

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 The Zoning Board of Adjustment (the "Board") of the County of
2 Chatham, North Carolina, met in the Henry H. Dunlap Building
3 Classroom, 80 East Street, located in Pittsboro, North Carolina,
4 at 2:00 PM on December 14, 2009.
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8 Present: Chairman George Lucier, Vice Chair, Sally Kost;
9 Commissioners Mike Cross, Carl Thompson, and Tom Vanderbeck,
10 County Manager, Charlie Horne; County Attorney, Jep Rose; Clerk
11 to the Board, Sandra B. Sublett; and Deputy Clerk to the Board,
12 Elizabeth Plata.
13

14
15 The Chairman called the Chatham County Zoning Board of
16 Adjustment meeting to order at 2:00 PM.

17
18 Lucier: We are here today to hear an appeal by Glenn Lassiter
19 on behalf of Nelson and Janice Wall from a determination by the
20 Chatham County zoning enforcement officer and zoning
21 administrator. The way we will do this is that we will have an
22 opening statement of about five minutes, first by the County and
23 then by the Appellant and then we will go into the examination
24 of the witnesses starting with the County zoning enforcement
25 officer and zoning administrator. With that, Mr. Heafner you
26 are representing the zoning administrator and zoning enforcement
27 officer, and Mr. Lassiter, you are representing Janice and
28 Nelson Wall, is that correct?

29
30 Lassiter: There is one preliminary matter, if I may, with
31 regard to the zoning appeal form. It is not altogether clear,
32 there are quite a few different addresses that have been
attached to this property and the address cited on the appeal is
2412 Lystra Church Road. I think I'm dyslexic because I got
that off of the tax record but it was actually 2142 on the tax
records, and I think that there is agreement on our side that
2151 Lystra Church Road is the address of one of these parcels.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 We don't really know what the address of the other one is
2 because we've never received mail there. I think it is
3 appropriate for the chair to allow that to be dealt with at the
4 beginning of the meeting and make sure that is conforming.
That's not an issue for us.

5 Lucier: Can just ask for any objections.

6 Rose: Let's get that property address clarified.

7
8 Heafner: I think that is a good point. Let me ask if this is a
9 good way to stipulate to the description of the property, and
10 that is that there are two county tax parcel numbers that are
11 listed. But I will be listing evidence presented by the County
and Mr. Lassiter has those two parcel numbers. I think you
refer to them in your...

12 Lassiter: 66416 and 19483.

14 Lucier: Are these two parcel numbers agreeable to both of you?

15 Lassiter: I just wanted to apologize for my dyslexia and the
16 confusion about it. I think we all know what property we are
17 talking about.

18 Rose: So we are straight on the two parcel numbers?

19 Heafner: I think those two parcel numbers will accurately
20 identify the property at issue...

21 Kost: Will you repeat those parcel numbers, please?

23 Heafner: 66416 and 19483.

24 Kost: Thank you.

25 Rose: Let me ask another preliminary question. On the appeal
26 notice you've got the acreage of each parcel listed as exactly
27 the same. Are they exactly the same size?

28 Lassiter: That is correct, yes, sir.

29 Lucier: Thank you. Any other issues before we begin the opening
30 statement? If not, then, Mr. Heafner?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

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2 Heafner: Thank you, Mr. Chairman. Good afternoon, board
3 members. I'm Greg Heafner. I am representing the staff, the
4 County here in this matter today. I am going to take less than
5 five minutes. I'll be very brief here and just turn this over
6 to the zoning enforcement officer involved here, Tony Wilson.
7 But I will tell you that the subject property at issue here, as
8 you have seen by looking at the parcel number is approximately
9 eleven (11) acres, total piece of land on Lystra Road. This
10 property, dating back many years, was used as a landfill. It
11 was use as a landfill prior to being covered by any county
12 zoning ordinance, that is not disputed in this case. It was
13 first covered by a county zoning ordinance is 1973, at which
14 point it was zoned residential. That classification of
15 residential zoning has not changed since then. Now the use of
16 the landfill that predated the zoning continues after 1973 and
17 in approximately 1985, the Walls acquired the property. And
18 they operated a landfill under the name M & W Landfill, Inc., a
19 North Carolina Corporation. They had a permit from the State
20 which is required to operate a landfill and they did so. They
21 stopped using this landfill, however, and as such, it no longer
22 is permitted as non-conforming use. The County acknowledged
23 after 1973, that the landfill use was a non-conforming use and
24 would be permitted under the Non-Conforming Use Ordinance, which
25 we will be handing out. The ordinance allows a non-conforming
26 use to continue so long as it continues uninterrupted, it cannot
27 stop being used as such more than six-months, otherwise it is
28 deemed to have abated, stopped and cannot resume. The landfill
29 use stopped. The State's permit expired to run the landfill.
30 The Walls even agreed in a sworn statement that was filed with
31 the Chatham County Register of Deeds to close the landfill. M &
32 W Landfill, Inc., the corporation that had the permit, that ran
the landfill, dissolved, and the County will present evidence
that all landfill activity ceased out there. Grass grew over
top of it. Nothing was happening out there as far as a
landfill. Very recently, some complaints were received that
there were a lot of trucks and traffic going in and out of
there. Investigation ensued and it was found that dirt was
being hauled in and sifted and hauled back out, for construction
purposes. That too, is not permitted in a residential district.
A citation was issued and that is the citation that is being
appealed here today. Tony Wilson, the zoning officer in charge
is going to present the County's evidence.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lucier: Thank you. We are going to hear an opening statement
2 Mr. Lassiter first and then we will go into Mr. Wilson's
3 evidence.

4 Lassiter: Good afternoon, Mr. Chairman, Commissioners. Thank
5 you for this opportunity to be heard and I believe that we will
6 be heard, today. It is fairly difficult to come to this meeting
7 and be prepared to present evidence when the nature of the
8 County's charges are so vague, nebulous and ill-defined, and not
9 defined in the zoning ordinance. During the course of this
10 process, we were asked what we could do and we were told
11 anything that is permissible under the zoning ordinance. Well,
12 that wasn't very helpful for us. What we will show you today,
13 in fact, is that the County in 1990 recognized this as an
14 existing non-conforming use as a landfill. At that time they
15 did not define the extent of that landfill or what that covered
16 in the letter that came out from Mr. Megginson. We would
17 contend that exactly the same activities that are complained
18 about here have been going on since 1990 to the present day, and
19 that the appropriate standard for review is exactly what was
20 going on at that time. I don't think that it would be
21 appropriate to get into things going ...this place was a gravel
22 pit in the fifty's (1950's) for all the roads around there. But
23 we contend that is not the standard that can be applied. We are
24 going to show continuous use and we are going to show that
25 basically this whole thing came out of a dispute involving an
26 Orange County resident and business man who was complaining
27 because my client and he are in competition for something. And
28 in fact, he has not only stirred this up and brought the County
29 in here and made misrepresentation about him that part of their
30 actions are based on. He's also filed lawsuits which we are in
31 the process of vehemently defending and we feel we will be
32 completely exonerated when the time comes. This person is
unreliable. He's sued three or four other people at the same
time. I've never seen anything like it. We are going to show,
and Mr. Wall is going tell you, that what is going on now is
exactly what's been going on there with one exception. It
probably does recycle more than it did in 1990. And I think
that we all recognize that the nature of a landfill has
certainly changed in the last twenty (20) years, and even though
the old adage was "one man's trash is another man's treasure",
has always been true to landfills, regulated or otherwise, that
in recent years more and more emphasis has been placed on
reusing, recycling, refurbishing and not doing things that

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 aren't sustainable. We would suggest that the only thing,
2 complaint that I've seen is that perhaps we are being more
3 sustainable; we are doing more recycling than we were earlier.
4 Well, who isn't? I have a new compost bin at my house that
5 hasn't been there too long. A lot of people have come to
6 understand that some of the things we're doing were not
7 sustainable. And what Mr. Wall is doing here, I would just
8 address the issue with the State permit. This is not a State
9 permit here. Mr. Wall is engaged in activities that may or may
10 not fall under the State permitting process. It's not for this
11 Board to decide, nor is it relevant to this Board what dealings
12 he's had with the State. The issue is what was going on there
13 in 1990 when he was grandfathered by the County as a non-
14 conforming use and what has been going on there since and has it
15 been interrupted? I think we will clearly show that it has not
16 and that what was going on this day was not only within the
17 bounds of the non-conforming use, it was also interrupted and
18 stopped at a great deal of expense to my client by overzealous
19 and over aggressive enforcement before this matter had been
20 thoroughly reviewed and before we had any chance at all to be
21 heard. Thank you.

16 Lucier: Mr. Heafner, we are ready to hear from the zoning
17 enforcement officer and other witnesses you wish to call. Wait a
18 second; I need to swear everyone in. Who is going to testify
19 today?

19 Lassiter: All of these people may testify depending on what
20 evidence is offered. So I think they should all be sworn in,
21 just in case.

22 Lucier: So everyone who intends on testifying please stand up
23 and raise your right hand. You will simply wait for me to go
24 through it, and then if you agree to what I say, then say "I
25 do". Do you swear or affirm that the information you are about
26 to give us is true to the best of your ability. Signify by
27 saying "I do".

27 Witnesses: "I do."

28 Lucier: Sorry for the interruption. Mr. Heafner you are ready
29 to go now.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wilson: Good afternoon, Board Members. As I stated before, what
2 we are here for today is, and if you can open your booklet, the
3 first page is a case summary for the Zoning Board of Adjustment,
4 is our case number 'C' as in Charles, zero-one, zero-one seven-
5 two (010172. Site address is 2151 Lystra Church Road. Also
6 known as parcel numbers 19483, and parcel 66416. What brings us
7 here today is an appeal, (inaudible) action or actions or
8 discretion of a zoning enforcement office on the parcel numbers
9 that were given. The recommendations on behalf of the zoning
10 enforcement officer and the planning staff is to deny this
11 appeal request based on the evidence that we are going to
12 present. The appellants are Nelson and Janice Wall, 64 Willow
13 Way, Chapel Hill. The purpose is to appeal this decision and
14 interpretation of the zoning enforcement officer and the
15 citation. A citation has not been issued. Only a warning
16 citation. For the illegal use of property located at 2151
17 Lystra Church Road, for a contractor's storage yard and a
18 recycling process and operation, an operation connected with an
19 LCID non-permitted landfill. This area is zoned R1,
20 residential. And it has been zoned as residential. The
21 adjacent zoning tracts around this property are residential The
22 zoning board in section four, districts, established a
23 definition of R-1 zoning, section 10.4, R1 residential district,
24 section 10.13, a table of permitted uses in R1 zoning. The next
25 page, which is a time line, as prepared by the zoning staff,
26 beginning in April 1973, through the year 2009 up to the appeal
27 date of November 6 (inaudible). The recommendations, again
28 denial of this appeal and upholding the actual decision of the
29 zone enforcement office and planning division. Action dates,
30 the appeal proceeding was on 11/6/2009; the day for the Zoning
31 Board of Adjustment hearing was 11/16/2009; the property posted
32 for hearing was on 12/1/2009; the appeal hearing notice sent to
the local paper was 12/8/2009; and the appeal hearing notice
appeared on 12/10/2009; and we are here today on 12/14/2009 for
the appeal hearing. If you will turn to your booklets to
Attachment Number 1, behind Tab #1: Chatham County Zoning
Ordinance excerpt of R1 zoning districts and their permitted use
and zoning map. Fourth paragraph down. As you can see here on
the board: Residential District: This district is primary for
low to moderate density residential development within
residential-agriculture areas of the jurisdiction. Page 2 is
Permitted Uses in R1 Districts:

Lucier: Your pages aren't matching up with ours. I have ...

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

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2 Wilson: I'm sorry, Page 3. Page 3 at the top, Subsection 10.4
3 of the R1 Zoning District: Permitted Uses that's allowed in the
4 R1 Zoning District. This continues on to Page 4 at the top;
5 number 4 at the top. Page 5 and 6 was allowed uses in R1
6 Zoning, either indicted by a conditional use permit or permitted
7 in R1 Zoning District, R5, anything zoned in the County. Page
8 6, which is not numbered, I'm sorry, Page 7, which is not
9 numbered, is the current zoning map of these particular two
10 parcels. Behind Tab #2 this would be the letter that was sent to
11 Mrs. Jean Merritt, who is the "M" part of M & W Landfill, dated
12 November 10, 1987 signed by Marlvern F. King, who is an attorney
13 from Pulley, Watson, King and Hofler, PA out of Durham. It
14 reads: "Please find enclosed Affidavit signed by Mr. Ned Diggs,
15 attesting to the use the property owned by M&W Landfill. Our
16 Paralegal went over to his home and had him sign the affidavit.
17 He was cooperative and has agreed to help you. If you need
18 other information concerning this matter, or require any other
19 legal help, please let me know. My best regards, I am," and it
20 was signed by Mr. King. Attached to that is the affidavit...

21 Lucier: M&W Landfill owned those two pieces of property?

22 Wilson Yes, sir.

23 Lucier: How do we know that?

24 Wilson: The two parcels requested is M&W Landfill.

25 Lucier: So that is always what it's been called.

26 Wilson: Yes, sir.

27 Lucier: That is what it was called before Mr. Wall bought it?

28 Wilson: No, sir.

29 Lucier: No, that is what it was called after he bought it.

30 Wilson: Yes, sir.

31 Lucier: Okay, thank you.
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MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wilson: Page 9 at the top is the affidavit that was signed by
2 Mr. Diggs on the 10th day of November 1987. Behind Tab #3 should
3 be attachment 3, page 10. This is the letter that at the time
4 of the record from planning director Keith Megginson to Mr. Wall
5 at M&W Landfill. "This letter is to inform you and other
6 interested persons that the property owned by M&W Landfill ,
7 listed by the Chatham County Tax office as PIN #, as given,
8 County for zoning purposes as a non-conforming use as a
9 landfill. It has been observed as a landfill for construction
10 materials, stumps and debris, not materials considered toxic in
11 any way. According to the attached affidavit by a nearby
12 property owner, it has been in operation as a landfill prior to
13 and since the effective date of the current zoning ordinance".
14 This is dated May 29, 1990.

