Camden County Board of Commissioners
Special Meeting / Quasi-Judicial Hearings
January 13, 2026 – 6:00 PM (Recessed)
January 28, 2026 – 6:00 PM (Recessed)
January 29, 2026 – 6:00 PM (Adjourned)
Camden Public Library Boardroom
118 Hwy 343 North

Minutes

A duly-noticed quasi-judicial hearing of the Camden County Board of Commissioners was held in the Boardroom of the Camden Public Library on January 13, 28, 29, 2026. On the agenda for consideration:

- Special Use Permit for B&M Investments of North Carolina, LLC (UDO 2016-08-10), specifically, County staff's request to revoke the special use permit (UDO 2025-11-227)
- B&M Investments' request for a major amendment modification of the special use permit (UDO 2025-12-336)

JANUARY 13, 2026 – 6:00 PM

CALL TO ORDER
The meeting was called to order by Chair Jason Banks at 6:00 PM. Also Present: Vice Chair Troy Leary, Commissioners Randy Krainiak, Sissy Aydlett and Tiffney White.

Administration Staff Present: County Manager Erin Burke, County Attorney Lauren Arizaga-Womble and Clerk to the Board Karen Davis

ITEM 1. CONSIDERATION OF AGENDA

Motion to approve the agenda as presented.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

ITEM 2. CONFLICT OF INTEREST DISCLOSURE STATEMENT

Clerk to the Board Karen Davis read the Conflict of Interest Disclosure Statement.

ITEM 3. QUASI-JUDICIAL HEARINGS

County Attorney Lauren Arizaga-Womble announced that the attorney for the applicant, the owner of the property to be discussed at the hearing, has requested a continuance due to the hospitalization of his client. Attorney Arizaga-Womble communicated with the attorneys of the parties involved and should the Board choose to honor the continuance request, an agreement was reached to continue the hearings at the certain day and time of January 28, 2026 at 6:00 PM in the Boardroom of the Camden Public Library.

Motion to table the public hearings for items 3A and 3B until January 28th at 6:00 PM.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Jason Banks
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

A. Camden County Planning Staff has submitted a revocation application (UDO 2025-11-227) for the special use permit UDO 2016-08-10.

B. B&M Investments of NC, LLC has submitted a major amendment modification application (UDO 2025-12-336) for the special use permit UDO 2016-08-10.

ITEM 4. RECESS

Motion to recess until January 28, 2026 at 6:00 PM.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Jason Banks
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks recessed the meeting at 6:04 PM until January 28, 2026 at 6:00 PM.

JANUARY 28, 2026 – 6:00 PM

Welcome and Reconvene

Chair Banks reconvened the Board of Commissioners from the January 13, 2026 recessed meeting at 6:00 PM. The agenda was previously approved at the January 13th meeting and there were no requests to amend the agenda. The Clerk to the Board read the Conflict of Interest Disclosure Statement.

Closed Session

Motion to go into Closed Session to consult with the county attorney in regard to matters within attorney-client privilege.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks reconvened the Board of Commissioners following a brief closed session.

[Begin transcript.]

Chair Banks: We are here this evening to address two applications related to the special use permit for mining operations issued to B&M Investments, specifically A) The Planning staff has submitted a revocation application for the special use permit UDO 2016-08-10 and B) B&M Investments of North Carolina, LLC has submitted a major amendment modification application for the special use permit UDO 2016-08-10. I'd like to now recognize our county attorney, Mrs. Womble, to give an overview of quasi-judicial proceedings and procedure.

Attorney Womble: Thank you, Mr. Chair. Good evening. So this is really a review for the Board but also for the public in that quasi-judicial proceedings are different than standard public hearings. In that regard that special due process safeguards that have to be followed. This is a legal proceeding and not political. Specifically, this is going to be based on evidence presented to the Board and not their personal opinion. And specifically, whether or not a decision is popular or unpopular is not relevant. The issues before are whether the applicant has complied with the standards in the ordinance or other applicable state law. All testimony will be under oath and subject to cross-examination. And in terms of procedure, the applicant will present their case first followed by the opposition. In these two matters we actually have two applicants and we generally do and will start with staff. Staff is the applicant for the revocation application and then B&M is the applicant for the modification. So we will begin with staff and then go to B&M.

In regards to identification of the parties and/or counsel for those here and will participate tonight we do have our Planning Director, County Staff, Amber Curling who will be making the presentation. And then for B&M, they are represented by Jim Cauley and Mr. Michael Franchi. They are seated on the front row here to left. Camden Yard Materials is represented by David Oakley, he's in the back row. And then Derrill Wickens is represented by Mr. Richard Biemiller and I hope I pronounced your name correctly. There he is. Both those parties are appearing in opposition to the modification application.

Is there any other members of the public present who allege they have standing to participate who's not represented by counsel?

Attorney Biemiller: I don't technically represent landowner Cohen, but I might say a few words or I might call on him to say a few words, answer a few questions.

Attorney Womble: Sure. So I think it would be appropriate for you to, since you are participating, to call him as a witness if that's the route you want to go. But…

Attorney Biemiller: Yes.

Attorney Womble: Okay. Is there anyone else…or been contacted by anyone else? Okay. So and also before we begin the hearing there are some preliminary motions, Mr. Chair, that have come to my attention that I believe we need to address. One, the county received a letter from Mr. Oakley yesterday regarding the validity of the permit. I believe that would need to be addressed first before we go into the hearing. And then also there was a request for remote testimony. Is that still…Mr. Franchi?

Michael Franchi: We withdraw that.

Attorney Womble: Okay, alright, thank you. Are there any other preliminary motions other than Mr. Oakley? Anyone…was there anything else? I wasn't made aware of anything else so…so at this time I believe it would be appropriate to have Mr. Oakley, if you'll come to the podium and address your motion.

Attorney Oakley: Yes, ma'am. Thank you very much. It's my honor to present here in front of you tonight. I represent the operator of the Camden Yard Material mine, which is a competitor of the B&M mine. These are two sandpit mines that are located on Ponderosa Road. The Camden Yard mine is about two miles in, a little over two miles. They received their use permit to operate first. Later, B&M came in and I believe they received their first use permit in 2007, which expired. They received their second one in 2017. That's the one that we're here about tonight. And earlier in 2025, B&M was cited with a notice of violation for their operations of their mine for being in violation of their use permit. I believe everyone here is familiar with that. In response, B&M filed a appeal of that notice of violation and that's in your…your packet…in the agenda packet. It starts on page 70, is their appeal application. And on page 72 there is an attachment and they give their grounds for their appeal. And in there they say that the grounds for their appeal are that the owners, B&M Investments of North Carolina LLC has complied with all conditions of the approved special use permit, which are legally permissible. So if you go through and read on, they admit that they can't comply with some of these conditions, specifically Condition 7 and 8. Condition 7 is to put up a six-foot wooden fence on the property border on the northern side of Ponderosa Road. And then Condition 8, they were to put in a vegetated buffer. So they admit that they can't comply with those, which is certainly grounds for revocation but they also state in here that those were not legally permissible conditions. So that brings us to Condition Number 12 of the permit. Condition Number 12 of their permit says that if any of the conditions affixed hereto or any part hereof shall be held invalid or void, then this approval in its entirety will be void and have no effect. So by their own admission this permit was never properly approved. It was *void ab initio*, void from the outset and it was…never had any effect. So there is no permit for you to revoke here tonight. The permit technically didn't exist. There is no permit to amend because it didn't exist. These were conditions that…I've got copies of the minutes from the prior 2016 or 2017 meetings on their permit. But B&M hired Herbert Mullen as their attorney. He came in and agreed to those conditions. They could've appealed those conditions if they wanted to but they didn't. Now they're coming back you know eight years

later and they're admitting that those conditions aren't valid so their permit was never in existence to begin with. So this Board doesn't have the authority technically to even revoke the permit that doesn't exist.

Attorney Womble: Thank you.

Attorney Oakley: Thank you.

Attorney Womble: And I'm going to give you guys an opportunity to respond but let's go ahead and see if Mr. Biemiller wants to have anything to say and then…

Attorney Oakley: And I'm sorry, I didn't fully introduce myself. I'm David Oakley. I'm attorney from the law firm of Poole, Brooke, Plumlee based out of Virginia Beach.

Attorney Womble: I'm going to let Mr. Biemiller go and then that way you guys can respond, Mr. Cauley, in its entirety.

Attorney Biemiller: Good evening. Richard Biemiller with the law firm of Pender Coward on behalf of Derrill and Angela Wickens. I won't take up any extra time but I concur fully with what Mr. Oakley just said. The permit was issued with conditions precedent that they had to be fulfilled in order for the permit to come into existence. They have never been fulfilled. They have admitted it. The evidence will show that there has never been a buffer, there has never been a fence in addition to all the other violations. But significantly, there's never been the fence, there's never been the buffer and so the permit has never come into existence. And I concur fully with what Mr. Oakley said. There's really nothing for the Board to revoke at this point. It's just not there to begin with. These were conditions precedent that weren't met. Thank you.

Chair Banks: Thank you.

Attorney Cauley: May I?

Attorney Womble: Yes, please.

Attorney Cauley: Good evening. I'm Jim Cauley, with Cauley Pridgen firm. This is my colleague, Michael Franchi. We represent B&M Investments and Ponderosa Sand. That's a pretty interesting bootstrapping argument in my view that we were just presented with this afternoon. So if you look back at the minutes of the 2017 process, it appears that the then owners of the adjoining properties were in agreement with these conditions. The conditions became unlawful when the owners did not consent or withdrew their consent. Our clients tried to do a fence; tried to do a buffer. And we agree here today that those conditions cannot be satisfied. And the reason they can't be satisfied is because the adjoining owners will not consent for those conditions to be satisfied. The conditions appear to have been in place for the benefit of the adjoining owners but they have withdrawn that consent or ownership has changed and that consent is no longer in place. The county has taken the position that a valid permit exists. We started this process in…our involvement was in October/November 2024 when we met with the county staff. A stop work order had been issued that was later deemed to be unwarranted or unfounded. And then I know you folks have been dealing with this for 12 months now based on various complaints. But I think our evidence will demonstrate to you that those complaints as to the…all the other conditions of the permit are not warranted and they're not supported by the evidence. So the county issued the NOV. You don't issue an NOV if there's no valid permit. So the county has taken a position that there's a valid permit. Your code requires a process for revocation that we are in at this point. But the reason the conditions can't be satisfied is because the landowners will not consent. Our client's perfectly willing to comply with those conditions. They didn't have anything to appeal in 2017. They were satisfied with the conditions. But over the course of time these conditions have become impossible to comply with and our evidence will show you tonight that there's correspondence from one of the landowners that acknowledges you can't comply with these because we're not going to let you. So to then say that well because you can't comply we go to Condition 12, which revokes the permit. But you can't bootstrap like that and revoke a permit based on an invalid condition. A permit cannot impose unlawful or invalid conditions and then say well your permit's not valid because we put these conditions in that you can't comply with. So our position is there is a valid permit in place. There is a dispute about whether the conditions have been satisfied; all the other ones. We're not going to dispute that 7 & 8 have not been satisfied. But our amendment application is a request to strike the unlawful conditions because they can't be satisfied. They cannot be met at this time. So we'd ask for…we ask to go forward on our amendment application and we are prepared to respond to whatever evidence is offered on the revocation process. Thank you.

Chair Banks: Thank you.

Attorney Biemiller: Mr. Cauley and B&M…

Attorney Womble: So hold on a just a second.

Attorney Biemiller: I'm sorry.

Attorney Womble: So is this in regards to this motion? So we're not going to get into back and forth. So if this is not in regards to the motion…do you have anything to add about the motion being…the permit being valid on its face?

Attorney Biemiller: I do.

Attorney Womble: Alright, so is it different than what everyone has already said?

Attorney Biemiller: Yes.

Attorney Womble: And the conditions? We'll give…very brief because I don't want to get in too much back and forth on this so the Board has a chance to review. Go ahead.

Attorney Biemiller: Yes ma'am. If we look clearly at number 7 and number 8, they read in clear language *applicant shall install a six-foot wooden fence along the front property line of the property* now or formerly owned by Rosenberger and Roberts who are now Cohen and Wickens. Number 8, *the applicant shall cause to be created and maintained an 8-foot wide*

vegetated buffer immediately south of the fence. The permit condition is clear that the vegetated buffer is to be south of the fence. North of the fence would be on the property owner's property so yes, they have refused to have the vegetated buffer be on their property. They've not ever agreed to it in 2017, 2018 or at any other time. The bugger was clearly stated in the permit to be south of the fence in the 30-foot easement. So this argument that it's the landowner's fault that there's no vegetated buffer is a complete nonstarter.

Attorney Womble: Do you have anything else to add, Mr. Oakley, briefly, in regards to…

Attorney Oakley: Very briefly. I think part of the confusion is coming…and I don't know if the Board understands this completely. I think Mr. Krainiak, you were on the Board when this was last approved. I don't think anybody else was.

Commissioner Krainiak: I believe so.

Attorney Oakley: And there was discussion, and again I can submit the minutes from the prior meetings. But the problem is, in front of Mr. Wickens' house and Mr. Cohen's house leading up to the B&M mine, half or more of that 30-foot Ponderosa Road easement is in the ditch or on the other side of the ditch. So they don't have the full 30 feet to work with to put in that fence and that buffer. And I just wanted to make sure that everybody's clear on that. Thank you.

Attorney Womble: No, that's good for now. Yeah, I said no. Mr. Cauley, did you want to respond to anything about that as it relates to the…I think it's undisputed by everyone that B&M is not in compliance with 7 and 8 and that that's the basis for their…their argument that the permit is void on its face, so just staying in that line, not getting into what would be more appropriate for the QJ hearing. Is there anything that you would like to add?

Attorney Cauley: I would just add that if the buffer was to be on the southside of the fence then it would be in the easement and the same argument would apply. Just as the…as the permit holder could not go put the buffer on the property owner's side of the fence, they couldn't put it in the easement either because other property owners have ownership rights in that easement.

Attorney Womble: And just for clarification, Mr. Cauley, for my Board, does B&M dispute that they agreed to all the conditions in the permit in 2017 when it was issued?

Attorney Cauley: They accepted the conditions.

Attorney Womble: Okay, alright. Thank you. Alright Mr. Chair, that address the argument before the Board regarding that preliminary motion about whether the permit is void on its face and so it'd be appropriate at this time for the Board to deliberate about that and have a motion one way or the other regarding that issue.

Chair Banks: Would it be appropriate to have any input from the Planning Director regards to the issuance of the permit or the easement?

Attorney Womble: Well I guess let me ask what your…how about…what is the question? Let's…I don't want to get into the weeds about what would probably be more appropriate for the hearing versus the argument for the preliminary?

Chair Banks: Well we have a party who is contending that the permit is invalid. The county issued the permit. So would it…from the county's standpoint, I mean do we…and you may speak to it yourself, I don't know, as far as the validity of the permit from the county's standpoint. So I think…and this is a unique issue before the Board tonight in terms of whether or not…the question really is whether or not this Board feels, based on the argument that's been presented, that you have the authority to consider the items before you. So similarly to whether a court would have jurisdiction over a matter, this Board's sitting in kind of a judicial stance tonight. And because of that, you have two matters before you; one is an application for a revocation and one's an application for a modification. And both those items are appropriate before this Board if there is in fact a permit. Their argument is that there is no permit because they, by all agreement, are not in compliance and have never been in compliance with Conditions 7 and 8. And so Mr. Oakley and Mr. Biemiller have argued that Condition 12 then comes into play and determines…alleges that the permit is void on its face and goes away. And so I believe really this is a decision for the Board. I don't…this isn't any procedural question for staff about whether the permit was issued. So procedurally after a hearing on a special use permit, it is appropriate for staff to generate a permit with a list of conditions. The applicant then takes the permit and is supposed to meet the conditions to operate. And so in terms of the permit being the properly issued by staff, that would be the proper procedure followed following a special use permit hearing. That permit's issued, the conditions are put in place, the applicant receives it and then they're supposed to comply to operate.

Chair Banks: Okay.

Attorney Womble: So the question here tonight is whether this Board believes that Condition 12 invalidates the entire permit and the language there about those items being held to being void or unenforceable.

Chair Banks: Okay. Any member of the Board have any questions or comments in regards to deliberation on this matter? No? Okay. Randy? So the Board is in agreement that there is a valid permit and we proceed with the hearing as planned? Is that in agreement?

Attorney Womble: So I think you would need a motion to that effect.

Chair Banks: Yeah, okay.

Commissioner Aydlett: You need a motion to open the quasi-judicial?

Attorney Womble: No, you need a motion to vote on the motion by Mr. Oakley and Mr. Biemiller. So if the Board's consensus is to proceed then I would believe the motion would be to deny his motion and proceed with the hearing.

Motion to deny the motion of Mr. Oakley in regards to a valid permit and proceed with the quasi-judicial hearing.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Jason Banks
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Attorney Womble: Alright, since there are no other preliminary motions at this time, it would be appropriate to accept a motion to enter the quasi-judicial hearings for the two applications before the Board tonight and after that motion and vote we will then proceed to the swearing of witnesses.

Motion to open the quasi-judicial hearing for the application to revoke special use permit UDO 2016-08-10 and the application for a major amendment for special use permit UDO 2016-08-10.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Jason Banks
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Attorney Womble: Alright so at this time we will recognize the clerk, Mrs. Karen Davis, to administer the oath to all of those who are planning to testify. So just prior to beginning, she did note that nobody signed up, which helps her in terms of keeping track of names for the record. So if…and we would like to swear anyone who's going to testify or thinks they might testify all at once so we're not stopping throughout the hearing to do it multiple times. So if you know you're testifying, think you might want to testify, it is your time to please stand and follow the directions of the clerk in regards to writing your name and taking the oath. So however you want to handle that, Karen, go ahead and proceed.

[The Clerk to the Board administers the oath and collects sign-in sheets.]

Attorney Womble: Alright, Mr. Chair, with the swearing of witnesses being complete we are ready to proceed and it'd be appropriate for staff to come forward at this time and give their presentation.

Attorney Cauley: Mr. Chair, will there be an opportunity for brief opening remarks; maybe some procedural items for the record?

Attorney Womble: What procedural…like procedural motions?

Attorney Cauley: No, no motions; just some information for the record, mainly in reference to the --- case and our agreement with respect to that.

Attorney Womble: So I was going to go ahead and let staff go and then at the beginning of your presentation you can certainly…you take that time and give a brief summary at that point.

Attorney Cauley: Yes.

Attorney Womble: Okay.

Amber Curling: Good evening. The Camden County Planning Department submitted a revocation application because it has been determined that multiple conditions of the approved Special Use Permit UDO# 2016-08-10 for mining operations of B&M Investments are not in compliance. Before going on and describing those specific conditions, the first couple slides show you the site and location. On the screen in the red is the actual mining operation which is approximately 2.5 miles off US Highway 17. The zoning district shows that the parcel and the surrounding parcels are Light Industrial. This vicinity map shows the various parcels of 319, 363, & 373 Ponderosa Drive with respect to 399 Ponderosa Drive, the actual mining operation. And this is a little closer look at those same parcels.

The Special Use Permit, UDO 2016-08-10 specific conditions of concern are as follows:

These pictures were taken by staff on September 9, 2025.

Condition Number 5 states the Applicant shall improve to NCDOT unpaved construction standards that portion of Ponderosa Drive starting at the mine entrance west to the entrance of Camden Yard Materials.

The portion of Ponderosa Drive that you see in the picture is from the entrance to Camden Yard Materials operation looking towards…down the road towards B&M.

So as we move down the road there are some potholes. There's potholes and some rutting. As mov further east down the roadway, more rutting and there is debris, which is from…a complaint from Mr. Wickens, which is attachment number 7 from September 25, 2025.

Attorney Cauley: We're going to object to anything that Mr. Wickens said or presented to Mrs. Curling. He's here to testify.

Attorney Womble: Alright, so it can be submitted in regards to the fact that she utilized that information to engage in her investigation and further review of the conditions of this permit and compliance. It can also be admitted for purposes of corroboration. I'm certain that Mr. Wickens is going to testify about all those things and we can make this PowerPoint available if you need to…so he can go back through and authenticate those pictures if he needs to.

Attorney Biemiller: Would it be easier if he just quickly authenticated all the pictures that are in the agenda that he took because they're all clearly identified? He can do that with one sentence right now so that she can continue with her presentation.

Attorney Womble: Would you prefer to have him called now to authenticate every single picture?

Attorney Cauley: I don't have a preference one way or the other. We feel it doesn't have standing and he needs to testify about his own ---. (too low)

Attorney Biemiller: I just want to ask him one question at this point…

Manager Burke: Excuse me, sir.

Attorney Womble: I'm sorry, you need to come to the podium because we are recording and livestreaming.

Manager Burke: Thank you.

Attorney Womble: I was supposed to tell everyone to do that.

Attorney Biemiller: I'm sorry. I can just ask him one question to authenticate all the pictures which bear his name, such as the one on the screen right now. That way Mrs. Curling can continue her presentation with what she looked at at the time.

Attorney Womble: So I think that procedurally and from an evidentiary perspective, so the rules of evidence apply in quasi-judicial proceedings to the extent that due process is provided, they're not necessarily strictly required. And so Mr. Wickens is going to testify. Staff can go through her report. There's at least two other legal reasons why these pictures can come in through her report and then when Mr. Wickens testifies, he's clearly watching this PowerPoint and you can ask him at that time about those pictures. And I think that'll just be the most efficient way to move forward.

Attorney Biemiller: Yes ma'am, thank you.

Attorney Womble: And certainly note your objection for the record.

Amber Curling: Condition Number 3 states the applicant shall aid in maintaining the upkeep of Ponderosa Road to current conditions. Attachment number 10 from November 12-18, 2024 which was an email, provided pictures and a video showing the road conditions which was from Mr. Wickens, shows rutting in the roadway. These are more pictures from the same time period, which shows some wetness and some rutting. Condition Number 6 states the applicant shall be responsible for any failures in the road improvements mentioned above and any failures shall be corrected within 24 hours, weather permitting. This is some pictures which shows B&M did not regularly maintain the road because there's some potholes and some…it's soft and there's…holding water. And this came…these are complaints from the residents that road repair was not being done, which is part of the attachment 10; email. And these are other ones. The road's rutting and it's wet. And there is a video, which I do have if ya'll wanted to see the video.

Condition Number 7 states the applicant shall install a six-foot wooden fence along the front property line of properties now or formerly-owned by Rosenberger and Roberts. Property owners shall be responsible for the maintenance of the fence.

Condition Number 8 states the applicant shall cause to be created and maintained an eight-foot wide vegetated buffer immediately south of the fence. Such buffer shall include trees with a preference of heavily year-round leafy trees at a planting height of at least 8 feet with minimum of 1 ½ inch in diameter. The applicant shall maintain the vegetated buffer at all times during the term of the project.

Conditions 7 and 8 of the special use permit have not been completed and are required for the special use permit to be active and in compliance. When staff was on site September 9, 2025 various pictures were taken and it will show fences, barrels, and T-post which is the property owners' representation of the property line next to the 30-foot easement of Ponderosa Drive. The measuring wheel which is in the pictures represents approximately 8 feet from the said property line which would contain the vegetated buffer, which is Condition Number 8. This first picture is chain link fence. That property is 319 Ponderosa Drive, Camden Yard Materials. And the wheel is approximately eight feet out from that fence. The barrel and the T-post are 363 Ponderosa Drive, which is the Cohen property. And there's two gates and the metal fence and post are 373 Ponderosa Drive, which is the Wickens property.

The wooden fence, Condition 7, and the vegetated buffer, Condition 8, have not been installed.

Condition 9 is the applicant shall install 10 mph speed limit signs at a point 500 feet prior to the entrance of the mine and at the exit of the mine. And in the slide you see those signs.

Attachment 8, a complaint was received on August 27, 2025 from Mr. Wickens which shows a video, which I've screenshot the video with the seconds. This condition, the 10 mile per hour, the condition has not been complied with, it appears in these videos, or ignored by drivers. The complaint was that it has not been complied with and drivers are ignoring the speed limit and repeating to drive down the road over the 10 mile per hour speed limit. The one on the left side is at zero seconds. The one on the right shows three seconds later. This is the same video, which is at fourteen seconds I believe; at eight seconds and then fourteen seconds here. Mathematically, 10 miles per hour is approximately 14.67 feet per second.

Attorney Cauley: We object to the competence and the foundation of this witness to offer testimony from somebody else's photo or video as to the speed of the vehicles. --- (too low)

Attorney Womble: So I would agree that unless staff has some specialized training or certification that I'm unaware of that…related to travel or speed other than just for…I guess for her common knowledge that she likely is not a competent witness. I see Mr. Oakley grabbing his notebook as if he wants to respond to that.

Clerk: I'm sorry, just one more reminder, we need the attorneys also to step to the microphone because people are watching livestream.

Amber Curling: Well I was going to say I have a Civil Engineering degree. That's how I came up with it. But I mean it's math and this is how I came up with it.

Attorney Womble: Well hold on, hold on.

Amber Curling: Oh sorry.

Attorney Womble: So before you go there, let's let Mr. Oakley finish and then we'll come back to you because if you have some educational foundation for that then we need to let Mr. Cauley hear about that so he can respond to that.

Attorney Oakley: I just wanted to make a point. She may very well have the education necessary to make that determination, but as a layperson you can estimate the speed of a vehicle. It's done in personal injury accident cases all the time and it's admitted into testimony all the time in court. And so even as a layperson to the extent that she has witnessed this video played in real time; not accelerated, not slowed down, then she can make that same estimate, as well.

Attorney Womble: Thank you. Mrs. Curling, if you will please review your educational or professional foundation for how you arrived at this and then ultimately how you…how you arrived at that determination.

Amber Curling: So I have a Bachelor's Degree in Civil Engineering and what I based it on is…the width of Mr. Wickens' lot is approximately 150 feet. Mr. Wickens' driveway gates are approximately 150 feet apart. And I was…if the video is accurate with the seconds, I took how long it took them to go from one to the other one.

Attorney Womble: Okay. So for clarification such that there is maybe not a misrepresentation of what you can testify to, you based this solely on the video you received.

Amber Curling: Yes ma'am. Like I said, that's it.

Attorney Womble: And the video you received, were you able to determine if it was an accelerated video, a shortened video? Do you review it on a program that lets you speed it up or slow it down, anything like that?

Amber Curling: On the video it had the seconds so that's what I relied on and if that was not accurate then I am not accurate. But if that was accurate then from Point A to Point B is approximately a certain distance and that's why I showed in the very beginning how wide the drive…how wide those lots were and that's why that's part of my evidence. But I can show the video.

Attorney Womble: Well let me just…I guess let me just circle back to this. The condition that you're referencing is Condition Number 9. It says that the applicant shall install 10 mile per hour speed limit signs at the point of 500 feet prior to the entrance of the mine and at the exit from the mine. And that is the condition that is on the permit.

Amber Curling: And that's the speed limit they're supposed to drive.

Attorney Womble: Okay. And so the speed…they posted the signs but the staff's concern is the speed at which they are traveling down the road.

Amber Curling: They're exceeding the speed limit.

Attorney Womble: Okay.

Attorney Cauley: What was the speed?

Attorney Womble: So if you will back up to…just since we've been through so much, what it is you were attempting to testify to just prior to the objection so I can hear that again.

Amber Curling: In the video they are moving faster than 10 miles per hour.

Attorney Womble: Okay. And…

Amber Curling: And it wasn't the dump trucks this time, in this video. It was the…it was other vehicles.

Attorney Womble: Other vehicles coming from the sand mine. Excuse me, B&M.

Amber Curling: Yes, according to the complaint when I got it. That's where they were coming from and I believe…I'd have to go back to it but it was probably in the evening.

Attorney Womble: Okay and that's your opinion based on your education experience of the video that you had watched.

Amber Curling: Of the video, yes ma'am.

Attorney Womble: Okay. I think that she can testify about her opinion of the video that she analyzed to the extent that the video…for the video that she received. And so the Board should acknowledge that based on for the video she received, that's the information she has provided. Alright, please proceed.

Amber Curling: Condition 10 states private vehicles shall have the right of way at all times when traveling along Ponderosa Road. There was another complaint, it's Attachment 8, received on August 27, 2025 from Mr. Wickens, of trucks not granting the right of way and these are the pictures I received.

Condition 11 states hours of operation shall be October 1st…excuse me, April 1st through October 31st; 7:00 AM-6:00 PM, Monday through Friday and November 1st through March 31st, 7:00 AM-5:00 PM, Monday through Friday. This complaint was on September 6, 2025 on a Saturday at 6:00 AM in the morning, according to the information and the complaint that I received. Pictures were taken and a video like I said, from Mr. Wickens and it's attachment number 8.

So that's for Item 1 and I wanted to sort of join these together. The second agenda item is the Major Amendment Application for the Special Use Permit for the mining operations submitted by B&M Investments of North Carolina, LLC.

The documentation for this application were not submitted to staff in a timely manner to be considered for a review.

So Planning Staff recommends approval of UDO 2025-11-227 the revocation and for the second agenda item, Planning Staff recommends denial of UDO 2025-12-236 the Major Amendment Application for the Special Use Permit 2016-08-10, An Order Granting A Special Use Permit for the mining operations to B&M Investments of North Carolina, LLC at 399

Ponderosa Drive due to the conditions of the Special Use Permit not being met per the Camden County Unified Development Ordinance Article 151.9.8.5.D.1. Does the Board have any questions for me?

Attorney Womble: Well so before we get to the Board, we need to allow all the parties to ask questions. And I think it's most efficient if we allow the parties to ask questions and let the Board hear what everyone has to question and her answers and then we'll come to the Board last. So let's start with Mr. Cauley. So Amber, don't go far because he's going to have to ask you questions you're going to have to answer and we're going to need both of you on the mic. So…

Attorney Cauley: We share the mic?

Attorney Womble: We are sharing the mic. So you might have to step back up to the podium, Amber.

Attorney Cauley: Amber, we met in November of 2024, correct?

Amber Curling: Yes, sir.

Attorney Cauley: And we met in the county offices because a stop work order had been posted on the B&M…well actually on the easement access to the B&M property. Is that your recollection?

Amber Curling: Yes, I would have to look back at some of the notes but I believe that was it.

Attorney Cauley: And it was later determined that the stop work order was issued improperly. Do you agree with that?

Amber Curling: I know that it was lifted; that we…I would have to look back at my notes but I know that we rescinded the stop work order.

Attorney Cauley: Did you see a copy of the letter dated March 25, 2025 from County Manager Erin Burke?

Amber Curling: Okay, yes sir.

Attorney Cauley: Have you seen that before?

Amber Curling: Yes, sir. Like I said, there's a lot of documents.

Attorney Cauley: And this letter…read that sentence into the record, please.

Amber Curling: The stop work order issued in 2024 was unfounded and has been rescinded.

Attorney Cauley: Okay. And that's again, from the letter from the county manager.

Attorney Womble: And just for the record for tracking purposes, that's page 74 of your agenda packet, Board; so if you were looking to follow along; and for those in the audience who have the agenda.

Attorney Cauley: Okay. Mrs. Curling, when did you…you're the Planning Director, correct?

Amber Curling: Yes, sir.

Attorney Cauley: And when did you assume those duties?

Amber Curling: I believe in November of 2021.

Attorney Cauley: So you were not here when the permit was issued in 2017.

Amber Curling: No, sir.

Attorney Cauley: And your job duties are what?

Amber Curling: Quite a few; everything Planning…whatever needs to be done in the Planning and Building Department and special use permits is one of those.

Attorney Cauley: Okay. And you're familiar with zoning throughout the county?

Amber Curling: Yes.

Attorney Cauley: And your job duties include interpretation of zoning ordinances?

Amber Curling: Yes.

Attorney Cauley: Have you…do you take instructions from the county manager?

Amber Curling: Yes.

Attorney Cauley: Is that your direct report?

Amber Curling: Yes.

Attorney Cauley: Has the county manager complained to you about this sand mine operation?

Amber Curling: Yes.

Attorney Cauley: Who else has complained to you about the sand mine operation?

Amber Curling: Besides the residents and some Board members because of complaints from residents.

Attorney Cauley: What Board members have complained to you?

Amber Curling: Normally the Board members go through Mrs. Burke if they have received information. They don't always complain directly to me.

Attorney Cauley: Are you aware of complaints from any particular Board member about this operation?

Amber Curling: No. I would have to go look but normally Mrs. Burke would direct me to…there's been a complaint and the complaint is sent to Board members and then she's directed to direct me to investigate.

Attorney Cauley: Okay. And you undertook an investigation in this case?

Amber Curling: Yes.

Attorney Cauley: And what did that entail?

Amber Curling: Site visit; determining what was done, what wasn't done; taking some pictures.

Attorney Cauley: And that was from your…that was in your presentation tonight?

Amber Curling: Yes and I have been back to the site again since then and the road…the road looked nice when I was back there last time but Conditions 7 and 8 still haven't been met.

Attorney Cauley: When were you there the last time?

Amber Curling: January 14, 2026.

Attorney Cauley: And the time before that the pictures were dated September 2025. Was that your last visit?

Amber Curling: September 9, 2025. I believe I was there at another time to deliver a letter. I would have to go back to my notes but I was…

Attorney Cauley: Who were you delivering a letter to?

Amber Curling: To the site; the Notice of Violation.

Attorney Cauley: Did you post it?

Amber Curling: I handed it to one of the workers and I believe Mr. Wynn got on the phone and I let him know about it and I let him know I was going to also email him Notice of Violation. Possibly I emailed it to you, as well.

Attorney Cauley: Okay so you've been to the site three times.

Amber Curling: Yes, since September 9th. Yes.

Attorney Cauley: Had you been there before September 9th?

Amber Curling: Yes.

Attorney Cauley: When?

Amber Curling: It had been quite a while but I had visited the site…if I didn't I know staff…some of my staff had visited the site at other times.

Attorney Cauley: Did you visit the site in October of '24 when the stop work notice was posted on the easement; on the light pole…on the access easement?

Amber Curling: I believe that was one of the code enforcement staff.

Attorney Cauley: That wasn't you.

Amber Curling: No.

Attorney Cauley: You requested in your package that the Board of Commissioners have a hearing on a revocation, correct?

Amber Curling: Yes, sir.

Attorney Cauley: And did you initiate that process or was it initiated by the manager or a commissioner?

Amber Curling: So upon the complaints and the site visits starting September 9th, in my research with the School of Government on what to do with special use permits and how a revocation happens and what I can do, if the conditions are not met that would be the process I have to take.

Attorney Cauley: Okay. Did anybody encourage you or direct you to do that or did you make that decision on your own?

Amber Curling: Well I was directed but that is my position and that's my job; what I would do is…there are complaints, there's conditions not being met so I would move forward with a revocation.

Attorney Cauley: So that was your decision.

Amber Curling: I was directed…I have a boss but yes, I have to move forward. That's my job to do that.

Attorney Cauley: Now I want to distinguish some between what you have personally observed and what you've been told.

Amber Curling: Okay.

Attorney Cauley: Okay? Can we put your photos back up?

Amber Curling: Yeah. You want me to go from the beginning or…

Attorney Cauley: Well let's back up just a moment; that zoning map. All of this property is zoned light industrial, is it not?

Amber Curling: Yes, sir.

Attorney Cauley: How long has it been zoned light industrial?

Attorney Womble: For clarification, what property? Are you talking about the pink? Are you talking about B&M? I just want to clarify for the record you're saying all this property, but there's multiple zoning districts on that screen.

Attorney Cauley: Well let me break it down in a couple of points. All the property on that diagram in pink is light industrial.

Amber Curling: Yes, sir.

Attorney Cauley: And all of the B&M property, which is shown on that diagram is light industrial.

Amber Curling: Yes, sir.

Attorney Cauley: And all of the property that is on that diagram in pink is subject to a mining overlay zoning, is it not?

Amber Curling: I do not believe all of the property is subject to the mining overlay. I believe it's specifically the sandpits. I would have to pull up…

Attorney Womble: Alright, let's hold just a second. Do you have an objection?

Attorney Biemiller: Yes, I object. I'm not seeing the relevance of this line of inquiry about the zoning and whatnot.

Attorney Womble: Well Mr. Cauley, do you want to respond?

Attorney Cauley: We're talking about an area of the county here that has been zoned for mining operation; light industrial and mining and not zoned for residential. And it is the residential adjoining that is causing the complaints about the permit. Seems to me it'd be extremely relevant.

Attorney Womble: I just want for clarification, because I don't want there to be confusion. Just because industrial zoning permits mining does not exclude residential. Residential is also permitted and may be permitted in other areas but I don't think it's disputed that this is light industrial so…and that the sand mine is in a light industrial zoning district.

Attorney Cauley: That's the point I was trying to make.

Attorney Womble: Okay. So I think we can…is there any dispute…I mean Mr. Biemiller, are you disputing that the sane mine is light industrial?

Attorney Biemiller: No, I'm objecting to the relevance of the line of inquiry although it is my understanding that sand mines are actually supposed to be in heavy industrial; not in light industrial zoning if we're going to go in that direction. But I thought we were looking at the conditions of the permit and zoning doesn't matter if the conditions have been complied with or not.

Attorney Womble: Alright. Thank you. I think we can…if we can move along, Mr. Cauley, and not get stuck in the seeds we are here in regards to the conditions; compliance with the conditions and/or your modification. So…

Attorney Cauley: So just to make sure the point's made, B&M property is in a light industrial zone.

Amber Curling: Yes, sir.

Attorney Cauley: And it is in a mining overlay zone.

Amber Curling: Mining overlay district, yes.

Attorney Cauley: Okay. You can move on, go ahead. Okay. Did you measure…on this photograph it looks like a depression there to the left.

Amber Curling: Right here?

Attorney Cauley: Yes, is that a pothole or a little depression or what is it?

Amber Curling: It was a place that looked like it was a little depression where the asphalt had created…

Attorney Cauley: Okay.

Amber Curling: It's cracking just like it is here but this is a little worse.

Attorney Cauley: Okay. And the location of that, the driveway to the left, where does that go?

Amber Curling: That's one of the entrances to Camden Yard Material. There's another prior to this one.

Attorney Cauley: Okay. Did you measure here to see if that depression is within the 30-foot easement?

Attorney Womble: So I am going to interject here. I don't know why a depression outside of B&M is relevant to conditions on your permit. So can you tie me into that other than trying to point out problems with B&M because we're not…I mean sorry, with Camden Yard. Is this B&M or Camden Yard?

Amber Curling: Camden Yard.

Attorney Womble: Okay so help me understand how a depression in front of Camden Yard is relevant to B&M's permit. I'm asking you, Mr. Cauley.

Attorney Cauley: You're asking me?

Attorney Womble: Yes.

Attorney Cauley: It's not. It's not. That's my point.

Attorney Womble: You're asking about the depression.

Attorney Cauley: I understood Mrs. Curling's testimony to be that this was evidence of a failure to meet the condition to keep the road in good condition. And if that is on the Camden site and outside the 30-foot easement it's not a part of our obligation?

Attorney Womble: Alright so Mrs. Curling…no. Mrs. Curling, if you would clarify that so we can understand.

Amber Curling: So what I was showing here is I was just trying to show that asphalt ends and the road starts…I was trying…for people who have not driven down there and then the next picture is as we were driving closer to B&M I was not addressing this. I was making a statement that I was going to show you some potholes as we move down and move closer down to the…

Attorney Cauley: I want to go through those. I want to first of all understand…

Amber Curling: This first one, I was just trying to let…that's the road you're going to enter. The asphalt ends and it starts to be rock.

Attorney Cauley: So you're not saying that the depression is my client's obligation.

Amber Curling: No, no. Well in the conditions it says that B&M is responsible for not only that part, but it's supposed to be the whole road because in the minutes it's supposed to be a joint effort in the entire road but here, I was just pointing out there. But I believe there is supposed to be a joint effort in the entire Ponderosa Drive.

Attorney Cauley: What I'm trying to clarify is whether that road condition that's shown in your exhibit is an obligation of B&M Investments. What was your testimony with respect to…

Attorney Oakley: Asked and answered.

Amber Curling: I'm not sure if…that wasn't my intent in the picture and I'm not sure if that's within the 30-foot easement. So if it was, it would be part of the joint effort. If it is not then it would not be.

Attorney Cauley: And you did not undertake to verify exactly where that was in relation to the easement?

Amber Curling: That wasn't part of my picture. That wasn't my intent of the picture. I was trying to show…as you're looking down, I was trying to show how the road gets smaller and there's less access.

Attorney Cauley: I understand. Okay. Did you…when you were there on January 14th you said the road was in good condition?

Amber Curling: As you pass the point it was…yes, it appeared to have been maintained and there were not…it was better than it was in this picture.

Attorney Cauley: You showed some…move ahead. You showed some photographs with some mud. What had been the weather conditions the few days prior to September 9th?

Amber Curling: So this is not my picture. This is from a complaint.

Attorney Cauley: Okay, I see the date.

Amber Curling: Um-hum, that's from a complaint on…those are different days.

Attorney Cauley: You didn't observe those conditions.

Amber Curling: No, sir.

Attorney Cauley: Move back one.

Amber Curling: That is from a complaint.

Attorney Cauley: You didn't observe that.

Amber Curling: No. That's from a complaint. This was from a complaint.

Attorney Cauley: And when you say this, you're referring to the bucket.

Amber Curling: Sorry, the bucket with the debris, metal; the one on the left-hand side with the date, September 9, 2025 showing this rut was from my pictures.

Attorney Cauley: Okay. And those conditions did not exist in January of this year?

Amber Curling: Not this bad. It appears the road had been graded or they had added some dirt.

Attorney Cauley: One of your photos…I'm sorry to jump around.

Amber Curling: That's alright, keep going?

Attorney Cauley: Well we'll go back. Right there. The text at the top of that refers to NCDOT unpaved construction standards. You see that?

Amber Curling: Yes, sir.

Attorney Cauley: Do you know what those standards are?

Amber Curling: I have reached out to NCDOT and they are supposed to get back to me with specifically what that would mean.

