

**TOWN OF DUCK  
BOARD OF ADJUSTMENT MINUTES  
MONDAY, APRIL 13, 2009  
MEETING**

The Board of Adjustment for the Town of Duck convened at the Duck Municipal Offices at 2:00 p.m. on Monday, April 13, 2009.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chairman Sam Taylor, Olin Finch, Patty Wander, Eileen Neren, and Alternate Carol Powell. Staff present: Director of Community Development Andy Garman, Building Inspector Cory Tate and Board of Adjustment Clerk Sandy Cady.

MEMBERS ABSENT: Vice Chairman Allan Starr and Alternate Ken Benton.

Chairman Taylor stated that a quorum was present and that Alternate Carol Powell would be participating in Vice Chairman Allan Starr's absence. He noted that Ken Benton was also absent. He stated that proper notices had been sent to the appropriate people and the meeting was duly authorized.

OTHERS PRESENT: Town Attorney Robert Hobbs, Attorney Steven Michael, Attorney Paulette Benz, Appellant John Kotch and several members of the audience.

**The following persons were sworn to provide testimony during the hearing: Paulette Benz, Loch Weems, Karen Nazik, John Kotch, Stefan Carbosi, Jerry Rose, Andy Garman, William C. Tate, Ronald Gregory, Robert Hobbs and Steven Michael.**

The meeting was called to order by Chairman Taylor at 2:03 p.m. Chairman Taylor noted that Steven Michael would be acting as the Board of Adjustment's attorney. He went on to swear in those that would be testifying in the hearing.

**QUASI-JUDICIAL HEARINGS (Regular Members to Participate)**

*BOA 2009-001 – An appeal submitted by Paulette Benz, council for appellant, John Kotch, property owner of 1264 Duck Road, Duck, NC 27949, regarding the Zoning Administrator's determination of the loss of non-conforming status of an existing roof mounted sign. This appeal pertains to Town Code Section 156.130(F)(5) which includes provisions governing the alteration, repair, maintenance and replacement of signs that no longer comply with Town zoning regulations.*

Chairman Taylor directed Paulette Benz to present her case.

Attorney Paulette Benz of Benz and Grimsley was recognized to speak. Attorney Benz stated that she was representing John Kotch who is the owner of Sunset Grill and Raw Bar. She stated that back in January, 2009 a storm blew down two (2) panels of Mr. Kotch's roof sign. She went on to show photographs of the sign to the Board and audience. Attorney Benz stated that Mr. Kotch was served notice by Director Garman notifying him that his sign had become nonconforming as per the Town's regulations and that he would have to bring the sign into conformance. She stated that her argument,

after reading the statutes, was that the sign was not damaged in excess of fifty percent (50%). She stated that the statute stated that a sign that is nonconforming must be brought into compliance if it was altered or removed. She thought that there were only two (2) panels from the sign face missing and had not been put back up. She stated that she obtained estimates for the repair of the sign and that the cost ranged from \$1,250 to 5,250 to either replace the panels or to replace the entire sign.

Chairman Taylor clarified that the damage to the sign was caused by a storm. He thought that Director Garman did not make clear in his letter the cause of the sign needing repair. Attorney Benz stated that he was correct. She presented a letter from Dave Ryan of Bissell Professional Group to the Board as evidence regarding the structural integrity of the sign, adding that Mr. Ryan noted in his letter that the sign was structurally sound.

Member Neren clarified that with the sign being structurally sound, it meant that nothing would need to be replaced beyond the panels. Attorney Benz stated she was correct. Member Neren noted that one photograph showed framing of the sign that looked damaged and missing. She asked if it would have to be replaced or if that was how it was constructed. Attorney Benz stated that she could have Loch Weems, who was a sign person, discuss the issue to the Board if they wished.

Ronald Gregory of 205 Sir Chandler Drive in Kill Devil Hills was recognized to speak. Mr. Gregory stated that it did not look to be part of the sign face that currently existed. Chairman Taylor thought one of the boards looked like it was part of the sign.

