

**TOWN OF WEDDINGTON
SPECIAL BOARD OF ADJUSTMENT MEETING
MONDAY, MARCH 23, 2009
MINUTES**

The Board of Adjustment of the Town of Weddington, North Carolina, met in a Special Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on Monday, March 23, 2009, with Chairman Jack Steele presiding.

Present: Chairman Jack Steele, Vice-Chairman Rob Dow, Dorine Sharp, Sarah Lowe and Beth Masurat, Attorney Susan Matthews, Attorney Bill Brown, Town Planner Jordan Cook and Town Administrator/Clerk Amy S. McCollum.

Absent: None

Visitors: William Scott, Sam Leggett and Rick Hunt.

Item No. 1. Open the Meeting. Chairman Jack Steele called the March 23, 2009 Special Board of Adjustment Meeting to order at 7:05 p.m. There was a quorum.

Item No. 2. Review and Discussion of the Minimum Housing Code Findings of Fact and Order Dated January 28, 2009 for Property Located on Beulah Church Road – Tax Parcel Number 06-096-023B – Mr. Rick Hunt. Chairman Steele advised that this item is related to the status of the schedule that the Board previously set with respect to Mr. Hunt's property and reminded everyone that the evidence that is taken should be factual and not opinion.

Attorney Bill Brown - This body retained jurisdiction over this matter pursuant to its order entered in January so I would regard this as a continuation of that same matter or item. Individuals who are already sworn in can speak; however, if someone wants to speak they need to be sworn in.

Attorney Brown swore in Town Administrator/Clerk Amy McCollum.

The Board of Adjustment received the following Exhibits:

I – Decision of the Board of Adjustment dated January 28, 2009

J – Letter dated March 17, 2009 from Union County Environmental Health

K – Copy of Union County Environmental Health Residential On-Site Wastewater Site Evaluation/Improvement Permit Application

L – Receipt showing payment of \$300.00 to Union County Health Department

M – List of North Carolina Board of Licensed Soil Scientists

Attorney Susan Matthews – This is a continuation of the matter that you heard January 26 regarding a dilapidated building pursuant to the Town's Minimum Housing Standards. The Town Building Inspector, Sam Leggett, found the building to be dilapidated. Mr. Hunt, the owner of the property, has appealed that decision. The first Notice of Violation of the Minimum Housing Standards was in March 2008. This portion of property was annexed by the Town in November 2007. Nothing was pursued back in March. The Building Inspector and property owner met in May to discuss going ahead and obtaining the building permit and bringing the house into compliance. Nothing resulted from that discussion and in November a Notice of Violation and Complaint was filed. Again Mr. Hunt and Mr. Leggett along with Legal Counsel met in December. They discussed various repairs that needed to be made to the house and if those repairs

were not made, the house would be demolished pursuant to the Minimum Housing Standards. In January, you issued an order giving the property owner a specific time line which he must meet in order to continue to repair the house and if not, fall back under the Town Inspector's finding of dilapidation at which time we would pursue enforcement under the Minimum Housing Standards.

Attorney Matthews – Is Exhibit I the order entered by the Board in January?

Ms. McCollum – Yes.

Attorney Matthews – Section A of the order requests that the property owner clean the property no later than February 6, 2009. Are you aware of whether or not Mr. Hunt met this deadline?

Ms. McCollum - He did meet the deadline to have it cleaned.

Attorney Matthews - The order also states that it must be secured by no later than 5:00 p.m. on February 6.

Ms. McCollum - It was not met on time. It was actually done the weekend of February 20 – 22.

Attorney Matthews - Why did the Board not convene at that point in time in order to decide that Mr. Hunt was in violation of the order?

Ms. McCollum – The Board waived this violation because Mr. Hunt did comply before their meeting. They had called for a Special Meeting on the 23rd and he had complied over the weekend.

Attorney Matthews - So the house is secure?

Ms. McCollum - Right. The bottom of the house is secure.

Attorney Matthews - Letter C states that a building permit to perform the necessary repairs must be obtained no later than March 1, 2009. Are you aware of whether or not Mr. Hunt met this deadline?

Ms. McCollum – As of 12:00 p.m. today, he has not met this deadline.

Attorney Matthews - That was confirmed by?

Ms. McCollum - The Union County Permit Department.

