

**MINUTES**

**ZONING BOARD OF ADJUSTMENT**

**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday  
December 12, 2019**

**Commissioners Chambers  
David R. Sandifer Administration Building  
Brunswick County Government Center  
Old Ocean Highway East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman  
Mary Ann McCarthy, Vice Chairman  
Marian Shiflet  
Clayton Rivenbark, Alternate  
Ron Medlin, Alternate

MEMBERS ABSENT

Virginia Ward  
Alan Lewis

STAFF PRESENT

Helen Bunch, Zoning Administrator  
Bryan Batton, Assistant County Attorney  
Justin Brantley, Project Planner  
Miranda Garmenn, Zoning Technician

OTHERS PRESENT

Phil Norris  
Huey Marshall, Attorney  
Kimberly Simmons  
Jeff Brown  
Randy Earp, Sr.  
Barry Guise  
Robert Turner  
Gerald Roberts  
Stephanie Herron

Brandon Hardee  
Matt Nichols, Attorney  
Belinda Benz  
Joanna McCumbee  
Gene Simmons  
Jackson Starling  
Vincent Russo  
Michelle Russo

**I. CALL TO ORDER.**

The Chairman called the meeting to order at 6:00 p.m.

II. ROLL CALL.

Mr. Lewis and Ms. Ward were absent. Mr. Ron Medlin and Mr. Clayton Rivenbark served as Alternates.

III. CONSIDERATION OF MINUTES OF THE NOVEMBER 14, 2019 MEETING.

Mr. Rivenbark made a motion to accept the minutes of the November 14, 2019 meeting as written. The motion was seconded by Mr. Medlin and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

Ms. McCarthy said that the public hearing is not to solicit broad public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the record by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

Ms. McCarthy stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.5.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

Ms. McCarthy informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

VI. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and/or affirmed Helen Bunch, Phil Norris, Brandon Hardee, Matthew Nichols, Kimberly Simmons, Belinda Benz, Jeff Brown, Joanna McCumbee, Randy Earp, Sr., Gene Simmons, Barry Guise, Jackson Starling, Robert Turner, Vincent Russo, Gerald Roberts, Michelle Russo, and Stephanie Herron as to their testimony being truthful and relevant to the respective case.

VII. New Business.

- A) 19-17S: Special Use Permit  
Applicant: Brandon Hardee dba King Sand Mine  
Location: 6380 Ludlum Road NW, Ash, NC 28420  
Tax Parcels: Portion of 16300016 & All of 1470001604  
Applicant requests a Special Use Permit for a “Class I Mining Operation” consistent with Section 5.2.3 and Section 5.3.7.G of the Brunswick County Unified Development Ordinance (UDO).

Ms. Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). Ms. Bunch identified the subject property and surrounding properties on a visual map.

Attorney Huey Marshall came before the Board and stated that he will not be providing testimony but will be asking questions. Attorney Marshall called Applicant Brandon Hardee to testify. Mr. Marshall asked Mr. Hardee if he understands why he is at the Board of Adjustment meeting. Mr. Hardee responded that he understands. Mr. Marshall asked Mr. Hardee why he is currently here at the Board of Adjustment meeting. Mr. Hardee responded that he is trying to get a Special Use Permit for a mining operation. Mr. Marshall asked Mr. Hardee if he has been here before on the same matter. Mr. Hardee responded that he was at the Board of Adjustment for the same reason thirteen (13) months prior.

Mr. Marshall asked if there had been any changes made to plan since that time. Mr. Hardee responded that there have been changes made to the plan. Mr. Marshall asked how the access to the mine has been changed. Mr. Hardee responded that the road has moved the on the plan away from parcel 1470001603. Mr. Hardee that the original road went along the property line of parcel 1470001603. Mr. Hardee continued that the road is now oriented along the center of parcel 1470001604. Mr. Marshall asked what is the current use of Tax Parcel 1470001604. Mr. Hardee responded that the property is currently used for farming.

Mr. Marshall asked Mr. Hardee if he intends to make improvements to the road to address issues such as dust. Mr. Hardee stated that the asphalt pavement would be installed to help control dust. Mr. Marshall asked if there

will be buffering on the road. Mr. Hardee responded that there will not be buffering on the road because the adjacent property owners said it was unnecessary. [Note: Buffer requirements will be determined by the Brunswick County Planning Department.]

Mr. Marshall asked if the proposed site would include scales, an office, or employee parking. Mr. Hardee responded no. Mr. Marshall asked if Ludlum Road would be used for all traffic generated by the site. Mr. Hardee responded yes. Mr. Marshall asked if there would be outdoor lighting or signs proposed for the site. Mr. Hardee responded no. Mr. Marshall asked Mr. Hardee if he was aware of any separate open space requirement for a mining use. Mr. Hardee responded no.

Mr. Marshall called Project Engineer Phil Norris to testify. He asked Mr. Norris if he knows how many parcels nearby are residentially developed. Mr. Norris responded that he would have to examine the map and added that he believes there are two. Mr. Marshall asked if those residentially developed parcels would require a 20-foot buffer with the remaining parcels requiring a 10-foot buffer. Mr. Norris responded yes. Mr. Marshall asked if the road has been paved. Mr. Norris responded no.

Mr. Marshall asked if an application was been submitted for a North Carolina Department of Transportation (NCDOT) driveway permit. Mr. Norris responded that the driveway permit has been applied for, but they have not yet heard back from the NCDOT. Mr. Marshall asked Mr. Norris if he is aware that the site is within five (5) miles of any military installation. Mr. Norris responded that there is not a military site within five (5) miles to his knowledge.

Mr. Marshall stated that the staff report indicates that the use is described as compatible with the Rural Residential (RR) zoning district provided the applicant receives permission from whom. Mr. Hardee responded that permission from the State for a mining permit, NCDOT for driveway access to Ludlum Road, as well as the Board of Adjustment are required.

Mr. Marshall asked Mr. Norris if he knows the acreage of the site. Mr. Norris responded that the total acreage that will be within the parcel that will be created will be over 19 acres. Mr. Norris continued that the actual mine and excavation area will be over 16 acres in size.

Mr. Marshall asked if there will be further processing of materials, explosives, or dewatering on the site. Mr. Marshall responded not to his knowledge. Mr. Marshall asked if there would be a housing development located around the pond after the mining operation is complete. Mr. Norris responded that nothing has been planned for the site.

