

BOARD OF ZONING APPEALS

February 6, 2013

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3
4 *Present: Joshua McDuffie, Michael Spearman, Ralph Meetze, William Smith, Susanne*
5 *Cecere, Christopher Sullivan; Absent: Sheldon Cooke]*

6
7 Called to order: 1:01 pm

8 CHAIRMAN MCDUFFIE: Call this meeting of the Richland County Board of
9 Zoning Appeals to order. In accordance with the Freedom of Information Act, a copy of
10 the Agenda for today's meeting was sent to radio and television stations, newspapers,
11 persons requesting notification, and posted on the bulletin board located in the lobby of
12 the County Administration Building. At this time I will recognize a quorum and I will turn
13 the meeting over to Amelia Linder, the county's attorney.

14 MS. LINDER: Thank you, Mr. Chairman. Good afternoon, my name is Amelia
15 Linder and I am the attorney for the Board of Zoning Appeals and I'd like to welcome
16 you today. I'd like to go over just a few procedures with you so you can understand how
17 we're going to proceed today. This Board is a *quasi* judicial body which means the
18 decisions they make are final, subject to the Minutes being approved and the Order
19 going out to you. Then you would have 30 days to appeal to circuit court if you're
20 unhappy with the decision. The Applicant will have up to 15 minutes to speak. I don't
21 believe we do have any person that's gonna speak against what you're asking for today,
22 which is an appeal. And the Board will take up the Agenda as it's ordered on the
23 Agenda. Please, when you speak, come to the podium, sign up on the sign up sheet
24 and address your comments to the Board. You will be under oath, which I'll give you in
25 a few minutes, and you will be recorded as will Staff. This is not quite as formal as a
26 court so if you have any documents or anything you'd like to submit to the Board you

1 may do so. They will give appropriate weight to whatever evidence they hear today. The
2 Board, once they've heard Staff's position and you as the person that's appealing Staff's
3 decision, then they will make a decision hopefully today. Until, and like I said, until those
4 Minutes are approved, there will not be an Order being sent to you, but then once those
5 Minutes are approved there will be an Order sent to you. I would ask that if anyone has
6 a cell phone here today you either turn it off or mute it please. And if anybody needs to
7 leave the room, just do so quietly. If the Board needs any legal advice today we may go
8 in the back session and I would meet with the Board at that time. Is there any question
9 of the Applicant? I would ask you then to stand and raise your right hand. Do you swear
10 or affirm that the testimony you shall give shall be the truth, the whole truth and nothing
11 but the truth, so help you God?

12 AUDIENCE: I do.

13 MS. LINDER: Thank you.

14 CHAIRMAN MCDUFFIE: Alright, at this time we'll move to the, we have approval
15 of Minutes from the previous, from the previous meeting from January. Has everyone
16 had an opportunity to review the Minutes? Okay. Are there any corrections to the
17 Minutes at this time? Alright, is there a motion to approve the Minutes?

18 MR. SMITH: Move to approve.

19 CHAIRMAN MCDUFFIE: Second?

20 MR. MEETZE: Second.

21 CHAIRMAN MCDUFFIE: Okay, a motion has been made and seconded. All in
22 favor?

1 MR. PRICE: Those in favor: Spearman, Meetze, Smith, McDuffie, Cecere and
2 Sullivan?

3 *[Approved: Spearman, Meetze, Smith, McDuffie, Cecere; Abstained: Sullivan; Absent:*
4 *Cooke]*

5 CHAIRMAN MCDUFFIE: I don't believe he's eligible to vote on the, the Minutes
6 from last month. Alright, the Minutes are approved from January and we shall at this
7 point move on to the public hearing portion of today's, of today's hearing. Mr. Price, if
8 you'll present our case.

9 **CASE NO. 13-01 AR:**

10 MR. PRICE: Yes. I will just kind of give you, provide some quick information
11 regarding your, the special, excuse me, the appeal you have before you, then I'll turn it
12 over to the Applicant to make his case. And I'd just ask that if there's a chance for me to
13 give a rebuttal or to give Staff's position, I'll then take it up after I guess the
14 presentation. Really in short, the Applicant is requesting to place a sales trailer, and you
15 have the same picture in your, in your package, but it – well placing a sales trailer right
16 near the entrance of the Alexander Point subdivision. There was a previous sales trailer
17 there, I guess during the initial development of this subdivision. When, right now they're
18 starting another phase and they were requesting to put a, put another sales trailer on
19 the site and they wanted to place it where the original one was, right near the entrance.
20 After reading Section 26-185(A)(2)(b)(ii) of the Land Development Code where I read
21 that, I won't read it verbatim but, a construction trailer or temporary modular unit may be
22 used as a real estate sales office in any new construction project. I took new
23 construction project as to be each approved phase because as you know, you don't

1 come in and do, typically do an entire subdivision. You come in and do parts of it, and
2 so as each one is being built, you're allowed to put a sales trailer to sell for that phase.

3 CHAIRMAN MCDUFFIE: Mr. Price, quick question. When the, when the
4 subdivision project is approved by, I'm assuming it's approved by the county in order to
5 subdivide and, you know, and perform the project, are the phases each approved
6 individually or is the project as a whole approved under one?

7 MR. PRICE: Many times you'll approve the project as a whole, more of a
8 conceptual, and that's just kind of giving an overall layout. But prior to you being able to
9 move dirt to actually start construction and to show that you're gonna meet all the
10 requirements of our Code, you will come in with each phase that you're planning on
11 constructing. Now some people do more than one, some may come in with the whole
12 thing, but you're required to get approval for what you're going to actually construct.

