes. Inspections were made on these permits, it was an oversight on Kim's part because she wasn't really familiar with the Permit Extension Act at that time and this is information that has been given and that's why I wanted to let Kim say it but …

King: Just looking down this chart, before we go on, you also have a flood plain permit that supposedly expired in August 2012.

Shreve: Yes sir

King: But that really does not prevent or did not prevent development did it?

Shreve: Floodplain development has to do with the rights to develop within a flood hazard area.

King: Right, but that didn't call for a new floodplain development permit or inspection every six months.

Shreve: No, that goes along with the Certificate of Occupancy.

King: So basically from the time the permits are initially issued you have to have a zoning, flood plain, what is HRF, do you know that?

Shreve: Homeowner's Relief Fund, that is a point under the building permit it is a fee that is charged, every building permit gets that fee charged.

King: What is the SWI?

Shreve: Stormwater Infrastructure

King: So of those zoning, floodplain, HRF and SWI, you don't get new inspections every six months do you?

Shreve: They are incidental to the building.

King: They are incidental to the building and so they are extended as long as the building is under construction.

Shreve: I suppose.

King: So the date is really for the expiration shown on this chart are not correct are they?

Shreve: I would assume so yes.

King: You would assume they are correct or not correct? Based on your own testimony just now, that they go with the other permits and inspections, they really didn't expire in August of 2012 did they?

Shreve: The HRF and the SWI go along with the building permit, that is correct.

King: Ok, so the dates shown here are not correct, is that true?

Shreve: I would say that is correct.

King: Which is correct that this chart is not correct?

Shreve: For those issues, yes

King: Lets look down under the plumbing, under the first 604 W Ft Macon, on this same chart, each of you have the chart by the way? Under the plumbing it says inspected 6-21-13 and expired 6-21-14, do you see that?

Shreve: Yes sir

King: Now is it fair to say that all three of the houses got permits at the same time, got inspections at the same time and all the work was done on one was done on all three at the same time? To the best of your knowledge is that a true statement?

Shreve: That is correct

King: If you look under the second grouping where it says 608 W Ft Macon, would you look under plumbing, do you see that is says it expired on the same day it was inspected?

Shreve: I see that 608 and 612 have typos. So those would be 6-21-14, you are correct.

King: What lot listed in these categories is the new plumbing permit that was issued.

Shreve: That is correct, they are not the same.

King: But the notation at the bottom that each one of these houses had a plumbing permit issued for that is not part of this chart.

Shreve: Correct

King: And that was something that y'all chose to do for this presentation.

Shreve: That we issued permits for this presentation?

King: No that you did not include it as part of the other chart.

Shreve: Correct because these are permits that were issued in 2009.

King: A question was asked of you earlier by the chairman but I think I'm going to save that for one of the other witnesses. Let me ask you just a few more if I may. I tell you what, that's all the questions I have for this witness at this time.

Kurek: Are there for Michelle from the board?

Lotsiph: Is it possible one of these other (inaudible) expired to go back and get another building permit?

Shreve: The zoning has changed so the building of single family homes at this point requires a Conditional Use Permit so they can't come to me to get zoning approval to get the building permit, they have to come here to get zoning approval to get the building permits. That's why it was important for him to keep up the inspections every year to keep to keep those permits so he wouldn't have to come to me or you for zoning.

D. Taylor: Just to keep us on track, when she says they would have to come here, that's not why we are here. There's a conditional use permit process that they would go through depending on the outcome of this particular hearing so when they come here, not tonight, later, it would be required they come here.

Chairman: "We will now hear from the Appellant and other witnesses the Appellant would like to call."
"If there are attorneys or other representatives here for the Appellant, we'd like you to go first."

D. Taylor: Just to be sure does the Town want to call any other witnesses or are you satisfied for now?

Shreve: Good for now.

D. Taylor: Now it's your turn.

King: I would like to call Ms. Tynes and if I may hand up these booklets

Lotsiph: Do you intend to go over all of this?

King: We will go over it thoroughly. I'm sure by the time we are done you will be acquainted with it and nothing is complex.

Lotsiph: Why wasn't this submitted earlier so we could all look at it.

King: Well one of the things that was asked of you earlier was have any of you received any correspondence of any communication with any of the parties. I did not want to submit to you something to may disqualify all of you. I apologize to the board if I was supposed to do that, I saw the Town did that. That's part of their process but I did not feel that was appropriate to unduly influence the jury or judge here by providing this earlier.

Ms Tynes what is your duty to the Town?

Tynes: Permit tech

King: How long have you worked with the Town?

Tynes: Since September 2010

King: So you were not here when the permits were initially issued in this case were you?

Tynes: No

King: Would you look at item #1 in the booklet. (my notebook) What is that?

Tynes: It's the inspection card that is posted at the job site.

King: Ok and tell me what an inspection card is.

Tynes: It's the placard posted at the jobsite that usually the inspector will mark if its okay, passed or failed and I also get a ticket that corresponds with that.

D.Taylor: John I don't want to give you a lot a leadway to have leading questions so if you want to move it to yes or no and if a further description is required just to help you out.

King: Under this document, are these all of the inspections that would typically be included for the completion of a house from start to finish?

Tynes: Yes

King: It has Land Use up there, would that be like a zoning permit we talked about earlier?

Tynes: Yes

King: Same thing with the flood development zone and those other things that were not regularly inspected, correct?

Tynes: Correct

King: You have the footings, pilings, plumbing, slab, electrical, electrical underground, correct?

Tynes: Correct

King: So a whole myriad of inspections that the building inspection departments make, correct?

Tynes: Correct

King: And some of these inspections require somebody with the right qualifications to perform those duties, correct?

Tynes: Yes

King: Does that include the plumbing? Mechanical, Electrical?

Tynes: Yes

King: But you have to have a licensed electrician to do some of these works, correct?

Tynes: Correct

King: In doing so, you have to have a permit for those, correct?

Tynes: Correct

King: Is it correct that a permit was issued for all of those in this particular case?

Tynes: Yes

King: Now, I have a (inaudible) 604, 608 and 612 in this booklet, correct?

Tynes: Yes

King: All of these inspections would be inspections required for each of the houses.

Tynes: Correct

King: Now if you will look at the chart on page 2, item 2, chart we have already seen, and already heard some testimony about this but isn't it correct that the permits remained alive each time an inspection was made of the property.

Tynes: Yes

King: Regardless of which sub category it came under, all the permits were kept alive?

Tynes: By my mistake they were, yes.

King: One of the permits was the plumbing permit.

Tynes: Are you talking about the new one?

King: I'm just asking you, one of the permits was a plumbing permit.

Tynes: There was a plumbing permit issued in 2009 but no work was done until 2013.

King: But it was still, work was done and so really several years later, work was done and an inspection made and passed.

Tynes: Correct

King: And that extended that plumbing permit correct?

Tynes: Until 2014 and that is a typo on the bottom two sections, they should have been 2014.

King: Ok, so a mistake there.

Tynes: Yes

King: Now if you looked at the item #3, is this the plumbing inspection under the new permit?

Tynes: Under the new one that was just issued on June 26, 2015, because the original one that was with the dwelling had expired.

King: Ok. And because that one had expired a new one had to be issued.

Tynes: Correct

King: And the new one that was issued allowed the work to be done and the work was done, correct?

Tynes: Correct

King: But now unlike before, the inspection of that work does not extend any of the other permits, correct.

Tynes: That's why it was issued, years later, it was not attached to that building permit at all.

King: Ok, did you give them the new plumbing permit?

Tynes: I did, June 26, 2015.

King: Are you familiar with what was required as far as the work being done for that permit?

Tynes: Yes

King: Do you know if any pilings were driven in because of that permit?

Tynes: They were.

King: Do you know if any boards were attached to the main structure of the house because of that permit?

Tynes: They were.

King: So it wasn't just plumbing?

Tynes: That has absolutely nothing to do with building, if anybody came in today to get that exact same permit, they would not be issued a building permit, they would not be issued a building to install that plumbing. That is part of the infrastructure for that plumbing, a building permit is not required for that.

King: So you are saying if no building permit had never been issued, the Town would have issued a plumbing permit to run a sewer line in the middle of a marsh.

Tynes: Correct, no for this job it was to connect what was already started back in 2013.

King: Sure it was a continuation of the work that had to be done, correct?

Tynes: It was a new permit because the other one had expired, to finish that connection.

