

Minutes
Mooresville Board of Commissioners
November 1, 2010
6:00 p.m. – Mooresville Town Hall

Agenda Briefing

Friday, October 29, 2010 - 8:30 a.m. – Mooresville Town Hall

Present: Mayor Chris Montgomery. Commissioners Mac Herring, Mitch Abraham, Rhett Dusenbury, Thurman Houston, Chris Carney, Miles Atkins, Town Manager Steve Husemann and Town Attorney Stephen P. Gambill.

Also Present: Maia Setzer, Director of Administration and Finance; Ryan Rase, Engineering Manager; Erskine Smith, Assistant Town Manager; John Finan, Public Works Director; Carl Robbins, Police Chief; Wes Greene, Fire Chief; John Pritchard, Library Director; Tim Brown, Planning Director; Lisa Hammond, Risk Manager; Craig Culberson, Senior Planner; Neil Burke, Transportation Planner; Janet Pope, Town Clerk.

Staff was present to address any questions or concerns pertaining to the agenda.

Mayor Montgomery adjourned the briefing at 9:00 a.m.

Regular Meeting

6:00 p.m. – Executive Board Room

Present: Mayor Chris Montgomery. Commissioners Chris Carney, Rhett Dusenbury, Mac Herring, Miles Atkins, Thurman Houston, Mitch Abraham, Town Manager Steve Husemann and Town Attorney Stephen P. Gambill.

Also Present: Erskine Smith, Assistant Town Manager; Tim Brown, Planning Director; Maia Setzer, Director of Administration and Finance; Craig Culberson, Senior Planner; Carl Robbins, Police Chief; Wes Greene, Fire Chief; Ryan Rase, Engineering Manager; John Vest, Public Utilities Director; John Pritchard, Library Director; Lisa Hammond, Risk Manager; Janet Pope, Town Clerk.

Public Comment: Brad Henderson is with the Harbor Cove Homeowners Association and wanted to extend his thanks to the police and fire departments. They participated with their Halloween parade and festival.

Mayor Montgomery opened the meeting at 6:05 p.m. Mr. Gambill gave the invocation. Mayor Montgomery led the Pledge of Allegiance.

1. Public Services Director John Vest introduced Mark Hahn, Water Treatment Plant Superintendent and Mike Fulbright, Water Treatment Plant Operations Supervisor.
2. Youth Council Advisor Terri Bumpers introduced the Mooresville Youth Council.
3. Mayor Montgomery presented a proclamation declaring the month of November 2010 as National Hospice Month. (attachment)

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4. Vince Pastore with Race City Runners Association presented a \$750 check to the Mooresville Public Library.

5. Adjustments to the Agenda.

Action: A motion by Mr. Herring, seconded by Mr. Houston, to approve the Agenda with the following adjustments and the Consent Agenda was unanimously approved. Commissioner Abraham was not present.

- A. Consent Item f. – Remove from agenda.**
- B. Add Consent Item j. - Consider authorizing the Town Manager to execute the documents necessary to settle a workers' compensation claim for a Mooresville Town employee in the amount of \$3,500.**
- C. Add Consent Item k. - Consider approving a budget amendment in the amount of \$750 for the Race City Runners donation for the Mooresville Public Library.**
- D. Add Consent Item l. - Consider an ordinance amending Article IV, Chapter 23 of the Code of Ordinances authorizing the Town Manager to establish reserved parking spaces for Town vehicles, set time limits for public use of such off-street parking areas adjacent to and used for Town Hall parking and post signs reflecting those changes.**
- E. Add Consent Item m. - Consider authorizing the Town Manager to negotiate and execute an agreement between the Town, Thomas John Development Company, Inc. and Scot E. Hennon for the construction of a waterline and other improvements related to the exchange of real property between the parties authorized by the Board on June 21, 2010.**
- F. Agenda Item 15 – Remove from agenda.**
- G. Add Agenda Item - Consider awarding a contract to Country Boy Landscaping, Inc. in the amount of \$149,812 for the NC 150 at Williamson Road Turn Lane Improvements Project. This project includes a dedicated right turn lane into the Lowe's Home Improvement Store on NC 150 and will be funded through the Traffic Task Force.**
- H. Add to Closed Session – Add G.S. 143-318.11(a)(5)
Property Acquisition – Gymco LLC – 210 Talbert Pointe Drive**

6. Consent Agenda Items Approved:

- a. Approved the minutes of September 20, 2010 and October 4, 2010.
- b. Approved the following adjustments to the Town Tax Scroll for 2010.
 - Releases – Previous Years – \$223.44
 - Releases – 2010 - \$6,769.41
 - Additions – 2010 - \$71,239.26
 - Vehicles - \$143,381.30
- c. Approved a request from the Waterlynn Homeowners Association to reduce the speed limit from 35 mph to 25 mph on all the streets within the Waterlynn Subdivision. (attachment)
- d. Approved a request from the residents of Briarcliff Road to install three (3) speed humps on Briarcliff Road. The petition has been certified and contains 93% of the property owner's signatures. Staff has met with representatives from Briarcliff Road and explained the locations of the speed humps and the elimination of parking in the area of each speed hump.

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- e. Approved an agreement with Shepherds Volunteer Fire Department to pay a percentage of their annual installments on equipment and facilities based upon the value of voluntarily annexed properties compared to their entire district. The Town voluntarily annexed 0.1101% of their fire district on June 30, 2010. The annexation results in payments according to the attached schedule for FY 2010-FY 2020. (attachment)
 - f. *Removed from agenda:* Consider the following parking requests from Central United Methodist Church with the support of Mitchell College:
 - 1. Reserve the four (4) parking spaces in front of the church on Academy Street for church visitors from 9:00 a.m. to 5:00 p.m. Monday through Friday. Due to the increased number of students it has become increasingly difficult for church visitors to find parking.
 - 2. Remove the parking space on Academy Street between the driveways of the north side parking lot because of site visibility issues. The new parking lot at Moore Avenue and Academy Street is finished and this space is no longer needed.
 - g. Approved a Code of Ethics for appointed officials, boards and committees. (attachment)
 - h. Approved the following title changes in the 2010-2011 Classification and Pay Plan:
 - 1. Circulation Manager (PG 349) to Librarian-Circulation (PG 349)
 - 2. Equipment Service Attendant I (PG 342) to Equipment Service Technician 1 (PG 342)
 - 3. Equipment Service Attendant II (PG 346) to Equipment Service Technician II (PG 346)
 - i. Awarded a contract to Lindsey & Willis of Mooresville in the amount of \$32,746 to replace the auditorium stage floor at The Charles Mack Citizen Center. The contract is based on bids received on October 19, 2010 and funds were approved in this year's budget. (attachment)
 - j. Authorized the Town Manager to execute the documents necessary to settle a workers' compensation claim for a Mooresville Town employee in the amount of \$3,500.
 - k. Approved a budget amendment in the amount of \$750 for the Race City Runners donation for the Mooresville Public Library. (attachment)
 - l. Approved an ordinance amending Article IV, Chapter 23 of the Code of Ordinances authorizing the Town Manager to establish reserved parking spaces for Town vehicles, set time limits for public use of such off-street parking areas adjacent to and used for Town Hall parking and post signs reflecting those changes. (attachment)
 - m. Authorized the Town Manager to negotiate and execute an agreement between the Town, Thomas John Development Company, Inc. and Scot E. Hennon for the construction of a waterline and other improvements related to the exchange of real property between the parties authorized by the Board on June 21, 2010.
7. Maia Setzer, Director of Administration and Finance, presented the Financial Summary Report for three months ending September 30, 2010. (attachment)
8. Mr. Husemann presented the Manager's Report. He reported on the storm last week and Halloween was uneventful.
9. Alan Hall presented an operational update for MI-Connection. He discussed the Community Marketing Plan, key offer points and the new website.
10. Kim Atkins, Director of the Mooresville Downtown Commission, reported on the activity and economic impact of the downtown area.

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11. Quasi-Judicial Public Hearing to consider a Conditional Use Permit request from Gryphon Development Group LLC.

The Town Attorney advised if you are here this evening and would like to present testimony or evidence to the board, please let me go over some of the guidelines that the Board must follow by law. First of all, the Board in order to approve the conditional use permit application that is before them, they must find that the development proposed in the application meets four standards or if you will, four findings of fact. First of all, the Board must find that the development proposed in the application does not materially endanger the public health or safety. Second, the Board must also find that the development proposed in the application complies with all relevant town laws and ordinances, state and federal laws and regulations and any regulations imposed by the Town Board and agreed to by the applicant. Third, the Board must find that the development proposed in the application will not substantially injure the value of adjoining or abutting property or is a public necessity and fourth, the Board must find that the development proposed in the application will be in harmony with the area in which it is located and be in general conformity with the comprehensive land use plan. I must also tell you that under North Carolina law the Board must receive testimony under oath or affirmation under North Carolina Law the Board must base its decision on facts as the Mayor has related. In that same vein also the Board, by law, cannot consider personal opinions unless it is the opinion of an expert. Generally speaking for our purposes an expert, again, an expert can render an opinion this evening but an expert is someone who is well trained and qualified in a particular subject during which they want to testify. It's not necessarily that the Board makes this rule up, they don't. They have to follow the rule on a Quasi-Judicial hearing that opinions are not admissible. In fact, North Carolina by law there is a General Statute in particular that says that opinions by non-experts may not be used to establish impacts on property value or the impacts of vehicular traffic on public safety, for example. So the Board is bound to listen only to facts. The Board also cannot consider hearsay testimony or hearsay evidence when reaching a decision. That is, the Board cannot consider something that someone else has told you or that someone else has written. In other words, the Board can only consider the testimony given by a person who testifies in its presence this evening. I also let you know that you're welcome to present exhibits. If you have them as part of your testimony that are relevant to the hearing and if you would, please provide the Town Clerk for a copy; she'll need that for the record. If I may, allow me to summarize what information the Board may consider this evening in reaching its decision. Again, testimony must focus on facts not opinions. If a person is testifying and is not an expert witness, that person cannot give opinions. Also hearsay testimony cannot be considered. It's a whole lot I know I've said, but please remember that your testimony is certainly welcome, but I hope you will understand that if the Mayor or I interrupt your testimony and ask that your testimony stay within the guidelines that I've gone over this evening, we're only trying to keep the hearing within the rules that the Board has to, by law, follow. I think I speak on behalf of everyone on the Board by saying that your cooperation in following this will certainly facilitate the decision that must be made this evening.

Commissioner Carney disclosed that he knows Mr. Henderson is here, Brad Henderson is in the crowd. I met with Mr. Henderson as well as Mr. Sizemore from the HOA

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probably a couple months ago and it's only fair to allow the applicant the ability to call into question if I had any discussion that was out of line and at that time we simply discussed the difference between a general use as opposed to a specific. My example, Mr. Henderson can certainly could tell me if I'm wrong, was that there's a far cry from Vinnie's to a yogurt store. There's a far cry from a bar to selling retail wine. So help us with some more specific uses and certainly if I've mistaken that, please, when he gets up I would appreciate him calling me on it. And on the flip side, certainly the same goes for Mr. Parker Black as well as Mr. Caputo where a discussion was about if you, to reach out to the HOA as well as the adjacent homeowners to ensure that they could answer any questions that they may have before approaching this Board and if I've mistaken either of those please fill me in and correct me. With that, that's my disclosure.

Commissioner Herring disclosed he had received three different emails, one prior to Friday, two on Friday that I deleted once I saw the subject line.

Commissioner Dusenbury disclosed that he got one email relevant and saw in the subject line what it was regarding and I deleted it as well.

Commissioner Houston disclosed that he also got one, two and he just deleted them.

Commissioner Atkins disclosed that he too. He thinks the whole board got a couple emails.

Mayor Montgomery opened the Public Hearing at 7:06 p.m.

Mr. Culberson was sworn to give testimony in this matter. He presented the request.

Tony Espisito was sworn to give testimony in this matter. He is with Gryphon Development Group. He introduced Charlie Caputo from the meat center. He's going to do a brief presentation and give everybody a brief explanation of what the proposed use is going to be at the building today.