11 Kost: What was the purpose of this affidavit signed by Ned
12 Diggs?

13 Wilson: From our best understanding of what this was, it was
14 confirming that this has been used as a landfill in the past,
15 prior to the zoning. That is our understanding.

16 Kost: I realize it was a long time ago.

17 Lucier: One other question on the ...

18
19 Wilson: Ms. Kost, on the affidavit, #5 it says that "this site
20 was ... equally used by the general public as a dump for a great
21 number of volume of items including refrigerators, tree limbs,
22 and assorted household trash".

22 Lucier: Mr. Wilson, is this the last written communication?
23 Was there any other communications prior to your apparently
24 becoming aware of your concern about a violation? In other
25 words, between 1990 and 2009 were there any other communications
26 from the County to Mr. Wall?

26 Wilson: No, sir.

27 Lucier: None that you are aware of, at least.

28
29 Wilson: None that I am aware of. Any other questions?
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MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Kost: I have another question about the letter that is under
2 Tab #3 from Mr. Megginson to Mr. Wall. Do you know why that
3 letter was generated? It just, a few years later..

4 Wilson: Again, it's our understanding that it is just confirming
5 that the County understands that this property has been used
6 prior to zoning as a landfill, a nonconforming landfill.

7 Kost: So we don't know if it is in response to a complaint?

8 Wilson: No, ma'am.

9 Lucier: And the letter refers to an attached affidavit from a
10 nearby property owner. That was the other one.

11 Thompson: I have question, Mr. Chair. In the letter sent by
12 Mr. Megginson, it looks like there are two parcels listed. One
13 is 5 acres, and one is 1.6 acres. That's 6.6 acres, are we
14 looking that whole property?

15 Wilson: 1.6 acres.

16 Thompson: It looks likes there's just one parcel of 5 acres. Am
17 I missing something?

18 Wilson: No, sir, you're not.

19 Thompson: But there are 2 with 5 acres. I see it now. I
20 thought I heard 11-acres a while ago.

21 Lucier: Eleven total. They don't quite add up right because it
22 is 11.7 by the parcel numbers but we understand how those things
23 work, but it is a slight mismatch there with the acres

24 Thompson: I didn't see the additional 5 acres. I missed that.

25 Wilson: Attachment #4 behind Tab #4. The Chatham County Zoning
26 Ordinance, Section 9. Non-conforming Situations. This is what
27 is currently on the books today as our zoning ordinance. Non-
28 conforming Lots of Record Continuous and the definitions.

29 Lucier: Is there anything in particular that you want to point
30 out to us there? What is the relevance there?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wilson: Non-conforming Lots of Records. "Where the owner of a
2 non-conforming lot of record does not own sufficient land to
3 enable him to conform to the area or lot width requirements,
4 such lot may be used as a building sited provided all other
5 dimensional requirement are met and provided that all use to be
6 made of the property is not one to which larger than minimum lot
7 area requirements are called for in the list of permitted uses".
8 Next page. Page 13, Tab #4. 9.7 of the zoning ordinance.
9 Discontinuance of Non-conforming Uses: "When active operation
10 or occupancy of a non-conforming used is discontinued,
11 regardless of the purpose or reason, for a consecutive period of
12 365 days , the property involved may thereafter be used only for
13 conforming uses. The requirement of this subsection shall not
14 apply to uses in buildings undergoing reconstruction in
15 accordance with the provision of Subsection 9.5. For the
16 purpose of determining whether a right to continue a non-
17 conforming situation is lost pursuant to this subsection, all
18 the buildings, activities, and operations maintained on a lot
19 are generally to be considered as a whole. For example, the
20 failure to rent one apartment in a non-conforming apartment
21 building or one space in a non-conforming mobile home park for
22 365-day shall not result in a loss of the right to rent that
23 apartment or space thereafter so long as the apartment building
24 or mobile home park as a whole is continuously maintained. But
25 if a non-conforming use is maintained in conjunction with a
26 conforming use, cessation of operation of occupancy the non-
27 conforming use for the required period shall terminate the right
28 to maintain it thereafter".

21 Lucier: That number is different from what Mr. Lassiter said in
22 his opening statement. He said six-months and the ordinance
23 says 365 days. I'll ask Mr. Lassiter about that...but the
24 ordinance says 365. But it is 365 days?

24 Wilson: Yes, sir. Attachment #5. Dated May 7, 1996, Amendment
25 1, Solid Waste Permit. Permit NO. 19-C. M&W Landfill, Inc., a
26 corporation wholly owned by Mr. R. Nelson Wall and Mrs. Janice
27 C. Wall, successors-in-interest to Mr. Billy C. Merritt and Mrs.
28 Betty Jean Merritt and Mr. R. Nelson Wall and Janice C. Wall.
29 Are hereby issued a permit to operate, until 1 January 1998 or
30 until closure whichever occurs first and according to the
31 approved plans, a LAND CLEARING AND INERT DEBRIS LANDFILL. And
32 then it gives the location to where it is, and it pertains to
the two parcel that...on Lystra Church Road.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

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2 Kost: How is closure defined? What does it means to close a
3 landfill? Do you know?

4 Wilson: I don't know. Closed is closed.

5 Lucier: Thank you. Please go on. [audience member
6 speaks...inaudible] Excuse me. If you are going to be called as a
7 witness we'll do that. We need to go in the order we talked
8 about.

9 Wilson: Page 15. The Solid Waste Permit. M&W Land Clearing
10 and Inert Debris Landfill. Conditions of this Permit. "The
11 North Carolina Solid Waste Section permits the M&W land clearing
12 and Inert Debris Landfill for the purposes of closure only. The
13 M&W Landfill operated illegally for several years prior to this
14 permit and the Solid Waste Section does not fully know the
15 contents contained in the landfill. M&W Landfill shall close the
16 landfill in accordance with the attached plans. This Permit
17 shall be effective until 1 January 1998 or until closure,
18 whichever occurs first consistent with the joint affidavit
19 signed 29 March 1998 and approves the operation and closure of
20 the referenced landfill on the property defined in the attached
21 Legal Description. Additional conditions and revisions of the
22 approved plans shall be approved by the North Carolina Solid
23 Waste Section. Upcoming amendments to the Solid Waste
24 Management Rules or violation of groundwater standards may
25 necessitate the modification of the construction and operation
26 plans of even closure of this prior to this date. This permit
27 shall not be effective unless the certified copy is filed in the
28 Register of Deeds Office, in the grantor index, under the name
29 of the owner of the land in the county or counties in which the
30 land is located. After recordation, forward the certified copy,
31 with page and book number, date of recordation and the
32 Register's seal indicated on them, to the Solid Waste Section as
follows: And it gives the address for it to be sent to. When
this property is sold, leased, conveyed or transferred, the deed
or other instrument of transfer shall contain in the description
section in no smaller type than used in the body of the deed or
instrument a statement that the property has been used as a land
clearing and inert debris landfill. The solid waste disposal
site is permitted to receive stumps, trees, concrete, rock, used
asphalt pavement (no asphalt shingles), and clean soil. This
facility shall conform to operating procedures in Rule 0.0566 of

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 the Solid Waste Management Rules and the following specific
2 conditions: Solid Waste shall be restricted to the smallest
3 feasible and compacted as densely as practical. Ms. Kost, on
4 Page 16, this will define the question you had on closure.

5 Kost: Right. My point is that the State has a procedure for
6 closing a landfill.

7 Wilson: Yes, ma'am. As far as to what those procedures are, I
8 am not aware of them.

9 Kost: They're here.

10 Wilson: Page 17.

11 Kost: So is this the latest permit? I understand this is a
12 State issue and I heard the attorney speak to the relevancy of
13 this, but I just want to make sure I'm clear. Is this the only
14 permit we have or is there something later than this?

15 Wilson: This is the permit that has been issued by the State.
16 There is an attachment to the original permit that he was
17 issued. Back on the first page?

18 Kost: I am a little bit confused.

19 Wilson: This permit is an amendment to the permit dated May 7,
20 1996.

21 Kost: I see that it's an amendment. So, again this is State
22 issued. So if I am reading this correctly there is not a valid
23 permit right now for a landfill?

24 Wilson: Correct.

25 Lucier: One other question. In your opinion if there was a
26 permit but no activity, at the site for a period of a year, but
27 the permit went for a longer period than that, what would that
28 mean in terms of our ordinance in your opinion?

29 Wilson: Do we have evidence to show if it was a permitted
30 facility?
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lucier: If it was a permitted facility, and yet there was no
2 activity for a year?

3 Wilson: It would still go through the same procedure because
4 there is no activity for a year.

5 Lucier: So you are saying in your opinion that the County
6 ordinance would trump the permit?

7 Wilson: Yes, sir, because it expires after 365 days of non use.

8 Lucier: Right. That was my question.
9

10 Wilson: Page 18. This is a joint affidavit between M&W
11 Landfill, Inc. and R. Nelson Wall and Janice C. Wall. Item #9
12 on Page 19.

13 Kost: What is purpose of this on Page 18? To show us what?

14 Wilson: This gives them an extension to 1998 on their current
15 permit. That affidavit, you'll notice the book and page number
16 that are stamped in the right top corner, followed the same
17 numbers on the permit itself. That was an affidavit signed by
18 Mr. and Mrs. Wall agreeing with the State's permit and its
requirements that the landfill be closed by

19 Lassiter: We are going to have to object at this point. We
20 certainly are prepared to explain all the dealing with this
21 permit. He has just admitted that the County's Zoning Ordinance
22 trumps the permit. So I don't see what relevance under those
23 circumstances that the permit has, or anything to do with the
24 permit has. My client is going to be prepared to testify that
25 he doesn't need a permit for what is going on in his property
26 and I don't think there is anybody here that is prepared to
27 refute that or with the expert (inaudible)..

28 Lucier: You will have a chance, by the way, Mr. Lassiter, to
29 cross examine Mr. Wilson, and you can ask those questions, too.
30 You can make those points when your turn is up.
31

32 Wilson: Item #9 on Page 19. Each affiant hereby expressly
acknowledges that: (a) The permit extension (to January 1, 1998
or until closure elevations are met, whichever occurs first) is
a final and binding obligation which must be followed strictly;

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 (b) That the Division of Solid Waste management is under no
2 obligation to grant many further extensions beyond January 1,
3 1998 or beyond the date that the closure elevations are met,
4 whichever occurs first. Page 20 is the signature of R. Nelson
5 Wall and Janice C. Wall dated 29 March, 1996. Page 22 is what
6 is required by the State known as 15A NCAC 13B.0563;
7 Applicability Requirement for Land Clearing/Inert Debris (LCID)
8 Landfills. That consists of pages 22 and 23.

9
10 Lucier: And what is the point of that?

11
12 Wilson: Give me one second.

13
14 Heafner: The point of that document, Mr. Chairman, is that's
15 the State's statute and the Administrative Code pertaining to
16 landfills and the first requirement, number 1 there, under that
17 first paragraph says that a permit is required by the State to
18 operate a landfill. It goes on to say there are certain
19 situations where a permit is not required but the following must
20 be met. So this basically is relevant to show that without a
21 permit, a landfill cannot be operated. You saw in a prior
22 document that the permit expired in 1998.

23
24 Lucier: So it is your opinion then, to go back to my question
25 of a few minutes ago, that if a permit is granted, but the
26 permit is not activated in terms of the use of the landfill,
27 then the landfill, according to zoning ordinance cannot be
28 operated again if it goes 365 days without being used. On the
29 other hand it is your contention that the landfill cannot be
30 operated based on the statute without a permit. So either, in
31 that particular case the State would trump the County. Is that
32 right? I'm just trying to sort through this relationship.

33
34 Heafner: You are looking at exactly why we presented this. And
35 that is to show what you just said, and if there is any
36 contention that a landfill has continued to be run, that the
37 landfill did not stop, right here it is very clear that the
38 State pulled their permit, State law does not allow a landfill
39 to be used without a permit and the Wall agreed by signing the
40 affidavit that they would shut down their landfill. And I think
41 you are going to get to some more documents that will show, in
42 fact, that the permit did expire. So it shows that if there is
any contention that the landfill is still, has never stopped
being operated, the property never stopped being used as a

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 landfill, this evidence will show that ... doesn't conform to
2 State law, or ... with their own evidence.

3 Lucier: I'm just trying to understand the relationship with the
4 State statute and the County Zoning Ordinance.

5 Kost: I would think that.....new permitting of a landfill, the
6 State looks at the Zoning of it as part of the permitting
7 process. That would only make sense.

8 Wilson: (inaudible).....permits according to State regulations,
9 they would have to be approved and meet all local zoning
10 ordinances and ...

11 Lucier: And don't they at that point require another letter from
12 the County?

13 Wilson: Yes, sir.

14 Lucier: Is there a letter after that from the County to the
15 State saying that? For example, has the State ever requested
16 from the County after 1996, a letter that says does this comply
17 with County zoning ordinances?

18 Wilson: Not that I am aware of, no sir. Because the State
19 deemed it closed and inactive in 1998 according to their
20 regulations.

21 Thompson: I would like to ask for clarification at this point,
22 Mr. Chairman. The issue before us today as a board has to do
23 with non-conforming use, had ceased for a long enough period of
24 time so that the owner can't go back and use the property again
25 for the same purpose. That is the only issue before us. It has
26 nothing to do with a State permitting process.

27 Lucier: Yes and the assumption is that this is being presented
28 to us to determine whether or not that question is being met.
29 Obviously the State has their statute so the question is if this
30 evidence in support of the contention that it has not been used.
31 At least that is my understanding.

