

**BANNER ELK BOARD OF ADJUSTMENT  
MONDAY FEBRUARY 7, 2023  
MINUTES**

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, David Tate

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Four Eggers

Others Present: Attorney Nathan Miller, Attorney Tyler Moffatt and respective clients.

Chairman Fred Schmitt called the meeting back to order at 6:00 p.m. Chairman Schmitt stated that this meeting was a continuance from the January 16<sup>th</sup> meeting and asked everyone present to stand and join in the Pledge of Allegiance.

**Outback Lane Subdivision Zoning Decision Appeal Continuation**

Before Mr. Miller called another witness, Attorney Eggers stated that he had conferred with both counsels, and all agreed to move the order of witnesses around due to scheduling conflicts. Allison Kidd and Paul Buchanan, witnesses of Ms. Pudney's, would be called first and then the order will be returned to Mr. Miller. Chairman Fred Schmitt agreed and asked Ms. Pudney to call her witness.

Ms. Pudney called Allison Kidd, further known as Mrs. Kidd, to the stand where she was sworn in. Ms. Pudney asked Mrs. Kidd what her current occupation was, and she stated that she was the Planning and Building Inspections Director for Avery County. She explained that she had been an inspector with the County for 22 years and only recently the director in September of 2022. Ms. Pudney asked that since Mrs. Kidd was with the County in 2007, could she verify if Gary Benfield was an employee of Avery County. Mrs. Kidd stated that yes, he was a coworker at the time. Ms. Pudney asked for Mrs. Kidd to look at exhibit 4, the 2007 plat. She asked if Mrs. Kidd could verify the signature that was signed off on the subdivision approval. She answered that it was Mr. Benfield's signature and that it was the stamp that Avery County would use. Ms. Pudney asked if Mrs. Kidd was aware that at the time the property was within the Town's ETJ. Mrs. Kidd stated she did not know. Ms. Pudney introduced exhibit 8, Avery County Subdivision Ordinance, and asked Mrs. Kidd to review it. She asked Mrs. Kidd what the DOT regulations were for a subdivision of 35 lots or less and Mrs. Kidd answered that according to their ordinance, it is a 45' right-of-way. Ms. Pudney asked Mrs. Kidd to identify the right-of-way to Outback Lane on the plat that was signed, and she answered that it was 20'. Ms. Pudney had no further questions.

Mr. Miller began his cross-examination by asking Mrs. Kidd if the lots circled in exhibit 5, the zoning map, were in the Town of Banner Elk's ETJ. She stated that it looked like that was the case on the map. Mr. Miller then asked if Mr. Benfield had the authority to sign plats on behalf of the Town and Mrs. Kidd stated that she did not know but believed he did not have the authority. Mr. Miller asked if the County had made an error by signing off on the plat. Mrs. Kidd stated that if it was in the Town's ETJ, it should not have been signed off by the County. Mr. Miller asked if the County had done anything to try and fix the error and she stated that they hadn't because she had just learned of it due to this meeting. Mr. Miller asked what the County did if there was a Zoning Ordinance Violation. She stated that the County did not have zoning, just buildings and a subdivision ordinance. He rephrased the question by asking

what the County would do in the event of a Subdivision violation. Mrs. Kidd stated that they let the Contractor know and if it is not resolved they would issue fines. Mr. Miller asked what the current subdivision standards are for the County. Mrs. Kidd stated that minimum standards for a private street of 10 acres and 10 lots or less would require a 25-foot right-of-way and 20 feet of travel surface and that she believes under the current standards, the subdivision would be approved. Mr. Miller had no further questions.

The Board was invited to ask questions. Ted Silver asked Mrs. Kidd when she was served the subpoena, and she stated that she received it on January 6<sup>th</sup>, 2023. He asked if there was any research or preparation she did prior to this meeting. She answered that she did not do any research or review any of the issues at hand. He then asked again if the Avery County Ordinance at the time of the plat being signed would require a 45' right-of-way. She stated that based on what she saw, it would have. There were no further questions from the Board.