Mr. Marshall asked if a bond is required for site remediation. Mr. Norris responded that the state mining permit requires a reclamation bond that must be posted prior to the issuance of the state permit [by the NC Department of Environmental Quality, Energy, Mineral and Land Resources Division Mining Program] to ensure the remediation of the site after the mining use has taken place. Mr. Marshall asked Mr. Norris to explain the remediation process. Mr. Norris stated that in the situation of a sand mine of this nature it is essential to make sure the banks are sloped properly and vegetated to avoid erosion or water quality issues at the site after the project is complete. Mr. Norris added that the bond will not be released until after an inspection by the state to verify that the remediation has taken place consistent with the approved plans.

Mr. Marshall asked how long the mine will be in use. Mr. Hardee responded that the life of the mine is unknown and that it could be between three (3) and five (5) years. Mr. Hardee added that the life of the mine will depend on development trends in the area. Mr. Marshall asked if development in Brunswick County been active. Mr. Hardee responded that development has been steady the past several years.

Mr. Marshall said he would like to point out a statement from application item four (4) that provides that the proposed project will create a freshwater lake at the end of the mining operation and that it should increase the value of the adjoining properties. Attorney Matt Nichols stated that he objects to that statement.

Mr. Williamson asked how many trucks would be visiting the site each day. Mr. Hardee responded that it depends on the demand. Mr. Hardee continued that it could range from zero (0) to twenty (20) trucks in a day.

Mr. Williamson asked how close the haul road is to the nearest home. Mr. Hardee responded that he is unclear, but an approximation would be over 100 feet. Mr. Hardee added that the proximity to the nearby homes is the reason the haul road was moved. Mr. Williamson asked if the haul road would be paved to the gate. Mr. Hardee responded yes. Mr. Williamson asked if there would be provisions in place to mitigate dust inside of the mining area itself. Mr. Hardee responded that there will be an irrigation system along the road as well as water tanks available on site as necessary.

Ms. Shiflet asked for clarification on where the irrigation system would be located. Mr. Hardee responded that the irrigation would be located outside the mine along the haul road where the trucks operate. Mr. Hardee stated that he has an employee that was recently diagnosed with Chronic Obstructive Pulmonary Disease (COPD) and their safety is a concern as well because the employee has a hard time handling dust.

Mr. Rivenbark asked if they exceed some set back requirements. Mr. Norris responded that they exceed the required buffers to increase the distance to from the proposed mine to adjoining properties.

Attorney Matthew Nichols addressed the Board. Mr. Nichols stated that he is representing the family of Adam and Kimberly Smith. Mr. Nichols stated that they are surprised that the application is coming back before the Board after the Board's unanimously denial of a previous request in October of 2018. Mr. Nichols stated that one of the children of the Smith family, 8-year-old Brayden Ballard, has a complex medical condition. Mr. Nichols stated that he would like to tender medical documents for the record. Mr. Nichols submitted a letter to the Board from Dr. Elisabeth Dellon (Exhibit A) with the University of North Carolina regarding Brayden's medical condition and her concern with the sand mine operation. Mr. Nichols read the letter.

Mr. Nichols stated that this is a very unique situation and added that last year the Board denied a previous request unanimously. Mr. Williamson asked if this case was decided on previously. Ms. Bunch responded that she believes that this case was withdrawn. Mr. Nichols stated that he has the meeting minutes from the October 2019 Board of Adjustment Meeting. Mr. Batton clarified that previously there were two sand mine applications for the same property and that the second application was withdrawn.

Mr. Nichols displayed a presentation showing the previous proposals for the site (Exhibit B). Mr. Nichols stated that the application that was unanimously denied was for a 12.85-acre sand mine. Mr. Nichols continued that the applicant is currently applying for a 16.83 sand mine which is nearly thirty (30) percent larger in size that what was previously denied. Mr. Nichols continued that after the board unanimously denied the request for the 12.85 acre mine the application for the other sand mine (13.65 acre) on the same property was withdrawn. Mr. Nichols pointed out his client's home on the map (Tax Parcel 16300021). Mr. Nichols stated that the Simmons home has not moved. Mr. Nichols stated that the applicant is asking for permission for a larger mine than what was denied.

Mr. Nichols submitted a letter from Dr. Lewis (Exhibit C), a note from Dr. Ludlow (Exhibit D), a copy of the deed for the Simmons property (Exhibit E), as well as a map recorded with the Register of Deeds for the Simmons property (Exhibit F). Attorney Nichols also requested that reference to the minutes from the October 2018 Board of Adjustment Meeting be reflected in the minutes.

Mr. Nichols stated that the applicant is requesting permission to have a more intense mining site than the request that was denied. Mr. Nichols continued that the applicant did not appeal the decision and is bound by that ruling. Mr. Nichols submitted a motion to dismiss the application based on the doctrine of

res judicata, which implies that the matter has been decided and may not be pursued further (Exhibit G).

Mr. Nichols referred to the October 2019 meeting and added that previously, the Board voted no on all of the review criteria. Mr. Nichols continued that the decision was not appealed by the applicant. Mr. Nichols reiterated that he objects to the previous statement saying that the mine/pond will increase property value because no supportive evidence has been provided. Mr. Nichols stated that the applicant has not sufficiently addressed the previous factors. Mr. Nichols added that the notes on the applicant's plan does acknowledge the generation of dust by the mining activity which is a major concern of the Smith family. Mr. Nichols continued that the haul road has been altered but still crosses over onto the larger parcel (16300016) within the same proximity to the Smith family's property as the application that was denied.

Mr. Nichols stated that the area is in a general area of low density residential according to Brunswick County's future land use plan. Mr. Nichols submitted a selection from the Brunswick County CAMA CORE Land Use Plan (Exhibit H). Mr. Nichols continued that this document states that inappropriate uses within this designation include commercial uses and industrial operations. Mr. Nichols further stated that the application should be denied based on the previous decision and the fact that the applicant has not adequately addressed the concerns.

Ms. Kimberly Simmons testified stating that she is a mother of three children. Ms. Simmons continued that her oldest child has limitations that prevent him from living a normal life. Ms. Simmons explained that Brayden's disability prevents him from coughing forcefully to clear his lungs as well as causes seizures. Ms. Simmons added that the sand mine could prohibit him further.

Ms. Simmons stated that after the October 2018 meeting Mr. Hardee never reached out to rectify or address concerns. Ms. Simmons asked how thick the asphalt would be on the proposed haul road. Mr. Hardee responded that the asphalt would be two (2) inches thick with a six (6) inch rock base.