32 Wilson: Item No. 7 Page 24, at the top. Is a copy of the NC
Division of Waste Management-Solid Waste Program. If you'll
note there, line item County of Chatham, Waste LCID Activity.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 LF stands for Landfill. Status is Inactive Closed. Permit
2 number 19C-LCID; Facility: M&W Landfill, Lystra Road, Chapel
3 Hill, Nelson Wall and his contact number. That also says
4 (inaudible). Attachment number 8. The photo you see before you
5 was taken December 9, 2008 by me from an adjacent property
6 owner. I was on the adjacent property investigating a possible
7 illegal mining operation and contractor storage yard. The next
8 one on page 26 is another picture, also taken on December 9, no
9 activity is occurring on this land. This land is what is known
10 as M&W Landfill. The next two pictures are different pictures
11 from the same vantage point, indicating that no activity is
12 taking place. It appears nothing has taken place in a while.
13 Again, these pictures were taken from an adjoining property
14 located behind M&W Landfill. Page 28. More pictures taken from
15 the adjacent property owners while conducting another
16 investigation. No activity is going on. Grass is growing.
17 Trees are growing. No activity is taking place. And that was
18 December 9, 2008. Those photos were taken by me.

14 Lucier: How do you know that this is evidence that no activity
15 had occurred in the last 365 days?

16 Wilson: I'll get to that. Behind Tab no. 9. This was the day
17 I conducted a site visit after receiving a complaint of 30-50
18 trucks per week going in and out of what we call M&W Landfill.
19 Complainant advised that the trucks were hauling the dirt in and
20 screening the dirt out and either stockpiling it or hauling it
21 to an undisclosed location. These photos were taken by me on
22 September 4th 2009. Page 29, 30, 31, 32 and 33.

21 Kost: Is there a valid erosion control permit for disturbance of
22 more than a half acre of land?

23 Wilson That is a question you will have to ask our erosion
24 control officer.

25 Kost: But you don't have a ...

26
27 Wilson: We have not received a copy of one, no, ma'am. Behind
28 Tab No. 10. Page 34, this is a Certificate of Dissolution from
29 the Secretary of State of North Carolina concerning M&W Landfill
30 noting that M& W Landfill has been administratively dissolved
31 pursuant to the procedure set forth in NCGS Section 55-14-21 for
32 failure to file an annual report effective as of the date set

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 forth hereunder. Signed by Elaine Marshall, Secretary of State.
2 Behind Tab 11, Page 35. This is the Warning Citation that was
3 issued on October 8, 2009 explaining to Mr. and Mrs. Wall what
4 they were in violation of according to the Chatham County Zoning
5 Ordinance for R1 Zoning Districts. It also explains the process
6 of appeal, and how many days it gives them to contact us to make
7 other arrangements or to file for any further permits. What is
8 cited in the warning citation is the use of a contractor's
9 storage yard and non-conforming use and recycling. The first
10 bullet point there says: "The inspection revealed a violation
11 of the Chatham County Zoning Ordinance Section 10, sub-section
12 10.4 and as seen in the Table of Permitted Uses under sub-
13 section 10.13 for the creation of a contractor's storage yard
14 and recycling/process operations which are not permitted uses in
15 an R-1 Residential zoning district". Again, this was issued on
16 October 8, 2009 from this office and it was received and signed
17 for on October 10, 2009. Page 37. This photo was taken from
18 adjoining property again, from across the same location dated on
19 December 8, 2008, on October 21 2009. As you can see, activity
20 has taken place or is ongoing. Those pictures indicated 37-40.
21 And these photos were taken by me from the adjoining property.

22 Lucier: And you were first notified by the adjoining property
23 owner, when? What they thought might be a violation?

24 Wilson I wasn't notified by the adjoining property owner.

25 Lucier: How did you find out about it?

26 Wilson: I had a person call me and tell me that he was observing
27 30-50 trucks a week entering M&W Landfill, bringing in dirt,
28 sifting it out, separating it, either stockpiling it or hauling
29 to an undisclosed location.

30 Lucier: When did you receive that phone call?

31 Wilson: September 3, 2009.

32 Lucier: And then, later that month you just started taking
those pictures, is that correct?

Wilson: Yes, sir. On Tab 13, is the appeal filed for Mr. Wall
and Mrs. Janice Wall by Glenn Lassiter. There are 11
attachments to include. Receipt of \$500 on behalf of Mr. Wall

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 for the appeal process. If I may, I'd like to enter this
2 booklet in as our Exhibit 'A' into evidence.

3 Rose: Let's get that marked County's Exhibit One (1).

4 Lucier: That's labeled Exhibit One.

5
6 Rose: The entire book, right.

7 Heafner: Yes, sir.

8 Lucier: Mr. Lassiter, you have your opportunity to cross
9 examine Mr. Wilson, now.

10 Lassiter: Mr. Wilson, I'm going to start with one thing here.
11 I'm Glenn Lassiter, I'm counsel for Mr. and Mrs. Wall. Now, you
12 don't purport to have any expertise, in applying State law, or
13 being an employee of Environment and Natural Resources. Is that
14 correct?

15 Wilson: Correct.

16 Lassiter: Are you aware if Mr. Wall's been cited for any
17 violation by DENR for any operations on his property?

18 Wilson: Not that I'm aware.

19 Rose: Excuse me, Mr. Lassiter. [directed to the clerk] Are you
20 picking him up? He is away from the mike down here.

21 Lucier: Should we move that mike closer to him.

22 Lassiter: (Inaudible). Can you tell us what a contractor's
23 storage yard is?

24 Wilson: It is a parcel or piece of property for materials,
25 where materials are and equipment are stored for use by the
26 owner of such materials.

27 Lassiter: You gave us a copy of the zoning ordinance that showed
28 that some things needed to be conditional use in this zoning
29 district. Is that correct?

30 Wilson: Yes, sir.
31

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lassiter: Can you point us in the zoning ordinance to the place
3 where that definition "contractor's storage yard" is located?

4 Wilson: There's not a definition.

5 Lassiter: There's not a definition. What other activities did
6 you observe on Mr. Wall's property on the day you made the visit
7 and decided to write a citation?

8 Wilson: There was a gentleman there with a piece of equipment
9 moving dirt around. I asked him where Mr. Wall was. He said he
10 was not there but he was on his way back there. I said fine,
11 I'll wait this time. He was moving some dirt and stuff around
12 but other than that, that's it.

13 Lassiter: So the violation is moving dirt? Moving dirt on this
14 property did not (too soft to hear)

15 Wilson: I didn't say moving dirt was (inaudible)

16 Lassiter: Can you please, very specifically, explain to us
17 exactly what it was that was going on, on the property that was
18 a violation.

19 Wilson: Dirt was being allowed to be brought in on his property
20 from an undisclosed location. Being processes, stockpiled, or
21 hauled back out.

22 Lassiter: A permitted landfill would be what was going on, is
23 that correct?

24 Wilson: I am not sure if that fits in the contours of being a
25 permitted landfill or not.

26 Lassiter: When it comes to nonconforming uses, would you agree
27 that it is in fact the use that is at issue and not what entity
28 may have been on the property or using it? It's not tied to M&W
29 Landfill (inaudible)

30 Wilson: I don't understand what you are saying.

31 Lassiter: A use is a use. The activities on the property are
32 what determines whether or not (inaudible), is that correct?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 It's not who's is doing them, it's being done there or not being
2 done. Is that not correct?

3 Wilson: It depends on how you look at it? A different person
4 could perceive that differently.

5 Lassiter: Now, it was Tony Mayer that called you to complain,
6 was it not?

7 Wilson: I do not know who the caller was.

8 Lassiter: Have you had any subsequent contact with Tony Mayer
9 (inaudible)

10 Wilson: I don't know who he is.

11 Lassiter: Did there come a time that you provided your
12 investigatory notes in this manner to any parties, lawyers or
13 other citizens other than us in the course of these proceedings?

14 Wilson: I did not.

15 Lassiter: Do you have any explanation for why Mr. Mayer's
16 lawyer in Hillsborough has a copy of your investigatory notes
17 from your desk?

18 Wilson: No, I do not.

19 Lassiter: Do you know if Mr. Mayer owns a landfill in Orange
20 County?

21 Wilson: That is not my jurisdiction.

22 Lassiter: Do you know if he owns a landfill?

23 Wilson: No, sir, I do not.

24 Lassiter: Taking you to 1990, would it be fair to say that you
25 have absolutely no idea what was going through Mr. Megginson
26 head when he wrote that letter to (inaudible) for nonconforming
27 use as a landfill?
28

29 Wilson: I can't answer for him. I wasn't here at that time.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: The only thing in the file was the affidavit. Is that
2 right? The only thing related to that situation, that appears to
3 be tied to it, you suggested is tied to it is the affidavit from
4 the individual. Is that correct?

5 Wilson: The affidavit sent to the Wall's from Mr. Megginson.
6 Yes.

7 Lassiter: Other than that, you have no idea what Mr. Megginson
8 may have considered other than the affidavit?

9 Wilson, No, sir.

10 Lassiter: Are you aware of any other zoning enforcement with
11 respect to this property since you've been a zoning enforcement
12 officer?

13 Wilson: No, sir.

14 Lassiter: How long have you been a zoning enforcement officer?

15 Wilson: Three years.

16 Lassiter: How long have you been familiar with this property?

17 Wilson: About fourteen (14) years, eleven (11) as a law
18 enforcement officer.

19 Lassiter: Going back to May of 1990, when Mr. Megginson wrote
20 his letter, are you aware of, or have you reviewed, the files
21 for this piece of property in your office?

22 Wilson: I reviewed what was in the file that Mr. Megginson had.

23 Lassiter: Is there anything in the file that would indicate any
24 kind of zoning enforcement action on this property?

25 Wilson: No, sir.

26 Lassiter: Is there anything in the file that indicates there
27 has been any kind of State permitting action on this property?
28 Is there anything in the file that indicates there has been any
29 kind of sedimentation action against this property?
30

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wilson: I have not seen that.

2 Lassiter: Is there anything in the file that indicates any kind
3 of action against any activities happening on this property?

4 Wilson: (Inaudible)

5
6 Lassiter: I would just take you behind Tab 6. You are not
7 suggesting that you have (inaudible)..or have the slightest clue
(Inaudible)

8 Wilson: No, sir.

9
10 Lassiter: Do you know what the definition of "landfill" was in
11 the County zoning ordinance in May of 1990, the date the letter
was written?

12
13 Wilson: What are you asking? The definition of a landfill in
14 1990, taken from the zoning ordinance? Chatham County Zoning
Ordinance, I've been told this is 1992: [reading from ordinance]
15 Land areas of greater than ½ acre in size for the deposit of
16 inert materials and land clearing materials including, gravel,
17 rocks, stumps, soil, not contaminated by petroleum products,
18 unpainted and untreated building materials such as brick,
19 concrete, blocks and lumber. Personal homeowners use of inert
20 debris, landfill materials, (inaudible) not to exceed 2 acres in
size, be exempt from requirement of a conditional use permit,
commercial inert debris landfills, or any that exceed 2 acres in
size will require a conditional use permit."

21 Lassiter: What is the title of that section, please?

22
23 Wilson: This will be in the definition section of Chatham
24 County Zoning Ordinance.

25 Lassiter: What's the name of the word or words being defined?

26 Wilson: Land clearing and inert debris landfill.

27
28 Lassiter: Of course Mr. Megginson letter doesn't say anything
29 about a land clearing and an inert debris landfill (Inaudible)
uses the word "landfill".

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wilson: (inaudible) correct in saying that, let me confirm
2 that. It says in his letter that it is considered by Chatham
3 County for zoning purpose as a nonconforming use as a landfill.
4 It has been observed as a landfill for construction materials,
stumps and debris. Not materials considered toxic in any way.

5 Lassiter: (Inaudible). Go to page 19, looking at item 'c'.
6 Simply, that section reads: "that after the first to occur of the
7 dates specified above, the affiants will not accept any more
8 regulated waste at the landfill site." Do you know what
regulated waste is?

9 Wilson: You want a definition or my opinion?

10 Lassiter: Do you have any idea from a legal standpoint what the
11 State's definition of regulated waste is?

12 Wilson: No, I do not.

13 Lassiter: Would it surprise you to learn that dirt and/or rock
14 is not regulated waste under State law?

15 Wilson: It may or may not be, I don't know.

16 Lassiter: Go to Tab 10 on page 34. We've included the
17 Certificate of Dissolution from the Secretary of State for M&W
18 Landfill, Inc. You don't contend that you have any knowledge of
19 the interior operation of the corporation known as M&W Landfill,
20 Inc., do you?

21 Wilson: No, sir.

22 Lassiter: This is just something that the Secretary of State
23 does when for whatever reason, (inaudible) in annual reports.

24 Wilson: (inaudible) Yes.

25 Lassiter: By your definition of the zoning ordinance, what
26 could Mr. Wall do on his property, with regard to dirt and
27 moving around, (inaudible)

28 Wilson: He could file for a conditional use permit.
29
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: I'm saying what can he legally do now on his property
2 with regard to hauling dirt, or moving it around or having any?

3 Wilson: Well, the acreage is R1-Residential. That is the only
4 thing allowed by the zoning ordinance. Residential (Inaudible)

5 Lassiter: So did that prohibit him from having a front end
6 loader on the property? Is that correct?

7 Wilson: If it's being stored there and can be (inaudible) and
8 can be considered a construction storage yard.

9 Lassiter: So if I had a front end loader at my house, and I'm
10 in R1, then that would be contractor storage yard, too?

11 Wilson: If you are using it, no. If it is there for a
12 temporary purpose, no. If you are actually using it in your
13 business, then yes.

14 Lassiter: Now, let's get back (inaudible) when you went out
15 there. You went out there, there was a man working on a piece of
16 equipment working on top of a dirt pile. Is that correct?

17 Wilson: Yes, sir.

18 Lassiter: Like a skid steer loader?

19 Wilson: Skid steer, bulldozer, some type.

20 Lassiter: Do you see that man here today? Can you identify him?

21 Wilson: Inaudible

22 Lassiter: Is it not true that you ordered him down off of the
23 equipment and you told him he had to quit operating that
24 equipment?
25

26 Wilson: No, sir. I advised him that he might want to. I did
27 not order him to do anything.

28 Lassiter: And then Mr. Wall came by?

29 Wilson: Yes, sir.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: What did you tell him with regard to what to continue
2 or not continue doing on his property?

3 Lassiter: I advised him that I had received a complaint. I was
4 there to investigate the complaint. That, if it was up to me, I
5 would cease operation until he heard from me. I would be filing
6 a warning citation to him. If he had any questions after he
7 received that to feel free to contact my office, make
8 arrangements to meet. And that was it.

