

ESSEX COUNTY BOARD OF ZONING APPEALS  
MEETING OF June 29, 2023, AT 7:00 P.M.  
109 CROSS STREET  
TAPPAHANNOCK, VIRGINIA 22560  
MINUTES

**Present:**

Steven Laffoon –Chairman  
Stephen Walters  
Gamaliel Rose  
Ned Stephenson  
Edward Haile

**Also Present:**

Kelly McKnight – Planning and Zoning Office Manager  
Rob Hodges - Planning and Zoning Administrator  
Max Hlavin – County Attorney

**Absent**

**Call to Order**

Chairman Laffoon called the June 29, 2023, meeting of the Essex County Board of Zoning Appeals to order.

**Roll Call**

Ms. McKnight called the roll. A quorum was met.

**Approval of Minutes**

Chairman Laffoon stated they needed to revisit and approve the minutes from April 27, 2023. Mr. Stephenson made the motion to approve the minutes as presented. Mr. Rose seconded the motion  
AYES: 5 NAYES: 0 ABSENT: 0

Chairman Laffoon asked about the May 25, 2023, minutes. Mr. Rose made a motion to approve the minutes as presented. Mr. Stephenson seconded the motion. AYES: 5 NAYES: 0 ABSENT: 0

**Public Comments**

None.

**Public Hearings**

None

## **New Business**

Zoning Administrative Appeal: Final Site Plan, Lots 8 and 9, LaGrange Industrial Park, Central Magisterial District. Applicants: Jeffrey L. Howeth, Dawn M. Howeth, and J.L. Howeth, PC, by Jeffrey L. Howeth President.

Mr. Hlavin stated that if there is an appeal for a zoning decision the zoning administrator supplies the basis of their decision. Then the Appellant has the burden of proof to rebut that by preponderance. He is happy to defer to Mr. Howeth if he would like to put in his case first but the normal procedure is to have the zoning administrator give their basis and then allow the appellant.

Mr. Hlavin is here on behalf of the County, A.K.A. the Zoning Administrator. He is going to have Mr. Hodges come up and introduce some brief evidence to have it before you. They are not going to be putting very much in front of you just the request and the letter in response from Mr. Hodges.

Mr. Hlavin asked Mr. Hodges if this was an accurate and true copy of the letter received from Mr. Howeth.

Mr. Hodges stated yes it is an accurate and true copy of the letter received dated May 5.

**J. L. Howeth P.C.**  
*Consulting Engineering and Land Surveying*  
*By Appointment Only At All Offices*

1019 Elm Street  
Tappahannock, Virginia 22560  
804-443-6367

9408 King's Highway  
King George, Virginia 22485  
540-775-5585

2833 Cople Highway  
Montross, Virginia 22520  
804-493-9066 / 804-493-1333

May 5, 2023

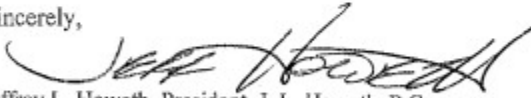
Mr. Robert Hodges, Zoning Administrator  
Essex County  
202 South Church Lane  
Tappahannock, Virginia 22560

Dear Mr. Hodges:

I am in receipt of your letter dated April 21, 2023 confirming that my interpretation of your effective date as becoming the Zoning Administrator, Subdivision Agent and Plats Officer is incorrect. Therefore, please accept the enclosed appeal to the Essex County Board of Zoning Appeals and associated fee as my appeal of a Zoning Administrator's interpretation as you are currently the Zoning Administrator of Essex County. Furthermore, as a FOIA requirement of this appeal, please provide me with a copy of the Board of Supervisor's resolution which approved you as the Zoning Administrator, et al and a copy of the employment agreement and duty discussions as the resolution's "nunc pro tunc" clause cannot be enforced unless the action taken was certified in writing at the time you were hired. If no documents can be produced to validate your position and granting of powers commensurate with the position duties at your time of hire, then I request that you re-evaluate your decision on this matter. Also, please do not claim that these actions are personnel related and protected from FOIA as I hardly believe that the appointment of a Zoning Administrator, Subdivision Agent and Plats Officer would be afforded this protection from the citizens that you would serve, which is why a Board of Supervisor's resolution is required for this action.

Thank you in advance for your consideration in this matter and please let me know when you have scheduled the meeting in accordance with the Code of Virginia timelines. We do not want a repeat of Essex County's failure to observe my due process rights as was done with my last appeal to the Essex County Board of Zoning Appeals.

Sincerely,



Jeffrey L. Howeth, President, J. L. Howeth, P.C.  
Virginia Licensed Professional Engineer  
Virginia Licensed Land Surveyor  
Nationally Certified Floodplain Manager  
Virginia Dual Combined Administrator ES&C and SWM

Mr. Hlavin asked Mr. Hodges if that was an accurate and true copy of his response.

Mr. Hodges stated yes it is an accurate and true copy of his response dated 21 April.

**Robert Hodges  
Planning & Zoning Administrator  
Plats Officer/Subdivision Agent**

202 South Church Lane  
P.O. Box 549  
Tappahannock, Virginia 22560  
(804) 443-4329  
www.essex-virginia.org



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April 21, 2023

J. L. Howeth  
1019 Elm Street  
Tappahannock, VA 22560

Re: Inquiry Regarding Review of Site Development Plan, Lots 8 and 9 LaGrange Industrial Park

Mr. Howeth:

Thank you for your inquiry. Your interpretation is not confirmed. The May 25, 2022 comment letter stands and identifies the deficiencies of the site plan submission titled "Final Site Plan Lots 8 and 9 LaGrange Industrial Park." Of course, the County welcomes a resubmission that includes the elements required by the Essex County Zoning Ordinance. Upon resubmission, the County will be happy to review further for compliance with the ordinance.

Robert Hodges  
Essex County Planning and Zoning Administrator  
Plats Officer/ Subdivision Agent

Mr. Hlavin stated that ordinarily in an appeal or a zoning administrator decision any sort of issue within the purview of the zoning ordinance you would be presented with considerably more factual based evidence to justify the decision. This letter issued by Mr. Hodges as zoning administrator is not an appealable decision. Things that can be appealed to the Board of Zoning Appeals are only those decisions that are related to the administration and enforcement of the zoning ordinance or zoning laws. Mr. Howeth requested that Mr. Hodges essentially confirm his interpretation of the State Code provision that would in his position deem a site plan having been approved. That is really only in the proper scope of the Circuit Court. Additionally, any issues with a Board of Supervisors resolution making an appointment is not within the purview of the Board of Zoning Appeals to consider. That is all of the evidence that we are going to present. We have additional argument, and we will reserve time to

present evidence should the Board of Zoning Appeals feel that there is an issue of appeal that they want to take additional evidence and argument on. Essentially this letter limits itself to not confirming Mr. Howeth's requested interpretation of State Code. That does not rise to the level of something that is in the appellant jurisdiction of the BZA. So we would simply ask that you would find that this Board doesn't have jurisdiction to hear the appeal that has been requested by Mr. Howeth.

Mr. Howeth stated that we have an interesting situation Chairman Laffoon. He just heard the Attorney say that this is not something that you can deal with.

Chairman Laffoon stated that is what he understood.

Mr. Howeth stated that is what he understood too. That is an interesting position to take, and this is part of the reason why he showed up before you tonight. We run into these situations, we have these big ordinances, Mr. Hodges does a fine job. This is not an attack on Mr. Hodges, he likes Rob Hodges. He thinks he is doing a decent job. We do have procedures and citizens do have rights, so he stands here tonight. The question that he brought tonight, and he is going to give the facts, he paid \$400 to be here so he is going to use up some time. He turned in a site plan and you all have a copy of it, and he gets some site plan comments back. He got 2 ½ pages of comments back. They just had one come before the board that is two lots over, which is Mike Parker and David Stokes main lot, where there was a site plan turned in. He asked if they had a copy of that site plan.

Mr. Hlavin stated that for the record he objects any this to be relevant to the appeal.

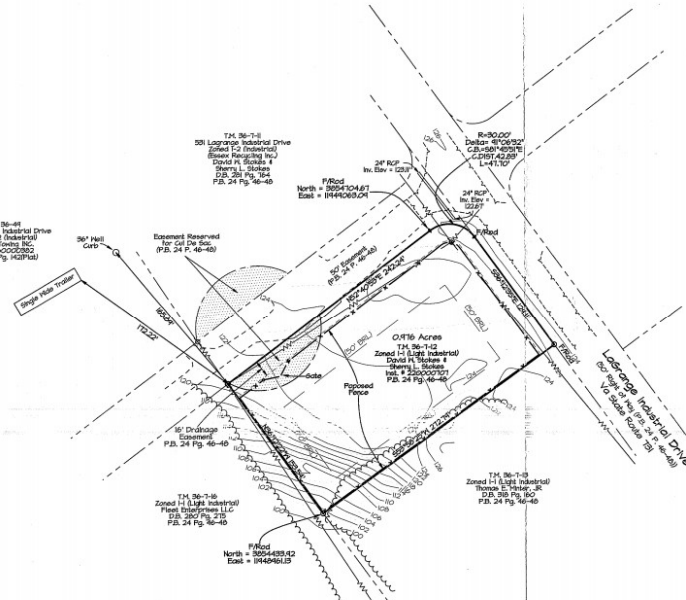
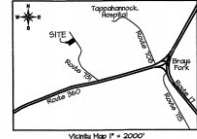
Mr. Howeth stated he was going to keep going, he will appeal that objection later. He showed the site plan that is for Lot 12. He explained that Lots 8 and 9 are all the way at the end of the cul-de-sac, Mike Paker owned lot 10, David Stokes has 11 which is Essex Recycling and then there is Lot 12. This is the site plan that was turned in. There were no comments on that site plan.