Attorney Cauley: So here tonight you're not saying that the conditions violate the DOT standards.

Amber Curling: In my opinion NCDOT standards would not have so many ruts but I do not have that information.

Attorney Cauley: Okay, move ahead please. Alright this exhibit refers to Condition Number 3 and says that the applicant shall aid in maintaining the upkeep of Ponderosa Road to current conditions. Did I read that right?

Amber Curling: That's straight out of the special use permit.

Attorney Cauley: Okay when it said aid in maintaining how do you…how do you understand that?

Amber Curling: That it is the road in its entirety; not just this part. They will maintain this part because they use it but I believe that aid…I believe that the intent means all the way out to 17.

Attorney Cauley: Do you give any weight to the words 'aid in'? Does 'aid in' not imply that they will be working with someone else to do that?

Amber Curling: I believe in the 2016…in 2016 or '17 when the special use permit was approved, there was discussion about jointly with Camden Yard Materials.

Attorney Cauley: So your understanding then of permit Condition Number 3 is that it would be Camden Yard and B&M maintaining the road.

Amber Curling: On the part they use together. This part would be B&M.

Attorney Cauley: Well how are they going to aid at this point?

Amber Curling: So this condition in my opinion is for the…from Highway 17 to Camden Yard Material. And then the other one, where it says they shall maintain it to NCDOT unpaved road conditions, means the rest of this.

Attorney Cauley: So this Condition 3 does not apply to past Camden Yard's gate.

Amber Curling: Not in my opinion.

Attorney Cauley: Okay. And it says 'to current conditions'. You said you weren't here in 2017. Correct?

Amber Curling: Correct.

Attorney Cauley: So do you know what the current conditions were in 2017?

Amber Curling: I do not. Am I going too fast?

Attorney Cauley: Yes. Alright this one refers to Condition 6 and has some photographs that I guess were provided to you from Mr. Wickens?

Amber Curling: Yes, sir.

Attorney Cauley: And you don't know what the weather had been with the few days of these dated photos?

Amber Curling: No.

Attorney Cauley: So where it says weather permitting on this Condition 6, you don't know if weather had permitted addressing those mudholes.

Amber Curling: No.

Attorney Cauley: And you don't know if they responded within 24 hours.

Amber Curling: I do not.

Attorney Cauley: Okay. Move ahead. Same questions about…these exhibits are not numbered, I don't know what page that is in your documents but they show road conditions with dates of November 2024. Is that right?

Amber Curling: Yes, November 11, 2024.

Attorney Cauley: Okay and you didn't take these photographs.

Amber Curling: No, this was a complaint.

Attorney Cauley: You don't know the weather within a few days before this?

Amber Curling: No.

Attorney Cauley: Okay. You can move ahead. Go ahead. Go ahead. Okay these photos refer to condition number 9. As I understand Condition 9, that is the applicant shall install 10 mile per hour speed limit signs out there, right?

Amber Curling: Yes.

Attorney Cauley: And that's at two places along the easement; the entrance and the exit.

Amber Curling: Yes.

Attorney Cauley: And did you observe those signs?

Amber Curling: Yes.

Attorney Cauley: At both places?

Amber Curling: Yes.

Attorney Cauley: Did you observe the backs of those signs?

Amber Curling: Yes.

Attorney Cauley: What was on the backs of those signs?

Amber Curling: 10 miles an hour on both sides.

Attorney Cauley: You sure?

Amber Curling: Well I would have to go back through the pictures but…

Attorney Cauley: Did you take pictures of the backs of the signs?

Amber Curling: I took many pictures and I was…I do believe it's on both sides. I would have to look back through my pictures to be 100% but…

Attorney Cauley: But you see the driver going in sees the speed limit twice and the driver coming out sees the speed limit twice.

Amber Curling: Yes.

Attorney Cauley: Okay go ahead. Did you testify about how fast that truck was going in this photo that has two frames and a pickup truck and some dust?

Amber Curling: So this is from a video. I can show you the video.

Attorney Cauley: Did you…

Amber Curling: Did I observe that? No. It's from a complaint and a video.

Attorney Cauley: You testified that you did some calculations. Correct?

Amber Curling: Yes.

Attorney Cauley: Did you calculate the speed of this truck?

Amber Curling: Approximately by the distance he's traveled from here to here in three seconds.

Attorney Cauley: How fast was he traveling?

Amber Curling: Faster than 10 miles an hour.

Attorney Cauley: Alright. 11? Could you calculate it or not?

Amber Curling: I didn't calculate…I calculated how fast at 10 miles…it should take approximately sorry. Hold on just a second.

Attorney Womble: Hang on just a second, Mrs. Curling. Yes, sir.

Attorney Biemiller: She has offered to play the video several times and since we're going to go into whether it's 11 miles an hour or 12 miles an hour, let's see the video. (cross talk)

Attorney Womble: When it's your opportunity to ask Mrs. Curling questions in just a minute you can ask her to play that video for you.

Attorney Biemiller: I'm just objecting to the badgering of this 11, 12 miles an hour stuff when she's offered to play the video.

Attorney Womble: I understand, thank you. We can move along. Mrs. Curling, did you calculate the exact speed? He's asked you if you came up with a mile per hour and I believe you answered that you calculated the time it should have taken to travel from one place to another based on 10 miles an hour and this truck exceeded that.

Amber Curling: Yes, yes.

Attorney Womble: Okay. So she doesn't have a miles per hour. I think we can move along.

Attorney Cauley: Okay, that's what I was asking.

Amber Curling: These are the same.

Attorney Cauley: Do you know whose…go back to the pickup truck.

Amber Curling: Oh sorry.

Attorney Cauley: Do you know whose pickup truck that is?

Amber Curling: I do not.

Attorney Cauley: In terms of geography there, that's taken from Mr. Wickens' property, correct?

Amber Curling: Yes.

Attorney Cauley: You understand that to be the orientation of the photo?

Amber Curling: Yes.

Attorney Cauley: And where is --- (inaudible) in relation to that?

Amber Curling: Further down the road.

Attorney Cauley: And what's to the left of that?

Amber Curling: I believe Mr. Roberts' house.

Attorney Cauley: Okay, let's go to the next one. Alright I understood your testimony from this photo that refers to Condition 10 to be or imply that dump truck is blocking the right of way. Was that your testimony?

Amber Curling: Yes, that what it appears according to those pictures.

Attorney Cauley: You didn't take these pictures?

Amber Curling: This was a complaint.

Attorney Cauley: So you don't know or do you, whether those vehicles might have been a mile apart and the approaching vehicle sped up in order to create that impasse.

Amber Curling: I do not know what happened on site. I just received these pictures showing that they are…

Attorney Cauley: Showing the vehicles close together.

Amber Curling: Yes.

Attorney Cauley: Okay, go ahead. Alright I'll ask about this one. This was received from a complaint, right…

Amber Curling: Yes.

Attorney Cauley: …from Mr. Wickens. This is showing three dump trucks traveling towards the sand mine, right?

Amber Curling: Yes.

Attorney Cauley: Alright and it refers to Condition Number 11, which is hours of operations.

Amber Curling: Yes.

Attorney Cauley: And I took the point here to be that the allegation or the implication from this photograph is that these trucks are violating the hours of operations. Is that the way you understood it?

Amber Curling: Yes.

Attorney Cauley: And the note at the bottom says that it was at 6:20 AM on a Saturday, right?

Amber Curling: Yes.

Attorney Cauley: Look closely at those trucks and look at that sky and tell me if you think…you see the shadows on those trucks? Do you think that was a 6:20 AM photo?

Amber Curling: I just take the complaint. I am not sure.

Attorney Cauley: You can't determine…

Attorney Womble: Hold on just a second. Mr. Oakley, yes sir.

Attorney Oakley: I'm going to object to the question. We don't have anybody here that's an expert witness that could testify about the time of day based upon the shadow of a vehicle.

Attorney Cauley: Common sense.

Attorney Womble: Well I think that in regards to the question, I think really more than anything he's asking her to speculate about the time of day that this picture was taken and her response is that she received a complaint. The complaint is that the video or picture was taken on September 6, 2025; Saturday at 6:20 AM. If there's a question about the time of day that it was or was not taken, that could be directed to Mr. Wickens who is going to have to testify.

Attorney Oakley: Agreed, thank you.

Attorney Cauley: You didn't verify the truth of time of the photo, did you?

Amber Curling: I take the complaint…

Attorney Cauley: You take what comes to you. Would you agree in your capacity as the zoning or Planning Director and in your work with special use permits, that the Board could not impose conditions that are illegal or unlawful?

Amber Curling: I wasn't here when they did it so I couldn't speak to what they did.

Attorney Cauley: I'm not asking you about those specific conditions of this permit. I'm asking…

Attorney Womble: I think you're asking her a legal conclusion. I don't think that that's a planning director's determination in terms of whether the Board can impose legal or illegal conditions. That's a legal conclusion. If you want to try to rephrase your question…I'm certainly not trying to shortcut you from asking her about her duties but asking her about a legal or not illegal…particularly because the conditions in this permit were not appealed. So there's not a question about legality of the conditions of this permit so I don't want there to be a rabbit trail here for my Board. There's not a question about a legal or not legal conditions.

Attorney Cauley: I do disagree ma'am because the conditions have become unlawful. They cannot be complied with without trespassing on adjoining properties. So I think they have become illegal conditions.

Attorney Womble: So well then, I guess my question to you goes back to your argument to the motion, which is they're either illegal conditions or they're not illegal conditions if they are…just because they cannot be complied with doesn't mean they're illegal. There are legal options by which a permit…someone who has a permit can comply with conditions. It's not…there are…you can purchase an easement, you can purchase property. There are ways by which permit holders can come into compliance. The legal versus illegal…but not to get in that rabbit trail. The conditions on this permit were not appealed. So for the hearing tonight the question is whether B&M is in compliance with the conditions on the permit, which were not appealed or challenged. So as we sit here tonight those conditions are legal conditions on the permit.

Attorney Cauley: Mrs. Curling, do you have an opinion as to whether the applicant, the permit holder, could put a fence along the property owners…the adjoining property owners on the north side of that easement?

Attorney Oakley: I'm going to object. The condition does not require putting a fence on Mr. Wickens' or anybody else's property. It's putting it on the property lines. That's the condition.

Attorney Cauley: My question stands.

Attorney Womble: Your question…can you repeat your question for me, please?

Attorney Cauley: My question is whether she has an opinion about the ability of B&M Investments to install a fence along the north side of that easement. Is that feasible or practical in your opinion?

Attorney Womble: Well I don't know how she's able to render an opinion about what B&M is capable of doing. So I guess that really the basis of the objection; is you're asking her to render an opinion about what your client is capable or not capable of doing.

Attorney Cauley: I'm under the impression that part of her duties as Planning Director are to recommend conditions for special use permits and that she would, if this permit was before the Board first time today, she would have recommendations about permit conditions. --- (cross talk)

Attorney Womble: Sure but her recommendation about a special use permit are not what's in question today.

Attorney Cauley: Okay.

Attorney Womble: I mean if you want to ask her if you know whether…if she knows whether the property owner would permit a fence to be constructed on the property line, I think you can ask her about her personal knowledge of whether the property owner would agree…if she knows whether the property owner would agree.

Attorney Cauley: Thank you, I'll ask that. Have you asked Mr. Wickens if he would agree to a fence?

Attorney Biemiller: Objection to relevance. The permit condition is on the property line on the other side; not on the Wickens' property. That's not what the permit allows for. It never said put it on Wickens' property.

Attorney Womble: Alright I'm going to give a little leeway here for Mr. Cauley and he asked the planner if she knows that. I think that that's already been entered into the record and an argument on the motion. So Mrs. Curling, have you asked Mr. Wickens if he would permit the fence to be constructed?

Amber Curling: No, I have not asked him that.

Attorney Cauley: Have you asked Mr. Cohen?

Amber Curling: No, I have not asked Mr. Cohen.

Attorney Cauley: Have either one of them made comments to you about their objection to the fence and the buffer?

Attorney Oakley: I object to that. Hearsay, if we're following the rules of evidence.

Attorney Womble: I believe both those individuals are here to testify so your objection of hearsay is going to be overruled just like Mr. Cauley was. So they can certainly cooperate or say, "That's not what I said," when they testify.

Amber Curling: So the question is have they complained about the condition?

Attorney Womble: I think the question is whether or not they have told you whether they would permit the fence to be erected or not.

Amber Curling: Both of them expressed that they were not in favor of a six-foot wooden fence.

Attorney Womble: Okay, thank you.

Attorney Cauley: Did they have the same opinion about a buffer?

Amber Curling: Their opinion about the buffer was…they did not like that because it goes too far over into the…

Attorney Biemiller: Objection to vagueness of the question. The buffer, again, whether it's on their property or in an easement is two different questions. He said did they object to the buffer. They don't object to the buffer on the proper side as provided in the permit. They object to it being on their property.

Attorney Womble: Thank you.

Attorney Cauley: I think I heard him say that they don't object to the property being in the easement and that is contrary to what we have been told.

Attorney Womble: Well I believe they're both here and you can ask them those questions. I don't know that Planning staff is maybe the most direct witness…(cross talk)

Attorney Cauley: Yeah I'm just asking Mrs. Curling because she has been the recipient of the complaints and she has initiated this process based on those complaints.

Chair Banks: Any further evidence or questions?

Attorney Cauley: One moment, please.

Attorney Cauley: There were some other photos in your materials. One is a bucket with some…looks like some iron, maybe rebar or something in it. Can you go to that one? And this one was also in the packet. I don't remember if you presented that one or not.

Attorney Womble: What page are you on in the agenda packet?

Amber Curling: I may not have taken every photo from the agenda packet because…the photo you have there…

Attorney Womble: Is it next to an email, Mr. Cauley?

Amber Curling: 79.

Attorney Womble: Page 79.

Attorney Cauley: Well it's actually from the November 19th Board of Adjustment materials. You didn't include that in this…

Amber Curling: No, because I think there's other photos included here. That photo is in the email. That photo is in the attachments.

Attorney Cauley: Is it in your presentation tonight?

Amber Curling: No.

Attorney Womble: I think it's in the…I believe it's maybe page 5 of the agenda. May I approach? I want to make sure I know what he's referring to so I can help the Board.

Amber Curling: This is to the Board of Adjustments. It's in the attachments.

Attorney Biemiller: It's page 5.

Attorney Oakley: Yes, today's agenda packet.

Attorney Cauley: If she didn't present it that's fine. I'll move on. But it was in the package ---. (inaudible)

Attorney Womble: He's asking about this one from the Board of Adjustment. I think it's this one. (cross talk)

Manager Burke: It appears multiple times in the Board's package for this evening. It's on page 5 of the Board's package and it's represented in the Board of Adjustment…and then it's also on page 50 of the current packet in larger format.

Attorney Womble: Yes, you're looking at page 50. Yes, he's referring to page 50 and 51 of the current agenda packet.

Amber Curling: I did not…no, I did not include every photo that was in the emails in the presentation.

Attorney Cauley: But it's in the Board's materials?

Amber Curling: It's in the attachments.

Attorney Cauley: Okay.

Attorney Womble: I believe the PowerPoint was a summary of your report and not…

Amber Curling: Yes, ma'am.

Attorney Womble: …the content of the entire packet she submitted.

Attorney Cauley: Okay. Well referring to this, you didn't take that photo, did you; the one with the bucket?

Amber Curling: No, no.

Attorney Cauley: What was the nature of the complaint that you said about that picture?

Amber Curling: There was debris found in the road after they were I guess trying to maintain the road. They had dumped something and that was part…that was in whatever they had dumped down to maintain the road; whatever B&M had placed on the road to grade, Mr. Wickens found that in the road.

Attorney Cauley: Is that what he told you?

Amber Curling: It was in the email and in the complaint.

Attorney Cauley: Was there any date or time associated with this photograph?

Amber Curling: In the attachments…

Attorney Womble: It's page 5 of the agenda packet. I was just trying to give a reference just to expedite the…for reference in the packet.

Attorney Cauley: Is that the email you're talking about?

Amber Curling: Yes, sir. I believe it is. Yeah it would be this date.

Attorney Cauley: But it does not indicate…in my reading I don't see where it says iron or millings or whatever is in that bucket came from. Do you see that? The email makes reference to Camden Yards.

Amber Curling: That's what I took it as; is that was what he picked up in the road.

Attorney Cauley: You don't know when. You know the date of the email but you don't know when the millings were alleged to be picked up, do you?

Attorney Biemiller: Not to be repetitive but he's here. He can testify about his picture.

Attorney Womble: I understand and that's fine but also the email speaks for itself and it says that we picked it up Wednesday evening. But you can certainly ask him about that. I think Mrs. Curling has been consistent that she takes the complaints as they're presented to her. She was not on site that Wednesday or on the date that these pictures were submitted to her. I think that's been well established.

Attorney Cauley: I have nothing further.

Attorney Womble: Alright, don't go anywhere yet. You still have a few more people to work through. Mr. Oakley.

Attorney Oakley: I think my questions will be a little bit quicker hopefully. You were asked multiple questions about the photos that Mr. Wickens took that were you in your presentation. Am I correct in assuming that those are the types of…those emails that Mr. Wickens sent you and the photos and videos that he provided, is that the sort of information that you take from citizens when they file complaints?

Amber Curling: Yes.

Attorney Oakley: About zoning violations?

Amber Curling: About yes, all kinds of…and code enforcement, too, yes.

Attorney Oakley: So that's a common occurrence; that you rely on that type of information.

Amber Curling: Yes.

Attorney Oakley: And then what is it that you and your staff do after you receive a complaint like that with that type of information?

Amber Curling: We go to the site and we try to verify what the complaint was about and whether there's any validity to it.

Attorney Oakley: If we can go to the…where you've got the stake in the middle of the road with the car next to it? Oh that's a measuring wheel, correct?

Amber Curling: Yes.

Attorney Oakley: So you used that measuring wheel to measure out how many feet from the property line?

Amber Curling: 8 feet.

Attorney Oakley: Okay and how were you able to determine where the property line was?

Amber Curling: The fence is the owners of all three properties…it's their representation. I am not a surveyor. I did not go look for pins. That's their representation of the property line and I went from there 8 feet out.

Attorney Oakley: Okay. And so that's how far out the vegetated buffer would have to go, correct?

Amber Curling: Yes.

Attorney Oakley: And if the vegetated buffer went out that far would trucks be able to get by; big trucks that are servicing B&M mine?

Amber Curling: Not in my opinion.

Attorney Oakley: There was some questions about a letter that you sent out somebody else did, it was page 75 in the packet. I believe it came from the county manager, page 74.

Amber Curling: Yes.

Attorney Oakley: It's in the packet. Mr. Cauley asked you some questions about this letter from…and it was dated March 25, 2025, correct?

Amber Curling: Correct.

Attorney Oakley: The current county attorney is here tonight. Do you know when she was appointed as the county attorney?

Amber Curling: It has not been that long…she was not the county attorney I do not believe at this time and I couldn't tell you.

Attorney Oakley: And the prior county attorney was John Morrison, correct?

Amber Curling: Yes.

Attorney Oakley: Okay, John Morrison was the county attorney for many years, correct?

Amber Curling: Yes.

Attorney Oakley: Was John working…or Mr. Morrison working on this matter prior to Mrs. Womble becoming the county attorney?

Amber Curling: Yes.

Attorney Oakley: Did Mr. Morrison start to have health problems at some point in time that you're aware of?

Amber Curling: I believe he did.

Attorney Oakley: Was he out of the office and not performing his functions as the county attorney as March 25, 2025?

Amber Curling: I don't have that information of the exact dates.

Attorney Oakley: Do you know if the county attorney was consulted about this letter?

Amber Curling: I do not.

Attorney Oakley: You were asked several --- (inaudible) You were asked several questions about the 10 mile per hour signs.

Amber Curling: Yes.

Attorney Oakley: They've been posted, correct?

Amber Curling: To my best recollection when I went there I looked at both sides, yes.

Attorney Oakley: Is it your opinion that vehicles and trucks coming in and out of the B&M mine, if they violate that 10 mile per hour speed limit sign, does that violate the permit?

Amber Curling: Yes, I believe that's what the 10 mile an hour sign was for.

Attorney Oakley: Okay. And you had complaints from local residents that trucks and vehicles coming in and out of that mine were going faster than that posted 10 mile per hour speed limit, correct?

Amber Curling: We did have complaints about that.

Attorney Oakley: In your opinion the permit holder, B&M, has violated Condition 3 of the use permit, correct?

Amber Curling: Yes.

Attorney Oakley: And Condition 3 is that they have to aid in the maintaining of the upkeep of Ponderosa Road, correct?

Amber Curling: Yes.

Attorney Oakley: And I believe you said this but I think it got a little lost in the weeds I think. But that's the entire stretch of Ponderosa Road going all the way out to Highway 17, correct?

Amber Curling: To my understanding from the original special use permit…that is my understanding why it says they would aid.

Attorney Oakley: And the special use permit doesn't specifically say how much they have to aid. Correct?

Amber Curling: No, I don't believe it is specific.

Attorney Oakley: And it isn't like you know they have to provide 50% of the funding or 10% of the funding or some other percentage.

Amber Curling: No.

Attorney Oakley: Would it be a fair interpretation of the use permit that their aiding in the upkeep of Ponderosa Road should be proportionate to their use of the road?

Amber Curling: Yes.

Attorney Oakley: And they use that road all the way out to their mine.

Amber Curling: Yes.

Attorney Oakley: Including the portion that is also used by Camden Yard mine from their entrance all the way out to Highway 17, correct?

Amber Curling: Yes.

Attorney Oakley: And it's your opinion that they have…B&M has also violated Condition 3 for not participating in the…or for not repairing the road, especially the portion from the Camden Yard mine east of the B&M mine where it's unpaved. They didn't correct the bad conditions of that roadway; potholes, debris, things like that, they didn't do that in a timely manner as required by the use permit, correct?

Amber Curling: Not according to the complaints.

Attorney Oakley: It's also your opinion that they have violated Condition Number 5, correct? Condition Number 5…it is the applicant shall improve to NCDOT unpaved construction standards that portion of Ponderosa Drive starting at the mine entrance west to the entrance of Camden Yard Materials. So that's the unpaved portion that we've seen pictures of. Is that correct?

Amber Curling: Yes.

Attorney Oakley: And it's your opinion that they have not met that condition, correct?

Amber Curling: Correct.

Attorney Oakley: And it's also your opinion that they have violated Condition 6 of the use permit; Condition 6 being…I'm sorry, that was 24 hours.

Amber Curling: Yes.

Attorney Oakley: And then it's also your opinion that they have violated Condition 7; Condition 7 being the 6-foot wooden fence that's supposed to be on the property, correct?

Amber Curling: Yes.

Attorney Oakley: Okay. Have you ever seen a 6-foot wooden fence erected along that property line where it was required by the use permit?

Amber Curling: I have not.

Attorney Oakley: Okay. --- (inaudible)

Amber Curling: No.

Attorney Oakley: And it's also your opinion that they're in violation of Condition Number 8, correct?

Amber Curling: Yes.

Attorney Oakley: And is number the vegetated buffer they're talking about?

Amber Curling: Correct.

Attorney Oakley: And that vegetated buffer would have to go in the 30-foot easement, correct?

Amber Curling: Yes.

Attorney Oakley: The 30-foot easement on Ponderosa Road.

Amber Curling: Correct.

Attorney Oakley: And it's also your opinion that Condition 10 has been violated; Condition 10 being private vehicles shall have the right of way at all times when traveling along Ponderosa Drive, correct?

Amber Curling: According to the complaints.

Attorney Oakley: And those are the complaints that you've received from Mr. Wickens?

Amber Curling: Yes.

Attorney Oakley: And anybody else?

Amber Curling: I believe Mr. Cohen…or either Mr. or Mrs. Cohen have also…I've also received one from them.

Attorney Oakley: And then you also received complaints that they're in violation of Condition Number 11, which is the working hours, correct?

Amber Curling: According to the complaints.

Attorney Oakley: So that's all the questions I have. Thank you.

Attorney Biemiller: You did such a great job I have very few to ask you. You said you were able to play the video easily, right?

Amber Curling: I hope so.

Attorney Biemiller: I hope so, too now that I've set you up for it.

Amber Curling: Which video specifically?

Attorney Biemiller: The one that was the issue of how fast the trucks were going.

Amber Curling: Okay, hold on. I have to get closer.

Attorney Womble: It's the second one that looks like ---. (inaudible) So go down.

Amber Curling: Number eight?

Attorney Womble: Nine. Number eight is the…well it says attachment, September at 6:20 AM…

Amber Curling: The trucks coming in, okay.

Attorney Womble: The trucks coming in. This is video speed dust.

[video plays]

Attorney Biemiller: Okay, thank you. You've exchanged a number of communications with Mr. Wickens and received a lot of photos and videos and other information from him. Do you have any reason to believe that anything he has told you or any photo he has submitted or any video he has submitted is untrue, has been altered, is not what it proports to show?

Amber Curling: I don't really judge…I just take it at face value. There's nothing that I've seen that would tell me that it's different. But I just take what he gives me.

Attorney Biemiller: I understand. But you have no reason to think that anything has been altered or is not what it proports to show? No one has said on that's…

Amber Curling: No, I don't believe so.

Attorney Biemiller: Okay, thank you. That's all.

Attorney Womble: Thank you. Alright, Board it is your opportunity to ask Mrs. Curling any questions if you have any or maybe all of your questions have been answered to this point. But if you have any questions for her you can ask them. You also have the opportunity to recall her later if you think of a question later that is maybe something for her. But at this time do you have any questions for her?

Commissioner Aydlett: I don't. I think you've had enough.

Chair White: I think you've answered them all.

Chair Banks: If not, let's entertain a two-minute recess; five, five. I was going to say two because I figured it was going to take five but five.

Attorney Womble: And then when we return we will begin with B&M.

[Recess]

Chair Banks: Just to be clear, no one on the Board had any questions for Mrs. Curling before we move on, correct? Okay.

Attorney Womble: So now the case will be with the applicant, that is the other applicant, B&M as I described earlier in our procedure. And so at this juncture I will turn it over to B&M and I believe Mr. Cauley, you said that you wanted to give some preliminary…brief opening.

Attorney Cauley: Yes ma'am, thank you. And do I understand that the county's presentation has concluded? Are there any other witnesses for the county?

Attorney Womble: So I would say that in regards to the county, staff's presentation on both items may be complete but I don't think that that concludes evidence on both items, being the revocation or the modification.

Attorney Cauley: Okay. Well just a couple of quick points then. We had a little bit of history before we got to you. And I appreciate the job you're doing. I know it's a difficult job. I sit in the same seat that the county attorney sits in often and handling quasi-judicial cases, when mostly you see legislative cases, is a challenge. And I've had board members come to me before and say, "Jim, next time we do one of those I want you to bring me a rope because if I've got to act like a judge I want a rope to go with it." So I understand the challenge of this type of case.

We had a hearing scheduled in December before the Board of Adjustment and that was based on an appeal; same issues really that are here tonight. But that was based on an appeal from an NOV issue in September; the same one that's in your package tonight. And in conversations with the county attorney, and because the staff had already initiated the revocation process for the permit and because there's an overlap and the same issues at issue in the BOA case and this case, we agreed that we would suspend that case without prejudice is my understanding; it would be stayed, pending your review. So I just wanted to put on the record that I say all that just to clarify that any appeal from this decision would be directly to Camden County Superior Court and not to the BOA. And I think we had an understanding to that effect. The county attorney can confirm or clarify that as necessary.

Attorney Womble: So the revocation proceeding has never been before the Board of Adjustment or any other board for review and I believe the proper appeal from a revocation proceeding or a modification proceeding, because they're quasi-judicial, would be to Superior Court.

Attorney Cauley: And we would agree to that. I just wanted to kind of get on the record that the reason why the BOA hearing did not go forward is because of the overlapping issues here and it didn't make sense to have two hearings on the same issue and then end up in the same…or possibly different places so…thank you.

Attorney Franchi: Good evening, Board. Mike Franchi here for B&M.

Attorney Womble: I need you to go to the mic. I'm so sorry.

Attorney Franchi: (inaudible) May I approach? All the binders are identical in nature and just lay out some of the exhibits that we will ---. (inaudible)

Attorney Womble: And just, I'm sorry, before we go on we do need to…because we are going to need to mark this, which reminds me we need to mark staff's presentation and report and the agenda packet. And so I think that we need to mark the agenda packet as County 1 in its entirety, Madam Clerk, for PowerPoint we'll mark that as County 2 and that will cover all the things that she submitted and then we will…I will let you proceed, Mr. Franchi, with how you want to identify these items. And we can do it in total at the end or one by one, it's up to you.

Attorney Franchi: Thank you. Alright, thank you Board. This evening I'm joined by Mr. Bonney Bright and I'll speak on his behalf. He's sorry we had to reschedule this. He was in the hospital in January. He's recently ---. (inaudible) He's doing about as good as he can. I'll turn it over to him. Bonney, if you can just please introduce yourself to the Board, tell them a little bit about yourself.

Bonney Bright: Well I'm Bonney Bright. And I have been in the --- (inaudible) business since 1988 and we are the ones that --- (inaudible) on Ponderosa. And we have been trying to do things right and we picked Randy and his boys to be down there running it and we picked them because they are going to do things and all right and we put our trust into him ---. (inaudible) And you know I don't know anything else to say.

Attorney Franchi: Tell us how long you've been in the sand mining industry.

Bonney Bright: I've been into the sandpit business since 19…you know 88 and we've been in it a long time and we've got two pits, we've got three pits. We've got one in Virginia Beach, we've got one in Currituck and we got one in Camden. And they've all been good pits. Randy and his boys have worked for me hauling for a long, long time and I have got you know old and I'm you know 84 almost and I just can't keep on doing what I have been doing. And I talked to Randy about buying my pit out and Randy was buying and I did not know we would have the problems that we have got.

Attorney Franchi: ---. (inaudible)

Bonney Bright: Yes, sir. ---. (inaudible)

Attorney Franchi: Tell me who Randy is exactly.

Bonney Bright: Randy Menefee, he is the boy…I mean man, that has a dump truck fleet and he's been working for me since 1989 and he runs a real good business and…and he does a good job at you know hauling and running things.

Attorney Franchi: This Special Use Permit was issued in 2017. What was the process for getting this site ready for ---? (inaudible)

Bonney Bright: Well Garry Meiggs come to me and Garry asked me would I be a partner with him. And they were going to have Black Bear Landing Field. So anyway, Black Bear Landing Field didn't never work. So by the time that everything happened that the building…this building was poor, very poor. We already --- (inaudible) two pits so I didn't need this now third pit. So just now kept it and I kept it just in case that I know one day my other pits would be nearly gone and I would move down in Camden. Well it's taken me longer digging them out than I thought and it's just…took a long time and I just got old and I just can't now do it. So…

Attorney Franchi: So when you arrived at the property what did it look like? Were there trees? Was it clear? What did it look like?

Bonney Bright: Trees onto it and then we --- (inaudible) and then we went in there clearing it.

Attorney Franchi: Is it about 100 acres?

Bonney Bright: Yes, sir it was 100 plus acres.

Attorney Franchi: Clear or trees?

Bonney Bright: Well we've done half of it I think.

Attorney Franchi: Is there anything you have to do as far as getting a sand mine…sand mining site ready?

Bonney Bright: No, sir it's partly up there done.

Attorney Franchi: Yeah was does that process take?

Bonney Bright: Well we had to go in there and clear it and then we got to build berms and dig ditches and all.

Attorney Franchi: Okay and that takes some time?

Bonney Bright: Yes, sir. It takes a lot of time, takes a lot of money.

Attorney Franchi: Tell us about just…and I won't belabor --- (inaudible) what sand is. But just please tell the Board why sand? What is sand vital for?

Bonney Bright: We haul and build just about everything. And about 80 to 90% of our business is government work. And we build airfields, we build government buildings, we build runways and we build hotels, motels and Walmart and just about everything, and houses. You know I don't hardly know anything that don't now build.

Attorney Franchi: So tell us about this site in particular and the ---. (inaudible) What's underground?

Bonney Bright: Well to have a pit…

Attorney Womble: I'm sorry, Mr. Bright, if you can hold on just one second we need to address something. Yes, sir.

Attorney Biemiller: Respectfully I'm not sure I see the relevance; the history, line of inquiry, his experience and all of that --- (inaudible) and again the fact that we're here to talk about the permit. ---. (inaudible)

Attorney Oakley: I join in that same objection.

Attorney Womble: Thank you. Mr. Franchi.

Attorney Franchi: ---. (too low)

Attorney Womble: I'm sorry?

Attorney Franchi: As the landowner it seems to me that he would have the opportunity to speak to this Board during the revocation process about his site and what he uses the site for ---. (too low) Just building the background.

Attorney Womble: Okay so I would just say let's move along and get to the point of the…what he's using the site for. We are here for the permit conditions and a modification. So…

Attorney Franchi: --- (too low)

Attorney Womble: Alright, thank you.

Attorney Franchi: If you could tell us about this site in particular. --- (too low)

Bonney Bright: Well it being a pit, you've got to have good --- (inaudible) sand and it's hard to now find. And I know this is not right but we in Virginia Beach and we dig on the Pungo bridge and then the one on Ponderosa Road is what they call Culpeper Island and you get into clay and mud and that's why we now chose this now pit because it's up on Culpeper Island and it's got some real good fill.

Attorney Franchi: It's fair to say that you can't just sand mine anywhere --- (cross talk).

Bonney Bright: Yes, sir. Yes, sir.

Attorney Franchi: That's all for this witness.

Attorney Womble: Alright, so Mr. Bright if you'll hold on, you're going to have to answer questions for everybody else.

Bonney Bright: Yeah.

Attorney Womble: We'll start with Mr. Oakley and then Mr. Biemiller.

Attorney Oakley: Mr. Bright, my name is David Oakley. I haven't had the pleasure to meet you before.

Bonney Bright: Yes, sir.

Attorney Oakley: But thank you for coming out today. I'm glad your health is on the mend.

Bonney Bright: Yes, sir.

Attorney Oakley: So it's my understanding you're a member of B&M Investments of North Carolina, LLC.

Bonney Bright: Yes, sir.

Attorney Oakley: Over the relevant timeframe of your trying to operate a sand mine out there, have there been any other owners or members of that limited liability company?

Bonney Bright: There has been one and I have bought him out of it so it's all mine.

Attorney Oakley: Was that Mr. Garry Meiggs?

Bonney Bright: Yes, sir.

Attorney Oakley: When did you buy Garry Meiggs out?

Bonney Bright: I think 2024 I think or 2023 I think.

Attorney Oakley: And I understand your company…you've got other companies in addition to the B&M company.

Bonney Bright: Yes, sir.

Attorney Oakley: What are your other companies?

Bonney Bright: Bonney Bright Farms, Bonney Bright Sand, Bonney Bright Trucking.

Attorney Oakley: ---. (inaudible)

Bonney Bright: Yes, sir.

Attorney Oakley: B&M Investments doesn't own those other sand mines.

Bonney Bright: Um-um, no sir.

Attorney Oakley: And doesn't have any involvement in those other sand mines.

Bonney Bright: No, sir.

Attorney Oakley: Okay. Is it a fair assumption that you don't go out to the B&M site on a daily basis?

Bonney Bright: No, sir.

Attorney Oakley: When was the last time you went out to the B&M site?

Bonney Bright: About a year-and-a-half ago.

Attorney Oakley: How many times have you been out to that site?

Bonney Bright: Probably about…I'd say over a period of time maybe 100 you know times.

Attorney Oakley: Okay. But you haven't been out there for at least a year-and-a-half?

Bonney Bright: About a year-and-a-half yes, sir.

Attorney Oakley: Those are all the questions I have for you. Thank you very much.

Bonney Bright: Alright, thank you.

Attorney Biemiller: I have no questions.

Attorney Womble: Okay. Board, this would be the time if you had any questions.

Chair Banks: We don't have any questions for you, Mr. Bright. Thank you, sir.

Bonney Bright: Alright. Thank ya'll.

Attorney Womble: Just give him a minute to get situated. Just make sure you pick that mic back up so…I don't want to get in trouble with the clerk.

Attorney Franchi: Mr. Meiggs was supposed to be here. In fact, he was here. His wife is ill so he's back home attending to her. So we'll pass on Mr. Meiggs and here we have Mr. Bobby Wynn. Please introduce yourself.

Bobby Wynn: My name's Bobby Wynn. I oversee the operation at the Ponderosa Sand Pit. And just…

Attorney Franchi: Are you at the pit fairly regularly?

Bobby Wynn: Yes but not every day.

Attorney Franchi: It's fair to say that you run the daily operations of the pit.

Bobby Wynn: Yes.

Attorney Franchi: Could you please tell us about the daily operations of the pit?

Bobby Wynn: Yeah well first of all we don't start until 7:00 on our operation. The guys come in between 6 and 6:30 to get prepared before the trucks come in. And once they come in we load the sand; sand's hauled out. As we're hauling the sand out we do maintenance daily. We run a water truck to keep the dust down and whatever else needs to be done. The trucks are very respectful as they're coming in and out, which the speed limit signs show 5 miles an hour. We didn't see that on the pictures. But the trucks usually run about 7 to 8 miles an hour coming in and out.

Attorney Franchi: --- (inaudible) exhibit in front of me, marked number 15 in the binder here. Can you us what this is a picture of?

Bobby Wynn: This is the area where we did the sand from.

Attorney Franchi: Is it the picture?

Bobby Wynn: Yes.

Attorney Franchi: Did you take this picture?

Bobby Wynn: Yes.

Attorney Franchi: Roughly, when did you take this picture?

Bobby Wynn: This was I would say right at the first of the year.

Attorney Franchi: --- (too low)

Bobby Wynn: Yes.

Attorney Franchi: Does it fairly and accurately represent the sand pit at the end of Ponderosa?

Bobby Wynn: Yes.

Attorney Franchi: Just tell the Board what they're seeing in front of them.

Bobby Wynn: This is the area where we mine the sand. As we dig the sand we keep it in the same area, digging down to hold our water and on occasion we pump the water out where we can get down and dig more sand throw it up to the top where it can dry before load it onto the trucks.

Attorney Biemiller: Once again, I'm not seeing the relevance of this inquiry. Again, we're focused on the road; not the pit and how it's mined and all of that.

Attorney Womble: Do you want to respond?

Attorney Franchi: ---. (too low) Can I ask him any background questions?

Attorney Womble: Well so in regards to the revocation or the modification, are you alleging that this is relevant to either one of those items and if so, how?

Attorney Franchi: I'll say it doesn't speak directly to any of the conditions --- (too low) it's a sand mining pit. Unless you've been out to one you don't really know what it is. My intent was in 15, 16, 17 these pictures was to show you, Board, what a sand pit looks like. --- (too low) about noise and some other things that do bear upon these conditions and I'll get to it but I first wanted to start with a general picture of what this place looks like.

Attorney Womble: So are you alleging that this foundation…this evidence that you're laying is in response to complaints that are noted in the agenda packet related to noise and operation?

Attorney Franchi: ---. (too low) Nothing that I've presented here is unnecessary. ---. (too low)

Attorney Womble: I understand. And I understand that you feel like it's all necessary but I'm trying to rein it in based on the objection, which is he's saying it's relevant. Are you saying that it's relevant to a complaint you read in the agenda packet?

Attorney Franchi: I'll say it tends to show that ---. (too low)

Attorney Womble: Okay. Can you tell me what in that packet?

Attorney Franchi: I'll just move on to conditions. Alright. Let's just talk about the fence and vegetated buffer. I think it's been clear that they're not up but can you please elaborate ---. (too low)

Bobby Wynn: Yes, I'm sorry.

Attorney Franchi: --- (too low)

Attorney Womble: And let me just say, Mr. Franchi, so let me just note this. If the opposition presents evidence that this becomes relevant to, you'll be given the opportunity to come back and address that issue. I will not shortcut you on being able to do that. So I don't want you to think I'm not going to let you address something that is raised. (cross talk)

Bobby Wynn: Well from the beginning when we were going in and I went myself to try and talk to the landowners to talk about the fence, talk about the buffer, which they told me personally they did not want that in there. So we went and tried to communicate with what they would want in lieu of a fence and a buffer. All they told me is, "We don't want ya'll there." I said well the pit's been permitted for quite a while. Mr. Wickens told me that he didn't know there was a pit there and then at a later time he told me he never thought the pit would open. I said well there's another pit right down the road. Well they weren't in operation when he moved in and he didn't think they were going to open up, which of course there was a lot of complaints about that pit before it turned onto us. But we've tried to do everything we could do to be good neighbors and make it work.

Attorney Franchi: But specifically for the fence and vegetated buffer did you make that --- (too low) with the neighbors --- (too low) those conditions?

Bobby Wynn: Yes, absolutely, from the very beginning.

Attorney Franchi: Give us a rough date.

Bobby Wynn: From the time…September of '24.

Attorney Franchi: When you say right at the beginning, I think the Board might be confused or questioning at least why it was not ---. Why wasn't ---? (too low)

Bobby Wynn: We weren't involved in it at that time? And they weren't living there at the time.

Attorney Franchi: Well what was happening in 2017?

Attorney Womble: I'm sorry, I didn't hear you Mr. Franchi. Did you say September '24 is when he engaged the neighbors? I just didn't hear that. Okay.

Attorney Franchi: So what was happening between 2017 and ---? (too low)

Bobby Wynn: Mr. Bright was in there cutting the timber off and then something that takes a lot of time is the de-stumping of the property, which he was doing that. Then he had to start on some of the infrastructure, which was putting in a sediment basin and some pipe per the county plans. And he was doing all that through that time.

Attorney Oakley: I'm going to have to object. I could be wrong in my understanding but it is my understanding that Mr. Wynn got involved in September of '24. That right?

Bobby Wynn: I started at the pit then.

Attorney Oakley: --- (too low) and now he's talking about things that happened prior to that? If that's the case he doesn't have personal knowledge of it and I object to his testimony about that.

