

BOARD OF ZONING ADJUSTMENT MINUTES

July 24, 2012

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3rd Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order

@ 5:30 pm: David Fulton, Chairman

Roll Call: Matthew Tapp, Director

Members Present: David Fulton, David Fricke, Brian Klopfenstein, and Vernon Reed

Members Absent: Mike Johnson

Staff Present: Matthew Tapp, Director
Debbie Viviano, Planner
Greg Canuteson, Assistant County Counselor
Angie Stokes, Secretary

Mr. Fulton: Let us call the regular July 24, 2012, Clay County Board of Zoning Adjustment meeting to order. At this time we are still short one board member, but he plans to be here. But we will get started with our regular meeting. Matt, would you please call roll?

Mr. Tapp: Mike Johnson?

Mr. Johnson: No answer.

Mr. Tapp: Brian Klopfenstein?

Mr. Klopfenstein: No answer.

Mr. Tapp: David Fricke?

Mr. Fricke: Here.

Mr. Tapp: David Fulton?

Mr. Fulton: Here.

Mr. Tapp: Vernon Reed?

Mr. Reed: Here.

Mr. Fulton: Okay we do have a quorum, but as I said we are expecting one other board member that was delayed. Gentlemen we have in front of you the minutes of our last meeting which was in March of 2012, is there any additions or corrections to the minutes you received in the mail?

Mr. Fricke: Mr. Chairman I don't find any correction and I move that we approve the March 27th minutes.

Mr. Fulton: Mr. Fricke has made the motion to approve the minutes of meeting of March 27, 2012 is there a second?

Mr. Reed: Second

Mr. Fulton: Vernon Reed second, all those in favor signify by saying "Aye".

All: Aye

Final Vote **3/0** **Approved** **March 27, 2012**
BZA Minutes

Mr. Fulton: Now normally we would ask anyone that is going to testify this evening to stand and be sworn in but we are going to do it a little different this evening. I would like everyone to do when you come to the podium, by the way everything tonight is on record it's all being recorded as we do at all of our meetings. And when you come to the podium to speak when all the testimony or any comments will be made from right up here, we ask you the first time you come up to make any kind of comments either as a proponent, opponent or make comments and we appreciate everyone coming out and we will give everyone the opportunity tonight if you want to speak you will have the opportunity before we adjourn. So we would, though, when you come up the first time you state your name then I'll ask you to be sworn in at that time. And we will swear you each in individually before any comments are made. We have two cases this evening. The first case is case number 12-103BZA is a request for a variance to the Clay County Code relative to minimum side setback. Now our normal procedure that we have used for the last number of years has been to have the staff report first and then hear from the proponents and then following that we would hear from anyone that is opposed to the request being made before this board. This board is interested in knowing one thing finding out the facts on the issue and we would like each of you to make your comments focus specifically on the case itself, not go off in left field, we would like to keep your comments directed as much as possible directly on the case and your position relative to your comments. So with that I call Matt to make staff comments on the first case number 12-103BZA.

Mr. Tapp: Debbie.

Ms. Viviano: Sam and Gina Lodhi, they own lot 5 of Waterfall Manor it's about a 6± acre lot that is located at 16811 NE 77th Street. Before I go any further I would like to attach the Staff Report to the minutes.

Mr. Fulton: Approved.

Ms. Viviano: Summarized the staff report. Staff report 12-103BZA dated June 20, 2012 and part of the case file is hereby made as an attachment to the minutes. Mr. Lodi is here if you have any questions.

Mr. Fulton: Thank you. Mr. Lodi will have the opportunity to speak here in a minute. Does the board have any questions relative to the staff report?

Mr. Reed: Yes I have a question.

Mr. Fulton: Okay Vernon.

Mr. Reed: I am curious as to what degree consideration was given to adding the building to the opposite side of the house and not to get so close to the property line? Did I miss something in the report here?

Mr. Fulton: We will address and direct questions to staff right now. When we open the public hearing we will call Mr. Lodi first as one of the proponent. Any questions to the staff relative.....

Mr. Tapp: Mr. Lodi can respond to that.

Mr. Reed: Just quickly were there any other neighbor responses to the inquiries?

Mr. Tapp: We had a number of phone calls, but no oppositions.

Mr. Reed: Any negative?

Ms. Viviano: No.

Mr. Tapp: No.

Mr. Reed: Just question.

Mr. Tapp: Just clarifications.

Mr. Fulton: Very good if there are no other questions of staff the public hearing will open with the proponents making any comments as far as why this board should approve your variance. And then we will hear from anyone who is opposed and then if the proponent want to come back and speak again we will give you that opportunity to come back and respond to the opponents until we get a clear understanding. One of the most difficult things for this board is we get an excellent staff report but we always like to hear directly from those involved and so our rule is to help us better understand what your request is all about and that sets the stage for us to make the best decision we can possibly make. So with that let's open the public hearing up to the proponents if you would. Anyone who would like to speak that is in favor of why we should approve this variance. State your name and then we will swear you in.

Mr. Lodi: Okay. Sam Lodi I live on the proposed property we are attaching a garage to our house.

Mr. Fulton: Okay now if you would, do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Lodi: I swear. So the question that Mr. Vernon had about the West side of the property if you see on the pictures you will see there's all the utilities that are going into the property from there are buried. The water, the electric, and the phone all the utilities are on that side. Also the air conditioning unit also sits on that side so that was one of the reasons and if you see the grade is very hard because it drops all the way down because it is kind of a walk out situation, it's a house that has a walk out basement. So that is why I can't, the only area that is flat enough and actually the garage can be put together is where we are trying to get it. Also my daughter who just started driving who's sixteen so we only have a two car garage and I have three kids, so I gotta have more garage space. And that is one of the reasons I wanted to extend because I defiantly want to live there for the rest of my life hopefully. I love Clay County.

Mr. Reed: May I ask, the implication is it would be quite a bit of fill on the other side of the house, how much fill will there be required on this side?

Mr. Lodi: Oh I have no idea, in fact because it is not only because of the fill part it's the utilities and water and even the air conditioning unit would have to be moved. And it all comes from that side.

Mr. Reed: I understand that but as far as the planning circulation is there any compelling need to go to one side rather than the other because of bedrooms or the arrangement of the house or is it just purely a function of the utilities.

Mr. Lodi: Bedroom is also on that side, the utility side has the bedrooms, yes. The main bedroom is on the utility side.

Mr. Reed: And there would be no utilities in the way on the side that you propose.

Mr. Lodi: Absolutely none.

Mr. Fulton: Okay, any other questions from staff or the board? I have only one. Did you approach Mr. Vick to buy 20 feet?

Mr. Lodi: Yes I did and in his letter you will see he had mentioned that I had asked him if I could buy and he declined respectfully. I absolutely tried.

Mr. Fulton: I want that in the record.

Mr. Lodi: Yes sir thank you. I did my best to get everything I could do.

Mr. Fulton: Okay. Thank you Mr. Lodi we reserve the right to call you back up if there is questions.

Mr. Lodi: Thank you.

Mr. Fulton: Now is there anyone who would like to speak in opposition to this request for variance? Hearing none we will declare the public hearing closed and this issue and the chair will introduce a motion at this time so we can have further discussion on this request for variance.

Mr. Reed: I move that we accept the staff's recommendation and approve the setback revision.

Mr. Fulton: Okay, is there a second to the motion?

Mr. Klopfenstein: I'll second.

Mr. Fulton: The motion as been duly been submitted and seconded. Now is there any discussion on the issue before we put to a vote?

Mr. Klopfenstein: Mr. Chairman I assume by the motion that we agree that it meets the four criteria and also that the recommendation includes the 20 foot side setback as outlined in the staff report and if that is the case then I have no other comments to make.

Mr. Fulton: So you are saying to attach that to the motion that it does meet the criteria?

Mr. Klopfenstein: Yeah.

Mr. Reed: I accept that amendment.

Mr. Fulton: The motion has been made with the staff comments relative to the bases to for which we make decisions. There are four items on this to make all decisions for variances and they all have been met and on that basis the request for a variance was summited. So with that if there is any more discussion? Hearing no further discussion Deb will you read the call for the vote?

Mr. Tapp: Mr. Chairman I move that we reintroduce a roll call so the additional member may introduce himself.

Mr. Fulton: Let the record show that Mr. Klopfenstein has arrived finally and he has been participating in this discussion and seconded the motion.

Mr. Tapp: Okay.

Mr. Tapp: Brian Klopfenstein?

Mr. Klopfenstein: Present, yes.

Mr. Tapp: David Fricke:

Mr. Fricke: Yes.

Mr. Tapp: David Fulton?

Mr. Fulton: Yes.

Mr. Tapp: Vernon Reed?

Mr. Reed: Yes.

Mr. Fulton: Okay, thank you for coming in, thank you for your request and for participating this evening.

Final Vote 4/0

**Approved 12-103 BZA Set back variance
for Mohammad Asim (Sam) Khan-Lodi
16811 NE 77th St**

Mr. Fulton: The second case this evening is case number 12-104 BZA that is a request for an Appeal of an Administrative Decision pursuant to Section 151-3.15 of the Clay County Code pertaining to a farm structure. The applicant is Patricia R. Jensen, Attorney for the O'Dell Trust and Mark and Rhonda O'Dell Trust. As we have we normally do we will first hear the Staff Report then hear from proponents for the request for appeal and then any one that would like to speak in opposition, but it's a little unique in that the staff is involved but we want to hear from the staff comments first. So with that and by the way since staff is involved in this, Matt before you make your comments we would like for you to be sworn in.

Mr. Tapp: Okay.

Mr. Fulton: Since you are involved specifically.

Ms. Jensen: Mr. Chairman just for the record my name is Patricia Jensen and I am with the White, Goss, Bowers Law Firm with offices located at 4510 Belleview, here today on behalf of the appellants.

Mr. Fulton: Okay, do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Tapp: I do.

Mr. Fulton: And state your name.

Mr. Tapp: Matthew Tapp, Director of Planning and Zoning for Clay County.

Mr. Fulton: Thank you.

Mr. Tapp: Mr. Chairman I move that we include the Staff Report as Exhibit A-1 for your consideration. Mr. Chairman?

Mr. Fulton: Okay, fine.

Ms. Jensen: And I have no objection to that.

Mr. Tapp: Summarized the staff report. Staff report 12-104BZA dated July 16, 2012 and part of the case file is hereby made as an attachment to the minutes. And also like to include Mr. Chairman that established the Staff Report as Exhibit A-1 but also to include all the attachments and exhibits here too under that.

Mr. Fulton: Okay.

Mr. Tapp: That reminded me. (*Continues with Staff Report*)

Mr. Fulton: Okay, thank you. Okay now we will open to public hearing and hear from the proponents of this request for an appeal and if you would state your name now.

Ms. Jensen: My name is Patricia Jensen with the White, Goss, Bowers Law Firm with offices located at 4510 Belleview, here today on the behalf of the appellants, the Jane H. O'Dell Trust and Mark and Rhonda O'Dell Trust. And with me is Mark O'Dell.

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Ms. Jensen: I do.

Mr. Fulton: Let the record show. The floor is yours.

Ms. Jensen: Thank you Mr. Chairman.

Mr. Fulton: We have had not been involved in this as nearly as long as you have and so I guess the greatest challenge is to help us understand really what you're asking. Cause I see a lot in the request for... He did furnish the request that you received for written interpretation but we You got a lot to go to help us understand what it going on.

Ms. Jensen: And we certainly hope to do that. We certainly have organized a presentation to you. I got an opening statement that will summarize what the facts are

that I believe you will hear tonight as well as what our request is and then we have several witnesses. But first we are going to ask Mr. Tapp some questions then Charles Adams is present here, and I got a few questions for him. David Pavlich is here from the City of Kearney pursuant to a subpoena and then finally Mark O'Dell is here as well as there are other people who may want to testify on behalf of the proponents. Before I go into my opening statement I've talked to Mr. Canuteson about what is the most efficient way to do this for you, we have a number of Exhibits which are Exhibits 1 through 31 and we would like to admit them on a whole sale bases they will be the foundation will be laid as we go through each of the questions for the witnesses. We have books for each of you that have the exhibits so that you can follow along as we make the presentation to you to tell you why we believe that the decision that was made by Mr. Tapp is incorrect and not based upon the law of Clay County. So with that I would ask that you admit Exhibit 1 through 31 and Ms. Bowers with give Mr. Canuteson one. The Exhibit list is at the front of the book. So we would request that you'd admit Exhibits 1 through 31 at this time.

Mr. Fulton: I have no problem with that. For the record let them be admitted Exhibits 1 through 31.

