

**MINUTES**  
**LINCOLN COUNTY BOARD OF COMMISSIONERS**  
**MONDAY, JANUARY 5, 2015**

The Lincoln County Board of County Commissioners and the Planning Board met in a joint session on January 5, 2015, at the Citizens Center, Commissioners' Room, 115 West Main Street, Lincolnton, North Carolina, the regular place of meeting at 6:30 PM.

Commissioners Present:

Carrol Mitchem, Chairman  
Bill Beam, Vice Chairman  
Martin Oakes  
Cecelia Martin  
Alex Patton

Planning Board Members Present:

Christine Poinsette, Chairman  
Darrell Gettys, Vice-Chairman  
Dr. Crystal Mitchem, Secretary  
Jeffrey Todd Burgin  
John Dancoff  
Floyd Dean  
Jamie Houser  
Keith Johnson

Others Present:

Kelly G. Atkins, County Manager  
Wesley Deaton, County Attorney  
Amy S. Atkins, Clerk to the Board

**Call to Order:** Chairman Mitchem called the meeting to order.

**Invocation:** Pastor Luke Johnson, of Highland Drive Freewill Baptist Church, gave the Invocation and Chairman Mitchem led in the Pledge of Allegiance.

**Adoption of Agenda:** Chairman Mitchem presented the agenda for the Board's approval.

AGENDA  
Lincoln County Board of Commissioners Meeting  
Monday, January 5, 2015  
6:30 PM

James W. Warren Citizens Center

115 West Main Street  
Lincolnton, North Carolina

Call to Order

Invocation - Pastor Luke Johnson, Highland Drive Freewill Baptist Church

Pledge of Allegiance

1. Adoption of Agenda

2. Consent Agenda

- Tax Requests for Releases - Over \$100
  - November 16 - December 15, 2014
- Tax Requests for Refunds - Over \$100
  - November 3 - 16, 2014
- CDBG Status Updates
- Minutes for Approval
- Surplus Property
- Budget Ordinance Amendment #6
- Vehicle Tax Refunds for November
- Amendment to Retention Schedule for Tax Administration

3. Zoning Public Hearings - Randy Hawkins

PCUR #154A B.V. Hedrick Gravel and Sand Co., applicant (Parcel ID# 56506, 34252, 84029, 85905, 31188, 30239, 52622, 02860, 52621, 02862, 73724, 78254, 78253, 02861 and 74885) A request to amend a conditional use district and conditional use permit to remove a condition that states that the applicant will abide by an restrictive covenant agreement with Pulte Homes (an agreement that has been nullified), to revise a site plan to enlarge future mining areas near portions of the northern boundary of the applicant's property and to specify the size of a planned berm along a portion of that boundary. The request involves a 498-acre site located at 6941 Quarry Lane, about 1,600 feet west of N.C 16 Business and 4,200 feet north of Old Plank Road, in Catawba Springs Township.

CUP #340 Frank Greco, applicant (Parcel ID# 77944) A request for a conditional use permit to sell vehicles in the I-G (General Industrial) district. The 2.5-acre parcel is located at 6321 Denver Industrial Park Rd., on the west side of Denver Industrial Park Road about 1,500 feet north of Sinclair Street, in Catawba Springs Township.

4. Public Comments (15 minutes allowed per Rules of Procedure – 3 minutes per person)

5. Resolution #2015-1: Amended Resolution for Prospective Bonus - Audrey Setzer and Wesley Deaton

6. Motion to Approve Sole Source Vendor, Charter Media, for the Health Department to Implement the approved communication plan for childhood immunizations - Maggie Dollar and John Henry

7. Other Business
8. Motion to Enter Closed Session Pursuant to NCGS § 143-318.11. Closed sessions.
  - (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, and
  - (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee

Adjourn

**UPON MOTION** by Commissioner Martin, the Board voted unanimously to adopt the agenda as presented.

**Consent Agenda:** **UPON MOTION** by Commissioner Oakes, the Board voted unanimously to approve the Consent Agenda.

Consent Agenda

- Tax Requests for Releases - Over \$100
  - November 16 - December 15, 2014
- Tax Requests for Refunds - Over \$100
  - November 3 - 16, 2014
- CDBG Status Updates
- Surplus Property
- Budget Ordinance Amendment #6
- Vehicle Tax Refunds for November
- Amendment to Retention Schedule for Tax Administration

**New Business/Advertised Public Hearings:**

**Parallel Conditional Use Rezoning #154A – B.V. Hedrick Sand and Gravel Co., applicant:** Randy Hawkins presented the following information concerning PCUR #154A – B.V. Hedrick Sand and Gravel Co., applicant.

The transcript of this case, provided by Marianne S. Aguirre, with Bridges Court Reporting, is incorporated by reference and hereby made a part of these minutes.

**Conditional Use Permit # 340 Frank Greco, applicant:**  
Randy Hawkins presented the following:

The applicant is requesting a conditional use permit to sell vehicles in the I-G (General Industrial) district. Vehicle sales is a conditional use in the I-G district.

The 2.5-acre parcel is located at 6321 Denver Industrial Park Road, on the west side of Denver Industrial Park Road about 1,500 feet north of Sinclair Street. A 6,000-squarefoot storage building is under construction on this parcel. A variance was approved by the Zoning Board of Adjustment to permit a portion of the building to extend into the road yard setback. This property is surrounded by property zoned I-G. Land uses in this area are primarily industrial. This property is part of an area designated by the Land se Plan as industrial.

Chairman Mitchem opened the public hearing concerning Conditional Use Permit #340 – Frank Greco, applicant.

Frank Greco, applicant, said he has developed this piece of property and wants to be able to buy and sell retail vehicles at this site. He said he will be detailing these and housing them in his building, there will be no mechanical work on site. He said he will sell fifteen to twenty cars per year at this site. Mr. Greco said he does a lot of internet sales.

Lee Killian stated this family developed this park and he asked that this request be approved.

Rudy Bauer said at last report, there were ten used car lots in the Denver area, there are now eleven and this will make twelve. He asked the Board not to approve any more car lots.

Being no additional speakers, Chairman Mitchem declared the public hearing closed.

The Planning Board reconvened to the second floor balcony to deliberate the cases.

Chairman Mitchem declared a brief recess and called the meeting back to order.

**Public Comments:** Chairman Mitchem advised that this was the time the Board of Commissioners would receive comments from the citizens regarding any matter they desired to address.

Robert Avery, 4466 Hwy 182, Crouse, asked the Board to consider a Citizen Review Board.

Being no speakers, Chairman Mitchem declared the Public Comments section closed.

**Resolution #2015-1: Amended Resolution for Prospective Bonus - Audrey Setzer and Wesley Deaton:** Audrey Setzer, Human Resource Director, presented the following Resolution for the Board's approval:

**RESOLUTION #2015-1  
RESOLUTION FOR PROSPECTIVE BONUS**

**WHEREAS**, pursuant to N.C.G.S. §153A-92, the Board of Commissioners shall fix or approve the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed; and

**WHEREAS**, all Lincoln County employees received yearly evaluations at which, based upon their departmental evaluation of merit, employees were given a merit-based salary or wage increase of between zero percent and 3.5 percent of their salary to become effective on January 1, 2015; and

**WHEREAS**, the Board of Commissioners previously approved said recommended merit pay increases; and

**WHEREAS**, the Board of Commissioners desires to clarify its merit pay increases as provided below; and

**WHEREAS**, the Board of Commissioners desires to provide prospective incentives to those of its employees who have been granted merit-based salary increases to maintain a high quality of work, to strive to serve the public to the best of their abilities, and to do their best at all times.

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED:**

On or before January 15, 2015, the County shall pay to all Qualified Employees a Merit-Based Bonus, as said capitalized terms are defined herein.

As used in this Resolution, the following capitalized terms shall apply herein:

**Merit-Based Bonus:** A bonus that is calculated by taking a Qualified Employee's merit-based pay increase percentage that the Qualified Employee received effective July 1, 2014, multiplied by the total pay the employee received from July 1, 2014, through January 14, 2015.

**Qualified Employee:** An employee who:

1. Was employed with Lincoln County effective July 1, 2014;
2. Obtained a merit-based salary increase to be effective January 15, 2015; and
3. Is still employed by the County on January 15, 2015.

That this Resolution shall become effective immediately.

Adopted this 5<sup>th</sup> day of January, 2015.

LINCOLN COUNTY

By: \_\_\_\_\_  
Carrol Mitchem, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the  
Board of Commissioners

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to adopt Resolution #2015-1: Resolution for Prospective Bonus.

**Motion to Approve Sole Source Vendor, Charter Media, for the Health Department to Implement the approved communication plan for childhood immunizations –**  
Lena Allen presented the following:

The Health Department has been awarded additional State funding from the NC Division of Public Health in the amount of \$5799 for the Childhood Immunization Program. The funds must be used to implement a local communications plan to promote public awareness of childhood immunizations and reduce incidents of childhood diseases. They are proposing to run a 21 week ad on Charter Media and asking the Board to approve Charter Media as the Sole Source Vendor.

**UPON MOTION** by Commissioner Oakes, the Board voted unanimously to accept the State funds and approve Charter Media as the Sole Source Vendor, as presented by Lena Allen.

**Other Business:** Kelly Atkins stated that the meeting between the Lake Norman Marine Commission and Catawba Wateree group had been scheduled, but will be rescheduled.

**UPON MOTION** by Commissioner Patton, the Board voted unanimously to appoint Commissioner Martin as the Voting Delegate for the upcoming Legislative Goals Conference.

**Closed Session:** **UPON MOTION** by Commissioner Oakes, the Board voted unanimously to enter Closed Session pursuant to NCGS § 143-318.11(a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or

removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

The Board returned to Open Session and Chairman Mitchem announced that no action was taken in Closed Session.

**Adjourn:** UPON MOTION by Commissioner Beam, the Board voted unanimously to adjourn.

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Amy S. Atkins, Clerk  
Board of Commissioners

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Carrol Mitchem, Chairman  
Board of Commissioners

**In The Matter Of:**  
*PCUR154A B.V. Hedrick Gravel and  
Sand Company*

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*Lincoln County Board of Commissioners Meeting  
January 5, 2015*

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LINCOLN COUNTY BOARD OF COMMISSIONERS MEETING  
OF  
PCUR #154A B.V. HEDRICK GRAVEL AND SAND COMPANY, APPLICANT  
HELD AT  
JAMES W. WARREN CITIZENS CENTER  
115 WEST MAIN STREET  
LINCOLNTON, NORTH CAROLINA  
MONDAY, JANUARY 5, 2015

\* \* \* \* \*

Reported By:  
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## A P P E A R A N C E S

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BY: CRAIG D. JUSTUS

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FOR THE LINCOLN COUNTY COMMISSION:

CHAIRMAN CARROL D. MITCHEM

MS. CECELIA A. MARTIN

MR. ALEX E. PATTON

MR. BILL BEAM

MR. MARTIN OAKES

MR. WESLEY DEATON, COUNTY ATTORNEY

MR. KELLY ATKINS, COUNTY MANAGER

FOR THE LINCOLN COUNTY PLANNING BOARD:

MS. CHRISTINE POINSETTE, CHAIR

MR. DARRELL GETTYS, VICE-CHAIR

DR. CRYSTAL MITCHEM, SECRETARY

MR. JEFFREY TODD BURGIN

MR. JOHN DANCOFF

MR. FLOYD DEAN

MR. JAMIE HOUSER

MR. KEITH JOHNSON

## I N D E X   O F   E X H I B I T S

EXHIBIT:   D, previously marked

DESCRIPTION:   Approved 2007 Site Plan

PAGE NO.:   21

EXHIBIT:   A-1

DESCRIPTION:   New Site Plan

PAGE NO.:   21

EXHIBIT:   1

DESCRIPTION:   Blasting Study by Austin Powder Company

PAGE NO.:   54

EXHIBIT:   2

DESCRIPTION:   Noise Impact Study by Arpeggio Acoustic  
Consulting, LLC

PAGE NO.:   54

EXHIBIT:   3

DESCRIPTION:   FL Value Study by Fortenberry Lambert,  
Inc.

PAGE NO.:   54

EXHIBIT:   4

DESCRIPTION:   Adjoining Property Uses

PAGE NO.:   54

EXHIBIT: 5

DESCRIPTION: Mining Detail Diagram

PAGE: 54

EXHIBIT: 6

DESCRIPTION: Document

PAGE: 85

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1           unty Board of Commissioners

2           CHAIRMAN MITCHEM: Randy, we have the zoning  
3                   hearings, PCUR #154 B.V. Hedrick Gravel and  
4                   Sand Company is the applicant.

5           MR. HAWKINS: The applicant is requesting to amend  
6                   a conditional use district and conditional  
7                   use permit to basically do three things.  
8                   One, remove a condition that states that the  
9                   applicant will abide by a restrictive  
10                  covenant agreement with Pulte Homes. That's  
11                  an agreement that was nullified when Pulte  
12                  Homes notified Hedrick that it had elected  
13                  not to purchase the property where a 55 and  
14                  older community had been approved. Number  
15                  two, to revise a site plan to enlarge future  
16                  mining areas near portions of the northern  
17                  boundary of the applicant's property. And  
18                  three, to specify the size of a planned berm  
19                  along a portion of that boundary.