Ms. Pudney followed up her questioning by asking Mrs. Kidd to read section 404J of the 2021 Avery County Ordinance. Mrs. Kidd read "the access requirements for subdivisions shall have a minimum frontage on a public road or a dedicated and recorded right of way connecting the subdivision with the public road, the minimum frontage and right of way standards are as follows. And there's chart zero to 30 acres, 45 feet of frontage on public road or dedicated, recorded right of way 36 to 59 acres, 50 feet of frontage or public road and 60 plus acres is 60 feet of frontage or public road." Ms. Pudney asked if that was the same wording in the 2007 copy and Mrs. Kidd stated that it was. Ms. Pudney then asked her to read the requirements for private streets, page 26 section B in the 2007 ordinance. Mrs. Kidd read "private streets shall meet the following requirements and design standards minimum right of way and surface widths. A 16-foot traveled surface, 25 foot right of way road serving less than 10 acres in less than 10 lots." Ms. Pudney asked if Outback Lane's 20' right-of-way met the required 25' right-of-way for strictly a private street, Mrs. Kidd stated that it did not. There were no further questions for Mrs. Kidd from any party.

Ms. Pudney called Fire Chief Paul Buchanan, further known as Chief Buchanan, to the stand where he was sworn in. Chief Buchanan stated that he is the Avery County Fire Marshal and Emergency Management Director. He stated that he has been with the County since 2016, in the fire service since 1995 and a fire marshal since 2007. Ms. Pudney asked if he had driven out to Outback Lane. He said he had driven out in a county vehicle. Ms. Pudney asked what the fire code required for minimum fire access for an emergency vehicle. Chief Buchanan said that for a subdivision it would be 20 feet of drivable surface. Ms. Pudney asked if he had measured the road. He said he had and on the paved area it is 11 feet and the gravel portion, the portion in question is only 9 feet in width. Ms. Pudney asked if part of his job as Fire Marshal, does he review and approve roads and subdivisions in regard to the fire code. He stated that yes, he would review and sign off if it met the requirements. She asked if Outback Lane in its current state would meet the requirements of the fire code. Chief Buchanan stated that it would not. Ms. Pudney asked if he believed he could get a firetruck up that road safely and he stated that he did not believe so. Ms. Pudney had no further questions.

Mr. Miller asked what firetruck Chief Buchanan believed he could not get there safely. Chief Buchanan stated that a ladder truck would have issue responding and that there were a few houses on the road that would require a ladder truck. He further explained that it is unsafe for a firetruck to travel that road

but in the event of an emergency, they would respond like any other call, the response would just be delayed. Mr. Miller asked if the 20' was for a right-of-way or drivable surface. Chief Buchanan stated that it was drivable surface and that none of the road met that requirement. Mr. Miller asked if Chief Buchanan knew the ISO height requirement that triggered the use of a ladder truck. Chief Buchanan stated that he did not. Mr. Miller asked if Chief Buchanan was familiar with the trucks that the Banner Elk Fire Department had. He said he was and provided a list. He listed Ladder 43, Engine 1201, Engine 1203 and Engine 1202 and stated that those trucks would be able to respond to an emergency on Outback Lane but it would take a long period of time due to the road being too narrow. Mr. Miller asked if he believed an ambulance and sheriff's vehicle would be able to respond; Chief Buchanan stated that they could. Mr. Miller had no further questions.

Mr. Moffatt asked if as part of his analysis of the safety of the road, did the potential for an EMS vehicle encountering an oncoming vehicle either coming down the road or up the road, does that pose any sort of a concern? Chief Buchanan answered that it would impact the response time because someone would have to back up and turn around and there is not an adequate place for a car to pull off and turnaround. Mr. Moffatt had no further questions.

