



Stanly County Board of Adjustment
July 13, 2022 - Meeting Minutes

Call to Order Chair Cindy Fish called the meeting to order on July 13, 2022 at 6:30 p.m. in the Gene McIntyre Meeting Room at 1000 N. First Street, Albemarle, North Carolina. Bob Remsburg served as Clerk of the meeting.

Stanly County Board of Adjustment Members attending

Richard Cosgrove, Michael Fleming, Cindy Fish, Rick Johnson, Devron Furr and Michael Efird

Absent: Brenda Farmer and Billy Franklin Lee

Stanly County Planning Staff Attending Bob Remsburg, Planning Director; Bailey Emrich, Planner 2; Tim Swaringen, Code Enforcement Officer

Others Present: refer to sign in sheet - (Board of Adjustment meeting minutes binder)

Chair Cindy Fish asked for a motion to adopt the agenda if no changes needed to be made.

Motion: Rick Johnson

Second: Richard Cosgrove

Passed: 6-0

Chair Fish asked for a motion to adopt the minutes from June 14, 2022.

Motion: Richard Cosgrove

Second: Michael Fleming

Passed: 6-0

Chair Fish announced there would only be one case.

Chair Fish introduced AR 22-01- a request by Thomas and Peggy Morton and Charles and Kathryn Berry for an Appeal of a Letter of Determination written and issued by Planning Director, Bob Remsburg concerning two determinations made regarding the use of the property located at 1101 Polk Ford Road, Stanfield, NC 28163. The two determinations made were:

1. The property located at 1101 Polk Ford Road, Stanfield, NC 28163 is a bona fide farm per NCGS 160D-903(a)(3).
2. The border collies on the property are a farm use per NCGS 106-851.1

Those who signed in on the sign up sheet to speak came forward to recite the swearing in ceremony.

Chair Fish “The Stanly County Board of Adjustment is a quasi-judicial board. Therefore, the North Carolina State Statute, requires that the board base its decisions only on testimony given under oath. Any person who, while under oath during this proceeding, willfully swears falsely, is guilty of a class 1 misdemeanor. If anyone refuses to be sworn, your statement will not be treated as evidence on which to base a decision but merely as arguments”.

Chair Fish “Before opening the evidentiary hearing, I would like to give Board members a chance to reveal any possible conflicts that you may have and withdraw from these proceedings if necessary”.

No Board members had a conflict.

Chair Fish “Any Board members who have any information or special knowledge about the case that may come out at the hearing tonight, please describe that information for the record so that interested persons will know and can respond”.

Chair Fish explained the proceedings.

Chair Fish “Parties may cross examine each witness after the witness testifies when questions are called for. If you want the Board to see written evidence such as reports and maps or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his / her testimony. The Board cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client’s case. Before you begin your testimony, please clearly identify yourself for the record.”

Chair Fish asked Planning Staff to share the details of AR 22-01.

Planner 2, Bailey Emrich shared the following:

Thomas and Peggy Morton and Charles and Kathryn Berry have requested an Appeal of a Letter of Determination written and issued by Planning Director, Bob Remsburg concerning two determinations made regarding the use of the property located at 1101 Polk Ford Road, Stanfield, NC 28163. (Tax Record #28096).

On March 15, 2022 the Board of Adjustment voted to continue their quasi judicial hearing concerning SUP 22-02 - A request by Josh and Rebecca Gibson for a Special Use Permit to operate a commercial Dog Kennel at 1101 Polk Ford Road, Stanfield, NC 28163. This hearing was continued due to the upcoming Voluntary Ag District Board meeting regarding this property being added into the Voluntary Ag District Program.

On April 8, 2022 Josh and Rebecca Gibson requested a Letter of Determination from Planning Director, Bob Remsburg regarding their property located at 1101 Polk Ford Road, Stanfield, NC 28163. The Gibsons requested that Mr. Remsburg determine if their property at 1101 Polk Ford Road was a bona fide farm and whether the border collies on the property constitute as a farm use. Per State Statute 160D-403 “The officer making the decision shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination if different from the owner”.

On April 13, 2022 Mr. Remsburg mailed the Letter of Determination to both the Gibsons and those who initially received an adjainer letter regarding the previous Special Use Permit request. In Mr. Remsburg's letter he made two determinations:

1. The property located at 1101 Polk Ford Road, Stanfield, NC 28163 is a bona fide farm per NC 160D-903(a)(3).
2. The border collies on the property are a farm use per NCGS 106-581.1.

Mr. Remsburg indicated in his letter that based on his determinations there would be no requirement for a Special Use Permit or any other Stanly County Zoning Ordinance requirements to be met for farm uses on the property. Upon receiving this determination, Josh and Rebecca Gibson requested to remove their application for a Special Use Permit.

Per 160D-405(d) "The owner or other party shall have 30 days from receipt of the written notice of determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal." On May 12th, 2022 the Stanly County Planning Department received the Application for Appeal of the Letter of Determination to the Board of Adjustment from Hartsell & Williams, PA in representation of Thomas and Peggy Morton and Charles and Kathryn Berry.

As the Board you may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirements, decision, or determination that ought to be made. You have the powers of the official who made the decision. The decision must resolve contested facts, be based on competent, material, and substantial evidence in the record, and be provided to the parties as a written decision document.

Therefore, as the Board of Adjustment you will be voting on Mr. Remsburgs two determinations individually, which were:

1. The property located at 1101 Polk Ford Road, Stanfield, NC 28163 is a bona fide farm per NC 160D-903(a)(3).
2. The border collies on the property are a farm use per NCGS 106-581.1.

Ms. Emrich displayed a slideshow of maps of 1101 Polk Ford Road, Stanfield.

Chair Fish asked if the Board or any other parties present had questions regarding the staff report. There were none.

Chair Fish asked to hear from those in favor of the determination. She asked attorneys or representatives present to go first and provide a general summary of their clients position.

County Attorney, Jenny Furr shared the following:

I am the Stanly County Attorney. I will be appearing before the Board this evening representing Planning Director, Bob Remsburg as Bailey summarized, Bob made a determination as to the Gibson Property. I won't go through the already shared information but I would like to call Mr. Remsburg up as my first witness to provide evidence to you all as to why the Gibson property is a bonafide farm and why the border collies are in fact a farm use.

Mr. Remsburg shared the following:

This was an interesting case that came before us and I was asked to make a determination on two things. As shared, the idea of whether this was a bona fide farm or not. These statutes are pretty clear on this in 160-903(a)(3) it states that a bona fide farm is any farm or property that can demonstrate that they have filed a schedule F with their federal income tax return. The Gibsons provided that information with 5 years of evidence that they have filed and have continuously filed since they got to this property and began this operation in 2015. With that information, that determination was fairly straight forward that as the statute states all that you have to do is show a schedule F has been filed.