8 Lassiter: We did come and meet with you after that.

9 Wilson: Yes, sir.

10 Lassiter: We did offer to compromise and consider any
11 suggestions you guys had about how we might resolve this without
12 coming for a hearing, didn't we?

13 Wilson: Well, you presented some evidence to us that day for our
14 review and I believe you did say that, I think one of the things
15 was that you would be willing to move the driveway if that would
16 help.

17 Lassiter: Just to be clear, you chose on your own, to go out and
18 take this enforcement action without first contacting Mr. Wall
19 or giving him any chance to explain what was going on his
20 property or what his legal basis was for engaging in the
21 activities he was engaged in on that property.

21 Wilson: Yes.

22 Lassiter: And it was based on a complaint you received on
23 September 3rd, correct?

24 Wilson: Correct.

25 Lassiter: I'd like to approach the bench.

26 Lucier: Okay, now this is part of the cross-examination.
27 Should we accept those now?
28

29 Rose: Are you going to examine him with regard to something
30 that is in those? Yes, Okay.

31 (discussion of new evidence and who gets the binders)

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lassiter: I'll call your attention to Tab B. (Citizen's Exhibit
3 'B'). Can you identify that document?

4 Wilson: It's a land use complaint form used by Chatham County
5 Planning Department, filled out by me.

6 Lassiter: And is that marked citizen's Exhibit "B"?

7 Wilson: It is.

8 Lassiter: This represents the complaint, the telephone
9 complaint, you had, is that correct?

10 Wilson: This is what I fill out once I go out and do an
11 investigation. At the top of the page is the date I received
12 the complaint, that is noted on there. There is also noted the
13 nature of the zoning violation and the actual date that I visit
14 the site. The date I investigated was 9/4/2009.

15 Lassiter: And if you could turn to Tab "C". It is marked
16 Citizen's Exhibit "C". Can you please identify that document
17 for us?

18 Wilson: These are my field notes.

19 Lassiter: You received the complaint on September 3rd, is that
20 correct?

21 Wilson: Yes.

22 Lassiter: You went out to the property on September 4th. Do you
23 recall approximately what time?

24 Wilson: What time I went out to the site? Before lunch.

25 Lassiter: Is it your contention that based on these notes,
26 based on your testimony, that the act of simply hauling of the
27 dirt into the property would be in violation of the ordinance,
28 as well?

29 Wilson: Yes.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: Go to Tab "D". "D" as in David. Can you please
2 identify that for us?

3 Wilson: It is the warning citation issued on September 8th by me
4 to Mr. and Mrs. Wall.

5 Lassiter: In looking at that, understanding that there is an
6 administrative process involved, there are several question
7 marks in the first paragraph. I am assuming that you left that
8 blank so you could fill something in later, is that correct? You
were deciding what to put in there?

9 Wilson: No, sir. This is really not relevant to the case.

10 Lassiter: It deals with the question. What were the question
11 marks there for?

12 Wilson: It was an error, in my (?)

13 Lassiter: This warning citation was mailed out certified mail?

14 Wilson: Certified mail, yes, sir.

15 Lassiter: What were they violating at that time?

16 Wilson: I withdrew this one and sent another one back out on
17 October 8th with the correct violation.

18 Lassiter: In fact, this one didn't have any numerations of any
19 violations at all, other than some mention of ...(inaudible)

20 Wilson: It said that it is in violation of the zoning
21 ordinance.

22 Lassiter: For creating and/or conducting something...

23 Wilson: Correct.

24 Lassiter: Please turn to Tab "I". Does that appear to be a plat
25 from the Register of Deeds showing the property in question
26 here.

27 Wilson: Book 91 at page 52. It does.
28
29
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: You also mentioned the use of a recycling facility in
2 your citation letter?

3 Wilson: Yes, sir.

4 Lassiter: Can you tell us what that is?

5
6 Wilson: Screening that material, taking the material into a
7 sifter, sifting out the bad dirt and soils from the good dirt.
8 Taking the good dirt and stockpiling it for sale or whatever
9 reason, for transport to another...(inaudible)

Lassiter: So deciding which materials is recycled and which is
put in the ground would be another way to say it.

10
11 Wilson: You might say that.

12 Lassiter: Can you point us to the section of the zoning
13 ordinance that defines that recycling (inaudible)

14 Wilson: Section 7: Definition: Chatham County Zoning Ordinance.
15 This is not in your books that I provided. Section 7.1.
16 General Purpose: For the purpose of this Ordinance, certain
17 words and terms used herein are defined as herein indicated. All
18 words used in the present tense shall include the future tense;
19 all words in singular number shall include the plural number;
20 all words in the plural number shall include the singular number
21 unless the natural construction of the wording indicates
22 otherwise; words in the male gender include the female gender;
23 All words not defined in this section shall carry the definition
24 prescribed in the common dictionary.

Lassiter: Can I take your attention to Tab "J"? Can you please
read that for us, starting at the top?

24 Wilson: Landfill: From Wikipedia, the free encyclopedia; A
25 landfill, also known as a dump or rubbish dump, is a site for
26 the disposal of waste materials by burial and is the oldest form
27 of waste treatment. Historically, landfills have been the most
28 common methods of organized waste disposal and remain so in many
29 places around the world. Landfills may include internal waste
30 disposal sites (where a producer of waste carries out their own
31 waste disposal at the place of production) as well as sites used
32 by many producers. **Many landfills are also used for other waste
management purposes, such as temporary storage, consolidation**

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 **and transfer, or processing of waste material (sorting,**
2 **treatment, recycling). [Emphasis added]**

3 Lassiter: With regards to the word "closure", you don't pretend
4 that you understand or even have any idea what the State
5 definition of the word "closure" means when it refers to a
6 technical term for the process involved in the end of a
landfill, do you?

7 Wilson: No, sir.

8 Lassiter: I have no further questions at this time. I would
9 request that he be available should additional issues arise
(inaudible)

10 Lucier: So you may wish to call him as a witness then, yourself?
11

12 Lassiter: Well, it's possible that I will need to cross examine
13 further.

14 Rose: Well, he'll be available but you will need to call him as
15 a witness. You've completed your cross examination.

16 Heafner: May I follow up with some questions directed what
17 toward what was asked of him?

18 Lucier: Yes.

19 Heafner: I would think he would be available for any rebuttal
20 without being called. You were just asked, Mr. Wilson to read a
21 definition from a free encyclopedia about what a landfill is,
22 right?

23 Wilson: Yes, sir.

24 Heafner: When in fact, in this case, the County has a
25 definition of landfill, do they not?

26 Wilson: Correct.

27 Heafner: In fact you were asked, and you read the County's
28 definition for a landfill. So the definition that is contained
29 in Wikipedia or any other internet encyclopedia, which
30 definition would control? The County has a definition of a word
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 in the Ordinance. Do you use the County's definition or would
2 you use a Wikipedia free encyclopedia definition?

3 Wilson: I'd have to use the County's definition.

4 Heafner: You were also asked early on by Mr. Lassiter, if there
5 was any definition of what a contractor's storage yard was and
6 you at some point said that was not defined in the County
7 Ordinance, correct?

8 Wilson: Correct.

9 Heafner: But you did read that the County Ordinance says under
10 definitions, all words not defined in the ordinance shall carry
11 the common dictionary definition. Correct? And is anywhere in
12 the ordinance, this goes back to the document NUMBER (?) in Tab
13 1 in the County's exhibits, (inaudible) uses. Does the County
14 permit storage and sifting, what you observed out there, no
15 matter what you call it; whether you call it a contractor's
16 storage yard, whether you call it dirt sifting, whether you call
17 it a carnival. Whatever you call it. What you saw out there in
18 the photograph, is that anywhere listed as a permitted use of
19 the property under Residential zoning.

20 Wilson: No, it's not.

21 Heafner: And in your investigation, I just want to be clear,
22 you presented a lot of evidence up front with respect to
23 landfill use. In your investigation of the property, did you
24 observe anything, any evidence of ongoing use as a landfill?

25 Wilson: I did.

26 Heafner: And what was that?

27 Wilson: The rocks and stuff being used off the back side of the
28 property was known as landfill. It is a low area near a creek
29 or a spring.

30 Heafner: I'm not sure you answered my question. Did you see any
31 evidence of the property being used as a landfill?

32 Wilson: No.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: I'm going to object. Move to strike. He already
2 asked him a question, and he answered it, then he asked it again
3 because he didn't like the answer he gave him. I am going to
4 move to strike the second answer.

5 Rose: Overruled

6 Heafner: Also, you were asked by Mr. Lassiter if you knew or
7 recalled if there had been any action with respect to erosion
8 control out there on the property. Do you remember being asked
9 that?

10 Wilson: Yes, sir.

11 Heafner: And you said you couldn't recall if anything had
12 occurred. I am going to hand you, I apologize to the board, I
13 only have one copy, because I didn't anticipate this being
14 asked, but, (addressing Lassiter) (Inaudible)

15 Lassiter: (inaudible)

16 Heafner: Can you without reading that, Mr. Wilson just tell the
17 board in a couple of sentences, what that is?

18 Wilson: It is a letter from Soil Erosion Sedimentation Control
19 Division dated October 1, 2009, mailed to Mr. and Mrs. Wall
20 regarding parcel 66416 and 19483 from Erosion and Sedimentation
21 Control officer Jim Willis.

22 Heafner: Some of the words, it's the County inquiring about
23 erosion control of the property.

24 Wilson: That's right.

25 Heafner: Can I approach the bench?

26 Lucier: Yes. I believe that is in the blue book that we will
27 get later.

28 Heafner. OK.

29 Lucier: Is that correct, Mr. Lassiter?

30 Lassiter: Yes.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Kost: It's under Tab B.

2 Lucier: And that is the letter dated October 1st from Jim Willis
3 to...

4 Heafner: Mr. Wilson, let me just ask you to clarify the
5 violation notice that is at issue here, that you issued, set
6 forth, that is the notice you put in your book at Tab 11. And
7 this one is dated October 8, 2009 and this is the one that the
8 applicant has appealed today, right?

9 Wilson: Correct.

10 Heafner: And in fact they attached that letter with their
11 appeal. So they aren't appealing that one you issued a month
12 earlier and you withdrew.

13 Wilson: Correct.

14 Heafner: So the one handed to you, is that relevant at all?

15 Wilson: No, sir.

16 Heafner: This is the one that at issue and this is the one they
17 are appealing. Correct?

18 Wilson: Correct.

19 Heafner: And what you've cited them for is uses of the property;
20 for dirt sifting, bringing it in and out, that you said is not
21 listed as a permitted use in a residential district. Right? So
22 you haven't cited them specifically for using the property as a
23 landfill, have you?

24 Wilson: No, sir. I only issued them one citation.

25 Heafner: Well, you haven't even warned them, necessarily, about
26 specifically a landfill.

27 Wilson: No, sir.

28 Heafner: But a landfill is also not a permitted use.

29 Wilson: Correct.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Heafner: And neither is moving dirt in and out.

3 Wilson: Correct.

4 Heafner: That's all.

5
6 Lassiter: Your honor, if I might I'd like to re-cross on a
7 couple of those points?

8 Lucier: Sure.

9 Lassiter: Just to be clear on that last question. In your
10 October 8, 2009 letter, you didn't cite them for anything in
11 there; you didn't say anything about moving dirt or hauling dirt
12 in, did you?

13 Wilson: The only things cited in there is the contractor
14 storage yard and recycling process operations which are not a
15 permitted use in R1 residential zoning.

16 Kost: Can I ask a question? Is there a residence on either one
17 of these parcels? Is there anyone living on either one of these
18 parcels? So, because we do have provisions for home
19 occupations, this would not be applicable to home occupations.

20 Rose: Let's let Mr. Lassiter finish first.

21 Lassiter: The other question I have now; counsel asked you, did
22 you read the definition of landfill, but actually you didn't
23 read the definition of landfill, you read the definition of
24 something else, didn't you? That's not the title of that
25 section. They call it Land Clearing and Inert Debris Landfill,
26 is the section that you read the definition from, is it not?

27 Wilson: He asked me if I read the definition that you provided
28 in your book.

29 Lassiter: And he asked you was there a definition of landfill
30 in the ordinance.

31 Lucier: Can you located that for us so we can find it?

32 Lassiter: This is behind Tab "N" (Citizen's Exhibit "N")

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Wilson: (inaudible)Exhibit N, this is what I read from the
3 zoning ordinance book. His question was, did I read a
4 definition from your book, from free Wikipedia and that is what
5 I read. I did not read this here from your book.

6 Lucier: But he asked you if there was a definition of landfill
7 in the ordinance and you said yes. That's not technically
8 accurate. There is a definition of land clearing and inert
9 debris landfill, but there is not a definition of landfill, that
10 one word, separate.

11 Wilson: No.

12 Lassiter: That's all, Your Honor.

13 Lucier: Thank you. We are going to take a five-minute break.

14 Rose: Let me ask him just one question. The recycling you talk
15 about, is that the recycling of dirt?

16 Lassiter: Yes, it is.

17 Rose: Thank you.

18 Lucier: I did have one other question to ask you. On the
19 ordinance you referred to, the zoning ordinance, and
20 specifically the section on the nonconforming use, is that the
21 language we had prior to, or after December 2, 2008? On
22 December 2, 2008 the Commissioners approved significant changes
23 to the zoning and subdivision ordinances among other ordinances.
24 Is the language in the non conforming section that you read, is
25 that language from the ordinance prior to December 2, 2008 or
26 after December 2, 2008?

27 Wilson: It is the same wording as it was in 2008.

28 Lucier: There were no changes made to the non conforming
29 section? Are you sure about that? I believe we need to have
30 both versions of the non conforming section. I know there were
31 some changes made. Exactly what those changes were, I don't
32 know. I can't remember, but there were some changes. We need
33 that information.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: If we might have ten minutes instead of five it might
2 give us a little extra time to prepare our case.

3 Lucier: Sure. We will reconvene at 3:40PM.

4 RECONVENED AT 3:43:59 PM

5
6 Lucier: As I understand it, Mr. Heafner, you didn't have any
7 additional witnesses. Is that correct?