Charlie Caputo was sworn to give testimony in this matter. He is the owner. Ok, why are we here? It starts with a passion for cooking and a passion for food. As you know he is the owner of the Mooresville Meat Center. We distribute food to about three hundred restaurants, mainly (inaudible) chicken, beef, seafood. Our real facility is out on Highway 21. It's been there for thirty eight years since 1972. And we noticed day in and day out that we have a tremendous amount of people that walk into our facility. They're looking for a butcher. In the past months, we've had over 550 to 750 people walk in looking for a butcher. So we say to ourselves, how do we get out there? How do we get a butcher shop to everybody? Highway 21, the middle of nowhere? Not the right spot. 491 Williamson Road, the right spot, where everybody drives by, everybody is. What is the Meat Center? The Meat Center, well, I'm going to start with our mission. The Meat Center's mission is to provide our customers with a complete culinary experience by sharing our passion providing the freshest, healthiest, and highest quality foods with our neighbors and the surrounding Lake Norman area. This is not only a butcher store; this is a market. It will have bread, it will have pastries, it will have fresh produce, it will have specialty beer, specialty wines, all the things we're looking for on our drive home. So

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why do we need another place to buy beef? Why do we need another place to buy chicken? We can all go to the grocery store. The grocery stores have lost that personal service. They've lost the personal effect. What we want to bring the people is that personal service. We've hired a world renowned chef, Tim Schafer, to work at the Center and work with everybody and help them with their food. With weekly specials and recipes, online blogs with the chef, food preparation tips and hints for all our clients. Cooking classes, demonstrations and catering; we will cater from this facility also. Food sampling, a place where you can go and check out everything. We will have the finest of products with beef USDA prime, which you can't find anywhere else around here, choice and select, Kobe beef, filet mignons, rib eyes, T-bones, porterhouses; however you'd like them cut. Along with all the pork products you could wish for. Fresh poultry, the same thing, cut however you like it set up however you like it. No hormones no steroids, all natural bringing a great product to everybody. We'll also have delicatessen meats; Boars Head meats, only the finest. Comparable brands. What is this like? What are we going to have? Dean and Deluca, the Meat House, these are both comparable brands. Specialty shops, much like ours, with spices and marinades and all sorts of extra cooking items that we all love. Then, the meat of the project. This is what everyone wants to get to. How does our food come? How do we get it? How do we butcher it? All our products are pre-packaged, boxed, and vacuum sealed. There's no carcasses, no big animals being brought in to be cut up. When you get beef, when you come to the butcher and you say "I want a T-bone, I want it two inches thick." The butcher will turn around, he'll go to the cooler and he'll pull out a short-loin. This is the biggest piece of meat that will come into our center right here. From this comes the T-bone, the porter house, filet mignon, New York Strips. It comes vacuum sealed, nice and tight, nothing drips, nothing runs. Very simple. You tell him you want a filet mignon. It will come from a tenderloin just like you get at the grocery store. Vacuum sealed nice and neat. All of these come in boxes, cardboard boxes. These are nice neat cardboard boxes, nothing wrong with them, no blood on them. Seafood, most of us hear fresh seafood and we think of fresh. When you go to the restaurant and you say "I want a fresh piece of Mahi Mahi" this is usually what you're getting. This is a frozen piece of Mahi Mahi. It's individually vacuum wrapped. These days when they catch fish, they process them on the boat, they individually vacuum pack them and they freeze them right there. An hour and ten minutes after it's caught, it's been put in this seal. When you open it, it's an hour and ten minutes old. Now, we will also receive fresh seafood from the coast. That fresh seafood will come in the same manner except it won't be frozen. It will be vacuum packed in a nice package. Nice and neat no smell, no odor released at all. Now, that's how our food comes. There's no big carcass, nothing crazy hanging in the air for the butcher to cut off of. Once he cuts a piece of meat off that, he'll wrap it up, put it back in the cooler, he'll wait for the next one. All the foods... we also have prepared foods of course. We'll prepare them, cook them in the kitchen there, they'll be fresh. What happens when the food gets old? What happens when it's too late to sell it? We have a bunch of different ways to dispose of the food. Number one, all our employees will be "serve safe food certified" in cleaning and sanitation, basic food safety, personal hygiene, cross contaminants and allergens and time and temperature trained. What do we do with this waste? Ok? When the package comes in a cardboard box I'm going to put the cardboard box in the cardboard box dumpster. Nothing wrong with this cardboard box, there's no smell or odor. I give them to my kids. They take their school projects to school in

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them...cardboard box. All the wrappings you just saw on top of the meat and the fish will go in a container that is taken to the dump. The Mooresville Meat Center has taken all of their trash to the dump for 36 years, 38 years. We don't let it sit around; we don't want to attract any rodents or any beasts ourselves. Meat scraps. When I take that piece of meat out of there, my butcher is going to trim it. He's going to take a little fat off, he's going to take a little of the bad meat off, the parts you can't sell. Those will go back to Mooresville Meat Center. A lot of that gets used to make our hamburgers so if we leave the tail on a filet mignon; someone's going to get a filet mignon hamburger. (Inaudible) food. When you see prepared food starting to get old or reaching the point where it's time to get rid of them, A. we'll take it to the Mooresville Soup Kitchen to feed as many people as we can with them. If they get outdated, we have a couple farms that we work with right now. They take our produce and extra foods; they feed it to their hogs. Recycling, can't go wrong with that. Same with bread and scraps from any other pastries or anything else we have. I believe that's it.

Carney: Help me with something. And that's always been the biggest concern. I'll make sure we're clear on that. There will be no disposal of any meat on premise in a dumpster whatsoever?

Caputo: Absolutely not. We don't even have a dumpster at the Mooresville Meat Center. We take every single thing to the dump.

Atkins: Mr. Caputo, I heard you discuss cooking classes and catering. So will meals be prepared on site there?

Caputo: Yes, we'll have a full kitchen. The cook Tim Schafer can prepare meals. He's not preparing meals to serve out, to serve to people, he's preparing prepared foods. There will be sides such as vegetable sides, vegetable casseroles, lasagna. You can stop in and buy a piece of lasagna to take home. There will be potato casseroles and all sorts of prepared foods like that available.

Herring: You said cooking classes would be held there?

Caputo: I don't know that the whole class is actually in the kitchen but Tim will be discussing with people and telling them how to cook food.

Herring: Ok. I didn't know if that affected how that building is used in terms of...

Caputo: Well, we can't take the public back in the kitchen to work.

Dusenbury: Mr. Caputo, you'll be serving sandwiches?

Caputo: Delicatessen sandwiches will be available, yes.

Dusenbury: And people will be able to eat those sandwiches in your establishment?

Caputo: We're not going to have seating in the establishment for them so they will have to stand and eat it. It's more of a take-out. We do plan to put a couple chairs outside if a woman's next door with her child at the Learning Institute that's there. She'd be able to walk over and if she wanted to get a deli sandwich and sit outside on the front porch we don't have a problem with that.

Dusenbury: And so you'll have a full wash area in the back for any preparation pans?

Caputo: Absolutely. The kitchen will have a mop sink and then it will have a food bay sink and all the items needed according to health code for a kitchen.

Dusenbury: You've indicated that you'll take all meat scraps to the dump via...ok.

Would that also include any other refuse from preparation as well?

Caputo: Anything that has food on it. Yeah, package wrapped in paper or items like that that will go in the dumpster like it normally does. And if it gets food on it, it will go in the trash that's being taken to the dump each day.

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Dusenbury: That was the point I was getting at. In your washing area you usually have a cavern washer or three chamber sink or whatever like that and my point was if you were going to have trash that was going to accumulate there that might have some food stuff on it from other preparation other than beef, chicken, or seafood.....

Caputo: We're happy to take anything that has had food touch it or has blood or food juices on it is going to go to the dump.

Dusenbury: So the only dumpster will be your cardboard dumpster?

Caputo: Correct.

Dusenbury: Ok. Some of the other Commissioners have touched on...you indicate you are going to sell alcohol on the premise, right?

Caputo: Correct.

Dusenbury: Is that going to be consumable on premise? Or is that going to...

Caputo: No. It's absolutely to take home.

Dusenbury: And also the hours of operation. Do you have any idea on that?

Caputo: Right now we're thinking nine to seven. Nine in the morning to seven at night.

Dusenbury: How about Sunday hours?

Caputo: Sunday will probably be more like ten to six.

Dusenbury: Would you be agreeable to some points along those lines with the board?

Caputo: As far as hours?

Dusenbury: And also consumption of alcoholic beverages on site?

Caputo: Oh, I have no problem with that. I don't expect anybody to consume alcohol here anymore than they would in a grocery store.

Carney: What are your current hours now?

Caputo: Right now we are, we start work at 5:30 and on Monday, Wednesday and Friday we close at three. On Thursday and Friday we're open until six.

Carney: So that's where you do all your producing of product?

Caputo: The Mooresville Meat Center, the existing Mooresville Meat Center on Highway 21 is a production facility. USDA production facility.

Herring: Would you maintain that little retail space out there?

Caputo: Yes, we will for a while. Absolutely. We've got a great customer base over there we've had for years.

Houston: I guess the only question I probably missed is going to come from the cooking. I know you are going to probably hear this from the neighbors in the Harbor Cove about smell. Which you know you got restaurants all around but I'm pretty sure that question is going to come up. What kind of environmental fan things do you do for your cooking?

Caputo: I mean it's going to have a normal hood system like any restaurant would. I can tell you that when Tim Schafer comes and cooks at my house it smells fantastic. But it will be vented through the top of the two story building so everything that comes out of there is going to be 45 foot in the air blowing away.

Espisito: I'll elaborate more now on the facts and findings. First we get to the question is the request reasonably consistent with the intent, function and requirements of the land code? In your packages you'll have exhibit 1A to show the base zoning of this corridor to NMX as stated before by Mr. Culberson. This zoning as shown on the Land Use Plan encourages retail and services in close proximity to the residential neighborhood. The retail use being requested tonight is considered retail one under the Land Use Code. You can further see that under exhibit 1B, Chapter 5.2.5, subsection 12(4)(D). The second item that I'll discuss with you is the use will be visually and functionally compatible to

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the surrounding area. Presently the only change that this building will take by the addition of this tenant will be the actual sign that will be placed on the property. Every other factor for this building remains the same. Also note that the office overlay chapter 4.5 of the Mooresville Code requires a CUP for this request. That's why we're here tonight. Exhibit 2B is a document from the Court of Appellates that was accepted in August of 2009. I believe you can probably read better in your package, should be a full copy there.

Gambill: If I may I would caution the Board though in using that. And would not suggest you using it because it is a...the Court of Appeals decision is certainly good law, but I think it mentions, I was just reading something about legislative decision. I may have read it too quickly, but in any event, it does discuss about equivalent to a legislative finding. This is not a legislative finding. This is a Quasi-Judicial finding. Plus I must also and I understand what you intend, but also I must tell the Board that without knowing the facts surrounding the decision you can't necessarily compare the two.

Espisito: Thank you for the explanation. In Chapter 4 of the Overlay Zoning District you'll read under Exhibit 2B, Section 4.5, specifically 4.5.1(6) which states that this CUP is necessary for the retail food preparation, such as bakeries, butcher shops, and delicatessens in which food will be consumed off site. And I know Mr. Caputo stated that all the food being prepared here and sold is to be off site. I wanted to be very clear with the Board and let them know that. Especially with the alcohol. In our meetings here with the Board, we have discussed and understood the neighbor's concerns about having alcohol being consumed on site. We've made commitments that we would not allow a tenant to come in and consume alcohol on site and our commitment still stands. The alcohol that's being sold here, first of all its only beer and wine, and that's all just you coming in to buy your steaks and you want a good bottle of red wine to take home for dinner with you and your family. You can pick it up and take it home. None of that will be consumed on site. The request does not materially endanger public health or safety and will not substantially injure the value of adjoining property. Mr. Caputo is going to have to go through a plans process in which not only the Town is going to look at these plans but he's going to have to go to state and county health departments to make sure that he meets all the requirements that's necessary for this type of use. If he meets all those uses, we make the assumption that he's followed all the laws. He's taking it a step further. He's even made the commitment that none of this waste that's coming from his products are even going to be dumped at the dumpster at Harbor Square. We do have a dumpster at Harbor Square. There's a letter from our dumpster provider.

Steve Gambill: Also, if I may....I'm sorry the Board cannot consider the letter displayed (inaudible) is hearsay. You can certainly testify as to what you will do about a dumpster but you can't use what they've told you.

Espisito: Ok. I would like the record to show that we do have a dumpster at the property which is presently being serviced twice a week. As far as I know we haven't had any complaints regarding the dumpster right now. Is that something that I can bring to the record Mr. Gambill?

Steve Gambill: What you know is certainly, you can certainly tell the board what you know, absolutely.

Carney: Sir? I want you to take it one step further. Would you also state that you will not allow any disposal of any food material?

Espisito: Yes. Absolutely. Gryphon Development....

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Carney: As the owner of the building.