That led us to the second question which of course is whether border collies used on the property for the herding of animals and then for a public use as well, if those were actually a farm use or if they served a commercial purpose. I had to dig a bit and eventually I looked at North Carolina Statute 106-581.1, this is the part that defines agriculture and farming. In part of that, it is described as being "dairying and the raising, management, care and training of livestock, including horses, bees, deer, elk, poultry, and other animals for individual public use, consumption and marketing". So, I had to look at that and consider, what are Border Collies? Of course this states other animals and livestock. In your packet was a reference to a case in Wake County which determined that dogs were not livestock.

The interesting part of that is that although dogs may not be livestock, this also mentions bees, poultry, deer, elk and other animals. So, it was not really a question of whether dogs are livestock or not. The Stanly County definition of livestock is pretty basic because it talks about being for personal use. Looking at that and the statute on agriculture regarding individual and public use for consumption or marketing and of course it includes training of those animals. The evidence that the Gibsons presented shows that one of the main things they do on that property is train the border collies. It says for individual or public use, the Gibsons indicated they have about 40 sheep on the property and one of the necessary things with that comes herding them. The border collies are being used as a herding animal. The other part is public use, and to be trained for that public use. The border collies that are trained on the property in question are used for a public purpose which is to chase geese from airports and airport runways, and other public places. That was a key component to this, there are lots of other materials that were included also regarding the use of border collies as animals. This is a very specific dog that is raised for a very specific purpose which is herding. By looking at that and the public use, I made the determination that the border collies were a farm use. I hope that addresses the question.

Chair Fish asked if there were any questions for Mr. Remsburg.

Michael Fleming "It is my understanding that in the Wake County case that the petitioner was actually involved in a dog breeding operation, which is not the case here. Did you take that into account as it

relates to all the other issues with dogs? Because they were slanted towards dogs trying to be classified as livestock and that is not the case in this.”

Mr. Remsburg “Yes, I did consider that in this case.. The idea in that case is that those dogs were being bred for sale.”

Michael Fleming “Specifically in the definition of agriculture that was given in that synopsis which essentially said “including every process and step necessary and incidental to”, the question I have is , does this case speak to the use of dogs as a farm tool? No different from a tractor, fence, or anything else that helps in the aid of management of a farm?”

Mr. Remsburg “I would state that I believe that is true. Dogs are a tool.”

Michael Fleming “I just wanted to clarify how much weight we should put on that case versus this case.”

Mr. Remsburg “Right, and I believe there are some key differences between them. I included that in your packet because I did look at that case specifically to see if it would apply.”

Michael Fleming asked for Mr. Remsburg’s packet to be admitted as evidence.

Board Attorney, Mark Lowder “I caution you that if you intend to view it and use it in your discussion, you need to make sure all of it is properly entered.”

Michael Fleming “Mrs. Gibson indicated that they received a letter from your department that they had to get a special use permit or had 14 days to shut down the operation. Could that letter be admitted as evidence to understand where this started?”

Mr. Remsburg “Yes.”

Michael Fleming “I want to get to the definition of kennel because there are multiple ways to talk about this. The land use ordinance of Stanly County defines it as a commercial operation that provides food and shelter for an animal for purposes not primarily related to medical care or engages in the breeding of animals for sale. Incidental breeding or litter sale shall not constitute a kennel. That is one of the definitions. The other one is simply a physical structure to house dogs. A commercial kennel receives dogs from the outside for the care, sheltering or specified time for a fee or sells puppies on a regular basis. Is it your opinion that this is not a commercial kennel?”

Mr. Remsburg “That is correct. There is a structure there that you may call a kennel because it houses the border collies but I would not call it a commercial kennel because the primary purpose is not to breed the border collies.”

Cindy Fish “The letter concerning the 14 days, has that been provided to the other side?”

Attorney Furr “I do not know if they have received it before this afternoon. I did send it to him today in response to a public records request, I did not realize that it may be referred to this evening. I can have someone go make copies.”

Mark Lowder “If you are going to introduce it, you need to share it with the other side.”

Chair Fish “Lets go ahead and enter the folder of information into evidence.”

Chair Fish asked if any of the other parties present had questions for Mr. Remsburg.

Attorney Andrew Cornelius representing the Mortons and the Berrys expressed he had questions for Mr. Remsburg.

Attorney Cornelius “How many Border Collies do the Gibsons have on their property?”

Mr. Remsburg “They indicated to us that they generally have no fewer than 25 on the property at any given time. They could have as many as 40.”

Attorney Cornelius “So your determination is that having between 25-40 border collies on a property that has approximately 40 sheep and some other animals, that would be a farm use?”

Mr. Remsburg “That is correct.”

Attorney Cornelius “Is there any point in time when the number of Border Collies on the property would increase to such that it would no longer be considered a farm use?”

Mr. Remsburg “If the Border Collies are there to be trained or for farm use then the answer is no.”

Attorney Cornelius “Are the Border Collies on their property used for anything other than for farm uses?”

Mr. Remsburg “I am not aware of them being used for any other uses on that property.”

Attorney Cornelius “Are you aware of whether or not the Gibsons operate a business out of that property?”

Mr. Remsburg “They operate FlyAwayGeese.com, but that would be an incidental business based on the farming statute.”

Attorney Cornelius “I am curious about the term incidental, but we will come back to that. What is the purpose of the fly away geese business?”

Mr. Remsburg “That is the public use side of things where they use those dogs to lease to government agencies and other things to result in the elimination or eradication of geese from properties such as airports and other public uses.”

Attorney Cornelius “So, according to their website, they sell or lease dogs to really whoever wants them. They don't have to be public, some of them are private as well, correct?”

Mr. Remsburg “If it is a public use, it is a public use.”

Attorney Cornelius “But, to keep the geese or other animals away from places of business that is a commercial operation that they run using those dogs.”

Mr. Remburg “Correct.”

Attorney Cornelius “Are you aware of what kind of revenue that business generates?”

Mr. Remsburg “I am not.”

Attorney Cornelius "Are you aware of what kind of revenue their farm generates?"

Mr. Remsburg "Not particularly, I have seen the schedule F forms but that is it."

Attorney Cornelius "The most recent schedule F that they submitted from 2020, I believe the revenue was in the range of 6,000 dollars. Does that sound right?"

Mr. Remsburg "I would have to look but it is certainly feasible, yes."

Attorney Cornelius "So, from the farm that would be a revenue. Do you imagine the revenue from the fly away geese commercial business would exceed that?"

Mr. Remsburg "I do not know."

Attorney Cornelius "If it did exceed that, do you think at some point in time that the revenue generated by the business of owning and leasing these dogs would at some point in time change and make these dogs a nonfarm use?"

Mr. Remsburg "Based on my interpretation of the statute for agriculture, no."

Attorney Cornelius "So, if they owned 500 Border Collies on this property and they sent them all over the world and leased them, sold them, and trained them for this use, your opinion would still be that it is a farm use that is exempt from these ordinances?"

Mr. Remsburg "If they are training those dogs on the property for a public purpose or for the use on that particular farm, I think the answer is yes."

Attorney Cornelius "You were talking about your interpretation of the definition of "other animals" for individual and public use and you said that was part of your basis for determining that these dogs met the criteria of the statute. So you are saying that these dogs are not livestock but they are other animals."