8 Heafner: That's correct.

9 Lucier: Mr. Lassiter.

10 Lassiter: I would just ask that the board would enter a direct
11 verdict or judgment in my client's favor. At this point I think
12 we have seen a pretty serious defect in the way this matter was
13 handled. Specifically, the warning does not give specific
14 enough notice as to what the activities occurring on the
15 premises are to a person to reasonably reply and defend
16 themselves against that. In fact, our whole case was based...we
17 didn't know what they might say here or what they might claim
18 was a violation of the ordinance. We asked them that at the
19 meeting and they wouldn't tell us. They've referred to two
20 terms neither of which is defined in the ordinance as the basis
21 of the illegal activities. And we would ask that at least with
22 regard to that part, the first bullet, that you can make a
23 finding at this time that they haven't carried the burden of
24 proving their action was appropriate and then it appears with
25 regard to the nonconforming use, the only evidence that they
26 offered is that the State permit expired and therefore, that
27 somehow is controlling, and yet their own witnesses admitted
28 that the zoning ordinance controls over the State permit. So I
29 would contend that with regard to both issues, we are entitled
30 to a direct verdict and at this point that you would quash the
31 enforcement action.

32 Lucier: Commissioners, what is your reaction to that request?

33 Heafner: With respect to that, I'll work backward from what was
34 just said. The reason, and it was asked by the Chairman, why
35 the evidence is presented with respect to the landfill ceasing
36 its use. If you look at the applicants, the appellants' appeal,
37 it states in there that this is considered a nonconforming use

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 as a landfill and it is their position that it has been used as
2 a quarry, etc., etc., as a landfill. It appears by what they
3 filed and from what we hear today, that that was the issue they
4 were raising. So therefore, you heard (inaudible) brought forth
5 the evidence that showed that it is no longer allowed to be a
6 landfill. That was the reason for that. The warning citation
7 is very clear as to what they are violating. What they're doing
8 is not permitted in the table of uses. And Mr. Wilson was asked
9 what he saw out there today. Is there anywhere in the table of
10 uses in residential districts that sifting dirt, storing dirt,
11 whatever you want to call it is permitted? Is it allowed? No.
12 And it is quite obvious from bullet point number 2 if you want
13 to refer to them by that, as counsel was, the citation lists
14 refers to the conversation, it quotes, what the appellant, Mr.
15 Wall, apparently said to him, that he was attending or utilizing
16 this dirt to comply with closing of the prior nonconforming
17 landfill LCID. It is very clear they have knowledge of what the
18 violation is for. And the citation is sufficient in that
19 respect. And I think we need to go forward.

20 Lucier: Thank you. Fellow board members, what is your reaction
21 to the request?

22 Kost: I think we need to learn more.

23 Thomson: I would agree with that. We need to move forward.

24 Vanderbeck: Yes.

25 Cross: Yes.

26 Lucier: Good. We will move forward.

27 Lassiter: I would call Mr. Wall at this time. Will you please
28 state your name clearly for the record and spell your name for
29 us.

30 Wall: Nelson Wall.

31 Lassiter: Mr. Wall, if you can pick up that exhibit on the
32 table, the map is turned upside down and labeled at the bottom.
Can you identify that for the court please, what the exhibit at
the bottom says it is?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wall: It says (inaudible)

2 Lassiter: What does it say underneath that?

3
4 Wall: 2007 GIS aerial map.

5 Lassiter: That is the only one I have of that. Make sure you
6 (inaudible)everybody there, and I'll show it to the
7 Commissioners.

8 Rose: What Exhibit Number is this notebook going to be? I know
9 you haven't introduced it.

10 Lassiter: The notebook and the rest of my report(?). This is
11 Exhibit 2.

12 Lassiter: Mr. Wall, so that is an aerial photo from the
13 County's GIS for your two parcels in 2007. Is that correct?

14 Wall: Yes, it is.

15 Lassiter: Does that fairly and accurately depict what the
16 property looked like in 2007?

17 Wall: Yes, it does.

18
19 Lassiter: And there is equipment on there, of course. And the
20 two parcels are outlined and they follow approximately the same
21 outline as the other map that was introduced by the County. You
22 saw the County map in those exhibits. Is that right?

23 Wall: Yes.

24 Lassiter: One of them is long and kind of narrow. If you could
25 hold it up to show the Commissioner. It's long and has a kind
26 of funny shape on it, almost an egg shape piece and that one and
27 then what's the other?

28 Wall: This one.

29 Lassiter: And so these are the two pieces we are talking about.

30 Kost: What is the date of that aerial?
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Thompson: 2007.

2 Wall: 2007.

3
4 Kost: That is the date the photo was actually taken.

5 Lassiter: According to the County GIS.

6 Lucier: And those are the two pieces of property, both are 5.87
7 acres, correct?

8 Lassiter: 5.83.

9
10 Lucier: 5.83.

11 Lassiter: That is a good place for us to start to clarify.
12 There was confusion about the two 5 acre tracts and the 1.6 acre
13 tract. If you'll go to Tab A, go behind Tab A, is that Mr.
14 Megginson's letter to you back in May 1990? Is that the one
15 that references the two five acre tracts and the 1.6 acre tract.
Is that right?

16 Wall: Yes, it is.

17 Lassiter: And since that time, there has been some recombination
18 on this land but when you look at those two lots that you showed
19 us on Exhibit 2, that is exactly the same land encompassed by
20 these three parcels he listed on his letter in 1990, is it not?

21 Wall: That's right.

22 Lassiter: Without regard to who holds legal title or record
23 title in it, have you been involved in the operations on that
24 land personally going back to 1990 and even before?

25 Wall: Absolutely, (inaudible)

26 Lassiter: Is that the letter that, behind Tab A that you
27 received as part of the licensing process for a landfill?

28 Wall: What section?
29
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: Behind Tab A. The State wanted you to have a letter
2 from the County before you could get a State permit for the
3 landfill. Is that right?

4 Wall: Yes, it is.

5 Lassiter: How to your knowledge did this problem occur? Did
6 there come a time when there was a business dispute between you
7 and somebody else?

8 Wall: Yes. Me and Billy Merrick, I took him in as partner in
9 this (inaudible). The first parcel, I think was a little over 6
10 acres. I got a contract from Mr. John Coffee in 1984 and Billy
11 Merrick, being a good friend of mine for many, many years prior
12 to that, I asked him if wanted part of it because he was in a
13 similar business.

14 Lassiter: Now, let me bring you up to the present day with
15 regard to Mr. Wilson. Prior to when Mr. Wilson came out to your
16 property for his enforcement activities, was there something
17 going on with the dirt hauling on your property?

18 Wall: Absolutely.

19 Lassiter: Tell us the background of that situation with the
20 dirt hauling that you had going on at the time he came out
21 there.

22 Wall: At the time he came out there, we were taking the trucks
23 (inaudible) the university.

24 Lassiter: Was there another landfill involved? Was there a
25 business dispute that existed between you and someone that
26 operates a different landfill?

27 Wall: There was a business dispute between me and Tony Merrit,
28 (inaudible) landfill off the (inaudible) Church Road in Orange
29 County.

30 Lassiter: What was he mad about?

31 Wall: What was he mad about? He said we stole his dirt.
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: Or his business, would be another way to put that, is
2 that right?

3 Wall: Well, he said we stole his dirt.

4 Lassiter: When this was going on, when Mr. Wilson came out
5 there, tell us what happened that day with regard to what was
6 happening and how things came down with regard to stopping
7 (inaudible) your work on the property.

8 Wall: The day that Tony Wilson came out there, I had gone to
9 Durham to get some parts for a dump truck. And I left David
10 Wall, my son, there to move up the dirt because the trucks were
11 constantly running. I got about half way back from Durham and
12 he called me and said there was a County man out there. And I
13 said just hang loose, I'll be there in a few minutes. But when
14 I got there, he ordered equipment stop on the dirt pile and he
15 ordered me to stop those trucks. And of course, when you have a
16 whole bunch of truck coming in, you just don't walk out in front
17 of them and stop. It took a few minutes to get this done.

18 Lassiter: In fact, at that point, did you voluntarily cease all
19 operations on the property?

20 Wall: I did.

21 Lassiter: And you haven't engaged in any additional hauling in
22 since that time?

23 Wall: No, I have not.

24 Lassiter: Until we can get this matter resolved, is that
25 correct?

26 Wall: Correct.

27 Lassiter: What was the potential value of the job that you shut
28 down, in dollars and cents?

29 Wall: It's cost me \$150 plus thousand, plus all the lawyer fees
30 and all the stuff that has been caused by this action.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: Now, with regard to the property, explain to us what
2 it is you've been doing on this property, with this dirt coming
3 in?

4 Wall: Take in dirt, recycle it, when people need dirt for a job
5 site, we haul it back out.

6 Lassiter: Is your property leveled completely, at this point?

7 Wall: My property is slick and grassed.

8 Lassiter: With regard to the back end of the property, is there
9 an additional area that needs (inaudible) to bring it up to
10 grade?

11 Wall: Absolutely. All the way in the rear where it goes back
12 into the corner back here. I've got land back here at the
13 point. It never did (inaudible) see the permit ran out with the
14 State so we stopped.

15 Lassiter: When you surrendered your State permit, you agreed to
16 stop taking regulated waste. What is your understanding that
17 regulated waste was?

18 Wall: Stumps, brush, limbs, debris of that nature.

19 Lassiter: But you've also had dealings with State and you know
20 what materials you can take in without needing a State permit,
21 do you not?

22 Wall: The State told me I could take in rock, dirt, concrete and
23 asphalt.

24 Lassiter: And you can take cinder blocks as long as they are
25 not painted, is that right?

26 Wall: Absolutely, there can't be any paint on them.

27 Lucier: Mr. Wall, do you have any of your communications with
28 the State? I see some where they communicated to you. Are
29 there any communications regarding the site that you have and
30 your response back to them?

31 Wall: Directly to me?
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lucier: What I am saying is that we have information the State
3 has sent you, apparently. Is there any documentation,
4 information, that you sent to the State in response to any of
the things that they've done since 1990?

5 Wall: No. Not since the last response I had from them about 1998
6 when we abided by their regulations, closed down and quit taking
7 the debris.

8 Lucier: We see that information where they requested that. But
9 we didn't have any response from you in writing to them.

10 Wall: As far as I know there was no response.

11 Lucier: As far as you know, there was none?

12 Wall: (inaudible)

13 Lassiter: I don't understand what you are referring to?

14 Lucier: There was information that was presented about the State
15 giving a time table for closing down operations, not accepting
16 regulated waste. And we've seen that in exhibits and both of
17 you have referred to that. What I haven't seen is any response
18 from Mr. Wall to the State regarding those documents.

19 Lassiter: Mr. Wall, that document was an agreement between you
20 and the State, correct?

21 Wall: Yes. We signed..

22 Lassiter: It didn't have anything to do with the County's zoning
23 or anything else?

24 Wall: No.

25 Lassiter: It was an agreement between you and the State?

26 Lucier: And then there is no other responses from you to the
27 County other than what you told us today. But there is no
28 written response?

29 Wall: No.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: Have you ever been contacted by the County and has
2 anybody ever suggested you were doing anything wrong on your
3 property going back to 1990?

4 Wall: Absolutely not. There has not been a County person on my
5 piece of property telling me I was not legal.

6 Lucier: So there is nothing you received from the County or sent
7 to them between 1990 and 2008?

8 Wall: I didn't send anything to the County. All the County has
9 sent me was taxes.

10 Lucier: About your landfill. What did they tax you for?

11 Lassiter: We've got that all in here.

12 Lucier: Are you going to go through that? Mr. Thompson, you had
13 a question?

14 Thompson: You mentioned, Mr. Wall, that the State told you that
15 you could continue to take in non-regulated waste.

16 Wall: Absolutely.

17 Thompson: Was that a verbal communication, discussion between
18 you and someone at the State level? Do you have anything in
19 writing to the effect that told you that you could do that?
20 (Inaudible from many)

21 Heafner: To the extent they aren't seeking to introduce that
22 document, they've been showing me, I would object to that. The
23 board needs to consider sworn testimony and for good reason.
24 One reason would be to cross examine the person (inaudible)
25 appears to be an email exchange from some unidentified persons,
(inaudible)

26 Rose: He hasn't tried to introduce it yet. I think the chair
27 had asked him a question. He is trying to respond to that
28 question.

29 Lassiter: Mr. Wall, you got these emails that we put together
30 and sent over to the State (inaudible). Did you read on the
31 back the question we asked them that is highlighted in yellow? .

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Wall: It says, My client, Mr. Wall, is desired (inaudible) in to
3 property. It is my understanding that he can haul in any amount
4 of soil, rock, etc., with no permit and that he can also haul
5 demolition debris which might include asphalt, and/or concrete.
6 He also would like to process soil by screening, sorting it,
7 etc, for resale. It is also my understanding that this requires
8 no permit. My further understanding is that this would not be
9 considered regulated waste by DENR.

10 Lassiter: Flip it over to the front side, and read the
11 highlighted response.

12 Wall: This is from Jason Watkins.

13 Heafner: This is what I would object to.

14 Rose: He is responding to the (inaudible) question. I don't
15 think it is relevant. (Mr. Wall is reading in the background)

16 Lucier: According to your own previous assertion, it would not
17 be relevant.

18 Kost: That's where I'm confused.

19 Lucier: They've already asserted that communication with the
20 State is not relevant. I was just trying to get information
21 about whether or not he had communicated with County or the
22 State regarding any of their actions regarding the landfill.

23 Rose: For that purpose, that there was communication with the
24 State, it is good evidence, but not for the matter that is
25 stated therein.

26 Lucier: Your objection is noted.

27 Lassiter: In addition, would you go behind Tab E, Mr. Wall? Is
28 this the letter you received after you met with Mr. Wilson from
29 the Sedimentation and Erosion Division? Did you meet with him?

30 Wall: Yes, I did.

31 Lassiter: Did you and he work out any of the issues regarding
32 any sedimentation on the property?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Wall: Absolutely.