King: But you issued a new permit?

Tynes: Correct

King: And you issued the new permit before any of the other permits had expired, correct?

Tynes: Correct, but it had nothing to do with that, it was an independent permit.

King: I understand what you are saying and I am simply saying you issued the permit before any of the other permits expired.

Tynes: Yes, no, only before the building expired. Building expired July 1st, he got the permit for plumbing June 26th. The other ones had already expired.

King: Ok but what we talked about earlier Ms. Shreve testified that when an inspection was done it carried with it the other permits. Based on past conduct, correct?

Tynes: Sort of. There is some confusion…

King: Isn't that the way he was treated for these three houses?

Tynes: Ask the question again?

King: Isn't it true that when these three houses, anytime any inspection was made, the other permits in essence got extended and did not have to be reissued?

Tynes: Yes, as a mistake on my part. I started in 2010 and the Permit Extension Act came in and I wasn't clear on the PEA so he actually got a couple of years extension that he was not supposed to have because I didn't catch it.

King: Ok, was there anyone else in the department that was responsible for catching that?

Tynes: No that was me.

King: Ok, so when you say he got a couple of years, he did do some work during those years, correct?

Tynes: He came in the week before they expired every year to do one thing and one year it was only to install a t-pole and he was told that was not enough to keep the permits alive, he had to do something structurally and he came back and did a partial framing to try to keep the building permit alive because he was told that if the building permit died it would kill all the other ones. The zoning stays attached to the building, as long as the building is going on, the zoning stays alive.

King: Ok, lets look at the dates then, if you look under the building where it says pilings were inspected on 6-14-12 and then almost two years go by before the framing is done correct?

Tynes: Correct

King: And so obviously there were some other inspections that kept that permit alive.

Tynes: No there were not, that's my mistake. The building permit should have died, should have expired on June 14, 2013, I did not have a clear understanding of the PEA and I let it go longer than it should have.

King: And when did you discover this?

Tynes: In 2014 is when I realized my mistake so when he did the work in 2014, that kept it alive until 2015.

King: Now in looking at the, so lets talk about the new plumbing permit. You issued the new plumbing permit because the old permit had expired, I think that was your new testimony.

Tynes: Correct

King: And the new plumbing permit had work to be done with it other than just laying pipe, correct?
Tynes: It has nothing to do with building if that's what you are asking.

King: inaudible

Tynes: Say that again?

King: The new plumbing permit had work associated with it other than just laying pipe.

Tynes: Only plumbing, it was just plumbing, that is all the permit was for.

King: Were some pilings driven as part of that activity?

Tynes: That was plumbing, that was to the structure of the plumbing.

King: Were there boards and attachments made to the pilings that were driven for the house?

Tynes: That is the plumbing structure. That has nothing to do with the building permit, this is a separate permit.

King: Ok, so you are saying that this plumbing permit had nothing to do with the structure being there.

Tynes: Absolutely not.

King: Absolutely not. How do you compute the fees for new plumbing fees?

Tynes: I don't the permit in front of me but whatever the cost of the job was it would be $75 plus $3 per thousand for the cost of the job.

King: Ok, do you know if you based it on the square footage of the house?

Tynes: No, I have no idea what the square footage of the house is I've never seen the plans.

King: Ok, so you didn't ask Mr. Taylor what the square footage of the house was?

Tynes: It has not relevance to a plumbing permit.

King: Did you ask him that?

Tynes: No it has not relevance to plumbing permit to connect sewer to a manhole.

King: Do you know what the fee was charged for the plumbing permit?

Tynes: I do not, it's based on the project cost of that plumbing portion. If you have the application it should be on the application.

King: That's what I'm looking for, I have one here, $312.40. Can you by deduction determine how you calculated that?

Tynes: It was $75.00 plus $3.00 per thousand for the cost of the job.

King: Did you take into consideration the cost of the houses to be built?

Tynes: It has nothing to do with that, it's totally separate, no.

King: If I may, do you see the fee there of $312.40?

Tynes: Yes.

King: Do you see the cost of the job there?

Tynes: $1,900, should have been $132.00

King: How do you, you said $75 and $3 per thousand so that should have been $78.00 and what did you charge?

Tynes: $312.40

King: Was that $312.40 consistent with the value of the entire of the house being built.

Tynes: No

King: Do you have a chart that shows you the plumbing permit that shows the cost of those?

Tynes: Yes

King: Do you have that in front of you?

Tynes: Yes

King: How was that computed?

Tynes: I don't know it was before I got here and the fee schedule has changed multiple times since 2009.

King: Has it been fairly consistent on how it's charged?

Tynes: I would assume so.

King: How is typically charged?

Tynes: There is a fee and then a percentage, I don't know what it was in 2009, I have no idea.

King: Looking at the chart that we looked at that says (inaudible) number two. That goes to fees that were paid for plumbing, do you see that?

Tynes: Yes

King: It says $270.80, correct for the first one?

Tynes: Yes

King: Would that have been based upon the value of house to be built?

Tynes: I have no idea, I would assume, I don't know, I wasn't here in 2009.

King: Is that the way you do it now, based on the value of the house?

Tynes: Correct, yes, project value.

King: Wouldn't it appear that the new plumbing permit that you issued was actually based on the value of the house and not the value of the work done?

Tynes: Absolutely not.

King: Then you simply overcharged Mr. Taylor.

Tynes: Apparently so. I need to pull my application and look at it because it had no bearing on the house whatsoever.

King: Do you know any other method other than the value of the house that you would have come up with $312.40?

Tynes: Nope.

King: I did not have that one in the book but I will be introducing that a little bit later if I may.

D.Taylor: Do you want to pile them all up and introduce them at the end?

King: Now if you will look at tab #7, this is an email from you to Mr. Taylor apologizing for a mistake you have already indicated this evening and if you will look at the second page, it talks about the plumbing permit. It says the plumbing permit expires June 21, 2014 and a new permit was issued June 23, 2015, correct?

Tynes: Yes

King: To add sewer connections, that job was inspected on July 21st, typo, correct?

Tynes: It was on July 2nd

King: So July 2, 2015 so it will expire on July 2, 2016 if no further plumbing permit work is done and inspected, correct?

Tynes: Yes

King: Now isn't it correct that had this house been built and this plumbing connection not been made that it would not pass inspection?

Tynes: If, ask again?

King: This latest permit that you've indicated was to run a pipeline to the house.

Tynes: To the sewer yes

King: Had that not been run would the house had gotten a CO?

Tynes: No

King: It would not have right

Tynes: No

King: So is it correct to say that under tab #1, the chart you showed earlier, of all these inspections, that is one of those inspections.

Tynes: Well sure it is but it doesn't keep the building permit alive, as long as the building permit stays alive, all these other trades stay alive as well. When the building permit dies, everything dies with it. The ones I have "expired", like the HRF, SWI, Floodplain – those are just in the software as it automatically populates those dates for six months out. They don't really expire because they have nothing to do with permitting the construction of the house.

King: So this chart is not correct.

Tynes: Yes, the software automatically populates those dates as expired, they don't really expire, the HRF, SWI and Floodplain development are incidentals.

King: This was not computer generated, this was Kim generated.

Tynes: I got it from the computer.

King: So you typed this information and you knew at the time you typed it those didn't really expire.

Tynes: Those have absolutely nothing to do with the building permit so they were not relevant.

King: You just testified that those really don't expire you got this from the computer.

Tynes: Those three do not expire.

King: Actually there are four there right?

Tynes: No

King: Zoning, Floodplain, HRF and SWI.

Tynes: No, zoning dies with the building permit.

King: Ok but he building permit had not died in August of 2012 had it?

Tynes: The building permit? No it should have died in June of 2013 but I missed it.

King: Ok, regardless of that, you still showing the expiration of the others as August of 2012, correct?

Tynes: Where do you…

King: Zoning

Tynes: Because it automatically populates.

King: But you knew that was incorrect when it automatically populated right?

Tynes: The ones it…

King: Let me take one at a time, zoning, the zoning really didn't expire in August of 2012 did it?

Tynes: It didn't expire because it's linked to the building permit. It expires when the building permit dies.

King: Fine, ok. I understand that.

Tynes: All these trades die with the building permit.

King: Bottom line is it did not expire and you knew that. You knew the zoning did not expire unless the building permit expires, correct?

Tynes: Yes

King: Yet you still typed this chart that it expired in 2012. Right?