Mr. Remsburg "Yes. Our definition of livestock could include dogs by the county zoning ordinance."

Attorney Cornelius "Right, but your county ordinance has different places that talk about dogs and cats differently from livestock or other farm animals, correct?"

Mr. Remsburg "Section 601.1 specifically talks about domestic animals or farm animals but does not mention dogs."

Attorney Cornelius "In the materials that you provided, the Special Use Ordinance talks about a commercial facility used for raising dogs or cats. So to be a kennel under your ordinance you have to raise dogs or cats?"

Mr. Remsburg "Yes."

Attorney Cornelius "So, there is a separate ordinance that specifically talks about raising dogs, so dogs and kennels are segregated out separate from livestock or other farm related animals in the ordinance?"

Mr. Remsburg "If it is a commercial operation, yes."

Attorney Cornelius "What you're saying is that the Gibsons do not have a commercial operation?"

Mr. Remsburg "Yes, because it is a farm."

Attorney Cornelius "Could you have a farm and still have a commercial operation as well?"

Mr. Remsburg "Yes, in our ordinance you could do that because of the sale of produce, greenhouse, including the sales of animals such as horses you can do that."

Attorney Cornelius "So if it is incidental to the farm it is okay to run that business?"

Mr. Remsburg "Right."

Attorney Cornelius "So your opinion is that the dog business is incidental to the farm?"

Mr. Remsburg "Yes, I think that is correct."

Attorney Cornelius "Well, that is the decision that you made and your opinion is that on the dog business there is nothing they could do to change that so that it would not be incidental to the farm?"

Mr. Remsburg "Only if they dropped their farm status."

Attorney Cornelius "And how would that happen?"

Mr. Remsburg "No longer file a schedule F or the other 4 definitions in the statute that defines a farm for zoning purposes."

Attorney Cornelius "Do the Stanly County Animal Control ordinances apply to the dogs on the Gibson property?"

Mr. Remsburg "Probably not, I will say we do not enforce that ordinance in our office but because the ordinance has an exception for dogs on farms."

Attorney Cornelius "The exception that you are talking about was a part of the information in the packet provided by the gibsons as part of their request for this determination. It only lists the exceptions section; it does not have the full section of the ordinance."

Mr. Remsburg "Right."

Attorney Cornelius "That section that says they are exempt says this article shall not apply to a dog, and it lists herding dogs, but this article if you were to look at the whole thing is article 8 that is dealing with dangerous animals or potentially dangerous animals. So the exemption only applies to dangerous animals, not the entire animal control ordinance. Do you agree with me?"

Mr. Remsburg "I am not familiar enough with it to make a determination on that."

Attorney Cornelius "I don't think I have any further questions and I apologize if I came off rough."

County Attorney, Jenny Furr asked Chair Fish if she could ask Mr. Remsburg some follow up questions. Chair Fish allowed her to proceed.

Attorney Furr "You were asked if anything could change your determination, what if the Gibsons were to get rid of the cows, horses dogs, pigs, geese, ram and sheep. What if they got rid of those animals and there were no longer animals for the collies to herd?"

Mr. Remsburg "Part of the use, as I understand it, for the animals that you just named besides the collies is for the purpose of training. I think the determination would have to come from whether the dogs could be trained without those animals present. I think the key to it is whether the dogs are being trained on that property and for public use. The training aspect is key, and those animals are partly used for training as I understand it."

Attorney Furr "As far as the public use, do you know how long the dogs have been used for public purposes?"

Mr Remsburg "I don't know specifically but I know that according to the information from the Gibsons they began this process in 2016 but exactly what time they became leased or used for the public I am not sure."

Attorney Furr "Do you know how long the dogs have been used for herding purposes on their [property for the sheep, cows, gesse, etc.?"

Mr. Remsburg "As far as I understand it, 2016 is when that started. They can clarify that but I would imagine that would happen at the same time."

Attorney Furr "So it is your understanding that the Gibsons have been in the collie / fly away geese business since 2016?"

Mr. Remsburg "Correct."

Attorney Furr "Have you ever had any complaints from neighbors about the property?"

Mr. Remsburg "Not prior to summer of 2021 that I am aware of. I have only been Planning Director for three years so if it happened before then I have not been made aware of it."

Attorney Furr shared she had no further questions.

Chair Fish asked if there were any further questions from the parties present or board members.

Chair Fish "Just to keep my evidence clean, the letter from May 14th concerning the Special Use Permit, can we take a minute to look at that so we can submit it into evidence."

Attorney Furr "Madam Chair if I may approach, I was under the impression that Mr. Fleming was referring to the original zoning code violation letter that is dated January 10, 2022."

Attorney Furr approached and passed out the letter from January 10, 2022 for the board's review. She shared if that is the incorrect letter then the correct one would be located.

Mr. Fleming "The letter provided satisfies."

Chair Fish shard if there was no opposition then she would like to submit the letter dated January 10, 2022 into evidence.

Chair Fish asked Attorney Furr to invite her next witness up.

Attorney Furr invited Rebecca Gibson to the podium.

Rebecca Gibson shared the following:

My family and I reside at 1101 Polk Ford Road. As you are aware from the last meeting when we were here concerning the Special Use Permit, yes the January 22nd letter was the first letter we received that resulted in the request for the Special Use Permit. I would like to start with a timeline of what has gone on and has happened as well as some background that will help.

Fly Away Geese was started in 1997, I was a sheep farmer and was training Border Collies to do sheep and cattle and there was not a whole lot of money in that field in the 90s. Farmers were not wanting to pay for working dogs. I was working for a lady in Virginia training dogs for sheep and cattle and she was the first one to train a border collie to do goose control for golf courses and she said you need to help me do this. In the early 2000s Fly Away Geese started performing wildlife service management with our Border Collies with all major Air Force bases on the east coast. Our dogs were working on all these airfields with our handlers doing the management control. Our services work under the USDA. We have sold dogs to airports all over the country and we have worked with airports in other countries. In 2012, I moved back to the Charlotte area. I started wildlife management in the Charlotte area in 1998, got out of Charlotte when I started with the military airfield and moved with my ex-husband towards the western part of the state. To train my dogs to do this service I have to have other livestock because if I have a Canada Goose on my property it is a federal offense.

In 2015, my current husband and I married and we bought this farm in May. Livestock arrived before we did. When we moved in, Mrs. Morton was the first person we met. She used to clean the home before we moved in. The first sheep arrived in October of 2015 and as did the Border Collies. As Mr. Remsburg said in 2015 & 2016 there were about 40 border collies on the farm at any given time. Our numbers are much lower than that now because I have 27 dogs in Virginia working 24 hours a day and 7 days a week. So most of my dogs are gone right now. Most of them don't come back, they go to other facilities after that season is over. 8-10 months out of the year 90 percent of the dogs are gone. There are about 16 dogs on the farm right now. The Mortons mowed the grass for us, fed the dogs for us, they came to neighbor parties and everyone got along. The Berrys as well. Our kids got along and everyone was fine and no one complained about the dogs. It was even talked about how the Mortons had ideas to build our facility to make it better. In 2020, the property between the Mortons property and ours came up for sale. The property owner asked if we wanted it and my husband told them to ask the Mortons first, they were not interested so we bought it. At that time Mrs. Morton asked if I would be willing to pay for 50 percent of the fence on the property line and I agreed and wrote her a check for \$1,700 that was July of 2020.