13 CHAIRMAN MCDUFFIE: So we have multiple approvals then; one for the entire
14 concept of the project and then one for each phase of the project before it commences?

15 MR. PRICE: That's correct.

16 CHAIRMAN MCDUFFIE: Okay. Thank you. Please continue.

17 MR. PRICE: Yeah, and as stated, so you know, my interpretation of the Code
18 was, once again, that each phase is considered the new construction project. And one
19 of the reasons I based it on was, of course, as you read it says that they're not to be
20 there more than 12 months or until one half of the units for the project are completed. I
21 think if you kind of read that, it implies those are not meant to be there long and you will
22 typically associate that timeframe [inaudible] that amount of build out to be associated

1 more with a project as opposed to the entire development. Those are just the basis of
2 my determination.

3 CHAIRMAN MCDUFFIE: Alright, are there any further questions for Mr. Price at
4 this time? At this time I'd like to call Mr. Brian Davis to present his case.

5 **TESTIMONY OF BRIAN DAVIS:**

6 MR. DAVIS: I'm really not here for myself, I'm here for the, for the real estate, the
7 builders.

8 CHAIRMAN MCDUFFIE: Okay.

9 MR. DAVIS: And, and it's really their request, it's not my request. It's their
10 request. They feel like –

11 CHAIRMAN MCDUFFIE: So who are the, who are the builders?

12 MR. DAVIS: Peachtree Communities.

13 CHAIRMAN MCDUFFIE: Okay.

14 MR. DAVIS: They're the ones that, that are specifically asking for the, for the
15 sales trailer to go in the front of the subdivision where they've got access from the road.

16 CHAIRMAN MCDUFFIE: Um-hum (affirmative).

17 MR. DAVIS: And they can catch somebody's eye.

18 CHAIRMAN MCDUFFIE: Um-hum (affirmative).

19 MR. DAVIS: Where they're building now is –

20 CHAIRMAN MCDUFFIE: Oh, please – excuse me, please state your address as
21 well for the Record.

22 MR. DAVIS: Oh, it's 140 Atrium Way.

23 CHAIRMAN MCDUFFIE: Okay.

1 MR. DAVIS: Columbia, 29223.

2 CHAIRMAN MCDUFFIE: Alright.

3 MR. DAVIS: And while Geo's got that up, the, the, they're actually building South
4 Suber's(?) Way and Farnsworth in the back corner, the other way, keep coming – right
5 in there. That, they don't have, they don't have any road access for sales trailer, for a
6 model, for anything, and they feel like it's imperative to their success to have the sales
7 trailer upfront. I mean, right now it's, most of the residents are using it for a parking lot
8 anyway. But it, it's really, times have changed. You know, I mean, you can't, you can't
9 put that, that square peg in that round hole anymore. The development business has
10 changed, the way builders take properties and lots have changed, and they just feel like
11 it's their competitive, that's, the best way to get their competitive edge is to have a, have
12 a sales presence up front in the subdivision. And that's basically what I've got. I mean,
13 that's their point. And, you know, we submit a master plan and we don't see a project,
14 we don't see this project as a phase, we see the project as the 500 lots in total; not just
15 phase 1, phase 1A, phase 2, phase 2A, I mean, we see our project as a whole.

16 CHAIRMAN MCDUFFIE: If, if I could interrupt for one second. You mentioned
17 that you don't see the, you see the project as a whole, not as a phase.

18 MR. DAVIS: Right.

19 CHAIRMAN MCDUFFIE: But in the, in the application or in the Administrative
20 Review request you indicated that there had previously been a sales trailer there?

21 MR. DAVIS: There had been.

22 CHAIRMAN MCDUFFIE: And do you know how long that trailer was there for?

23 MR. DAVIS: That's –

1 CHAIRMAN MCDUFFIE: If you had to guess.

2 MR. DAVIS: - that sales trailer was there for six months maybe, eight months.

3 CHAIRMAN MCDUFFIE: And based on my reading it says that the sales trailer
4 could be there for no –

5 MR. DAVIS: Well, it's a different builder.

6 CHAIRMAN MCDUFFIE: - but it's one project.

7 MR. DAVIS: Right, right.

8 CHAIRMAN MCDUFFIE: And, and let's say that it could be there for no more
9 than 12 months or until half the units of the project completed, whichever occurs first.

10 MR. DAVIS: Right.

11 CHAIRMAN MCDUFFIE: So it would seem like from the reading of it being an
12 entire project at most you might have six months left then of having a sales trailer?

13 MR. DAVIS: Four to six months, yeah.

14 CHAIRMAN MCDUFFIE: Is, is, am I reading that incorrectly, Mr. Price?

15 MR. PRICE: No, you're correct.

16 MR. DAVIS: And, and I think they'd be happy with that.

17 MR. PRICE: Well, first of all we would just need to make a determination how
18 long the sales trailer was there. It may have been there longer, it may have been around
19 the same time as, as he's testified to.

20 MR. DAVIS: If, if the sales trailer was there for phase 1 and that sell out was
21 about seven months. I mean, that was back in, when times were good and builders
22 would take 30, 35 lots at a pop. Now, I mean, if you're lucky to get a five lot sale you're

1 happy. I mean, the, the whole velocity is just shrunk and slowed down and, I mean, like
2 I say it's not my call, it's, I'm here for the builder. So.

3 CHAIRMAN MCDUFFIE: At this, at this point before we have any further
4 questions, I'd like to request that the Board go into Executive Session to receive some
5 legal counsel for a moment.