Espisito: We will not allow it and I'm sure we will work together with Mr. Caputo to come up with some kind of language that we are both protected and we'll protect the Town and the residents of the area.

Carney: Regardless of even this hearing. Just in general, I think that's a good policy.

Espisito: Yes. Absolutely. Again, as promised before, we've taken additional steps with other concerns that the neighbors have had in previous meetings regarding the buffering and the lighting. We've added several Cypresses and holes that were present in between the properties. You see some pictures there of gaps that have been, say plugged up in order to stop traffic from the neighboring community into the property. As everybody will know, these Cypresses will continue to grow and as it is right now it's pretty thick. Within the matter of the next 12 to 24 months, it will be even thicker than that. The lights. Our lights were placed based on the requirements from the Town. The lights are leased from Duke Power. Previous meetings have...neighbors have stated that light transgresses into their properties causing glare. We spoke to an Engineer from Duke Power. He gave us a photo metrics of the box lights that have been placed there and as you can see the photo metrics shows the light is protruded towards the front only. We tried getting shields put on but Duke Power number one doesn't make them for it and number two doesn't allow it. The one light that is right on the border of one of the homeowner's property and ours has even been tilted farther towards our property so if there is any spillage at all it would be mitigated. And there you see a picture of the actual light with the tilt towards our property. Mr. Gambill this is a letter from an appraisal that we requested.

Gambill: Unless he is here to testify, I do not suggest it.

Espisito: Thank you Sir. Finally, adequate provisions of design have been made to ensure automotive and pedestrian safety, convenience and adequate ingress and egress. As Mr. Culberson has stated, this property was designed, approved and modified prior to construction to abide by any regulations that not only the Town of Mooresville had but the North Carolina Department of Transportation and we've met all those requirements. This CUP did not require us to change anything so it really doesn't affect down on the property. That's just a copy of the site plan again showing that the property stays in the same condition that was previously approved. Those are some more details on the plan and we'll save time for the rebuttal at the end. Thank you.

Herring: Actually my question is for Planning Staff and...Mr. Caputo, in reference to maybe using some tables out front for folks who may want to sit and eat a sandwich, any zoning issues with that if he decided to go forward with that? Any concerns there?

Culberson: The only concern would be whether or not there was adequate sidewalk space to maintain ADA compliance if you put a table out front.

Carney: Mr. Culberson, I think there has been a lot of discussion about traffic over the years and certainly some discussion about parking and whether or not it's adequate. I think the question becomes, when that building was established, it was established with the idea of office use. Do you see a change in the retail aspect of this or does it still fall in the trip generation that would fall in the normal office use.

Culberson: The building was designed initially as a mixed use facility. The parking requirements for the retail aspects and parking requirements for the office aspects in our zoning ordinance are the same so no difference in there. And I would point out the plan that's in your packet shows the second building on that site that was originally supposed

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to be a bank. As yet that has not been developed so if I'm not giving Mr. Caputo any work unless it comes up but there is the ability to create additional parking for the site if the need should arise. But as I stated earlier, the parking for the size of the building is adequate for the zoning ordinance.

Brad Henderson was sworn to give testimony in this matter. He is the Association President representing the 200 families of the Harbor Cove Home Owner's Association. Mayor: Thank you and I would ask that you adhere to the guidelines outlined by Mr. Gambill when referencing the findings of fact; no hearsay is permitted.

Henderson: Absolutely. First I'd like to congratulate Gryphon Development on attracting three new tenants: State Farm, Cural Medical Systems and Sylvan Learning Center. These are exactly the type of tenants that the residents were told that would be there when they bought their homes. That when the Gryphon Development bought the property that the property was zoned for and until the concrete was dried, that is what they were discussing with the homeowners the type of tenants that would be there. It was only later, three years ago in the fall of 2007 that they brought the first food services up. And at that point in time your Planning Board under the previous rules, clearly, unanimously indicated that the request failed on two, at least two of the three criteria. The applicant withdrew the request and met with the homeowner's association. They asked us to do a survey. We did so and the survey results were not what they had hoped for. Eighty six percent of the homeowners within Harbor Cove said they did not want any food preparation on the site. Certainly their experience with Vinnie's Restaurant is part of that. But the whole matter is really proximity. You can see the structure is within 75 feet of single family property lines at one corner. We are concerned with the traffic. We are concerned with the parking. We are concerned with the safety of the area as well. But primarily we believe that as one of proximity that it is one, not a public necessity. There are the added noise, the traffic, the pickups whether they're hauling it away or the business hauling it away is a problem. The concern about the alcohol. You talked about tables being out in front with sandwiches. What's to keep that from being used for alcohol use at the same time? It's not in harmony. The parking, the spacing from the trash cans and the cookout is too close to residences. It is a matter of the smells.

Gambill: If I may, if you would please. If you could testify about, you're certainly welcome to say that its "x distance away" from them, but if you could keep it factual about how far it is. The Board will have to make a conclusion in their opinion if it's in harmony or not. If you could keep the facts to that I would appreciate it.

Henderson: Essentially one corner of the building is within 75 feet. The trash cans are within roughly 200 feet, measured this weekend. Vinnie's in comparison is 350 to 750 feet. They also have all the controls as far as exhaust. You don't have to get very close to their parking lot to know what they're cooking for dinner. It's clear and that is a concern to the residents. And as others will show you, it has already impacted this constant re-upping of this type of request has already impacted the property value. I thank you for your time.

Gambill: I would also if I may, I'm sorry I will have to ask the Board too about the property value. Unless there's someone here to testify to that, as I told the applicant, you can't testify to the property value unless someone is here (inaudible).

Henderson: Well, we'll provide some documentation.

Pareesh Patel: I have some handouts I would like to share right here. He was sworn to give testimony in this matter. I'm a Harbor Cove resident. I live on Sandusky. I've been

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there since the street was formed. What I wanted to share with you is MLS listings of this particular house on our street, 151 Sandusky. It's the Chadwick model. It was built by Galloway Homes during the '96, '97, '98 time frame. I moved in in 1998 on our street. It's a quite popular model. I just wanted to show you the impact it had on the property values of when the house is listed.

Gambill: I'm sorry, I apologize and I know I sound like a broken record. We're not trying to be difficult. The Board, by law, and this applies to both sides, they can only hear testimony about either increase or decrease in property value if the person is a, literally an expert. I'm not trying to put you on the spot or be difficult but the question is, are you qualified as an expert to testify about the increase or decrease in property values for this (inaudible).

Patel: These are just MLS listings and the actual sales prices.

Gambill: I think it's certainly OK if you know the actual sales price, but I guess...who is the information from?

Patel: It's pulled from the MLS listing. These are...we get updates. I got this from Mr. Brad Henderson. This is actual sales price of the home. We keep track...I live there. For example, these gentlemen showed two different times on one of the slides finding of fact for conditional use permit. Item C says it would not substantially injure our values and also in Exhibit 3C but I beg to differ. It's over a 20, 25 percent drop in...

Gambill: I'm not questioning. Please understand I'm not questioning the effect. What I am saying it is the evidence that the Board can hear. North Carolina...this Board...we don't make up these rules. And frankly, sometimes they'd like to hear a lot more sometimes than they could but they just can't for this type of hearing. They're bound only when it comes to property value by someone who is a qualified expert who can testify as to what the actual valuations are (inaudible).

Patel: I would just like to say that this particular home, it was listed twice. It took over one year on the second listing for it to sell. And the biggest impact that we heard was the location of their building...

Gambill: Let me again, that's what we can't...I'm sorry.

Patel: But I just wanted to say its affecting time that it's on the market too. But I understand you can't see that but I disagree with their findings that it doesn't affect our value.

Ken Lobby was sworn to give testimony in this matter. He is a resident of Harbor Cove community. I just wanted...on the tail end of Paresh's last piece. As you can imagine we had a little bit of difficulty getting an actual real estate person to come up here and address the Board from a, well you understand what I'm saying, to provide expert testimony. This was the second best thing we could do to point in fact what it's actually done in our neighborhood. So with that I'll leave it there. My point is and what you have in front of you is just a quick survey, a statement of fact in terms of the number of food establishments within a two mile radius of the Harbor Cove, or excuse me, of the Harbor Square Building. I did a quick categorization on some of these. Eight deli's/sub shops, nine breakfast/coffee establishments, six ice cream/ frozen yogurt establishments, eight traditional fast food establishments and about 16 full service restaurants that are currently within a two mile radius of Harbor Square. The biggest take away from that, in my estimation again, it's a statement of facts with the numbers that I have here. Is there truly a need for ya'll to change the zoning of what is office and mixed use when there is substantial commercial real estate outside that two mile radius that is clearly available. I

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can understand if we're in a situation where commercial real estate was a hot commodity but at the time right now there's a lot of empty space in and around the Mooresville area. My survey here did not include anything off of Highway 150, so nothing in the Best Buy area and nothing along the Lowe's Home Improvement. That whole stretch of road was not included in this. And of course we know that to be a bevy of restaurants and so on. Lastly, the groceries. We have four within that two mile radius. A Bloom that just opened up off of Brawley School as you head toward the Point. Harris Teeter, the newly located Lowe's Foods and again that does not include a Super Target, the Super Wal-Mart nor the established Bloom that is right there by the ABC off of Highway 150. I guess with as much commercial real estate out there is it really truly a necessary thing for ya'll to rezone based on the request of Gryphon. And also the concern of setting that precedence for the future was numerous. I mean once it happens once, what's to stop numerous food retail outlets from coming into that location? And if I could just address a couple quick concerns. I don't know if we have that map we can show again? Of the development? Is that possible? At the far southeast end of that red highlighted area there is what is undeveloped area and one large concern I have as the father of two children, while I can't keep a close eye on them every second of the day, just on the other side of that, there is where its undeveloped, there's a huge pooling area where water collects. And that's happened since the outset of all this development and I'm curious what Gryphon might be able to do in the meantime to address that concern. There's points where there's two to three foot of standing water out there that's quite dangerous for any children that might get out that way.

Mary Williams was sworn to give testimony in this matter. She is a resident of Harbor Cove. I actually do not live right in back of Harbor Square. I actually live down the other end of Harbor Cove near Vinnie's. I have been dealing with Vinnie's for the last seven years or however long Vinnie's has been there. I live in very close proximity to their dumpster. It's basically in my backyard. We have put up with...we have a trap set in our backyard continually for rodents. We have caught numerous rodents in our trap. I have contacted the county, I have contacted...Finally a couple of gals, Tammy Heck and Mandy Edwards were able to help me get that area, the dumpster area cleaned up. It was deplorable. There's times in the summer I cannot use my backyard because of the odor from the dumpsters and I don't know how any restaurant or place that sells food cannot use a dumpster. There's going to be something in that dumpster that's going to give off an odor, that's going to have food scraps or something on it that's going to give off the odor and attract varmints. Like I said, I hate to see another food service place go in near Harbor Cove that's going to impact it. I'd hate to have anybody else in my neighborhood have to go through what I have gone through the last two years with dealing with Vinnie's and Vinnie's dumpsters and the odors and like I said there's times in the summer we cannot use our backyard. And I have had instances where I have had company, we've been sitting on my patio and I've had a rat come down my backyard towards my patio. And I just don't see any kind of food preparation. Vinnie's also gets their meat and seafood in nice cardboard boxes but they look nice when they come in but when they hit the dumpster, there's food scraps, there is juice, there is everything all over and the odor is deplorable. So I would just beg that this not be allowed to go into Harbor Square.

Carney: You obviously have made the most sound discussion point because you have something in particular that you're concerned about. Because a lot of other discussion

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has been about I just really don't like the idea of adding traffic and honestly at some juncture, or I don't want another business. Mr. Henderson and I have certainly had this conversation face to face. And I see this Board not in the position to decide whether or not one more grocery store goes into Mooresville. I mean, that's not our place. But you've targeted to a concern that this particular has caused an unfair burden on your home. And so I'm picking you for that specific reason if that's ok and you seem to be very reasonable. That's why when we ask these questions of them, I get when we think about moving a food butcher production type place there, we've always said no in the past. And certainly Mr. Henderson and I have had this conversation. I don't understand though when we go to the retail side, for the example of and I used that in the beginning, I see a bottle of wine much different than I see the fact that you sit down and so, I'm not for the outside tables. I agree with that. I think it's a great point. But if somebody were to want to sell an unopened bottle of wine, let's just use that because it's really easy for us to use as an example, that is so different than Hooters or Vinnie's or some things to that effect. So I'm trying to grasp, if we do transition that over to food and say if food comes in already prepackaged let's say. Not allowed to butcher at all. All remains from that were taken out daily; I'm struggling with that part. So give me your interpretation. Is it you just don't buy the fact that that's possible?