Loch Weems of Ad Light Signs was recognized to speak. Mr. Weems stated that it was just a board that was used and was not part of the sign or structure. He added that the band was minor in nature and not part of the basic structure of the sign. He stated that it was a strap band that was used to strap the fascia to the sign. Attorney Benz presented an estimate from Ad Light Signs regarding repairing the damaged sign.

Attorney Benz stated that she had an estimate from Stefan Carbosi of Signworks; however, it was not for replacement of the structure, only for replacement of the sign boards. Stefan Carbosi of Signworks was recognized to speak. Mr. Carbosi noted that the cost to replace the sign would be \$500 per panel and would not include the installation.

Attorney Benz stated that in addition to the argument that the sign was not fifty percent (50%) damaged, she referenced the purpose of the statute. She suggested that the Town promote and aid businesses to help sustain the economic vitality. She noted that Sunset Grill had become a landmark, enhanced the character of the Town and did not detract from the character of the Town.

Member Powell wondered what the need of the sign was. She agreed Sunset Grill was a place where tourists flock, but wondered why it would be a consideration that the sign was necessary when it seemed that it wasn't. She stated that it didn't necessarily prove that Mr. Kotch needed the sign. Attorney Benz thought the sign was there for advertising purposes. She added that it did not detract from the Town in any way and thought it drew attention to the building. She noted that the sign assisted Mr. Kotch in his business efforts.

Chairman Taylor thought that everyone agreed that the sign was nonconforming as the statute existed. He noted that the Board's job was to look at what the ordinance said and what it meant in this

situation. Attorney Benz pointed out that an Act of God was what caused the damage. She asked if the intent of the Town was to make every sign that blew down conforming and if so, why there was the fifty percent (50%) provision. She felt the sign was not more than fifty percent (50%) damaged.

Director Garman handed out the staff report to the Board, which included his assessment of the situation. He noted that in 2008 the amortization for wall and roof signs - unless they were altered, changed or damaged less than fifty percent (50%) - was eliminated from the ordinance. He went on to give a short overview of the sign ordinance history changes and how it related to this issue.

Chairman Taylor reiterated that no one disagreed that the sign was nonconforming. He asked if there was any disagreement as to how the sign was damaged. Director Garman stated that staff put the burden on the appellant to provide evidence that the sign was damaged; however he (Director Garman) did not provide any.

Director Garman reviewed Page 6 of the staff report, which included looking at the alteration of the sign. He presented the Board with the original sign permit which included the proposed location and size of the sign. He stated that staff did not realize until the sign came down that the original sign was not painted over, but replaced with a new sign, to which the appellant did not obtain permits. He stated that there was never a permit in the Dare County file for the new sign; therefore the sign did not have a legal status as a nonconforming sign. He stated that the sign would have required a building and sign permit at the time it was erected.

Director Garman stated that with regard to the repair cost, the appellant provided estimates from two (2) companies. He noted that the sign ordinance spoke to the appraised value of the sign and not the replacement value. He pointed out that the key piece of information was that the engineering report cost would have needed to be included in the repair estimates as well as the building permit fees.

Member Neren asked if staff had noticed before the panels came down that the sign had been overlaid with a larger sign and lost its nonconforming legal status, what would have been done. Director Garman stated it still would have had to come before the Board.

Member Wander asked when the sign was refaced. Director Garman stated he wasn't sure. John Kotch of 262 Sea Oats Trail in Southern Shores was recognized to speak. Mr. Kotch stated it was refaced in 2001 when he purchased the building. He added that he was given permission by Dare County to reface it without a permit because it already existed. Chairman Taylor asked if the original sign was for Quackers Restaurant. Mr. Kotch thought it was. He asked when the new façade was put on the sign, if there were any permits required to do so. Director Garman stated that Building Inspector Cory Tate would be able to answer that question.