The Board was invited to ask questions. Ted Silver asked if it would be a true statement that first responders will go wherever they need to go, whenever they need to go there. Chief Buchanan believes that is a true statement. Ted Silver asked if the response time would be different on Highway 105 compared to Outback Lane. Chief Buchanan believed that the road conditions on 105 would allow for a quicker response time. Ted Silver then asked what the difference is between thinking it is safe and actually going to the emergency. Chief Buchanan stated that safety is two different things. Safe as far as destroying a four or \$500,000 vehicle compared to actual true safety is two different things. If they have to put that four or \$500,000 vehicle in danger to save a life, that's what they're going to do. But to do it safely would be putting themselves in danger. Ted Silver asked if he would review any new home plans for the proposed subdivision. He stated that he would. Ted Silver then asked if there was a possibility of a home being built that would require a ladder truck. Chief Buchanan stated that there definitely could be homes built that would require a ladder truck.

Chairman Fred Schmitt asked if the County provided cross training with other Fire departments in the area. Chief Buchanan stated that there is cross training with other departments within Avery County. Chairman Fred Schmitt asked if Chief Buchanan believed that he was an expert in the fire service field. Chief Buchanan stated that he would consider himself an expert. The Board had no further questions.

Ms. Pudney followed up by asking if Chief Buchanan believed that the firetrucks had an adequate turn radius on Outback Lane. Chief Buchanan stated that the turn going into the proposed subdivision would require a couple of turns to actually get into the development. She then asked if it was his testimony that the state of the road and the curves and width of the road would increase the response time to a fire or medical emergency. He answered that it would definitely slow the response time. Ms. Pudney asked what hazard a delayed response could pose in an emergency. Chief Buchanan stated that it could be the difference between life and death. Ms. Pudney had no further questions.

Mr. Miller asked Chief Buchanan if he believed that the present condition of the road is actually dangerous to the public health and safety. Chief Buchanan answered that it could potentially be dangerous. There were no further questions for Chief Buchanan from any party.

Mr. Miller called Lisa Standering, further known as Mrs. Standering, to the stand where she was sworn in. Mrs. Standering stated she was from Cornelius North Carolina, married to Daniel Standering and is a licensed real estate agent working with buyers specifically. Mr. Miller asked how she was associated with StandUp Properties, and she answered that it was her husband and his sister's company. He asked Mrs. Standering to explain how she found the property and the process of purchasing it. She explained that she had been working with another agent looking for properties in the area and found the property in question on realtor.com. She stated that the property was listed as four separate parcels. Mr. Miller introduced exhibits 12, 13, 14 and 15, which represent the four individual MLS listings. Mr. Miller asked when they purchased the properties. Mrs. Standering stated that they purchased the property in March of 2022. Mr. Miller asked if they had looked at the recorded plat that showed four lots. She answered that she had also viewed the lots on GIS and called Avery County, who confirmed it was four separate parcels. Mr. Miller introduced exhibit 16, the offer to purchase, and asked Mrs. Standering what the purchase price was for all four lots. She answered that they purchased the property for \$315,000. Mr. Miller introduced exhibit 17, the warranty deed, and asked Mrs. Standering to read the description of the deeded property. She stated that it was a 10-acre tract divided into four different parcels. He asked if they receive four separate tax bills, and she said that they do. Mr. Miller introduced exhibits 20, 21, 22 and 23, the respective tax bills for the four lots. Mr. Miller asked if she had paid the four tax bills and she stated that she had. Mr. Miller asked what the plans were for the property. She said they wanted to build 4-8 homes and keep 1 or 2 for themselves. She stated that she had talked to Avery County regarding building 8 homes and discussed soil testing. Mr. Miller asked if they had completed another survey for the 8 homes. She stated that they did, and it was presented to the County, the County refused it since it was in the Town's jurisdiction and that is when the issue came to light and they were made aware by the Zoning Administrator of the issue. Mr. Miller asked if they had done any work on the property. Mrs. Standering said the only work they have done is making a drivable and safe entrance to the lots which cost \$150,000. Mr. Miller asked if they would have bought the property if they knew it was a 10-acre tract. Mrs. Standering stated that no they would not have because it was a project funded by inheritance money that had the goal of building 4 homes and selling two, creating an investment in four total homes. Mr. Miller asked if she or her husband has ever had any issue driving to the lots and she stated that she hasn't and that she drives a 2wd sedan and has not experienced any issues, nor has run in to any traffic on the road. Mr. Miller asked who she thought was to blame for the error. Mrs. Standering answered that she believes it's between Avery County and the Town of Banner Elk and the listing agent should have known as well. Mr. Miller had no further questions.