Ms. Jensen: Thank you. Yes. Chairman and members of the board as you know my name is Patricia Jensen and I am here on behalf of the appellants in this case. The appellants own and resided on properties in Kearney, MO which is on the North side of NE 130th Street and on the East side of 33 Highway immediately North of the Flanery property. The O'Dell's on, we filed on behalf of the O'Dell's the appeal of the director's written interpretation that are the subject of tonight's hearing and the facts that we will present tonight through testimony and exhibits will establish these following facts; that my clients generally acquired their properties a little less than twenty years ago and have been living there since then. Their properties were annexed into Kearney about five years ago in 2007/2008. The O'Dell's are opposed to the building that is currently constructed on the property on the basis that it has been constructed for commercial purposes and not for farm purposes. About thirteen (13) years ago I think some of you may remember that the 250 acre Flanery property was owned by Park Development at that time controlled by David and John Barth. They applied to Clay County to rezone the property from AG which is Agricultural to a single family subdivision classification R-1B and for an approval for a preliminary plat for 136 homes. The plat provided for a ten acre buffer zone on the North end across the street from the Mrs. O'Dell's home. The buffer zone provided that there would be no buildings within 600 feet of NE 130th Street. The Barth's proposed project was never developed. Last year Park Development sold the 250 acres to the Jack L. Flanery Trust and subsequently in June of last year specifically on June 9th the Flanery's on behalf of the trust applied for and received a building permit to construct a farm building on the trust property. This application states that the Flanery's planned to construct a farm building not a daycare building and Charles Adams, the building official at that time, signed the document "Checklist for Farm Buildings" that permitted the construction of the building. About seven days later on June 16th Charles Adams filled a memo in the file that said "This farm permit was issued by mistake. When I checked the zoning map it showed that this property was still being zoned as Ag in that corner. After further inspection it was determined that this parcel has been rezoned as was the rest of the property. This I did not find out until the permit and construction had started." And that was only seven days after the permit had been issued.

My client who lives across the street and who's picture window looks directly onto the site did not notice any construction on the building at that time until about two months after the permit was improperly issued. As I stated in about August the O'Dell's saw the quote barn building coming out of the ground. They investigated and upon their investigation they learned that Ms. Flanery intended to start a daycare business in that building and that's when we were hired to look into the matter. On October 18th of last year the Jack L Flanery Trust conveyed about 5.9 acres which is at the very corner of the property that included the barn building of the larger 250 acre property to Richard A and Chala Flanery. On February 10th of this year approximately five months after Jim Bowers sent a letter to Jack Flanery, Richard Flanery called Mr. Bowers to ask for a meeting with Mrs. O'Dell to allow Chala to explain her plans for a daycare facility. And they held the meeting on February 16th of this year. She told them of her plans for a daycare facility to handle 55 children in a 110 foot by 80 foot metal building with 28 parking spaces with vehicle access from NE 130th Street. Our clients are very concern about that given the traffic that occurs and the fact that this is supposed to be a rural single family residential area. On February 20th of this year Mr. Bowers advised the Flanery's that the O'Dell's opposed the daycare project. Ms. Flanery responded back via e-mails and stated that if the O'Dell's did not support the project that they would not provide any buffer for any use of the Flanery property. On April 13th of this year Richard and Chala Flanery summited a voluntary petition to annex the 5.9 acres to the City of Kearney and on April 27th of this year is when our office summited the request to Mr. Tapp for a written interpretation of the Clay County Land Development Code in terms of the construction of what we believe is a commercial building on the Flanery property. On May 4th Richard and Chala Flanery quick claimed back that same 5.9 acres to the Jack L Flanery Trust and on that same day the Jack L Flanery Trust conveyed back and more about 43 acres to Richard and Chala Flanery which included that 5.9 acres they just flipped back to them. You might ask why did they do this the likely reason they went through this process is that the original conveyance on October 18th of last year from the Trust to Richard and Chala violated your Land Development Code, specifically the subdivision requirement that no property shall be subdivided without complying with the subdivision regulations unless the conveyance is expressly exempt. There are about eleven exemptions contained in your county's code. One of which is to exempt conveyances of properties containing 40 acres or more. Not the 5.9 acres that were originally conveyed with 100 foot of frontage and access that complies with state and local distances requirements. And then on May 24th and June 4th of this year Mr. Tapp issued written interpretations to the questions that were posed in Mr. Bowers' April 27th letter and I think Mr. Tapp will tell you that those letters are the same they just have different dates. On June 4th the City of Kearney determined that it did not desire to proceed forward with the annexation request by the Flanery's. So this property has not been annexed into the City of Kearney. And on June 22nd as Mr. Tapp stated we filed the appeal of the director's decision on the following bases a farm building is not permitted on the property in question without a principal structure under Section 151-6.3 of the Land Development Code. Section 151-6.3 permits the farm building as an accessory structure in the R-1B zoning district but only if it is subordinate to the principal structure. There is no principal structure on the 5.9 acres or on the larger 43 acre property. So therefore it does not qualify as an accessory use or accessory structure and this is true whether you apply today's effective code, because Clay County went under a code

revision and adopted a new Land Development Code in February of this year, or whether you are applying the code that was in effect in June of 2011. The second reason is that on the date that the permit was issued June 9th of last year farm buildings were not allowed as an accessory use in a residential district. That changed with the new Development Code and Mr. Adams admitted in the memorandum that is in the file on June 16th that it was clearly a mistake. He believed at the time he agreed and signed that checklist for farm buildings that the permit that the property was zoned AG which allowed the farm building as an accessory use not the R-1B zoning district that applied to the property where those farm buildings were not permitted. And then finally the facts, especially since the June 9th permit issuance showed that the intent of the Flanery's has never been to use the building as a farm building. It's been demonstrated through all the actions of the Flanery's subsequent to obtaining the permit on June 9th, for example the transfer of only 5.9 acres of the property, which is where that building is located, to Richard and Chala Flanery. The voluntary annexation petition that was filed with the City of Kearney only asked to annex 5.9 acres into the City of Kearney not the entire Flanery property. And then the Flanery's have stated their intent over and over again in the voluntary annexation proceedings and the meetings we have had with them that it's their intent to locate their business, their daycare, and relocate their daycare facility to the building. And the construction when you see the photos of the building was never about using the building for farm purposes. It's always been about locating a daycare facility there. If you look at the photographs the doors that are constructed to this building are not large enough to accommodate your farm equipment like your combines and your threshing machines and any of the other large plows that are done with farming. They are small doors done with an entry for a daycare facility. It was built with two floors in mind; you will see small windows on top of each other on the building. So, therefore we request that you overturn the written interpretation of the director and find that the building as constructed does not meet the requirements of the Land Development Code, because it not an accessory structure and it is not a farm building. After you hear all the testimony and you reach your decision we also request that the board issue written findings of fact inclusions of law. And with that I will call the first witness, which is Mr. Tapp.

Mr. Fulton: First can I ask one question? You said right in your closing that your appeal was to written interpretation of Mr. Tapp?

Ms. Jensen: Right.

Mr. Fulton: All of it? There are five sections.

Ms. Jensen: No, our

Mr. Fulton: Well you please somewhere bring out to this board is there specific, what specific items of those five are you addressing?

Ms. Jensen: I'm addressing item number three (3).

Mr. Fulton: Okay.

Ms. Jensen: Because he says in there a barn is permitted on the property in question under the Land Development Code within the R-1B zoning district. And then item number five (5) says request for written interpretation as to whether the decision was made by your department on June 9th is correct given the memo dated June 16th and we also asked in our written letter that he revoke the permit that was issued and he denied that. So those are really the points in the letter that we are talking about.

Mr. Fulton: To clarify you're appeal is for items number three (3) and number five (5) of the five items.

Ms. Jensen: Right.

Mr. Fulton: Is that right?

Ms. Jensen: Right.

Mr. Fulton: Thank you very much.

Mr. Canuteson: Mr. Chairman may I clarify this just a little bit more? You are entitled to an appeal based on a written interpretation and an administrative decision and it seems you have identified number three (3) and number five (5) of exhibit B as the reasons for your appeal, is that correct?

Ms. Jensen: Yes along with the failure to revoke the permit as we requested in the letter.

Mr. Canuteson: You are entitled to an appeal on an administrative decision. What specific administrative decision are you appealing?

Ms. Jensen: This number three and five and he also failed to revoke the permit.

Mr. Canuteson: Okay, number three and number five are both written interpretations which you are entitled to an appeal.

Ms. Jensen: Right.

Mr. Canuteson: You are also entitled to an appeal of an administrative decision.

Ms. Jensen: The administrative decision was the failure to revoke the permit.

Mr. Canuteson: So the failure to revoke the permitted use based on your letter of April 27th.

Ms. Jensen: Yes those two.

Mr. Fulton: Thank you for that clarification.

Ms. Jensen: Mr. Tapp, I am going to consolidate the questions into a number exhibits that have already been admitted but I would like you to take a look at what we have marked as Exhibit six (6).

Mr. Tapp: Patricia are those the same exhibits that are in your book?

Ms. Jensen: Yes eight and nine.

Mr. Tapp: Six, eight and nine?

Ms. Jensen: Just eight and nine, sorry. And eight is a section; Section 151-6.3 that was in effect in June, 2011 and section or Exhibit nine is the same section that was effective with the new code. Can you tell me the difference between that, these two documents as it relates to the farm buildings that are built as accessory structures?

Mr. Tapp: Sure, definitely. The main differences here between Exhibits eight and nine, eight being the LDC as established in June 2011 and then the LDC as the request of this appeal. The main difference is in the old code we limited farm structures based on zoning districts and in the new code we removed any reference to zoning districts because as this subject property illustrates, when you rezone a piece of property to high density residential that does not always happen. So there is a difference between current drive by windshield land use and future what is allowed land use. And so references to zoning districts on farm building does not apply. That is the main difference.

Ms. Jensen: And specifically in Exhibit nine, which is the current code, the added provision compared to the provision that was in effect when this permit was issued as it relates to these farm structures are in 151-6.3 B-2A in residential districts and that is on page 150 at the bottom of the paper.

Mr. Tapp: In residential districts?

Ms. Jensen: Right.

Mr. Tapp: Yes, but also keep in mind too under 6.3 B.5.A is the time of establishment of accessory structures and it is very similar language.

Ms. Jensen: Right it added a number of provisions that says that those provisions shall not apply to farm structures on various things.

Mr. Tapp: At time of establishment and accessory structures the only time an accessory structure can be in place prior to a principal structure is a farm building and three acres or more. The three acres relates back to our animal standards, where you can have animals on three plus acres.

Ms. Jensen: But the provision in, Mr. Tapp, the provision in Section 151-6.3 B, the sentence imminently underneath that is the same for as it was in 2011 is that correct? Where it says all accessory structures shall be subordinate to the principal structure.

Mr. Tapp: Directly under B, yes.

Ms. Jensen: Thank you. And then if you would take and turn to Exhibit eleven that is the zoning map that you provided to us and certified to us.

Mr. Tapp: Yes.

Ms. Jensen: And that shows the zoning of the Flanery property as well as the surrounding property, correct?

Mr. Tapp: Yes.

Ms. Jensen: And the surrounding property on the East side of 33 Highway is zoned R-1?

Mr. Tapp: R-1B yes.

Ms. Jensen: Okay. And the zoning on the Oak Creek Farms is R-1A?

Mr. Tapp: Are you talking about the Elm Tree Estates, the Flanery property or which?

Ms. Jensen: No it over here (points at map).

Mr. Tapp: Oak Creek Farms yes that is R-1 the reproduction here is a lighter hue you can tell it is R-1.

Ms. Jensen: Okay. That is all of the questions I have of this witness. The next witness I would like to call is Mr. Charles Adams. I think you have to stand up by me to get a microphone.

Mr. Fulton: Charles if you will please come up to the microphone and talk into the microphone. State your name and I'll ask you to be sworn in.

Mr. Adams: Really, you want me to say I swear to tell the truth, the whole truth nothing but the truth so help me God, Charles Adams.

Mr. Fulton: Charles with the greatest respect I will say that.

Mr. Adams: Oh okay want to do it again?

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Adams: I do.

Mr. Fulton: Thank you Charles.

Mr. Adams: You bet.

Ms. Jensen: And Mr. Adams were you previously employed by Clay County Missouri?

Mr. Adams: Yes.

Ms. Jensen: And what was your previous position with Clay County?

Mr. Adams: I was their Building Official and Land Trustee.

Ms. Jensen: And when did you retire?

Mr. Adams: April 1st of this year.

Ms. Jensen: As Building Official for Clay County what were your responsibilities?

Mr. Adams: Well are you sure you want them all?

Ms. Jensen: Can you briefly describe them?

Mr. Adams: Alright, I did the plan reviews, I did the issuing of permits and I did the inspection of construction for structures in the County.

Ms. Jensen: Did you receive a form from the Flanery's on June 9th, 2011 for the Checklist for Farm Buildings Clay County Missouri? And that is shown as Exhibit number thirteen.