Tynes: You are kind of twisting what…

King: I understand what you are saying, you're saying that your computer says it expires at a certain date but it really doesn't, it expires when the building permit expires.

Tynes: It does, it really does expires with those dates, however, these other trades fall into place under the building permit.

King: Exactly.

Tynes: If the building permit dies, the rest are going to die as well. Which is why he had to get a separate plumbing permit, his plumbing permit had expired.

King: Ok, so the building permit is kind of the master permit.

Tynes: Correct

King: And if you look at tab #1 again, tab 1 shows all of the inspections, every single inspection that has to be done to a house to get at CO, is that right?

Tynes: Yes

King: Which includes everything, mechanical, plumbing, electric, everything

Tynes: Yes

King: So all of these are work that is progress towards the house, correct?

Tynes: Yes

King: Alright. So during, over the last several years, there was progress, however slow, was being made towards the work on the house, some of it plumbing, some of it electrical, some of it framing but there was work being done towards the progress of the house. Looking under tab 1 I think that is what you testified, right?

Tynes: Yes, minimal

King: One of the things that was in Town's submission, if you look at the Town's submission that you received earlier, that was highlighted in my list the law, I don't know if you have that in front of you, I'll bring that up. Are you familiar with NCGS 160-A 418? Would you look at that?

(inaudible chatter among all)

King: That was included in the booklet that was submitted to this board and that is the law that you are going under?

Tynes: Yes

King: Would you read that please?

Tynes: A permit issued pursuant to GS 160A-417 shall expire by limitation six months or any lesser time fixed by ordinance of the city council after the date of issuance, if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured.

King: Ok do you see anywhere in there where it says has to be inspected within 12 months?

Tynes: No, but I will tell you that I go to a Permitting Personnel Conference every year…

King: Do you see in the law…

Tynes: The law is who told me this…

King: That this board has submitted to…

Tynes: It's not in this paragraph no.

King: It's not in that paragraph.

Tynes: It's not in this paragraph.

King: And that is the NCGS correct?

Tynes: It is one of them, yes.

King: Based on your testimony, in tab 1, in the appellants notebook you have, you testified that all of these different trades are work towards finishing the house, correct?

Tynes: Yes

King: Ok and isn't it correct that the new plumbing permit that was issued and the work done in that connection would be something that would fall under item 1 as work towards the house?

Tynes: Yes

King: So isn't it correct to say that there was not a 12 month period were work towards construction on the house had expired?

Tynes: I disagree with that.

King: I know you are talking about permits and I know you disagree with that.

Tynes: That's all I know about our department.

King: But basically the last inspection that you are showing was July 2 of 2015, correct?

Tynes: Yes

King: That was on the plumbing

Tynes: Yes

King: That plumbing was part of the intrical part of getting the house finished.

Tynes: Before this permit was issued, I talked to Zack and told him that his permits had expired and I could not let him do plumbing without a new plumbing permit because it had expired and I also told him at that time your building is going to expire if you don't do something on building.

King: Ok, but you are basing that, you had already made a mistake correct?

Tynes: Three years prior.

King: And you discovered that mistake

Tynes: Correct

King: And you said he had to get a new plumbing permit and you issued a new plumbing permit.

Tynes: The plumbing permit was never where I made the mistake.

King: I understand I'm just asking the question now, you issued a new plumbing permit prior to the expiration of the building permit and work was done under the new plumbing permit, correct?

Tynes: Correct.

King: That work was inspected on July 2, 2015 correct?

Tynes: Correct

King: And that plumbing was part of this overall tab 1, correct?

Tynes: Correct

King: So it is one of the many facets of doing work on a house, correct?

Tynes: Yes

King: And if I know the board says well that doesn't extend the building permit but isn't it correct, mistake or not, that in the past, the work on the other items had in fact extended the building permits?

Tynes: Absolutely not, the building permit. This is what I'm trying to tell you. The building permit should, he got the permit in 2009. He drove some pilings in the ground in 2012 because of the PEA, he was allowed to do it. He had to do it before August 2012 or his building permit that was issued 2009 was going to expire. So he drove pilings in the ground. In June of 2013, that permit should have died I missed it, I did not understand the PEA, that was my mistake so this permit in fact should have expired June 14, 2013, my mistake, I didn't catch it until he did building and it needed an inspection in 2014, when I saw it in the software I said oh my God I've made a horrible mistake, which bought him an extra two years.

King: My whole contention is that you didn't make a mistake.

Tynes: Yes I did.

King: You're falling on the knife of the team here. But what I'm saying is based on historical matters, whether you say it was mistake, an inspection of the plumbing in fact extended the building permit. Mistake or not.

Tynes: No

King: In June of 2013 extended things, the plumbing inspection.

Tynes: No, it did not anything except he got plumbing work done, it didn't extend anything with building whatsoever.

King: I know what your contention is. You are saying by mistake it extended it, correct?

Tynes: My mistake extended years longer than it should have.

King: I understand but never the less it still extended it, right?

Tynes: Yes but it had nothing to do with the other trades.

King: But here again you have testified that item 1, hate to keep going over this, but item 1 in this notebook lists everything that is required as far as work to be done under the building permit.

Tynes: It does.

King: And plumbing is one of the items to be done.

Tynes: That is correct.

King: So it's correct to say that plumbing was part of the progress toward building the house, yes?

Tynes: It has nothing to do with the permits that were issued to build this house, so no.

King: I understand that's your contention.

Tynes: No because if had come in and said I need a plumbing permit, an insulation permit or mechanical permit, I could have issued any of those as long as the building permit was still alive. When the building permit killed the zoning because of the zoning change, this has been a hairy situation from day one when I first started here because the zoning changed and it was imperative that he keep these building permits alive because it would affect his zoing.

King: Sure, absolutely.

Tynes: That's why everybody kept informing him, don't let them expire, don't let them expire, you cannot let them expire because if the building permit ever dies it takes down the zoning. He could walk in a get a permit for any of these things with no problem, the problem is getting the building and zoning permit which is why he was asked to never let them expire.

King: Right, I understand.

Tynes: So this plumbing that was done, after the fact, has no bearing on that building permit at all.

King: Ok and you are saying it has no bearing with the houses being there?

Tynes: There is no house there, there are some pilings there.

King: Structure.

Tynes: There are some pilings there.

King: It has no bearing on the fact that the building permits were issued at all?

Tynes: That permit does not, no, it has nothing to do with that.

King: The new plumbing permit.

Tynes: It has nothing to do with the permits that were issued in 2009.

King: Ok did the original plumbing permit have something to do with the building permit?

Tynes: That plumbing permit was for the structure for a single family home. Plumbing permit 1714, 1722 and 1730 were to plumb a new single family dwelling.

King: Isn't it true that, in your correspondence you said because your plumbing permit expired, you have a new plumbing permit.

Tynes: Which he can do because there is not zoning to affect this, the reason, he could walk in here today if his land was in a different place, and his building permit expired, he could walk right in our office and I could issue him a new building permit and it would not be a problem. This lot is different which is why I'm able, I can issue any of these other permits, I cannot reissue building and I cannot reissue zoning. Because of the zone change for that area.

King: The only time the building permit would expire, if there is not work being done during a 12 month period. Correct? Isn't that what the law says?

Tynes: There was no building work…

King: Isn't that what the law says?

Tynes: That is your interpretation, the interpretation I went was the interpretation of the building inspector which is where I get my direction.

King: So you are saying no building work?

Tynes: No building work has gone on since 2014.

King: But you testified that all of these items in tab 1 are towards the building permit.

Tynes: They are part of it.

King: Now, let's go to tab 8, (inaudible) …Do you recognize that?

Tynes: I do which brings up an interesting fact that one of the permits are void because he sold the property between the time the permit was issued and today. We have no knowledge of that, the only reason I know is in doing research for this case for you, we found out there is actually a new owner on I think 608, the permit was issued to one owner and the property has been sold which voids that whole permit without any other affiliation with this.

King: That was not part of the Town's presentation that Ms. Shreve gave is it? Yes or no?

Tynes: I don't know if she got to it yet. She has mentioned somewhere in there the ownership changed and voids that permit. That in itself deviated from the plans.

King: Lets go back to chart 8, ask you to look at that chart, where did this come from?

Tynes: Our CSI software.

King: What does that mean?

Tynes: Permitting software

King: Is this what they call a screenshot?