Mr. Moffatt asked if Mrs. Standering was either a member or manager of Standup Properties? She said no. He then asked how long they were shopping for land. She stated that she believed it was around 6 months. He asked if her or her husband had any experience in residential real estate development. She said neither had not. He asked if she could explain the process of due diligence that is listed in the offer to purchase. Mrs. Standering answered that it would entail making calls to the county and asking if there are any limitations. She stated that the listing agent should have done her due diligence. He then asked if they had ever met with a civil engineer to prepare a site plan for the proposed development. She

stated that she only contacted Avery County. He asked if she could read the bottom of the MLS documents (exhibits 12-15). She stated that it said, "information deemed reliable but not guaranteed." She stated that she is aware it may not be accurate and that is why she contacted the County. Mr. Moffatt had no further questions.

Ms. Pudney began by asking Mrs. Standering if she told Avery County what the intended use of the land was. She stated that she told them it was for a residential development. Ms. Pudney then asked Mrs. Standering to look at exhibits 12-15 and if she could state what the property summary type stated on the MLS sheets. Mrs. Standering answered that it was listed as commercial on all sheets, but she was told it was zoned R1. Ms. Pudney asked if Mrs. Standering heard the testimony from Mrs. Kidd where she stated that Avery County did not have zoning and if she would agree that the R1 zoning was the zoning for the Town of Banner Elk. Mrs. Standering stated that at this point she would agree. Ms. Pudney then asked what Mrs. Standering's deed listed as the "brief description". Mrs. Standering answered that it said, "a 10-acre tract +/- on Stacy Lane." Ms. Pudney then asked if she was aware that any property within any ETJ is not subject to Town taxes and therefor would not receive a tax bill from the Town of banner Elk. She stated that she would agree with that statement based on what she has learned throughout this process. Ms. Pudney asked Mrs. Standering if she would read the Township description on the 2007 plat and the warranty deed (exhibits 4 and 17 respectively). She stated that the Township on exhibit 4 read "Banner Elk" and the city on exhibit 17 read "Banner Elk". Ms. Pudney asked if it was her testimony that she never contacted the Town of Banner Elk regarding the property. Mrs. Standering answered that that was correct. Ms. Pudney had no further questions.

The Board was invited to ask questions. Ted Silver began by asking Mrs. Standering if she acted as the buyer's agent. She stated that she did, and she conducted her side of the due diligence by contacting Avery County because nothing on the MLS sheet or plat indicated she would have to contact anyone else. Ted Silver asked if the previous owners knew or had disclosed that the lots were in the Town's ETJ. Mrs. Standering stated that they had not known either prior to this issue. Ted Silver asked if they had made their offer to purchase contingent on the viability of the land. She stated that they had not. Ted Silver asked if Mrs. Standering's conversation with the County was about building homes on the lot. She answered that it was and what kind of restrictions there were. He further asked if she had heard Mrs. Kidd's testimony stating that the County handles building permits throughout the County, regardless of the ETJ. She answered that she did hear that testimony. Ted Silver then asked if her conversation with the County would have clarified any zoning or subdivision issues if it was strictly about building the homes. She answered that she had discussed with the County the setbacks for the proposed homes and the size and location of them as well. The Board had no further questions.

Mr. Miller followed up questioning by asking Mrs. Standering if Avery County indicated to her that she would need an approved zoning permit from the Town of Banner Elk prior to obtaining a building permit. She stated that the County did not tell her that. He asked if they had relied on the information the County had provided when deciding to close on the property. Mrs. Standering stated that that was correct. Mr. Miller had no further questions.