Director Garman asked John Kotch how long he owned the Sunset Grill. Mr. Kotch stated he had owned it since 2001. Director Garman clarified that the current roof sign was installed in 2001. Mr. Kotch stated he was correct. Director Garman asked if Mr. Kotch had ever obtained a permit for the sign. Mr. Kotch stated the sign was already in place and was passed on from Paul Shaver. Director Garman noted that the permit was in Paul Shaver's name.

Chairman Taylor clarified that the sign permit was issued to the previous owner. Director Garman stated that it was. John Kotch stated that the sign was put up in 2001 while he was renting from Paul Shaver and in 2003 he took ownership of the building.

Town Attorney Robert Hobbs asked if John Kotch had anything from Dare County stating that he was allowed to use the existing permit or change the face of the sign. John Kotch stated that he would have to check but thought Barrier Island may have the documentation.

Chairman Taylor asked if the Town's ordinances have anything that makes a distinction between replacing the face of a sign and replacing the whole sign. Director Garman stated that the current ordinance states that if the sign is replaced and is nonconforming, then the owner would have to come into compliance with the regulations. Chairman Taylor asked what the ordinance said in 2001. Director Garman stated he did not know, but pointed out that the main point staff was making was that the size of the sign increased in 2001 from the original sign. He added that they had overlaid the panels on top of the existing panels which caused a greater load on the structure and may require additional engineering.

Building Inspector Cory Tate was recognized to speak. Director Garman asked if he was familiar with the sign at Sunset Grill. Building Inspector Tate stated he was. Director Garman asked what Building Inspector Tate's opinion was regarding what was located behind the existing sign. Building Inspector Tate stated that the previous sign was located behind the existing one. He added that the sign placed over the original one was larger in area. Director Garman asked if he knew if any building permits for the roof sign were obtained. Building Inspector Tate stated that staff did not have any legacy permit information from Dare County that indicated that permits were issued for the refacing of the sign. Director Garman asked Building Inspector Tate to tell the Board what was on the original permit. Building Inspector Tate stated that the application was dated February, 1999 and the signature of the applicant appeared to be Paul Shaver's – the previous owner of the property. He added that the permit was for several signs on the property and not just the roof mounted sign. He stated that the drawing that was submitted to Dare County showed the erection of the sign to the left of the gable area with the original dimensions of ten feet by twenty-two feet (10x22). Director Garman asked if the sign was erected where it was supposed to be with regard to the permit. Building Inspector Tate stated that the existing one did not appear to be erected where it was originally permitted by Dare County. Chairman Taylor clarified that the Quackers sign was the one that may have been erected in the wrong place. Building Inspector Tate stated he was correct.

Director Garman asked what would be required for a new permit. Building Inspector Tate stated that in addition to a building permit application, North Carolina State Building Code has for a number of years required plans and specifications to be submitted from a registered North Carolina architect or engineer. He added that the Town would require engineering to show that the sign would resist the structural loads that are required in North Carolina State Building Code, which were outlined in Chapter 16 of the Building Code. He stated that the Code that was in effect when the sign was put up was 1978 Building Code and would have been in Chapter 12, however, the requirements were still the same. He stated that the original permit did not appear to have any engineering associated with it.

Director Garman asked if the sign consisted of replacement or new panels. Building Inspector Tate stated that it consisted of larger panels that were placed over the existing sign. He pointed out that the increase in area would require an increase in the load requirements and would need additional

engineering. He added that a building permit would have been required. Director Garman asked what structural information would be needed if a building permit was applied for. Building Inspector Tate stated that he would need to see information showing structural methods that met 130 mile per hour wind gusts and would not impact the building.

Chairman Taylor clarified that all the work on the sign in 2001 was under Dare County. Building Inspector Tate stated he was correct. Chairman Taylor stated it was a question of whether it complied with the rules of Dare County back then. Building Inspector Tate stated that it would not have been Dare County regulations, but the regulations set forth by the North Carolina Building Code. Chairman Taylor clarified that the transfer of ownership occurred before the Town incorporated. Building Inspector Tate stated he was correct.