Mr. Adams: Okay this was what we call a Checklist for Farm Buildings, the only reason it exists is to take care of no construction in Floodplains so we don't lose our FEMA insurance and to make sure that setback requirements are met for the property. Other than that we have nothing else to do. We do no inspections, which you are aware of, and we do nothing else. We take no money for it or anything else, and the reason why is because the State of Missouri says that farm buildings are allowed to be constructed without a permit. But we had to protect our insurance with FEMA and we had to protect the setbacks for the utilities so that's why there is such a thing as a checklist. And in that checklist it states right there before the guy who signs it that it is solely for agricultural proposes. So if you want to go out and build a chicken coop and you want to go out and build a barn, a three sided barn shelter for your horse or what have you all of those things fall under that because there are no permitting. Okay it's strictly the property was not in a flood plain and he made his setback requirements. Okay that is all we look for, we don't even look for the driveway permit or utilities or anything else because we don't need them. Okay for this.

Ms. Jensen: Mr. Adams you received this from the Flanery's on June 9th?

Mr. Adams: He signed it at that time and it was notarized by Judi Ewing at that time.

Ms. Jensen: And your signature appears at the bottom of this?

Mr. Adams: At the very bottom that is right because I am the Building Official who checked the thing to make sure he did sign.

Ms. Jensen: And your signature, the statement above your signature specifically states that the work described in the application form will not authorize a violation of any laws and regulations. Is that correct?

Mr. Adams: That's correct.

Ms. Jensen: And when you signed this form did you believe the Flanery property was entirely zoned the AG or the portion that you were approving was assigned AG.

Mr. Adams: Okay, the portion that this barn was sitting on which was about 40 acres I think if I remember right was zoned AG on the map that was approved by the commission. Alright I had no other thing to go by at that time that is what I had to go by because there was no one else I could even talk to at that time. So it said that that 40 acres was AG. That came as no surprise to me because I had heard that when the original plotting of everything was going through, there was going to be a buffer zone between 130th Street and the construction. So I figured that is why that was left as Ag for that and I had no reason to challenge or check into any further at that time because everything seemed normal to me.

Ms. Jensen: And did that zoning belief turn out to be incorrect?

Mr. Adams: That's what I found out later on when I was talking to the zoning people that it had changed, yes.

Ms. Jensen: I am showing you Exhibit 14, which is a memorandum that you signed dated June 16th. Is that correct?

Mr. Adams: Okay, that is what it says and that is my signature.

Ms. Jensen: And in that memorandum that you signed you state that the farm permit was issued by mistake because you did not have the correct zone.

Mr. Adams: Okayed it by mistake there is no building permit. We cannot issue a building permit, it is strictly a checklist to make sure what you are going to build is being built where it said, it was not in a flood plain, etc.

Ms. Jensen: Right, but your memorandum calls it a farm permit.

Mr. Adams: A farm permit, we permitted for it to be built but it was not a construction permit. Okay?

Ms. Jensen: Okay, and based upon this mistake did you do anything or take any action to revoke the problem.

Mr. Adams: No I did not, and I never did get around to do anything further with it and I never did receive what I would consider to be a normal time, because if you look at the date that the other one was issued.

Ms. Jensen: June 9th.

Mr. Adams: June 9th and I retired on April the first in all of that time I never received anything that said that they wanted an appeal of my decision and take it before the appeal board that exists for the building department. And that board even has one of the Commissioners on it so that we make sure everything is kosher and nobody ever appealed it. So it was not appealed with what you would say within any kind of reasonable time frame.

Ms. Jensen: Mr. Adams

Mr. Adams: Did we receive anything to me nothing repealed to me at all.

Ms. Jensen: Mr. Adams you need to be responsive to the question.

Mr. Adams: I know you don't want me to say this but you know it is going to lead around to the fact that even the courts will not take this because it would never finish going through the appeal process. They don't get the building they only get the zoning.

Ms. Jensen: Mr. Chairman he is not responding I would like to ask if you would strike the testimony.

Mr. Fulton: Since we are not a jury, we are a board we want to get to the facts all the facts and with council we were going to reserve the rights to question the witness. This board is with your approval while he is still under oath and if the board members have any questions we are going to ask Charles or any other witness. Because we want to get the facts that is why we are here tonight, just to get the facts and there's a lot of facts to be obtained as you are pointing out.

Ms. Jensen: Mr. Adams if someone had told you that they wanted to operate a daycare faculty from this building would you have issued this farm permit.

Mr. Adams: No.

Ms. Jensen: Thank you.

Mr. Fulton: Okay, Charles if you would stay, does any of the board members have any questions to Charles this is a good time to ask them, he's here.

Mr. Fricke: Maybe later.

Mr. Klopfenstein: Mr. Adams, when you discovered their permit was issued by mistake did you notify anyone?

Mr. Adams: Only in my office and put the note in the file that I had discovered that mistake at that time. I know the building had been ordered okay so those expenses were already under. The farm buildings can be built like I said out of anything, you can build

them out of cardboard if you want to or you can build them out of stainless steel if you want to anything, because we don't govern that.

Mr. Klopfenstein: I guess my question is did you ever notify the Flanery's that you had made a mistake.

Mr. Adams: I don't recall if I did or not. Seriously.

Mr. Klopfenstein: Is there in your file that reflects you notified the Flanery's?

Mr. Adams: Not that I am aware of.

Mr. Fulton: And for the record Charles how long does anyone have to appeal your decision?

Mr. Adams: Normally it says ten days but if it is within reason 30 days 60 days. But we are talking about several months here and nobody ever appealed or made an appeal to us that they wanted to go before my appeal board and take care of this.

Mr. Klopfenstein: At the time that you noticed the mistake did you ever drive out the property to see if there had been.

Mr. Adams: I knew that there had been excavation work done.

Mr. Klopfenstein: Any construction?

Mr. Adams: The only thing I knew of was that they had been ordered.

Mr. Klopfenstein: Okay. Thank you.

Mr. Fulton: Good.

Mr. Reed: Would you repeat your comments about the state has provisions that a permit...

Mr. Adams: State Statues.

Mr. Reed: Explain that to me once more.

Mr. Adams: I think you built your building out there that way too. If you want to build a building solely for agricultural purposes, the State of Missouri says that I may not issue you a permit to build no building permit will be required to do that work, but we also have FEMA insurance we also know that other counties got in to trouble by not watching their insurance, okay. So we have watched our's here, we make sure you go through this checklist, no building permit, to make sure that you are not building in a floodplain or water way, etc. and that you are staying off easements that could be on the property, okay. That's the only thing we check for other than that we don't do anything because it's state says that they can build any kind of thing on their farm that they want to build.

Mr. Reed: And you qualified that by saying that the state statute permits a structure for agricultural use, purpose. Now in the code that we have there are a number of uses that are permitted in agricultural zone are those all considered agricultural?

Mr. Adams: No, only that is being used for agricultural purposes. Now if you went out there and you built a building on your farm to repair trucks in or do to other work in no that does not qualify as an Ag building that is a shop that's a building for construction or for other purposes. So, no that doesn't qualify now you have to pay for the permit and you will have to build it according to the 90 mile an hour wind and the snow load and everything else. And especially in something like you are going have people working inside of it. So that means it's got to be inspected and be checked and so forth for life safety. Where in a farm building it's mainly for the animals, grain storage you usually park your tractors and that kind of stuff inside of the building but that is all it is used for. It's not a workshop.

Mr. Fulton: Any farmer that has acreage over 40 acres can build a structure anytime without coming to you?

Mr. Adams: He can't do that because of our checklist that they must fill out. You got to get over that first, okay. We do say you must get that and that is because of our FEMA insurance. If we don't get that, if we let everybody go out here and build where they want to build we are liable to have FEMA come in and say we are going to cancel your insurance, cause you have too many buildings in the floodplain. They have done that in other counties.

Mr. Fricke: Checklist is not binding.

Mr. Fulton: Any other questions of staff? Thank you very much Charles. Are finished with this witness?

Ms. Jensen: Yes I am. And members of the board just so you know I do have a brief that will describe the statue that Mr. Adams is referencing as well as an Attorney General opinion that will be attached to the brief that describes what county....

Mr. Fulton: Excuse me, Charles, we are going to call the opponents here in a minute and I would like to reserve the right to call you again too as well as all the witnesses. I am going to give all the opponents an opportunity to speak also; I want to get the facts.

Ms. Jensen: The brief attaches a 1970 Attorney General opinion that talks about what authority counties have over these farm buildings or farming crops and other types of crops that are farmed and so I will present that to you at the end too. First I want to get all the facts out to you. The next witness is Elaine Bowers.

Mr. Fulton: Would you please state your name first and then I will swear you in.

Ms. Bowers: Elaine Bowers.

Mr. Fulton: Thank you Elaine for coming this evening. Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Ms. Bowers: I do.

Mr. Fulton: Thank you very much.

Ms. Jensen: Mrs. Bowers where are you employed?

Mr. Bowers: White, Goss, Bowers, March, Schulte & Weisenfels Law Firm.

Ms. Jensen: And what is your position with White Goss?

Ms. Bowers: Senior Paralegal.

Ms. Jensen: And as the Senior Paralegal what are your responsibilities?

Ms. Bowers: I assist the attorneys in all kinds of cases as well as supervise other Paralegals.

Ms. Jensen: Did I ask you to obtain the deeds for the property at the South East corner of 33 Highway and North East 130th Street?

Ms. Bowers: Yes you did.

Ms. Jensen: And where did you obtain them?

Ms. Bowers: From the Clay County website Recorder of Deeds.

Ms. Jensen: And Exhibits 15, 16 and 17 that are in the books are the deeds that you obtained from the website?

Ms. Bowers: Correct.

Ms. Jensen: What is the date that Exhibit 15 was recorded with the county?

Ms. Bowers: It was recorded October 18th of 2011.

Ms. Jensen: And did this Exhibit transfer 5.9 acres?

Ms. Bowers: Yes.

Ms. Jensen: And you determined that it was 5.9 acres not because it was mentioned in the deed but because you compared some additional documents? Is that correct?

Ms. Bowers: Correct. The legal matches the petition for annexation in the City of Kearney's files.

Ms. Jensen: And that legal in the petition for annexation talks about 5.9 acres? Correct?

Ms. Bowers: Correct.

Ms. Jensen: What are the, what is the date that Exhibits 16 and 17 were recorded with the county?

Ms. Bowers: May 4th of 2012.

Ms. Jensen: Did Exhibits 16 transfer that 5.9 acres back to the Jack Flanery Trust?

Ms. Bowers: Yes.

Ms. Jensen: And did Exhibit 17 transfer a larger area of about 43 acres to Richard and Chala Flanery.

Ms. Bowers: Yes.

Ms. Jensen: Did this transfer include the original 5.9 acres that was included in the two previous deeds?

Ms. Bowers: Yes it did.

Ms. Jensen: Let me grab the board. Ms. Bowers at my direction I asked you to prepare an aerial map to demonstrate where these properties were, is that correct?

Ms. Bowers: Correct.

Ms. Jensen: And that is Exhibit 12 that has been admitted into evidence already?

Ms. Bowers: Yes.

Ms. Jensen: And can you explain what the outlines are on the board. The blue outline first.

Ms. Bowers: The blue outline is the legal description that is referenced in the deed that is Exhibit 17 I asked the Clay County Assessor's Office, to using that legal, to give me the boundaries and that was the boundary that was prepared by Brian Lomus in the Clay County Office.

Ms. Jensen: And the yellow boundary is?

Ms. Bowers: That is the approximate or the location or the location of the 5.9 acres.

Ms. Jensen: And that is acreage where building is constructed? Is that correct?

Ms. Bowers: Correct.

Ms. Jensen: I am also identifying for you Exhibits 18 through 27 can you identify these photographs?

Ms. Bowers: These are photographs that I took on June 20th of this year.

Ms. Jensen: Are these photographs a fair and accurate representation of the Flanery property and surrounding property to the North.

Ms. Bowers: Yes they are.

Ms. Jensen: And can you go through each of the photographs and describe the location of where you were taking the photographs?

Ms. Bowers: Yes, first of all Exhibit 18 is looking at the building from approximately the location of 130th and 33. The Exhibit 19 is pretty much from the same location just zoomed in a little bit. Exhibit 20 is the building from 130th Street.

Ms. Jensen: And that is looking directly south.

Ms. Bowers: Correct, directly South. Exhibit 21 is again looking directly south at the building just zoomed in. Twenty-two is looking basically to the Southwest from 130th toward the building. Exhibit 23 is pretty much the same direction just kind of pulled back a little, the first one was zoomed in a little bit. Exhibit 24.....

