APPEALS COMMISSION MEETING MINUTES
January 28, 2015

Chairperson Sielaff called the Appeals Commission Meeting to order at 7:04 p.m.

MEMBERS PRESENT: Brad Sielaff
David Ostwald
Blaine Jones
Michelle Drury

OTHERS PRESENT: Julie Jones, Planning Manager
Scott Hickok, Community Development Director
Darcy Erickson, City Attorney
Steve Saba
Tom Saba
Attorney Michael Tello
Attorney Karen Marty
Pam Reynolds

Approval of Minutes: October 1, 2014

MOTION by Commissioner Jones to approve the minutes as presented. Seconded by Commissioner Ostwald.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SIELAFF DECLARED THE MOTION CARRIED UNANIMOUSLY.

1. Request for Appeal Hearing by Owner of 7345 Central Avenue.

Any persons who were present and wished to testify were sworn in by the City Attorney.
Staff provided the Commission members with a packet of 55 exhibits and the City Attorney provided two additional exhibits.

Julie Jones, Planning Manager, stated this code enforcement case appeal was originally scheduled for January 4, 2012, but that day, the property owner, Steve Saba, filed suit against the City, Scott Hickok, and Julie Jones. Both the City Attorney and Mr. Saba's Attorney agreed that it was best to delay the appeal hearing with the City until resolution of the County Court cases.

Ms. Jones stated the Court's findings were that Mr. Saba had not exhausted all of his remedies allowed by City Code and was premature in his District Court filing. Mr. Saba's court case was dismissed on July 21, 2014, and he was directed to pursue and exhaust any administrative remedies with the City. Staff then rescheduled the appeal hearing.

Ms. Jones stated the property, 7345 Central Avenue is zoned C-1, Local Business, although it has been used as a single-family home since before 1949. The owner has outside storage on the

property related to his snow plowing, landscaping, catering, towing, and scrap metal recycling businesses. Staff has repeatedly tried to get this property into compliance over the past 53 years.

Ms. Jones stated this appeal is for an abatement that was originally scheduled to occur July 21, 2011, following a July 1, 2011 letter sent to the owner of the property, Mr. Steve Saba. The City delayed abatement as Mr. Saba's attorney, Karen Marty, argued it was not legal because of a 2009 court decision. The City attorney, Fritz Knaak, disagreed and warned Marty of the appeal time limit.

Ms. Jones stated staff delayed abatement into August to allow Mr. Saba time to appeal. His attorney argued in an August 23, 2011 letter that proceeding with the abatement would be double jeopardy. Mr. Knaak responded in an August 9, 2011, letter that Mr. Saba's acquittal on a 2008 code violation (Exhibit 40) does not prohibit the City from enforcing subsequent violations.

Ms. Jones stated meanwhile, in October 2011, the City obtained new legal counsel and delayed abatement to allow its new attorney time to study the case. Staff notified Attorney Marty on November 4, 2011, that the abatement was delayed to November 28. On November 17, 2011, Darcy Erickson, City's present attorney, met with and provided Attorney Marty a letter, explaining that use of the property as a junk yard is an illegal, nonconforming use of the property.

Ms. Jones stated attorney Erickson stated in her letter the following: "Accordingly, based on all of the foregoing, Mr. Saba's existing land use is not and never has been permitted as of right, through a special use permit or as a grandfathered legal non-conformity. In short, Mr. Saba's use of the Property constitutes an illegal land use."

Ms. Jones stated attorney Marty then requested an appeal before the Appeals Commission on November 22, 2011. Staff, therefore, did not proceed with the November 28, 2011, abatement. That appeal was originally set for January 4, 2012, but is occurring tonight because of the delay of the charges by Mr. Saba.

Ms. Jones stated the Appeals Commission is being asked to determine whether staff is in error in proceeding with this abatement. The Appeals Commission shall affirm, repeal, or modify staff's abatement order. The Commission's order shall be accompanied by written Findings of Fact. The Commission has been provided a summary of staff's documented facts as the last exhibit in its packet.

Ms. Jones stated Section 28 of 1949 Zoning Code, the City's first zoning code, did not permit junk yards to exist in residential zoning districts nor did it allow junk yards to continue as a non-conforming use in any commercial or industrial zoning district. The 1949 code classified this property as zoned commercial, but the zoning classification is irrelevant in regards to the junk yard use, since no zoning classification has ever allowed a junk yard except for by SUP in the industrial zoning district.

Ms. Jones stated the Fridley zoning code was amended in 1953, and continued to list the Saba property as commercial zoning, as it was zoned in 1949 (Exhibit 1). There were only three zoning classifications in 1953: Residential, Commercial and Industrial. The 1953 zoning classification is key, because Jacob and Arline Saba, Steve Saba's parents, took ownership of the property on May 10, 1954 (Exhibit 3).

Ms. Jones stated Steve Saba has testified under oath in a 2009 jury trial that his family moved into the property in 1954. Mr. Saba further testified that his father scrapped out appliances and different items and sold the scrap metal at the junk yards across the street. He testified that he did the same continuously since he was in third grade

Ms. Jones stated there is no evidence of any junk yard uses at the property prior to when the Saba's took ownership of the property. In1947 aerials show what looks like a typical home site and in 1953 aerials show no evidence of a junk yard use either.

Ms. Jones stated letters from the City requesting corrective action began in 1961. There is a July 5, 1961, letter (Exhibit 5) asking J. Saba to remove old washing machines, junk and other refuse within 10 days.

Ms. Jones presented 1977 documentation which is a Complaint resulting in a letter to Arline Saba regarding her son's use of the property to junk out cars meeting the definition of a junk yard, which is not an allowed use of the property (Exhibit 6).

Ms. Jones stated the violations mounted by 1980. The City has photos on file from April 1980 which document use of property as an auto salvage yard with tow trucks, tires, metal drums, and several vehicles parked off the pavement.

Ms. Jones stated the violations escalated to car sales in 1982. A June 9, 1982, letter from the City ordered Ms. Saba to discontinue using property for used car sales and junk yard, which zoning did not permit. Steve Saba agreed to comply by October 1982. However, apparently nothing was done by 1983 because another complaint triggered a March 18, 1983, second non-compliance letter from the City on the same case to Arline Saba, stating the site had not been cleaned up by October 1982 as promised by her son. There was some improvement in 1983. By May 17, 1983, a letter on file to Steve Saba, himself, documents some improvement on cleaning up the property, but complete compliance was requested by June 6, 1983.

Ms. Jones presented 1984 photos of worse conditions. A citation is issued by the City. File notes indicate a citation was issued in June 1984 to Arline Saba for maintaining unlicensed vehicles and various other refuse. As the court case proceeded from arraignment onto trial, Steve Olson (the code enforcement officer at the time for the City) left his employment (1-4-85) with the City of Fridley, and was no longer available to testify.

Ms. Jones stated Mr. Saba claims the citation was resolved by an agreement between him and City staff. There is evidence that the City settled the case out of court with an agreement that

Mr. Saba would construct a screening fence by July 1985 and keep any storage behind the fence. Such an agreement, however, could only be legal if Council approved it by SUP.

Ms. Jones stated assuming this agreement was reached in a court settlement; it is void because it is illegal as staff had no authority to allow exterior storage without an SUP. An SUP can only be granted by the City Council after public notice and a public hearing, meeting the requirements of Minnesota law and City Zoning Code.

Ms. Jones stated even if this agreement was legal, the agreement was not binding on the City because Mr. Saba repeatedly violated the terms of the agreement as he has indicated it required the screening fence. Mr. Saba failed to completely construct the screening fence in a timely manner and repeatedly failed to keep the exterior storage behind the fence. As a result staff feels the City has authority to abate problems on the site.

Ms. Jones stated the adjacent American Legion constructed and owned the fence along the northern property line (Exhibit 51). Aerial photos from April 1985 and May 1989, four years later, show the Saba property still incompletely screened years after the alleged agreement was entered between Mr. Saba and the City.

Ms. Jones stated as the following portions of the presentation will demonstrate, Mr. Saba has repeatedly failed to keep exterior storage behind the fence as required by the alleged agreement.

Ms. Jones stated letters of non-compliance started up again in earnest with a new code enforcement officer in 1986. Outside storage of 8 unlicensed vehicles and other items are noted. The 1986 case went unresolved into 1987. Two more outside storage letters were sent in 1988.

Ms. Jones stated in September of 1988, staff sent Mr. Saba a letter for the same outside storage violation of vehicles and materials. City staff met with Mr. Saba in January 1989 and agreed to give him to May 15, 1989, to clean up the property.

