MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
DECEMBER 5, 2019

Regularly Scheduled Meeting
2:00 p.m.
Warren Green Building, First Floor Meeting Room
10 Hotel Street
Warrenton, Virginia

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, December 5, 2019, beginning at 2:00 p.m. in the Warren Green Building, First Floor Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; and Mr. Lawrence G. McDade. Also present were Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Mr. Adam Shellenberger, Chief of Planning; and Mrs. Fran Williams, Administrative Manager. Member absent was Mr. Benjamin Tissue, Jr.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mr. Shellenberger stated that, to the best of his knowledge, the case before the Board of Zoning Appeals for public meeting has been properly advertised and posted.

MINUTES:

On motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to approve the November 7, 2019 minutes.

The motion carried 4 – 0, as follows:

AYES: Mr. Meadows, Mr. Tufts, Mrs. Cooper, Mr. McDade

NAYS: None

ABSENT: Mr. Tissue

ABSTENTION: None

REGULAR AGENDA:

APPEAL #AZAD-19-012140, RCH, LLC (OWNER/APPLICANT) – RCH, LLC PROPERTY/PAIGE LEIGH ANNE WAY – An appeal of a Zoning Administrator's

determination related to the storage or disposal of nonagricultural fill material in excess of the amount allowed by Zoning Ordinance Section 5-1816.2(1) without the required Special Exception approval and in violation of the standards for this use listed in Section 5-1816.2; the expansion of a non-conforming use without approval of a Special Exception; the commencement of a use prior to the issuance of a Zoning Permit; and the excavation or grading of a parcel before the issuance of a Zoning Permit, PIN 7847-88-1968-000, located on Paige Leigh Anne Way, Cedar Run District, Midland, Virginia. (Heather Jenkins, Staff) ***Note: This is a public meeting, not a public hearing.***

Mr. Meadows asked staff and the Appellant if they wished to proceed with their presentations or wait until the next regularly scheduled meeting since only four members of the Board are present and, due to an emergency, another member will need to leave early. Mr. Meadows stated that he opted to hold the public meeting today since it had already been advertised. He noted that the decision to proceed or postpone this item is ultimately up to the Board.

Ms. Jenkins stated that she wished to proceed with her presentation today.

Mr. Hawkins stated that his preference would be for a continuance until the next regularly scheduled meeting.

Mr. Meadows asked the Board members how they wished to proceed.

Mr. McDade stated that he would prefer to continue with the public meeting today and then recess when the other Board member needs to leave. Board members were in agreement.

Mr. Meadows inquired if the Appellant had received a copy of the Rules of Procedure Regarding Appeals.

Mr. Hawkins responded that he did receive a copy.

Mr. Meadows opened the public meeting.

Mr. McDade noted that the material submitted by the Appellant indicated he is represented by Counsel and asked if his attorney is present today.

Mr. Hawkins responded that he would be representing himself at today's meeting. He asked for verification that no decision would be made at today's meeting and if he would be allowed to submit additional material prior to the next meeting.

Mr. Meadows verified that no decision would be made at today's meeting and the Appellant will be allowed to submit additional information prior to the next meeting.

COUNTY PRESENTATION

Ms. Jenkins provided background information on the property, stating that it consists of a 56.1047-acre parcel, PIN 7847-88-1968-000. The property is located at 9293 Paige Leigh Anne Way, and zoned to the Agriculture (RA) district. The Appellant and current property

owner, RCH, LLC, took title to the subject property on June 28, 2019, where ownership of the property was conveyed from Thomas and Jody A. Schottler to RCH, LLC as recorded in Deed Book 1600 Page 1666.

Ms. Jenkins stated that the property was wooded until May of 2017. In May of 2017 Thomas and Jody Schottler purchased the property and, along with R.C. Hawkins Construction Company, disposed of large volumes of fill material on the eastern half of the property. This activity prompted a text amendment to the Zoning Ordinance to regulate this type of use, and an Official Notice of Zoning Violation and Corrective Order was issued.

Beginning in July 2019, the current property owner, RCH, LLC, and responsible party, R.C. Hawkins Construction Company, began to once again use the property to dispose of fill material from development projects in Northern Virginia, further expanding the fill area to the west, past the perimeter of the fill area completed under the Schottler's ownership. Staff inspected the property multiple times between July and October of this year, documenting the activities on the property, dump truck trips to and from the property, and determining sources of the fill material. Following a site inspection on October 1, 2019, an Official Notice of Violation and Corrective Order was issued to RCH, LLC as the property owner, R.C. Hawkins Construction Company as the responsible party, and Michael Hawkins as the owner/operator of the business.