Ms. Jensen: Let's go back to 23, that is taken from the driveway of Mrs. O'Dell's property, correct?

Ms. Bowers: Correct. Then 24 I believe that was looking to the west from Nebo Hills Road on the east side and then Exhibit 25 is a photo of the Mrs. O'Dell's property on the north side of 130th Street. And then Exhibit 26 is looking west along 130th Street with the Flanery building on the left and Mrs. O'Dell's property home on the right. And Exhibit 27 is looking back at the building basically toward the Northeast from 33 Highway.

Ms. Jensen: And that looks at the back of the building on the South side?

Ms. Bowers: Correct. And that was it for the photos.

Ms. Jensen: That's all the questions I have of this witness.

Mr. Fulton: Okay would you first board, anyone like to ask her a question? I would like to see on the map here just where the building is? We got pictures but....

Ms. Bowers: Yes this aerial was taken prior to the building construction, so the building without scaling out it is going to be right about I believe in here where I got my finger.

Mr. Fulton: Okay I thought it was farther back.

Ms. Bowers: No I believe that one picture I took was from this driveway right here looking back this way so the building is going to be right approximately in that location.

Mr. Klopfenstein: The road on the left of the picture that is 33 isn't it?

Ms. Bowers: Correct this is 33 and 130th then Nebo Hills.

Mr. Klopfenstein: And the O'Dell residence?

Ms. Bowers: Right there.

Mr. Klopfenstein: Thank you.

Mr. Fulton: Thank you very much if there are no other, yes Vernon.

Mr. Reed: I noticed that in the photographs you were taking from the driveway I had inferred that the house was closer to that driveway but it is actually to the left and there for closer to the building.

Ms. Bowers: Correct.

Mr. Reed: Can you tell me how far that building is from directly across the house.

Ms. Jensen: I believe Mr. Mark O'Dell will be able to answer that question for you. I know that when Mrs. O'Dell sits at her picture window she looks out directly at that building.

Mr. Fulton: So the building is located on the 5.9 acres?

Ms. Jensen: Yes it is.

Mr. Fricke: And the blue boarder is the 40...

Ms. Jensen: Forty-three acres that was transferred in May of this year.

Mr. Fulton: Very good.

Mr. Klopfenstein: Do we have any idea how many acres total the Flanery.

Ms. Jensen: The original Park Development Properties and what was transferred to the Flanery's was about 250 acres or to the Jack Flanery Trust. What Richard and Chala Flanery now own are the 43 acres that are outlined in blue the Jack Flanery Trust owns the remainder.

Mr. Reed: And you show me where the property is zoned for agricultural single family?

Ms. Jensen: This property is zoned R-1B which is Rural Single Family.

Mr. Reed: And that would permit how many houses on that property?

Ms. Jensen: The original Park Development was 136 overall 250 acres I haven't done the math to figure out what could be put on the 43 acres.

Mr. Reed: Okay so the 43 would have also had provisions for how many houses?

Ms. Jensen: I haven't done the math to figure out what that is.

Mr. Reed: What is the ratio of square footage or lot areas per square foot?

Ms. Jensen: I would have to; I'll look at the code and give you an answer. Or Mr. Tapp may know too.

Mr. Tapp: I am sorry the question?

Mr. Reed: I am trying to determine how many houses could be built on this ...

Ms. Jensen: Forty-three acres.

Mr. Reed: Forty-three acres as well as the 5.9 acres.

Mr. Tapp: As it's deeded now its one tract or one parcel of land so one single family house on the 43 then you could build another house on the remainder. That's how it is deeded.

Mr. Fulton: It's not been subdivided.

Mr. Tapp: Just preliminary, conceptionally.

Mr. Reed: The lot sizes are what?

Mr. Tapp: It does not really matter the R-1B, what is it Debbie, it's a little over an acre I believe.

Mr. Fulton: Does this have a high priority?

Mr. Reed: I am trying to compare the intensity of the development as what is permitted verses what it is being used. Is this more intense development then what is permitted or the other way around?

Ms. Jensen: Well as Mr. Tapp stated nothing more than one house is permitted on this property at this time. The basis for the appeal is that this building was constructed without any permits without going through any process.

Mr. Fulton: That is what we want to focus on.

Ms. Jensen: And that is what the basis of the appeal is and I believe that the state statute that exempts farm buildings from permits under Clay County doesn't apply in this case, because the intent and what the Attorney General opinion states is you have to look at what the actual use is and what the intent is to figure out whether or not that exemption applies.

Mr. Fulton: And to again reemphasize we got a long way to go this evening and we want to focus on the appeal for both the testimony and also from the board perspective, so if you would. Thank you very much for

Ms. Jensen: Just to answer your question the minimum lot size in the Residential Rural district is 10 acres.

Mr. Tapp: Is what?

Ms. Jensen: Ten acres it says.

Mr. Tapp: Under zone R-1B?

Ms. Jensen: Okay that is R-1.

Mr. Tapp: That is the new code on R-1B you have to go to the previous code its 12,000 square foot lot sizes. That is the minimum.

Mr. Fulton: Let's focus on the questions.

Ms. Jensen: The next witness is David Pavlich.

Mr. Fulton: If you would state your name.

Mr. Pavlich: David Pavlich.

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Pavlich: I do.

Mr. Fulton: Let the record show he answered yes affirmative.

Mr. Klopfenstein: Could you spell your name for me?

Mr. Pavlich: P-a v-l-i-c-h.

Ms. Jensen: Mr. Pavlich will you let the board know your place of employment.

Mr. Pavlich: I work for the City of Kearney.

Ms. Jensen: And what is your position with the City of Kearney?

Mr. Pavlich: Community Development Director.

Ms. Jensen: As Director of Community Development are you responsible for receiving and processing request for voluntary annexations of property into the City of Kearney?

Mr. Pavlich: Yeah that would be one of my duties, yes.

Ms. Jensen: Did you receive a request from Richard and Chala Flanery to annex their property of approximately 5.9 acres located at the Southeast corner of 33 Highway and Northeast 130th Street into the city limits of the City of Kearney?

Mr. Pavlich: Yes.

Ms. Jensen: And when was the voluntary annexations petition filed with the City of Kearney?

Mr. Pavlich: April 13, 2012.

Ms. Jensen: And I am handing you what has been marked as Exhibit 28 can you identify this Exhibit for me.

Mr. Pavlich: This would be our annexation file that we have.

Ms. Jensen: Okay and that's your entire annexation file.

Mr. Pavlich: It looks like it, yes quite thick.

Ms. Jensen: Is it your understanding that the annexation request that was filed was for the purpose of relocating the Little Dog Daycare facility to the building that's been constructed on the 5.9 acres.

Mr. Palvich: Well the applicants did indicate a desire to do that on the property.

Ms. Jensen: Was there a petition and opposition to the annexation file by at least 5% of the registered voters of the City of Kearney opposing this annexation?

Mr. Palvich: Yes.

Ms. Jensen: Did the Board of Aldermen move the voluntary annexation request forward following the filing of the petition in opposition?

Mr. Palvich: Upon application there was a hearing, but...

Ms. Jensen: What did they do on June 4th?

Mr. Palvich: That has gone no further; there was no approval of an annexation.

Ms. Jensen: Once they got that petition and opposition they decided to not move forward on the annexation request.

Mr. Palvich: That has not moved forward, yes.

Ms. Jensen: At the present time do you know if there is any intent by the city to annex the property within the city limits?

Mr. Palvich: That would be a board decision but staff has not been advised that they want to move forward with that or to take any steps to do that.

Ms. Jensen: Okay I have no further questions.

Mr. Fulton: Does the board? If you would remain standing.

Mr. Klopfenstein: Mr. Chairman, your testimony is that the Flanery's communicated their desire to open or to move the Little Dawg Daycare.

Mr. Palvich: They did have interest in that yes.

Mr. Klopfenstein: Is it in written form, was it conversation between you and the Flanery's.

Mr. Palvich: Conversation.

Mr. Klopfenstein: Is there anything in the file which is Exhibit 28 that reflects that?

Mr. Palvich: There's none in the file that is just our annexation file from the date they made the application.

Mr. Fulton: And what date was that?

Mr. Palvich: April 13.

Mr. Fulton: April 13 of?

Mr. Palvich: 2012.

Mr. Klopfenstein: Would have informed the Board of Aldermen or something like that about your conversation with Flanery's.

Mr. Palvich: If they ask questions yes, they only application that was submitted was an annexation request had nothing to do with the development on the property. At that application of course later there would be a reason, a need to do a rezoning, site plan and all that.

Mr. Klopfenstein: At any time during the hearing that occurred with the Board of Aldermen was there ever any testimony that it involved the Little Dog Daycare?

Mr. Palvich: Yeah.

Mr. Klopfenstein: Tell me what happened.

Mr. Palvich: Well there were, Patricia and their client and then the Flanery's were present at the hearings and there were people for and against that particular project.

Mr. Klopfenstein: I guess what I am asking is did the Flanery's confirm that was their desire.

Mr. Palvich: Yes, I think the board understands that or understood that.

Mr. Klopfenstein: Okay

Mr. Fulton: And that is a matter of record.

Mr. Palvich: Yeah we keep minutes of our board meetings.

Mr. Klopfenstein: Are we going to see those minutes?

Ms. Jensen: They are in here I will give them to you.

Mr. Fulton: Thank you very much. Again we reserve the rights for opponents to call you.

Ms. Jensen: Mr. Klopfenstein there is and Mr. O'Dell will testify to this Exhibits 29, 30 and 31 are e-mail correspondence that occurred between Mr. Bowers and the Flanery's in which Mr. Bowers summarized the meeting that they had with the Flanery's and their intent to locate the daycare in that facility and the Flanery's responded back when we told the Flanery's that our client opposed the location of the daycare facility there.

Mr. Klopfenstein: Okay.

Ms. Jensen: The last witness and there may be other people who want to testify on behalf of the proponents following this gentlemen's testimony is Mr. Mark O'Dell.

Mr. Fulton: Please state your name.

Mr. O'Dell: Mark O'Dell.

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. O'Dell: Yes I do.

Mr. Fulton: Let the record show that he did answer in the affirmative.

Ms. Jensen: Mr. O'Dell what is your address?

Mr. O'Dell: 13107 Highway 33, Kearney, MO

Ms. Jensen: And I am going to show you this Exhibit you point out where your property is.

Mr. O'Dell: I live in that house right here.

Ms. Jensen: And long have you lived in your home there.

Mr. O'Dell: Since we built that house in 1996.

Ms. Jensen: And can you identify where Mrs. O'Dell, your mother, lives.

Mr. O'Dell: My mother lives in this house right to the South of me.

Ms. Jensen: Okay, were you involved original in the discussions and planning approval for the Park Development property?

Mr. O'Dell: Yes I was.

Ms. Jensen: And what was your understanding of what was approved and planned for that property that was owned by Park Development?

Mr. O'Dell: John and David Barth had planned a development called Elm Tree Estates where they were going to build 136 houses in here. And we had worked out an agreement with John and David along with Hallmark to purchase a buffer zone about 600 feet wide in here, it did two things, it shielded us from the residential development and also it moved their driveway. They had first requested their driveway for their residential development to be right in here and with us buying a buffer zone it moved the entrance out on 33 Highway.

Ms. Jensen: And did the Jack Flanery Trust subsequently acquire the property from Park Development?

Mr. O'Dell: My understanding yes.

Ms. Jensen: And when did you become aware of the construction of the building on the Flanery property?

Mr. O'Dell: We had first heard rumor through people in Kearney that they were going to build a daycare facility there and then it was finally announced I think by one of the Flanery's to the parents of one their students that "we are getting ready to start construction of it".

Ms. Jensen: Once you became aware of the intent to relocate the daycare facility to that building what did you do?

Mr. O'Dell: I called our local attorney and told him the rumors we heard and had him check it out and he had got with the zoning department and they said well they understood there was a barn going to be built there but not a daycare facility. So then a few weeks later or month later I came home one night and there was a big trackhoe up there doing some construction so I myself called Debbie at the zoning and said that I understand that their building a daycare center there and she said I remember talking to John Crossett and we looked it up but let me look it up and so she called me back a couple of days later and said we looked in the file and there is permit for a barn only not a daycare center but she did remember some conversation from the Flanery's or one of their representatives several month earlier said what would have to do if we wanted to put a daycare facility there, and I assumed she advised them what they would have to do. So nothing went on for a little while longer and then we started seeing the construction of this building and obviously it wasn't a barn, two story, windows in it and that is when we contacted Jim Bowers and asked us to represent us to protect our interest.

Ms. Jensen: And so it's clear you opposed the construction of and location of the daycare facility on the property is that correct.

Mr. O'Dell: That is correct.

Ms. Jensen: And did you actively oppose the voluntary annexation of the 5.9 acres or the 43 acres or the 5.9 acres into the City of Kearney?