Ms. Jones stated by August, 1989, Mr. Saba was still storing junk vehicles, so staff issued another citation. In September the City dropped the charges as Mr. Saba had finally corrected the violations. Staff evidently incorrectly assumed he had an SUP for the outside storage behind the fence.

Ms. Jones stated by April 1990, the code enforcement officer sent another letter regarding unscreened outside storage. In January 1991 a new case was initiated by City staff for unlicensed and inoperable vehicles being stored off pavement in addition to outside storage. Once again an extension was granted to May 15 and then another to September. There is no record noted of what resulted from 1991 extensions.

Ms. Jones stated another non-compliance letter for the same violations was sent to Mr. Saba again in April 1994. According to a May 30, 1997, letter to Steve Saba, the City met with Mr. Saba on December 5, 1995, to go over the violations. Apparently the site was not cleaned up

because the violations were documented again in a May 30, 1997, letter to Arline Saba as witnessed during systematic inspections that spring. Again, as in 1977 and 1982 correspondence from the City, the Sabas are informed that: "Junk yard and/or vehicle recycling operations and the exterior storage of lawn care equipment related to your lawn care business are not permitted at this location. Please remove all improperly stored business-related materials from the premises." (Exhibit 27).

Ms. Jones stated there was another staff change and, again, during systematic inspections in 1998, 7345 Central was found to be out of compliance of several City Codes. Again, in 1998, Arline Saba was sent letters, informing her that the junk yard use was not allowed in the C-1 zoning.

Ms. Jones stated on September 29, 1998, Arline Saba was cited for the following offenses: (1) zoning violation, (2) inoperable/improperly parked vehicles, and (3) exterior storage. Ms. Saba was fined with one-year probation. In February 1999 the City was considering enforcing the remaining fine and jail time, according to a February 2, 1999 code enforcement letter (Exhibit 30) due to lack of compliance.

Ms. Jones stated in 2000, a new code enforcement officer was hired. By 2002 the Saba property had still not been cleaned up. Therefore, the City decided to take a different approach and send an abatement letter with a December 6, 2002 deadline. Arline and Steve Saba sent a letter opposing the abatement on December 4, 2002.

Ms. Jones stated because of the State one-year retention policy on code enforcement materials, there are minimal paper records left after 2000. Scott Hickok was the Planning Manager for much of this time period and assisted staff on the Saba case. In 2003, budget cuts resulted in Planning losing two full-time positions that worked on code enforcement. She became the Planning Manager in 2005 and took on the 7345 Central Ave case.

Ms. Jones stated she sent an abatement letter in 2005, stating Mr. Saba did not have a SUP for outside storage. When the storage above the fence and outside the fence was cleaned up, she closed the case, giving Mr. Saba time to clean out material behind the fence.

Ms. Jones stated, again, Mr. Saba was sent an abatement letter on April 23, 2008, because of massive amounts of outside storage on site. She presented a photo taken from the street on Evert Court.

Ms. Jones stated despite the property looking like this on May 16, 2008, staff ended up granting Saba three extensions on the abatement, and finally decided to issue a citation. While much cleanup occurred, storage on site continued to be non-compliant. Staff was concerned that the cleanup by the City would not resolve the problem long term.

Ms. Jones stated the date of offense was October 13, 2008, and the case went to jury trial. The jury found Steve Saba not guilty on both counts of (1) improper outside storage and (2) illegal

land use. City staff was stunned. They learned that you cannot expect a jury to understand land use law. Because of an unauthorized action by previous staff, legal counsel, and lack of consistent enforcement because of staff turnover, this case remains a problem the City must resolve.

Ms. Jones stated by the summer of 2011, the view of the Saba property from homes on Evert Court was deplorable. Since a citation would not get the site cleaned up quickly, staff chose again to try to abate the problem.

Ms. Jones stated on July 1, 2011 an abatement letter was sent with a July 21 deadline for cleanup. Mr. Saba's attorney sent a letter to the City on July 18, 2011, claiming the 2009 "not guilty" finding prevents the City's ability to abate. City attorney, Knaak, stated in an August 9 letter clarified that previous court decision only applied to a particular date of offense.

Ms. Jones stated Karen Marty contended in her August 23, 2011, letter to Knaak that Mr. Saba "plans to clean out his storage area, however, must be allowed to work at his own pace". Mr. Saba's "pace", Ms. Jones stated, has proven time and again to be unacceptable.

Ms. Jones stated in October 2011 the City changed attorneys. Staff spent some time getting the new attorney informed of the case.

Ms. Jones stated since so much time had lapsed since the July 1, 2011 abatement letter had been sent, staff resent the letter on November 4, 2011, and extended the deadline to November 28 because of the Thanksgiving holiday weekend. The letter was sent to Mr. Saba through notice to his attorney, informing her that the City had new legal counsel.

Ms. Jones stated on November 17, 2011, Darcy Erickson, the new City Attorney, met with Mr. Saba's attorney, Karen Marty. Ms. Erickson presented attorney Marty with a letter explaining the City's position that "Mr. Saba's existing land use is not and never has been permitted as of right, through special use permit or as a grandfathered legal non-conformity."

Ms. Jones stated on November 22, 2011, attorney Marty sent a letter to the City indicating that her client, Mr. Steve Saba, owner of 7345 Central Avenue, desired an appeal hearing of his abatement case. The date of January 4, 2012, was mutually agreed upon. Staff postponed the nuisance abatement, pending the outcome of the appeal hearing.

Ms. Jones stated three years later the property appears to have even more exterior storage now than when the current abatement case started in 2011. She presented a photo taken last week.

Ms. Jones stated the Commission has been provided a packet of 55 exhibits by staff to aid in its deliberations. Staff has additional records. If the Commission desires additional facts, ask staff as they may have documentation as an answer. Staff was also involved in many meetings and phone conversations with Mr. Saba that they can attest to. Staff desires to end the 50 plus years of non-compliance. Code enforcement problems began over 50 years ago. The length of the

case resulted in limited staffing and the City's willingness to allow the owner to correct problem himself, because it is going to be a massive cleanup project for the City. It is time for the City to end this 50-year drain on City resources and impact on the surrounding neighborhood.

Ms. Jones stated in an appeal hearing, the Appeal's Commission charge is to affirm, repeal, or modify the order of City staff. The order in this case is removal of all exterior storage in the yard, including the material stored behind the fence.

Ms. Jones stated abatement is allowed by Code despite previous acquittal for an offense on October 13, 2008. Using a C-1 site as a junk yard is not allowed by Code and never has been. Mr. Saba does not have a SUP for outside storage. If there was a 1985 agreement to put the storage behind a fence, that agreement was not legal without Council approval.

Ms. Jones stated if there was an agreement to fence in the storage, Mr. Saba did not complete the fence by the deadline. Furthermore, Mr. Saba repeatedly violated the City's outside storage rules by storing materials outside the fence and continues to violate that agreement today.

Ms. Jones stated the case is clear that using this commercial site for a junk yard and for outside storage has never been legally allowed since the Sabas purchased the property in 1954. Using the site as a single-family residence, even though that use is not listed in the C-1 code, is allowed as it is a use that existed before the first Zoning Code was adopted in 1949.

Ms. Jones stated staff has created a resolution that lists the facts contained in this presentation and is supported by the packet of exhibits provided the Commission. Mr. Saba's attorney will likely also provide the Commission with a list of facts and exhibits. It is the Commission's role to compile its own Findings of Fact with the information provided to it.

Ms. Jones stated Scott Hickok, Community Development Director, was involved in the Saba cases since 1994. He can address questions on materials that predate Ms. Jones' involvement. Darcy Erickson, City Attorney, can clarify legal points, as needed.

Darcy Erickson, City Attorney, stated to Ms. Jones during her presentation she indicated there is evidence the City settled the case out of court with an agreement that Mr. Saba would construct a screening fence by July 1985 and keep any storage behind the fence. To clarify there is no written agreement signed by the City and Mr. Saba or representatives from either side to that effect, is that correct?

Ms. Jones replied staff has not been able to find anything. They only found some memos indicating an agreement was being discussed. They have searched Anoka County documents, all the City files, and have not been able to come up with any written agreement nor has Mr. Saba or his attorney submitted anything relating that.

Attorney Erickson stated to be clear, there is no written, signed agreement by the parties to that effect?

Ms. Jones replied, not that they could find.

Attorney Erickson asked, this probably goes without saying, but a memo is not an agreement, is that correct?

Ms. Jones replied, correct.

Attorney Erickson asked, nor is any other communication like a letter without signatures of both parties, correct?