20                   To clarify what's proposed under number  
21                   two, amending the site plan, the applicant  
22                   prepared a new exhibit today and it shows in  
23                   purple, the area that would be added to the  
24                   future pit area. If you can pass that around  
25                   please. Again, the purple area is the area

1                   that they're requesting to add to the future  
2                   pit areas that are shown on the  
3                   (unintelligible) 2007 plan.

4                   COMMISSIONER BEAM: Areas in the white that say  
5                   the pit has already been approved?

6                   MR. HAWKINS: Correct.

7                   CHAIRMAN MITCHEM: Randy, you say -- you say to  
8                   add. Is that, the purple, does that put the  
9                   boundaries back to where they originally was?

10                  MR. HAWKINS: The 2000 --

11                  CHAIRMAN MITCHEM: Before it was taken away from  
12                  the Pulte agreement?

13                  MR. HAWKINS: No, the 2007 parallel conditional  
14                  use rezonings, one of the effects of that was  
15                  to allow Hedrick to expand onto the parcel  
16                  that's north of Forney Creek. Prior to the  
17                  2007 agreement under the zoning regulations,  
18                  they were not permitted to expand beyond the  
19                  current parcels where they were already  
20                  operating quarry operations. This is a 500-  
21                  acre site, approximately 500 acres located  
22                  west of NC 16 and north of Old Plank Road.  
23                  It was rezoned to conditional use general  
24                  industrial in 2007 to bring the grandfathered  
25                  quarry operation into conformity and to

1 permit future expansion into the area shown  
2 on the 2007 plan as future pits, future  
3 mining areas.

4 COMMISSIONER OAKES: The 2007 is Exhibit D, is  
5 that correct?

6 MR. HAWKINS: Correct. This property is located  
7 in the area designated by the Lincoln County  
8 Land Use Plan as industrial. Under Section  
9 9.11.10C of the Unified Development  
10 Ordinance, a proposed amendment to a  
11 conditional use permit shall be reviewed in  
12 accordance with the standards which govern  
13 his approval. Meaning that this is to be  
14 reviewed under the standards of the zoning  
15 ordinance that was in effect in 2007. The  
16 UDO sets some setbacks for mining operations,  
17 the zoning ordinance did not. The zoning  
18 ordinance only had setbacks for structures.  
19 It did not have special standards for mining  
20 operations. So under the zoning ordinance,  
21 this proposed amendment to the site plan is  
22 in compliance with the zoning ordinance which  
23 was in effect in 2007 in which the UDO says  
24 this proposed amendment must be reviewed  
25 under.

1 COMMISSIONER OAKES: Now, the original conditional  
2 use permit is in here, what page? Is it in  
3 this package?

4 MR. HAWKINS: It's in your packet starting with  
5 the letter from me to Jason Conner and it  
6 lists the conditions that were part of the  
7 2007 approval and it bears the approved 2007  
8 site plan which shows what's noted on the  
9 site plan as "Quarry and Pulte Buffer  
10 Survey." Under the Pulte agreement, a buffer  
11 line was established on the adjoining  
12 property to the north and on the quarry  
13 property. That agreement, of course, has  
14 been nullified; however, the site plan shows  
15 that as the boundary, as the buffer boundary  
16 for the approved 2007 plan.

17 COMMISSIONER OAKES: So the original PCUR that  
18 we're modifying is on page 3, am I right?

19 MR. HAWKINS: Correct.

20 COMMISSIONER OAKES: And we're modifying items 1  
21 and 2?

22 MR. HAWKINS: You would be modifying the site  
23 plan.

24 COMMISSIONER OAKES: Which is item 2.

25 MR. HAWKINS: And modifying --



1 COMMISSIONER OAKES: And removing item 1?

2 MR. HAWKINS: Correct.

3 COMMISSIONER OAKES: Okay.

4 CHAIRMAN MITCHEM: Randy, does that put it back to  
5 the original 2007 on this? Does this put it  
6 back to the original 2007 line?

7 MR. HAWKINS: No. No, this would move the buffer  
8 area to within 50 feet of the property line  
9 between Hedrick's property and the Shea Homes  
10 property.

11 CHAIRMAN MITCHEM: Maybe -- maybe I'm not asking  
12 it right. Does this put it back prior to  
13 2007?

14 MR. HAWKINS: No. Prior to 2007, Hedrick could  
15 not have expanded into that area because  
16 that's on a separate parcel from their  
17 existing quarry operation. They needed a  
18 conditional use permit to expand into that  
19 area. So they couldn't have mined at all on  
20 the north side of the creek.

21 CHAIRMAN MITCHEM: And what about the mining  
22 regulations through the State?

23 MR. HAWKINS: I'll let Hedrick address that.

24 COMMISSIONER OAKES: Speaking of the creek, I  
25 don't understand this topology -- topographic

1 instances there. Is the creek in a ditch or  
2 something? Is it way down? Do they need to  
3 build a bridge to get over to the new quarry  
4 area?

5 MR. HAWKINS: They would need to build some kind  
6 of crossing and there is also a flood plain  
7 along that creek that a pit would affect that  
8 flood plain, and that's why they would need a  
9 map amendment or a approval of FEMA.

10 COMMISSIONER OAKES: FEMA? Not DENR or somebody?  
11 FEMA?

12 MR. HAWKINS: Yes, FEMA. Also have -- of course,  
13 since 2007, earlier last year the Pulte site  
14 was rezoned to permit a similar type  
15 development, Shea Homes was active in that  
16 case, and I have a map that shows the Shea  
17 Homes approved plan with that revised plan  
18 that you have in your packet for comparison  
19 and it will show -- it shows a buffer line on  
20 the Shea Homes site that is in effect for  
21 their -- for their project.

22 COMMISSIONER OAKES: Do you have that onscreen?  
23 Randy, is that available onscreen?

24 MR. HAWKINS: So that blue line on the Pulte  
25 Homes, I mean, on the Shea Homes site is --

1                   they cannot build homes past that line.

2           COMMISSIONER OAKES:   What's the difference between  
3                   there and the boundary?

4           MR. HAWKINS:   It varies from approximately 400  
5                   feet to approximately 800 feet from that line  
6                   to the expansion area.   There's a 50 foot  
7                   buffer with a berm shown on part of the  
8                   Hedrick property so to the pit area to the  
9                   expansion area it varies from about 400 feet  
10                  to 800 feet.

11          COMMISSIONER OAKES:   Of which 50 feet is the berm?

12          MR. HAWKINS:   Correct.

13          MS. MARTIN:   That's the gold line, that's the  
14                   berm?

15          MR. HAWKINS:   Correct.   The original agreement  
16                   between Pulte and Hedrick would have provided  
17                   1,000 feet approximately between the nearest  
18                   home and the nearest mine area.

19          COMMISSIONER OAKES:   So to the right of the berm,  
20                   where it says green area and then around to  
21                   the rest of the expansioned area, there's no  
22                   berm there, there's just a green boundary?  
23                   What is that?

24          MR. HAWKINS:   That's an area where they would not  
25                   be mining in.

1 COMMISSIONER OAKES: Okay. So -- but there's no  
2 berm there?

3 MR. HAWKINS: Correct.

4 CHAIRMAN MITCHEM: Anything else, Randy?

5 MR. HAWKINS: That's all I have.

6 CHAIRMAN MITCHEM: Any other members of the Board  
7 or the Planning Board have any questions for  
8 Randy?

9 Randy, what is the plan -- the staff's  
10 recommendations?

11 MR. HAWKINS: Staff does not make a recommendation  
12 on conditional use permit cases. We haven't  
13 heard all the evidence that will be presented  
14 and that's our policy. We do not make  
15 recommendations on conditional use permits.

16 CHAIRMAN MITCHEM: Okay. Thank you, Randy. We'll  
17 open the public hearing on this. The  
18 applicants will be the first one that would  
19 speak. I have a -- does Hedrick want to come  
20 first to plead their case? Your name and  
21 address for the record?

22 MR. LORDI: My name is Joe Lordi. I live in  
23 Asheville, North Carolina. I'd first like to  
24 thank Randy and his staff, the Planning  
25 Board, and the Commissioners for the

1 opportunity to speak with you tonight.

2 Again, my name is Joe. I work as the  
3 divisionary president on Hedrick Industries  
4 on our aggregate operations in Asheville.  
5 I'm here tonight to speak as an ownership  
6 representative of Lake Norman Quarry. There  
7 are three things I'd like to key on and hit  
8 on tonight in my sharing with you. The first  
9 being the history of Lake Norman Quarry's  
10 relationship with Lincoln County over the  
11 last 30 years. A description of our  
12 industry, a very brief description, kind of  
13 what we do, why we're important, what  
14 products we make. And third and lastly, the  
15 reasoning behind us coming to ask for the  
16 amendment to our current conditional use  
17 permit.

18 To begin, Hedrick Industries is family-  
19 owned and operated. We just celebrated this  
20 past June, our 90th year of doing business in  
21 the State of North Carolina. We have nine  
22 mining operations throughout the state. We  
23 provide aggregate, sandstone, and gravel to  
24 general contractors, grading contractors,  
25 municipalities, DOT in all shapes and forms.

1 We currently employ about 745 employees  
2 across the state as well. About three  
3 decades ago, our family spent six years  
4 trying to identify a suitable piece of  
5 property to locate a stone quarry in Lincoln  
6 County. They ultimately settled on our  
7 current location. For two reasons, first, it  
8 was in a low density area at that time and  
9 secondly, it had a very high quality, an  
10 abundance of high granite construction  
11 quality material. Since opening, Lake Norman  
12 Quarry has provided aggregate and stone to  
13 numerous projects, specifically to East  
14 Lincoln County expansion, Highway 16  
15 expansion, CMC Lincoln Hospital, the airport  
16 expansion, countless homes, roads, et cetera.  
17 We also have made it easier for citizens of  
18 Lincoln County to access Charlotte through  
19 resurfacing projects that we've done on 77  
20 and 485. Since 1984, we've invested about  
21 \$150 million into the operation at Lake  
22 Norman Quarry; it's turned into really, our  
23 flagship operation. About 85 percent of  
24 those dollars have been spent in the State.  
25 We currently employ about 25 highly skilled

1 employees. Payroll of about \$1.25 million  
2 this past year. Through the delivery and  
3 service of our products, we provide another  
4 100 additional jobs to the community, mostly  
5 in the form of truck drivers. Manufacturing  
6 and processing granite materials, you can  
7 imagine, requires heavy equipment. It's  
8 industrial by nature. We have drills, we  
9 blast our material, we extract it from the  
10 earth using loaders, using large excavators,  
11 using large haul trucks. We are also highly  
12 regulated. We're regulated by air quality,  
13 land quality, water quality. We're also  
14 regulated on the safety side from a federal  
15 agency called MSHA. At Hedrick, we are very  
16 proud of our track record over the last 90  
17 years. We have a very strong reputation  
18 within the industry. We have plenty of  
19 experience in terms of mitigating dust,  
20 noise, and blasting. Not just at Lake Norman  
21 Quarry, but across the state.

22 We come to you tonight because we do  
23 recognize certainly things have changed in  
24 the 30 years since we've opened our quarry  
25 and opened that location. And it's really

1 not unique to us. This is an industry issue.  
2 What has happened is communities grow in and  
3 around active mining sites and it really is  
4 to the benefit of the market for that to be  
5 the case. Technological advances have made  
6 it such that we now do have the capacity to  
7 operate in ways that, in some cases, it might  
8 seem like we have disparate or different  
9 entities existing next to one another.  
10 Studies have also shown that actually  
11 restricting the reserve base of active mines  
12 just opens up a different set of problems for  
13 local municipalities, including more truck  
14 traffic, higher costs of construction and  
15 faster wear of infrastructure.

16 And so really the reason we come to you  
17 tonight is we're just seeking some certainty  
18 in terms of our reserve base. When I refer  
19 to our reserve base, I'm really just talking  
20 about the raw materials on our property that  
21 we can extract up to our 50 foot boundary.  
22 Our reserve base, and any mining operation  
23 would say the same thing, is the single most  
24 important factor of any sort of long-term  
25 security. And so while our modification



1 request really involves a relatively small  
2 footprint in terms of our overall site, 500  
3 acres, those 20 additional acres that have  
4 been referenced in purple, would yield an  
5 additional seven million tons of aggregate  
6 material. And just to kind of make that  
7 something that you might be able to wrap your  
8 minds around, seven million tons is the  
9 equivalent, using industry standards, of  
10 about 185 miles of four-lane highway, 185  
11 miles. Similar in size and scope of Highway  
12 16. It's the equivalent of roughly 20 to  
13 30,000 single-unit residential homes. So  
14 seven million tons is a big deal to us.

15 In 2013, the American Society for Civil  
16 Engineers estimates \$3.5 trillion that will  
17 need to be spent on infrastructure  
18 improvements and upgrades. Lincoln County,  
19 especially, East Lincoln County, at the  
20 continued rate of growth will see some of  
21 that work. As long as people are on the  
22 roads, as long as there are bridges to be  
23 built, the product we provide to the market  
24 and to the community, will be of demand.