6 MR. SPEARMAN: Second.

7 CHAIRMAN MCDUFFIE: Okay. At this time let's go into Executive Session.

8 *[Executive Session]*

9 CHAIRMAN MCDUFFIE: At this time the Board of Zoning Appeals is coming out
10 of Executive Session and we have a Member of the Board that based on information
11 presented in the testimony today needs to recuse himself. So Mr. Smith will be
12 recusing himself and, from today's hearing.

13 MR. SMITH: And I will, I must request to be excused from participating in
14 discussions or voting on Agenda Item No. 13, excuse me, Appeals Section 26, no 13-
15 01, regarding the Administrative Review for this Application because I, Peachtree will be
16 my builder, and I want to be able to definitely stay out of any type of trouble with that.
17 But I thank you.

18 CHAIRMAN MCDUFFIE: Alright, at this time Mr. Davis if you could come back up
19 to the stand for us. And I believe that there were some questions.

20 MR. MEETZE: I had a question. A practical reason to put that unit back where
21 the other one was I guess because of the water and sewer hook up would be, make it
22 just more practical?

23 MR. DAVIS: Yes, sir. And it's still there.

1 MR. MEETZE: Exactly.

2 MR. DAVIS: It's still there. As well as the, well the gravel parking pad. And they
3 plan, and their plan is, if they're allowed to put the sales trailer there, they will fully
4 landscape the common area. Fence and landscape.

5 MR. MEETZE: I agree with what you mentioned [inaudible]. I've been by there
6 twice and you're right, they're using it as a parking lot now.

7 MR. DAVIS: Yes, sir. And, I mean, I've tried to stop that but there's no stopping it.

8 MR. MEETZE: And a little bit of trash too at times.

9 MR. DAVIS: Yes, sir.

10 MR. MEETZE: No more questions at this point.

11 MR. DAVIS: And I, I think honestly that the way Peachtree would set it up would
12 enhance the community actually.

13 MR. MEETZE: Nice little neighborhood.

14 MR. DAVIS: Yes, sir.

15 MS. CECERE: Mr. Davis, what is your title with this project?

16 MR. DAVIS: What is what?

17 MS. CECERE: Your title with this project?

18 MR. DAVIS: I am the president of BBC(?), I'm the developer.

19 MS. CECERE: Okay. And when this project was presented to the county for
20 approval, was it numbered phase 1, phase 2, phase 3, phase 4, whatever it is?

21 MR. DAVIS: I mean, this – we give them a master plan and then based on
22 market or need or timing, that's how you determine your phases. Specifically, builder
23 need and, and so that's how we actually phased our projects.

1 MS. CECERE: Okay. At the time that you presented this plan to the county and I
2 assume then there was a special permit that this trailer could be there, were you at that
3 time notified that it was for only 12 months?

4 MR. DAVIS: No, ma'am. Like I say, I didn't get the permit. The builder puts, has
5 to buy the permit because it's his, it's actually his trailer. And I'm not sure that it was
6 ever permitted. I mean, I don't know, I have no knowledge of whether or not Hurricane
7 Construction obtained a permit to the put the sales trailer there. I, I don't know.

8 MS. CECERE: Hurricane Construction was the prior builder?

9 MR. DAVIS: Was the prior builder.

10 MS. CECERE: Mr. Price, I have a question then for you. When, when the new
11 builder takes over a project like that do they come to you and they are informed of
12 everything that's, that's been submitted or?

13 MR. PRICE: No, ma'am.

14 CHAIRMAN MCDUFFIE: Mr. Price, would, would 26-185, section (A)(1)(c)(ii)
15 apply in this case, under General Standards, no temporary use should be located closer
16 than 200' to a dwelling unit?

17 MR. PRICE: No, sir.

18 CHAIRMAN MCDUFFIE: That would not apply in this case?

19 MR. PRICE: No, sir.

20 CHAIRMAN MCDUFFIE: Okay.

21 MR. PRICE: We, that, that section would primarily go to a special events and
22 activities.

1 CHAIRMAN MCDUFFIE: Okay. Cause I, I assumed that since that was under
2 General Standards that that would apply to all temporary uses since it's not specifically
3 under temporary events.

4 MR. MEETZE: I have a question, Mr. Price. This might could help cut through the
5 case of this. Under Section 26-185(A)(2)(b)(ii), as I read this the third word of the last
6 line says, project, so we're saying that this is an entire project. So maybe I am missing
7 something, but isn't, this trailer would be alright for him to put it there for the project?
8 Because that's what it looks like in section, this Section 26-185 says, for the, until one
9 half, 12 months or one half of the units for the project are completed. I see nothing in
10 here where it says of the phases completed.

11 MR. PRICE: Yes, sir. Well, you know, once again as the Zoning Administrator, I
12 do have, one of the authorities I have is to interpret and I do take that, once again, as,
13 the new construction project as a phase. And as you continue to read on it would,
14 couple of things within that, this entire section or this subsection that I've used to help
15 make my determination, you know, one of those, 12 months or one half of the units.
16 Really that wouldn't make it for most, if this were, if you would look at Alexander Pointe
17 as a whole, as the entire project I think as you're alluding to, then 12 months really
18 wouldn't be sufficient for them to build out because I don't think the entire development
19 would ever be built out within 12 months. Secondly –

20 MR. MEETZE: Alright, well could they move it for 30 days and then move it back
21 for six more months?

22 MR. PRICE: No, sir.

23 MR. MEETZE: Okay.

1 MR. PRICE: I mean, once again, the Code also does provide options for
2 developers. If they want to have a sales office, once again, sales trailer, one of the
3 reasons why I do look at it as for each project, so you know, you come in, this is the
4 phase as he stated, the builder knows this is what the market demands, this is what we
5 can build right now so they may come in with a phase and say, we're gonna do 12
6 homes, we may do 20, we may do 30, but they know within a certain timeframe how
7 many of those homes they're gonna build. And then once they get approval, they also
8 know that timeframe. So I think it's within reason, within 12 months or until half of them
9 are, you know, half of them are built that sales trailer can be there because their product
10 is, will be displayed within that timeframe. If they want to just have an office there to
11 market for the entire development, if you were to look at 26(A)(2)(b)(iii), they're allowed
12 to actually establish the sales office within a home, and that would be for the entire
13 development, or at least until 90% of it is built out.