**Site Impervious Area Summary**

Total Area of Property = 42220 Sq. Ft. = 0.976 Acres  
Total Driveway/Overlance (LOD) Area = 0 Sq. Ft. = 0.000 Acres  
**Area Impervious**  
Existing Building Removed Remaining Proposed  
221 Sq. Ft. 0 Sq. Ft. 221 Sq. Ft. 0 Sq. Ft.  
Total Impervious Construction = 221 Sq. Ft.

**Boundary & Site Plan Survey for Tax Map 96-7 Parcel 12 LaGrange Farm Industrial Park in Central Magisterial District Essex County, Virginia**



**Property Detail**

Tax ID No. Tax Map 96 (70), Parcel 12  
Owner(s) David H. Stokes Sherry L. Stokes  
Zoning H Light Industrial  
Ownership Int. # 220000707 P.B. 24 Pg. 46-46  
Address Essex Heights Inc. 598 LaGrange Industrial Drive Topsham, VA 22660

**Notes**

- 1. All Lines Represented by Dashed Description, Adjoining Plats, and Factual Physical Evidence at Year of Finality.
- 2. This Survey was Performed without the Benefit of a Title Report.
- 3. The Map does not represent a correct Field Survey.
- 4. Horizontal Datum = Virginia State Plane NAD83
- 5. Vertical Datum = NAVD83
- 6. Contour Interval = 1'
- 7. The parcel of land is located in Flood Zone X (unshaded area)
- 8. The parcel of the 0.176 acre change field plat, as shown on P. 1, R. H. Company Field Plat No. 3005/0166 Effective date of October, 2021

**Purpose of Site**

- 1. It is the intent to rezone this property T.M. 96 (70) 12 for the sole use of storing and loading vehicles that are existing to be processed for recycling.

**Development**

- 1. This property will not require any excavation, grading, or any other kind of clearing or soil disturbance during the preparation period of the storage facility. Any soil disturbance shall during the development of this project first be corrected for positive drainage, seeded, and mulched.
- 2. Development of the property will require the installation of a suitable drainage system, which shall be at least 18" in height.
- 3. This proposal shows no adverse effects to adjacent parcels, and shall not impact on the existing school system, refuse system, ground water, wells, or any other community services that are in existence in the Essex Heights, Inc. facilities.
- 4. No drainage features will be identified or delineated for the creation or throughout use of the site and property.

**Order of Development and Conditions of Use**

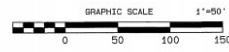
- 1. Clear all brush and all required local utility and water lines.
- 2. Aerial Survey.
- 3. Install existing privacy fence will be erected no later than the location of the property.
- 4. Please Note that any soil disturbances during the installation of the fence will be corrected for positive drainage, seeded, and mulched.
- 5. Vehicles will be placed on the lot within the bounds of the lot. All vehicles will be stacked and/or stored in any environmentally harmful chemicals and properly disposed of before being placed on the lot. All chemicals will be disposed of at currently standard practices of Essex Recycling, Inc.
- 6. Vehicles will be stored on the site for a period of no longer than 48 hours and no more than five vehicles at a time.
- 7. Vehicles leaving the lot will be processed, prepared, and loaded ready to be shipped.
- 8. All zoning requirements be shown in the State Comptroller's Office, Code, No. 307 (and on coded parcel) shall be checked by any division from the authority will not require a variance granted by the Essex County Board of Zoning Appeals.

**ESSEX COUNTY ZONING AND SUBDIVISION ORDINANCE Section 96.9B1. Junkyard.**

- (a) No illegal salvage yard, or accumulative junkyard or grower shall hereafter be established on any portion of its area within 50 feet of a State street, road, or highway.
- (b) No portion of the site, including required screening and setback buffers, shall be located within 50 feet of a residential district or structure containing a dwelling unit.
- (c) All such yards shall be screened effectively from view from public streets or highways, public squares, and adjacent property not residential or business districts by natural vegetation, topography or other means and shall be screened by an opaque structural fence or wall that is not less than 6 feet in height. All fences and walls shall have a uniform and discrete character and shall be properly maintained.
- (d) Impervious vehicles or parts thereof shall not be collected or stored outside the required fence or its area more than six feet in height.
- (e) The collection or storage of any material containing or contaminated with dangerous explosives, flammable, gaseous, or radioactive substances is prohibited.
- (f) Trucks, trailers, garbage cans, or containers containing or contaminated with such a material or no to allow the breeding of rats, flies, houseflies, or other disease-carrying insects and pests.



I certify that this boundary line survey is correct to the best of my knowledge and belief, subject to easements, servitudes, and covenants of record.



- Legend**
- Lot
  - - - - - Easement
  - - - - - Right of Way
  - - - - - Ditch
  - - - - - Edge of Forest
  - - - - - Edge of Wood
  - - - - - Disturbed Forest Line
  - - - - - Proposed Fence

DATE: 04/05/2023  
PN: 202304.01  
SHEET 1 OF 1  
Revised: 04/11/2023  
**resource**  
INTERNATIONAL  
P.O. Box 6180 - 6100 Chapel Drive - Ashland, VA 23005  
(804) 550-0200 - FAX (804) 550-0259

Mr. Howeth stated that he had 2 1/2 pages of comments.

**Robert Hodges  
Planning & Zoning Administrator  
Plats Officer/Subdivision Agent**

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At Large Election District

May 25, 2022

J. L. Howeth  
1019 El Street  
Tappahannock, VA 22560

Re: Review of Site Development Plan, Lots 8 and 9 LaGrange Industrial Park

Attn: Mr. Howeth:

Staff has performed a review of the site plan entitled "Final Site Plan Lots 8 and 9 LaGrange Industrial Park" prepared by J. L. Howeth, P.C., and last revised on 6 May 2022 to locate and construct a 'disassembly/repair building' and multiple 'automobile wrecking yard/open or enclosed storage junk yard(s)' on a 16.72 +/- acre property identified as Tax Parcel IDs TM 36 ((7)) Lot 8 and TM 36 ((7)) Lot 9 located at the end of LaGrange Industrial Drive, Tappahannock, Virginia.

Based upon the results of this review, the site plan is found to be incomplete with respect to the requirements of the Essex County Zoning Ordinance. Enclosure 1 outlines the missing requirements in the plan. Once a complete plan is submitted the county and appropriate state agencies will initiate reviews

Please advise if you have any questions.

Sincerely,

Robert Hodges  
Planning and Zoning Administrator

## Enclosure 1

Reference	Requirement Detail	Component(s)	Paid	Status	Note/Comments
Site Plan Review Date: 8 & 19 May 2022					
	Address:				Lots 8 & 9 LaGrange Industrial Park 36-7-8
	Tax ID(s)				36-7-9
	Zoning				M-1
	Land Disturbance less than 2500 SF		N		42,689 sq. ft. per LD permit
	LD Permit required	Y	Y		Yes
	Plan Review	Y	?		TBD
	Erosion and Sediment Control Plan	Y	?		TBD
	Multiple Parcels	Y			
	FEMA	Y			North edge lot 8, zone A; sheet 1 of 4, General Notes 3 indicates different FEMA information than sheet 4a of 4
	CBPA/RPA Buffer	Y			North edge lot 8
	Wetlands	Y			North edge lot 8
17.30-2.	A. Two (2) copies of the site plan submitted.			<b>Meets Requirement</b>	
17.30-2.	B. Drawn to scale.			<b>Meets Requirement</b>	
17.30-2.1	Name and address of the applicant, owner of the property, and the preparer of the plan.			<b>Meets Requirement</b>	
17.30-2.2	Location of the property including name of the subdivision, tax map number, and name or route number where property is located.			<b>Meets Requirement</b>	
17.30-2.3	A boundary survey of the tract, if available, or site plan limit showing north arrow and property line measurements.			<b>Meets Requirement</b>	
17.30-2.4	Location of all building restriction lines, setbacks, easements, covenant restrictions, and right-of-ways.			<b>Does Not Meet Requirement</b>	1- no easements, covenant restrictions, or right-of-ways are depicted; plan needs to indicate that none are present or depict on the plan 2- are lots being developed a single parcel or separate parcels? 3- Is 'flag' portion of lot 8 (between lots 9 and 7) a ROW or deeded easement for lot 9?
17.30-2.5	Existing zoning classification.			<b>Meets Requirement</b>	total number of sheets is 5, plan indicates 4; sheet 4a of 4 is related to sheet 2 of 4
17.30-2.6	Date, scale, and number of sheets.			<b>Marginally Meets Requirement</b>	
17.30-2.7	The location of all existing and proposed structures, including marine and temporary structures. In the case of temporary structures, the date when the structure will be removed must be indicated.			<b>Does Not Meet Requirement</b>	1- no structures indicated for lot 8
17.30-2.8	The location and extent of all wooded areas before development; the proposed area of clearing, with indication of post-development cover.			<b>Does Not Meet Requirement</b>	3x Automobile Storage/Wrecking Yard areas are depicted for lot 8 on sheet 2 of 4; No Automobile Storage/Wrecking Yard areas are depicted for lot 8 on sheet 4a of 4. Neither sheet depicts the limits of clearing necessary for the proposed use
17.30-2.9	Computations shall include the total site area in acres, the approximate amount and percentage of the site to be covered by open space, and the amount and percentage to be covered by impervious surface after development.			<b>Does Not Meet Requirement</b>	approximate amount and percentage of the site to be covered by open space, and the amount and percentage to be covered by impervious surface after development. The acreage information provided is not specific to lot 8 or 9