Mr. Moffatt asked Mrs. Standering if the buyer requested or received a zoning endorsement on the title insurance policy. She stated that she did not know that she left that up to the attorney. He then asked if she had received any type of site or development plans from the seller. She stated that she had not. He

ended his questioning by asking if she believed the seller should be held liable for the misrepresentation of property, where she answered that she believed they should.

Morgan Herdklotz, board member, had one follow up question. She asked Mrs. Standering if she was aware that exhibits 12-15 were not actual MLS sheets but rather an informational sheet from CRS. Mrs. Standering stated that she was aware that the sheet provided was just an informational sheet and not the listing sheet with agent remarks from the MLS system. There were no further questions from the Board.

The Board took a short recess at 8:15 and reconvened at 8:20.

Mr. Miller called Daniel Standering, further known as Mr. Standering, to the stand where he was sworn in. Mr. Standering stated that he was a co-member of Standup Properties, LLC with his sister Lisa, who resided in Minnesota. He stated that he received the money to purchase the property from the passing of his mother. Mr. Miller asked if any of the attorneys mentioned the property was within the Town's ETJ. He stated that no, no one told them prior to the Town issuing the violation. Mr. Miller asked what the extent of the sitework done was. Mr. Standering stated that they removed dead trees, trees that obstructed the road and reinforced the existing road to make it safe. Mr. Miller asked what type of equipment was utilized to do those things. Mr. Standering answered that there were many logging trucks and backhoes. Mr. Miller introduced exhibits 25,26,27 and 28, which were visual representations of the equipment brought in. Mr. Miller went through each exhibit and asked Mr. Standering if any of the heavy machinery had issues reaching the property. Mr. Standering testified for all that they reached the property without issue. Mr. Miller asked if Mr. Standering had any issue of his own reaching the property or with meeting traffic on the road. He stated that he had no issue and had not run into any traffic on the road. Mr. Miller had no further questions.

Mr. Moffatt asked if Mr. Standering has a significant financial investment with the work that has already been completed. Mr. Standering says he does and has budgeted roughly \$1,000,000. Mr. Moffatt asked if at any point he reached out to a civil engineer or developing consultant prior to any of these issues coming to light. He stated that no, he had not. Mr. Moffatt then asked if Mr. Standering reviewed the title policy from the closing attorney, and he answered that he had not. Mr. Moffatt had no further questions.

Ted Silver asked Mr. Standering to describe the speed at which the trucks that delivered the machines went on Outback Lane. Mr. Standering stated that it was slow and that he observed them from the entrance of his property but did not follow them up from the bottom of the road. Ted Silver then asked if Mr. Standering knew if the drivers had to be very cautious and slow to avoid damage. Mr. Standering answered that he did not know. There were no further questions.

Attorney Eggers informed the Board that they should allow others who believe they have competent testimony to present their testimony and be sworn in. The Board called for those who wanted to testify and none were noted. Attorney Eggers then invited all parties to provide their closing statements.

Ms. Pudney began by saying that the subdivision in question was not brought to or signed off on by the Town of Banner Elk. If it did, it would not have met the minimum subdivision standards in 2007 due to Outback Lane not having an adequate 45' right-of-way. She reiterated that the subdivision as presented

in 2007 did not meet the Town's requirements nor did it meet Avery County's requirements. She stated that due to the road condition, there is a concern for public health and safety regarding the ability for emergency services to be able to respond to calls in a timely manner. She told the Board that when the issue was brought to her attention in March of 2022, she responded in a timely manner and after careful consideration issued the decision to deny the 2007 subdivision.