14 CHAIRMAN MCDUFFIE: Another quick question. Are these types of sales
15 trailers typically put on a residential lot or are they typically put in the common area as
16 the Applicant is proposing here? Cause, you know, as I read common area that's based
17 on the county's definition, that's, you know, land within the development not individually
18 owned or dedicated for public use, which is design and intended for common use or
19 enjoyment of the residents of the development. It says nothing about using it as a, as a
20 lot for a sales trailer or something.

21 MR. PRICE: Well, and usually during the initial phase of development, whether it
22 be a common area or a lot that would be used for residential purposes later on, for a
23 residential structure, those are, once again, it's a temporary use so we'll allow that to

1 occur up until such time that it's removed and, I guess if it's gonna be a common area
2 it's developed as a common area. I guess in this case, and maybe this is getting off a
3 little bit, but in this case once Hurricane removed their trailer, they didn't go back and
4 actually construct a common area for the community. They left it there, thus that would
5 explain why people are still able to go and park cars and do things on the site that
6 maybe the common area is not meant for.

7 MR. DAVIS: Can I ask one question? When was, when was this ordinance put in
8 place?

9 CHAIRMAN MCDUFFIE: Which specific ordinance?

10 MR. DAVIS: The ordinance concerning the, the sales trailer? Do you know, do
11 you have a date on that?

12 MS. CECERE: That would be the county ordinance.

13 MR. PRICE: The Code was adopted in 2005.

14 MR. DAVIS: And see –

15 MR. PRICE: July 1st, 2005.

16 MR. DAVIS: - and see, and that's possibly why, because our engineer who
17 actually is passed away now, but his initial master plan put that there, we started in
18 2003 with the master plan and he put it there essentially for the sales, for a sales trailer.
19 So, you know, we wouldn't have – under those scenarios it would've been, I mean,
20 there was no jurisdiction over what could go there, for how long.

21 MR. MEETZE: Grandfathered in in other words.

22 MR. DAVIS: Well, possibly. And that's why –

1 CHAIRMAN MCDUFFIE: But, well assuming that this is substantially different
2 from the previous Code.

3 MS. CECERE: Right.

4 MR. PRICE: Once again, you're still talking about a use that would be temporary
5 in nature. So regardless, it's not meant to be there, and I think when you start referring
6 to something being grandfathered I think that typically goes for something that's either
7 been established as a permanent use or is attempted to be a permanent use.

8 MR. DAVIS: And I agree I agree with that.

9 MR. MEETZE: Another question, Mr. Price. Are you, has there been any kind of
10 uproar or any distinction or any objection by the residents to put the sales trailer there?

11 MR. DAVIS: No, we never had a complaint while there was one there from any
12 resident.

13 MR. SPEARMAN: I've got some questions. Thank you. When was the trailer that
14 was there, when was removed, sir?

15 MR. DAVIS: It would've been in 2000 and – I have to go back and check the
16 dates but I think 2005.

17 MR. SPEARMAN: And how long was it there?

18 MR. DAVIS: During the period of the first phase sell out, which was about seven
19 months.

20 MR. SPEARMAN: And I believe you said that the, there is water and electricity
21 available?

22 MR. DAVIS: Well, there's, yeah, there's electric, water and sewer on the, there's
23 a sewer stub out there and –

1 MR. SPEARMAN: For, for that particular –

2 MR. DAVIS: - for that particular use, right.

3 MR. SPEARMAN: Okay, so to get electricity for that trailer there pretty much had
4 to be some type of a permit issue and inspected by the Building Inspectors, is that
5 correct?

6 MR. DAVIS: I would guess, yes.

7 MR. SPEARMAN: When did you first have, and I assume it's you, correct me if
8 I'm wrong, when did you first ask for that trailer to be reestablished?

9 MR. DAVIS: Peachtree, I signed a contract with them for the purchase of some
10 lots last summer. It was, it was really brought to the forefront with them right before we
11 closed, which would've been September/October. And they, that's when they began
12 pushing, you know, we would really love to put a sales trailer here. And so I told them
13 there was one there before. And I was unaware of this ordinance. They actually bought
14 the trailer, they actually, and then they, they went to get the permit and were, the permit
15 was disallowed. That's when it really came forward.

16 MR. SPEARMAN: Do you have a timeframe for that or a particular date?

17 MR. DAVIS: That would've been, like I say, September/October.

18 MR. SPEARMAN: Mr. Price, in our Agenda packet right here, Mr. Price sent you
19 a letter dated October 1st, 2012.

20 MR. DAVIS: Um-hum (affirmative).

21 MR. SPEARMAN: Is that correct, are you familiar with that letter, sir?

22 MR. DAVIS: Yes, yes. And that would've been, I guess, the realtor for Peachtree
23 and I went down to talk to Mr. Price and we were, and had made a request to have the

1 sales trailer put there after they were denied the permit. So we went with several other
2 options and were told we couldn't do any of them. So it was, it was about that time
3 period that we asked for the hearing.