Attorney Matthews - Has Mr. Hunt obtained a zoning permit from the Town?

Ms. McCollum – Yes, he has.

Attorney Matthews - When did he do that?

Ms. McCollum – On February 11.

Attorney Matthews – To your knowledge, how long has this house been in the state that it is in now?

Ms. McCollum - We have been receiving complaints for two to three years from the Planning Board and Town Council asking what we could do about it. For a long time it was not in the Town of Weddington so there was not anything we could do about it.

Chairman Steele – Were you the person that issued the zoning permit?

Mc. McCollum - No. Nadine Bennett did.

Chairman Steele - Have you or anyone with the Town had any communication with Mr. Hunt prior to tonight on why he had not received his building permit from Union County?

Ms. McCollum - I called and left a message for Mr. Hunt the week prior to the March 1 deadline and told him that this was his next deadline and to please fax me a copy once he got his permit. I believe he left me a message that he had to deal with the Soil Inspection Department at Union County. He was not able to get a permit and had to be sent to that department. That was only after he received the notice that we were having this meeting tonight.

Chairman Steele - Was the soil permit a prerequisite to Union County issuing a building permit?

Ms. McCollum – I am not sure.

Chairman Steele – Do you know what is involved in this process?

Ms. McCollum - The only thing that I know is it can be a two to four week process.

Chairman Steele - Is there an application that has to be submitted?

Ms. McCollum - I am not sure. I believe that he was working with them. I do not know if an application has been completed or not.

Attorney Matthews – Mr. Leggett, have you confirmed with the Union County Building Department on whether or not Mr. Hunt has obtained a building permit?

Mr. Leggett - I spoke to them by phone as of today at 4:00 p.m. and they have not issued a building permit for that property.

Attorney Matthews - Had he applied for a soil test?

Mr. Leggett - Yes, according to what I learned from the Health Department he has applied for a soil test for a septic tank.

Attorney Matthews - Is that a prerequisite for obtaining a building permit?

Mr. Leggett – It is.

Attorney Matthews – Tell us briefly what Exhibit J states and what it is.

Mr. Leggett – This is communication from the Union County Health Department to Mr. Hunt indicating that they have performed a soil evaluation test and found insufficient areas suitable for the proposed use designated on the application.

Attorney Matthews - Are you saying that the property in question is not suitable for a septic tank?

Mr. Leggett – Yes – according to this letter they found no areas suitable for a septic tank.

Attorney Matthews - Are you aware if Mr. Hunt knew of this prior to March 17, the date of this letter?

Mr. Leggett – I learned from speaking with the author of this letter that Union County had been talking with him about some sort of design system by a Soil Scientist and they had approved something but it was good for five years and that was back in 2002/2003. That original approval that they talked about expired. At this point he has no approval for any kind of system and if you read the entire letter it talks about he can still talk with a Soil Scientist about one of the innovative designs that someone could come up with. They are not saying that they would approve it but they are offering that as the only option.

Attorney Matthews - Mr. Hunt did have a permit for an innovative experimental system that lapsed two years ago and was a five year permit?

Mr. Leggett – Yes, that was my understanding with talking with Drew Walker with the Union County Health Department.

Attorney Matthews - During all of your conversations with Mr. Hunt did he ever mention to you that he would be unable to obtain a building permit as a result of the soil?

Mr. Leggett – No.

Attorney Matthews – Did you have any indication before today that the soil tests may fail?

Mr. Leggett – No.

Chairman Steele – When was the last time that you talked with Mr. Hunt?

Mr. Leggett – I suppose at the meeting in January and we have not communicated since.

Chairman Steele – Would it be correct to say that the soil there is not suitable for what you would think of for a standard septic system?

Mr. Leggett – I would say so based on my experience and with that part of the regulatory land development process as I read what is in here in this letter.

Chairman Steele – There is the possibility subject to engineering approval that some innovative new septic system could be approved so that the land could have a structure.

Mr. Leggett – That is the way that it sounds.

Chairman Steele – Do you have any idea whether Mr. Hunt has obtained any type of engineer to design that type of system?

Mr. Leggett – No.

Ms. Sharp – In order to get the building permit he had to apply for a soil test. Is there an actual date of application for when he did this?