Mr. Moffatt began his closing statement by addressing the main points of discussion, the statute of limitations and laches. He cites NC General Statute 1-49 and 1-51, stating that these are the statute of limitations that basically state that a property owner after a certain period of time a township or municipality or a county is prohibited from seeking an inaction and a court action to enforce any sort of an ordinance or land use violation. He states that this is an administrative proceeding of quasi-judicial proceeding, but it is not an action by statute in North Carolina and therefore for that reason alone, that statute of limitations has no bearing on this board's decision as far as not being able to enforce its own ordinances here. He also states that he does not believe there has been a triggering event for the statute of limitations to begin. He argues that a plat recorded in Avery County is a public record of the County but not a public record of the Town of Banner Elk. HE closes by stating the defense of laches is not equitable due to the Town not knowing of the violation until March of 2022 and then acting on in within the following weeks. He states that there was no significant delay from the Town in enforcing their ordinances.

Mr. Miller began by reminding the Board that his clients, the realtors, or Avery County, knew this property was in the ETJ of Banner Elk. He stated that this is an issue created by Avery County and his clients relied on the information provided by Avery County in making their purchase. He argues that the Town had knowledge of the subdivision since the four lots appeared on their zoning map since 2009. He reminded the Board that his expert witness in rural fires stated that he believed there was no safety concern on the road, nor did any of the intervenors at the beginning cite specific examples of safety concerns. He believes that the change of condition, from going to 1 10-acre tract to 4 tracts, triggers the defense of laches. He states that his client paid \$325,000 and has spent \$150,000 on site work and that they have a substantial investment in this property. He ends by asking the Board to overturn the Zoning decision and to allow for the building of four residential homes on the four lots.

With closing statements completed, Chairman Fred Schmitt closed the evidentiary portion of the hearing and asked for direction from the Town Attorney before proceeding to deliberations. Attorney Eggers stated that the board is called upon to review a decision of the zoning administrator for the application of the facts and law to the particular situation in this matter. The burden of proof is upon the applicant to show error as to the decision of the zoning administrator by the greater weight of the evidence. If the Board finds that the zoning administrator's decision was appropriate it would be appropriate to have a motion to affirm the zoning administration decision. If believed that the decision was erroneous, it would be appropriate to reverse that decision. In order to reach that conclusion as to whether to affirm or reverse the zoning administrator's decision the Board will need to be called upon to answer several issues that have been presented and to apply the facts as they find them to be based upon the evidence to the circumstances presented. The first issue that will need to be considered and addressed is whether the enforcement of this action would be barred by the or have applicable effect for the seven-year statute of limitations contained in one dash 49. That statute of limitations provides a

seven-year statute of limitations against enforcement against the owner of an interest in real property by a unit of local government for the violation of a land use statute, ordinance or permit or any other official action concerning land use carrying the effect of law. It would be appropriate to find out when that statute would be effective in whether it is applicable to this particular situation for that statute to have run. If the Board does find the statute of limitations as applicable, then it should be considered whether an exception to that statute would apply and should consider the question of whether the conditions related to the road and the proposed subdivision are actually injurious or dangerous to the public health or safety. So those would be the issues as they relate to the statute of limitations for consideration. Additionally, there's been an issue that has been presented as to whether enforcement of the zoning administrator's decision would be barred by the doctrine of laches. Laches is an equitable doctrine that would prohibit enforcement of nonconforming situations under the doctrine of laches that would be applicable when the following three items are met. First, when the local government made affirmative assurances about the zoning regulations, second, the individual substantially relied upon those assurances to their detriment. And third, there was considerable delay by the local government in bringing an enforcement action after the government learned of the violation. So those would be the three elements of laches for consideration based upon the board's findings those particular issues that would inform the decision on the ultimate issue of whether to affirm, modify or reverse the zoning administrator's determination in this particular case. He then instructed the Board to begin their deliberations.