25 So really in addition, we're also

1                   confident that the modification we're  
2                   requesting directly corresponds with the  
3                   county's own Land Use Plan. Two standards  
4                   which specifically state, the first, the  
5                   preservation of prime employment and  
6                   industrial sites which we consider ourselves  
7                   to be one of. And secondly, to ensure that  
8                   Lincoln County remains an affordable place in  
9                   which to build and live, which we also feel  
10                  quite confident that we can make a strong  
11                  case that we allow that as well.

12                 So after explaining the merits and the  
13                 importance of our reserve base, there's been  
14                 a little bit of discussion from Randy in  
15                 terms of how it came to be in its current  
16                 designation. In 2007, as Randy mentioned  
17                 Pulte Homes came to Lincoln County and they  
18                 identified the parcel of property to our due  
19                 north as being suitable for building high-  
20                 density residential units, a retirement  
21                 community. The Board of Commissioners at  
22                 that time really urged Hedrick and Pulte to  
23                 sit down and work out an agreement. The  
24                 county recognized the potential conflict in  
25                 terms of having two disparate zoned entities

1 existing right next to each other. It was a  
2 binding agreement. And in any agreement you  
3 give a little and in our case, what we gave  
4 was seven million tons of reserves. And  
5 really, incorporated into that agreement was  
6 two things that were very important to us.

7 The first thing was a very explicit  
8 explanation to home buyers in the Pulte site  
9 identifying our quarry and not just  
10 identifying it at the state standard, but  
11 going in-depth and explaining certain things  
12 in terms of what potential home buyers might  
13 expect to hear from their neighbor that has  
14 been there for 30 years, what sort of noises  
15 are commonplace occurrences in terms of our  
16 operation. And so there's a very explicit  
17 disclosure that was included in that  
18 agreement that ultimately led us to sacrifice  
19 so to speak those 20 acres in question.

20 And there was also a covenant not to sue  
21 which has been referenced. The covenant not  
22 to sue didn't protect us from operating  
23 outside of our boundaries. What the covenant  
24 not to sue did, was it protected us as an  
25 operation from frivolous lawsuits from

1 neighbors or home buyers that potentially may  
2 be experiencing some buyer's remorse and so  
3 those were two key components to us. We were  
4 not able to reach an agreement with Shea  
5 Homes of a similar type nature and that has  
6 really informed our path forward over the  
7 last 12 months, specifically. You know, it  
8 has -- we have taken a very conservative  
9 approach to determine the feasibility of what  
10 we can do on our property, and whether or not  
11 we can extract those seven million tons and  
12 remain good neighbors, most importantly.

13 And what we learned through that process  
14 and really what we're going to share with you  
15 tonight is that we do feel comfortable in our  
16 ability to mitigate noise, dust, and blasting  
17 concerns to comply with our already strict  
18 standards. We have spoken extensively to  
19 industry peers that are seeing a very similar  
20 phenomenon that we are in terms of  
21 communities growing in and around active  
22 quarries. And we will have to modify some  
23 things, specifically on the blasting side so  
24 that we can maintain our current level of  
25 vibration to any of our neighbors and

1 structures. We don't have total clarity of  
2 what is going to become of the property to  
3 our due north. We do have certainty in terms  
4 of what we'd like our direction to be moving  
5 forward as an operation. We have certainty  
6 in what our investment in this county has  
7 been. We have certainty in terms of what  
8 we'd like our investment to continue to be.  
9 We also have certainty in the fact that  
10 Lincoln County has a very bright future ahead  
11 of it and I guess what we're looking for  
12 tonight is a little bit of clarity in terms  
13 of our place within that future.

14 And so most importantly, we're going to  
15 be good neighbors every step of the way.  
16 With 90 years of doing business the right  
17 way, we're going to continue to do it that  
18 way. And so at this point, I'm going to turn  
19 it over to Craig Justus and they're going to  
20 get into a little more depth in terms of  
21 presenting some expert testimony from a  
22 noise, blasting, and land value studies. So  
23 I appreciate your time again. Thank you.

24 COMMISSIONER OAKES: Just one question.

25 MR. LORDI: Go right ahead.

1           COMMISSIONER OAKES: You say in the application  
2                           you're going to extend the life of the quarry  
3                           eight to ten years?

4           MR. LORDI: Right.

5           MR. OATES: What's your (inaudible) current  
6                           estimate of when the quarry will be done  
7                           generating material?

8           MR. LORDI: That's a little bit of a trade secret  
9                           in terms of our industry and so they all have  
10                          a finite life. We are self-consuming by  
11                          nature. We cannot order materials from China  
12                          and manufacture them on-site and so we would  
13                          like to have as much longevity as we possibly  
14                          could have. I would say -- I would say 30  
15                          years.

16          MS. POINSETT: Can I ask you a question? Maybe  
17                           you're not the right person?

18          MR. LORDI: I may not be.

19          MS. POINSETT: Do you have a time frame for when  
20                           you plan on expanding towards the Shea  
21                           property?

22          MR. LORDI: That's a good question. We don't have  
23                           an immediate time frame right now. There are  
24                           a lot of things that dictate in terms of, you  
25                           know, which reserves we go after and when,

1                   depending on what we have access to. So  
2                   right now we don't have an immediate time  
3                   frame in mind at this present moment.

4           MR. JUSTUS: Good evening, Chairman, Board of  
5                   Commissioners. My name is Craig Justus and  
6                   I'm an attorney for the applicant. And at  
7                   this time I'm going really be more of a Vanna  
8                   White helping Jason Conner with an easel and  
9                   some exhibits for you to consider.

10          MR. CONNER: I'm going to go over the maps and  
11                   kind of what we're after.

12          (WHEREUPON, Exhibit D previously marked was  
13                   presented for review)

14          MR. CONNER: So this Exhibit D. And Exhibit D is  
15                   what was previously permitted in 2007 so I'll  
16                   show Exhibit A, what we have.

17          MR. JUSTUS: And just for clarity purposes, I  
18                   think for the record, we're going to be  
19                   calling this Exhibit A-1, because Exhibit A  
20                   was -- is part of our application that you  
21                   already have.

22          (WHEREUPON, Exhibit A-1 was marked for  
23                   identification)

24          MR. JUSTUS: Exhibit A-1 is just changing the  
25                   colors so you can better understand the

1 difference between the plan approved in 2007  
2 and the plan we're asking to be approved  
3 today.

4 MR. CONNER: So the gray, the future pit, as Randy  
5 mentioned before, this was all, everything  
6 south of this Pulte -- quarry Pulte buffer  
7 survey, was all approved in '07. So what  
8 we're asking for is basically to expand this  
9 area, 13.5 acres, expand this northeast area  
10 to 6.5 acres and then we're going to define  
11 the actual berm to be --

12 COMMISSIONER BEAM: Is it currently in the gray  
13 area, just south of that?

14 MR. CONNER: Right, here?

15 COMMISSIONER BEAM: Yes. Is that a pit now or is  
16 that -- it says, on my map here that it's the  
17 future pit. Is that correct?

18 MR. CONNER: Yeah. This is the present pit so  
19 this would be future pit that we would  
20 expand. We would mine over in this area.

21 COMMISSIONER BEAM: So that one is still not  
22 currently a mine?

23 MR. CONNER: Correct. Correct. So what we're  
24 after is to expand into this area an  
25 additional 13.5 acres and then basically



1                   construct a berm that is 50 foot in width 10  
 2                   foot in height. I'm coming up with the  
 3                   visual of that. So what we're after, so  
 4                   within the mining permit, we have a 50 foot  
 5                   offset off of an adjoining property owner and  
 6                   any water -- waterway. So what we're  
 7                   proposing to do is build our berm within our  
 8                   50 foot buffer which we're allowed to do by  
 9                   our state mining permit. Again, 10 foot  
 10                  high, 50 foot in width. And this -- so we  
 11                  would use to construct this berm, 2,000 feet  
 12                  long. We would take the strippings, build  
 13                  the berm, and then this is what your typical  
 14                  mine would look like, so's the pit. So, and  
 15                  within this -- all this, you know, our  
 16                  industry is extremely heavily regulated and  
 17                  everything that we do is controlled by the  
 18                  state mining permit, air quality and water  
 19                  quality.

20               COMMISSIONER BEAM: Okay. What you got a  
 21                  conditional use permit or whatever that  
 22                  allows you currently is to mine where you  
 23                  haven't started mining yet, that gray area  
 24                  there?

25               MR. CONNER: Yes, it allows us --

1 COMMISSIONER BEAM: And the gray area on the  
2 right?

3 MR. CONNER: Correct.

4 COMMISSIONER BEAM: That's two locations that you  
5 can currently mine that you're not mining?

6 MR. JUSTUS: That's correct.

7 MR. CONNER: Yeah. So we're asking in increasing  
8 this area we'll gain another seven million  
9 tons of reserves we're able to access.

10 COMMISSIONER BEAM: My question is basically, is  
11 since we -- you've not even started to mine  
12 on two locations that are by far much larger  
13 than these two little small spots here, why  
14 is there a need -- why is the need to do this  
15 now and when you've not even started to mine  
16 these other two locations at all?

17 MR. JUSTUS: Well, I can tell you in a large  
18 degree, it's about fixed expectations. As  
19 you heard from Joe, the mining industry is  
20 unique in that the property itself is the  
21 asset. You can't go to China and buy more.  
22 The land itself is the unique thing. If we  
23 had not reached an understanding with Pulte  
24 that included the covenant not to sue and  
25 included the disclosure requirements that

1 we've talked about, then in 2007 we would  
2 have come and asked for exactly what you're  
3 looking at here as Exhibit A-1. The only  
4 reason we backed off, what's shown in purple,  
5 was for the things that we got out of the  
6 Pulte deal which included the covenant not to  
7 sue --

8 COMMISSIONER BEAM: And that's not the company  
9 that's doing the housing development?

10 MR. JUSTUS: That's correct. That agreement --

11 COMMISSIONER BEAM: Somebody else is there and  
12 they won't agree to that?

13 MR. JUSTUS: They -- they did not want to agree to  
14 the disclosure requirements nor did they want  
15 to agree with the covenant not to sue. And  
16 quite frankly, there was nothing that bound  
17 them to that in the sense that Pulte didn't  
18 close so the agreement was, as Randy said,  
19 was nullified.

20 COMMISSIONER BEAM: How long have you all been  
21 working, I mean, how long has all this been  
22 going on?

23 MR. JUSTUS: Well, I've had a child and a second  
24 marriage and --

25 COMMISSIONER BEAM: That's more information than I

1                   needed right there.

2           MR. JUSTUS: But it has been going on since 2006.

3                   But the reality is that the idea of my  
4                   client, Hedrick, was to come together and  
5                   present a plan that would say, "Here is the  
6                   plan for the quarry for its useful life."  
7                   And the only reason we backed off of this  
8                   purple area was for the things we got and now  
9                   they're no longer there. And so we're coming  
10                  back and asking so that basically, ten years  
11                  from now, someone can't say, "Well, I didn't  
12                  know what the plan was."

13          COMMISSIONER BEAM: Are they building houses over  
14                  on this other place yet?

15          MR. JUSTUS: My understanding, and again, it's my  
16                  rough understanding, is they closed on Phase  
17                  1 only which is a lot further north and  
18                  they're starting development on that  
19                  property. Phase 2, which is an area that was  
20                  closer to us, they haven't closed on.

21          COMMISSIONER BEAM: So they may not be building  
22                  any houses back over here towards this quarry  
23                  in our lifetime?

24          MR. JUSTUS: We can't control that. What we can  
25                  control is basically, what is our plan and

1                   what we're asking for is basically what the  
2                   State of North Carolina, with their extensive  
3                   regulations, what they would allow as a  
4                   statewide standard in North Carolina which is  
5                   a 50 foot buffer.

6                   COMMISSIONER BEAM: Is that not apt to change?

7                   MR. JUSTUS: The state standards?

8                   COMMISSIONER BEAM: Yeah, the state standards and  
9                   anything we -- anything we do here today, is  
10                  it not liable to change?

11                  MR. JUSTUS: Well, I'm not aware of the state  
12                  standards having been altered recently, but  
13                  the conditions that were in the 2007 --

14                  COMMISSIONER BEAM: If it's at the state  
15                  government, they're going to change.

16                  MR. JUSTUS: Well, they may, but the conditions  
17                  that were imposed upon us in 2007, all of  
18                  them carried forward to what's in purple  
19                  except for the first two and one of the main  
20                  requirements is that we have to abide by  
21                  state requirements. So if the state later on  
22                  decides to do something to us, then I guess  
23                  that's up to the state. But we're asking for  
24                  the assurances of what we can do with this  
25                  piece of property because again, mining is

1 unique and this is the only asset we've got.

2 CHAIRMAN MITCHEM: Okay. Any other questions?

3 COMMISSIONER OAKES: I have a couple. What's your  
4 current understanding of the restrictions on  
5 blasting hours and operating hours?

6 MR. CONNER: Say it again, sorry.

7 COMMISSIONER OAKES: What's your current  
8 understanding of the restrictions that you  
9 have on when you can blast and when you can  
10 operate excavation?