## Enclosure 1

Reference	Requirement Detail	Component(s)	Paid	Status	Note/Comments
17.30-2.10	The locations of all existing and proposed septic tanks and drain field sites including reserve sites; the location of all existing and proposed wells.			<b>Does Not Meet Requirement</b>	1- does NOT depict primary and reserve septic areas 2- does NOT depict location of well
17.30-2.11	The location of all existing and proposed easements for roads, overhead and underground utilities, drainage, or other easements which may exist or are proposed on the property.			<b>Does Not Meet Requirement</b>	no drainage depicted for lot 8
17.30-2.12	The location of proposed access and location of all curb cuts as approved by the Virginia Department of Transportation demonstrating efforts made to control access and minimize impacts to through traffic on adjacent routes.			<b>Meets Requirement</b>	
17.30-2.13	The location and layout of any driveways or parking areas, or any other paved or graveled areas.			<b>Does Not Meet Requirement</b>	existing parking areas and/ or proposed proposed parking areas not depicted on either lot
17.30-2.14	The shortest distances from all property lines to all existing and proposed structures.			<b>Does Not Meet Requirement</b>	not listed
17.30-2.15	The approximate limit of all Resource Protection Area features and any additional required buffer areas if an environmental assessment is not submitted.			<b>Meets Requirement</b>	
17.30-2.16	The approximate limit of the 100-year floodplain.			<b>Meets Requirement</b>	
17.30-2.17	Included with the site plan shall be documentation of all existing permits and applications relevant to the parcel, including, but not limited to: Health Department permits for all wells and septic drain fields; all existing zoning permits and zoning applications; applications for rezoning, special use and conditional use permits, and zoning variances and evidence of all wetlands permits required by Federal, State, and local laws and regulations applicable to the site, lot or parcel.			<b>Does Not Meet Requirement</b>	1- missing VDH septic and well permits 2-missing VDOT commercial entrance permit

Enclosure 1

Reference	Requirement Detail	Component(s)	Paid	Status	Note/Comments
	Additional Comments				1 - Erosion and sediment control narrative references the lots are in Town of Tappahannock 2 - missing Sediment Trap on lot 8 3 - not clear if 'repair' use is limited to vehicle scrapping/junk or includes other vehicle repair or retail, such as vehicle or parts sales 4 - parking areas are not indicated on either lot 8 or 9; is parking only required for tow trucks or something different? 5 - plans need to show all structures, parking, vehicle storage areas, details on treatment of surfaces for parking and vehicle storage areas, including junk vehicle areas; 6 -Details of landscaping, fencing and/ or screening not provided 7- sheet 2 of 2 & sheet 4a of 4 do NOT depict the adjoining property west of lots 8 & 9

Mr. Howeth struggles with is that he feels he had a better site plan than Mr. Stokes. He felt he met a little more of the law, a little more of what needed to be done by code.

Mr. Hlavin stated again he objects to any of these documents being relevant to the appeal.

Mr. Howeth stated he has a site plan and he gets a little bit different treatment then with the other site plan does. So we go along and here is where the course of the night goes. Mr. Hodges was hired on January 18, 2022 it states halfway down the page on the resolution *nunc pro tunc* an interesting Latin phrase that we will get to later. So he is hired in January, but our County Code actually says in the new adopted code 36.16.a 'Zoning Administrator shall be appointed by the Board of Supervisors.' So he is hired by Mr. Lombardo, who at the time was the person that was hired everybody. So he is hired in January but they don't actually do the resolution until the 13<sup>th</sup> of December. Almost a whole year went by. The real interesting question is if the Board of Supervisors by our own code has to appoint him was he actually the zoning administrator through that entire year. The reason why this becomes important is because the Code of Virginia 15.2-2259 actually states that if he turns in a site plan the County has 60 days to properly respond to him but using the proper person. Which would be the zoning administrator in this case. If he was not the zoning administrator at the time, then he didn't get a proper response and the 60 days timed out, therefore that site plan theoretically approved itself. When he asked Mr. Hodges, and that is your first letter, the letter that he sent that the attorney gave you. He asked him if he would confirm that he was not and the 60 days went by and we had the resolution, we knew the dates. He would not confirm that he stated he was so he disagreed with his decision. Our County code says that he come here to the Board of Zoning Appeals and plead his case because that is the decision of the zoning administrator. The most important part of that is that, Sans Anderson, Mr. Hlavin's parent firm has clearly stated on record many times that you need to exhaust all of your administrative appeal processes before you are allowed to go into that circuit court. So he is here tonight, he paid his money, filed his application, you guys were nice enough to come out to hear him, but he is filing his appeal process. You can validate that Mr. Hodges was the Zoning Administrator at the time, you can validate

that he was not. He has met his requirement because he showed up here before you. Max is objecting like crazy to everything he is doing and that is fine and he will make a couple of comments. If you read that resolution, we are now going to talk about *nunc pro tunc*, in that resolution, Max's firm, wrote ' Be it further resolved that such appointment shall be *nunc pro tunc* January 18, 2022, the date of his hire as the Director of Planning & Zoning for Essex County, Virginia and the Board of Supervisors hereby ratifies the actions taken by Rob Hodges as the Zoning Administrator and Subdivision Agent (Plats Officer) of Essex County, Virginia since January 18, 2022.' It was adopted in December 2022. *Nunc pro tunc* is a Latin phrase that attorneys use that means 'then for now'. So the real question of the matter is can they use that phrase? If you do some research on it, here from the North Carolina School of Law, it says no more *nunc pro tunc* in civil cases. Let's explain so everyone knows what this means. *Nunc pro tunc* is an item that is court ordered, it is designed to set the record straight. The classic example is a man gets a divorce from his loving wife and he goes through the court system and the divorce is actually ordered and decreed. It is properly done but somebody forgets to write it down. Then that man goes and marries another woman, without that divorce being written down and properly documented that he was divorced from that woman before he married the other woman he has a little problem on his hands in most states. So *nunc pro tunc* is usually a item that straightens up chronology with clerks and judges. Can *nunc pro tunc* actually be used to make a zoning administrator retroactive and of course if it can, can it be used to make a tax retroactive, can it be used to make anything retroactive? If the pure definition of *nunc pro tunc* says you can do it as long as the action was taken when it was contemplated and you can prove that, he has FOIA Mr. Hodges asking for every piece of information saying they made you the zoning administrator the day he was hired, he has gotten nothing. Hopefully Max has something. He has been given nothing under a FOIA, so he has to assume since the time frame is out that it doesn't exist. So we don't have those functions. The interesting part of all of this, of course this is the part he loves it when they get up and object. You are asking, he shouldn't do this but he is going to, you are asking the man whose firm wrote the resolution if he did anything wrong? What do you think his answer is going to be? He, right now in this room, represents you guys. He represents that man right there.

Mr. Hlavin stated as a point of clarification he does not represent the BZA. The BZA is totally separate from the County. He represents the County and the Zoning Administrator.

Mr. Howeth asked Mr. Laffoon who represents them in these legal matters? This is a tough one. He is the Chairman of the Wetlands board and had a case that implicated the prior building official. He asked this County and it's Supervisors for independent council because it was Sans Anderson who was representing the old building official. He was told he would get what he gets. He is assuming you will be told the same thing so that might be the man that represents you. This is where we are, this is not an easy case to what's there. The only other comment that he has here tonight is, he thinks those documents and those comments stand for themselves, he thinks most of them know how long he has been here and what projects he has worked on. The only other comment he has, and then he will stop and let Max take off with it, he printed a section 15.2.2308.1 Board of Zoning Appeals *ex parte* communications and he would trust because he was delivered no documents ever of anything that the County said, any position that they took, he would assume that none exist. Only you gentleman would know if anything was said that he wasn't made privy to.

Chairman Laffoon stated the only thing that he has been given, and he is sure it is what has been given to everybody, is the correspondence between you and Mr. Hodges.