Tynes: It is

King: On this screenshot what is the first section, first of the first page say? As far as (inaudible)

Tynes: It is, what are you talking about?

King: What is this?

Tynes: Inspection report? Is that what you are asking?

King: Yes

Tynes: It's an inspection report

King: Is that all of the inspections that to do with that particular house?

Tynes: That is all that has ever been done since 2009, yes

King: Same thing in the second half, that's the second house and third house?

Tynes: Correct

King: They are all the same dates, everything.

Tynes: Correct

King: What applies to one, applies to all.

Tynes: In this case, that's how he did it, yes.

King: And isn't it true that the new plumbing inspection is actually shown on this screen shot.

Tynes: Yes

King: Although when the chart was prepared which is tab 2, it was listed as a separate item at the bottom.

Tynes: It IS separate, this software is by address.

King: Ok by address

Tynes: You could come in five years from now and put in a fence, it's going to show up on this screen shot.

King: You mentioned something that kind of came up and it's come up before about one of the permits being void. Isn't it correct that it's not void it would have to be revoked?

Tynes: Yes

King: Are you aware of any action the Town has taken to actually revoke?

Tynes: We didn't because we didn't know the ownership changed until all of this and it was already coming here so there was no reason to revoke it, nothing is happening right now, the permit has expired.

King: So it did not get revoked so that is not an issue.

Tynes: Simply because it was only discovered in getting this information for you and all to be addressed here tonight.

King: You are saying a permit cannot be assigned?

Tynes: What?

King: A permit cannot be assigned, gets transferred, can't do it?

Tynes: No, it is revoked because you have deviated from the plans by selling the property, changing ownership.

King: You are saying if I'm a house builder and I've got a buyer and I sell it to that buyer before the final CO is issued that the permit is revoked?

Tynes: If the ownership shows up on the GIS that ownership is different from the permit, it has deviated from the plans.

King: You are saying permits can't be assigned?

Tynes: I don't know anything about it if they can.

King: Go to tab 10 and look at second page. Do you see a letter there from Mr. Taylor?

Tynes: Dated 2009? Yes

King: Who is that to?

Tynes: Donna

King: What is she to the Town?

Tynes: She was the Director of Inspections

King: This letter is to confirm our understanding that the following building permit being issued this week may be assigned to a new owner of any of the three lots or to a general contractor at any time without having to pay any additional permit fees. Correct?

Tynes: He sent this in because, Donna will have to address this later.

King: But this is in your file correct?

Tynes: I've never seen this before.

King: Well it was in the information that your office provided to me and is it correct that it is signed by Donna Turner and dated in 2009?

Tynes: Yes, that's what it says.

King: Like you said there has been no action to revoke a permit in this particular case has there? So that's not really in front of this board tonight is it?

Tynes: No, it wasn't supposed to be.

King: That's all the questions I have for this witness at this time.

D.Taylor: Anyone from the Town want to redirect? Anyone have any questions? Based on what you just heard you should ask your questions based on what you just heard.

(inaudible chatter)

Lotsiph: I do have a question, I don't know if this is the appropriate time or not but why didn't the person you represent act in good faith and get started and do something instead of just let it sit there? Looks like a bombed out area.

King: Well I understand that and that's a fair question and I think it's, most of it has been the economy. Basically what you have is a NC Legislature came in and said all permits are extended three years without my client having to do anything. Right off the bat everything was extended three years, after that the economy still was not going great, at this point in time basically the economy is much better and my client does intend, if he can, to go forward and finish these houses within the next twelve months because now things are selling down here. Back then they weren't so obviously he did everything he could to keep these permits alive based on the information that was provided and do what he needed to do.

Lotsiph: I suspect the committee members will know the (inaudible) in the summer and other builders were building and being able to sell their houses. Your client did not. That's not a good business plan.

King: Everyone has their own economic situation and I would defer to him on that. I know there was one in that Needle Rush Bay that I don't know if it's still for sale but it was for sale for probably 6 or 7 years.

Lotsiph: I can tell you other than (inaudible) the prices were unreasonable.

King: Now the prices are coming down.

Chairman: Kim, I do have an off the wall question – did Fred Bunn have to get new building permits?

Tynes: I have no idea, I don't think he had permits issued to him until he started his project. He had plans, but to my knowledge there were no permits issued until he started work.

Chairman: When was that.

Tynes: I don't know.

Chairman: Donna, do you remember?

Donna: I don't recall but once he purchased a permit, his job started and was completed in (inaudible) manner.

Tynes: This is the only case I've seen like this. The only one issue we've had from the PEA, this is it. There were others that were part of the PEA but they finished around 2012/13.

Shreve: This is also remaining project from before the rezoning.

King: I would like to call Mr. Russell Willis, questioning him should be very short. Mr. Willis, what do you do?

Willis: Install pilings

King: Did you install pilings for Mr. Taylor in this transaction?

Willis: Yes

King: And did there come a time that you installed pilings to support sewer pipes?

Willis: Yes

King: And was that back in 2015?

Willis: Yes

King: And did you write a letter concerning that?

Willis: I did

King: If board will look in tab 4, is this the letter you wrote?

Willis: Yes, June 20, 2015

King: You were hired to install pilings and support structures for the above ground sewer system, correct?

Willis: Right?

King: Was the support structures connected to the pilings of the house structure also?

Willis: Yes

King: And did you at that time request an inspection from the building department?

Willis: Yes

King: And what were you told?

Willis: I talked to Justin, if I recall, and he said he would get back to me, it took a day or two and he said that his information was he did not have to have a piling inspection, it just needed a plumbing inspection for a pipe that was installed on the structure.
King: Ok, based on that did you proceed with work and get everything inspected?

Willis: Yes

King: Ok, but you were told you did not need a pilings inspection.

Willis: That is what I was told

King: If you will look at tab 5, those are the photographs, does that reflect the work that you did on this property?

Willis: It sure does.

King: The pilings there and also the boards attached to the structure itself and the pilings that were to support the house and different views to show the work you did.

Willis: Yes

King: Was it your belief that an inspection needed to be made on the pilings?

Willis: It was a request, I always request a piling inspection when we do it.

King: Did you also drive the pilings for the house frame?

Willis: Yes

King: Did you get in inspection of those?

Willis: Yes

King: That all I have for this witness.

Chairman: Before you step down, does anyone else on board have a question?

D.Taylor: Anyone from the Town have any questions?

Lotsiph: I have a question, are these piling just to support the (inaudible) and in the ground?

Willis: About 5' with plumbing right?

Lotsiph: Sewer

Willis : That's what I meant, I think we're at 5'.

King: With the boards permission I'd ask this witness to be excused (inaudible)

D.Taylor: Now why in the world would he want to leave?

King: Now I'd like to call Ms. Turner. Ms. Turner, what do you do?

Turner: I'm the inspector for the Town of Atlantic Beach.

King: Have you been with the TOAB since 2009 or before?

Turner: 16 years now.

King: And as part of that you know Mr. Taylor.

Turner: Yes, for years.

King: And you have a past working relationship with him and you work with him and try to cooperate on making sure his permits got extended, correct?

Turner: Yes, worked very closely with him.

King: Ok and this action you have seen the chart I'm assuming?

Turner: No

King: Oh you have not? See tab 2 in that notebook and you see the 3 buildings there and the various inspections that were done?

Turner: I do.

King: Did you in fact make some of those inspections?

Turner: I did

King: And each of those inspections, if you go back to tab 1, is it correct to say that each of those inspections were part of an overall listing of items needed to be inspected under the building permit?

Turner: There are a list of items that need to be inspected under the permits.

King: But the items listed here have all the items, plumbing, footings, all of those things, correct?

Turner: I don't believe we have a sewer permit on here.

King: Look at item 12 on the right hand side, where it says final inspection, sewer.

Turner: That's engineering, sewer, ok

King: You certainly don't have to issue and CO unless the house were connected to sewer would you?

Turner: Yes it would have to be approved to private or public sewer.

King: So is it correct to say that all of the work that was done, plumbing, electrical and everything were to meet all of the inspections under tab 1 on this sheet?

Turner: I don't understand what you are talking about. I know that everything has to be done in order to get a final.

King: Everything has to be inspected. Ok. Now what role does an engineer play in connect with inspections?

Turner: If we require an engineer to come out as we did with Zack, we may require them to do a soil test or pilings, let us know if the soil will hold in its capacity loaded on.