11 MR. CONNER: Yeah. We can blast, you know, we're  
12 held by one inch per second and at 133  
13 decibels (inaudible) blasting. But --

14 COMMISSIONER OAKES: I'm talking about time of  
15 day.

16 MR. CONNER: Time of day? We can -- 24 hours a  
17 day.

18 UNIDENTIFIED MAN: No, blasting would have to be  
19 before dark.

20 MR. CONNER: Before when?

21 UNIDENTIFIED MAN: Before dark.

22 MR. CONNER: Before dark.

23 COMMISSIONER OAKES: So it's dawn to dark?

24 MR. CONNER: Yes.

25 COMMISSIONER OAKES: Okay. What about operating

1 hours, excavating, same thing?

2 MR. CONNER: No. We can excavate at any point in  
3 time.

4 COMMISSIONER OAKES: Twenty-four hours, seven days  
5 a week?

6 MR. CONNER: Yes.

7 MR. JUSTUS: Right now, of course, this is what  
8 has been already approved and I don't believe  
9 there was any operational requirements  
10 imposed in 2007 as part of the county  
11 approval. We're asking for, of course,  
12 what's in purple. But I will say this, we  
13 are open-minded to any reasonable condition,  
14 so it's just a matter of we're asking for --  
15 if you are asking for something, let's just  
16 have a discussion about it, but we're open-  
17 minded to any reasonable condition.

18 CHAIRMAN MITCHEM: Yes, sir. Go ahead, Keith.

19 MR. JOHNSON: Can you give us some mining detail?  
20 Is the usable material 20 feet under the  
21 overburden is there about a 20 foot  
22 overburden there?

23 MR. CONNER: Yeah, correct.

24 MR. JOHNSON: So you would use the overburden to  
25 build the berm?

1 MR. CONNER: Yes, correct.

2 MR. JOHNSON: And so you would have no problem  
3 with the condition that the berm be completed  
4 before you start any blasting in that area.  
5 I would think you wouldn't have a problem  
6 with that because you're doing it with the  
7 overburden?

8 MR. CONNER: Yes, correct.

9 MR. JOHNSON: And when you finish with the  
10 overburden, the dirt slopes down to the first  
11 blasting surface, it looks like would be 20  
12 foot plus a 10-foot berm?

13 MR. CONNER: Correct.

14 MR. JOHNSON: Is that -- that's what it looks like  
15 on the engineering --

16 MR. CONNER: Right.

17 CHAIRMAN MITCHEM: Any other questions?

18 MR. DEAN: Back when we were discussing Shea Homes  
19 and the approval of the subdivision of Shea  
20 Homes, we met down there and there was blast  
21 set up -- were you there?

22 MR. CONNER: Yes.

23 MR. DEAN: Would you show us on the map, where we  
24 were when the blast was, and where we were --  
25 on the property at Shea Homes when the --



1                   that day that we were down there and you had  
2                   the decibel reading set up and -- I just want  
3                   general information.

4           MR. CONNER: I don't have -- yeah, it would be up  
5                   here, somewhere right in this area. It's 330  
6                   feet away from our property line. The blast  
7                   was in this location.

8           MR. DEAN: And there were several Planning Board  
9                   --

10          COMMISSIONER OAKES: I can't see that. Can I see  
11                   that please?

12          MR. CONNER: So the blast -- the blast would have  
13                   been in this general location and then we  
14                   would have been up in this general area.

15          COMMISSIONER OAKES: Measure --

16          MR. CONNER: 330 feet. So it would have been 330  
17                   feet from here to here, but the blast would  
18                   have been a lot further --

19          COMMISSIONER OAKES: The 330 feet is where you  
20                   measured from?

21          MR. CONNER: No. 330 feet is the -- where the  
22                   line is off of our property line where we  
23                   were standing.

24          MR. DEAN: They were 330 feet away from their  
25                   property.

1 COMMISSIONER OAKES: Oh, okay. That's where you  
2 were standing when the blasting happened?

3 MR. CONNER: Correct.

4 MR. DEAN: But we were actually on the property  
5 that Shea was going to develop also --

6 MR. CONNER: Correct, yes.

7 CHAIRMAN MITCHEM: How many of the Planning Board  
8 members attended that, I also attended that?

9 MR. CONNER: Carrol, this kind of -- so we were  
10 standing in this general area right here and  
11 also we were blasting in this area.

12 MS. MITCHEM: And the area you were standing at is  
13 going to be the closest home that Shea Homes  
14 is going to build to there, correct?

15 MR. CONNER: Correct.

16 MR. BURGIN: According to this map, would that be  
17 that purple line?

18 MR. CONNER: Yes.

19 CHAIRMAN MITCHEM: Okay. Let's move on to the  
20 next person that -- Hedrick like to speak?

21 MR. CONNER: It'd be Mike Osborne with Austin  
22 Powder.

23 MR. OSBORNE: Yeah, that would be me. And just to  
24 clarify it is state law that all blasting  
25 takes place before dark and after daylight.

1           That's the state regulation that we all live  
2           by.

3           CHAIRMAN MITCHEM: Can I get your name?

4           MR. OSBORNE: I am Mike Osborne with Austin Powder  
5           Company. And thank you for allowing me to  
6           speak. With Austin Powder Company, I'll tell  
7           you a little bit about Austin Powder Company  
8           first. Well, we've been around since 1833  
9           and it's Austin Powder, not Powers, but I get  
10          that confused a lot, but it's Austin Powder  
11          Company, started 133 years ago -- excuse me,  
12          1833, 182 years ago. We're a full-line  
13          explosives company, although we're owned by  
14          one man in Virginia. We sell, distribute,  
15          and handle explosives pretty much globally.  
16          And I've been with Austin Powder Company  
17          about 35 -- well, 35 years in June. I've  
18          been involved with mining for coal,  
19          limestone, both surface and underground, iron  
20          ore, copper, gold, just about anything. Just  
21          like they say, if it can't be grown, it's got  
22          to be mined and usually if it's got to be  
23          mined, most of the time, it's going to take a  
24          few explosives to do it. That's where I  
25          spend my time.

1 Now, the biggest part of my time over  
2 the last 20 years has been in the aggregate  
3 industry here in North Carolina. Prior to  
4 being in North Carolina, I worked in kind of  
5 the coal fields of West Virginia, spent some  
6 time in Missouri out in the limestone area  
7 and the lead mines out that way and then came  
8 back and spent some time as a product manager  
9 in Ohio and then moved to North Carolina.  
10 Moving to North Carolina about 20 years ago,  
11 I've been involved with Hedrick Industries on  
12 Lake Norman Quarry for that period of time.

13 At Lake Norman Quarry's Hedrick  
14 Industries, I mean, we've been together for a  
15 long time as a company and a customer as we  
16 would say and they asked us just to look and  
17 I was given that 330 foot range, look and see  
18 how we can mine safely and economically. You  
19 got to look at it both ways, but mainly  
20 safely to within 330 feet of these homes.  
21 Which Austin Powder and all the other  
22 explosives companies in the U.S. do, it's  
23 just like Joe was saying, how it's all -- it  
24 just keep getting closer, all the homes just  
25 keep moving in closer. In commercial use of

1 explosives, and I say commercial because we  
2 don't deal with military explosives, but  
3 commercial use of explosives in the U.S. is  
4 about 7.4 billion pounds of explosives used  
5 annually. That's a rough number, 2012  
6 number. And a large portion of those are  
7 used in places just like Lake Norman Quarry.  
8 In North Carolina and this is rough numbers,  
9 but in North Carolina -- North Carolina, the  
10 state of North Carolina is going to need  
11 about 15 million tons of aggregate to use and  
12 most of that's used in urban areas, I would  
13 say. So most of that's used for roads,  
14 buildings, construction, and that's where it  
15 all needs to go. And then when we blast,  
16 it's a pretty scientific type of thing that  
17 we do. Vanna, do they have this?

18 MR. JUSTUS: Yes, I just handed it out.

19 MR. OSBORNE: This is the kind of the study we put  
20 together and if you look through it, there's  
21 a lot of verbiage, there's a lot of formulas,  
22 there's a lot of numbers, there's a lot of  
23 computer programs and all of that. But I'm  
24 just going to kind of summarize it that when  
25 blasting is conducted, we just take that rock

1 mass and blast it down to a fragment size  
2 that's suitable and gives it the looseness to  
3 be dug with a material that Joe was talking  
4 about. All blasting operations are well-  
5 designed. It's not just go out load it and  
6 go. There's a lot of design work that goes  
7 into the beforehand process.

8 COMMISSIONER BEAM: Do you actually do the  
9 blasting down here at the quarry?

10 MR. OSBORNE: I have. I do not now. I'm the  
11 technical manager for the Southeast, but I  
12 have done the blasting at the quarry. We do  
13 have people that do the blasting there. I  
14 know I been in there a month or two ago, I  
15 guess, is when I was in there.

16 The blasting plans, they're developed to  
17 maximize fragmentation and minimize  
18 environmental effects such as the vibration  
19 and air blast. The effects of the  
20 anticipated blasting activity and equipment  
21 associated with the actual mining and  
22 crushing operations indicate that the ground  
23 vibration and our blast and general noise  
24 levels will be well within safe limits  
25 dictated by the state of North Carolina.

1 COMMISSIONER OAKES: And do you have monitoring  
2 equipment on-site?

3 MR. OSBORNE: Yes, have monitoring -- we do not  
4 supply -- that's kind of like if you ask me  
5 how my monitoring was going and I shot it  
6 myself, it's kind of like gives a little  
7 conflict so it's an outside party or they do  
8 it themselves. But yes, monitoring equipment  
9 at the nearest protected structure which is  
10 state law. So state law has to be monitored.

11 COMMISSIONER OAKES: And you keep that data for  
12 how long?

13 MR. OSBORNE: Five years. Legally, five years  
14 we've actually got it longer, but legally,  
15 five years.

16 The state of the art explosives that we  
17 use today has really progressed a great deal.  
18 I mean, it's -- we -- everybody when they  
19 hear explosives, they automatically think  
20 dynamite and we don't really use dynamite  
21 anymore. And it's manufactured explosives,  
22 that's actually manufactured at the jobsite.  
23 We don't run up and down the road with it.  
24 We've got chemicals that mix together to go  
25 in the blast holes to be exploded. We've got

1                   detonators that are little computers. And  
2                   Lake Norman Quarry uses state of the art  
3                   materials with electronics and gas boosters  
4                   and gas emulsions. They use the current  
5                   levels that we supply.

6                   Bottom line with all this, and yeah,  
7                   we'd have to make some changes in the  
8                   blasting process because what I looked at was  
9                   where we are today just like you were  
10                  pointing how far away that was. As we get  
11                  closer, we do have to change the way we do  
12                  things a little bit by lowering the pounds  
13                  that would be exploded at one time to stay  
14                  within our requirements set by the state and  
15                  to stay with as keeping the neighbors happy  
16                  because we do it all the time. There's  
17                  computer programs that tell us how to time  
18                  one. Well, it's getting quite good as the  
19                  technology takes us there. And we're on the  
20                  forefront of technology. But we can, at the  
21                  Lake Norman Quarry, maintain safe and  
22                  adequate levels for noise and vibrations  
23                  within their state requirements.

24                  You got any questions on this, you're  
25                  welcome to ask me or if anything else, please



1 ask.

2 COMMISSIONER OAKES: How often do you blast?

3 MR. OSBORNE: Blasting depends upon the volume  
4 that they would have or their sales, let's  
5 say, because they don't put more on the  
6 ground than normal. What we've done over the  
7 past, well, my goodness, probably the past 15  
8 years, it's been like two a week, two times a  
9 week, usually about 50,000 tons at a time  
10 which is usually about 25,000 pounds at one  
11 time. So that's normally about twice a week,  
12 let's say. Over the past recession period it  
13 has been more like once a week. I think they  
14 even went 2009 to maybe once every month. So  
15 it just depends on the economy. Any other  
16 questions?

17 COMMISSIONER BEAM: When -- back in 2007 when  
18 there was a different group that was doing  
19 the homes, did their conditional use permit  
20 say that this agreement had been reached and  
21 that they wouldn't --

22 MR. OSBORNE: To my knowledge that -- they agreed  
23 to the conditions that --

24 COMMISSIONER BEAM: Did they use that -- that was  
25 part of their conditional use permit?

1 MR. JUSTUS: Yes. The Pulte, the agreement we  
2 worked out was part of their conditional use?

3 COMMISSIONER BEAM: Yeah.

4 MR. JUSTUS: Yes.

5 COMMISSIONER BEAM: What happened with this next  
6 group? I mean, I'm asking that because I'm  
7 new to the Board. I wasn't here when this  
8 decision was made.

9 MR. JUSTUS: The understanding was that at least  
10 technically, that if Pulte did not close, and  
11 I believe that the agreement actually covered  
12 this, that if Pulte did not close on the  
13 property, the agreement would expire. So the  
14 agreement never got recorded of record. It  
15 was part of the zoning per se, but when Shea  
16 Homes came before you, they basically moved  
17 from the standpoint of that agreement not  
18 being in effect.

19 CHAIRMAN MITCHEM: And Hedrick and Shea tried to  
20 talk to each other and get an agreement, but  
21 that was never reached?

22 MR. JUSTUS: Right. We did spend a lot of time  
23 trying to talk it out and --

24 CHAIRMAN MITCHEM: They would not agree.

25 MR. JUSTUS: -- we didn't come to a final

1 agreement.