Mr. Howeth stated fair enough. He has given you and will leave a full set of copies what he has given you so they can be put into the record. He does want them to understand that this is the type of situation, he is probably not considered the average citizen here because of the functions that he does, but this makes it really hard for an average citizen to deal with it's government. We write the books down but all of sudden things we write in the books don't come true. It makes it very difficult, and you would imagine a guy that doesn't have his background trying to hold this off or defend himself that would be an absolute joke.

Chairman Laffoon asked if before he was given all of this was he acting as the Zoning Administrator? If so as an acting zoning administrator wouldn't he have all the authority and everything that goes with that as acting, temporary or otherwise, because that would be the position that he is in?

Mr. Howeth stated that the County Code that we just adopted that mimics the old one says the Board has to appoint the Zoning Administrator.

Chairman Laffoon stated that is for the permanent one but for a temporary fill-in as acting then wouldn't he have the same authority?

Mr. Howeth stated that he asked for any documentation that would prove to him as such. It is a very good question, very fair question. He has asked for any documentation that makes him such. Let's be careful what you are asking because he paid his money and has the right to appeal the Zoning Administrator's decision. It doesn't say he has the right to appeal an acting Zoning Administrator's decision. We need to follow what the rules are. We don't do this with the Building Official. When the Building Official comes we make him the Building Official and he is the guy because he has lots of power. Mr. Hodges has a substantial amount of power as well as a Zoning Administrator don't the citizens have the right to know who that Zoning Administrator is if they want to do an appeal. We are 25 minutes in to an appeal and you all probably have not seen an appeal in years of a zoning administrator's decision. This is a difficult process. So does an Acting Zoning Administrator have the same power as a Zoning Administrator? Where did we declare him acting?

Mr. Walters stated in the Minutes of the January meeting when you brought this up. In the January 13<sup>th</sup> 2022 meeting when you first came to us with the plan for 8 and 9. You were asking for a change to the setback. When that came up, at that point in time Mr. Nuckols was the Acting Administrator and he stated in that meeting and it is in the minutes that Mr. Hodges is taking over as Acting Administrator going forward. So at that point in time it is public record that he is the acting administrator.

Mr. Rose stated so the absence of evidence in a FOIA is not evidence of absence because you have the record that show it.

Mr. Walters stated that this came from the public minutes on the 13<sup>th</sup>.

Mr. Howeth raised an interesting question to Mr. Walters Who made Bart Nuckols the Acting Zoning Administrator? Do you have that record?

Mr. Walters stated no but that's not our problem.

Mr. Howeth stated he asked for a copy of the records.

Mr. Walters stated that they serve at the pleasure of the Board of Supervisors.

Mr. Hlavin stated he appreciates the boards curiosity. It is really not relevant to the jurisdiction of the BZA. He appreciates the curiosity, he will let them discuss *ad nauseum*, but it is not relevant to what the appellants jurisdiction of the BZA on a decision of the Zoning Administrator is really on something that is in the administration and enforcement of the Zoning ordinance or the zoning laws of which a Board of Supervisors action appointing and a claim to Circuit Court are not those two things.

Mr. Rose asked if they could provide the citation for the vacation of *nunc pro tunc* that you mentioned? Can you give us the date on that, where that was vacated? Mr. Howeth had mentioned that the *nunc pro tunc* provision.

Mr. Howeth stated that is probably a better question for Max but *nunc pro tunc*, this is an opinion from UNC law. He has a copy of what is in Blacks Law dictionary which is usually one of the standards.

Mr. Rose stated he understands the concept but Mr. Howeth mentioned in his presentation on *nunc pro tunc* a document which vacated the concept in Virginia.

Mr. Howeth stated that document is called 'On the Civil Side A UNC School of Government Blog No More *Nunc pro Tunc* in Civil Cases. He does not think that Virginia has actually struck it because utilizing the divorce example you do not want to take it out of the bag to what is there but is it appropriate. The whole fundamental basis is that the act happened when you said it did back in January there is no proof that the act happened to what is there. So, we can't go 12 months in advance and say 'I'm going to use this Latin phrase to say that the act happened when there is no evidence that the act happened.

## No More Nunc Pro Tunc in Civil Cases?

*Nunc pro tunc* is a phrase used in an order or judgment when the court wants the order or judgment to be effective as of a date in the past rather than on the date the judgment or order is entered into the court record. Black's Law Dictionary defines the term "*nunc pro tunc*" to mean "now for then; [a term signifying] 'a thing is now done which should have been done on the specified date.'" Recent cases from the North Carolina Court of Appeals have made it clear that *nunc pro tunc* is a tool available only in extremely limited circumstances.

### Judgment/Order Must Have Been Decreed or Signed in the Past

In Whitworth v. Whitworth, 222 NC App 771 (2012), the court of appeals reminded us that *nunc pro tunc* only can be used if an order actually was "decreed or signed" on the date in the past. Because *nunc pro tunc* is a tool to correct the court record to reflect an event that actually occurred in the past, it cannot be used to give an order retroactive effect when the order was not in fact entered in the past.

The trial court in Whitworth entered an equitable distribution judgment in a case involving a marital corporation. At some point during the equitable distribution proceeding, the marital corporation filed a motion to intervene. The trial court indicated on the record that it would sign an order allowing intervention but a written order was not signed. Several years after the final equitable distribution judgment was entered, the court signed a written consent order granting the corporation's motion to intervene *nunc pro tunc* to the date the court indicated on the record that it would allow the motion.

The court of appeals vacated the consent order, holding that *nunc pro tunc* can be used only if the trial court determines:

1. An order/judgment *actually was decreed or signed* on the date in the past;
2. The order/judgment was not entered on the record due to accident, mistake, or neglect of the clerk; **and**
3. No prejudice will result if the order is entered *nunc pro tunc*.

The order allowing intervention in Whitworth clearly had not been signed in the past. So what does "actually decreed" mean? The court does not explain but held that the intervention order had not been actually decreed in this case because:

- "...any rendition in open court did not precisely set out the trial court's order on the motion to intervene. ...the court merely stated [that it would sign an order if one was presented by the attorney.]
- Thus, the trial court made no oral findings of fact, although the written order contained specific findings. ...

Mr. Rose stated that this is where Mr. Walters testimony is positive because he is saying that we have minutes/records showing that he was appointed as Acting.

Mr. Walters stated that it is recorded that from this point on, and in a public record. First, we don't have jurisdiction over any appointment of employees, we are not part of the County Government, we do not appoint the Zoning Administrator. Whether or not his appointment is valid there is not anything we can handle or adjudicate.

Mr. Haile agreed with Mr. Haile. He asked if we had anything that appointed Mr. Hodges as acting supervisor.

Mr. Rose stated the minutes.

Mr. Haile asked other than the acceptance of the position defacto on January 18<sup>th</sup>. Is there a document that states Mr. Hodges will be henceforth Acting in this capacity.

Mr. Howeth stated that no and we don't have one for Mr. Nuckols either who supposedly passed the torch of acting onto Mr. Hodges.

Mr. Haile stated that this board has no authority over appointing Mr. Hodges. So it seems that we need to turn this over to the Board of Supervisors or the Circuit Court. He has no authority to grant or deny Mr. Hodges authority.

Mr. Rose stated he would move to go with Max's argument that this is for Circuit Court.

Mr. Haile stated this is a technical point and is probably well taken. He doesn't think that this board can handle that.

Mr. Howeth stated that is a probably a fair assumption so with that being said if you choose to just simply validate Mr. Hodges opinion then I have jumped the hurdle of going through the BZA. It doesn't matter which answer, he has jumped the hurdle which allows me to move on forward to Circuit Court because as most of you are aware he actually has a suit pending. This will get appended to that suit.

Chairman Laffoon asked if there is a motion.

Mr. Rose made the motion.

Mr. Haile asked if they were going to hear tonight that *nunc pro tunc* is valid in Virginia?

Mr. Howeth stated that he is going to simply say their firm wrote that and guided this County, right, wrong or indifferent, that is what somebody is going to decide. He does not think it is the BZA .

Mr. Hlavin stated on the point of Mr. Howeth saying this is a complex matter. For the purposes of the Board of Zoning Appeals it really is not. It couldn't be any simpler, just because you ask a question of the Zoning Administrator doesn't mean it is an appealable decision in the jurisdiction of the BZA to hear an appeal. This letter issued by Mr. Hodges pretty well represents that. Him stating he can't, he doesn't have the authority to confirm your interpretation of state code or his appointment is not a decision appealable to this body. If it feels like an odd procedure before you. That's why it feels like an odd procedure before you because it is not within your jurisdiction. Mr. Howeth can petition the Circuit Court under the statue that he sites. There are limitations to any deemed approved, he can battle those

out in Circuit Court should he wish to. But they will not deem a deficient site plan to be approved and there are lots of issues there. To address the actual issue before the Board of Zoning Appeals, the Zoning Administrator and the County would ask that you make a ruling that the Board does not have jurisdiction to hear the appeal filed by Mr. Howeth. That is the ruling the Zoning Administrator is requesting. As far as *nunc pro tunc* goes, this is not at all relevant to the appeal, but since you all have expressed the curiosity the 'now for then' does operate to ratify decisions of an appointee or designated person. A Zoning Administrator is only a designated person to act on behalf of the Board of Supervisors. The Board of Supervisors is the ultimate authority for the County when it comes to Zoning. Planning Commission is also a designated authority for Zoning decisions. The Board of Supervisors has the ability to ratify any decision of its designees or appointees within their delegated responsibility. The *nunc pro tunc* issue is just a red herring really as to whether or not a zoning decision has been valid due to Mr. Hodges appointment.

