

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR JULY 28, 2011

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Acting Chairman*	
Charles Ewen *	Renee Safford-White *
John Hutchens *	Sharon Ferris *
Linda Rich *	Justin Mullarkey *
Wanda Harrington X	Wiley Carraway *
Minnie Anderson *	Bill Fleming X

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Shook, Ewen, Hutchens, Rich, Safford-White, Ferris, Mullarkey

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Ms. Valerie Paul, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Jonathan Edwards, Communications Technician

Chairman Wubneh had the Secretary call the roll for the meeting.

Attorney Little said that there were seven members of the Board present and the applicants would need the approval of at least six of the members.

MINUTES

Mr. Carraway asked for an amendment to the minutes he was present at the May meeting, but he was marked as absent. A motion to approve the minutes with amendments was made by Mr. Hutchens and seconded by Ms. Safford-White. The motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FARID AHMED

The applicant, Farid Ahmed, desires a special use permit to operate a home occupation consulting and biological test lab pursuant to Appendix A, Use (3)a. of the Greenville City Code. The proposed use is located at 2905 S. Memorial Drive. The property is further identified as being tax parcel number 24139.

Chairman Shook: All those wishing to speak in favor of the applicant can come forward to be sworn.

Attorney Little: Mr. Chair, while the witnesses are being sworn, just for a matter of record we know that at the end of the attendance roll you do have a quorum and that under the guidelines there are seven voting members tonight. The applicants would have to have the concurrence of six on any application and on the attendance tonight, those that would be participating and voting would be Sharon Ferris, Scott Shook, John Hutchens, Renee Safford-White, Charles Ewen, Linda Rich and Justin Mullarkey; those are the seven participating, although I understand there may be a change and on the last item and we’ll address that when it comes, when it comes time. And so just for the record

purpose tonight, those who can... voting and participating. Those that are not, that were not called out may participate in the discussions, but they would not vote on any of the items.

Chairman Shook: Okay, Ms. Anderson and Mr. Carraway, you can participate in this and voice your opinion, just no vote.

Mr. Phil Dixon: Place your left hand on the Bible and raise your right hand.

Ms. Valerie Paul: Do you swear or affirm to tell the truth, the whole truth and nothing but the truth so help you God?

Witnesses: I do.

Chairman Shook: At this time I'd like to call the City to come forward; Mr. Dail you give the presentation please.

Mr. Dail: Sure. Again, this is a request for a home occupation biological testing lab and consulting service along Memorial Drive and as you remember, this same case before you in April and it was denied by the Board at that time. The applicant has come back to request again. The red star indicates the general location within the city's jurisdiction; it's in the southern, south western portion of the city. The highlighted property in red shows the more specific location. It's at the corner of Fairlane Road and South Memorial Drive. The property itself is zoned R15S, Residential Single Family and properties on all sides, all the way around basically, are R15S, Residential Single Family as well. Surrounding developments on all sides is residential single-family dwellings. The subject property contains a 4,644 sq. foot single family residential dwelling and has 270 ft. of frontage along South Memorial Drive and 355 ft. of frontage along Fairlane Road, with a total lot area of 2.36 acres. The property is located within Visionary E as designated by the Comprehensive Plan and the proposed use is in general compliance with the Future Land Use Plan which recommends medium-density residential development for the subject property. The property is located along a major thoroughfare being South Memorial Drive. This is a view of the property looking across Memorial. Another view from the corner of Fairlane and Memorial. And another view of the garage. This is a view to the south and this is looking south down Memorial Drive. This is looking north along Memorial. Views to the west across Memorial; and view to the east. This is looking east along Fairlane Road; the single family structures. Notice was mailed to adjoining property owners on June 9th, and July 14th, of this year. And notice of the Public Hearing was published in the Daily Reflector four times: June 13th, June 20th, July 18th and 25th of this year. In your packet under Related Zoning Ordinance Regulations I've included the definition of a home occupation and the specific criteria that a home occupation is subject to if approved. Under Zoning Comments, it's the same comments that staff had under the previous case and I'll read those to you:

The requested use does not qualify as a home occupation based on the fact that it does not comply with standard (j) listed in the definition of a home occupation. Standard (j) states "Shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling or to area residents or properties". Noncompliance with this standard is evident based on the fact that eleven of the chemicals to be used by the applicant are classified as hazardous by OHSAs.

Noncompliance with standard (j) is further evident based on the letters submitted by the applicant from the North Carolina Department of Natural Resource Division of Waste Management and that is attached. The letter indicates that the biological testing portion of the business will be a small quantity generator of hazardous waste and further more that the applicant must hire a hazardous waste disposal company to remove the waste from the property. Based on these two facts, the hazard and nuisance to the occupants residing or working within the dwelling and area residents will be created thus disqualifying the use to be called a home occupation. Under

other staff comments, the proposed project must meet all related NC State Fire & Building codes prior to occupancy and there is also an attached police report. If you have any questions, I would be happy to answer them at this time.

Chairman Shook: Any questions for the City?

Mr. Ewen: I have one – has the applicant brought any new information to you with his re-application?

Mr. Dail: I believe that he's hired a chemical waste, hazardous waste disposal company. I think that's probably the most pertinent thing.

Mr. Ewen: Okay.

Chairman Shook: Any other questions for the City? *Pause* Okay, the applicant can please come forward and state your name give the case.

Attorney Dixon: If I may Mr. Chair, my name is Phil Dixon, I'm an attorney here in Greenville. I'm representing Dr. Ahmed. I have some materials I'd like to share with those people who are going to be participating in the decision making. I'll hand those to the clerk.

Chairman Shook: Okay.

Attorney Dixon: (Unintelligible) There is a great deal of data, but let me begin by apologizing to you for having to bring this back before you, but let me also explain why we're bringing it back before you. Dr. Ahmed was very disappointed when he was denied his application and when he first came to see me, it was not to come back before you a second time, but instead to seek redress in court by going to the Superior Court and asking for a review of your decision; not because your decision was not sound and based on the evidence, but because he was so disappointed that perhaps he didn't do as good a job as he should have in presenting the facts to you. Dr. Ahmed is originally from Egypt. He's sometimes hard to understand; I have a difficult time sometimes understanding what he's saying. Not so much because of his accent, but because he talks over my head. He's a brilliant man; he's a very bright man. He was a member of the National Academy of Sciences for eight years. He has done colon cancer research before he retired from Brody School of Medicine; he talks on a different level from me and you sometimes. I'm grateful that we have people like him, but when we talked and I discussed this case with him, and discussed the idea of taking this case to Superior Court, I first called Bill Little, the Assistant City Attorney, and I said, "Bill, can you give me some insight into some of the concerns that were expressed by the Board of Adjustment? I apologize that I was not here and was not able to hear that." One was that Mr. William Denton with the North Carolina Department of Natural Resources, who's here tonight to be a witness by the way, had written a letter that I think there was a great reaction to it because he said technically, Dr. Ahmed is a small quantity generator of hazardous waste. Dr. Ahmed would take great issue with that. He says, no this is medical waste and its chemical waste, but it's not hazardous waste. And, unlike your report, 11 chemicals are not hazardous wastes, and you'll hear more from Will Denton about that. Most of the things that we are talking about are things like finger nail polish remover, detergent, Lysol, vinegar, salt – things that you would find in everybody's home just about under the sink, but we'll get to that in just a moment. I want to share with you what's in the materials because I think it's relevant. First of all, I wanted you to see the resume for Dr. Ahmed and I don't want you to spend a lot of time looking at his resume; I just want you to know that he is a well educated person who has done some extraordinary research over the years. One of the things I

guess that surprised me and disturbed me a little bit is at my age, at least, my doctor recommends every year that I have an examination that's very, um, personal. You know, it's one of those things where they take this fiber optic cable and they go up your intestine and they're looking for polyps. And, when I first discussed this matter with Dr. Ahmed, he said, "You know, that's a very invasive procedure and it costs between \$900 - \$1200 to have that done." And he said, in 7% of the cases they have complications. I'm not sure my doctor ever told me that, but he said, you know, doctors in smaller communities who really have patients who don't have insurance or can't afford something that significant in cost, he said "I can help those people." Now that I'm retired, what I do is I take a stool sample or blood sample, it's a very small sample I might add, and he said I can add a chemical to it to dissolve it and I can put it under microscope and I can determine if there's any irregularities. And then I can determine if there's some evidence of cancer or cancer cells and if necessary then the person can have a much more invasive procedure done that's much more expensive. He said "But I don't work much. I'm retired now; I work 2 days a week out of five and I use a laboratory 2 hours a month" He said, "Because I use the laboratory only 2 hours a month, I really can't afford to go pay for renting a lab. He said that this year he had had 2 projects that he'd worked on; one for twenty hours at \$200/hour, and another project just doing some consultant work. He said that most of what I do is consultant work, but I want you to understand we're talking about a man who does consultant work 2 days a week and, and uses his laboratory 2 hours a month. Now, this house, to me, is known as the Ken Haigler House; Taft, Taft & Haigler, the law firm. Ken owned this house, it's a lovely home. It's very far set back off of the road off of Memorial Drive, very attractive home – 4600 sq. feet. In a space that's 12 ft. long between Dr. Ahmed's garage, which is bricked, and his house, which is bricked, he's created a laboratory with all the necessary accoutrements for him to do his research 2 hours a month. And, he only occasionally and intermittently will use that. Now last time, when he made his presentation to you, I have the order, you have it in your materials, where you denied his special use permit. You did not find that there was any problem with the Comprehensive Plan or Detriment to Public Welfare or Existing Uses being Detrimental; you didn't find any Injuries to Property or Improvements. What you focused on was Health & Safety and Nuisance or Hazard which was based primarily on the letter from Mr. Bill Denton with the North Carolina Department of Natural Resources. So one of the first things I did was I simply called Bill Denton, and I said "Mr. Denton, can you educate me better as to the problem here?" He said, "Well, there's really not a problem." He was surprised at your decision. And he was so surprised that he said, "What you need to do is get a chemistry teacher, get a high school chemistry teacher to come before the Board of Adjustment next time and they can explain that these are not things that are dangerous or hazardous or really present a problem for the safety of other people, and finally he said, "You know what? I'm gonna come to the meeting." And so, he's not being paid to do this, he's here tonight as a witness and you will hear from him tonight where he can explain his letter and I think it's to reassure you that this is an overreaction for people to consider this to be something that's harmful. We're talking about less than a teaspoon 3.1 ml of these chemicals that are used to dissolve the stool or the blood and they're properly disposed of and through a licensed agency. We have letters in the file there from the two licensed groups that will be taking care of it 24 hours a day, 7 days a week. But again, an eyedropper full of chemicals, and again, very similar to anything that you'd find in anybody's home. Now, I want you to know that last time we could not have this meeting because we didn't have a quorum, but the wonderful thing about it for the first time we had the property owners to try and talk to. Before that meeting, I had asked Dr. Ahmed if he would try to talk to some of the neighbors and he talked to one of the spokesmen for the neighbors, Mrs. Mewborn, and offered to meet with them to try and address their concerns. Quite frankly, I thought perhaps having a high school chemistry teacher meet with the neighbors might allay some of their concerns, but we were fortunate because last time a very well respected attorney here, Jim Hopf, former school board member- I was the school board attorney, I know Jim quite well-he's a real fine attorney, was here. And so I spoke to Jim and I shared with him as much information as I could and I shared with him a letter that pretty much tells you everything that I plan to tell you tonight by presenting evidence to you; and what it says to

you is that he's using only about a space 12 ft. x 13 ft., which is 123 sq. ft.; that's 2% of the space in his house and it's not even the livable space whereas your guidelines are that you can't use more than 20% of the house for something like this. It also has all the barriers and security measures that you need and are required by OSHA. He has again in the materials that you will see behind the letters from the North Carolina Department of Environment Natural Resources, a letter from Stericycle and a letter from Eastern Environmental where he has licensed companies now, that we have proved to you that he has made the arrangements to properly dispose of anything. But I want you to be aware that this is the same as going to LabCorp or to your dentist's office or going to a doctor's office. I even had a lady who talked to me about renting space in my office who would do medical examinations for life insurance companies; and she would check your blood pressure and your heart and so forth. She too would have to have the proper method of disposal of a syringe, or, you know, a piece of gauze that had a little blood on it; this is the same kind of thing that is required by Dr. Ahmed and he's made those necessary arrangements. Now, I'm at a little bit of a disadvantage because when I was in high school, I never took chemistry, and when I was in college I never took chemistry. I've always felt deficient in that regard; so when I sat down with Dr. Ahmed, and he's talking above my head, I said, "Would you please tell me what these things are?" And so, my third page of my letter to doctor-, to Mr. Hopf, I said to him, "What is acetone?" He said its finger nail polish remover. "What is acidic acid?" It's vinegar. "What is ammonium sulfate?" It's salt. "What is chloroform?" It's a salt solvent. And I've listed all these things there that you find in paint in your house or under your sink, and there's much more dangerous things that you find in your house such as fertilizer and things that you use in your garden and things that you use inside your house, and you know, these things are not things I think that you're gonna-, should be concerned about, or you should conclude presents a risk of harm to others and again, I'm gonna have you hear from the people who can tell you that. Now, in the materials you'll also find a letter from Paul Cuomo-, a letter from me to Paul Cuomo. Paul Cuomo is a certified real estate appraiser. One of my great concerns last time was that when Mr. Hopf appeared last time, he had with him Jon Day. Jon Day is a well-known, respected developer here and I know Jon quite well; worked with him on a number of matters that have come before the City Council or Planning & Zoning from time to time. And so it was suggested to me and it appeared to me that perhaps one of the arguments that might be a concern to the neighbors is this something that is going to adversely affect my property values; and so I want you to see the letter that I wrote to Paul Cuomo. I looked to Paul Cuomo and asked if he would give me a very objective assessment of how something like this taking place at this particular location would affect property values and he's gonna be the first person I call forward to be a witness in this case, and at this time I would like to call Paul Cuomo, a certified real estate appraiser to come forward and be heard. Paul, can you come forward?

Chairman Shook: Mr. Cuomo have you been sworn?

Attorney Dixon: He's already been sworn.

Chairman Shook: State your name.

Mr. Cuomo: My name is Paul Andrew Cuomo.

Chairman Shook: Okay, thank you.

Attorney Dixon: Paul what is your educational background and experience?

Mr. Cuomo: I have a Bachelors of Arts and a Bachelors of Science. My Bachelors of Arts degree is in Justice and Public Policy with an emphasis in public policy and my Bachelors of Science is in chemistry.

Attorney Dixon: And how are you currently employed and for how long have you been so employed?

Mr. Cuomo: I am President and CEO of the Coastal Carolina Group Inc. of Eastern North Carolina and the Commonwealth of Virginia. We're based here in Greenville, NC. I've been there since 2003.

Attorney Dixon: How do you become a state certified general appraiser?

Mr. Cuomo: One becomes a state certified general appraiser by taking approximately 400 hours of real estate compliance under a general appraiser or certified residential appraiser. Once one completes that, there is an examination period and there is a state test administered by the state of North Carolina. Once that test is passed, you may receive your trainee license. When you have your trainee certification you must work under someone's supervision for approximately 36 months or 3000 hours where you have to either appraise residential or what is known as general property, general real estate property. General real estate property is non-residential property that is complex in nature. Once that is accumulated, your points are turned into the Board, you are reviewed by a Peer Review Committee appointed by the state of North Carolina and your credentials are issued once you pass your state Board and then you may practice as a certified general appraiser.

Attorney Dixon: And Paul, have you previously testified in state and federal court?

Mr. Cuomo: I have.

Attorney Dixon: In what state?

Mr. Cuomo: In North Carolina.

Attorney Dixon: Okay, have you been determined in each of those cases to be an expert in real estate appraisal?

Mr. Cuomo: I have; in 12 - 15 cases.

Attorney Dixon: What were you engaged to do in this particular case and what was the scope of your work?

Mr. Cuomo: I was engaged by your office in regards to finding an objective and impartial finding as to whether this special use permit on the property would either harm, or be a hazard or impair value to the subject itself or any adjacent properties.

Attorney Dixon: And did this involve your visit and your studying these premises and the surrounding areas?

Mr. Cuomo: It did.

Attorney Dixon: And did you conduct examinations of the premises?

Mr. Cuomo: I inspected the premises on June 22, 2011, at nine o' clock in the morning and I've observed the property throughout the day. And also I've inspected the property several times since, including this morning.

Attorney Dixon: And what did you find?

Mr. Cuomo: The property is a 4600 sq. ft. single-family residence zoned R15S. The property itself is located on the corner of busy Memorial Drive and Fairlane . Basically, not to rehash everything that the City has already told you again, the property is pretty much divided into the residence being, if you're looking at the property straight, to the left hand side and the garage facing the back side of the property facing the other street, inside of that area between the house and in between the garage is a breezeway which is approximately 12 ft. wide by 13 ft. long for 156 sq. ft. which is approximately less than 2% of the residence. That area inside right there is was where Dr. Ahmed wanted to have his lab.

Attorney Dixon: And he did in fact create a lab in that space?

Mr. Cuomo: There is. There are OSHA approved containers on both sides of the wall in that space and if the members of the Board would like to see it, it is on page... starting on page 15 of the packet provided by me. Inside of that area in there, there are two doors, one to the right and one to the left. There is also a door that goes directly into the garage and one into the primary residence. Most of the walls are brick with the exception of the wall going into the residence. There are... I believe, two spigots, one water spigot to the left, one water spigot to the right and there's four doors that you can either enter or exit from.

Attorney Dixon: Now the significance of that- first of all, let me ask, what are the usual and normal customary precautions taken for a property used occasionally as a lab? What kind of things would you have to have?