2 CHAIRMAN MITCHEM: Any other questions? Keith?

3 MR. JOHNSON: Mr. Osborne, looking at page 5.

4 MR. OSBORNE: Of the report?

5 MR. JOHNSON: Yes, sir. And I didn't do well in  
6 math. But you've got a formula here and what  
7 it appears is that based on that formula, you  
8 would reduce the amount of explosive the  
9 closer you get to a property line --

10 MR. OSBORNE: You did pretty good in math.

11 MR. JOHNSON: -- because of that measurement, the  
12 seismograph would be measuring it?

13 MR. OSBORNE: That's correct.

14 MR. JOHNSON: So over here in the middle, it  
15 doesn't matter. If their equipment shakes,  
16 it's all right, Hedrick doesn't care about  
17 that?

18 MR. OSBORNE: Right. Well --

19 MR. JOHNSON: To some degree, but you still got to  
20 be --

21 MR. OSBORNE: Yeah, to some degree they don't care  
22 about the equipment.

23 MR. JOHNSON: You still got to meet the state  
24 requirements. You got to meet state  
25 requirements.

1           MR. OSBORNE: So there's not any danger. This is  
2                           for vibration to a structure and --

3           CHAIRMAN MITCHEM: If you would, speak into the  
4                           microphone.

5           MR. OSBORNE: I'm sorry. I walk some when I talk  
6                           so I'll try my -- there's a -- the blasting  
7                           bible for vibration and sound that was  
8                           written by the U.S. Bureau of Mines, a while  
9                           back and it's been tested many, many times.  
10                          And they look at -- they look with physical  
11                          mining, blasting, taking seismic readings  
12                          looking at possible cracks and crevices or  
13                          possible damage and they arrived with this  
14                          formula. So you are correct. As you get  
15                          closer in distance, the pounds do go down.

16          MR. JOHNSON: Reduce the blast and so there's less  
17                           energy dissipated through the -- through the  
18                           rock?

19          MR. OSBORNE: Correct. About 95 percent of all  
20                           the energy that you put into the ground,  
21                           breaks the rock. There's about five percent  
22                           that would end up going into vibration or  
23                           overpressure.

24          CHAIRMAN MITCHEM: Any other questions for Mr.  
25                           Osborne?

1                   Okay. Not hearing any, next. Anyone else  
2                   from Hedrick?

3           MR. JUSTUS: Yes, we had commissioned a sound  
4                   study and Jesse is going to talk about that.

5           MR. EHNERT: Thank you. My name is Jesse Ehnert.  
6                   I'm the acoustic consultant with Arpeggio  
7                   Acoustic Consulting in Atlanta. We're a  
8                   four-person firm that was founded in the year  
9                   2000. I have personally been an acoustic  
10                  consultant having gotten my undergrad at  
11                  University of Florida and my graduate degree  
12                  at Georgia Tech. But I've been practicing  
13                  acoustic consulting for some 17 years.

14                         We were originally retained by Hedrick  
15                         about a year and a half ago to take a look at  
16                         potential noise impacts from this expansion.  
17                         Mr. Osborne already spoke to the blasting  
18                         issue both in terms of vibration and noise so  
19                         we were brought into model or to address  
20                         potential other sources. Specifically, it  
21                         was deemed that one of the more persistent  
22                         sound sources that would be encountered,  
23                         again aside from blasting, would be backup  
24                         alarms from haul trucks. So we came out  
25                         about a year, well, a bit little less than a

1 year ago, and measured backup alarms from  
2 haul trucks to quantify exactly how loud they  
3 are and proceeded to do some computer  
4 modeling using commercially available three  
5 dimensional software called SoundPLAN where  
6 you actually model the topography of the  
7 land, and all the structures, and so forth.  
8 We modeled two backup alarms emitting  
9 simultaneously at the northern property line  
10 just south of the 10-foot tall berm to  
11 determine its effect on sound levels at the  
12 nearest -- at some of the nearest properties.  
13 Speaking just about the nearest property, the  
14 berm would have -- be effective of reducing  
15 sound levels by approximately seven decibels  
16 at that nearest property line and that is  
17 with the dump trucks at grade. As you go  
18 lower in grade, then the sound level goes  
19 down mainly because the sound has a lot  
20 further to refract around, up, you know, 50,  
21 200 feet. In addition, as they dig deeper,  
22 then you have what amounts to a big wall that  
23 provides -- which causes the sound to reflect  
24 back towards the south. Sound levels at that  
25 nearest property are -- would be around 60

1           decibels from, again, from two backup alarms  
2           emitting simultaneously which would be about  
3           the sound level of two people having a normal  
4           conversation at a distance of about three  
5           feet. And again, as you go lower in  
6           elevation as the blasting occurs and grade  
7           goes lower and lower and lower, then the  
8           sound level will go down to 50 and lower  
9           decibels.

10           And so our conclusion was that while not  
11           necessarily being inaudible at that nearest  
12           property line, particularly when the sources  
13           are at grade before the blasting occurs, the  
14           level will not be onerous or to a degree that  
15           it would materially endanger those nearest  
16           residences. Any questions?

17           CHAIRMAN MITCHEM: Any questions?

18           COMMISSIONER OAKES: Well, I don't know decibels.

19           At 100 feet away, what's the decibel level of  
20           a Harley-Davidson?

21           MR. EHNERT: At 100 feet away?

22           COMMISSIONER BEAM: Well, I got a muffler --

23           COMMISSIONER OAKES: Your Harley-Davidson.

24           MR. EHNERT: At 100 --

25           MR. PATTON: Commissioner Oakes, I have a app for

1                   that and the conversation you're having right  
2                   now, is 80 decibels.

3           COMMISSIONER OAKES:   Okay.   Thank you.

4           MR. EHNERT:   Well, that -- you're probably holding  
5                   that very close to your mouth, so.

6           MR. PATTON:   Yeah.

7           MR. EHNERT:   Yeah, yeah.   So you're -- so that 80  
8                   decibels would be reflective mostly of the  
9                   sound of your voice a foot or two away from  
10                  your phone.

11          MR. PATTON:   Yeah.   Your conversation coming  
12                  through the microphone is 70 to 75 decibels.

13          MR. EHNERT:   Right.   Do you still want the answer  
14                  to the Harley-Davidson question?

15          COMMISSIONER OAKES:   No.

16          CHAIRMAN MITCHEM:   Any other questions?   Thank  
17                  you.   One other, I believe we had one other?

18          MR. JUSTUS:   We do.   We have Carol Fortenberry  
19                  that did a property value study.

20          MS. FORTENBERRY:   I think I'm the shortest one in  
21                  the bunch.   I'm Carol Fortenberry.   I'm a  
22                  partner with Fortenberry Lambert based in  
23                  Charlotte, North Carolina.   I like to tell  
24                  people that I'm a native Charlottean, but I  
25                  am a native Charlottean.   And as far as my



1 education, I got an MBA from Queens College  
2 which is now known as Queens University,  
3 received my MAI designation from the  
4 Appraisal Institute which is the highest  
5 level in appraising that you can get. I am  
6 generally certified in both North and South  
7 Carolina and I've been appraising and  
8 consulting for about 26 years. I've also  
9 served on the City of Charlotte's Zoning  
10 Board of Adjustments for six years and of  
11 those six years, two years I was vice-chair  
12 and two years I was chair. I'm also a member  
13 and past president of CREW, which is  
14 Commercial Real Estate Women. I've been on  
15 the board of directors of the North Carolina  
16 chapter of the Appraisal Institute in serving  
17 as the president for the state in 2007. I've  
18 also served as a regional representative for  
19 the Appraisal Institute and in addition, I've  
20 also had the opportunity to do several impact  
21 studies for rock quarries around North  
22 Carolina.

23 COMMISSIONER BEAM: We'll certify you as an  
24 expert.

25 MS. FORTENBERRY: Pardon?

1 COMMISSIONER BEAM: We'll certify you as an  
2 expert.

3 MS. FORTENBERRY: Okay. To let you know what I  
4 did as I went out and inspected the property,  
5 I looked -- I had a thorough inspection. I  
6 was escorted all around the entire site and  
7 then I also spent the better part of a day  
8 just inspecting the neighborhood and all the  
9 site, the properties around it. I did a site  
10 analysis. I reviewed zoning regulations and  
11 the future Land Use Plan. I analyzed  
12 historical property values surrounding the  
13 quarry property and I also analyzed assessed  
14 values which are based on market value for  
15 the subject as well as surrounding  
16 properties.

17 In doing an impact study, there's really  
18 six criteria that we like to look at and the  
19 first one is, would the expansion materially  
20 endanger public health or safety? I felt  
21 that it would not. The parcels or the  
22 expansion is already part of the existing  
23 quarry operations, it's not like they're  
24 adding land to it, it's already part of it.  
25 And in addition, I noted that the quarry is a

1 member of the WAIT Program so they're there  
2 to help protect wildlife and they intend to  
3 continue with that program.

4 The second criteria is, does the  
5 development comply with all regulations and  
6 standards? To the best of my knowledge and  
7 the information that I was provided, they do  
8 currently comply and I don't see where this  
9 expansion would -- if they were to expand,  
10 they would have to comply or they would be  
11 shut down. So I didn't think that was an  
12 issue.

13 Will the use or development adversely  
14 impact the surrounding properties or  
15 substantially injure surrounding property  
16 values? The quarry has existed since 1984,  
17 1985 and already includes substantial  
18 screening in the form of berms and wooded  
19 areas. Most of the surrounding development  
20 is industrial in nature, especially towards  
21 the south with very sparse single family  
22 residential development. Of course, that  
23 will change with the Shea development. I  
24 interviewed several existing residents to the  
25 north. In doing my expansion, I saw people

1 walking on the street and asked, you know,  
2 how they felt about the quarry and could they  
3 hear noise or was there anything bothersome  
4 about it. And they reported to me that it  
5 had no impact on -- in their opinion. They  
6 had no issue with the quarry whatsoever. I  
7 also interviewed several real estate brokers  
8 who have properties for sale, listed for  
9 sale, and asked if they had ever had any  
10 trouble or any problem with the quarry in the  
11 past and they said the quarry was really just  
12 not an issue and that it certainly didn't  
13 affect property values. The fact that both  
14 Pulte and Shea are showing interest for such  
15 a large development to the north, just  
16 suggests that the quarry I don't think is a  
17 factor as far as if they thought it was going  
18 to hurt property values, they wouldn't be  
19 interested in the property, they wouldn't be  
20 interested in this property to the north.

21 Historical study of sales shows the  
22 quarry has not impacted property values.  
23 Historical assessed values for the  
24 surrounding properties indicated no declining  
25 values. In fact, I understand that the

1 property was -- that the property has been  
2 revalued in 2014 effective, I guess, as of  
3 1/1/15 and the assessor at the time could not  
4 tell me what the -- what was happening with  
5 the assessed values other than to say that  
6 they would at least be stable or increasing  
7 so there would be no declining property  
8 values. So again, I don't think you could  
9 attribute that to the -- any declining  
10 property values to the quarry.

11 Forth criterion, is the plan in harmony  
12 with the area and in conformity with city and  
13 land development plan? Currently the  
14 conditional use conforms to the zoning and  
15 the future Land Use Plan shows continued  
16 industrial use for this property and as well  
17 as some properties to the south. So it'd  
18 still be an industrial flavor in proximity to  
19 the subject.

20 Also, we looked at traffic impact. They  
21 will not change where the traffic flow comes  
22 from in and out of the quarry, it will still  
23 remain in the same place. So it will have no  
24 impact on -- so they're going to maintain the  
25 same entrance and no impact on traffic flow.

1                   A fifth criterion -- criteria, is public  
2                   water and sewer available in an adequate  
3                   capacity? Well, water and sewer is not  
4                   available in the area, but there is a new  
5                   sewer nearby. But it's -- water and sewer is  
6                   not necessary for the quarry operation, so  
7                   the proposed expansion should have no impact  
8                   on those utilities.

9                   And the last issue I looked at, is will  
10                  the change produce a development of equal or  
11                  higher quality? Basically, the operation  
12                  will not change. It should allow Hedrick to  
13                  continue the operation as it has for the past  
14                  30 years. And that's my conclusion if you  
15                  have any questions.

16               CHAIRMAN MITCHEM: Okay. Any questions by the  
17                  Board or -- Ma'am, you said, you were talking  
18                  about tax value. What was the tax value on  
19                  that property?

20               MS. FORTENBERRY: Were you all provided -- did you  
21                  provide my report?

22               MR. JUSTUS: I did.

23               MS. FORTENBERRY: Okay. You should have a copy of  
24                  my report and I'm going to -- it had -- it's  
25                  in there and I'm going to try to find the

1 page for you. I thought I did. It may be  
2 towards the back of the report. I apologize.

3 CHAIRMAN MITCHEM: That's fine. That's okay.

4 UNIDENTIFIED MAN: Page 58.

5 MS. FORTENBERRY: 58? Thank you. This is a  
6 little bit different format than I usually do  
7 for an appraisal so that's why --

8 CHAIRMAN MITCHEM: I understand.

9 MS. FORTENBERRY: So page 58 I think I listed the  
10 -- the quarry's assessed value as well  
11 assessed values of the surrounding  
12 properties.