4 MS. CECERE: Mr. – excuse me, I'm sorry, go ahead.

5 MR. SPEARMAN: Can you tell me when you received this letter from Mr. Price
6 dated October 1st, 2012, the denial letter?

7 MR. DAVIS: It would've been, I don't know the exact date, probably the 3rd or 4th
8 of October.

9 MR. SPEARMAN: Do you, and also in our Agenda packet there is a form that the
10 county supplied you for Administrative Review.

11 MR. DAVIS: Right.

12 MR. SPEARMAN: Is this your handwriting on here, sir?

13 MR. DAVIS: Yes, it is. Um-hum (affirmative).

14 MR. SPEARMAN: When did you file this form as far as the Administrative
15 Review?

16 MR. DAVIS: Actually, actually I was probably given that form on the date that we
17 met with Mr. Price, I think Suzie gave me the form.

18 MR. SPEARMAN: Yes, sir.

19 MR. DAVIS: I filed that form in December.

20 MR. SPEARMAN: You filed this in December.

21 MR. DAVIS: Yeah, I, I, and then I brought it down and then I had to come back
22 because I had checked the wrong thing and provided the wrong fee, so I had to
23 resubmit it. And it would've been November/December, I can go back to my checkbook

1 and tell you, but. Because Peachtree really, at one point, they didn't want to fight it so
2 we kind of held off on, on bringing the application in. And then they decided after
3 construction started that they really saw the need to have an upfront presence for sales
4 in the neighborhood.

5 MR. SPEARMAN: For, for this appeal to be perfected and accepted by Richland
6 County it has to be filled out and you have to submit the necessary fee accompanying it.

7 MR. DAVIS: Um-hum (affirmative).

8 MR. SPEARMAN: If you fail to do either one of those then it's not officially
9 perfected I guess is the legal term. If I'm reading the Land Development Code correctly,
10 and maybe Mr. Price can answer this, you have a 30 day window to get this back in for
11 an Administrative Review in this particular case right here. And by your testimony you
12 took longer than 30 days to do that. Am I correct?

13 MR. DAVIS: I would say yes.

14 MR. SPEARMAN: Ms. Linder, you're going to have to answer a question for me.

15 CHAIRMAN MCDUFFIE: Would you like to go into Executive Session again for
16 the purpose of receiving legal counsel?

17 MR. DAVIS: Well, when, when you say that, now I submitted it, I submitted it with
18 a check and then was told it's the wrong, it was the wrong fee so I came down and
19 corrected it and provided the check, an additional \$50 fee.

20 MS. LINDER: Mr. Spearman, I would recommend that you ask the Zoning
21 Administrator as to whether he submitted the appeal in a timely manner.

22 [Inaudible discussion]

1 MR. DAVIS: And in the wrong figure. I mean, I gave her a \$50 check and the,
2 and this, and then was told later, several weeks later, it's the wrong one, come back,
3 and we corrected.

4 MR. PRICE: We deferred, we deferred this case from a previous Agenda
5 because the form I did, I had initially received had, was more for a special exception
6 and so we allowed the Applicant to resubmit the appropriate form. So that's why, this is
7 why you didn't hear this earlier.

8 MR. SPEARMAN: So if I understand you correctly this Administrative Review
9 was filed in a timely fashion, is that correct?

10 MR. PRICE: Yes, sir.

11 MS. CECERE: Mr. Davis, you said that there were other options. What were the
12 other options?

13 MR. DAVIS: We looked at, there's a, there's a separate tract of land that we own,
14 if you'll see it's a – on the undeveloped portion here –

15 MR. SPEARMAN: Have you got your laser, Mr. Price?

16 MR. PRICE: I do not.

17 MR. DAVIS: We actually requested that spot there, this, part of the, part of the
18 undeveloped – if you see, can you see the cursor?

19 MS. CECERE: No.

20 CHAIRMAN MCDUFFIE: To the left of the, the lowest cul de sac on the left.

21 MR. DAVIS: That's right. And we're told we couldn't do that. And under here, this
22 tract of land right here, it's about $\frac{3}{4}$ of an acre, and we asked could we put it there and
23 were told no.

1 MR. PRICE: It's not on the site of the development.

2 CHAIRMAN MCDUFFIE: The reason was because those –

3 MS. CECERE: I'm sorry, it's not on the site?

4 MR. PRICE: Of the development.

5 MS. CECERE: Oh, okay.

6 CHAIRMAN MCDUFFIE: But that would be an off-site –

7 MR. DAVIS: Because that tract of land is, actually was not in our master plan, it's
8 across the street. So.

9 MR. SPEARMAN: I have another question.

10 CHAIRMAN MCDUFFIE: Yes, of course.

11 MR. SPEARMAN: I rode out there Monday and, and took a look at the site that
12 you're referring to. There are a number of signs off of Rabbit Run advertising, you know,
13 lots for sale, the subdivision, the development, the whole nine yards. Usually when you
14 finish a phase and you start a second phase and you, since you do not have a, a home
15 or one of the houses –

16 CHAIRMAN MCDUFFIE: A model home, right.

17 MR. SPEARMAN: - a model home or whatever, you would normally move that to
18 the phase that's going to be under construction. You can do signage, you know, to
19 direct folks in that area to do just that. Have y'all given that any thought?