Ms. Jones replied, correct.

Scott Hickok, Community Development Director, stated if there was a special use permit, which would have been required, there would also be minutes to that fact. He just wanted the record to show and to reiterate if there was a special use permit, it would come with a set of minutes, it would describe Council's thought process behind the policy that would allow a special use permit here and that does not exist.

Attorney Erickson stated and to his point would it also not, as an agreement of any type, whether it could exist under Minnesota planning law, would have to be brought before the City Council and approved by the City Council, is that not correct?

Mr. Hickok replied, that is correct. The Minnesota State Planning Act would require that the special use permit follow the statutory procedures in order to become an official special use permit and that no evidence of that exists. There is no special use permit that would comply with Minnesota state law and would be signed ultimately by the Mayor and the Clerk representing an official special use permit.

Attorney Erickson asked Mr. Hickok with his experience and qualifications of the City's zoning administrator, is it not true that the Minnesota Planning Act is the mandated process by which property rights, such as special use permits and variances and in fact rezoning, are required to go through?

Mr. Hickok replied, yes, the Planning Act is the enabling legislation that allows cities to make land use decisions like this that would affect private properties within the City's boundaries.

Attorney Erickson stated, in effect, if there were any type of evidence of any agreement, which there is not, it would not be a legal method of providing the legal right to store materials outside of any fencing and certainly to conduct a junk yard in a district that it did not permit junk yards to be operated in, is that correct?

Mr. Hickok replied, that is correct. It would take a special use permit to do that and it would have to follow the Land Planning Act.

Attorney Erickson stated and in fact the property would have needed to be rezoned, correct, to even have a junk yard?

Mr. Hickok replied, that is correct. The C-1 zoning would not provide for that.

Chairperson Sielaff stated his understanding of this site could continue as it is if it had a special use permit?

Ms. Jones asked what does he mean by "as is"?

Chairperson Sielaff replied, well, it is considered a junk yard now, right?

Ms. Jones replied, a lot of things are in violation, not just the junk yard.

Chairperson Sielaff stated how much would the special use permit limit be issued for?

Ms. Jones replied, the special use permit would cover some degree of outside storage typically. She does not know if the City has ever even granted a special use permit for outside storage in the C-1 district. They typically are doing that in Industrial. The City's current Code allows that in Industrial districts. It would be highly unusual for the City to do that for one thing. Clearly for a junk yard use they could not because that would require complete rezoning of the property. The City could have offered a special use permit for outside storage. The language in the Code at the time did allow for that to occur. What exactly would be allowed to be in that would be in the stipulations of that special use permit. There would be parameters about screening and what would be allowed in that outside storage area.

Mr. Hickok stated the special use permit, even it had been granted and they know it was not, but if it had you could not geographically expand beyond what was originally allowed and as they saw in the presentation and heard in testimony, it has gotten worse over time. The area has expanded and it has become more and more visible from those right-of-ways. It is important they make that note as well that even if one wanted to argue that somehow there was an agreement which there was not or a special use permit, they have to understand it would be under those provisions that it was originally approved and not expanded geographically which has truly been the case here as they have observed.

Chairperson Sielaff stated areawise they have expanded over time?

Commissioner Jones asked, is there any concern of hazardous waste problem in this area because the way it has been used in the last 50 years?

Ms. Jones replied, that is a very good point. That is exactly the crux of staff's concern. In the past, the code enforcement officer had contacted Anoka County Environmental Health Services, because they were very concerned about that, and Anoka County did inspect the property and

had sent a letter to Arline Saba requesting more information because they felt from what they were seeing on the property that a hazardous waste generator license would be required by the County. They were concerned about what was happening to all the fluids that were coming from the vehicles and appliances that were being junked.

Ms. Jones stated when this started back in 1954 state law probably was not in place like it is now protecting and requiring that anybody dismantling appliances has to be certified by the State, and, of course, there are rules, such as it has to be done inside a building, you have to properly handle PCB's, Freon and other toxic chemicals coming out of those appliances. All of the dismantling has been occurring just on bare ground. It is not paved in the area where the junk yard location is. Staff is very concerned for public health and safety around this site.

Commissioner Jones asked there are no guarantees the activity at this site could not have already contaminated the groundwater?

Ms. Jones replied, it is possible. She does not know of any City wells nearby. There may be private wells nearby.

Commissioner Jones stated there are the aquifers.

Chairperson Sielaff asked if there were any more questions by the Commission. There being no questions, he stated they will move onto the petitioner to provide their presentation.

Karen Marty, Attorney for Steve Saba, stated she has been representing Mr. Saba for quite a number of years. One of the things that has always been important here is she had expected to push him to come into compliance. When some of the facts came out though, it turns out he is in compliance; and the City is overreaching.

Attorney Marty stated her Exhibit A is a resolution she had drafted for the Commission's consideration. The reason she is giving it to them first is it lays out the factual background and all of the points that are critically important here.

A**ttorney Marty** stated the City has brought this code enforcement action. They started an abatement on Mr. Saba's property. They sent him various notices, etc. She wanted to go through the points in the draft resolution, and they will quickly see what the issues are here. The City has sent Mr. Saba the notice. They say they found a violation of zoning and unlawful exterior storage and that they actually prosecuted Mr. Saba for those things. They wanted Mr. Saba to plead guilty, and he was unwilling. He took this to jury and the jury found Mr. Saba was not guilty of unlawful land use and was not guilty of unlawful exterior storage.

Attorney Marty stated what they have here is a jury verdict and sore losers on the part of City staff. In this American system it is incumbent upon us to respect and honor the process of taking a case to a jury trial and honor what the jury has done. They are humans. They are never perfect, but we have the best system on earth with trial by jury, and their verdict should be given

the credence it is actually a correct decision and should be honored as such. When the prosecution resulted in an acquittal, Ms. Jones and Mr. Hickok initiated an abatement because they could not give up; and Mr. Saba has appealed that to this floor.

Attorney Marty stated this case has been delayed because the City Attorney and she agreed to delay this appeal proceeding while the lawsuit was ongoing but because they covered broader issues than just now the abatement could proceed. However, the judge disagreed and dismissed the case without prejudice. Meaning they could refile it any time. Last summer, because they wanted the court to rule on their abatement order, this was scheduled to be heard in October but the meeting ran late because of another hearing.

Attorney Marty stated in 1954 Mr. Saba's parents purchased the property. They moved into the house with their seven children. They promptly established the garden in order to help feed those children, and Mr. Saba's father began recycling metals outdoors on the property at that time. Steve Saba's older brother is here, and he would like to tell them a little bit about what he remembers happened on the property in the 50's. Just so they know what began when.

Tom Saba stated he is the oldest of nine Saba siblings. He grew up on 7345 Central and attended high school and college and lived there until the late 1960's. They always had a big garden there.

Attorney Marty stated to Mr. T. Saba before he goes on to what happens then, just tell them what education he got and what he did for a living.

Mr. T. Saba replied, he is a retired police officer. He was an officer for 30 years. He graduated from college and went on and got his Master's and worked in law enforcement for 32 years. In fact in the 1970's after graduating from the FBI National Academy and doing graduate work at the University of Virginia, the City Manager, James Hill, asked him to take the examination for police chief at Fridley.

Mr. T. Saba stated in the 1950's they saw a current picture of the American Legion, just north of the property. That was a little shopping area. On the corner was a hardware store and then there was Mitch's TV and Appliance, and then there was a grocery store. The neighborhood has always been very close. There was the property across the street that was used automobile recycling. His mother was a very good friend with John who owned all that property.

Mr. T. Saba stated in the 1950's after they purchased the property, 1954-1955, and later on in the 1950's, his dad worked at Mitch's TV and Appliance. They took in a lot of recycled older appliances. His dad would bring those home, take them apart, and recycle them. As kids they had the job to separate the wires, the switches; and his dad would do the heavier stuff with the motors and the sheet metal, etc. In fact a lot of that material was brought in right beside the driveway and their big garden was right there. He was into the recycling and salvage business with those appliances. Very careful about it because it was right next to their garden and the residential structure there. That is his memory. He is in his 70's so he guessed he could serve as

a little bit as a historian. As long as he can remember they were involved in the recycling business.

Attorney Marty stated the property has been used continuously for recycling since Mr. Saba's father began it. The current zoning of the property is C-1 according to the City and that does not allow establishment of a new residence or garden although those have been there since 1954. The current zoning of the property does not allow the establishment of any new land use that would involve recycling of metals or other goods or unscreened exterior storage. However, any existing use which has been legal at any time may continue indefinitely as the legal non-conforming use. It is called, "grandfathered" in the vernacular but it is technically a legal non-conforming use. If it has ever been legal it may continue regardless of how the zoning may change after that.