Williams: I guess I just don't buy the fact that it's going to happen. What guarantee do we have that that is going to happen? Because you are going to have something with food scraps in the dumpster. Another thing that we've lived with with that dumpster too is they come and in fact, one of the letters that was signed by Jeff McMann at BSS Sanitation has become one of my very good friends because I call him when they come at quarter to five in the morning to empty the dumpster that's in my back yard.

Carney: We actually looked at limiting hours for them to be able to pick that dumpster up so we....

Williams: He's very accommodating.

Carney: The question is, you don't buy the fact that they won't use the dumpster. That pretty much summarizes...

Williams: It is. To the full extent, I mean your intentions may be good but....

Jim Trout was sworn to give testimony in this matter. He lives in the Harbor Cove subdivision. Have any of you ever worked in a restaurant? Anybody here? Have you ever, ever seen an occasion where you're preparing meat, seafood, baked goods or any other thing of that nature where you've got kitchen equipment, a ventilation hood, grease traps...I'm certain that you don't develop waste in scraps? Comes in real nice and pretty. I saw the boxes I saw the cryovac casing it comes in but you open it up, grease, blood, scraps spill everywhere. Now my question is, do you really believe that a restaurant manager or somebody that works in that restaurant when that place closes and they're charged with cleaning that up for the next hour and a half or two hours that they're going to pack that up in a little box somehow this scrap and take it to the dump? Well, I don't believe the dump is open at that hour is it? Secondly I can't picture these people loading this scrap into their car, taking it home for the night and somehow disposing of it the following day. I have put restaurant packages, school food service packages, casino packages, prison packages, every type of food service establishment imaginable together over the last 22 years of my career. It's what I do every day. I put about 75 to 100 projects together every year and I have never once seen where a restaurant or a food service establishment goes into this type of proximity to a neighborhood and not been

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detrimental in numerous ways. The rats. I can tell you my boat slip is down along the board walk by Vinnie's. Once Vinnie's came in we had to put rat traps out all along our board walks and we catch them regularly. Now that extends several hundred yards from Vinnie's in the actual dumpster that they have. You walk up that board walk anytime you're done using your boat, the smell is constant. Once in a while it's wonderful. It really smells good when you get off the boat at six o'clock in the evening and you're hungry but 24-7 is not tolerable to a neighborhood. Ventilation. One gentleman stated that it's going to be two stories high and go off into the air somehow. That doesn't happen. It comes back down. Grease is heavier than air. It's why they have extraction hoods. Its grease laden vapors that come out of there. It's very disturbing to a neighborhood. I don't know if any of you have had the occasion to live in a neighborhood with restaurants around it. Anybody here live in such a situation? How close are they may I ask?

Carney: I've got the entire Target shopping center behind my house.

Trout: How's that working out for you?

Carney: Actually our home values are up 100 percent. I bought it for one price and it's 100 percent more and we walk it but like I said that's for us. I'm not trying to take my and put it in your situation.

Trout: I think you've seen the comps of the neighborhood. There's five homes there. I saw myself 230,000 was the low. The one right next to the building, 290,000 was the average of the others. That's a huge hit. Now that's not just a marginal hit, that's a big hit on a homeowner and we're all judged by comps and I'm afraid that's what's going to happen to our neighborhood.

Carney: To sum it up Mr. Trout, food preparation. Food preparation is without...you can't see any possible way that food preparation could work?

Trout: I've never seen it in 22 years that's the thing.

Carney: I mean there's a lot of emotion here. I want to make sure that when I'm looking at all the facts here I break it down...food preparation.

Trout: Being involved with it as long as I have, I know how restaurant managers act. I know how employees react. I know what they go through at night to clean up. I know what they go through in the daytime to prepare. If you want any idea go to the butcher shop at Harris Teeter. Look at the scrap that's coming off there. They have to do something with it. I doubt highly that it's going to get boxed up, carried off in the manager's car and taken to the dump. I've never seen that happen.

Espisito: If I may, now that that item is fresh in our minds. I understand that Harris Teeter does throw their scraps to the back. That's unfortunate. That landlord should be a little more astringent on that tenant. We've put our rules down to Mr. Caputo and he's going to abide by them and we believe that. To make it even more concrete, my partners and I took it a little step further. We went to the processing plant and talked to their neighbors and we actually have Mr. Henderson here who is a direct neighbor of the processing plant here tonight. Mr. Christy?

Caputo: I would like to be able to ask him a couple questions if that's alright.

Robert Christy was sworn to give testimony in this matter. He is the across the street neighbor from Mooresville Meat Center.

Caputo: Mr. Christy, you say you live across from the Mooresville Meat Center?

Gambill: I'm sorry let me interject, who is the applicant?

Caputo: I'm the applicant. The landlord is the applicant.

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Gambill: Realistically the applicant is the one who needs to be questioning any witnesses.

Espisito: Mr. Christy, where is your permanent address?

Christy: 2107 Charlotte Highway

Espisito: And where are you located in proximity to the existing...

Christy: Directly across the street.

Espisito: How long have you been living there?

Christy: Since before the meat center was there.

Espisito: And since the meat center opened to today, what have you noticed about their practices when it comes to disposing of scraps?

Christy: Their scraps are hauled to the dump every day. I know that for a fact.

Espisito: My point is very simple. If this is being done at the processing plant, how can we not assume that it's not going to be done here at Harbor Square? Where the processing is ten percent of what it would be at the processing center. We made a commitment. I understand the problems with Vinnie's. Unfortunately I wish I would have never heard of or seen Vinnie's but I do. Every time we come up to this Board we have to deal with problems with Vinnie's. We don't control Vinnie's; we control Harbor Square. As of right now, Harbor Square has abided by every single rule that has been given to us. And yet, we still have to combat rules that other owners and tenants are not abiding by. I don't believe that's fair. I believe what's fair is, like I've always told my kids, you show me a rule book. If I accept your rules, I'll play by the rules. I can't play if someone, if someone is breaking a rule in that rule book, you can't hold me accountable for it. They broke the rules. This Town should do something about Vinnie's. Harbor Square has nothing to do with Vinnie's. The dumpster. The dumpster was placed as far away from the property line as possible. We worked with Mr. Culberson and his office to place the dumpster, not abutting the residential property but abutting the boat yard on the, I believe it's the North side of the building. Away from the residential. Another thing, Mr. Henderson states that we stated to the HOA that we would never have food use. I honestly don't know who he spoke to but I guarantee he didn't speak to me or any of my partners because we never stated that. As you all know this is the second time we're coming in front of you asking for a food use. Before it was a much more general request. Now we're coming specifically with a request. The area of water that was mentioned by one of the residents. It's a retention pond. That retention pond was required by the Town. We abided by the rules. We were supposed to have a retention pond on the property for our drainage. It's there. It's built up to code. It passed inspection. We didn't, I mean, we didn't come out and say we want to build a retention pond. I would have saved a little money. We didn't. We abided by the rules. Again. And I believe that's all I have today. I respectfully request that you consider everything that has been stated in front of you today. I believe we have abided by the rules and we have answered all the questions. Thank you.

Dusenbury: How long has State Farm been there?

Espisito: They opened about a month ago.

Dusenbury: Sylvan?

Espisito: They just opened up.

Dusenbury: I take it they have pretty substantial leases.

Espisito: Yes.

Atkins: This is for the applicant really. What I've heard from the residents and I

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certainly understand their concerns because we've been through this numerous times already. But we are bound by fact. But what I want to get to is our real strong concern about the waste which I think we really have to have some very specific measures and rules in place that can be enforced but also the ventilation and exhaust. Those are, that is another thing I heard and so I think those really are standing out to me the two key concerns I hear from the residents. If we have to cut through, I know there's a lot of emotion, a lot of people been living this for a long time in that community and I certainly appreciate where everybody is on this. But as a Board and what we have to think about the facts, I'm hearing the waste and I'm hearing the ventilation so those are things I think this Board really has to consider and address tonight.

Espisito: To address those two concerns again, when it comes to the waste, we have a dumpster that is properly serviced as we speak today. In addition, our tenant Mr. Caputo has committed to not dumping any of his scraps or any food into our dumpster. He's going to be hauling away just like he does at his processing plant to the dump. So therefore the...we should not have an odor issue when it comes to the garbage. If we do, I can guarantee you that as a landlord we will address all those issues and those commitments that Mr. Caputo has made. When it comes to the venting, we have two options. The easiest, most economical option is to vent it right back through the back wall. Perfectly legal, we'll be able to pull a permit. We're not doing that. We're going the extra expense and taking it all the way to the roof which has a two foot (inaudible) and exhausting it that way. That is the most stringent exhaust that we can have him make. I can't do it any other way. So we didn't take the easy road out. Oh let's just put a belt on the back of the building and exhaust it that way. We're within code. We're going to follow every single rule. No, as a landlord, we've taken it a step further. We're going to make him exhaust it all the way to the top. We can't...there's no other solution that I can make it more stringent for him to make it more compatible to what the neighbors want. We've worked with Harbor Cove. We continue to have an open door policy. I, myself, had various conversations with Mr. Henderson. I believe they've been good. We understand the concerns and I believe that we've addressed...from back to the ones when we had that trees to the lights and we will continue to address them. Your two concerns right now, I believe we have addressed.

Carney: If you could, please I don't want anybody to take...one of the particular people asked personal questions of this Board and we answered those questions. But certainly I hope that doesn't make anybody believe that it sways us one way or another because my situation is not the same as their situation. Right? It's more than 75 feet away and many other things. And certainly I worked for Applebee's so its like working at Vinnie's so that was certainly a different situation there when I was in college. The reason I asked the question of those particular people is because I was trying to break it down. This has become very emotional. It's become emotional for Commissioners. We go to church with these people. They're people that we know well. Meat Center has been part of this community for a long time and it's had a very good reputation. So here we have two sides that we're trying to figure out and I'm not going to jump to the conclusion that one side is lying. I refuse to do that. So we have to base this on fact is why I asked please tell me the factual part of your argument. And Mr. Atkins is right. Food disposal is a question and food preparation the question. Those are the two. I'm willing to go and say I believe you on food disposal because there is a history to the food disposal with this company. I cannot go on the food preparation. I'm just being honest. The food

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preparation I think is going to be something we need to discuss further. So, does the food preparation have to be on site? Can food preparation be an offsite piece? Because I've always said and Mr. Henderson can speak for me, I've always said that I believe retail sales is far different than restaurant use and restaurant use in my mind is food prep. Making stuff in the back and then in turn selling it to customers. If you make it off site and sell it on site then that is a solely different thing and I think that's what we get hung up with here. We can have everything that you're looking for at this site. I'm just thinking that correct food preparation is going to be a difficult time. Help me with that. It seems like a small portion of your business, that's the reason I asked.

Caputo: It is but we do need it to be on site. The food preparation we're going to do is not the same as a Vinnie's Sardines. We will not be frying hundreds and hundreds of pounds of fish and onion rings and French fries every day. That produces a lot of smell, a lot of grease. Will I be grilling some fresh vegetables? Yes. Will we be boiling pasta? Yes. Will we be grilling some chicken or seafood? Yes. All those things will happen. But like I say, the vent will be on the roof. The same place that every single one of our toilets and the sewer system for the entire town is vented to. Just like every single house in the neighborhood. Speaking of trash, I want to say one more thing real quick and I know it's not a question you asked but every single one of these people goes to the grocery store. Every single one of these people unwraps their trash, every single one of them sticks it in the trash can. We will not be doing that. The neighborhood does. Ok? Vinnie's also puts the trash from, I don't know how many guests per day, wasted leftover food into their dumpster. We will not be doing that. We are not a restaurant. We are a retail store, a market. I also wanted to ask one more question of Mr. Christy if I could or two more questions?

Mayor: That needs to be through the applicant.

Espisito: Mr. Christy do you smell anything while you're at your residence from the butcher shop?

Christy: No.

Espisito: Do you have any rodent problems?

Christy: None at all.

Espisito: Have you ever had any rodent problems?

Christy: No. Never have

Tony Walters was sworn to give testimony in this matter. He lives at 172 Harbor Cove. I just have a few questions I would like to ask. In regards to the Planning Board asked for greenery to go between the two properties, how many of those greeneries in that picture did you plant? They were planted by the homeowner's association which we just planted more because we want them to grow or we want a border in there. The other thing is when you state that everything is going to be packed up and you're going to be here? Do you live in Mooresville? You're not going to be here. And what or who do we go to? Down in Florida? It just doesn't make any sense. Everyone on the Board knows my position. I been here since day one. It just doesn't work for that particular property. The building is fine. It's a beautiful building. Not for a restaurant.