Bobby Wynn: Well I do have personal knowledge because I was at…

Attorney Womble: Hold on, hold on just a second. Hold on just a second. So let's let Mr. Franchi see if can lay a little bit better foundation; some context to where he received this information and his basis of knowledge. And then we can…you can raise your objection again if that doesn't satisfy. (cross talk)

Bobby Wynn: Yeah I've been dealing with Mr. Bright for 15 years now and I have been…

Attorney Franchi: --- operations? (too low)

Bobby Wynn: Yes.

Attorney Franchi: --- (too low)

Bobby Wynn: Yes, was down there to look at probably 12 years ago the first time.

Attorney Franchi: You've been at the pit as early as 12 years ago.

Bobby Wynn: Yes.

Attorney Franchi: ---. (too low)

Bobby Wynn: Yes.

Attorney Franchi: And was it your testimony just a minute ago that from 2017 to 2024 the pit was being prepared for operation?

Bobby Wynn: Yes.

Attorney Franchi: And in 2024 when operations began to start is when --- landowners ---. (too low)

Bobby Wynn: Correct.

Attorney Franchi: And their response was?

Bobby Wynn: That they didn't want the fence, they didn't want the buffer and they didn't want us there.

Attorney Franchi: Why was the condition there in the first place?

Bobby Wynn: For them or for the previous homeowners.

Attorney Franchi: Let's move on to some of the conditions, specifically road conditions and road improvements. Can you please tell us about your process of identifying problems in the road and how you go about fixing those?

Bobby Wynn: Well I wanted to say the pictures that were up where the road and they said was rutted, that was in the process of us enhancing the road, from what…when we went in, that section of road was just all dirt. There was already potholes there, there were ruts in there. We were cutting out the bad material to…to put in the good material from the pit; the good sand and build it back up to put the millings on top the way a road is supposed to be built.

Attorney Franchi: You got involved in for having been on this property 12 years ago. What was ---? (too low)

Bobby Wynn: Not good at that time. That section of road, that one section where we're at was all dirt. Mr. Bright had fixed the end closest to the pit. He had put some stone in there. It was a little better shape. There was a lot of potholes and ruts in there.

Attorney Franchi: Alright and then I'm going to show you a couple of pictures here. Turn in your binder to page…or tab 19. ---. (too low)

Bobby Wynn: This is us working on the road and…

Attorney Franchi: And I realize it's not…actually it is date-stamped. The date's at the bottom.

Attorney Oakley: What tab are you on?

Attorney Franchi: 20.

Attorney Womble: I thought 19.

Attorney Franchi: Oh is it 19?

Attorney Womble: You said 19.

Attorney Franchi: Yep it's 19. ---? (too low)

Bobby Wynn: So this is us working on the road. It's what I was just talking about in this area where this backhoe is here now is placing millings down and during that operation we were having a hard time. This fence was installed during that time and the neighbors were creating an issue. We had to get out of the way so we were having a hard time because they didn't want us working on the road.

Attorney Franchi: And I realize this is a snapshot in time. This is one day out of a year-and-a-half or so of operations, but please just tell us the general process of you found a problem that needs to be fixed in the road. How ---? (too low)

Bobby Wynn: Well we try and do that immediately when we find a problem but this particular time we were trying to rebuild the whole road as we were going along, which as you saw from the pictures when the inspector was out there how good a shape the road was compared to the pictures that were taken when…after rainstorms or whatever; that there were some potholes and some rutting and that was before we were able to enhance the road. And you don't see that now. After rains and after these snows you do get potholes like you do anywhere else; not just from traffic, but from Mother Nature itself can cause it.

Attorney Franchi: I'm gonna briefly pass this one but --- (too low) tab 20 in your binder. Briefly just tell us what do we have before us here.

Bobby Wynn: Same thing; where we're working on the road, these are millings that we're putting in on top of the sand.

Attorney Franchi: Who took these pictures?

Bobby Wynn: I did.

Attorney Franchi: When were these taken?

Bobby Wynn: On this date here, May 23rd. And with the millings over times they compact more. I guess when I say millings, that's asphalt millings that have been grinded up. So they will adhere together over time to become more like asphalt; like an asphalt road as they sit and the sun bakes them and the trucks running on them. And that's why the road looks so much better now.

Attorney Franchi: Moving along, has the company spent any money specifically for completing road improvements?

Bobby Wynn: Yes. We've bought a whole load of asphalt millings that we have stockpiled there that we've started to use on the road and still have…Doug has the numbers. I believe it's close to 10,000 tons left on site. And we've spent over $100,000 on those millings to get them there. And that doesn't include the work, the labor and the equipment on the road itself.

Attorney Franchi: And to just summarize the entire process, the company has purchased $100,000 in asphalt millings.

Bobby Wynn: Yes.

Attorney Franchi: And they've bought equipment in order to complete those repairs.

Bobby Wynn: Yes.

Attorney Franchi: And then would identify and travel along the road and make those repairs.

Bobby Wynn: Yes. This picture here on…

Attorney Franchi: And let the record reflect he's on page…he's on tab 21 of the binder. What is that a picture of?

Bobby Wynn: That's a motor grader bought specifically just to work on the road and keep it. One of the problems we had was getting in and out of there quick enough if we had a dozer out there and somebody would pull out and we would have to back all the way off the road. So we got a motor grader where we could move faster so when there's interference we can get out of the way and then continue on with grading the road.

Attorney Franchi: How much money did you spend on this piece of equipment; the motor grader?

Bobby Wynn: I think by the time we got it repaired it was $25,000 to $30,000.

Attorney Franchi: Does this serve any other usefulness for your business?

Bobby Wynn: No, just roads.

Attorney Franchi: Bought specifically for this condition; Condition Number 3?

Bobby Wynn: Yes, yes.

Attorney Franchi: Is there any other equipment that you might have purchased?

Bobby Wynn: Well we have a tractor also that you saw in the picture that we haul the millings in and out with.

Attorney Franchi: This one?

Bobby Wynn: Yeah, this tractor here.

Attorney Franchi: That's on tab 20?

Bobby Wynn: Yes, that was $42,000-$43,000.

Attorney Womble: Which tab are you on so we're tracking?

Attorney Franchi: That was…the tractor that they purchased was on page…there was multiple page but the last tab was 21.

Attorney Womble: Okay so you were on 20 and 21; 19, 20 and 21.

Attorney Franchi: I'm going to try to move on quickly but if we're all on board with moving to tab 23. Bobby, what is that a picture of?

Bobby Wynn: That's our stockpile of asphalt millings.

Attorney Franchi: And as you said earlier, that you purchased to keep on site to use for road purposes?

Bobby Wynn: Yes.

Attorney Franchi: Okay. It came up in Mrs. Curling's testimony and I think we'll hear more about it later, but metal in the road...can you please tell us when you acquired the material, is there metal…

Bobby Wynn: No, there should not be any metal in this material. When metal usually comes in is in crushed concrete, which we haven't used on the road. Now there was crushed concrete previously placed on the road and down where the other pit is, they had lots of crushed concrete down there and lots of metal that Mr. Wickens also complained about, but not sure about where the metal's coming from or you know any of that.

Attorney Franchi: You just know that you…parts of your process never includes…road refurbishment puts metal or installs it ---. (too low)

Bobby Wynn: Correct. We purposely put the millings down so we didn't have that issue because all the trucks running in and out…we certainly don't want metal in the road. I mean we've had, to my knowledge, zero flat tires, including myself and the workers and the dump trucks from that road.

Attorney Franchi: I'm going to move on past the road improvements to…it's been alleged that there's been operations on the weekends. To your knowledge, the special use permit itself, does it prohibit you from entering the property on weekends? What I hear is…what does the special use permit…

Bobby Wynn: We do not operate far as commerce on Saturdays. We have not, on any Saturday, hauled sand out of that pit. We do go in there for maintenance, prepping everything, which is all part of the business. But we do not run trucks down the road. And that picture from a Saturday, I'm not sure where that came from but we also have GPS evidence from Puryear that all their trucks were on their lot on that day. So not sure about that. We know the sun wasn't…

Attorney Franchi: So you would agree that you're on the property and there's reasons for you to be on your property on weekends.

Bobby Wynn: Yes, that…

Attorney Franchi: What are those reasons? Let's be specific.

Bobby Wynn: Well to get the roads straight, for one; to…

Attorney Franchi: And I'm going to stop you here. Why do you need road improvements on weekends?

Bobby Wynn: Well when trucks aren't running, that's the time to fix the roads; maintenance of equipment; prepping for the sand to get ready for when sales…trucks come back.

Attorney Franchi: As agreed in the special use permit, does it prohibit you from tending to things that a sandpit needs to do?

Bobby Wynn: No, it's my interpretation and I believe the understanding of what they…just for not running trucks in and out of there, which we do not do; and not selling sand; not making any operation; but just maintaining our business.

Attorney Franchi: And just to be absolutely clear for this Board, have you ever brought in a truck on a weekend?

Bobby Wynn: No. (cross talk)

Attorney Franchi: And you do dispute that on September 6th…

Bobby Wynn: Absolutely.

Attorney Franchi: …those three trucks…

Bobby Wynn: Absolutely. And the time of day that it was taken. We also don't come in before 7:00 and the trucks wait until that time and then they come in at 7:00.

Attorney Franchi: Okay. The last thing I want to address with you is watering the road. Is that something that you…

Bobby Wynn: Yes, whenever we have trucks running we…we constantly water the road back and forth.

Attorney Franchi: What does that do?

Bobby Wynn: It keeps the dust down.

Attorney Franchi: Okay and how often do you water?

Bobby Wynn: Well depending on how the trucks are running, might be twice an hour in that area when we're running…when it's dusty. Some days there is no dust because if everything's wet. But we're constant on the road.

Attorney Franchi: And why do you water the road again?

Bobby Wynn: To keep the dust down.

Attorney Franchi: Is it for the adjoining landowners?

Bobby Wynn: Absolutely.

Attorney Franchi: I have nothing further for this witness.

Bobby Wynn: Thank you.

Attorney Womble: Hold on, you'll answer everyone's questions, too.

Attorney Oakley: How are you doing this evening?

Bobby Wynn: Good, how about yourself?

Attorney Oakley: Not too bad. I need my glasses. You're not a member of B&M Investments of North Carolina, LLC correct?

Bobby Wynn: Correct.

Attorney Oakley: You don't have any ownership interest in that company?

Bobby Wynn: No.

Attorney Oakley: So who do you work for?

Bobby Wynn: Ponderosa Sand Pit.

Attorney Oakley: Who owns Ponderosa Sand Pit?

Bobby Wynn: Myself, Randy Menefee, Travis Menefee, Matt Menefee and Doug Haney.

Attorney Oakley: And what does Ponderosa Sand Pit company do?

Bobby Wynn: We mine sand and sell it.

Attorney Oakley: So you have an agreement with B&M to mine that property?

Bobby Wynn: Yes.

Attorney Oakley: Okay. Just want to make sure I understand the relationship of everybody. And you didn't get out to that property until when, to start mining operations?

Bobby Wynn: 2024.

Attorney Oakley: And you were not involved in the preparation work…

Bobby Wynn: No.

Attorney Oakley: …prior to that?

Bobby Wynn: No.

Attorney Oakley: Okay, alright. And you didn't speak to the neighbors about putting up a fence prior to September 2024, correct?

Bobby Wynn: Correct.

Attorney Oakley: And same question regarding the buffer, September 2024?

Bobby Wynn: Yeah, correct.

Attorney Oakley: You never talked to them prior to that?

Bobby Wynn: No.

Attorney Oakley: And you mentioned in kind of an offhand comment that there were prior complaints about Camden Yard and their maintenance of the road?

Bobby Wynn: Yes. Talked to Danny about it many times about what they were doing to him.

Attorney Oakley: Those…you have some knowledge about those complaints?

Bobby Wynn: Yes.

Attorney Oakley: And those complaints were prior to you beginning mining operations with B&M, correct?

Bobby Wynn: Correct.

Attorney Oakley: So those…those complaints were not about B&M's operations.

Bobby Wynn: Correct.

Attorney Oakley: That was only about Camden Yard Materials?

Bobby Wynn: Yes.

Attorney Oakley: Do you know what NCDOT unpaved road standards are?

Bobby Wynn: No, not exactly but I know it's…basically it's…I don't think they have a specific standard for a secondary road like that other than the maintenance of it.

Attorney Oakley: So as you stand here today you can't tell this Board whether or not your road from Camden Yard Materials' entrance going east towards the unpaved portions of the B&M entrance…you can't tell this Board whether or not that section of the road is meeting NCDOT unpaved road standards, correct?

Bobby Wynn: I believe at this point from what I understood from what we've done, it exceeds that; for that type of road.

Attorney Oakley: You just told me you don't know what those standards are. Are you telling me you understand it exceeds it?

Bobby Wynn: No, I don't know exactly if they…we've got 12 inches of millings in there now and I believe that exceeds what there is. But no, I'm not 100% on that.

Attorney Oakley: Okay and you don't have an engineer here tonight to testify that your road for that section meets NCDOT unpaved standards, correct?

Bobby Wynn: No.

Attorney Oakley: You talked about the millings that you put out there on the road. Who did you buy…you didn't personally buy those millings, correct?

Bobby Wynn: No, they came through Puryear. We pay Puryear Trucking for the millings.

Attorney Oakley: Oh who is Puryear?

Bobby Wynn: Menefee that we're involved with that runs the trucks out of the pit. That's Puryear Trucking.

Attorney Oakley: So they…Puryear delivered those millings to you.

Bobby Wynn: Yes.

Attorney Oakley: Okay. Did you purchase those millings from Puryear?

Bobby Wynn: Yes.

Attorney Oakley: And do you have a receipt for those?

Bobby Wynn: Absolutely.

Attorney Oakley: Do you have a receipt for those here tonight?

Commissioner Aydlett: It's in the binder.

Attorney Oakley: It's in the binder, okay.

Bobby Wynn: Towards the front?

Attorney Womble: While you're finding that, can spell Puryear for the…

Bobby Wynn: P-u-r-y-e-a-r.

Commissioner Aydlett: I think it's 22.

Attorney Womble: Did you get that, Karen?

Clerk: No.

Attorney Womble: I'm sorry, can you repeat that again; or somebody?

Bobby Wynn: P-u-r-y-e-a-r.

Attorney Womble: Thank you. That's tab 22.

Attorney Oakley: Tab 22?

Attorney Womble: I mean that's a receipt I see. I'm certainly not trying to allege that's the receipt you were asking about but it appears that's the expenditures…

Manager Burke: A series of receipts.

Attorney Womble: …a series of receipts. Really just trying to direct for review.

Attorney Oakley: There's a series of what appear to be invoices from Puryear Trucking to Ponderosa Sand Pit under that tab on 21; excuse me, 22. Are those the…are you telling me that those are the receipts that you have for the millings?

Bobby Wynn: Those are the invoices and they were all paid.

Attorney Oakley: Okay. And do you know where Puryear obtained that material from?

Bobby Wynn: No, not right off.

Attorney Oakley: Do you have any…were those millings ever inspected?

Bobby Wynn: Yeah, we inspected them.

Attorney Oakley: Were they ever inspected by an outside company?

Bobby Wynn: Not to my…well I can't answer that. I'm not sure.

Attorney Oakley: In addition to Puryear delivering these millings. Does Puryear also take sand out of your property?

Bobby Wynn: Yes.

Attorney Oakley: Okay. What other companies take sand out of your property?

Bobby Wynn: Well 95% of the trucking is done through them.

Attorney Oakley: Through Puryear?

Bobby Wynn: Yes.

Attorney Oakley: Okay. What other companies truck sand out of your property?

Bobby Wynn: You talking about who we sell it to or what trucks do we run?

Attorney Oakley: Right now I'm asking about trucks that you run.

Bobby Wynn: Well RDR Trucking, for one, and whatever other ones we have run through Puryear, under Puryear.

Attorney Oakley: Ponderosa Sand Pit doesn't have trucks for the sand mine?

Bobby Wynn: No, we don't have trucks through Ponderosa Sand Pit.

Attorney Oakley: But all of the drivers are employed by other companies?

Bobby Wynn: Yes.

Attorney Oakley: Okay and those companies are not controlled directly by Ponderosa Sand?

Bobby Wynn: Well they're directly controlled by the owners of Ponderosa Sand other than myself.

Attorney Oakley: So there's…there's some overlap in the ownership in those companies?

Bobby Wynn: Yeah.

Attorney Oakley: So Ponderosa Sand Company is in charge of mining the sand and selling it to other people?

Bobby Wynn: Yes.

Attorney Oakley: What people or entities does Ponderosa Sand sell to?

Bobby Wynn: Well anybody who…any contractors who want to buy it. Like right now we're sending it out to 464 Project, it's been the majority. You know we've been operating on a limited basis until we…we get going full bore. A lot of the sand runs through Puryear Trucking. They deal directly with the contractors. So Ponderosa Sand sells the material to Puryear or ATCO.

Attorney Oakley: Were you done? I didn't want to interrupt you.

Attorney Womble: Did he say ATCO?

Bobby Wynn: Yeah.

Attorney Oakley: A-T-C-O?

Bobby Wynn: Yeah.

Attorney Oakley: So you said you're not up to full bore yet, correct? You're not up to full capacity as far as running trucks in and out?

Bobby Wynn: No.

Attorney Oakley: How many…since September '24 how many trucks a day go in and out?

Bobby Wynn: I'm going to say we average 8 to 10 trucks running.

Attorney Oakley: Okay how many truck trips? Let's kind of ask it that way.

Bobby Wynn: Well it depends on where the jobs are that they're running to but I'm going to say on average 50 loads.

Attorney Oakley: So 50 loads would be 100 truck trips if they come in and out?

Bobby Wynn: Potentially, yes.

Attorney Oakley: Because the trucks don't stay there overnight, right?

Bobby Wynn: Right.

Attorney Oakley: So if there's a load going out…

Bobby Wynn: Yes.

Attorney Oakley: …that's two truckloads, right?

Bobby Wynn: Correct.

Attorney Oakley: So you're averaging currently 100 truck trips a day of the days that you're obligated.

Bobby Wynn: Well that's at the peak. I'm going to say right now since…it would be less than that; somewhere around there, yes.

Attorney Oakley: ---. (cross talk)

Bobby Wynn: Yes, right, yes.

Attorney Oakley: When you're up to full speed, how many…how many loads coming out; how many loads coming out of your mine can you fulfill?

Bobby Wynn: Well we've been purposely limiting what we do to not create any more problems with the neighbors that we have until we get through this process is what we've been trying to do. So that won't happen until we get to that point.

Attorney Oakley: But you do anticipate on amping up your production?

Bobby Wynn: Potentially, yes.

Attorney Oakley: Okay. And so I ask my question again. What are you capable of producing? How many loads a day?

Bobby Wynn: Well we won't know that until we get to that point I'll say. It depends on how many excavators we would have; how many people we had operating.

Attorney Oakley: But it could significantly go up from what it is today, correct?

Bobby Wynn: Well it could. It could go down. If the economy goes down we could not do much you know like the sand pit down the road. They closed up because there was no business for quite a while.

Attorney Oakley: There was a motor grader that you referenced a picture of. Did you spend like $30,000 on it or something like that?

Attorney Womble: $20,000.

Bobby Wynn: $20,000. We bought it and then we had to do repairs on it.

Attorney Oakley: Okay. When did you buy that and work on the road?

Bobby Wynn: I believe June.

Attorney Oakley: June of last year?

Bobby Wynn: Yes. June of ’25.

Attorney Oakley: And prior to your involvement in September of ’24, you don’t have any knowledge of what contribution was made for the upkeep of Ponderosa Road do you?

Bobby Wynn: No.

Attorney Oakley: Since your involvement, what has been B&M’s contribution for the upkeep of Ponderosa Road from Highway 17 going east to the Camden Yard property?

Bobby Wynn: None at this point other than placing…placing water when their trucks are coming down the road because too tracked up we run some water out there. But we’ve offered to help and I told Danny that would repair some of the areas but we need to undercut them. The areas that are breaking down on that asphalt road, because it was put in so quickly, there was no undercut done like we were doing on the section of road we worked on to give it a better foundation.

Attorney Oakley: There’s no maintenance agreement between B&M or Ponderosa Sand Pit and Camden Yard to do any maintenance of Ponderosa Road, right?

Bobby Wynn: Correct.

Attorney Oakley: Talk about doing some work on the weekends and how you said you don’t sell sand on the weekends.

Bobby Wynn: Right.

Attorney Oakley: And you said you don’t run trucks on the weekends but you do some other stuff. Correct?

Bobby Wynn: Correct.

Attorney Oakley: So you do road maintenance, right?

Bobby Wynn: Yes.

Attorney Oakley: Is there any reason why you can’t do that during the week?

Bobby Wynn: Well when the trucks are coming in and out it makes it a little more difficult but so it’s just easier when we don’t have trucks running.

Attorney Oakley: ---. (too low)

Bobby Wynn: But we do periodically go out there and grade it. But as far as the undercutting and that sort of thing it just takes a little more time and…

Attorney Oakley: And you said that you do prep work on the site.

Bobby Wynn: Yeah.

Attorney Oakley: That’s in the sand pit, correct?

Bobby Wynn: Yeah.

Attorney Oakley: Okay so you’re digging the sand out and stockpiling it to get ready for the week?

Bobby Wynn: Yeah.

Attorney Oakley: You do that on weekends?

Bobby Wynn: Sometimes.

Attorney Oakley: That’s all the questions I have, thank you.

Bobby Wynn: Thank you.

Attorney Biemiller: Looking at the permit itself, just run through a couple of these conditions with you. You heard Mr. Oakley earlier ask Mrs. Curling about Condition Number 3, where it indicates that the applicant shall aid in maintaining the upkeep of Ponderosa Road. You would agree that proportionately speaking, B&M should be aiding at a much higher percentage than the residents, right, based on its usage? You said 100 trips per day.

Bobby Wynn: Yes.

Attorney Biemiller: Okay. So it should be doing the far bulk of the aiding and maintaining the road.

Bobby Wynn: (affirmative head nod)

Attorney Biemiller: Okay. In regard to…

Bobby Wynn: And we do.

Attorney Biemiller: We'll see. In regard to the asphalt millings, have you placed any in front of the Wickens or the Cohen property?

Bobby Wynn: Yes.

Attorney Biemiller: When was that done?

Bobby Wynn: It's done periodically. But it was started in…I want to say November '24.

Attorney Biemiller: What is the most recent date when millings were put in front of those properties?

Bobby Wynn: I can't say an exact date far as when it was. But we do it periodically with the tractor. Sometimes we have the dump trucks come out and layer it out and then we grade it.

Attorney Biemiller: Is it your testimony that millings have been placed all the way from the Camden property to the entrance to the Ponderosa property?

Bobby Wynn: Yes; to some degree, yes.

Attorney Biemiller: How do you explain the various pictures which show ruts or mud, potholes, and apparently no millings at all? I don't see any…

Bobby Wynn: Well if you looked at the dates that was before that work was done. If you see the picture from September how much…that the inspector took, in the same area you saw a completely different road, correct?

Attorney Biemiller: In some of the pictures but others, there is still…and I can introduce evidence that there are still potholes, ruts, etc. in areas.

Bobby Wynn: Well as I stated, potholes, and everybody that lives in this area knows, on dirt roads and even on asphalt sometimes, potholes just appear. When the weather changes; there's rain, cold, snow, potholes appear without any help. But if you see the pictures from recent the road looks completely different than it did during that time when those pictures were taken; which we were in the process of fixing the road and was basically run off the road.

Attorney Biemiller: You indicated that you had to frequently run the water truck to water the road and keep the dust down.

Bobby Wynn: Yes.

Attorney Biemiller: If the asphalt millings were covering the entire road, why would there still be dust?

Bobby Wynn: Well the dirt can still mix in with the millings. You're gonna have some dust from millings. One of the offers we made to the landowners, we said we would pave that portion of the road the rest of the way. They said…anything that we said we wanted to do, they didn't want to do. But you will get some dust from millings, as well. Crushed concrete, you'll get dust.

Attorney Biemiller: But you don't use crushed concrete I thought.

Bobby Wynn: No, we don't. I'm just telling you that those materials, you will still have dust; not just from a dirt road, but from crushed concrete or millings you will get dust running across it.

Attorney Biemiller: What's the life expectancy of just putting down millings as opposed to actual pavement, when you've got 100 trucks?

Bobby Wynn: Well as I said earlier, those asphalt millings will adhere together. When they're compacted they become like asphalt again. But we maintain them…you know asphalt is not a lifelong product, either. That's why you have millings because when they mill them up you know to repair the roads, that's where the millings come from. They also mix millings back in with the asphalt when they're manufacturing the asphalt at the asphalt plants.

Attorney Biemiller: But you don't do that. You're not putting any asphalt. You're just putting the old, worn out millings on the road.

Bobby Wynn: No, they're not old, worn out.

Attorney Biemiller: Well they're scraped off of worn-out roads.

Bobby Wynn: Because they break up.

Attorney Biemiller: And there's oil in them that have dried out.

Bobby Wynn: Because they're no adhesive, right.

Attorney Biemiller: No adhesive.

Bobby Wynn: So as you saw from the road, asphalt breaks down.

Attorney Biemiller: But millings break down faster.

Bobby Wynn: Well I won't say they break down faster; not as solid.

Attorney Biemiller: But you don't see millings go on paved roads anywhere. They just use straight asphalt.

Bobby Wynn: Well they're not as solid. Asphalt is a better product and we did offer to pave that road ourselves and that wasn't wanted by the homeowners either. They just…so…but we have made that offer.

Attorney Biemiller: You testified earlier…you testified earlier you were not sure what NCDOT unpaved construction standards were. But incidentally your counsel put the statute in your binder and I'm somewhat surprised you hadn't seen it or were familiar with it, but it's actually in your binder; 26. Are you saying you're not familiar with that section?

Bobby Wynn: Well I've read through it. As you see there's different standards.

Attorney Biemiller: But your testimony is that even though you really weren't familiar with it, you're in compliance or ---. (too low)

Bobby Wynn: We're trying to get to that point.

Attorney Biemiller: But you haven't yet.

Bobby Wynn: We've tried to completely rebuild the road. We were like I said, run off the road so we…

Attorney Biemiller: Okay. So you haven't done it yet. Alright, let's talk about the…

Bobby Wynn: Well we would have to get an inspector out there to look at the road to answer that question; somebody that's specific to that to tell us if it's NCDOT standard or not.

Attorney Biemiller: But you're the manager. You never had…you never called anyone to come out and inspect it.

Bobby Wynn: No, not at this point.

Attorney Biemiller: Okay.

Bobby Wynn: We're still trying to get to…we want to do all of it.

Attorney Biemiller: Okay. Conditions 7 and 8, the fence and the buffer. Can you take a look, and I'll let you read mine, of number 8, buffer, and you can see the sentence here that it says it is to be 8 feet to the south of the property line. And you would agree with me that south of the property line of the fence would be in the easement area of Ponderosa Road, right?

Bobby Wynn: Correct; at this time, yes.

Attorney Biemiller: How could it be any different at any time; from 2017 forward? The permit has always said 8 feet south of the line. And I read your testimony from the public comment hearing, it wasn't testimony but it was your statement, that it somehow changed or evolved but I don't understand how you can possibly read that to mean that the buffer is supposed to be on the Wickens or the Cohen property.

Bobby Wynn: I don't believe the Wickens were there when this was…

Attorney Biemiller: It doesn't matter. It's the property line. There's no names. It just says the property line…

Bobby Wynn: Right.

Attorney Biemiller: So regardless of who the property owner was, the condition is 8 feet south of the line, right? It's not north, this is south.

Bobby Wynn: According to this, yes.

Attorney Biemiller: This is it, right? I mean this is the condition.

Bobby Wynn: Well as we know there's some discrepancy in the condition when it was brought about in 2017 from what I've read in the minutes and what was brought about.

Attorney Biemiller: But this is the permit, right? You agree this is the permit? Regardless of the minutes, regardless of the discussion, this is…

Bobby Wynn: Yes, yeah.

Attorney Biemiller: Okay. And there's no discrepancy here. It doesn't say kind of north, kind of south. It clearly says 8 feet south, right?

Bobby Wynn: Correct.

Attorney Biemiller: Okay. And has that ever been done since 2017?

Bobby Wynn: It's been offered to be done.

Attorney Biemiller: Has it been…in the easement or on the Wickens property?

Bobby Wynn: Well in the easement if that's what it takes.

Attorney Biemiller: You offered to put the buffer in the Ponderosa Road easement.

Bobby Wynn: We said we would do whatever it takes to get it done.

Attorney Biemiller: Why haven't you?

Bobby Wynn: Because they said they didn't want it.

Attorney Biemiller: They don't own the easement.

Bobby Wynn: Okay well they apparently do. I mean they told me I wasn't allowed on the road.

Attorney Biemiller: You were told you weren't allowed on their property. Because that was your proposal; was to put it on their property. And again, I read your statement from the public meeting last time, a month or so ago, and it used the same terminology you're using this evening; a discrepancy or something evolving. But I don't read it and I'm trying to understand from you how you could possibly read it to have changed.

Bobby Wynn: Well…well we tried to…from the very beginning we've tried to accommodate whatever would be…could be done on there. They didn't want it from the beginning. They didn't want the buffer.

Attorney Biemiller: On their property.

Bobby Wynn: They didn't want the fence.

Attorney Biemiller: On their property.

Bobby Wynn: Or on the line. They said they didn't want a fence on the line.

Attorney Biemiller: But they can't stop you.

Bobby Wynn: Derrill Wickens did not have a fence up before we went in.

Attorney Biemiller: But he can't stop you from putting something in the easement, right?

Bobby Wynn: Well…

Attorney Biemiller: Okay. Either way it hasn't been done.

Attorney Cauley: Let him answer.

Attorney Biemiller: Okay.

Bobby Wynn: Yeah he thinks he can, yes. And he went to the county and told them the same thing. And…

Attorney Biemiller: Do you have evidence of that?

Bobby Wynn: Yeah, I've got of him…

Attorney Biemiller: Because Mrs. Curling didn't produce any of that.

Attorney Womble: Hold on, let's let him finish his statement before you ask the next question.

Bobby Wynn: Yeah, I have it that he told me personally and yes, when I talked with Amber she said they didn't want that on there; that they told them that. And I think she ended up saying that; that they said they didn't want that in.

Attorney Biemiller: Either way there's no buffer, right?

Bobby Wynn: Not at this time, no.

Attorney Biemiller: Okay. In regard to the speed limit, again I read your statement from the last meeting and you testified that the trucks were so safe and that they had governors. What's a governor?

Bobby Wynn: I don't think that was my testimony.

Attorney Biemiller: I can show it to you.

Bobby Wynn: Okay.

Attorney Biemiller: Do you believe me now or do you want me to show it to you?

Bobby Wynn: Well a governor wouldn't have anything…no, they have GPS is what I said; not governor.

Attorney Biemiller: You didn't say governor.

Bobby Wynn: No, I did not say governor. I said GPS to monitor their speed.

Attorney Biemiller: How do you monitor trucks that aren't owned or managed by Ponderosa?

Bobby Wynn: I said the GPS monitors them but I…we all monitor the trucks on what they need to do coming in and out of there.

Attorney Biemiller: And your testimony is they have never exceeded 10 miles an hour?

Bobby Wynn: No, I'm not saying they've never exceeded 10 miles an hour. But their average speed is 7-8 miles an hour and we went through the GPS information to verify that.

Attorney Biemiller: You saw the video earlier of the truck going by? How fast would you estimate…

Bobby Wynn: They're not dump trucks.

Attorney Biemiller: Oh so you think that only applies to dump trucks?

Bobby Wynn: I'm not sure…that road is used by all kinds of people.

Attorney Biemiller: So you think the speed limit only applies to the dump trucks?

Bobby Wynn: That's what Derrill Wickens told me; that they don't have a speed limit on there. That's what he told me personally.

Attorney Biemiller: ---. (too low)

Attorney Womble: Alright, let's…

Attorney Biemiller: One was a pickup truck and one was a dump truck.

Bobby Wynn: Okay, that road…and I'm not sure what day that was, but that road where I gate is going into the pit opens up, there's a bunch of hunters, farmers that go back there, as well. I'm not sure what their speeds are coming in and out of there.

Attorney Biemiller: I'm asking about the dump trucks.

Bobby Wynn: The dump trucks obey the speed limit.

Attorney Biemiller: All of them obey the speed limit?

Bobby Wynn: Yes. They were not dump trucks in the picture.

Attorney Biemiller: Okay. Condition 11, hours of operations. Now you seem to think that means hauling; not mining operations because you've acknowledged that there are a number of mining operations which take place outside of those hours, right?

Bobby Wynn: We operate outside of those hours, yes, other than…

Attorney Biemiller: And you indicated that you ran at least excavator outside of those hours?

Bobby Wynn: Yes.

Attorney Biemiller: And that obviously is diesel-powered?

Bobby Wynn: Yes.

Attorney Biemiller: And carries a noise level.

Bobby Wynn: Yeah, of course.

Attorney Biemiller: Okay. And there's a pump also running on the weekends?

Bobby Wynn: Yeah.

Attorney Biemiller: And that's diesel-powered, as well?

Bobby Wynn: Yes, with a…with a sound barrier on it, built in it. You can't hear it and we have video of that, as well. You can't even hear it at the entrance to where it is.

Attorney Biemiller: Okay.

Bobby Wynn: And the sheriff's deputy came out there when he was called and he was like, "Well I'm not sure what the complaint is." And that's on record.

Attorney Biemiller: Not here. Do you run more than the excavator and pump on the weekends?

Bobby Wynn: Possibly, yes.

Attorney Biemiller: Machinery.

Bobby Wynn: Yes, a bulldozer.

Attorney Biemiller: Diesel-powered machinery, bulldozer, okay, alright. And was there any other operations running…

Bobby Wynn: Can I ask you a question?

Attorney Biemiller: Not really.

Attorney Womble: No, you really can't ask him a question, that's just a procedural thing and so…not trying to be difficult.

Bobby Wynn: Okay.
Attorney Womble: But I think he asked you a question. Did you ask a question and you're waiting for an answer?

Attorney Biemiller: I asked if there was any other equipment besides the excavator, the bulldozer and the pump.

Attorney Womble: Alright so let's give him a chance to answer that question before we move on.

Bobby Wynn: No, I've been involved with quite a few pits and setting them up and the permits always…when that's stated it means operating the pit far as commerce; not your maintenance, your…what you need to do to operate the business.

Attorney Biemiller: Does it say that here?

Bobby Wynn: It's just like a person in any job going into their office outside of hours. It does not…I don't…

Attorney Biemiller: You would agree that operating a sand pit includes digging out the sand, right? So you're digging out the sand, that's an operation of the sand pit, right?

Bobby Wynn: Yeah, it's part of the process, yes. It's not the operation, it's part of the process; getting ready to…

Attorney Biemiller: But it is part of the process. If you're digging the sand out…

Bobby Wynn: Well apparently…apparently you know more about it than I do.

Attorney Biemiller: Well it's common sense as Mr. Cauley said.

Bobby Wynn: I guess you can tell me.

Attorney Biemiller: Well you tell me. Is excavating the sand out of the ground part of a mining operation?

Bobby Wynn: It is but I don't believe that this permit, it refers to that. I believe it refers to the commerce of the sand; running the trucks. I think they were trying to not run the trucks there down the road on a Saturday.

Attorney Biemiller: Where do you read that? Do you read that anywhere?

Bobby Wynn: I read into it as that, yes.

Attorney Biemiller: You read into it.

Bobby Wynn: Yes, yes.

Attorney Biemiller: So you read into words.

Bobby Wynn: And you're reading into that you can't do anything. (cross talk)

Attorney Womble: Alright, we're not going to argue back and forth. We're gonna get a question, we're gonna get a question so the Board can follow you.

Bobby Wynn: Sorry.

Attorney Biemiller: Alright, that's all I have.

Bobby Wynn: Alright.

Attorney Biemiller: Let me make sure. Oh the millings, I'm sorry. Did you personally inspect the millings that were unloaded to see if there was any metal in those or not?

Bobby Wynn: Yeah, we monitor when we put them down, yes. We didn't…we didn't…

Attorney Biemiller: When you put them down.

Bobby Wynn: We didn't see and I know they came up with some. But yes, we didn't see them in there.

Attorney Biemiller: When a neighbor complained about getting flat tires you offered to buy new tires because of the metal.

Bobby Wynn: I offered to meet with him. I told him we'd buy him tires if that was his complaint. We would give him money to put up a fence. We would buy the property. We would rent the property, which he told me it would…(cross talk) Okay well I'm just telling you that was all part of the same conversation.

Attorney Biemiller: Okay. But you did offer to buy him new tires because…

Bobby Wynn: Yeah, if that's what it took to…to make him happy, yes. We…like I said, we tried to be good neighbors and whatever it took to do that we would do.

Attorney Biemiller: Okay, alright. Thank you.

Bobby Wynn: Thank you.

Attorney Biemiller: Nothing further.

Attorney Womble: Hold on just one second. We've got to see if the Board has any questions. I know we've got many to go through tonight. Board, do you have any questions?

Commissioner Aydlett: I have…I have one question.

Bobby Wynn: Okay.

Commissioner Aydlett: You said that there were more vehicles that travel up and down that road, too.

Bobby Wynn: Yes.

Commissioner Aydlett: And under tab 24, you have several pictures of a white SUV parked in the road and then white pickup truck blocking the road. Were those your vehicles or someone else's vehicles?

Bobby Wynn: No, they're Derrill Wickens' and Adam Cohen's vehicles when they…that was part of not wanting us to operate at all and said we weren't…weren't supposed to be in there and no right. So we went through that quite a bit. This went on for quite a long time with trying to do that; to block us, keep us from going in and out.

Commissioner Aydlett: Was that on the weekend or during the week or…

Bobby Wynn: That was during the week. We didn't have trucks there on the weekend. I can promise you that. This went on for weeks at a time.

Commissioner Aydlett: What would you do? What would you do when that happened?

Bobby Wynn: Well we called the Sheriff one time to see if there was anything we could do. They said they had no jurisdiction on the road. Other than that, there was enough room for us to go around which wasn't really safe. But we had to go around…he left the car out there. He went to work, left the car out in the road. And that went on and on. I mean it's been difficult and we haven't retaliated in any way. We've tried to do, as I've said many times, our part to make it work.

Commissioner Aydlett: The car was left in the road for the entire day?

Bobby Wynn: Yeah for weeks at a time. And…yeah.

Commissioner White: I have a question for you, also. You said you didn't know how many loads of trucks. Ya'll don't keep a record book of how many loads come in and out?

Bobby Wynn: We do. I would have to get that information. We have all that information…

Commissioner White: Okay.

Bobby Wynn: …exactly how many trucks are in and out. But as far as an average, it goes up and down so much it's hard to say an average. I mean here lately we've been running maybe 20 loads a day you know since first of the year and on average.

Chair Banks: I have another question.

Commissioner Krainiak: The life of the pit, how much life do you still have on that pit? How many years you'd say?

Bobby Wynn: 15 to 20 years I would say.

Commissioner Krainiak: Okay and the noise level that comes from the pit, I think we had testimony tonight that it was two-and-a-half miles down the road. I can hear cars at a stoplight but they're not very loud. I didn't know an excavator could actually produce that much noise.

Bobby Wynn: No, there's very little noise outside the pit. We've built berms for buffers. So you can't hear much outside of the pit. You can't hear the pump running at all. You might hear a…if we're up towards the entrance you might hear the dozer running. But you…there is no nuisance as far as noise. And we're out of there…most of the time the equipment stops running by 3:30. By the time most of the people…which is only two houses that we're talking about that are…have an issue. But by the time they get home most of the time we're done. We're completely done by 4:00 and even though our hours run later we cut it off early to again, be good neighbors and try and get out of there and so there is not an interference if we're…those pictures of the trucks going down there and getting a picture taken. Instead of waiting just one minute for the trucks to go on by to go in, you know they've got to back all the way up to…back to the sand pit which again, can be dangerous. But we've done what we need to do to deflect the conflict.

Commissioner Krainiak: One more question. The right of way, can that be purchased to the left side; away from the property?

Bobby Wynn: When you say to the…

Commissioner Krainiak: You know the right of way, the road existing now…

Bobby Wynn: Yeah.

Commissioner Krainiak: …there's ditches on both sides, correct?

Bobby Wynn: One side, yes.

Commissioner Krainiak: One side?

Bobby Wynn: Yes.

Commissioner Krainiak: Can that road actually be moved over and purchased on one side?

Bobby Wynn: We're working on alternate routes now to try and avoid this.

Chair Banks: And that was going to be my next question; was do you have written offers of what's been proposed to…

Bobby Wynn: No, at this time we do not have any written offers.

Chair Banks: Could you list what's been proposed as far as purchase of easement or paving of the road? And you might have mentioned another item or two.

Bobby Wynn: Well we're willing…

Attorney Cauley: If I could clarify, Mr. Chairman, you're asking about offers to these landowners?

Chair Banks: Yes, sir.

Attorney Cauley: He had started talking about an alternate access he's working on.

Chair Banks: No, sir. I'm asking about history of offers to…

Bobby Wynn: No, we do not…other than verbal. It was rebuffed pretty much from the beginning.

Chair Banks: Okay.

Bobby Wynn: Now Adam Cohen did tell me at the last meeting here he would be willing to rent his land. But when I tried to get in touch with him after that I couldn't.

Chair Banks: When was the offer made verbally to pave the property?

Bobby Wynn: From the beginning.

Chair Banks: '24 when you came on board?

Bobby Wynn: Yes, yes.

Chair Banks: Or previously with Mr. Bright?

Bobby Wynn: No, '24.

Chair Banks: '24.

Bobby Wynn: Yes.

Chair Banks: Any other questions?

Commissioner White: I don't have any.

Attorney Biemiller: Point of clarification. From the Ponderosa Sand entrance to Route 17…

Bobby Wynn: Yes.

Attorney Biemiller: …is two-and-a-half miles. Correct?