Mr. O'Dell: Yes we did. We went and got signatures.

Ms. Jensen: And why do you oppose the location of the daycare as well as the annexation?

Mr. O'Dell: Just because of the way it looks we don't want the daycare facility there, it's going to diminish the value of houses that we have built here. It doesn't fit in, you look at it and it is a commercial building, it's not a barn it was never designed to be a barn, it was designed to be a daycare center. It's got second floors, it's got classrooms, and it's got that area in the back fort, for I guess for them to do their activities or something if it rains and it's basically going to affect our quality of life. We moved out in the country to be in the rural area and then now somebody disguises a daycare center as a barn and build's it next door to us, it's just not aesthetic value and I think it's going to hurt the value of our property all together.

Ms. Jensen: Do you feel that the roads could accommodate the traffic?

Mr. O'Dell: Absolutely not.

Ms. Jensen: I am showing you Exhibits 29, 30 and 31 in the books that have been handed out. Are these exhibits e-mail correspondence between Mr. Bowers and the Flanery's that you were copied on?

Mr. O'Dell: Yes it is.

Ms. Jensen: Or that you received copies. And then again you actively opposed this building that has been constructed on the Flanery property is that correct?

Mr. O'Dell: That is correct.

Ms. Jensen: That is all of my questions of this witness.

Mr. Fulton: Questions from the board?

Mr. Reed: You mentioned that the roads were inadequate for the increased traffic, what are you basing that opinion on?

Mr. O'Dell: Well we understood that where she is in Kearney now she had 55 students and maybe she was hoping to increase it to, you know she building that building to increase her size. I think we heard at one time maybe a 100 students. So that means could be 100 cars in the morning dropping off and 100 cars in the afternoon picking up plus their staff. And the recent weeks there's, one even this last week another accident at the intersection of 130th and 33 Highway.

Mr. Reed: Where is that, where was the accident? Are both of those paved road or gravel?

Mr. O'Dell: Yes. It is a hillside right here and blind turn out when you pull out from there. You can't see pulling out either side.

Mr. Reed: But they are both paved highways?

Mr. O'Dell: Yes 130th Street and 33 Highway are paved.

Mr. Fulton: I have, Brian go ahead. Who pulled away from your discussion to purchase a buffer zone you or the Flanery's?

Mr. O'Dell: Barth's never did go through with their development. If I remember right...

Mr. Fulton: Was that ever approached to the Flanery's after they purchased, I just wondered how that sounds like a great idea and just wondered.

Mr. O'Dell: We were reassured by Planning and Zoning it was a barn only.

Mr. Fulton: Okay thank you.

Mr. Klopfenstein: I have a couple of questions. You indicated that you became aware of construction on the building when did you become aware of construction on the building?

Mr. O'Dell: Mid-summer of 2011.

Mr. Klopfenstein: You also indicated that you understood there was intent to relocate the business, when did you become aware of the intent to relocate the business.

Mr. O'Dell: We just had heard rumors you know through people in Kearney.

Mr. Klopfenstein: You also mentioned that you had a conversation with Debbie regarding the permit being issued for a barn only. Again when did you have the conversation with Debbie?

Mr. O'Dell: Mid-summer I am guessing June sometime.

Ms. Jensen: The permit was issued in June. Was it July or August?

Mr. Klopfenstein: July or August 2011?

Mr. Fulton: Of 2011?

Mr. Klopfenstein: Okay, here is my question if you became aware of that why do you file an application to set aside roughly one year later?

Mr. O'Dell: Are you asking me?

Ms. Jensen: Mr. Klopfenstein, what we filed was an application to appeal the determination of the Director after he had issued his written interpretation. Those facts certainly were unveiled as the process went through and I believe that your code provides for those written interpretations and you also the Director has the ability to revoke permits if they are requested under Missouri law.

Mr. Klopfenstein: And I understand, my question is, if you are aware of it in the summer or 2011 why do you wait until April 27, 2012.

Ms. Jensen: Those facts were being unveiled from June until April; we were going through a number of different processes at that time.

Mr. Fulton: So from your testimony than did you, did I hear you say, that a barn will be no problem.

Mr. O'Dell: If it looked like a barn.

Mr. Fulton: If it looked like a barn.

Mr. O'Dell: If it looked like a barn, a Morton building with horse stalls and everything it would be nice.

Mr. Fulton: Okay thank you very much Mr. O'Dell, again reserve the right to call you again.

Mr. Reed: You said something would be nice, what did you say would be nice? A barn?

Mr. O'Dell: If it was like a rural barn, looked like a horse barn or something like that and not a commercial looking facility.

Mr. Reed: For the children rather than horses is that what the problem is?

Ms. Jensen: It is the use of this building it was built not with the intent to be a farm structure it was built with the intent to be a daycare facility.

Mr. Reed: I understand that, I was just curious about what he felt was the objection; it appears to be the use rather than the technical difference between.

Mr. O'Dell: Both the use and then the looks of a commercial building.

Mr. Fulton: Right okay thank you very, very much Mr. O'Dell. Other witness?

Ms. Jensen: Mr. Chairman I do not have any other planned witnesses there may be people who want to testify who support the proponents. I do have a closing brief and I would like to present that to you after all your testimony is heard by both the proponents and the opponents if that is permissible.

Mr. Fulton: I have no problem with that.

Ms. Jensen: Okay so I'll wait to present that brief until after you hear all the testimony.

Mr. Fulton: Wonderful. Now is there anyone else here that would like to stand and testify in favor of the request for appeal? This is as proponents now we'll get to the opponents in a minute. This is a proponent? If you would state your name and I will swear you in.

Ms. Snodderly: My name is Mary Snodderly.

Mr. Klopfenstein: Could you spell your name.

Ms. Snodderly: How do I spell my last name, S as in Sam, n as in Nancy, o-d-d-e-r-l-y.

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Ms. Snodderly: Yes I do.

Mr. Fulton: Thank you very much.

Ms. Snodderly: My concerns I am agreeing with what Mrs. Jensen and the O'Dell's have actually stated up here. We heard rumors of this being a daycare before the construction ever started on this I know Mr. Adams had stated that it was supposed to be a farm permit that was never the intent so that actually a very much concern of mine and it was actually outlined and we attended the meetings that were held in Kearney as well.

Mr. Fulton: So we can understand from where you come, shows us where you live so we can get the proximity of you to this.

Ms. Snodderly: Okay here is 33 and 130th okay I am on this side, this should be *(inaudible)* On the west side.

Mr. Fulton: You are West of Highway 33. Thank you very much, that is what I wanted.

Ms. Snodderly: We express our concerns also whenever Kearney had hearing and I guess I am just kind of reiterating some of the things that have already been said, traffic. I have actually lived at this location 46 of my 49 years and I will be honest 33 Highway is always been treacherous, particular in the winter time. My job I work over 30 miles in South Kansas City each way and if bad weather starts I dread those two miles from 69 Highway up to 130th Street on 33 Highway. Bottom line there is no shoulder to it, it is not really set up for the traffic I think a daycare would cause. It seems like something else but I cannot remember, will I have the opportunity to come back up if I think of something else?

Mr. Fulton: Absolutely, don't leave

Ms. Snodderly: Okay, I am not leaving.

Mr. Fulton: Is there any questions to this witness on her testimony? Thank you very much; we will reserve the right to call you back up. Other that would like to speak as proponents of the O'Dell's request for appeal.

Mr. Gillahan: My name is Greg Gillahan.

Mr. Fulton: Greg do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Gillahan: Yes sir.

Mr. Fulton: Thank you very much. Please state why we should approve this.

Mr. Klopfenstein: Please spell your last name.

Mr. Gillahan: G-I-L-L-A-H-A-N as in Nancy. I live in the City of Kearney, I've lived there for about 16 years now most of the time I've commuted south on 33. When I became aware of this building being built and what its use for my main concern was the traffic flowing south. I've seen several accidents through the years of traveling south on 33 that is a blind hill, coming as you try to sit and turn left and seen whether it be 50 or 100 cars trying to make a left hand turn without any type of support from traffic signals or even a stop signs really was my concern as I became aware. Then as I did participate in the making other citizens aware in Kearney of it and getting signatures that was echoed time and time again from many of them. I don't know what concern that may be in this hearing but I think if there were to be some sort of a commercial building there it's extremely important that is some improvements made to the highways system there turn lanes shoulders etc. before it becomes a place that not only are there accidents but there's you know children killed trying to turn left at that intersection.

Mr. Fulton: Thank you very much, is there any questions?

Mr. Klopfenstein: I assume you were part of the group of Kearney citizens that opposed the annexation.

Mr. Gillahan: Yes sir.

Mr. Klopfenstein: Thank you.

Mr. Fulton: Thank you very much. Others that would like to speak in favor of the request for appeal?

Mr. Burnham: Good evening. My name is Bart Burnham.

Mr. Fulton: Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Burnham: I do. I do. I guess I am here on a couple, I am kind of a close neighbor, I will show you. I live on 33

Mr. Fulton: South of Fishing River?

Mr. Burnham: Pardon me?

Mr. Fulton: South of Fishing River?

Mr. Burnham: Yes. I go through that intersection, I work in Excelsior so I go through that intersection at least a couple times a day and even the way it is now and I think if we had to dig up the records on the accidents reports that happen at that intersection just the way it is with the traffic that is on it. It's probable one of the I don't want to say probable busiest isn't the word I want to use but in that regard in the county I would guess for that size of an intersection, I cannot imagine throwing in dozens of suburban's and vans you know people dropping their kids off in the morning. The other the thing is and Mr. Pavlich, I think he remembers who I am , I just went through the process on my little acreage of going through all the step to make sure you have I had to have my property rezoned, I am hopefully going to build a little garage building and I don't know but from just sitting here and listening to all of this that the intent of what the folks were going to do doesn't sound like that was quit upfront for one thing but to me the biggest factor is the traffic situation is just going to be out of control. I think about coming over that hill and trying turn when I'm going to Excelsior every morning, and because it is just a dangerous intersection and I guess that is my two cents worth.

Mr. Fulton: Any other questions? Thank you very much.

Mr. Tapp: Mr. Chairman, I want two points of clarification here, Number one, we are in proponents or people in favor of the appeal not in opposition that will be coming next the

four speakers have been in opposition and also we are not here to discuss. You said proponents are in favor these are not in favor.

Mr. Fulton: Proponents we are going to get to the opponents.

Mr. Tapp: Okay so you are talking about proponents of the appeal.

Mr. Fulton: Proponents of the appeal as stated.

Mr. Tapp: Okay. And also we are not here to discuss anything to do with the actual use of that land or dangerous intersections. We are here to talk about an appeal of an administrative decision and interpretation, not whether or not a daycare is proper there. I just want to reiterate that, we are not here to decide on a rezoning or conditional use permit, it's an appeal of my decision. I don't want to rehash everything.

Mr. Fulton: Exactly and this board would like the information. That anyone who came tonight we are going to give them a chance to if it is appropriate if it is focused on the appeal to make comments the board then will make their determination and but we do want to keep it focused on the appeal. We are not here to evaluate the use of the building as such.

Mr. Tapp: Or the land yes, general land use.

Mr. Fulton: Okay anyone else specifically information that might help the board make a decision that is what we are after. Okay with that we will now call on anyone who would like to speak in opposition.

Mrs. Jensen: Before you go to opposition I would like to ask the people who came in favor of the O'Dell appeal even though you don't want to testify to stand so you know who's here. So if you all would stand so they will have an idea.

Mr. Reed: These are people that are opposed?

Ms. Jensen: In favor of the O'Dell Appeal.

Mr. Fulton: Very good. Let the record show that where were, stand up again for the chairman please I want to count.

Mr. Fricke: Are they all residence?

Mr. Fulton: Let the record show there are about 16 individuals standing and there's another 3 or 4 not standing, so just for the record. Now we'll hear from anyone that would like to speak in opposition to as the opponents to this appeal, in other words. Okay if you would come stand up and state your name and then we'll start.

Mr. Flanery: My name is Richard Flanery. We are the owner my wife and I Chala are the owners of the 40 acres and the farm building.

Mr. Fulton: Just a minute I need to swear you in. Do you solemnly swear to tell the truth the whole truth and nothing but the truth so help you God?

Mr. Flanery: I do.

Mr. Fulton: Thank you very much, okay now we're interested to hear from you.