Mr. Walters asked about going back to the motion that was made.

Mr. Rose stated that we didn't give the Chairman the opportunity to articulate the motion.

Mr. Howeth asked about the public portion of this?

Mr. Hlavin stated that usually on an appeal of a determination there is no public hearing. There is a publicly noticed hearing before the BZA but there is not a public hearing component. If it was advertised as a public hearing there is nothing wrong with opening it for comment but it is not really relevant to the decision that you will make.

Mr. Walters asked to clarify the site plan is not under consideration in this meeting? All we are considering is Mr. Howeth's questioning of the authority of Mr. Hodges to act as Zoning Administrator.

Mr. Rose stated that is very important clarification because it wasn't clear initially that we weren't just to whether we could ever hear a zoning appeal or an appeal of a decision which we don't want to concede.

Mr. Walters stated of course not and we don't want to have peoples expectations that in having this hearing and especially if we are going to have public comment that we are considering this plan at this point because it hasn't been presented to us as something that needs their action to make it fit into the zoning or needs variances for them to execute.

Mr. Hlavin stated that is correct and the basis of his objections on the relevance to the appeal. Not that he has any objection to the plans themselves in any other context just that they are not relevant to your consideration of the appeal.

Chairman Laffoon stated this is a little different territory than we normally have. We do or do not need a public comment period?

Mr. Hlavin stated that there is a requirement that there be a notice for the hearing but there is not customarily a public hearing on an appeal. There is a hearing that has taken place that allows for the appellant to make their case and the Zoning Administrator to justify their decision but there is not a traditional public hearing.



Chairman Laffoon asked for a motion that we dismiss this as it is out of our purview. In other words we don't have any authority to actually rule in this.

Mr. Rose stated that it is rather funny as Mr. Howeth correctly asserts. They are being asked to apine on our incompetence to apine on a letter in defense of a man who is responsible for the matter in question. So it is awfully convoluted in sort of responsibility, nevertheless it does seem to resolve to a very simple question. If there is a question about the authority of Rob Hodges prior to his actual official appointment it would certainly not be our question. He would assume it would go to the court that appointed us which would be the Circuit Court.

Mr. Haile stated we should acknowledge that we have heard Mr. Howeth's appeal on behalf of his people and we have to say we don't have the authority to act on his appeal but acknowledge that he made one. It is apparently important for tonight for his purposes, this is step one.

Mr. Howeth stated this would be in interesting question, and since Mr. Hlavin is going to represent the County and it looked like he became your attorney for split second. So he asked Mr. Hlavin if he met the criteria of going through the hoops or are you going to stand up at some later date and say Mr. Howeth didn't get a decision from the Board? Because he would say to go ahead and support Mr. Hodges decision, then he gets a decision and can move on to Circuit Court. He would like Mr. Hlavin to answer, if he would, but is he going to stand up and a later date and argue, well you didn't go through, because he has already done that in other cases with this County, it didn't go through the entire appeal process so you don't have the right to be in Circuit Court. The dismissal of this case certainly leaves that, in his mind, wide open. As you have noticed, he did not bring an attorney tonight. Mr. Hlavin started with you. He was under the impression Mr. Hlavin was just going to sit back and watch, we see that didn't pan out. He would prefer, if you don't mind, since he did spend his \$400 here and they won't be giving it back, that you would make a motion to support Mr. Hodges or confirm his decision that he was Zoning Administrator. That doesn't hurt his feelings at all.

Mr. Walters stated that is not their jurisdiction.

Mr. Haile stated they don't have the authority.

Mr. Howeth stated that his \$400 is gone, its all wiped away. He has to go now, he and all other citizens who get pinched, has to go and spend a pile of money battling in Circuit Court. That is probably where we are in the capitalistic society that we are in. Obviously we end up where we are going to end up. He put on what he thought was a reasonable set of facts to get us to where we were and if we were not going to do this how come he wasn't told this when he filed the appeal? Why are you gentleman here if this couldn't be done? He does not know the answer.

Mr. Rose stated that he thinks he knows and it is very easy, although he sympathizes very much with your position. It is simply that they are appointed by the Circuit Court and so is Mr. Hodges and we are spokes on the same hub but we are not the hub.

Mr. Howeth stated that you are appointed by the Circuit Court but the reason that there is an appeal process is, this is where the whole thing gets skewed a little bit on the County side. You have team County, the BZA is appointed by the Circuit Court but Mr. Hodges is who the appeal is on. If we always agree with the zoning man then why would anybody want to come here? What is the purpose of being here? If we are always going to support the County decision, the sole reason why a citizen appeals a

zoning administrators decision is he disagrees with it. He has the right to stand in front of you gentleman with as much realism as possible and plead his case. Now you may not be able to help them, he thinks they are going to find out in just a few minutes you won't be able to help me. It doesn't change any of their positions.

Chairman Laffoon stated that the past times that Mr. Howeth has been there they have found in his favor.

Mr. Howeth stated that he is 110% correct. You all do a wonderful job. Most of the time he is in there representing citizens. Now there are citizens in this county that we both care for. These are the people that pay our taxes, that we meet in the grocery store, that we like. Mr. Laffoon we do them a good job, we help them get through some of these sticky wickets of what we are going through. So thank you. He expects to be before them again he just ran into this. His sole point is we are not following what our rules are. You have two site plans for putting vehicles on one acre and they are so different you can't even fathom why one has 2 ½ pages of comments and the other doesn't. This is where these things start. He is going to end with, he just had a right and again he likes \$400 more than anyone else does, but he had a right to come here and say what he had to say tonight and appreciates the gentlemen for allowing him to come and say it.

Mr. Rose asked just one more time to clarify you are not appealing the prior zoning, BZA decision, you are appealing the legitimacy of Rob Hodges prior to December 2022?

Mr. Howeth stated he is not appealing any prior. He knows Mr. Walters was looking at the prior act but that's all done and gone. Everybody is happy we did exactly what we did. The sole appeal here is Rob Hodges sent me some comments on a site plan. He did not send them to a very similar site plan two lots over. That's what got it started. So he came in and appealed the decision that he is the legitimate, Board of Supervisors appointed Zoning Administrator without using some retroactive Latin phrase to try to make him so. Because if he was not the legitimate Zoning Administrator, and he had the right when it was presented to say no you are right your plan is approved go on about your business but he didn't. He was just questioning his plan but his path is to stand here tonight and try to enunciate to you all where he is. Since he didn't get his answer yet he asked Max if he had met the criteria to go into the Circuit Court without you arguing that he didn't go through the administrative process?

Mr. Hlavin stated that Mr. Howeth is too clever by half that any request to the Zoning Administrator is not appealable so you can't write a letter to Mr. Hodges saying you think the NN Burger is better than the other burgers and Mr. Hodges disagrees and then say you are going to appeal it to the BZA. That's not how it works. On the issue of 'deemed approved' Mr. Hodges as Zoning Administrator does not have the authority to deem a site plan approved per a provision of state code that allows for a Circuit Court to deem a plan approved if there has been a delinquency in review. That is only affectual to the extent that the site plan is not deficient anyway. As far as the right to petition the Circuit Court to have a site plan reviewed or deemed approved, that right exists outside of the scope of an appeal to the BZA.

Mr. Rose asked to clarify the zoning decision of the BZA is not actually what is under appeal. What Mr. Howeth is appealing is the legitimacy of the then putative Zoning Administrator, Mr. Hodges. There is no analogy between a Zoning appeal, which we would want to hear and an appeal standing before the court that appoints these positions. There is no analogy because you are asking about two different kinds of authority. On one of which we possess and the other we are completely without. With due respect to Mr. Hodges there is some blurring of categories here, probably not intentionally. The simple

fact that we would have issued a finding as a board that may or may not be appealable is not the matter before the board despite all the printouts. It is simply whether Mr. Hodges, at the time, was in good standing as the man to represent those decisions. That is not a question for this board in his opinion.

Mr. Hlavin stated he wanted address Mr. Howeth's point about why are we here tonight if the BZA does not have jurisdiction to appeal. That is not a decision for staff to make. If a citizen wants to submit an appeal to the BZA they are entitled, just as he said, to come and present their case to the BZA. That does not mean that appeal, the county has said, has jurisdiction to hear it and decide it. But it is not up to staff to take that right away from someone who wants to appeal something to the BZA.

Mr. Howeth asked if he met the legal requirements.

Mr. Hlavin stated that the legal requirements are separate from a deemed approved appeal than they are for a BZA appeal.

Mr. Howeth did he presenting here tonight, you are pushing them to not make a decision and he wants them to support Rob's decision.

Mr. Hlavin is asking the BZA to rule that it does not have jurisdiction to decide on this appeal. This is not a decision appealable to the BZA.