In October of 2020, we fenced our property with electronet and in the fall of 2020 we fired the Mortons from doing things on our property because it was very costly. We did not really talk after that, and it had gotten to where it was 400 dollars a week. October 22, 2021 I had a farm employee who was fencing along the front of the property and he went to tie into the fence that we paid 1700 dollars for and Mr. Morton came out and told him that he could not tie into that fence. My husband called him and said we paid for half of it but Mr. Morton would not give him much of a reason. My husband asked for our money back and he said no so my husband told him that we will have to go to court over this, we aren't going to

let them keep our money. We went to court on November 10th and we won the small claims case and on November 11th they paid the \$1,700 to the court and they also called animal control that same day regarding our livestock guardian dog. The first complaint to Stanly County zoning was on December the 7th, 2021 and they called the sheriff's department with many complaints also. Zoning came out in 2021 and told us to consider getting a special use permit and I explained this was not a boarding facility that they were used for work. Then I got the letter on January 10th and I called Mr. Swaringen to explain the same thing and I was told I had to get a special use permit. It was not until we got to that meeting that I was told that I could request a determination on our ag status and whether the collies were of agricultural use. So to add to that, I have for all of you and for the other side as well a document that was produced by the USDA. They have a wildlife conflict division on airfields, military bases, for the public etc.

What I handed you talks about the unacceptable limit of wildlife feces in pastures, trampling and emerging crops, erosion, etc. It talks about farm damage due to Canada Geese but if you go to the safety side it talks about the danger of the geese and ducks also present human health and safety issues. This is the reason we are contracted at every place that we have collies. We do every part for the Cabarrus County Parks Department, UNCC, Charlotte Douglas Airport, Virginia Department of Transportation. These dogs are working for the public keeping human health and safety their main goal. If it was not for our dogs, the safety of people at the Charlotte Douglas Airport would not be as good as it is. Everything we do has to do with livestock and working these dogs.

Attorney Furr "You said that you had a number of dogs on your property since 2015 and the neighbors, is it fair to say none of them complained about you or the dogs until after you won the small claims case?"

Mrs. Gibson "That is correct and I have every text message from Mrs. Morton since the day we moved in and there have been no complaints until after that small claims case and not from the Berry's either."

Attorney Furr "Can you summarize for the board the types of animals you have on the farm and the number of each of them."

Mrs. Gibson "3 cows, 6 geese, 2 pigs, 2 horses, 25 ducks, 27 sheep, a ram and that is it."

Sally Pleasant brought up a presentation for Mrs. Gibson to show the animals and the structures on the farm.

Mrs. Gibson "I don't know if I can submit it but I have an affidavit from a major in the US Airforce who worked with us on our contracts talking about the airforce and how these airfields were farm fields at one time and how they correlate with the farming side of things. He could not be here in Florida but I do not know if it is permissible to add into evidence."

Chair Fish allowed for it to be submitted into evidence.

Attorney Furr "Could you explain how your collies work with or train with the other animals on your property?"

Ms. Gibson "I can't have geese so we use the ducks to teach the dogs to swim but because the ducks are small we use the sheep to teach the dogs their left and right commands. We also use the sheep for the sheep dog trials along with the cattle. Some of the dogs on the farm are not for business, they are just sheep dog trial dogs. I know breeding was mentioned but that is not our main focus, I may have one litter of puppies a year but I do not sell dogs, they all stay with us and train with us."

Attorney Furr "We would respectfully ask that the affidavit be added into the record, copies are being made now. Also, the picture board and the USDA document that Mrs. Gibson handed out to everyone."

Chair Fish shared that once the other side has seen the evidence and if there is no opposition then it can be submitted as evidence.

Richard Cosgrove "Back on March 15th we met to determine whether or not you are to be granted a special use permit but that was continued without a decision. There was some mention of a Voluntary Ag District Program we were waiting to hear from, did you get the results from that?"

Mrs. Gibson "No sir, because the Mortons and the Berrys also protested that in front of the County Commissioners therefore they would not make a determination on that even though it had no bearing on this until you all made your decision."

Mr. Cosgrove "A lot of us have been around kennels, and dogs bark all the time at the drop of a hat. Could you deceive the vocal cords of your dogs over a period of time?"

Mrs. Gibson "I think that Mrs. Pleasant can testify to that better because she came and did decibel readings. My dogs are trained dogs and they do not bark all the time. They will occasionally bark, I will not tell you that they do not bark. There will be one dog here and there but when Mr. Swaringen came out and the Sheriff's Office came out and they made comments about how quiet it was. You can come to our home and you won't hear the dogs for two hours. Our property slopes to the river and it is a significant drop from our home to the Mortons and there is a natural berm that prevents sound from traveling from it. The reading was no more than 80 with the dogs barking and running the sheep which is the sound of a washing machine at the end of the cul-de-sac."

Mr. Cosgrove "When Border Collies herd sheep or geese, do they bark incessantly?"

Mrs. Gibson "They don't bark at all. Border Collies are silent workers, they move sheep by putting their heads down, tails in between their legs and staring at them. So there is no barking. They are different from other dogs. They move with their eyes. If it barks when it works it is not a good collie."

Mr. Cosgrove "What is the working life of a border collie?"

Mrs. Gibson "10-15 years."

Mr. Cosgrove "So as your dogs age out, how do you replace them?"

Mrs. Gibson "We bring in younger dogs, usually around 8 months to a year old. You can start one until it is at least 8 years old. I like to bring them in early to get them started right off the bat."

Mr. Cosgrove "Do you have a lot of people come to your home and ask to purchase a dog?"

Mrs. Gibson "They do not just show up at my house."

Mr. Cosgrove "So is it safe to say that you really don't really have that much traffic related to the collies?"

Mrs. Gibson "I have farm employees that come and go daily. We may have 2 to 3 customers there a month, maybe. That is me being generous. That is just someone coming to pick up a dog or come to watch them work sheep. Recently I have had traffic for a remodel, it has nothing to do with business."

*Attorney Furr passed out the Affidavit referenced by Mrs. Gibson earlier to submit into evidence.
Chair Fish had no objections to it - it was submitted into evidence.*

Mrs. Gibson passed out the USDA mission statement and an article on the USDA receiving a presidential award on migratory bird stewardship.

Mr. Cosgrove "At an airport, I know there is a lot of grass and I assume the geese go to the grass and defecate. Do geese often fly up into planes?"

Mrs. Gibson "Yes, if you saw the Miracle on the Hudson, that was due to a flock of geese and the reason that the Air Force and military is so serious about the management of birds is because in 1980 a plane crashed because of a flock of geese and killed all 24 people on board. That plane crash pushed the Air Force to put together their bird aircraft strike hazard program. This forced all bases to put programs into place to avoid this from happening again."