Attorney Marty stated the City does have the burden of proving the zoning over time. In 1949 before Mr. Saba's parents purchased the property, the City had adopted a zoning ordinance which she simply calls the 1949 Ordinance, Ordinance No. 24. That ordinance stated that the boundaries of these districts are delineated on the map, entitled "Zoning Map of the Village of Fridley" which is on the record at the office of the village clerk. That zoning map the City has admitted is missing. They do not have that zoning map. That zoning ordinance was amended in 1953. The 1953 zoning ordinance states that the zoning is shown on, she does not have it in front of her, it is one of the exhibits from the City, but she believed it states it is called "The Revised Zoning Map of the City of Fridley." That map is also missing.

Attorney Marty stated if they look at the first two pages she talked about, the third and following pages are what the City claims is the zoning map from 1953. This is not a zoning map. This is a map of the Village by some land surveyors and engineers. Unfortunately, she gave her only good copy of this map to a judge. All she has is the crummy one the City sent her. She blew up the part where it says what it is a map of. It does not say Revised Zoning Map. If they flip to the next to last page, they will see what is probably in their upper right, a legend. It is very hard to read. She did blow that up. It is almost impossible to read. The first three lines, if they had a proper copy, identifies street types. The following two lines identify two zoning districts. They do not know if those are accurate. They do not know who put this in.

Attorney Marty stated the City had three zones by then, Residential, Commercial, and Industrial. They do not know where the residential land is. It is not shown. This is not a zoning map. This is a street map. It is not possible to say that this shows the zoning. It also is not at all clear whether this map intended to show the zoning from the 1949 or 1953 ordinance. Therefore, they do not know still what the zoning was on the Saba property when they started recycling in 1954. These maps are both missing. The City has located this alternative map and is using it, but it is not the official one.

Attorney Marty stated zoning is considered to be a derogation of the common law. Put that in English, the common law gives you a lot of property rights. The Constitution in fact mentions property rights as one of the things that cannot be taken without just compensation. Zoning takes

some of those property rights. That is fine so long as the property owners get equal benefit back. There are some balances that go into this. However, because zoning is contrary to the constitutional and long common law property rights, an ordinance must be clear. It must clearly articulate the limitations on property, where the property is located, and how it is zoned.

Attorney Marty stated without a map they have no idea what the 1949 ordinance attempted to zone. There are cases from that era. Golden Valley had one of the major ones showing that some cities were not zoning the entire city at that point in time. In the 1950's and 60's cities would some time zone only the residential areas because that is what they wanted to protect. That is what zoning was originally used for, to keep the nice residential areas from being inundated by apartment buildings and nasty industries. We all appreciate that protection of our neighborhoods. There are ordinances out there that would regulate the residential areas and not the rest of the City. Sometimes they called it an open development district, sometimes they simply left it out. They do not know what the City did in the 1949 ordinance. They do not know if it zoned the entire City.

Attorney Marty stated the 1953 ordinance may have but without the correct map they do not know. The legal description that the staff points to in their indication of the 1953 ordinance describes the zoning near the Saba property as that property which is so many feet from another location. It does not say and to the east, and to the west, it is "that line". If they remember high school geometry, a line is really, really narrow. It is not a zoning district. It is a line. They do not know if it is on the stuff to the right or the left. They do not know how the Saba property was zoned. Again, that is a lack of clarity in the ordinance and there is a lack of clarity to interpret the ordinance in the way that is most beneficial to honoring the common law property rights. The rights to use your property as you wish.

Attorney Marty stated in 1985 the City adopted a new zoning ordinance. That zoning ordinance, No. 775, defined junk yards. And this is critical. It defines junk yards as an open area where waste and used materials are bought, sold, etc. It is an open area. That is clarified elsewhere in the ordinance as an unscreened area. An area that is not enclosed by a fence. That is the ordinance that was in effect in 1985 when the City brought its first prosecution of the Sabas.

Attorney Marty stated at that point in time, as the photos show and as the City has been quick to point out, the Sabas were pretty much recycling anywhere and everywhere on their property. They have a big piece of property. In the court proceeding they convinced Mr. Saba to enclose it with a solid, six-foot tall wooden fence and move all his stuff inside. They gave him six months to do it. That meant that his junk yard, as the City calls it, was no longer a junk yard. It was not an open area. It was an enclosed area. The deal between the City and Mr. Saba was that he could, do whatever he wanted for, you know, disassembly, junking, storing things inside the fence.

Attorney Marty stated when you are recycling you bring stuff onto your property and then it gets into the fence. Not necessarily in the same trip because the fence has a gate and, let's face it,

not everybody gets everything done immediately. Sometimes it would take a day or so to go in and would come out before it was hauled out. It could come out for a few days. Mr. Saba is not a perfect person. Over the years he screwed up and left stuff outside the fence. The deal was if he had stuff outside the fence for too long, the City could come after him again. Fair enough. That agreement was reached.

Attorney Marty stated she does not want them to think there is nothing lagging about this agreement because there is. The City has presented the Commission with only one side of the story. There is the City memo from the public works director to the city manager describing sending the issue to the City Council to get their approval for the proposal that there be a fence erected and the property put inside the fence. There is a public works memo to him from the chief building official. There is a letter from the City's attorney to Mike Tello who was the Sabas' attorney. By the way Mr. Tello is here. This is from 1985 but he remembers it, and he will tell them what happened. And then part of the deal was Mr. Saba had to submit a drawing of his fence, get it approved, then he had to get the materials and build the fence, and then the fence would be inspected. That all occurred.

Attorney Marty stated they will see at the top page of this packet is the ordinance she mentioned. The second page has the page of the ordinance that has the definition of junk yard. The third page is that memo from the director of public works. They will see at the very bottom, the last paragraph, if Council has no objection. Obviously this matter went to the City council. The next page is simply another memo from the chief building official. The next to last page is the letter from City's attorney to Mr. Tello laying out the deal, the agreement. Then the final page is the fence drawing.

Attorney Marty stated she directed them to the letter to Mr. Tello. It states in paragraph two that he would be required to construct a six-foot high wood screening fence around an area of the lot as set by the City of Fridley prior to July 1, 1985. He would be requested to submit a design for construction of the fence to the City of Fridley and receive the City's approval prior to commencing construction. Then there is a handwritten note, approval will not be unreasonably denied. Mr. Tello wrote that in. He remembers that. And Mr. Saba would be required to move all refuse and unlicensed vehicles inside the fence prior to July 1 or he could get rid of everything.

Attorney Marty stated why would the City ask for a fence? Why would the City ask that stuff be moved inside the fence if it was all completely legal to begin with? The reason, because the City Council could read their ordinance and tell that once there was a fence and everything was inside it, it was not a junk yard anymore. It was legal. It was outside the scope of the ordinance. No special use permit was required. No rezoning. He now had an enclosed area for his storage. It was screened from the public right-of-way. When it was not screened, they could come after him.

Attorney Marty stated she is not asking the Commission to accept this as the only evidence of any agreement that ever occurred. She would like to walk them through a few of the City's

exhibits if she may. This is Exhibit 13. What she did is took the City's exhibit and took some of the words and just highlighted them by putting them in a box. She wanted the Commission to be aware of in this letter from 1986, the City objected to things that were "unscreened, junk vehicles in the open, and other items in the open." The next letter is the City's Exhibit No. 14, a January 16, 1987, letter. Again this refers to vehicles stored unscreened and items were in the open. The next letter again refers to, "need to move things such that they are not visible from the residential area to the east and also the rights-of-way." Making things screened and not visible made them legal.

Attorney Marty stated the next letter is Exhibit No. 16. Again it says remove remaining outside storage such that it is not visible to the area to the east and the public rights-of-way. Exhibit No. 17, remove all vehicles and outside storage so that they are not visible. This says make things not visible. These are City documents. Exhibit No. 18, all junk vehicles, tires, equipment/supplies, and assorted debris must be removed from the property or placed in the fence-enclosed storage area. Exhibit No. 19, all junk, etc. etc. must be removed or placed within the fence-enclosed area east of the house. Exhibit No. 21, the violation is unscreened outside storage visible from public rights-of-way. Things inside the fence are not visible from public rights-of-way. Exhibit No. 22, unscreened outside storage. Not any outside storage. It is the unscreened outside storage that was the problem.