Mr. Flanery: Okay first of all things kind of got side tracked to what we are here about we are here about the barn and they're saying it's a commercial barn and you know it's got windows and yata, yata, yata. I didn't see all the pictures that they showed did anybody take any pictures of the South end of the barn? Okay there's one large overhead door there's another large overhead that has not been put in because the building has not been finished that is for if the daycare didn't come about it was going to be a farm building. And we did not try to mislead anybody before we even started anything on the property one of the employees of the O'Dell's come over and asked us what we were doing and we stated that we building a barn hoping to get it turned into a daycare. We heard nothing more from them for two or three months. So they were aware what was

going on from day one. So back to the building, I am just a dumb farmer I am not very smart so we don't know if we are going to get the building annexed into the city or not so I built the building for a farm building if it didn't get annexed in to the city it would be a farm building. It's got large doors in the back, it's got windows, and it's got a mezzanine. I work on all my own equipment I have parts; I have machine tools that will be on the second mezzanine. You need light so you can see what you are doing. I also have a 20x20 basement in the front of that building that if it was going to be a daycare it was going to be a storm shelter for the children, if it wasn't a daycare I have a wood business it was designed for my wood business. We do packaged wood, we're clearing wood on the farm timber on the farm, I turn that into. So you know for them to set here and say that it was solely put up for a commercial building is wrong and I think if anybody would go up there and look in the building it is a pole barn. There is no floor in it, it is not built on a footer, it is a pole barn. So that defends that. Now let's go back to what we are really here about and that is the dreaded strip, buffer strip. Before we started anything on the property we had not, probable hadn't owned the property less than a month we get our Real Estate person gets a call from the O'Dell's Real Estate person and informed us that we did not own a 200 foot strip on the south side of 130th Street. You know my Real Estate lady told them she was wrong she called us, I'm like I have the plat right here in front of me, we own to 130th Street. So we were bullied right from the bat, you know, they did come over and try to talk to us and try to work anything out, we know nothing about a buffer strip and that's what this whole thing is about. They did not get their buffer strip and I cannot prove this but I have a pretty good idea that she paid for a buffer strip it did not get recorded so therefore the buffer strip did not go from owner to owner so when we bought the property we, you know, built the building we know nothing about a buffer strip. And I would like to go back to what the attorney said, I am sorry I cannot think of your name, but she said that we had a meeting with the O'Dell's, we did have a meeting with the O'Dell's and I said I understand your position I would probably would be upset too if somebody built a building right across from me. But, and let me back up a minute, were sitting in her living looking right out her windows and she has large pine trees and you could barely see the building from her windows and at that time I explained to her that we had bought \$20,000 worth of trees to hide the building we would put in a berm we would do whatever it took to make her happy. And her exact words were, and I said what are your concerns is it safety and her sole words were "Have you looked out my window" and you know that is what this whole thing is about is this buffer strip and they come back and said, you know when they sent us a letter back and said that they were not in favor of the daycare that it was incorrectly built it was on R-1B land and we did send a letter back and I wrote the letter so I know exactly what it said, I said you are correct and being this is R-1B zoning with anything that goes on there will be no 50 foot buffer strip because that's what we heard first, 50 foot then 200 then 800. There will be no 50 foot buffer strip, there will be no buffer strip and that was my exact words that was not what was actually said here tonight, which is pretty typical. But let's get back to the building, the building is you know, and just because you want the building to look like an O'Dell building I'm sorry you know it's not your land I can build the kind of building I want to build.

Mr. Fulton: Let's focus on your testimony, let's not get into personalities.

Mr. Flanery: Okay I'm sorry. And the other thing I would like to say this is totally off track but since everybody else has brought the daycare and traffic and everything else

into it, you know the Barth's were going put I think she said 150 some houses on there, again the O'Dell's got a petition to stop that, you know they were worried about the traffic they were concerned about this, they were concerned that, well all the sudden they make a deal of this buffer strip and then all a sudden they're not worried about the traffic anymore, they don't sign the petition and you know they leave the neighbor's hanging to fight it themselves. So, you know, this whole thing about the traffic and all this, what kind of traffic would you have with 150 houses out there with two people working it would be significantly more then you know. Even if we had 100 kids out there, number one we have two or three kids there would not be 100 kids, but you know I think the whole thing goes back to the buffer strip and they didn't get their buffer strip and that's what that whole thing is about. It's apparent here tonight we're here to talk about the building and all that can be brought up is the daycare and how unsafe everything is that battle has been fought you won that battle, we give. I mean that battle is over and done. Now...

Mr. Fulton: We are not talking with the greatest respect here we are not talking about battles here just speak specifically on your position.

Mr. Flanery: I am sorry, but that's what is what we're here for tonight it the building and I think if anyone of you go up there and look at the building you would plainly see that it is a farm building it does not fit, it doesn't have horses and it doesn't fit their build but it is a farm building.

Mr. Fulton: Remain please, questions for Mr. Flanery from any board members.

Mr. Klopfenstein: At the time you got the permit to build the farm building although you did not need a permit to build a farm building, did you have any ideas to the size of the structure, was it in your mind when you got the permit, when it was identify to you as Ag in your mind did you have the same ideas the building that currently exists?

Mr. Flanery: Yes. I have a black dirt business I will use that building to back the trucks in, rise the beds on them I have end dumps so when you raise a hoist you have to have significant head room. Like I said the front end was built to do my wood business so this building was built, we give it a lot of thought, because we don't have the kind of money to, we have to make every move count. So yes the building was built with that in mind and it was also built, the other reason it was so big we have even thought and that might be what it is, is to turn it into grain storage.

Mr. Fulton: Other questions? Thank you very much. Is there anyone else that would like to speak as an opponent to the request by Mr. O'Dell? Before we hear any summaries I would like to have the our attorney to clarify for the board, I have heard it stated that our decision involves the relative to the interpretation and request to appeal that interpretation two points-only number three and number five. So before we, Greg if you would clarify for the board specifically and I hear that there's not an administrative decision just a request to override it, is that right? Clarify for us what you heard and see if it is the same thing the board heard.

Mr. Canuteson: I think there is a bases to appeal for three reasons, one is the interpretation number three on Exhibit B of Exhibit A-1 states the request for written interpretation as to whether a barn is an accessory structure and whether it is permitted within the R-1B zone district when there is no other principal structure built within property. The interpretation was a barn is permitted on the property in question under Section 151-6.3 of the Land Development Code without a principal structure. That's the first interpretation that the Director made that they are appealing. You'll have to look at

the code and make your decision as to whether or not that was the proper interpretation. Second request for an interpretation is the request for written interpretation as to whether the decision the was made by your department on June 9, 2011 is correct giving the memo dated June 16, 2011 and the Director's interpretation was pursuant to Section 151-3.14 of the LDC. The Director issues interpretation of the current Land Development Code (LDC) not interpretation of past decisions made under previous provisions of the LDC that's the second request for appeal on the interpretation. And the third is that they are the proponents are appealing the administrative decision the attempted appeal of an administrative decision on April 27, 2012, give me a second, that they requested that the department revoke the department's decision made on June 9, 2011 that permitted the construction of the barn facility on the property. So the third base for the appeal is that the decision on April 27, 2012 not to revoke it is a decision that can be appealed. That is their proposition for tonight. And this body is going to have to determine whether or not that is a decision within the meaning of the Land Development Code that can be appealed.

Mr. Fulton: Very good, so the board is totally aware of specifically what our ruling is based on. Now council would ask to make a summary statement while public hearing is still open, so if you would like to do that.

Ms. Jensen: Mr. Chairman before I go over the brief which will summarize why we believe our appeal should be affirmed and the Director's decision overturned I want to make a few clarifying facts Exhibits 29, 30, and 31 will really speak for themselves in terms of the correspondences that was going on between Mr. Bowers and the Flanery's after, following the meeting in regards to the daycare facility. I think Mr. Flanery stated that I think what occurred during that meeting is there was a statement by Flanery's that if they did the buffer that they wanted the O'Dell's to back off of the opposition to the daycare and the O'Dell's did not do that. Finally, or one other point is that during his testimony Mr. Flanery admitted fully that their intent for this building was really to operate the daycare. He keeps saying well if the daycare didn't go through then we'll change it into a farm building but then his testimony also intermingled in there that he has a wood business and he has a dirt business, none of those uses are uses that are permitted in the residential urban yeah the suburban residential zoning district the rural residential zoning district. They're all uses that commercial businesses exactly the reason that we are filing this appeal. That building was never built with the intent of being a farm building it's always the intent of being a daycare facility and now he is telling you he could run his dirt business and his wood business from that building. He also eluded to the fact that the Flanery's never heard from the O'Dell's well Mr. Bowers sent a letter to the Flanery's in September of last year voicing the opposition and the concerns and they weren't contacted by the Flanery's until February of this year, some five months following that initial letter. Now I am going to focus on really what is the legal basis as to why you should overturn the Director's decision. Section 151-6.3 governs accessory uses in Clay County and at the beginning of Section 151-6.3 it states "permitted uses and approved conditional uses shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and appropriate, incidental, and subordinate to the principal use. All interpretations regarding allowed accessory uses shall be made by the Planning and Zoning Director." The Director's decision however is limited further by language in Section 151-6.3. Section 151-6.3B of the code clearly states "All accessory structures shall be subordinate to the principle structure." Under

Missouri law the wording of the code shall be given its plain and ordinary meaning. Well under the new code farm structures are permitted in residential zoning districts if the building is located on a tract of three acres or more. These farm structures still need to be subordinate to the principal structure on the building as the evidence has demonstrated there is no structure at all on the Flanery property on the 5.9 acres or on the larger 43 acres now owned by the Flanery's except for the quote barn building that was built under the misrepresentation that were made by the Flanery's to the county on June 9th, that it was being constructed for farm purposes. When Mr. Tapp made his interpretation he ignored the plain language of Section 151-6.3.B. An accessory structure under Missouri law is one that is reasonable necessary and incident to the principal structure when it's preformed as integral and essential part of the principal structure or use. You heard no testimony that this accessory structure as a farm building is built as a part of a larger farm operation. In fact what you heard was, well I could use it for my wood business or I could use it for my dirt business too. That doesn't fall under the exception in Missouri law. And Missouri courts also consistently held that in order to determine whether a particular structure is a permitted accessory structure the wording of the code has to control. In the Flanery matter the barn was never constructed for the purposes of farming it has always been constructed with the purposes of relocating the daycare facility to this building or now operating a dirt business or some other type of business from this facility. And the actions that took place between June to June of this year demonstrate that, 5.9 acres was transferred in October of 2011, statements by the Flanery's that it's their intent to move the daycare facility there, plans prepared for the building showing the daycare facility in the way the building is constructed. If you look at the building it is not constructed as a farm structure to accommodate farm equipment. We got to go with actual construction of the building and then finally the annexation request to the City of Kearney only asked for the 5.9 acres to be annexed into the City of Kearney not any larger acreage. The Director's written interpretation that a barn is permitted on the Flanery property without a principal structure is clearing contrary and in conflict with the plan language of Section 151-6.3B and it should be overturned by this board. Next the Director's written decision that denied appellant's request to revoke the permit or approval of the checklist for farm buildings should be reversed since the approval was issued by mistake as admitted in Charles Adams June 16th memorandum. It was clearly in error everyone has testified to that and the Missouri case law says there is no astopal against a county based on a mistake of an employee. No matter the reliance of that employee. And I've cited a number of cases that go into that in more detail. Finally Mr. Adams referred to the Section 64-620.2 of the Missouri statues that says that Clay County is a limited in terms of its ability to regulate the construction of any farm structures this Section does not apply because this construction was not done for any farm purposes. Section 64-620.2 really states that counties are limited from imposing regulations for the rising of crops, livestock, orchards or forestry or from imposing regulations on the erections, maintenance, repair, alteration or extension of farm buildings or farm structures used for such purposes in an area not within an area shown on the flood hazard map. And that's why Mr. Adams referred to the floodplain in his testimony. This does not mean however that the county is precluded from regulating these structures buildings if they are not used for farm purposes or from investigating further into the intent of the use of the building or structure. And as I referred to and attached to my brief before you is an opinion that was done by Attorney General John Danforth at that time in 1970, it is

Attorney General opinion number 254-70 which construed what is permitted to be regulated by a county pursuant to 64.620.2, in his conclusion the Attorney General stated and this applied to this was a request from Cass County at the time. The Cass County Planning Commission made not impose regulations or require permits with respect to land used or to be used for the raising of which may include grassland. This restriction is applicable to, with respect to land used or to be used for enumerated purposes and does not extend to land devoted to other uses although they are owned by the same land owner the county court may not require permits on the construction or alteration of farm buildings or farm structures but the opinion goes on to say in determining whether to regulate the construction or alteration of a particular building or structure the use of the building or residence as a farm building or a farm structure must be determined by examining the relationship of the building to the farming activities. There has been no testimony here that that building relates to any farming activities. In reaching his conclusion the Attorney General stated with regard to specific structures it would seem necessary to determine if that structure or building is to be functionally used in the farm operation, thus if a silo is constructed to retain the produce of the farm it would seem to be a farm structure, however if a farm would construct a restaurant such structure would not be within the exemption even though it was erected by a farmer since the restaurant has no relationship to the operation of the farm. That is the controlling language of the Attorney General opinion. There's also been an Iowa case that discussed a similar Iowa exemption, the farm exemption that really affirms the Attorney General's reasoning. An individual isn't allowed to claim an exemption under this provision without demonstrating the justification for the exemption. In the Flanery matter there is no evidence that this building is to be used for agricultural or farming purposes other than Mr. Flanery stating well if this use doesn't go through and this doesn't go through than I can convert it to this use. The evidence is all to the contrary. Therefore Clay County is not prohibited from regulating the building under the code and the permit should have been revoked and for those reasons we ask you to overturn the decision of Mr. Tapp, both in relationship to the written interpretations number three and five and the decision not to revoke the permit that issued or the approval of the checklist for farm buildings.