Mr. Cuomo: OSHA standards generally require, or the National Fire Protection Association, NFPA for short, requires certain barriers be put in the property. Those barriers meaning certain types of cabinets that are generally fire-retardant and are of a greater quality, obviously, than what you would have in a kitchen. Those cabinets are placed on the right and the left wall as well as the rear of that parcel. There is also required a fire extinguisher, a fire entry and exit plan, as well as what they call multiple container exclusion, meaning that if the piece of material that you are handling must be taken and dropped into a container, similar to a Tupperware container, and then you would have another container on top of it where it was put in. This is fairly standard in any type of doctor, dentist, veterinarian office, even with a person, who more commonly is a diabetic at home, people call them shark containers. The standard is pretty much the same.

Attorney Dixon: So if you go to LabCorp or a phlebotomist, they've got the same standards to deal with?

Mr. Cuomo: In any paramedical facility they would have to have the same standard.

Attorney Dixon: And they also have potable water, two double exit doors, a spill kit, a fire extinguisher, towels, all sorts of things – all those things are present in this lab?

Mr. Cuomo: That is correct. They would have to have a way to deal with immediately some type of spill, be it water or anything else, and a fire extinguisher would be required.

Attorney Dixon: Now, when you make an assessment of a neighborhood, or an area where a house like this is located, you make an assessment as to whether this is a growth area or a stabilized area or declining area?

Mr. Cuomo: Correct.

Attorney Dixon: And what did you find with respect to this property?

Mr. Cuomo: There is a classic neighborhood life cycle that exists on, the only thing we have in common on this earth in real estate in every country in the world; it's called growth, stability, decline and revitalization. There's not a country on this earth, there's not a town on this earth, no matter where you go, no matter what language you speak, no matter where you live, where this neighborhood cycle does not occur. For example, our subject is based in an area where the neighborhood is actually going into decline and headed into the revitalization cycle. And how that would be determined to be, I conducted a study of the surrounding properties. The old Carolina Dairies Plant, for example, I'm going to start to the right of the property, going down the street on Memorial, had a gas station in front of it several years ago, it was demolished – basically contaminated, reclaimed, the Dairy itself has been defunct for many years. Going up the street a little further, toward the intersection where you have the McDonalds, where Trust Atlantic Bank is located, where you would cross into Arlington, all of those houses with the exception of two, are split zoned; you have Office on one side – which most of the houses have been converted into Office, except for two, one that is on the corner and one that is right behind it that belong to Mark Ellano, which are rental properties. To the left of that intersection, you have a Kangaroo station, you have the Pecheles buy-here, pay-here lot, coming down the street further towards Dr. Ahmed's house, you have several hotels that are obsolete or either basically misplaced improvements, and then you have another hotel behind it and coming down further you have the parcel that is directly located in front of Dr. Ahmed's house which would be parcel number 09612, which is the only sale that had occurred within the neighborhood in the past three years other than Dr. Ahmed's house. This parcel was purchased and the improvement was demolished. The purchaser of the property, Mr. Grant – Granitz, excuse me, advised me when I called him that he had purchased the property to have the house demolished to reclaim it to eventually have it rezoned Commercial or General Office. That property is no further from across the street standing in his yard than from Dr. Ahmed's house. The property beside that, when property starts becoming demolished, when they become obsolete, if you will, if there is misplaced improvements, it's a steady show of decline. For example, there were two other houses that I researched in the neighborhood that were exposed to the market over 1,000 days including Dr. Ahmed's house which sold for \$30,000 under market, and those were the only sales that I could find. All the other sales, or publically listed sales behind there that would be comparable to Dr. Ahmed's house have been removed from the market.

Attorney Dixon: Are there any other demolitions?

Mr. Cuomo: None that I'm aware of.

Attorney Dixon: Is there a gasoline station?

Mr. Cuomo: There was a gasoline station which was beside the Carolina Dairies that was demolished.

Attorney Dixon: Now, on the basis of your findings, have you rendered an opinion as to whether granting this particular special use permit would impair the value of the subject property, or the adjoining properties or the salability of such properties?

Mr. Cuomo: It would not impair the value of the subject property, however, it's a buyer beware. If someone who is buying the property, obviously, the past or present use of a special use permit to the property is a matter of taste. That buyer themselves, it would be up to them if they would want to buy the property or not. But essentially, no, it would not cause any damage to the property, nor would it cause any damage to the adjacent properties. No one would know based on where this lab is located. On page 15 of my report, you'll notice that

the lab is located in a breezeway, between the house, between the garage and between the main structure of the house. And this breezeway area is probably no bigger almost than where Mr. Dixon and I are standing to the stairs right here, and it's about 12 ft. wide; it's not even part of the livable area. No one would really know that it's there, and there's really no – I don't see any drawback based on all the precautions, based on the fire marshal's report, based on the NFPC – the National Fire Protection Code standards, based on all the preliminary precautions that Dr. Farid has taken, I see no detriment. And there's no evidence, the information that I've given you in reference to zoning, in reference to what's surrounding the property, is a fact – it's not my opinion; it's literally a fact that I have gone around and found it be public records through the City, the County, the MLS and other records.

Attorney Dixon: I'm going to hand you a book, a book from the General Statutes of North Carolina, this is volume 11, and direct your attention to chapter 93-E and ask you what is that if you know.

Mr. Cuomo: This is the registration license and certification of real estate appraisers.

Attorney Dixon: And what would that say with regard to the ability of someone to come in and give testimony and testify as the value of property or the effects on values of properties? And specifically direct your attention to section 93E-1-2.1.

Mr. Cuomo: It says, it says basically that only a state certified, or licensed real estate appraiser may offer or render an opinion of value as an expert, period.

Attorney Dixon: Thank you very much.

Mr. Mullarkey: How long is that opinion of value good for?

Mr. Cuomo: An opinion of value is generally good for one day, its effective date.

Attorney Dixon: And you did in fact visit the premises today?

Mr. Cuomo: I did, this morning.

Attorney Dixon: And there are no changes in your opinion?

Mr. Cuomo: No.

Mr. Mullarkey: Thank you.

Mr. Hutchens: I have some questions Mr. Chairman. First of all, can you site some examples from your experience where someone who brought a lab to a residential neighborhood and it did not affect property values?

Mr. Cuomo: I don't have one exactly of a laboratory. I do have one a home veterinarian and some other persons that have done that.

Mr. Hutchens: Did that person have hazardous chemicals and have to have HAZMAT visit his house?

Mr. Cuomo: Um, I wouldn't – I would say a veterinarian who practices, and again, I would say I'm not an expert in the area of hazardous chemicals and material handling, other than a cursory knowledge of how it applies to real estate, so this veterinarian would actually keep drugs in his cabinet for treating animals and obviously animals create waste, obviously there's issues with animals, they make noise, they have different.. certain issues.

Attorney Dixon: With blood and stool just as (unintelligible).

Mr. Cuomo: Correct. And I believe, uh, I believe, that under the veterinary code, that there has to have similar type of handling as it would be anything else of that nature – in a paramedical nature.

Mr. Hutchens: And to you knowledge that did not affect property values?

Mr. Cuomo: No it did not. As far as I know, it is still ongoing. As far as I know, he still may be practicing, I'm not aware.

Chairman Shook: Did that gentleman have a special use permit to operate that business?

Mr. Cuomo: I don't know if you would call it that at the time ... because I believe that he had a permit. I don't know if it would be classified as our special use permits.

Chairman Shook: Okay.

Mr. Cuomo: In other words, let me make myself very clear, it would not go through- it did not go through the formal process of which we are going through now.

Mr. Hutchens: Had a question Mr. Chairman. You mentioned if neighbors, if the neighbors - persons purchasing property in that area, probably not even know that there is a lab there, but suppose they did know, would that affect property values?

Mr. Cuomo: If they did know, that is a matter of ... well, let me –

Mr. Hutchens: I'm asking for your expert opinion.

Mr. Cuomo: Alright, I'll give it to you, well, you've published this in the paper several times, well here it is a matter of public record, it will never go away. Anyone practicing due diligence on a property can find that, I mean, it's very easy to find on the internet. But most of the practice I've had, when you have a person who has bought a house that's already \$30,000 underneath it's listed price and if you have houses exposed in an area in an excess of 1,000 days and most of them withdrawn from the market, where are you ... I mean, I think would speak for itself to say that the blight has already taken place. One would, one would go to a multiple listing service and find this, one would go to seek the counsel of a real estate agent who is – or real estate broker, or real estate developer who is engaged in the act of sale – I am not. I'm not – I don't have either license; I don't engage in the act of development or the sale of real estate, but one would – one would hire the services of one like that and the first thing they would do would be to go to the MLS.

Attorney Dixon: Mr. Cuomo, a typical house that might be built for residential purposes here would have a lot

size of about a quarter of an acre?

Mr. Cuomo: That is correct.

Attorney Dixon: And what is the size of this particular lot, can you recall?

Mr. Cuomo: It is 2.36 acres.

Attorney Dixon: And the house sits in the middle of the lot?

Mr. Cuomo: Yes.

Attorney Dixon: Back from the road?

Mr. Cuomo: Yes.

Attorney Dixon: And far back from anyone else as a matter of fact? Is that correct?

Mr. Cuomo: It is well buffered, approximately 200 ft. to the back door from the road. There is a horseshoe driveway that enters the property off Fairlane coming around; that horseshoe driveway is probably in excess of 200 ft.

Attorney Dixon: Do you know how – what the distance is to this property from St. Andrews?

Mr. Cuomo: I believe it was 135 or 170 ft, somewhere in between there.

Attorney Dixon: I have no other questions. Any questions of any members of the Board of Adjustment?

Chairman Shook: Thank you.

Attorney Dixon: Mr. Denton?

Attorney Little: (unintelligible) Mr. Hopf may have some questions, remember, after we, to expedite time, (unintelligible) any opposition, since we do have a specific opposition leader, as it were, and I use that term to counsel for the opposition, he may cross examine, after the Board has asked their questions, he may cross examine that way it will make the hearing go a little smoother, instead of having him sit down and sometime later get back up and go through the question period.

Chairman Shook: Okay.

Attorney Hopf: The veterinary clinic – where was that?

Chairman Shook: I'm sorry; can you state your name and direct it to us?

Attorney Hopf: I'm sorry, I apologize. I figured I'd introduce myself later, but my name is Jim Hopf. I'm an attorney here and I'm representing some folks in the neighborhood who are opposed to this application.

Chairman Shook: Okay.

Mr. Cuomo: It was in Lenoir County.

Attorney Hopf: Okay, and was it located in the City of Kinston?

Mr. Cuomo: No, it was in the County in Pink Hill.

Attorney Hopf: Okay, so it was outside the city's jurisdiction?

Mr. Cuomo: Yes sir, it was outside the city's jurisdiction, yes sir.

Attorney Hopf: In your opinion is the presence of a chemical lab in a neighborhood such as this readily discoverable or discernable by somebody doing due diligence looking to buy property?

Mr. Cuomo: I would think it would be, given the ability they can find on the internet now and given the quantity of information outside, I would believe so.

Attorney Hopf: So you would think that folks looking to buy in the future would be able to find this out as part of their normal looking and investigating for a piece of property?

Mr. Cuomo: I would say so, to a savvy buyer.

Attorney Hopf: And, but it's your opinion that it would have no impact on somebody wanting to move into the neighborhood?

Mr. Cuomo: No.

Attorney Hopf: Okay and, the, you talked about OSHA requirements, and that is because of the presence in this instance of chemicals and the materials being used in this lab?

Mr. Cuomo: That is correct.

Attorney Hopf: And OSHA, because of these chemicals, would require, I think you talked about, and I didn't get to see your pictures, but explosive-proof cabinets?

Mr. Cuomo: They would be fire rated. I'm not an expert as to whether they would be explosive-proof or not.

Attorney Hopf: Fire proof cabinets?

Mr. Cuomo: Yes sir, I will state that, yes sir.

Attorney Hopf: Fire extinguishers?

Mr. Cuomo: Yes sir.

Attorney Hopf: Fire hoses?

Mr. Cuomo: Yes sir.

Attorney Hopf: Locks on the cabinets?

Mr. Cuomo: Absolutely.

Attorney Hopf: Okay, and that's all because of safety concerns over what's in those cabinets.

Mr. Cuomo: Yes sir, that's fair to say.

Attorney Hopf: Okay, and your, your testimony I was con-, I wasn't real clear. You indicated that this neighborhood is in decline, is that correct?

Mr. Cuomo: Well, a neighborhood would mean a specific geographical area that would surround the subject. It would not necessarily mean one street. Neighborhoods are generally defined by a specific geographical area. The neighborhood that I was defining would be up and down Memorial right there and then back around to where the subject is.

Attorney Hopf: Including the commercial properties you talked about?

Mr. Cuomo: Including some of them because they're within- they're within a reasonable – when I say neighborhood, let me clarify for you, I would mean within several hundred yards of the property; and you have commercial activity within a hundred yards of the property so it would be encompassed in the neighborhood.

Attorney Hopf: Up, up Memorial at the Dairy, those properties?

Mr. Cuomo: Yes sir.

Attorney Hopf: And then south on Memorial, you have offices and commercial properties?

Mr. Cuomo: That would be a fair assumption.

Attorney Hopf: Okay, what if we're talking about the neighborhood immediately surrounding his house? The residential neighborhood – is that area, that residential neighborhood, an area of decline? In your opinion?

Mr. Cuomo: It has some blight to it, yes sir.

Attorney Hopf: Okay, blight being defined as what?

Mr. Cuomo: Blight being defined as some foreclosures in there, some – as I went through there today, there were three properties listed for sale. There is one that is definitely a foreclosure, directly behind Dr. Ahmed's house, turning on St. Andrew's Place, where the driveway is torn out, you can't access the house, it's in a bad state of physical disrepair.

Attorney Hopf: Okay, is it your opinion that having this chemical lab there is going to help the neighborhood in that regard?

Mr. Cuomo: I - it's a fair question...I wouldn't say that it would hurt it, but I could not say with great specificity that it would help.

Attorney Hopf: Okay, thank you.

Attorney Dixon: Mr. Denton, can you come forward please? Mr. Denton, would you state your name and address for the Board please?

Mr. Denton: Yes, it's 3 - my name is William Denton and I live at 387 Marina Road in Chocowinity, North Carolina.

Attorney Dixon: And how are you currently employed Mr. Denton?

Mr. Denton: I work with the state of North Carolina with the Department of Natural Resources with the Hazardous Waste Section.

Attorney Dixon: And you actually wrote a letter that was considered by the Board of Adjustment last time and is included in their packet and I'm gonna hand it to you. It's dated March 4, 2011; can you identify it as the letter that you wrote?

Mr. Denton: Yes it is.

Attorney Dixon: And the letter says that technically, Dr. Ahmed's laboratory here would cause him to be considered, technically, a generator, a small quantity generator of hazardous waste.

Mr. Denton: That's not - that's not accurate and I'm glad you brought that up. As soon as I heard that and I wanted to go ahead and make that clarification because it is an important clarification. He would not be a small quantity generator- generator of hazardous waste. I stated in a memo to him, I'm sure it's in here also...

Attorney Dixon: Stated to him, is that Dr. Ahmed?

Mr. Denton: Yes, thank you, and I think it's in here too without having to read it, but he would be an exempt small quantity generator of hazardous waste and that's a big distinction. Small quantity generators of waste generate a fair amount of hazardous waste and they're fairly well regulated; exempt small quantity generators of hazardous waste generate very little hazardous waste and because of that, they are exactly what the rule says. They are exempt from the hazardous waste rules because it generates so little, with a few exceptions: 1. They have to identify the waste that they generate and 2. They have to properly dispose of it; which Dr. Ahmed has done. It's a big distinction. Exempt small quantity generators are, are exactly that - they are exempt from the rules.

Attorney Dixon: Mr. Denton, the Planning staff of the City, without the benefit of your knowledge has stated on the record here, last time and this time, that there were 11 chemicals they identified as hazardous waste, is that an accurate statement?

Mr. Denton: No, it's not.

Attorney Dixon: And you have a list of those chemicals, is that correct?

Mr. Denton: Yes I do.

Attorney Dixon: And what would you say in response to that statement?

Mr. Denton: I'm, I'm not sure where the number 11 came from, in our initial memo back to Dr. Ahmed identified ten items that may be regulated as hazardous wastes without having a lot more information from him. Since that time, and sitting in this, this area here, we have eliminated, with more information, we've been able to eliminate three of the initial ten; and there's about seven that could be – that are regulated.

Attorney Dixon: Now, Dr. Ahmed has stated to me, and he insists that this is medical wastes, or bio-medical wastes, or chemical wastes, but under the rules it still might be deemed hazardous, is that correct?

Mr. Denton: Yes, that's right, and we're also involved, and when I say "we", I mean the Hazardous Waste Section, with the hospitals. Hospitals generate a lot of medical waste and some of the medical waste they generate can be hazardous waste. It's just like the School of Medicine, and places, and the University. So you can generate medical waste and some of it also, unfortunately, can be regulated following our program, the Hazardous Waste program.

Attorney Dixon: To a lay person like me, who doesn't know much about chemistry, when you list those all of those chemicals and you hear those very fancy titles, it causes you concern because we don't know what that is. When my doctor prescribes something, I'm really not sure what that is, I just know what it's for. In looking at those things, how would those compare to things that you would find in your home, my home or a typical home?

Mr. Denton: That's a good point to make. Many of the things, the items on the list that would be regulated, if he was a large industry, you know, by the hazardous waste section – again, I want, it's important to remember he's an exempt small quantity generator, so he is exempt from the rules, except for identifying his wastes and properly disposing of it. So, having said that, one of the, one of the things that we thought may have been a hazardous waste if disposed of was the acidic acid. But it turns out his acidic acid, which everybody knows here, is commonly known as vinegar. His, his aci – and vinegar has a pH anywhere of 2.4, to 2.8, or something like that. His acidic acid has a pH of 3.2 and that's what would make it hazardous; it has to be less than a certain -, less than 2.0. Another one he has here is acetone, which commonly known is finger nail polish remover, and one of the things that struck me about this is I couldn't help but remember when my daughter was 14. And she was changing her finger nail polish colors almost daily, and she was at my walnut kitchen table I just got through refinishing, and she managed to spill her bottle, and my point being is, she probably spilled more acetone, the hazardous waste we're worried about toda-, tonight, in that one time, you know – messing up the finish on my table, than he will probably generate in two years; so, that's a good point to make. Some of the other things here, ethyl alcohol, when it's a certain percent, is regulated. Ethyl alcohol, I'm sure ethanol, that's the type of alcohol many of us consume in adult beverages.