Bobby Wynn: Yes.

Attorney Biemiller: The distance from the entrance to the Wickens and Cohen property is only a couple hundred feet.

Bobby Wynn: Probably 200 feet to Wickens and 400 to 500 feet to Cohen. I…I'm sure the Cohens don't hear anything from down there other than the trucks running by their house. But as far as on site, I would be surprised if anybody heard anything down there. And most of the time now, you saw the pictures of the pit, as far as an excavator, they're down in a hole so you have that much more of a buffer in there.

Attorney Biemiller: Okay. But I think you just said you'd be surprised if the Cohens did hear anything but…

Bobby Wynn: Yeah well you can ask him but he's not the one that usually complains about it.

Attorney Biemiller: Wickens it closer so he could hear better.

Bobby Wynn: Well if he's trying to hear something he might hear it but…

Attorney Biemiller: If he's outside.

Bobby Wynn: …but he might hear birds chirping too. (cross talk)

Attorney Womble: Well hold on, hold on, hold on. I don't want to get in this round and round again with you too.

Bobby Wynn: I'm sorry.

Attorney Womble: You said point of clarification which was to clarify I believe the question from the Board about the two-and-a-half mile. And I appreciate the clarification about the distance between the end of the road, the neighbors. If you want to ask Mr. Wickens and Mr. Cohen about what they can hear at their property you can do that then. But I believe that that's a better question for Mr. Cohen and Mr. Wickens.

Attorney Biemiller: Okay. I have nothing further.

Attorney Womble: Thank you. Alright, is there any more questions from the Board?

Commissioner White: I don't have any.

Attorney Womble: Okay, alright. Thank you.

Bobby Wynn: Alright, thank ya'll.

Chair Banks: Thank you.

Attorney Franchi: I do have a few items. --- (too low)

Attorney Womble: Mr. Franchi, just so I can…the Board can know…I mean it's 9:30 and we've been going a while. And I just…and I'm not trying to rush you. I just want to understand how many more you have.

Attorney Franchi: Yeah and I'm trying to limit this as much as possible for the sake of time.

Attorney Womble: I understand.

Attorney Franchi: I'm trying to hit all the conditions. I'm going to keep it as fast and then we'll…

Attorney Womble: Sure. How many more witnesses do you think you have?

Attorney Franchi: At the most two more.

Attorney Womble: So three, including this witness?

Attorney Franchi: If I'm being honest I could do this witness in addition to three more but…

Attorney Womble: Approximately…I'm just trying to approximate so that my Chair knows. And Mr. Biemiller and Mr. Oakley in terms of your projected witness count?

Attorney Biemiller: Two for me but one…Mr. Wickens will be longer.

Attorney Womble: Sure. I understand.

Attorney Oakley: I have two to three.

Attorney Womble: Two to three. Okay. Alright and Mr. Chair, I'm not trying to interrupt. We can keep going. I just wanted you to have that information given the time so you can make a decision if we're gonna…how long we're gonna go and if we need to recess and come back.

Chair Banks: Okay.

Attorney Womble: And I'm not trying to rush anybody but I want to make sure we understood all that still need to be heard. Thank you.

Chair Banks: Thank you. (cross talk) Yes, sir. Please proceed.

Attorney Franchi: Doug, please introduce yourself to the Board.

Doug Haney: How you doing? I'm Doug Haney. I am a partner in Puryear Trucking. I'm also a partner in Ponderosa Sand. We…we've made a lot of investment and trying to be a good neighbor in your community. We've spent over $1 million with Camden County businesses directly between our companies in the year-and-a-half or almost two years that we've been in operation.

Attorney Franchi: And we're gonna move on from here but…

Doug Haney: Okay.

Attorney Franchi: …we've got…it's been --- a few different companies here. What is your role ---? (too low)

Doug Haney: Yeah so I could answer more on the trucking side of things; the questions that ya'll were asking Bobby, I have that stuff down. That's where I deal more with the sales of the material, I deal more on the bookkeeping side so I can tell you approximately how many loads a day would be more like something you'd hear from me. And along…the truck…the trucking operations; I'm intimately involved in the trucking operations.

Attorney Franchi: Let's speak to that and let's start with the training you've had and your involvement with your drivers.

Doug Haney: Okay. Yeah, I mean we have over 90 of our own power units and it's almost 100 right now. We have safety managers, we have on-site safety that we send out to the pit to monitor our trucks and what they're doing. In addition to that, we believe in technology. So all our trucks are outfitted with AI cameras. If a truck…we can actually do live look-ins on all the trucks that we were currently own and operate. In addition to that, we have…we utilize Samsara GPS and Tracking with all of our trucks and all of our partner trucks. So I do believe the question was asked before how do you track the partner trucks. We actually use these tags. These are AirTags. We can put them on the partner trucks and we can track them like we track our trucks. We actually have set up geofence on Ponderosa in front of these people's house so that whenever a truck goes above 10 miles per hour, our safety manager, Travis Menefee, Matt Menefee are all given email alerts; hey, you have a truck that just went over 10 miles per hour. If a truck has that happen, they have somebody at the end of the day that sits down and explains to them that we are not allowed to go over 10 miles an hour. We have not had one driver have more than one of those incidents happen because they understand that if they do continue to do that, then they will be in jeopardy of losing their job.

Attorney Franchi: So just to summarize, you take it very seriously the training and involvement with your drivers.

Doug Haney: Very serious. I mean it's our reputation in the community. We've been in the community since 1989 and so we've been doing this for a while. We…we want to be known as a…well we're a family-owned business. We want to be known as people in the community that are doing the right thing and I think we have that reputation all around.

Attorney Franchi: Okay. I'll move on to other items. You know I may just switch gears to the property itself and then the others going on to the property. A pit can be dangerous, it's a big open hole.

Doug Haney: It is.

Attorney Franchi: Is your business generally open to the public?

Doug Haney: Absolutely not, no. We do not encourage anybody and we actually forbid people that are not…that are not…that don't have a purpose for being there to be there. It absolutely is against insurance rules; it's against anything that we have.

Attorney Franchi: Are there individuals, perhaps landowners, who may enter onto your property?

Doug Haney: We have never given them permission to on our property.

Attorney Franchi: They have been on your property.

Doug Haney: We do believe so, yeah. We have camera evidence of that.

Attorney Franchi: Has Derrill Wickens been on your property?

Doug Haney: Yes.

Attorney Franchi: Did you let him on your property?

Doug Haney: No, we did not let him on our property.

Attorney Franchi: Is he welcome on your property?

Doug Haney: No, he is not welcome on the property.

Attorney Franchi: For all the reasons you just stated?

Doug Haney: For all the reasons we just stated, yeah.

Attorney Franchi: Alright. At any time have you had any confrontations with Mr. Wickens on your property?

Doug Haney: Absolutely. Yeah so Travis and myself went down to install cameras November 1st of 2024 to make sure that we could…make sure people aren't just coming and going as they please to mess with our equipment, to injure themselves on the mine, to play and be vagrant and that kind of stuff. So we were installing cameras down there and we told Adam Cohen that we wanted to meet with him. We tried to reach out to Derrill Wickens and we met Bobby Wynn down there. So it was myself, Travis Menefee, Bobby Wynn and then Adam Cohen came and so did Derrill Wickens. He actually showed up on his side-by-side. And so we were discussing, we were like, "Hey guys, we want to be great neighbors. What can we do? I know Bobby's already asked you guys if you guys want us…we're willing to pave the road, we're willing to put up a vegetated buffer, we're willing to put a fence. Tell us what you guys need. You know what's the monetary amount?" Derrill Wickens said, "You want me to stop being a nuisance? Then my number's a million-and-a-half." We looked at him and we kind of laughed about that a little bit. And then we got…we got to where we were starting to talk about them parking their vehicles in the middle of the easement and you know, "Hey, can you guys please stop doing it? It's not…you know it's not funny, it's serious and it's dangerous." And Derrill looked at me straight in the face and told me that he hopes one of my trucks hits his vehicle; that he could feel his back hurting from the recliner in his living room. And Adam Cohen heard this, Travis Menefee heard this, Bobby Wynn heard this. They all heard it and we were all standing right there. And Adam Cohen just shook his head and put his head down when it happened. So…

Attorney Franchi: Is it your belief that he parks in the roadway simply to spite you and the business?

Doug Haney: Absolutely, 100%. In fact, it's not my belief. He told us that.

Attorney Franchi: And he said the payoff as you said, is a million-and-a-half.

Doug Haney: "If you pay me a million-and-a-half I will stop complaining about your business." Yes.

Attorney Franchi: And the last thing I'd like to get to is unpaved construction standards.

Doug Haney: Absolutely.

Attorney Franchi: This is exhibit 26. --- on the trucking side of things. Please explain your understanding of ---. (too low)

Doug Haney: So we did reach out to…I reached out to Shannon Douglas who is the Vice-President of Barnhill that operates in Division I here in Camden County, Pasquotank County. And I wanted to get from him how would we find out what unpaved NCDOT road standards are because they're not defined in the…in the permit. There's no definition there. And he said, "Well the way you find that out is if you contact the Division I engineer." And so I…

Attorney Oakley: I'm going to have to object to the hearsay nature of the testimony.

Doug Haney: Okay.

Attorney Franchi: If the Board will allow, I think it's pretty relevant. I mean it's a conversation he had to comply with this permit. --- (too low) highly relevant to their compliance with the special use permit.

Attorney Oakley: Relevance doesn't trump hearsay.

Attorney Cauley: It's not hearsay. It's not offered to prove the truth of how he found…

Manager Burke: All conversations have to be made at the microphone at the podium.

Attorney Womble: Yeah, go to the microphone please.

Attorney Oakley: Mr. Franchi can handle this. I'm not playing tag-team with two attorneys up here.

Attorney Womble: I understand. So if this is…technically if this is Mr. Franchi's witness then…

Attorney Franchi: Sure, understood. Yeah, you're saying that the evidence must be offered for the truth of the matter asserted, and it's not. He's recalling who he spoke with to gather information for his permit.

Attorney Womble: So I think that we can address this by Mr…

Doug Haney: Haney.

Attorney Womble: Haney, I'm sorry.

Doug Haney: It's late and I appreciate all you…

Attorney Womble: And so Mr. Haney can say that he contacted the Division I…excuse me, Division I engineer and based on contacting the Division I engineer, he then did this. So I think he can say that he used…in terms of explaining his next step, I don't think he has to say what that person…what they said; if that can help you move along. Does it help move along?

Attorney Oakley: His testimony was, "This is what they told me." And that's why I was objecting.

Attorney Franchi: What did you learn and what did you do with that information?

Doug Haney: Okay. They directed me to the only thing that they could possibly find that comes close to defining this undefined term that was put in the permit. And that was in the 19(a) of the NC…North Carolina…

Attorney Franchi: He's about to reference…this is Exhibit 26 and he's about to cite out the NCDC Administrative Code. It's Exhibit 26 and he's going to explain his interpretation as he reads it.

Doug Haney: Yeah. So you know they told me there is not actually any real NCDOT unpaved road standard.

Attorney Womble: So I know…I see Mr. Oakley getting up. You don't need to get up. Board, to the extent that he's saying, "They told me this," you can't accept that as if that's the truth of what they're alleging. I think you need to focus on based on talking to them, you went to this section and…

Doug Haney: Based on talking to them….based on talking to them, they went ahead and they said this is the closest that North Carolina has. And the closest that they have states right here it says you know for unpaved roads, a minimal travel way width of at least 20 feet is required. Where feasible, road widths of 32 feet including side ditches shall be required. Where not feasible, the requirement may be reduced to a width applicable to the situation, if safety will not be sacrificed. And as they told you guys, we are running up to 100 trips a day and we haven't had any accidents. So it doesn't seem like safety's being sacrificed here.

Attorney Franchi: What's the width of the actual usable area of Ponderosa Road?

Doug Haney: It varies and you know this is I think one thing that we were talking…well that everybody was talking about earlier. But it does vary.

Attorney Franchi: What's the nearest you'd guess down towards the end of your…

Doug Haney: 17 feet; somewhere in that range I do believe.

Attorney Franchi: So it's less than 20 feet.

Doug Haney: Less than 20 feet, yeah.

Attorney Franchi: And the unpaved standards…what you just read there, minimum standards for secondary roads for unpaved standards is that less than 20 feet and then basically the next best thing.

Doug Haney: Exactly.

Attorney Franchi: ---. (too low)

Doug Haney: 100%.

Attorney Franchi: ---. (too low)

Doug Haney: We have not; none that weren't caused by the other petitioners here.

Attorney Franchi: So in your interpretation based on your research and understanding, have you complied with the NCDOT unpaved standards as you understand them?

Doug Haney: Absolutely.

Attorney Franchi: Okay. I have no more questions.

Attorney Oakley: I just have a few questions for you.

Doug Haney: Okay.

Attorney Oakley: The last question was whether or not you believe, your personal belief based upon your interpretation of the ordinance or regulation that he cited to you, that you feel like you complied, correct?

Doug Haney: I believe that because the NCDOT engineer told me and the Vice-President of Barnhill that builds roads in this area told me that we were in compliance, yes.

Attorney Oakley: But NCDOT did not specifically reduce those standards for your site, correct?

Doug Haney: Correct, no.

Attorney Oakley: Okay. So you have nothing from NCDOT saying that you've complied with their standards for that section of road?

Doug Haney: We do. I mean if you read it…I mean this is what I have. It's the statute.

Attorney Oakley: You don't have certification or a letter or anything else that's official from NCDOT.

Doug Haney: It's not an NCDOT road. They won't even come on the road and we asked them.

Attorney Oakley: And you don't have an engineer who has inspected that section of the road to confirm that you've complied with that section…with NCDOT unpaved standards.

Doug Haney: I do. If we would have wanted to bring ten more witnesses we could've had Shannon Douglas here. He is an engineer and he did tell me it was in compliance, yes.

Attorney Oakley: Alright but in fact…and I move to strike the hearsay portion.

Attorney Womble: So that would be appropriate because we've already addressed that in terms of the hearsay applicability. So Board, you shouldn't consider that.

Attorney Franchi: May I?

Attorney Womble: Sure, I'm sorry. Go ahead.

Attorney Franchi: He did ask a question about bringing in an engineer.

Attorney Oakley: I asked him if he brought in an engineer.

Attorney Oakley: Yes, I did.

Attorney Oakley: And the answer was no, he didn't bring an engineer here tonight.

Attorney Womble: Okay, yes and I…

Doug Haney: No, I didn't bring one here tonight. I'm sorry, I didn't understand that portion of the question.

Attorney Womble: So I think that he can say, "No, I didn't, but I could have brought Mr…

Doug Haney: Shannon Douglas, absolutely.

Attorney Womble: …Shannon Douglas, but that doesn't give him the opportunity to go into what Shannon Douglas has told him in other conversations. So to the extent that there was testimony about a conversation with Mr. Shannon Douglas, Board you should not consider that. We've got to stop it there for purposes of this hearing.

Attorney Oakley: Alright, I don't have any other questions.

Attorney Biemiller: You mentioned…

Doug Haney: Good evening, sir. I don't think we've ever met. I'm Doug.

Attorney Biemiller: Richard. You mentioned meeting with Mr. Wickens and Mr. Cohen. At your first meeting were there GPS devices in all of the trucks?

Doug Haney: Absolutely, yes.

Attorney Biemiller: The first time you met him you already has GPS's.

Doug Haney: 100% yes.

Attorney Biemiller: And you monitored the speed.

Doug Haney: Yeah, we set up geofence on the road. I mean it's common practice for us. We have geofences on every single job site we go into. We have a geofence on the pit to know how quickly the trucks can get loaded. Like I can tell you how long it takes to get loaded at Vulcan Norfolk…

Attorney Biemiller: I'm asking you about the speed.

Doug Haney: Yeah, I'm just letting you know.

Attorney Biemiller: Okay. But they were there the first time you met?

Doug Haney: Yes sir, 100%.

Attorney Biemiller: Okay and you were aware of the other conditions of the permit when you first met with him or did he have to explain those to you?

Doug Haney: I was aware of all the conditions of the permit.

Attorney Biemiller: When did you first see the permit?

Doug Haney: I first saw the permit in…I mean prior to September we started negotiations with Bonney; the month prior, I would say. So August of '24.

Attorney Biemiller: August of '24 you saw the permit.

Doug Haney: Yes, sir.

Attorney Biemiller: Okay and you were aware of all those conditions.

Doug Haney: Absolutely, yeah. And so at the time when I was presented with the permit and at the time Mr. Bright is here and testified that he didn't understand all this was going to happen because at the time the 30-foot easement extended…actually you know everybody's belief was the GIS said and everything until your clients decided to hire surveyors and try to push us…tried everything to stop the pit from happening. Everybody, including the commission…I mean the commissioners before understood that there was a 30-foot road.

Attorney Biemiller: Whoa, whoa, whoa.

Doug Haney: Well I'm just…you asked…

Attorney Womble: Whoa, whoa, whoa, whoa. Okay, hold on.

Doug Haney: I'm sorry, I'm sorry. ---. (cross talk) I won't do that anymore, sorry.

Attorney Womble: This is just part of the process. I mean I know this is personal but let's try to stay in our professional capacities here.

Doug Haney: Absolutely.

Attorney Womble: You can't…repeat your question. Let's start there; your question about…that led to this…

Attorney Biemiller: You know it was so far back…

Doug Haney: He asked me if I had reviewed the permit. He asked me about when I reviewed the permit. And yes, I did review the permit in August.

Attorney Womble: And you can answer that question without going into what you believe…

Doug Haney: Absolutely.

Attorney Womble: …the Board did in 2017 or…

Doug Haney: Yes, I'm so sorry.

Attorney Womble: That's okay.

Doug Haney: Yes, absolutely and I know it's late; August 2024, yes.

Attorney Womble: Alright.

Attorney Biemiller: And you felt like that permit allowed 30 feet over or some feet over into the Wickens and Cohen property?

Doug Haney: Absolutely. Everybody thought that, yes.

Attorney Biemiller: Really? Do you see that somewhere in the permit itself?

Doug Haney: I saw it on the County GIS site. I saw it on…

Attorney Biemiller: No, I'm asking you about the permit. Where the permit says 30 feet from the property line…or sorry, 8 feet from the property line…

Doug Haney: Can you please restate your question then because I just want to understand?

Attorney Biemiller: Yes, how do you interpret Condition 8, which says 8 feet from the property line…

Doug Haney: Yeah.

Attorney Biemiller: …as somehow being on to the Wickens and Cohen properties?

Doug Haney: I will say that at the time in August 2024 I believed that their property line was not where their property line currently is.

Attorney Biemiller: Where it actually is.

Doug Haney: Well it's disputed so yeah.

Attorney Biemiller: Okay. You dispute where the Cohen and Wickens property line is?

Doug Haney: Yes.

Attorney Biemiller: Okay. And so you feel like their property line is northward and then that's where the easement should lie.

Doug Haney: Absolutely.

Attorney Biemiller: Okay.

Doug Haney: Yeah if you would like me to explain I would love to explain why. That's fine, the commissioners ---.

Attorney Biemiller: Thank you, that's all.

Chair Banks: Do you have a survey showing the easement and property line that were you basing your decision on?

Doug Haney: So the…so what I was basing our decision on was our deed that said that we had a 30-foot easement north of the ditch and so that's what we based our decision on. And so apparently you know when the plots were laid out and people decided to make things into 10-acre neat plots, some of the plots you know were eased into the easement and I think the people that did that never anticipated any of this --- (too low) going down. And they surely didn't anticipate us being here until 9:30 or 10:00 or whatever.

Attorney Womble: Any other…are there questions from the Board? So we're in the Board questions at this point.

Attorney Biemiller: Oh I'm sorry.

Attorney Womble: So do you have a point of clarification about that question?

Attorney Biemiller: I do, in the sense that we have Mrs. Curling's several survey-related pictures where…we could pull those up…

Attorney Womble: Sure and when it's your turn I will let you do that.

Attorney Biemiller: Okay.

Attorney Womble: Thank you. Board, do you have questions?

Attorney Oakley: Before we get to the Board, may I ask just one…it's based off of something that came up in that questioning.

Chair Banks: Does anybody else have any questions first?

Commissioner Aydlett: I do have a question.

Attorney Womble: We'll come back to your point of…if it's indeed a point of clarification we will return to you.

Commissioner Aydlett: You kind of touched on it a little bit but not quite as far as I wanted you to. How long has that equipment been installed in your trucks?

Doug Haney: We…we started tracking our trucks with GPS software that we could geofence in 2008. We are early adopters of technology and it's one of the reasons why we've been able to be where we're at in the market because we know how long it takes our trucks to be different places. We can be safe and make sure we don't have trucks that are speeding and doing things they're not supposed to do.

Commissioner Aydlett: That's all I have.

Chair Banks: Any other questions?

Vice Chair Leary: What would you say the average loaded truck would weigh; gross weight coming in and out of there?

Doug Haney: It's going to be between 62,000 and 65,000 pounds, sir.

Chair Banks: Any other questions for Mr. Haney?

Attorney Womble: Any other Board questions? Mr. Oakley, did you have a clarification question?

Attorney Oakley: He referenced a deed that your property or B&M's property…

Doug Haney: Yeah.

Attorney Oakley: …that the easement actually went farther north?

Doug Haney: Yeah and that's what we understood it to be at the time…(cross talk)

Attorney Womble: Whoa, whoa, whoa.

Attorney Oakley: So I'm not done asking the question. So I…

Attorney Womble: No, no, no. I was just trying to figure out the question.

Doug Haney: I'm sorry, I misunderstood the question.

Attorney Womble: No, no, I'm not calling you down. I'm trying to make sure…did he finish his question? Does he need to answer? If that's not the complete question go ahead.

Attorney Oakley: So you referenced that. But B&M's deed does not measure the easement northward from the ditch, does it?

Doug Haney: What I remember the deed to say, that there was a 30-foot usable easement and that you know…no, I'm sorry. Let me go ahead and break it all down for you so that you understand exactly what I'm saying.

Attorney Oakley: I'm not asking for you to break it down. I'm asking does B&M's deed measure the easement northward from the ditch?

Doug Haney: I do not believe that it does, no.

Attorney Oakley: Okay, that's the question I had. Thank you.

Doug Haney: Can I clarify why on that?

Attorney Womble: Does the Board have any more questions?

Attorney Cauley: Can he explain his answer?

Attorney Womble: He can explain his answer. I mean the question was asked…you can explain. But let me preface this by saying you can explain your answer. Your answer was no, the deed does not measure the easement. So you've got to stay in that lane; not…

Doug Haney: Absolutely.

Attorney Womble: …why you believe the measurement is wrong or somebody moved the property line.

Doug Haney: Yeah, yeah.

Attorney Womble: Just you've got to stick with the deed.

Doug Haney: There was…okay. There was…okay well then…

Attorney Womble: I mean you can explain your answer.

Doug Haney: I was just wanting to explain the fact that the ditch has been there since the '70s so it would make sense that…I mean the reason why I said it's north of the ditch is because the ditch has been there since the '70s. You wouldn't

make…you wouldn't make a deed out and put 13 foot of inside of a ditch that has been there since 1970. That's where you know my thinking was. I wasn't trying to mislead or anything.

Attorney Womble: Oh that's fine. Okay, thank you.

Doug Haney: Alright, okay.

Chair Banks: One other…I mean just to clarify again, do you have or are you witness to any conflicting surveys or have you…has B&M or Mr. Bright, has anyone else hired a surveyor to combat…?

Doug Haney: No, sir.

Chair Banks: Okay.

Attorney Womble: Alright.

Chair Banks: No other questions?

Attorney Womble: Any other questions from the Board?

Chair Banks: Do you…

Attorney Biemiller: Just a point of clarification. So if you don't have any conflicting survey, why is it you…

Attorney Womble: No.

Attorney Biemiller: No?

Attorney Womble: Why did you testify what?

Attorney Biemiller: Why did you testify that you thought that the Wickens survey was wrong?

Attorney Womble: He said because he thinks it's in the deed.

Doug Haney: Yeah, absolutely.

Attorney Womble: He did answer that question. He said, "I think it's in the B&M deed."

Doug Haney: Why would they have made a deed that says…(cross talk)…have an easement when the ditch has been there since 1970 and…

Attorney Womble: That was his answer. He doesn't have a survey to conflict and he used that…that's his interpretation of his deed.

Attorney Biemiller: Okay but he --- that it was not in the deed. ---. (too low)

Attorney Womble: Yes and I'm saying his answer to that…when he said is it not in there; and he said no, it's not in there and it's not in there because the ditch measured…the explanation he just gave.

Attorney Biemiller: Okay.

Attorney Womble: I believe he answered that question.

Doug Haney: Thank you guys for your time.

Chair Banks: Thank you, Mr. Haney. Can we recess for five minutes again, please?

Attorney Womble: Sure, that's up to you all.

Chair Banks: We're going to recess for five minutes.

[Meeting recessed and reconvened.]

Chair Banks: It is getting late and we need…there's no way we're going to finish tonight anyway so while we are all present, let's go ahead and discuss a date and time in the future that we will recess this meeting until.

[Discussion took place in open session amongst the Board and all counsel in regard to schedules and availability to reconvene the hearing.]

Attorney Cauley: We were going to suggest and recommend that before you reconvene, go by and look at the site. We haven't filed a formal motion to that effect but we think it would be informative to your decision to go by and look at the road, the mine. They'd be glad to show you around or you could go unescorted. But we think that'd be helpful ---. (too low)

[More discussion in regard to potential dates to reconvene the hearing.]

Attorney Womble: In terms of a site visit, so I think we need to be on the same page about that. I don't need some Board members going and other Board members not going. I'm not really sure the relevance of a site visit other than…

Attorney Cauley: Looking at the site ---. (too low)

Attorney Womble: I have not had that with a Board. My boards usually never go to a site. So I would need to have some conversation with you about that before I would recommend my Board go do that --- these proceedings.

Attorney Cauley: We'll be glad ---. (too low)

Attorney Womble: I'm just not certain the relevance of my Board visiting the site to determine the allegations of compliance with the permit and primarily we know that Conditions 6 and 7 or 7 and 8 are not complied with and the Board going out there or not is not going to be any different than the pictures. And in regards to a permit modification, the Board never went to the site for a Special Use Permit.

[More discussion on possible dates and times to reconvene.]

Motion to recess this hearing until 6:00 pm on January 29th.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Randy Krainiak
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks recessed the meeting at 10:00 PM to the following evening.

JANUARY 29, 2026 – 6:00 PM

Welcome and Reconvene

Chair Banks reconvened the Board of Commissioners from the January 13th and January 28th recessed meetings at 6:00 PM. The agenda was previously approved at the January 13th meeting and there were no requests to amend the agenda.

Chair Banks: We will reconvene the meeting that was recessed on January 28, 2026 for the quasi-judicial hearing regarding the mining operations Special Use Permit UDO 2025-11-227 and at this time I would like to recognize Mrs. Lauren Womble to continue the proceedings.

Attorney Womble: Alright, thank you Mr. Chair. I believe when we left off last night with the applicant, B&M and so just remind everyone this is a quasi-judicial hearing, we talked about that last night, which means evidentiary. I believe everyone who was intending to testify was sworn last night. You're still under oath. If you…if there's somebody here who didn't swear last night please make sure you let us know. We want to make sure we…you fill out the form and we take care of that. And of course the Board's here to consider evidence considered at the hearing only. And we'll turn it back over to you, Mr. Franchi. And just procedurally we'll follow the same order that we did last night in terms of follow-up questions.

Attorney Franchi: Mr. Meiggs, please acquaint yourself with the Board.

Garry Meiggs: Excuse me?

Attorney Franchi: Please introduce yourself to the Board.

Garry Meiggs: My name's Garry Meiggs.

Attorney Franchi: As it relates here can you please explain who you are in this matter?

Garry Meiggs: Well I'm part of B&M.

Attorney Franchi: You were the M on the original special use permit?

Garry Meiggs: Yes, sir.

Attorney Franchi: And again in 2017?

Garry Meiggs: Yes.

Attorney Franchi: Can you explain your understanding of Conditions 7 and 8, the fence and the vegetated buffer?

Garry Meiggs: Well it seemed like nobody was ever in agreement…

Attorney Biemiller: Objection.

Attorney Womble: Alright, hold on just a second. Let's hear the objection.

Attorney Biemiller: His understanding is not really relevant. The document speaks for itself.

Attorney Womble: Mr. Franchi, would you like to respond?

Attorney Franchi: He as the applicant has a responsibility of complying with the permit. I think his understanding is ---. (too low)

Attorney Womble: Well maybe rephrase the question about his understanding. It sounded like he was going into…rephrase your question and let's see where we go from there.

Attorney Franchi: ---. (too low) I'm going to put in front of you the special use permit. Would you recognize that this is the special use permit?

Garry Meiggs: Yes.

Attorney Franchi: Do you see Condition Number 7 in front of you?

Garry Meiggs: Yes.

Attorney Franchi: Can you please read it for me?

Garry Meiggs: Applicant shall…let me get my glasses off so I can read it…shall install a six-foot wooden fence along the front property line of property now or formerly owned by Rosenberger and Roberts. Property owners shall be responsible for the maintenance of the fence.

Attorney Franchi: Okay. Where was that fence supposed to be? What does it say?

Garry Meiggs: It's supposed to be on the line.

Attorney Franchi: And number 8, what does number 8 say please?

Garry Meiggs: The applicant shall cause to be created and maintained an eight-foot wide vegetated buffer immediately south of the fence. Such buffer shall include trees with a preference of heavily year-round leafy trees at a planting height of at least 8 feet with minimum of 1 ½ inch diameter. The applicant shall maintain the vegetated buffer at all times during the term of the permit.

Attorney Franchi: Does this specific where the vegetated buffer is supposed to be?

Attorney Biemiller: Objection. It speaks for itself.

Attorney Womble: I think he can ask him…he read the condition. He can ask him where he believes the vegetated buffer should be located. And you can cross examine him on that.

Attorney Franchi: Does it say where the vegetated buffer needs to be?

Garry Meiggs: It says south. In other words…

Attorney Franchi: Does it say what property it is to be own?

Garry Meiggs: I don't think so. Let me see.

Attorney Biemiller: I'm going to continue the objection.

Garry Meiggs: --- (cross talk)

Attorney Womble: I understand, thank you.

Attorney Franchi: Does it say it needs to be in a right of way?

Garry Meiggs: No.

Attorney Franchi: Does it say it needs to be in the land owner's property?

Garry Meiggs: No.

Attorney Franchi: It's ambiguous.

Garry Meiggs: Sort of, yeah.

Attorney Biemiller: Objection.

Garry Meiggs: That was one of our problems with it.

Attorney Womble: I think that's a legal conclusion so the Board should not consider that it's ambiguous. You can ask him all those questions you did, which is does it say this, does it say that. I don't think you can make a legal conclusion.

Attorney Franchi: Is it fair to say that this permit does not specify where that vegetated buffer is supposed to be placed?

Attorney Biemiller: Objection.

Garry Meiggs: To me I'd say yes.

Attorney Womble: Alright so if there's an objection just wait to answer so we can address that issue so that the Board only considers the appropriate evidence before it. So what's the basis of the objection?

Attorney Biemiller: The permit speaks for itself. It clearly says 8 foot to the south of the property line. Whatever he thinks, wherever he thinks that is doesn't matter. It says on its face 8 feet south of the property line.

Attorney Womble: The questions you asked him…would you like to respond? I'm sorry.

Attorney Franchi: Somewhat for a document that speaks for itself, it seems to be ambiguous. And I can't ask whether it's ambiguous and I can't ask if he understands it.

Attorney Womble: So you asked him if it says what property line. You asked him if it says where specifically. You asked him if it says where he believed it was supposed to be. And he answered all those questions. That is different than coming to a conclusion that says I think it's ambiguous. You can certainly argue that to the Board but that's not…that's a legal conclusion and the condition is what it is and it says what it says. I don't think that you can have this witness interpret a condition.

Attorney Franchi: Okay. I have no more questions. Stay here.

Attorney Womble: Hold on, Mr. Oakley goes first and then you go.

Attorney Biemiller: Okay.

Attorney Womble: We're going to follow the same order as last night so my clerk has a very easy way of taking minutes and we don't get switched around. Thank you.

Attorney Biemiller: Sure.

Attorney Oakley: I just have a couple of questions for you. How are you?

Garry Meiggs: Alright.

Attorney Oakley: That's my first question. How are you doing tonight?

Garry Meiggs: Doing fine. Hope you are, also.

Attorney Oakley: Doing well. You said that you had a stake in B&M Investments, correct?

Garry Meiggs: Correct.

Attorney Oakley: And that started in 2000…what year?

Garry Meiggs: I don't know exactly; a long time ago.

Attorney Oakley: And but eventually you partnered with Mr. Bonney Bright, correct?

Garry Meiggs: Correct.

Attorney Oakley: Okay what year was that?

Garry Meiggs: I can't tell you that either.

Attorney Oakley: Okay. Eventually…he testified yesterday, I don't know if you were here when he did, but he testified that you sold your stake to him. Is that correct?

Garry Meiggs: Yes.

Attorney Oakley: Okay when was that?

Garry Meiggs: When was it, Bonney?

Attorney Oakley: You can't ask him, I'm sorry.

Garry Meiggs: Oh I'm sorry.

Attorney Oakley: He told us when he thought it was. Do you remember when it was?

Garry Meiggs: It's been maybe a year or so.

Attorney Oakley: Okay. And how much did you sell your stake for?

Garry Meiggs: What's the relevance?

Attorney Oakley: You don't get to make objections, I'm sorry.

Attorney Franchi: Objection. Relevance?

Garry Meiggs: Thank you.

Attorney Womble: Would you like to respond? I'm not seeing the relevance.

Attorney Oakley: It has to do with…I mean they put on lots of evidence yesterday on what the value of this sand mine is and how it's an asset to the…to the community and I'm just following up on that.

Attorney Womble: I'm not sure that that testimony gets you into that information.

Attorney Oakley: Okay.

Garry Meiggs: Thank you.

Attorney Oakley: You were asked several questions about Conditions 7 and 8 by the attorney just a moment ago. You never complied with Condition 7, correct?

Garry Meiggs: Which one was 7?

Attorney Oakley: 7 is the six-foot fence on the property line.

Garry Meiggs: You couldn't ever get anybody to agree.

Attorney Oakley: So your answer is no, you never…

Garry Meiggs: The answer is no. But you can't do it when nobody agrees.

Attorney Oakley: You never had the fence when you were a member…

Garry Meiggs: No.

Attorney Oakley: …of the B&M company, correct?

Garry Meiggs: Correct.

Attorney Oakley: And you never complied with Condition Number 8 either, did you? 8 is the buffer.

Garry Meiggs: Nobody wanted to say where it was. You couldn't take 8 feet of the road to put the buffer in.

Attorney Oakley: It's a yes or no question. Did you ever install the buffer?

Garry Meiggs: No.

Attorney Oakley: Thank you. --- (inaudible) Did you ever install 10 mile per hour speed limit signs when you were involved with B&M?

Garry Meiggs: Not when I was involved because that weren't part of it.

Attorney Oakley: Okay. So for the first like six or seven years those 10 mile per hour signs were never there, correct?

Garry Meiggs: No, because nothing was going on; nobody in or out.

Attorney Oakley: So while you were involved with B&M there was no activity going on back there as far as the sand mine.

Garry Meiggs: Exactly.

Attorney Oakley: You did a bunch of logging back there, correct, back in there?

Garry Meiggs: I have. My father did all of that. Both sides of Ponderosa used to be timberland. My father cut that timber off of both sides with a railroad. He railroad logged it. We had over eight miles of rail in that track.

Attorney Oakley: So ya'll took a lot of timber out of there.

Garry Meiggs: For quite a few years.

Attorney Oakley: I'm going to show you…this is page 22 of the Board's agenda packet. And these are the conditions to your permit, the 2017 permit. Condition Number 4 says applicant shall retain the cut over trees that lay within the buffer area indicated on site plans. Do you understand that condition?

Garry Meiggs: Not really.

Attorney Oakley: Okay. Did you cut down the trees that were within the buffer area indicated on the site plans?

Garry Meiggs: There weren't none.

Attorney Oakley: Because you cut them down?

Garry Meiggs: I didn't.

Attorney Oakley: Okay.

Garry Meiggs: But they were logged down when the tract was cut.

Attorney Oakley: Okay. Alright I don't have any further questions.

Garry Meiggs: Your turn.

Attorney Biemiller: When your counsel asked you if the buffer was installed your testimony was you didn't know where it was. Do you recall that?

Garry Meiggs: I know what you're saying, yes.

Attorney Biemiller: But isn't that what you said? You didn't know where it was. You thought it was vague.

Garry Meiggs: Very vague.

Attorney Biemiller: But when Mr. Oakley asked you if it had ever been installed you said you can't put it in the easement.

Garry Meiggs: That was my answer, yes sir.

Attorney Biemiller: So it kind of sounds like you do know where the buffer is supposed to be.

Garry Meiggs: So you use the right of way to put the buffer on?

Attorney Biemiller: I asked you the question. So you would agree that the buffer belongs…

Garry Meiggs: On the south side of the fence.

Attorney Biemiller: Okay.

Garry Meiggs: Not the south side; on the north side of the fence. How can you take…if you're going to use the right of way how in the world can you take 8 foot of it?

Attorney Biemiller: Not really my problem.

Garry Meiggs: Well it was part of mine.

Attorney Biemiller: But the point is you do know where it is supposed to be located; in the easement area, correct?

Garry Meiggs: Nobody would ever agree.

Attorney Biemiller: I'm sorry?

Garry Meiggs: Nobody would ever say amen.

Attorney Biemiller: But you understand that's where it's supposed to be.

Garry Meiggs: Yeah.

Attorney Biemiller: Okay, thank you. No further questions.

Garry Meiggs: When everybody will agree.

Attorney Womble: Board, do you have any questions?

Chair Banks: I don't have any.

Attorney Womble: No? Okay. Thank you.

Garry Meiggs: Thank you.

Attorney Franchi: Larry, please introduce yourself to the Board.

Larry Sherman: My name is Larry Sherman. I'm the senior driver for ATCO and Puryear; the entire company. I've been there the longest and I've seen quite a bit out there.

Attorney Franchi: What's your daily job ---? (too low)

Larry Sherman: My daily job is just to haul whatever we need to haul from A to B. Occasionally we go out to this pit.

Attorney Franchi: You drive dump trucks.

Larry Sherman: Yes.

Attorney Franchi: You drive dump trucks. You drive in and haul sand back.

Larry Sherman: Right.

Attorney Franchi: Alright. Tell us about your experience specifically with the neighbors. Let's get to the point of conditions for you.

Larry Sherman: Well as early as yesterday morning, I pulled onto…from Route 17 on to the road leading to the pit. I'll pulled over because another truck was coming at me. You can't run side by side when you first get on the road because there's a tree line and they just cut it, which it's real jagged so you can't go down --- with your truck. I had to stop. Well the car behind me whipped around me and went at that truck that was coming at me and he had to stop for this driver. And it's a gray Honda CRV that we see often. And it pulls into the Cohen house. Many times I've seen it do this. Well it disappeared down the road. Before I could get down…you could see down the road all the way to our pit, it's…

Attorney Biemiller: Objection. Is there relevance to this and whether the conditions are being met? (cross talk)

Attorney Franchi: I'll pause him there and redirect him to where we're at. So one of the most important things as a driver for ATCO is to yield to other drivers. Is that fair to say?

Larry Sherman: Yes, yes.

Attorney Franchi: And that could be a difficult job when you're considering the width of the road.

Larry Sherman: Right.

Attorney Franchi: Tell me a little bit about the topography of the road. Is it sloped? Is it flat? What does it look like?

Larry Sherman: It was paved very poorly. It's very bumpy and the road is just big enough…

Attorney Franchi: And I'm not even asking about the road itself. But can you see far ahead of you?

Larry Sherman: You can see all the way to the pit.

Attorney Franchi: How far can you see; a mile away, two miles away?

Larry Sherman: What is that, a mile and a half? As soon as you come off 17 you can see all the way to the pit, or I can.

Attorney Franchi: Okay. So when a car's approaching you can see it pretty far away.

Larry Sherman: Yes.

Attorney Franchi: And other cars can probably see you from pretty far away.

Larry Sherman: Yes.

Attorney Franchi: Okay. So tell us about some of the interactions that you've had with other drivers as far as…

Attorney Biemiller: Objection, relevance. Again, the permit says drivers are to yield. It doesn't say about visibility, it doesn't say anything about the length of the road. It just says they're supposed to yield. It speaks for itself. I don't see the relevance.

Attorney Womble: Would you like to respond?

Attorney Franchi: I was about to ask him about him yielding to other drivers.

Attorney Biemiller: Okay.

Attorney Franchi: Okay well if we're going to ask about yielding to drivers I don't know that getting into the back and forth between neighbors and drivers…let's focus on yielding to drivers and let's see where that gets us. Go ahead with your question.

Attorney Franchi: Okay. Please explain your process for yielding to drivers. How far off do you identify it? What are you to do on a three-mile stretch with very little width? How do you approach that as a driver?

Larry Sherman: As a driver approaches you, the driver that's loaded always has the right of way as far as a truck. Okay in a car, you try to get over as much as you can to give them plenty of room. But that doesn't seem to be enough on this road because they'll go around you at very high speeds. We have to do 25 on the paved road. They do 35 and 40.

Attorney Biemiller: Objection.

Attorney Womble: As to?

Attorney Biemiller: Again, it's about yielding. He's talking about passing, he's talking about other drivers speeding. He's not identifying who the drivers are, he's just making…just throwing out things.

Larry Sherman: I already said the car. It's the same car all the time.

Attorney Womble: So hold on, hold on, hold on. Let's not argue. We'll let your attorney ask you questions and you can respond to those. So I believe his testimony was that…his question was how do you yield to drivers. He's answered that question about how…the procedure by which they are supposed to yield to drivers. So let's move along because he's described that, unless there's more details about how he yields specifically.

Attorney Franchi: That's what I'm trying to figure out.