20 MR. DAVIS: They're using signage now but, but they, to this day they still feel
21 like that the sales trailer up front is an eye catcher and would help their sales. And, like I
22 say, I'm not here for me, I'm here for them.

23 MR. SPEARMAN: How many lots is this builder gonna build?

1 MR. DAVIS: We've got 34 lots left. And he and another builder are actually – the
2 other builder hasn't requested anything.

3 CHAIRMAN MCDUFFIE: Thirty four lots in the entire development or 34 lots in
4 the current phase?

5 MR. DAVIS: No, 34 lots in this, this current phase.

6 CHAIRMAN MCDUFFIE: And which, but this is phase 1B?

7 MR. DAVIS: This is phase 2A.

8 CHAIRMAN MCDUFFIE: Phase 2A, okay.

9 MR. DAVIS: Phase 2B has 74 lots that we will begin construction on once they
10 get to the, under 20 lots left we'll begin construction on phase 2B.

11 CHAIRMAN MCDUFFIE: And how many, how many phases total will there be in
12 this project?

13 MR. DAVIS: There's gonna be 2B, and then probably four more for the
14 undeveloped portion, at least four more. There's about 135, 40 lots in there, and they
15 will be, we'll do half of it, probably half and half as far as a phase goes of the real estate.

16 CHAIRMAN MCDUFFIE: And if, if the, if today's hearing was to go in your favor
17 and reverse the Zoning Administrator's decision, based on my understanding, the, the
18 sales trailer would only be able to, to stay up for maybe a maximum of five more
19 months. What, what would, what would be the plan then once those five months have
20 expired and you've still got 200 or 300 lots to sell?

21 MR. DAVIS: That's a question for builder. I'm not sure. I, I think at that point they
22 would probably build a model, they would hope to.

23 CHAIRMAN MCDUFFIE: Obviously not in the common area though.

1 MR. DAVIS: Not in the common area. But what they really want to do is
2 establish a foothold and really a presence there before they do that. And they feel like a
3 sales trailer up front helps them establish a foothold and a presence.

4 MS. CECERE: Is the common area like noticeable from some major highway or
5 road or something?

6 MR. DAVIS: Yes, ma'am. I mean, the common area –

7 MS. CECERE: Like, I mean, I haven't been out there.

8 MR. DAVIS: - it can be seen from, it's very visible from Rabbit Run Road which is
9 the exterior road here.

10 MS. CECERE: Okay, I'm not familiar where Rabbit Run Road is, but I mean, I'm
11 saying is it like, can you see it from Sumter Highway, can you see it from –

12 MR. DAVIS: [Inaudible] Sumter Highway.

13 MS. CECERE: Okay. And then my other question is, is this project that we're
14 talking now, is that a new project or is that a continuous project from the first phase?

15 MR. DAVIS: It's a continuous project.

16 MR. SPEARMAN: What phase is the common area in?

17 MR. DAVIS: Phase 1.

18 MR. SPEARMAN: According to the, according to the subdivision plat –

19 MR. DAVIS: Phase 1B.

20 MR. SPEARMAN: - approved by Richland County.

21 MR. DAVIS: Phase 1B.

22 MR. SPEARMAN: So the common area's in phase 1B. What area is going to be
23 built upon, what phase is that?

1 MR. DAVIS: Two A.

2 MR. SPEARMAN: Two A.

3 MR. DAVIS: There was 1A, 1B, and now 2A.

4 MR. SPEARMAN: And, and 1B, how many lots are in 1B? That's where the
5 common area is, right?

6 MR. DAVIS: Yeah, there were 76 lots.

7 MR. SPEARMAN: Of those 76 lots are there, has that been built out?

8 MR. DAVIS: Yes. There were 30 in phase 1A, 76 in phase 1B, and there were 91
9 in phase 2A.

10 MR. SPEARMAN: When did, did you submit the subdivision plat to Richland
11 County for approval?

12 MR. DAVIS: Yes.

13 MR. SPEARMAN: When was that done?

14 MR. DAVIS: 2004. Not like it used to be.

15 CHAIRMAN MCDUFFIE: I mean, I guess the real question in my mind is, is, is
16 each phase a separate, is each phase really a separate project and a separate entity,
17 you know, which would say preclude putting the sales trailer somewhere else, or, or
18 should we be viewing the entire development holistically as a, as one development with
19 the, you know, with the operator free to put the trailer anywhere he or she pleases?

20 MR. MEETZE: There's only one entrance in and out, there is no practical place
21 they could put a sales trailer for the purpose that they want to put it there for.

22 CHAIRMAN MCDUFFIE: Other than at the –

1 MR. MEETZE: Than at the place they're asking for, that's right. Because they're
2 building behind there and there is no outlet for another road or anything. There's one
3 way in and one way out. That's the only practical place that it could be put.

4 MR. DAVIS: And like I say, the, the master plan was done prior to this and, and it
5 was, and I think that, I could be, fair to say that the engineer designed it that way so that
6 there would be a sales presence up front.

7 MS. CECERE: Well, Mr. Davis, now even if, let's say we did say, okay five more
8 months, but then the next phase will start up and then will we be back at the same
9 venue as we are now?

10 MR. DAVIS: I don't –

11 MS. CECERE: What, what would make –

12 MS. DAVIS: - I can't answer that question for them.

13 MS. CECERE: Okay, what – okay, tell me this, what would make the difference
14 between now and next year when you start the next phase?

15 MR. DAVIS: I, I think once they establish themselves in that neighborhood, I think
16 they're okay to move into a model, an actual model home. And they just want, they just
17 want a presence up front to establish themselves in the neighborhood. For whatever
18 period of time that, that, if you so deem, that they can use it. I think they'll be happy with
19 that. They'll have to be.