Attorney Dixon: So it's regulated by the ABC Board, not so much OSHA.

Mr. Denton: Well, no, it's... well, it is regulated by the ABC Board, but in industrial settings when you have large amounts of it that being disposed of, it also can be regulated by the Hazardous Waste Section. The hydrochloric acid that we thought may be regulated is not. It has, its pH is way too high. It's even a higher pH than the vinegar; a pH approaching neutral. Methanol is another alcohol, the Toluene and the Xylene, for example, that is, are-are-is-is stuff you find commonly around the household and, and paint thinners and in, in paints and something like this. So a lot of this is stuff that you would find around the house.

Attorney Dixon: Now Mr. Denton, in terms of quantity, it's been presented to the Board that the average amount or quantity that Dr. Ahmed would have in a given month is 3.1 mL. Can you give them some idea of what quantity that is?

Mr. Denton: 3.1 mL is not a lot; best thing that I can equate it to is about like the size of a flu shot. It is, it is that type of generation that's exactly why they wrote the, federal government wrote the rules to exempt people like this from the hazardous waste rules; so they would not be burdened with all these regulations. So, 3.1 mL is nothing.

Attorney Dixon: Would a tablespoon be about 5mL?

Mr. Denton: That is correct.

Attorney Dixon: So 3.1 mL would be something between a teaspoon and a tablespoon

Mr. Denton: That is correct.

Attorney Dixon: Now, Mr. Denton, you weren't paid to be here – is that correct?

Mr. Denton: No, I wasn't.

Attorney Dixon: And you were here last time when there was no quorum – is that correct?

Mr. Denton: Yes.

Attorney Dixon: Why did you come?

Mr. Denton: Well, I-I-I was very disappointed that something so simple as this could get so, in my opinion, if this was – if this letter was, had any reason for his permit being denied, I would have a hard time digesting that 'cause it's just really a moot point really, in my opinion.

Attorney Dixon: There's nothing here that you believe would present a hazard or safety concern for someone any more than the ordinary things that we would find under our sink in the kitchen or the bathroom?

Mr. Denton: No, there's not and I have a five-year old granddaughter that stays with me a lot and if he were next door to me, I would not have any problem with this at all based on – based on what we're talking about.

Attorney Dixon: You had, you had recommended that it be- that it was important that Dr. Ahmed make

arrangements to go through a licensed disposal company for handling chemical or biomedical waste, and you have seen the letters that we received from the companies and they are in fact licensed companies to do that?

Mr. Denton: Yes, Stericycle is a very large company, they, in fact I was talking with the Stericycle representative representing the hospital here in Pitt County, where now, we being the Hazardous Waste Section and they now really getting into the hospitals, and so they have hired Stericycle to work with them to manage their hazardous waste. As I was told by the representative, they are working with 5 other- 500 hospitals in this southeastern part of the United States. So they're a very big, very big player in this industry. Eastern Environmental is the folks that are going to be managing, the folks that would take any hazardous waste that he accumulates over a period time and they are a very good company and work a lot in eastern North Carolina.

Attorney Dixon: And to your knowledge, these companies are available 24 hours a day, 7 days a week to handle any disposal that may be necessary?

Mr. Denton: Oh yes. They-they-they are, in fact Eastern Environmental, because their headquarters is in Rocky Mount, North Carolina, will be a lot more available than some of the other ones.

Attorney Dixon: Is there anything else that you would care to share with the Board of Adjustment.

Mr. Denton: No, I'm just glad that I had the opportunity to come and speak to you about this tonight. I feel like that if ..if you as a Board was using the data in my letter as a reason for rejection, that would be a ...that would be a mistake.

Chairman Shook: Mr. Denton, I've got a question for you.

Mr. Denton: You bet.

Chairman Shook: If it's a small, and, your terminology, the specific terminology if I'm not using that correct, please excuse me, but if it's so small and less than a teaspoon or a tablespoon, and it's not harmful, why can't he just flush it down the toilet?

Mr. Denton: Well, it's interesting – it's interesting that you, you mention that because I left one other option out that he does have, and that is to treat his own hazardous waste in exempt small quantity generator and that means he can treat it, and if the City of Greenville would take it, he could flush it or pour it down the sink.

Chairman Shook: Well, I mean, why treat it? If it's so small and so minute, I mean, he's got to pay a big company to go there with a hazardous waste material company to remove it.

Mr. Denton: Because I really think he wants to do what he thinks is the right thing.

Chairman Shook: Well, I understand that, but this Board, if we approve that with a hazardous waste material company coming to a residential house, talking about chemicals that you're referring to today, what's to preclude him from using other chemicals in larger quantities and going past all this? I mean, where is the guideline? I mean, we talked about the type of chemical or the amount, which is – which makes it worse? Is it, you know, certain amounts of chemicals to tablespoons? Is it bad if it's a five-gallon drum? Is it the type of chemical no matter what the quantity, or, you know, what's an issue? That's what I'm trying to come up with

because in your letter you mentioned, you know, that they weren't licensed to handle hazardous wastes. And if it is hazardous wastes that we're talking about in a residential area, you know, that brought our attention on the Board. So if it's so small and it's not hazardous, why does he still need to have it removed by a hazardous waste company?

Mr. Denton: Well, as I just stated, he could treat it. He could treat it with water – that's the universal solvent and he wouldn't even have to. He could work with the pre-treatment folks with the City of Greenville and would not have to get a licensed person to come get it.

Chairman Shook: (Unintelligible) but it's still a material that he would have to get treated-

Mr. Denton: What I mean by treated, he could use the most universal solvent or surfactant there is, which is water and all of these is-, would dissolve in water; and he could put it down the drain, as long as he had permission from the pre-treatment folks with the City of Greenville.

Chairman Shook: How do you treat vinegar?

Mr. Denton: Dilute it.

Chairman Shook: Okay, okay.

Ms. Rich: In your letter dated March 4th, you state that Stericycle is not licensed in bold print – has that changed or are you retracting your statement?

Mr. Denton: Steri-, Stericycle, it has moved from, it has moved and is moving from the medical waste to also managing the hazardous waste.

Attorney Dixon: Any other questions from the Board?

Ms. Anderson: Mr. Denton?

Mr. Denton: Yes?

Ms. Anderson: How could you satisfy the people here tonight, and I know he has an attorney, with the minor things that you're saying, that would not bother, you're talking about diluting the water... what could you say to the people here tonight who have some concern about the chemicals in their neighborhood?

Mr. Denton: Yeah, well I am, other than what I've already said, I would think that they can of gasoline that you would have in your carport for your lawnmower is much more dangerous. I think a gallon of gas is equal to a stick of dynamite, for example. I think given the scope of what Dr. Ahmed is proposing, and the amounts and the types of waste, that he may be generating, pales. I mean, in just real world, and I understand that you can "what if" stuff to death and, and, and when we start talking about hazardous this, or that, people's emotions tend to run away, but it's , it's – in the world of hazardous waste, this is, this is, is just really is not that, is not an issue.

Attorney Dixon: Let me help you for a second Mr. Denton.

Mr. Denton: Thank you.

Attorney Dixon: If the Board of Adjustment had it within their authority, as they do I believe, to pose any conditions on Dr. Ahmed, as a condition, or prerequisite to granting the special use permit, are you aware of anything that they might add, or require that might allay some of the concerns of the neighbors?

Mr. Denton: Our staff, for example, I think one of the questions you [directed to the Board] had – if he increased more – you know, what kind of assurances would one have. One, if he, if he started increasing waste generation, then he could, you know, he could become a small generator and then he would be regulated and could be inspected by us, and would be. So as a condition, if the Board wanted to have someone from our department come in and actually do inspections, regarding hazardous things, I'm sure that can be arranged.

Attorney Dixon: And they can be periodic or random?

Mr. Denton: We prefer doing random, unannounced when we do inspections.

Attorney Dixon: And could the same thing happen, could the City actually have inspections the same way?

Mr. Denton: I don't see why they could not, as long as they have someone that, you know, was knowledgeable and knew what they were looking for, sure. I'm sure the City does.

Attorney Dixon: No other questions for me. Does anybody else on the Board of Adjustment have another question? *Pause* Thank you, and Mr. Hopf, your witness.

Attorney Hopf: Mr. Denton, good evening.

Mr. Denton: Good evening.

Attorney Hopf: How are you doing?

Mr. Denton: Doing well.

Attorney Hopf: I'm, I'm confused. Help me.

Mr. Denton: That's alright; I stay that way a lot myself.

Attorney Hopf: Is it true that as submitted, Dr. Ahmed will be generating hazardous waste?

Mr. Denton: He will, a-a-a- less than tablespoon from what I understand, in a month, yes. That, that, that would be regulated it, it – excuse me, it would not be regulated with him because he's not regulated. He's an exempt small generator.

Attorney Hopf: You're indicating because of the size that has been reported to you, that he's exempt from the regulations-

Mr. Denton: Yes sir, yes sir.

Attorney Hopf: -but he nonetheless is a generator, or would be, a generator of hazardous waste, correct?

Mr. Denton: Mm-hmm, correct.

Attorney Hopf: Are you familiar with Eastern Environmental and Stericycle?

Mr. Denton: Yes.

Attorney Hopf: This, this is printed off their website. Is that the company you're talking about Eastern Environmental Management, LLC?

Mr. Denton: Let's see...there's, there's, there's two of them ...just, let me sure this ...

Attorney Hopf: Do you know where they're located?

Mr. Denton: Rocky Mount.

Attorney Hopf: Okay and see the address right there? South Pearl Street, Rocky Mount?

Mr. Denton: Yep, that's them.

Attorney Hopf: It appears to be the same company.

Mr. Denton: Yes.

Attorney Hopf: Are you familiar with that truck? Is that the truck they use to come (unintelligible) hazardous waste?

Mr. Denton: No, no, that's not the truck they use.

Attorney Hopf: How about Stericycle, are you familiar with that company?

Mr. Denton: I-I have become familiar with them just recently, yes.

Attorney Hopf: Are you familiar with their panel trucks that they use to haul materials? Experts in infection control and health care compliant services - that's the Stericycle-?

Mr. Denton: I'm sure that when they go to hospitals and places like that, they would have a vehicle, sure.

Attorney Hopf: And how about when they pick up from labs such as this?

Mr. Denton: I don't know how they would arrange it. They may or may not.

Attorney Hopf: But it would be common for those vehicles to have as this one does in this photograph, a biohazard and regulated medical on the side?

Mr. Denton: Yeah, they have big placards and all that sure.

Attorney Hopf: To come pick up from facilities such as this?

Mr. Denton: Mm-hmm. But, but just for the record, as far as the hazardous waste part of it, Dr. Ahmed could transport his waste, his hazardous waste, himself to a TSD. He wouldn't have to have them come pick it up, he could actually take it to them.

Attorney Hopf: To a TSD?

Mr. Denton: I'm sorry, Treatment Storage Disposal Facility.

Attorney Hopf: Okay, where would that be located?

Mr. Denton: Well, there's one in Greensboro.

Attorney Hopf: Okay, so he could have them come and get it or he could –

Mr. Denton: Or he could legally take it himself, sure.

Attorney Hopf: I guess he would have to follow the same sorts of precautions in how he transports it in containers and safety containers –

Mr. Denton: It would be (Unintelligible), but the point this is really, not a lot of rules.

Attorney Hopf: The point is, to get it to that proper facility that's designed to handle this sort of waste, correct?

Mr. Denton: Yes.

Attorney Hopf: Okay, are you able to assure this Board, the City of Greenville and these residents that Dr. Ahmed volumes are never going to change with regards to these chemicals?

Mr. Denton: Now, I couldn't, could not not assure that. I'm - I'm - I have no idea what the future brings for him, but all I know is what he, you know, based on what he had stated.

Attorney Hopf: You're going on what he submitted in this application now, but that could change at any time, correct?

Mr. Denton: I guess so. It could go to zero, or whatever, to a hundred.

Attorney Hopf: And, as I understand it, what you're saying is, instead of ten or eleven hazardous substances, there are only seven that you consider hazardous with regard to Dr. –

Mr. Denton: Well, that would be following our rules, the hazardous waste rules.

Attorney Hopf: Right, okay. Which three did you eliminate in talking with him or his counsel tonight?

Mr. Denton: The acetic acid, the trichloroacetic acid and the hydrochloric.

Attorney Hopf: Okay, alright. I think this list, Table 1, is in the packet that everyone on the Board has and these highlighted comments to the right are yours? Correct?

Mr. Denton: Yes.

Attorney Hopf: And that's where you've indicated hazardous waste and, and those are actually EPA waste codes, correct?

Mr. Denton: That's correct, yes sir.

Attorney Hopf: So D0001 or F003, means what?

Mr. Denton: D001 is flammable, in other words, it will flash at 140 degrees or less.

Attorney Hopf: D001 is an EPA code for ignitability, correct?

Mr. Denton: Yes.

Attorney Hopf: D002 is an EPA code for corro-

Mr. Denton: Corrosive.

Attorney Hopf: -corrosivity.

Mr. Denton: Mm-hmm.

Attorney Hopf: So those are codes the EPA has assigned depending on the characteristics of the material.

Mr. Denton: Yes sir.

Attorney Hopf: And because of the characteristics of the material, or because they are an EPA listed waste, they get assigned a waste code.

Mr. Denton: Correct.

Attorney Hopf: Which are the ones you've assigned over here; D001, D002, F003.

Mr. Denton: Correct.

Attorney Hopf: And that's from the Federal EPA.

Mr. Denton: Yes sir.

Attorney Hopf: Are you familiar with Hawley's Chemical Dictionary?

Mr. Denton: Yes I am.

Attorney Hopf: It wouldn't surprise you then, given your familiarity, and I can give you a copy, that all of the substances listed by Dr. Ahmed are in Hawley's.

Mr. Denton: Yeah, sure you would; it wouldn't shock me a bit.

Attorney Hopf: And, for some of these substances, they list different characteristics, properties, uses, grades and also hazards - correct? And, you can follow along with me if you like, but acetic acid, they list hazards, moderate fire risks, moderately toxic by ingestion and inhalation, strong irritant to skin and tissue - do you disagree with that?

Mr. Denton: In-in-in, no, I would not generally, but in this, this strong irritant I would because of the pH of this; the pH according to Dr. Ahmed is only 3.2. I think Coca-Cola is 2.5 or 3.5.

Attorney Hopf: Okay. How about the acetone? Again, hazard, dangerous, flammable, fire risk, narcotic in high concentrations, toxic by ingestion and inhalation.

Mr. Denton: Yes, acetone is very flammable; I think it flashes at -70.

Attorney Hopf: Acrylamide - did I say that right?

Mr. Denton: Acrylamine.

Attorney Hopf: Acrylamide, okay.

Mr. Denton: Acrylamide, you're right.

Attorney Hopf: Toxic by skin absorptions; irritant to mucus, skin and membrane; suspected of possible carcinogenic potential for humans; toxic by skin absorption - do you disagree with that?

Mr. Denton: That's not a regulated hazardous waste that I'm aware of, so I'm not really familiar with that one.

Attorney Hopf: Do you have any reason to disagree with what Hawley's says about that?

Mr. Denton: No.

Attorney Hopf: Okay.

Mr. Denton: Wouldn't do that.

Attorney Hopf: Chloroform - I'm just gonna pick a few, I'm not gonna go through them all - but chloroform, toxic by inhalation, anesthetic, a carcinogen prohibited by FDA from use in drugs, etc. non-flammable will burn on prolonged exposure to flame and high temperatures - you disagree with that?

Mr. Denton: No.

Attorney Hopf: Now hydrochloric acid, you indicated you took that off based on your conversation with Dr. Ahmed as one of - from the list of ten; hazard: toxic by inhalation, strong irritant to eyes and skin - disagree with that?

Mr. Denton: No ... but again, he indicated his is a very weak hydrochloric acid; with a pH of 4.

Attorney Hopf: And again, the trichloroacetic acid, you took off your list, I think, of what you consider hazardous waste, but here it says hazard: toxic by ingestion, inhalation, strong irritant to skin and tissue - do you disagree with that?

Mr. Denton: I'm sure that in industrial strength I would not disagree with that, but with a pH of 4, which he has indicated that he has, I would disagree.

Attorney Hopf: Okay, where does he indicate that... pH 4?

Mr. Denton: In our discussions.

Attorney Hopf: Okay, okay... now, when these chemicals are ordered by a lab like this ... there -, it's not like ordering finger nail polish - correct? I mean, these are straight chemicals.

Mr. Denton: Well, I believe, not-not-not to, I believe finger nail polish is pretty straight up acetone, but -

Attorney Hopf: Okay, so you're saying the concentration of acetone in finger nail polish is the same as if I ordered a bottle of acetone.

Mr. Denton: I think 90%, 99%, it's regardless of where you get it from; from Walmart or another chemical company.

Attorney Hopf: Okay, okay, now is that true with all of these here? Or just unique to acetone and finger nail polish?

Mr. Denton: Oh I'm sure you can get all of these in different grades.

Attorney Hopf: Okay, well for a lab -

Mr. Denton: I mean, there are some, there are some things, some technical grades if I knew what it was, I would turn around and run. But - but in some they're not; they're not a problem.

Attorney Hopf: So it depends on what's being ordered.

Mr. Denton: Sure.

Attorney Hopf: But typically in a lab, you're going to be using a stronger concentration than you would in a household use.