Gambill: If I may also interject, the applicant can certainly respond and answer questions if he so chooses. That's up to you.

Espisito: Regarding the trees, we were required to put a certain amount of trees with our original plan which we did. After that we planted additional trees. I can't tell you exactly how many. The bottom line is that whether we planted four or 42 or 100, I'll

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submit pictures of the exhibits to the trees and I'll have you pass it around. These were all taken in the last forty eight hours.

Gambill: Who took those pictures?

Espisito: I did. Some pictures were taken from our property looking towards the neighbors. Two of the pictures were taken from inside Sandusky looking towards our building. Yes, we've planted some extra trees. Yes, the association has planted other trees. The trees are there. They're growing and as you can tell they're pretty thick. Regarding the gentlemen's question, how I'm going to control this from Florida. Just like other landlords I'm sure that Mooresville has from other states and other cities. We have a management team here. We have a property manager here. One of our partners is a property manager that lives here in the state of North Carolina. He actually has a house here in Mooresville. Just like any other property, I mean if something's wrong, they call the office, we handle it. If it's a waste problem and we need to call the waste company, we call them and we handle every problem like any other landlord would handle whether they live here or not. I don't believe that's an adequate question. Whether I live here or not is just how problems are going to be handled. They're going to be handled properly is the answer.

Robert Henderson was sworn to give testimony in this matter. I live in the neighborhood and I'm a caring boy scout. First of all during the last two years, they've planted four trees, we have planted 86. I have planted almost...I've helped plant almost every single one of those tree. Secondly, there are a few kids that are bad, well, pretty much they do bad stuff like smoke, do drugs and drink. They're young. Some are even younger than me and they will probably go and if their parents bring home some red wine or anything they might take it and drink it. Which would be easily accessible since it's near.

Gambill: Well, I appreciate the thought but again, the Board admonishes I have to (inaudible) everyone. The Board can only consider what someone has done. I understand what you're getting at but the Board is under very, very specific rules that they have to follow. One of those is that they have to base it off what you, you can testify to what you've personally observed and what you personally know.

R. Henderson: Yes, about the oil is thicker than air and going down. That would go into our community making it smell bad thus it might lower our...the prices of our houses.

Gambill: I couldn't say that myself. But again, listen we appreciate it, don't get me wrong. I think everybody up here, you know, everybody appreciates what you're saying. I have to keep the Board corralled into the information they can hear. But you can continue. They cannot hear about property values unless it's an expert witness that can come up and verify. But I appreciate what you're saying. Go ahead, please continue.

R. Henderson: Well, I believe that the smell in the neighborhood will pretty much be bad for our neighborhood. It will, I mean, I really wouldn't like to just go outside and cover my nose because of the smell. Just a concern. Thank you.

Carney: Robert, you did bring up something I'd like for you to elaborate on. You planted 86 trees on that tree line between the building and the HOA and the development? You and others planted that?

R. Henderson: Yes. I'm not sure if, not all of them were against that line but that was during the past two years.

Carney: Ok, thank you. So eighty six as a buffer?

R. Henderson: Yes.

Trevor Darling was sworn to give testimony in this matter. He's a homeowner in Harbor

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Cove. I want to try to keep it to fact. I used to be the director of real estate for a chain of retail stores in North America. I'm telling you the truth now, ok? I'm retired. I work as a substitute teacher now. But let me tell you something and I'm going to tell you the facts. I used to sign a lot of leases and I'm talking a lot of leases with a lot of landlords and one of the biggest things that we used to worry about...we should sign the lease and believe me we spent a lot of money on lawyers and everything. But one of the big things that the worry was was when the landlord sold the building. This is the big problem. Because you get the landlord, oh we're going to do this, we're going to do that, we're going to do the other and everything, then the landlord sells the building and it's a completely different game. Because you may be even dealing with a company overseas. And you get all these people, oh we're going to do this, we're going to do that, we're going to do the other and then they get the place rented out and then they sell it. Then we're all, you don't even know who to get a hold of and that's where the problem lies. All these people have all these wonderful things, we're going to do this, we're going to do that, we're going to vent it, we're going to do this. They sell the building, forget about it. All they're concerned about what's in the lease and even that's a problem. Because you know what it's like to go into court, you're a lawyer. Even if you've got a good case, it's going to cost you thousands. And that's the rough. And that really is the rough especially with this situation. It is so close to the neighborhood. And that's...the whole building was never designed for that. You tell me about playing by the rules; you should have stayed by the rules. You knew the rules when you went in. You should have stuck by the rules, built the building and rented the building as it was. Those were the rules. But you want to bend the rules. That's my point. You say, "oh, we want to...you want to twist the rules. Sorry, and they want to twist the rules to not what it was originally intended for. And that's what I'm saying. They don't play by the rules and that's what makes us so upset because that's what we were told as...I'm speaking as a homeowner now. But that's what really upsets people. Because you get told something, you go and buy a house, you pay \$250,000, \$300,000 for a house and you're told, oh no, it's going to be an office building, medical...and then they want to change the rules.

Espisito: In closing this will be brief. Fact, the building is not for sale. So the building, we're not going to sell it right now. One day will it sell? Most likely it will but it's not going to happen anytime soon. Number two, regarding the trees again. We planted what was required by code in our plans on the property line. In addition to that we made some commitments to plug up some holes in trees which we have done. Number three, I am abiding by the rules. The CUP is an allowable condition for us to come in front of you today like we are here today. If I wouldn't be abiding by the rules, we wouldn't be in front of you. So I believe that all three items have been addressed to you as factual. Thank you.

Carney: Just for the record I believe that the Planning Department should actually reiterate whether or not the different discrepancies that have been said because much of it has been opinioned by one side or the other. So I'd like the Planning Department to validate either the process is correct or not correct. I don't believe we should take from the applicant whether or not they are following...would you please go through what is expected as well as what we're doing.

Culberson: As far as this or historically or where would you like me to start?

Carney: Why are they OK asking for this and what is the concern? I think certainly, currently disposal, what do we have in place that actually holds them to that? If they

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were to agree to no disposal... That's a great point. How in the world are we going to enforce that? Do we currently have something in policy that allows for us to enforce that?

Culberson: Today, basically, their disposal of waste and things like that would be covered under their Health Department inspection. You as a Board, since this is a Quasi-Judicial hearing for a Conditional Use Permit, you could propose that as a condition of approval and if the applicant agreed to that as this is how their waste would be hauled off, then we would be able to follow up on that.

Carney: What would be the penalty? What penalty is in place?

Culberson: It would basically fall under the Code Enforcement section. I don't know the absolute number but there would be a notice of violation to have a process taken care of and after that there would be a monetary fine involved. But I don't know what that number would be. But that would be subject to you making it a condition of approval. If not, it would be under the Health Department's purview.

Gambill: Let me ask if I may interject (inaudible). If the condition is agreed to such as that and then as part of the Conditional Use Permit and then that condition is violated, I believe though can the Planning though have the Conditional Use Permit revoked as a violation of the CUP?

Culberson: I'm not sure of the answer to the question Mr. Gambill. I don't know that our...

Gambill: I don't mean to put you on the spot, I honestly don't.

Culberson: I'm not sure what our ordinance says as far as revocation of the CUP. They would be...they would not be abiding by the conditions of that CUP.

Carney: I'm not real sure that it did answer my question. I think it came back with that we're not sure exactly what that...and then going back to that, I believe they're not going to dispose of it. But to put...if people want it, I agree with that, it's a perfectly valid point. If they don't follow that rule, what is the penalty? I think that's something everybody should know. If you need a few minutes to find out that information, I'd like a five minute recess and then we can come back and get that. If there's nothing in our current ordinance that allows us to go ahead and have something in place, then they're a 100 percent right the fact that we're going simply on somebody's word and that's probably not (inaudible).

Culberson: Mr. Gambill is looking from the CUP side of it. I can check on the zoning enforcement side of it if you'd like for us to do that.

The meeting recessed for nine minutes.

Carney: It's just...when emotions get high we just want to make sure we're all playing on an honest playing field.

Culberson: Just to reiterate a couple things from Mr. Carney's question. This property just as a little bit of history, this property was originally zoned office institutional by the Town Board of Commissioners in 1996, about the same time that the Harbor Cove Subdivision was developed. The office institutional zoning district was predominantly an office district as the name would indicate but it also provided the ability for someone who had a property zoned office institutional to come to the Town Board of Commissioners and ask for a CU permit for a restaurant. So the ability to ask for a CU permit for food related services has actually been in place since 1996. When the Board adopted the current zoning ordinance in March of 2008, the staff's recommendation at the time was to make that corridor neighborhood mixed use. At that time the residents of Harbor Cove

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came to the Board and asked you and you agreed to put in the office overlay, which is what we're talking about tonight, which essentially maintained the office institutional zoning that was in place since 1996 giving them the ability to come and ask you for a CU permit for food related use. So that, the ability to ask for that food related use has been in place since 1996. To the other part of your question as far as the enforcement, if you propose conditions and the applicant agrees to those conditions regarding the disposal of the waste, if they become conditions of approval, they are by extension a part of the zoning ordinance and failure to comply with those would be dealt with in Chapter 6 of the Zoning Ordinance which is "Remedies for Violations." 12.6.4... Planning Director may revoke a zoning permit. If the Board approves a Conditional Use Permit tonight, they will then need to submit a site plan and get construction approval that would give them, that would require them to get a zoning permit from the Town and the enforcement is of the zoning permit that they would receive. "Zoning permit may be revoked by written notification to a permit holder when violations of the ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit or work has been done in a substantial departure from the approved application." So the first step in that process is that the Town could issue a revocation of zoning approval which essentially causes a use to have to cease and there's couple of additional steps if that doesn't work. They can issue an injunction, an order of abatement and ultimately could take it up with a legal process if you want to expand on it. Gambill: The conditions agreed to and the condition is violated, it's treated as a zoning violation of the Code Enforcement. If it goes through that process and there is not compliance after appeals, the internal appeals what have you, one option is for the Town to go to court to enforce the permit and to revoke the permit.

Carney: So the Homeowner's Association would not be involved in that process, solely a Town generated process?

Gambill: That is correct.

Mayor: I did have a question about is there an ordinance in place that limits how close food can be prepared to residential?

Culberson: No sir. The ordinance has two or three instances where there is a distance separation requirement but food service preparation is not one of those.

Lobby: Would that not be a suitable topic of conversation? I mean we've never had that in the past. Is there a reason for it or call for it here given the nature of this situation? Or at least, a reasonable buffer aside from a visual or something in the way of trees to be discussed?

Gambill: If I may on that point, the Board has to operate under the ordinances that are currently in place. They can consider an ordinance at whatever time they choose but they could not enact an ordinance this evening effective (inaudible).

Walters: I just have one question. Perhaps zoning could answer it. Is there any other residential area that has 75 feet from a restaurant in Mooresville? Is there any other place? This is a unique property we're talking about. Is there any other place that's known?

Herring: Prickly Pear is two doors down from me.

Carney: Morrison Plantation.

Walters: And they are 75 feet?

Herring: They are from the closest residential probably less than that. Actually it's just across the street.

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Walters: Yeah I know where.

Herring: It does exist elsewhere.

Trout: I have heard two different people up here for the developer side swear that...one swore that this was a retail development, the other a restaurant. I don't think we've clarified truly what it's going to be. I think we all know what it's going to be but there's been two different positions taken. A retail development or a retail establishment is vastly different if you're selling packaged meats, wine, packaged beer, packaged bake goods...that's a retail establishment. If its products that are made on premises, cooked on premises, possibly even eaten on premises, that is not a retail establishment, that is a restaurant. But I've heard the applicant swear to both. I'd like to get a little clarification on that if we could please.

Gambill: Well, if I may also add that the definition, if that is a consideration of the Board, the Board has to take into account the definition of a restaurant within the zoning (inaudible). I don't honestly, can't tell you what it is but is what they have to consider from where they sit if there is (inaudible) restaurant.

Dusenbury: Excuse me everybody. A point of order. Our public hearing is supposed to have three minutes, five minute staff presentation, fifteen minutes applicant presentation, three minutes each speaker and five minute rebuttal by applicant. I can understand some relaxed standards to allow someone to finish making their point. However, I'm somewhat concerned over the re-testimony time and time again of people that have already spoken. Now if there are other people from the public that would like to speak then I'm more than happy to hear them. But you know unless we're going to serve coffee at six in the morning, we'll just keep having everybody come up and talk about this.