20 MR. SPEARMAN: Has any building permits been issued for the second phase?

21 MR. DAVIS: Yes, sir.

22 MR. SPEARMAN: How many permits have been issued?

23 MR. DAVIS: Well, there was 91 lots originally and there's 34 left, so.

1 MR. SPEARMAN: How many, has, has Richland County issued building permits
2 for those vacant lots?

3 MR. DAVIS: For the vacant lots?

4 MR. SPEARMAN: For the lots that have not been built on?

5 MR. DAVIS: No. No building permits.

6 MR. SPEARMAN: No building permits have been requested by –

7 MR. DAVIS: No, but they're, there's –

8 MR. SPEARMAN: - from your builder to Richland County, is that correct?

9 MR. DAVIS: Right, there's, there's three probably that are gonna occur this week
10 for, for three of the vacant lots.

11 MR. SPEARMAN: I guess I should say undeveloped lots.

12 MR. DAVIS: Undeveloped lots. Well, they're developed. Those lots that are
13 unsold in that phase are developed. The only undeveloped portion is that tract of land
14 around where I was showing you, the big tract where the, with the out parcel across the
15 street. That, that's the undeveloped portion. Has a permit been issued for that or, or
16 construction permit for phase 2A? No. I mean, we're not gonna get to that point until we
17 sell another 15 or 20 lots and then we'll start construction.

18 CHAIRMAN MCDUFFIE: When did the, the, this subdivision building commence?
19 When did, when did the project initially start?

20 MR. DAVIS: The building commence? 2005.

21 CHAIRMAN MCDUFFIE: One of the things that I, I have an issue with is that it, in
22 the Code it states that a construction trailer, temporary modular unit may be used as a
23 real estate sales office on any new construction project. And, and given that this project

1 started seven years ago, I have a hard time considering that this is a new construction
2 project, if we're going to take, you know, the holistic view that, that the active project is
3 the entire subdivision. I mean, I, I, seven years is a, I mean, that's a long time for
4 something to be considered a new project.

5 MR. DAVIS: You know, when we brought phase 2 on we started construction on
6 phase 2 end of 2006, finished it middle of 2007, right before, I mean, and just, it sat
7 there. I mean, there was no market in late 2007, 08, 09, 10, there was no market. None.

8 CHAIRMAN MCDUFFIE: Are there any further questions for either Staff or for the
9 Applicant at this time?

10 MR. MEETZE: How about comment?

11 CHAIRMAN MCDUFFIE: Please. Comment or discussion?

12 MR. MEETZE: Alright. We're in a heck of an economy here and the reason his
13 project has not really blossomed because the housing market crashed.

14 MR. DAVIS: And timing, right.

15 MR. MEETZE: There's only a practical solution to put that sales trailer where the
16 other one was. We're not putting up a strip club or a night club or anything obnoxious,
17 number one, the neighbors don't seem to have a problem with it, it would enhance the
18 place. I think it might be a matter here of maybe splitting hairs. Now there is the letter of
19 the law and the spirit of law, and I think here we're probably spinning our wheels. This is
20 a common sense issue, let the people put the little sales trailer there and say give them
21 five months, six months, seven months and at that time then it gives them time to
22 develop, see how the market is going. They can either tuck their tails and go home then
23 or make arrangements to build a model home and everybody's happy.

1 CHAIRMAN MCDUFFIE: At this time I'd like to send the Board back into
2 Executive Session to receive some legal instruction from Ms. Linder.

3 MR. SPEARMAN: Second.

4 CHAIRMAN MCDUFFIE: Alright.

5 *[Executive Session]*

6 CHAIRMAN MCDUFFIE: Alright, at this time we are out of Executive Session.
7 Mr. Price, if you would for the Record one more time, just please explain exactly what
8 you based your initial decision on to, to, not to allow the sales trailer?

9 MR. PRICE: Once again, the wording and as you read – one, the wording. Once
10 again, I read, I think you also stated this previously, new construction project. And I
11 think that comes in with each phase that comes in, you know, different review to allow,
12 you know, to allow the build out of that phase. I think even as the Applicant has stated,
13 as the market states what's needed they come in. The standards could change for what
14 the county looks at, but each one comes in separately. So I consider that to be a phase
15 as opposed to the entire development. Also, reading down you can kind of, actually
16 wording sometimes gives you what the intent of a section is for and when you say no
17 more than 12 months or half, half of the units for the project are completed, whichever
18 occurs first, well I'm assuming that 12, if you're talking about an entire development as
19 Alexander Pointe would be, if you looked at it as a whole, 12 months is always going to
20 occur so they've would've gotten one year to build out, I don't know, whatever the
21 number is. Say if this was a 300 unit development, then they would get 12 months to
22 build 300 units. My interpretation is, actually kind of gives them, it's a little bit more
23 permissible because it allows them to put a sales trailer every time they do a different

1 phase to sell. If you were to take it as it was brought before you and interpret that this is
2 a whole, then they would be allowed for 12 months for the entire build out of a project.
3 So, and I base, that's, those are pretty much the basis of why, of my determination.