Mr. Denton: Well - well, not necessarily. Like I say, he's got trichloroacetic acid here 4 pH. It's not very strong. I-I-I don't know if he's - he's mixing it or what, I don't know.

Attorney Hopf: Okay, alright - thank you, that's all I have.

Mr. Denton: Alright, thank you.

Ms. Ferris: I have one additional question if I may. The list of chemicals that he has here, he adds them up and has the total disposal amount for all of these chemicals at approximately 3.21 mL, however, it's been stated that he's going to be using these chemicals to dissolve stool and blood samples, would that not increase the amount of waste that he is producing since dissolving it would essentially become one substance at that point and one homogeneous mixture.

Mr. Denton: I think he's probably done a calculation the best he can about what he'll be generating. I mean, I - , I wouldn't wanna....

Ms. Ferris: Alright, thank you.

Ms. Safford-White: I have a question Mr. Chairman. I need clarification; you indicated maybe three separate occasions that you removed chemicals from this list, but as you talked about it, you indicated that he would still be using these. Why -

Mr. Denton: No, no, no, when I said I'll remove them, most of these are characteristic hazardous waste. They would be a hazardous waste because of the characteristic, for example the, any of the acids. They have to have a pH - a pH is a measure of how strong something as far as an acid or a base - 7 is neutral, it goes from 1 - 14... for it to be a hazardous waste based on being corrosive, it'd have to have a pH of, in this case (unintelligible) 2 or less, so it turns out that I did not know what the strength when I wrote this memo, I was responding - I said that if the pH is less than 2 it, it would be a characteristic D002 hazardous waste. It turns out the pH is 3.2, so it would not be a hazardous waste so that's what I meant by removing it from the list. It would not be a hazardous waste. Like I said, I think Coca-Cola would be around 3 pH to give you an idea of how corrosive...

Ms. Ferris: One more quick question, for the acquisition of these chemicals, for him to use for testing, how would they be acquired? Can he go to a store and buy these? Does it have to be delivered by a hazardous truck? Is it UPS? How these are usually transported?

Mr. Denton: I'm sure he can order - stuff comes on UPS, he would have to - , he would not be going to a store to, to buy these chemicals. I'm sure they might be coming from certified labs and suppliers, and common carriers like UPS, or someone like that.

Ms. Ferris: Thank you.

Attorney Dixon: Any other questions from the Board? *Pause* If not, I'll redirect. Mr. Hopf has raised some pretty interesting questions about the characteristics of something being an irritant or it being flammable.

Mennen aftershave, Chanel No. 5, any spray that you might use as a perfume would be an irritant and many of those would be flammable - correct?

Mr. Denton: Very flammable. A lot of alcohol ... there's a lot of alcohol in the products.

Attorney Dixon: We are talking about extremely small quantities, is that correct?

Mr. Denton: We are talking about extremely small quantities. It's interesting you kind of note that; we just ran across a warehouse over in - well, never mind all that - but we, we ran across a warehouse that has a lot of abandoned stuff; a lot of drums of body wash that you buy at Wal-Mart, CVS or wherever; read the label, it has a flash point of 149 degrees - body wash - and yet, for something to be flammable, for it to be a hazardous waste, the flash point starts at 140.

Attorney Dixon: Are you familiar with **Shocerpool?**

Mr. Denton: Yes.

Attorney Dixon: Would that be a dangerous chemical?

Mr. Denton: It could be very corrosive ... one of the definitions for something to be corrosive it has to be an aqueous solution, or liquid, or if it's a solid, if it will corrode a certain amount of steel in a period of time, and **poleshoc** -

Attorney Dixon: Could we say the same about Lysol, Comet, Clorox Bleach, fertilizer - probably the most dangerous thing you could have in your home is it not?

Mr. Denton: Well, I would say it can be, but I'm gonna go back to the can of gasoline.

Attorney Dixon: Well, and again, you've mentioned the nail polish - , windshield wiper fluid that you might put in your car, that would also be an issue would it not?

Mr. Denton: Well it has alcohol in it, yes, it can.

Attorney Dixon: That's all. Thank you very much.

Mr. Denton: Thank you.

Attorney Dixon: Any other questions? *Pause* You may be seated unless they have any other questions.

Mr. Denton: Thank you very much.

Attorney Dixon: I would call my next witness, Michael Barberio. Now Michael, would you state your name and address for the court.

Mr. Barberio: Michael Barberio, 2909 South Memorial Drive. I live right next (unintelligible).

Attorney Dixon: so you have the house immediately adjacent to Mr. Ahmed?

Mr. Barberio: Correct.

Attorney Dixon: And that is Judge Albi N. Dunn's house? Is that correct?

Mr. Barberio: No, it's my house now.

Attorney Dixon: Well, I mean, a lovely old house built in 1928, is that correct?

Mr. Barberio: Yes sir, yes.

Chairman Shook: Some of us haven't been in Greenville that long Phil.

Attorney Dixon: (unintelligible)

Chairman Shook: For the map, you talking about directly up north - ,

Attorney Dixon: Directly beside his house would be north.

Chairman Shook: (unintelligible).

Attorney Dixon: You've heard about this particular issue? And what has been your reaction and response?

Mr. Barberio: Well I have a four and a six- year old daughter. I'm a lot more concerned about pedophiles within a three-mile radius of my home and things of that nature. I lost both of my parents to cancer, so personally anybody that wants to research cancer is- , gets my vote, no matter what - ,

Attorney Dixon: So you're saying you have no objections to this?

Mr. Barberio: None what so ever.

Attorney Dixon: And you do not believe that it will have an adverse affect on you or your property value.

Mr. Barberio: I don't think so, no.

Attorney Dixon: I have no other questions. Any questions for any member of the Board? Mr. Hopf (unintelligible) ?

Attorney Hopf: No.

Attorney Dixon: Finally, I'm going to ask Dr. Ahmed to come forward, and Dr. Ahmed I'm going to ask that you speak slowly - ,

Mr. Ahmed: I will.

Attorney Dixon: -and in simple terms, if you may.

Mr. Ahmed: I will.

Attorney Dixon: Would you state your name and address for the cour-, I mean, for the Board of Adjustment please.

Mr. Ahmed: Farid Ahmed.

Attorney Dixon: And Dr. Ahmed, you have a resume that you have included in our materials and that does show your educational background – is that correct?

Mr. Ahmed: Yes.

Attorney Dixon: And you have now retired from the Brody School of Medicine?

Mr. Ahmed: Yes.

Attorney Dixon: And the primary focus of your research in recent years has been colon cancer research?

Mr. Ahmed: Colon cancer research, yes.

Attorney Dixon: And since your retirement, you have been doing consultant work?

Mr. Ahmed: Yes.

Attorney Dixon: And how often would you be working and doing consultant work in a typical week?

Mr. Ahmed: An hour, couple hours maximum.

Attorney Dixon: And this year, you've only had a couple projects, is that correct?

Mr. Ahmed: Yes, a couple projects, yeah.

Attorney Dixon: And one involved 20 hours of work where they paid you by the hour, \$200/hour to do some research?

Mr. Ahmed: Yeah, yeah.

Attorney Dixon: And you occasionally use the laboratory-, would like to use the laboratory at your house and that is the reason you're seeking a special use permit?

Mr. Ahmed: Yeah.

Attorney Dixon: How did you learn that you needed to do that? Why didn't you just simply do it without telling anybody?

Mr. Ahmed: I wanted to do the right thing so nobody complain or say “Why didn’t you get a permit?” So I decided to go to the City of Greenville and see what I need. And it sounds, when I went, very simple; all I need is to get a special use permit and I’ll get it, and that’s why I came last time unprepared because I was under the impression that it was a very simple process.

Attorney Dixon: So you thought, routine, just matter-of-fact, and didn’t anticipate there being any real issue.

Mr. Ahmed: No.

Attorney Dixon: Now, when you first discussed it with the Planning Staff of the City of Greenville, was there any indication to you that there might be a problem or an issue with your (unintelligible) permit?

Mr. Ahmed: There wasn’t, there wasn’t any indication when I discussed it with them. If I know that it’s going to be a problem, I would have came last time with a lawyer with me.

Attorney Dixon: But when the city staff discovered -, discussed the matter with the City Attorney, or the Assistant City Attorney, Mr. Little, I’m not sure which, that was the first time that some issues arose?

Mr. Ahmed: Yeah.

Attorney Dixon: And those damn attorneys always complicate things don’t they?

Mr. Ahmed: Sometimes.

Attorney Dixon: -with all due respect to Mr. Little. But in this case, we apologize for having to bring this back before the Board of Adjustment, because, quite frankly, had you done a better job the first time being able to present your case, there might have been a different decision; might have been the same decision, but you feel better bringing this back before them and giving them additional data in which to make a decision?

Mr. Ahmed: Yes, I feel (unintelligible) -,

Attorney Dixon: You’ve heard the information that has been presented – is there anything that you would disagree with or take issue with that’s been said?

Mr. Ahmed: I mean, all the chemicals -, I just want to -, I don’t want to scare them and (unintelligible). This is what I use.

Attorney Dixon: Can I hand that out to everybody?

Mr. Ahmed: Yeah, yeah, yes sir.

Attorney Dixon: This item that I’m going to hand to the clerk is a small tube or vial and, if I understand correctly, that is what you’re going the stool in?

Mr. Ahmed: The stool – a very small ...the metric system...2, 3 milligrams will fit a speckle in the bottom and then you add a drop or two of chemicals in them - ,

Attorney Dixon: And the reason for adding chemicals would be to make it soluble -,

Mr. Ahmed: Soluble, yeah.

Attorney Dixon: so you could, you could look at it under a microscope?

Mr. Ahmed: Yeah, under a microscope, or analyze it with some other equipment. I have collaborators all over the country, I know I can send this stuff to them and they can do this analysis for me using -,

Attorney Dixon: And now that you've retired, excuse me, now that you've retired, occasionally, another physician might send you a sample and say please look at this and see if you see any genetic alterations that will require some further testing, perhaps?

Mr. Ahmed: Yeah.

Attorney Dixon: And this is a cost-saving to the patient?

Mr. Ahmed: It is because you can do a test that will cost \$100 instead of paying from \$900 - \$1300, which is invasive procedure and everybody who is above 50 will do it at least once every few years. And there's a lot of risks when you insert a probe, it's an invasive procedure (unintelligible) anything could happen.

Attorney Dixon: Now, what you've done since you retired, you simply use this consulting work to supplement your income somewhat?

Mr. Ahmed: Yeah.

Attorney Dixon: But it's actually a small supplement actually.

Mr. Ahmed: Yeah.

Attorney Dixon: And again, it's your testimony that you would plan to use this laboratory a few hours a month?

Mr. Ahmed: Yeah, I mean, if I wanted to use more than that I go hire a big, a big facility and a lot of people to work for me, but I don't need to do that for awhile.

Attorney Dixon: And when somebody asks, "Well, why don't you just go rent a lab space?" ... why don't you rent a lab space?

Mr. Ahmed: Because I don't want to do it every day. I do it infrequently, so why would I, I rent a place and pay \$500 a month while I have a space that is not going to hurt anyone and if I had not brought this permit, nobody would have known what I am doing. So, it is not -,

Attorney Dixon: Why did you choose this location Dr. Ahmed? Was there some -?

Mr. Ahmed: Yeah, I have a son that need some help from me and live close by me and it's close to him.

Attorney Dixon: So it seemed like an ideal location?

Mr. Ahmed: It is an ideal location, and it is, yeah, it is close to where I live. I can walk to it, I can bike, or I can drive if I want.

Attorney Dixon: And you will have no difficulty if the Board of Adjustment decided as a precondition to the special use to impose some conditions on you that might require random inspections from time- to-time, or any other safeguards that they might want to impose to make sure that you meet and address some of the concerns?

Mr. Ahmed: And there are other conditions they are free to impose and I will comply with them, I have no problem with that. I just -, I try to speak with my neighbors. I wanted to the lady who was leading the group, I told her I can meet you. I gave her the phone number of Mr. Denton; I told her, "Call him, he's not my friend or anything, he's a government official, he'll tell you what it is." We offered to meet with Mr. Hopf and his clients to discuss whatever will make them happy because I did not believe this reaction will happen, but they didn't choose it.

Attorney Dixon: So you would simply like to just plead with the Board of Adjustment to allow you to also allow you to use your home to some very minor consulting work and occasional, intermittent, lab work as required by your consulting work – is that correct?

Mr. Ahmed: Yes, that's what I hope.

Attorney Dixon: Now, with regard to the laboratory that you have proposed to set up, it does meet, as far as you know, all OSHA requirements and you do have the proper mechanisms, you call them "sharpies"?

Mr. Ahmed: They are sharps, were you dispose of, of, the contaminated stuff and the chemicals you collect them in the special containers, and I can either transport them as you heard, or someone can come and pick them up – whatever the Board decides. We can even dispose of them because they are exempt, if the City of Greenville will allow me, so any-, any-, anything that the City of Greenville want me to do, they allow me because of the small amount disposed (unintelligible) and dispose them in the sink, for example, or transport them myself to the waste company if they are afraid the big truck will come and scare everyone, I will do that.

Attorney Dixon: So you would be very comfortable and willing to accept as a condition the issuance of a special use permit that you would transport any of this biomedical, medical or chemical waste?

Mr. Ahmed: Yes.

Attorney Dixon: So there would not be an issue of anyone bringing a truck back?

Mr. Ahmed: No, if this is an concern, I will do that. Goldsboro is only 45 minutes from here.

Mr. Mullarkey: Mr. Chair -,

Attorney Dixon: No other questions.

Mr. Mullarkey: I'd like to just, we've gone over these points ad nauseum, I feel like ... we're talking about safety ... we've gone over this in small quantities and , and everything and I would say that I've heard today that I've probably got some pretty dangerous things in my shed at home. I've got gasoline, I've got fertilizer, I've got nail polish remover from my wife, the list goes on and on. I'm not a chemist, but I think this Board – are you guys satisfied with the evidence, can we motion to move along with this testimony please?

Board Members: (unintelligible)

Mr. Mullarkey: They have no other evidence to present? Thank you.

Attorney Dixon: I think Mr. Hopf might have the opportunity, Dr. Ahmed, to ask you questions and let me move my stuff out of the way. I would ask that these packets and I'd be happy to hand another one up, be admitted into evidence and made a part of the record Mr. Little.

Attorney Little: That's, that's the Board's decision.

Chairman Shook: I have no objection, absolutely.

Attorney Hopf: Dr. Ahmed, you, you currently have a lab at, on Calvin Way – is that correct?

Mr. Ahmed: Yeah.

Attorney Hopf: And you've been doing the same sort of work at Calvin Way that you're proposing to do at this new property at Memorial Drive – correct?

Mr. Ahmed: Most of the stuff that I do when I go to the patient, I do (unintelligible) of stuff for them at their own place. But with the stool sample, so I don't have to transport it to either place, and then send this sample to my collaborators. I have collaborators working with me all over the country; I can send this sample for them instead of having a big organization because I'm not so sure, like, when you have a grant for example, you don't know, it takes 2 – 4 years to get a grant and after a grant is over, you don't know if you're getting another grant to do this work or not.

Attorney Hopf: You recently had a grant that you received.

Mr. Ahmed: Yeah.

Attorney Hopf: It was a \$400,000 grant and did you do that work for that grant at the Calvin Way location?

Mr. Ahmed: Some of it, some of it I did at the Calvin Way location, some of it I contracted to my collaborators that you have ... and I was thinking of getting a lab with the city from... City of Greenville (unintelligible), but since most of the work I found it's cheaper to contract it outside and the people can do it and I don't have to worry about overhead or people working for me and then after a few months and tell them leave, I decided to do it this way.

Attorney Hopf: This is a copy of your, your grant -,

Mr. Ahmed: Yeah, yeah.

Attorney Hopf: -you're familiar? I got this from your attorney and it refers to the, your, the company laboratory is currently located at 2400 -,

Mr. Ahmed: This was actually the grant, this was actually the grant I applied when I was at ECU after... this was in 2007 and I got the grant, but I left ECU. So I applied again, I applied again to the government and they asked me to submit another grant, so I submitted to them.

Attorney Hopf: Correct. That was November 2009, you submitted. My question - ,

Mr. Ahmed: No, I submitted it at..in 2007 and it took two years to get approved -,

Attorney Hopf: Actually, to be correct, this is actually a re-submission in '09.

Mr. Ahmed: Yeah, re-submission because it takes about two years to submit a grant and get it approved.

Attorney Hopf: The headquarters that you refer to in this grant, was that your facility at Calvin Way?

Mr. Ahmed: This was, this was, this was yeah.

Attorney Hopf: Okay, so the equipment that you list in this grant, at Calvin Way, is that, is that the equipment that's gonna come over -,

Mr. Ahmed: Some, no, some of it is at the storage too. Some of them I kept, I keep at the storage.

Attorney Hopf: 'Cause you had quite a lot of equipment there.

Mr. Ahmed: No, that is, that is not quite a lot.

Attorney Hopf: Well -,

Mr. Ahmed: Some, many of them, many of them at the storage because when I was at Duke and when I was at ECU I acquire this equipment. But I don't, I didn't, for me, for me to use this equipment, I have to have a huge facility and I have to use a huge labor force and then what I will do after the grant is over? What I will do with the people I employ?

Attorney Hopf: Okay, you had some employees when you were doing this grant.

Mr. Ahmed: This were people, this were people from ECU, that were, that were working at ECU and then they left and they wanted better than doing nothing.

Attorney Hopf: Dr. Mousa, Dr. Evans and then a nurse -,

Mr. Ahmed: Yeah, yeah, he's in Europe now, he's Europe; the second one is in Michigan, so all this, all this people are not here anymore.

Attorney Hopf: I understand, but at the time this work was being done, which was at your Calvin Way location

-,
Mr. Ahmed: No, no, this were not -, this I contracted the work, this work outside.