Ms. Jenkins displayed photographs taken by staff which show the condition of the property on October 1, 2019 just prior to the issuance of the Official Notice of Violation and Corrective Order. One photograph showed the approximate edge of the fill area that was completed prior to RCH, LLC purchasing the property. Another photograph showed a portion of the property that had been seeded with grass by Mr. Hawkins for an alleged turf farm. Also shown was the fill area that has been active following RHC, LLC's purchase of the property in June. The southern property line extending along the fence posts installed by the neighboring property owner and the undisturbed trees that are just past the northern property line on the other side were also shown. The fill slope extends past the property line, onto the neighboring property. The fill depth is approximately two feet in depth at this location.

One photo included a bulldozer that was actively spreading fill material during the site inspection, piles of fill lined up to be spread, and a large stockpile of fill material, estimated to be 8 to 12 feet in height.

The area where the seeded fill area stops and the active fill area begins was also included in a photograph. A large stockpile of soil on the north side of the gravel roadway was estimated to be 8 feet in height and 40 feet in length. The base of the silt fence is along the edge of the fill slope for the roadway, approximately 18 feet in depth at this location. Past the roadway, the top elevation of the fill material is one to two feet above the top surface of the roadway.

Proceeding further to the west, two dump trucks were actively dumping fill material on the property during the site inspection. An additional photograph showed another stockpile of fill material as well as an excavator that was being operated during the inspection. The excavator was below the top surface of the imported fill, with only the arm visible in the photo, extending above the fill surface.

Another photo showed fill material that has been disposed of further to the west, with the fill material consisting of sub-soil mixed with asphalt millings, gravel, concrete rubble and other debris. The dark staining in the middle of the photo is oil or fuel that has been spilled on the surface and left there.

A view of the western portion of the rear of the property was shown. The surface of the property has been stripped of vegetative cover, is bare and has no stabilization. Fill material has been dumped in various areas in this portion of the property and piles of fill, as well as piles of woody debris such as root matter, are scattered throughout the disturbed area. The tree line shown in the far background of the photo is the rear property line.

Two additional photos showed further views of the western/rear portion of the property. The intense filling operation has not yet extended to this rear portion of the property; however, this area has been disturbed, has not been stabilized, and piles of fill material are visible, scattered here and there. Mr. Hawkins has stated that his intent is to fill this rear 30-acre portion of the property to a depth of 23 feet, which Mr. Hawkins estimated would potentially require an additional one-million cubic yards of fill material brought to the property.

Following the October 1, 2019 site inspection, a Notice of Violation was issued. The Notice cited the property owner and responsible party with violations of the Ordinance that consisted of:

- Construction-waste fill material brought to the property at a volume exceeding the allowable maximum of 4,200 cubic yards per year for the 2019 calendar year, and at rates that exceeded the allowable maximum of 200 cubic yards in any one-day period. The volume and rate of fill material that was brought to the property during the 2019 calendar year requires the approval of a Special Exception by the Board of Supervisors, and must follow the standards for this use, as found in Article 5.

- The further expansion of the fill area beyond that which was previously completed while the property was owned by Mr. and Mrs. Schottler, and beyond that which existed as of September 13, 2018, is an unpermitted expansion of a non-conforming use, that now requires the approval of a Special Exception.

- The use of the property to dispose of fill requires a Zoning Permit before the use can begin.

- The property was disturbed without the required Zoning Permit and associated Land Disturbing Permit.

The Appellant, Mr. Michael Hawkins of RCH, LLC, and R.C. Hawkins Construction Company, submitted an appeal to the Notice of Violation. The appeal includes three arguments as to why the Board of Zoning Appeals should dismiss the Notice of Violation.

The Appellant alleges that the fill has been used in the agricultural engineering practice of terracing to make the property suitable for an alleged future turf farm. Staff argues that the creation of a monolithic plateau composed of unconsolidated fill material is not equivalent to

the agricultural practice of terracing, and this term is being used by the Appellant to disguise the actual use of the property as an unregulated, unpermitted, landfill for construction-generated waste excavation material.