Attorney Furr "The affidavit you provided to Mrs. Gibson from Major Ronald Merrit, was he the one in charge of the Bird program on base?"

Mrs. Gibson "He was, for the entire Air Force."

Attorney Furr "You mentioned the Mortons have called 911 and made complaints on you and or your animals the day after the small claims case, it appears that Mrs. Pleasant provided some reports from our Communications Department. I would ask that these reports be admitted into evidence as well."

Mrs. Gibson "The Mortons have also left up all of their Halloween decorations, there are 6-8 zombies facing our home 24 hours a day. Along with a camera on an 8 foot pole facing down our driveway, the Lowes guy came today and he got out of the vehicle and was terrified because of all of this."

Chair Fish shared a recap of the items being admitted into evidence:

-Geese, Ducks and Coots handout from the USDA

-Mission and Goals statement from the USDA

-Emergency communication transcripts

-USDA Wildlife Services presidential award document

-Affidavit of Ronald Merrit

-Board of photographs on the farm

If there is no objection these will all be accepted as evidence.

There was no objection

Attorney Cornelius "Is the purpose of your farm to raise and train these Border Collies?"

Mrs. Gibson "The purpose of my farm is to train."

Attorney Cornelius "What is the purpose of your business, because you talk about the business."

Mrs. Gibson "The purpose of my business is to provide wildlife management services to the public."

Attorney Cornelius "I know in part of the packet you submitted, schedule F that gets filed with your tax returns. On the most recent one from 2020 you showed the total income around six thousand and some dollars for the year 2020, does that sound correct?"

Mrs. Gibson "Yes sir."

Attorney Cornelius "The Schedule F would not be filed for anything related to your dogs, correct?"

Mrs. Gibson "Our accountant puts the dogs in a separate section."

Attorney Cornelius "Okay, so the dogs are separate from the farm the way you file your taxes."

Mrs. Gibson "I don't know where she puts them to be honest. I don't know if there is a separate schedule F for the farm animals."

Attorney Cornelius "Okay, so the farm animals get their own schedule F but the farm animals that you file on your taxes do not include the dogs."

Mrs. Gibson "I do not do the taxes. They include the dogs that work the animals on the farm. Every dog on the farm works the animals."

Attorney Cornelius "The reason I ask is there is a second page on the schedule F that says you filed it but then it says income related to dogs you would file a schedule C. Do you know if you file a schedule C?"

Mrs. Gibson "I do not know."

Attorney Cornelius "But you did not provide a schedule C with any of the items submitted?"

Mrs. Gibson "No."

Attorney Cornelius "I am assuming that the \$6,000 revenue generated by the farm, your business generates considerably more than that."

Mrs. Gibson "Yes."

Attorney Cornelius "Do you know a ballpark number of what your business generated in 2020?"

Mrs. Gibson "I do not know."

Attorney Cornelius "How do you make a living?"

Mrs. Gibson "By working with my animals on the farm. I can't throw out a number without the numbers in front of me, I don't want to do that."

Attorney Cornelius "The way you make a living is through the business that you use with your dogs to lease them out or sell them."

Mrs. Gibson "Right, and the farm."

Attorney Cornelius "The farm only generated 6000 dollars in 2020."

Mrs. Gibson "That 6,000 dollars is revenue."

Attorney Cornelius "Right, but I am assuming that for you to survive and live and pay your bills that the revenue stream you receive from the dogs is considerably more than 6000 dollars."

Mrs. Gibson "yes."

Attorney Cornelius "You don't have any ballpark about the annual revenue for the business?"

Mrs. Gibson "No."

Attorney Cornelius "But that is where you receive your income, is from that business?"

Mrs. Gibson "And the farm, yes."

Attorney Cornelius "Right, I am just talking about 2020, that is for you and your husband both?"

Mrs. Gibson "Yes, that is correct."

*Chair Fish asked if there were any others present who had questions.
There were none.*

Attorney Furr shared that concluded their witnesses on behalf of the county staff.

Attorney Cornelius asked if it was appropriate to make an opening statement or should he go into his witnesses to begin.

Board Attorney Mark Lowder shared that this is his case and is welcome to proceed how he would like.

Attorney Cornelius called Tommy Morton to testify on behalf of the appellants.

Attorney Cornelius asked to share documentation to go along with his testimony and asked that it be submitted to the board.

Attorney Cornelius "Could you introduce yourself to the board please Mr. Morton."

Mr. Morton "I am Thomas Morton and I reside at 1112 Polk Ford Road, Stanfield, North Carolina."

Attorney Cornelius "We have heard what Mrs. Gibson has testified about what she does for a living, could you tell the Board what you do?"

Mr. Morton "I served the nation as a US marine for 8 years and after that I became a police officer and retired within 30 years and have retired from the front that profession."

Attorney Cornelius "On the screen it shows the correlation of your property, the Gibsons and the Berry property. Can you talk about what you can see from your property and as well as what you have observed over the years?"

Mr. Morton "What I can see from my porch is the Gibsons house, their gate and the top of their dog kennel. Through the years the dogs have become louder and more. As their business of kenneling and raising dogs grew, so did the traffic on our road. That road is a private road and the maintenance falls on the home owners and people who own the property there. Gravel is so expensive and we have to keep up with them. At any given time there will be dogs barking incessively. We like to work outside and my dogs are trained to not bark and stay on our side but hers are not. What Mrs. Gibson told you is not all true.

Attorney Cornelius "How long have you lived at your property?"

Mr. Gibson "I purchased the property in 2004 in September."

Attorney Furr "Madam Chair I would object to any testimony as to noise level I feel like that is irrelevant to the determination of farm status or farm use."

Attorney Cornelius "Madam Chair in their presentation they brought up the noise level so if they brought it up in what they have said we are merely responding to it. It is not appropriate to bring things up on their side and then object to it whenever it is spoken of on our side.

Chair Fish "I understand that but I think the reason that was gone into was because it was addressing a question from our board. So if we could just move along."

Attorney Cornelius "Walk through the history of the animals being on the property and the dogs being on the property."

Mr. Morton "The Gibsons moved in and so did the animals. The cows, sheep, duck, at one time a kangaroo. Before all of that there was no fencing and they would break loose and we had to chase them off the property and help bring them back. When we were out of town one of the employees asked us to help chase down the dogs. One of their dogs was constantly on our land destroying my yard decorations and lights and we made that known. They kept showing up and even Mrs. Gibson admitted that there were 45 dogs at any given time on the property. These dogs bark.

Attorney Cornelius "You are talking a little about the gravel drive, what kind of traffic comes and goes to that property?"

Mr. Morton "You have their employees at any part of the day because it is a 24 hour dog kennel business, we have had tractor trailers, with flat beds off loading pallets of food, we have had numerous Amazon, UPS, whatever delivery service. That is upwards of 20-30 cars a day just for their business.

Attorney Cornelius "I want to talk about how we have presented the packet of information that we want them to consider tonight. This is a packet of 60 pages total, they are all numbered. The first page is the statute that Mr. Remsburg has previously talked about 160D-903 governing agriculture. This is the one that talks about bona fide farm regulations. According to the statute if the activity is a non-farm purpose then the ordinance would still apply."