Director Garman asked if there were any building permits in the Town's files. Building Inspector Tate stated that there were no other permits than the original one issued by Dare County. Chairman Taylor stated that the Town did not exist in 2001, so they would not have a permit in its files. He clarified that there was no reason to have a building permit in the file since 2001. Director Garman stated that when Duck incorporated, it received all of the permit files from Dare County. Town Attorney Hobbs noted that Duck had the authority to enforce previous actions taken by Dare County in its jurisdiction.

Building Inspector Tate read Subsection F5(b) of the ordinance regarding maintenance and repair of nonconforming signs to the Board and audience, noting that if the sign suffered more than fifty percent (50%) appraised damage or deterioration, it must be removed or brought into conformance with the regulations. Director Garman stated that up until the hearing, the only estimate staff had was one provided by Signworks. Building Inspector Tate thought the estimate was accurate but did not include all costs associated with the permitting procedures and engineering that would be needed to have the sign meet building code requirements. Chairman Taylor clarified that the estimate did not include anything except for an estimate for the construction of new panels. Building Inspector Tate stated he was correct and it was an industry accepted standard to include all costs associated with the repair and replacement of a sign.

Director Garman noted that he did not recall the Town having a severe storm that would have reached the level of one hundred thirty (130) miles per hour. He asked what the cost of a building permit application would be. Building Inspector Tate stated that it would be \$100 plus a \$25.00 floodplain development fee. Director Garman pointed out that Attachment 5 included an additional estimate that ranged from \$700 to \$1,000 for replacement of the sign. He added that staff was unaware of what Bissell Professional Group charged for their engineering, however, Building Inspector Tate was provided with that information. Building Inspector Tate stated that Dave Ryan of Bissell Professional Group addressed the questions that would need to be answered in order to issue a building permit.

Director Garman asked Building Inspector Tate what his opinion would be for the repair value versus the replacement value of the sign. Building Inspector Tate stated that the replacement cost was not the issue, but the repair cost versus the appraised value of the sign. Director Garman explained that with all costs included, it would cost approximately \$1,800 to repair the sign. Chairman Taylor stated he was unclear on the appraised value of the sign. Town Attorney Hobbs stated that the appraised repair or cost would be the appraised difference in value between the sign as it stood before the damage and the appraised value afterward. He noted that the point was that "replacement cost" was

not used in the ordinance. He added that the replacement cost would give something that was brand new; however the sign was not brand new. Chairman Taylor clarified that appraised damage was not a defined term in the ordinance. He thought the Board had to interpret what it meant. Town Attorney Hobbs stated that Section 151.21, Subsection B8 listed the requirements for the building permit application, remodeling and additions to existing structures. He noted that one item listed was an independent appraisal of value to existing structures. He stated that in this provision, it did refer to an independent appraisal of value to existing structures.

Member Finch asked if what the greater than fifty percent (50%) was based upon. Director Garman stated that the appellant's repair estimate was used as a basis for staff's argument and staff had not obtained an appraised value of the sign. Member Finch asked if the appraised value was what the sign was worth, depreciated in place. Director Garman thought it was the depreciated value. Member Finch pointed out that one couldn't put a value on the sign when Mr. Kotch didn't obtain a permit to put it up. Director Garman thought the premise was designed to have the nonconformity removed. He added that appraised value did include deterioration over time. Member Finch asked if the Town was asking Mr. Kotch to remove the sign because it could not be repaired. Director Garman stated that the Town was asking Mr. Kotch to comply with the Town code, which the sign cannot do as it currently existed. Member Finch wondered if he was asking for the removal because the sign was unlawful. Director Garman stated that the primary point was that the sign did not enjoy a lawful nonconforming status. He added that unlawful signs could not be considered nonconforming.