King: Are there other times that basically you defer to the expertise of an engineer?

Turner: Yes there is.

King: Is it typical that when you have an issue and you get a statement from an engineer under seal that you rely on that statement?

Turner: Not all the time. If I find discrepancies in it then I'll bring it to his attention and sometimes it's just an overlook or miscalculation. It doesn't mean just because it's an engineer it will be bound.

King: The structure that are in question, I think everybody is familiar with, have you had complaints from people about the structure.

Turner: Oh many, yes, many complaints.

King: Have you had more in the last 12 months?

Turner: We've had complaints for the last 5-6 years.

King: But as far as you know Mr. Taylor was doing under the law to keep the permits alive including the NC Legislature that helped him along three years.

Turner: I don't think he's done it in a timely manner.

King: I understand that but I mean there is a certain minimum that he has to be done, is that correct?

Turner: Yes, he's got a minimum, within six months he has to start and 12 months if work has ceased then permits expire.

King: Ok, is it correct to say there was not a 12 month period that no work was done?

Turner: No, I can't say that. There was work not done for several (inaudible)

King: Ok, if you look at chart 2 in book, prepared by the Town office. See the inspection dates on the right and I'm just going to go over the very top of it because we've already shown that all the inspection dates are the same for all of them. You see piling inspection 6/14/12 and would that be the first date of pilings inspection were done?

Turner: Yes

King: I that was timely, correct?

Turner: Well it started the permits, yes it was.

King: Then the next inspection was June 2013.

Turner: Underground plumbing? Yes.

King: Then another inspection in July 2014.

Turner: T-pole? That's not really part of your house.

King: Ok there was also one done July 1st, 2014 also at the very top correct? Partial framing out to the right of the pilings

Turner: Yes, I see that.

King: So there was work done in 2012, 13 and 14, correct?

Turner: Yes, very minimal

King: But enough to comply with the law correct?

Turner: At that time.

King: Then there was also the plumbing work that was done in 2015, it's not on this chart but if you look at the bottom, it talks about the plumbing and if you look at the next tab, 3, that's the approval of the plumbing on July 2, 2015.

Turner: That is the approval of a sewer pipe line.

King: Right, I understand that but that would be work done in 2015.

Turner: Right. That work was finalled out and closed.

King: So in each year, there was work done that was listed under tab 1, correct?

Turner: In each year?

King: Yes, identified as 2012, 2013, 2014 and 2015.

Turner: (inaudible) but they expired.

King: I understand (inaudible) but are you familiar with NC GS

Turner: I certainly am.

King: If I may get that back from you cause I left it up there. Is there anywhere in this statute uses the word inspections?

Turner: I don't think it needs it. If work ceased and work ceased.

King: Ok, but it does not say inspections.

Turner: It does not say inspections, it says work ceased.

King: And you testified that there was work done in 2012, 13, 14 and 15, correct?

Turner: But there a period where there was no work done.

King: None whatsoever?

Turner: None whatsoever.

King: When was that?

Turner: Do you have than information on the permits?

Tynes: The question he is asking you, he is saying work was done every year in 2015, it was done on these permits that we are here to talk about. The 2015 permit he keeps referring to is a totally separate permit. It has nothing to do with the ones from 2009. No work was done in 2015.

King: So you're saying the work that was done on the sewer pipes that connect to the house did not count?

Turner: No, because it's finalled out, nothing else can be done.

King: Ok, if you look at Ms. Tynes email, tab 7, second page, go to first page. Do you see at the top, the date that is?

Turner: June 20, 2015

King: July 20, 2015

Turner: Right

King: This was after the new sewer permit inspection was done correct?

Turner: I assume

King: It was done July 2, 2015. If you look on the second page, it says plumbing permit expired June 21, 2014 and a new permit was issued June 23, 2015. See that?

Turner: Yes.

King: Then do you see the last part of that sentence that says it will expire on July 21, 2016, typo should have been July 2, 2016 if no further plumbing work is done and inspected. Would you agree with that?

Turner: Well that permit was finalled out so you can't do any more plumbing because that one is finalled out and the other one is expired.

King: But what you are saying is finalled out, if this email is accurate, your contention is that it was finalled out, correct?

Turner: I called Ms. Tynes to please check his permits because he is on a timeline and he was not proceeding with work. I called Mr. Taylor and said Mr. Taylor, look I'll get these pilings inspected but you are going to have to show us some work. You've been sitting on these permits and you're going to get caught with these permits and they will expire. I said I'm going to do this piling inspection but I expect to see some work, I want to see some continued work. Nothing happened and nothing happened and come up the last week, every year he will come up the last week and do a minimal amount of work to keep the permits going. He can do that but it caught him.

King: Assuming you disregard the minimal amount of work that he did in 2015 right?

Turner: Right.

King: That's what this board is to determine.

Turner: I want you to know in 2015 business was booming and still booming and 2014 business was booming and 2013 business was booming. I don't know what the problem is.

King: Well I understand that you are upset about this matter.

Turner: I'm not upset I'm just tired of wasting time.

King: I understand, in fact you told Mr. Taylor you were going to be a hostile witness towards him.

Turner: I don't recall that. I've never been hostile to Mr. Taylor

King: I understand, up until this deal, you've done very kind things and he appreciates that. But now that this deal is taken you are not happy about it right?

Turner: I'm not happy because the Town is not happy and the law has been broken.

King: I understand what your contention is and nevertheless there was work done that would have to be done for the completion of these houses in 2015.

Turner: It was done and finalled out but it did not cause the other permits to keep on going. These permits have a timeline, six months to 12 months, 12 months ran out.

King: I understand. I have no further questions.

Lotsiph: On this building permit, section 1, page 1 says sewer on the right hand page but it doesn't say anything about pilings, sewer pilings. (inaudible)

Turner: The pilings were there for the house originally and those piling, well they connected, what there contention was is that they connected that sewer to the house, those pilings have already been inspected and passed. We don't need 8x8 pilings to hold up a little sewer line.

Lotsiph: Right and there again it's a general type term, you don't inspect bolts that go in here, it a general concept, it's a sewer line, it's not …

Turner: It's not a building permit, if you're going to look at building, we'll look at building, if we're going to look at sewer, we'll go look at sewer.

Lotsiph: My contention is it's not a requirement the way I see it.

Turner: No it wasn't final, it was attached to pilings that were already there and inspected.

D.Taylor: I'm going to ask a question just because we are only getting one side, tell your story as to why these permits have expired. Can you start to explain because even I don't understand finalled out. What does that mean and why is it your position as building inspector involved in this, explain your position to this board so they understand it.

Turner: It's very simple. NCGS 160-428 tells you that you can buy your building permits and you have a certain time to start, you have six months in that time period to start a project. Mr. Taylor started the project. After you start the project you have a time of one year to show work has commenced that you have done something on piece of property within 12 months. You put up pilings, you put on floor joist, walls, insulation, electrical, you have done something to see this house grow into a home, something you can sell. It sits there for a year and nothing is going on well it's pretty much been abandoned. It's overgrown, I don't see any intentions of it going up doing anything, the state doesn't see anything and the state says we have a year. That's plenty of time to do a little something to get something passed, get an inspection. It doesn't say inspection, it says commence. So that's why the law states you have six months to start and one year to show some working going on within the year. So the permits expire, it's as simple as that. You can get new permits, you're not dead in the water, you get new permits. Is that enough do I need to clarify more?

D.Taylor: This is for the boards purposes so they can ask the questions they don't undersand.

Turner: Do y'all understand what I'm saying? It's simple, we just want to see work like everyone else does. I get a lot of heat because this is very unsightly right now, it's been unsightly for years. Town gets a lot of heat, how can you allow that? Well we can allow it because as long as the permits are alive we work with him. I have always worked with Zack, we've had a good relationship. The law is the law and (inaudible)

Plough: It sounds like the gentleman here was trying tie in that all these permits are contingent upon part of the building permit. But if I'm reading what I think I know a little bit about is the building permit is totally different from the electrical, plumbing, all those. So in other words, those other permits are carried over but the building permit itself, when it expires it expired by itself.