Attorney Hopf: "Carry out the (unintelligible) at the GMA Tox facilities..."?

Mr. Ahmed: When, when you submit a grant, you say what you are planning to do. When you get a grant, it is different, what you're going to do.

Attorney Hopf: Okay, but they listed these -,

Mr. Ahmed: At this time, yeah, at 2 - 07, yeah, these people were collaborating with me -,

Attorney Hopf: At Calvin Way.

Mr. Ahmed: I was planning to do it at Calvin Way, but, as I told you, that it is, it was going to cost me too much money and I did not have enough space at Calvin Way to do that because I don't have a lab, a lab facility at Calvin Way.

Attorney Hopf: These, these, individuals who are helping you with this, indicated they were working at GEM Tox and then, they listed -,

Mr. Ahmed: Yeah, anybody, anybody who I can hire him for an hour can be a worker for me, why not?

Attorney Hopf: Okay, alright. You're familiar with the Technology Enterprise Center?

Mr. Ahmed: Yes, I know, I work with them, yeah.

Attorney Hopf: Through the Pitt County Development Commission -,

Mr. Ahmed: Yeah, I was planning to hire with them, but I find out that it will cost me much, much more to send the work out to be done because I have collaborators -, I have collaborator from other place.

Attorney Hopf: This is actually within just a couple miles of your location, correct?

Mr. Ahmed: It is and I work with them and - ,

Attorney Hopf: They have space that they have to give you (unintelligible).

Mr. Ahmed: But it would have cost me several thousand dollars.

Attorney Hopf: Okay, thank you Dr. Ahmed. That's all I have.

Mr. Ahmed: Thank You.

Attorney Dixon: No redirect from me and I'm finished with him unless you have a question.

Chairman Shook: Okay, anybody else - anybody have any questions?

Ms. Ferris: Was Calvin Way a residential address?

Mr. Ahmed: It was a residential, yeah.

Ms. Ferris: Was there a laboratory at that location?

Mr. Ahmed: I was thinking of a laboratory there and I was thinking also of having a laboratory in the, incu- , City Incubator close to the airport, but I found that it was going to be very, very expensive and I will not find the people that I pay them full time to work there so it was much easier after I collect the stool sample in, in this vial I gave you to ship it out to some people at Ohio, and some people at Indiana to do the assess for me.

Ms. Ferris: So there was not actually a laboratory at that location?

Mr. Ahmed: No there was not a laboratory, no. The government, all the government want is a result, so whatever, whatever you do, they are interested to know the result - not how, how actually you do it.

Chairman Shook: Any other questions?

Attorney Dixon: Chairman, can you ask if there's anybody else -,

Chairman Shook: Yeah, I was getting ready to.

Attorney Dixon: -speak in favor of the project? I'm not aware of anybody else.

Chairman Shook: Is there anybody else here who wishes to speak in favor of the application? Is there anybody who wishes to speak against the application? *Pause* Okay, please come forward and be sworn.

Attorney Little: Mr. Chair you may want to consider about a ten or fifteen minute break.

Chairman Shook: I'm glad you pulled that up.

Mr. Mullarkey: I'd like to also ask the other applicants -,

Chairman Shook: We're going to ask the other applicants to get sworn in, we're going to take a ten minute recess and convene back here at 8:45.

Ten Minute Recess

Chairman Shook: Okay, I'm gonna ask everybody, please come back and take a seat. We'll start momentarily. *Pause* We'll start back in just a few minutes, thanks a bunch. Okay, when we resume, we're asking for anybody to speak in opposition. Those who've come forward and be sworn, you'll be able to come up one at a time; anybody else that want to speak, before you will speak will have to come in and be sworn in as well. That being said, I think I believe we're ready to proceed so first person that would like to speak, please come forward.

Attorney Hopf: Thank you, good evening; again my name is Jim Hopf. I'm an attorney here in Greenville and I'm here on behalf of some folks that are concerned about this and I will very much try to be brief because I think you all do have a grasp of everything, but some of these folks would like to be heard and we would like to present a little bit of evidence for you in terms of a, an opposing view on the real estate, and also an opposing view with regard to chemist, and then we'll have some, some of the residents who would like to come and express some of the thoughts they have. There's no question, there's no debate over the merit in theory over what Dr. Ahmed is doing. I don't think there's anybody that would question his motives in cancer research and what have you. I think most of us have been touched by cancer in our families in one way or another; so that, I wanna be real clear, there's -, there's -, there's no criticism over what he's wanting to do - it's just the location. It's purely the location and where -, what we object to and what we feel is, is not appropriate for this location. And I will, I will save a lot of my comments, really, to the end after you've heard the testimony because, again, I think you all understand the issues and there's no need for me to belabor it, so I'm not gonna go into a long opening statement even though I could. And with that said, I would like to bring up our first witness, Jon Day, on real estate issues.

Mr. Day: Good evening, my name is Jon Day. I'm a licensed real estate broker here in Greenville; owner of real estate company, Jon Day & Associates. I've been in the real estate business since about 1975; graduated from East Carolina University, sold real estate for a number of years and then I spent about sixteen or seventeen years as a licensed real estate appraiser. I retired from that real estate appraisal business merely because I could make a little more money as a real estate broker. I opened up my own commercial real estate company in 1997 and since 1997 I've been actively engaged in the sale, leasing and development of residential and commercial properties throughout Greenville and eastern North Carolina.

Attorney Hopf: Just, Mr. Day, have you testified in state and, or, federal court at -, on real estate issues?

Mr. Day: Yes, I have. State -, testified in state and federal court on real estate evaluation matters when I was a licensed real estate appraiser.

Attorney Hopf: And, and where you -, and how about brokerage issues, general marketing, and, and brokerage of real estate.

Mr. Day: Yes; many of the opinions of value you've given involve understanding the marketability and the marketing of properties.

Attorney Hopf: And were you accepted as an expert in those real estate issues by those courts?

Mr. Day: Yes, yes I was.

Attorney Hopf: And, and were, were you asked to undertake an investigation and analysis in regard to the application and request for a special use permit by Dr. Ahmed and specifically with regard to impact on the neighborhood surrounding this property?

Mr. Day: Yes I was at the request of one of the property owners that lives on St. Andrews Drive. I was requested to become involved in the matter to render an opinion as to the effect that the proposed use would have on the adjacent residential properties. I subsequently went out and inspected the neighborhood in the latter part of June and studied the neighborhood, made an investigation into the neighborhood. That investigation

revealed some stately homes along Memorial Drive. Most of those are larger homes on larger lots. Located on St. Andrews Drive, Fairlane Drive and Greenbriar Drive were smaller homes on smaller lots. That neighborhood appeared to be home generally well maintained, homes appeared to be predominantly owner-occupied and I did not observe any adverse factors in my preliminary investigation any adverse factors within the neighborhood.

Attorney Hopf: Okay, and you've been in the real estate business for 36 years, correct? Since 1975?

Mr. Day: Yeah, a little longer than I would like, but yeah, somewhere...

Attorney Hopf: Some would say you're getting old - alright, and all that's been in, in Greenville, Pitt County?

Mr. Day: In the Greenville, Pitt County area.

Attorney Hopf: And did you reach conclusions with regard to this neighborhood and the impact by the proposed use?

Mr. Day: Yes.

Attorney Hopf: (unintelligible) you just tell the Board what those are.

Mr. Day: After reviewing the Special Use Permit that was submitted for this case and after studying all of the details regarding the proposed use, the laboratory, the inflow of chemicals, the outflow of chemicals, and the timing and the physical structure that's involved, it is my opinion as a licensed real estate broker that the proposed medical laboratory use would adversely impact residential properties in the surrounding area. I think it primarily would have an impact on the marketability of those homes. What happens is people, when they look at homes, they investigate the surrounding land use patterns, they talk to neighbors, talk to real estate brokers like myself, and they try to become informed on what is in the neighborhood. Greenville is a small town and generally information get's circulated pretty quickly, and I think that a potential buyer would either be scared away or would look negatively at the neighborhood if the proposed use were to be open and operating as has been proposed in the special use permit. I based that primarily on several factors:

- 1.) Is that a medical laboratory is not a normal use in a residential neighborhood. You typically don't see them where residential neighborhoods are developed; they don't put laboratories or medical laboratories in residential neighborhoods.
- 2.) Would be conformity, is a theory in real estate appraisal, in real estate brokerage evaluations that the highest rate of appreciation occurs when homes conform to the same use. So when you have residential structures that are residential in nature, that tends to breed the highest rate of appreciation. If you stick alternative uses into a residential neighborhood, that tends to slow down, or not have as high of a rate of appreciation.

Attorney Hopf: Does the City of Greenville have zoning classifications for medical uses?

Mr. Day: Yes it does. Medical Office is a zoning classification that you would see a medical laboratory typically located in.

Attorney Hopf: A medical district? Do you have a medical district under zoning?

Mr. Day: I have a medical district that's out in and around the hospital area.

Attorney Hopf: And are you personally familiar in your line of work with leasable space in the medical district to whether there is any available?

Mr. Day: Yeah, there's numerous medical office spaces anywhere from 800 sq. ft. up to 5-, 6-, 10,000 sq. ft. that's available for lease, you know, in the local marketplace that's zoned appropriately and that's set up for use for medical space or medical laboratories.

Attorney Hopf: And in setup, you talk about being setup, is it specifically designed for medical uses in terms of how it's built, or, or outfitted for venting that kind of thing - are you familiar with that?

Mr. Day: Yeah the, the general floors or the construction of it would be VCT commercial flooring which is a commercial tile that's water resistant so if there's a spillage it can be mopped up. Those buildings are generally designed to have customers or patients come in the front and then there usually is rear access that's set up for truck deliveries and truck exiting and so that the material flow can be handled so it generally doesn't interact with patients and people coming and going from the offices.

Attorney Hopf: And then there also venting hoods and other safety precautions that are taken in those spaces specifically for medical waste type issues?

Mr. Day: Yes, some of those uses have details of construction that are required under code and are built in designed into those buildings.

Attorney Hopf: Thank you, that's all I have.

Attorney Dixon: Jon, you and I have worked together on a lot of matters before Planning & Zoning and City Council, correct?

Mr. Day: Yes, I enjoy working with you Phil - ,

Attorney Dixon: Me too.

Mr. Day: -you're a good, good attorney to work for.

Attorney Dixon: Did I understand you testify that you're no longer a licensed real estate appraiser?

Mr. Day: I turned my real estate appraisal license in sometime around 2001, 2002.

Attorney Dixon: So you are no longer a licensed real estate-?

Mr. Day: A licensed real estate broker.

Attorney Dixon: Okay, but not an appraiser?

Mr. Day: That's correct.

Attorney Dixon: Okay, do you know what the going rate is for the rental of laboratory space is here?

Mr. Day: Yeah, anywhere from \$12 - \$14/sq. ft. Maybe the high end space might go \$16-,

Attorney Dixon: For a lay person like myself, if you were renting an office like Dr. Ahmed is trying to maintain at his house, or establish at his home, about what would that go for each month - do you have any idea?

Mr. Day: I think the square footage was a hundred-,

Attorney Dixon: Twelve by thirteen.

Mr. Day: Twelve or so? 130, 150 sq. ft. at \$12/sq. ft, probably \$1500, \$2000 a year.

Attorney Dixon: A year?

Mr. Day: Yeah.

Attorney Dixon: That's all I have, thank you.

Chairman Shook: Any questions from the Board?

Ms. Ferris: Can I get a quick clarification that Mr. Cuomo spoke to the fact that there would be no depreciation of the value of the home, but you're saying there would be a decrease in the marketability of the home, if not the value? Is that... essentially sum it up a little bit?

Mr. Day: That would sum it up. I think that a decrease in the marketability in this market would result in a decrease in the value. I'm not an expert in valuation; I'm a real estate broker so I have certain limitations on how I can and can't testify, but what I-, my primarily-, primary concern is with a use that is not normal and typical for residential use, it would scare off potential buyers. They would, in all likelihood, be-, go to other neighborhoods where they did not have this feature because they would view the potential negative impact that this use may have.

Ms. Ferris: Okay, thank you.

Ms. Safford-White: Jon? I'm sorry, I just have a question.

Mr. Day: Sure.

Ms. Safford-White: I just want to be sure that I understand, so as far as the neighborhood is concerned, there was talk that the neighborhood itself is on a downward slope at this point ... can you...?

Mr. Day: My investigation did not reveal the neighborhood in a downward decline. I think our overall real estate market has suffered due to the overall economy, but the homes I looked at were very well maintained. The homes along Memorial Drive are considered very desirable. Whenever I work with a buyer that rides in here from Canada or out of the area, they ride through Memorial Drive and they say, "Wow, this is a really nice neighborhood." Their larger homes are set back from the road, so I think it's overall desirable. The

neighborhood behind it has smaller homes, but in my investigation, I don't think it's in a state of decline. I think it's gone through some owners that originally owned them, they sold them, some younger people have bought them and maintained them. Some of those homes have not been purchased and maintained, but I'd say that's a normal growth cycle; I didn't see a neighborhood in decline.

Ms. Safford-White: Thank you.

Attorney Hopf: Next, I'd like to call Jeff Rorer ... talk about some of the chemistry issues. *Pause* State your name for the Board.

Mr. Rorer: My name is Jeff Rorer. A little background about myself, I have both a ma-, Master's' Degree in Chemistry and a Bachelors Degree in Chemistry and a Graduate Certificate in Security Studies. I have publications in organic chemistry and in explosive detection under the Security Studies. I've worked at DSM Pharmaceuticals and a processed developmental lab, and while working at DSM Pharmaceuticals joined the Emergency Response Team. With the-, under the Emergency Response Team, we have HAZMAT, we have fire, we have confined space rescue and medical. I was certified in Industrial Fire Brigade and as a HAZMAT technician.

Attorney Hopf: And you have-, have you also published a manual for HAZMAT incidences at-, while you were at DSM?

Mr. Rorer: Correct, as one of the things from the big bromine spill was to come up with better planning and I wrote a manual that included over 108 chemicals on DSM can respond to those different instances.

Attorney Hopf: And what do you mean by Security Studies?

Mr. Rorer: The publication I have was dealing with the chemistry side and from DSM, I was laid off and looking for other areas and so I wanted to complement that with the policy side of security studies.

Attorney Hopf: Security studies involve terrorism?

Mr. Rorer: Terrorism, yes.

Attorney Hopf: And chemicals, with your background, chemicals specifically used in terrorism, domestic terrorism?

Mr. Rorer: We had one class specifically on domestic terrorism, and it included the law enforcement side.

Attorney Hopf: Okay, okay, you indicated you're a certified HAZMAT technician?

Mr. Rorer: While working at DSM-,

Attorney Hopf: While you were at DSM, okay.

Mr. Rorer: After leaving DSM, we have to make, basically, one entry, or we'd have to train once a year; and since 2000-, December 2003, I've not been certified.

Attorney Hopf: Okay, and you're an instructor at East Carolina and Pitt Community?

Mr. Rorer: I am part time at East Carolina University and full time at Pitt Community College.

Attorney Hopf: Okay, alright. Were you asked to review the application by Dr. Ahmed, specifically with regard to the chemical issues?

Mr. Rorer: Correct. Ann brought this list by and I looked at-, looked at 'em. Some of them are pretty generic but some of there were ...-,

Attorney Hopf: Okay and the list you are talking about is Table 1, which I think was from Dr. Ahmed's application?

Mr. Rorer: That is correct.

Attorney Hopf: Alright, if you would, just tell the Board your conclusion; what you did and what you're conclusions are.

Mr. Rorer: Okay, several things; some of these chemicals, just looking at the use here, just, again, starting at the top, 1 mL once per week, but 1/2 mL per month. First, that 3.21 mL just seemed really, really, really small and so I'm just concerned about the, the calculation of that amount; I was uncertain of that. Some of these chemicals are gonna come in on a tractor trailer. I've ordered them: I've seen them come to a residence on a tractor trailer. For instance, the, the ether; 250 mL, .5 mL once per month or .01 mL per month – I don't know if that's a typo there, but ether, 250 mL, at this small amount, he's gonna have that bottle for a very long time before he uses that entire bottle. Ether, over a period of time, will form peroxides; peroxides go boom – they're explosive. You'll start to see little crystals start to form right as you open the bottle and that friction can actually detonate it. We're talking about years. Several solvents up here – yes, you can go to Lowes and probably buy some of these solvents. I've heard of the, the acetic acid as far as the vinegar – vinegar is 5% acetic acid. Typically, you're buying 80%, 90%, 100% glacial acetic acid, so I'm not sure what concentrations he's buying. The hydrochloric acid, I've heard that mentioned; listening to what's been said tonight, probably .1 molar- fairly dilute solution there. The acrylamide-that has the potential to polymerize. While working at DSM, we had a lab that disposed of some items that could polymerize in a small container and because of that mix, it created a very exothermic reaction; produced a lot of heat. The plastic that it was in was enough- I mean, this was a small 2-gallon, 3-gallon container- actually started to, to, partially melt and swell. So you can have some of these chemicals start to react to each other that you normally wouldn't expect to react.

Attorney Hopf: Tell me what you mean by "polymerize".

Mr. Rorer: Polymerize is this uncontrolled reaction where it will continue to basically add to itself and you start with a real small piece, a building block and you start building things together. That reaction can produce a lot of heat, especially if it's uncontrolled.

Attorney Hopf: Do you have any opinion, based on your-, well, let me back up. Your, your con-, you're expressing concern about the use and the, the, amount of chemicals being indicated here on this application, is that right?

Mr. Rorer: I'm concerned about the storage, the bringing the chemicals in, storing the chemicals, using the chemicals. He's talking about very small amounts, but he's opening the bottle, closing them; you got fumes being produced, I've yet to hear anything about a fume hood being utilized.

Attorney Hopf: Alright, so there are-, there's issues. Are there issues with regard to short-term storage in terms of chemical? Some of these chemicals just don't mix with each other, is that right?