Attorney Womble: Well then let's redirect him to those details…

Attorney Franchi: Okay.

Attorney Womble: …about how he yields; how far does he pull off the road; how far is he able to pull off the road; how far off the right of way does he have room to pull off the road.

Attorney Franchi: It has been alleged and will probably be alleged further in this hearing that drivers fail to yield. In your experience do you fail to yield?

Larry Sherman: No, I do not.

Attorney Franchi: Can you explain that?

Larry Sherman: You can only get to the edge of the road. You can't go off the road because if you do you're going to be in the ditch. It drops off about six feet.

Attorney Franchi: So let's be clear. There is a ditch.

Larry Sherman: There is a big ditch on the other side…

Attorney Franchi: Okay there's a ditch and then there is about how much width of usable roadway? And let's talk about this.

Larry Sherman: Not much. When it's wet you can't go on that with the truck.

Attorney Franchi: Let's not talk about the paved portion because the paved portion is wider, is it not?

Larry Sherman: Right, right.

Attorney Franchi: The main problem here is the unpaved portion.

Larry Sherman: Right.

Attorney Franchi: Roughly how long? It's a mile? Less than a mile?

Larry Sherman: The unpaved part?

Attorney Franchi: Unpaved portion.

Larry Sherman: Is it maybe a quarter-mile? It takes us five minutes to get…once we get on the road to the pit at 5 miles an hour; quarter of a mile. I would say that.

Attorney Franchi: Alright. Roughly what is the width of this quarter-mile of unpaved road?

Larry Sherman: It's a little wider than our trucks.

Attorney Franchi: How wide is your truck?

Larry Sherman: What are they eight, ten feet?

Attorney Franchi: You've got 12'ish…

Larry Sherman: Yeah it's not very wide.

Attorney Franchi: You've got about 12 feet.

Larry Sherman: You can't pass on that. It's one at a time.

Attorney Franchi: Okay. So we've got 12 feet of usable space. What are you to do? Do you back up? Do you move to the side? How do you…

Larry Sherman: Well we have to back up and I've had to do that, when I was already coming out. And the car came flying at me at least 25 on that road. And I had to back up so that person could get into his driveway.

Attorney Franchi: Let's be clear, you don't mind backing up. I assume that's fine, that's just part of the game.

Larry Sherman: Well when we're loaded and we're coming out of there it's not very safe. I mean you're at 65,000 pounds and you're trying to back up a little truck…or not a little truck, big truck. And if you do something wrong you're going to be in that ditch. And if you go into the ditch you're flipping the truck over. That's something you don't want to do.

Attorney Franchi: So how do you…how do you make this as safe as possible?

Larry Sherman: You have to look both ways, back up, make sure nobody behind you. I mean you just do it slowly.

Attorney Franchi: Have there been any instances where you have compromised another driver's safety and prioritized your route over another driver?

Larry Sherman: No, not at all.

Attorney Franchi: Okay. Alright. Just let the record reflect I am going to show the witness a video…

Attorney Womble: Well can he identify the video?

Attorney Franchi: I'd like to pull it up for him first. I'm showing you a video. Do you recognize this property?

Larry Sherman: That's the gate of the sandpit we go into.

Attorney Franchi: Okay. That's the entrance to the Ponderosa Sand Mine?

Larry Sherman: Right.

Attorney Franchi: How do you know?

Larry Sherman: Because I've been in and out of there several times.

Attorney Franchi: Okay. Where's the video coming from? Did you take this video?

Larry Sherman: No.

Attorney Franchi: What took this video?

Larry Sherman: I do not know.

Attorney Franchi: Do you have some cameras on the property?

Attorney Biemiller: Objection. Does this have anything to do with the conditions of the permit?

Attorney Franchi: It might.

Attorney Biemiller: Might? Which one?

Attorney Franchi: Yeah all of them. Can I lay the foundation for this witness?

Attorney Womble: So I understand his objection as to relevance regarding a video at the gate of the sand mine. So and another issue is he said he doesn't know where this video came from. So let's start with relevance before we…and if there's more foundation if we get past relevance we'll certainly do that. But what's the alleged relevance of the gate?

Attorney Franchi: I would submit to you that the individual in this video is an individual who has complained repeatedly about it and if the Board doesn't want to see it that's fine. But I would submit to the Board that it's relevant here. So…

Attorney Womble: Well I would just…what I'll say is I don't know that it's what the Board wants to hear. This is a quasi-judicial proceeding and so because of that the Board is sitting, as you know, as a judicial board; a judicial body, if you will. And so because of that we can't just show things that are not particularly relevant. So if you can point me to…

Attorney Franchi: And I don't think it speaks to any of the exact conditions but it is regarding an individual who has complained repeatedly about this pit and its operations. And to that extent it is…I would say it's relevant to the reason why we're here today.

Attorney Biemiller: The relevance that he is not saying is that he wants to put Mr. Wickens on trial instead of acknowledging that they're not complying with the permit. And they tried it last night and they're obviously going to start it tonight to turn this into the trial of Derrill Wickens instead of the failures of B&M complying with the permit. So I think it's irrelevant to what is on the agenda.

Attorney Franchi: I'll follow whatever the Board wants to do.

Attorney Womble: So Mr. Chair, it's my opinion that unless they can allege that there is some content in this video that is relevant to the conditions, then it is not relevant at this juncture. It may become relevant later but I am left without a reason or an argument to submit that this is relevant at this time.

Chair Banks: I agree. Unless you can establish relevance.

Attorney Franchi: That's fine.

Chair Banks: Thank you.

Attorney Franchi: That's all the questions I have.

Attorney Womble: Hold on just one second.

Attorney Oakley: I don't have any questions for this witness.

Attorney Womble: Okay, thank you.

Attorney Biemiller: I don't either for this witness.

Attorney Womble: Alright, thank you. Hold on, the Board; one more. Does the Board have any questions for this witness?

Commissioner Aydlett: No.

Attorney Womble: You might be the luckiest witness of them all.

Attorney Franchi: Dan, would you please introduce yourself to this Board?

Dan Roberts: Dan Roberts. I am a contractor for ATCO and Puryear. I run a small trucking company, four dump trucks. Live here in Camden County. I've lived here since 2012.

Attorney Franchi: You work in the trucking business. Again to be as direct as possible here, you can speak to road conditions. Is that fair?

Dan Roberts: Yes.

Attorney Franchi: Alright. So you and your trucks drive down Ponderosa Road.

Dan Roberts: Yes.

Attorney Franchi: Can you tell us your experience with the road conditions on Ponderosa Road and…yeah, take it away.

Dan Roberts: Yeah, the dirt road…Ponderosa Roads have been excellent in my opinion. I've lived off of a NCDOT-maintained dirt road for ten years in Camden County.

Attorney Franchi: And I'm not going to ask you about that because it isn't relevant to the conditions here but you know dirt roads, it's fair to say.

Dan Roberts: Yes, I do; very much.

Attorney Franchi: And I'm sure that this is not the only dirt road that your trucks go on.

Dan Roberts: No, it's not.

Attorney Franchi: But you do know this dirt road and the quarter-mile or so of unpaved road. I don't want to put words in your mouth but just explain the quality of that…of that road and whether you think it meets…I won't ask whether you think it meets these conditions. Tell the Board the condition of this road with some specificity.

Dan Roberts: The condition of this road, the dust is kept to a minimum. It can't be you know completely…with a dirt road you're always going to have a little bit of dust here and there. But they have a dedicated water truck that has the right of the way. We were told if you see the water truck on the road you wait for him to get back because they have the right of way maintaining the road conditions. The potholes…if there is some they're you know…what I've seen they're taken care of immediately. My trucks have actually been involved in repairing the road. We went from a --- put on an hourly and just you know depositing the millings down the road while the bulldozer leveled everything off.

Attorney Franchi: That's all the questions I have.

Dan Roberts: Okay.

Attorney Oakley: You say your name is Dale Roberts?

Dan Roberts: Dan Roberts.

Attorney Oakley: Dan, I'm sorry. What was the name of your company?

Dan Roberts: RDR Hauling.

Attorney Oakley: I think I heard you say you had four dump trucks?

Dan Roberts: Yes, sir.

Attorney Oakley: And how often do your dump trucks come to the B&M mine site?

Dan Roberts: We were…we were there today. So it's you know…when it's slower it's not as often but when it's busy it's you know…I think it's a couple times a week.

Attorney Oakley: Are there times you go a week or more without going there?

Dan Roberts: Yes.

Attorney Oakley: Okay. When was the first time you started sending dump trucks to the B&M mine?

Dan Roberts: I don't remember the exact date. It's been close to a year I think.

Attorney Oakley: Alright was it sometime in 2024?

Dan Roberts: I think it might have been '25.

Attorney Oakley: Okay. I have no further questions. Thank you.

Attorney Biemiller: I'm slightly confused. You described this as a dirt road but last night we heard testimony that there was asphalt millings on top of it. So is it a dirt road or is it a millings road? I'm confused.

Dan Roberts: It's a dirt road maintained with asphalt millings.

Attorney Biemiller: Okay. When were those millings put down?

Dan Roberts: I think they are put down quite often; like as needed.

Attorney Biemiller: When do they start?

Dan Roberts: I don't know when they started. Are you asking like a specific place or a time?

Attorney Biemiller: The specific place; the narrow portion of the dirt road.

Dan Roberts: Oh after the asphalt ends, the paved asphalt ends and the dirt road portion begins is where…

Attorney Biemiller: Right. When did the millings first get put down?

Dan Roberts: I don't know the first…

Attorney Biemiller: Okay.

Dan Roberts: I wasn't involved in that.

Attorney Biemiller: And you were at the…on the road today you said?

Dan Roberts: One of my trucks was out there today.

Attorney Biemiller: Not you personally.

Dan Roberts: No.

Attorney Biemiller: Okay. Nothing further.

Attorney Womble: Okay. Board?

Chair Banks: Does anyone have any questions?

Attorney Womble: The Board have any questions?

Chair Banks: I do not.

Commissioner White: I do not.

Chair Banks: Thank you.

Attorney Womble: Alright I take that back. You might be the new winner; the easiest witness.

Attorney Franchi: Board, I have just one more witness for you. Willie, please come up. Please introduce yourself to the Board.

Willie Giles: Excuse me?

Attorney Franchi: Please introduce yourself to the Board.

Willie Giles: My name is Willie A. Giles, Jr. I reside at 379 Old Swamp Road. I'm a resident of Camden County and I'm employed by Ponderosa Sand.

Attorney Franchi: And what is your daily job at Ponderosa Sand?

Willie Giles: My daily job is to load dump trucks.

Attorney Franchi: Okay.

Willie Giles: I'm a excavator operator.

Attorney Franchi: Work the excavator, alright. Can you please tell us about the conditions…tell us about the audible conditions at the site. What does it sound like? What do you hear? What's the…what's the ambience of the site?

Willie Giles: Well we have a pump that is almost whisper quiet. You can't hear it 100 yards from any direction.

Attorney Franchi: Okay.

Willie Giles: The excavator most of the time is sitting idle unless we're loading trucks and the…I'd say if you were probably 500 feet from it you could hardly hear it run.

Attorney Franchi: And just to be clear, I mean this is not a rock quarry. You're not blasting or using dynamite.

Willie Giles: No.

Attorney Franchi: Using an excavator to dig.

Willie Giles: We're just digging sand; we're not blasting.

Attorney Franchi: You're part of the daily operations. Have trucks ever run on weekends; dump trucks?

Willie Giles: No, sir. We don't load trucks on weekends.

Attorney Franchi: You never load a truck on a weekend.

Willie Giles: No, sir. I haven't. And I'm the one that loads out 98% of their sand.

Attorney Franchi: Okay, alright. Thank you.

Willie Giles: That it?

Attorney Franchi: That's it. Stay right here.

Willie Giles: Any questions?

Attorney Oakley: I just a couple questions for you.

Willie Giles: Come on up.

Attorney Womble: Hold on just a second. Mr. Oakley, hold on just a second. They're conferring. He might have another follow-up. I'm sorry.

Willie Giles: What was that?

Attorney Oakley: They might have more questions for you.

Attorney Womble: Move on? Okay.

Attorney Oakley: By the way, my name is David Oakley. I didn't catch your last name. What's that?

Willie Giles: Giles. G-i-l-e-s.

Attorney Oakley: G-i-l-e-s.

Willie Giles: Yeah.

Attorney Oakley: Okay. And you said you're the main excavator operator out there?

Willie Giles: Well I do the main loading. I'm not the main excavator operator. We'll have…one is usually either removing overburden or he's down throwing up sand.

Attorney Oakley: So you're not that guy.

Willie Giles: Sometimes.

Attorney Oakley: Okay.

Willie Giles: It depends on whether the other machine's broken down.

Attorney Oakley: And you talked about the machines and some of the noises they make. Heavy equipment like excavators and dump trucks, they have backup alarms?

Willie Giles: Yes, sir.

Attorney Oakley: That's required, right? That's required by the government?

Willie Giles: Yes, sir.

Attorney Oakley: And they're rather loud because they're supposed to…

Willie Giles: Don't let OSHA catch you when they're not working.

Attorney Oakley: Exactly. Do you ever run an excavator on weekends?

Willie Giles: Yes, sir.

Attorney Oakley: Okay. You dig sand out of the pit on weekends?

Willie Giles: No, sir.

Attorney Oakley: Do you stockpile stand on the weekends?

Willie Giles: What we do, it's not mining if you don't load it on something and carry it away.

Attorney Oakley: I understand you're not putting it on a truck. What do you do on the weekends with an excavator?

Willie Giles: On the weekends if the other machine has been broken down I have to take up the slack and keep something…generating the sand so we'll have something to load the next week.

Attorney Oakley: So you've got to dig it out of the pit and stockpile it so it's ready for the week.

Willie Giles: No, sir. It stays in the pit, I just make it deeper and put it over where I can load it.

Attorney Oakley: So you're stockpiling the sand in the pit area.

Willie Giles: Yes, sir.

Attorney Oakley: On the weekends.

Willie Giles: In the hole.

Attorney Oakley: Okay.

Willie Giles: And if you're in the hole you can barely hear it.

Attorney Oakley: Understood, thank you.

Attorney Biemiller: Perhaps I didn't hear you. So does that mean there's sometimes two excavators running at the same time?

Willie Giles: Yes, sir.

Attorney Biemiller: On the weekends?

Willie Giles: No, sir.

Attorney Biemiller: So it's one on the weekends.

Willie Giles: I'm the only one usually works on the weekends in there.

Attorney Biemiller: Okay. And so that's one excavator. There's no other equipment running on the weekend?

Willie Giles: No, sir.

Attorney Biemiller: No bulldozer or anything?

Willie Giles: No, sir.

Attorney Biemiller: But the pump is running.

Willie Giles: Well yeah but it's a whisper pump and you…if you were standing here and you were…the pump was at the road, you wouldn't even know it was running.

Attorney Biemiller: Maybe.

Willie Giles: Maybe?

Attorney Biemiller: But it does run 24/7?

Willie Giles: Basically, yeah.

Attorney Biemiller: Okay, alright. Thank you.

Willie Giles: Anything else?

Attorney Womble: Hold on just one second. The Board might have questions for you. Does the Board have any questions?

Chair Banks: Anybody have any questions for Mr. Giles?

Commissioner Aydlett: I don't.

Chair Banks: Thank you, Mr. Giles. You're good to go.

Attorney Franchi: Board, that concludes our presentation of evidence.

Attorney Womble: Alright, so we want to make sure…

Attorney Cauley: We'd like to move the…

Attorney Womble: Identify your…

Attorney Cauley: A number of exhibits into evidence.

Manager Burke: Please go to the podium. Sorry.

Attorney Womble: Sorry, Karen.

Attorney Cauley: We'd like to move the notebook of exhibit into evidence as Applicant's Number 1.

Attorney Oakley: I do have an objection. They have twenty-something…

Attorney Womble: 28.

Attorney Oakley: 28 tabs in their notebook. Several witnesses did discuss them; you know identified pictures and things like that and laid the foundation for them to be admitted into evidence. But every single tab was not gone through. I don't necessarily have an issue with things that are public records already; you know prior minutes of this Board, things like that; statutes, ordinances, I'm fine with that. But to the extent that there are…we can go through them one by one, but there are tabs in there that have pictures and other items of evidence that were not authenticated and a foundation laid. And so I do object to the notebook as a whole. We can step aside while the Board takes a break to identify those specific ones if you want.

Attorney Womble: I'm trying to go through the list here so just give me a minute.

Attorney Biemiller: For the record I would concur with Mr. Oakley regarding that not all the exhibits were --- (too low).

Attorney Oakley: If we want to go through them and if you want to tell me that I'm wrong on any specific one…

Attorney Cauley: We'll be glad to call Doug or any of the witnesses who've already testified to corroborate…

Attorney Womble: Well let's just…let's just see if there is an issue and we may be able to address it and then we can…so if you'll just go to the front of the list. My notes reflected that we went through…

Attorney Oakley: The pictures are the big one.

Attorney Womble: We went through 14 to 20…no, 22. I wrote them down.

Attorney Cauley: I think we also talked about 23, 24…

Attorney Womble: Give me just one quick second. I wrote them down. I have tabs 15 through 17 first. I have tab 19. I have tab 20, 21, 23. We bounced back to 22, back to 21, 26. And that's everything I have.

Attorney Oakley: Specifically I'll say 24 was discussed only because Commissioner Aydlett had a question about it. But there was no witness that ever testified to lay a foundation to admit tab 24 into evidence. 25 was not discussed and 27. 28 was not discussed either. Otherwise, like I said if public records I have no problem with…

Attorney Womble: Right.

Attorney Oakley: …with regards to whether or not they were discussed.

Attorney Womble: So do you agree that 1 through 13 are public records?

Attorney Oakley: Yes.

Attorney Womble: I'm sorry, 14. I apologize. 14 is the meeting minutes.

Attorney Oakley: Yes.

Attorney Womble: Okay. So that leaves…

Attorney Oakley: And as you said, we discussed through pictures under 15, 16, those are fine. 17 is fine. 18 is a public record. 19, a foundation was laid.

Attorney Womble: So that only leaves 24, 25 and 27 are where your…and 28.

Attorney Oakley: Yes, ma'am.

Attorney Cauley: And our position would be 24 and 25, there were questions from a commissioner. Two witnesses who responded to those questions about the photographs. The speed limit sign, I'm not sure what the concern is about the speed limit sign. There was testimony about the speed limit sign. Mrs. Curling testified about the speed limit and Mr. Haney testified about the geofencing policy.

Attorney Womble: So the Board…Commissioner Aydlett did ask about those pictures, 24 and 25, and I believe they covered that in their testimony at that time. Now if you're…I mean is your objection because there wasn't a foundation or do you have another objection?

Attorney Oakley: There was not a foundation laid. Just because somebody on the Board decided to ask a question about something doesn't mean that that document automatically comes into evidence.

Attorney Cauley: You know we could present all that. We're trying to be conscientious of time.

Attorney Womble: I understand. And then in regards to the geofencing, number 28, he did testify about the fact that there was geofencing but I don't recall any testimony about…about that document per se in terms of like what it means or what it represents and so I tend to agree with that, which in light of their objection would you like to address those…readdress those items?

Attorney Cauley: Yes.

Attorney Womble: And then we can address if you have other objections in the testimony.

Attorney Oakley: I'll note my objection for the record. They've rested their case and it's our turn to proceed.

Attorney Cauley: I think we stopped just short of resting our case for the purpose of moving exhibits into evidence.

Attorney Womble: I agree. Mr. Franchi said that'll conclude our presentation and simultaneously Mr. Cauley stood up to have his items introduced into evidence. That would be appropriate. I think that quasi-judicial, we have to give due process. It's not strict…strict rules. And so if you want them to recall witnesses we can do that. I would agree with 28 for sure. If you want them to readdress 24 and 25.

Attorney Oakley: I'll withdraw my objection for the sake of efficiency.

Attorney Womble: Okay, alright.

Attorney Oakley: We'd like to go home a little earlier tonight.

Attorney Womble: I understand, I understand. So in light of that we can mark your…Madam Clerk, if you'll mark the binder in its entirety as…let's do B&M 1, since we have multiple applicants in the hearing. So we'll just do B&M 1.

Attorney Cauley: Agreed, thank you. And that will conclude…

Attorney Womble: I understand, thank you very much. Alright Mr. Oakley…

Attorney Oakley: If you don't mind I'll defer to Mr. Biemiller. He can go first…

Attorney Womble: That's fine.

Attorney Oakley: …and present his witnesses.

Attorney Womble: Okay. Oh I'm sorry, I'm sorry. I'm just sitting here waiting for you to take off.

Attorney Biemiller: I have some binders as well. May I approach?

Attorney Womble: Yes. Do we have enough? I can share with the manager if you need an extra. Does Mr. Oakley have one?

Manager Burke: We can share.

Attorney Womble: We really can, that's fine.

Attorney Biemiller: I'm sorry.

Attorney Womble: That's okay.

Attorney Biemiller: Alright, would you state your name please?

Derrill Wickens: Derrill Wickens.

Attorney Biemiller: And what is your address?

Derrill Wickens: 373 Ponderosa Drive, South Mills, North Carolina.

Attorney Biemiller: And when did you acquire that property?

Derrill Wickens: 2018.

Attorney Biemiller: And I think it's actually then admitted in B&M exhibit book, your deed is found at…

Attorney Womble: Tab 10.

Attorney Biemiller: …tab 10. Let me just show it to you ---. (too low) Is that the deed by which you acquired your property?

Derrill Wickens: No, that's Adam Cohen's.

Attorney Biemiller: Oh sorry, that threw me off. Here we go.

Derrill Wickens: Yes.

Attorney Biemiller: Okay. And could you read this last sentence at the bottom here?

Derrill Wickens: Also conveyed as a part of this instrument is a nonexclusive permanent for ingress and egress to and from said property over and along aforesaid 30-foot wide road, Ponderosa Drive, which road extends westerly to Highway 17.

Attorney Biemiller: Okay. Now so you live there, obviously you have lived there since you acquired the property. In your entire time living at your residence has there ever been a fence installed by B&M along the property line?

Derrill Wickens: No, sir.

Attorney Biemiller: Has there ever been an 8-foot vegetated buffer to the south of the fence since you've lived there?

Derrill Wickens: No, sir.

Attorney Biemiller: Okay. Can you describe the condition of the road at the time when you first moved into your house?

Derrill Wickens: When we first moved in there there weren't any trucks, there wasn't any mining going on. There hasn't been mining going on there for some time. So the millings that Mr. Bright put in in the initial time had over time become compressed and was almost like an asphalt road. It was nice, no dust. It was fine.

Attorney Biemiller: Alright, I want to ask you to flip to the first page of your binders and can you identify this picture, please?

Derrill Wickens: That's my tractor right in front of Camden Yard Materials on the road doing road maintenance.

Attorney Biemiller: Did you take that picture?

Derrill Wickens: Yes, sir.

Attorney Biemiller: And is that date, September 29, 2019 when you took the picture?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay so that's you on your tractor on that date.

Derrill Wickens: On my birthday.

Attorney Biemiller: On your birthday, okay. And does that depict the condition of the road that you had just described?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay. And the second page, flip over…the third page, what does that depict?

Derrill Wickens: That depicts the stretch of road in front of my house where the millings had been put down by Mr. Bright and Mr. Meiggs at the time.

Attorney Biemiller: Alright again, that picture is dated November of 2023.

Derrill Wickens: That's correct.

Attorney Biemiller: And did you take that picture?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay and that is in front of your house. Your house is basically to the right, in front of you.

Derrill Wickens: Yes, sir. That's my driveway going down…

Attorney Biemiller: That's your driveway depicted okay. Alright. So in November of 2023 the road looked like this. Were there any potholes in the road, ruts?

Derrill Wickens: No, sir.

Attorney Biemiller: Other damaging conditions to the roadway at that point?

Derrill Wickens: No, sir. It was like an asphalt road because the millings had melded together over time.

Attorney Biemiller: And compact?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay. When did you first start noticing problems in the condition of the road?

Derrill Wickens: Probably want to say around November of '24…I mean '25 is when it started to…the asphalt on the ditch side that had melded together, it was all starting to buckle in because the substrate under those millings couldn't handle the weight of the trucks.

Attorney Biemiller: And how much did it deteriorate? What kind of conditions did you observe in the roadway?

Derrill Wickens: Ruts and potholes and all that stuff. As you can see, it's crowned real nice so when it rains the water sheds off the road. Didn't have to worry about any mud or anything or potholes.

Attorney Biemiller: Back in 2023.

Derrill Wickens: Yes, sir. Yeah, now it's puddles all the way down the road after it rains.

Attorney Biemiller: Alright. We saw a number of pictures last night in the package.

Attorney Womble: Need some help?

Attorney Biemiller: That's the agenda package.

Attorney Womble: Amber, can you assist?

Amber Curling: What do you need?

Attorney Womble: He needs the agenda package, the pictures.

Attorney Biemiller: The agenda package with the pictures.

Amber Curling: The entire agenda package?

Attorney Biemiller: No, just your report of the conditions. (cross talk)

Amber Curling: Our report?

Manager Burke: Yeah.

Attorney Womble: Yes.

Amber Curling: Alright. Do you want it like this or do you want…?

Attorney Biemiller: I want to get to the first pictures that…okay. The picture on the right, the bucket with material in it.

Derrill Wickens: Yes, sir.

Attorney Biemiller: Did you take that picture?

Derrill Wickens: Yes, sir.

Attorney Biemiller: And what does that depict?

Derrill Wickens: It's my five-gallon bucket with metal that my wife and picked up Saturday or Sunday in my side-by-side in my garage.

Attorney Biemiller: Where did you pick it up from?

Derrill Wickens: That stretch just after the Cohen's house towards Camden Yard Materials.

Attorney Biemiller: This stretch of road?

Derrill Wickens: Yes, sir.

Attorney Biemiller: And what was the date on this roughly?

Derrill Wickens: No telling. I'd have to look at my records.

Attorney Biemiller: Okay. Was it after B&M started running trucks?

Derrill Wickens: Yes.

Attorney Biemiller: Okay. Was it after they put down the asphalt millings?

Derrill Wickens: Yes.

Attorney Biemiller: Okay. Prior to them putting down the asphalt millings, had you ever picked up any metal debris like this?

Derrill Wickens: Not on that stretch of road.

Attorney Biemiller: Alright these are pictures which Mrs. Curling presented and they were attributed to you. Did you take these pictures?

Derrill Wickens: Yes, sir I took those pictures myself.

Attorney Biemiller: Can you describe those?

Derrill Wickens: That's the road heading towards my house. That was before they started putting asphalt millings. I can't really tell if there's any further down. But and sometimes those ruts right there…you know portions of the road will be hard and then you get to a certain another portion that it's like a bottomless pit. You just can't fill it. And they'll tell you that sometimes you just got to put…they stuck layers and layers of millings in there to keep it from sinking. But in the interim it's pretty rough; bottom your car out when it rains trying to get in and out of there. But that stuff like that, yeah, it's not good for your vehicle.

Attorney Biemiller: Right, okay. And these are two more pictures attributed to you. Did you take these pictures?

Derrill Wickens: Yes, sir.

Attorney Biemiller: And what do they depict?

Derrill Wickens: That's a little further down the road towards Adam and Brittany Cohen's house. It's just more where the road is starting to spall and come apart. So all these where these trucks just push the dirt out.

Attorney Biemiller: To be clear, these pictures were…this is November 12 through 18 of 2024. Is that an accurate date for these pictures?

Derrill Wickens: Yes, sir. And according to my records, I keep track of the amount of trucks that come and go. I've got a video system and I count them. There's a little over 300 trucks have gone up and down that road in that period of time right there.

Attorney Biemiller: Okay. These are not your pictures, right?

Derrill Wickens: Yes, those are my pictures.

Attorney Biemiller: Okay.

Derrill Wickens: That's right in front of my house.

Attorney Biemiller: And what do they show?

Derrill Wickens: The road's failing. The dirt…the road's being actually pushed into my yard. You can see it right there on the picture on the right. My fencepost is starting to tip in towards the yard because…

Attorney Biemiller: Right here where the cursor is?

Derrill Wickens: Yes, sir.

Attorney Biemiller: The road you're saying is pushing in…

Derrill Wickens: It's being pushed into my yard because it's sinking and pushing the dirt over.

Attorney Biemiller: And that's your fencepost…it's actually leaning.

Derrill Wickens: Just a little bit, it's not much. When I put them in about a year ago they were…they were plumb so…

Attorney Biemiller: Okay. Did you take these pictures?

Derrill Wickens: Yes, sir I did.

Attorney Biemiller: Okay. And again, just very briefly, what do they depict?

Derrill Wickens: The road's falling apart. Has some millings in it, a little bit wet. And that's another one of those holes that's like a bottomless pit. You just got to keep filling it with stuff until…until it stops. It's fine with POV's but when you put those 50,000-pound trucks on that road it just pushes the dirt out of the driveway.

Attorney Biemiller: Did you take this picture on the right?

Derrill Wickens: I don't recall. I've got so many.

Attorney Biemiller: Okay. You took this video, is that correct?

Derrill Wickens: My security system took those videos.

Attorney Biemiller: Tell us about your security system.

Derrill Wickens: It's a Arlo wi-fi wireless security system. It goes right to my phone. I have…I have four of them across my house; one east, one west, one in my driveway and one that faces my house.

Attorney Biemiller: It was suggested that this video may have been tampered with, altered, sped up, slowed down. Did you do any of that?

Derrill Wickens: I couldn't tell you how to do that. I'm not a technical guy.

Attorney Biemiller: So no, you did not.

Derrill Wickens: No, no.

Attorney Biemiller: And the way you submitted it to Mrs. Curling was exactly as it came up?

Derrill Wickens: I just downloaded and sent it.

Attorney Biemiller: And you took…this is just a continuation of the same video.

Derrill Wickens: Yes, sir.

Attorney Biemiller: In front of your house.

Derrill Wickens: Yes, sir.

Attorney Biemiller: That's also a continuation.

Derrill Wickens: Yes, sir.

Attorney Biemiller: Alright. Tell me about these pictures.

Derrill Wickens: That's probably a day coming home from work and they just continued coming as I was coming up Ponderosa. I call it The Mexican Standoff. It's kind of…it's a little bit stressful every time I leave my house because I might run into that. It took a while for them to figure out that they're supposed to yield to us. And you know now they're yielding to us, backing up, but still it's…

Attorney Biemiller: Was there a time when they did not yield to you?

Derrill Wickens: Oh yeah, you know they'd just stop, shut their trucks off, get out of their trucks in the middle of the road.

Attorney Biemiller: It was also suggested last night that you might've sped up in order to make it look like that you were crowding into them. Is that the case; that you would speed up and crowd into them?

Derrill Wickens: No, no.

Attorney Biemiller: This is you driving along and facing these trucks.

Derrill Wickens: Right.

Attorney Biemiller: And you said that for a while they would just shut the trucks off.

Derrill Wickens: There's been…the first few occasions and then I guess ATCO kind of realized that you know…they talked to their folks and told them that the local residents, that they have the right of way; that they're supposed to yield to us. And you know for the most part now…like today, Ives, he waited for me at the gate because he could see me coming up the road. That's the thing with the road like they said, you can see pretty far. So you see a POV coming up the road, you're driving a truck you should probably wait; you know wait and see what it is. But for the most part they're pretty courteous.

Attorney Biemiller: At this point.

Derrill Wickens: At this point they are.

Attorney Biemiller: But they weren't…

Derrill Wickens: No, not when they were first moving in.

Attorney Biemiller: This is also your picture?

Derrill Wickens: Yes, sir. That picture was supposed to depict the amount of dust that I have to deal with on a daily basis when the road's not watered.

Attorney Biemiller: And you took this September 6th?

Derrill Wickens: September 6th.

Attorney Biemiller: Okay. All of the pictures, okay. Now you mentioned…and you heard some testimony last night, but you just mentioned that there was a time when they were getting out of the trucks and they weren't yielding and that type of thing. Did you have occasion to meet with some of the representatives of ATCO?

Derrill Wickens: Oh occasion I met with…well William Irby would always come up to me and say, "Why are you being so difficult?" all up in my face. I'm not being difficult. I'm just following what's inside the four corners of the permit. It says you're supposed to yield to us. And this was an ongoing thing with him.

Attorney Biemiller: Okay. And you also had a meeting with Mr. Haney. Now he described his point of view last night. What is your recollection of that meeting with Mr. Haney?

Derrill Wickens: That was sometime in September if I remember correctly. It was Mr. Haney, Bobby Wynn, Adam and myself.

Attorney Biemiller: Adam Cohen.

Derrill Wickens: Adam Cohen, tall fellow.

Attorney Womble: For the Board's clarification, what year? September of?

Derrill Wickens: '24 of think is that timeframe. Anyways yeah, Bobby Wynn wanted to have a chitchat with us you know to be a good neighbor and we went over there and we talked with them. I tried to explain to them about the conditions of the permit and explain to them it's going to be pretty difficult to meet the conditions where you have to put a fence in the buffer in the middle of the easement. And at that point I didn't they…they didn't appear to be aware of the conditions. So I tried to…you know I told them what was the conditions of the permit but they kept thinking that it wasn't right. And then they…you know what is it gonna take? What is it gonna take? Well I field at least two to three phone calls a week from realtors trying to buy my property and various properties around here. And my response to them is $1.5 million because I don't want to sell it. That was my response to them. So it was more in essence of I'm not selling you my property. I'm not selling you an inch of my property. The buffer and the fence, that's your problem, not my problem. So and I didn't mean to be mean but they kept saying I'm difficult and all this other business and I kind of just stopped talking to them because they weren't listening to what I was saying, especially when it came to the buffer and the fence. You're not going to put it in my yard. It's supposed to be in the easement as it states on the permit; south of the six-foot fence. It's on my property line.

Attorney Biemiller: So they offered to put the buffer in your yard.

Derrill Wickens: Yes.

Attorney Biemiller: And you told them no.

Derrill Wickens: Yes.

Attorney Biemiller: Okay. You did hear the phrase since you mentioned it, that they were trying to be a good neighbor. Contrast that with Camden up the road and tell me what they did with their road.

Derrill Wickens: Oh well over time we got to a point where…that's a long stretch of road.

Attorney Biemiller: But Camden stepped up and they…

Derrill Wickens: They stepped up and they paved it and…and life is good. We've got a relationship now with Danny Meeks, Chris Coleman. We chitchat.

Attorney Biemiller: So you would consider Camden to be a good neighbor.

Derrill Wickens: Oh they're a good neighbor, yes sir.

Attorney Biemiller: But not so much B&M.

Derrill Wickens: Well yeah, they can't comply with the conditions so you know I'm sorry. It's not me.

Attorney Biemiller: Alright. If we could go to page 4 in my binder, what does this depict?

Derrill Wickens: That's a picture on a Saturday. That's an ATCO truck. William Irby is in the passenger seat; ATCO driver is in the driver's seat. My wife and I were leaving to go and eye doctor appointment to get some new glasses because we're getting old and they were dumping millings on the road and Mr. Irby felt that I should back in my driveway and let him pass on a Saturday. And like I spoke before, Mr. Irby hopped out of the truck and started kind of…he didn't use curse words but he was all up in my grill telling me you know, "You always difficult, Derrill. You know you always on top of us, Derrill." And this and that. And I'm like…his name's Rooster, that's his nickname. I was like, "Rooster, you ain't supposed to be working on a Saturday. You've got an ATCO dump truck blocking the road on a Saturday. Saturday is a family day." We're supposed to have the road. After that he…I told him I wasn't moving and he called the police and Officer Tripp showed up to try and mediate the whole thing and Offer Tripp wouldn't even come down the road because that portion of the road by their sandpit was so bad. He parked his cruiser in front of Camden Yard Materials and walked up the road that day.

Attorney Biemiller: The part of the road by B&M was so bad.

Derrill Wickens: No, the part of the road between Camden Yard Materials and this is like right by my west gate of my house.

Attorney Biemiller: Oh I see, okay. That section…

Attorney Womble: I'm sorry, go ahead. I was going to ask you when you get a second, the wording on this picture is very blurred just based on…I think from the copy or the print. If you could tell us what that says.

Derrill Wickens: It says something 10 May…on Saturday, 10 May 2025, leaving to go to an eye doctor appointment; an eye appointment.

Attorney Womble: Okay, alright.

Attorney Biemiller: Again, this is a picture that you took.

Derrill Wickens: Yes, sir.

Attorney Biemiller: And this text at the top is what you added.

Derrill Wickens: Yes, sir. Yeah, I had to keep track of it; tried to keep track of it.

Attorney Womble: Thank you, I'm sorry to interrupt.

Derrill Wickens: That's fine.

Attorney Biemiller: Okay. Alright the next page in the binder, is that a picture that you took?

Derrill Wickens: Yes, sir. If you look at that picture, this is that stretch of road between Cohen's and Camden Yard Materials just before the asphalt…where it turns into an asphalt road. If you look at the right side of the picture where the berm's at before it goes down in this ditch, there's about a foot of…a foot of ditch that has slid down into the bottom of that ditch. So we lost…we lost a foot of travel way there last August.

Attorney Biemiller: And that's due to the trucks.

Derrill Wickens: I think it's due to the traffic and the trucks. The ditch just gave way and slid down.

Attorney Cauley: Can you tell me which photo you're on?

Attorney Biemiller: I'm on this one with the white hood.

Attorney Cauley: Did he testify to the date and time?

Attorney Biemiller: I don't think he did yet.

Derrill Wickens: I don't have a date on there. I don't know what date it is to be certain; can't recollect.

Attorney Biemiller: Can you estimate approximately when it was taken?

Derrill Wickens: Probably like I said around September 2025.

Attorney Biemiller: Okay. And this next picture on the next page, is that the same timeframe?

Derrill Wickens: That's the same timeframe; just more mud.

Attorney Biemiller: Another picture that you took?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Alright the next page, what is that depicting?

Derrill Wickens: Mud and potholes. That hole in front of my house that just keeps getting deeper and I'll go out with my tractor and pull all the dirt back in and pack it in the hole so it doesn't leave a puddle there. You can see where they lay asphalt millings further towards the gate but they didn't pull the asphalt millings down towards my house and fill in the holes in front of my house.

Attorney Biemiller: The asphalt's closer to their property…

Derrill Wickens: Correct.

Attorney Biemiller: …and not closer to yours.

Derrill Wickens: It's right there in front of…actually it's Kyle's house and Mary Robins' house.

Attorney Womble: Can you show us the picture you're on; what picture you're referring to?

Attorney Biemiller: It says 'sent from my iPhone'.

Attorney Womble: Okay there's a number 4 on the bottom of this one with the fence on the side.

Attorney Biemiller: Yes.

Attorney Womble: Okay.

Attorney Cauley: Was there a date on that?

Attorney Womble: He said about September 2025.

Derrill Wickens: Yeah.

Attorney Womble: That's what I hard.

Attorney Biemiller: Is that right; September 2025?

Derrill Wickens: Yeah, roughly September 2025.

Attorney Biemiller: And we'll flip to the next page. Where is this one?

Derrill Wickens: So that area is towards Mr. Cohen's western property boundary and this kind of shows you what a hot mess that is right there. It's kind of full of water and you can see where the dump trucks have been driving. That's the property line right there. You can see where the dump trucks are going over into those people's property and…

Attorney Biemiller: So that you're illustrating is you can see the fence in the distance.

Derrill Wickens: Right, right.

Attorney Biemiller: And what you're drawing with your finger is basically a line coming down straight…

Derrill Wickens: Yeah.

Attorney Biemiller: …and what you're…

Derrill Wickens: There used to be a t-post there but I think it got run over at some point.

Attorney Biemiller: But what you're testifying…where you're putting your finger, I'm sorry I don't have these on the screen…

Derrill Wickens: Yes.

Attorney Biemiller: …is that the road is actually wider and is extending over into private property.

Derrill Wickens: Yeah that's over into private property right there.

Attorney Biemiller: Okay. Because of again, the way that the trucks are pushing down…

Derrill Wickens: No, no, I think it's they're trying to avoid the puddles like everybody else.

Attorney Biemiller: Okay.

Derrill Wickens: That low spot; that's another low spot that you just have to keep putting millings in or something to fill it in. I used to pull it down the road to keep it filled in but over time it just gets pushed out and then filled it up with water.

Attorney Biemiller: Okay. And we'll flip to the next page. This looks like again, another series of…

Derrill Wickens: This is a fairly recent picture. It just shows the condition of the road, that's all.

Attorney Biemiller: Some potholes.

Derrill Wickens: Yeah, I would venture to say that's this month.

Attorney Biemiller: Okay. And the next page.

Derrill Wickens: Same thing.

Attorney Biemiller: Okay. Again, illustrating mud, potholes, ruts.

Derrill Wickens: Yeah, yeah. They haven't been out there in a while.

Attorney Biemiller: Alright, before we go further I want to ask you…you mentioned you have a security and you also mentioned that you keep logs of the number of trucks that go by.

Derrill Wickens: Yes, sir.

Attorney Biemiller: And you have the logs with you tonight, right?

Derrill Wickens: Yeah, it's in my bag.

Attorney Biemiller: Okay. Can you…I tried to make copies of his log book, which are fairly small pieces of paper and despite my best effort, I could not turn it into legible copies. I can show you what I have as a copy but he does have the original with him this evening and I was going to ask him questions about what his records reflect.

Derrill Wickens: You want me to get it?

Attorney Biemiller: Yeah, please. I can show you the copies that we have and just did not turn out very well. This is the size of the book. This is your original notebook?

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay and these are your notes?

Derrill Wickens: Yes, sir.

Attorney Womble: I need you to come up to the microphone or I might get in trouble here.

Attorney Cauley: Objection to the relevance of the log.

Attorney Womble: Alright.

Attorney Biemiller: It's relevant to the number of trucks using the road and it also depicts or reflects some other activities which he recorded, which are in violation of the permit.