3 Lassiter: And in fact, did you have an engineer work with you in
4 dealing with the issues on the property?

5 Wall: Absolutely.

6 Lassiter: Who was that?
7

8 Wall: Vernon Wayne Johnson out of Raleigh.

9 Lassiter: Now, go behind Tab F. This is the affidavit from
10 Robert Green, this is the one we brought down to the meeting we
11 had with the County prior to filing the appeal. Mr. Green
12 worked with you on the property in the past?

13 Wall: Absolutely.

14 Lassiter: What kind of work did he do there?

15 Wall: He practically ran (inaudible because someone is tapping
16 fingers next to the microphone) aspect of the landfill.

17 Lassiter: When did he work there (inaudible)

18 Wall: To my knowledge, his full time employment, I may be
19 corrected by him, he's here, it was probably around 2000.

20 Lassiter: Back to the 1980's?

21 Wall: Oh, yes, going back to about 1984.
22

23 Lassiter: To be clear, this property was a rock quarry for the
24 State going back into the 1950's, I believe. Is that correct?

25 Wall: It was (inaudible)mine for Chapel Hill
26 (inaudible)correct.

27 Lassiter: Under Tab G; is that a partial list of the jobs that
28 you gave to the County at the meeting that we had with them?

29 Lucier: Excuse me, you said Mr. Green is here?

30 Wall: Yes.
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lucier: So, we may come back to that.

3 Wall: Yes, this is several jobs that had done (inaudible)

4 Lassiter: And that has jobs in there for every year going back
5 to 1998, does it not?

6 Wall: Absolutely.

7
8 Lassiter: 1998 is the year when your debris landfill permit
9 expired. Is that correct?

10 Wall: Yes.

11 Lassiter: And you quit taking regulated waste?

12 Wall: Yes.

13
14 Lassiter: I'd like you to turn to Tab K. (Inaudible)
15 Kost: Are we going to come back to these so we can ask
16 questions?

17 Lucier: You may ask them now if you'd like.

18 Kost: Under Tab G, there is a chronology of dates of job and
19 things, but my question is, when you say "lot preparation" there
20 are four or five of those that I see, what does that mean, "lot
21 preparations" because that seems to be something that is done
22 offsite not onsite at these two parcels.

23 Wall: (inaudible) me into dirt and material from the landfill.

24 Kost: So when you say lot preparation for these various folks
25 that is taking dirt from this location and then taking it to
26 the...I just want to make sure I understood.

27 Wall: In some cases it was hauling it back.

28 Vanderbeck: And it could include debris? Like stumps?

29 Wall: No, just dirt.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: To clarify, if you had debris the (inaudible) to quit
2 taking regulated waste, you'd have to take that someplace else.

3 Wall: Of course, we had a grinder, too. We still have a grinder
4 where we grind our stuff.

5 Lucier: Do you have contracts that would indicate the duration
6 of these activities? For example: Lot preparation for American
7 Homes, from 2000 and 2005? Dirt haul, Barnhill Construction,
8 2000 and 2001.

9 Wall: Do I have contracts?

10 Lucier: Yes, these give dates, what they don't necessarily prove
11 is whether or not there are 365 days in which there has been no
12 activity. This in itself does not prove that.

13 Lassiter: Mr. Wall, has there ever been a 365 day period, going
14 back to May 1990 or even 180 period when there was no activity
15 on the landfill.

16 Wall: Absolutely not.

17 Lassiter: Has it been continuous?

18 Wall: Something was done every year. I admit the last couple of
19 years, there's been not a whole lot. But there has been work
20 done on that property. You know the economy now has gone to, you
21 know what... "H". Anybody in here can testify to that. And I
22 felt I was lucky to just get the dirt. Get this material in.

23 Lassiter: Would it be your testimony then, that there are
24 varying degrees and levels of activity on the property? That
25 the amount of activity changes? It goes both up and down?

26 Wall: That's right. Definitely so.

27 Lassiter: So if we go to Barnhill Construction, I see at the
28 bottom it is 34,000 yards of dirt, that is a lot of dump truck
29 loads.

30 Wall: You better believe it was. We're two men, one writes the
31 ticket, the other works on machines all day long for many, many
32 weeks.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lucier: That's about 1700 trucks loads out? Is that correct?

3 Lassiter: We're talking about what was going on at the property.
4 It is a little confusing. You've owned several different
5 companies that have conducted activities on this property and
6 had to quit (inaudible)...and tell us about American Homes, for
instance. When was that?

7 Wall: American Homes was a modular building company.

8 Lassiter: So you built modular homes. And during that time were
9 you hauling dirt in and out of here to prepare those lots for
10 the modular homes. And that was from 2000 to 2005. How many
11 homes did you build in those five years?

12 Wall: I'd say maybe 12-13 at least.

13 Kost: So when you take dirt to a site, then do you also
14 distribute that dirt with the bulldozer? And where do you store
15 that equipment that you use for moving the soil on the site? Is
16 it in this area that you are storing that equipment?

17 Wall: No, no. When we are doing a job site then the equipment
18 stays on the job site.

19 Kost: But when you finish does it comes back to this property?

20 Wall: When it comes back, it comes back to the landfill.

21 Lassiter: Let me clarify one thing. You're not in the
22 contracting business anymore. You're not doing those kinds of
23 jobs anymore, is that correct?

24 Wall. No.

25 Kost: But from this list that we have here, I guess it would be
26 important to know if it is in this time period. So you are not
27 storing equipment for distributing soil on job sites at this
28 location?

29 Wall: If I carry dirt out of my landfill to a job site, yes, I
30 will transport a piece of equipment to spread it and level it up
31 and landscape it.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Kost: And where do you store that equipment?

3 Wall: At the job site?

4 Kost: No, when it is not at the job site?

5
6 Wall: It will be stored back at the landfill.

7 Lassiter: And is that a part of the operation of the landfill
8 when you use that equipment? Is that part of the service that
9 you provide?

10 Wall: Absolutely, you take a piece of (Inaudible) landfill out,
11 take the equipment, do the job, and then you bring it back.

12 Lassiter: Let's keep in mind, though that we are talking about
13 is September of this year. You weren't doing any jobs like that
14 since September of this year?

15 Wall: No.

16 Kost: But would you, if that opportunity came up?

17 Wall: Sure.

18
19 Lassiter: With regard to (inaudible), Mr. Wall, I'll ask you to
20 look at those pages starting with Citizen's Exhibit K 1. Is
21 that a tax bill from 2006, assessed value of \$59,000 in
equipment, where you paid \$430 in early 2007?

22 Wall: Yes, tax on equipment.

23 Lassiter: And then on the next page, is that the tax bill for
24 the next year? The assessed value was a little less that year.

25 Wall: It had been depreciated by my accountant.

26
27 Lassiter: And the same with Exhibit K 3? That is your tax bill,
28 as well?

29 Wall: Yes.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: That's some of the equipment, that's the tax bill for
2 the equipment that you have on site and can be seen in the
3 picture and that we have pictures of we're going to show you in
4 a minute, is that correct?

5 Wall: That's correct.

6 Lassiter: If you go behind Tab L...

7 Lucier: Excuse me, Willow Way in Chapel Hill, is your home
8 address?

9 Wall: That's correct. 64 Willow Way.

10 Lassiter: And that is where your tax bill comes to? You don't
11 receive any mail at the landfill site, do you?

12 Wall: No.

13 Lassiter: With regard to Citizen's Exhibit L-1, is that a tax
14 property card for parcel number 19483 for this year? It looks
15 dark on our copy, but there is a word highlighted right there on
16 the property type?

17 Wall: It says Industrial.

18 Lassiter: Thank you. And you've been paying taxes on this as an
19 industrial property for how long?

20 Wall: I don't know, every time they send me a bill, I send them
21 a check. (laughter)

22 Lucier: Excuse me? Where is that on the tax bill?

23 Wall: L-1

24 Vanderbeck: Was that a highlight or was someone crossing it out?

25 Lassiter: In regard to Citizen's Exhibit L-2, which is on the
26 next page, that's the tax bill for the other parcel, isn't it?

27 Wall: Yes.

28 Lassiter: That is where we had the mysterious 2142 Lystra Road.
29
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 In the same place, what does that say?

2 Wall: It ain't highlighted, but I can read "industrial" there.
3

4 Lassiter: You've been paying your tax bill going back to 1990
5 either as part of the corporation or...

6 Wall: Right.

7 Lassiter: Now go on to behind the next tab, Citizen's Exhibit M
8 and you will find some pictures. Now looking at those pictures
9 starting at Citizen's Exhibit M-1 at the top, can you just
10 describe what you see in that picture there?

11 Wall: That is a John Deere excavator.

12 Lassiter: Is that on your site?

13 Wall: Yes, it is.

14 Lassiter: How long do you think that thing has been on the site?
15

16 Wall: Since 1994.

17 Lassiter: What's that underneath it (next picture)?
18

19 Wall: My fuel tanks.

20 Lassiter: How long have those been there?

21 Wall: Since the early 1990's.
22

23 Lassiter: Turn the page and go to Citizen's Exhibit M-3,
24 please. Identify what you have there.

25 Wall: That is a KW Dump Truck.

26 Lassiter: Is that the type of equipment you can spread dirt
27 with, is it not?

28 Wall: The truck? Inaudible.

29 Lassiter: Go to Citizen's Exhibit M-4. Is that a dump truck?
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wall: That is another single axle dump truck, and a little low
2 boy to move the equipment on.

3 Lucier: Is that the same dump truck or a different one?

4 Wall: No, it's a different one.

5
6 Lassiter: Do you know when you acquired the dump truck in
7 Citizen's M-3?

8 Wall: I bought it in 2000.

9 Lassiter: How about in Exhibit M-4, roughly?

10 Wall: I bought it in 2007-2008, I can't remember.

11
12 Lassiter: In Citizen's Exhibit M-5, is a backhoe?

13 Wall: Backhoe.

14 Lassiter: Will you tell us about that?

15
16 Wall: I bought it in approximately 1990.

17 Lassiter: Has it been on that site ever since?

18
19 Wall: Yes.

20 Lassiter: Have you been using it since then?

21 Wall: Oh, yes.

22
23 Lassiter: How about Citizen's Exhibit M-6?

24 Wall: M-6. Which piece are you talking about?

25 Lassiter: In the foreground. It looks like a loader.

26
27 Wall: It's a John Deere loader, rubber tire loader.

28 Lassiter: And then beside it, is that a chipper?

29
30 Wall: No, it's a blower.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: It's a blower; For blowing straw?

2 Wall: Yes.

3
4 Lassiter: Citizen's Exhibit M-7. What is that?

5 Wall: It's a screener.

6 Lassiter: When did you buy that?

7
8 Wall: Approximately 1993-1994.

9 Lassiter: Do you use it on the site?

10 Wall: Yes, we have.

11
12 Lassiter: Has it been there on the site since '93-'94?

13 Wall: Ever since then.

14
15 Vanderbeck: Going back to M-6, you didn't mention dates on
16 those. It may not be that big of a deal.

17 Wall: Both those pieces were bought in 2009.

18 Lassiter: With regard to Citizen's Exhibit M-8?

19 Wall: That is a 953 CAT Loader.

20
21 Lassiter: That's probably the one that Mr. Wall was on that day?

22 Wall: That was the one that he was on that day.

23
24 Lassiter: Now, this is some equipment that is on the property
25 now. Have you had other equipment on the property since 1990?
Sold or disposed?

26 Wall: Yes, we've had equipment prior to that and some after that
27 we had sold.

28 Lucier: Now, all that equipment is valued at \$19,000?

29
30 Wall: It's whatever our CPA has put on there.
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: It's been depreciated down.

2 Wall: It's been depreciated down. That equipment is old.

3
4 Lucier: Some of it is newer than others. You've given us some
5 of the dates since you've bought it. But you've may have bought
6 it used.

7 Lassiter: The tax value is based on the depreciation and the
8 attrition on his books.

9 Lucier: So that is the list you provided the tax assessor, is
10 that right?

11 Wall: Yes, that's right.

12 Lucier: It's what we have pictures on?

13 Wall: Yes.

14
15 Lassiter: And it's not an actual value of the property. It is
16 the attritional value. With regard to the next Tab, Citizen's
17 Exhibit-O, skipping N. Tell us, is that a stock purchase
18 agreement between you and Billy Merritt and your wife and his
19 wife in May of 1993? Is that when you bought him out?

20 Wall: Yes, it is.

21 Lassiter: Is that why you surveyed this into two equal shares
22 at one time; but eventually you worked it out and you bought the
23 whole M&W Landfill, Inc., everything, lock, stock and barrel
24 from him? And at that time, all this property came under your
25 ownership of you and your wife individually or a corporation
26 that you and your wife own 100% of the stock?

27 Wall: That's correct.

28 Lassiter: Is it also correct that no stock has been transferred
29 out of that corporation that as of this date right now, you and
30 your wife are still 100% (inaudible) owners of all the stock of
31 that corporation and are in total control of the property owned
32 by that corporation?

Wall: That's correct.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lassiter: With regards to Tab-P; is that a letter from Gaines
3 Oil Company?

4 Wall: Yes, it is from B.G Gaines Oil Company.

5 Lassiter: It indicates that they have been doing business with,
6 since 1995, WW Developers, is that right?

7 Wall: Yes, that's right.

8 Lassiter: Now that is a different company, isn't it?

9
10 Wall: It's a different corporation.

11 Lassiter: Who was WW?

12 Wall: Me and my wife.

13
14 Lassiter: You also did business with American Homes,
15 (inaudible)any other names that you have done business as?

16 Wall: M&W Landfill.

17 Lassiter: And individually in your own name. There came a time
18 that you no longer wanted to file tax under the corporation, is
19 that correct?

20 Wall: That's correct. We wanted to file individually.

21 Lassiter: With regard to this property, there have been a lot of
22 different companies that have engaged in uses on it, over the
23 years, as far as who the equipment might belong to, but is it
24 fair to say that you have been there, you've observed what's
25 going on, on that property, and you can testify that activities
26 have been uninterrupted and continuance to varying scope and
27 degree going all the way back to 1990, and (inaudible) 1998.