Mr. Rose stated to clarify you are not pushing us to approve Rob's decision you are pushing us to assert Rob's authority in the making of that decision. That is a totally different species of question.

Mr. Howeth stated to be clear the appeal is that 'I said he wasn't the Zoning Administrator so therefore the site grant approved because he did not address it within 60 days' That was the appeal. Mr. Hodges countered with 'I disagree with you.' So he answered his question.

Mr. Hlavin stated that the letter from Mr. Hodges has been introduced as evidence to you says 'I cannot confirm your interpretation' 'Your interpretation is not confirmed' Mr. Hodges cannot deem a site plan approved and Mr. Hodges cannot rule on the validity as a Zoning Administrator to the satisfaction of Mr. Howeth.

Mr. Rose asked Mr. Hlavin to tell Mr. Howeth what he wants to hear because he thinks the request is accurate.

Mr. Howeth asked if he is going to go to Circuit Court are you going to block me from going into the Circuit Court by saying he didn't follow through with the administrative process? Yes or no?

Mr. Hlavin stated he cannot anticipate what Mr. Howeth is going to put into a Circuit Court petition. The appeal right from the BZA to the Circuit Court exists on a decision if you decide you all do not have jurisdiction to hear this appeal. Which is the decision that the Zoning Administrator and the County are asking for. That can be appealed to the Circuit Court should Mr. Howeth disagree that this is a matter that is properly before the BZA for decision. Separate from that, Mr. Howeth, should he feel it is necessary rather than turning in a site plan for a property that he owns that complies with the Zoning Ordinance, he can petition to the Circuit Court to have a site plan deemed approved. That is a separate process.

Mr. Howeth stated just to clarify this is not an issue as to whether or not that site plan is approvable or not. He has not produced a site plan that is not approvable. He can get this one approved just as easy. This is a question of was that man legal and if he was how much retroactivity can we do? Can we retroactive taxes, can we retroactive other people in, can we put people here that are gone and put them back, is it even possible to do?

Mr. Hlavin stated he is glad Mr. Howeth has clarified that. Again it is not an issue within the appellant jurisdiction of the Board of Zoning.

Mr. Rose asked is it not possible for Mr. Howeth, having established and gone through this process, to go to the Circuit Court and argue that the decision made during the intermittency or illegitimacy of the early Hodges administration is vacated because it doesn't have standing because of his lack of official appointment?

Mr. Hlavin stated those are completely separate issues. He is not going to give Mr. Howeth legal advice.

Mr. Howeth stated we are probably not going to get that answer even though we have asked it several times in several ways. So what happens tonight if you just dismiss it is he is left in limbo. To attempt to battle in Circuit Court where they may say no you didn't get through your administrative appeals you are done or go back. So the better outcome, don't give him the site plan approval, he is not even going to ask for that, just validate Mr. Hodges and that means that we made a decision here to what's there. Or just let it drop and his decision will stand but don't dismiss it. That's what Max wants you to do.

Mr. Rose stated unfortunately it's the facts.

Chairman Laffoon stated we don't have the authority.

Mr. Howeth stated wouldn't it be nice to have had an independent attorney.

Mr. Stephenson stated it seems to him that we have an appellant before us and we have neither the authority to deny the appellant nor grant the appellant. It is not ours to choose. He is reluctant for this board to make any motion ruling on a matter that is not theirs to rule on.

Mr. Rose seconded the non motion.

Mr. Stephenson stated to Mr. Howeth that the record is clear tonight, abundantly clear, many times, that they are being asked to do something that is not theirs to do and therein you are referred to whatever authority is available to you to cure that. He thinks of it as no different if a man came in with a traffic ticket and asking us to rule on it. That would be silly we would tell them they were in the wrong forum. That is what we have today. For that reason he would abstain from any motion. He is not making a motion and recommending the board not make any motion.

Mr. Rose made a motion to abstain from a motion.

Mr. Hlavin stated that to secure Mr. Howeth's appeal rights from a decision of this board the proper motion were you to decide that there is not jurisdiction would be rule that the BZA does not have jurisdiction to decide Mr. Howeth's appeal. That would be an appealable decision.

Mr. Rose made the motion that we do not have the authority in the question of this appeal. Mr. Walters seconded the motion. AYES: 4 NAYES: 0 ABSTAIN: 1

Mr. Howeth thanked the Board for being there.

Mr. Stephenson stated that he thought it was good that Mr. Howeth was heard.

Mr. Howeth he thinks it is good that the citizens can be heard.

REGISTRY  
MAY 19 2023  
BY: *Opportunity* CA



**Land DEVELOPMENT & ZONING APPLICATION**

DEPARTMENT OF BUILDING & ZONING  
202 S Church Lane  
P O Box 1079  
Tappahannock, VA 22560  
(804) 443-4951  
(804) 445-8023 fax

CASE NUMBER: \_\_\_\_\_ PERMIT NUMBER: \_\_\_\_\_

**1. TYPE OF REQUEST - Check all/any that apply.**

- Rezoning: From \_\_\_\_\_ To: \_\_\_\_\_
- Site Construction Plan  Major - Name of Development: \_\_\_\_\_  
 Minor - Name of Development: \_\_\_\_\_
- Conditional Use Permit (ordinance section): \_\_\_\_\_
- Subdivision  
Types:  Minor  Family  Major  
 Boundary line adjustment/Lot Consolidation  
 Preliminary Name & Phase/Section: \_\_\_\_\_  
 Final/Record Name & Phase/Section: \_\_\_\_\_  
 Final/Record Name: \_\_\_\_\_
- Land Disturbance  Chesapeake Bay Exception
- Right-of-way Vacation  Major WQIA  Minor WQIA
- Administrative Appeal (zoning/building): *SEE ATTACHED LETTER 5/5/23*
- Zoning Variance/Special Exception: Specify ordinance section: \_\_\_\_\_
- Subdivision Variance: Specify ordinance section: \_\_\_\_\_

**Zoning Permit - GENERAL INFORMATION FOR ALL ZONING PERMITS:**

Tax Map Number: \_\_\_\_\_ Site Address: \_\_\_\_\_  
Water/Sewer Supply:  Well/Septic  Central  Public  
Existing Land Use: \_\_\_\_\_ Proposed Land Use: \_\_\_\_\_  
Proposed Building Use: \_\_\_\_\_  
 New Building  Addition  Change-in-Use/Modification  Accessory Structure

**Residential** - Zoning District: \_\_\_\_\_ Magisterial District: \_\_\_\_\_

Subdivision Name: \_\_\_\_\_  
 Single-Family Dwelling Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_  
 Mobile Home Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_  
Setbacks for Principal Building - Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_  
Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Side \_\_\_\_\_  
 Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ No. of Stories: \_\_\_\_\_  
Setbacks for Accessory Building - Required: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_  
Proposed: Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_  
Existing Impervious Percentage: \_\_\_\_\_ Post Impervious Percentage: \_\_\_\_\_

**Commercial** - Zoning District: \_\_\_\_\_

Type of Structure: \_\_\_\_\_  
Size Length \_\_\_\_\_ Width \_\_\_\_\_ Height \_\_\_\_\_  
Accessory Building Size (Length by Width) \_\_\_\_\_ Height \_\_\_\_\_ (ft.)  
Setbacks - Required: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_  
Proposed: Front \_\_\_\_\_ Rear \_\_\_\_\_ Left side \_\_\_\_\_ Right Side \_\_\_\_\_

\*NOTE: All measurements in Feet (round to nearest whole foot). Impervious % is the sum of the square feet of all areas that is covered by roofs, sidewalks, driveways, decks, or accessory structures divided by the total square footage of the lot. Example: a 1 acre lot = 43560 sq.

**2. APPLICANT INFORMATION**

**OWNER(s) OF RECORD** (use additional sheets if more than one-party)

Jeffrey L. & Dawn M. Howeth 804-241-4160  
 Owner DAYTIME PHONE NUMBER

556 Riverdale Road Tappahannock, Virginia 22560  
 MAILING ADDRESS, CITY, STATE, ZIP CODE

JLHOWETH@MSN.COM  
 Fax Number E-mail Address

**Applicant (if different from owner)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**Agent/Contractor (if different from owner/applicant)**

Applicant DAYTIME PHONE NUMBER

MAILING ADDRESS, CITY, STATE, ZIP CODE

Fax Number E-mail Address

**3. PROPERTY INFORMATION (FOR REZONINGS, SITE PLANS, SUBDIVISIONS, CONDITIONAL USE, SPECIAL EXCEPTIONS & VARIANCES)**

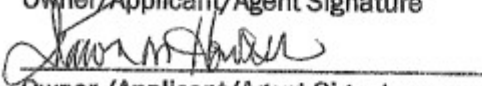
Tax Map Number			Total Acreage			
Subdivision Name	Section		Block	Lot		
Physical Address						
Current Zoning			Existing Structures			
Proposed Utilities			Acreage of Request			