Ms. Simmons asked Mr. Hardee why he does not feel it is necessary to post signs that notify buses and other vehicles of the hazard created by the trucks. Mr. Hardee responded that he would have to ask the County for permission to put up signs. Mr. Hardee continued that inside of the mining area he is allowed to post small signs around the haul road within the mining site. Ms. Simmons asked if he is going to attempt to have properly regulated signs posted to address off-site traffic concerns. Mr. Hardee responded that he does not think that the potential truck traffic volume is enough justification.

Ms. Simmons stated that she and her family were at the Board of Adjustment making the same arguments over one year ago. Ms. Simmons continued that nothing has changed since that time and added that the findings of the previous case have not changed. Ms. Simmons clarified that the proposed use is still not in harmony with the area and will have potentially detrimental health impacts on the community. She added that the use is not a good fit with the area.

Ms. McCarthy asked Ms. Simmons to articulate the primary concerns with the mine itself. Ms. Simmons responded that dust from the haul road is the greatest concern. Ms. McCarthy stated that the applicant has attempted to address that concern. Ms. Simmons said that the proposed remedy is not substantial enough.

Ms. McCarthy asked how long the Simmons have lived in the house. Ms. Simmons responded five (5) years. Ms. McCarthy asked what kind of use would be acceptable for the property in question. Ms. Simmons responded agriculture. Ms. McCarthy asked if a large subdivision would be acceptable. Ms. Simmons replied that would be fine as it is a lesser evil.

Mr. Rivenbark stated that farms and development can create dust. Ms. Simmons state that her concern is every day traffic generating dust. Mr. Rivenbark asked Ms. Simmons about her concern about the haul road lacking pavement from the gate to the mine pit. Ms. Simmons stated that the pavement of the haul road could reduce the dust, but it would not be substantial enough, as dust would still be created within the mining site.

Ms. Belinda Benz stated that her property is adjacent to the proposed haul road at 2603 Whiteville Road (Tax Parcel 14700076). She stated that she would like to address the speculation of what the community would like at the property in question. Ms. Benz continued that we cannot speculate what could go there and that the meeting is to discuss what is currently being considered for the site.

Ms. Benz referenced correspondence from her husband's doctor and stated that her husband, Kevin Benz, has developed COPD and is currently being treated. Ms. Benz stated that she would like to see how far the proposed haul road is to her property. Ms. Benz stated that the proposed haul road has moved closer to her property.

Ms. Benz asked Mr. Hardee how far the haul road will be from her property. Mr. Hardee responded that he does not know the exact distance but is likely around 200 feet.

Ms. Benz stated that there is no natural vegetation in the field where the haul road is proposed. Ms. Benz asked if they will clean the ditches.

Ms. Benz stated that she has two animals and a mother that live next door. Ms. Benz continued that she gardens at home as a hobby. Ms. Benz stated that she has concerns about the impacts on the natural environment from the sand mine. Ms. Benz added that an environmental study may be needed to assess this impact. Ms. Benz stated that she received notice the Saturday before Thanksgiving and found that was an inadequate amount of time to respond appropriately.

Ms. Benz asked what materials will be mined. Mr. Hardee responded field dirt and sand. Ms. Benz asked what the materials will be used for. Mr. Hardee responded that the material will generally be used for building pads for new construction. Ms. Benz asked how long the project would last. Mr. Hardee responded less than five years hopefully. Ms. Benz asked what the hours of operation will be. Mr. Hardee responded that the normal hours of operation are typically from 7am to 5pm. Mr. Hardee added that the pit itself typically closes at 3pm. Ms. Benz asked if there is a limit to the number of trucks that can go on and off site per day. Chairperson Williamson responded no.

Ms. Benz asked for the setbacks for the haul road. Ms. Bunch responded that there is no distance requirement for the road to be set from the property line. Ms. Bunch clarified that there are buffer and set back requirements for the mine from the property line, but this does not apply specifically to the haul road, unless the haul road is adjacent to the property line.

Ms. Benz stated that she is concerned with children or animals accessing the site and becoming endangered. Ms. Benz recommended putting up a fence around the area to address safety concerns.

Ms. Benz stated that the beginning of the haul road appears to be too close to the Simmons property. Ms. Benz asked if the buffer requirement was met for the mine. Mr. Williamson stated that the applicant would be required to meet all of the requirements and based on the site plan these requirements have been met.

Ms. Benz reiterated her concern for the natural environment and referred to Wet Ash Swamp and South Prong Wet Ash Swamp as environmentally sensitive areas.

Ms. Benz asked for clarification of the dewatering process. Ms. Bunch explained that the process that will be used on the site entails pumping water from one area of the pit to another area of the pit on the same site. This is not considered dewatering.

Ms. Benz stated that she is concerned with traffic. Ms. Benz continued that several children live within the area and ride three different school buses. Ms. Benz added that four (4) children live adjacent to the proposed site.

Ms. Benz reiterated her concern for the natural environment and stated that the dust may impact bee populations in the area. Ms. Benz added that she is not an expert in this area.

Mr. Williamson asked if there should be sand mines in Brunswick County. Ms. Benz responded that is not what is in question.

Ms. McCarthy asked if there are a lot of accidents in the area. Ms. Benz responded yes and added that she is not a traffic expert. Ms. McCarthy asked if there has been a NCDOT study done. Ms. Benz responded that she is not aware of one.

Mr. Rivenbark asked Mr. Norris if there are wetlands on the site that would be impacted by the mine. Mr. Norris responded that there are wetlands on the property and that one of the requirements for the state mining permit is to include wetlands on the site plan. Mr. Norris continued that the mining operation is required by the State of North Carolina to be located at least fifty (50') feet from existing wetlands.

Mr. Nichols submitted the meeting packet from the October 2019 Board of Adjustment meeting (Exhibit I).

Mr. Jeff Brown addressed the Board. Mr. Brown stated that he and his family live across from Mr. Simmons's property. Mr. Brown continued that he is currently building a home on land that was purchased to foster children. The home is planned to be completed in April of 2020. Mr. Brown referred to a particular fostering policy that provides that a body of water being located within 120 yards of the home can be grounds for denial. Mr. Brown stated that the proposed pond would be located within 125 yards of the home. Mr. Brown continued that it would not be fair to be denied the opportunity to foster children as a result of this activity.

Mr. Brown stated that the use would not be harmonious with the surrounding community. Mr. Brown added that three years of operation can equate to 20,000 truckloads. Mr. Brown stated that a mine operation on Longwood Road is an example of a mine being located in an appropriate area.

Mr. Williamson asked if the foster agency were contacted to asked about the policy concerning the proximity of the body of water. Mr. Brown responded that the foster agency said that they could be denied.