Mr. Leggett – The people today that I spoke with at the Health Department - I believe that they mentioned the date of March 17. The lady was real clear that you had to submit an application and pay a fee. I did not get from her that it was done or not. She explained to me the process that you follow. It is a two step

process with them. A soils investigation and that determines if you have an area that is suitable and then you apply for a permit to install that septic tank and once you do that and they approve it you can take that approval to the Building Inspection Department and get a permit that would authorize you to move a building onto a lot and do construction. As far as I can determine, that has not been done.

Vice-Chairman Rob Dow – Back in 2002, whenever Union County permitted the house to be moved onto the property they did so after approving a modified septic system, correct?

Mr. Leggett – I have no knowledge that they did that.

Ms. Sharp – What is the permit that lapsed then?

Mr. Leggett – Apparently the folks that I talked with looked at a proposed design for some sort of innovative system.

Vice-Chairman Dow – Those systems are not uncommon. How did he actually get a permit to move the house on the property without an approved, modified, or not septic system?

Mr. Leggett – I could not find anything. People searched back and could not find any record of that.

Attorney Matthews – What is your understanding of how the residence got put on the property in 2002?

Mr. Leggett – When we were here at the last meeting, I listened to the neighbors and they talked about that it was moved on a weekend and parked on the edge of the road. I do not know if it was done with or without a permit. That was seven to eight years ago. I could find no record and when I made those types of inquiries to the Building Inspection Department they could find no record that it was ever permitted.

Attorney Matthews – Is it possible in your opinion as a Town Inspector with 30 years of experience in this that houses get moved and just appear on property without a building permit?

Mr. Leggett – I have seen that happen.

Attorney Matthews – So it is possible that no building permit was ever issued for this property and it was something that was moved overnight and at that point Mr. Hunt obtained an innovative soil test?

Mr. Leggett – Yes.

Vice-Chairman Dow – Then to your knowledge, and you have inquired, there was no permit to move that house onto the property? There was no original building permit?

Mr. Leggett – According to the people that I spoke with at the County Inspection Department today, and that was the second inquiry that I made to them, they found no record of any permit.

Vice-Chairman Dow – Was there no foundation inspection for that poured in place foundation?

Mr. Leggett – No.

Mr. Hunt – How long do they keep records for at the County?

Mr. Leggett – The folks that I spoke with today said their records went back to 2004. They changed the system in 2004.

Mr. Hunt – Because they do not have any records does that mean that it was not done?

Mr. Leggett – No.

Mr. Hunt – Did I not call you and tell you that I had this permit on the 24th and that I was going for the soil tests and why did we need to meet and I told you that it was going to take two to four weeks to get the soil tests done?

Ms. McCollum – At the time we talked, we had already planned the hearing. You called me after you got notice of the hearing. I talked with the Chairman to see if we go ahead with the meeting and he said yes. The notices were mailed on March 13. You left me a message the next week. I do know what the date was. It was the week after the notices went out.

Mr. Hunt – Is it true that you return all of your voice mails the next day?

Ms. McCollum – Yes, I do. I left you several messages, too.

Mr. Hunt – You just said that it took you a week to get back to me.

Ms. McCollum – I was out on the Friday. You called the next week and left me a message. I do not know the date that I called you back but it definitely was not a week.

Mr. William H. Scott – I live at 3311 Beulah Church Road in Weddington. I cannot provide the exact dates like I did in my original testimony as to when the house was moved there and when it was placed in its position now but I can tell you that during that period of time soil borings were incorrectly done. We came home and found probably a half a dozen different soil borings on our property more than 50 feet on our property which was the soil borings that someone had used to determine whether or not that house could even be placed there. We immediately contacted people and said that these borings are not on the property. They are on our property and why are they there and they said that they had made a mistake and they would correct it. They did not apparently use those borings so that was the time that they determined that a system could not be placed on that property in a normal fashion and it would have to go to an engineered system. I cannot give you the exact dates of when that actually happened but it was in that time period.

Mr. Hunt – Was that before I bought the property?

Mr. Scott – It was right about the time the house was moved there. It was during that period that the house may have been at the road position or it may have been at the site that it is at now. It was in that time period. I assumed you owned the property when you moved the house there. That is the only thing that I can assume. It was within that period and those borings were incorrectly done on our property and I assume that the County made the correction and at that point there was no adequate area. I have no idea why they did it on my property because my property is mowed past your overgrown area.