Chairman Taylor asked how many signs would be no longer deemed nonconforming. He thought it would be a high number. He asked if it was the sense of the Planning Board and Town Council when the ordinance was adopted, that that drop dead date was removed and allow nonconforming signs to continue so long as they weren't damaged more than fifty percent (50%). Director Garman stated that when the ordinance was re-drafted in 2004, the Council adopted a six (6) month amnesty period to allow business owners to come in and obtain permits if they never received one. He stated that permits were issued if they met the terms of the Dare County code at the time they were erected. He stated that while quite a few came in, some could not meet the provisions of the Dare County code. He added that once the amnesty period was up, business owners would have had to meet the Town of Duck ordinances. Chairman Taylor clarified that in this instance, Mr. Kotch did not have a permit for the sign on his building because it did not meet the requirements. He further clarified that when he added the new panels to the sign, there were larger than it previously was and he should have obtained a permit. Director Garman stated he was correct.

Member Finch clarified that because there wasn't a permit in the Dare County files, staff assumed that there wasn't a conversation or permit, making the sign unlawful. Director Garman stated he was correct. He added that the Town could not honor a verbal approval as testified by Mr. Kotch. Town Attorney Hobbs pointed out that the law of North Carolina stated that even if a local government made a mistake, it wouldn't matter as it would still be unlawful. He stated that there was no evidence in the file of any action taken or requested of Dare County with regard to the sign.

Chairman Taylor clarified that Mr. Kotch should have known that the sign did not have a proper building permit and should have sought amnesty in 2004 to bring his sign into conformance. Director Garman stated that he should have if Mr. Kotch met the terms of the Dare County ordinance. Chairman Taylor noted that he would not have been able to. Member Finch pointed out that because

there was a permit in the file, it could be assumed that the sign was lawful. Director Garman disagreed. He added that there was a permit in place for the previous owner.

Member Wander asked if in 2001 when the sign was changed, it would not have required engineering under Dare County rules. Building Inspector Tate stated it would have required engineering under State of North Carolina. Member Finch believed that each permitting official had the last say as to whether it did or did not apply and how it applied. He felt words were being put in the mouth of people that were not present, i.e. Dare County. Chairman Taylor stated that the Board did not know how the Dare County official interpreted it at that time. Director Garman noted that the Town's case was based on rules that were in effect at the time.

Chairman Taylor summarized that the reason why the appeal should be denied was that the sign had no legal status as a nonconforming sign and even if it did, in Director Garman's estimate, the appraised damage was more than fifty percent (50%).

Attorney Benz believed that the existing sign was less in square footage than what it was originally permitted. She asked if an additional permit would've been needed if the boards were less than what was required to replace them if the load requirements were met. Building Inspector Tate stated that technically, anything on a commercial building requires a permit. He added that anything that would have bearing on any structural member on the building would require a permit. He stated that in regard to the height versus the width and total square footage area of a sign, he would require the evaluation from an engineer stating that the new sign that was shorter and lower in height and placed less wind load than the previous sign. He added that his argument was not that the building would not be able to handle the load of the sign but that it would need to be evaluated by an engineer to see what effects the change of the sign would have on the structural components.

Member Wander asked if the sign on the platform would have a different wind profile than the sign on the other roof. Building Inspector Tate stated that it would.

John Kotch stated that Town staff was assuming that the sign behind the existing sign was an old sign. He stated that he wasn't sure but thought it was only part of the old sign. He added that Town staff thought he had put up something larger than the old sign. He stated that the assumptions that the Town was making needed to be taken into consideration. Director Garman pointed out that the engineering report from Dave Ryan of Bissell Professional Group showed that it was the original sign behind the existing sign and was used as a base for the new sign.

Member Finch asked if the time was correct. He stated that if it was after 2001, it would have a major bearing on whether or not the sign was lawful. He asked if the Town acknowledged the sign was there when it incorporated. Director Garman stated it was not relevant whether the Town was incorporated or not as a permit was required. He (Director Garman) added that Mr. Kotch had indicated that Dare County did not require a permit; however Director Garman indicated that a permit was necessary as required by the Building Code.