Espisito: Just to answer the last questions, hopefully the last ones. This is not a restaurant. This is a retail establishment that will serve cooked foods that will be handed to the customer in a container or whether it be plastic or cardboard or in a bag, it is a contained unit that they can take home. Now, can we prohibit someone opening the container and taking a bite of their green bean on the way out? No. But it's not a restaurant, there are no waiters, there's no tables inside for them to sit. They're not going to be served; they have to go to a counter. That is not a restaurant. That is a retail establishment serving food likes it's been presented by Mr. Caputo over an hour ago. So I don't think we need to keep addressing the same kind of question readdressed a different way. And I appreciate the time that the Board has taken so far. I appreciate it.

Atkins: I'd just like to ask Mr. Gambill the process again because there was a concern that was brought up that once this, once we go through this process, does it then open the door that the rest of that space can now all of a sudden...we can have two, three, four more deli type, market type establishments? So if you can kind of address that Mr. Gambill.

Gambill: What I'm about to say I will also qualify it by asking the Planning Department to jump up and correct me if I'm mistaken about the zoning ordinance. To me, other facilities in this particular area that want to do a similar thing with food preparation, dealing with food, is going to have to come back before the Board for a Conditional Use Permit and they will stand on their own facts as this one has to stand on its own facts. So this by granting a Conditional Use Permit to this applicant or denying it for this applicant, does not affect any other applicants that come forward. They have to come to their own...

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Carney: Mr. Gambill, I would ask the question, how many square feet is this applicant going to use of the building?

Espisito: Three thousand square feet.

Gambill: Is that correct, Planning about what I said? Did that answer your question?

Carney: At this time I would like to list all the conditions I've heard this evening and see if we're correct on, these are things that the applicant has either inferred or because I want to make sure it's on the record clearly. We discussed no frying of food. You said we're going to do all kinds of things but never in there was frying discussed. You specifically said no frying.

Espisito: Correct.

Carney: And I think that's certainly a big...they're exactly right. Frying is a big difference from sautéing and other words that were used.

Herring: Deep frying or pan frying?

Carney: Fryers. They'll be no fryers on site.

Caputo: We plan to have one fryer. Let me explain one more thing. One more point I want to make real quick if the Commissioners will allow me. This is not a restaurant. We will not be cooking food every single day. We will not be cooking and prepping food from ten in the morning until lunch time. We will not be cooking and prepping food from two o'clock until dinner. We will be cooking and prepping food two hours on Monday, one hour on Tuesday, three hours on Wednesday, one hour on Thursday. It's simply preparing food for people to take with them. And we will not prepare food cooked to order. This food will all be made at different times placed out on display for people to take with them. So we're different in a lot of ways from a restaurant in that we will not be emitting odors at all times of the day, every day.

Carney: Now that we've...I have no idea where even to start now because I understood no frying. Help me. Stick with no frying. We have to meet each other somewhere half way. No frying of food. No disposal of any food preparation, nothing that has touched food will be disposed of. We need to have a discussion about vegetation because you showed a great picture and I agree with you, it looks a lot better than it used to. But if they have some income, if they spent some money, we need to work on that somehow. Buffering is a great idea. If there's a discussion about buffering then about an...like a fenced buffering if that's what you're looking for. We can certainly bring that into discussion. No consumption. I agree with you, you can't stop somebody from eating something in the parking lot. But we're not going to...let's not set up any tables, let's not... there will be nothing to encourage consumption. If someone wants to eat their filet raw in the parking lot, there's not a whole lot we can do about that. No more than 3,000 square feet of food use, period. That solves our problem with any of the slippery slope, next one, next one. If you can give us that, then everybody can put this thing to rest once and for all. Your current use is the only thing they're ever going to hear about again that has anything to do with food whatsoever. And in reality we can go ahead and work on that so that it mitigates any of their questions. So, I think there are some opportunity for us to work together here. So if you can agree with that and I would certainly open the door for other or anything from the rest of the Commissioners. But I think that in general covers the main concerns that I heard from the citizens. Is there any of those particularly that I've mistaken?

Espisito: I just don't understand honestly when it comes to buffering of putting a fence, what is a fence going to mitigate of what is food usage going to do? I don't see the correlation there.

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Carney: I think buffering on this particular piece of property has continually been a discussion point. I mean every time we come before each other, and you've been very kind, you've said, I'll add more trees, I'll do this, I'll do that. It sounds like we have to get to a point where they have some buffering that makes some sense and they feel more comfortable about. And if that's a six foot tall, whatever privacy fence of some kind, I think at some juncture we have to get the buffering behind us. And obviously it's been a big enough concern that they spent the HOA's money to put some more trees in so I think that you guys have certainly been partners in trying to help the buffering situation. But I think if the buffering thing continues to be a problem, let's get that behind us and fix the problem. You seem to have tried to work on the lighting and everything else. So those are the discussion points I think that we need to expand on and I certainly would encourage whatever other things this Board has heard. But just so we...the frying is a concern and I didn't think it was a concern because that wasn't in our discussion earlier. Disposal of stuff which I believe you're right and we have the teeth in our ordinance to stop that from being a problem because revocation of your permit. So that certainly should be taken off the table. The buffering, consumption and the fact that this is just one of many opportunities for this. And I believe you when you say I think this adds something to this development that the people will like. But let's go ahead and put that to rest once and for all that there will be no more food product on site. I think yogurt would be great. Forgive me for ya'll who don't agree with me but I think that's why...there is a far cry but we are getting dangerously into the realm of food preparation and other things so let's put everybody's mind to rest once and for all and the next time they want to sell their house, there will be not more guess what might come. Its...we know what it is now; the building is what it is. A great butcher shop where they walk up and buy meat to take home with a nice bottle of wine and then ancillary services around them which are insurance companies and tutoring and whatever else is along with that. I think it really kind of sets us in the right tone. And Mr. Culberson actually, probably has...I've stepped out of bounds in some manner I guess. I'll leave it there.

Dusenbury: Also, clarity, you would agree to alcohol sales to go. No consumption on the property just beer and wine.

Espisito: That is correct.

Dusenbury: And you were alluding to some type of reduced hours on Sunday.

Espisito: I didn't allude to that.

Dusenbury: What were your hours? Monday through Friday or?

Caputo: Right now we're thinking nine to seven. Same on Saturday.

Dusenbury: And Sunday would...

Caputo: Sunday would probably be more like eleven to six or eleven to five.

Dusenbury: Would you agree to those hours of operation?

Caputo: Yeah, I'll agree to those hours of operation.

Dusenbury: Well, you're the applicant...

Espisito: Yes.

Atkins: In consulting with Mr. Gambill and addressing the concerns that were expressed about if the land, if the property owner or property manager sold the building. Mr.

Gambill you indicated...

Gambill: The Conditional Use Permit becomes part of the property (inaudible). So if someone bought it, they're going to have to...

Espisito: Abide by the rules just like we did.

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Gambill: (inaudible) The next question is whether the applicant will agree to the conditions?

Clerk: There are six conditions?

Gambill: I have seven.

Espisito: I'd like to hear them all please.

Gambill: Let me go down the list if I may and also, if I may go through the list and ask Commissioners to clarify a condition if they have any and then ask the applicant if they agree or do not agree to the condition. The first condition that I have is no frying of foods, is that...

Carney: By that I mean fryers?

Herring: That would be deep fryers because they will be sautéing, I would assume, or pan frying of some things.

Gambill: So no deep frying of foods?

Husemann: By deep frying we're talking about where food is immersed in grease, is that...

Herring: Correct.

Speaker: Deep fat frying.

Gambill: No deep fat frying. Did I say that right?

Carney: We're trying to be reasonable. If they want to sauté in a pan, we're trying to be reasonable. We're talking about production of chicken wings and French fries and all that stuff. No deep fat frying.

Dusenbury: We're talking about no grease trap, no pump, no...

Herring: Oh, they'll still have to have a grease trap.

Dusenbury: Yeah but I'm talking about loads of oil.

Carney: For the record, if you make a sandwich, you need a grease trap.

Gambill: So the first condition I have is no request for condition, no deep fat frying of food. Is that correct Commissioners? And the first in the question is, will the applicant then agree to that?

Espisito: Yes.

Gambill: The second condition that I have is no disposal of food, food products or food residue...I'm assuming outside of the establishment. I don't know how else to word that.

Herring: Or on site?

Espisito: Mr. Gambill, if I can just...we have other tenants there. If someone from (inaudible) services has lunch and they dispose of half a sandwich into the dumpster, I mean, that would be a normal...from this business.

Carney: Well, it will be easy to tell because if there's packaging from meat over there, all of their packaging will be disposed of offsite that has anything to do with the food.

Gambill: So let me again read that with Commissioner Herring's addition. No disposal of food, food products or food residue on site. Would you agree to that?

Espisito: Yes.

Gambill: Is that correct? Would you agree to that?

Espisito: Yes.

Gambill: The third condition I have is, we will need some clarification, is buffering perhaps...the question is what kind of buffering is the Board asking if the applicant would agree to it?

Carney: Let's let the Planning Department weigh in. Mr. Culberson or Mr. Brown? By buffering or fencing, I believe what we're talking about is a privacy fencing similar to

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what we asked for from between us and the Target shopping center. Is that...am I in the right ball game there?

Culberson: Well I think based on the geography of the site, if you're going to require any additional screening at all it would have to be something like a fence because there's not physically room there to do any kind of a berm or planting or something like that. I mean, there's not room there for it.

Carney: So what size would we be looking for? Six foot?

Culberson: That's customary for a privacy fence.

Espisito: Again, there is a buffer there today. We can continue adding more trees, more fences...I mean it is what it is.

Carney: Certainly there's room on the applicant's side of the property between the end of the parking lot and the tree line for a six foot tall privacy fence. Is that correct?

Culberson: Well, I'd have to look at the...

Carney: We have a picture. What happened to those wonderful pictures? There's not room.

Commissioner Houston: I just got a question for the Board. Mr. Carney, he requested this buffer. I'm just, you know about the buffer with the tree line and we're really not going to buffer. On that one picture I seen one house that's two story that you can really just basically see. Its concern of the buffer and the fence about walk-ins from the butcher shop coming into the neighborhood because of the fence. I don't understand the reason the fence comes out in this hearing. I'm kind of, I mean I can see getting one 20 foot tall to cover that one house that I seen through those trees but is the concern about the patrons walking into the neighborhood or the neighborhood coming into the butcher shop?

Carney: My assumption I certainly would take any guidance on this. My assumption is that the people whose homes border that would like to have some privacy in their back yard. And don't want to sit in their back yard and have a car staring at them from the parking lot. And I certainly understand that and it makes perfect sense. The question becomes if the trees aren't adequate, which I can't speak to whether they are or not. But there it continually is a buffering issue of...I don't want to have to see that just because it's there. And that's what I'm shooting for with that. And I don't honestly, if I can just be frank, no offense Frank in the audience. I'm sick of talking about buffering. I am just sick of it.

Espisito: So are we.

Carney: And I'm sick of trying to figure out who planted what and who did what because at the end of the day it's obviously not been enough because that continually the discussion point is. And there is nothing we can do about 75 feet and I think here we're trying to get to a point because at some juncture we don't have the right to say how many grocery stores belong in Mooresville or how many. I mean we just don't. We just can't do that. But we do have the right to try and protect their property in some manner and I need your help in doing that. So how are we going to ensure that the gentleman who lives in that home sits in his backyard and barbeques and plays with his kids and doesn't have to stare at a patron of your establishment?

Espisito: I mean right now you can't see them. But let's just say if we were to put a six foot fence, we'd have to take trees away because at the tree line right now it's fully full of trees. I mean I really don't understand how you would like us to build a fence there. To be honest with you I don't understand how. I don't understand how we're going to be taking down probably a 12 to 14 if not bigger cypress and we're going to replace it with a

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six foot fence. How does that mitigate? I'd rather have the 12 foot cypress. Two things, I have no maintenance issue. Kids can't graffiti a tree, they can graffiti a wall. That fence? It could rot, I mean I don't know. I just see that we're trying to help something by, in my opinion, making it worse. I'd rather see this than a six foot wall. I'll be honest with you. And if I'm wrong, please let me know.

Atkins: Commissioner Carney and Mr. Gambill, if we could just go through some of the other conditions. It seems like we're going to get hung up on something that really doesn't pertain specifically to this use. It's more of an ongoing issue that as you pointed out and I hate for us to get distracted when we were just getting to the very specifics.