13 CHAIRMAN MITCHEM: Thank you. Is that all the  
14 ones that wishes to speak with Hedrick?

15 MR. JUSTUS: Yes, Mr. Chairman. For  
16 clarification, the one exhibit we had is this  
17 diagram which shows the, of course, the Clark  
18 property is here to the north, just to show  
19 that on most of the boundaries of this  
20 property are industrial/commercial operations  
21 and so just wanted to make sure you had that  
22 diagram. And for purposes of the record, Mr.  
23 Chairman, I'm going to hand the clerk copies  
24 of the exhibits. You, of course, have been  
25 looking at an Exhibit D, which was the

1 previous approval. Again, the significance  
2 of this Exhibit D is that we're not asking to  
3 go back in history because this has already  
4 been approved that's shown in gray. We are  
5 asking for what is shown on purple and we  
6 have marked the exhibit to show the  
7 difference in the site plans, Exhibit A-1.  
8 The blasting study that Mike Osborne  
9 testified about that he prepared is Exhibit  
10 1. Jesse's noise impact study that he  
11 testified about is Exhibit 2 and Carol's  
12 property evaluation study she just concluded,  
13 and I'm marking as Exhibit 3. The -- in the  
14 diagrams there that we've showed to you  
15 today, I'm marking the adjoining property  
16 uses as Exhibit 4. The mining detail diagram  
17 as Exhibit 5 and for the record, I've  
18 included certified copies of the ordinance  
19 that was in effect when we first had the  
20 approval in 2007 as well as today's UDO and a  
21 certified copy of your Land Use Plan.

22 (WHEREUPON, Exhibits 1, 2, 3, 4, and 5 were  
23 marked for identification)

24 MR. JUSTUS: And Mr. Chairman, if I may, I will  
25 withhold a closing presentation, it won't



1 take that long, after everybody has finished  
2 testifying, if that's okay?

3 CHAIRMAN MITCHEM: That would be fine. Randy, if  
4 I may ask, you were -- you were there when we  
5 visited the site of the blasting, right?

6 MR. HAWKINS: Correct, yes.

7 CHAIRMAN MITCHEM: Can you give me a brief summary  
8 of what happened?

9 MR. HAWKINS: We were standing on the -- at the  
10 site of what would be the nearest home to the  
11 quarry. Of course, they were blasting in  
12 their existing pit. One of my impressions  
13 was that the planes that were flying overhead  
14 towards Charlotte Douglas and away from  
15 Charlotte Douglas Airport were the loudest  
16 noise. Did not feel vibration. I think we  
17 heard like a thud when the explosion took  
18 place.

19 CHAIRMAN MITCHEM: Okay. And I don't -- I just  
20 want, like to say that's -- I was there too,  
21 and especially the airplane noise. We both  
22 stood there and said that was a lot louder  
23 than anything we heard and it was just a  
24 thump. So you really didn't know when it  
25 happened and when it did happen, but the

1 airplane thing did stand out in my  
2 recollection. Thank you, Randy. Okay.

3 Patty Bell, do you wish to speak?

4 MS. BELL: I did, but I'm so confused now, I'm not  
5 going to.

6 CHAIRMAN MITCHEM: Okay. Ada Stapleton. Yes,  
7 ma'am if you would approach the --

8 MS. STAPLETON: Yeah. I got a few questions.

9 CHAIRMAN MITCHEM: Ma'am, if you would come to the  
10 podium. You've been sworn?

11 MS. STAPLETON: Yes, I have.

12 CHAIRMAN MITCHEM: Would you state your name and  
13 address please?

14 MS. STAPLETON: It's Ada Stapleton and it's  
15 Lowesville.

16 I guess one of the biggest questions I  
17 got would be like the one area they're  
18 thinking about doing, is kind of right all  
19 the way in front of our place and down the  
20 side somewhat and I just wondered if it has  
21 any effect at all on our well and stuff, if  
22 they'll rectify it, take care of it?

23 COMMISSIONER OAKES: Could you show us where that  
24 is on the map?

25 MS. STAPLETON: It's --

1 CHAIRMAN MITCHEM: If you'd show her the entrance  
2 to the quarry may be best.

3 MS. STAPLETON: It's Dayton Lane is where we're  
4 at. Well, you got me mixed up.

5 MR. JUSTUS: This is north, south, east, west.

6 MS. STAPLETON: And where's Dayton?

7 MR. HAWKINS: Here it is on this map.

8 MS. STAPLETON: Yeah, there it is right there.

9 CHAIRMAN MITCHEM: Where is that here, Randy, on  
10 this map?

11 MR. HAWKINS: It's on the south side.

12 MS. STAPLETON: It's what, 78235, something like  
13 that.

14 CHAIRMAN MITCHEM: Randy, do you want to explain  
15 that where she's at now is, they're already  
16 blasting and what we're talking about is  
17 farther away. It will be a lot further away,  
18 ma'am, from you, what we're talking about  
19 than where they're actually doing it --

20 MS. STAPLETON: They're going farther away?

21 CHAIRMAN MITCHEM: Yes.

22 MS. STAPLETON: Well, right now, we're -- we can  
23 feel it. We got, myself and the neighbors,  
24 we've got like, I don't know how to explain  
25 this, like things falling apart in the house

1 from the vibration. We got black stuff  
2 coming out of the well. We did put a thing  
3 on the well to contradict that basically, but  
4 I just wondered if -- they're not going to  
5 come any closer, is that what you're saying?

6 CHAIRMAN MITCHEM: On that, particular to what  
7 we're talking about, no.

8 MR. HAWKINS: Their proposal was further away from  
9 you.

10 MS. STAPLETON: Farther away? Okay. Okay.

11 That's it. That's great. Thank you for your  
12 time.

13 CHAIRMAN MITCHEM: David Clark, Jr.

14 MR. CLARK: Chairman Mitchem, Honorable  
15 Commissioners, members of the Planning Board.

16 CHAIRMAN MITCHEM: Give us your name?

17 MR. CLARK: David Clark, Jr. I reside at 8443  
18 Luckey Point Road, Denver. I'm also part of  
19 the family that is selling the property to  
20 Shea Homes and I, you know, certainly I will  
21 update you, we have not closed on this part  
22 of the property so we still have an interest  
23 in what happens to the property adjoining  
24 this. And I think given some of what I've  
25 heard, I think I need to kind of go over some

1 of the history that I've had the opportunity  
2 to be a part of.

3 As part of representing my family in  
4 certain negotiations with the quarry back in  
5 2006 with Pulte Homes, I was aware of the  
6 discussions. There was an agreement that was  
7 reached. Part of that agreement was that  
8 there would not be any opposition to their  
9 conditional use permit that was approved in  
10 2007. As part of honoring that agreement,  
11 our family chose not to oppose them, which we  
12 would have had every right to. So as they --  
13 Hedrick got the benefit of our decision to  
14 stand down, which we could have been standing  
15 here in place of Pulte and I think, you know,  
16 as Randy brought up, at that time a large  
17 percentage of their property or a portion of  
18 the property was zoned residential  
19 transition. It was a grandfathered use. As  
20 part of that approval, they got vested rights  
21 to continue to operate the quarry and expand  
22 their quarry. There was an agreement to put  
23 in place a buffer which we consented to,  
24 which we as part of Shea's application, they  
25 have added that buffer in and quite honestly,

1 we're agreeable to all the terms of Pulte's  
2 agreement with the exception of the  
3 protective -- the covenant not to sue and  
4 disclosure. I think it -- so in essence it  
5 was, you know, with all conditions including  
6 our decision not to oppose in 2007, they --  
7 all that was agreed to with Pulte, Shea had  
8 agreed to do. Following Pulte's termination,  
9 I had a number of meetings with the chairman  
10 of Hedrick. There was discussions that  
11 involved -- they discussed the idea of buying  
12 our property which we offered to sell as part  
13 of their interest in, you know, again their  
14 quarry. We could not reach terms. They made  
15 an offer that was not of the level that we  
16 felt was reasonable.

17 Following that discussion, the chairman  
18 then engaged me about setting aside some of  
19 our property, and the property they now want  
20 to expand into, into a conservation easement.  
21 We again agreed to consider that. I again,  
22 met with him a couple of more times  
23 requesting more information on what he was  
24 proposing. Unfortunately, there was no  
25 follow-up. That sort of got pushed left.

1                   In 2013, we were approached by Shea  
2                   Homes about buying the property. At that  
3                   point, we began to discuss with them. We  
4                   made them aware of the quarry's presence and  
5                   the history here. They made -- there was an  
6                   initial contact with Shea in November of  
7                   2013, which I initiated. The discussions  
8                   continued. As you all know, carried over  
9                   into the hearing which, you know, for us as  
10                  we listen, here the quarry is making an issue  
11                  about the lack of a disclosure agreement,  
12                  that they -- as you all, most of you  
13                  remember, those that were there, it was a lot  
14                  of discussion about the nuisance nature of a  
15                  quarry and, you know, the threat they felt  
16                  that Shea or any development over there, and  
17                  they were trying to impose conditions on not  
18                  Shea or our family as the adjoining property  
19                  owner to protect them. Now, as I understand  
20                  it, there was an agreement in principal with  
21                  the exception of one condition with Shea  
22                  Homes. It involved an existing easement that  
23                  crosses our property that our father and a  
24                  business partner of his had given the  
25                  property owner for the homes that sits at the

1 rear of this property. That property, as I  
2 said, the easement was written in such a way  
3 with the recognition that eventually, there  
4 would probably be some development of this  
5 property. It was structured that the -- at  
6 that time, the homeowner, if there was a  
7 decision to develop property or the road was  
8 needed to be moved, the property owner would  
9 be required to pay for half the relocation.  
10 I think Shea has tried and I think Mr.  
11 Seymoure will speak to some of this, but I  
12 think there was -- been multiple efforts of  
13 good faith to try to resolve this with our  
14 family and with Shea and you know, if all it  
15 comes down to is this easement, I think the  
16 -- Mr. Seymoure can speak to that.

17 I think from our family's standpoint,  
18 what we would ask I think, is that,  
19 understanding they have every right to  
20 consider it becoming in here, the Pulte deal  
21 fell through, but that some standard -- a 10-  
22 foot berm seems to be minimalistic in our  
23 opinion, based on industry standards that we  
24 found in the spring when we were back in  
25 front of you then. I think a larger berm, I



1 think that's part of what was originally  
2 discussed between Shea and the quarry and I  
3 would ask that there be consideration on  
4 behalf of my family to consider those  
5 conditions as any approval that you want to  
6 grant.

7 COMMISSIONER OAKES: What's the easement you're  
8 talking about?

9 MR. CLARK: There was a -- there's a residence  
10 that -- a home, single-family home, was built  
11 back on the property that they now plan to  
12 disturb. That --

13 COMMISSIONER OAKES: In the quarry -- in the  
14 quarry area?

15 MR. CLARK: It is, I believe, sort of in this area  
16 here (pointing).

17 CHAIRMAN MITCHEM: And that's Hedrick's --

18 MR. CLARK: That's Hedrick property, yes. And the  
19 road, I think you can see, it comes in here.

20 COMMISSIONER OAKES: Charlie Saine Road?

21 MR. CLARK: It comes in off Charlie Saine Road.  
22 But the idea is that, you know, it's -- the  
23 frequency of use, I don't know, I can't speak  
24 to. But what was discussed is that -- and  
25 what terms of the agreement that grants them

1                   that easement is that that road is relocated,  
2                   they've got to pay for half the cost. If  
3                   they want to continue to come in that route,  
4                   they've got to pay for the road to be moved  
5                   halfway. I think Shea --

6                   COMMISSIONER OAKES: Who's "they"? Who's "they"?

7                   MR. CLARK: The quarry and Shea. They were --  
8                   their negotiations, sorry, Commissioner --

9                   COMMISSIONER OAKES: You're confusing me. There's  
10                  an easement in the quarry area to a home  
11                  that's there?

12                 MR. CLARK: Yes, sir. There is a small easement  
13                  and I would rather Mr. Seymoure discuss it,  
14                  but it goes back, I think, to the 70s when a  
15                  family lived in a small home right here  
16                  (pointing) in a single-family residence.

17                 COMMISSIONER OAKES: That home is still there or  
18                  it's gone?

19                 MR. CLARK: It is there.

20                 COMMISSIONER OAKES: It's occupied?

21                 MR. CLARK: It's still on the property. There is  
22                  --

23                 CHAIRMAN MITCHEM: If I may, I don't think that  
24                  easement and that house back there is  
25                  Hedrick's house so that's not dealing with

1 anything what we got to do with here.

2 MR. CLARK: It is.

3 CHAIRMAN MITCHEM: I don't understand how it would  
4 be because if it belongs to them and the  
5 easement, you know, I don't --

6 MR. PATTON: But they're having to access it from  
7 this property.

8 CHAIRMAN MITCHEM: Well, they have that easement,  
9 so be it.

10 MR. CLARK: Well, but the issue is that obviously  
11 it's part of Shea's development, they will be  
12 -- that road will go away. They have the --  
13 Shea through the understanding of the terms  
14 of the agreement --

15 CHAIRMAN MITCHEM: So you can just do away with  
16 any --

17 MR. CLARK: -- they can -- they can relocate it.  
18 What they had requested Hedrick do was just  
19 abandon it as part of their agreement.  
20 Hedrick --

21 CHAIRMAN MITCHEM: Excuse me. We're talking about  
22 agreements and agreements that we never had  
23 -- never was happened -- never did happen.  
24 Agreements that could have been, should,  
25 could, or what may be, but what this is is

1                    basically -- what we have at hand here is not  
2                    -- that easement's not at hand but it's about  
3                    expanded those maps. So -- but the easement  
4                    -- the easement and that house, that's not in  
5                    this -- that's not in this issue. That will  
6                    be something else later. But you're talking  
7                    about agreements that was talked about.