The Appellant alleges that the Notice of Violation was issued in error, as the Appellant has not exceeded the allowable volume of fill permitted in a one-year period. Staff argues that the amount of fill that has been brought to the property since January of 2019 is obviously greater than 4,200 cubic yards by visual inspection, that the number of trucks that have been observed dumping fill on the property would obviously have exceeded 4,200 cubic yards during this year, and that in any case, truck counts show that the property received more than the maximum allowable 200 cubic yards of fill in a one-day period on multiple days following RCH, LLC's purchase of the property in June.

The Appellant argues in his appeal that some of the fill material originated from Commonwealth funded or operated transportation projects, and is therefore exempt from local regulation. Staff notes that the appeal specifies ***"SOME."*** Much of the fill material brought to the property was documented to have originated from industrial, commercial and residential projects, including the 12689 Apollo Drive commercial development in Dale City by the RW Manning Company, and the Woods Edge residential subdivision development off Quantico Neck Road under construction by Total Development Solutions (TDS, LLC).

The Appellant alleges that the continued use of the property to dispose of fill material does not meet the Zoning Ordinance definition of a non-conforming use.

The text amendment that revised the Ordinance to create a specific use category, approval process, standards and limitations for the storage and disposal of nonagricultural fill was adopted by the Board of Supervisors on September 13, 2018. After this date, any property that had previously established this use prior to the adoption of the regulations, became a non-conforming use.

The Appellant argues that in order to be an expansion of a non-conforming use, that per the County Zoning Ordinance, the character of the use must have changed.

Staff argues that this is a misreading of the Ordinance. In actuality, the Zoning Ordinance specifically states that an expansion in the area of a non-conforming use is not permitted and is limited to the land area that was previously used for that non-conforming use.

The Ordinance separates out into two different subsections non-conforming uses that change character and non-conforming uses that expand in area. The Ordinance states that where a use is non-conforming solely because it now requires the approval of a Special Exception, that any expansion of the use requires a Special Exception approval.

The Appellant alleges that he has a vested right to continue to use the property to dispose of nonagricultural fill, as he has relied in good faith on a significant affirmative governmental act, and has expended significant funds in reliance on this significant affirmative act. The Appellant further states that he has both an approved permit from the Department of Forestry and an approved plan from the Department of Environmental Quality (DEQ) that includes filling the property.

A significant affirmative governmental act is an issued permit or approval. There has been no approval or permit that allows the property owner to dispose of fill material on the property, certainly not from the County – who in fact has issued multiple notices of violation, notices to comply and stop work orders against the unpermitted activities on the property. Additionally, the DEQ plan the Appellant refers to is solely for mitigating unpermitted wetland and stream channel impacts due to the filling activity, where a notice of violation was issued against this property by DEQ and the U.S. Army Corps of Engineers. The Forestry permit that the Appellant refers to was for the silvicultural activity of logging, and not for the removal of stumps and roots, stripping the property of all vegetative cover, and causing unpermitted land disturbance. Additionally, the property was not converted to a bona fide agricultural use within 12 months after the logging was completed as is required, and so the land disturbance activity on the property is in no way covered under Forestry.

Given that the owner took title to the property after the adoption of the text amendment, knew that the County considered the activity to be a violation, and has received no approvals or permits to allow the filling activity, RCH, LLC has no valid vested right to continue to use the property to dispose of vast amounts of construction-generated waste excavation material. The property owner could certainly establish a permitted agricultural use on the property, and if that use actually needed large volumes of fill material to level the property, then the owner could request a Special Exception and conform to the standards for that use.

The use of the property to dispose of large volumes of fill material has had negative impacts on neighboring property owners. Dust from dump trucks and earth moving equipment has impacted neighbors, where large portions of the property consist of bare, unstabilized soil that turns into wind-driven dust. Increased traffic on Route 612 from commercial dump trucks has negatively impacted roadway safety. The filling operation on the property is at an industrial scale and interferes with neighbors' quiet enjoyment of their property.

The noise from dump trucks and large pieces of earth moving equipment have impacted neighbors and is not in keeping with the surrounding rural agricultural character of the area.

Ms. Jenkins showed a video, which provided an example of noise impacts where a bulldozer was being operated on the subject property at 10:30 p.m. on a weekend night.

The vast amount of fill that has been disposed of on the property has altered drainage patterns, increased run-off volumes, and has caused flooding and the deposition of sediment on neighboring properties. Another video was shown which provided evidence of these conditions.

Required applications with supporting plans and documents have not been submitted by the Appellant to permit this use, and so staff has not been able to review any materials to ensure that there will be no negative impacts or damage to neighboring properties and downstream waterways.

In conclusion, Ms. Jenkins stated that the issue before the Board of Zoning Appeals is whether or not the Zoning Administrator was correct in issuing the Notice of Zoning Violation and Corrective Order. Per State Code, the Zoning Administrator's determination is presumed correct during an Appeal and respectfully requested that it be upheld by the Board.

QUESTIONS FROM THE BOARD

Mr. McDade inquired if, putting aside for a moment the effect of the September 13, 2018 Ordinance, is it the position of the Zoning Administrator that the Appellant would have needed a Land Disturbing Permit and a grading plan prior to taking the actions that he has.

Ms. Jenkins responded in the affirmative.

Mr. McDade asked if, to her knowledge, anything has been submitted related to a Land Disturbing Permit or grading plan.

Ms. Jenkins stated that nothing has been submitted, and subsequently, notices to comply and stop work orders have been issued because the required land disturbance application has not been submitted.

Mr. McDade stated that this property was the subject of a prior Board of Zoning Appeals' decision, which was appealed to the Circuit Court, but was ultimately dismissed by the Appellant. Mr. McDade asked if this action makes a final determination that the findings of the Zoning Administrator were valid.

Ms. Jenkins said she believes that it does.

Mr. McDade stated that staff has made representations regarding the amount of fill material that has been brought to the property and asked if a determination has been made as to how much has been put on the property since the September 13, 2018 Ordinance was adopted.

Ms. Jenkins stated that the amount is approximately 8,000 cubic yards based upon documentation she has received.

Mr. McDade noted that the Ordinance allows up to 4,200 cubic yards within a one year period. He asked what the determination that the 200 cubic yard per day allowance has been exceeded is based on.

Ms. Jenkins stated that this determination is based on documented truck counts going into the property on specific days. She noted that 800 and 500 cubic yards of fill material were brought to the property on October 1, 2019 and October 2, 2019. It appears that, on these two days, this fill material was from a residential subdivision development rather than a Commonwealth of Virginia transportation project.

Mr. McDade stated that, according to the Appellant, the proposed use of the property is for a turf farm and the clearing of trees would be necessary for this use. He asked if any explanation has been given as to why the level of the property would need to be significantly raised to prepare it for use as a turf farm.

Ms. Jenkins stated that the previous property owner gave various reasons why he felt that was necessary. He said the property needed to be all entirely one level. The rock, concrete and millings all needed to be included in the dirt to increase the infiltration capacity. He also said that there could not be too much standing water because the property could potentially be over

sod. He wanted to properly slope it because if it was all flat, the water would pool. However, these appear to be conflicting statements because it seems the goal has been to make it a very tall, raised up plateau.

APPELLANT PRESENTATION

Mr. Michael Hawkins, Appellant, stated that he has lived in Fauquier County for 44 years and is a managing member of RCH, LLC and president of R.C. Hawkins Construction Company located in Catlett. RCH, LLC purchased the property located at 9293 Paige Leigh Anne Way from Thomas and Jody Schottler in June 2019.

Referring to a photograph introduced by Ms. Jenkins, the Appellant stated that the map legend indicating "Edge of Fill Slope" is somewhat misleading since his silt fence is inside the property line. Mr. Hawkins stated that there is currently no fill material on his site past the fencing which was installed by his neighbor approximately one year ago.

Mr. Hawkins stated that he obtained a timber harvesting permit from the Department of Forestry and then proceeded to timber approximately 52 acres of the site, leaving him with the option of perhaps constructing a house site in the future. He explained that silviculture harvesting is an agricultural activity. In order to show the intent of a bona fide agricultural use, he began piling up all the limbs, removing the stumps and burning the debris, which caused his neighbors to begin complaining. After removing the stumps, all the topsoil was stripped off the ground; this stockpile of topsoil will be spread on the property in order to plant the sod.