Director Garman asked Stefan Carbosi what he was asked to prepare for the hearing as well as any work that was completed for John Kotch for the sign in question. Mr. Carbosi stated that originally he had a new design. He stated that it was a proposal for a new logo, but then Mr. Kotch found out that they were not allowed to change anything on the sign, so he requested a price on replacing just

the first and third panel only. Director Garman asked if the new design required the panels to be painted. Mr. Carbosi stated that it would. Director Garman asked if the replacement value on the estimate was for the two (2) panels versus the entire five (5) panels. Mr. Carbosi stated he was correct.

Attorney Benz stated that she was confused about the sign appraisal, which was why she brought the second estimate to the hearing to figure out a value of the sign. She added that with the original estimate, Mr. Carbosi was not going to replace the existing structure. She stated that John Kotch was acting in good faith when he put the sign up as it currently exists. She added that the sign was not unlawful and was a conforming sign.

Chairman Taylor stated that he was going to summarize the hearing and then the Board would deliberate. He noted that there would be no further questions except on the part of the Board if additional information was needed. Steven Michael noted that if the Board closed the hearing, it could not receive further information. He added that the hearing could be kept open while they were deliberating, but if they closed it, they would not be able to ask any further questions. Chairman Taylor asked the Board if they had questions they would like to ask.

Member Wander asked John Kotch who he had spoken to that told him he did not need a permit for the sign. John Kotch stated that he only recalled that it was a woman. Member Wander asked if this woman still worked for Dare County. Mr. Kotch stated that he wasn't sure. Member Finch thought it could have been the building inspector.

Member Powell thought that if she had asked for permission to resurface a sign, she would want to know if it was actually being resurfaced or changing the configuration. She noted that the configuration of the sign was changed. She wondered what resurfacing meant. Chairman Taylor thought it was defined in the current ordinance.

Terry Rose of 122 Mallard Drive was recognized to speak. Ms. Rose stated that she was an employee of Sunset Grill and resident of the Town. She stated that she passes the sign at least twice a day and did not find it offensive. She added that she hardly notices it.

Town Attorney Hobbs stated that the Town's position on the interactions between Dare County and the owner at the time that the new sign went up was that a new permit should have been issued. He stated that if the County had made a mistake and noted that a permit wasn't needed, if the Board determined it was mistake, the sign would still be unlawful. He stated that just because the owner relied upon a decision or action taken by the zoning or building inspector had no bearing on whether the action taken was correct or not. He stated that the Town's testimony was that a permit would have been required under the Building Code. He added that just because Dare County may have made a mistake and told Mr. Kotch that he didn't need a permit had no bearing on whether the sign was lawful or not. He added that the Town's position was that it was unlawful despite any mistake that was made.

Attorney Benz thought the distinction was whether a building permit would have been required. She thought that it would not have been at that time, but only a sign permit would have been required.

Chairman Taylor summarized that the Board of Adjustment had heard an appeal from Sunset Grill to a decision of the Town of Duck that stated that the sign had to be brought into conformance. He stated that the sign had suffered more than fifty percent (50%) damage and the Town of Duck was of the opinion that the sign should have never been a nonconforming one in the first place. He stated that the appellant stated that he had a building permit for the sign from the original owner and the sign was placed in the wrong spot. He stated that in 2001, the appellant changed the name of the business from Quackers to Sunset Bar and Grill and added a new façade to the sign. He stated that the appellant contacted Dare County and was told that he did not need a new building permit to change the façade. He stated that the Board's job was to decide whether the sign was nonconforming or not and if it was nonconforming, whether it suffered more than fifty percent (50%) damage and if the appellant would be required to come to the Town and bring their sign into conformance. He stated that the Board would now go into deliberations.

Member Finch thought the issue was if the sign was unlawful and would have to come down because of that. He thought if the Board felt it was, then the hearing would be over.

Member Neren thought Mr. Kotch had acted in good faith, but even if he thought everything was fine, it did not make it right. She believed the sign was unlawful because it was put in the wrong place. Chairman Taylor thought that the building inspector had come out and completed a final inspection on where the sign was. Member Neren noted that the sign was not installed in the correct location as per the permit. Chairman Taylor reiterated that the building inspector had come out to inspect where the sign was placed. Member Neren still felt the sign was unlawful.