Ms. Joanna McCumbee addressed the Board. Ms. Joanna McCumbee stated that she resides at Tax Parcel 16300022 and has the same concerns as she had last year which include noise pollution, air pollution, groundwater supply, and traffic. Ms. Joanna McCumbee added that there has not been a traffic analysis or environmental analysis performed. Ms. Joanna McCumbee added that the Gopher Frog is an endangered species within the area. Ms. Joanna McCumbee continued that it is her understanding that an environmental study may be performed if a state permit is applied for.

Mr. Norris clarified that there are two required state permits, which include the mining permit and the NCDOT driveway permit. Mr. Norris stated that he unaware of an environmental study being required when the state mining permit is sought. Mr. Norris continued that it is required for natural features such as wetlands and streams to be included on the site plan. Mr. Norris added that if there is a protected species in the area, then the state may possibly pursue a study.

Ms. Joanna McCumbee stated that David Smith has serious health issues and provided documentation to the Board (Exhibit J). Ms. Joanna McCumbee continued that David often resides at a property adjacent to the proposed use.

Ms. Joanna McCumbee reiterated that her concerns have not changed since the permit was denied last year. Ms. Joanna McCumbee stated that the haul road has been moved closer to her property and will have a greater impact on her property than last year.

Mr. Rivenbark asked for clarification on David's permanent residence. Ms. Joanna McCumbee responded that he lives north of Ludlum Road on NC 130 (Whiteville Road) and sometimes visits the property adjacent to the proposed site (Tax Parcel 16200022).

Ms. Dolores McCumbee addressed the Board. Ms. Dolores McCumbee stated that David had been staying at her home (Tax Parcel 16200022) previously. She added that she recently had back surgery and needed to move David to a home nearby. Ms. McCumbee continued that she intends to have David return to her home. She stated that David has serious medical conditions such as sensitivity to noise.

Mr. Randy Earp, Sr. addressed the Board. Mr. Earp submitted a document from the National Climatic Data Center located in Ashville that states the prevailing winds from the southwest prevail 10 months out of the year in this area (Exhibit K). Mr. Earp stated that the staff report included that there are two residential parcels adjacent to the proposed site. Mr. Earp continued that there are several more totaling around six to seven homes. [Prior to the subdivision of the parcel].

Mr. Earp asked for clarification on the water transfer process on site. Mr. Hardee explained that water would be pumped from one pond to another on-site area. Mr. Earp stated that his well is around 35 in depth. Mr. Earp asked how long the bond would be good for. Mr. Hardee responded that the bond would be held until a site evaluation to verify remediation is performed. Mr. Earp reiterated his overall concerns and stated that there should be special considerations made for the community.

Mr. Gene Simmons addressed the Board. Mr. Simmons stated that he thought this was taken care of one year ago. Mr. Simmons continued that he and his son would not have moved his son's house to this location if they knew there would be a sand mine located there. Mr. Simmons stated that after the meeting last year Mr. King, the property owner, told him that he would have never pursued a mine if he had known of Braydon's condition.

Mr. Simmons said that he is not an expert but thinks that the asphalt pavement and irrigation will not sufficiently address the dust concern. Mr. Simmons stated that he purchased Tax Parcel 16300021 and added that he is under the understanding that the mine would diminish the value of his property.

Attorney Nichols stated that the concerns and circumstances discussed illustrate why special use permits are required for certain uses. He continued that previous findings of the Board determined the site to be inappropriate for the proposed use.

Mr. Williamson asked Ms. Bunch to read the conditions of approval from the Staff Report.

Mr. Williamson asked Mr. Batton if the Board would need to respond to the motion to dismiss that was submitted. Mr. Batton said that the Board can rule on the request. Mr. Batton stated that Ms. Bunch can clarify the reapplication allowance. Ms. Bunch stated that applications can be resubmitted if they meet the criteria found within Section 3.5.13. of the UDO.

Ms. Shiflet asked if the applicant can reapply year after year. Mr. Batton responded yes.

Attorney Marshall stated that *res judicata* means a thing that has been decided. Mr. Marshall continued that *res judicata* does not apply because this is a different application than was denied previously.

Attorney Nichols stated that he strongly disagrees with Mr. Marshall's statement. He continued that the board has decided the facts previously. Attorney Nichols submitted a 2014 Court of Appeals case summary for Mount Ulla Historical Preservation Society, Inc. v. Rowan County (Exhibit L). He explained that the case involved a radio tower in which the applicant applied

for a 1,350 feet tower and was denied. He continued that the applicant reapplied for a 1,200 feet tower. The Court of Appeals found that *res judicata* does apply in that situation and that the proposed change does not constitute a material change.

Attorney Nichols stated that this applies to the current case because the applicant is applying for the same use that was previously denied. Mr. Nichols continued that there has not been a material change to the application.

Attorney Nichols stated that the application that was denied is smaller in size than the current proposal. Ms. Shiflet stated that the mine that was denied last year was located on the same parcel as the current proposal. Mr. Nichols referred to the Board Minutes from October of 2018 to clarify.

Attorney Marshall stated that the applicant has submitted a different application than what was previously denied. Ms. Kimberly Simmons stated that the parcels are the same in regard to the previous and current applications.

Ms. Shiflet stated that the denied portion should not be a part of the current application. Attorney Marshall stated that the proposed mine is oriented differently than the previously denied application.

Ms. Shiflet made a motion to accept the motion to dismiss that was filed by Attorney Nichols. There was no second. Mr. Williamson asked if there was a motion to deny the motion to dismiss. There was no second.

Mr. Williamson stated that the Board will take a ten-minute recess. Mr. Batton stated that it will be important to find the material change from the prior application to deny the motion to dismiss. The Board took a brief recess.

After the recess, Mr. Williamson asked Mr. Hardee to list the changes that had been made to the site plan. Mr. Hardee stated that changes have been made to the site plan to address the concerns of the neighbors which included setbacks, the location of the haul road, and dust in general. Mr. Hardee continued that he tried to go above and beyond what was required to accommodate the neighbors' concerns.

Mr. Gene Simmons stated that the dust cannot be controlled completely. Mr. Simmons asked if the Board is willing to risk a child's limited quality of life. Mr. Simmons continued that the King family has other properties that could be used alternatively.

Ms. Benz stated that she is related to the King family. Ms. Benz continued that the King family will cause problems in the community if they pursue the use at this site.