Turner: Right, same with electrical, you build a house you put the footings and pilings in and then you do the framing after you do the framing, you put your subs in to do plumbing, mechanical, electrical. After that passes in a timely manner, within a year, that's fine (inaudible) insulation, call for an inspection, get that passed, and on and on until you get to the final. It's a step by step, critical path forward is because you are on a timeline and you have a buyer or homeowner wanting to get in. That's why the inspections are so important because everyone wants to get into that house but then they wait until the last minute to call in all those inspections. That's why it's so important to get your inspections because if I lollygag around and I don't his inspections then sheetrock guy is put off and they won't get back for six weeks or a month or whatever so that's why we have to give everybody timely inspections and that's why we have inspections and why we have a year so if you are really intending to finish a project you have all these people lined up.

D. Taylor: Before you sit down Donna, John can address or ask questions about what you just stated if he wants to.

King: Just briefly, look at tab 5, the first photograph there, you see the boards that are hooked to the short pilings and the boards attached to the house structure pilings and is it correct that any boards attached to the house structure piling offer a support to the stability of this nature?

Turner: You didn't have to attach it to the house.

King: It was done.

Turner: It was done and didn't have to attach it. (inaudible)

King: Does the fact that it was done effects the structure of the house, adds to stability, isn't that something that could be inspected?

Turner: I think those 8 (inaudible) whether anybody inspected them or not would hold that little piece of pipe.

King: I'm asking isn't something like that

Turner: It's part of the house there is no reason, I don't know who even attaches that to a house.

King: But I'm asking you, these boards that are attached to the house piling add stability to the house correct?

Turner: No they don't add stability to the house, they add weight to the house.

King: You are saying they add no structural soundness to the house at all.

Turner: No because now you have to carry that weight on it with the sewer line.

King: The portion of the boards that were attached to the tall pilings on the house.

Turner: That adds nothing to the house, simply carrying sewer line.

King: What is banding?

Turner: The girders at the top that the floor joists are attached to that carries the weight. The banding is the girder that carries the main weight, it's the backbone of the house.

King: So if you were called upon to make an inspection of these boards attached to the structure of the house would you come out and make an inspection of these?

Turner: If he wanted me to I would.

King: Did you hear the testimony of Mr. Willis that he requested an inspection?

Turner: I heard it.

King: It was refused.

Turner: I heard that.

King: That was in 2015, did Justin Borbeau work for the town at that time?

Turner: Yes he did

King: Does he still?

Turner: No he doesn't

King: Do you recall if he ever checked with you or anybody else if he should go out and inspect those?

Turner: He was certified and on probation (inaudible) probation certificates at that time he could look at single family dwellings at that time.

King: No further questions.

Lotsiph: I have a question – Looking at that first picture again, that board attached to the supports, that to me looks like a rather poor design because the board is not supported by anything but a couple of screws into there for a downward force. A sewer line should be mounted on top of the posts, is that correct?

Turner: I don't know, I don't have the drawing in front of me, (inaudible)

Lotsiph: That's not the way you design something.

Turner: I don't know how he attached it or used hangers on the sewer line.

Lotsiph: (inaudible) It doesn't show on here.

Turner: I doesn't show the sewer line.

Lotsiph: (inaudible)

King: Based on that the plumbing job would be closed out correct?

Lotsiph: That's why there wasn't an inspection.

King: Mr. Taylor, are you the authorized agent for all these properties?

ZTaylor: Yes

King: (Inaudible) … from the beginning.

ZTaylor: yes

King: In fact, (inaudible) all of the applications and everything has been based on your signature?

ZTaylor: yes

King: Your communications with the Town?

ZTaylor: Yes

King: When you first received the building permit, it was prior to the UDO which effectively changed the zoning on their property, is that right, except now (inaudible) one of those?

ZTaylor: Correct

King: As such you think the (inaudible) was pointed out by Ms. Shreve, the NC Law extended the permits for about three years.

ZTaylor: Correct

King: After that period of time did you commence to work on the project?

ZTaylor: Yes

King: I'm sure this board would want to know why the work was progressing at such a slow pace, will you tell the board?

ZTaylor: Well the economy was bad as indicated by the State's extension of all building permits in the State of NC, right after we got these permits, they extended them basically until 2012 when actually started the work even though 2009 is when we got the permits. We didn't have to do any work until 2012 State's extension of the law.

King: In 2012 you had some work done but you didn't finish the houses within a year, is there a reason for that?

ZTaylor: Yes, even though the economy was still bad at that time, our intention was to do whatever work to keep the permits active but to finish them when the economy was good enough that we could sell the houses and get a contract on them.

King: Based upon your communications with the inspections department over the years, did you do work each year?

ZTaylor: Yes

King: Did you do work they indicated to you would need to be done to keep the permit alive?

ZTaylor: Yes

King: If you look at the chart under CAMA (inaudible) various inspections that were done on the houses in 2012, 13, 14, correct?

ZTaylor: Yes

King; And you also had the plumbing and plumbing framing done around the house in 2015, correct?

ZTaylor: Yes

King: You had underground plumbing inspected in 2013 is that right?
ZTaylor: Yes, I did.

King: That inspection in fact extended as far as you know, all the permits until the framing was inspected in 2014.

ZTaylor: Yes

King: Based on the fact the Town told you the existing plumbing permit had expired and you needed a new one, you obtained a new one, correct?

ZTaylor: Yes

King: Based on that new permit did you continue to have work done on the house?

ZTaylor: Yes

King: Was that work not only plumbing but also adding some framing for the plumbing and also framing around the pilings?

ZTaylor: Yes

King; The photographs there under tab 5, do you see the framing that is put up not only on the short piling but also the pilings on the house?

ZT: yes

King: Did you have an engineer look at that?

ZT: yes

King: Tab 6, is this a professional engineer, ? Corcoran, that you know?

ZT: yes

King: Did you hire him to make an inspection of the work that had been done in 2015.

ZT: yes

King: It talks about the plumbing support and also the piling supports, do you see the very last sentence, please read that.

ZT: This work performed on site and structure would normally be considered improvements to be completed under a building permit.

King: Mr. Willis testified earlier that he had asked for an inspection of the building permit of those supports and piling is that correct?

ZT: yes

King: Tab 4, and that was refused so none the less he did have an inspection of the plumbing work that was done in 2015, did he not?

ZT: yes

King: Was it your expectations that work would be sufficient to carry forward the permits another year which would be July 2 of this year?

ZT: yes

King: Was that expectation consistent with the way you have been treated by the Town in the past based on plumbing inspections and other inspections.

ZT: yes

King: Tab 9, invoices and chart you prepared, tell this board that you have in these 3 houses as of this year?

ZT: As of this year, $70,518

King: Does this include the purchase of the sewer tap that you bought.

ZT: No it does not.

King: Any thought how much they were?

ZT: Don't recall the exact amount but it was over $50,000 for sewer and tap. I have no paid tap fees to the utilities but paid them in order to run the lines (in audible) approximately I didn't pay, keep account of those.

King: That plus the $70 you have about $120,000 in these 3 houses?

ZT: at least

King: Is it your desire now to proceed now the economy has picked up?

ZT: Yes

King: Are you asking this board to basically approve the fact the work done in 2015 extended the permits to July 2nd of this year?

ZT: yes

King: If this board does approve that are you going to proceed hastily in completing the houses in the next 12 months.

ZT: yes

King: That's all the questions I have at this time with this witness.

Chairman: Members of board have any questions?

Tynes: Hey Zack, he was one of my first employers so this has been a real hardship for me because I want this to work for him. I just want to make sure, the email you showed that I wrote from July of 2015 – it doesn't show the email that I'm responding to you on. I want to see if you recall the phone call I made to you in 2014 when I realized my mistake when I called you and said oh my gosh I didn't understand the PEA and I have by mistake extended your building a year longer than I should have, because with no work being done, it should have expired.

ZT: I do not recall receiving anything from anybody on this matter. I don't recall anybody advising me that the plumbing work would not extend the building permit.

Tynes: You and I had that conversation. I also had the exact same conversation with Mike Hawkins.

ZT: I don't recall

Tynes: You were not on that call but you and I talked about because you said you didn't understand why and then Mike Hawkins called me from Tarheel Building trying to understand it and I explained it to him the same way I talked to you but also back in 2014 when I realized my mistake, that I had extended your building permit longer than I should have, we talked about it then and I said please don't these expire, you have to keep these going based on what I was told by the Planner and the Inspector because it was going to be a huge hardship for you as well as us, if they expire.

ZT: I don't recall that conversation but it seems to me something that important would be in an email rather than a call.

Tynes: No it was a mistake I made I didn't put it in an email, I called.