Gambill: If we could then we can come back to the third one. Let's go to number four. The fourth request for a condition is that there will be no tables or seating for food consumption.

Espisito: That's agreeable.

Gambill: Commissioners is that correct wording? Number five, the condition I have, the request is that the use will, excuse me, there will be no more than 3,000, no more than 3,000 square feet of space.

Clerk: Food usage?

Herring: And that would be strictly for this parcel?

Gambill: Yes.

Herring: So if somebody across the street could come in and still put 5,000 square feet if that's what's allowed for?

Gambill: If the ordinance allowed it, yes, but this only applies to this parcel. Is it no more than 3,000 square feet or is it no more than 3,000 square feet of space for food usage or food preparation or food sales?

Espisito: And let me just ask for a clarification. Let's just say, how do we define food? Is yogurt food? I mean there's a processing place right now that requires a CUP and we don't have another food use right now to be honest with you. But let's say two years from now somebody wants to open a 1,000 square foot yogurt shop. That sells yogurt. There's a process right now that we would have to come in front of you and prove to you with all the facts that we want to put them in to make yogurt. Do we define that as food? I don't agree. So I mean there's a process in place right now. No we don't have another food use right now coming in, we don't. And we're not looking for one. Three years from now, we get a TCBY or somebody that wants to put a yogurt or ice cream place in there. How do we define food? I believe there's a process in place already. So we're trying to change a process that's been approved for how many years and it's a legal process and we're going to get into specifics right now. Mr. Gambill, help me out of defining quote unquote food. How do we define that? I'm not in agreeance of having an open definition of food because I don't know what's going to happen three years from now. Now will there be another market in this? Absolutely not. No, there will not.

Gambill: The only way I can answer that would be to say edible food stuff and normally, well what that means though is if the ordinance doesn't define it then you go to the normal regular definition for food stuffs.

Espisito: So is yogurt considered a food stuff? Ice cream considered a food stuff? Shakes considered a food stuff?

Gambill: Well it is to me, but zoning is ultimately the one who answers...

Espisito: If we're going to be held to that wide a definition, I can't agree to that. You have to understand why. I don't know what's going to happen five years from now when

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we own this property. If we get somebody to come in, we're going to have to come in front of you and there is a set procedure to come in front of you at this time. That we would have to go through the whole, this whole thing again talking about yogurt. Is yogurt food or is a shake food?

Carney: I must apologize. First of all remind me of your full name.

Espisito: Tony Esposito.

Carney: Because we've talked, forgive me, in all this, sir, somewhere in here we're going to find a way that we're going to work together.

Espisito: And I'm here and that's why I'm standing here.

Carney: And we've come a long way from nothing because luckily A. you've bought a local business we could see. We know what they do. We know what their disposal...we can put our hands on it, we can, so it helps us a little bit, realize what we're talking about. The second part of that is you're willing to give some different things...let's say offsite disposal, no on site disposal. That's a huge difference.

Espisito: Absolutely. That's probably the biggest one.

Carney: That's very few and far between on that. So we're getting somewhere. The biggest problem we have with this situation is that, and I applaud the HOA as well, and you as well, we go through the same dance over and over. So here we're in a position to say, let's find somewhere we can work together. Let's find a place that we can all be happy. Because I truly believe in the long run they will relish the opportunity to stop by that store and buy a product because I know I drive a long way now to go and buy a product from that particular place. Much further than the Bloom right next to my house or the Target. So, but sir, and I mean this, I'm trying to be as helpful as possible. You've got to meet me halfway. You got to meet us halfway. And the fact is that currently this can possibly work with the right conditions in place. If you want to leave it open ended, it opens the door for where we have to start questioning ourselves on what all we need to put in conditions. And I think right now we're getting close enough to where we can come up with some stuff that's going to work. If you want to worry about five years from now, sir, I can't help you there. If you want to worry about today and what's going to benefit you as well as the homeowners, we got somewhere we can work from. And that's probably completely off the...I shouldn't be saying any of that because I'm sure it insinuates some kind of I'm going to say no if you don't say this. I'm just trying to be honest with you as well as I have been the homeowners there. If you will let me, I'm trying to get us there. Sir, so you got to make a decision now. Is that important to you or not?

Espisito: All I'm asking with all due respect, we have a right to come in front of this Board and ask for a CUP. We don't have anybody right now. While you don't have to worry about five years from now, I do and I hope you would see that. I am not saying that we're going to come out here and bring another food use. I don't know. But I don't control the future. We might have the Charlie leave in three years to a bigger establishment. Am I limited? Under the present verbiage I don't know. I don't know.

Herring: My understanding, this parcel can currently have 5,000 square feet of food service.

Craig Culberson: That is correct.

Herring: Because that's what we were using in a previous hearing on this.

Culberson: The neighborhood mixed use district, which is the base district that underlies this, has a 5,000 square foot limitation on any single use. So, this parcel is not

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necessarily limited to 5,000 square feet. It's limited to any single user as a limitation of 5,000 square feet.

Herring: So Mr. Caputo could have a larger shop by the current zoning by 2,000 feet if he chose?

Culberson: Well, if he asked for it and you approved it because of the use. But a use that's a use by right could go in there up to 5,000 square feet for any single use.

Husemann: Just a suggestion. Would it help any if you defined the food use as being that which is prepared or consumed on the premises? I don't think anybody cares if he sells a can of beans. I think the issue is whether the food is prepared or consumed on the premises. Would that help the situation or does it just complicate things?

Carney: No I think he's right. His point he's trying to make is that it's probably a location that an ice cream store or something will probably want to go. I certainly understand that. We have got to figure out...there's going to be a line drawn somewhere and we have got to figure out where that line is going to be drawn.

Atkins: And Commissioner Carney, I do concur with you but I do think there are rights. We do have a process in place and I think that's what we have to, we have to rely on that process to, again, that if this is the right use to your point, we know what's going in there today. It's tangible. We can put those conditions on that particular use for that one, that one group. But I think it...we're really crossing the line if we're going to handcuff the property owner and take away his right to at least go through the process that our current ordinance and what we have in place allows to happen. I mean, I know people might not like to hear that but that is just, that's what this is about and I just don't think we can handcuff the property owner in that fashion because he or she will have his day again to come before this Board or another Board to vet this out again. And its...we want it to all go away but unfortunately the way its zoned and the way this thing's been set up, it is just an unfortunate situation of where we are. And I'd love to get to an end game with this so that everybody can feel good about where they are and we don't have to keep going through this but, I don't think we can take away someone's right to come before this Board.

Gambill: The next condition is no alcohol consumption on site.

Espisito: We agree.

Gambill: That was condition six. We'll come back to two others.

Dusenbury: On that condition six, I would also request that it be required that their alcohol license is only permitted for beer and wine.

Espisito: Yes.

Gambill: That will have to be separate condition but that condition would be beer or wine sales only.

Espisito: Yes. That's correct.

Gambill: That will be in addition.

Espisito: Yes.

Gambill: Then, the next condition is, I'm sorry, you agreed to beer and wine?

Espisito: Yes sir.

Gambill: Thank you. The next condition as requested operating hours of 9 to 7. 9 a.m. to 7 p.m., Monday through Saturday and 11 a.m. to 6 p.m. on Sunday.

Caputo: What if we wanted to serve pastries and coffee in the morning? People to take them to go. If we wanted to open earlier. The whole thing is it would be nice if we could be open at seven in the morning and people could stop in and get a pastry and coffee on their way to work.

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Gambill: The condition is...sets the hours of nine to seven, Monday through Saturday, and eleven to six on Sunday. If you so agree.

Caputo: Let's go for seven to seven.

Espisito: Can we amend that to go seven to seven Monday through Saturday?

Gambill: You will agree to seven to seven Monday through Saturday and not nine to seven?

Espisito: Yes sir. And Sunday eleven to six.

Gambill: So you will agree to seven to seven Monday through Saturday and eleven to six on Sunday.

Espisito: Yes sir.

Gambill: Back down to the two conditions remaining. One is buffering. Any resolution to that request for a condition? Is it, the condition being requested now, is it buffering? What is the condition? Have we reached a conclusion?

Carney: Mr. Gambill, I withdraw that due to the fact that there's no property available for a fence. And I'm really not sure how to fix that particular problem at this moment.

Gambill: We can move then to the other remaining condition being requested is the no more than 3,000 square feet of space for...I have now said edible food products. Is that close to what the request is? Is it three or five? Well, I heard the request at 3,000.

Espisito: The present application is for 3,000 square feet. And Mr. Carney, I'm not trying to be difficult. I'm just trying to be...the last thing that I want is to come in front of you again asking for some kind of variance. If you would like we could even add to that that we won't come back in 24 months for any additional CUP's. I have no idea how else to mitigate this. There's a legal process in line. I'll be honest with you, if we come out here in six months asking for another use, you guys should bury us. Because its, I mean it's ridiculous. Now what if somebody comes in with a yogurt shop? I mean, I'll use your example which is a very, very, very viable example. What if someone came in and wants to sell yogurt out of 1,000 square feet in there? We would have to come up here and go through this whole thing again telling you what...

Gambill: I think the condition though was no more than 3,000 square feet is what I heard.

Espisito: But we would have 3,000 already with the market place open. Let's say someone came in from...

Gambill: Oh, you're talking about an additional.

Espisito: Sure. Let's say someone came in for a thousand. We'd have to go through a CUP process.

Gambill: That is correct. I'm sorry I misunderstood.

Espisito: Right. All I'm asking for is the right to come here. If we're going to come here, I would assume I am going to have some pretty good facts. Cut if not, I wouldn't even come in front of you guys. If Five Guys wanted to come here next week, I wouldn't even bring it in front. Because it would be, honestly, it would be an insult. That would be an insult.

Carney: I need a minute because I think what we need to figure out is how both sides can live together. And I agree that at some juncture there has to be some feeling of goodwill that the people understand what is and is not going to be in that building. And that is the biggest thing hanging over...

Espisito: In previous conversations, and correct me if I'm wrong and help me think of it, but the last time we were here, we were going to be limited to 5,000 square feet. We were asking for ten, somebody wanted a limit of 5,000.

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Carney: Mr. Herring did.

Espisito: Five thousand we can live with. Still, having to come in front of you for a CUP if someone else were to come at any time. We would live with a maximum that this place would be. Which to be honest, right now, we don't have another tenant wanting a food use to come in here. We don't. But we do put a maximum on that of 5,000 square feet that would run with the property.

Herring: Actually I think that conversation came from the previous hearing where I was trying to hone down some conditions that would make it easier for everybody and nobody seemed to want it so it just dropped so I think they could have whatever you wanted to put in there as long as...

Espisito: Sure. We're limited to 5,000 for the whole the property, for the building that we would never be able to have more than 5,000 square feet and any additional space besides this 3,000 square feet of approved, we'd still have to come through with a CUP process.

Carney: So let me understand this. What you're coming back with is that if Mr. Caputo, who wanted to expand to 4,500 square feet, then you would have 500 square feet left. And your point would be, if I can't fill that 500 square feet with something, then it just goes to waste?

Espisito: Correct me if I'm wrong, (inaudible) extend to 1,500, we would still have to come in here to ask for an increase to our CUP and then we would have to go for another CUP for 500.

Carney: Is that correct?

Gambill: Well, if their, yes, if their application if for 3,000 square feet, the Conditional Use Permit confines him, restricts him to 3,000 square feet. (Inaudible) Planning to be sure. I always like to double check.

Espisito: And we would agree to that.

Gambill: Well, if that's not a condition though...the condition is, are you, you want to ask the applicant to do something that the ordinance that his application doesn't already ask for. In addition to.

Herring: You want something, you mean something more restrictive than what is currently allowed?

Gambill: Yes. If you grant it, if I may say, if the applicant is granted a permit, a CUP now under the application, the applicant can use, utilize 3,000 square feet of space. And if he wants to increase that, he would have to come back again for a CUP. Let me, just to get us on track again, the conditions they agreed to thus far. The applicant, if you will please, object if I misstate anything. You have agreed, number one, to no deep fat frying of food?

Espisito: That is correct.

Gambill: You have agreed that there will be no disposal of food or food products or food residue on site.

Espisito: That is correct.

Gambill: You have agreed that there will be no tables or seating for food consumption.

Espisito: That is correct.

Gambill: You have agreed that there will be no alcohol consumption on site.

Espisito: That is correct.

Gambill: You have agreed that you will have beer or wine sales only

Espisito: That is correct.

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Gambill: You will agree to hours of seven to seven, Monday through Saturday and eleven to six on Sunday.

Espisito: That is correct.