Mr. Williamson asked if there is a motion to grant or deny the motion to dismiss. Ms. Shiflet clarified that the motion is on the floor. Mr. Rivenbark seconded the motion in order for the case to be discussed among board members

Ms. McCarthy asked for clarification on *res judicata* and the Rowan County case. Mr. Batton read the conclusion of the case summary Exhibit L and provided further explanation.

Attorney Batton stated that he recommends that the Board ask Ms. Bunch about the differences between the current and previous applications. Ms. Bunch responded that there have been a number of changes made to the site application, including relocation of the haul road away from parcels with residences, the addition of a 20' strip of asphalt on the haul road, and increased distances from the new proposed property boundary of the mine and the residential houses on the immediate area.

Attorney Nichols asked Ms. Bunch if the proposed mine site is thirty (30) percent larger than the mine site that was previous denied. Ms. Bunch responded that that she is not sure how much bigger the current proposal is in size. Mr. Williamson stated that he concedes the point. Attorney Nichols asked if a larger mine site would be considered a more intense use. Ms. Bunch stated that there are differences in the configuration of the site plans. Attorney Nichols reiterated that the Board denied a nearly 12 acre mine and the current application was a 16 acre mine at the same site.

Note: The following exhibits were entered into the record:

- A. Letter from Dr. Dellon
- B. Simmons Presentation
- C. Letter from dr. Lewis
- D. Note from Dr. Ludlow, Dec 11, 2019
- E. Copy of Simmons Deed
- F. Simmons Property Map referenced in the deed.
- G. Motion to dismiss
- H. Selection from Brunswick County CAMA CORE Land Use Plan
- I. Meeting Packet October 2018 Board of Adjustment
- J. David Smith Medical Information
- K. National Climatic Data Center (NCDC) Document
- L. Rowan County Court Case Summary

Mr. Williamson asked the board to vote on Ms. Shiflet's motion to accept Attorney Nichol's motion to dismiss the case based upon *res judicata*. Ms. Shiflet's motion died for a lack of a second. Attorney Batton stated that the Board would need to find a material change if they wanted to deny the motion to dismiss. The Board decided that in order to have the dismissal discussion a

motion would have to be seconded. Ms. Shiflet made a motion to dismiss the case based upon *res judicata*. The motion was seconded by Mr. Rivenbark.

Having heard a Motion to Dismiss based upon the doctrine of Res Judicata filed by Matthew Nichols, Esq. on behalf of adjacent property owners, Adam and Kimberly Smith, the Brunswick County Board of Adjustment makes the following Findings of Fact:

1. The Board of Adjustment previously denied a special use permit for a Class 1 Mining Operation from the same applicant and on the same property in 18-16S.
2. Application 18-16S was denied, in large part, based on concerns relating to the generation of noise and dust which would have an adverse impact on the neighboring properties. The minutes of Application 18-16S were entered into the record of this case without objection.
3. The site plan for application 19-17S is in a different configuration. However, there is not a material change in the application as the use, property, and potential impacts are substantially similar.
4. Application 19-17S includes a paved entrance way which was not present in the previous application. Although the entrance way is paved to the gate, the remainder of the path leading to the mining location is a dirt haul road. Even with an irrigation system in place on the haul road and water tanks available, there is still an impact from dust.
5. Application 19-17S contains a 19.91-acre site plan, which is larger than the 12.85-acre site plan from the denied application.
6. The site from 18-16S is directly adjacent to neighboring parcels. Application 19-17S places the site approximately 186 feet to the West of the original location on an approximately 131-acre parcel, which would be subdivided as a condition of the permit. The small increase in distance from the neighboring properties does not significantly address the Board's concerns from the previous hearing.

Based on the foregoing, the Board of Adjustment makes the following Conclusion of Law:

1. That Application 19-17S contains no material change in the facts or circumstances from 18-16S which would undermine the reasoning of the denial of Application 18-16S.

Based on the findings and conclusion above, the Board of Adjustment grants the Motion to Dismiss and Application Number 19-17S is hereby DISMISSED.

- B) 19-18S: Special Use Permit  
Applicant: Hot Mix, Inc.  
Location: 1151 Whiteville Road NW, Shallotte, NC 28470  
Tax Parcel 18000006  
Applicant requests a Special Use Permit for a “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid” consistent with Section 5.2.3 and Section 5.3.7.I of the Brunswick County Unified Development Ordinance (UDO).

Ms. Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). Ms. Bunch identified the subject property and surrounding properties on a visual map.

Mr. Barry Guise, East Coast Engineering, stated that this project was approved unanimously by the Board of Adjustment in April of 2016. Mr. Guise continued that their client did not move forward with the project at that time. Mr. Guise continued that his client is now ready to move forward. East Coast Engineering has renewed the permits required for the project but is waiting for the North Carolina Department of Transportation (NCDOT) driveway permit. Mr. Guise stated that he would like the record to include the meeting minutes from the April 2016 Board of Adjustment meeting when the project was initially approved (Exhibit 1). Mr. Guise continued that his client is aware of the conditions agreed upon at the previous meeting and has revised the site plan accordingly.

Mr. Robert Turner, Hot Mix, Inc., stated that there were delays in moving the project forward after the 2016 approval. Mr. Turner provided an explanation of the nature of the business, stating that the business would take construction and demolition debris and physically sort the materials. Materials will be recycled for sale as well as disposal once the holding bin for each particular type of material is full.

Mr. Turner stated that he should have returned to the Board in April of 2019 to renew the project but failed to do so due to recovery efforts underway from Hurricanes Matthew and Florence.

Mr. Williamson asked if there is substantial change to the current application compared to the previous application. Mr. Jackson Starling, Engineer-In-Training with East Coast Engineering, stated that there are no significant changes. Mr. Guise added that changes were made to revise the plan to more comply with the comments provided by Staff.

Mr. Williamson asked who can bring material to the site. Mr. Turner responded that his company contracts with a number of entities and contractors and added that it is not open to the general public.

Mr. Williamson asked how the company would regulate where materials come from. Mr. Turner responded they will work with local contractors, adding that distance typically limits where materials come from naturally. Mr. Turner explained that the trucks are inspected prior to unloading the materials.

Mr. Williamson asked if there is a market for the materials. Mr. Turner responded that there is a market, but it is not consistent. Mr. Turner explained that some materials have higher demands at certain times and that it is common to have some stockpiled materials disposed of at a landfill if the demand is low.

Mr. Williamson asked how much material would be stored on site at a given time. Mr. Turner responded that is a difficult question and that an estimation would be 200 cubic yards in volume.

Mr. Williamson asked where the materials will be taken to be disposed of. Mr. Turner responded that the materials would be disposed of at their landfill in South Carolina.