4. NARRATIVE – REQUIRED FOR ALL REZONINGS, CONDITIONAL USE, VARIANCES, SPECIAL EXCEPTIONS AND APPEALS. THE NARRATIVE SHALL DESCRIBE THE NEED AND/OR REASONS FOR THE APPLICATION AND HOW THE REQUEST IS CONSISTENT WITH THE GOALS AND OBJECTIVES OF THE COMPREHENSIVE PLAN.
5. SIGNATURE(S)

I/WE HAVE READ THIS COMPLETED APPLICATION, UNDERSTAND ITS INTENT AND FREELY CONSENT TO ITS FILING. THE INFORMATION PROVIDED IS ACCURATE TO THE BEST OF MY/OUR KNOWLEDGE. I UNDERSTAND THAT THE COUNTY MAY APPROVE, CONDITIONALLY APPROVE, APPROVED WITH MODIFICATIONS OR DENY THE REQUEST FOR WHICH I AM APPLYING. FURTHERMORE, I GRANT PERMISSION TO THE DEPARTMENT OF BUILDING AND ZONING AND ANY OTHER AUTHORIZED GOVERNMENT AGENTS TO ENTER THE PROPERTY AND MAKE SUCH INVESTIGATIONS AS THEY DEEM NECESSARY TO EVALUATE THE REQUEST AND ENSURE THAT CONDITIONS PLACED ON THE REQUEST HAVE BEEN IMPLEMENTED AND/OR MAINTAINED AS PROSCRIBED BY THE APPROVING AUTHORITY. ADDITIONALLY, IF OUTSIDE REVIEW IS NEEDED BY THE COUNTY TO EVALUATE THIS REQUEST I ACKNOWLEDGE AND AGREE TO REIMBURSE THE COUNTY OF ESSEX FOR THESE OUTSIDE REVIEW AGENCY COSTS.

  
 Owner/Applicant/Agent Signature

3/7/23  
 Date

  
 Owner /Applicant/Agent Signature

May 7, 2023  
 Date

\_\_\_\_\_  
 Owner /Applicant/Agent Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Owner /Applicant/Agent Signature

\_\_\_\_\_  
 Date

**6. APPROVAL/DISAPPROVAL**

APPROVED AUTHORIZED SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

DISAPPROVED AUTHORIZED SIGNATURE: \_\_\_\_\_ Date: \_\_\_\_\_

REASONS FOR DISAPPROVAL: \_\_\_\_\_

**IF DISAPPROVED/DENIED:** Any person aggrieved by the disapproval of this application may appeal to the Board of Zoning Appeals\* in accordance with provisions of the Essex County Zoning Ordinance. Such an Appeal must be filed with the Zoning Administrator on approved application forms within thirty (30) days from the date of this denial. Application shall be accompanied by a filing fee of \$250.00, made payable to the County of Essex for the Administrative Appeal. This decision in written order shall be final and unappeasable if not appealed within thirty (30) calendar days from the date of this letter.

\*NOTE: DENIAL OF BOARD OF ZONING APPEALS, BOARD OF SUPERVISORS, AND PLANNING COMMISSION DECISION(S) MUST BE FILED WITH THE ESSEX COUNTY CIRCUIT COURT WITHIN 30-DAYS OF THE DENIAL AS PROVIDED BY THE CODE OF VIRGINIA, 1950, AS AMENDED.



**RESOLUTION OF APPOINTMENT ESSEX COUNTY  
ZONING ADMINISTRATOR AND SUBDIVISION AGENT (PLATS OFFICER)**

**WHEREAS**, the Board of Supervisors of Essex County, Virginia desires to appoint a Zoning Administrator and Subdivision Agent (Plats Officer); and

**WHEREAS**, section 15.2-2286 of the Code of Virginia and Essex County Code Appx. B, Sec. 21.1 provides for the appointment of a Zoning Administrator; and

**WHEREAS**, section 15.2-2258 of the Code of Virginia and Essex County Code Appx. A, Sec. 2.1 provides for the appointment of a Subdivision Agent (Plats Officer).

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of Essex County, Virginia hereby appoints Rob Hodges, as the Zoning Administrator for Essex County, Virginia and as the Subdivision Agent (Plats Officer) for Essex County, Virginia.

**BE IT FURTHER RESOLVED** that such appointment shall be *nunc pro tunc* January 18, 2022, the date of his hire as the Director of Planning & Zoning for Essex County, Virginia, and the Board of Supervisors hereby ratifies the actions taken by Rob Hodges as the Zoning Administrator and Subdivision Agent (Plats Officer) of Essex County, Virginia since January 18, 2022.

Adopted this 13<sup>th</sup> day of December 2022.

**CERTIFICATION OF ADOPTION RESOLUTION**

The undersigned Clerk of the Board of Supervisors of the County of Essex, Virginia certifies that the Resolution set forth above was duly adopted during an open and electronic meeting on the 13<sup>th</sup> day of December 2022 by as majority of the members of the members of the Board of Supervisors with the following votes:

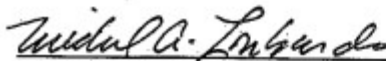
AYE: Akers, Gill, Johnson, Magruder, Smith

NAY:

ABSTENTION:

Signed this 13<sup>th</sup> day of December 2022.

ATTEST:



Michael A. Lombardo, Clerk  
Board of Supervisors of the County of Essex, Virginia



# FINAL SITE PLAN LOTS 8 AND 9 LAGRANGE INDUSTRIAL PARK CENTRAL MAGISTERIAL DISTRICT



**OWNER / DEVELOPER**  
JEFFREY L. HOWETH AND  
DAWN M. HOWETH  
156 RIVERDALE DRIVE  
TAPPANHOCK, VIRGINIA 22668  
884 - 514 - 689

**J. L. HOWETH, P.C.**  
CONSULTING ENGINEERING  
AND SURVEYING  
LAND SURVEYING  
TAPPANHOCK, VIRGINIA 22668  
TELEPHONE: 884-445-6897

### GENERAL NOTES

1. ALL CONSTRUCTION SHALL COMPLY WITH THE SPECIAL ORDINANCES OF THE CENTRAL MAGISTERIAL DISTRICT, VICTORIA COUNTY, VIRGINIA, AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND THE VIRGINIA DEPARTMENT OF HIGHWAYS. THE SPECIAL ORDINANCES AND REGULATIONS OF THE CENTRAL MAGISTERIAL DISTRICT, VICTORIA COUNTY, VIRGINIA, SHALL BE STRICTLY ENFORCED AND ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL APPLICABLE ORDINANCES AND REGULATIONS.
2. EROSION AND SEDIMENT CONTROL MEASURES SHALL BE INSTALLED AT THE COMMENCEMENT OF CONSTRUCTION AND SHALL REMAIN IN PLACE THROUGHOUT CONSTRUCTION AND SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION AND SHALL BE RESTORED TO ORIGINAL OR BETTER CONDITION AT THE COMPLETION OF CONSTRUCTION.
3. THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.
4. ALL WORK SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS.
5. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.
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### TEMPORARY AND PERMANENT SEEDING

TEMPORARY AND PERMANENT SEEDING SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS.

DATE MAY BE AMENDED WITH PROPOSED SITES

NOTE: FULL SCALE, 1:1 SCALE  
SCALE: 2" = 40' HORIZONTAL  
SCALE: 1" = 20' VERTICAL

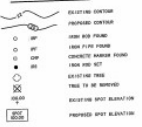
### ENVIRONMENTAL ENGINEERING NOTES

1. ALL EROSION AND SEDIMENT CONTROL MEASURES SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS AND SHALL BE ACCORDING TO THE SPECIFICATIONS OF ALL APPLICABLE CONTRACTS.

2. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.

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### LEGEND



### MAINTENANCE

1. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.

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### EROSION AND SEDIMENT CONTROL NARRATIVE

1. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.

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### EROSION AND SEDIMENT CONTROL IMPLEMENTATION AND PHASING SCHEDULE

1. THE OWNER SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES AND SHALL BE RESPONSIBLE FOR THE INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES AT ALL CONSTRUCTION SITES.