Mr. Hunt – Did you notice any flags on my property?

Mr. Scott – It was in the time period the house was on the street or in the position it is now. I assume when you moved the house to that property you owned the property because it was done in that time period. It may have not been when the house is where it sits now but it was definitely after the house was placed at the road.

Mr. Hunt – Do you know if it was passed at all?

Mr. Scott – It was not passed from the soil borings on my property.

Mr. Hunt – Do you work for the County? Do you know if it was passed?

Mr. Scott – We called and they said it did not.

Mr. Hunt – Are they allowed to release information to you?

Mr. Scott – They did soil borings on my property.

Mr. Hunt – After we met here last time, you told me to get a permit. I came here to get a permit from you to go to Union County. I got that from you and went to Union County. They told me that you cannot get a building permit until you get a soil evaluation. There is a receipt and there is the stamp. I told them that I have to have a permit by March 1. They said it could be a week or two weeks. I received this letter March 17 that it did not pass and it would have to have a special soils test. I am trying to find a Soil Scientist. I called Kenny Owens out here to get another evaluation. I am doing what I said I would do. This happens all the time. It is not a special deal. As soon as I got my permit from the Town, I went straight there and got it done. I am doing what I said I would do.

Chairman Steele- Have you retained a Soil Scientist?

Mr. Hunt – I have called to get estimates on what they can do. I am in the process of selecting a Soil Scientist. I need more time to do that. I thought this was supposed to be a joint thing. Mr. Leggett has not called me. If he is not calling me, I am doing what I am supposed to do. I did not get a call. I am progressing.

Attorney Brown – We had the hearing here on January 26. You came to Weddington and you got a zoning permit approval. What date did you get that from Weddington?

Mr. Hunt – I called three or four times and the Town Planner was not in to do it. She postponed me at least two to three weeks when I called. She is not in Wednesday and I came back to do it. I do not recall the date.

Attorney Brown – You testified that you immediately went to Union County.

Mr. Hunt – It was a day or two later that I went to Union County.

Attorney Brown – What did you do when you got to Union County?

Mr. Hunt – I gave them my permit from Weddington and they said that they could not issue me a building permit right now and my original permit had expired and they said that I needed to get another one. I had to pay \$300.00 to have the County come out and do that. I paid for that. They said that it would take two to three weeks.

Attorney Brown – So around February 13 you got the zoning, a couple of days later you went to the County?

Mr. Hunt – It was done a week before the permit was supposed to be issued. A week should be plenty of time. I did not know it took two or three weeks.

Attorney Brown – Did you then go to the Health Division at the County? Did you do it that same day when you went to get your building permit?

Mr. Hunt – I am not sure. If I had a date, I would tell you.

Attorney Brown – Did you have to apply at all to the Health Department for the soil tests?

Mr. Hunt - Yes. I applied on February 24.

Attorney Brown – You had to give them permission to come on your property to do the testing?

Mr. Hunt – That is why I paid the \$300.00. In the meantime I was trying to get the Town to get an appointment here.

Attorney Brown – Were you at your property when they came to do the soil testing?

Mr. Hunt - No.

Attorney Brown – Do you have any knowledge of when they did that soil testing?

Mr. Hunt – No. On March 17 they sent the letter that said that you did not pass and you need to get a special permit.

Attorney Brown – You applied for the soil testing on the 24th then the next thing you heard from the County was on March 17?

Mr. Hunt – Exactly.

Ms. Sharp – On the form that Attorney Brown is holding on the right hand corner you see Mr. Hunt's signature with a date of February 15, 2009 and yet the date stamped is February 24, 2009. That is nine days from the date he filled out the form until it was actually date stamped by the County.

Mr. Hunt – I do not know why. I do not know if I did not have a check or what happened.

Ms. Sharp – When you found out that you could not meet our March 1 deadline did you try to contact anyone at Town Hall between February 24 and March 1?

Mr. Hunt – No.

Ms. Sharp – Even though you were under this deadline you did not make any effort to communicate your problems?

Mr. Hunt – No – I did what I was supposed to do. It was a joint thing. No one called me.