Mr. Morton "That is correct."

Attorney Cornelius "Page two has state statute 106-851.1 which defines agriculture and Mr. Remsburg talked about this. He pointed to sub paragraph three for the basis of why these dogs are a farm use. The way this is worded, there is a comma before including. Mr. Remsburg talked of the Wake County case,

which is on page 51 in the packet, the next to last paragraph say that dogs are not included in the classification of livestock and that breeding and the operation of a farm kennel are not a farm use. When we go back to page 2, it talks about dairying and the raising management and care of livestock then a comma. We know that the courts said that the livestock does not include dogs. Page 3 is part of the Stanly County ordinance and section 302 talks about the bona fide farm exemption except for any such use for non-farm purposes are subject to the regulations and ordinances. Section 601.2 of the Stanly County ordinance talks about the Special Uses that may be allowed that require approval of the Board of Adjustment. If you look at the bottom it says if you are operating a commercial kennel or facility for raising dogs then you have to have a special use permit. The county already made that determination, the letter from January 10th says that they were operating a kennel and they had to get a special use permit. The county originally made that determination then changed its mind and made the decision about the Bona Fide farm. Section 13.3 says the definition of agriculture which includes the raising and keep of general livestock but we know that dogs are not livestock. A kennel is a commercial operation that engages in the breeding of animals for sale, if you just have a commercial operation that provides food, shelter and care of animals for non medical purposes then by definition that is a kennel. Then we know that if you have a kennel you have to have a special use permit to operate it. Turn to page 6, the animal control ordinances. What does the animal control ordinance of Stanly County say about licensing for dogs?

Mr. Morton "If you have a dog that is older than 4 months old you have to register it with the Stanly County tax office and get a tag. There are specific rules about the tag and how to apply it."

Attorney Cornelius "How many dogs do you have?"

Mr. Morton "I have 3."

Attorney Cornelius "Are they licensed in complying with this?"

Mr. Morton "Yes, they are."

Attorney Cornelius "Do you have any knowledge if the Gibsons have acquired tags for their dogs or not."

Mr. Morton "I have no knowledge of that."

Attorney Cornelius "There are some exemptions for licensure but that is if you are an approved rescue or foster dog or if you are a dog owned by a government official. Page 27 shows article 8 of dangerous animals or potentially dangerous animals. It defines which are considered dangerous and what the requirements are if they bite someone. On page 28, section 2 talks of exemption to this article would include herding dogs. So it is only in this article, it does not say that it is exempt from this entire ordinance. So that exemption would not apply to your dogs being licensed. Would you tell the board members what this document is on page 29?"

Mr. Morton "This is a letter from Rebecca Gibson, I did not get this letter but it is to select members of the street and our community. Someone provided me with a copy of this letter."

Attorney Cornelius "What was this letter for?"

Mr. Morton "I understood this letter to be for a response to the Planning Directors zoning design that was placed on the property. She saw it fit to send this letter out. This was before the hearing of the Special Use Permit.

Attorney Cornelius "So after the zoning sign was placed on the property they saw fit to send out this letter before a decision had been made about a special use permit?"

Mr. Morton "Correct."

Mr. Morton read a section of the letter.

Attorney Cornelius "Do you take this letter that she is saying that she is running a business from her property that includes the operation of a kennel?"

Mr. Morton "I do."

Attorney Cornelius "Page 30, shows the document that is the assumed business name certificate that was recorded with the Stanly County Register of Deeds. It was recorded by Rebecca Gibson because she wanted to give notice that she was operating businesses under assumed names. You record this so that it is a public business so others are aware. What are the two names that she recorded?"

Mr. Morton "Fly Away Geese & Fly Away Farm and Kennel.

Attorney Cornelius "So she is acknowledging that part of the business is a kennel. What is listed as the address of this business?"

Mr. Morton "1101 Polk Ford Road, Stanfield, North Carolina 28163."

Attorney Cornelius "And this is where the farm, the business and everything is?"

Mr. Morton "Correct."

Attorney Cornelius "And what did she list as the nature of her business?"

Mr. Morton "Wildlife management."

Attorney Cornelius "So the business is not for farming, it is for Wildlife Management?"

Mr. Morton "Correct."

Attorney Cornelius "Page 31, this is a copy of a schedule F from the year 2020. In the documentation Mr. Remsburg used he had copies of 2 years of schedule F's and the top sliver of the year before that. We only have the front page of the documentation. This document on page 31 is the front and back page. On the back page on the bottom in the notes it talks about different types of agriculture activities. It says do not report income from a list of things and one of those is the breeding, care and raising of dogs, cats and other pets or animals instead file schedule C. The point is this form for farming profit loss it does not include dogs, anything with that you would file separately./ The IRS does not include dogs as part of this farm."

Mr. Morton "Correct."

Attorney Cornelius "For the next several pages, what are these copies of?"

Mr. Morton "These are copies of her business website."

Attorney Cornelius "This is the FlyAway Geese business that we saw on the assumed name certificate that was filed at the Register of Deeds. What services does the website say they provide?"

Mr. Morton "Nuisance wildlife consultation, Border Collie sales & training, handler training and certification, permitting and mass management of wildlife birds."

Attorney Cornelius "Page 35, it says looking for a certified goose dog. Does it say anywhere that they exclusively do this for the public or public entities?"

Mr. Morton "It is for the general public, I assume anyone who wants to lease a dog."

Attorney Cornelius "So it does not matter if it is a public entity or private entity?"

Mr. Morton "No."

Attorney Cornelius "The business itself is a private entity, correct?"

Mr. Morton "It is."

Attorney Cornelius "Page 40, it lists some of the places that they provide the services to, one of those places is providence states, housing complexes, universities, correct?"

Mr. Morton "Correct."

Attorney Cornleius "Page 41 through 50, these are the minutes from the March 15th Board meeting where there was discussion regarding the Special Use Permit before that was continued and that may have already been a record before the Board but we wanted to make sure that was in there. Page 51 is the Wake County case that was already talked about. Page 55 is a separate 2009 court case, I will talk about this case later and how it applies. That represents the documentation that we intend to submit. Madam Chair I would like to submit that packet of information to the board."

Madam Chair asked if there was any opposition to submit the packet into evidence. There was none therefore it was submitted.

Attorney Cornelius "In your own words, will you just explain to the board what you are asking them to do on this appeal of the Planning Directors decision and what we are trying to achieve here?"

Mr. Morton "I served this country as a US Marine and served this nation and was then discharged honorary and then went to become a police officer and retired after thirty years of service. All I wish for is a private quiet life with my wife on our property that I worked hard to achieve. I ask that this Board reverse the decision the Planning Director made so that myself, neighbors and the folks affected by the barking dogs and kennel will have a chance to live in peace. I am not against business, I am against barking dogs 24/7."

Attorney Cornelius "I don't have any further questions, is there anything else that you would like to share with the Board?"

Mr. Morton "Mrs. Gibson stood up here and painted a picture that is unfair towards my wife and I. This did not stem from a fence issue. The fencing came because their dogs were not being kept on their

property. Their dogs, livestock and animals all came to our property. We told them and asked them to stop. We helped them when they were out of town for 6-8 months at a time and before their help could get there and people would quit then they would call and ask if we could feed them. I am not going to let an animal suffer. I did not give them any tips on how to further their business. Why would I? That would not be my place. To be fair, I did make an automatic watering system for my dogs for when I go on vacation and I did say that I would show them how I did it because at the time their watering system was inoperable. As far as the money on the fencing, we were approached by the Gibsons if we could give half of the fencing because they bought that property and we said that was fine if they wanted to. If it keeps their animals off of our property then lets make it happen. As far as tying in the fence line, weeks before that there was an issue of money owed to my home, I asked if they would make good on the money owed and if not then that's fine I would take it out of the 1700. Mr. Gibson cussed me and told me that he was taking it to court and I said that was fine. I never refused to pay the money. I just asked that he made right with what he owed. I did not want the board to think I am unreasonable or someone that could not be approached. My wife did clean their home because that is the neighborly thing to do. I do not make assumptions on anyone until they prove they are unworthy of my friendship."

Madam Chair asked if there were any questions for Mr. Morton

Richard Cosgrove "You made some reference to a private road, is Polk Ford Road not a state maintained Road?"

Mr. Morton "It is not, sir."

Richard Cosgrove "Down towards the creek is not maintained?"

Mr. Morton "Not by the state sir, that is maintained by the homeowners."

Richard Cosgrove "Do you have a road maintenance agreement in the community where every year you pay into a fund and then you buy gravel?"

Mr. Morton "That is true there is a road covenant."

Richard Cosgrove "And do all the neighbors on that road contribute to it?"

Mr. Morton "Not all of them."

Richard Cosgrove "Do the Gibsons contribute to that road fund?"

Mr. Morton "I do not know to be honest."

Richard Cosgrove "Who collects the road fund money?"

Mr. Morton "We were asked to do so by certain members of the community because it is easier to start at the end and work our way up."

Richard Cosgrove "There is no court order that says you have to fund the private road?"

Mr. Morton "I don't understand your question sir."

Richard Cosgrove "Is there a court order or something that says you have to maintain that road or is it just a neighborhood thing?"

Mr. Morton "I read in Stanly County that the maintenance of the road is that when it falls onto private individuals you have to maintain it for fire, EMS and those entities."

Richard Cosgrove "I understand, the way you spoke it sounded like you were denying the Gibsons the right to travel on that road to their property and other vehicles to their property."

Mr. Morton "I never denied anyone access, I do not have the legal authority to do that."

Richard Cosgrove "You spoke as if it were sort of a negative thing that many people were driving down the road."

Mr. Morton "A lot of vehicles travel on that road not to visit me or any other neighbors; it is directly to the Gibson property. It does drastically erode the road."

*Madam chair shared that was not really part of the determination, and to move past it.
Madam chair asked if any other parties had any other questions.*

Attorney Furr "If I could direct your attention to page 2 of the packet,, if you could look at section 3 of the statute that says dairying, raising, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use and consumption, there is no comma after the words other animals, correct?"

Mr. Morton "I do not see one."

Attorney Furr "So, if we were to number the items in the list here, number one would be livestock including horses, number two bees, number three poultry and number four other animals, correct?"

Attorney Cornelius shared he objected to the nature of that question.

Board Attorney Mark Lowder shared that as a state statute it is for the board to determine what that means.

Attorney Furr chose to withdraw that question.

Attorney Furr "Mr. Morton you would agree there is no comma after other animals in 106-851.1 correct?"

Mr. Morton "Correct."

Attorney Furr "Page 29, this appears to be a letter from Rebecca Gibson. You stated that she provided this to the neighbors. Wasn't this letter in response to a letter that you had sent out to the neighbors?"

Mr. Morton "I did send out a letter, I do not know if it would be in response to this one."

Attorney Furr approached Mr. Morton with the letter sent to Mr. Morton and his wife from February of 2022 from Bailey Emrich regarding the Special Use Permit request and then the letter he sent to the neighbors.

Attorney Furr "Was Mrs. Gibson's letter not a follow up to your letter?"

Mr. Morton "I can't speak to that, I do not know what she does with her letters."

Attorney Furr approached the board to give copies of the letter and asked that it be entered into evidence.

Attorney Furr "Page 6, the Stanly County Animal Control Ordinance. Are you aware that the ordinance was amended November 2, 2020?"

Mr. Morton "I don't know."

Attorney Furr "Are you aware of what entity enforces the county noise ordinance?/"

Mr. Morton "I believe the Sheriff's Department."

Attorney Furr "Are you aware of who is currently enforcing the Stanly County Animal Services ordinance?"

Mr. Morton "I do not know."

Attorney Furr "Page 30, the assumed business name certificate. Were you aware that Flyaway Farm and the Kennel portion of the business was dissolved in 2012."

Mr. Morton "I do not have knowledge of that, that is not my business."

Attorney Furr had no further questions.

Attorney Cornelius "If I could make one clarifying question on page 30 the assumed names certificate was registered in April of 2019, correct?"

Mr. Morton "Correct."

Attorney Cornelius "So as of April 1, 2019 she is doing business as Fly Away Farm & Kennel and Fly Away Geese, correct?"

Mr. Morton "Yes."

Attorney Cornelius had no further questions.

Madam Chair asked if there was any opposition to entering both letters into evidence. There was no opposition.

Attorney Cornelius shared they had no further witnesses but there were neighbors who would like to be heard.

Madam Chair asked Mr. Cornelius to go ahead and provide his summary.

Attorney Cornelius "Our argument is essentially that the Gibsons are using the guise of a farm to operate a commercial business enterprise that is a kennel. They are raising dogs which is a definition of a kennel in this statute. That does not mean a puppy mill, they are training them and using them for a commercial business to make money for all different kinds of people. Some are for public entities, some are for private entities, doesn't matter. It is a private commercial business. They make money from it and they

pay taxes on it. That's what they are doing, that is what the evidence is. Mrs. Gibson's own testimony calls it a business and once in a while she will mention it as a farm but everything else is the word business. The farms are incidental to it. The statute talks of how a bona fide farm is a farm but it can have things incidental to it and they become part of the farm. That is the basis for Mr. Remburg's decision. However the evidence before you shows that is not what is going on. It is flipped. The business is the primary thing and they use the farm stuff to support the business. The sheep that make up the farm are not the purpose of the property, the purpose of the property is to operate their fly away geese business and to house all of these Border Collies. They use the sheep incidental to the business. Under the ordinances and the statutes that is running a business, that is kennel. They would have to apply for a special use permit which this County told them they had to apply for and that was the original decision. The decision was changed to say that it was a bona fide farm. The statute says that the county zoning regulations can't affect the bona fide farm purposes, however it does not apply to the use of farm properties for non-farm purposes.