Member Finch stated that any permitting mistake can be corrected. He added that the hearing was to determine whether the sign was damaged by more than fifty percent (50%) or whether the sign was unlawful. Member Neren believed that the sign was unlawful. Member Powell agreed.

Member Wander pointed out that if the permit and engineering done at that time the sign was placed on the roof where it had something behind it, made the engineering invalid. She stated that if the inspector came out and felt it was wrong, he would have changed it on the permit.

Chairman Taylor pointed out that the actual evidence the Board had was a permit, drawings, and photographs of the signs. He added that the Board did not know whether the sign was inspected or not. Member Powell stated that all the Board knew was that the sign was in a different place and that the sign as it currently existed was a different configuration than the originally permitted one. Member Neren disagreed. Member Finch pointed out that the letter from the Town's Zoning Department stated that the sign was legally permitted by Dare County. Chairman Taylor explained that it was legally permitted by Dare County in 1999 and became nonconforming when the Town's sign regulations were revised. Member Neren stated that it was legally permitted but when it was built, it was not built the way it was permitted by Dare County. Member Neren stated that she was sticking with her position that the sign was illegal based upon where it was placed.

Attorney Michael stated that the Board needed to determine both issues. He suggested the Board consider only the evidence that was presented and not anything outside of the record. He stated that the applicant had the burden of persuasion and not the Town. Member Finch thought that the sign was legal but just nonconforming.

Member Powell stated that if the Board based their decision on the evidence that was presented, then they have seen a permit for a sign that did not exist and no permit for the sign that currently exists. Chairman Taylor added that the Board did see a sign that currently exists. Member Powell agreed and noted that it did not have a permit. She added that the whole issue really came down to the fifty percent (50%). She agreed that it was placed in the wrong area and has been refaced, changing the sign. Member Wander believed that when the appellant changed the sign in 2001 it became illegal.

Member Powell stated that with regard to the fifty percent (50%), only two (2) of the five (5) panels came down, so that would be considered less than fifty percent (50%) as well as the cost of replacing the two (2) panels. She wondered if Mr. Kotch was not going to touch any other part of the sign and what he would do if he found additional damage. She noted that based on the photograph presented, there was structural damage to the framework. She thought the question was how Mr. Kotch could keep it below fifty percent (50%).

Member Neren thought if the Board took the \$5,245 estimate along with the other fees and costs and backed into the amortization rate; it would take thirty-six (36) years to get to the fifty percent (50%) mark. She thought this was a long time for a sign to exist with regard to the weather conditions on the Outer Banks. Chairman Taylor noted that the Board did not know what the appraised value versus the replacement value was for the sign.

Member Powell stated that the point was that there wasn't an appraised cost or replacement value, so the Board was comparing similar items as they had an actual repair and replacement cost. She stated that based upon the information in the ordinance, it would not exceed the fifty percent (50%) rule. Member Wander thought it would be very difficult to reach the fifty percent (50%) value. Member Powell felt that based on the information presented, there was not enough evidence to show that it would cost more than fifty percent (50%). Members Wander and Finch agreed. It was *consensus* of the Board that the fifty percent (50%) appraised value had not been clearly breached.

Chairman Taylor asked if the nonconforming status of the sign was clearly breached. Member Neren thought it had based upon the evidence presented. Member Finch stated that the location was modified slightly. Member Powell thought there were several permitting issues – the location of the sign versus the permit and the refacing of the sign without knowing if there was any approval for it.

Member Wander stated the sign was no longer lawful when it changed in 2001 and Member Neren agreed. Member Wander further stated that a permit would have been required when the sign was modified in 2001. Member Neren further noted that there was no permit issued in 2001. Member Wander also commented that if the size of the sign has bearing on whether it is a lawful sign, then the location should as well.