Attorney Womble: Alright. In regards to the number of trucks coming up and down the road, I'm not sure that there's a condition that relates to the number of trucks coming up and down the road but if you have questions regarding what may be violations of permit conditions, unless you want to be heard further on how the number of trucks may be relevant…I think there was some testimony last night about…that Mr. Wynn, Mr. Bobby Wynn…are you Mr. Wynn? Okay. Mr. Wynn testified about the number of trucks running currently and maybe they had scaled down. And so to the extent that you have a question about what Mr. Wynn already testified about and/or a violation of the condition, I think that would be appropriate. But I don't know that the number of trucks per se is related to a particular condition.

Attorney Biemiller: I hear you. It relates in the sense that obviously when there's more trucks there's more damage reflected in the road and less trucks, there's less damage. So he can…has a good correlation…I mean I don't need him to testify and I hear what you're saying. So we don't need to testify as to the number of trucks per day but I'll just direct my questioning toward the events that he noticed in the road at times.

Attorney Oakley: And I would also add that it is relevant because this special use permit was granted back in 2017 based in part on representation made by Mr. Meiggs as to the number of trucks that would be traveling on the road and there's already been testimony about the number of trucks traveling on the road. I also think it also goes to Mr. Wickens' standing in this case if it does go up on appeal as to the number of trucks; how it affects his property.

Attorney Cauley: As I've heard my worth opponent say, it's not in the four corners of the document.

Attorney Womble: I understand. So I do have to agree that it would be relevant to standing if standing is challenged. And for the Board's…for explanation about that, the legal standard regarding standing is whether a person or a party has the ability to participate in quasi-judicial proceedings if they're not an applicant or staff, there are statutory provisions regarding that and guidelines in Section 160D of the General Statutes. One of the ways which…and seems to be the most common way that neighbors or other members of the community would find standing would be that they would allege they would sever special damages in excess or more than the community in general. And so…and that's why I was referencing that regarding the volume of traffic. I will note though for the record that there was no preliminary objection or motions regarding Mr. Wickens and Camden Yard participating regarding their standing so that hasn't been challenged. But let's try to just…let's

see…I think the best thing at this point is let's see where it goes and how far it gets down. Let's try to streamline this testimony in regards to standing and the specific violations and let's not just get too lost in the weeds. And Mr. Cauley, if you would like to renew an objection if this gets too far outside the lines. Let's see where this takes us a little bit.

Attorney Biemiller: Okay. So with that in mind, how far back does this logbook go? Let's start there.

Derrill Wickens: October of '24 maybe. October of '24. It doesn't…some of this is significant offense that had happened; like bulldozer driving down the road, October 29, on the asphalt portion that was already good. So you had a bulldozer with grousers and tracks tearing up a perfectly good road to go down and push asphalt millings in front of Camden Yard's pit. So I thought it was significant.

Attorney Biemiller: Okay so we start there. So you observed that on October 28th.

Derrill Wickens: 20th.

Attorney Biemiller: 29th, I'm sorry. Someone from B&M operating a bulldozer…

Derrill Wickens: Yeah.

Attorney Biemiller: …pushing the millings in front of Camden's property.

Derrill Wickens: Yeah.

Attorney Biemiller: Okay. And then I see you have an entry for October 30th.

Derrill Wickens: Yeah, that's Adam Cohen sent me a pic where his car got bottomed out because the road was so bad.

Attorney Biemiller: Driving his car and when you say bottom out it…

Derrill Wickens: Yeah.

Attorney Biemiller: Okay. Alright what's another significant event that you've noted here?

Derrill Wickens: My interactions with the Sheriff sometimes and…

Attorney Biemiller: We've talked about that.

Derrill Wickens: Let's see, okay. I started counting trucks on December 23, 2025.

Attorney Cauley: ---. (too low)

Derrill Wickens: 2025. December 23, 2025.

Attorney Biemiller: That's '24.

Derrill Wickens: Oh that's up here. Yeah, this is '24. Yeah, I'm sorry, that was '24 because we start January right here so…

Attorney Biemiller: And roughly...I'm not going to ask you every single day, but…

Derrill Wickens: The 23rd, there was 90; 24th, there was 24 and then they were off the 25th, 26th, 27th, 28th, 29th. The 30th they had 96 trucks. The 31st they had 38 trucks. New Year's Day, 1/1/25 there was no activity. The 2nd was six trucks, one employee. I kind of wasn't consistent with the amount of employees I could see going in in the morning. But plus there's gaps in the time because there were times that I had to go out of the country for work.

Attorney Biemiller: Okay. But you would agree with the testimony you heard last night that many days you saw upwards of 100 trucks or 100 trips.

Derrill Wickens: There are days of 100 trucks. 110 there, 130 there, 128, 120.

Attorney Biemiller: Per day.

Derrill Wickens: Yeah. 114. This is in succession, Monday through Friday. 114, 120, 122, 120, 110. Saturday is one employee that worked. It just goes on from here. 110, 104, 118, 118, 82.

Attorney Biemiller: Okay.

Derrill Wickens: Saturday, two employees. 98, 46, 42.

Attorney Biemiller: Okay.

Derrill Wickens: It went up and down but for a while they were hot and heavy.

Attorney Biemiller: Alright now let's talk about some other violations and specifically mining operations outside of permitted hours. You noted some of those.

Derrill Wickens: Actually every time there's a weekend…on the weekend they're down there operating and it's outside the permitted hours.

Attorney Biemiller: Okay. Tell me what you have seen and heard on weekends.

Derrill Wickens: I can see the boom of the excavator from my backyard and I can hear the back alarm and I can hear them moving the excavator.

Attorney Biemiller: Okay so you can hear the engine running.

Derrill Wickens: Yeah.

Attorney Biemiller: You can hear the excavator.

Derrill Wickens: Well mind you, the wind. We're wide open so if the wind is out of the southwest, I can't really hear shit because, excuse my language, I can't hear anything that goes on down there. But if the wind is out of the northeast I hear everything that goes on.

Attorney Biemiller: Okay.

Derrill Wickens: So and then in the evening it's still and I can hear the whisper pump in the evenings.

Attorney Biemiller: So he did describe it as a whisper pump and you can hear it.

Derrill Wickens: In the evenings when it's still.

Attorney Biemiller: Okay, and on the weekends.

Derrill Wickens: Oh yeah, yeah.

Attorney Biemiller: Okay. Any other equipment that you've heard outside of the permitted hours?

Derrill Wickens: I think there was one truck came in early and parked in front of the gate. I told him, I was like, "Hey man, the gate doesn't…it's not open until 7." So he just turned around and left, no big deal but…the employees come in roughly every day around 6, 6:15 and they go home early. For a long time they were gone before I even got home from work so no anxiety about the Mexican Standoffs on the road. But…

Attorney Biemiller: But you have observed them again operating outside of the permitted hours…

Derrill Wickens: Yes.

Attorney Biemiller: …on a number of occasions.

Derrill Wickens: Yes.

Attorney Biemiller: And the notebook reflects those occasions.

Derrill Wickens: Yes.

Attorney Biemiller: Okay.

Derrill Wickens: I sent all that evidence to the County, too.

Attorney Biemiller: Copies of these pages?

Derrill Wickens: No, all the videos.

Attorney Biemiller: The videos, okay. Alright.

Derrill Wickens: Those should be…I sent them as a code enforcement.

Attorney Biemiller: Okay. It's fair to say from Mrs. Curling's presentation she had…you had sent her more than what was in her presentation.

Derrill Wickens: Oh yeah, yes.

Attorney Biemiller: Okay, alright.

Derrill Wickens: You know and then I just have notations on here; a lot of dust. And I guess we're going to talk about that in a little bit. But the road's bad, the road's bad; minimal dust. Usually if there wasn't anything wrong, there wasn't anything there. But…

Attorney Biemiller: So you've noted dust I can see…

Derrill Wickens: Yes.

Attorney Biemiller: …on a number of occasions. Describe that for the Board.

Derrill Wickens: Well if their water truck…their water truck consists of a pickup truck with an IBC with a gas pump and some PVC with holes drilled in it. It's like a sprinkler that goes down the road; like bringing a knife to a gunfight. So by the time they get down to the end of the road, the road's dry already. You've got to come back. So it really never gets watered. Does that make sense? There's not enough volume to wet the road to keep the dust down. So when that happens…I mean that poor guy would run that water truck up and down the road nonstop and it would still be dusty. In those instances I really can't use my front yard because the dust is so bad and it's a health hazard. My house gets filthy. I had to clean my HVAC condensers this year three times. Normally it's only once or twice and that's harvesting season for soybeans.

Attorney Biemiller: And some of that dust was depicted in one of the earlier…in the earlier pictures.

Derrill Wickens: Yeah gets on my…I have mud in my gutters, it's on my siding. So I mean it's…water on the road saves me a lot of work.

Attorney Biemiller: But it's not done.

Derrill Wickens: It's not being done.

Attorney Biemiller: Okay. The vegetated buffer, which you said has never been installed.

Derrill Wickens: No.

Attorney Biemiller: Would that help, buffer basically, the road from your house and alleviate some of that dust concern if that buffer was there?

Derrill Wickens: I can't answer that question. I'm sure it would help.

Attorney Biemiller: Okay.

Derrill Wickens: But I couldn't…I couldn't tell you. Usually…you know I think when they were talking about putting that development over on the Krause tract land across that ditch, they had talked about putting a 50-foot buffer in to keep it…keep it good. But I'm not sure how an 8-foot buffer…last night we had some deer at the trail and the deer trail folks, they could probably let you know how…well Mr. Cohen installed the fence and the evergreen trees, how that would help out. But I'm not sure the effectiveness of it.

Attorney Biemiller: Okay. But you would like to see the buffer installed.

Derrill Wickens: Yes.

Attorney Biemiller: Okay. Just not on your property.

Derrill Wickens: Exactly.

Attorney Biemiller: Just a second. Last night there was a brief bit about a car being parked…one of your vehicles being part of the easement area.

Derrill Wickens: Yes.

Attorney Biemiller: Can you explain what happened in that incident?

Derrill Wickens: So I had spoke with William Irby on numerous occasions about speeding.

Attorney Biemiller: He's with B&M.

Derrill Wickens: He's the pit boss down there, Rooster. I had spoke to him on numerous occasions about, "Hey man, could you talk to the trucks, tell them to slow down?" And, "Can you water the road for the dust?" And, "If you can't water the road please have the trucks slow down." Well none of the above happened. So if you look at those pictures that they have provided, you'll see that the road is bone dry. So when I get home from work I have to take my dogs out. I have to clean up what they do in my yard so I'm out in the yard. So my intent was, and it worked, was to try and get the trucks to slow down enough so they're not generating an enormous amount of dust to where it becomes unhealthy for me to be in my front yard. That's why I was parked there. And it worked. The Sheriff showed up one day, we chitchatted. He did note that the trucks are going too fast down the road and he had no jurisdiction.

Attorney Cauley: Objection and motion to strike. Hearsay.

Attorney Womble: Yeah it would be appropriate for the Board not to consider what the Sheriff said in terms of that would be hearsay. You can explain what you did after speaking to the Sheriff but don't tell us what he said.

Attorney Biemiller: I'm gonna back up for just a second. So you did try to ask them to slow down and water the road.

Derrill Wickens: Yes, sir.

Attorney Biemiller: And they ignored you.

Derrill Wickens: Well they just couldn't. They were running trucks like crazy. You could see the pictures, four trucks coming in at a time. And it slowed them down to…at that time, at that time they weren't going slow. I mean they were 30 miles an hour in and out of there. But as soon as they got the Notice of Revocation this last round, those trucks have slowed down and following the speed limit, which is fine. I mean one of the Ives trucks, I want to say the day before yesterday, went zooming by the house. Well I called Ives dispatcher and I said, "Hey man, the speed limit on this road is 5, 10 miles an hour." I said, "Your guy is doing like 30. Can you give him a call and tell him to slow down and tell him what the speed limit is?" And he did, very nice man. So Ives truck ran today and it was slow. They were going the speed limit. So I try to work with these people.

Attorney Biemiller: You've tried to be a good neighbor.

Derrill Wickens: I have tried to be a good neighbor.

Attorney Biemiller: By working it out.

Derrill Wickens: I'm just following what's in the permit.

Attorney Biemiller: Okay. But it was after speaking with him on a number of occasions getting no results that you put your vehicle slightly in…

Derrill Wickens: Yeah it didn't block the easement. They could get by and it wasn't unsafe. It still left…I mean that section of the road is 22 feet. There was 3 feet of my Ford Escape sitting out in the road. So they had that much…do the math. They had that much road to get by it. They just slowed down to go by my house.

Attorney Biemiller: Okay.

Derrill Wickens: That's all…that's the intent of that. It wasn't malicious.

Attorney Biemiller: Okay. Did the Sheriff write you a ticket or…?

Derrill Wickens: No.

Attorney Biemiller: Okay. Okay I think that…let me look at the book real quick. Alright explain…if we flip to the next page of my binder which is a landowner permission form. Can you explain that form please?

Derrill Wickens: Last night somebody made an allegation that I was trespassing. I have access to 305 Ponderosa Drive, which is owned by Johnny Knowles which is on the eastern end of Ponderosa Drive. To get to that property I have to pass on the easement, that's land that's not owned by B&M, to get to his property. That's not trespassing.

Attorney Biemiller: You've never been on B&M's property.

Derrill Wickens: Ever since Rooster…we didn't get along, I just kind of…we don't…we just don't communicate, we don't do anything.

Attorney Biemiller: Okay. But you have been on the easement…

Derrill Wickens: Yes.

Attorney Biemiller: …that's in front of their property.

Derrill Wickens: Yes, sir.

Attorney Biemiller: And you've been granted permission per this slip.

Derrill Wickens: Yes, sir.

Attorney Biemiller: Okay. Alright and then the next item in this binder is your deed, which has already been admitted by B&M. And then the only remaining item is the Cohen deed, which I can't have Mr. Wickens identify but I would move to admit all of the other pages of the binder at this point and then I could ask Mr. Cohen to come up to identify his deed next.

Attorney Womble: Okay. Does anybody want to be heard about this? They mentioned this? Okay. If it's okay…if there's no objection, if it's okay with you can we just do Mr. Cohen's deed and then do it as one entire exhibit like we've done everyone else?

Attorney Biemiller: Sure.

Attorney Womble: Okay.

Attorney Biemiller: Do you want me to call Mr. Cohen up right now?

Attorney Womble: No, just whenever you're ready.

Attorney Cauley: We'll stipulate that this is the deed.

Attorney Oakley: I think it was in their notebook, too.

Attorney Womble: Okay. So then we'll just…we'll just mark this, Madam Clerk, as Wickens 1, his notebook in its entirety.

Attorney Biemiller: Alright.

Derrill Wickens: Ciao.

Attorney Biemiller: Nothing further.

Attorney Womble: Thank you. Mr. Oakley, do you have any questions for Mr. Wickens? Okay so I was just going to make sure we kind of got all of the questions before Mr. Cauley had his…I assume, Mr. Cauley, you're cross examining Mr. Wickens?

Attorney Cauley: Yes, that's why I'm sitting down here.

Attorney Womble: I figured as much. Mr. Wickens is with you.

Attorney Cauley: Okay I've been informed that we have to share a mic.

Derrill Wickens: Sure.

Attorney Cauley: Alright, how are you employed sir?

Derrill Wickens: I work for the U.S. Government right now.

Attorney Cauley: What do you do?

Derrill Wickens: I am a Policy / ISO 9001:2015 and Environmental 14000 Auditor and Assessor, whichever you choose.

Attorney Cauley: What does that mean?

Derrill Wickens: I go out and I audit people.

Attorney Cauley: Audit people?

Derrill Wickens: Yes, I do. I audit them to the…I audit them to their processes and their procedures to ensure that they're saying what they're doing.

Attorney Cauley: Give me an example of what you're talking about.

Derrill Wickens: Well let's say somebody writes a contract. I make sure they do all the stuff that's in that contract.

Attorney Cauley: I'm sorry, write a contract?

Derrill Wickens: Yeah. Let's say somebody has a contract. I make sure that the service provider makes sure that they do everything that's in the contract.

Attorney Cauley: And you do that for the federal government?

Derrill Wickens: Yes, sir.

Attorney Cauley: How long have you been doing that?

Derrill Wickens: That job, eight years now.

Attorney Cauley: And do you travel around for that?

Derrill Wickens: Yes, sir.

Attorney Cauley: Okay let's actually look at the one that's up. Can you identify your residence on that map?

Derrill Wickens: Where's the mouse? My residence is right there.

Attorney Womble: I think the zoom is in the bottom…this little corner. Or maybe go a few slides down.

Derrill Wickens: I'm right there where it says 373 Ponderosa.

Attorney Cauley: Okay. Is there a property between you and B&M?

Derrill Wickens: Yes, sir. Yes, sir.

Attorney Cauley: Who is that?

Derrill Wickens: That would be Kyle Wallace.

Attorney Cauley: Is that the only property between you and B&M?

Derrill Wickens: Yes, sir.

Attorney Cauley: And while you've got this zoomed in, does it show where the Cohen property is?

Derrill Wickens: It is right there.

Attorney Cauley: Okay so there's one property between you and B&M?

Derrill Wickens: Yes, sir.

Attorney Cauley: Okay. And your deed indicates that you bought this property in 2018, right?

Derrill Wickens: I believe so. I'd have to look at it. My wife takes care of all that stuff.

Attorney Womble: It's tab 10 in the B&M notebook and it's toward the end of their folder.

Derrill Wickens: 2018.

Attorney Cauley: Was there a house on this property at that time?

Derrill Wickens: Which property, sir?

Attorney Cauley: The property you bought.

Derrill Wickens: That house was built in 2005.

Attorney Cauley: So there was a house there when you bought it.

Derrill Wickens: Yes, sir.

Attorney Cauley: And did you move in right away?

Derrill Wickens: Yes, sir.

Attorney Cauley: What sort of investigation did you do prior to buying that property?

Derrill Wickens: Pertaining to what?

Attorney Cauley: Pertaining to the property.

Derrill Wickens: Yeah, I wanted to make sure where the wetland was.

Attorney Cauley: Did you investigate the zoning?

Derrill Wickens: It was Light Residential and it had…you could build a house on it.

Attorney Cauley: It was Light Industrial wasn't it?

Derrill Wickens: Oh Light Industrial, sorry.

Attorney Cauley: And did you determine that before you bought it?

Derrill Wickens: Yes, sir.

Attorney Cauley: Did you determine that there was a mining overlay on this property?

Derrill Wickens: Could you explain what mining overlay is?

Attorney Cauley: Do you not know?

Derrill Wickens: No, sir. I haven't been able to get one.

Attorney Cauley: So you weren't aware of that?

Derrill Wickens: Of what?

Attorney Cauley: That it was a mining overlay.

Derrill Wickens: Everybody keeps talking about a mining overlay. Nobody's been able to produce it.

Attorney Cauley: Were you aware of it?

Derrill Wickens: If I can't see…I am auditor. If I can't see it, it doesn't exist. It's hearsay.

Attorney Cauley: When you were buying your property did you investigate the zoning of the property?

Derrill Wickens: It was Light Industrial.

Attorney Cauley: But you didn't know that it was also within a mining overlay district?

Attorney Biemiller: Asked and answered.

Attorney Cauley: I don't think I've gotten an answer.

Attorney Biemiller: He said no, he hadn't seen it.

Derrill Wickens: I didn't see it. I don't know.

Attorney Womble: Hold on, hold on. His question was at the time you purchased this property was he aware whether or not there was a mining overlay, and I may have paraphrased the mining overlay working just a little bit but…and I don't think that Mr. Wickens answered whether he knew at the time he purchased this property that there was a mining overlay. And he said he doesn't know about a mining overlay. Maybe he needs to clarify his answer? But the question was at the time he purchased his property was he aware that there was a mining overlay?

Derrill Wickens: No, I was not because I didn't know what a mining overlay was, like I said.

Attorney Cauley: Have you since become…since you purchased become aware of that restriction on the property?

Derrill Wickens: I didn't know there was a restriction on my property. It's never been brought to my attention.

Attorney Cauley: So you still don't know about it.

Derrill Wickens: Nobody…the County has not been able to provide me a mining overlay. I've asked for it in writing and at a BOC meeting.

Attorney Cauley: Did you hear the testimony of the Planning Director?

Derrill Wickens: With regards to what?

Attorney Cauley: With regards to the mining overlay district on this property.
Derrill Wickens: She mentioned it but there again, I don't know anything about it. I'd like to learn about it and that's why I asked for it.

Attorney Cauley: You presented some pictures in your exhibit folder; some with dates and some without. And I'd like to generally understand did you have any photographs that would show the condition of the property in 2017?

Derrill Wickens: Which property?

Attorney Cauley: I'm sorry, the condition of the easement.

Derrill Wickens: On my phone I do, I think. 2019 is as far back as I go but ---. (too low)

Attorney Cauley: So you don't know the condition of the property in 2017 or you do?

Derrill Wickens: Which property? My property?

Attorney Cauley: I'm sorry, I keep saying property, I mean the easement. Did you know the condition of the easement in 2017?

Derrill Wickens: It was just a sand road going in and coming out as far as know. Probably…I looked at it in 2017 I believe. I can't remember. But we had looked at the house and then it was a while and we bought it.

Attorney Cauley: Well let me put it this way. When you bought your property in 2018..

Derrill Wickens: Yeah.

Attorney Cauley: …what was the condition of the road at that time?

Derrill Wickens: Sand and mud.

Attorney Cauley: And do you have any reason to think that it was different in 2017?

Derrill Wickens: Probably not. I don't like to assume; nothing changes but the sand mine.

Attorney Cauley: You testified about the POV and you read some language about your easement rights.

Derrill Wickens: Yes, sir.

Attorney Cauley: You recall that? That you had a nonexclusive easement for ingress and egress?

Derrill Wickens: That's what it says.

Attorney Cauley: I read that right?

Derrill Wickens: Yes, sir.

Attorney Cauley: And what does that mean?

Derrill Wickens: That means it's deeded ingress and egress to my property.

Attorney Cauley: What does nonexclusive mean?

Derrill Wickens: I don't know, I'm not an attorney.

Attorney Cauley: Do you understand that other people other than you have the easement rights in that 30-foot strip?

Derrill Wickens: Yes, sir.

Attorney Cauley: You don't contend that you have exclusive rights.

Derrill Wickens: No sir, not by any means.

Attorney Cauley: If the…if anyone who went in that easement and built a buffer area would that impair your easement right?

Derrill Wickens: I would think so.

Attorney Cauley: Would it impair the others who also have nonexclusive easement rights?

Derrill Wickens: I would think so.

Attorney Cauley: You said there was a house on the property when you bought it that had been built in 2005.

Derrill Wickens: Yes, sir.

Attorney Cauley: Since 2018 have you made improvements to that house?

Derrill Wickens: Yes, sir.

Attorney Cauley: Did you build an addition or build a new house?

Derrill Wickens: I put in a carport and I put in a fence. I've got five labs so I've got to keep them out of the road during hunting season. Glad I did that. My neighbor's got dogs, too, so I put it up for that, too. Fences make good neighbors.

Attorney Cauley: So the improvements to the house far as what, specifically?

Derrill Wickens: A fence, a carport, a driveway.

Attorney Cauley: I'm talking about to the house. Did you do an addition to the house?

Derrill Wickens: Put a new roof; metal roof.

Attorney Cauley: ---. (too low)

Derrill Wickens: Yes, sir.

Attorney Cauley: Okay, did you add on to the house?

Derrill Wickens: No, sir.

Attorney Cauley: Did you obtain permits for that work?

Derrill Wickens: Yes, for the carport I did.

Attorney Cauley: Did you, when you bought your property, did you understand that a residential use in that area was what's called a nonconforming use?

Derrill Wickens: No sir, no.

Attorney Cauley: Do you understand the concept of a nonconforming use in the zoning world?

Derrill Wickens: No, sir.

Attorney Cauley: When you were submitting…your submission of complaints to the County about B&M was not the first time you had complained about mining on Ponderosa Road. Is that right?

Derrill Wickens: I didn't complain about mining per se. I complained about conformance to the conditions of their permit. It's not the mining. I don't care. It's the content of the permit that they weren't complying with.

Attorney Cauley: Which permit?

Derrill Wickens: Wherever mining you're talking about.

Attorney Cauley: I'm asking if you complained about the other mine on Ponderosa?

Derrill Wickens: Absolutely.

Attorney Cauley: Tell us about the nature of those complaints.

Derrill Wickens: Just the road for the most part.

Attorney Cauley: When was that?

Derrill Wickens: '23, 2023. I can't remember. It was a long time ago.

Attorney Cauley: Do you read The Daily Advance?

Derrill Wickens: I used to.

Attorney Cauley: Would it surprise you to know that you're quoted in The Daily Advance in January of 2024?

Derrill Wickens: No, sir.

Attorney Cauley: That would make sense to you?

Derrill Wickens: Sure.

Attorney Biemiller: Objection. Relevance of this?

Attorney Womble: Whoa, whoa, whoa there's an objection. He objected to relevance so would you like to respond? How is…

Attorney Cauley: Yeah it's relevant to show that there is a history of complaints prior to the complaints about this operation that are the same. They're the same nature as the current complaints.

Attorney Womble: Okay and how is that relevant to your client's compliance with the permit?

Attorney Cauley: I think it will show that even in different parts of the road, the complaints are the same. And we know the road conditions are different in different parts.

Derrill Wickens: If I may…

Attorney Womble: So are you…hold on just a second.

Attorney Cauley: Mr. Wickens has a history…has a history of complaining about both mines on this operation. He's testified about these good neighbor issues and yet he's had a history of complaints about the Camden Yard operations. I want to know, and I think this Board would want to know, therefore I'd be relevant, that how was that resolved?

Attorney Womble: How were his complaints with Camden Yard resolved?

Attorney Cauley: Yes ma'am, exactly.

Attorney Biemiller: --- testified that they paved the road, they bought extra land and they put in trees. He could explain that in more detail.

Attorney Cauley: Well let's get into the details of that.

Attorney Biemiller: No. Because again, I don't want him painted as the villain in this situation and that sounds like where we're going.

Attorney Womble: Well let's just…I guess we need to…I think he can ask about…I mean it's already been testified to the road in front of Camden Yard was paved. I don't think that getting into the details of Mr. Wickens' complaints with Camden Yard is relevant to B&M's compliance with the permit.

Attorney Cauley: It goes…this is cross examination. I think we're entitled to some latitude on cross examination.

Attorney Womble: And are you saying that he's…I mean it is your contention that he's lying?

Attorney Cauley: I haven't made that allegation yet.

Derrill Wickens: Wow.

Attorney Biemiller: Come on.

Attorney Womble: I don't disagree this is cross examination and there is some latitude to questioning a witness about the veracity of their statements. I disagree that…let me just say this: I think it is undisputed in practically stipulated to at this point that Mr. Wickens made complaints against B&M Sand Mine. Whatever their resolution was included paving the road and other conditions and that was resolved and that Mr. Wickens has also generated complaints against Camden Yard. Now I think if you…I'm sorry.

Attorney Biemiller: Flip flop those.

Attorney Womble: Sorry, B&M and Camden Yard but you guys know what I was saying. I apologize. I think that if you're going to go down this line of questioning it needs to be directed to something specific that you're going to…that you are challenging in his testimony; not just going through all these complaints with B&M. But if you're questioning the veracity of his statements and his testimony and/or his complaints, I do think you're entitled to do that. He is entitled to question the veracity of the witness' statements. So let's see where this goes and we'll…

Attorney Biemiller: Okay but his last question whether he was quoted in the newspaper or whether he was surprised that he was quoted in the newspaper. So I don't see that as being at all relevant; to what you just said.

Attorney Womble: I understand. Let's let him ask the question and see what he's asking him about and Mr. Cauley, if you can tie it to an allegation or a question about an allegation he's made against your client, that would be helpful.

Attorney Cauley: Well let me ask this. You are quoted in The Daily Advance saying that with respect to Camden Yard, that they left a diesel pump running all night. Was that one of your complaints?

Derrill Wickens: What's the date of that? I don't recall.

Attorney Cauley: January 2024.

Derrill Wickens: I don't recall.

Attorney Cauley: You don't remember making that complaint?

Derrill Wickens: No, sir.

Attorney Cauley: How about…how about the complaint that the asphalt the company put down was full of metal?

Derrill Wickens: They misquoted. It was asphalt millings they put down had metal in it.

Attorney Cauley: So the same complaint you made against B&M?

Derrill Wickens: It wasn't complaint, it was fact.

Attorney Cauley: Okay.

Derrill Wickens: If I knew I had to answer for Camden Yard's zoning violations I would have brought the evidence.

Attorney Cauley: Well I'm interested in how you resolved your complaint with Camden Yard.

Derrill Wickens: The road's paved.

Attorney Cauley: Was the road paving a condition of their permit?

Derrill Wickens: No, sir. They just volunteered to do it I assume.

Attorney Cauley: Okay. And they did that based on your complaints?

Derrill Wickens: I can't answer that question.

Attorney Cauley: Okay. Did they pay you any money?

Attorney Biemiller: Objection.

Attorney Womble: Alright, that's also irrelevant as the same question was irrelevant for Mr. Meiggs.

Derrill Wickens: That was a character attack.

Attorney Cauley: Have you made any further complaints about Camden Yard Materials?

Derrill Wickens: I haven't had the need to.

Attorney Cauley: Everything's…everything's good at that end of the road you're saying?

Derrill Wickens: --- complaints. No one discussed it.

Attorney Cauley: Do you contend that you had a flat tire at some point because of wire in the millings?

Derrill Wickens: I don't recall. I've had so many flat tires on that road in the last three years I couldn't keep track of which one they came from.

Attorney Cauley: Okay. Did you take any pictures of those?

Derrill Wickens: I have a plug kit in my garage. I just fix the tire anymore.

Attorney Cauley: You don't pay somebody to do it.

Derrill Wickens: No, sir.

Attorney Cauley: But you don't have any receipts showing repairs.

Derrill Wickens: No, sir.

Attorney Cauley: You don't have any photos showing the wire in the tire?

Derrill Wickens: Not presented as evidence. I probably have it in my phone. I don't recall making that allegation. That might have been Mr. Cohen. I might be mistaken.

Attorney Cauley: Well let's advance this. How do we do that?

Attorney Womble: I think you're going to have to go from the top; left from the beginning.

Attorney Cauley: I've seen several pictures of this bucket. Is that your bucket?

Derrill Wickens: That's my bucket and that's my bucket.

Attorney Cauley: I can't see it. There you go, zoom out a little bit so we get the whole picture on the screen.

Derrill Wickens: You want me to zoom out?

Attorney Cauley: Yeah, zoom out so the picture's not cut off.

Attorney Womble: The other direction.

Derrill Wickens: I'm trying.

Attorney Womble: You should be able to click the minus right here and it'll go down a little bit at a time.

Attorney Cauley: Get the whole picture also. Is that the whole picture?

Manager Burke: The picture's been moved in the presentation.

Attorney Womble: Do you want the road and the bucket or just…?

Attorney Cauley: No, just the bucket; right now just the bucket. Okay. You took that picture? Is that your testimony?

Derrill Wickens: Yes, sir.

Attorney Cauley: When?

Derrill Wickens: I don't recall.

Attorney Cauley: But it's your testimony that those millings came from your end of the Ponderosa Road easement and not the Camden road end; I mean Camden Yard end?

Derrill Wickens: Camden Yard was paved at the time I picked those pieces of wire up. As you can see that's a stretch. Mr. Cohen and Brittany Cohen's house is up there at the top middle of the picture. There's pine tree trunks right there. And there's a speed limit sign that says 5 miles an hour right to the right.

Attorney Cauley: So are you saying these two photos are related?

Derrill Wickens: Yeah. That's where we picked up that metal that's in that bucket.

Attorney Cauley: Okay. You didn't pick it up from the other end of the easement.

Derrill Wickens: No, sir.

Attorney Cauley: Okay. And you've heard the testimony that they didn't have metal in their millings. Did you hear that?

Derrill Wickens: That's what they said.

Attorney Cauley: Yeah, okay. Have you ever been on the B&M property?

Derrill Wickens: Before 2024 and that was with Mr. Knowles who has permission from Mr. Bright.

Attorney Cauley: You don't have permission to be there anymore, do you?

Derrill Wickens: Not that I know of. Nobody's told me but I don't venture over there anymore because it's all muddy.

Attorney Cauley: Alright the road conditions…did you hear the testimony? You already said you heard the testimony of Mrs. Curling and did you hear her say that she was out there a couple weeks ago and the road condition was good?

Derrill Wickens: Yes, sir.

Attorney Cauley: Did you disagree with that?

Derrill Wickens: I didn't know what day she was up there to know…

Attorney Cauley: January 9th

Derrill Wickens: I don't know. I couldn't tell you.

Attorney Cauley: You didn't bring any current pictures, did you? You didn't include any in your exhibit book.

Derrill Wickens: Just the one in the binder; they're newer. These are the new ones right here.

Attorney Cauley: Okay. And by new what do you mean?

Derrill Wickens: This week. I hadn't taken any pictures in a while. I've actually been on the tractor to fix that one spot.

Attorney Biemiller: ---. (too low)

Derrill Wickens: Page 2. (cross talk)

Manager Burke: There's multiple twos.

Derrill Wickens: That's where we're starting.

Attorney Womble: Can you just count how many pages back you are, I'm sorry, from the front? That might be easier.

Derrill Wickens: It's the fourth page from the front.

Attorney Womble: Thank you.

Attorney Cauley: I understood your testimony to be that that was from September of 2025.

Derrill Wickens: It might've been. I can't recall. If I don't put a date in it like I have on this one up here, I can't recall what day it is. But you can see there's trash on the road. That's not from us. ---. (too low) So I usually put annotations up here because I have so many pictures that I have to keep track of.

Attorney Cauley: So this picture on page 4, which is numbered page 2…it's actually page 5 in my book, it's the fifth page back but it's number 2 on the bottom, right? You're saying that was in September of 2025.

Derrill Wickens: It could have. Could've been, yeah.

Attorney Cauley: Okay.

Attorney Biemiller: I can call Mrs. Wickens but it might help with information. --- (too low)

Derrill Wickens: I remember these because I printed them.

Attorney Cauley: So your testimony previously was not correct about the date of this.

Derrill Wickens: Absolutely.

Attorney Cauley: Absolutely incorrect?

Derrill Wickens: Absolutely incorrect.

Attorney Cauley: Okay, thank you.

Derrill Wickens: These are the correct ones right here.

Attorney Cauley: Okay and they've not been admitted into…

Derrill Wickens: Pretty much the same picture, just the wrong dates.

Attorney Womble: Alright so it would be helpful for the Board and for the record if we could have him clarify the dates as to which picture that's in our binder.

Attorney Cauley: I think he's saying page…page 5.

Commissioner Krainiak: If you could turn the picture this way so we could see it as well.

Attorney Cauley: I think he's saying that's January.

Attorney Womble: Okay so our page 5 is January of this…

Chair Banks: January of '25.

Attorney Womble: There's 5 and 6.

Attorney Cauley: '26 is what's noted on the photograph.

Attorney Biemiller: January 28, 2026. That's on page…

Attorney Cauley: That's yesterday. Did you get any ice in this part of the country this weekend?

Attorney Womble: Alright hold on, don't keep going. Wait for me.

Attorney Cauley: Okay.

Derrill Wickens: It's only ice in my backyard. (cross talk)

Attorney Womble: Give me a second. That would be page 5, 6 and 7. Alright 5, 6 and 7 is January 28, 2026.

Attorney Biemiller: (cross talk) He took these yesterday. I had --- in a different court this morning and ---. (too low)_

Attorney Cauley: So these photographs that we now have individual pictures, individual sheets, these are the same photographs that in the binder. Is that right?

Derrill Wickens: Yes, sir.

Attorney Cauley: Okay. But the date is January 28, 2026; yesterday?

Derrill Wickens: Yes, sir.

Attorney Cauley: Before the hearing started yesterday.

Derrill Wickens: Yes, sir.

Attorney Cauley: Okay. And tell me about the ice and rain you had this weekend.

Derrill Wickens: It wasn't a whole lot.

Attorney Cauley: It wasn't? Get the road wet?

Derrill Wickens: It did but it doesn't drain. A pretty big puddle right about here. I'll show you. Right here. That's all flooded right there.

Attorney Cauley: And where is that?

Derrill Wickens: That's right at the Cohen's house.

Attorney Cauley: What page is that so the Board can reference?

Derrill Wickens: Page 8. Right by the speed limit sign. That was under water this last…the ice storm, whatever we had.

Attorney Cauley: And you are aware of the permit condition that states that about the time period for road maintenance.

Derrill Wickens: Correct. This was taken yesterday. That's 24 hours later and it ain't fixed.

Attorney Cauley: You mean 24 hours now?

Derrill Wickens: Yeah.

Attorney Cauley: ---. (too low) And was it your testimony that those road conditions are…should be prepared while they're wet like that?

Derrill Wickens: --- right there; that's what I'd do.

Attorney Cauley: Why did none of your photos of wire show the wire in the road?

Derrill Wickens: I'll tell you how I pick them up. I'll tell you how I pick up the metal. I bought this 48-inch magnet that I hang underneath the back of my buggy and I drive my buggy…I bought that magnet when Camden Yard was putting down asphalt millings that had metal in it, right. So I don't necessarily…there are pictures of the magnet on top of the back of the buggy with metal on it. It just hasn't been entered in I guess…I've sent it to the County. They've got it. So I don't physically walk the road. I drive my buggy and it picks the metal up out of the millings.

Attorney Cauley: Yes, sir. I want to ask you about another phot.

Derrill Wickens: Sure.

Attorney Womble: Which one are you looking for? I might be able to assist.

Attorney Cauley: The one…that one right there. There you go. So you contend…well let me ask, is that labeled right?

Derrill Wickens: No.

Attorney Cauley: It's not?

Derrill Wickens: No. I looked at that today, matter of fact.

Attorney Cauley: And you heard my question yesterday about…

Derrill Wickens: Oh I knew it. I knew it the first time around I knew it was the wrong picture.

Attorney Cauley: Okay. So this is another error?

Derrill Wickens: That is. But that right there shows the dust. That's why I recorded dust on a enforcement notice. That's a video of the trucks coming in. See the dust.

Attorney Cauley: So this photo was intended to show dust and not to show a Saturday work…the trucks working on a Saturday.

Derrill Wickens: No, sir.

Attorney Cauley: No, it was not intended for that?

Derrill Wickens: I didn't make this PowerPoint.

Attorney Cauley: Well you took the picture.

Derrill Wickens: Right and I sent it as an enforcement; code enforcement as a dust issue.

Attorney Cauley: So did you…when you sent the picture did you indicate that it was taken on a Saturday morning at 6:20 AM?

Derrill Wickens: No, sir.

Attorney Cauley: That's not from you?

Derrill Wickens: I took the picture but I didn't say it was taken that day.

Attorney Cauley: Okay, that didn't come from you.

Derrill Wickens: That's actually a video; a snippet out of a video.

Attorney Cauley: So you would agree that the language down at the bottom and the top is not correct?

Derrill Wickens: For the second time, yes.

Attorney Cauley: Now you have testified that you thought a buffer would be advantageous but you weren't really sure it would be helpful with the dust. Is that fair to say?

Derrill Wickens: I'm not an expert on buffers, I can't answer that question.

Attorney Cauley: But you testified that you…you want to see the buffer installed.

Derrill Wickens: If that's what the permit requires I think it would probably be appropriate to install it so you can operate.

Attorney Cauley: And you want it to be installed like the…you testified that a buffer in the easement would impair other easement right holders who have other nonexclusive rights like you in the easement.

Attorney Biemiller: Objection. Calls for speculation because his question presumes that the easement stays the same. If you have a 30-foot easement and if the buffer would fit. But the road is not and you have not taken any steps to obtain anything on the other side and you're asking him to speculate.

Attorney Cauley: I was just asking him if he wants to see the buffer installed in that space adjacent to his property and in the easement.

Attorney Biemiller: ---. (too low) So asked and answered.

Attorney Cauley: And my question after that is, which I believe he's also answered, is does that impair the easement rights of others?

Attorney Biemiller: Calls for speculation.

Derrill Wickens: I couldn't answer that question.

Attorney Womble: I mean I was going to say that calls for a legal conclusion I believe and he said he doesn't know so at this point there's nothing more to address about that question.

Attorney Cauley: You testified about these photos and your vehicle in the easement?

Derrill Wickens: Yes, sir.

Attorney Cauley: And did this happen once or more than once?

Derrill Wickens: My wife and I were talking about this morning and it was probably maybe about five times. That's all. As you can see the road's dry as a bone. See it right there; dry as a bone.

Attorney Cauley: Well I can't really tell that, sir, but that's okay. So these three photos that…

Derrill Wickens: Are those the same photos or different ones; different days?

Attorney Cauley: You don't dispute that this is at least three examples or four examples where your car was…

Derrill Wickens: Like I said, maybe five times it happened, maybe. I don't remember. It seemed to have resolved itself.

Attorney Cauley: Tried to characterize ---. (background noise)

Attorney Womble: Mr. Chair, this would be a good time to take a brief recess and give the Board and breather and then we can come back and I guess…there was an objection, resume and address that objection; if you would like to take a break. I know that the Board originally was thinking they would take a break at 8. Mr. Cauley, are you close? I mean I don't necessarily want to…if you have just a few more questions I think we can hang on but…

Attorney Cauley: No, I think a breather's fine.

Chair Banks: Thank you. We'll recess for five minutes please.

[recess]

Attorney Womble: As we're back on the record, the clerk on clarification on who Rooster is. We know you said his name.

Derrill Wickens: That would be William Irby.

Attorney Womble: Irby?

Derrill Wickens: William Irby.

Attorney Womble: Alright, thank you. Mr. Cauley.

Attorney Cauley: Thank you. I'll be quick. So was looking at these photos…we were looking at these photos behind exhibit tab 24 and you indicated there were several times where your vehicle was parked in the easement, obstructing easement traffic. Agreed?