Attorney Marty stated she did highlight the second provision because it has come up repeatedly. Fridley zoning code does permit boats, trailers, and stacked firewood inside the rear yard. The City has accused Mr. Saba of having trailers and firewood in his yard and objected to this. That made that an issue at trial. She thinks the zoning code permitted it in 1991 at least.

Attorney Marty stated the second 1991 letter, Exhibit No. 23, no unscreened storage. Exhibit No. 24, all materials need to be fully screened from view. Exhibit No. 25, again, unscreened storage. They are not making this up. This is the City’s position.

Attorney Marty stated she has to ask them whether all city officials between 1954 and 1994, 50 years, were all wrong. This was legal. That the use could be allowed to continue or is it possible that current staff has erroneously interpreted the ordinance.

Attorney Marty stated the last two pages of the packet she gave the Commission are documents that the City did not give them, but the first one is from the City's files. It is a complaint form from 1987. The form says, "Complaint - Commercial Property, Residential Use." It says, "No violation of past agreement to the City. Is adequately screened." At this point in time they are acknowledging they have an agreement allowing the screened storage. The last page in the packet is from one of the code enforcement officers who sent Mr. Saba the letters. He is now a city administrator in Marshfield, Wisconsin. He sent a letter letting anyone know there was a previous agreement that allows this property to be used for a business that Mr. Saba operated involving towing/plowing activities, storage, and recycling of certain equipment, etc. He notes that problems were related to storage that may have been kept outside the fenced storage area from time to time. Screened storage was legal. Unscreened storage was the problem.

Attorney Marty stated in the City's presentation, staff claimed there is no written agreement between the City and Mr. Saba. Without such a document showing up in their files, they believe it could have never existed. Mr. Saba is not the paper keeping kind so he does not have records. He does not have much of anything. She asked him for photographs, and he found one. The City does not have the 1949 zoning map. The City does not have the 1953 zoning map. The City stated they were purging files based on a one-year retention policy related to violations in the 90's. The City might not have a copy of the agreement. She does not know what was purged. They do not know who purged but, the fact they are missing something as critical as the zoning map, she thinks indicates that the City's files have not been kept perfectly over the last 60, 70 years. She guessed that is because they are not perfect people just like the rest of us, but the fact that they do not have a signed agreement in their files does not mean that one did not exist.

Attorney Marty stated she has one document that she does not have copies of but she wanted to show the Commission anyways that came from the City files. It is a copy of Polaroid photos the City had in their file showing where they went out to the property in 1987 at least the fence is intact. The fence was there by the date it was required. She asked Mr. Saba if the photos show the fence was intact then?

Steve Saba replied, it shows the fence off to the distance behind the garden. The fence was completed three or four months after it was required. He had a six-month period. The City came out and inspected it. It was done before it was required. Attorney Tello who was his attorney back in 1985 came out and inspected it. The City said it was not done four years later. It was done four months later.

Attorney Marty stated the City is basing their interpretation, their claim, on aerial photos. In court those aerial photos would never be admitted because they do not have anyone qualified to testify they accurately represent what was on the ground at the time. The fact they do not show the fence says they are not accurate because it was done.

Attorney Marty stated if they go back to Exhibit A, page 4, at paragraph 44, the agreement allows the City to hound Mr. Saba when he brought recyclables onto the property and did not place them behind the fence promptly enough. If he puts them behind the fence, they would let him be and they honored that agreement for many years. In 1998 the City did again initiate a prosecution of Mr. Saba for his junk yard and recycling use. That case confirmed the 1985 agreement. This case was against Arline Saba. They will see in the Plea Petition she pleads guilty. She was fined with a ten-day cap. The second half of what the judge scribbled says, "No violations or activities conducted within the fence, only outside of the fence for probation violation." On the Conditions of Sentence page, at the bottom, it is written, "Not violate ordinance (storage) outside of fence." That was the point. Inside the fence was okay. Outside the fence was not.

Attorney Marty stated that case was another one where Mike Tello represented the Sabas, and he can certainly answer any questions about how that happened. In 2010 the City again decided

to prosecute Mr. Saba for illegal land use and exterior storage. She wanted them to see, if they were interested, well, first of all she wanted to back up, because one of the documents that came into her tonight was not highlighted on the screen but she knows was given to the Commission, was one where Julie Jones had written a letter to Mr. Saba claiming to have had a conversation with him whereby he promised to clean up everything. That is not true. Mr. Saba did have a conversation. That was with Mr. Hickok, and he never agreed to clean up everything. He had called and asked permission to have auctions outside the fence because he wanted to reduce a lot of the stuff inside the fence. He had the goal of ultimately getting rid of nearly all of it. He was recycling some things. He was creating plastic rain barrels and that kind of thing.

Attorney Marty stated Mr. Saba is always going to be doing something. There is no hazardous waste involved in plastic buckets and rain barrels as far as she can tell. In fact there is no evidence of hazardous waste. The City threw that out as a scare tactic, but they do not have any evidence. There has never been any evidence of any hazardous waste or any pollution on this site.

Attorney Marty stated, back to the letter. Ms. Jones had sent Mr. Saba this letter with the false statements in it. Mr. Saba was asked about this under oath at trial. She wanted to give the Commission his response where he explained what he spoke to Scott Hickok about.

Attorney Marty stated the testimony, the questions of the prosecutors, the answers of Mr. Saba, they just set up the issues so the Commission can tell he spoke with Mr. Hickok about having auctions. Prior to initiating this prosecution against Mr. Saba, Julie Jones sent a memo to the City Attorney which the City provided attorney Marty as part of its discovery and she thinks it really important the Commission sees it. This document has, "Regarding Mr. Saba, new case. We made the decision to cite rather than abate as we needed to have a legally definitive answer for his claim to use his land in this manner." That is a good idea and that is what they went to the jury trial for. To get a legal definitive answer. (She provided the document to the Commission.)

Attorney Marty stated the first one, where it says, Steve Saba, that is relating to Mr. Saba's property. Right in the middle, where Ms. Jones states she wanted a legal definitive answer. Attorney Marty cannot quite imagine a more legally definitive answer than a jury decision granting a full acquittal. This was not a case where Mr. Saba was accused of acting bad on such and such a date. He was accused of improper outside storage. Something that has been continuous on the property since 1954. He was accused of improper land use, having this junk yard use as they have called it, the recycling operation, which has been in place since 1954. Those are big charges. Exterior storage and land use. This is not just something the jury could not understand, where it was a little bitty thing that he did on one day. He did not punch someone out on a single day in a single point in time. These have been things that have been going on since 1954.

Attorney Marty stated she is going to bring the Commission an excerpt from the jury instructions the judge provided to the jury and then after that they will see the Conditions of

Sentence (a standard court form) for each of the two offenses and at the bottom of the Conditions of Sentence, they will see "acquitted" on both of them. Then they have the verdict of Not Guilty Form that was filled in by the jury.

Attorney Marty stated the jury gave Ms. Jones her legally definitive answer. Unfortunately, the City will not accept it. Because the City would not accept the jury verdict, they disagreed with it. The City decided to proceed with their abatement that they considered back in 2008 but then looked for a legally definitive answer. Here they are, back with the same two charges of illegal land use and illegal exterior storage. Now they are trying to abate that.

Attorney Marty stated the City's abatement ordinance does not define the term, public nuisance, which simply allows the abatement of an exterior public nuisance. She was trying to figure out what that means. What is a public nuisance? It has to be something more than, I don't like it. She was looking for something in the ordinances that might answer that question. There are several other ordinances that refer to nuisances, and they are going to go through them. She does not think they are going to find a nuisance here.

Attorney Marty stated the first one, Exhibit L, is simply the abatement of exterior public nuisances. She cannot find definitions in this. She does not see anything. She does see on the first page there that it says this chapter shall apply to the abatement of public nuisances. Okay. Involving junk vehicles (as defined in Chapter 123), large commercial vehicles exceeding 12,000 pounds which are in violation of Chapter 506 and outside storage, etc. and other materials deemed to create exterior public nuisances as defined and subscribed in the preceding sections. The preceding section says, the City is determined that the health, safety, general welfare, good order and convenience of the public is threatened by certain exterior public nuisances. Those definitions defined as the same term.

Attorney Marty stated she does not know what they are talking about yet. Is it having a vegetable garden with having the tomato cages? Is it having old washing machines? There is a difference between these. She is looking for ordinances. Something that would give her guidance.

Attorney Marty stated the first thing she found was the City's public nuisance ordinance. That seemed like a good choice. That is Exhibit M. Fridley City Code, Chapter 110, "public nuisance" is defined. The first one is sort of not too bad. It is someone who maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, comfort or repose of any considerable number of members of the public. They have not heard from numbers of the public. They have heard from two staff members. They are unaware of any considerable number of members of the public whose safety, health, comfort, or repose has been injured by Mr. Saba. That is not very helpful. They are waiting for these members of the public to come forward if that is the case.