Ted Silver began the discussion regarding the issue of laches. He stated that the Town of Banner Elk did not make an affirmative representation to the appellant. He stated that the zoning map that shows the four parcels does not convey knowledge or approval of the subdivision. The map is used for zoning designations and not parcel data. He believes that the Town does not meet the burden of a local government making an affirmative representation. The decisions of the appellant were relied upon the information provided by the County and not the Town. He stated that the Town had not known about the subdivision based on their zoning map since its use is for zoning regulations. He believes there was no delay on the Town's part in dealing with the issue. The issue came to light in March of 2022 and the Zoning Administrator acted within a matter of weeks. **Ted Silver makes a motion to deny the defense of laches based on his statements above.** Chairman Fred Schmitt reiterated Ted Silver's points that this case is about a subdivision that was never brought to the Town for approval and no assurance were given by the Town as far as equitable defense. Morgan Herdklotz and David Tate agree with those statements. **Chairman Fred Schmitt seconds the motion to deny the defense of laches.** The motion passed unanimously with the following votes from the Board:

Ted Silver: Aye

David Tate: Aye

Fred Schmitt: Aye

Morgan Herdklotz: Aye

Chairman Fred Schmitt moved to the next issue of statute of limitations and whether it is applicable and if there are any exceptions due to public health and safety. He opened it for discussion.



Ted Silver stated that all statute of limitations needs a triggering event. He believes that when the Town knew or should have known is not triggered by the zoning map or the plat being recorded in the County and that there has not been a triggering event for the statute of limitations. He believes the property in question is in “public view” by being on the GIS system, but that does not show whether a subdivision of land has been approved or not. He ends by stating that the Zoning Administrator did not delay in her response and was made aware of the issue.

Chairman Fred Schmitt states that he agrees with Ted Silver in the fact that the subdivision in question is not apparent from a public right-of-way and the land is not available to the public. He also states that the public record trail is solely in Avery County. The plat was recorded in Avery County with no documentation coming to the Town. With that in mind, he does not believe a triggering event has been reached that would make the statute of limitations applicable.

**Ted Silver makes a motion that the statute of limitations was not triggered due to the above findings of fact. David Tate seconded the motion and it passed unanimously with the following votes from the Board:**

Ted Silver: Aye

David Tate: Aye

Fred Schmitt: Aye

Morgan Herdklotz: Aye

Chairman Fred Schmitt moved to the next issue of statute of limitations regarding the risk to public health and safety. He opened it for discussion.

Ted Silver began by stating that even though Chief Buchanan was not sworn in as an expert witness, he gives weight to his experience and testimony that his descriptions of the road, the descriptions of the vehicles, and that in responding to an emergency, those vehicles in answering that emergency would have some difficulty in trying to navigate and be very careful. He also states that during Mr. Stander's testimony, Mr. Stander stated that the heavy machinery vehicles were able to make it to his property. However, he testified that he did not witness them driving up or know how fast or slow they were able to travel. He states that the fire code, DOT, The Town's Subdivision ordinance and the County's Subdivision ordinance has minimum requirements for a reason, and this access road does not meet any of those requirements and can be injurious to first responders and vehicles traveling the road. He states that the road condition will lead to delayed response times which is a safety issue. **Ted Silver motions that if the statute of limitations were for some reason applicable, the safety issues discussed would create a risk to public safety and health. Chairman Fred Schmitt seconds the motion and it passed unanimously with the following votes:**

Ted Silver: Aye

David Tate: Aye

Fred Schmitt: Aye

Morgan Herdklotz: Aye

With all the previous findings of fact, **Chairman Fred Schmitt motioned to find that there's no error or abuse of discretion by the zoning administrator and to affirm the zoning administrator's decision**  
**David Tate seconded the motion and it passed unanimously with the following votes:**

Ted Silver: Aye

David Tate: Aye

Fred Schmitt: Aye

Morgan Herdklotz: Aye

The final motion presented by Chairman Fred Schmitt which was seconded by Morgan Herdklotz was that the Board of Adjustment upholds the Zoning Administrators decision. The motion passed unanimously with the following votes:

Ted Silver: Aye

David Tate: Aye

Fred Schmitt: Aye

Morgan Herdklotz: Aye

With no further discussion David Tate motioned to close the meeting and was seconded by Chairman Fred Schmitt. The meeting adjourned at 10:17 pm.

Respectfully Submitted,

Riley Pudney, Zoning Administrator

Approved: \_\_\_\_\_

Chairman to the Board

\*\*NOTE: A transcript of the audio recordings is available upon request