28 Wall: Absolutely.

29 Lassiter: In filling the property, has there been an increase in
30 the amount of materials that you recycle as a percentage of the
31 amount of materials that have been coming in to the property
32 over the years?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Wall: I figure with recycling and sending out, about 60% to
3 about 40% when we (inaudible) the landfill.

4 Lassiter: Was there a time when you were sending out 30%? Are
5 you recycling a lot more now than you used to?

6 Wall: Yes. But before we set up the screener, we were using the
7 loader to (inaudible)so that I could sift out the bigger rock,
8 then send the material out like that.

9 Lassiter: Has there always, since you've been involved with the
10 landfill, going back to 1995, or 1985 approximately when you and
11 Merritt went into business?

12 Wall: I believe that was '84.

13 Lassiter: 1984? Has there always been this process of the
14 materials coming and going?

15 Wall: Back then it was proved if we got any dirt saved it was
16 with a loader.

17 Lassiter: I understand that. I'm just saying that there has
18 always been that type of activity that's been a part of it.
19 Now, there is a lot more recycling.

20 Wall: Absolutely.

21 Lassiter: When Mr. Wilson came out there, were you pretty upset
22 when he shut you down?

23 Wall: Yes.

24 Lassiter: Did you interpret his remarks as requiring you to
25 stop? Did you think you felt you had to shut down?

26 Wall: My understanding then, is that he told me to stop or they
27 were going to fine me as of that time.

28 Lassiter: Now, eventually when you knocked off, we talked about
29 that and you could go back to hauling, but you decided not to
30 pending outcome of this appeal, is that right?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wall: Right.

2 Lassiter: When you turned in your land fill permit to the State,
3 was it your intention to abandon that property at that time?

4 Wall: Absolutely not.

5
6 Lassiter: Are you willing to work with the County in getting a
7 conditional use permit for this property and would you prefer to
8 have one?

9 Wall: If the timeframe where I can continue to work (inaudible)

10 Lassiter: Are you willing to compromise?

11 Wall: Compromise? Yes.

12 Lassiter: Just for the record, have you ever had any letter or
13 any communication of any kind about the activities on your
14 property, notwithstanding the fact that the same thing has been
15 going on there for 19 years since Keith Megginson's letter, have
16 you had any contact from Zoning?

17 Wall: Absolutely not

18 Lassiter: Have you had any contact from State people in any
19 enforcement capacity either while you were operating the
20 landfill or after, other than in the closing process?

21 Wall: None whatsoever.

22 Lassiter: Did you understand closure, your deal with the State,
23 to mean that you had to abandon the property and no longer use
24 it for the kind of things you were?

25 Wall: Absolutely not. I would never signed the papers if that
26 had been the case.

27 Lassiter: (Inaudible)

28 Lucier: Thank you. I have a question that regards Mr. Green's
29 affidavit. It's at point 3, under Tab-F, that he has conducted
30 various work on both these parcels in full time from
31 approximately mid '80's until the mid to late 1990's and then on

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 an as needed basis under the employ of the Walls and/or their
2 various business interests. That suggests the activity was
3 greater until the mid to late 1990's, and then tailed off. Is
4 that correct? So my question is, (directed to Rose: Do I need to
5 have Mr. Green?)

6 Rose: I think Mr. Wall can respond to that. You can also ask
7 Mr. Green. The question to him is what was Mr. Green doing and
8 ...

9 Lucier: My question is how confident is Mr. Green that there
10 hasn't been 365 days in which no activity has occurred?

11 Rose: You'll have to ask Mr. Green that. Any other questions of
12 Mr. Wall? Before Mr. Wall sits down, let's let Mr. Heafner
13 cross examine him.

14 Lucier: Mr. Heafner.

15 Heafner: Thank you. Mr. Wall, I just want to ask you a few
16 questions. You acquired the property sometime in 1995,
17 thereabouts, is that right?

18 Wall: That is my recollection. Part of it was acquired in '84
19 and the..

20 Heafner: Whether it was '84 or '85, at that time, it had already
21 been zoned by the County back in 1973, correct?

22 Wall: That was my understanding.

23 Heafner: And zoned residential.

24 Wall: That was I was told.

25 Heafner: So in order to be a nonconforming use you would have to
26 show evidence of what it was used as prior to 1973.

27 Lassiter: I object. This line of questioning, I'd like to be
28 heard if I might, the County should be estopped from arguing
29 that what happened between 1973 and 1990 because it is clear
30 from the record that in 1990, some nonconforming use was
31 (inaudible) by the County as at that time, it was admitted by
32 the County as a nonconforming. For the County to come in here

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 now and try to prove that it wasn't a valid letter, would be
2 inherently unfair to Mr. Wall.

3 Lucier: I don't know if that is the purpose of the question.
4 That is not how I understood it. Is that correct to invalidate
5 the Megginson letter?

6 Heafner: Not at all.

7 Lassiter: I'm saying that what happened before 1990 is totally
8 irrelevant because as of 1990 we're clear that there was a
9 nonconforming use as a landfill, and the only question of fact
10 is what was going on, on the property at that time in 1990 when
11 Mr. Megginson issued his letter. What happened in 1973 doesn't
12 make any difference. And nobody here knows what was going on in
13 1973 there anyway, so I don't see where we are going with this,
14 or how it would be relevant or have any place in the hearing.

15 Lucier: Your point has certainly been made about the time frame
16 up to 1990, so that is on the record. And we understand that
17 point quite well, but please go ahead with the question.

18 Heafner: So, do you have any evidence, other than (inaudible)
19 use of a landfill, do you have evidence of any kind of use on
20 that property prior to 1973, when it became residential?

21 Wall: Do I have any knowledge what it was prior to that?

22 Heafner: Yes. Other than the landfill. We all agree that it was
23 used as a landfill prior to it becoming residential.

24 Wall: It was a State mine prior to that.

25 Heafner: Anything else, State mine?

26 Wall: State mine and, it was my understanding that people had
27 dumped some wood in there.

28 Heafner: So then we fast forward to 1990, you applied to get
29 that State landfill permit extended. And tell me if I'm wrong.

30 Wall: No, not extended.

31 Heafner: To acquire it, to get it?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Wall: To acquire it.

3 Heafner: Did you testify that you needed a letter from the
4 County to get that State permit?

5 Wall: I don't remember requesting that. It may have been, I'm
6 not saying I didn't, I just don't have a recollection.

7 Heafner: I thought that you said you needed that letter from the
8 County in order to show compliance, in order to get the permit.

9 Wall: I don't recollect that.

10 Heafner: The letter in 1990 from Mr. Megginson, you've read
11 that letter, right? You've included it with your documents.

12 Lucier: Will you let us know what tab and so forth?

13
14 Heafner: That's Tab 3 in our book and then the same letter
15 appears in your book somewhere? It's at Tab A in your book.
16 Heafner: Tell me in there where it says you can grandfather in
sifting or storing or moving materials on your site.

17 Wall: It doesn't say that you can move dirt, but I don't how you
18 can expect to haul in debris and have dirt cover it up, too, it
19 can't be done.

20 Heafner: You testified earlier that you weren't just hauling in
21 dirt to cover up debris, in fact you testified you closed the
22 landfill, right?

23 Wall: Yes.

24 Heafner: You said you were moving dirt in and out. Right?

25 Wall: At what point in time?

26 Heafner: Presently. You were cited.

27 Wall: Yes. But I wasn't moving it out, but I was taking it in.

28 Heafner: And you were recycling dirt?
29
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wall: I was screening dirt.

2 Heafner: And you were taking it back out, right?

3
4 Wall: I hadn't taken it back out.

5 Lassiter: Objection, that's been answered.

6 Heafner: Okay, well, let me back up then. I must have sorely
7 misunderstood your testimony when you said that you were
8 bringing dirt in and out. You produced a list of jobs that you
9 had done.

10 Wall: Prior to that, I was taking dirt in and out. At the time
11 he came up there, I was not taking it out. (Inaudible) Does
12 that answer your question?

13 Heafner: Yes, it does. It answers my question.

14 Lucier: But we didn't quite hear the question.

15 Heafner: My question to Mr. Wall was that he has been bringing
16 dirt in and out of his property as opposed to simply bringing
17 dirt in to cover up the landfill. Is that correct, Mr. Wall?

18 Wall: Yes.

19 Heafner: And you closed the landfill?

20 Wall: For inert debris.

21 Heafner: If you say you closed it for inert debris...

22 Wall: Stumps, brush.

23 Heafner: Are you still taking in materials?

24 Wall: I'm taking in dirt and rock.

25 Heafner: Taking in dirt and rock. So when Mr. Green in his
26 affidavit which says, the landfill, I'm looking at paragraph
27 seven, your Tab F, it says if the site no longer accepted
28 debris, stump, etc. But you continued to disperse dirt and for
29 storage and staging. So you accept the dirt and sent it out,
30
31

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 right? I want to be clear that we are not parsing words. When
2 I asked you if you were sending dirt out and you said no to me,
3 I guess...

4 Wall: Inaudible.

5 Heafner: You are doing that.

6 Wall: Yes.

7 Heafner: Do you live on the property?

8 Wall: No.

9 Heafner: Have you ever lived on the property?

10 Wall: No.

11 Heafner: Are you aware then that the County's definition of a
12 landfill only allows for the types of material that your lawyer
13 stated to you in his question, in fact I will read it. This is
14 the definition from the County ordinance of Land Clearing and
15 Inert Debris Landfill at 7.1. It says, "Personal homeowners use
16 of inert debris landfill materials, a beneficial fill, not to
17 exceed 2 acres in size, are exempt from requiring a conditional
18 use permit." But you are not a personal home owner, on that
19 property, are you? You don't have a home or live on that
20 property, do you?

21 Wall: I own a (inaudible)

22 Heafner: In fact you started really sifting dirt, doing these
23 jobs that you included in this list as one of your exhibits. I
24 think the jobs start in '97-'98. That's when the landfill
25 closed, right?

26 Wall: (inaudible) job way back before that, too.

27 Heafner: So you started, when the landfill closed, that is when
28 you started focusing more on sifting dirt and storing materials,
29 and so forth, right?

30 Lassiter: Objection. He's answered it twice.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Rose: Overruled. I don't think he's answered it.

2 Lucier: The timeframe had not been in the question.
3

4 Wall: What's the question?

5 Heafner: The question is when the landfill closed, that is when
6 you started doing the dirt storage and sifting more.

7 Wall: No, definitely not. I made the statement a while ago that
8 the screener was set up in 1993-1994. (Inaudible) the gentleman
9 here, that is here, he helped build it himself, that year.

10 Heafner: Have you ever applied for a conditional use permit on
11 the property?

12 Wall: No.

13 Heafner: You've made mention that you tax bill list the property
14 as the word "industrial", or something. Can you tell us what
15 relevance that has?

16 Wall: I don't know, I just pay the bill when they send it to me.

17 Heafner: Do you know if the tax rate is different? Would you be
18 surprise to know that it would be the same if it said
19 residential?

20 Wall: No.

21 Heafner: What the tax bill said is no relation to zoning, is it?

22 Wall: You're asking me a technical question, I can't answer.

23 Heafner: You are the one that presented that evidence, as if
24 that meant something, so I'm asking you what does that...

25 Rose: I think he said he didn't know.
26

27 Lucier: Are you trying to decide if you have questions about the
28 photographs?

29 Heafner: Yes, I'm sorry. I'm trying to pull it up instead of...

30 Lucier: Okay.
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Heafner: Look at this photo, if you would Mr. Wall. Where on the
3 property was the sifter you showed us the picture of?
4 (powerpoint)

5 Wall: Around the storage building there, I believe. To the
6 right.

7 Heafner: Is that it right there?

8 Wall: Yes.

9 Heafner: It didn't appear on the 1998 picture that we
10 (inaudible)if you go back to the '08 picture. It doesn't appear
11 in that picture anywhere, does it?

12 Wall: No. It isn't sitting in the same place.

13 Heafner: That's all the questions I have.

14 Lucier: Thank you. On that picture, how long had it been since
15 that area had been disturbed.

16 Wall: I'm not sure I follow you.

17
18 Lucier: That is December 9, 2008. Stuff is growing there. So my
19 question is how long had it been prior to December 9, 2008 that
20 the area wasn't disturbed and how long after before it was
21 disturbed again?

22 Wall: How long before it was disturbed again?

23 Lucier: Yes. Two questions. That date is December 9, 2008.
24 Clearly, it hadn't been disturbed for a little while. Stuff is
25 growing up there. My question is when was the last time it was
26 disturbed prior to December 9, 2008, and how long after December
27 9, 2008 was it disturbed again; at what date, roughly?

28 Wall: Probably the first part of 2008, I believe. (Inaudible)

29 Lucier: When was it disturbed again? What about the time frame
30 before 2008. What was the latest it was disturbed prior to that
31 date? Do you understand my question?
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Wall: It'a hard to keep up with dates.

2 REDIRECT (Inaudible)

3
4 Lassiter: Mr. Wall that doesn't show anywhere near the whole
5 piece of property, that is a small portion of the ...maybe it
6 shows two to three acres of eleven acres, is that right?
7 Different parts of the landfill have been disturbed at different
8 times.

9 Wall: Absolutley.

10 Lucier: Okay. What about the letter though, from Mr. Willis,
11 where he says something like the land disturbance in the
12 property is a soil processing operation and is about 1.5-2.0
13 acres of disturbance?

14 Wall: No.

15 Lucier: That's what it says.

16 Wall: He told me that day, he said, "would you agree that it is
17 over half an acre?" I said, yes, a small amount over a half an
18 acre. Then he asked would I do such and such and that would
19 make everybody happy. And I said I sure would.

20 Lucier: So you don't know where Mr. Willis got the 1.5-2.0
21 acres?

22 Wall: No.

23 Lucier: Because I just heard it was eleven (11) acres used as a
24 landfill.

25 Wall: If we needed it, it could. It takes it in. But he told me
26 that we would have to have an engineer-erosion control set up,
27 Mr. Willis and he went up to two acres or better. But he said
28 "you've got a little over a half an acre, would you agree with
29 that?" And I said yes.