Attorney Marty stated No. 5 is also not bad so she looked at that one. Someone who accumulates in the open discarded or disused machinery, household appliances. This sounds

good, right? Or stores in the open machinery, equipment, cars, or materials, not in normal use on the premises where stored, in a manner conducive to the harboring of rats, mice, snakes or vermin or to the fire, health or safety hazards or from the rank growth of vegetation. That would be a very important paragraph if the City had ever presented any evidence of rats, mice, snakes, or vermin or fire, health, or safety hazards or rank growth of vegetation among things stored. The City has not done that. They have not shown that Mr. Saba's storage is a public nuisance under this chapter.

Attorney Marty stated so she went to the Zoning ordinance. She copied part of that for the Commission on the next page. It is not called public nuisance, it is environmental quality which is something we all worry about. In order to comply with the environmental quality standards, the City can require various things. No explosives. No radiation or electrical emissions. Okay. Other nuisance conditions. Okay. But if you look at that it goes through minimum standards relating to noise, odors, vibration, smoke, air pollution and dust, or toxic or noxious matters which have to be deposited or discharged across the boundaries of the lot. The City has not presented any evidence of any of these things. They have no reason to believe that Mr. Saba's exterior storage is violating any of these environmental standards. There has been no noise measurements. There have been no reports of smoke. There have been no reports of immeasurable quantities, any quantities of toxic matter. It is all pure speculation by the City. They do not have anything.

Attorney Marty stated, the next page, continuation of ordinance, same stuff. Again, Chapter 123, junk vehicles. A "junk car" is any motor vehicle that is not in operable condition or that is partially dismantled and is used for sale of parts or as a source of repair or replacement vehicles. She would like to bring to their attention the fact that Mr. Saba does not have any junk cars. He had junk cars in the 80's. He does not have junk cars now. Mr. Saba has trailers and operable vehicles. These are not junk cars. They do not qualify as violation of junk vehicles under this Code. The next page is just more of that provision.

Attorney Marty stated the City wants to abate Mr. Saba's property because they did not agree with the jury because they do not like what they see when they look over the fence into his back yard. They do not like the fact that he is not perfect, that he has not kept everything moved promptly behind the fence.

Attorney Marty stated the City showed photos taken a few days ago. She asked Mr. Saba whether he has any junk cars on his property anymore?

Mr. Saba replied, no.

Attorney Marty asked Mr. Saba whether he has any explanation for why there is a bunch of stuff outside the fence right now?

Mr. Saba replied, a couple of reasons. He takes pallets and things and he cuts them up for firewood. Some of them he sells. Some of them he uses himself. He removed a lot of things

and moved a lot of trailers. There is only one vehicle there and that is his daughter's. He moved a lot of trailers and boxes that he put firewood and stuff into for the sake of Asphlundh.

Attorney Marty asked, who is Asphlundh?

Mr. Saba replied, they are the tree trimming people for Xcel. They trimmed the whole entire 300-foot south side of the property. He has been talking to them for six months. He told them when he got time to do it he would move things for them. There are a few things that should be inside the fence. There are some trailers and stuff that he feels should not have to be in the fence, but he moved stuff that was inside the fence so they could get in there and trim some trees. He moved a lot of stuff on the outside of the fence so they could trim the whole entire 300-foot south side portion of the 150 feet on the east side.

Attorney Marty stated back to Exhibit A, her draft Findings, she has given them all of the evidence that goes with the first 73 paragraphs. It is a lot of stuff. She knows. She does administrative hearings as a hearing officer. She typically writes findings of fact and conclusions of law, so she set it up that way. The conclusions she would encourage the Commission to find are that the use of the property was legal. It would not have begun in 1954 because the City cannot prove it was illegal because they do not have the maps and may continue as a legal non-conforming use.

Attorney Marty stated the 1985 agreement actually changed the status of the use because at that point the recycling was no longer spread over the entire property but was now limited to the area inside the fence. That area was legal. Since 1985 the use of the property as a residence and family garden remained legal non-conforming, and the recycling remained legal so long as it is in the fenced-in area. Exterior storage outside the fence is legal so long as it is accessory to the residential and family garden or legal under the commercial zoning.

Attorney Marty stated if they were to look at the map of the proposed fence that Mr. Saba had in the original packet from the 1985 court proceedings, on that there is a note that Mr. Saba will keep his commercial vehicles outside the fence. When you do not have a formal signed contract, you collect all the documents from that period of time and, if people have honored the agreement for years as they have this one, you look at the documents trying to figure out what these terms were. She believes that is part of the agreement that Mr. Saba's commercial vehicles would be parked in a commercial zone, and it would be legal outside the fence. That exterior storage within the fenced-in area is legal and that neither of the use of the property nor the exterior storage had been shown to constitute a public nuisance.

Attorney Marty stated she would urge the Commission to overturn the abatement order of the City Planning Manager. She asked if they have any questions.

Commissioner Jones asked, is there an actual signed document that is the agreement?

Attorney Marty replied, the thing she believes constitutes the agreement is signed by the city

attorney.

Commissioner Jones asked, does anyone have, to her knowledge, an actual signed document signed by both parties?

Attorney Marty replied, she wished there was but the only documents she has are from the City; and the City openly states they do not have a signed contract. She was disappointed they tried to hide the 1985 documents from the Commission because those are City file documents. She has no reason to dispute them. She believes they represent the terms of the agreement…

Commissioner Jones asked attorney Marty, to her knowledge or Mr. Saba's knowledge, is there an actual special use permit, the SUP. Does Mr. Saba have one of those?

Attorney Marty replied, Mr. Saba is not the record keeping type, he does not have anything such that a lawyer would love to get their hands on. If one was granted on the property, it was probably done when he was very young.

Commissioner Jones stated, sometimes it gets put in with all the other records, in with an envelope.

Chairperson Sielaff, seeing no other questions from the commissioners, said the next step in the process will be staff's rebuttal.

Commissioner Jones requested a short recess, so **Chairperson Sielaff** recessed the hearing at 8:50pm for a five minute break. Upon return from recess at 8:55pm, **Chairperson Sielaff** said it is now time for rebuttal from both sides, starting with the City.

Mr. Hickok asked to take them back to the 1949 zoning map first. In the Commission's packet, is the 1949 ordinance, and what was described in their presentation earlier is a line. That is not a zoning designation or a zoning district. That is a line. They will see that on the Saba property it has been highlighted, and they can see the Section, Township, Range description: lying 300 feet easterly and parallel to the easterly right-of-way line of Central Avenue. Those are dimensions that you could go out and measure.

Chairperson Sielaff asked Mr. Hickok, what part of the packet is that on?

Mr. Hickok stated the second page is '49. The point is about '49 before he moves onto '53 is that the zoning was described in great detail by legal description. They should not focus on the '49 map though because they know that the '53 map came into effect before they bought the home in '54. The Commission heard from their testimony that they bought the property in '54. They want to be told it seems that because the City does not have a '49 map, this is corrupt. The legal description did define precisely which properties have what zoning. The one they really want to focus on then is the 1953 ordinance that would be in effect then when they bought their property in 1954. The Commission will recall from staff's testimony that aerial photos showed there was

nothing there but a farmhouse when the Sabas bought the property and then they began after they bought in 1954.

Mr. Hickok stated, again, now this does have a zoning map and interestingly enough the attorney who spoke to the Commission and said there isn't one, has that zoning map. She might want to argue about the cartography and how the maps differ between 1953 and today, but she has in her possession the zoning map that they used in court and it has also been attached here to the information that she presented. She may want to argue there is a different type style in the corner on the key. Well, back then, oftentimes what they did do is they took a map (remember they do not have GIS and the fancy mapping systems that they now have) and they took what they did have, what they paid money to do, and that was a street map and created a zoning map accordingly. Even by attorney Marty's own description as she is describing another city case that does not really have relevance here, but she was trying to point out that zoning maps leave open areas that might be agriculture and open land, etc.