Attorney Biemiller: Object to coerce ---. (too low)

Attorney Cauley: Well what would you call it?

Derrill Wickens: I would call it squeezing.

Attorney Cauley: Squeezing. Okay. Making it more difficult to get…to pass on the easement.

Derrill Wickens: I would say slowing down to be more cautious to go around.

Attorney Cauley: Okay and I think you testified earlier that you were only on the easement 3 feet.

Derrill Wickens: Yeah, see the rock right there. That's my property line where the rock's at. That's about…

Attorney Cauley: The rocks appear to me to go like that…(hand gesture) You don't see that?

Derrill Wickens: No.

Attorney Cauley: And look at the last photo on exhibit…no, the next to the last on Exhibit 24. Is that your same vehicle; the white SUV parked in the roadway?

Derrill Wickens: It's not blocking…it's not blocking the road.

Attorney Cauley: It's possible to get by there is what you're saying?

Derrill Wickens: I've never…I've never blocked the road.

Attorney Cauley: And it looks like from the front door back, the rest of the car is in the…

Derrill Wickens: It's in there crooked.

Attorney Cauley: So what…well I mean it speaks for itself. The next photo on 24 is of a pickup truck. Is that yours?

Derrill Wickens: No, sir.

Attorney Cauley: Whose is that?

Derrill Wickens: I don't know.

Attorney Cauley: Don't know?

Derrill Wickens: My neighbor's.

Attorney Cauley: Which neighbor? Mr. Cohen?

Derrill Wickens: Yeah, I think.

Attorney Cauley: And the next truck photo, is that Mr. Cohen's truck?

Derrill Wickens: Yes, sir.

Attorney Cauley: Sitting across the easement? Is that what you see in that photo?

Derrill Wickens: I see it partially off the easement; or it is in the easement.

Attorney Cauley: Is it possible to pass by that vehicle?

Derrill Wickens: On a bicycle, yes.

Attorney Cauley: On a bicycle or walking. You indicated in your testimony that sometimes the road's too dry and they're not doing enough to keep it wet. Sometimes the road's too wet, they're not doing enough to maintain it. Is that fair substance of your testimony?

Derrill Wickens: No, sir.

Attorney Cauley: Well how would you describe it?

Derrill Wickens: If the road is dry it needs to be wet. If it's wet it needs to be dry.

Attorney Cauley: Okay.

Derrill Wickens: Or if it's got water standing in it, the holes need to be filled.

Attorney Cauley: Alright. Does the permit require B&M to repair the road within 24 hours, weather permitting? Is that your understanding of it?

Derrill Wickens: That would be my understanding but you have to define weather permitting.

Attorney Cauley: It's not entirely specific, is it?

Derrill Wickens: Right.

Attorney Cauley: Okay. And there's going to be some variation in what the weather will permit from day to day.

Derrill Wickens: Correct.

Attorney Cauley: And if the weather permitted…if there were some road maintenance or roadwork that was needed at the end of the week would the permit require the maintenance to occur on a weekend?

Derrill Wickens: No, sir. There's no operations on weekends.

Attorney Cauley: So can't even do road maintenance.

Derrill Wickens: No, sir.

Attorney Cauley: And you can't do road maintenance within 24 hours, weather permitting, then can you?

Derrill Wickens: Correct.

Attorney Cauley: You had I think testified earlier tonight that you…I think you said they can't do it; with respect to the buffer. Is that what you said?

Derrill Wickens: I don't believe so. You can put a buffer up there all day along --- 22-foot travel way.

Attorney Cauley: Okay your quote that I wrote down, and the Board will remember it as they heard it, but what I heard was, "They can't comply with the conditions."

Derrill Wickens: If you want to use the easement.

Attorney Cauley: And in fact you stated that again in the past, have you not? That's not a new position. You've previously said they can't comply with the conditions.

Derrill Wickens: Oh you can comply with the conditions. You can put your buffer there. ---.

Attorney Cauley: Well let's look at Exhibit 13 in the B&M notebook. Let me see if I read this correctly. This is an email from you, right?

Derrill Wickens: Yes.

Attorney Cauley: And it says, "I have emailed the County Manager and Commissioners…" this is the second paragraph, Board, …"with no response and request action from the Planning Department as they issued the permit with conditions that are unattainable."

Derrill Wickens: That was in my…that was in my opinion.

Attorney Cauley: Thank you very much.

Attorney Womble: Alright hold on, you've got to wait for the Board's questions. Board, do you have any questions for Mr. Wickens?

Chair Banks: I do.

Commissioner White: I don't.

Chair Banks: I do and it might be slightly repetitive. In regards to the fence or t-post, this picture on the screen right now that is in front of your house?

Derrill Wickens: Yes, sir.

Chair Banks: Is your fence representative of the property line as you…

Derrill Wickens: My fence is just inside my property line.

Chair Banks: The other photographs with a fence on page 5 of your notebook…

Derrill Wickens: ---. (too low)

Chair Banks: Okay, is it your understanding that that fence is also representative of the property line?

Derrill Wickens: I didn't run the --- on that fence. They had it surveyed I believe and ---. If you're standing at the end of their fence line…

Chair Banks: Yeah.

Derrill Wickens: …it lines up with every single t-post that runs down that road all the way to the pit gate.

Chair Banks: Okay. And the t-post in one of the other photos, is that Mr. Cohen's yard that you know of?

Derrill Wickens: Which one?

Chair Banks: I'm just trying to…

Derrill Wickens: There's a bunch of t-posts.

Chair Banks: Page 3.

Derrill Wickens: Actually that's my corner control ---. (too low)

Chair Banks: It was testified last night I believe by Mr. Bobby Wynn that as it relates to Condition 5, the road improvements, that they offered to pave the road? Do you have any recollection of that or…?

Derrill Wickens: No, sir. That road was…the road was fine. The road was fine before they started. The asphalt millings had turned it into a paved road. There was no dust, no nothing.

Chair Banks: I understand. I just wondered if you had any recollection.

Derrill Wickens: Not to my knowledge, no.

Chair Banks: And I had the same question as Mr. Cauley as far as if the property line is accurate in your opinion, if the 8-foot buffer were placed, would it inhibit your ingress and egress?

Derrill Wickens: I'd have to go out my other gate.

Chair Banks: That's all the questions I had for you. Thank you, Mr. Wickens. Any other questions?

Attorney Biemiller: Can you give me just one second?

Chair Banks: Sure.

Attorney Biemiller: So I'm just trying to clarify with respect to your questioning with him, if the buffer were on either side of his driveway but out, that would be okay. I wasn't sure of the question or whether he understood. So we wouldn't want the buffer right directly in front of his driveway.

Chair Banks: But I mean it doesn't specify on the conditions whether the buffer would block or allow the driveways but so I mean I don't know if you could interpret that as either way as the buffer would continuously run along the property line.

Attorney Biemiller: Well alright then I'll let his answer stand that he could use his other…I could understand if it went all the way.

Chair Banks: Yeah, thank you.

Derrill Wickens: The only time it would be an issue is if I needed a long load in my driveway. That's why that driveway's got angled gates. See how it's set up with angles on it? I got a 30-foot trailer I back into my driveway. I'd have to reconfigure the other end of my gate and all that business to get in and out of my yard.

Chair Banks: I do have one other question for you. It's been said multiple times that all the parties cannot agree as far as the fence. It was said I think specifically they wouldn't allow it. Is it your position that the fence could be placed within inches of the existing fences, for example on your property?

Derrill Wickens: It would be in the easement. By the time they dig the hole and center the posts it'd be on the easement. So I mean…

Chair Banks: So would that be an impossible condition?

Derrill Wickens: No.

Chair Banks: Okay. Thank you.

Attorney Biemiller: I'm going to call Adam Cohen just very briefly. Can you state your name please?

Adam Cohen: It's Adam Cohen.

Attorney Biemiller: And what is your address?

Adam Cohen: 363 Ponderosa.

Attorney Biemiller: And it was shown earlier I think by Mr. Wickens exactly where your property is. Was that accurate?

Adam Cohen: Yes.

Attorney Biemiller: Okay. And when did you acquire your property?

Adam Cohen: November 2018.

Attorney Biemiller: And have you lived there continuously since?

Adam Cohen: Yes.

Attorney Biemiller: Okay. And how did you observe the road when you moved in?

Adam Cohen: It was just pretty much a dirt road you know --- put asphalt down ---. (too low)

Attorney Biemiller: Okay. When did you first observe some issues, problems with the road?

Adam Cohen: I'd say probably November of '24.

Attorney Biemiller: And again, I don't want to be overly cumulative but have you observed the same conditions that Mr. Wickens spoke of…

Adam Cohen: Yes.

Attorney Biemiller: …in terms of the speeding, the dust, the condition of the road; all those things?

Adam Cohen: Yes.

Attorney Womble: Mr. Cohen, would you mind stepping closer to the microphone? Your voice is a little deep and so I think it's hard to pick up. Thank you.

Adam Cohen: I mean I have video. There's video I can put on here, too.

Attorney Womble: No, no, I just couldn't hear your voice. So they're trying to livestream and because your voice is deep it's hard to pick up when you're that far away from the microphone.

Adam Cohen: Right.

Attorney Womble: Thank you.

Attorney Biemiller: And has there ever been a fence placed in front of your property?

Adam Cohen: No.

Attorney Biemiller: Or a vegetated buffer?

Adam Cohen: No.

Attorney Biemiller: What have you observed in terms of the trucks and your meeting each other on the road?

Adam Cohen: You know coming home from work and just have multiple trucks you know coming from the same pit. A lot of times they pull in my driveway…multiple trucks will pull in my driveway, back in my driveway. I have video footage of it. I'm sure that needs some…

Attorney Biemiller: Explain that in more detail. What do you mean they're backing into your driveway?

Adam Cohen: So they're backing in my driveway to allow other vehicles to pass them.

Attorney Biemiller: You heard some drivers earlier testify they had to back all the way up to the mine.

Adam Cohen: Yeah, that's happened too. But then they've backed in my driveway…one pulled in my yard.

Attorney Biemiller: Pulled in your yard, backed in your driveway.

Adam Cohen: Or I've had to back up where they don't move.

Attorney Biemiller: Clearly in your yard; not in the easement.

Adam Cohen: Yes.

Attorney Biemiller: Okay.

Adam Cohen: And I told them not to go in my yard, it's trespassing. And it's continuing…it still happens.

Attorney Biemiller: When's the most recent?

Adam Cohen: Yesterday actually.

Attorney Biemiller: Yesterday?

Adam Cohen: Yes.

Attorney Biemiller: Okay. You remember what truck company it was?

Adam Cohen: It was ATCO, yeah Puryear; blue, the blue ones.

Attorney Biemiller: The blue ones, okay. You have children.

Adam Cohen: Yes.

Attorney Biemiller: And one of them is about to start driving?

Adam Cohen: Yes. That's one of the biggest concerns to me is the…you know my daughter just getting licensed coming down the road, dump trucks are coming down the road. Someone has to back up. I mean it's a safety issue for the dump

trucks to back up or you know my daughter, whoever has to back up you know 1000, 2000 feet you know for someone to pass through. That's a big safety concern for me; is the road.

Attorney Biemiller: Okay. A minute ago they exhibited some pictures that looked like your vehicle was in the easement. Can you explain what's happening?

Adam Cohen: Yeah so one picture is me driving, turning into my driveway. I was in the truck driving it. The other one…

Attorney Biemiller: Let me stop you there. So the truck wasn't actually stopped.

Adam Cohen: No.

Attorney Biemiller: You were still moving.

Adam Cohen: Yeah they took a picture of me driving.

Attorney Biemiller: Okay.

Adam Cohen: Now there's two pictures. The other picture was me pulling out in the road and my truck shut off and in the picture is me jumpstarting my truck in the road. I even have video footage allowing them to go around me at that time so I was never blocking the road.

Attorney Biemiller: Okay and that was the picture actually your hood was up…

Adam Cohen: Yes.

Attorney Biemiller: …at that time.

Attorney Womble: I think it's tab 24.

Attorney Biemiller: --- and you were jumpstarting your car. (too low)

Adam Cohen: Yes.

Attorney Biemiller: And you didn't cause that to happen, right, okay. And that was a legitimate breakdown.

Adam Cohen: Yes.

Attorney Biemiller: Okay. And the last picture under tab 24, you're still moving.

Adam Cohen: That's me driving my vehicle into my driveway.

Attorney Biemiller: Okay, alright. That's all I have.

Attorney Womble: Okay, thank you.

Attorney Oakley: I just have one or two quick questions. Mr. Cohen, do you know how wide the roadway is in front of your property?

Adam Cohen: It's about 13 foot, 4 inches.

Attorney Oakley: Okay. And how do you know that?

Adam Cohen: I got it surveyed in 2020. The surveyors assisted me in putting the t-post up and then you know took measurements, took video. And I have footage of that, too, if they need to see that.

Attorney Oakley: So you know where the edge of your property lies, correct?

Adam Cohen: Yes, yes.

Attorney Oakley: Have you measured it yourself?

Adam Cohen: Yes.

Attorney Oakley: And then you measured it how wide is that unpaved road in front of your property?

Adam Cohen: It ranges from maybe 16 feet to 13 foot, 4 inches.

Attorney Oakley: Alright, thank you. ---. (too low)

Attorney Cauley: How are you employed, Mr. Cohen?

Adam Cohen: Work for the DOD.

Attorney Oakley: I'm going to object. Want to finish tonight. I don't know his employment to the direct examination. He's on cross and if he wants to ask questions about what he's already testified too, that's fine. But this is not his opportunity to have a whole full examination of this witness. ---. (too low)

Attorney Cauley: ---. (too low)

Attorney Womble: I think that we need to move it along and he can get some preliminary information. I think that some preliminary information regarding Mr. Cohen might also be relevant to standing regarding where he is and…

Attorney Oakley: I'll withdraw my objection.

Attorney Womble: You can raise it again if it gets…

Attorney Oakley: ---. (too low)

Attorney Womble: Yes.

Attorney Cauley: What do you do for the DOD?

Adam Cohen: I'm a nuclear sheet metal supervisor for a aircraft carrier.

Attorney Cauley: You work with metal?

Adam Cohen: Yes.

Attorney Cauley: Is that why your email is metal crafter?

Adam Cohen: Yes.

Attorney Cauley: Okay. And you testified that you purchased this property in 2018?

Adam Cohen: Yes.

Attorney Cauley: Same question that I asked Mr. Wickens. Did you do due diligence or homework when you were buying the property?

Adam Cohen: I did some. I didn't know there was any sandpit around there at the time.

Attorney Cauley: You didn't know there was even the Camden Yard there?

Adam Cohen: I just thought it was a pond when I first saw it.

Attorney Cauley: And you didn't know about the zoning?

Adam Cohen: The light industrial / residential? Yeah, I knew that at the time.

Attorney Cauley: You knew it was light industrial.

Adam Cohen: Yes.

Attorney Cauley: And did you know about the mining overlay?

Attorney Womble: So I want to just briefly address the mining overlay because this is the second time you've brought that up and the records that were introduced into evidence do actually reflect that there is no zoning overlay for Mr. Cohen's property or Mr. Wickens' property. So I just want to clarify that for the Board based on the exhibits that you introduced. So I just don't want to be a misleading fact. So that's a point of clarification.

Attorney Biemiller: So you said there's no overlay.

Attorney Womble: Correct, not on Mr. Wickens' parcel or Mr. Cohen's parcel. It's tab…and you can keep going in your questioning. I just want to clarify for my Board that it's behind tab 5. But please proceed.

Attorney Biemiller: Thank you.

Attorney Cauley: Well I guess you've answered it. You did not look at the mining overlay.

Attorney Biemiller: Objection ---. (too low)

Adam Cohen: There's nobody that has anything…no one has anything…no one knows anything about it because no one can show it.

Attorney Cauley: Well let's…I want to show you this in here. Have you ever seen this map?

Attorney Biemiller: What page is that?

Attorney Cauley: 5.

Attorney Womble: So this is tab 5 in the B&M notebook, Board.

Adam Cohen: Have I ever seen this picture here? No, not until now.

Attorney Cauley: Do you see where it says Mining District?

Adam Cohen: Yes.

Attorney Cauley: And then you see the hashed areas that appear to be the mining district?

Adam Cohen: Yes.

Attorney Cauley: You did not discover this when you brought your property?

Adam Cohen: I already told you that.

Attorney Cauley: Just trying to be clear. And you were not aware of the sand mines.

Adam Cohen: No.

Attorney Cauley: And you were not aware of the special use permit issued in 2017 for the B&M mine?

Adam Cohen: When I moved in my house I did not know nothing about that.

Attorney Cauley: Okay.

Adam Cohen: My house was there since…there was a house on my property since 1989. So that was probably before all the sandpit was even there anyway.

Attorney Cauley: Do you know how long the property's been zoned light industrial?

Adam Cohen: No.

Attorney Cauley: Do you know the road conditions in 2017?

Adam Cohen: No, I didn't live there.

Attorney Cauley: You weren't in the area.

Adam Cohen: I didn't live there, I don't know.

Attorney Cauley: You first became aware of the road conditions in 2018.

Adam Cohen: Yes.

Attorney Cauley: And you did not acknowledge that there have been some road improvements since 2018?

Adam Cohen: By Camden Yard, yes.

Attorney Cauley: But not --- Camden Yard? (too low)

Adam Cohen: They put millings in there with metal in it.

Attorney Biemiller: They?

Adam Cohen: Sorry, B&M put millings in it with metal.

Attorney Cauley: And you saw that?

Adam Cohen: Yes.

Attorney Cauley: You saw them put millings in it?

Adam Cohen: Yes.

Attorney Cauley: Did you say anything to them about it?

Adam Cohen: Yes, I called Bobby Wynn. He started blaming it on Derrill that there was metal in the road. I said, "Well let me go look at where your pile of millings is and let me look through that." He agreed to go back there. I went back there with an employee that was working there. We went through the pile and there was metal all in it. I had pictures I sent to the County about this. I got text messages from Bobby Wynn --- metal in the road paying for my tires.

Attorney Cauley: Where?

Adam Cohen: I have it on my phone.

Attorney Cauley: Did you bring those with you?

Adam Cohen: I just told you I have it on my phone.

Attorney Cauley: Is your phone with you?

Adam Cohen: I mean I have pictures of the metal. Can I use the mouse for this?

Attorney Cauley: Your testimony is that you submitted whatever --- evidence, pictures, text messages that you have, did you give that to the County?

Adam Cohen: Yes, that's from my picking it up out of the pile right there. And the Sheriff's been out there walking with me, looking at this at times.

Attorney Womble: Alright for the record we need to just…

Adam Cohen: That's the rust…

Attorney Womble: Well you go ahead with your cross examination and I'll come back to Mr. Cohen about his exhibits in just a few minutes. So let's just let him finish and I'll circle back to document this for the record so we can track it.

Attorney Cauley: Have there been any accidents to your knowledge on this stretch of Ponderosa Road?

Adam Cohen: Not that I'm aware of.

Attorney Cauley: Has the condition of the road ever prevented your access?

Adam Cohen: Well there's been times where those ruts were so bad it was vehicles bottoming out, damaging my vehicle.

Attorney Cauley: You couldn't get in or out?

Adam Cohen: Well I got in and out, yes.

Attorney Cauley: The information you sent in to the County, who did you send that to; just to the County Manager or to the Planning Director?

Adam Cohen: Planning Director and I think maybe Mrs. Erin; Erin Burke, too.

Attorney Womble: The County Manager.

Attorney Cauley: Oh okay. Have you had conversations with B&M or Ponderosa about installing a fence?

Adam Cohen: Yes.

Attorney Cauley: And did you want to see that fence installed?

Adam Cohen: There's just no…they can install the fence but they want to be practical and there's only 13 foot of road in front of my house. But I told Bobby Wynn, I said, "Go ahead and build a fence according to the permit."

Attorney Cauley: And the buffer, have you had conversations about the buffer?

Adam Cohen: Yes.

Attorney Cauley: And would you agree that's not practical either?

Adam Cohen: Yeah.

Attorney Biemiller: Objections, calls for speculation.

Attorney Cauley: Well he's had plenty of opinions. He can have an opinion on that.

Attorney Womble: I want them to follow the permit, that's all. If they can follow the…

Attorney Cauley: Do you want to see the buffer…(cross talk)

Adam Cohen: Yes, if they can build it then build it. If that's how it's written and they can do it, then do it.

Attorney Cauley: Think that's practical?

Attorney Biemiller: Objection.

Adam Cohen: I don't know.

Attorney Cauley: That's all the question I have.

Attorney Womble: Alright, before we turn over to the Board…

Attorney Biemiller: Can I introduce ---, I was unaware of these pictures in here and ready. So I can have him identify them and introduce?

Attorney Womble: Yeah if we could…and I don't want you to go…I don't want to get off on a whole another tangent, but if you can just assist with making sure we can document these for the record, authenticate them appropriately and then we will…Madam Clerk, we will do these as Cohen…well actually they would be Wickens because this is Mr. Wickens' attorney's witness. So this would be…we would start with Wickens 2 and then Mr. Biemiller as you're going through let's just make sure…so we'll start with the first one and the first one will be Wickens 2.

Attorney Biemiller: Okay. The first one is Wickens 2 and just for the record, these are in a folder labeled Cohen Photos. And so I'm just going to click on the first one. And did you take this picture?

Adam Cohen: Yes.

Attorney Biemiller: And what is this depicting?

Adam Cohen: Just showing the ruts that's right in front of my house.

Attorney Biemiller: This is the easement, the road.

Adam Cohen: Yes.

Attorney Biemiller: And that's a rut in the road. And is that a measuring stick?

Adam Cohen: Yes.

Attorney Biemiller: Can you tell how deep that is? I can't see it.

Adam Cohen: I'm not sure. I think it's…

Attorney Womble: You can zoom in on the bottom maybe. It says 21% right there. And then also if we have a date. There's a date at the top.

Attorney Biemiller: Do you know when this picture was taken?

Adam Cohen: I can look it over but I don't know off the top of my head.

Attorney Womble: Let's look at the top, yes. October?

Adam Cohen: 10/24/24.

Attorney Biemiller: Okay so you took this 10/24/24…

Adam Cohen: Yes.

Attorney Biemiller: …in the easement. Okay. And this was the second picture in the series. What is this depicting?

Adam Cohen: That's the metal of the millings.

Attorney Biemiller: And is this in the pile on B&M's yard or is this in the road?

Adam Cohen: Yes.

Attorney Biemiller: This is on the occasion where they…

Adam Cohen: This is when Bobby Wynn gave me permission to go look at it.

Attorney Biemiller: Okay. And this was…

Attorney Womble: Is that a picture or video?

Adam Cohen: I think it's a video. Yeah, it's like a motion picture.

Attorney Womble: Oh okay. So that'll be Wickens 3, Madam Clerk.

Attorney Biemiller: Did you take this picture?

Adam Cohen: Yes.

Attorney Biemiller: And can you see the date?

Adam Cohen: It was today.

Attorney Biemiller: It was today?

Adam Cohen: Yes.

Attorney Biemiller: Okay. And what is this depicting?

Adam Cohen: The property line to the edge of the ditch.

Attorney Biemiller: And how far is that?

Adam Cohen: 13 foot, 3 or something.

Attorney Biemiller: Is this in front of your house?

Adam Cohen: Yes.

Attorney Womble: That'll be Wickens 4. And then did you tell us the date of the metal? I don't know that I heard a date.

Adam Cohen: 11/26/24.

Attorney Biemiller: So we're up to the fourth picture.

Attorney Cauley: What was the date on that one?

Attorney Womble: Can you back to number 4? We didn't have the date. The metal…it says 11/26. (cross talk)

Attorney Biemiller: Picture number 3 in the series which I think the clerk has labeled Wickens 4…

Attorney Womble: That's right.

Attorney Biemiller: …was taken today.

Adam Cohen: Yes.

Attorney Biemiller: Okay.

Attorney Womble: That answer your question, Mr. Cauley?

Attorney Cauley: Yes.

Attorney Biemiller: Is that a…what is that?

Adam Cohen: That's my receipt for paying for a survey back in 2020.

Attorney Biemiller: The one that you testified to earlier that you were paying for your property?

Adam Cohen: Yes.

Attorney Biemiller: Okay.

Attorney Womble: That will be Wickens 5.

Adam Cohen: That's my survey.

Attorney Biemiller: And this is the survey that you obtained. And this will be Wickens 6. This depicts your property…

Adam Cohen: Yes.

Attorney Biemiller: …in 2020. And this is the boundary line with Ponderosa Road here? Or am I on the wrong end? I can't see.

Adam Cohen: Yeah so that's Ponderosa.

Attorney Biemiller: Everybody likes to show off. Okay, so Ponderosa Road is here.

Adam Cohen: Yes.

Attorney Biemiller: And clearly the delineated line, that's your front line.

Adam Cohen: Yes.

Attorney Biemiller: Now somebody tell me how to reduce it. I'm sorry, I just cannot see it.

Adam Cohen: Resize image.

Attorney Womble: Is the keyboard up there?

Manager Burke: Hit the escape button on the keyboard.

Attorney Womble: Try again. Hit escape again.

Manager Burke: Are you doing it, Morgan?

Morgan: Yeah.

Manager Burke: Okay, hold on. There we go.

Attorney Biemiller: Last one. Okay, you mentioned this. Is stated December 20, 2024. Did you take this video?

Adam Cohen: Yes. Well I got a security camera.

Attorney Biemiller: Okay, security camera mounted on your house.

Adam Cohen: Yeah, pole on the side.

Attorney Biemiller: Okay. And this is your driveway here?

Adam Cohen: Yes.

Attorney Biemiller: And that's depicting an ATCO truck backing into your driveway.

Adam Cohen: Puryear.

Attorney Biemiller: Puryear. I can't see it. And this has happened on more than one occasion?

Adam Cohen: Yeah, I've probably have maybe 15 of these videos.

Attorney Biemiller: Alright and that's Wickens…

Attorney Womble: That'll be Wickens 7.

Attorney Biemiller: Okay. I think that's all in this folder, right? Yes. Anything else you need to explain about these photos or videos?

Adam Cohen: No.

Attorney Biemiller: Okay. Alright, thank you.

Attorney Womble: Mr. Cauley, since we've now identified and gone through these exhibits it would be appropriate to give me Mr. Oakley and Mr. Cauley an opportunity to inquire about these exhibits that were admitted.

Attorney Oakley: I don't have any questions.

Attorney Womble: Okay. Mr. Cauley, do you have some follow up? Just about these exhibits now.

Attorney Cauley: Yes, ma'am.

Attorney Womble: Okay.

Attorney Cauley: I might need your expertise to see the survey. I'm trying to see if this survey indicates the width of Ponderosa Road anywhere. If somebody sees it…

Attorney Womble: I don't know that it will focus to the fine print.

Attorney Cauley: You didn't bring a hard copy. You just have these photos?

Adam Cohen: Yes.

Attorney Biemiller: --- (too low) for the width of the easement. It's a survey of his property.

Attorney Womble: I understand but he can ask…I mean the survey's been admitted into the record for the Board if he wants to…

Manager Burke: It's right after the words Ponderosa Drive. It says 30-foot right of way.

Attorney Womble: Well she has better eyes than all of us.

Attorney Cauley: I don't have anything further.

Attorney Womble: Okay. Alright Board, it's your turn if you have any questions for Mr. Cohen.

Commissioner Krainiak: One question with the deep ruts, is that a recent picture?

Adam Cohen: No, that was…I don't know what the date…

Commissioner Krainiak: Has it all been taken care of now? Those have been…cleaned it up and fixed it up?

Adam Cohen: Somewhat, yes. There's not ruts like that there but still…

Commissioner Krainiak: Okay.

Attorney Womble: The date he testified to was October 24th of '24.

Adam Cohen: And the big thing now…yes, they fixed the road with the millings. There's metal still in it. I mean that's one of the biggest concerns; is the metal is still in the road. And you can go out there right now and just walk down there and you can find it.

Attorney Womble: Are there any other questions from the Board?

Commissioner White: I don't have any.

Attorney Womble: Okay.

Chair Banks: Thank you, Mr. Cohen.

Attorney Womble: Alright, thank you. Mr. Biemiller, anything further?

Attorney Biemiller: Nothing further from me. Mr. Oakley is ready to proceed.

Attorney Oakley: I may have one witness. That would be Mr. Coleman. Mr. Coleman, would you come up? Can you introduce yourself to the Board?

Chris Coleman: Chris Coleman, Camden Yard Materials.

Attorney Oakley: And how long have you been Camden Yard Materials mined on Ponderosa?

Chris Coleman: Since 2001.

Attorney Oakley: And is it fair to say that if B&M, being another sand mine on the same road in the same county, that ya'll are competitors to some extent?

Chris Coleman: Yes.

Attorney Oakley: Okay do you have any problems with having a competitor on the same road?

Chris Coleman: No.

Attorney Oakley: Do you have any problems with the way B&M, their mining operation has been treated by the County and the requirements that they've had to meet or not meet versus how you were treated?

Chris Coleman: Very much so.

Attorney Oakley: Okay. When did your mine first get permitted?

Chris Coleman: Back in 2002.

Attorney Oakley: And did you have conditions?

Attorney Cauley: Objection to the relevance of a competing mine at the other end of the road; at the entrance end of the road. I don't see how that's relevant to the conditions of the B&M permit.

Attorney Oakley: Would you like me to address that?

Attorney Womble: So yes, I guess let me hear your response to that.

Attorney Oakley: Camden Yard Materials has been permitted since 2002. They have conditions that were put on their property that were very similar in some respects to the conditions that were put in place against B&M. And those conditions have been enforced by the County. Those conditions have been complied with by Camden Yard Materials. And they have a constitutional right to be treated equally compared to B&M. If B&M is not being treated equally then that's not fair.

Attorney Womble: Alright.

Manager Burke: You need to go to the podium, please.

Attorney Womble: Yes, thank you for the reminder because I wasn't thinking about that.

Attorney Cauley: That's really an argument for another day. That's between them and the County. That has no bearing on the B&M permit.

Attorney Womble: So I tend to agree with Mr. Cauley, that any sort of…I mean obviously I'm concerned with protecting the record for an appeal if one should come from these proceedings and so I want to make sure everyone has an opportunity to properly state their position in the record for an appeal. I'm not certain Mr. Coleman's testimony about his treatment versus B&M's treatment, this is the venue for that. I think you can ask him about…I think there's been plenty of testimony about the fact that Camden Yard was found to be in violation by the County. There was a resolution and they followed that, so almost similar to your statement in the response to the objection. I think that would be…

Attorney Oakley: I've got a slight twist, slant on it; --- as well. (too low) To the extent that there are similar conditions placed on Camden Yard mines and they were able to comply with them and how they were able to comply with those conditions is absolutely relevant because they're the same types of conditions. There's been a lot of testimony that B&M is either unable to comply with their conditions, or unwilling to. But the same types of conditions have been complied with by Camden Yard Materials and that is absolutely relevant.

Attorney Biemiller: --- (too low) from Mr. Wickens' standpoint?

Attorney Womble: Sure.

Attorney Biemiller: So he was questioned quite a bit, as was Mr. Cohen, in regard to what would be practical, what would be reasonable with regard to other traffic and I think I objected but it was somewhat speculative. But the point is, and I agree with Mr. Oakley that Camden was able to comply in some fashion and satisfy the condition so…

Attorney Oakley: And the questions I'm going to be asking him are about the history of mining and the upkeep of Ponderosa Road. The entire stretch of Ponderosa Road is relevant.

Attorney Womble: So I don't disagree, the entire stretch, because that is a condition in the permit. Your questions about Camden Yard's compliance with their conditions versus B&M's conditions, that line of questioning should be narrowed to how…

Attorney Oakley: I'm going to stick to the conditions that relate to Ponderosa Road. Can I do that?

Attorney Womble: To the conditions that relate to Ponderosa Road but not only…but not this is how we maintain our road and they should maintain the road in this fashion.

Attorney Oakley: No, that's not what I'm going for.

Attorney Womble: Okay so the way I view this is if you had to put a vegetated buffer on this section of the road, there wasn't that much room in the easement, how were you able to do that.

Attorney Oakley: That's what I'm getting at.

Attorney Womble: So it needs to be very narrow to contest the testimony that it was impossible or not practical; not a history about how they may feel they were treated differently, which I understand may be an argument, but I think you can extrapolate that out at a different…Superior Court venue if God forbid, we end there.

Attorney Oakley: Note my objection for the record and move on.

Attorney Womble: Yes, sir.

Attorney Oakley: So for your mine, Camden Yard Mine, you had conditions on your permit, as well. Correct?

Chris Coleman: Correct.

Attorney Oakley: And when I say your permit, I'm talking about the permit from the County Special Use Permit.

Chris Coleman: Right.

Attorney Oakley: And did you have conditions related to the width of Ponderosa Road?

Chris Coleman: Yes.

Attorney Oakley: And did you have conditions related to fencing and a vegetated buffer for houses along Ponderosa Road that your trucks would have to pass?

Chris Coleman: Yes.

Attorney Oakley: Can you explain that to the Board; what those conditions were and how you complied with them?

Chris Coleman: Sure. So we had the condition of putting in a 6-foot privacy fence and it's roughly 1300 linear feet behind the Heritage neighborhood up front near 17.

Manager Burke: Mr. Coleman, can you get closer to the microphone? Thank you, sorry.

Chris Coleman: With that we also had the requirement for an 8-foot vegetated buffer to include caliper trees to act as a sound and dust barrier. We negotiated a stable road to NCDOT standards for a paved section of 22 feet in width with two 3-foot shoulders for the first 3,000 feet I believe and then after that we were reduced to the NCDOT standard of a 20-foot wide unpaved with two 3-foot shoulders all the way to the entrance of my mine.

Attorney Oakley: In order to achieve that for the first 1200-1500 feet, when you turn in Ponderosa Road off of Highway 17, right, there's a neighborhood just to the north of Ponderosa Road, correct?

Chris Coleman: Yes.

Attorney Oakley: That's the neighborhood you…

Chris Coleman: Heritage, yes.

Attorney Oakley: How far back does that neighborhood go on Ponderosa Road?

Chris Coleman: Roughly 1500-2000 feet, something like that.

Attorney Oakley: And that's the stretch where you had to put in the 6-foot fence and the vegetated buffer, correct?

Chris Coleman: Correct.

Attorney Oakley: How were you able to achieve that and have the proper road width at the same time?

Chris Coleman: Well as we were going through our process of application through the County, we discovered that the easement in fact was on…the south end of the easement was on the other side of the canal that parallels Ponderosa, which only left us about 8 foot of road surface that could be constructed. So in order to move forward and have a business and have a mine I had to purchase, luckily, I was able to, a 30-foot stretch of land for that 2000 feet, therefore creating that other land so we could build…we could comply with the standards that were put on us.

Attorney Oakley: How much did you have to pay for that 30-foot strip?

Chris Coleman: I think it was $350,000.

Attorney Oakley: Alright, I'll have you look at a document. Is this the deed where you purchased that 30-foot strip?

Chris Coleman: Yes.

Attorney Oakley: I would move this to be Camden Yard Materials 1.

Attorney Womble: Is there any objection?

Attorney Cauley: ---. (too low)

Attorney Womble: Alright so there's been ample that you have elicited regarding the practicality or possibility of complying with conditions that you have on your permit which are similar and exactly as the ones Camden Yard did. So I think the evidence is relevant to show an avenue of how compliance could be achieved. But let's not get too far in the weeds.

Attorney Oakley: I have one more document on this --- (too low) and then I'll move on.

Attorney Womble: I think the Board should accept this document as Camden Yard 1. Madam Clerk, if you'll mark that.

Attorney Oakley: Mr. Coleman, I put another document in front of you. Can you identify what that document is and what it shows?

Chris Coleman: This is part of our engineered drawings that were prepared for our development. This shows that western end of Ponderosa where it ties into 17 back behind Heritage Drive and up here at the top right it clearly shows the survey points of where the Ponderosa easement lies on the existing road.

Attorney Cauley: Same objection.

Attorney Womble: In regards to relevance?

Attorney Cauley: Yes.

Attorney Womble: Mr. Oakley do you want to be heard?

Attorney Oakley: It's the same argument. This is another visual or it's a visual depiction of what he just described and I think what's most relevant is on the top left corner it shows the cross section, how in this portion of Ponderosa Road, the 30-foot width easement is significantly within that ditch or the ditch intrudes within the easement; however you want to look at it.

Attorney Womble: Okay.

Attorney Oakley: So I move this as Camden Yard Materials 2.

Attorney Womble: Alright.

Chris Coleman: So it's basically the mirror image on the east end of Ponderosa mine.

Attorney Womble: For purposes of this exhibit Board, you should accept it for corroboration for what Mr. Coleman testified to and I guess there'll be some more testimony regarding it. But it is limited to showing you that portion of the road that's depicted.

Attorney Oakley: So does this exhibit show how you were able to comply with the buffer requirements and the roadway requirements and the fence requirement for your condition use permit or special use permit?

Chris Coleman: Yes.

Attorney Oakley: Okay. Is the fence depicted on there?

Chris Coleman: Yes.

Attorney Oakley: And there's some circles. Are those the trees that you installed?

Chris Coleman: Yes.

Attorney Oakley: When B&M proceeded to apply for and were trying to get their use permit back in 2016 and ultimately 2017, did you attend a County meeting?

Chris Coleman: Yes.

Attorney Oakley: Did you attend the Planning Commission meeting?

Chris Coleman: Yes.

Attorney Oakley: Did you attend the Board of Commissioner meetings?

Chris Coleman: Yes.

Attorney Oakley: Did you speak at those meetings?

Chris Coleman: Yes.

Attorney Oakley: Did you hear other people speak at those meetings?

Chris Coleman: Yes.

Attorney Oakley: Did you hear Mr. Meiggs speak at those meetings?

Chris Coleman: Yes.

Attorney Oakley: Did Mr. Meiggs respond to questions about the number of trucks that he would have going in and out of the B&M property for mining purposes?

Attorney Cauley: Objection, hearsay.
Chris Coleman: Yes.

Attorney Oakley: Admission of a party-opponent.

Attorney Oakley: What did he say?

Attorney Womble: So you said admission of a party-opponent?

Attorney Oakley: Yes.

Attorney Cauley: Mr. Meiggs is not a party.

Attorney Oakley: At the time he was a member…he already testified and so did Mr. Bright that at the time he was a member of the LLC.

Attorney Womble: So I guess my…

Attorney Oakley: And it's also public record. I've got copies of the relevant portion of those meeting minutes.

Attorney Womble: Well the meeting minutes were already introduced by the County in the agenda packet, I believe.

Attorney Oakley: I'd like to submit them again just to…

Attorney Womble: Sure.

Attorney Oakley: ---. (too low)

Attorney Womble: Maybe not. They may not…I'm not sure so it's safer to do that.

Attorney Oakley: Some of them may have been but I want to make sure.

Attorney Womble: Okay I think that you can introduce the minutes as a public record and then you can ask him about his recollection and that the record would speak. So this will be Camden Yard 3.

Attorney Oakley: 3 and 4.

Attorney Womble: 3 and 4.

Attorney Oakley: We've got the excerpts from two different Planning Commission meetings or Planning Board meetings. And there are also two Board of Commissioners meetings. This is the Board of Commissioners meetings. Okay.

Attorney Womble: So for the record I've marked the Planning Board minutes as Camden Yard 3 and then we'll do Board of Commissioners as Camden Yard 4. Alright if you want to repeat the question.

Attorney Oakley: Do you have any recollection of Mr. Meiggs speaking at those meetings about the number of trucks that were going to be running in and out of the property?

Attorney Cauley: ---. (too low)

Chris Coleman: Yes.

Attorney Womble: Same basis? I'm sorry, Mr. Coleman, just for the record. Thank you.

Attorney Oakley: And do you recall what he said?

Chris Coleman: We talked about traffic volumes. That was a big topic of discussion. And he claimed that he was looking at 12 to 15 loads a day.

Attorney Oakley: And I would direct the Board to the Camden Planning regular meeting October 19, 2016. If you go to page…it's the 3rd page but at the bottom it says page 8 of 13.

Attorney Womble: So the Planning Board is Camden Yard 3.

Attorney Oakley: Yes.

Attorney Oakley: 8 of 13, about third of the way down. It says Rick McCall asked how many trucks per week would be traveling the road if this project went forward. Mr. Meiggs replied that there would be 12 to 15 loads per day, which means anywhere between 84 and 105 truckloads per week. Is that what your recollection is, as well?

Chris Coleman: Yes.

Attorney Oakley: In 2024 there has been some testimony was one of the neighbors that had a problem with your mining operation?

Chris Coleman: Yes.

Attorney Oakley: And describe what those complaints were and can you explain to the Board what you did to correct that?

Chris Coleman: There were complaints about road conditions ongoing and…

Attorney Oakley: And that was on the unpaved portion of Ponderosa Road leading up to your mine.

Chris Coleman: On the unpaved portion. Never had a complaint about the paved portion. And we rectified that situation; basically put an end to it when we paved the entire roadway.

Attorney Oakley: And how much did that cost?

Chris Coleman: Just under $2 million.

Attorney Womble: Sorry, did he say 2 or 10?

Attorney Oakley: 2. And have there been other expenses that ya'll have incurred in the construction, maintenance and upkeep of Ponderosa Road long as you've been mining?

Chris Coleman: Yeah, of course. I mean there's the initial bringing that road into compliance at the onset of our original permit. Probably you know a little north of a million put into that road. We were also responsible for all the pipes and ditches and drainage and there was quite a few of those. And then just in general operations you know on and off for the past 25 years, you know a million in labor, equipment and material resurfacing the road.

Attorney Oakley: Has B&M ever contributed to any of those expenses?

Chris Coleman: No.

Attorney Oakley: Going back to this document, I can't remember what it was labeled but it's the one that has the cross section.

Attorney Womble: Camden Yard 2.

Attorney Oakley: 2. Camden Yard 2. So the shaded area on kind of the north side of Ponderosa Drive, you see that?

Chris Coleman: Um hum.