Mr. Rorer: You can have some unexpected reactions, that's correct. Even with chemists in a chemical industrial setting will have unexpected reactions, yes.

Attorney Hopf: That's the polymerization, you talked about?

Mr. Rorer: That's just one that can occur.

Attorney: Okay, alright. And how about, do you have concerns with the long-term storage in terms of stability in chemicals?

Mr. Rorer: Very much so. Especially again with the, the, diethyl ether.

Attorney Hopf: Okay, alright, are you familiar with Hawley's Chemical Dictionary?

Mr. Rorer: We never used it.

Attorney Hopf: Okay, alright, have you had a chance to review these, and you heard – I'm not gonna go through it again – but you heard me talk to Mr. Denton about some of the hazards associated with these chemicals; is there any of that, that you disagreed with or-,

Mr. Rorer: I agreed with everything you said.

Attorney Hopf: Okay, in terms of the hazards and the risks?

Mr. Rorer: There are hazards; there are risks, without a doubt.

Attorney Hopf: Alright, anything else you would like the Board to consider?

Mr. Rorer: Just doing a quick check, just thinking of how this, and I'm not saying Dr. Ahmed would run an illicit meth lab, but if you look at those as, as, an example, you start looking at some of these chemicals on this list and you start to see a similarity, you start to see that some of these other chemicals that are found at a house, a house, that then has to have the SBI brought in to decontaminate the area. Some of those same chemicals are on here, so I'm not sure how anyone could say that these chemicals here are not hazardous. They are hazardous.

Attorney Hopf: Did you prepare a document to the Board of Adjustment, and this is a copy of that, tonight?

Mr. Rorer: Yes.

Attorney Hopf: Which I would like permission to hand it to the clerk.

Mr. Rorer: Sure, sure.

Attorney Dixon: Is there a copy for me?

Attorney Hopf: I might could squeeze one out for you.

Chairman Shook: One question, you mentioned that these materials come in on a tractor trailer. Can anybody, any lay person order tho-, these types of chemicals in that type of quantity? What-?

Mr. Rorer: Absolutely not.

Chairman Shook: Okay, how do you qualify to do that?

Mr. Rorer: What you're looking at is consumer product versus an industrial product. As a consumer, I can go out and buy gasoline, or I can buy finger nail polish, or the, the, which is about 80% acetone. The windshield wiper fluid, we can go purchase, but those are a consumer product. Here we're talking about an industrial product which is a little bit different. I could not order and have something sent to my house, aft-, especially after 9/11.

Chairman Shook: How would he get the materials that are on this list to perform the tests or perform the services he's talking about? How, how, is he gonna obtain them, in your opinion?

Mr. Rorer: If you called up Sigma Aldrich and wanted to order some, they would have some questions for you. I'm not sure if, if, to answer truthfully, they would actually ship to him.

Chairman Shook: Mm-hmm.

Mr. Rorer: With having a grant that-, it would be up to them if they want to accept the liability.

Chairman Shook: Mm-hmm. Where else could he obtain the materials to perform these same type tests?

Mr. Rorer: You'd have to go through a Sigma Aldrich, Fisher Scientific, some chemical warehouse in most cases. And if he wanted acetic acid, I'm not sure what, what, concentration he wanted, but if it was more than about 5%, you couldn't go to the grocery store and buy it.

Chairman Shook: So a lot of these materials that he said, are not available in the retails arena, is that correct?

Mr. Rorer: Toluene, you could probably go to Lowes and buy; Hydrochloric acid, you might be able to purchase at Lowes; and again, I don't know what concentration he wants to use-,

Chairman Shook: Sure, sure.

Mr. Rorer: I'm just saying, typically, when I buy stuff for my lab, we're buying concentrated 12 molar. It's fairly, fairly, strong hydrochloric acid. I'm not sure, just listening to the testimony, .1, .01, based on his numbers, but again I'm thinking that the numbers he said, again, I haven't talked with him, is, he's talking about, the waste aspect. And I just want to draw focus on the actual chemical storage, what's gonna be in that locked

container. You know, he's generating only 3.2, according to his numbers, 3.21 mL per month; that's, that's, awful small-,

Chairman Shook: Can you buy it in that quantity? To your knowledge?

Mr. Rorer: Some of these are so common that, that, that, the amounts listed may be the smallest amount possible.

Chairman Shook: Mm-hmm.

Mr. Rorer: But if you add up just the liquids here, you're looking at almost a gallon of chemicals.

Chairman Shook: Mm-hmm.

Mr. Rorer: And again, I keep focusing on that 3.21 mL.

Chairman Shook: Okay, alright. Any other questions?

Attorney Dixon: As a matter of fact, you really don't know what quantity Dr. Ahmed has.

Mr. Rorer: Right, that's correct.

Attorney Dixon: And your testimony is that you're not sure what concentration he's buying.

Mr. Rorer: All I can say is what's typical.

Attorney Dixon: "Probably", you say, "intentionally" you say, and did I hear you correct to say that there are similarities to an illicit meth lab by what he has there?

Mr. Rorer: What I'm, what I'm, saying is that if you look at the, the, chemicals that a law enforcement agency would be called on to clean up, some of those chemicals are listed here. I'm not implying anything, whatsoever-

Attorney Dixon: That's what you've said, "similarities to an illicit meth lab".

Mr. Rorer: That's-, the chemicals, yes. Such as toluene-,

Attorney Dixon: Well, you don't really-,

Mr. Rorer: -and hydrochloric acid and they would probably have a use for acetone. Again, I don't have that list with me.

Attorney Dixon: But your testimony was, you're not sure what quantities he would have, and you don't understand his numbers-,

Mr. Rorer: The quantities are listed here-,

Attorney Dixon: (unintelligible) is that correct?

Mr. Rorer: The quantities are listed here, so I'm going on the information provided here.

Attorney Dixon: And you don't know whether someone will ship it to him or not. They would ask questions, but they still might ship it to him and he has a track record over a long period of time of having dealt with these. So-,

Mr. Rorer: It would be up to the manufacturer to ship or not ship.

Attorney Dixon: But the matter of fact is you don't know.

Mr. Rorer: It'll be up to the manufacturer to ship or not ship.

Attorney Dixon: Okay, but you don't know what concentration he has or uses or has obtained.

Mr. Rorer: That is correct. I have not looked at the lab.

Attorney Dixon: Okay, thank you.

Chairman Shook: Any other questions?

Ms. Ferris: We have a photo included in Mr. Cuomo's inspection; would we be able to show this to Mr. Rorer and see if he feels that this facility is appropriate for the testing that he would like to perform.

Chairman Shook: I'm sure you could ask him. That was in the Board packet.

Mr. Rorer: The containers, for sure I've seen that-, the container's actually do appear appropriate for chemical storage. The only concern I would have is keeping the chemicals separate so if there was a spill, if a container did break, they would not mix. So you'd need secondary containment and keeping them separate. The other concern would be the availability of a fume hood if he has some of these chemicals.

Ms. Ferris: That's kind of what I wanted to show you if I may.

Chairman Shook: While she's doing that, Mr. Denton testified that he wouldn't mind if this was beside his house, what's your opinion on that?

Mr. Rorer: I wouldn't want it in my neighborhood for sure. I'm not trying to sell my house, so ... I would not have an immediate interest. *Looking at photo* I cannot see for sure... I can't tell if these are fume hoods on the side or not. And if they are, where do they lead to?

Ms. Ferris: So your definition of a fume hood in this case, what he would need to be using these chemicals, would be -,

Mr. Rorer: For his own protection.

Ms. Ferris: How does a fume hood work? What, what, would need to be installed to qualify as a fume hood?

Mr. Rorer: Okay, you have a containment area so if there was an explosion, you would, you would, have a sash that comes down to kind of protect the user. You would have airflow from the outside that would come through that room and evacuate all... you would have your chemical in the hood and so the airflow would come through and remove that, those fumes to the outside.

Ms. Ferris: So kind of like a dryer vent would have to vent to the outside a fume hood would as well.

Mr. Rorer: That's correct, that's correct.

Ms. Ferris: Thank you.

Attorney Hopf: At, at this point I believe, there are some residents that would like to come up if that's your pleasure of the Board.

Chairman Shook: Mm-hmm, okay.

Attorney Hopf: I will just ask them to come up one at a time to introduce themselves and give you their comments.

Chairman Shook: Okay. And I'll remind you that when you do come forward, please state your name for the record, thank you.

Mr. Huggins: Mr. Chairman, other members of the Board, my name is Rufus Huggins. It's a pleasure to be before you this afternoon. I served 12 years on the Greenville City Council so I'm fully aware of the task you have before you. I live in this area and I have some difference of opinion than what someone has portrayed this area as. It's a very beautiful neighborhood; there are only three homes in that area that's up for sale. The area that was presented to you, approximately 2, 3, miles from the general area that's located to that. I'm retired; my wife is retired also. We moved in this neighborhood because of the closeness of the neighborhood, the very diversified people that live in this area. If this place were here today, I would not buy that home; I want you to know that. The City position has been well presented and that's the position that I support. The City Attorney stated the reason that they were against this. The OSHA has also given reason that they don't support this. The biological tab-, the biological lab in the neighborhood is not going to present anything that's negative against it being in that neighborhood and that's why I'm here, and these people that are from that area, that's why they're here, to present the other side because we live there. We all feel that there's a need for this. But we do not feel that this is where you locate this. I would not support this in any neighborhood area. But for the people that live there, because they are the ones that have to address this all day long. We have a lot of children in that area, who walk throughout that area all day long and they're playing. And large trucks coming in this area is a hazard; I don't see them entering this area from Memorial Drive and coming in and also coming out of that. That presents a hazard to this area also. And I believe in integrity of the neighborhood, and I believe that is what we should support. It bothers me that we really have no control over what can be done versus what an individual said that he is going to do. They could be two entirely different things and with this not being what it is projected to be, then the neighborhood is the one that's going to suffer for that. *Pause* Just looking at some of my notes here. This would present an environmental hazard in this neighborhood also that I know people with the environmental agency should be here to represent their position, but they're not here. But, it, it, does that. So I'm asking that you look at the neighborhood, look at what the neighborhood really consists of – not a

decayed neighborhood that homes are for sale. There are three homes in this entire neighborhood, and it's a very large neighborhood, that are for sale. It's way below the market area, and the homes in this area are very high up in the \$200,000 range for those homes in that area. And, and an investment there, investment by the people, and the majority of people over in that area are home owners. There's very, very few renters over in this area, and we're trying to maintain it that way. And I thank you for the opportunity to come before you and if I may, I would just like to ask the people that are here, supporting this position, to stand. Can I do that Mr. Chairman?

Chairman Shook: Sure.

Mr. Huggins: If the ones here, supporting this, will you please stand.

Mr. Elmore: You mean, against it?

Mr. Huggins: For it-, against it being there. *Pause* I really thank you all for the opportunity.

Chairman Shook: Anybody else wish to speak in opposition?

Attorney Dixon: I have no questions.

Mr. Elmore: I'm John Elmore, 2907 South Memorial. That's right beside the Albi & Dunn House, Mr. Dixon, I think you know where that is. Our home was built in 1957 by the Flanagan family; it's a really nice home. We raised four kids there and I hope one day to have grandchildren running around on that lot. Our house has been on the Tour of Homes for three different times, in fact, for fun-, for different fundraisers here in Greenville. And last week, I was called from volunteers, the Ronald McDonald House, wanting to do the grounds, you know, touring the grounds for a fundraiser. So I just take serious exception with the declining neighborhood theory. The house that the appraiser referred to as being on the market 1,000 days and being withdrawn, that's the Buddy Holt House and that's been in their family for a long time, and I talked with Buddy about it, and the reason it was taken off the market is that all the realtors that showed it, said it was, it just needed some work on the inside because it is an older home, and that large homes are just not selling anywhere in Greenville and this is not the time to have it on the market, so Buddy took it off. The appraiser also talked about talking to Mr. Granitz about what he was going to do with that empty lot that he tore down the house. Since he quoted someone who's not here, I wanted to quote someone who is also not here that I talked with and that's Mike Aldridge. I-

Attorney Dixon: I, I, object your Honor (unintelligible) testimony of people that's not here.

Mr. Elmore: What about your appraiser?

Attorney Dixon: (unintelligible)

Mr. Elmore: He quoted Mr. Granitz.

Attorney Dixon: My appraiser was here to be cross examined. (unintelligible)

Mr. Elmore: Well, I understand that.

Attorney Dixon: Well, I think it's the ruling of the Chair. (Unintelligible)

Mr. Elmore: Okay, fine; I understand that, but I just thought since Mr. Granitz was quoted, I would quote Mike Aldridge. And, and, he said that-

Attorney Dixon: I-I-I object and I'd like a ruling on that point.

Chairman Shook: Mr. Little?

Attorney Hopf: Again, if I might, Mr. Little, this is, this has happened before tonight. We didn't object because we wanted to get everything out in front of the Board, and I think that in fairness, Mr. Elmore ought to be able to do the same thing that was done by the applicant.

Chairman Shook: Mr. Little?

Attorney Little: Generally, as the Board knows, that hearsay evidence is not admissible, nor can it be considered as party or fact finding. If you found that there was testimony earlier tonight that fell into this category, even without an objection or exception to it, the Board still has the ultimate decision whether or not it was factual or material, competent, substantial evidence as part of the decision making process. The Board can also find that this may be what, what he's going to propose to speak about may be an exception to the hearsay rule, such as not being offered to the truth of the matter, or it may be probably what he has in his hand to present to himself. He may present it. So again, the Board has to decide is it a factual basis, is it material, is it competent, is it substantial. At the end, when, the, the, parties have finished, because of the complexity of this particular case, what I'll do is I'll provide some additional guides and instructions as you go back through it and before your deliberations, we talk about what the witnesses are. It's up to you whether or not you want to listen and it will be up to you at some point whether or not you accept any of the testimony that is provided.

Chairman Shook: Thank you.

Mr. Elmore: Mike Aldridge told me that if, if he were showing this house, or he had one of his agents showing this house, and they knew that there was a testing lab there or saw a sign, saw a disposal truck leaving or knew that it was a testing lab, it would adversely affect the salability of that home. The other point that I wanted to bring up was, I'm-, Mr. Dixon has really put on a, a wonderful presentation, in depth, and I know that it cost a lot of money for Dr. Ahmed. And I just find it very hard to believe that he would go to all this effort to do this, and all this expense for a few hours a week for a four thousand dollar business. I mean, once he got this special use permit, I just see nothing to stop him from getting more research grants ... any business wants to grow, why would he keep it small? He bought a \$300,000 house and he's got plenty of room to expand, I mean, he's just in a little tiny spot. It just doesn't make any sense that he would keep it this small and spend all this money, all this effort to... you know, just have this little tiny business. Thank you, that's all I've got.

Chairman Shook: Any rebuttal?

Attorney Dixon: Is Mr. Hopf here tonight for free?

Mr. Elmore: I'm sorry?

Attorney Dixon: Is Mr. Hopf here tonight for free? (Unintelligible) hire him to represent you in this case?

Mr. Elmore: Absolutely.

Attorney Dixon: Okay, no further questions.

Mr. Elmore: Bu-, may I address?

Attorney Dixon: No. (Unintelligible) unless he has further questions on redirect.

Attorney Hopf: You may complete your answer.

Mr. Elmore: A lot of people are paying Mr. Hopf; Mr. Ahmed is the only one paying you is my (unintelligible).

Attorney Dixon: You don't have any idea how much Mr. Ahmed is paying me.

Mr. Elmore: No I don't.

Chairman Shook: Alright, anybody else, anybody else to speak in opposition?

Mr. Hutchens: Just a quick comment Mr. Chairman. We have heard a lot of opinions, a lot of feelings... looking for anything new, anything different, in addition to what we've already heard.

Mr. Hemaness: My name is Mr. Hemaness. This is about the third or fourth time that I come over here. I know Mr. Ahmed's house very well because number one, it's the dirtiest yard in the neighborhood. They talk about a neighborhood deteriorating, they are making the neighborhood deteriorate - between him and the fellow that live across the street; he got about twenty cars parked in his yard. They the ones creating the problem; it's not us, we've been here (unintelligible) years, retired from New York, used our savings, to move in that neighborhood - a nice neighborhood with beautiful homes. There are no houses that have been abandoned over there. For sale? Yes, two or three. Well everything is changing in this country; people are dying in their houses. They are not moving and selling, they are dying in their houses. We don't need neighbors like Mr. Ahmed in our neighborhood. We need people that take care about their properties; he doesn't. He got a bunch of dead trees, grass about 3 ft. high in his yard. His property is deteriorating; he don't take care of nothing. All he do is treat his house the way he treats his self. So, I want you to deny him that. If you don't deny for him, we gonna make it hard for him. We don't need him in this neighborhood. We can't stand that man around there, thank you very much.

Attorney Dixon: I-I have questions.

Mr. Hemaness: Yes.

Attorney Dixon: You said that (unintelligible).

Mr. Hemaness: No, I said across the street from Mr. Ahmed's house.

Attorney Dixon: (Unintelligible) Mr. Ahmed, the man who sells cars across the street has ten cars.

Mr. Hemaness: No, the guy across the street from Mr. Ahmed's house got about ten cars parked in there. He's one of the (unintelligible) in that (unintelligible) there.

Attorney Dixon: (Unintelligible)

Mr. Hemaness: Huh?

Attorney Dixon: Does that have anything to do with Dr. Ahmed?

Mr. Hemaness: Well, you talking about a bad neighborhood that is deteriorated - he contribute, he don't clean his yard-,

Attorney Little: (Unintelligible) *he advises Attorney Dixon to stand beside the microphone.

Attorney Dixon: You testified that there were cars parked in the yard, but-,

Mr. Hemaness: Across the street. Across the street from Mr. Ahmed's house.

Attorney Dixon: NOT in Dr. Ahmed's yard?

Mr. Hemaness: That's exactly right.