Mr. Hickok stated the 1953 ordinance was very precise and described every zoning that they had in the City by legal description. That is pointed out in this illustration where the Saba property is defined clearly by legal description what they are talking about: the township range and section, which gets you to precisely the section you are in, and then the dimensions, "300 feet Easterly of and parallel to the Easterly right-of-way line of the Central Avenue. All that part of the North 1/2 of said Section 12 lying 500 feet Westerly of the Westerly right-of-way line of State Highway No. 65; and all that part lying 500 feet Easterly of the Easterly right-of-way of Highway 65 and all that part of the N.W. 1/4 of said Section 12 lying Southerly of Fireside Drive and Easterly of the Easterly line of State Highway No. 65, excepting Lots 14 thru 18 inclusive,, Block 2 Central View Manor Addition." That you could go to the map and compare.

Mr. Hickok stated the Commission has been told there is not a 1953 map, which there is. They have been told that these are not zoning designations, these are lines, and the description itself is a line. If you know anything about legal descriptions, you know that defines an area. When you hear 300 feet and 500 feet, you start to realize there is an area being called out. That area was not industrial. That area never permitted recycling, junk yards, or what has been described as the family business that the young kids in the family got involved with at a young age and the dad did.

Mr. Hickok stated that, to be clear, was not a land use that was permitted at the time. The petitioner can spend an hour and a half in the presentation telling them all sorts of rosy things about a 1985 agreement that supposedly exists but cannot be produced. However, there is an attorney here that can tell them that, I remember the details that went into that discussion. That does not match having a document here. That document, it would be so very important, shall also describe that 1985 action as an ordinance. The last and most recent ordinance amendment in 1985 was a 1983 amendment. There is not a 1985 code change. It is a 1983 amendment that talks about the land uses.

Mr. Hickok stated, way back, just to put it into comparison. In the 1970's the salvage yards

grew up here in Fridley and the petitioner talks about being friends with some of the folks who created those salvage yards. They should know better than anyone then what those folks who created salvage yards needed to go through. It was not about putting recycling out in open areas, as has been described for the Commission. No, it was about screening, making sure the height of the materials inside the fence were not where you could see them from any vantage point. It was so that any objectionable views that might be part of that property and part of that project would not be viewed from the street. That goes back to the beginning of the salvage yards, and it certainly would have applied if this were a salvage yard. Keep in mind these folks were across from the salvage yard. Probably thought they could be like a salvage yard. They were not a salvage yard. They were a C-1 zoning.

Mr. Hickok stated just to remind the Commission again what the Commercial districts are about, the bigger the number, 1, 2, 3, C-3 is a shopping center district. It expects a market area like this; C-2 is a bit more restricted area, it is a little bit more restricted than the types of uses that are there; C-1 was very restricted, it was the old corner barbershop. It was some of those local services that were expecting a service area that was much smaller. Imagine trying to put an industrial use where the corner barbershop, the little ice cream store, some of those local services were supposed to go that were meant for that area.

Mr. Hickok stated they are being told that an industrial property was okay there. That the City was okay with that from the very beginning. The fact that there have been letters since 1961 but that no one is complaining apparently except Ms. Jones and Mr. Hickok. Those letters just were coming out from City staff who were apparently "overreaching" like the City is doing now. You folks were overreaching. No one is complaining about it. You could not live next to this and have a dinner, look out the window, and not see that as a nuisance or being aggravated by it or find that your comfort of living is affected by this.

Mr. Hickok stated how about if he were to tell the Commission that dad used to take apart refrigerators with Freon dripping into the soil? It would be interesting and you would fear for your groundwater, which does not just stay in your property. Groundwater in fact goes out and it travels. There is a plume of contamination that typically travels out from a contaminated site. The City is very concerned about it. Staff has tried to work with these folks to get it cleaned up, unsuccessfully as they can see. The City's history is quite long.

Mr. Hickok stated the 1985 ordinance he touched on and the agreement. There is no agreement here to be produced. However, he wanted to remind the Commission again how it all works and how zoning law works. Way back in the 1949 ordinance, if they read it, they had special uses; and those special uses were special by virtue of the fact there were mitigating solutions that you might need to come up with because of features about that use. Way back to 1949 the City would have required a special use permit for some of these more intense uses like a salvage yard. In 1953 the City would have absolutely required it. They definitely would not have allowed it out on the corner store site, the little C-1 site. The City would have had you go through great lengths through a special use permit process back at that time also.

Mr. Hickok stated in 1985 there was not a new ordinance as the Commission heard the petitioner tell tonight. There is no agreement they can show. There was some discussion. There was a public works director who did not quite understand planning all that well who was talking about a possible solution. There was an attorney who was trying to figure out how we solve this problem. However, all of those folks would have had to come back together before the City Council with something it could act on to change the land use outcome. Because they did not, there is no legal use they are talking about here at all. They are talking about an illegal use started by a dad who was recycling stuff and thought he could bring appliances across the street from where he worked and take them apart in his yard. It was never permitted by law. They have been told that it is. It was not.

Mr. Hickok stated the City had a series of code enforcement people, as Ms. Jones pointed out in her presentation that went through, may have understood land use real well, or they may not. All they saw was stuff like this, going back to 1961 that needed to be cleaned up.

Mr. Hickok explained that the Commission was given portions of the Land Planning Act. Some of this history goes back to 1982. Some of this history goes back further, but the claim is that in 1985 there was an action here that made what they were doing legal. The conditional use segment of the law required a conditional use for this type of activity if the zoning were right. Again, if it were industrial, the City (even back to 1949) would have required a conditional use, and as they know, called a *special use* in Fridley. The petitioner claims in 1985 they had the equivalent of a special use that made this legal that somehow made it okay to recycle inside the fence. Maybe if they had gotten behind the public works director sending a memo to the City Manager and the city attorney weighing in, and maybe if it had any legs at all and gone any further to the City Council, maybe there would have been a stipulation in there saying, okay, but by these standards. The Commission knows how this works; they have gone through these before. There was not. There is not.

Mr. Hickok stated you have the two pieces here, you have the Minnesota Statutes that enable planning to take place. More specifically you have what it requires to adopt conditional uses under law. This did not happen. Each time you hear, each and every time they hear, this is legal. There was an agreement. It is okay now, as long as it is inside the fence. Well, it was not. There was no official act on the part of the City. The jury did not understand that. This is a big thing and, as was stated here, juries are people, too. They do not necessarily understand everything. They saw a sympathetic figure. They saw somebody whose dad had been doing this for years and which really defined dad as a part of his job. Probably did not want to put him out of business. Probably felt a little bit bad. Mr. Saba does not know where he is going to put the stuff. He has stated tonight and he has stated before, he is not exactly sure. He has some stuff that should be inside the fence. He has some stuff that is outside the fence. And even by their agreement, if they were for one split second to say, well, there is an agreement. Is this inside the fence (pointing to a current photo of the site)? How about this? Mr. Hickok would say, no.

Mr. Hickok stated as to aerial photos. He thought this was maybe the most interesting in all of

the testimony. He is going to give the Commission one equally as bad. Those were not aerial photos. Those were described as just bad Polaroids in the presentation. He referred the Commission to Exhibit 52 in their packet (a 1989 aerial photo). He asked Ms. Jones to put up the petitioner's photos of what they were saying the fence looked like in 1987.

Mr. Hickok asked the Commission to call their attention to Exhibit 52 and to the east edge of this site. Just to give them a reference it is hard to read that aerial but kind of in the southwest corner of the page, they will see the cul de sac that comes off of 73rd. That is a good indicator, and if they go just a little bit to the north and west of there, they will see the site. They will see shadows from the fence area. That shadow stops though as they can see before it gets to the north/south fence which you can also see a little shadow of. There is an opening there. There is also a matched opening on the north property line. That fence was not complete there. However, look at the photos given to the Commission tonight as evidence. Not one of those photos show that east edge of the fence. They are all taken from an angle that show the western part of the fence and they are telling the Commission, wow, that was taken in 1987. Staff knew and could tell them that it was not done. It was supposed to be done, according to this agreement, in six months. It was not completed. They took a picture in 1987 that shows the western edge of the fence that was done. The eastern edge of the fence which you can see in a 1989 aerial was not done.

Mr. Hickok stated the Commission just needs to pay attention to these little facts they are being given as facts that they really need to question. The jury did not understand it. The jury got a lot of the same. You are wondering how does the staff go through and get what they are saying is an acquittal after all the detailed work that it has done on two counts, outside storage and the land use. In his 28 years of doing this now, that is the first acquittal that has come back on a jury and is clear to him that a lot of the information given was to misdirect on land use which is a pretty careful and detailed profession that they need to understand. If you are going to read the ordinances, they need to be in common every day terms. Everything that an owner here would have had to read would have been in common every day terms but is described to the Commission as it was described to others.