ZT: I don't recall any verbal but I don't recall any conversation where I was warned the plumbing permit did in fact not relate to the building permit.

Tynes: That just happened in July, the call I'm talking about was in 2014.

ZT: After July 2015 you did tell me that after the permit was considered expired.

Tynes: You called and wanted to start the work and I said you can't your permit has already expired. I called you to tell you it had already expired and you couldn't do the work you would have to be issued a new permit

ZT: Yes that was in late June 2015, I do recall that but it didn't relate that the plumbing permit would not extend the general building permit. I never understood that until July 16 when we called to get a copy of the inspection that was done in early July. First we ever heard that our building permit was somehow terminated, never understood that before then.

Tynes: Zack, Donna can address this as well, every time you came in our office, once a year, the week before they expired, Donna and Jessica and I always told you you have to keep to keep these alive, you have to do something with building. Which is why when you got the electrical permit for the t-pole, Joey sent an email said he didn't think that would be enough to keep your building alive so you came back and did the framing based on Joey telling you a t-pole was not going to keep your building permit alive so came back and did some framing.

ZT: I remember all that.

King: (inaudible)

Tynes: I'm just trying to jog his memory on all the times we tried to keep this alive.

ZT: I recall the t-pole but the t-pole as I recall, Joey onsite told me while Donna was on vacation that it was his opinion the t-pole did not count toward an inspection so I took that advice and had the bands put on at that time before the expiration, I remember that.

Tynes: That kept your building permit alive. Joey said getting a t-pole would not keep your building permit alive which is why you were asked to come do something and the framing happened.

ZT: he just said it wouldn't extend the permit, that's all he told me as I recall and I took his advice and I started actual boards going the pilings at that time.

Tynes: Correct

Chairman: Any other questions?

Turner: Zack, are you a licensed contractor?

ZT: No

Turner: You hired a licensed contractor?

ZT: Yes

Turner: They understand when permits expire?

ZT: I assume they do

Turner: That's what I wanted to know, they know when permits expire.

King: My objection is to what somebody else knows.

ZT: I don't know

Turner: If they are licensed contractors then they know when permits expire.

ZT: I don't know what general contractors responsibilities are, I just hire them.

Turner: When you hire as a homeowner to build your home, were you hired as a contractor for one of those houses yourself or did you hire a contractor?

ZT: I hired a contractor

Turner: He is supposed to know the laws like when permits expire. A licensed contractor will know this.

ZT: I would assume.

Palma: Mr. Taylor where you applying for these permits or was your contractor, did you personally apply?

ZT: I applied for these because the last permit when I applied for the last one, Kim said the general contractor or the plumber had to sign that. So I signed as the applicant I think and the plumber signed as the trade person.

Palma: When you were presented with that paperwork does it not tell you at the bottom and you have to sign saying that you understand when the expiration dates are for each of the permits?

ZT: I don't recall seeing that on the bottom of the application. If it's there (inaudible)

Chairman: Is it?

Tynes: Yes it is.

Palma: I just had some work done is the reason I know that and it's plain, they put it right there when the expiration is and the contractor or plumber whoever was doing it or you, should have heeded that paperwork.

Tynes: It's on here, the permits have changed since 2009 but it is on the 2009 application as well as our current applications.

ZT: I don't have a copy of that.

Tynes: I assume that it is your signature but don't know to tell the truth.

Shreve: I have sets of 604, 608 and 612 these were in the files, just the same as you have. The one Miss Vada is looking at is 612 and that is signed by Zachary Taylor. The other two are signed by

ZT: I can't respond to that because I have not seen a copy. If I could see a copy.

Shreve: Ok

Palma: Do you recall that Mr. Taylor?

ZT: I recall the permits I don't recall the details of the notice but I do know that we did not start construction within six months but we did work as required by the state extension act. So I see what's written here but I'm not sure what the question is anymore.

Palma: Because generally when you apply for a permit you agree before you sign here that you understand everything there and that you also understand this notice, would you like me to read this notice, or would you like to read that notice? It's perfectly clear. "This permit becomes null and void if work or construction authorized under this permit is not commenced within six months or if after commencement of work no required inspections are requested and approved within any 12 month period thereafter or substantial deviations from plans. Permit may be withdrawn if occupancy occurs before a CO is issued and know the same to be true and I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of this permit does presume to give authority to violate or cancel the provisions of any other state or local law regulation, construction or the performance of construction. When properly validated this is your permit." And it says Zachary Taylor 9/12/08.

ZT: I'm looking at a different application here from what you are reading but

Palma: I pointed out the one of 2008 for 612 West Fort Macon.

ZT: Let me read part of that you just read – "to the granting of this permit does not presume to give authority to violate or cancel the provisions any other state or local law or regulation, construction or performance of construction and I thought the state law did not require an inspection but only work to be done on the project so it seems to be that requiring an inspection is a violation of that statute.

Palma: I'm not sure I agree with that but maybe that's why you are here. Do you have a contractor that keeps up with all this?

ZT: He tries to.

Palma: I know they are on the front lines so they know the changes and in constant contact with staff here and that's why it is so important to have a good one, getting these things done in a timely way and updating any time the permits are just about ready to expire. This staff repeatedly contacted you, I think they were very kind, I don't that in Wake County they would continue to say please come on with the permit because we don't want it to go bad on you.

ZT: I cannot agree with you more, I agree with the staff, everybody on the staff for the past 5 years has treated me terrifically, they have always given me notice, hey be sure to renew the contract or do work. This one year, in 2015, they did not remind me after they in my opinion knew that I was applying for a plumbing permits for these houses and they never said hey, this is not going to renew your building permit. So if they did it for 5 years, why didn't they do it the last time? Because they knew I was assuming the plumbing permit would carry the building permit forward and nobody spoke, they kept quiet.

Palma: Can that be entered, you knew were assuming? How did you know they were assuming? Is that legal to assume.

ZT: I'm doing the assuming.

Palma: Well okay, thank you sir. That's all.

ZT: I was not given notice of their interpretation or their change in method until two weeks after the deadline.

King: Follow up questions if I may. Mr. Taylor, do you currently have the property under contract?

ZT: Yes, these three houses

King: Is it contingent upon obviously being able to have building permits in place, is that true?

ZT: Yes

King: The question has come up, why did you not do the work for 12 months but isn't it correct that in 2015 you got a new permit for the sewer because you were told the existing sewer permit expired and you did work not only to install the sewer but also some of the framing?

ZT: yes

Tynes: I think I can address Vada's question. Our software doesn't give us any indication of when permits expire, we don't actively go in to look for when permits expire, the only reason I knew about is because Donna had a mental note about a certain time every summer, we need to look into it. It's not on a calendar somewhere, there are no alerts, the software does not tell us and we don't keep notes on anybody's expiration dates.

Palma: So that's not really in your job description, this is something you all have just been doing?

Tynes: No, she just knew and would always tell me and for the past couple of years we've been slammed, super busy and Zack was an afterthought, in it's about time for Zack to show up, check and make sure he's got his stuff. By the time we checked, as a courtesy, it was too late. It's not something we are required to do, it something we were trying to do to avoid this.

Lostiph: If this office was slammed, why have you not continued the building?

ZT: I have

Lotsiph: Not in good faith

ZT: Absolutely in good faith, I followed the same method that I've been following since the permits were issued.

King: At this time I move to introduce the 10 exhibits in the book and also the other document that shows the new plumbing permit fees being computed. I only have one copy but I can bring this up.

DTaylor: Any objections to these exhibits?

Shreve: No.

(Inaudible chatter in background)

King: That is the conclusion of evidence at such time as you allow me I will summarize what has been presented.

DTaylor: Any more evidence or testimony in this case from any party, anywhere?

King: I will make this brief, you've heard a lot this evening and I apologize for the length of it but obviously I think it is important to have all of this information before you. The Town has been most gracious as Ms. Tynes, said, she wants to support Zack in this matter but I think it's important to look at what's been done. If you look at the law itself, NCGS 160-418, (inaudible) why didn't you do something within 12 months, well we did do something, that notice in there says inspections but that's not what the law says. Law says you cease work, I think it's important what work is and how this is processed. If you look under tab 1 in my notebook you saw all those different

inspections, it says building permit. Every single inspection under there was a part of getting the building permit finalized. The culmination of the building permit is a certificate of occupancy, that 's after all the inspections are done. There are certain qualified trades that are required. Plumbing, electrical and those things and those require permits under the building permit. In this particular case, each one of those trades are the work that was done was progress toward the building and the structure so we contend all the work was done in 2012, 13, 14,15 was work that was towards the building permit. Therefore the building permit should not have expired.