Attorney Dixon: That's the only question I have.

Mr. Hemaness: Alright, I'd like to have Mr. Ahmed (unintelligible)

Chairman Shook: Anybody else to speak? In opposition? Anybody else to speak in opposition? *Pause* Please state your name.

Mr. Welch: Good evening. My name is Jack Welch. I live across the street from Dr. Ahmed's house; I live at 2900 South Memorial Drive.

Chairman Shook: Mr. Welch, were you sworn in?

Mr. Welch: I'm sorry?

Chairman Shook: Were you sworn in?

Mr. Welch: Yes.

Chairman Shook: Okay, thank you.

Mr. Welch: There's no question that these are hazardous materials- that's a fact. There's no question that the tissues that he will be handling are hazardous materials- blood, feces, human secretions, biopsies and so forth.

So, by the very nature, we're dealing with hazardous, biological materials that have to be disposed of in a proper fashion. We've heard testimony as to how that will, or will not, occur. It occurs to me that there should be some Environmental Protection Agency oversight to this project. We've heard nothing - maybe the willingness of the Board - of imposing something. This is a very serious OSHA problem ... could be. We heard that he works 2 out of 5 days; I would expect any business that gets started will want to grow. If, let's say, he goes to 20 personnel, he'd have to pave his whole yard in order just to take care of the parking that his employees would have. Speaking of the declining property, I think you've heard from the good folks of St. Andrews and Fairlane and certainly me, from Memorial Drive. Maybe the Pitt County Tax Assessor hasn't heard this; we certainly haven't heard it. We have a nice, very nice, quiet residential area - residential area - and that's the way we need to keep it. Thank you very much.

Chairman Shook: Any rebuttal?

Mr. Welch: Questions?

Attorney Dixon: No questions.

Chairman Shook: Alright, anybody with anything substantially different have anything to offer in opposition?

Ms. Mewborn: My name is Ann Mewborn and I live on St. Andrews Drive, just a few feet away from Ahmed's closed in breezeway that he's gonna make into a lab. And in talking with Mike Dail and the City lawyer, there is no other area, residential area, in the City of Greenville that has a biological test lab in it; and if the Board were to pass this, or grant his request, then any neighborhood, your neighborhood, any neighborhood could be subjected to a medical test lab. And we, as citizens in this City, do not feel sorry for Ahmed; if he can buy a 4,600+ sq. ft. house, we don't feel sorry for him being able to-, he should be able to rent a small amount of lab space in a zoned, a properly zoned, medical facility to do his research. So I'm begging you please not to grant this request because if you open this up to his medical research, then the next person coming could say, "Well he has a grant-, I mean, permission to do his research, I wanna have a, a, grant to prove my research, so we're not only trying to protect our neighborhood, but every residential neighborhood in the City of Greenville. Thank you.

Chairman Shook: Any questions?

Ms. Safford-White: I have a question.

Attorney Dixon: And I have a question, too. Ma'am, you say you live a few feet away?

Ms. Mewborn: Yes, yes, I paced it off. My corner of my lot is about 200 ft. from his-,

Attorney Dixon: 200 ft - not a few feet?

Ms. Mewborn: 200-,

Attorney Dixon: A few is normally two- ,

Ms. Mewborn: Well it depends on who you're talking to.

Attorney Dixon: Well, we're talking about 200 ft. instead of 2 ft.

Ms. Mewborn: Right, about 200 ft. from his breezeway.

Attorney Dixon: Thank you.

Chairman Shook: Any other questions?

Ms. Safford-White: I have a question.

Chairman Shook: Ms. Safford-White?

Ms. Mewborn: Excuse me ... I'm sorry.

Ms. Safford-White: Have you talked with Dr. Ahmed? If you're that close to him?

Ms. Mewborn: I felt that I heard his opinion when we sat in here on April 23, I think it was? When we heard him present his case for about an hour-, I don't know how long it was; some, most of you were all here. Plus, he, Phil Dixon, wrote Jim Hopf a letter and we all received copies of that where we went-, I, I made copies and we passed it out in the neighborhood, so we heard his argument again. We know that these are hazardous chemicals; we know he's dealing with hazardous waste materials with the stool sample and the blood samples. And surely if he's doing cancer research, those stool samples and blood samples are going to have to have cancer cells in them in order for him to test.

Mr. Hutchens: Ma'am, we've heard all of this before-,

Ms. Mewborn: Okay, sorry.

Chairman Shook: Okay, any other questions?

Ms. Mewborn: Thank you.

Chairman Shook: Anybody else with anything materially new? Or specifically different from what we've heard this evening? *Pause* I need you to state your name, and have you been sworn?

Ms. Maye: Yes, Duchess Maye. I just think it's interesting that the homes in this neighborhood have been referred to by their previous owners. So, that kind of indicates the significance of this neighborhood, that there are historical references to the homes on Memorial Drive. This is a neighborhood and the residents there, we want to keep it a neighborhood, period. That's it, that's all I got to say.

Chairman Shook: Okay, any questions, rebuttal? Anybody else to speak in opposition with anything materially new?

Ms. Elmore: I haven't been sworn.

Chairman Shook: Okay, state your name.

Mr. Ewen: She hasn't been sworn.

Chairman Shook: I know, but she-, you can still state your name.

Secretary: Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. Elmore: I do.

Secretary: Sign in here and put your signature on that side.

Ms. Elmore: I'm Jennifer Elmore, I'm John Elmore's wife and we've lived in Greenville since 1989. John and I went to North Carolina college, we paid back student loans, we opened a small business in Greenville, we put four kids through public school. We bought that house with every penny we've made. We want to keep it a neighborhood; we don't want to see the value of our home go down. We love all these neighbors; we go catch each other's dogs, we take cookies to each other. We are a neighborhood and this is just one step in a decline and I just beg you to keep it a neighborhood.

Chairman Shook: Any questions? Anybody here in-, to speak in opposition? Seeing none, wish to summarize, we get-, we've had rebuttals along the way-,

Attorney Little: What would happen is if the applicant a rebuttal, a short rebuttal, he may present witness in rebuttal and then the Board can give the two counsel, one for the applicant, one for those in opposition, a short closing to summarize their position. And when that gets done, then I'll-, you'll close the public hearing portion and then I'll provide the instruction for you.

Chairman Shook: Sure. Mr. Dixon?

Mr. Hutchens: I'd like to emphasize layman short presentation rather than the lawyer short presentation.

Attorney Dixon: John, I think I'm entitled to make whatever presentation is appropriate for my client, but I appreciate your concerns. I'm going-, I was trying to approach Jim Hopf to shorten the process. Jim, I simply wanted to present as a rebuttal, that we do have a fume hood and that Dr. Ahmed is 65 years of age and is retired, and is just doing this to supplement his income in retirement. That's his only testimony and if you'll stipulate that would be his testimony, I won't even call.

Attorney Hopf: (Unintelligible)

Attorney Dixon: In rebuttal. And I have no other evidence.

Chairman Shook: Okay. And Mr. Dail, what is the City staff recommendation?

Mr. Dail: Staff actually recommends denial of the request as we did last time. Based on the evidence provided that proves use does not meet the standards required to qualify for a home-occupation.

Chairman Shook: Okay, I now move to close the public hearing. Mr. Little?

Attorney Little: I believe that both counsels may want to make a summary presentation, as we would call that a closing argument, and I would ask them, because of the time frame, if they elect to do that – they're not required to – it would be very short.

Chairman Shook: Okay, either one of you wish to do that? Mr. Dixon?

Attorney Dixon: Of course I do, but I will keep it very short. You know, when Dr. Ahmed came to me and I began to look into the matter, I recognized there were some factors that I don't think you had a chance to consider last time. I thought he had done a poor job of making a presentation to you and I hope tonight that we've at least given you a chance to understand better what he hopes to do. He is retired; he is simply trying to supplement his income in a modest way. He's a remarkable man, a very interesting man to get to know because he's done some incredible research and I don't think he wants to abandon that research and I think he found a house that's near his son, a lovely home. He doesn't want it to depreciate in value either, it's a very nice home, my goodness, and it's a very nice area. I think though, to suggest that it's not a declining state along Memorial Drive would be foolish because there has been decline in that area. That's not to say that there's not lovely homes along there and lovely homes in the adjoining area. Our point is simply that what he proposes to do is such a small thing and such a small component of what his consulting work is that it should be allowed, and it doesn't adversely affect anyone. And I thought the testimony by Paul Cuomo, who-, was compelling. And I think he did a great job of looking into it and giving you some examples and giving you facts in which you make your decision. I recognize the emotion of this, I mean, I understand; and in fact, I would suggest to you that the hysteria, the knee-jerk reaction is what caused this to be turned down the first time, and it may cause it to be turned down a second time, but in looking at what is really fair, and what is really reasonable, you know, you've heard testimony from the person who wrote the letter that probably caused you the greatest concern. I mean, Mr. Denton who comes over here says, you know, this was really an overreaction and I'm sorry if I was a part of that. He certainly didn't have to do that; I thought it was impressive and commendable that he would do so. But I do think that it's within your power to allay the concerns, some of the legitimate concerns, I think, of the neighbors by saying that there would be random inspections by the state, or random inspections by the City, and, you know, any other conditions that you consider reasonable. It's just sad if this man can't occasionally do some work at his house as part of his consulting work. I think he's gone through the right process and procedure, I think we've tried to do it in a measured, deliberate way, and quite frankly, I'm disappointed because we agreed to meet with the neighbors. I had him meet with the spokesman for the neighbors before this came to the Board of Adjustment last time. I gave information to Mr. Hopf, a man I respect a great deal, and I shared it with him, and I said, "Let's not wait to the eleventh hour to talk about this. Let's get together and maybe we can present some information to you that would change the mind of the people." I'm not sure we can overcome some of that emotion, but I do think knowledge is power. And I think that some of the things you hear tonight have to assure you, you know, that 3.1 mL of chemical or medical waste in a month's time is not a lot, and that an occasional, intermittent use of a laboratory that meets all the requirements, I mean, this is a man who's very knowledgeable about labs and how to handle this material – you saw the sample. We're not talking about something that requires a lot of time and effort, it's not a growing business, it's not - , he doesn't have any other employees; you can't qualify as a home occupation and have other employees. Whether you accept it and approve it or not, it's a reasonable request and it does meet the requirements; and I would urge you to look back last time, even without the assistance that I provided him tonight in trying to state his case, you didn't find any detriment to the neighborhood last time; you shouldn't find any detriment this time. And the staff recommendation is just wrong. I mean, I don't know how you can hear from Mr. Denton and not conclude that it's wrong for them to say this is hazardous waste and it presents a health and safety concern any more than any one of us might find

something under the kitchen sink or the bathroom sink that would be a concern or a hazard. Again, I appreciate your situation, I know how difficult it is, I appreciate your patience and I apologize again for having to bring it back before you, but I thought it was unfair for you not to hear the whole story before you made your decision, and it should be a measured, deliberate decision. And if you make the same decision, we can accept that, but I don't think it should be the same decision. I think based on new data, it should be approved. Thank you.

Ms. Ferris: And if I could ask for quiet from the audience and respect for these people who have taken their time to do their research and present this case to us, it would be appreciated.

Attorney Hopf: Thank you Mr. Chair and the Board. And I will be very brief because I think you definitely have the full picture and we rely on your judgment on that. As I've stated before, we don't-, I don't think there's any qualms with what Dr. Ahmed wants to do in the way of research and what have you, and again, I just wanna emphasize that there shouldn't be any confusion there. But it's come back to location and you know the old adage, real estate adage to the most important thing – "Location, location, location." And this just, this just isn't right in our view. You've heard some of the concerns for what he's presented with you tonight and what he's asking for, and outlining with the way of chemicals is one thing, their small, but they're still hazardous waste; they still amount to hazardous waste. So to call them small, it's kind of like, "I'm going to build some bombs in my house, but they're only going to be little ones, so you don't need to worry about it." These are hazardous waste, they clearly are. And we don't know what will happen tomorrow and we don't know what will happen next year. There's the application of the grant he did a year or so ago and he did have employees and he was, as best I can tell, working out of the lab that he had at Calvin Way with all the equipment listed in that, in that application and I'm going to submit that to you so you can look at it. But we don't know what it's going to be like tomorrow; even if you just look at what the information we have right now is, there's hazardous waste, they need to be picked up by hazardous waste companies that are certified and that have precautions. We know that he has to have explosion proof cabinets and fire proof cabinets and water hoses and fire extinguishers, and that's all for a reason. It's just not appropriate in a residential use. The staff, you've heard the findings, they determined that this did not constitute an acceptable home occupation for the reasons they specified; and I would go further with regard to the special use permit criteria, in it, just very quickly. The health and safety that the proposed use will not adversely affect the health and safety of persons working or residing in the neighborhood - you've heard testimony on that. You've heard about the hazardous chemicals, you've heard about the property values, you've heard the concerns of the chemist; I-I believe that it will adversely affect the health and safety. D). Detriment to the public welfare, the proposed use will not be detrimental to the public welfare or to the use and development of adjacent properties – again, I believe there's been evidence on that, that would support a conclusion that it will be detrimental in terms of the real estate, in terms of safety hazards and what have you. F). Injuries to properties or improvements, that the proposed use will not injure by value or otherwise adjoining or abutting properties – again, real estate issues, marketability, being able to sell it; is this appropriate for a residential use? We believe not, we believe the testimony shows that it will injure and hurt adjacent properties. And G). Nuisance or hazard, that the proposed use will not constitute a nuisance or hazard – well just, in the same way that staff found home occupation problems because of nuisance and hazard, those same things apply here with regard to the chemicals with regard to the necessary safety equipment, with regard to the trucks that will come, need to pick up the regulated bio-hazardous waste, with regard to the concerns raised by the risk of the chemicals, again, location is key. No question, cancer research - we all want that. It's just not appropriate in this location, in a residence, in a residential neighborhood. A commercial use, business use, medical use, and we just ask you to deny this request. Thank you. And I would like to submit, I think you had Jeff Rorer's letter and I just hand up the information we showed on the companies, the chemical information and his application if I might.

Chairman Shook: Absolutely. That being said, I now close the public hearing. Mr. Little?

Attorney Little: Because of the complexity of tonight, it would probably be appropriate to do some instructions that normally are not necessary. As far as the burden of proof, the burden of proof is on the applicant to establish by substantial, material, competent and relevant evidence, that the application and testimony to support the application satisfies the facts and conditions required in the ordinance for the issuance of a special use permit. If the Board is convinced that the evidence tends to support satisfaction of the requirements, then the applicant has established a prime fascia case that the applicant is entitled to the special use permit. The burden of persuasion exists on any opposition to that application. To rebut the prime fascia case of entitlement, the opposition must present material, competent and substantial evidence that the application fails to satisfy one or more of the criteria or the conditions for issuance of the special use permit. The burden of proof always remains on the applicant. And we talked about evidence; the Board will make its decision based on the determination of admissible facts and the decision must be based on material, competent and substantial evidence. What is competent evidence? It's that which-, evidence which has any tendency to make existence of any fact that is of consequence to the determination of the action, more probable or less probable than it would be without the evidence. Substantial evidence is that amount of relevant evidence that is a-, a reasonable mind might accept as adequate to support a conclusion. And material evidence is defined as that quality of evidence which tends to influence the trier of fact, which is you, because of its logical connection with the issue. Tonight we've also had testimony and questions concerning hearsay. Hearsay is generally where somebody is referring to somebody else's statements or it may be some document that they've seen that's not been presented. Hearsay is a statement other than one made by the declarant while testifying at a hearing offering evidence to prove the truth or the matter to be asserted. Hearsay is not admissible. Examples of hearsay are a declarant stating that he heard someone say; an affidavit, a letter, a memo from someone who is not present and testifying. Now a document or statement may be admissible if it is not offered for the truth of the matter, such as a police officer testifying the owner of a company called and said that, "There's a break in, go check it out.", that would not be offered for the proof of the matter and it would not be hearsay. You also had references to letters that were presented to you, there was testimony concerning those letters, so they were not necessarily offered as truth by themselves, but may corroborate what was presented to you. Opinion evidence, generally opinion statements are not admissible unless they are in the form of a qualified opinion from an expert; however, in some cases, lay witness testimony is admissible. If the person is testifying, not as an expert, but as a lay person, the lay person may testify and provide an opinion or inference about a matter that's before you, but those opinions and inferences are limited. Those facts are the witnesses had firsthand knowledge, or by direct observation. If you determine the witness meets this requirement, the testimony may be accepted and considered by you in the determination of a fact or issue before you. A person may testify as an expert if you determine the person testifying proposes sufficient technical, scientific, or other specialized knowledge that will aid the finders of fact, which is you, to understand the issue, fact or other relevant point. You must determine before you accept the expert that the person possesses that sufficient knowledge, skill, experience or training, or education to be accepted. If you accept the person as an expert, that person may give an opinion based on the facts before you, you may inquire into the facts and inferences used to form the basis of opinion. Even if the witness has provided an opinion, on the ultimate issues before you, you may not exclude the opinion on that basis alone, nor are you required to accept it on that sole basis alone. You are still required to find the facts applicable in making a decision to whether or not it meets the criteria for issuance of a special use permit. If you did not accept a particular witness who was proffered to you as an expert, you still could accept them as a lay witness if it met the criteria of a lay witness. And lastly, on the home occupation, an activity conducted for financial gain as an accessory use to a detached single family dwelling – this is out of the ordinance, Title 9, Chapter 4, Article

B, Section 9-4-22 – family dwelling unit by member of the family residing in the dwelling unit. Home occupation should meet all of the following requirements: one, shall only be permitted with detached-, only within the detached single family dwelling unit; two, shall not be permitted with any accessory building; three, shall not constitute and accessory use to the principal use; four, it shall not occupy more than 20% of the mechanically conditioned closed floor space of the dwelling unit; five, shall not employ more than one person other than those legally residing within the principal use dwelling; six, shall not be visible from any public right of way or adjacent property lines; seven, shall not involve the on-site sale of products; eight, shall not involve any outside storage related materials, parts or supplies; shall have any signage related to Article N of the code; and shall-, ten, shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling or to area residents or properties. As you go through the criteria, you take those instructions, take the testimony that you heard and go from there. Are there any questions concerning any the matters that you heard tonight or any of these instructions?