Mrs. Gibson talked about the fact that she has all of these dogs that she trains to use for the business but then says there are some just for the farm. The ones that are actually used for the farm probably do fit under the exemption but all the other dogs that are for the business are for non-farm purposes and the statute that specifically says anything that is not used for the bona fide farm purpose does not fall under the exemption and is subject to the ordinance. So in order to do something with all of those dogs, which is a kennel, under the ordinances you have to have a special use permit to operate that. All the stuff that Mrs. Gibson talked about and all the documentation, it all has to do with the dogs and that is the primary use of the property. She uses the animals on the property to train them. They are saying that since it is a public use that it creates some sort of exception, no these dogs are not public dogs. They are owned by a private business that contracts them to public companies. It is no different than a private construction company going and building a building for Stanly County. It is a private company doing something for a private entity. It is not a public use, a public use is the fire department when they put out a fire.

These dogs are not defined as a public entity. These are not exceptions to the statute. Mr. Remsburg said they can have an unlimited amount of dogs on their property and as long as they are doing something with farming on there then they are allowed. Just because they send one dog to a public park then it is a public use so that means they can keep 1000 dogs on the property? According to him there is no limit of number. If you go through and read the statutes discussed, the other court of appeals case in North Carolina on page 55, in 2009. This is a case where a farm was manufacturing biodiesel through the production of soybeans on a farm. We are talking about agriculture. This farm was producing biodiesel and the neighbors challenged it. What happened is this went to Superior Court and they found that the production of biodiesel on the farm for agricultural purposes is a bona fide farm use and therefore it would be exempt from the county zoning ordinances. However, what happened is that on appeal the Court of Appeals said that actually the farm was producing 500,000 gallons of biodiesel fuel on their farm and then were selling excess amounts but they only need 100,000 gallons a year for their 5,000 acre farm. They held that the farmers did not have a bona fide farm use and they said that the production of 500,000 gallons per year when it requires only 100,000 removes this production from the realm from a bona fide farm use to a non-farm commercial enterprise. It became subject to zoning.

The court said that if it is a secondary use and you are using it for your farm and is what you need then yes it is a farm use. Whenever that farm is doing something way above what the ordinances say is a farm

use then the court says no and it removes it from the realm of bona fide farm use. That is exactly what we have here. They are operating a commercial kennel where they are training and raising Border Collies for profit. They should be subject to the relevant ordinances. They are using the bona fide farm thing to say they can do all these things with their business. If they had 4 Border Collies on the farm which is what you actually need for 40 sheep, then yes that is a farm use. She testified that it is not to herd, the reason they have them is to train them up for the business, not for the farm. They use this farm to get out of having to comply with the ordinances. Even if it is a bona fide farm because they have some farm animals then the only way the dogs can be useful is if it is dogs that are needed for that farm. In the documentation from Mr. Remsburg a lot of these readings say "a dog" you do not need 40 dogs on a farm. We feel that you should reverse that decision because Mr. Remsburg did not have all the information in front of him to know what is really going on on this property and that they are not just using it for the farm purposes, that is an incidental use to it. The statute says that if it is an incidental use to the farm then it is a farm use and is ok. What we have is the farm use is incidental to the business. That is the reason why we feel that you should reverse this decision and they should have to comply with the ordinance like everyone else in the county.

Madam Chair went through the list inviting the public to speak when called upon.

Madam chair reminded the public the purpose of the meeting is in reference to the letter of the determinations which list the two determinations.

Amy Irish "I was made aware by the sign that was posted. As I understand it, the sign came up and then the sign went down because of the reversal of Mr. Remsburg's decision, so we planned on attending that meeting to learn more but we did not have the opportunity as the community to even learn more about it because it was approved. I think it should be reversed so the community has a chance to speak. There were no questions for this witness.

Beth Redmond "I knew nobody in here before now so this to me has nothing to do with the community. I back up to the property, the dogs are loud. I don't hear any farm animals, all I hear are the dogs all the time. I yell and tell them to hush and they will stop for a minute. They are definitely trained. This place was full at the last meeting so there are a lot more people concerned besides these folks.

Attorney Cornelius asked her to confirm where her property was in correlation to the Gibson property.

Darrell Kidd "I live at 1127 Polk Ford Road so I am close. The road issue, I am not aware of any kind of formal agreement that requires it. For the most part the road maintenance crew is seated here. We in an informal way buy the gravel and get rakes and take it all into the potholes as a community. Anything that increases traffic will increase the amount of gravel we buy. My understanding is if we bring the road up to state standards then the state will pave it for us. My understanding is that we are \$100,000 away from that. We do our own road maintenance, the money that will bring us up to the paved road will do alot for our property value. I was in Mecklenburg county as a builder and when I decided to get out of there, I found 5 acres on Polk Ford Road of paradise. This is river front property, it is an undiscovered treasure. There is a magnificent residential opportunity in this area. I think it is an obligation to the people who live there that we try to protect that and that it comes to its full potential."

Chair Fish asked if planning staff had any further comments.

Bailey Emrich shared to keep in mind that the two determinations will be the only things considered and will be voted on separately.

*Chair Fish shared that after the hearing is closed no further testimony is allowed.
Chair Fish closed the evidentiary hearing.*

Chair Fish requested a 5 minute recess to go through acquired evidence.

Chair Fish “The Board will now review the two determinations made in the Letter of Determination. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board has all of the powers of the official who made the decision.”

Determination #1 - The property located at 1101 Polk Ford Road, Stanfield, NC 28163 is a bona fide farm per NC 160D-903(a)(3).

Chair Fish “Do I have a motion to find this determination true based on the evidence submitted?”
The Board finds this standard true.

Motion: Michael Efird

Second: Michael Fleming

Vote: 6-0

Michael Fleming “The simple fact that the Gibsons submitted a schedule F which is one of the four criteria to meet in order to be considered a Bona fide farm is enough.”

Determination #2 – The border collies on the property are a farm use per NCGS 106-581.1

Chair Fish “Do I have a motion to find this determination true based on the evidence presented?”
The Board finds this fact true.

Motion: Rick Johnson

Second: Michael Efird

Vote: 5-1

Rick Johnson “We have a lot of evidence to prove that the Border Collies are a part of the farm.”

Michael Fleming “Farming includes public use. Either on the farm or public use. I feel that the public use has a wide definition. I live on Lake Tillery and if we had a downpour and the geese dropped a pound and a half and it went into Lake Tillery then that is a hazard to public safety. The farmer is training the dog and even though the farmer may be a private entity the dog is being used for the public.”

Chair Fish “Those with standing in the matter have thirty days to appeal this to the Stanly County Superior Court.”


Adjournment

Motion by:Richard Cosgrove

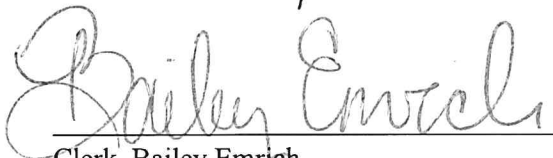
Second by:Michael Fleming

Vote:6-0

Time:9:20 PM



Chair, Cindy Fish



Clerk, Bailey Emrich