

January 8, 2009

PRESENT: S. F. Shreckhise, Chairman  
J. W. Callison, Jr., Vice Chairman  
G. A. Coyner, II  
C. E. Swortzel  
D. A. Brown  
J. R. Wilkinson, Zoning Administrator & Secretary  
S. K. Shiflett, Zoning Technician I

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, January 8, 2009, at 10:00 A.M., in the County Government Center, Verona, Virginia.

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**VIEWINGS**

The members of the Board of Zoning Appeals assembled at the Government Center and went as a group to view the following:

- **Edgar E. Michael, Trustee - Special Use Permit**
- **Hahns Kanode, agent for Shen-View Enterprises, Inc. - Special Use Permit**
- **Kay F. Harlow - Special Use Permit**

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.

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Chairman

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Secretary

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PRESENT: S. F. Shreckhise, Chairman  
 J. W. Callison, Jr., Vice Chairman  
 C. E. Swortzel  
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 D. A. Brown  
 J. R. Wilkinson, Zoning Administrator & Secretary  
 S. K. Shiflett, Zoning Technician I  
 Pat Morgan, County Attorney  
 B.B. Cardellicchio-Weber, Administrative Secretary

Absent: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, January 8, 2009, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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**ELECTION OF OFFICERS**

Mr. Swortzel nominated Mr. Shreckhise as Chairman and Mr. Callison as Vice-Chairman, and John R. Wilkinson as Secretary.

Ms. Brown seconded the motion, which carried unanimously.

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**MINUTES**

Mr. Swortzel moved that the minutes from the December 4, 2008 meeting be approved.

Mr. Coyner seconded the motion, which carried unanimously.

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### **CONSIDERATION OF 2009 RESOLUTION**

Mr. Coyner moved that the Board of Zoning Appeals adopt the resolution to establish its schedule for regular meetings during calendar year 2009 and if hazardous weather conditions are such that the members of the Board cannot meet, the meeting shall be continued the next business day.

Mr. Swortzel seconded the motion, which carried unanimously.

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### **EDGAR E. MICHAEL, TRUSTEE - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Edgar E. Michael, Trustee, for a Special Use Permit to expand the existing business office by adding a second floor on property he owns, located on the south side of Willow Sprout Road (Route 742), approximately .1 of a mile east of the intersection of Willow Sprout Road (Route 742) and Leaport Road (Route 744) in the North River District.

Mr. Edgar Michael stated that he would like to raise the office up approximately four (4') feet. He stated that he will use what is underneath for storage and office space.

Mr. Swortzel stated that the entire building will be raised up.

Mr. Michael stated that he would raise the building up another four (4') feet. He stated that it is level.

Mr. Coyner stated that the Board visited the site and noticed that there was some digging being done this morning.

Mr. Michael stated that he has been waterproofing the wall but decided to wait until the Board makes their decision on the request before going any further.

Mr. Coyner stated that the site looked very good this morning and he hopes that it will continue to be kept that way.

Chairman Shreckhise asked if there would be any additional machinery or storage areas?

Mr. Michael stated no. He stated that everything will be kept the same.

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Chairman Shreckhise asked if there was anyone wishing to speak in favor or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Vice Chairman Callison stated that the applicant's site is as neat as he has ever seen it. He moved that the request be approved with the following conditions:

**Pre-Condition:**

None

**Operating Conditions:**

1. All stipulations on the previous Special Use Permits remain in effect.
2. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
3. If any expansion of building or use is requested or required, the business must be moved to a Business zoned district.

Mr. Swortzel seconded the motion, which carried unanimously.

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**HAHNS KANODE, AGENT FOR SHEN-VIEW ENTERPRISES, INC. - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Hahns Kanode, agent for Shen-View Enterprises, Inc., for a Special Use Permit to continue the existing fertilizer mill and farm shop with equipment repair and sales, and to use an existing building as a warehouse, and add seed and other agricultural products and services on property owned by Emma Jean Wise, Trustee, located on the north side of Fadley Road (Route 646), approximately .4 of a mile west of the intersection of Fadley Road (Route 646) and Stonewall Road (Route 696) in the North River District.

Chairman Shreckhise asked if this request is necessary because of the change in ownership?

Mr. Wilkinson stated that it is agricultural property but they operate under Special Use Permit and anytime additional buildings are added to the business then they will need to

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go back before the Board. He stated that they also wanted to put the permit in the company name. He stated that they wanted to get the permits under one name because they have had three (3) different permits over the years.

Mr. Hahns Kanode stated that this is an existing building. He stated that it was not leased to them before. He stated that they did not buy the entire property but they only purchased a portion of the property.

Chairman Shreckhise asked what will be done inside the building?

Mr. Kanode stated that he would like to use it for a warehouse. He stated that he would like to keep his trucks and fertilizer in the building. He stated that he would like to have permission to use the building.

Mr. Wilkinson asked if there will be light maintenance done on the trucks inside the building?

Mr. Kanode stated not in that building. He stated that the maintenance is done at the shop they currently have a permit for.

Mr. Coyner stated that the property looks good and well organized. He hopes that the applicant will keep it that way.

Chairman Shreckhise asked if there was anyone wishing to speak in favor or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Mr. Coyner stated that the applicant has done a good job with the site. He stated that this looks like a logical way to use the existing building. He moved that the request be approved with the following conditions:

**Pre-Condition:**

None

**Operating Conditions:**

1. All stipulations of previous Special Use Permits (89-10 and 00-94) remain in effect.
2. All seed and products be kept within the warehouse areas.

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Mr. Swortzel seconded the motion, which carried unanimously.

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**KAY F. HARLOW - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Kay F. Harlow, for a Special Use Permit to have a dog kennel on property she owns, located on the west side of Lee Highway (Route 11), approximately .5 of a mile north of the intersection of Lee Highway (Route 11) and Fort Defiance Road (Route 616) in the North River District.

Ms. Kay Harlow stated that it is not her intent to have more dogs that what she currently has. She would like to take care of the ones that she has. She stated that most of her dogs are between ten (10) and twelve (12) years old. She stated that she has had those dogs since they were puppies. She stated that she has seven (7) dogs. She stated that she takes care of her son's dog when he is at school. She stated that her son's dog is younger than the rest.

Mr. Coyner asked how long has the applicant had the dogs?

Ms. Harlow stated she has had the dogs since they were puppies. She stated that they were all strays.

Mr. Wilkinson asked if the dogs arrived all at one time?

Ms. Harlow stated they have all came at different times. She stated that she is getting older and she just wants to take care of the dogs she has. She stated that she has no intentions of having a dog kennel.

Mr. Swortzel asked if the applicant knew that the dogs were creating problems for her neighbors?

Ms. Harlow stated yes obviously because there were complaints. She stated that when she hears the dogs barking at night she goes out with them. She stated that the dogs bark when people come to the driveway because that is what dogs do, they bark. She stated that is how they communicate.

Mr. Coyner stated that the applicant has property to the rear. He asked if the applicant can keep the dogs inside the barn at the back of the property?

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Ms. Harlow stated that she could do that but it would be more work for her. She stated that there would be a cost of moving the pen. She stated the current location is closer to her and there is shade for the dogs.

Mr. Coyner stated there are complaints in the neighborhood and something needs to be done to fix the problem. He stated that if the applicant is not going to do anything then all the issues will not be resolved.

Ms. Harlow stated that she will do whatever it takes to keep the dogs. She stated that the dogs are getting very old. She stated that one dog is losing its hearing and one is going blind. She stated that it takes a lot to take care of them. She stated that she will not turn the dogs away.

Chairman Shreckhise asked if there was anyone wishing to speak in favor to the request?

Mr. Richard Zambrotta, 1966 Lee Highway, Mt. Sidney, stated that he lives next door to Ms. Harlow who is his sister-in-law. He stated that he is on the right side. He stated that the dogs have plenty of room to run. He stated that she brings the dogs to the veterinarian. He stated that a year ago one of the dogs was shot and she spent quite a lot of money on that dog. He stated that the dogs are all a family. He stated that there is a mother and father and three (3) puppies. He stated that his wife helps Ms. Harlow take care of the dogs. He stated that they try to keep the dogs where they are supposed to be. He stated that her son has put concrete down so that they cannot get underneath the fence. He stated that they try to keep the dogs where they are supposed to be.

Chairman Shreckhise asked if there was anyone else wishing to speak in favor to the request?

Ms. Connie Wooddell, 1974 Lee Highway, Mt. Sidney, stated that she is Mr. Zambrotta's neighbor on the right side. She stated that she has lived there for eight (8) years and the only time she hears the dogs bark is when she takes her dogs out. She stated that the dogs do not bother her. She stated that the applicant takes good care of them. She stated that occasionally they bark at night like any dog would. She stated that she hears dogs barking across the road in the subdivision at night too. She stated that she does not hear any other noise. She stated that the applicant should not have to get rid of any of her dogs. She stated that they all have been there since she has lived on the site. She stated that when she is walking her dogs and they see Ms. Harlow's dogs they run up and want to bark. She stated that dogs bark to communicate.

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Chairman Shreckhise asked if there was anyone else wishing to speak in favor to the request?

There being none, Chairman Shreckhise asked if there was anyone wishing to speak in opposition to the request?

Mr. Mike Hudson, 197 Humbert Road, Crimora, stated that his grandparents own property at 2052 Lee Highway, which borders the horse barn and field. He stated that he grew up on the property and he is there on a daily basis to feed. He stated that they have cattle on the site. He stated that they have had problems with dogs chasing the cattle and running at large on a regular basis and it has gone on for quite some time. He stated that he does not care how many dogs the applicant has as long as they are kept on her property. He stated that they do make attempts to patch the fence sometimes but they cannot seem to control the dogs. He stated that he is in opposition to the request. He stated that the property is parcel number 72 along Lee Highway. He stated that it is a large parcel that is all pasture.

Mr. Coyner asked if the dogs get out onto the pasture field?

Mr. Hudson stated that the dogs have gotten out on the following days: August 7<sup>th</sup> - got out and killed one of the cats at the house, August 15<sup>th</sup>, September 10<sup>th</sup>, September 30<sup>th</sup>, October 24<sup>th</sup>, and November 7<sup>th</sup>. He stated that he called the County Dog Warden and they told him that if he caught the dogs they will come and get them but other than that they would not do anything for him.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Mr. Wilkinson stated that he received two (2) letters in opposition to the request. He stated that one letter was from Evelyn and Joe Kirby, 1946 Lee Highway, who was in opposition due to all of the noise. He stated that the other letter was from Victor Kirby who was visiting Mr. and Mrs. Kirby during the Christmas holiday and was concerned about the populated area and having the large number of dogs at the site as well as the loud barking.

Chairman Shreckhise asked if Mr. Kirby would like to come forward? He wanted to question Mr. Kirby because he would be the most directly affected neighbor and whether he was mainly against additional dogs or the entire request.

Mrs. Kirby stated that this is too upsetting for her. She asked that Mr. Wilkinson read her letter.



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Mr. Wilkinson read Evelyn and Joe Kirby's letter to the Board (a copy of the letter is filed in the Special Use Permit file located in the Community Development Department).

There being no one else wishing to speak in opposition, he asked if Ms. Harlow would like to speak in rebuttal?

Ms. Harlow stated that this sounds horrendous because she has done everything to keep the dogs from getting onto the farm property. She stated that she has even mended the fence up. She stated that the upkeep of the fence is divided between her and Mr. McAllister. She stated that she is responsible for the upkeep of the fence from the top of her hill to the second floodgate to the back of the field. She stated that they were responsible for the fence to Route 11 up to the top of the hill. She stated that the fence is all broken down and has not been replaced. She stated that is what she has been patching up. She stated that she has horses and a cow and the dogs do not bother them. She stated that when the dogs get out they want to hunt groundhogs. She stated that she does not want her dogs to get out. She stated that her sister-in-law also stays out with the dogs. She stated that the biggest problem is the dog that is losing his hearing because he gets out most of the time. She stated that the other dogs are smaller and they have no desire to get out. She stated that she does not know which days the dogs have gotten out. She stated that if they get out she goes looking for them. She stated that they can get out when they are in the six (6) acre front field. She stated they exercise in the front field. She stated that they bought boards for the bottom of the fence to prevent the dogs from getting out if they were to dig. She stated that they have not gotten out as much lately because she has been going out with them. She has been keeping a closer watch on the dogs.

Mr. Coyner asked if the applicant can use a run instead of turning them in the field?

Ms. Harlow stated that she thought about giving them a smaller area to exercise in. She stated that she thought about putting up a fence right behind their pen. She stated that would be a possibility. She stated that fencing in six (6) acres can be very expensive.

Ms. Brown asked if the dogs have ever gotten out across the highway?

Ms. Harlow stated yes and when that happens she goes out to try and find them right away. She stated that most of the time they are not gone very long. She stated that the dogs do not bother her cow. She stated that Mr. Hudson's farm has a creek on it and she knows the dogs go out to the creek.

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Mr. Wilkinson stated there is a leash law that you have to keep your dog on a leash or under the owner's control. He stated that if the dogs get out then that would be a violation of the County Code.

Mr. Swortzel stated that if the dogs are on the six (6) acres there would not be a violation.

Mr. Wilkinson stated that the applicant needs to be out with the dogs.

Ms. Harlow stated that she owns the six (6) acres and the property behind that as well. She stated that she goes out with the dogs in the afternoon and stays with them. She stated that she has been trying to do something about the dogs running out onto other property.

Mr. Wilkinson stated that because the applicant has more than four (4) adult dogs she needs a Special Use Permit for a kennel. He stated that she is able to apply for that because her property is located in an agricultural area. He stated that if the property was zoned residential she would not be permitted to apply for the permit. He stated that the applicant currently has seven (7) dogs. He stated that the Board of Zoning Appeals must determine how to control the nuisance of odors and the disturbance to the neighbors. He stated that the Board will look at enclosures and distance from the neighbors.

Ms. Harlow asked if the law is fifty (50') feet from a property line. She stated that she will do whatever she can to keep the dogs as long as she could afford it.

Mr. Wilkinson stated that is the minimum unless the Board feels that the kennel needs to go further to protect the adjoining properties.

Mr. Coyner stated that it sounds like the dogs are important to the applicant. He stated that apparently there is a discourse in the neighborhood because of the barking but if you have a barn that you can put the dogs in you may be able to solve some of those issues.

Ms. Harlow stated that she does not want to keep the dogs inside the building. He stated that they are winter dogs because they have a lot of thick hair.

Mr. Coyner stated that the applicant needs to do something different because what she is presently doing is not working.

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Ms. Harlow stated that the pen is located where it is because of the trees so that the dogs have shade in the summer. She stated that there is no shade in the field where the barn is.

Mr. Wilkinson stated that the applicant needs to have a sound proof enclosure to keep the dogs in.

Ms. Harlow stated that she can keep the dogs in the barn at night and in the pen during the day.

Mr. Swortzel stated that the applicant should not have any more than seven (7) dogs on the property especially since they are getting older. He stated that he will not be inclined to grant the applicant more dogs. He stated that the dogs should be in the barn at night.

Mr. Zambrotta stated that he can take three (3) dogs from Ms. Harlow and keep them on his property. He stated that would eliminate that she has more than four (4) dogs. He stated that Ms. Harlow paid a \$250 fine for having more than four (4) dogs.

Mr. Wilkinson stated that the \$250 is for the application fee for the Special Use Permit. He stated that it was not for a fine.

Mr. Zambrotta stated that he has mended the fence in the neighbor's field. He stated that he walks the fence all of the time and he tries to fix it immediately.

Chairman Shreckhise declared the public hearing closed. He stated that the applicant is allowed to have four (4) dogs on the property without a Special Use Permit. He stated that the applicant can withdraw her permit if she gave three (3) dogs to Mr. Zambrotta. He stated that the cattle being bothered by dogs will be a separate matter handled by Animal Control.

Mr. Wilkinson stated that if the applicant went down to four (4) dogs and did not replace them and if the permit goes two (2) years without any activity, the permit will expire under the Code of Virginia. He stated that the Board of Zoning Appeals can render a decision or Ms. Harlow may want Mr. Zambrotta to take three (3) dogs and place them on his property. He stated that if he takes three (3) dogs then the Special Use Permit is not needed, therefore, it can be withdrawn. He stated that the applicant can even table the request to next month's agenda in order to allow for more time to make a decision. He stated that the applicant has a number of options.

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Chairman Shreckhise stated that if the Board approves the kennel request there will be stipulations that the dogs be kept in the barn at night even if the applicant gives three (3) of the dogs to the neighbor.

Mr. Coyner stated that if the permit is granted the same stipulations would apply to any dogs on the property even if the applicant gave some dogs to the neighbor. He asked if that is correct?

Mr. Wilkinson stated that is correct.

Chairman Shreckhise stated that the applicant will still need to adhere to the stipulations on the permit.

Mr. Coyner stated that the elderly neighbors in the area are upset. He feels that the applicant should try to appease that situation.

Mr. Swortzel stated that three (3) neighbors in the area do not have any problems with the dogs. He stated that this Board needs to protect the neighbors in the area. He stated that the Board can table the request until next month so that the applicant can decide what she would like to do.

Chairman Shreckhise stated that the applicant will need to make a decision.

Ms. Harlow asked that the dogs be put in the barn at night in order for her to keep her dogs. She stated that the dogs do not bark that much. She stated that she can put their beds in the barn. She stated that it will be more work for her but she will do it. She stated that the dogs are her responsibility. She stated that she would like for the Board to approve the request with the stipulation that the dogs be kept inside the barn at night.

Mr. Coyner stated that once the Board approves a permit with the stipulations they must be adhered to.

Chairman Shreckhise stated that knowing now what the applicant would like to do the Board can go ahead and discuss the options. He stated that the public hearing has been closed but he will open it back up so that the neighbor can speak.

Mr. Zambrotta stated that the County Ordinance states that (4) dogs or less would not require a kennel. He stated that if the Board passes the request is Ms. Harlow still required to meet the stipulations with the rest of the dogs.

Chairman Shreckhise stated that the stipulations would need to be adhered to unless the applicant cancels the permit.

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Mr. Wilkinson stated that the rules of the permit still stay the same.

Chairman Shreckhise stated that the stipulations still apply to the dogs that the applicant still has.

Mr. Zambrotta stated that if he gets three (3) dogs from Ms. Harlow he does not have to get a permit from the Board. He asked for a few minutes to speak with the applicant.

Chairman Shreckhise allowed a five minute recess so that Mr. Zambrotta can discuss the situation with the applicant. After the recess, Chairman Shreckhise asked the applicant what option she would like to pursue?

Ms. Harlow stated that she would like to keep the dogs on her property. She stated that she will keep the dogs inside the barn at night.

Chairman Shreckhise stated that if the Board approves the permit and the applicant decides to give three (3) dogs to Mr. Zambrotta than the Special Use Permit can be cancelled. He stated that if the applicant does not like the outcome of the Board's decision the applicant can appeal the decision of the Board.

Mr. Kalin Harlow, Ms. Harlow's son, stated that he lives at the house when he is not in school. He asked if they can keep the dogs until they die off inside the barn at night whether Ms. Harlow has the Special Use Permit or not.

Mr. Wilkinson stated no. He stated that more than four (4) dogs require a Special Use Permit. He stated that the condition will state where the dogs can be kept.

Mr. Swortzel asked if that is the applicant's preference.

Ms. Harlow stated yes.

Chairman Shreckhise declared the public hearing closed.

Mr. Swortzel stated that the dogs should be in the barn at night.

Mr. Coyner stated that there needs to be a specific time placed on the permit as to when the dogs need to be in the barn.

Mr. Swortzel stated that the dogs should be in the barn within an hour of sundown. He stated that he does not have any problem with staff's recommendation of 10:00 p.m. until 6:00 a.m.

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Ms. Harlow stated that she feeds the dogs at 5:00 p.m. She stated that once they are fed she does not hear much out of them.

Mr. Coyner stated that if the dogs do not go to the barn until 10:00 p.m. then the Board is not doing much to help the neighbors with the barking of the dogs.

Vice Chairman Callison stated sundown is not until 9:00 p.m. part of the year. He stated that the dogs should be kept inside the barn by 8:00 p.m.

Mr. Swortzel moved that the request be approved with the following conditions:

**Pre-Condition:**

- 1. Obtain current County dog license for all dogs on site and provide a copy to Community Development.

**Operating Conditions:**

- 1. Be limited to seven (7) dogs. As the older dogs expire they cannot be replaced. Once the number of dogs is reduced to four (4) the Special Use Permit is no longer needed and will then expire.
- 2. All dogs be confined within the existing kennel, designated exercise area, or inside the barn at all times.
- 3. Applicant keep the dogs inside the existing barn from 8:00 p.m. until 6:00 a.m.
- 4. Site be kept neat and orderly.
- 5. If the property is reduced below the five (5) acre minimum, the permit will be void.

Ms. Brown seconded the motion, which carried unanimously.

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**BOARD OF ZONING APPEALS ANNUAL REPORT 2008**

Mr. Wilkinson presented the Board of Zoning Appeals Annual Report for the year 2008.

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**STAFF REPORT**

- 08-6 Dovel, Harry L., Sr. and Linda B.
- 08-7 Crown Communications, Inc.
- 08-8 Shuey, Leslie J. or Wilma C. Walker
- 08-9 Fitzgerald, David W. or Ellen B.
- 08-10 Wright, Doris S. – **Cancelled**
- 08-11 Bowles, Mark
- 08-12 Higginson, Lida W.
- 08-13 Hodge, John M. and Charlotte

Mr. Wilkinson stated that the building has been constructed for SUP#08-6 and it is in compliance. He stated that the co-location has been completed for SUP#08-7. He stated that SUP#08-8 is down to four (4) dogs and the permit is expired. He stated that they have not received a building permit for the wind energy system for SUP#08-9, therefore, staff has sent the applicant a letter.

Mr. Swortzel stated that when the applicant gets the wind turbine constructed, the Board should visit the site.

Mr. Wilkinson stated that the applicant has not replied to his letter yet. He stated that the privacy fence has not been constructed for SUP#08-11, therefore, staff has sent the applicant a letter. He stated that it did not look like there was any activity at the house. He stated that there are six (6) dogs that are kept inside the dwelling for SUP#08-12. He stated that SUP#08-13 is requesting a one (1) year extension of time and that will be on the agenda next month.

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Mr. Wilkinson passed out the court cases for the Board to review.

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There being no further business to come before the Board, the meeting was adjourned.

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Chairman

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Secretary