Ms. McCarthy asked if this was a transfer station. Mr. Turner stated that in the State of North Carolina it is referred to as a transfer station. Ms. McCarthy asked if they would accept hazardous materials. Mr. Turner responded that they will not accept hazardous materials. Mr. Starling explained that the State permits identify the materials that are acceptable for disposition.

Mr. Williamson asked Ms. Bunch to read the conditions of approval from the Staff Report.

With no further comments, the Chairman summarized that the applicant, Hot Mix Inc., is applying for a Special Use Permit for a “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid” in the Commercial Intensive (CI) Zoning District, which allows the use with a Special Use Permit. Mr. Williamson continued that Mr. Turner explained that he is reapplying for a project that was previously approved by the Board of Adjustment because the initial approval expired.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

**DECISION:** Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting on December 12,

2019, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made.

1. A written application was submitted and complete in all respects.
2. The use, a “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. No evidence or testimony was provided with regard to property values.
  - b. This is a commercial area with other Commercial Intensive uses adjacent to the subject parcel, which makes it in harmony with the area.
  - c. The applicant is aware of the criteria for the operation of this type of business and has agreed to it.
3. The use, a “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid as a permissible use in the C-I Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.7.I. of the UDO outlines the additional criteria for “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid”, if approved by the Board of Adjustment through the Special Use Permit process.
  - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all of the conditions outlined in the Staff Report are met.
  - d. The applicant testified at the Board of Adjustment Meeting that all of the conditions required to receive the Special Use Permit are acceptable and will be met.
4. The use, “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. No expert testimony or evidence was provided that the use will adversely affect the health and safety of the public.
  - b. The applicant indicated in his testimony that all safety requirements associated with this type of business will be met.

5. The use, a “Public or Private Waste Disposal Site, Recycling Non-Hazardous Solid or Liquid”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
    1. **Circulation:** All access to the site will occur from Whiteville Road (NC 130). A revised driveway permit may be required. The applicant has notified the North Carolina Department of Transportation (NCDOT) of the proposed use and has provided the Brunswick County Planning Department with documentation from NCDOT stating improvements will not be necessary.
    2. **Parking and Loading:** Per Section 6.12.6.A. of the Brunswick County Unified Development Ordinance (UDO), one (1) parking space per 500 square feet of enclosed area plus (1) space per 5,000 square feet of outside storage area is required for all waste related services. Additionally, one (1) parking space per 300 square feet of enclosed floor area is required for offices. A total of seventeen (17) parking spaces are required. Seventeen (17) parking spaces are delineated on the site plan.
    3. **Service Entrances and Areas:** All service vehicles will access the subject property from Whiteville Road. (NC 130).
    4. **Lighting:** Outdoor lighting is not planned at this time. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO prior to installation.
    5. **Signs:** Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
    6. **Utilities:** Water will be provided by Brunswick County. The applicant has applied for a septic system, with the proposed location shown on the site plan.
    7. **Open Space:** There are no separate open space requirements for this use.
    8. **Environmental Protection:** The applicant must meet all applicable Federal, State and Local Government requirements.
    9. **Screening, Buffering and Landscaping:** A 20’ deep street buffer adjacent to Whiteville Road will be

necessary. The applicant must install one (1) canopy tree or two (2) understory trees per one hundred (100) linear feet for all portions of the property fronting Whiteville Road. Project boundary buffers of 0.6 or 0.8 opacity, depending upon whether the adjacent parcel is developed, will be required around Tax Parcel 18000003, and adjacent to Tax Parcels 18000005; 19600019; 18100006; and 18100010. The buffer depths are denoted on the site plan. Note that the project boundary buffer around Tax Parcel 18000003 should be revised to 0.8 opacity or 50' if the property is developed. Use of existing vegetation is permissible but must be documented. A project boundary buffer will not be necessary adjacent to Tax Parcels 18000007, 180000601, 18000008 and 1810001001 because they are zoned C-I, as is the subject parcel.

10. **Effect on Adjoining Property:** The effect on some of the adjoining property is lessened by the buffer requirements and the requirement that the proposed driveway and off-street parking surfaces must be washed stone or some other type of dustless material.
  11. **Compatibility:** The proposed use is permissible in the C-I Zoning District with Special Use Permit approval by the Board of Adjustment.
  12. **Impacts on Military Installations:** The proposed Special Use not within five (5) miles of a military installation.
- b. **Additional Approval Criteria (Section 5.3.7.I): Public or Private Waste Disposal Site, Non-Hazardous Solid or Liquid.**
1. No waste material deposited in the waste disposal site may originate outside of the County borders.
  2. All federal, state, and local guidelines and regulations regarding site design, construction, and operation shall apply.
- c. The applicant was made aware of these requirements during the first application process. He has developed this parcel with the requirements in mind.

Ms. McCarthy made a motion to grant the Special Use Permit if developed as proposed and subject to the conditions imposed below:

- a) will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,
- b) will be in conformance with all special requirements applicable to the use,
- c) will not adversely affect the health and safety of the public, and

d) will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance with the following conditions:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the special use permit application and kept on file by the Brunswick County Planning and Community Development Department.
3. The applicant must comply with all requirements specific to this use outlined in Section 5.3.7.I. of the Brunswick County UDO. No waste material deposited in the waste disposal site may originate outside of the County borders. All federal, state, and local guidelines and regulations regarding site design, construction, and operation of the facility shall apply.
4. The applicant must apply for and receive a driveway permit from the North Carolina Department of Transportation (NCDOT).
5. Any Outdoor Lighting installed on the property must meet the requirement outlined in Section 6.9. of the UDO.
6. The applicant must comply with all Federal, State and Local requirements related to this use.
7. If the specified conditions addressed in this special use permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The motion was seconded by Mr. Williamson and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and as show in the approved site plan. Vested rights are hereby established pursuant to Section 9.5. of the Brunswick County Unified Development Ordinance.

C) 19-16S: Special Use Permit  
Applicant: Vincent C. Russo  
Location: 3176 Exum Road NW, Ash NC 28420  
Tax Parcel 0900001604  
Applicant requests a Special Use Permit for a “Vehicle and Heavy Equipment Sales and Rentals” consistent with Section 5.2.3 and Section 5.3.5.S of the Brunswick County Unified Development Ordinance (UDO).