30 Lucier: Why I am asking the question is; that isn't the whole
31 part of it that we are showing in the picture? I mean that
32 looks like close to an acre.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: (inaudible)these picture, we might know something
2 about them. But these things, nobody has ever identified..

3 Lucier: But it is clearly more than half an acre was pictured
4 there. I know enough to know that.

5 Wall: To put up an umbrella..

6 Lucier: I'm just responding, counselor, to your question that
7 said this didn't show all the area that was being disturbed.

8 Heafner: Mr. Chairman, that is the photo in our book, right
9 about, the screener was just to the right. This is a larger
10 shot showing the far right of it and all the way to the
11 treeline. Go back to the one you just showed. Mr. Wall, you
12 said the screener was just to the right, it didn't show. Go back
13 up, same date, Mr. Wilson, this was admitted with our evidence,
14 took a larger shot showing to the right. Where is the screener
15 then?

16 Wall: Inaudible

17 Lucier: Okay, I've exhausted my line of questioning there.

18 Redirect

19 Lassiter: When you "closed the landfill" what you mean is that
20 you turned in the State permit and quit accepting inert debris.
21 No matter how many ways you are asked, no matter how many ways
22 they try to get you to say the landfill that was grandfather
23 since 1990, you've done the same things you've been doing on
24 this property before, since, and up until this date? It is
25 exactly the same thing that you were doing the day Mr. Wilson
26 came out there.

27 Wall: Absolutely.

28 Lassiter: How long have you lived in Chatham County?

29 Wall: The 23rd day of this month I would have lived here for
30 seventy (70) years. I'm seventy years old now. I moved to
31 Chatham County when I was three months old.
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Lassiter: How many people do you think you've employed in
2 Chatham County over the years?

3 Wall: Hundred, literally, hundreds.

4 Lassiter: Thank you. That is the last question I have.

5
6 Heafner: Mr. Wall, it is your contention that this 1990 letter
7 from Mr. Megginson is what you are relying on to grandfather
8 your use then?

9 Wall: Absolutely.

10 Heafner: I asked you to read the letter, and you looked at it,
11 and you couldn't tell us where it says that you are allowed to
12 store, sift, bring dirt in and out.

13 Lassiter: Objection. That is outside the scope of redirect,
14 unless you let me re-redirect?

15 Rose: We will let you do that.

16 Heafner: Mr. Wall, are you familiar with Section 8.6 of the
17 zoning ordinance concerning interpreting permitted uses? It
18 says, "Any use that is not specifically listed, shall be deemed
19 to be prohibited." You don't have anything other than this
20 letter than, to rely on to ...

21 Wall: Keith Megginson knew what I was doing all these years. He
22 left here, not too long ago.

23 Heafner: And you called him as a witness today. Do you have him
24 here to testify?

25 Wall: No, I didn't call him.

26 Heafner: Did you write him back in 1990, and say hey, you missed
27 something?

28 Wall: No, absolutely not.

29 Heafner: Or any time since then?

30 Wall: No.
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Heafner: That's all.

3 Lassiter: Has anyone from the zoning department cited you for
4 anything since 1990 even though your use was open, notorious and
5 hostile in front of the whole world?

6 Wall: Absolutely, not.

7 Lassiter: Thank you.

8 Lucier: I'm going to call Mr. Green. Thank you for coming, Mr.
9 Green. I just have one question on your affidavit. It relates
10 to the 0.3. What I am after is what the time frame might be in
11 which no work was going on? You say a lot of work has gone on
12 over a period of time, but it is not clear in your affidavit
13 whether or not there's ever been a 365-day period without any
14 activity.

15 Green: There's not, as far as I know. And I've been in this
16 county for sixty-six (66) years. I've worked with him since
17 1984 regular until business went down and he closed the landfill
18 and then I went to work part-time then, and then I went to work
19 full-time and now I work full-time at Lowe's Food in Apex. But
20 I still help him and I help other people do stuff. I've got a
21 license to drive big trucks. If he needs someone I'll drive a
22 truck for two or three days on a job and I go in. I've
23 (inaudible) if he needs me for two days, three days...

24 Lucier: So your affidavit is related to the work you've done
25 with him over that period time? You've actually been a customer
26 of his too.

27 Green: He's hauled dirt over to my house and filled in
28 and...(inaudible)

29 Lucier: So you are not a next door neighbor, it is just that you
30 worked at the place for a period. How long was that?

31 Green: 1984-1990's regular. And then off and on, (inaudible)

32 Lucier: Has there ever been a year in which you didn't do any
work for him?

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Green: No, I believe I've been over there, every year, sometimes
2 two times. A week job, and stuff like that.

3 Lucier: Thank you.

4 Rose: Let's see if any of the attorneys have questions?

5
6 Lassiter: As Mr. Wall testified, there have been variations in
7 the level of activities on the property. Sometimes it is busier,
8 sometimes it's not. Sometimes, you're screening soil, sometimes
9 you are hauling it in, sometimes you're picking rock. It is just
10 a lot of different things, but it varies in degree, but it been
11 continuous, is that right?

12 Green: That's right. I've been (inaudible), load of trucks,
13 I've been over there (inaudible).

14 Lassiter: That is the only question I have.

15 Lucier: Mr. Heafner, do you have questions for Mr. Green?

16 Heafner: No.

17 Lassiter: Call Mr. Collins. Will you please state your name
18 for the record and spell your name for the clerk?

19 Collins: Everybody calls me Cliff Collins.

20 Lassiter: And where were you born, Mr. Collins?

21 Collins: Duke Hospital. I grew up at Lystra Church

22 Lassiter: As far as you know where is the first place you came
23 to when came home from Duke Hospital?

24 Collins: (inaudible) Lystra Church.

25 Lassiter: And that is all it was called. It was called Lystra
26 Road, but what you call it is Lystra Church Road.

27 Collins: My folks settled that land 1674.

28 Lassiter: In fact, have you lived in this general vicinity of
29 the landfill your whole life?
30
31

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

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2 Collins: My whole life. When I was a senior in high school I
3 bought piece of property and that is what I am living on now.
4 So 1722 Sam Jones Road they've named it now. It's had five
5 different name since I've been there.

6
7 Lassiter: How far is that from this property?

8
9 Collins: I go to work seven days a week and I go right by his
10 place every day. Two or three times a day, sometimes. It's
11 about a mile from the property.

12
13 Lassiter: You own property in the vicinity of his property
14 as well, don't you?

15
16 Collins: Yes, I do.

17
18 Lassiter: Along with your family land, it's been in your family
19 a long time.

20
21 Collins: Yes.

22
23 Lassiter: Have you been by here and seen what going on this
24 property going back to 1990?

25
26 Collins: Going back to 1971.

27
28 Lassiter: Since Mr. Wall been on it, engaged in it, have you
29 seen him engaged in activity on this property on a regular
30 basis?

31
32 Collins: There was always something there. I look at the
machinery when I go by, because I like machinery.

Lassiter: You heard him testify. Did he tell the truth?

Collins: Yes, he did.

Lassiter: And you've seen dirt probably coming out and sometimes
a dump truck might have pulled out in front of you?

Collins: No, I've seen them going in. I'm usually at work when
they are doing all that stuff. I work every day, all day. No
time to play.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lassiter: Do you remember what it was, a dry quarry or something
3 way back in ...a long time ago.

4 Collins: I have to go by what my parents told me. The road used
5 to come up over the hill on the other side of the rock quarry.
6 But the State bought it, the rock quarry, they built Lystra
7 Church Road in '48, '49 '50. That's when they found that soil
8 at the gravel mine and they bought that hill, and started mining
9 it. They built roads all over the place. This is a DOT.

10 Lassiter: Have you known Nelson a long time?

11 Collins: Maybe since 1970, something like that.

12 Lassiter: Have you seen the different businesses he been
13 engaged in?

14 Collins: All the things we talked about up here. I told you I
15 remembered all those things about him. He's always worked in
16 that pit.

17 Lassiter: He's employed a lot of people?

18 Collins: Oh, yes.

19 Lassiter: That's all the questions, I have.

20 Kost: Can you answer a quick question related to that? Can you
21 see this activity from the road?

22 Collins: Some of it. I can tell when trucks are going in and
23 out. I can tell right on the front of the driveway goes right
24 in, you'll see a truck parked there sometimes. Sometimes it's
25 moved. You can tell things are moved around.

26 Kost: But the activity for sifting soil and all that, that isn't
27 visible from road, is it?

28 Collins: No, I have to keep my eyes on the road. One day I was
29 coming down the hill and one of my friends was walking on the
30 road and I'm the one that killed him at night. So I don't want
31 to take my eyes off the road, there. Coming up the hill, I was
32 facing bright head lights, I was coming around, I didn't see

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 him, of course, he shouldn't be walking the road and a car was
2 behind me, tailgating me, I was going 35-miles an hour, we call
3 that the mountain...

4 Kost: Thank you.

5 Lucier: Do you have more witnesses?

6 Lassiter: I have one. Should be able to wrap up.

7
8 Lucier: Because we actually have another meeting we have to
9 start at 6:00 and we have to have a little...

10 Lassiter: I'll be glad to try and wrap up fairly shortly.

11 Lucier: I will have to adjourn this at 5:05.

12 Lassiter: We'll go as fast as we can.

13
14 Lucier: We'll have to come back another day.

15 Lassiter: Mr. Moldenhauer.

16
17 Haefner: Mr. Chairman, if this witness is just going to say the
18 same thing, that this activity has been going on, we will
19 stipulate to that. That is not really this issue that we have
here.

20 Rose: Well, it may not be, but he is entitled to put his
21 witnesses on.

22 Lassiter: Mr. Moldenhauer has a letter, I think, about the
23 situation.

24 Moldenhauer: I've known Nelson for a long time. I just wrote a
25 letter, I'm going to try and read it. "Honorable Commissioners
26 of Chatham County, The employees of the County, and other
27 residents. My name is Mark Moldenhauer, I've operated a grading-
28 landscaping company off of Lystra Road for the past thirty(30)
29 years. We also operate a LCID landfill located at 1957 Lystra
30 Church Road, which borders Nelson Wall's property on the
31 Westside. I am here today to support my neighbor's request for a
32 permit on his property. I've known Nelson for almost 30 years
I've been in Chatham. And I've used his facility back when

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 Billy and Jean Merritt were his partners. That was before I
2 opened my landfill in 1996, before Hurricane Fran. Nelson is a
3 reputable builder, developer, grading contractor. He has done
4 numerous good quality projects for citizens of Chatham County.
5 He's a good neighbor and good steward of the land he owns.
6 There has never been any problems at his operation. Fires,
7 dumping of unauthorized material or any erosion problems. The
8 location has actually has been improved over the years. It used
9 to be a big hole in the ground, with steep vertical cliffs, a
10 real safety issue. Now that it has been filled up to a nice,
11 even grade, it has become safe. As everyone who knows the land,
12 it cannot be build upon, but the property needs to be used for
13 some type of purpose. If Chatham County plans to grow, once all
14 this recession is over, it needs contractors like Nelson to
15 provide materials and service for our residents, recycled
16 materials, readily available (inaudible) air projects. We don't
17 need to hire out of town contractors or truckers coming from
18 much further distance, burning additional fuel and adding to our
19 global warming problems. Or worse still, dumping in
20 unauthorized areas of the County and causing more environmental
21 problems like what happened to the Stone Brook Community (?) of
22 Governor's Club several weeks ago.

23 Rose: I think we are getting a little far field. We need to
24 talk about this property.

25 Moldenhauer: I'm just trying to make the point that Nelson
26 services are needed, and people like Nelson are needed.

27 Rose: We need to talk about what he is doing.

28 Moldenhauer: Okay, in closing, by having an operation like
29 Nelson's everyone can benefit. The State and the County can
30 monitor what is going on and make sure he adheres to the
31 guidelines, and other contractors can obtain the materials that
32 are cost effective and at a reasonable price for their jobs.

Lassiter: Have you seen him operating since you've been on the
property next door the way he described it?

Moldenhauer: He's always operated it well.

Lassiter: Has he done the things he said he's been doing?

Moldenhauer: All of them.

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1
2 Lucier: Thank you, Mr. Moldenhauer.

3 Lassiter: We would move our Exhibits under evidence at this
4 time. Exhibits A-Q.

5 Lucier: They are all contained in this book, correct?

6 Lassiter: I would make an objection to those photos that were
7 offered a minute ago, those were not identified as possible
8 (inaudible)

9 Lucier: Thank you, we know that.

10 Heafner: I would just like to note if I could, that the photos
11 contained in their book, that they spoke about, you can check
12 the record, but my recollection was that they were never
13 identified when they taken or who took them. For that reason I
14 would suggest that they are not relevant and shouldn't be
considered either.

15 Lucier: The only dates we had, as I understand, were the dates
16 the equipment was purchase that were shown in the photographs.
17 Is that correct?

18 Lassiter: Inaudible

19 Lucier: The dates that we have were related to the dates when he
20 acquired the equipment. It is now 5:05 and we are going to have
21 to adjourn. We've received a lot of material today. The way
22 this works is we don't know anything about this case until we
23 sat down today. So we have our two books worth of information,
24 we've got three hours worth of testimony, and we are going to
25 need to go over this stuff on our own and come back at another
26 meeting to make an initial decision on what the outcome will be
27 of the appeal. Our next Commissioner meeting is January 4th.
That is a day meeting starting at 9:00. We could potentially
schedule a Board of Adjustment at 1:00.

28 Kost: I think we need to look at the agenda, look at the
29 material first. That is a good tentative date.
30
31
32

MINUTES
CHATHAM COUNTY
ZONING BOARD OF ADJUSTMENT
DECEMBER 14, 2009

1 By consensus, the Board agreed to tentatively reschedule a
2 continuation of appeal on Monday, January 4, 2010 at 1:00 PM in
3 the Agricultural Building Auditorium.

4 Commissioner Kost moved, seconded by Commissioner Cross, to
5 recess the Chatham County Zoning Board of Adjustment meeting
6 until January 4th, 2010 to be held in the Agricultural Building
7 Auditorium at 1:00PM. The motion carried five (5) to zero (0)
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