Ms. Sharp – It clearly says a building permit to perform the necessary repairs shall be issued by Union County no later than March 1, 2009. I would think if you were having trouble meeting that deadline, considering the fact that you almost came before the Board last month because of missing a deadline, I am curious why you did not try to communicate with us to let us know that it was an issue?

Mr. Hunt – Better tax dollars at use.

Vice-Chairman Dow – Why would you apply for a standard septic field permit when you knew that it would not pass because you had to apply for a modified permit before?

Mr. Hunt – I did not know that. I thought it passed already the first initial time. They did not tell me that you did not pass the original soils test.

Vice-Chairman Dow – In 2002, you had to have the Health Department do a soil test on the property?

Mr. Hunt – Yes.

Vice-Chairman Dow – At that point, because you did go to the expense of having an engineering firm design a modified system, you must have been turned down on a standard system?

Mr. Hunt – I never got a letter like this before.

Vice-Chairman Dow – Why would you go through the modified?

Mr. Hunt – That is what they told me I had to do. I never got a letter like this before.

Vice-Chairman Dow – You just assumed that you were going back through the same process.

Mr. Hunt – Exactly.

Vice-Chairman Dow – Were you aware that it would have to be tested again or were you assuming that you could use the same permit that was issued before or just renew the permit that you had?

Mr. Hunt – Exactly I told them that you have already done this once and they said it has expired.

Vice-Chairman Dow – Did you originally have a building permit?

Mr. Hunt – Yes.

Vice-Chairman Dow – And the Inspectors came out and inspected the foundation?

Mr. Hunt – Yes.

Vice-Chairman Dow – You did not keep any records of that?

Mr. Hunt – I have the little sign that I got. I have the old dilapidated sign but it is inked out.

Attorney Brown – You obviously said that you had this earlier permit, not quite sure what it was but they said that you could have it and then they told you that it had expired. On its face were you familiar with its terms?

Mr. Hunt – I thought it was a standard issuance for a septic tank.

Attorney Brown – Did you understand what the timeframe was for the validity of that permit? Did you know that it was for a five-year term?

Mr. Hunt – I am sure that I did when I first saw it.

Attorney Brown – Why was the septic system not built within the five years?

Mr. Hunt – The same reason why the house is not done.

Attorney Brown – When you went to the County, did you know that permit was expired?

Mr. Hunt – No, I did not.

Attorney Matthews – During the entire time here a month and a half ago you stated that it would take two weeks to get the building permit from the County. Did you mention to anyone that you were going to have an issue with your soil?

Mr. Hunt – No, not at all.

Vice-Chairman Dow – Are you testifying that on your original septic system approval you were not aware that it was a modified system?

Mr. Hunt – I knew I had to hire somebody to do that back then but I thought it would pass right then. I never received a letter. When I bought the property it said that it was approved for a six bedroom house.

Ms. Sarah Lowe – When you originally moved the house onto the lot did you have to get a permit to move it there?

Mr. Hunt – Yes, from Union County.

Ms. Lowe – Did you use a licensed house mover to move the house and who was that?

Mr. Hunt – Yes. I cannot remember the name of the actual contractor.

Ms. Lowe – I have had quite a bit of experience with these soil tests for our development and I wanted the Board to know that sometimes it does take more than four weeks to get them out to do the soil testing and they really do not tell you much then.

Vice-Chairman Dow – I was not aware that there was a time limit on the permit themselves.

Ms. Lowe – There is because we had to go back and get permits again after we already had them.

Vice-Chairman Dow – Did that require retesting?

Ms. Lowe – Yes.

Chairman Steele – I am not sure when we met last time and set up the time frame that we took into account the time that would be required.

Vice-Chairman Dow – I assumed that the building permit would allow the original Health Department approved septic system to go in.

Ms. Lowe – It is two separate things.

Vice-Chairman Dow – I assumed that he had an approved system and that would not be a stumbling block. What was the date that he actually went in to find out that he was actually going to have to have a new permit?

Chairman Steele - It had to be no later than February 15 because that is the day that he signed and dated the new permit application.

Attorney Brown – The testimony was that he thought that he got the zoning around the 13th and it was a couple of days later which would be consistent with the 15th which is on the bottom of that.

Vice-Chairman Dow – On February 15 he was two weeks away from the deadline perhaps thinking he was all right.