Mr. Hawkins stated that no one from the County has been on this property to take any measurements since he purchased it and he does not know how they are coming up with their stated quantities of fill material. He noted that the dark staining in one of staff's photographs could possibly be from a bonfire rather than an oil or fuel spill. Staff contends that he is hauling in material and dumping it on the ground; however, he pointed out that the material in one photograph is from a sump pump hole which was dug to generate water to help keep the dust down on the road. Mr. Hawkins clarified that no fill material has been trucked to the back portion of the property. He stated that the photograph showing the silt fencing was taken in 2018 and whoever took the photo was actually trespassing because the silt fencing is approximately 25' inside his property line. The water shown coming down the hill never made it to the neighbor's property, but rather, it went into a level spreader and was dispersed on both sides.

The County claims the Appellant is expanding a non-conforming use. However, the property was 56 acres to start with and they have harvested approximately 52 to 53 acres and are now in the process of bench terracing off the fill material. Mr. Hawkins stated that both bench terracing and fill terracing qualify as agricultural exemptions since the construction of terraces for agricultural purposes is a permitted use. Mr. Hawkins again emphasized that he has not expanded the use of the property since it was 56 acres when he purchased it and it continues to be 56 acres today. He compared this to a similar situation when he was before the Board of Zoning Appeals in 2012 after being cited by the Zoning Administrator for, among other things, expanding a non-conforming Contractor's Storage Yard to occupy additional land area

and constructing additional structures on a 9.26-acre parcel he owns on Route 28. In that case, the Board of Zoning Appeals voted to overturn the portion of the Zoning Administrator's determination related to this issue.

Mr. Hawkins stated that the County argues that he must have a Zoning Permit or Land Disturbing Permit for agricultural purposes. However, Zoning Ordinance Section 13-50l states: "*Except for permitted agriculture…floodplain crossing as permitted in Section 4-405.1.a of this Ordinance, horticulture or forestry uses, no use permitted by right, by Special Permit or Special Exception shall be begun on a parcel prior to the issuance of a Zoning Permit by the Zoning Administrator. No excavation or grading of a parcel shall be begun before the issuance of a Zoning Permit therefore by the Zoning Administrator. No Building Permit shall be issued prior to the issuance of a Zoning Permit.*" Mr. Hawkins noted that the construction of a terrace is a permitted agricultural use in the State of Virginia.

On September 13, 2018, Fauquier County adopted Ordinance "D," which requires an Administrative Permit or Special Exception for the storage or disposal of nonagricultural excavation material, depending on the quantity of such material to be stored or disposed of. However, the County still allows a certain amount of material to be brought onto a property without a permit. In this case, staff's estimates of the amount of material brought onto the property comes from a deposition he gave in a prior case. Staff does not have any other evidence of how much, or when, fill has been brought to the property since the adoption of Ordinance "D." Rather, staff is only using a *"guesstimate"* given during that deposition. Mr. Hawkins stated that he was only guessing on the amount of fill needed and staff has no evidence to prove that he has exceeded the amount of fill material allowed to be brought to the property on any given day. He stated that even *he* does not know how much fill material has been disposed of on his property, yet staff wants the Board of Zoning Appeals to accept his "guesstimate" as proof. In addition, he stated that since this information was provided in a *different case*, it should be inadmissible here.

Mr. Hawkins displayed photographs showing the east end of the beginning of the turf farm with the neighbor's property in the middle. His boundary line is entirely surrounding them. He pointed out the black silt fencing on the eastern edge of the bench terrace which is keeping the run-off from coming down the base of the stair of the bench. Mr. Hawkins clarified that this is only 13' tall and no run-off is getting on his neighbor's property. Another photograph showed the edge of the field where he had stopped terracing in August and proceeded to plant the field. He pointed to an area that still needs to be completed on the front portion of the property and noted that he is very close to having it finished. Mr. Hawkins reminded the Board that this property is contiguous and just because the front field stops in one location does not mean the back field was not part of the original plan. In addition, he showed a photograph of the back portion of the property that still needs to be terraced and he estimates that approximately 23 feet of fill will be needed to make it level. Mr. Hawkins emphasized that it has always been his intent to have the entire 56-acre property as a turf farm and they have been working toward that goal since 2017. But they have only been slowed down by the County's harassment, the threatening of his customers and interference with his daily business. Because of the County's actions, they missed last year's growing season.

Mr. Hawkins stated that the Zoning Administrator claims since they started working on the turf farm in one particular area of the 56-acre property, working on another area of the *same*

56-acre property is an expansion of a non-conforming use. However, bench terracing and fill terracing are considered agricultural uses – not non-conforming uses. He noted that this is how a turf farm has to be constructed since a farmer has to start somewhere. Just because they started in one part of the property versus another does not mean the entire property was not meant for a turf farm or that preparation of the land has not started ahead of the bench terracing. Once the entire site was logged, they started in the middle, worked both ways, finishing in the front, and are working their way to the back.