Attorney Oakley: Is that where the road actually is now, or part of the road?

Chris Coleman: Which area?

Attorney Oakley: Actually let me ask it a different way. Is part of the road within that 30-foot strip that you had to buy from the Sawyer family?

Chris Coleman: Of Ponderosa?

Attorney Oakley: Ponderosa.

Chris Coleman: No.

Attorney Oakley: Okay.

Chris Coleman: Did I hear you correctly? There's a clear separation, right, between the 30-foot section that we bought…

Attorney Oakley: Right.

Chris Coleman: …adjacent to the northern line of the Ponderosa easement.

Attorney Oakley: Sorry, say that again.

Chris Coleman: There's a clear distinction between the 30-foot new property line or piece of property, because we didn't convert it to an easement. That's private property, okay. That lays parallel to Ponderosa. And as everybody can see on the drawing, top left corner, that line pretty much…I mean it's pretty simple to understand; where the 33 feet…where it shows the 30-foot access easement, that is Ponderosa right of way. And then to the left of that page is the 30-foot strip that we purchased in order to meet our conditions.

Attorney Oakley: And as part of that, you put new asphalt within that 30 strip that's actually north of the Ponderosa easement.

Chris Coleman: Correct.

Attorney Oakley: So if I go and I drive on that northern half of Ponderosa Road, the roadway, that's actually on your 30-foot strip that you own to be simple.

Chris Coleman: Yes.

Attorney Oakley: Okay so that's your property. And every time a B&M truck drives across that they're trespassing, correct?

Chris Coleman: Essentially, yes. Correct.

Attorney Oakley: And are you familiar with NCDOT standards for unpaved roads?

Chris Coleman: Yes.

Attorney Oakley: And your section of unpaved road while it was unpaved, did that comply with those requirements?

Chris Coleman: Yes.

Attorney Oakley: And was that a requirement of your permit?

Chris Coleman: Yes and it was required that a engineer certify everything and that happened.

Attorney Oakley: And have you had the opportunity to look at the unpaved portion going eastward from your mine entrance to the B&M mine?

Chris Coleman: Yes.

Attorney Oakley: Does that meet the NCDOT unpaved standards?

Chris Coleman: Absolutely not.

Attorney Oakley: I'll have you take a look at these photos. ---. (too low) Do these photos show the unpaved portion, or at least a portion of the unpaved road between your mind and B&M?

Chris Coleman: Yes.

Attorney Oakley: Okay. And do these photos, are they a fair representation of what the condition of that stretch was around January 31st of last year?

Attorney Womble: Is that '24 or '25?

Attorney Oakley: '25, yeah. New Year's Eve; just this past New Year's Eve. I will move these as Camden Yard Materials 6? Is that what we're on?

Attorney Womble: Did you say January 31st or December 31st?

Attorney Oakley: December 31st, New Year's Eve. ---. (cross talk)

Attorney Womble: So December 31st of 2025.

Attorney Oakley: Yes, ma'am.

Attorney Womble: Okay, thank you. I'm sorry. Alright if no objection this will be marked as Camden Yard 4.

Board Clerk: I'm sorry I have 5, okay.

Attorney Oakley: Thank you, 5. Do any of these pictures show potholes or other standing water in the roadway?

Chris Coleman: Yes.

Attorney Oakley: And if you flip…so this first picture, that shows the front of Derrill Wickens' property, correct?

Chris Coleman: Yeah that's correct.

Attorney Oakley: The second one shows around Adam Cohen's property?

Chris Coleman: Yes.

Attorney Oakley: And we're starting to see some chain-link fencing now when you go to picture 3 and the next several ones. Where is that fencing located?

Chris Coleman: That's my property, Camden Yard Materials.

Attorney Oakley: Is that fence on the property line?

Chris Coleman: Yes.

Attorney Oakley: And that's the same fencing that was in the city's PowerPoint presentation yesterday?

Chris Coleman: Um hum.

Attorney Oakley: Okay. But there's some different in the fencing. If you go to picture 6, what's going on with the fencing here?

Chris Coleman: Somebody hit it.

Attorney Oakley: Do you know who hit it?

Chris Coleman: I don't.

Attorney Oakley: But was it any of your workers?

Chris Coleman: No.

Attorney Oakley: Okay. And then 10 kind of shows where it converts from a paved to the unpaved section?

Chris Coleman: Yes.

Attorney Oakley: I think those are all the exhibits I have. As part of the conditions for your permit, were you required to have any bonds?

Chris Coleman: Yes.

Attorney Oakley: Okay what were those? Can you explain those to the Board?

Chris Coleman: We were required to have a reclamation and an E&S bond, Erosion and Sediment Control. Our bonds include the perimeter of the mine, which is the 112, 113, 115, acres plus the right of way of Ponderosa Road; leaving my mine to Route 17. So each year I renew, post the bond for $1 million.

Attorney Oakley: And back when you got your permit…excuse me, not when you got your permit; when B&M got their permit in 2017 when you talked about how you spoke at those meetings as well…

Chris Coleman: Um hum.

Attorney Oakley: …And did you inform the Board at that time about any issues with the roadway?

Chris Coleman: Yes.

Attorney Oakley: Alright what were those issues that you brought up with the Board back in 2016 and '17?

Chris Coleman: My grave concerns were the additional truck traffic and how the road was going to be able to hold up to having two full-blown operation mines. I did not have faith in the 12 to 15 loads a day. That didn't make any sense to me. He had more like 100 to 200, should be the average. You know I voiced my opinions about the maintenance of the road because I'm liable for it; both Camden Yard Materials and me personally; especially I have to put up a bond. I got to sign the bond personally. And you know there needed to be rules set in place between the two operators on an agreement on how we're going to handle the maintenance and liability of Ponderosa Drive.

Attorney Oakley: And eventually they were granted their permit with conditions, correct?

Chris Coleman: Yes.

Attorney Oakley: And what happened after they obtained their permit in 2017?

Chris Coleman: Nothing.

Attorney Oakley: Was there any activity at the B&M mine site for how long?

Chris Coleman: Until the last year-and-a-half.

Attorney Oakley: Okay. So there was some testimony yesterday I believe that they started their mining operations around September 2024. Is that accurate with your recollection?

Chris Coleman: Yes.

Attorney Oakley: Is that about the same time as ya'll finished up paving your road?

Chris Coleman: Yes.

Attorney Oakley: Okay. So is it fair to say that there was no activity at the B&M mining site until you improved the first conditions for the two months.

Chris Coleman: Correct.

Attorney Oakley: And did that make it easier for B&M to access their mine site?

Chris Coleman: True, yeah.

Attorney Oakley: One of the conditions to the B&M permit is Condition Number 4, applicant shall retain the cut over trees that lay within the buffer area indicated on site plans.

Attorney Womble: Which condition are you referring to?

Attorney Oakley: That's Condition Number 4 of B&M's permit.

Attorney Womble: Thank you.

Attorney Oakley: Do you know what that condition is referring to?

Chris Coleman: Yes.

Attorney Oakley: Okay can you explain that to the Board?

Chris Coleman: Well there's a natural cut buffer of trees that was in the perimeter and I think it's…what was it, Mary Roberts' property? It's the one that lays adjacent to the B&M…and so that was the buffer. That was supposed to not be touched.

Attorney Oakley: And was that in the southwest corner of the B&M property?

Chris Coleman: Yes.

Attorney Oakley: Okay. And what happened to those trees?

Attorney Cauley: I'm going to object to inquiries and questions about his interpretation of B&M's permit. We had this same conversation when we were talking about a witness earlier. The permit speaks for itself.

Attorney Womble: I agree the permit speaks for itself but my recollection is that your witness was permitted to explain what he understood that condition to be without interpreting a word. I don't think he interpreted a word. He asked him what vegetated buffer…

Attorney Oakley: I asked him if he knew what it referred to.

Attorney Womble: What it referred to. I don't think he's asking him to interpret language per se.

Attorney Cauley: I understood him to be asking about his understanding of the permit condition and I don't think that's relevant to this Board's determination of what that permit says.

Attorney Womble: So do you have follow-up questions about compliance with that condition?

Attorney Oakley: Absolutely.

Attorney Womble: Okay so let's get to the compliance of that condition.

Attorney Oakley: Okay. You brought a document here tonight, it's two pages, three pages label Bright Mine Meiggs Tract Mining Development Plan and it's dated 3/7/2001. That's the expiration on the engineer's…the date is right there. And if we can…we don't have extra copies of this but we can come up and show it to the Board.

Attorney Womble: So this is the what?

Attorney Oakley: This is the Meiggs B&M…this is their site plan that they submitted as part of their approval.

Attorney Womble: Their approval in…

Attorney Oakley: This is the same site plan from their original…

Attorney Womble: I understand it's a public record.

Attorney Oakley: It's part of the record.

Attorney Womble: So for record purposes let's mark this as Camden Yard 7. Because they're going to identify it and show it to the Board it needs to be submitted to our report for the record.

Attorney Oakley: Understood. And so can you point out to the Board where that buffer is that pertains to Condition Number 4?

Chris Coleman: It's this section right there and then have the additional buffer all the way around just like any other mine.

Attorney Oakley: Okay so before B&M ever got a permit to mine out there, were there trees in that buffer area?

Chris Coleman: Yes.

Attorney Oakley: And what happened to those trees?

Chris Coleman: They were all taken out.

Attorney Oakley: By who?

Chris Coleman: Somebody affiliated with Mr. Meiggs.

Attorney Oakley: Okay. And do you know if they ever received any kind of penalty related to that?

Chris Coleman: From my understanding the state came down on them; that that was a violation of the state permit, as well.

Attorney Oakley: Okay. And do you know when those trees were cut down?

Chris Coleman: That was a while ago; maybe 2012? At least ten years ago.

Attorney Oakley: And on there it's a little hard to read. But can you read this paragraph that's point to that buffer area?

Chris Coleman: Yeah, vegetated buffer; approximately 75 feet of existing cut over vegetation to remain as a buffer to adjacent landowners.

Attorney Oakley: Okay, thank you very much. Do you want me to give that to the clerk? Does anybody want a closer look at it?

Attorney Womble: Does anybody else need to look at it kind of closer? Alright so we will submit it to Madam Clerk and I believe that's Number 6. Yes, that will be Camden Yard 6.

Attorney Oakley: Do you have any personal knowledge of B&M, whether or not they made timely to their section of the road? When I say timely, within 24 hours weather permitting?

Chris Coleman: You know I'm not there all the time. I think that's more policed by the neighbor down on the end.

Attorney Oakley: Okay. Unless you have anything else you'd like to share with the Board, I don't have any more questions for you.

Chris Coleman: Okay.

Attorney Womble: Mr. Biemiller, any questions?

Attorney Biemiller: The buffer that we just talked about on the three-page plan, do you know the purpose of that buffer? I think you read it but maybe you could add some clarification.

Chris Coleman: I mean the purpose of any buffer is to you know create harmony and a wall. If you're down on the interstate and you see the divider walls, it's more for noise you know and it does help with dust. You know once the mature trees are up it'll catch the dust because the dust only goes so high before it falls out.

Attorney Womble: Can you stay close the mic, Mr. Coleman? I'm sorry.

Attorney Biemiller: You heard a lot of testimony earlier about the amount of dust on the road and Mr. Wickens and Mr. Cohen talk about that. So in your opinion and based on your experience, a buffer would help alleviate some of that dust in turn and some of the noise in turn.

Chris Coleman: Well it would alleviate from it going…it would help from entering their property, their airspace, yes.

Attorney Biemiller: Thank you. That's all I have.

Attorney Cauley: Mr. Coleman, how many loads a day does your mine haul?

Chris Coleman: It varies by season, but anywhere from you know 50 to 200.

Attorney Cauley: I think you testified the average was 100 to 200?

Chris Coleman: Probably.

Attorney Cauley: Your average?

Chris Coleman: Yeah, average.

Attorney Cauley: Is there at the entrance to Ponderosa Road where you turn off of 17, is there a subdivision there?

Chris Coleman: Yes.

Attorney Cauley: How many houses are in that subdivision?

Chris Coleman: I don't recall.

Attorney Cauley: Are there more houses in that subdivision than there are at the other end of Ponderosa Road?

Chris Coleman: Yes.

Attorney Cauley: Substantially more?

Chris Coleman: Um hum.

Attorney Cauley: You don't know how many dwellings are in there?

Chris Coleman: I don't recall.

Attorney Cauley: How many dwellings do you go by to get to your mine?

Attorney Womble: Can you both take a step…I know it's cozy up there but it you will take a step closer to that mic.

Attorney Cauley: We're not that close.

Attorney Womble: I understand.

Manager Burke: You can push the microphone back and forth if you need to.

Attorney Womble: Yeah but I need you guys to speak up; just both of your voices are a little lower and I'm getting eyes from the corner. He's trying to livestream so I would appreciate that. Thank you.

Chris Coleman: I will improve.

Attorney Womble: Thank you.

Attorney Cauley: So the number of dwellings that you past to get to your mine?

Chris Coleman: I would say at least a dozen.

Attorney Cauley: The site plan that you just testified about, what was the date on that?

Chris Coleman: I believe he read it, it was in '01.

Attorney Cauley: 2001? I'm sorry, 2001?

Attorney Womble: That's what he testified.

Chris Coleman: Yes.

Attorney Cauley: The portion of the easement at the Highway 17 end is also non-exclusive, is it not?

Chris Coleman: You'll have to be more specific.

Attorney Oakley: Can you repeat the question? I didn't quite hear it.

Attorney Cauley: The portion of the easement, the Ponderosa Road easement close to Highway 17 is also non-exclusive?

Attorney Oakley: I think that calls for a legal conclusion. I think it's uncontested that the Ponderosa Easement is shared by everybody.

Attorney Cauley: So it's nonexclusive. You don't have exclusive rights to that easement.

Chris Coleman: To the Ponderosa easement, no.

Attorney Cauley: Do you have any information about my client's efforts to acquire land from adjacent landowner?

Chris Coleman: I have no information.

Attorney Cauley: Are you aware of my client's offer to pave a portion of Ponderosa Road?

Chris Coleman: No, I'm not aware.

Attorney Cauley: Would it surprise you to know that the fence damage…well let me put it this way, the fence damage that you showed a photograph of, I think you said you don't know what happened.

Chris Coleman: Correct.

Attorney Cauley: You don't know who caused it.

Chris Coleman: Correct.

Attorney Cauley: You're not accusing B&M of having caused that.

Chris Coleman: Correct.

Attorney Cauley: You're not accusing Ponderosa Sand or ATCO.

Chris Coleman: Correct.

Attorney Cauley: Okay. And you're a competitor of B&M?

Attorney Oakley: Asked and answered.

Attorney Cauley: Is that correct?

Chris Coleman: Correct.

Attorney Cauley: Thank you.

Attorney Womble: Board, do you have any questions for Mr. Coleman?

Chair Banks: Thank you, Mr. Coleman.

Chris Coleman: Thank you.

Attorney Womble: Mr. Oakley, you said you have one witness. Are you holding to that?

Attorney Oakley: Yes, ma'am.

Attorney Womble: Okay. Mr. Chair at this point it would be appropriate to permit the counsel for the parties to give a brief closing statement where they can summarize the evidence and their legal arguments to the Board. Given the hour, it would be appropriate to set a time limit for each one to follow for their argument.

Chair Banks: I will ask the County Attorney's advice on the term of the time limit.

Attorney Womble: I think that given the extent of evidence and cross examination, you guys think you can summarize in about 5 minutes apiece? That'll be 15 minutes. That'll put us past 10:00 before the Board gets to deliberation. So if you can wrap up your…

Attorney Cauley: That feels a little rushed. ---. (too low)

Attorney Womble: 7 minutes. Mr. Chair, it really is in your discretion. I think this is a procedural…you can put in place approximately 5 minutes. If we go 10 minutes apiece that's another 30 minutes and we've been here for two nights, so…

Chair Banks: Let's stick with 7 minutes, okay. And I would like to ask the Board first if anyone needs a 5-minute recess before we continue. Yes? We'll take a 5-minute recess please.

[Recess]

Chair Banks: Mr. Oakley, would you prefer to go first or second? Mr. Biemiller, do you have a preference?

Attorney Oakley: I'm not sure about the order.

Chair Banks: Mr. Cauley has elected to go last.

Attorney Oakley: I'd like to go last, as well.

Attorney Womble: I know you would but think that procedurally they are an applicant and then you are opposition, you guys put on evidence and so they would be able to go last.

Attorney Oakley: Well if they're an applicant wouldn't they be going first?

Attorney Womble: They can waive and you can go and then they can go back…

Attorney Oakley: Well I'll let Mr. Biemiller go first then.

Attorney Biemiller: ---. (too low)

Attorney Womble: And ultimately because it's a QJ hearing I don't know that there's any hard and fast rule about it but I would say that my experience is that we would allow them to elect.

Chair Banks: Your time's starting. I'm just kidding. Don't feel obligated to use your entire 7 minutes.

Commissioner Aydlett: It actually is on. Get them, Karen. (laughter)

Attorney Biemiller: It is on. Good evening, thank ya'll very much for two long nights. I really do appreciate everyone's time and attention and sometimes the inability for me being able to see the screen. Very quickly, obviously you've heard a lot of testimony. On one hand on the application for revocation there are a number of conditions which Mrs. Curling described, which Mr. Wickens described and Mr. Cohen. For revocation, I don't think we have to prove all the conditions. We only really have to prove violation of one. I think it's uncontested that both the fence has not been erected and the buffer has not been erected. You've heard testimony on the condition of the road; it was bad, maybe it's better. You've heard and seen a lot of evidence related to yielding, right of way, that kind of thing. I think overall you have seen violations of all of the conditions at some point. But regardless of whether the condition of the road or the right of way issues or the speed, those things, right now today as we stand here, there is still no fence and there is no vegetated buffer and they admit it. Their response to that is, "Well we can't do it. It's impractical, it would cause more harm than it's worth and so we're just not going to do it because we can't do it." But you've heard a lot of testimony what I would describe as a good neighbor, Camden Yard stepped up. They found a way to do it. It was obviously very expensive. It sure cut deeply into the bottom line but they did it. They found a way to make it work, to satisfy all the County's conditions; to erect a fence, to put in the buffer, to allow the traffic to pass. And so to me it can be done and B&M should be required to do it, as well. And they're excuse that Mr. Wickens has somehow prohibited them from doing it or he won't sell his property or he asked too much for it, those are just nonstarter, ridiculous arguments. We haven't heard any testimony that they've looked to the other side; whether they've contacted Sawyer or whoever owns that property; whether they've contacted the Army Corps or whoever has jurisdiction over the ditch or whether they've done anything on the other side to gain their 30-feet access. So pinning the blame for their inability, unwillingness to install the fence, install the buffer on Mr. Wickens is just misplaced. So I'm going to conclude very quickly to say that the application to revoke the permit to me is an easy decision because by everyone's admission, they're not in compliance. On the other hand, on their application to amend, you've heard a lot of testimony on the importance of a buffer, you heard a lot of testimony on the dust. You saw pictures of dust. Regardless of the speed, you saw the pictures of the dust. You heard testimony that the road frequently is not watered enough; that it's still too dry. You heard a lot of testimony on the noise from the excavators, from the pump, from the trucks themselves. You heard Mr. Coleman indicate the importance…and obviously you all are familiar with the importance of a buffer. My definition, buffer, barrier, guard, whatever is put in place in order to help, as Mr. Coleman said, alleviate some of the dust, some of the noise and the other issues that the residents have encountered. And so we would oppose the amendment that the

B&M is seeking to eliminate these two very critical conditions from the permit which was issued after deliberation and consideration to have those two buffers in place. So we would oppose that. Thank you. That's all I would have, five minutes.

Chair Banks: Thank you, Mr. Biemiller.

Attorney Oakley: Thank you very much for letting us present over these two nights. I'm going to be as quick as I can and I'm going to give you at least four different categories of why either this permit is invalid and doesn't exist or it has been repeatedly violated. The conditions have been repeatedly violated and must be revoked.

So the first one is I'm going to remind the Board of your duty, where your duties come from, is from state law. North Carolina General Statute 160D-403(f) deals with revocation of development approvals. That's your authority to revoke the permit here tonight. Under that, it says development approvals shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or for false statements or misrepresentation made in securing the approval. Any development approval mistakenly issues in violation of an applicable State or local law may also be revoked.

But if they violated the terms of their permit, you shall revoke that permit. It's not permissive. It is a shall. If there were material misrepresentations in obtaining that permit, you shall revoke that permit. So the first is material misrepresentation.

You heard today that Garry Meiggs, and you have the record in front of you from the Planning Commission. In 2016, Garry Meiggs came before this Board and said, "I'm going to have 12 to 15 trucks a day." You heard testimony yesterday from B&M, they've got 100 plus. You heard testimony from Derrill Wickens, they've got 100 plus a day. So that is a material representation in obtaining their permit and you shall revoke their permit for that.

Number Two, under the UDO, the Uniform [Unified] Development Ordinance, when you get a use permit you've got two years to begin that use. You heard testimony from B&M themselves, they didn't start their operation, their mining operation until September of 2024. That was corroborated by everybody on our side, as well. So they didn't start it in time. There's no competent in the record that shows that they had any significant construction, going towards doing that, other than Garry Meiggs testified that he previously logged that property. Nothing happened out there prior to September 2024. Their permit expired. So they didn't have a permit. They don't have a permit anymore. It expired after that two years. Going fast.

The third reason this permit doesn't exist goes back to the preliminary motion that I made yesterday. I'm not going to remake that argument. I'm just going to remind you that pursuant to Condition 12, if there any additions that are unlawful or void, the entire approval is void and of no effect. So also under Condition 12, they don't have a permit and you can make that finding, as well. However, to the extent that the Board made the finding yesterday that they do have a valid permit, that was the first vote yesterday; is that they do have a valid permit and so all of those conditions that the Board determined yesterday, which I do note my objection to that, but the Board determined yesterday that all of those conditions are valid. And B&M has admitted in their documents that they submitted to the County and in their testimony from all their witnesses, that they're in violation of many of those conditions. And there's been additional testimony from our folks, from Camden Yard Materials as well as the residents, that there's other violations, as well. And I've got the last half of my time to go through those.

So Condition Number 1 is the applicant must strictly abide by all requirements of the UDO. They must also strictly comply with all other local, state and federal ordinances, laws, rules and regulations. You heard testimony from Mr. Coleman here tonight that they removed that buffer and the State came down on them on that, but they violated the State law on that. They've also violated the UDO because when you violate a permit condition, you're violating the UDO.

Number two, the second Condition is the applicant shall complete the development strictly in accordance with the approved plans. You looked at the approved plans that they had and they had taken out that buffer and so they did not complete in accordance with the approved plans.

Number three, Condition 3, the applicant shall aid in maintaining the upkeep of Ponderosa Road to current conditions. Other than the little bit of work that they've done on that unpaved section between Camden Yard Materials and their mine, they haven't contributed at all to the upkeep of Ponderosa Road. Mr. Coleman testified about how they put in…Camden Yard Materials spent over $2 million to update the Ponderosa Road, that long section, and what a coincidence, as soon as they get it paved, what happens? B&M now has easy access and they're driving their trucks, 100 plus a day, up and down that road and they're not providing any aid in the upkeep and maintenance of that road.

Condition Number 4, I've already touched on it a couple times. That talks about the cut over trees. That's that tree buffer on the site plan that you saw had been cut away.

5 is the applicant shall improve to NCDOT unpaved conditions. You have the NCDOT unpaved conditions administrative code requirement. You've got to have a 20-foot roadway. It's got to be 20 feet wide. They don't have any exception to that requirement. The code section doesn't say that they get an exception to it. It's got to be to NCDOT standard. Their own witnesses have testified they've only got 12 feet of roadway. Mr. Cohen testified that they only have 12 feet of roadway. It's not anywhere near close to NCDOT standards. Mr. Wickens testified that the road doesn't drain. That's another requirement of NCDOT.

Number 6, the applicant shall…let's skip past that one.

7 and 8. Seven is the fence, eight is the buffer. There's no question; they have not built the fence, they have not built the buffer. This company came in, got their permit in 2017 and did nothing for 6 ½ years. They knew about these conditions for that entire 6 ½ years. They didn't put in the fence and the buffer during that timeframe. They came out in September 2024 knowing they needed to comply with those conditions. The attempted to, they couldn't negotiate it to a way that they could do it. And so what did they do? Did they come to the County and ask for an amendment at that point in time? No, they didn't; not until the County tried to revoke the permit did they try to get an amendment to their permit. They didn't do the right thing. Instead what they did is they chose to operate in violation of their conditions knowingly for the last almost two years. They have knowingly violated those conditions and they haven't done anything to fix it. That's not the kind of business you want in this County.

When Camden Yard Materials…when they were violating, what did they do? They fixed the problem. That's not how B&M operates. B&M would rather take $100 penalty a day and run 100 trucks up and down that road rather than comply with their conditions. They haven't done so.

I'm not going to talk about the 10 mile an hour speed limit or any of that.

I'm over by just about a minute and I will wrap up there and if you have any questions for me I'm happy to answer them. I know I spoke really fast. I try not to do that normally but I had to fit it in.

Chair Banks: Thank you, Mr. Oakley. Mr. Cauley.

Attorney Cauley: I cannot talk that fast on a good day. Well before I get started, I want to renew the request on the offer at the end of last night about visiting the site. We had offered for you to visit the site. I have provided the County Attorney late this afternoon a memo on that point.

Attorney Womble: Well late this afternoon while we were here.

Attorney Cauley: Yeah.

Attorney Womble: So to clarify.

Attorney Cauley: Late this afternoon, like quarter to six. But a memo on those legal points. And we renew that invitation. You've heard so much testimony about the condition of things, wouldn't it be revealing to see it for yourself and just lay your own eyes on it? So with that out of the way, I'll say thank you. I join my colleagues. Thank you for your attention, thank you for your time. Thank you for your interest and your patience. Thank you for hearing us out. Thank you to the County Attorney for her professional courtesies. We appreciate the way we've been treated.

Brief history: Mining operations began in 2024; Permit issued in 2017; Stop Work Notice issued in October '24 right after mining operations began. The interim period between 2017 and 2024, you heard testimony about preparations; timbering, clearing, stumping; all the work that goes into a mining operation. We were engaged at that time when the Stop Work Notice was issued. We met with County staff and the County Attorney in November 2024. This is all the record, by the way. It's in the package that was submitted by the Planning Department. The Stop Work Order was determined to be unfounded and was rescinded. You can refer to Exhibit 12 for that letter. We were informed…we informed the County at that time that we could not comply with Conditions 7 and 8. We haven't disputed that. Condition 7 and 8 have not been complied with but they haven't been complied with because you can't do it without violating private property rights. So they haven't been done.

Brief summary of the testimony: Bonney Bright, an experienced pit owner, been in sand mining since 1988, selected an experienced pit operator because he wanted it done the way he would do it; years of preparation to get it ready. Bobby Wynn is the experience pit operator. They spent $100,000 on milling, they spent $70,000 plus on equipment. They have made every effort to comply with permit conditions. They've offered to pave the road, buy tires, build a fence and install a buffer but they need cooperation to do that.

Doug Haney testified about trucking operations. Have you ever met anybody as qualified and capable and technologically advanced in the trucking business as Doug Haney? He has speed and location monitoring, a safety program; no safety incidents during any of the operations here and that was borne out I think by the residents.

So there are in the Notice of Violation, which kind of started this ball rolling, I'd like you to refer to the permit itself, if you've got that available to you. A few highlights: This property is Light Industrial. According to the permit on page 3 it is Light Industrial. Staff's opinion at the time was that the use would not injure the value of properties; the property is zoned for its use and the area is consistent with the County's Future Land Use Plan. Then kind of curiously, the Planning Staff identified several conditions that were they said violated. But in that list of conditions, didn't include Number 1, violation of laws. It didn't include Number 2, compliance with approved plans. It didn't include Number 4, which had to do with cut over trees. So the permit conditions that are allegedly violated are 3, upkeep of roads; 5, DOT standards; 6, correct failures in 24 hours; 7 and 8, we know about; we're not contesting those. Number 9, install 10 mile per hour speed limit signs; Number 10, private vehicles have the right of way and Number 11, hours of operations.

I would remind you or ask you to recall the testimony of Amber Curling, who is probably the most disinterested witness in this whole proceeding. And her testimony was on the upkeep to current conditions, she doesn't know what they were in 2017 but she knows what they were two weeks ago when she out there and the road was in good condition.

You heard testimony about tons of materials, you've seen invoices, significant road improvements. Condition Number 3 has been satisfied.

Number 5, improved to DOT standards. Mrs. Curling was not aware of what they were but on January 14th again she said the road was in good condition. Our client is really the only one who's offered any evidence about the DOT standards and that's in your binder. And it's not a 20-foot minimum. It's a safety minimum if 20 feet is not available. So the DOT conditions testimony was that it's been complied with.

Correct failures within 24 hours, Mrs. Curling didn't have any information on that. Ponderosa Sand testified that that has been done. Of course we've got the issue about can you go do it in 24 hours if 24 hours falls on Saturday or Sunday.

The speed limit signs are done, no contest there. They actually say 10 miles an hour on the way in. They've got 5 on the back of the sign coming out.

And Mrs. Curling didn't have any evidence on the vehicles with the right of way or the hours of operation.

I can't tell from Mr. Wickens if it's too wet or too dry out there but it seems to be both at different times. He testified the drivers are courteous and that the conditions are unattainable.

So in summary, our evidence, and I believe it's persuasive, is that our client has complied with all Conditions except 7 and 8 and we haven't disputed from day one that we cannot comply with 7 and 8. That's been our consistent position.

So on behalf of B&M and based on the evidence presented, our request to you is that: 1) The staff request to revoke the SUP be denied; and 2) The Board grant the applicant's request for an amendment and strike Condition 7 and 8 from the permit.

Thank you again for your time.

Chair Banks: Thank you, Mr. Cauley.

Attorney Womble: So now, Mr. Chair, it would be appropriate to accept a motion to close the evidentiary portion of the quasi-judicial hearing.

Chair Banks: I'll make a motion that we close the evidentiary portion of this hearing. Any discussion? All in favor?

Attorney Cauley: Does that include the site visit?

Attorney Womble: Well I guess that's I mean the motion. If the Board wants to, in terms of Mr. Cauley, I haven't reviewed it…but they stood here tonight and made a request that you make a site visit. We've not given Mr. Oakley or Mr. Biemiller an opportunity to respond to that. I guess we need to address that for the record first before we make a motion. But I do think you made a motion so if you, for the record, will rescind your motion; whoever made that.

Chair Banks: I'll rescind that motion.

Attorney Womble: Okay and then briefly…

Attorney Oakley: Very briefly.

Attorney Womble: Please.

Attorney Oakley: This is another instance of B&M coming at the last second to try to delay this process. Everything the Board has…everything the Board needs is before it. A site visit is not necessary. This has been going on for months and months and months. This hearing was noticed…I think the first hearing was originally noticed in November or December. There's been plenty of time to make a request for a site visit. And this is just one more attempt to delay the process. I'm going to ask the Board to make their decision tonight.

Attorney Biemiller: Yeah, I would oppose the site visit as well. I think you have everything you need. Again, we do not have to prove a violation of every condition. The uncontroverted testimony is that two conditions are not met as we sit here tonight. The fence and the buffer are not met. Their only response is they can't get the land and do it on Wickens and Cohen property. But the Camden Yard people were able to find a workaround so it can be done without anything from Wickens and Cohen so I don't think a site visit would add anything towards deliberations.

Attorney Womble: Alright, thank you. Mr. Cauley, you already made your request so…

Attorney Cauley: I just want to say we're not afraid for you to see the property.

Chair Banks: Thank you.

Attorney Womble: Alright so the Board needs to I guess address that request and if you're going to entertain that request…if the Board is interested in making that site visit then you would have to recess; not close the evidentiary hearing. You would have to recess your meeting tonight and we would not have deliberation because that would be evidence. The Board would have to organize a make a site visit out there. Then you would have to…and that site visit would likely have to include all the attorneys to be present and the Board would have to come back and report on what you observed, such that it's in the record and not ex parte and then you would then be able to…close the hearing and then have deliberation.

Attorney Cauley: We'll waive our ---. (too low)

Attorney Womble: I understand.

Commissioner White: I don't need one. I don't need a site visit.

Chair Banks: Troy?

Vice Chair Leary: I'm good with the information in front of us.

Chair Banks: Randy?

Commissioner Krainiak: I've been up there in the past.

Chair Banks: Okay. Do we need a motion to…?

Attorney Womble: We need a motion to decline the request for a site visit.

Motion to decline the request for a site visit.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Attorney Womble: Now you would be in position to accept a motion to close the evidentiary portion of the quasi-judicial hearings.

Motion to close the evidentiary portion of this hearing.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Jason Banks
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Attorney Womble: And so now, Board you are in the deliberation phase of these proceedings and it'd be appropriate, Mr. Chair, to open the floor for discussion.

Chair Banks: I am opening the floor for discussion unless feels a need to enter a motion for closed session to consult with the attorney, given the legal implications of motions or proceedings that may follow.

Commissioner Aydlett: I would like to.

Chair Banks: Do you want to enter a motion?

Commissioner Aydlett: Motion that we enter into closed session to consult with the attorney.

Chair Banks: Okay. We have a motion on the floor. Is there any discussion? Mrs. Womble, could you please provide public instruction as to why the Board would go into closed session?

Attorney Womble: So just in regards to…

Chair Banks: The legal implications.

Attorney Womble: …If this is a request to go into closed session for attorney-client privilege, the Board cannot engage in any deliberations or discussions about facts or contested facts or evidence or testimony. All that has to be done in open session and on the record. The Board can consult with me regarding potential legal outcomes or you know legal exposure, things of that nature. It would have to be a very specific legal question and the Board knows I've done it before. We're not talking about this in closed session. So I don't…I say that to say you made the motion, so if you feel like your motion…your inquiry is within those bounds, we can go back. If it's not then I will bring us right back out. But there is no deliberations in closed session, there's no discussion about contested facts or evidence. But if you have a legal question for me then we can go into closed session for that. But it's going to be very limited.

Chair Banks: Does everyone fully understand those instructions?

Commissioner White: Yes.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Sissy Aydlett
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks: We will enter closed session.

[Chair Banks reconvened the Board of Commissioners following a brief closed session.]

Chair Banks: We will return to close session but I would like…

Attorney Womble: Return to open session.

Chair Banks: Return to open session, excuse me.

Attorney Womble: And just for the record I wanted to note the Board did not engage in any deliberation or fact discussion back in closed session. It was strictly for attorney-client privilege.

Chair Banks: And I would like to give myself and other Board members a couple of minutes to gather any thoughts or reshuffle all the paper evidence before you before we verbally deliberate.

Commissioner Krainiak: Mr. Chairman.

Chair Banks: Yes, sir.

Commissioner Krainiak: Reading the Board packet of 2017 and it's talked about…they were discussing the B&M. You have a whole lot of discussion about the roadway.

Attorney Womble: Are you referring to Camden Yard Number 4; the exhibit; the Board of Commissioners meeting?

Commissioner Krainiak: I didn't put Number 4 on this one but…

Manager Burke: Yes.

Chair Banks: Yeah.

Attorney Womble: Thank you, I just want to make sure that everyone knows what they're referring to.

Commissioner Krainiak: It addressed the Camden Yard and talked about the --- throughout the whole period of what they'll be doing; moving sand and trucks and the amount of trucks and stuff. There was no particular numbers given to anybody on how many loads would be out a day so it was just chartered territory at that time but the roads seemed to be a problem then and is still a problem today. And regardless if you put millings on top of it I think there needs to be a buffer. So that's one of the problems I have.

Attorney Womble: Was that the Board of Commissioners 1? That is noted as Camden Yard 4. The Planning Board is 3.

Commissioner Aydlett: And I will have to agree with Camden Yard Exhibit 3 for the application for the Special Use Permit. It was stated that there would be 12-15 loads per day, which obviously has not been.

Chair Banks: Could you cite which condition of the Special Use Permit, if there is one, that you feel like that violates? You feel like it would fall under Number 3, the aid in maintaining the upkeep of Ponderosa Road to its current conditions and the overuse of the road?

Commissioner Aydlett: Yes.

Chair Banks: Or higher volume use than originally stated by the applicant?

Attorney Womble: Are you talking about a representation?

Commissioner Aydlett: Or Condition 5.

Chair Banks: Madam Attorney, is it accurate if the Special Use Permit was issued in 2017 and mining operations were not begun within two years, that is a valid legal argument? Am I allowed to ask you that?

Attorney Womble: So I believe that that would be a contested fact that the Board would have to resolve in regards to when mining operations began. I think it's undisputed that the permit was issued in 2017. I think it's undisputed that B&M started operating the sand mine in 2024. And I don't want to misstate the month. I want to say September, November; in the fall of 2024. Is that a fair representation?

Attorney Cauley: October.

Attorney Womble: October, okay. I just want to misstate…

Chair Banks: Sure.

Attorney Womble: …what all the testimony was. And the argument before you from counsel, multiple counsel, is that Mr. Oakley contends that the activities that were testified to prior to 2024 are not mining activities and don't qualify. Mr. Cauley contends that the activities that they testified to qualify. It is on the Board to recall the testimony about those facts and determine…make a determination about the disputed facts. And that is whether mining started before or after. It is a legally true statement that a Special Use Permit, and this is all, general, not directed to B&M or any other entity; but it is a true legal statement that a Special Use Permit does expire if the activity under the permit is not taken within two years. You are faced with a disputed fact of whether that activity occurred here. And I cannot answer that question.

Chair Banks: Okay. Condition Number 7, applicant shall install a 6-foot wooden fence along the property line of property now or formerly owned by Rosenberger and Roberts. Property owners shall be responsible for the maintenance of the fence. You know I don't see…I have not seen evidence of a wooden fence constructed along the property line or even considered south of the property line within the easement, if applicable. I'll continue with Condition Number 8; the applicant shall cause to be created and maintained an 8-foot wide vegetated buffer immediately south of the fence. Such buffer shall include trees…I'm not going to continue reading that. It's in the…in the packet and submitted. There's been no evidence of a buffer being created or taking any efforts to acquire more property in order to establish a buffer. Item Number 9, the applicant shall install 10 mile an hour speed limit…I don't think there's been any debate whether the 10 mile an hour speed limit sign exists at the point required. There has been debate about whether that speed has been monitored or abided by. Geofencing on the trucks should provide data to counteract any claims of excess speed but I don't recall seeing any actual evidence on dates that were provided by Mr. Wickens or his attorney about dates where the speed was in question. I do not remember…no one specially trained with speed monitoring equipment but also no evidence of rebuttal on the days in question from geofencing data.

Commissioner White: Mr. Chair, I'd like to make a motion. With everything being said and I agree with everything that we've been over. I want to make a motion to deny the UDO 2025-12-336, the Major Amendment of Special Use Permit 2016-08-10, an order granting a Special Use Permit from Mining Operations to B&M Investment of North Carolina, LLC, 399 Ponderosa Road. The motion is because 7 and 8 has not been met as you've said. The UDO Permit had two years to comply. I still think that they should have complied and have not. There is plenty of evidence shown here in front of us so that is my motion.

Chair Banks: Could you say that…I hate to ask you to read that or say that one more time. Was your motion to deny the amendment or…?

Chair Banks: The Special Use Permit; to deny.

Attorney Womble: So let me just ask for some clarification. So you have two options before you and that is to…you can make a motion to deny the amendment first but you still have to…the Board will still have to address the revocation application.

Commissioner White: I'm sorry.

Attorney Womble: So which is fine if you want to go that route. But you have two matters before you and just based on the…because you are moving to deny the modification…you can stick with that motion and the Board can vote on that or you can address the other one first.

Commissioner White: Let me rescind that motion. I'll rescind that one and let me make the motion to…the motion to approve UDO 2025-11-227, the revocation of the Special Use Permit 2016-08-10, an order granting a Special Use Permit for Mining Operations to B&M Investments of North Carolina, LLC, 399 Ponderosa Drive due to the conditions of the Special Use Permit not being met for Camden County Unified Development Ordinance, Article 151.9.8.5.D.1 and other applicable laws. And that is due to 7 and 8 not being done. Also, use of the permit wasn't the two years complied and the permit had expired. And that's my first motion. I got ahead of myself.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks: Motion carries.

Attorney Womble: You will still need to address the second one.

Commissioner White: Okay. Then I make a motion to deny UDO 2025-12-336, the Major Amendment of the Special Use Permit 2016-08-10, an order granting a Special Use Permit for Mining Operations to B&M Investments of North Carolina, LLC, 399 Ponderosa Drive.

Chair Banks: I have a motion on the floor. Is there any discussion?

Commissioner Krainiak: They can reapply for mining operations at another day?

Attorney Womble: So the motion to deny the modification, now that you've voted to revoke the permit means then there's not a permit to modify. But there's nothing prohibiting a application to…nothing in the Board's action is prohibiting a applicant from reapplying for a Special Use Permit for a sand mining operation at that location or any other properly-zoned location where sand mine operations are permitted.

Commissioner Krainiak: Okay, thank you.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks: Motion carries. If there is no further discussion I will entertain a motion to adjourn.

Commissioner White: Motion.

Attorney Womble: Just really briefly, procedurally I will need to prepare an order from the hearing tonight. Because it's quasi-judicial, I will circulate that written order to the attorneys for comment. Ideally, we'll be able to agree on a version and if we're unable to agree on a version I will have to bring it back to you to resolve the disputed items and then ultimately submit it to you for signature. If we are able to agree on order then I will be able to submit it to the Chair for signature.

Chair Banks: Thank you.

Attorney Womble: And so now you can accept that motion. I apologize.

RESULT:	**PASSED [UNANIMOUS]**
MOVER:	Tiffney White
AYES:	Jason Banks, Troy Leary, Randy Krainiak, Sissy Aydlett, Tiffney White

Chair Banks: We're adjourned.

There being no further matters for discussion, Chair Banks adjourned the meeting at 10:43 PM.