Chairman Steele – He did not know about the application so he probably did not have the \$300.00 so that probably accounts for the difference between the 15th and the 24th.

Ms. Sharp – Here is an option - Change March 1 to May 1, May 18 to July 18, September 1 to November 1.

Chairman Steele – I think that makes sense. It is not like Mr. Hunt did nothing. He should have notified the Town about the issue. He did in fact try to get the permit and then had to go through the septic process again. I would be very comfortable with moving the deadline.

Vice-Chairman Dow – I would agree. The most urgent thing was securing the home so that kids could not get in.

Ms. Sharp – I want Mr. Hunt to understand that the property needs to continue to be cleaned. That property needs to be maintained.

Chairman Steele – What is the date of our meeting in July?

Ms. McCollum – July 27.

Vice-Chairman Dow – He is going to have to go back in and reapply with a modified system. He is going to have to hire engineers to come out and do soil samples and design a modified system. I would assume similar to the one that Union County originally approved. He still has a pretty good hurdle here.

Chairman Steele- With the May 1 deadline, we can require that the modified system proposed by his engineer be submitted to Union County. That will be six weeks from now. I think your concern is that he has no control over how long it takes Union County from the time that they receive it until they actually get the approval.

Ms. Sharp – We did cancel a meeting last month because of a missed deadline. We went through all the advertising process and the notices went out. It took that before he actually went in and boarded up the ground floor. He was already in violation. He has not contacted us or made any attempt to contact us regarding his attempts with the County. I am concerned that we are going to keep going and going and going. I do not know how to address that. I do not want to see anyone's house destroyed but I am very concerned on what is going on.

Chairman Steele - It probably is not realistic to get an engineer, do a design and then submit and get approval all by May 1. It would not take an engineer more than a couple of weeks to design a system. Any delay from now would be a delay in hiring your engineer.

Ms. Sharp – Our meeting in May is May 18. Let's plan to meet on May 18 and require that he bring us his building permit from Union County. That is almost two full months. That gives him additional time. On May 18 we would want to see proof of a building permit from Union County.

Ms. Sharp moved that additional time be granted in the repair schedule subject to the following conditions:

- A. The Board of Adjustment will retain jurisdiction over this matter during the progress of construction and repair.
- B. The property is to remain cleaned and the structure secured throughout the repair period.
- C. A building permit to perform the necessary repairs shall be issued by Union County and a copy submitted to the Town no later than May 18, 2009. A copy is to be provided to the Town as soon as it is received. A Board of Adjustment Meeting will be held on May 18, 2009 to review the permit issued by Union County and to set future deadlines for completing the required repairs to the extent they differ from what is currently in the January 28 decision.
- D. Except as modified above, the provisions of the December 18, 2008 Findings of Fact and Order and the January 28, 2009 Decision remain in full force and effect.

Vice-Chairman Dow seconded the motion, with votes recorded as follows:

AYES: Masurat, Lowe, Sharp and Vice-Chairman Dow
NAYS: None

Chairman Steele - If he gets his permit early, there is no reason for him to wait until May 18th to begin work on his property.

Ms. Sharp – He could also show us at that time the progress he has made.

Item No. 3. Approval of Minutes.

A. January 26, 2009 Special Board of Adjustment Minutes. Ms. Sharp moved to approve the January 26, 2009 Special Board of Adjustment Meeting Minutes. Ms. Lowe seconded the motion, with votes recorded as follows:

AYES: Masurat, Lowe, Sharp and Vice-Chairman Dow
NAYS: None

B. February 23, 2009 Special Board of Adjustment Minutes. Ms. Sharp moved to approve the February 23, 2009 Special Board of Adjustment Meeting Minutes. Ms. Lowe seconded the motion, with votes recorded as follows:

AYES: Masurat, Lowe, Sharp and Vice-Chairman Dow
NAYS: None

Item No. 4. Adjournment. Ms. Sharp moved to adjourn the March 23, 2009 Special Board of Adjustment Meeting. Vice-Chairman Dow seconded the motion, with votes recorded as follows:

AYES: Masurat, Lowe, Sharp and Vice-Chairman Dow
NAYS: None

The meeting adjourned at 8:00 p.m.

Jack Steele, Chairman

Attest:

Amy S. McCollum, Town Clerk