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### MANAGEMENT STRATEGIES

1. ALL CONSTRUCTION SHALL COMPLY WITH THE SPECIAL ORDINANCES OF THE CENTRAL MAGISTERIAL DISTRICT, VICTORIA COUNTY, VIRGINIA, AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND THE VIRGINIA DEPARTMENT OF HIGHWAYS.
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*[Signature]*  
DATE: \_\_\_\_\_ RESPONSIBLE LAND DISTURBER

APPROVED :

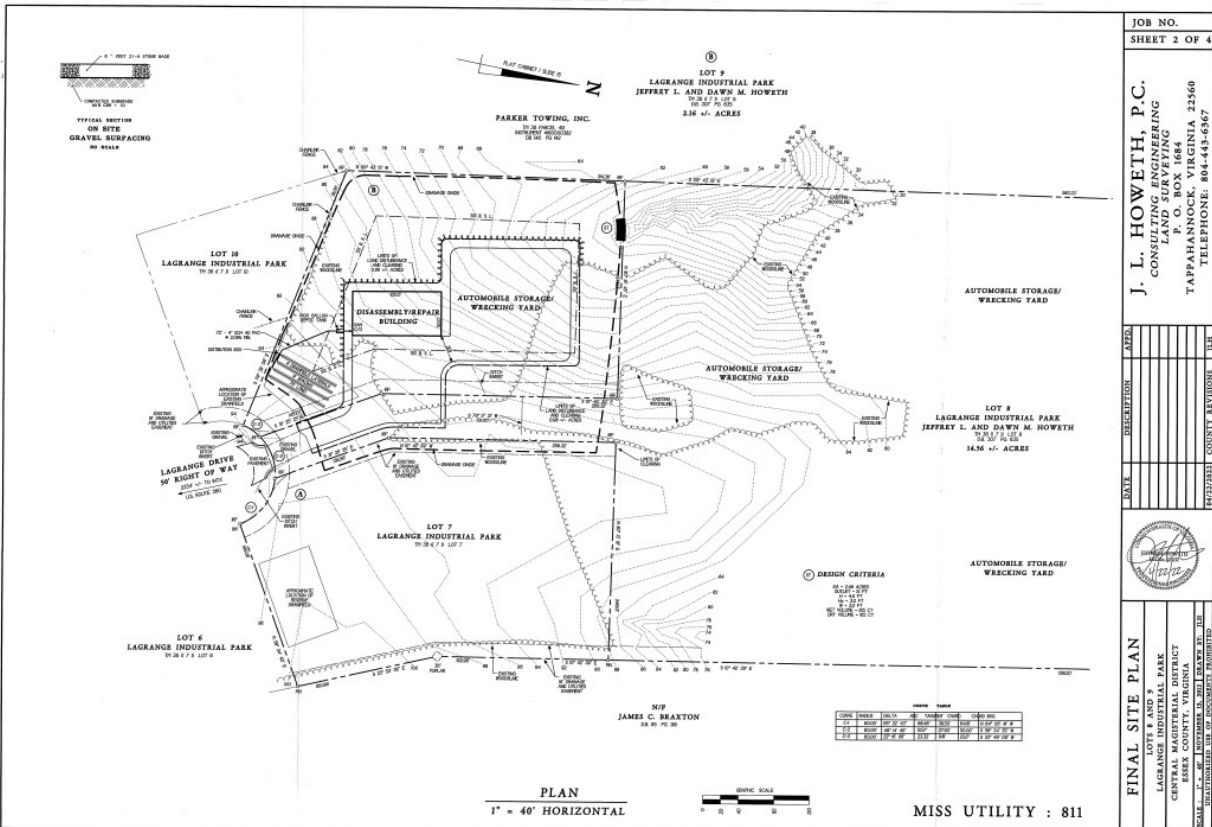
DATE: \_\_\_\_\_ AGENT, SBEKX COUNTY

MISS UTILITY : 811

DATE	DESCRIPTION	APPROVED	REVISION



**FINAL SITE PLAN**  
LOTS 8 AND 9  
LAGRANGE INDUSTRIAL PARK  
CENTRAL MAGISTERIAL DISTRICT  
VICTORIA COUNTY, VIRGINIA  
SCALE: 1" = 40' HORIZONTAL, 1" = 20' VERTICAL  
DATE: \_\_\_\_\_



PLAN  
1" = 40' HORIZONTAL

GRAPHIC SCALE

MISS UTILITY : 811

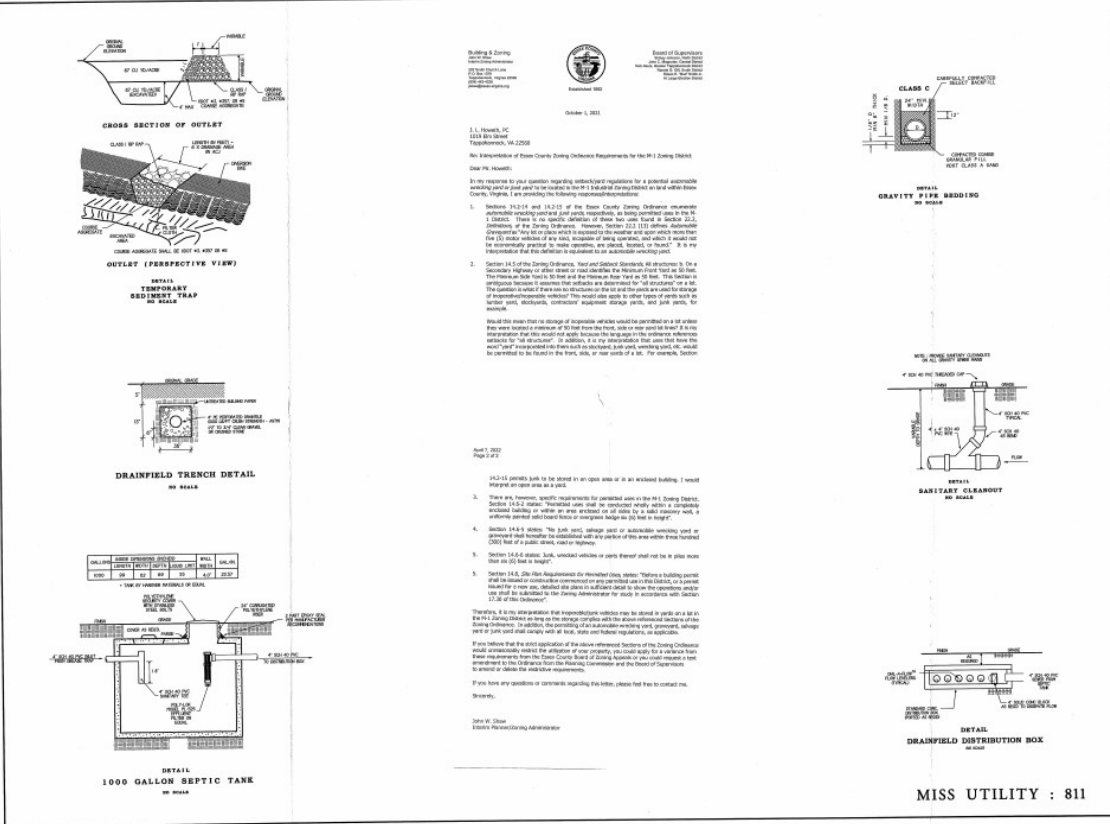
JOB NO. SHEET 2 OF 4

**J. L. HOWETH, P.C.**  
CONSULTING ENGINEERING  
AND SURVEYING  
LAND SURVEYING  
P. O. BOX 1684  
TAPPANHOCK, VIRGINIA 22668  
TELEPHONE: 884-445-6897

DATE	DESCRIPTION	APPROVED	REVISION



**FINAL SITE PLAN**  
LOTS 8 AND 9  
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CENTRAL MAGISTERIAL DISTRICT  
VICTORIA COUNTY, VIRGINIA  
SCALE: 1" = 40' HORIZONTAL, 1" = 20' VERTICAL  
DATE: \_\_\_\_\_



**J. L. HOWETH, P.C.**  
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 LAND SURVEYING  
 3905 COMBINE DRIVE  
 TAPPANHOCK, VIRGINIA 22560  
 TELEPHONE: 804-443-6567

**FINAL SITE PLAN**  
 LOTS 8 AND 9  
 LAGRANGE INDUSTRIAL PARK  
 CENTRAL MAGNETIC DISTRICT  
 1000 GALLON SEPTIC TANK  
 DRAINFIELD TRENCH

**MISS UTILITY : 811**

**VIRGINIA'S 19 MINIMUM STANDARDS FOR EROSION AND SEDIMENT CONTROL**

1. EROSION CONTROL: ...  
 2. SEDIMENT CONTROL: ...  
 3. ...  
 4. ...  
 5. ...  
 6. ...  
 7. ...  
 8. ...  
 9. ...  
 10. ...  
 11. ...  
 12. ...  
 13. ...  
 14. ...  
 15. ...  
 16. ...  
 17. ...  
 18. ...  
 19. ...

**MINIMUM STANDARDS FOR PROJECT**

PROPOSED STANDARD	APPLICABLE	NOT APPLICABLE	COMMENTS
1	X		SEE TEMPORARY AND PERMANENT SEDIMENT
2		X	
3	X		SEE TEMPORARY AND PERMANENT SEDIMENT
4	X		SEE CONSTRUCTION PRACTICES
5	X		SEE NARRATIVE
6			SEE ROBERT TOWN SCHEMATIC
7		X	
8		X	
9		X	
10		X	
11		X	
12		X	
13		X	
14		X	
15		X	
16		X	
17	X		PREVIOUSLY INSTALLED CONSTRUCTION ENTRANCE
18	X		PRELIMINATION AND FINISHING DETAILS SEE ATTACHED CHANNEL
19	X		

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**FINAL SITE PLAN**  
 LOTS 8 AND 9  
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 1000 GALLON SEPTIC TANK  
 DRAINFIELD TRENCH

**MISS UTILITY : 811**

**Old Business**

None

**Miscellaneous**

None.

**Adjourn**

Mr. Stephenson made a motion to adjourn. Mr. Walters seconded the motion. AYES: 5 NAYES: 0  
ABSENT: 0

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Steven Laffoon - Chairman