He stated that he has a vested right to use the property to create a turf farm since *Code of Virginia* §15.2-2307(A) provides that *"a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act."* In addition to obtaining a permit from the Department of Forestry for logging activities, he also received an approved plan from the Department of Environmental Quality (DEQ) along with an Erosion & Sedimentation (E&S) Plan with wetland delineations.

The County specifically asked the Department of Environmental Quality if it would be possible to require an Erosion & Sedimentation Plan with its Letter of Agreement. To oblige the County, the Department of Environmental Quality agreed to have him do an E&S Plan. So, now he has a farming operation with an E&S Plan which the County wants to say is a wetland delineation. However, emails between the County and DEQ clearly prove otherwise. The Department of Environmental Quality came out two months ago and closed his Letter of Agreement, telling him that no further activity was required other than to manage his E&S and run-off from the property, to which he agreed.

Mr. Hawkins stated that every necessary government agency, including this County, knew that the ultimate goal for this property was use as a turf farm. He relied on their permits and also incurred substantial expenses and contractual obligations to develop the turf farm. He noted that they are vested and can continue with a turf farm. Also, communications between the Department of Environmental Quality and Fauquier County make it clear that DEQ says they are an agricultural use and no permit is required for the construction fill used.

In an October 19, 2018 email from the Department of Environmental Quality to the County, DEQ said that it *"…does not have any authority over the management of fill that is exempt from the Virginia Solid Waste Management Regulations (9 VAC 20-81-95)."* Mr. Hawkins stated that his neighbors have sent an email to DEQ requesting them to reconsider its findings that he is not running a landfill. He emphasized that he is building a bench terrace for water management purposes for sod production.

Mr. Hawkins displayed an email from a neighbor to the Department of Environmental Quality stating that he is hauling in good dirt to cover up the rocks and boulders he brought in to build this sod farm. Mr. Hawkins stated that he will be growing premium turf as has been shown in photographs of the property.

Mr. Hawkins read from a July 30, 2019 email from the Department of Environmental Quality, which states: *"In northern Virginia it is common for agricultural land to receive fill from construction sites. The owner of the land states that the fill is being used to augment current or future agricultural practices. Some landowners receive very large volumes of soils/debris but nonetheless maintain it is for agricultural purposes. Agricultural practices are exempt from the Virginia Erosion and Sediment Control regulations. These regulations are implemented by local governments but because agricultural practices are exempt, local governments cannot use E&S requirements to restrict projects where large volumes of construction soil and debris are placed on farms; nor can DEQ. However, it is DEQ's understanding that some localities are attempting to limit this activity via other local authorities such as zoning ordinances which are outside of DEQ's authority. It is important to note that even if a local government, or DEQ, were to conclude that such an operation were subject to E&S regulations, the project could still proceed; it would just have to comply with E&S regulations…The project discussed by Mr. Rainwater in his email…is an operation where the owner of the agricultural land has received large volumes of construction soil and debris…"*

A July 31, 2019 email from the Department of Environmental Quality goes on to say: *"…With respect to erosion and sediment control requirements designed to protect water quality during construction activities, these requirements are implemented by local governments and it is important to note that agricultural operations are exempt from the Virginia Erosion and Sediment Control regulations, thus where construction soil and debris are used in agricultural operations neither the local government; nor DEQ, can require compliance with erosion and sediment control measures."*

Mrs. Cooper left the meeting at approximately 2:40 p.m.

After discussion, Mr. Meadows adjourned the public meeting.

Mr. Meadows stated that the meeting is being both video and audio recorded and he would like to have Mr. Tissue, who is absent, to have an opportunity to review the recording.

Mr. McDade noted that the Appellant has three minutes left but suggested giving him additional time to complete his presentation at the next meeting.

Mr. Meadows stated that the Appellant would be allowed up to eight minutes to complete his presentation at the next regularly scheduled meeting.

Board members were in agreement.

OTHER BUSINESS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at approximately 2:50 p.m.

John R. Meadows, Chairperson	Fran Williams, Secretary

Copies of all files and materials presented to the BZA are attached to and become part of these minutes. A recording of the meeting is on file for one (1) year.