4 CHAIRMAN MCDUFFIE: Alright. Are there any further questions for either Mr.
5 Price or for the Applicant? Yes, sir.

6 MR. PRICE: Just, if I could point out a couple things.

7 CHAIRMAN MCDUFFIE: Um-hum (affirmative).

8 MR. PRICE: One, this is based on the discussion you had, I know we talked
9 about whether it was practical or not. I think what we have before you is either you, your
10 interpretation is that you agree with me that a new project is per phase or it's not and
11 then this would be for the entire development. And I think that does set a, it will set a
12 precedent on how we go forward. Secondly, the discussion regarding when the previous
13 sales trailer was there, I believe we keep coming up with the time of, well there may be
14 five months left. That has not been determined yet and that would require some
15 additional research on Staff just to determine how long it's been there. And also with
16 that being said, forgetting the time we would also need to look at the total number of
17 units that, you know, are proposed for the entire Alexander Pointe development and the
18 total number of units that are currently on, in the development, because if half of the
19 units are there then that still would preclude this from having a sales trailer. And once
20 again, if your interpretation is that this applies to the entire development and it's
21 determined that the sales trailer was there for 12 months or for half of the, over half or
22 more of the proposed build out, then this would not be a, a sales trailer would not be
23 allowed on this site, either way.

1 MR. DAVIS: Can I say one thing?

2 CHAIRMAN MCDUFFIE: Sure.

3 MR. DAVIS: I understand the, the spirit of the law, I understand the law. But
4 we've seen some times in the last three or four years that, that hopefully we never see
5 again. And, and I think that, that, you know, that we should be able to be flexible enough
6 to make it work for everybody, that, and that's really all I wanted to say. I mean, I
7 understand the law.

8 CHAIRMAN MCDUFFIE: This Board certainly appreciates, you know,
9 appreciates that and certainly agrees I think with your sentiment that, you know, we
10 hope we don't have to revisit the last four or five years. But at the same time, you know,
11 what's at issue here today is whether or not this Board will affirm or reverse the decision
12 of the Administrator, which – and that decision could have further ramifications for land
13 development in, in Richland County. And so we, you know, we have to, you know, make
14 our decision, you know, with that big picture in mind, not with the, necessarily the
15 specifics of this situation in mind. Are there any further questions at this time? Would
16 anyone care to, is there any discussion or would anyone care to make a motion?

17 MR. SPEARMAN: I think you stated it pretty much on the head. And looking at
18 this particular situation and how it would affect future land development and so forth in
19 Richland County, number one, we do not know exactly how long that first trailer was
20 there. I guess the only way you could find out would be to get SCE&G to give you some
21 type of timeframe as far as electrical usage since it had electricity. Number two, really
22 don't know if the adjacent property owners that live in the subdivision would be in favor

1 or not in favor of replacing that trailer there. I don't know if, if the folks had any type of
2 notice of this because I don't believe an Administrative Review –

3 CHAIRMAN MCDUFFIE: Mr. Price, was, are Administrative Reviews posted on
4 the property?

5 MR. SPEARMAN: - requires posting or anything.

6 MR. PRICE: No, sir.

7 CHAIRMAN MCDUFFIE: So, so the fact that no one has signed up in support of
8 or against this project has no bearing on, on, or – opposed to or, or, or for this request
9 has no bearing on, on whether or not anybody had an opinion on it.

10 MR. PRICE: Correct.

11 CHAIRMAN MCDUFFIE: Okay.

12 MS. CECERE: Mr. Chair, I'd like to make a motion. I'd like to make a motion that
13 we uphold the determination of the County Administrator.

14 CHAIRMAN MCDUFFIE: To affirm?

15 MS. CECERE: To affirm and deny the Applicant's request.

16 CHAIRMAN MCDUFFIE: Alright, is there a second at this time?

17 MR. SPEARMAN: I'll second the motion.

18 CHAIRMAN MCDUFFIE: Okay. We have a motion to affirm the Zoning
19 Administrator's decision in Case 13-01 based on the Board's reading of the, of the
20 county ordinance, and it has been properly seconded. All in favor?

21 MR. PRICE: Those in favor are Spearman, McDuffie, Cecere.

22 CHAIRMAN MCDUFFIE: And all opposed?

23 MR. PRICE: Meetze, Sullivan.

1 [Approved: Spearman, McDuffie, Cecere; Opposed: Meetze, Sullivan; Recused: Smith;
2 Absent: Cooke]

3 CHAIRMAN MCDUFFIE: Alright, Mr. Davis the Zoning Administrator's decision
4 has been upheld and Mr. Price will be touch. Thank you very much.

5 MR. DAVIS: Okay, thank you.

6 CHAIRMAN MCDUFFIE: Is there – that concludes the public hearing portion of
7 today's hearing. Is there any other business at this time?

8 MR. SPEARMAN: Could, could we ask Staff either to mail us, maybe, or email us
9 a copy of the meeting schedule for the remainder of the year so we can approve it at
10 our next meeting?

11 MS. CECERE: I thought we already got one. We already got one.

12 MR. SPEARMAN: Didn't get one for this year, I didn't get one for this year, for
13 2013.

14 [Inaudible discussion]

15 CHAIRMAN MCDUFFIE: Would you send it back out? Just email it would be fine.

16 MR. SPEARMAN: Okay. And then we can approve it for, you know, at our next
17 meeting if -

18 CHAIRMAN MCDUFFIE: Okay.

19 MR. SPEARMAN: - that's appropriate.

20 CHAIRMAN MCDUFFIE: It'll be fine.

21 MR. PRICE: [Inaudible]

22 CHAIRMAN MCDUFFIE: Okay, so we'll look at in April then.

23 MR. PRICE: Potentially.

1 CHAIRMAN MCDUFFIE: Potentially. Alright, if there's no further business at this
2 time I'll move to adjourn. Meeting adjourned.

3

4

[Meeting adjourned at 2:02pm]