8                    There any agreements written?

9                    MR. CLARK: There was a draft of the agreement.

10                  CHAIRMAN MITCHEM: Was any agreements written and  
11                  signed?

12                  MR. CLARK: No, sir.

13                  CHAIRMAN MITCHEM: Okay. Thank you. Any other  
14                  questions?

15                  MR. JOHNSON: Yes, sir. Mr. Clark, the property  
16                  north of the present quarry is still owned by  
17                  you and your family?

18                  MR. CLARK: Yes, sir.

19                  MR. JOHNSON: Under contract to Shea?

20                  MR. CLARK: Yes, sir.

21                  MR. JOHNSON: Is that contract -- what triggers  
22                  the closing of that contract?

23                  MR. CLARK: Just a deadline, a time line.

24                  MR. JOHNSON: You don't have the ability to modify  
25                  that contract now?

1 MR. CLARK: No. We're bound by the contract.

2 MR. JOHNSON: And Shea doesn't have the ability to  
3 contract it either, I mean, to amend it at  
4 this point?

5 MR. CLARK: No, sir.

6 MR. JOHNSON: So it's all -- you're just waiting  
7 on time to close?

8 MR. CLARK: Right. But they, you know, it's like  
9 anything in this world today, business-wise,  
10 real estate, you know that, but no, it is  
11 under contract, but we still own title to the  
12 property, but they have contractual rights  
13 and --

14 MR. JOHNSON: Correct. And you still have an  
15 interest in it, certainly. Did you and your  
16 family consider making a condition of that  
17 contract that they agree to the covenant not  
18 to sue that Pulte had agreed to? Did you  
19 talk about that?

20 MR. CLARK: We had no basis to ask them that. No,  
21 sir.

22 MR. JOHNSON: You didn't even discuss it?

23 MR. CLARK: We made them aware there, they, for  
24 understandable reasons, from their point of  
25 view they did not see -- it was something

1                   they could agree to, but they agreed as has  
2                   been noted to abide by the existing buffer.

3           MR. JOHNSON: And certainly when they came in with  
4                   their request, they became aware of that  
5                   covenant not to sue, did they not, or were  
6                   you part of those discussions?

7           MR. CLARK: Yes, sir, I was part of those.

8           MR. JOHNSON: And those chose not to agree to that  
9                   covenant not to sue?

10          MR. CLARK: Yes, sir.

11          MR. JOHNSON: Okay. That's fine.

12          CHAIRMAN MITCHEM: Any other questions?

13          MR. DEAN: Yes, I have a question. When we're  
14                   going through the process of giving Shea  
15                   Homes approval for a 1650-property site, this  
16                   is what I remember distinctly, is us setting  
17                   up on a property that the house, the last,  
18                   the closest house, was going to be set on.  
19                   Now, it was at that time that Shea Homes was  
20                   trying to convince others that the quarry had  
21                   no negative effect because we set the blast  
22                   off, we did the decibel, and we heard the  
23                   airplanes go, and the property to the far  
24                   northeast, that 13 acres --

25          UNIDENTIFIED MAN: I don't think there's any

1 residence --

2 MR. CLARK: Right here?

3 MR. DEAN: No. To the far west, right here, no,  
4 go this way. I'm looking at it backwards,  
5 the purple, the small purple. There's not  
6 going to be any development around that are  
7 they?

8 MR. CLARK: I do not think so. I think that's  
9 outside the --

10 MR. DEAN: So that's not going to affect anything  
11 whatsoever. So we get back to where set up  
12 the monitoring device and the explosions and  
13 that sort of thing. It was at that time that  
14 Shea Homes was trying to convince the  
15 Planning Board and the Commissioner Harrell  
16 that was there that this noise level was very  
17 minimal, wouldn't have no adverse effect on  
18 the residents of that. That's one reason we  
19 approved it. Now, I understand this is a new  
20 deal coming in here, but I remember that deal  
21 being discussed also at that time. And it  
22 just seemed like to me, my recollect --  
23 recollections of it, was everybody was in  
24 harmony with everything. So I think there  
25 ought to be some discussion about that for

1           some reason or another that why would it be a  
2           problem today if it was a problem that was  
3           trying to be convinced to me that this was a  
4           perfect place for this subdivision.

5           MR. CLARK: Well, I think again, the issue here is  
6           they're (inaudible) across Forney Creek.

7           Under that scenario, I would assume the blast  
8           took place on the south side of Forney Creek  
9           and they're talking moving on the other side  
10          which was not -- all this property was -- and  
11          maybe I'm wrong because I was not there so I  
12          don't --

13          MR. DEAN: I don't know what the scale on the  
14          narrow, long purple area is, but I imagine  
15          it's in the 100s of feet, not in 1,000s of  
16          feet and we were set up beyond that. Just if  
17          I'm right, pretty darn close to that. And it  
18          was --

19          MR. CLARK: This side of the creek?

20          MR. DEAN: Yes, sir. And I'm just saying that at  
21          that time it seemed to be no problem  
22          whatsoever.

23          MR. CLARK: And your point, I think what is being  
24          asked is that a -- I think Shea can speak to  
25          this, but they're willing -- they're okay



1 with the idea of it, the berm at ten feet is  
2 very minimal --

3 MR. DEAN: Well, and I understand that. There  
4 might be -- have to have some conditions put  
5 on that, but that was brought up. The quarry  
6 brought up the fact that they would in the  
7 future like to mine this. We discussed it in  
8 depth at one of the meetings at the quarry.

9 CHAIRMAN MITCHEM: Okay. If we can move on.

10 Randy, you got a 10-foot berm, 10 foot high  
11 and on those drawings there, it showed where  
12 you come down then went down 50 feet. If you  
13 got 50 feet, 10 foot, once you get down 50  
14 foot, is that a 60-foot berm?

15 MR. HAWKINS: You would be 60 feet below the top  
16 of the berm.

17 CHAIRMAN MITCHEM: So that would be a 60-foot  
18 berm? Once you go down 50 feet below the 10  
19 foot, according to that right there, when you  
20 get to the bottom of that --

21 COMMISSIONER BEAM: It's showing 80 feet there.

22 CHAIRMAN MITCHEM: It would be 70 feet. Once they  
23 got down that 50 feet, you'd have a 70, 80  
24 foot berm, true or false?

25 MR. HAWKINS: True. You'd be 80 feet from the --

1 CHAIRMAN MITCHEM: So we'd have a 80 foot berm  
2 once we got. Okay. Thank you.  
3 Jay Seymoure?

4 MR. SEYMOURE: Jay Seymoure, Denver, 2405 Smith  
5 Harbour Drive.

6 Commissioners, Chairman, how are you  
7 doing this evening? Thanks for allowing me a  
8 moment. A couple of things, and just right  
9 off the bat, the concept of the 80 foot berm,  
10 I think your math is correct on that, Mr.  
11 Chairman. In that sense though today, they'd  
12 be blasting behind approximately 125 or 150  
13 foot berm because you're blasting down a hole  
14 today, is that correct, Jason?

15 MR. CONNER: (Nodding head up and down)

16 MR. SEYMOURE: Thank you. So conceptually, your  
17 math is accurate, but it wouldn't be a fair  
18 comparison because you'd have -- your sound  
19 waves travel in circles and they're down in a  
20 hole right now.

21 So look, I mean, in general, I don't  
22 have any issue with the quarry next door. We  
23 were aware of it when we went through the  
24 zoning the first time. And it was the reason  
25 that, you know, we felt comfortable to your

1 point, Mr. Planner, we're comfortable, Shea's  
2 comfortable with where the quarry is today.  
3 It was under those terms that we purchased  
4 and have closed on half the property and  
5 anticipate closing on the other half of the  
6 property. Appreciate Hedrick's desire for  
7 the covenant not to sue. As you read through  
8 that document, I mean, it's -- frankly, it's  
9 a matter of legal opinions. We can go back  
10 and forth on it. But it's effectively a  
11 document that would, to a certain extent,  
12 it'd take away one's right to sue for  
13 something that they would not have the right  
14 to sue over to begin with because it was the  
15 concept of, you can't sue us if we're  
16 operating within our permit. Okay? So I get  
17 that. That's an attempt to eliminate  
18 frivolous lawsuits. It's intelligent, it's  
19 smart. I understand why you want to do that  
20 from their perspective.

21 That said, what we're talking about  
22 ultimately now, is 700 foot, roughly, that  
23 most of that pit, that future pit proposal  
24 lies in the area so for a covenant not to sue  
25 that would eliminate frivolous lawsuits, they

1 gave up ten years worth of reserves. Okay?  
2 That was with Pulte. Now today, they're  
3 comfortable not having a covenant not to sue  
4 if they can have the ten years worth of  
5 reserves. So just from me it's, I'm sitting  
6 in the room and I'm glad to hear the  
7 appraiser. That's fantastic news. We were a  
8 little bit concerned about it so she says  
9 we're good. So that's good. From a safety  
10 perspective, I just assumed, being out there  
11 witnessing several blasts as we were through  
12 the Hedrick folks, that they were doing  
13 things safely and according to the permit.  
14 So it wasn't a concern for me personally  
15 anyways, for Shea, you know, from a safety  
16 perspective. You know, the backup beepers,  
17 yeah, I mean, they're annoying. They're  
18 supposed to be annoying, you know, it's to  
19 keep guys out there safe.

20 So as we worked through some of the  
21 concerns that we had in making sure that not  
22 only we were disclosing at an adequate level  
23 to everybody purchasing a home in there, but  
24 also to try and mitigate the very thing that  
25 a covenant not to sue would do, which is

1 prevent frivolous lawsuits. Right? So we,  
2 in my discussions with Hedrick over the  
3 summer, prior to fall when conversations kind  
4 of died off, really centering around a non-  
5 issue related to this specific conditional  
6 use for ezone requests. I was -- we had some  
7 white noise beepers in there, a berm height  
8 and length that is more consistent with what  
9 you see in other quarries and ultimately,  
10 gentlemen and ladies, it's effectively --  
11 it's a psychological impact more than  
12 anything for that berm. If you look at that  
13 acoustic study, you're going to see there's  
14 -- it doesn't -- the amount of decibels that  
15 you get with a larger, taller berm or a  
16 longer berm, are somewhat, you know, they're  
17 small. So it tends to be more of a, you  
18 know, what's standard. When you see a  
19 development up next to a quarry, what are the  
20 types barriers that you see in place? And  
21 not just from a noise mitigation, but also  
22 from a safety perspective. So -- and I think  
23 a taller, longer berm helps establish that  
24 perhaps more than a ten foot by, you know,  
25 100 foot long or whatever the number is.

1                   So, do you guys have questions for me?  
2                   There's some confusion, I think, about the  
3                   easement that I can clear up.

4           COMMISSIONER BEAM: Is there a fence back there?

5           MR. SEYMOUR: No. There's -- well, I can't speak  
6                   for the entire length of the property. I  
7                   know there's a fence at the bottom of the  
8                   road. The road is the easement that is on  
9                   Clark property that provides access through a  
10                  recorded easement, provides access to a house  
11                  that it sits on the property that is the  
12                  quarry property today.

13          COMMISSIONER BEAM: Do they use -- does Hedrick  
14                  use that road at all?

15          MR. SEYMOUR: My understanding is that they rent  
16                  that house and there's a gentleman that uses  
17                  that road to get to that house.

18          COMMISSIONER BEAM: So the house is occupied?

19          MR. CLARK: It is.

20          CHAIRMAN MITCHEM: Okay. You said psychologically  
21                  about a berm? Do you want to explain that to  
22                  me?

23          MR. SEYMOUR: Yeah. I think --

24          CHAIRMAN MITCHEM: If you see it and it looks big,  
25                  it's automatically --

1 COMMISSIONER BEAM: Out of sight, out of mind.

2 MR. SEYMOUR: Yeah. Well, yeah. I think when  
3 you go and you look at other developments  
4 that are next to quarries, you see an earthen  
5 berm of substantial height and size. I think  
6 a lot of -- my assumption is that a lot of  
7 the quarries put this in place because --

8 COMMISSIONER BEAM: Because of psychological?

9 MR. SEYMOUR: Because out of sight, out of mind.  
10 If you can't see them and you do your best to  
11 not hear them, then they're not there.  
12 Because I think ultimately, you know, for  
13 some folks it can be a challenge. We're  
14 comfortable with the development that we have  
15 today and the proximity that we have. We've  
16 got a lot of trees down there. We're  
17 comfortable with the distance today. This,  
18 you know, to get within 50 feet of the  
19 property, you know, our comfort level  
20 changes.