Chairman Taylor stated that it would be fair to assume that the Dare County permitting process would have required an inspection of some sort. Member Powell reminded the Board that Director Garman stated the Town received all of the permit files from the County.

Member Finch noted that it took the wind blowing the sign down for this to become an issue, but he questioned whether the wind blowing it down had caused more than fifty percent (50%) damage. The wind blowing the sign down simply exposed the sign behind the existing one.

Member Wander believed the sign became unlawful when it was changed in 2001 without the requisite permits; the sign panels blowing down were simply further evidence that the sign had changed. Member Finch commented that because the sign behind the existing one had been revealed it was evidence that the sign had not been moved.

Member Neren stated that they still do not know that it was not moved. The old sign may have been used for support. Member Powell stated that the only thing known for sure is that the sign was altered. Member Finch stated that the Board had evidence that Mr. Kotch obtained permission from his testimony. Members Wander and Neren both reiterated that a permit would have been required to modify that sign aside from the sign being located somewhere other than where it was originally permitted. Member Wander stated that the failure to obtain a permit when the sign was altered changed the sign's status.

Attorney Michael commented to the Board that they need to determine whether the sign was a legally non-conforming sign. He posed the question whether it was legal when it became non-conforming in 2004.

Member Neren stated the sign was unlawful in 2001 because proper permits were not obtained, so it should not be considered non-conforming as a result of the ordinance changes in 2004. Member Finch stated that a permit was received in 1999, but the Board did not know whether a whole new sign was put up in 2001 or whether an existing sign was altered. Member Neren stated that the existing sign had been altered to the point that a permit should have been obtained. Chairman Taylor stated that the determination in 2009 was that the sign should not have been treated as nonconforming and was a Town error. Member Finch commented that the Town was saying that a new permit was necessary in 2001. Member Wander reiterated that the sign should not have been treated as nonconforming due to the alterations made in 2001, which were done without written permits; the 2001 changes to the sign would have required a permit.

Chairman Taylor made a motion to reverse the determination of the Zoning Administrator, finding that treatment of the sign as nonconforming from 2004-2009 was reasonable and people would have concluded nonconforming status existed, but the evidence not sufficient to support that the sign was more than fifty percent (50%) damaged. He moved that the appeal be upheld. Member Powell seconded the motion.

Member Wander questioned whether she could make a substitute motion or vote only on the legality issue and then separately on the fifty percent (50%) issue. Attorney Michael advised that she may vote against the existing motion and make a subsequent motion if she chose to.

Motion passed with a simple majority of 3-2, which was not sufficient to uphold the appellant's position. Members Wander and Neren opposing.

Member Wander made a motion to uphold the determination of the Zoning Administrator finding that the sign was not lawful as a result of alterations made to it in 2001 without permits, and any verbal authority provided to the appellant would have been made in error. Therefore, the sign should not have been afforded non-conforming status. Member Neren seconded the motion.

Motion failed 2-3 for the lack of simple majority, with Chairman Taylor, Members Finch and Powell opposing.

Attorney Michael stated that to reverse the determination of the Zoning Administrator, the motion must pass by 4/5 approval; therefore the Zoning Administrator's determination is upheld by default.

**APPROVAL OF MINUTES FROM JUNE 27, 2008 and JULY 18, 2008**

Member Wander made a motion to approve the minutes from June 27, 2008 and July 18, 2008 as presented. Member Neren seconded the motion.

Motion carried 3-0.

**OTHER BUSINESS**

**Annual Election and Appointments**

Chairman Taylor made a motion to nominate Member Wander as Chairperson. Member Finch seconded the motion.

Motion carried 5-0.

Chair Wander accepted the chair seat, and made a motion to nominate Member Taylor as Vice-Chair. Member Powell seconded the motion.

Motion carried 5-0.

**STAFF COMMENTS**

None.

**BOARD COMMENTS**

None.

**ADJOURNMENT**

Chair Wander adjourned the meeting.

The time was 5:49 p.m.

Approved: \_\_\_\_\_  
/s/ Secretary