Chairman Shook: I'll go ahead and open up for-, the Board for Board discussions.

Mr. Hutchens: A little discussion Mr. Chairman. I don't think we've heard any specific testimony, any concrete testimony the amounts of chemicals or the amounts of materials being presented, actually constitute a hazard in the amounts specified by the applicant. Now, certainly we can place limitations on inspections and unannounced visit to inspections to make sure that those limitations, amounts are curtailed to. But, on the other hand, we have heard testimony on the appropriateness on this particular occupation in a neighborhood. We have heard from a real estate appraiser and from a real estate broker. Both these gentleman have implied to me that if this information were widely known, and it will be on the internet, that it could affect the marketability of homes.

Chairman Shook: Any other discussion?

Mr. Ewen: Well, would that speak to the Comprehensive Plan? The proposed use is in general conformity of the Comprehensive Land Use Plan; I mean is this, would this be something we consider, it's appropriateness in a single-residential zoned area?

Chairman Shook: I think it would more apply to conditions and specifications of the specific property more so than-, the Land Use Plan kinda governs the entire city – Mr. Little, you correct me if I'm wrong – as to the general outlay of what happens and whether things are in general compliance or non-compliance.

Attorney Little: It can determine if it is in general compliance with the Comprehensive Use Plan, if under the Table of Uses, it's a permitted use or use by special permit. If it falls, if it falls within-, and there are, if you look at the tables, there are those that have a "P", which says it's a permitted use, those that have an "S", which says it's a special use, and if it's blank, you can't do that. So that would not fall, something that did have either a "P" or an "S". In this case, to get before you tonight, it had to have had at least an "S", as a permitted use, or as a special use condition. And home occupations within the ordinances of the City are considered special use acceptable within the plan.

Chairman Shook: And speaking specifically to the Comprehensive Plan, not conditions and specifications for a specific property.

Attorney Little: That is correct.

Chairman Shook: Okay, clarification.

Attorney Little: One of the things that were brought about was the inspections question as to whether or not the Board could impose a condition. The Board can impose conditions if it gets to that point; the question would be that the City does not have the authority to mandate a state agency to inspect, so that would be a condition for you to consider.

Chairman Shook: Who's qualified at the City to perform-,

Attorney Little: The only one that would have the qualification would be the City Fire Marshall and the City Fire Marshall could only determine whether or not the storage facility meets the building fire code. The cabinet that's there ... does that-, and that cabinet did meet, as it was presented at the last hearing, since it's part of the minutes that were discussed, that storage did meet the City fire code, from that standpoint. But that would be the only thing the City ha-, would be competent to inspect since it does not have an environmental ability and state statutes would preempt anything dealing with hazardous materials, from that standpoint.

Chairman Shook: Any other comment?

Ms. Ferris: A couple quick things that I noted in the doctor's resume, which is, of course, extensive. Under... page 6, it does mention that he does supervise one support staff at his consulting firm from 2008 – present. And granted that is allowed per the home occupation, but he would not be able to employ anyone besides that one person. Also, looking at, Mr. Rorer mentioned the fume hood vents to the outside and if he's going to have these bottles open in the fume hood while he's using them, that vents these chemicals to the outside, and that's a concern for me. Also the danger of fire or explosion based on Mr. Denton's response and the explanation that the code D001, is flammable, that's four – five chemicals that are listed that he has classified as flammable – acetone, ethanol, phenol, xylene and ether.

Chairman Shook: Any other discussions?

Mr. Mullarkey: Going on that same point, I thought it was worth noting that the quantities of use were very small, however the storage of those amounts was much more significant.

Chairman Shook: Or unknown.

Mr. Mullarkey: Or unknown.

Ms. Safford-White: I just want to add on to what she was saying about- , with regards to these flammables. I think I got a better understanding at this meeting than I did the last meeting-,

Mr. Mullarkey: Absolutely.

Ms. Safford-White: -and I was... the last meeting was a little difficult, but we worked through it, but I got a true understanding on what's going on and what's happening; it was very detailed. I understand what's going on and now I have bigger issues. So, the good thing about this, it truly opened up and it was more details for me to understand what is taking place.

Mr. Mullarkey: Absolutely.

Ms. Safford-White: And those details really helped me to make the decision.

Chairman Shook: Any other discussions? *Pause* Okay, not hearing any, I will move forward to read the criteria by reference. You may call for a vote on any criteria as read. Your silence on each criteria is recognized as a vote in favor of the application.

Mr. Ewen: Are we not doing the finding of fact?

Chairman Shook: This is what we're doing.

Mr. Ewen: Oh, okay.

Chairman Shook: Conditions and Specifications. Comprehensive Plan. Health & Safety.

Ms. Ferris: Vote. Number 5 says the reasonably anticipated increase in vehicular traffic generated by the proposed use and if he's required to-, tractor trailers come in to drop off these chemicals that he orders, or these trucks have to come in to remove the wastes, that would be unreasonable, in my opinion.

Chairman Shook: Okay, so how do you vote? Yes or no?

Ms. Ferris: No. (VOTE)

Chairman Shook: Okay ...that's an explanation?

Ms. Ferris: Yes.

Mr. Ewen: Yes. (VOTE)

Chairman Shook: They can't vote.

Ms. Safford-White: So it's me? Yes. (VOTE)

Chairman Shook: Yes. (VOTE)

Mr. Hutchens: Yes. (VOTE)

Ms. Rich: Yes. (VOTE)

Mr. Mullarkey: Yes. (VOTE)

Chairman Shook: Okay, alright... we left off on...(unintelligible), Detriment to Public Welfare. Existed-, Existing Use is Detrimental. Injury to Properties or Improvements.

Mr. Ewen: Vote.

Mr. Mullarkey: Vote.

Chairman Shook: Okay, Ms. Ferris?

Ms. Safford-White: No, it was -,

Ms. Ferris: It was Mr. Ewen.

Chairman Shook: Yeah, but, well, I'm asking for a vote.

Ms. Ferris: Oh. Which one is which?

Chairman Shook: Injury to Properties or Improvements.

Ms. Ferris: Yes, but "Yes" means what? And "No" means what?

Chairman Shook: "Yes" means you're voting in favor of the application, "No" means you're voting opposed.

Ms. Ferris: Opposed, no. (VOTE)

Mr. Ewen: No. (VOTE)

Ms. Safford-White: No. (VOTE)

Chairman Shook: No. (VOTE)

Mr. Hutchens: No. (VOTE)

Ms. Rich: No. (VOTE)

Mr. Mullarkey: No. (VOTE)

Chairman Shook: Nuisance or Hazard.

Ms. Safford-White: Vote.

Chairman Shook: Starting again with Ms. Ferris.

Ms. Ferris: No. (VOTE)

Mr. Ewen: Yes. (VOTE)

Ms. Safford-White: Yes. (VOTE)

Chairman Shook: Yes. (VOTE)

Mr. Hutchens: Yes. (VOTE)

Ms. Rich: No. (VOTE)

Mr. Mullarkey: No. (VOTE)

Secretary: Can I get that vote again?

Ms. Ferris: No. (VOTE)

Mr. Ewen: Yes. (VOTE)

Ms. Safford-White: Yes. (VOTE)

Chairman Shook: Yes. (VOTE)

Mr. Hutchens: Yes. (VOTE)

Ms. Rich: No. (VOTE)

Mr. Mullarkey: No. (VOTE)

Secretary: Okay.

Chairman Shook: Okay. Having read through that, we want to adopt the Finding of Facts.

Ms. Safford-White: We gotta explain why we said no.

Chairman Shook: Mr. Little, we need to have an explanation on those?

Mr. Hutchens: Explaining the no's...

Attorney Little: Yeah, you need to go back and on the ones that had the "no" vote, and state what facts they represented in their determination from the evidence. You can make that as part of your Findings of Fact.

Chairman Shook: Okay. We had Injuries to Properties or Improvements and we had Ms. Ferris...

Mr. Ewen: Actually, I called the vote on that. I-I-I thought that it would, especially in today's market, adversely affect the property values surrounding it. I thought the broker was persuasive in that idea, and honestly, people's perception is what drives their buying of properties, and just the perception that there may be a hazard in the area is enough.

Chairman Shook: Who else voted "no" on that one?

Ms. Ferris: I did.

Chairman Shook: Okay, go ahead.

Ms. Ferris: That the-, even though if the property value may not be directly impacted, the marketability of the neighborhood would; and that would be a big concern for the neighborhood.

Chairman Shook: Okay.

Ms. Safford-White: The marketability of the neighborhood would be affected.

Chairman Shook: Okay.

Mr. Hutchens: Marketability; the information would be readily available on the internet. It would certainly affect people's decision to buy a home.

Ms. Rich: I agree - the marketability.

Mr. Mullarkey: Marketability.

Chairman Shook: Same. And the Nuisance and Hazard?

Ms. Ferris: As I mentioned earlier, the fume hood is required to vent whatever he's using to the outside, point 5 is the noise, odor, smoke, dust, emissions of gas, particles, solids or other objectionable or other toxic characteristics which are proposed or can be reasonably expected to be a result of the operation of the proposed use. And the possibility of the chemicals that can cause fire or explosions depending on how they're stored and with what else they are stored.

Chairman Shook: Mr. Ewen?

Mr. Ewen: I voted yes.

Ms. Safford-White: I can't remember what I voted.

Mr. Mullarkey: Hazard.

Chairman Shook: Hazard.

Ms. Safford-White: Did I say no, or yes?

Chairman Shook: Madame Secretary, can we have the-,

Ms. Safford-White: Did I say no, or yes?

Mr. Hutchens: You said yes.

Secretary: You said yes.

Chairman Shook: Yes.

Mr. Hutchens: I said yes.

Ms. Rich: I said no, and I agree with Ms. Ferris. There's a lot of possibilities here that we don't know what's gonna happen. We know what we've been told, we don't know what will happen in the long range. I just don't think this is feasible occupation in a residential area.

Mr. Mullarkey: I'd agree with that. I thought the testimony we heard from the gentleman who is trained in HAZMAT really raised some concerns with-, I-I-I understand that it's safe once it's in a locker if that locker is assumed shut, if that locker is assumed that the shelf life, pardon the expression, I'm sure it's not correct, but if those things were to crystallize, and even the friction of opening that, assuming you can't open it inside the cabinet, the user, the occupant of the house in this case, would certainly be endangering himself and anyone else in that building.

Chairman Shook: Okay. Mr. Little, at this point in time, we have failure to obtain six or more yes votes on all the criteria, but do we still take a motion to adopt the Findings of Fact as read?

Attorney Little: Yes, and that would also include the reasons that were stated on each item, of each category that had two or more "no" votes for it.

Chairman Shook: I want to take a motion to adopt the Findings of Fact with the reasoning placed on such votes.

Ms. Safford-White: Motion.

Ms. Ferris: Second.

Chairman Shook: Motion by Ms. Safford-White, seconded by Ms. Ferris. All in favor of the Findings of Fact, please signify by saying "Aye".

Ms. Ferris: Aye.

Mr. Ewen: Aye.

Ms. Safford-White: Aye.

Chairman Shook: Aye.

Mr. Hutchens: Aye.

Ms. Rich: Aye.

Mr. Mullarkey: Aye.

Chairman Shook: No?

No response

Chairman Shook: I'll entertain a motion to accept or reject-, no?

Attorney Little: It's not necessary at this point. Because there were more... the criteria, they do not satisfy the six votes on all the criteria and you had that based upon the rules and the application would be denied, but you would have to formally note that.

Chairman Shook: Okay, after formally informing the applicant that your application for a special use permit has been declined and we will now move to the next item on the agenda.

Chairman Shook said that there was a request to switch the remaining items to hear the third item first and the second item last.

Mr. Ewen made the motion, Ms. Rich seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY LANGEMAN PROPERTIES, INC.

The applicant, Langeman Properties, Inc., desires a special use permit to operate a major automotive repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed use is located at 306 Manchester Street. The property is further identified as being tax parcel number 30867.

Mr. Mullarkey asked to be recused from the Board because he is a commercial real estate broker representing this transaction and he stands to make financial gain from this case.

Mr. Hutchens made a motion to recuse Mr. Mullarkey, Ms. Safford-White seconded and the motion passed unanimously.

Mr. Dail delineated the area on the map. He said that the property is located at 306 Manchester Street and is zoned CH (Heavy Commercial).

Surrounding Zoning:

- North: CH (Heavy Commercial)
- South: CH (Heavy Commercial)
- East: CH (Heavy Commercial)
- West: CH (Heavy Commercial)

Surrounding Development:

- North: Century Link
- South: Vacant Commercial Building, Century Link
- East: American Auto Body, Heath Motorsports
- West: Carquest Auto Parts

Description of Property:

The property contains a 5,885 square foot commercial building and has approximately 180 feet of frontage along Manchester Street with a total lot area of 0.58 acres. The applicant operates the American Auto Body Shop adjacent to the east and wishes to expand their business onto the street

property.

Comprehensive Plan:

The property is located within Vision Area “E” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject story.

Notice:

Notice was mailed to the adjoining property owners on July 14, 2011. Notice of the public hearing was published in the Daily Reflector on July 18, 2011 and July 25, 2011.

Related Zoning Ordinance Regulations:

Definition

Repair; major. The following activities shall be considered major repair:

- (1) Engine overhaul or dismantling of subparts,
- (2) Body or frame repair;
- (3) Windshield or glass replacement;
- (4) Transmission, starter, alternator or other subpart rework service;
- (5) Welding or metal cutting; and
- (6) Any other repair other than minor repair.

Specific Criteria

Major or minor repair facilities.

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are within ten feet of the principal structure and outside required bufferyards. Signage displayed in conjunction with such display shall be in accordance with the sign regulations.
- (8) All services except fuel sales shall be performed within a completely enclosed building.

Other Comments

The proposed project must meet all related NC State fire and building codes prior to occupancy.

There were no questions from the Board for staff.

Chairman Shook called for the applicant to address the Board.

Ms. Charlotte-Anne Alexander, addressed the Board on behalf of the Langemans. Langeman Properties has been operating American Auto Body since 1994. They have been doing well and would like to expand their business and they hope to remain in Greenville. They believe that is an appropriate use and they do not feel that there will be a substantial impact on traffic. This type of business is anticipated in this type of area and they asked that the Board grant them a special use permit.

There were no questions from the Board for the applicant.

Mr. Dail said that staff had no objections to the request.

Mr. Ewen made the motion to approve the Finding of Facts, Mr. Hutchens seconded and the motion carried unanimously.

Ms. Safford-White made the motion to approve the petition, Ms. Rich seconded and the motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JAMES JADE

The applicant, Langeman Properties, Inc., desires a special use permit to operate a major automotive repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed use is located at 306 Manchester Street. The property is further identified as being tax parcel number 30867.

Mr. Dail delineated the area on the map. The area is located at 1716 W. Fifth Street and is zoned CDF (Downtown Commercial Fringe).

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe) & R6 (Residential)

South: MS (Medical Support) & MI (Medical Institutional)

East: CDF (Downtown Commercial Fringe)

West: MCH (Medical Heavy Commercial)

Surrounding Development:

North: Vacant, Single Family Residence

South: Medical Pavilion (Medical Offices)

East: Medical Office (Dr. James Murad)

West: Vacant

Description of Property:

The property contains a 2,485 square foot commercial building and has approximately 145 feet of frontage along E. Fifth Street with a total lot area of 0.42 acres.

Comprehensive Plan:

The property is located within Vision Area “F” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on July 14, 2011. Notice of the public hearing was published in the Daily Reflector on July 18, 2011 and July 25, 2011.

Staff Recommend Conditions:

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283 and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste materials.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy. There were no questions from the Board for staff.

Chairman Shook called for the applicant to address the Board.

Mr. James Jade said that he is fine arts major and this is how he has chosen to express his art. He has done a lot of research with the City and with the Health Department. He intends on using disposable materials rather than sterilizing them because he feels that it will be safer. He said that the Health Department will inspect his building once he obtains his Special Use Permit.

There were no questions from the Board for the applicant.

Mr. Dail said that staff had no objections to the request.

Chairman Shook noted that Mr. Mullarkey had not returned to the Board so Ms. Anderson would be able to vote on this case as well. He opened the case for Board discussion.

Mr. Ewen asked if the disposal of hazardous waste would be an issue.

Mr. Jade said that he did not anticipate a lot of business initially, but he said that as far as disposal goes, he would be using a shark container.

Attorney Little said that this case is at a different level from the earlier case because Mr. Jade would be required to comply with the County’s regulations and the other would have been regulated by the North Carolina Department of Natural Resources (DENR) and the United States Environmental Protection Agency (EPA).

Ms. Rich made a motion to approve the Findings of Fact, Mr. Ewen seconded and the motion carried unanimously.

Mr. Hutchens made a motion to approve the application with staff recommendations, Mr. Ewen seconded and the motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

ELECTION OF CHAIR AND VICE CHAIR

Attorney Little advised the Board that only the regular members would be eligible to be Chair and Vice-Chair; under the rules of the Board, the current Vice-Chair would not automatically be elevated to the Chair's position.

Ms. Rich nominated Scott Shook to be Chair.

With there being no further nominations, Mr. Ewen made a motion to close, Ms. Safford-White seconded and the motion carried unanimously.

Ms. Anderson nominated Ms. Safford-White as Vice-Chair.

With there being no further nominations, Ms. Rich made a motion to close, Mr. Hutchens seconded and the motion carried unanimously.

With no further discussion, motion was made and properly seconded to adjourn at 10:21 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner