

ON SEPTEMBER 8TH, 2009 THE BOARD OF ADJUSTMENT HELD A MEETING IN THE 2ND FLOOR COURTROOM OF THE WOODFORD COUNTY COURTHOUSE TO HEAR THE FOLLOWING APPEALS:

Sam Dozier opened the meeting at 6:00 p.m. with those being in attendance as follows:

MEMBERS PRESENT: Sam Dozier, Al Schooler, Tim Turney, Frank Stark, David Prewitt, Staff Paul Noel Jr., Petra Dotson and Patricia B. Wilson and Planning and Zoning Commission Attorney Tim Butler

MEMBERS ABSENT: none

MINUTES: Tim Turney moved, as seconded by Frank Stark, to accept the July 6th, 2009 minutes as distributed. Motion carried 5-0.

NEW BUSINESS:

PUBLIC HEARING:

08-013-2009

ADMINSTRATIVE REVIEW: Sue Holman/Mark E. Gormley, Attorney – 1260 Brushy Run Road – A-1/CO-1 Zoning District – Section 203 & 801 – Applicant is seeking an administrative review to overturn the order to remove the manufactured home from the property.

Mr. Noel indicated Ms. Holman received an order to remove her manufactured home on the lot at 1260 Brushy Run Road. Ms. Holman is requesting her case be heard since she believes the order has been made in error on the grounds that the information, facts and law have been misinterpreted. Mr. Noel suggested Mr. Gormley speak on behalf of Ms. Holman first and then he can follow up if necessary.

Mr. Gormley advised he would like Ms. Holman to speak first. Ms. Sue Holman introduced herself and stated she and George Holman married. They built a house on Brushy Run Road in 1988. Mr. Holman came down with cancer in 2005. As a result, they sold the house and moved in to a double wide on the property. She stated she has been in the manufactured home for 3 years and does not know why this issue has come up. Ms. Holman indicated she keeps her place maintained, she does not bother anybody and the home is on the end of a dead end road. There is no public traffic on the road. She stated it would be a hardship if she tried to move the home since she is by herself and is on a limited income. She stated it would cost about \$70,000 to move it. The home is not mobile and there are no wheels under it. Ms. Holman further stated that Planning and Zoning gave her a permit to put the double wide in 3 years ago and now 3 years later she is being told it is illegal and has to move it. She has had a lot of research done and so has Mr. Gormley which is why she has requested he speak at this point. At this time, there were no questions for Ms. Holman and it was stated she may be called at a later time.

Mr. Gormley distributed documents to the Board which he explained is as recap of all the paperwork he has submitted and a lot of it is repetitious. Mr. Gormley referred to a satellite photo of the area of Brushy Run where the mobile home is located. He advised the photo does not have any legal significance; however, he does want to state on the record that the mobile home is in one of the most remote areas in Woodford County. At this time, Mr. Gormley pointed to the location of the mobile home and stated Ms. Holman is the last house on the paved county road. He also pointed to the county map to show the remoteness of the mobile home. Mr. Gormley stated it could have legal significance with regards to the hardship exemption. He explained further; this relates to the cost or detriment to the private citizen as opposed to the benefit of enforcing the regulation (the benefit the community gets by enforcing the regulation). If the detriment to the citizen strongly outweighs the benefit to the community by enforcing the regulation the Board can make the decision not to enforce the regulation. Mr. Gormley once again pointed to the satellite photo to show that if the decision is to move the mobile home the benefit to Planning and Zoning goals and objectives would not be affected.

Mr. Gormley then referred to another photo. He mentioned he would like to present the first satellite photo as evidence which may likely be used in court at a later date. The second photo provided a lay out of the properties/lots which Mr. Gormley stated he was going to use to provide a history of the property. Mr. Gormley then provided the following explanation:

In 1874 Gordon Washington bought 9 acres along Brushy Run. In 1910 7 lots were surveyed by a professional engineer and put it in Cabinet C and it was recorded. Mr. Washington platted 7 lots, 7 separate deeds and recorded them. Those have been there since 1910. Mr. Gormley referred to the map of the lots and pointed to the 4 most southwest lots along Brushy Run. This same map listed KRS 100.257 which Mr. Gormley explained he uses as a reference to show the authority and the power of the Board. He further explained the Board has the power to hear and decide. Mr. Gormley indicated, that most of the time, if someone is seeking a variance the Board is limited as to what variances you can grant. When a variance is requested, it is more restrictive. Mr. Gormley stated this case is different and as KRS 100.257 says you can hear and decide cases where it is alleged that there is an error in an order requiring... by enforcement office of Planning and Zoning. Mr. Gormley explained Ms. Holman is not requesting a variance rather Ms. Holman is alleging an error in interpreting the facts and the law and applying the law so now the Board has the power to hear the case and decide. He stated there is a broad discretion as to what the Board can rule in this case. This is not a variance rather this is an alleged error.

Mr. Gormley stated the 4 lots he discussed earlier along with some other lots were platted and recorded in 1910 and there has been no change since then. Ms. Holman is the last lot of the 4 lots which was also called the Paulina Tyler lot. Some time in the 1950's the mobile home was placed on that lot and the mobile home has been continuously there to the present. Mr. Gormley provided the Board with 3 affidavits which he submitted as evidence. The affidavits were written by a Jimmy Sutherland who used to farm the Brown Farm, Pete Welch and Tommy Turner. Mr. Turner lived in that neighborhood for

a long time and passed the Holman's property many times because was courting his wife who lived on a farm behind that. Mr. Gormley explained that all 3 of the individuals had vivid memories, at least in the 1950's, early 60's that a mobile home was on the property and that to the best of their recollection the lot has never been without a mobile home. Mr. Gormley stated that Pete Welch even remembers the siding on the mobile home (he was married in 1961 and had to go back in there and remembers the mobile home). Mr. Gormley explained this fact is significant because Planning and Zoning in the county went in to effect some time in 1965. Therefore, this mobile home was on the lot in the 50's, at least long before 1965. This is significant because it was grandfathered in. Mr. Gormley indicated he cited a case, the Darlington case out of Frankfort, in his memorandum in addition to another case. The cases are strong about the vested right and being grandfathered in. The vested right is protected by the United States Constitution and cannot be conformed by Planning and Zoning and they can continue to use it as always as long as they don't change the use. At this time, Mr. Gormley submitted the affidavits as evidence.

Mr. Gormley distributed 8 photos of the mobile home and submitted them as evidence to show the Board that it is inoffensive, which could be an abstract factor in the Board making a decision.

Mr. Gormley distributed a synopsis of the Darlington case. This is a case that spelled out the grandfathering procedures for non-conforming use. Mobile homes are also non-conforming because the ordinance states where mobiles can be and can't be so it is non-conforming. He further explained in this case, which is a hallmark case, early on by Kentucky Court of Appeals (which is now the Supreme Court) that non-confirming lots are not subject to planning and zoning because they are pre-existing and they are protected by the 14th and 5th amendment of the United States Constitution. Ms. Holman's home is a given and that it is grandfathered in. Mr. Gormley stated before any house was ever built on that lot, a mobile home was already on the property which was legal and proper and the courts have consistently held that you can replace a mobile home once it becomes ragged and put another one there. Mr. Gormley then referred an opinion of the Attorney General, who by coincidence gave an opinion on this very issue. The question that was asked was if you have a non-confirming mobile home that was pre existing before Planning and Zoning went in to effect, and was grandfathered in, is it ok to replace it with a new one? Buzz Nave, while he was County Attorney, wrote the Attorney General for his opinion on that question for the Board of Adjustment of Woodford County. The Attorney General wrote that it was alright to replace one mobile home with another one and it doesn't break the chain and the continuity is there. Ownership does not matter and is immaterial and it is a matter of use. Mr. Gormley stated it is his opinion Ms. Holman's mobile home is legal, was there before Planning and Zoning, has been grandfathered in because it was there before 1965, in accordance with the Kentucky Court of Appeals, has been vested and is protected by the Constitution of the United States. It is not subject to the removal by Planning and Zoning and it can stay there and be replaced. It is clear to him that the mobile home itself can stay there and is quite legal.

Mr. Gormley indicated he wanted to address the violation cited in the letter from Planning and Zoning which was not related to what he has been talking about. He stated it relates to Planning and Zoning's opinion that when the 4 lots became the property of Mr. Holman or a single owner, and they all front on a road and they are all non-conforming that by Article VIII, Section 801 of the Zoning Ordinance says all the lots merge into 1 and the dividing interior lines disappear and there no longer is 4 lots. Mr. Gormley stated if that were the case, even though many people including developers and builders disagree, Planning and Zoning says that creates the density violation because there is a 3 acre tract with two dwellings. The Zoning Ordinance says, with regards to Agricultural land density, 1 dwelling per 5 acres. Therefore you cannot have 2 dwellings on a 3 acre tract. This is what was cited in the letter sent to Ms. Holman which also says she must remove her mobile home.

Mr. Gormley explained that the issue gets even more complicated. If you did not have that merger, there would be 4 lots. Therefore, it would be grandfathered in and there are 4 lots that are preserved, vested and protected by the United States Constitution as set out in the Darlington case. Mr. Gormley thinks the lots might be 5/8th's of an acre building lots instead of one 3 acre tract. Ms. Holman is on one of the lots, has plenty of side yard and meets all other requirements so there is nothing wrong with her having her own mobile home there. By the same token, the Watts who have now bought the land from the Holmans, have 3 lots left on which to put his house which would not be in violation of any regulation. If the Board would find, based on Article VIII, Section 801, that the order to remove the mobile home is not enforceable or unconstitutional, there wouldn't be a problem with density. Throughout the years the lots have been treated as separate lots and not merged lots. Before 1998, the merger of lots only applied to Agricultural districts and a platted residential district. Mr. Gormely stated in 1998 the Fiscal Court amended the Ordinance and changed it from agriculture to only a residential zone so it can only occur in a residential zone. The Administrative Office is now trying to enforce the law that the two homes were on there before 1998, ownership occurred in 1980 when Mr. Holman bought the lot so there was a merger. It was not enforced at that time because there was a permit issued in 1996 to build a house with a mobile home already on that lot. Two years later, in 1998 the law was amended to residential so there is no longer a law today that would create such a merger in an agricultural district. Mr. Gormley stated now the Administrative Office is trying to enforce a law that has been appealed which is a merger in the agricultural district. He has received opinions from many other attorneys who believe that the merger business is likely unconstitutional because it takes property from a private citizen without compensation. Mr. Gormley explained when they condemn the land, nobody would argue that 4 separate lots are more valuable than a one 3 acre tract that you can only put 1 dwelling on. When you merge those 4 lots, and eliminate those lines you are taking that difference in value from the owner. Mr. Gormley gave the following example- before the merger, lots were \$50,000 a piece so 4 lots is \$200,000. If you put them in to one 3 acre tract where only 1 house is allowed now instead of a \$200,000 value you may only get \$100,000. The owner has lost \$100,000 by the fact of the merger taking the public purpose which is to comply with the Zoning Ordinance. Mr. Gormley stated this would be unconstitutional and could be challenged in a court of law.

Mr. Gormley stated it is his position that the merger is not enforceable and that there are still 4 building lots with a mobile home on 1 lot and a house on the other and both should be allowed to continue. As a practical matter, leave the mobile home where it is and it is well kept. The Board can find that the merger of the lots did not occur.

As recent as 3 years ago, in Woodford Circuit Court, after Mr. Holman bought this lot, Tommy Cox (who is deceased now) said he owned the Paulina Tyler lot. Mr. Cox went to Richmond and got a deed from an elderly lady who was an heir to the original owners. It was sold to Mr. Cox for \$1000 and it was recorded. Mr. Holman attempted to reason with Mr. Cox but was unable to do so so he filed a lawsuit. Judge Overstreet started out with the case and it ended up with Judge Johnson. The case went on for 5 or 6 years. Both judges did not think it was a 3 acre merged tract. The case ended in 2006. Both judges treated these as 4 separate tracts. This is why Mr. Holman went to get a permit for the transferring of the mobile home and said the court awarded him another lot; Mr. Gormley indicated this is what was in Mr. Holman's mind as to what happened in the courts. In 6 years, while this is pending, Mr. Cox had a mobile home that was there during that time, had it rented and was collecting the rent. After 6 years of litigation the tract was awarded to Mr. Holman. Mr. Gormley submitted a document showing the land with the separated lots which he stated he would like added to the record. Mr. Gormley explained this shows how the Court dealt with the lots. When Mr. Cox bought the lot or at least thought he did, they used the Metes and Bounds description. If you look at the permit application filed with Planning and Zoning, it was for an upgrade of the mobile home. In front of the application it says replacement of existing mobile home, mobile home, same size. Mr. Gormley explained the significance of that is – Mr. Holman was not putting in a first time mobile home that might not be conforming to the site; all he was doing was replacing it. This maintains the continuity and the chain of the mobile home from the 50's to the present. Mr. Gormley stated it is his position the Board has to hear the case which is not a variance which makes it limited and in this case the Board is not limited. Rather the Board has the authority under 100.257 to hear the case and decide it based on merits and the Board can be different. Mr. Gormley mentioned when he was first county attorney he represented Planning and Zoning and the Board of Adjustment. After doing that for several years the Board didn't always listen to him. Mr. Gormley stated the mobile home was there in the 50's, planning and zoning came in 1965 and the mobile home has a vested right and protected by the Constitution and can be replaced without breaking the chain. In 1996, the only thing on the entire 4 lots or if you concede it's a 3 acre tract is that it had a mobile home that was perfectly legal and protected by the Constitution. Mr. Holman gets a building permit to build a house which was built in 1996, 13 years ago and now there is a 3 acre tract, the mobile that was there and a house along with it. In the letter from Planning and Zoning to Ms. Holman it states that the mobile home violates the density law. Mr. Gormley stated that he does not concede to that. He stated what caused the density law is not the mobile home but the building of the house. Mr. Gormley stated he cannot believe the administrative officers had the discretion of arbitrarily choosing to move the mobile home. He stated the fact is –if there is a violation it did not occur when Mr. Holman got a permit to upgrade the mobile home

rather it occurred in 1996 when the house was built so if anything is to be moved it should be the house.

At this time, Chairman Dozier asked if the Board had any questions which they responded with no questions. Mr. Butler was then asked to speak.

Mr. Butler suggested Ms. Wilson speak first because she has the history of how Planning and Zoning came to make their decision. Mr. Dozier excused Mr. Gormley at this time and requested Ms. Wilson speak. Mr. Gormley interrupted and advised he was offering the satellite photo and map of the lot layout as an exhibit and if they are to go to court it will be in the record. Ms. Wilson asked about the photographs of the mobile home for which Mr. Gormley explained he was offering those as exhibits as well.

Ms. Wilson provided the following explanation. She stated in December of this past year it was brought to Planning and Zoning's attention that they had possibly issued a building permit in error. The way that came about is that Planning and Zoning was told there had been a lawsuit that was pending about the subject property Mr. Gormley has been discussing. In 1961 Mr. Cox bought a 3 acre tract of land. In 1970 he sold that 3 acres with the same legal description to somebody by the name of Bass. In 1980 Mr. Bass sold the same 3 acre tract with the same legal description to the Holmans. In 1986 Mr. Cox cut out 5/8's of a piece of property from that 3 acres claiming ownership. He recorded the deed. In December 2000 neighbors filed suit against Cox to determine if this lot existed. At some point, Cox had a mobile home. In March 2005 the Court granted a motion and ordered the removal of the mobile home and made the decision that the lot did not exist. The mobile home was removed. From some time after March 2005 to the time Mr. Holman came in to obtain a building permit, there was no mobile home on the property. There was about a year that the property sat vacant. The Holman's won the case to get the mobile home off the property. In the interim, Mr. Holman came in to get a building permit. At that time, (Ms. Wilson referred to a photo provided in the Board's packet) Mr. Noel and Ms. Wilson signed the building permit because the tax office had the property as separate lots because of Mr. Cox's deed. In June 2006, the tax map used to issue the permit already showed the original Holman house and a trailer on it as a separate lot. Ms. Wilson indicated that had there not been this tax map there wouldn't be two houses on this property but the tax office believed these were separate lots based on Mr. Cox's deed. The Judge ruled that that did not exist so that lot line got taken off after that ruling occurred. The tax map shows what it is today which is one parcel. It is taxed as one parcel and it is not 4 separate lots. Mr. Stark asked if that occurred in 2005. Ms. Wilson advised that it was not. Mr. Stark then asked when it went to one piece of property. Ms. Wilson stated some time after the court order and she was not aware of the exact date but advised it was after Planning and Zoning issued the building permit. Ms. Wilson explained that when building permit was issued Planning and Zoning saw two lots and Mr. Stark questioned that they must have seen more than 2. Ms. Wilson explained that they only saw two. Mr. Butler stated he believed Mr. Stark and Ms. Wilson were talking about two different things. Mr. Stark then asked if the 4 lots that existed (he referred to a map of the 4 lot layout) and Ms. Wilson interrupted and stated Planning and Zoning never knew about the alleged 4 lots since that plat was never

recorded. Mr. Butler explained the 3 deeds and the chain of title describe it as 3 acres. Ms. Wilson stated it was recorded as one 3 acre tract bound on the north with 3 or 4 different names on the property. She further stated Planning and Zoning did not have any reason to believe that they were not separate lots when the permits were being issued. Planning and Zoning was not a party to the lawsuit, it was a private civil matter going on in Circuit Court. Once it was brought to Planning and Zoning's attention that it in fact was one lot and they had issued a permit in violation they researched the documents and notified Ms. Holman in January. Ms. Wilson explained Mr. Noel spent some time in the clerk's office researching the documents. Ms. Holman came in to the office to talk about the violation and was given an extension and then given another extension which Ms. Wilson stated she believes it was good through the first of July. Ms. Wilson believed Ms. Holman was given about 6 months before she had to remove the mobile home. At that time, when it had not been removed Mr. Gormley came in to Planning and Zoning and stated he was going to file an Administrative Appeal. Ms. Wilson stated Mr. Gormley has been trying to convince Planning and Zoning that they had made an error in the determination about the lots and density and consolidation. Ms. Wilson stated the fact is it has been deeded a 3 acre tract for many years. The Holman's were even a party to a lawsuit trying to rule that the lot did not exist which they won and had the mobile home removed only to come back in a year later to tell Planning and Zoning (who did not know any of that information) they wanted to put another mobile home back on it. Ms. Wilson stated knowing the non-conforming rule you can replace the mobile home with one of equal or lesser size however the history of the tract of land was not known at the time. Once Planning and Zoning did know, they notified Ms. Holman that they had issued the permit in violation. Mr. Gormley requested Ms. Holman respond to Ms. Wilson's statement.

Ms. Holman referred to Ms. Wilson's comment that there was a year that there was no mobile home. Ms. Wilson advised she knew the judge ordered for the mobile home to be removed in March 2005 and the Holmans did not get their permit until June 2006. Ms. Holman stated the mobile home just sat there and it almost fell down and it was condemned. Ms. Wilson stated the mobile home was ordered to be removed based on the decision of the tract of land. Ms. Holman stated she did not know anything about that; she knew most of what was going on but did not know there was an order to remove the mobile home. Ms. Holman stated all she knows is that the mobile home just sat there until they cleaned it up themselves. The agreement between George Holman and Tommy Cox was that if Tommy Cox cleaned up the mobile home Mr. Holman would stop charging him rent which he had been collecting from Cox. Then Mr. Cox never cleaned it up which Ms. Holman said that is when they decided to clean it up themselves and obtain a building permit to replace the old one. Mr. Holman was diagnosed with cancer and that is why they had to sell their big place and get something smaller. Ms. Wilson explained that a demolition permit is not on record to show the old mobile home was removed.

Mr. Butler explained and directed to Ms. Holman that the other or older mobile home was listed as a single wide mobile home but Ms. Holman requested a double wide. Ms. Wilson stated it was a single wide mobile home at some point in time. Ms. Holman says

there might have been one but many years ago and before she was even married to Mr. Holman. Ms. Holman stated it was a double wide. Ms. Wilson asked if that is what Mr. Cox put there after he created the deed? Ms. Holman stated he did not. She provided the following explanation-Mr. Holman bought Nonesuch Grocery in 1980 when he bought the property. He put a mobile home there owned by a girl that worked for him. That girl sells the mobile home to somebody and that somebody sells it to Tommy Cox which is how he ended up with the double wide. Mr. Butler asked if that is how Mr. Cox had the ownership to the mobile home but not that land? Ms. Holman stated that was correct.

Mr. Schooler asked a question and wanted to know if the original mobile home was still there (not the one that is there now) would that mean there would not be anything in question right now?? Ms. Wilson stated that is not correct. Mr. Stark began to ask a question and Mr. Schooler interrupted and asked if Ms. Holman had not gotten a new mobile home she would not have required a building permit. Ms. Wilson stated you would still have to get a permit if you are replacing a mobile home. Mr. Schooler stated what he meant was that if the Holmans did not replace it, and the old ones still existed would this case be here today? Ms. Wilson stated a judge ordered that to go away because the lot did not exist. Mr. Schooler confirmed the judge ordered it go away and the Holmans came to ask for another permit to replace it on the same piece of land that the judge just ruled was not a separate piece of land. Mr. Butler stated that Planning and Zoning was not aware of that ruling. Ms. Holman stated she was not aware of the judge's ruling about requiring the mobile home to be taken out. She stated she has never heard that and all she heard was that the judge ordered the piece of property be conveyed back to the original tract.

Mr. Stark asked-outside of the law, the Holman's own this property? Ms. Wilson stated they have a land contract with a gentleman by the name of John Watts. Mr. Noel stated the Holman's still have it by deed. Ms. Wilson stated that was correct but that there is a land contract with Mr. Watts who was also present at the hearing. Mr. Stark asked if the Holman's, in some form or fashion, own, control or lease the 3 acres. Ms. Wilson advised that was correct. Mr. Stark asked if anybody was being harmed with the mobile home and house sitting where it is? He also asked if there was somebody claiming they are being harmed or is Planning and Zoning trying to make everything fit in the law when no one is being harmed? Mr. Butler indicated there was a complaint. Ms. Wilson stated the complaint made to Planning and Zoning was anonymous which is allowable. Mr. Stark asked if that person was still anonymous and Ms. Wilson stated they are unless they are in attendance for the hearing and wish to speak. Mr. Stark stated if it is anonymous it does not exist. Mr. Butler stated that would be outside the record here. Mr. Stark stated he is trying to figure out who is being harmed in this whole situation. Mr. Butler stated one thing to worry about is any precedent that the Board would be setting. He further explained is that the Board has to worry about if the next person that comes along and says well you did it for the Holmans. Mr. Butler stated he wanted to give a brief synopsis- the regulation that consolidates the lots-it doesn't consolidate the lots rather it says for the purpose of the ordinance we are going to treat them as one. Mr. Butler stated he thinks there has been a deed of consolidation here and somebody along the line was sloppy. What has been done is taken lots that were created by deed and then by deed

consolidated them in to one 3 acre tract. In terms of the 4 lots are more valuable, that may be true but in order for that to hold weight the 4 lots should be taxed. Mr. Butler stated it's the tax man being hurt because they are not getting taxes on the value of 4 lots rather they are taxed on the lower value. Mr. Butler stated it is disingenuous to make the argument we are being harmed but yet by the way we don't want to pay high taxes on that. Mr. Butler commented on the taking of the difference in values comment by Mr. Gormley. He stated that is not the state of the law. In order to take, you have to take all use of that property and that is not being done in this case. Mr. Butler explained his concern is that there is a legal theory of detrimental reliance. It says that if Government does something a person should be able to rely on that. If the Governmental body issues a permit that person should be able to rely on that. If you rely on that to your detriment in good faith then the government can't come back and say we made a mistake and that person needs to pay a penalty. So in other words if Planning and Zoning makes a mistake the person who was issued the permit shouldn't pay the price. Mr. Butler stated he has been personally sued about that and lost. In that case, he issued a permit in error, came back and said it was a mistake and it was taken to court and the court said since he was the one who made the error he cannot penalize the person who was issued the permit. The issue in this case is the permit which was issued in 2006, Mr. Holman in good faith thought that there were separate tracts and Ms. Wilson and Mr. Noel acted on that in good faith. When some evidence comes back the burden of the error under detrimental reliance will fall on the government body. Mr. Butler stated he doesn't think the other arguments hold weight and his main concern is detrimental reliance. In this case, the Holmans have relied to their determinant on that permit. He further stated that on the other end, a person can't come in and lie to the Board and claim detrimental reliance if that person deceived the Board. It has got to be good faith for that to apply. Mr. Turney wanted to know if it was up to the Board to decide detrimental reliance as he thinks the Board's decision needs to be made on whether or not Planning and Zoning made the error. Mr. Turney stated he thinks the detrimental issue is more of a judicial matter. Mr. Butler stated that Ms. Holman is claiming that there was an error on part of the Board in revoking the permit. The Holmans are saying the error is to revoke that and he believes the Board can decide that there was an error made and that the error was made was back in 2006 and the staff can't go back on that. They made that in good faith. The staff made the best decision with the information they had. The question is whether or not Mr. Holman deceived or did he provide the best information he had. Mr. Butler asked if that should go to court? He stated it would be expensive to do that and he thinks the Board does have the authority and should go that route if the Board's true feeling is this should apply. Mr. Turney asked for a copy of that order and what date that was? Mr. Noel stated it was in August 2005. Mr. Turney then asked who would have gotten a copy of the order and Mr. Butler stated anybody who was a party to the lawsuit. Mr. Noel stated the judge ordered the master commissioner to, by a deed of 5/8 of an acre, convey any interest from Cox to Holman. Ms. Wilson stated it says the master commissioner was ordered to convey title back to Holman in August 2005. Mr. Turney asked if in that order it said to remove the mobile home. Ms. Wilson stated she had that written down in her notes that it was to be removed in March 2005. Mr. Butler stated the parties were seeking to have the mobile home removed. Mr. Turney stated that was the part that concerned him. Ms. Wilson stated Mr. Holman is not here to obtain that information and

Mr. Butler stated that is the unfortunate part since one of the parties is not here. Ms. Wilson indicated there may be other people in the audience who wish to speak.

Ms. Dozier asked Mr. Butler if he was finished and he responded affirmatively. Mr. Dozier asked if anybody in the audience would like to address the Board. There were no responses.

Ms. Wilson received a call from a party about this case and documented on a piece of paper. She asked if the paper was available for the hearing however it was located back in the office. Ms. Wilson explained it was a lady who called and her and two siblings inherited property in that area. She just called to say that she did not object to Ms. Holman's mobile home staying on the property. She apologized she did not have the name of the person and stated that person and her siblings all live out of state.

Mr. Stark directed his comment to Mr. Butler and indicated that Mr. Butler stated earlier he was concerned about setting a precedent. Mr. Stark stated he thinks there is enough peculiarities about the case. Mr. Butler stated he was responding to his comment about who was being harmed? Mr. Butler stated he is not too concerned about setting a precedent either. The reason is because the things that caught this; there is better information today and getting better everyday primarily because of GIS technology. Mr. Butler stated some of the other issues like was the mobile home grandfathered in or the grandfathering issue as a modular home or mobile home. Initially everybody stated it is a mobile home and now it's being stated as a modular home which is treated like a house. Mr. Noel stated a modular home based on Kentucky Office of Building and Housing is a stick built home constructed on another site and brought in on a flat bed and crane lifted to a foundation. A manufactured, mobile or house trailer, going back in time, is constructed with an undercarriage, or chassis adaptable to axle and wheels and tongue for towing across the road. Mr. Noel further stated the one in question is a manufactured home; the wheels and tongue have been removed and he would not be surprised if they are underneath it. There is a foundation around it which is not an unusual occurrence. The main body of that double wide is supported by piers and there are probably 16 or 22 of them. Mr. Noel has not seen it because it is not under his purview but that is the standard. Mr. Gormley stated he has not seen any cases where the courts made a distinction between mobile homes, modular homes and manufactured homes because they are all the same. Mr. Noel stated manufactured is the same as mobile and house trailer and that is just the term that has evolved over the years. Mr. Gormley stated for purposes of what is being talked about he has not seen the courts make a distinction. Mr. Noel stated there basically is none.

Mr. Gormley stated in a lot of the mobile homes they take the wheel offs and put it on foundation which is not any different from a manufactured home. Mr. Noel stated the only difference is the name. Mr. Noel stated, back in the old days, house trailer had a bad connotation so they went to mobile home and that evolved in to manufactured home. Mr. Noel stated he wanted to clarify the differences.

Ms. Holman stated her home was brought in on wheels and the wheels were taken off.

Mr. Schooler stated he does not think the staff was in error with what they did. He believes they followed the ordinance. The circumstances involved them not knowing some things that were going on prior to this building permit creating a different situation. Mr. Schooler stated he doesn't want the Board to set a precedent but he is not concerned about it considering Ms. Holman's situation. Mr. Butler stated it is one of those situations where if you knew then what you know now they would have acted differently. Mr. Butler stated Planning and Zoning acted on the best information they had.

Ms. Wilson stated had that been a separate lot with nothing on it and the Holmans wanted to put a mobile home on it the Holmans would have to come in front of the Board since the lot is less than 5 acres and in order to put a mobile home on it they would have to seek Board approval. That would have been the procedure the Holmans could have followed. The Holmans would have needed a dimensional variance as they would have to be 80 feet back from the road, 25 feet from the side and 50 feet from the rear and that is not met. Ms. Wilson indicated there would have been other administrative processes the Holmans would have had to go through to possibly come out with the same outcome but the home may have been placed a little differently if it had gotten approved.

Mr. Prewitt asked as part of disapproval or approval can the Board add stipulations as part of it related to the specific case, such as a time frame? Mr. Butler said it is not a Conditional Use Permit and he can't think of any conditions, unless there was testimony of what the Holmans intended to; i.e. there was testimony stating it is our intention to use the land for this the Board may be able to limit it to that use. He stated the Board can hold them to what they are testifying to. Mr. Butler stated since it is a structure he doesn't think there would be anything. Ms. Wilson asked if Ms. Holman can stay in the home if somebody else owns the land. Mr. Noel stated he thinks there is an agreement between the Watts and Ms. Holman that she lives there until such time if she chooses to leave or passes away at which time Mr. and Mrs. Watts receive what is left. Mr. Noel asked if that was correct for which Ms. Holman responded affirmatively.

Mr. Stark asked if the Board decides to overturn the order to remove the trailer, 10 years from now someone comes in and wants to buy that lot they can't buy the lot, because it doesn't exist today. He further stated they would have to buy the 3 acres with the trailer and the house on that lot? Mr. Stark continued that if down the road the Holmans decide they wanted to sell that 3 acre tract with the mobile home and the house on it and Mr. Butler interrupted and stated for all intense purposes the Holmans have sold the property which is the contract discussed earlier. Mr. Stark asked if the Holmans have sold the 3 acres? Mr. Stark asked if Ms. Holman has permission to live in the mobile home? Mr. Noel asked if the trailer was still titled to her? Ms. Holman stated that it is. Mr. Watts then stood up and stated in the agreement, Ms. Holman sold all 3 acres to him and whenever she decides to leave or pass away what Ms. Holman is living in becomes his property. The ground has already been contracted to him. Mr. Stark confirmed directly with Mr. Watts that if Ms. Holman passes away you own the house, the trailer and the land which he responded affirmatively. If that is the case, Mr. Stark asked if that means Mr. Watts will have a house and a mobile home on a 3 acre tract, based on the law is in

violation of the density issue?? Mr. Gormley stated not if the Board approves this. Mr. Stark then asked if the Board approves this is there a violation when this occurs (if in fact Ms. Holman passes). Mr. Butler stated the Board's decision runs with the land. Mr. Stark stated that would mean the Watts would own the home, trailer and the 3 acre tract of land. Mr. Turney asked if the 3 acre lot could be divided later on for which Mr. Butler stated it could not. Mr. Noel stated that is the case whether there is a house on it or not. Ms. Wilson explained that it is zoned A-1 which means no less than 30 acres of land can be sold at a time. Mr. Butler stated there are a lot of issues that he believes the Board doesn't need to get in to.

Mr. Gormley stated that the courts have consistently held and in the opinion Buzz Nave received from the Attorney General, ownership has nothing to do with the use of land. If the Board makes a decision based on the permit and relying on it to your detriment, and if for some reason the Board says we don't enforce the regulation in this case against Ms. Holman or even if the Board makes the decision based on hardship (if you decided there is a such a disparity between the damage and injury to Ms. Holman as compared to the benefit of the community) then this is an isolated incident and has nothing to do with the rest of Woodford County. Therefore he does not think there is a precedent being created.

Mr. Dozier asked if there was anybody else in the audience with any questions or comments. He also asked the Board if there were any other questions or comments. Since there were no questions the hearing was closed.

Mr. Stark motioned to overturn the order to remove the manufactured home from the property. Mr. Butler asked if he could have some add-ons. **Mr. Stark said his motion is based on all the facts and testimony that was presented at the hearing. Mr. Schooler seconded the motion.** Mr. Butler interrupted and advised he wanted something to be added and informed the Board they do not have to agree. Mr. Butler stated that the basis of the decision is on the fact that the permit was issued in good faith by the Planning and Commission staff based on the best information available at the time but in error and that error is not as a result of any affirmative or deceptive action based on what was heard from Ms. Holman. **Mr. Stark stated he has no problem adding that to the motion and Mr. Schooler agreed as well.**

MOTION NOW READS:

Mr. Stark motioned to overturn the order to have the manufactured home removed from the property based on all the facts and testimony that was presented at the hearing; and based on the fact that the permit was issued in good faith by the Planning Commission Staff based on the best information available at the time, but in error and that error is not as a result of any affirmative or deceptive action based on what was heard from Mrs. Holman. Motion carried 3-2 in favor, with Mr. Prewitt and Mr. Turney voting against.

Ms. Holman and Mr. Gormley asked what the outcome was and Mr. Dozier explained that they won with 3-2 in favor. Ms. Wilson stated there was a 30 day time frame for an appeal.

09-014-2009

DIMENSIONAL VARIANCE: James K. Branham – 381 Winton Road – R-1B Zoning District – Section 504.2 Zoning District – Applicant is seeking a 28’9” front yard variance from the required 30’ front yard set back in order to construct a 48” fence along the side of the property 3” from the sidewalk

Mr. Noel advised the applicant was not aware of the ordinances regarding fencing and permitting. The fence is 48”. Mr. Noel referred to the overhead photo and indicated the factors to this case is a concrete drainage flume. The applicants have fenced in above that. Mr. Noel explained that the fence does not go to the rear property line. He referred to other photos in the Board’s packet as well. Mr. Noel referred to the photo that shows a chain link fence in it. That chain link fence is around the head of the headwall of the drainage flume. It is across the top, parallel to the sidewalk to prevent pedestrians from going in. He stated you can notice it by the one across from the driveway, the drop off of the fence. It has given the applicants protection for pets and young children in the backyard. It is a picket style fence erected for safety and security. It will also ensure public safety on this property around the drainage culvert. Mr. Turney pointed to the chain link fence in the photo and Mr. Noel responded that has nothing to do with the case. Mr. Turney asked how far it was from the sidewalk and would it require setbacks. Mr. Noel stated it is a 4 foot chain link fence put there by the developers in accordance with the development plan. Mr. Turney asked how far it would be from the sidewalk to the fence? Mr. Noel explained, the fence they need to be looking at runs parallel to the sidewalk. Mr. Noel said it is going down hill and if there are 8 foot spans you are looking at potentially 16 feet of ground. Mr. Turney referred to the photo and was trying to confirm which fence is at question. Mr. Noel stated it is not the chain link fence and it is the wood only. Mr. Turney then asked if that is parallel with the sidewalk and Mr. Noel stated it is parallel and within 30 feet of the sidewalk. Mr. Noel then referred to the photos again.

Mr. Stark asked if there will be a thru street at some point in the future. Mr. Noel stated he thinks there will be but it will require some creativity since it is the Backer property. Mr. Stark asked if there is an issue with being able to see. Mr. Noel stated there are no sight line issues and nor will there be if there is a thru street. Mr. Stark asked if you pull in or out of the driveway will it be an issue? Mr. Noel stated the fence is removed from the driveway. Mr. Stark asked if the street is there and a car was driving on the road would they see a car in the driveway? Mr. Noel stated they would. Mr. Butler asked how far the sidewalk is from the back of the curb. Mr. Noel stated he thinks it’s the standard 5 feet utility strip. Mr. Butler stated it’s more than 5 feet back.

Mr. Noel stated the owners were not aware of the fence regulation and the main reason is to create safety around the culvert. It will not affect visibility or the intended use of the culvert. It meets all specifications of the association. Ms. Wilson stated the applicants

might have to adjust spacing of the pickets based on the county engineer's recommendation. Mr. Dozier asked if there was any communication from anybody or any questions from the audience. There none so the hearing was closed.

Mr. Prewitt motioned to approve the Dimensional Variance based on the record, as seconded by Mr. Schooler. Motion carried 5-0 in favor.

09-015-2009 **DIMENSIONAL VARIANCE:** Joe Gay/Rick Moore – 134 Bell Avenue – R-1C Zoning District – Section 707.6 – Applicant is seeking a 5' variance from the minimum side yard of 8' and a 7' variance from the remaining 10' side yard set back requirement in order to construct a building 19' wide on a 25' wide lot. Applicant also needs a 12' variance from the required 18' minimum sum of the two side yard set backs.

Mr. Noel stated the lots are from an older part of town and when the lots were first platted the lots were only 25' wide. He explained it is not something that has happened in recent history. Over the years, a lot of the homes have been demolished and some have been rebuilt on. A 25' lot would not be buildable with the set backs that are in place today. The applicant is asking for this reduced property line set back to make it such that they can build on it. Mr. Stark asked if there was another lot right next to the one they are discussing. Mr. Noel explained there was and that the Board will be hearing that case next. The lots are owned by two separate people. Mr. Turney asked if the lots are deeded separately and for how long. Ms. Wilson explained that they have been deeded separately and it was many years ago. This was part of Wooldridge town. No contacts have been made on this property.

Mr. Dozier asked if anybody in the audience has any comments. George Kohl advised he lived at 140 Bell Avenue. He stated the lots are directly next to him. Next to the house that is there now, there were two lots. Mr. Stark asked if the lots sizes have been the same forever and Mr. Noel stated that long ago you used to be able to take two 25' lots and build over them. Mr. Kohl mentioned a gentleman that used to live up on Bell Court and moved in the little house next to him. Mr. Kohl stated at the time they did not have a clear deed. Ms. Wilson explained that the applicants are asking to put another little shotgun house back on the lot and the Board has to grant the variance in order to put the house back on there. Mr. Stark asked if it was for both of the lots and Ms. Wilson confirmed it was. Mr. Noel advised Mr. Kohl that the next property on the agenda is the lot directly next to him and that will be the next thing they talk about. Mr. Kohl stated the lot has almost the same dimensions which Mr. Noel explained that was the case. No other comments from the audience were made so the hearing was closed.

Mr. Turney motioned to approve the variance based on the record, as seconded by Mr. Prewitt. Motion carried 5-0 in favor.

09-016-2009

DIMENSIONAL VARIANCE: William E. Drury/Rick Moore – 138 Bell Avenue – R-1C Zoning District – Section 707.6 – Applicant is seeking a 5’ variance from the minimum side yard of 8’ and a 7’ variance from the remaining 10’ side yard set back requirement in order to construct a building 19’ wide on a 25’ wide lot. Applicant also needs a 12’ variance from the required 18’ minimum sum of the two side yard set backs.

Mr. Noel stated everything from the first case applies to this case. He would be happy to re-state everything if the Board requests. Ms. Wilson stated the lot used to be in the R-4 Zone so the set backs are not as severe as they are in R-1C Zoning District. It’s part of a grant that the city got years ago when they down zoned the neighborhood. There were no questions or comments from the audience or the Board so the hearing was closed.

Tim Turney motioned to approve the Dimensional Variance based on the record, as seconded by David Prewitt. Motion carried 5-0 in favor.

Mr. Turney moved to adjourn the meeting, as seconded by Mr. Prewitt. Motion carried 5-0 in favor.

Sam Dozier III, Chairman