Mr. Fulton: Okay thank you very much.

Ms. Jensen: Thank you and thank you for attention and we have also requested that you issue written findings of fact and conclusions of law.

Mr. Fulton: Okay. Mr. Flanery would you like to make a closing statement, since we gave Mr. O'Dell's attorney.

Mr. Flanery: Okay she said that we were going to use the building for commercial use a dirt business a wood business, Matt would you clarify what a commercial business is. We're grain farmers so we put grain in that building is that, that is not a commercial use, is that correct.

Mr. Tapp: The storage of grain that is produced on site, no, that is ag use.

Mr. Flanery: Okay I am cutting the trees off of the farm I am not bring them in from somewhere else I am using them for my firewood, selling firewood, is that commercial use?

Mr. Tapp: Yes, because you are selling it on site.

Mrs. Flanery: We are not selling it on site.

Mr. Tapp: Oh you are not selling it on site.

Mr. Flanery: We are storing it, we have a commercial business that we sell..

Mr. Tapp: As long as it's from product on site then that would be fine.

Mr. Flanery: That is what I was told several months ago. We have black dirt we are taking off of the farm we store it in the building to keep it dry we do not sell it on site, is that a commercial?

Mr. Tapp: I need more time on that one, I need to look at our code, I can't give you a firm answer right now.

Mr. Flanery: This was not the intent to try to trick anybody. We are farmers and like I said it was built to be a number of things and it can be a number of things. It can be grain storage; it can be wood storage that it is not a commercial business. We are not running a commercial business out of it.

Mr. Fulton: Thank you Mr. Flanery.

Mr. Flanery: And I would also like to verify, we keep coming back to this 5.9 acres. If you would David would you please come up here and tell everybody where this 5.9 acres originated from, where did this magic 5.9 acres come from. Who came up with this?

Mr. Palvich: I don't understand what the question is.

Mr. Flanery: When we originally wanted to build this barn we were going to put it on 40 acres we talked to the city about what we wanted to do, we were advised all they wanted to annex was 5.9 acres. Enough to put the septic system on and that was it. We then had to replat spend all kinds of money to do this 5.9 acres and now 5.9 acres isn't enough. Would you explain that to everybody?

Mr. Palvich: I am not sure I need to answer; I don't think I need to address that question. I really don't, I think he trying to say the city told him to annex 5.9 acres in.

Mr. Flanery: (*inaudible*)

Mr. Fulton: Just answer for your position by the city on the number of acres to annex that you requested of Mr. Flanery.

Mr. Palvich: We will hear a request by an applicant for whatever acres that they want to submit to the city. The county when you subdivide acreages if you are going to use a septic system they're going to want a minimum of 5 acres on a piece of ground.

Mr. Fulton: Thank you very much. We have heard from the

Ms. Jensen: Mr. Chairman I would like to supplement Exhibit 29 with a letter that was referred to in the e-mail, in Mr. Bower's e-mail regarding September 22 letter he sent.

Mr. Fulton: Very good. We want to get all the facts in and we have heard from the proponents, opponents and now we hear from Mr. Tapp. Since he is, it is a request to appeal his decision the board would like to hear why you made the decision very appropriate.

Mr. Tapp: If you are in reference to Mr. Chairman to the

Mr. Fulton: Reference to two points only number three and number five.

Mr. Tapp: Number three and number five let me..

Mr. Fulton: If you would stand please so everyone can hear.

Mr. Tapp: I am on the microphone everyone should hear.

Mr. Fulton: That is fine.

Mr. Tapp: Your reference to number three and number five of the written interpretation which will be Exhibit looks like 2 from the appellants. Three and five date back to or reference the fact that we are under a different Land Development Code at the time of the request then what they are requesting and we are not in the business of interpreting old code, from 1980, 1993, 2011 it does not matter. The written interpretation specifically states this Land Development Code at the time when they requested the written

interpretation we were under a different code then they were under the assumption of. That's the reasoning behind the response on three and five.

Mr. Fulton: Does each of the board members understand what he is saying? This is very key.

Mr. Tapp: Because the pertinent code did change. Not in direct reflection of this particular case, but there are other examples of similar situations.

Mr. Fulton: To make sure I understand what you are saying. So I've had action three or four years ago under the old code you can't redig it up. It's already history.

Mr. Tapp: No, I only give interpretations of the current Land Development Code.

Mr. Fulton: Okay. Any questions on his reasoning on why he did the interpretation he did on number three?

Mr. Reed: Yes on number three, this is the one in Exhibit 8 that we are looking at?

Mr. Tapp: I am reviewing it right now hold on. Exhibit 8 is the current Land Development code yes.

Mr. Reed: And so that is the one you are interpreting?

Mr. Tapp: That I can interpret from yes. I believe it's a...

Mr. Reed: So you can interpret

Mr. Klopfenstein: Nine is the new code.

Mr. Tapp: Nine is the new code you are correct, yeah. Eight is the previous code.

Mr. Reed: And so am I understanding your interpretation to mean at currently under the code as it stands today a barn is permitted without a principal structure.

Mr. Tapp: A farm building, yes.

Mr. Reed: A farm building.

Mr. Tapp: As long as the checklist goes through and the building is not in a floodplain.

Mr. Reed: Does it say that specifically?

Mr. Tapp: Yes does.

Mr. Reed: Can you show me where?

Mr. Tapp: It depends; there's actually three different sections. There is 6.3 subsection B, and then one. And in A.

Mr. Reed: Is that in her Exhibit or do I need to get my book?

Mr. Tapp: No in her exhibit right there. So on page 149 of the Land Development Code under B1A, it talks about agricultural districts which does not apply to the particular piece of ground, but what does apply is under subsection 2A where farm structures are permitted only for farm purposes with a minimum of three acres, no permit is required but you must submit a plot plan showing the location of the building on the property and fill out a check list for farm structure with the Building Official. That's the current code.

Mr. Reed: Okay so if this were considered purely an agricultural district...

Mr. Tapp: Which it is not.

Mr. Reed: ... the barn would require a primary structure? But in a residential district which this is zoned for it, it's permitted without it being a principal structure? I now see.

Mr. Tapp: That is the interpretation of the code.

Mr. Reed: I see what you are saying now.

Mr. Tapp: And then also under 5A or under Time of Establishment for all accessory structures it talks a little bit more to the farm building provision. To where a farm building may be in existence prior to a principal structure commonly a house in residential zoning. As long as at least three acres and used solely for ag purposes.

Mr. Reed: Okay thank you.

Mr. Fulton: Okay on number three is there any other questions? Brian, on three of Matt? Now let's go to understanding your position and my only question on that, B still states before all the agricultural districts all accessory structures shall be subordinate to the principal structure. Before we ever get to B or A or B or C or D.

Mr. Tapp: My interpretation of that is not a simple or rudimentary that the accessory structure has to be subordinate so we have no definition of subordinate to go off of, and then following that there are exemptions and exceptions to that the only one being farm structures are allowed prior to the principal structure, under 5A.

Mr. Fulton: Okay

Mr. Tapp: And there could also be an interpretation that a farm building is not an accessory structure. It can be construed as principal or accessory or neither nor, it's its own category, it's a farm building. Farm structure.

Mr. Reed: Where are you reading that?

Mr. Tapp: It's the interpretation and I believe we have definition in the back. Debbie if you want to take a look at it. It does not expensively state, but that would be the interpretation.

Mr. Fricke: No permits required.

Mr. Tapp: No permits just the checklist.

Ms. Viviano: The definitions in the back in chapter 15.

Mr. Fulton: Okay if you want to say something and go on record Debbie, you want to make a statement then you need to and we want everything on the record tonight, everything. Do you want to make a comment?

Ms. Viviano: Matt can make the comment but you can turn to it if you like on the definitions.

Mr. Tapp: There is numerous amendments to Land Development Code so this is just a spec of sand in a beach so I am trying to recall, we may not have given a specific definition of farm structure. We have a definition of agricultural use, the use of a tract of land for growing crops, pasturage, nursery, or raising of poultry, including the structures necessary for the carrying out farming operations and the residence or residences, of those owning or operating the premises, a member of their family or persons employed thereon, and their family; but such use shall not include feedlots.

Mr. Fulton: Matt help me understand then, if I live in the city I have a farm in Clay County and I want to build a barn out there cause I just happen to live in town and I don't live there can I build a barn.

Mr. Tapp: As long we get the checklist.

Mr. Fulton: And it is R-1B?

Mr. Tapp: Yes as long as we get a checklist that it is going to be used for ag or ag related purposes and we have no hard evidence to the contrary, then it's a farm building.

Mr. Fulton: Okay.

Mr. Canuteson: Mr. Chairman can I ask Mr. Tapp a question if you live in town and you own 500 acres in the county and you want to build a farm building out there can you do that? If it's zoned AG?

Mr. Tapp: Any zoning at all you have at least three acres you can.

Mr. Canuteson: Where do you find permission in the code for that?

Mr. Tapp: Under 6.3 5A and then depending on which district you are in residential or AG. If you are in AG you go 5 or B 1A if you are in residential you go in 2A.

Mr. Canuteson: So even in the county if you are an Ag related, if you're in the county and zoned agricultural you can build a farm building on that 500 acres without a principal structure even though it says all accessory structures shall be subordinate to the principal structure?

Mr. Tapp: Correct.

Mr. Fricke: Was that the law then and now?

Mr. Tapp: Yes, the one statement that Greg is in reference to under the first part of accessory structures that was not changed between the two versions of codes. What was changed was the parts I talked about because there does not need to be a reference to zoning. Just lot size at least three acres and the three acres relates back to the minimum acreage for having animals, medium to large animals.

Mr. Fulton: Okay is there any other questions from the board to Matt. Let's go number five, the interpretation of the current code after interpretation of past decision made under the previous code of 2003.

Mr. Fricke: Can we get Matt to interpret that (*inaudible*)

Mr. Tapp: Self-explanatory.

Mr. Fulton: Mr. Fricke?

Mr. Fricke: I just wanted your comments about number five.

Mr. Tapp: Again we did amendments to our Land Development Codes so much so that we changed the title of it from the 2003 Land Development Code to 2011 Land Development Code. That was in February 2012 and I believe that request for written interpretation was not until, when, April 27, so it was after that date of adoption. Therefore we're under the current code and I give interpretations of that code and that code only.

Mr. Fricke: Okay what changes then would've occurred on this site that we are talking about?

Mr. Tapp: Changes to the site itself little to none, if you are talking about that point in time. Changes to the code were monumental.

Mr. Fricke: Well what were those changes?

Mr. Tapp: To where a farm building would be allowed on three acres regardless of zoning district, AG, R-1, R-1B.

Mr. Fricke: Without a permit?

Mr. Tapp: Right it will be a Farm Building Checklist. Because in this case it just exemplifies it, but we have had numerous people have questions about the previous code was very conflicting and contradictor and was very hard to discern, so we kind of streamlined that as much as we could.

Mr. Fricke: Would the person building the structure have to designate the use?

Mr. Tapp: They sign the checklist that says they will use it for Ag or Ag related purposes, if after the fact we find..

Mr. Fricke: Are they bound to that?

Mr. Tapp: Yes, if after the fact we find hard evidence to the contrary that they are in fact using the structure or premises for something other than Ag or Ag related...

Mr. Fricke: They need to do what?

Mr. Tapp: Then we go through a code violation and I would have to send letters out and they need to remedy the situation otherwise we go to the Prosecuting Attorney's office for criminal prosecution. So I have to have hard, hard evidence. Not speculation not hear say.

Mr. Fulton: Okay and the last I would like to hear your comments relative to the Administrative decision “we request Mr. Tapp revoke the determination of permit that permitted construction of the farm building”. As we have heard there’s not a permit just a checklist. Any comments?

Mr. Tapp: Just again I don’t decide to revoke something well after the fact and legal counsel can certainly speak more to that if Greg desires.

Mr. Fulton: So you are saying the same thing, this was grandfathered in by the old?