These other permits, we may have to go back and get but we can't get the building permit because of the zoning. The issue before this board is not whether the electrical expired or whether the plumbing expired, I think its whether the building permit expired because we ceased doing any work under tab 1 for 12 continuous months. I think there is absolutely no testimony that we ceased doing work for all of these inspections, there was something done every single year, in addition there is a case I'll summarize. NC Supreme Court case which is our highest court, its called Morris Communications Corp vs. City of Bessimer City Zoning. In that particular case, a zoning permit was issued to a billboard company to put up a billboard. Six months expired and the billboard was not up it got put up after six months. The city say no, you missed your six months because the statute says you have to commence work just like this one says and we did. NC Supreme Court says you have to look work is – work is not just putting up the billboard, it talks about the fact there were permits, work had to go into that, in this case there was a building that had to be torn down before that could be done. There was preliminary work that had to be done so it says work towards a permit like that is not just a hammer and nails, its all the work that goes into it. In this particular case the sewer is part of the work that goes into the building process. The framing is part of the work. I don't think you say well the framing is only for the building the permit and the electrical has nothing to do with the house. The electrical is part of it, that's just one little bitty inspection that was in tab 1. All of these, sewer, electrical, everything. The bottom line is, there was one of these items done every 12 months, now whether it was done under an expired electrical permit of an expired plumbing permit, nevertheless , it was work done under the building permit and that work kept the building permit alive because it was a subcategory under this per this chart. So the work we did in 2015, even though for a new sewer permit, kept the work alive toward that building, as one of the requirements here. In addition I want to emphasize under the Towns admission and Ms. Tynes email of July of 20, said you had to get a new plumbing permit because the old plumbing permit expired. Well that didn't make it a stand alone new permit, what is did, it replaced the old permit because we need a new one since the old one expired so we go the new one per their instruction then June 2015, did our work prior to July 1st, had it inspected July 2nd, the photograph shows not only sewer pipe but it also shows some structural work that we requested to be inspected as far as piling and framing and the town said oh you don't need that inspected. We have an engineer statement under seal that says in his opinion that would normally be part of the building permit. Here again look at all the categories, (inaudible) it has sewer item #12 , that's part of it. Ms. Tynes testified that you cannot do a CO unless you connect the sewer to something, that's part of it. Ms. Turner in her testimony said all he had to do was do something, just do something. Do some electrical, do some insulation, do something. Well we did something, in 2015 we did the pilings, we did the sewer pipes, framing around the bottom of the pilings. We did something and that extended the building permit. Now, I don't think Ms. Tynes made a mistake, I think she was exactly right, these other subcategories I think extended the building permit. If there was a mistake made, it was on one of the smaller permits like electrical or something like that may not have gotten extended and needed renewal. I think each one of those would extend the building permit because an electrical is not a subcategory of a plumbing but a plumbing is a subcategory of building. Electrical is a subcategory of a building. Mechanical is subcategory of building, you are not going to install an air conditioner in a field. You have to have that building permit to show where everything is going to be located and that is the building, the whole thing. Just because you need specialized expertise to do plumbing and mechanical they require additional permits but all of that supports the building permit. If there wasn't rezoning we wouldn't be here tonight. Part of the package that you have is an email talking about had it not been a zoning issue the Council would not have taken care of this but because of the zoning it requires us to come before you tonight. We understand those pilings have been there, I've seen them, I own property down here, I've seen them for years, you've seen them for years, people don't like it we understand that and we are ready to proceed. The economy is right now it wasn't before and we are ready to get going with it and its our contention and totally supported by the evidence that we did not cease work under these categories for 12 months and the inspections report clearly supports that. There is no question that in 2012, 13,14 and 15 had work done. Problem is if the board approves this tonight which we hope you do, we have about two weeks to get more work done because they expire on July 2, 2016. At this point, that's what we are asking you to do to find these other categories sewer and everything else are supporting the building and the building doesn't report to those and per that statute if the work is discontinued for a period of 12 months. Our work

was not discontinued for a period of 12 months, this case that supports that also talks about the role of the board which is interesting. If I may read that, not to tell you what to do but why you sit as a Board of Adjustment. One of the fundamental purposes of zoning boards of adjustment is to provide flexibility and prevent practical difficulties and unnecessary hardships resulting from strict interpretations of zoning ordinances thus the purpose of effecting a just result , boards of adjustment are empowered to correct errors or abuse arising from the zoning enforcement officer administration of the ordinance. I will say this is not the zoning officer but effectively we are here because of a zoning issue. We are unfortunately, technically, in compliance with the law and here again we have not proceeding with great haste but never the less we proceeded under the guidelines of this law and the laws of NC. We would ask that you find the building permit was extended to July 2, 2016 because of the continued work that was done in 2015. Thank you.

Chairman: Are there any others that wish to be heard on this matter?

Palma: Kim, can you just tell me about your mistake?

Tynes: I did make a mistake because I didn't have a clear understanding about the PEA. When I realized it, I contacted Zack to let him know about it. However, I go to a permitting conference every year that is conducted by the Licensing Boards of all the trades, general contractors and all the other trades as well the Department of Insurance has representation and the School of Government. We have groups and we all talk about different situations and I presented that. Kathy Williams from the DOI said there should be absolutely nothing still open from the PEA, she couldn't believe that we were allowing these to still be open and said I did make a mistake which bought them some extra time and that they should be grateful for my mistake because it actually helped them. So the DOI told me I did make a mistake to which I apologize to everybody.

(Inaudible)

Turner: As the attorney said about the sewer line, there is not a county in this state or any other state that doesn't have sewer lines already run, stubbed up for a housing development so that doesn't to me, justify a building permit. You get a sewer line and attach it and have these lots ready and have these stubbed up, I'm sure you've seen them. You have lots for sale and have sewer lines stubbed up. This house, been there all these years, some poor soul is going to buy this house thinking they are going to get a new house and this thing is already 7 years old. The case he is talking about is about a billboard, not a house, it's not something that is going to house the public, wife, children, grandchildren, grandfather, this was a billboard, not a house. It didn't have to have plumbing, mechanical and others that go with a house, this was just a billboard. I can understand, the Town held them up and I read that case but it was not a home, not something the public is going to buy. You will look at, you will stand under it or be inside it, I can understand that, that case was a billboard. I'm talking about sewer lines that are stubbed up all throughout our state and probably every state in the US. It's done all the time and who is going to buy that house that's already 7 years old?

King: It appears that one of the things thru testimony, I would like to respond to some of that testimony. All of the items in tab 1-10 were introduced into evidence. If you look at tab 6, second page, there is an engineer's report dated March 2016 that says the structure there remains in good order. In spite of Ms. Turner's concern about selling an old house, this is an engineer and they rely on engineers as her testimony under seal that the structure that is there is perfectly good.

Lotsiph: What is the date?

King: Item 6, 3/4/16.

Lotsiph: What is lifespan of pilings?

King: Pilings were put in in 2012

Lotsiph: What is the lifespan of the wood?

- I interpret the applicable ordinance or statute to require an applicant to do or not to do what?
- The Town's Planning and Inspections Department has shown (or has not shown) that the applicant has failed to meet the ordinance or statute from evidence presented
The Appellant has shown (or not shown) that he or she has met the requirements of the ordinance and therefore his permit has not expired.
If there no further discussions, all in favor please raise your hand and hold it there for the Secretary to record the vote.

DTaylor: The motion on the table is to uphold the administrative determination and therefore the permit has expired.

Chairman: All those in favor raise your hand, (Lotsiph, Plough and Palma)

All those opposed, please do the same. (Chamblee and Kurek)

The vote is 3 for the motion and 2 against, therefore the building inspector's decision is upheld.

The appellant will be provided a written order within ten (10) days reflecting the determination and findings of this Board. Thank You.

Is there any further business to come before the Board of Adjustment Tonight?

ADJOURNMENT

May I get a motion to adjourn the meeting. Motion to adjourn by Plough, second by Lotsiph and the meeting concluded at 10:39pm.

Respectfully Submitted,

Kim Tynes

Kim Tynes, Secretary

Approved by:

John Kurek, Chairman