Ms. Helen Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Property owner Mr. Vincent Russo addressed the Board. Mr. Russo stated that he would like to open up an office for vehicle sales that is operated on an appointment basis at 3176 Exum Road NW. He continued that he would have access to auctions and customers would either come with him to the auctions to choose a vehicle or he would bring a vehicle back to his residence where the customer would purchase and pick the vehicle up. Mr. Russo stated that it would not actually be a traditional sales lot but that paperwork would be done in the office. Mr. Russo stated that he has three (3) parking spaces set aside for customers and an area for display, however it was his intent to store the vehicle(s) inside the building.

Mr. Williamson asked if the vehicles would be in the garage at all times. Mr. Russo responded yes. Mr. Russo stated that this is his personal residence and it is not meant to be a car lot. Mr. Russo stated that there would be no signage or lighting outside.

Mr. Williamson asked how Mr. Russo plans to advertise his operation. Mr. Russo responded that it would be done by word of mouth and possibly the internet as this is just a hobby.

Ms. Shiflet asked how many cars Mr. Russo plan to sell a month. Mr. Russo stated that he would be happy with selling one a month. Mr. Russo explained that he doesn't want this to become a major business. He just wants to be kept busy in retirement.

Ms. McCarthy asked the size of the garage. Mr. Russo responded that the garage is 24' x 60'. Ms. McCarthy asked how many vehicles can fit in the garage at one time. Mr. Russo answered four (4) vehicles.

Mr. Williamson asked if he understands all the requirements that Ms. Bunch has read and is willing to abide by them. Mr. Russo answered yes.

Mr. Gerald Roberts, adjacent property owner, addressed the Board. Mr. Roberts stated that the notice he received was very misleading. Mr. Roberts continued that he was concerned about traffic. Mr. Roberts stated his concern that he has not seen a business plan. Mr. Roberts stated that he is worried a rezoning will decrease the value of his property.

Ms. Bunch responded to Mr. Roberts concern and informed him that Mr. Russo is not rezoning, but rather requesting a Special Use Permit. Ms. Bunch clarified that the Rural Residential (RR) district is a mixed-use district.

Mr. Roberts stated that he had insufficient time to prepare for this meeting and reiterated that the notice he was given was misleading.

Mr. Williamson asked if Mr. Roberts lived directly across the street from the site. Mr. Roberts stated that he lives on the corner at 3121 Exum Road NW (Tax Parcel 0900001607).

Mr. Roberts stated that a number of his neighbors came to him with their concerns. Mr. Roberts continued to read a letter from the adjacent property owner, Elton Mobbs (Tax Parcel 0900001606). Mr. Mobbs was concerned about property values.

Mr. Roberts stated that he doesn't understand how this use will improve their neighborhood. He asked who will be policing this use. Mr. Roberts continued to read excerpts of letters from adjacent property owners Grant Miller (Tax Parcel 0900001605) and Judith Ann Mueller (Tax Parcel 0900001603) raising concerns regarding the process. Mr. Roberts asked how long Mr. Russo planned on running this business. Ms. Bunch clarified that Special Use Permits go with the land and are valid until they are revoked.

Mr. Roberts asked if Mr. Russo had ever run a business like this before. Mr. Roberts stated his concerns about not seeing a business plan, the character of the community changing as a result of the use being approved, the value of his property being impacted, and traffic.

Mr. Rivenbark asked if Mr. Roberts had any proof that this use would devalue surrounding properties. Mr. Roberts answered that he had limited time to prepare evidence.

Mr. Williamson asked if Mr. Russo planned on changing oil on site. Mr. Russo responded no. Mr. Russo added that there will be no cleaning on the site and that the cars will only be on site waiting to be picked up by the customer. Mr. Russo continued that logging trucks and farm equipment are already driving down Exum Road NW everyday and this use will not impact traffic. Mr. Russo stated that NCDOT requires an office separate from the house for "Vehicle and Heavy Equipment Sales and Rentals."

Mr. Williamson asked for confirmation that Mr. Russo would be happy selling one (1) car a month. Mr. Russo reiterated yes.

Mr. Rivenbark asked if the house on site has already been built. Mr. Russo responded yes. Mr. Russo reiterated that the garage will be the only place business will be done.

Michelle Russo addressed the Board. Ms. Russo stated that she understands the traffic impacts that are currently on Exum Road and does not think this use

will have an impact. Ms. Russo added that the Special Use Permit sign has been on her property for a sufficient amount of time. [Sign will be removed in the days following the public hearing].

Stephanie Herron (Tax Parcel 0900001602) addressed the Board. Ms. Herron stated that she is relieved hearing about the minimum number of cars a month. Ms. Herron stated that her biggest concern is safety. Ms. Herron added her concern about the potential for the business to grow and if there would be legal recourse.

Ms. Bunch responded, stating that a complaint could be made to Community Enforcement and an investigation would be completed if there were complaints that the applicant was not meeting the conditions of the permit.

Ms. Herron asked if the use was approved based on a quantity of vehicles or by a business plan. Mr. Williamson answered that the Board could limit the number of vehicles. Attorney Batton added that the site plan only allows for a few vehicles at a time.

Mr. Rivenbark asked what Ms. Herron would consider for a maximum number of cars a month. Ms. Herron responded thirty (30). Ms. Herron reiterated her concern about safety.

Mr. Russo stated that customers would be identified by their driver's license.

Mr. Rivenbark asked Ms. Bunch if "Heavy Equipment Sales" could be eliminated from the permit. Ms. Bunch stated that doing that could cause a problem for enforcement.

Mr. Williamson asked Ms. Bunch to read the conditions of approval from the Staff Report.

With no further comments, the Chairman summarized that Vincent Russo wants to sell vehicles from his home. Mr. Williamson added the vehicles will be sold by appointment only and will not be displayed. Mr. Williamson continued that Mr. Russo expects to sell one (1) to two (2) cars a month. Mr. Williamson stated that Mr. Russo will not be working on or cleaning the cars he is selling. Mr. Williamson stated that an adjacent property owner, Mr. Gerald Roberts, had voiced his concerns in regard to effect on value of surrounding property, safety, increase on traffic, and character of the neighborhood. He continued saying adjacent property owner, Ms. Stephanie Herron, expressed her concerns about volume of customers. Mr. Williamson continued that those concerns were addressed by Mr. Russo.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

**DECISION:** Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its meeting on December 12, 2019, finds and determines that the application is complete, and subject to the conditions imposed below, the following findings are made.