Gambill: Those are the ones that agreed to thus far. There's still a question of the square footage that's still open. Buffering has been taken off the list of consideration but there is a question of the square footage. Of course we can move forward with what hasn't been agreed to (inaudible). Can I ask Planning to, Craig, you've been sworn, to just step up just so we know all the, all the square footage, what they have approved, what if approved, what the, how much space the applicant can use and for what purposes.

Culberson: Our recommendation would be that the 3,000 square feet be utilized for the proposed floor plan, that the floor plan in here be accepted as a condition showing what would be the display areas, the kitchen and that type of facilities per this plan that is part of the agenda packet.

Gambill: So the suggestion from Planning and of course as it would be a request of the condition, will the applicant agree to use no more than 3,000 square feet and use it according to the plan as submitted. Would that be correct?

Espisito: To preliminary floor plan...we haven't even brought it to the building department to make sure we need, I mean it's a preliminary floor plan. It's not one that has even been presented to the Town.

Gambill: I don't know that that establishes the actual floor plan but maybe the best way to say it for the uses as depicted in the floor plan, for the uses depicted in the plan.

Espisito: That's fine. We'll agree to that.

Gambill: That's the question, that's what the applicant has said that they will agree to is no more than 3,000 square feet. Utilize no more than 3,000 square feet of space for the uses as depicted in the plan submitted to the Planning Department.

Culberson: Except for the deep fryer that is depicted on the plan.

Gambill: That's correct, that's a condition that (inaudible)

Carney: Tony? Because I can't pronounce your last name, forgive me. I would like for you and the HOA to come up with an opaque screening to make sure that whether it's the few trees that are necessary left or whatever, but I would like for there to be opaque, am I using the right word, opaque? Opaque screening from one, beginning of your area to the end of your area. I've seen two sets of pictures. I have to assume that...theirs show lots of holes, yours show no holes, so somewhere in between there, there's some truth.

Espisito: If I may Mr. Henderson, was that picture recently taken or was that the last picture that was presented eight months ago?

B. Henderson: It was taken about five months ago.

Carney: So we can agree that if you have added more trees, then you've already solved most of that problem. Opaque screening, the entire back.

Espisito: I will agree to meet with them. I've offered to meet with them several times. I will agree to meet with them and talk about opaque screening and come up with a solution. I will agree to that.

Carney: And there will be opaque screening. Although you used the word...you used the word "talk." I'm saying talk must lead to a final which means there will be opaque screening across the entire back.

Espisito: Yes. That's not unreasonably...

Carney: I agree with you.

Herring: Against the residential property?

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Carney: And our Planning Department will be the one to...

Espisito: Perfect.

Carney: Keeps everybody fair on both sides.

Gambill: Did you get that?

Clerk: Opaque screening, we brought number three back into it.

Gambill: Yes, number three comes back as a, as opaque screening as agreed to between the applicant and the Homeowners Association. You mentioned the Planning Department as approved by...is that subject to approval by, that opaque screening, approval by the Planning Department?

Herring: That was against the property, against the residential property line.

Gambill: Opaque screening between the commercial and residential property as agreed to between the applicant and the Homeowner's Association and approved by the Planning Department...subject to approval by the Planning Department.

Herring: That's assuming there will be in agreement. I don't know if we can put our staff in the middle of...if they're going to have to enforce something we got to come to terms first.

Gambill: That is correct. We have to have something you can enforce.

Dusenbury: I would also like to have some sort of time limit if Mr. Carney would agree with this. We had an instance a while back, we found out that there should have been a fence built 20 years ago that we agreed to and we never followed up on that. I'd like some sort of time limit to be inserted into that opaque fence construction time limit of completion. That way, we have some kind of fall back for the Town on that issue.

Gambill: That's a good point, and it gives all, every side...

Espisito: Mr. Carney, what would you suggest?

Carney: Well, with the current weather, I would, I think six months certainly gives us a... that way you can plant viable plants.

Gambill: No later than six months.

Espisito: I agree to that as long as, remember, we have to have a reasonable in the verbiage and approved by the Board, by the Planning Department.

Carney: Planning will be the ones that figure out that you've done opaque.

Espisito: And yes, the answer is yes.

Husemann: Mr. Culberson, is opaque defined by the zoning code?

Culberson: Yes, sir.

Husemann: So as long as it meets those definitions, Mr. Carney's description has been satisfied.

Culberson: In our ordinance it would be a Type B screening is described as opaque.

Herring: Vegetative?

Culberson: Yes.

Gambill: Opacity or opacity, I don't know how to pronounce it. New word for me. A measurement indicating the degree of obscuration of light or visibility. A measurement indicating the degree of obscuration of light or visibility. That's the definition in the zoning, in the definition section, Mr. Culberson may have...

Culberson: Are you in Chapter 13?

Gambill: I'm at page 13-29.

Culberson: And based on that definition, the screening type basically says, zero visibility through the buffer from a grade to a height of six feet.

Gambill: Is that agreeable by the...

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Carney: We have limited tools, has anybody figured that out? Thank you, Mr. Gambill.

Gambill: Anything else, those conditions as read.

Espisito: Are all acceptable.

Mayor Montgomery closed the Public Hearing at 9:38 p.m.

Action: A motion by Mr. Atkins, seconded by Mr. Herring, to suspend the rules of procedure to enable the Board to consider the Findings of Fact and the Conditional Use Permit was unanimously approved.

Action: A motion by Mr. Herring, seconded by Mr. Houston, to approve the Findings of Fact and the Conditional Use Permit request subject to staff recommendations and the following conditions as agreed to by the applicant was unanimously approved.

- 1. No deep fat frying of food.**
- 2. No disposal of food, food products or food residue on site.**
- 3. An opaque buffer to be erected between the applicant's building and the residential area as agreed to between the applicant, the homeowner's association and approved by the Planning Department. Opaque buffer to be completed in six months.**
- 4. No tables or seating for food consumption.**
- 5. No alcohol consumption on site.**
- 6. Beer and wine sales only.**
- 7. Hours: 7 a.m. to 7 p.m. Monday through Saturday and 11 a.m. to 6 p.m. on Sunday.**
- 8. Applicant will vent all exhaust through the roof.**

The property located at 491 Williamson Road is further referenced by Iredell County Tax Map PIN 4646-48-5569. The approved Conditional Use Permit will allow a retail food preparation use. (attachment)

- 12. Public Hearing to consider a Rezoning request from Melvin & Eva Shumake, John and Wanda Redden, Kay R. Cope, John W. Shuler, Harold Robertson Et. Al, Ronald C. Caldwell, Glen Shuler, Robert and Patricia Hasket, Karen Hager, Jay W. Hager, Timothy and Mary Lay, Mary E. R. Gilstrap, Johnnie Robertson, O'Anna Minton, Elizabeth Lowder, George Brawley and Floyd & Phyllis Witherspoon.**

Mayor Montgomery opened the Public Hearing at 9:47 p.m.

Commissioner Abraham arrived at 9:47 p.m.

Mr. Culberson presented the request.

Commissioner Dusenbury disclosed that he has spoken with Mr. Robertson, an applicant, just in casual conversation and it would not basis his decision.

John Robertson said he had been selected as the spokesperson for these 16 property owners who own 24 parcels. Mr. Culberson pointed out that 17 do have residences and seven are vacant. They did not ask to be rezoned to commercial. Most of these properties have been in the families of the current owners for 60, some of them 40, some of them 45 years. They've been maintained as residences most of that time. Some of them are rentals but there are residents living in those rental properties. He was going to have the owners

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to stand but several of them had to leave. You would see real quickly that they are not youngsters any more. They're in their 60's and 70's. They are burdened to death with taxes. When the last appraisal came out, on average these properties went from 106,000 to 450,000. That's a burden of about \$269 a month for county taxes which includes a Mt. Mourne fire tax that folks that live in the city do not have to pay. If you look at the county appraisal card for properties in the city limits or for neighboring properties in their neighborhood, they're more in line with what their property used to be. They're property went up about 425 percent on average. If you look at these other properties today they are about 400 percent less in county values than what their properties are. If you look at the map, 55 percent of this property according to the land use plan is set aside for residential. So the majority of these 24 pieces of property fall within that yellow on the exhibit before you.

Mayor Montgomery closed the Public Hearing at 10:00 p.m.

Action: A motion by Mr. Herring, seconded by Mr. Houston, to approve the Statement of Reasonableness and the Rezoning request subject to staff recommendations was unanimously approved. The properties located in the vicinity of Highway 21 and Waterlynn Road and are further referenced by Iredell County Tax Map PIN's 4646-93-1676, 4646-93-0586, 4646-93-0484, 4646-93-4413, 4646-93-6796, 4646-93-7929, 4646-93-7951, 4646-93-8794, 4646-93-9657, 4646-94-4265, 4646-94-1265, 4646-83-7743, 4646-94-2631, 4646-94-0693, 4646-84-6395, 4646-94-3871, 4646-94-4668, 4646-94-6417, 4646-94-7518, 4646-94-5768, 4646-94-7831, 4646-94-8952, 4646-94-9118 and 4656-04-4916. The properties were rezoned from NMX (Neighborhood Mixed-Use) to R2 (Single Family Residential-2). (attachment)

13. Downtown Parking.

Mr. Brown gave an update on the progress of downtown parking. Commissioner Herring asked for a task force to help facilitate the plans for parking in downtown.

Action: A motion by Mr. Herring, seconded by Mr. Atkins, to appoint the following to a task force to facilitate plans for downtown parking was unanimously approved.

**Kim Atkins – Mooresville Downtown Commission
Police Department Representative
Planning Staff
Steve Gambill – Town Attorney
Tom Kilroe
Two MDC Representatives at the discretion of the MDC Director
Commissioner Chris Carney**

14. Change Order #2 – Rocky River Wastewater Treatment Interim Plant Expansion.

Consider Change Order #2 to the Pizzagalli Construction Company contract in the amount of \$6,755. CH2M HILL is requesting authorization to have a firm that

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specializes in working with live electrical equipment analyze the existing switchgear and develop a one-line diagram of the existing conditions (as-built drawing). As-built drawings are necessary for the contractor to safely perform modifications to the existing switchgear for the WWTP expansion. This change order will increase the contract amount from \$10,274,027 to \$10,280,782.

Action: A motion by Mr. Herring, seconded by Mr. Carney, to approve Change Order #2 to the Pizzagalli Construction Company contract in the estimated amount of \$6,755 for a firm to analyze the existing switchgear and develop a one-line diagram of the existing conditions was unanimously approved. (attachment)

15. Mooresville Public Library.

Remove from agenda.

16. Consider awarding a contract to Country Boy Landscaping, Inc. in the amount of \$149,812 for the NC 150 at Williamson Road Turn Lane Improvements Project. This project includes a dedicated right turn lane into the Lowe's Home Improvement Store on NC 150 and will be funded through the Traffic Task Force.

Action: A motion by Mr. Carney, seconded by Mr. Abraham, to award a contract to Country Boy Landscaping, Inc. in the amount of \$149,812 for the NC 150 at Williamson Road Turn Lane Improvements Project was unanimously approved.

17. New Business

No new business.

18. Closed Session – G.S.143-318.11

- A. Economic Development – G.S. 143-318.11(a)(4)**
- B. Consult with Attorney – G.S. 143-318.11(a)(3)**
Forest City Land Group, Inc. versus Town of Mooresville
- C. Personnel – G.S. 143-318.11(a)(6)**
- D. Property Acquisition – G.S. 143-318.11(a)(5)**
Gymco LLC – 210 Talbert Pointe Drive

Action: A motion by Mr. Herring, seconded by Mr. Carney, to go into closed session to discuss economic development, property acquisition, personnel and consult with attorney was unanimously approved.

MINUTES FOR THE CLOSED SESSION HAVE BEEN RECORDED AND SEALED UNTIL PUBLIC INSPECTION WILL NO LONGER FRUSTRATE THE PURPOSE OF THE CLOSED SESSION.

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19. Following the closed session, the Board returned to open session.

Action: A motion by Mr. Abraham, seconded by Mr. Atkins, to terminate the two economic incentive agreements that currently exist between the Town and NGK Ceramics and approve a new economic incentive agreement with NGK Ceramics based on an investment of \$63,110,995 in the amount of \$292,835 per year for five years for a total incentive of \$1,464,175 was unanimously approved. The incentive grant will be prorated based on the actual amount invested.

Action: A motion made by Mr. Atkins, seconded by Mr. Abraham, to adjourn the meeting was unanimously approved.

The meeting adjourned at 11:43 p.m.

Janet Pope
Town Clerk

Chris Montgomery
Mayor