Mr. Tapp: I would not say grandfathered in but

Mr. Fulton: Or dig up something from the past?

Mr. Tapp: Right there’s other cases out there that it is questionable as to timing of things. We’re not going to go back 15 years, one year, and two years and revoke something.

Mr. Canuteson: Mr. Chairman I have a question? Under the Land Development Code...

Mr. Fulton: Greg would you like to clarify please.

Mr. Canuteson: Mr. Tapp is there a time period for which people have to appeal Administrative decisions?

Mr. Tapp: Yes 30 days.

Mr. Canuteson: And where’s that in the Land Development Code?

Mr. Tapp: Let me take a look, unless you would like to help me out, 3.15?

Mr. Canuteson: Page 55.

Mr. Reed: Yes it is on page 55 very top two lines.

Mr. Tapp: Are you talking about administrative decisions Mr. Canuteson?

Mr. Canuteson: Appeals of administrative decisions not written interpretations.

Mr. Fulton: Appeals B?

Mr. Tapp: 3.15 C?

Mr. Canuteson: Letter B.

Mr. Tapp: Or B yeah right to appeal of application of filing within 30 days.

Mr. Canuteson: And when was the checklist approved by the Planning and Zoning Department.

Mr. Tapp: It was approved June 9 of 2011 or early June 2011.

Mr. Canuteson: And when was the appeal filed by the appellant in this case?

Mr. Tapp: April 2012.

Ms. Jensen: Mr. Chairman (*inaudible*)

Mr. Fulton: I’ll give you a chance in due time.

Ms. Jensen: Okay

Mr. Fulton: Anyone else too, if anyone came let the record show or anyone has the opportunity to speak this evening. And I’ll give the council again to speak very defiantly. Does everyone, did you all hear Greg’s comments that we are going to hear another opinion I think? Which is fine that’s why we are here. That’s where that clarifies a point on the, and that is 151-3.15 Right to Appeal Section B Appeals of Administrative Decisions may be filed within 30 days by any person aggrieved by a decision of an administrative official in the administration or enforcement of this Land Development Code. Okay

Mr. Reed: Can I ask another question?

Mr. Fulton: Certainly.

Mr. Reed: As to the issue of whether you should have revoked a permit or whatever it may be called that was in error hasn't that issue been made inappropriate because it was legal in accordance with the code here, Charlie Adams would have issued a permit anyway. Isn't that right?

Mr. Tapp: There could be argument for the opposite side that at the time of when that checklist was authorized we were under a different code and under R-1B it would not have been permissible.

Mr. Reed: Okay so there was a change, material change.

Mr. Tapp: Between that time and this time.

Mr. Reed: That made that problem go away.

Mr. Tapp: Right.

Mr. Fulton: I will now hear council requested.

Ms. Jensen: I just have one brief statement, given all the time that we have given to this matter. The administrative decision that we are appealing which was filed within the 30 day time period is the decision not to revoke the building, the permit or the approval of the Checklist for Farm Buildings. We asked for to be revoked and the Director did not revoke it, that is an appealable decision under Missouri law and it was filed clearly within the 30 day time period.

Mr. Klopfenstein: Can I ask you a question? Let's say I'm neighbors to Mr. Canuteson and Mr. Canuteson 12 years ago builds something that he gets permission for and it has just been upsetting me over those 12 year period of time and finally his dog comes into my yard and does his business in my yard and I decide that's it I appealing that decision because the dog has pooped one to many times. If there's a span of time.

Ms. Jensen: Mr. Klopfenstein I agree with you that there are certain circumstances where that span of time may arise that would be what we would call under law as latches, that a court would later on say no you can't complain about this, because this has been existing for 10, 20 years, you have been fully aware it you've allowed it to continue. Those aren't the facts under this case, those are not the facts.

Mr. Klopfenstein: Let's say, let me change the facts and say, Flanery decides to build a farm structure but in the process shortly before the building is confirmed a Quick Trip sign appears on top of the building and we see it and it is not a pretty view and we don't like seeing it out of our front picture window. If I wait whatever period of time haven't I waived my right?

Mr. Jensen: I don't think so, a Quik Trip sign wouldn't be a sign that would be permitted on the property.

Mr. Klopfenstein: And I understand that but as I understand the complaint is, it's not a farm structure.

Ms. Jensen: It is not, but the facts

Mr. Klopfenstein: Mr. O'Dell admitted that sometime in the summer of '11 he realizes this isn't going to be no farm building and we wait until April of '12.

Ms. Jensen: Right. He is hearing rumors to the effect that it is. All the evidence that is in front of you that has been admitted in this case is it's September of 2011 and a letter is sent by Mr. Bowers to the Flanery's saying, voicing the issue, we don't hear anything from them until February, when we meet with them in February and then the intent of the daycare is confirmed by the Flanery's. Plans are shown right away than the voluntary annexation petition is filed that's something then we oppose. I mean you can't say that any of our actions has delayed the appeal that were filed in this case. We turn to the Clay

County Director and we say how did this get built and how did you interpret the code to allow this, we get our interpretation and we file the appeal. Those are not the facts in the case.

Mr. Tapp: Mr. Chairman I still understand this revoke decision where is that in writing? The only time we hear about that is in April 27, which is over a year after the Farm Building Checklist was authorized. I don't recall in writing from Mr. Bowers or whomever saying I want you to revoke this permit now. I don't recall that at all, maybe in verbal discussion, I don't know I have talked to 50 people a day.

Mr. Fulton: Would you like to address that?

Mr. Tapp: I am trying to follow this revoke ...

Mr. Fulton: I see the April 27th day he is referring to.

Ms. Jensen: The April 27th is the formal date on which we requested that you revoke the permit and that is based on

Mr. Tapp: That is over a year.

Ms. Jensen: That is based upon all of the facts that came about and came to light during this whole discussion.

Mr. Tapp: I disagree.

Mr. Fricke: Matt counsel says that the appeal was filed within 30 days, is that?

Mr. Tapp: The written interpretation yes.

Mr. Fricke: Was that considered an appeal?

Mr. Tapp: There's two different types of appeals, one for written interpretation, which is "Matt what do you think this code is saying" and then there is another appeal of an administrative decision where I do some type of decision saying okay that farm building okay. I am giving you that specific scenario, but there's a clear difference between written interpretation and

Mr. Fricke: Would we have considered that a complaint or objection to the coding? Within the 30 days?

Mr. Tapp: The written interpretation was within 30 days, that in my mind that is permissible. But the administrative decision they are talking about a decision that was done in June 2011 and we were not made aware of it until April of 2012. Well beyond the 30 day.

Mr. Fulton: Okay we have heard from everyone here this evening, I think that wanted to make any type of testimony. Charles would like to make another comment, come right forward.

Mr. Adams: I got cut off a while ago when I was trying to tell you about it. And I do have an Appeals Board, okay. Same thing applies on it, if you don't like my decision you don't like what I did, if it would be interpretation of something, issued a permit for something or what have you. It's an administrative decision that I did so in turn you've got that 30 day deal, but we are talking about going from June to June and no one appealed to me to tell me to run it before my Appeal Board. Now there are court cases right here in Clay County, that have even went to the appeals court, and it says that if you didn't exercise all of the options that were available to you at the time then they can't hear your case. In reality this revoke of the permit would be before my board of builders, Building Board. That's the one that gets that for the revoke, it doesn't go to him, it doesn't go to you people. I think you are looking at something that you have no jurisdiction over. If it's going to be appealed or repealed it's got to go before the Building Commission first. Now if you don't like what they said and they agreed to hear

it even though it was this far down the line they can take it to court. But until they hear it before that Building Commission it can't go to court and I am the one who issued the okay to go ahead with it, I did the checklist. So it was my decision. Even though it was done in error, it was still my decision. And it had to be appealed to my board not to you people tonight. Okay thank you.

Mr. Fulton: Thank you very much Charles. As I look at this we've heard from legal counsel, a lot from legal counsel for the O'Dell's, I've not heard from legal counsel for Matt and we need to, I would like to have, I would propose that we give Greg, I don't think he has complete ready tonight to present to us as far as other case law.

Mr. Canuteson: What I would like to do Mr. Chairman is the appellants have asked for a finding in facts and conclusions of law, why don't I prepare a proposed draft that this board can consider at its next meeting, I will distribute it. Obviously you all make the decisions on what are the findings in facts and you'll determine the conclusions of law. If could do that and then get that to you for your consideration at the next meeting.

Mr. Fulton: We have the O'Dell's statement here and I think that, since that is more, we feel is incomplete right now, until we would have that. Does any of the...

Ms. Jensen: Mr. Canuteson and Mr. Chair we can provide you want we believe the findings in facts and conclusions of law should be. We can give you a draft of at least ours that you could consider.

Mr. Klopfenstein: I would welcome that absolutely.

Mr. Canuteson: Mr. Flanery I understand that you have had legal counsel as well, they have not had the benefit of being here tonight, there will be a transcript of this made if you wish to have that or have you lawyer look at that and if he or she what to also write a proposed findings of fact and conclusion of law, we would be glad to take a look at that as well. I think the board would like to have your opinion, your opinion and probable have mine as well, and so if we could do that by the next meeting I think that would

Mr. Fulton: Okay if there is no objection from any of the board members we will put it on bed still and take it up at our next meeting date, which is

Mr. Tapp: I can bring it up right now, 4th Tuesday of August.

Mr. Fulton: 24th?

Mr. Tapp: 28th maybe?

Mr. Klopfenstein: That's the fourth Tuesday.

Mr. Fulton: August 28th, okay and I invite everyone who came out tonight to come back. You are more than welcome. And you will hear the...

Mr. Tapp: Mr. Chairman you may want to motion for that.

Mr. Fulton: When I get there, I am not there yet. But it is very appropriate I do have, I am not sure I need it but anyway if you think I need it, I will do it. To have a motion to table this to hear from Greg on the finding of fact with the assistance from counsel of the O'Dell's if they so desire. If I entertain that motion.

Mr. Fricke: Mr. Chairman I would move that we not make a decision on this this evening and that we seek advice from Ms. Jensen and Mr. Canuteson and perhaps his attorney, Mr. Flanery's attorney.

Mr. Fulton: Okay is there a second?

Mr. Klopfenstein: I will second it but can we talk about it before we vote.

Mr. Fulton: That is fair we are going to have a discussion after this in a second. It is duly made and seconded; now we will open it to discussion by the board.

Mr. Klopfenstein: I assume that means we leave the record open so that additional evidence can be offered if we're accepting recommendations. I'm not suggesting anybody needs to, I got to tell you I think the testimony in record is wonderful so, I am not at all trying to be critical, but I think if we're taking proposed findings of fact we have to leave the record open and so that others can submit anything they wish for us to consider.

Mr. Fulton: So of us who are not attorneys and so it takes a little longer for this ...

Mr. Tapp: Speaking of records Ms. Patricia Jensen you had submitted this before the Board of Zoning Adjustment in Clay County brief of appellants did you want to mark this as Exhibit 32 I think.

Ms. Jensen: Yes you certainly can mark it.

Mr. Tapp: I just want to make sure I am clear at what number we are at.

Ms. Jensen: Briefs in court aren't typical admitted as exhibits...

Mr. Fulton: Stop everybody, we have a motion on the floor to table nothing happens until rid of the motion. We have a motion on the floor to table, we are having a discussion on that and if it's germane to the discussion we'll listen it otherwise we are going to vote. Is there any more discussion? If not all those in favor, Debbie call the vote to table the action on this with the record remaining open until August the 28th or our regular August date meeting.

Ms. Viviano: Brian Klopfenstein?

Mr. Klopfenstein: Yes.

Ms. Viviano: David Fricke?

Mr. Fricke: Yes.

Ms. Viviano: David Fulton?

Mr. Fulton: Yes

Ms. Viviano: Vernon Reed?

Mr. Reed: Yes.

Final Vote 4/0/0 Approved to Table 12-104 BZA
Appeal of Written Interpretation & Administrative Decision

Mr. Fulton: Very good, now again I want to thank everyone for coming this evening we have had a, I think an open discussion as we could have and everyone's had the opportunity to speak and I invite you since the record is still open if you have additional pertinent information to come back on the August the 28th to our meeting.

Mr. Klopfenstein: Make sure your belief that your brief is an aid to the board not necessarily an exhibit.

Ms. Jensen: *(inaudible)*

Mr. Fulton: Very good, I as a Chair entertain a motion to adjourn.

Mr. Klopfenstein: So moved.

Mr. Fricke: I move.

Mr. Fulton: Motion has been made and seconded all those in favor signify by saying "aye".

All: aye

Mr. Fulton: We are adjourned. Thank you again for coming.

Meeting Adjourned

Chairman, Board of Zoning Adjustment

Secretary, Board of Zoning Adjustment

Recording Secretary