21 CHAIRMAN MITCHEM: What are you uncomfortable  
22 with? There won't be no home within 50 feet.

23 MR. SEYMOUR: What's that?

24 CHAIRMAN MITCHEM: There won't be no home within  
25 50 feet.

1 MR. SEYMOUR: Yeah. You know, that's a good  
2 point. I mean, right now in the planning  
3 concept, there's --

4 CHAIRMAN MITCHEM: The line, the property line  
5 will be, but the actual home will not be 50  
6 feet from that.

7 MR. SEYMOUR: What home?

8 COMMISSIONER OAKES: You're at least 400 feet  
9 according to your zoning.

10 CHAIRMAN MITCHEM: You're at least 400 feet from a  
11 home.

12 MR. SEYMOUR: Right. Today, based on a bubble  
13 plan map, right. And the reason that you see  
14 homes where you see homes, is because we  
15 honored the original buffer that Pulte  
16 implemented on themselves when they went  
17 through their zoning process. Our map  
18 reflects that and ultimately, really, there's  
19 nothing to prevent us from building homes 50  
20 feet from a property line from a zoning  
21 perspective, and Randy can correct me on the  
22 exact distance. But the area that is  
23 currently shown as trees and is being  
24 recognized as buffer, we could absolutely  
25 build houses there.



1           CHAIRMAN MITCHEM: You could but it's not on the  
2                                   plan?

3           MR. SEYMOUR: We could. It's not on the plan,  
4                                   but that plan is not a vested plan from its  
5                                   precise location until we submit a parcel and  
6                                   a plat for review --

7           CHAIRMAN MITCHEM: Are you saying the plan could  
8                                   be changed?

9           MR. SEYMOUR: I'm saying, my understanding of  
10                                  what's in the PD-R that's approved is a  
11                                  conceptual land plan.

12          CHAIRMAN MITCHEM: Any other questions for Jay?

13          MR. SEYMOUR: And Randy can correct me if I'm  
14                                  wrong on the flexibility that that plan  
15                                  creates.

16          MR. HAWKINS: We view that line that's on the  
17                                  conceptual plan as a hard line.

18          COMMISSIONER OAKES: And isn't that what we  
19                                  approved, is the 400 to 700 foot back?

20          MR. SEYMOUR: Right.

21          COMMISSIONER OAKES: That's what I thought.

22          MR. SEYMOUR: Yeah.

23          CHAIRMAN MITCHEM: So there could not be no homes  
24                                  built back there without --

25          MR. HAWKINS: That's my position.

1                   CHAIRMAN MITCHEM:   Okay.   Thank you, Randy.

2                               Keith?

3                   MR. JOHNSON:   The 350 feet we're talking about, is  
4                               wooded?

5                   MR. SEYMOURE:   Yes.

6                   MR. JOHNSON:   And would you say that's a medium  
7                               age forest it's not old forest?

8                   MR. SEYMOURE:   Yeah, that's probably fair.   Some  
9                               of it's been forested over there, but they're  
10                              not huge trees, caliber trees, yeah.

11                  MR. JOHNSON:   30, 40 foot trees?

12                  MR. SEYMOURE:   Yeah.

13                  MR. JOHNSON:   How can you see from the last house  
14                              you built, a 10-foot berm beyond 350 feet of  
15                              30 feet of trees?   You have to walk down to  
16                              it, right?

17                  MR. SEYMOURE:   Well, yeah, you do.

18                  MR. JOHNSON:   So the psychological impact is hard  
19                              for me, it's kind of hard for me to  
20                              understand that.

21                  MR. SEYMOURE:   Part of our PD-R we indicated we  
22                              would be putting an extensive trail system  
23                              throughout the community.   A lot of trail  
24                              system runs down through there.

25                  MR. JOHNSON:   Now, does Shea have any noise impact

1 studies?

2 MR. SEYMOUR: No, we don't have any noise impact  
3 studies. I reviewed the noise impact study  
4 that Hedrick provided.

5 MR. JOHNSON: Do you disagree with it?

6 MR. SEYMOUR: No, not at all.

7 MR. JOHNSON: Do you think that one of the biggest  
8 noise is the backup beepers or whatever  
9 they're called?

10 MR. SEYMOUR: Yeah. I think from a, you know,  
11 what do you hear most when you're out there.  
12 Because at least as of today, blasting is  
13 once a week, once every other week. They  
14 generally try and do it at noon.

15 MR. JOHNSON: How long do you think it's going to  
16 take Shea to build 1600 units?

17 MR. SEYMOUR: 2023 plus or minus five years.

18 MR. JOHNSON: So another ten years, let's say.  
19 How many pieces of equipment does Shea have  
20 on that property now with backup beepers on  
21 it?

22 MR. SEYMOUR: Yeah. And I don't think -- I see  
23 where you're going and I'm right there with  
24 you. It's fine. It won't be --

25 MR. JOHNSON: Those are louder than the ones from

1 the quarry.

2 MR. SEYMOUR: Yeah, yeah. It's fine. They're  
3 going to be. I don't think anybody's  
4 concerned about five to ten years from now.  
5 It doesn't sound like it. Because they've  
6 got enough -- they've got enough area to mine  
7 for another 30 years and they're looking to  
8 add another ten. So what we're talking about  
9 is 30 years from now.

10 MR. JOHNSON: But your backup beepers may be  
11 disturbing the people at the quarry having  
12 their lunch.

13 MR. SEYMOUR: Yeah, and we're -- exactly.

14 MR. JOHNSON: Part of the progress.

15 CHAIRMAN MITCHEM: Anyone else got a question for  
16 Jay?

17 COMMISSIONER OAKES: I have a question.

18 MR. SEYMOUR: Yes?

19 CHAIRMAN MITCHEM: Let's try to wrap this up.

20 COMMISSIONER OAKES: Okay. Berms, can we have  
21 trees on berms? Is that possible? Does that  
22 make sense?

23 CHAIRMAN MITCHEM: Yeah.

24 COMMISSIONER OAKES: Somebody know about that?

25 MR. SEYMOUR: You can.

1 CHAIRMAN MITCHEM: They'll grow there anyway  
2 unless you keep everything cut down, they'll  
3 come up anyway.

4 MR. SEYMOUR: It changes the type of a berm, but  
5 yes, you can.

6 CHAIRMAN MITCHEM: Any other questions for Jay?

7 MR. BURGIN: Just one question. In your opinion,  
8 does the backup beepers or the airplane,  
9 which one is worse? Because the airplane is  
10 going to be there forever.

11 MR. SEYMOUR: Which one is worse? You know, I  
12 don't know under what expertise my opinion  
13 falls in this particular category.

14 MR. BURGIN: Well, in my opinion, I was there, the  
15 airplanes are worse.

16 MR. SEYMOUR: You mean louder when you say worse?

17 MR. BURGIN: Loud, I mean, yeah.

18 MR. SEYMOUR: Yeah, I would agree with you. The  
19 day we that we were there, yeah.

20 MR. BURGIN: But they're -- and they're going to  
21 be there forever.

22 MR. SEYMOUR: Yeah, I'm -- look, let me just be  
23 real clear, we're going to disclose the fact  
24 that there's a quarry down there, just as we  
25 disclosed the fact that there's a nuclear

1 power plant, airplanes running overhead,  
2 perhaps a train occasionally, and a whole  
3 slew of other things. We're going to  
4 disclose that. It's the very reason that  
5 we're comfortable not having a covenant not  
6 to sue.

7 CHAIRMAN MITCHEM: You would have to do that, not  
8 that you've -- you're already doing it.

9 You'd have to do it anyway. So it's not --

10 MR. SEYMOUR: Yeah, I know, I'm not -- and --

11 CHAIRMAN MITCHEM: Any other questions for Jay?

12 Let's wrap this up if we can.

13 MR. DEAN: On this map behind you, the 13 1/2 acre  
14 site that they're wanting to mine, the larger  
15 portion of that to the far east, is that a  
16 creek coming into it at the top of it? See  
17 the four --

18 MR. SEYMOUR: This here?

19 MR. DEAN: Yes.

20 MR. SEYMOUR: No, that's not the creek, that's  
21 the easement. Actually, that's the road that  
22 runs down --

23 MR. DEAN: That goes into that house?

24 MR. SEYMOUR: Yes.

25 MR. DEAN: And are you all planning on developing

1 to the east of that road?

2 MR. SEYMOUR: Our development stops, right now  
3 our planned area of development stops maybe  
4 300 feet from, yeah, about the top of that  
5 line right there.

6 CHAIRMAN MITCHEM: Okay. Thank you, Jay.

7 MR. SEYMOUR: You're welcome. Thank you.

8 CHAIRMAN MITCHEM: David Grossman?

9 MR. GROSSMAN: I'm here Mr. Chairman. I'm going  
10 to withdraw my request to speak.

11 CHAIRMAN MITCHEM: Okay. Thank you. Anyone else  
12 hear wishing to speak to this matter?

13 Hearing none, I'll declare the public hearing  
14 --

15 MR. JUSTUS: Mr. Chairman?

16 CHAIRMAN MITCHEM: Yeah, he wanted to follow up  
17 with the --

18 MR. JUSTUS: Mr. Chairman, I have -- there was a  
19 statement made by Mr. Clark about how much we  
20 got out of the deal by what property was  
21 zoned residential when it swapped to  
22 industrial. I got this from Randy. Randy,  
23 I've marked this as Exhibit 6.

24 (WHEREUPON, Exhibit Number 6 was marked for  
25 identification)

1 MR. JUSTUS: Is this from you?

2 MR. HAWKINS: Yes.

3 MR. JUSTUS: And I'll hand this up. This is the  
4 only copy I had because I didn't know this  
5 would come up. But you'll see there was only  
6 little pieces that was residential. In fact,  
7 most of what we show as our future pit area  
8 including the expansion area was not  
9 residential, so I'm just going to --

10 COMMISSIONER BEAM: Both the purple places were?

11 MR. JUSTUS: The purple places, that's right.

12 COMMISSIONER BEAM: They were industrial?

13 MR. JUSTUS: Most of it was industrial. But let  
14 me just quickly talk about --

15 CHAIRMAN MITCHEM: Let's try to wrap this up.

16 MR. JUSTUS: Okay. Quickly talk about the Pulte  
17 agreement. They keep saying, first off we  
18 didn't have an agreement after Pulte decided  
19 not to close. The chairman's correct. There  
20 is no such agreement. We can talk till we're  
21 blue in the face. We didn't reach an  
22 agreement. The covenant not to sue was very  
23 critical to us. They say, well, they gave us  
24 the buffer. Now, I would just submit that  
25 they got 1650 homes, which was more than what



1 Pulte asked. How much more homes did they  
2 really think they could put on that piece of  
3 property? What they've done is they've  
4 created a cluster development, right? So  
5 they've put 1650 homes and they've left some  
6 open space. Lord knows, I think at the end  
7 of the day, they're not really giving us  
8 anything because I'm quite sure that it'd be  
9 pretty difficult to put more than 1650 homes  
10 on that property even if they want to. So  
11 they really didn't at the end of the day,  
12 give us anything.

13 In terms of the county standards for  
14 berms, I was just asking, clarifying this  
15 with Randy. Right now your standard for a  
16 berm is three feet tall, three feet in  
17 height. We are asking for a ten foot height  
18 limitation for our berm. At the end of the  
19 day, our burden is to present evidence of  
20 four things that we -- that the Planning  
21 Board recommending to this Board of  
22 Commissioners, standards that we meet. One,  
23 that the use will not materially endanger the  
24 public health or safety if located where  
25 proposed and developed according to plan.

1 Again, we're only talking about the purple.  
2 We're not talking about what's in gray, but  
3 just in purple and we've -- we're the only  
4 ones who've presented experts that talked  
5 about noise, blasting, property values, and  
6 so forth. The findings of fact we've  
7 presented to you, each one of our witnesses  
8 have testified to each of the items noted in  
9 the proposed findings of fact.

10 The second thing is, the use meets all  
11 required conditions and specifications.  
12 Randy said yes, it does. Third, the use will  
13 not substantially injure the value of  
14 adjoining or abutting property. We're the  
15 only one with an expert, that apparently they  
16 agree with our expert as to her study. And  
17 the fourth thing is, that what we're  
18 proposing is general conformity with your  
19 Land Use Plan. Randy said it was. So we  
20 meet all the findings and at the end of the  
21 day, we're asking for protection of our asset  
22 for the life of this quarry. Thank you.

23 CHAIRMAN MITCHEM: Thank you. Anyone else, one  
24 more time wishing to speak to this matter?  
25 Thank you. With that being said, I want to

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close the public hearing on the PCUR Number  
154A.

(WHEREUPON, this proceeding on January 5,  
2015, was concluded at 8:20 p.m.)

\* \* \* \* \*

STATE OF NORTH CAROLINA)  
COUNTY OF RUTHERFORD )

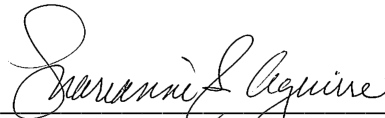
C E R T I F I C A T E

I, Marianne S. Aguirre, Verbatim Reporter and  
Notary Public, within and for the State of North  
Carolina, do hereby certify:

That I reported the proceedings in the within-  
entitled matter, and that the within transcript is a  
true record of such proceedings.

I further certify that I am not related by blood  
or marriage, to any of the parties in this matter and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this the 20th day of January, 2015.



Marianne S. Aguirre  
N.P. Number: 19961490099

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