1. A written application was submitted and complete in all respects.
2. The use, “Vehicle and Heavy Equipment Sales and Rentals”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. No expert testimony was provided, or report submitted by an appraiser regarding the value of properties.
  - b. A low number of vehicles are anticipated for sale, as the owner testified that his business is to look for the specific type of car the customer desires and then return it to the business to show the customer and draw up the sales contract.
  - c. Vehicles will primarily be stored inside a building as opposed to being displayed on a sales lot.
3. The use, “Vehicle and heavy Equipment Sales and Rentals”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance Lists Vehicle and Heavy Equipment Sales and Rentals as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.5.S. of the UDO outlines the additional criteria for Vehicle and Heavy Equipment Sales and Rentals if approved by the Board of Adjustment through the Special Use Permit process.
  - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all the conditions outlined in the Staff Report are met.
  - d. The applicant testified that all standards required by the UDO would be met.
4. The use, “Vehicle and heavy Equipment Sales and Rentals”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. No testimony or evidence was presented at the hearing that the proposed use will adversely affect the health and safety of the public.

- b. Based on the testimony, traffic was concern for the adjacent property owners, but is insignificant based upon the use. No individual speaking on the traffic impact identified themselves as a traffic professional.
5. The use, a “Vehicle and Heavy Equipment Sales and Rentals”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
- a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
    - 1. **Circulation:** All access to the site will occur from Exum Road (SR 1340) via an existing circular residential driveway developed within the parcel. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
    - 2. **Parking and Loading:** A minimum of two (2) standard and one (1) accessible parking space must be provided, based upon the square footage of the office structure.
    - 3. **Service Entrances and Areas:** All service vehicles will access the subject property from Exum Road, which is a state-maintained road.
    - 4. **Lighting:** No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO prior to installation.
    - 5. **Signs:** Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
    - 6. **Utilities:** Public water and sewer are not available to the structure that will be utilized as the office for the building. The applicant will use his personal home restroom.
    - 7. **Open Space:** There are no separate open space requirements for this use.
    - 8. **Environmental Protection:** The applicant must meet all applicable Federal, State and Local Government requirements.
    - 9. **Screening, Buffering and Landscaping:** Project boundary buffers and a street buffer are required. RR Zoning to RR Zoning Undeveloped will require a 10’ deep buffer with 0.2 visual opacity. RR Zoning to RR Zoning

Existing Residentially Developed will require a buffer with 0.4 visual opacity, which will be 20' in depth, unless the depth is reduced by adding a six-foot fence or wall. If the opacity requirement cannot be met with existing vegetation, plantings must be added to meet the opacity requirements. The front yard will require a twenty-foot (20') street yard with one (1) canopy tree or two (2) understory trees per one hundred linear feet (100') of street frontage. Landscaping requirements per Section 5.3.5.S. of the UDO specifically for vehicle sales and display businesses must be met.

10. **Effect on Adjoining Property:** The effect on adjoining property is minimal as one (1) adjacent parcel is residentially developed, which will require a 20' deep buffer planted at 0.4 visual opacity. The adjacent parcels will require a minimum of a 10' deep buffer planted at 0.2 visual opacity with the exception of those across Exum Road, which will be buffered by a 20' deep street buffer.
  11. **Compatibility:** The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment.
  12. **Impacts on Military Installations:** The proposed Special Use is not within five (5) miles of a military installation.
- b. **Additional Approval Criteria (Section 5.3.5.S.): Vehicle and Heavy Equipment Sales and Rentals** shall be permitted in accordance with the use tables in Section 5.2, subject to the following:
1. Automobile and light truck sales and rentals are permitted as an Accessory Use to a Vehicle Wrecking, Junk or Salvage Yard only in the I-G Zoning District. **N/A.**
  2. Junked or inoperable vehicles/heavy equipment shall not be on the premises unless such is within an enclosed building or screened area. **Applicant is aware of this requirement and will have any of such in an enclosed building.**
  3. Vehicle or equipment repairs made on-site shall be subject to the same restrictions under Section 5.3.5.T, Vehicle Service and Garage. **N/A – Vehicle Sales only.**
  4. Adequate on-site area shall exist for the loading and unloading of vehicles from car carriers to ensure that no such loading or unloading occurs in any public right of way. **Proposed area denoted on the site plan.**
  5. Vehicle sales, leasing, and rental facilities shall meet the following landscaping standards rather than those of Section 6.12.10, Vehicular Use Area and Landscaping:
    - a. The provisions of Section 6.22, Outdoor Display, shall not apply. **Applicant is aware of this issue.**

- b. Vehicles may not be in any required yard or buffer area, even for temporary display purposes. **Applicant is aware of this requirement.**
  - c. Permanent vehicle sales areas may not be located in any required parking spaces. **Applicant is aware of this requirement.**
  - d. Vehicle sales or display areas may not block sidewalks or parking areas and may not impede vehicular or pedestrian traffic. **Applicant is aware of this requirement.**
  - e. Adequate lighting shall be provided in conformance with Section 6.9, Outdoor Lighting. **Applicant is aware of this requirement.**
6. Aircraft and boat sales and rentals are permitted as an Accessory Use to an aircraft or boat manufacturing facility only in the I-G Zoning District. **N/A.**
- c. Mr. Russo stated that he is aware of the requirements and agreed to comply with all conditions of the permit.

Ms. McCarthy made a motion to grant the Special Use Permit if developed as proposed and subject to the conditions imposed below:

- a) will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,
- b) will be in conformance with all special requirements applicable to the use,
- c) will not adversely affect the health and safety of the public, and
- d) will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance with the following conditions:
  - 1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
  - 2. The development shall proceed in conformity with all amended plans and design features submitted as part of the special use permit application and kept on file by the Brunswick County Planning Department.
  - 3. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
  - 4. Provide a Landscaping Plan that addresses the requirements for periphery buffers and front yard buffers for “Vehicle and Heavy

Equipment Sales and Rentals” as well as requirements for landscaping out lined in Section 6.12.10.

5. The applicant must request a visual inspection of the site prior to the commencement of “Vehicle and Heavy Equipment Sales and Rentals” activities to ensure all requirements have been met.
6. If the specified conditions addressed in this special use permit are violated, the permit shall be revoked, and the use will no longer be allowed. Only by reapplying to the Board of Adjustment to another special use permit and received their support can use be again permitted.

The motion was seconded by Ms. Shiflet and unanimously carried. Approval of this permit confers upon the right to develop with the type and intensity of use as herein described and as shown on the approved site plan. Vested rights are hereby established pursuant to Section 9.5. of the Brunswick County Unified Development Ordinance.

VIII. Staff Report.

There was none.

IX. Adjournment.

With no further business, Mr. Medlin made a motion to adjourn. The motion was seconded by Ms. McCarthy and unanimously carried.