Mr. Hickok stated he finds it very, very interesting that the Commission is given things like this, that show the end of the fence that is supposed to be complete. This is the best day the site has ever looked. Believe him he is guessing there was cleanup from the photos because the City has aerials going all the way back. The Commission heard tonight testimony about, well, you know, they were coming through and trimming trees so Mr. Saba was moving stuff around for them. And that is why there is stuff outside the fence?

Mr. Hickok stated one more thing he wanted to mention and then Ms. Jones is going to go through the resolution and findings of fact. The discussion with Scott Hickok the petitioner has pointed to. He found that very, very interesting. That discussion started when Steve Saba called a councilmember. Steve Saba was told by that councilmember and rightly so, you know, talk to staff. They are a good staff. They are a reasonable staff. They are going to work with you. They are going to help you figure out a solution to getting this thing done. Yes, it was Scott

Hickok and Steve Saba on the phone. Ms. Jones can talk in the collective about "we talked to you". She did not say, "I talked to you". City staff talked to him. That was Mr. Hickok. He talked to Steve Saba, and he was directed to talk to staff by a councilmember. The City gave him time. In the little snippet the petitioner chose to give to the Commission, they told them, Steve Saba was going to have these tent events to use auctions outside. That is what this discussion was about. This discussion was about giving him more time. He was pleading. He was going to have a graduation on his site. He also caters. He needs to get it cleaned up for his own benefit. They were going to have a graduation on the site, and he could not have it looking like this either, stating “you and I are after the same goals”, we want to get this thing cleaned up.

Mr. Hickok stated he had asked Mr. Saba, when is the date of this? Mr. Saba replied, well, can he have until they extended, Mr. Hickok believed, until August. Mr. Saba said, in the meantime, he really needed to get rid of some stuff. He was looking at this new technique he is hearing about out there. There are these auctions that people are having on-line that are drawing people in. Can he have those? Mr. Hickok replied, he has a big job ahead of him. He has some clean-up to do. If that is what he has to do to get this thing done. The City is not saying that is the land use from here on out which he might be led to believe. They were talking again about that reasonableness that council pointed to. Pointed him to a solution to get to something that, okay, it is not going to happen in May but the City is going to give him until August. If it takes you doing these auctions, get it cleaned up. Even in court that day on their way out of course, Mr. Saba said, “I know, you and I are after the same thing.” Again, Mr. Saba told Mr. Hickok, I know, I want to get it cleaned up, too.

Mr. Hickok stated the earlier photo that they saw is evidence there has not been a lot of clean-up. It has gotten even worse since then.

Mr. Hickok stated from here he turns the Commission's attention to Ms. Jones which will take them through the resolution findings of fact and after that, it will conclude their rebuttal.

Attorney Erickson stated she realizes they have to label the exhibits that Mr. Hickok distributed here. The two exhibits that were distributed to opposing counsel and the members of the Commission are Minn. Stat. Sec. 462.357 and that can be labeled she believed as Exhibit 57. Then, Minn. Stat. § 462.3595, entitled, "Conditional Use Permits", that can be labeled as Exhibit 58. Before she does turn it over to Ms. Jones, she wanted to ask Mr. Hickok a question. With respect to conditional use permits, they are the same thing as special use permits, is that correct?

Mr. Hickok replied, that is correct.

Attorney Erickson asked, and Fridley just designates those as special use permits as opposed to conditional use permits?

Mr. Hickok replied, yes, it is Fridleyism. Some other communities call them special use permits but typically they are called conditional use permits. In Fridley, they are called special use permits.

Attorney Erickson stated, turning their attention to Subdivision 4 of that Statute relating to conditional use permits, does it not require that any conditional use permit be recorded and she assumes Mr. Hickok is familiar enough with the property and has reviewed title to the property? There is no conditional use permit that has ever been recorded, is there not?

Mr. Hickok replied, correct. Before the staff would embark on any sort of code enforcement action back in the early 90's, when he came on, staff looked to make sure there was not something. They always need to do that because, especially with these sites that are questioned, how did that get to be? The staff turns over all of the stones to see if there is something, maybe a special use or something in history to tell them how and why this happened.

Mr. Hickok stated if for some reason the City's clumsiness here would cause them to not have it, they would definitely be able to find it at the County because, in order to be legal and legitimate and everyone else be able to find it when they are looking for it, they need to have it filed at the County according to law.

Attorney Erickson asked, does this Statute set forth in Exhibit 58 also require that before any conditional use permit or special use permit, as in the City of Fridley before it can be issued, there needs to be notice to property owners that are adjacent to or within 350 feet and there needs to be public hearings on any issuance of a conditional use permit before that can be legally permitted?

Mr. Hickok replied, that is correct. And there would be minutes. As mentioned earlier. There would be minutes and this would have gone, not only to the City Council, but prior to that it would have gone to the Planning Commission. Even if they were able to lose one set of minutes, there would be the Planning Commission minutes, too.

Attorney Erickson asked, and there is nothing in State files that would suggest any public body in the City.

Chairperson Sielaff stated he had a question about grandfathering. Is there still grandfathering that happened before that period of time into the time the statute was promulgated in 1982? He is a little bit fuzzy on what is grandfathered in.

Mr. Hickok replied, when they are hearing testimony there was a 1985 ordinance amendment, again, the staff is telling the Commission that the redraft of the Code was in 1983, so it would have been a 1983 ordinance. Also, when they are talking about the grandfathering, that is why it is so important they go back to remind the Commission about 1953 because nothing was legal prior to when the petitioner is claiming an agreement in 1985. There is not a legitimate, legal, preexisting land use there. Do not be confused or boondoggled by it was grandfathered in. It can only be grandfathered in if it was legal at the time that it came. Remember in 1953 the place was a farmhouse. In 1954 the Sabas had started doing this, and from that point forward, the Commission really needs to look at the 1953 ordinance and what would have been permitted

there. It was not permitted. There is no grandfathering that could happen here pre-1985. Even if a special chapter, the Minnesota State Planning Act was 1982. Nothing in this case pre-1982 would say, yes, but that was earlier.

Attorney Erickson asked, the house existed on the property as of 1953, correct?

Mr. Hickok replied, pre-1949.

Attorney Erickson stated, right, pre-1949. That house, limited to the residential use, is a grandfathered legal non-conforming use.

Mr. Hickok replied, that did continue for all those years, that is, this is as close as they come to grandfathering here. The uses beyond the house and the garden. Those were pre-existing nonconforming, could you have a C-1 house being built today? No, you could not. That is where you can really capture the idea of how that works.

Chairperson Sielaff stated so the issue that has surfaced, the one that came up in 1954, apparently when the Saba family first purchased it, they would come under whatever ordinances they had in 1953. Making it before 1953, they are not grandfathering anything in.

Mr. Hickok replied, just the house and the garden.

Attorney Erickson stated because the use was not legal in 1953 and it in fact did not exist in 1953. The Sabas by their own testimony under oath did not start the scrap and recycling business until 1954 when they took the property and it was not legal at that time. It cannot be legal as of right or grandfathered in.

Ms. Jones stated it might be helpful for the Commission because they probably have not had time to read it, to go through attorney Marty's resolution that she submitted. She would like to go through some points on that as to some corrections.

Ms. Jones stated as to the very first "Whereas" on attorney Marty's resolution, it states "Whereas the City of Fridley initiated this action to force an end to Mr. Saba's use of the property." Ms. Jones wanted to correct this statement and it goes into what they were just asking about as far as the preexisting non-conforming use of the house because Mr. Saba can use the house as a home and continue to use the house as a home as well as any other uses allowed in the C-1 code. He certainly has allowable use of the property.

Ms. Jones stated as to No. 6 under attorney Marty's findings of fact, she has a note about the prosecution resulting in a jury verdict acquitting Mr. Saba. Ms. Jones wants to repeat, that was acquitting for the day of the offense, October 8, 2008. It does not mean permitting of that use continuing.

Ms. Jones stated as to No. 7 attorney Marty states Mr. Saba timely appealed the abatement to

this Board. Actually this very abatement they are talking about, the appeal was not within the 20 days, it was late, but the City allowed it anyway.

Ms. Jones stated as to Item No. 8 attorney Marty states that because Mr. Saba also initiated suit to halt repeated attacks on him and his property, Ms. Jones would argue he just wanted more time to clean it up. He was granted many extensions.

Ms. Jones stated as to No. 9, the judge hearing the lawsuit ruled that this Board should enter a decision first. To clarify what that was referring to is that Mr. Saba had not exhausted his administrative remedies through the City's code. He needs to appeal to the City before he appeals to the district court.

Ms. Jones stated there is a note in No. 14 about the garden. Staff has never had a problem or issue with the garden. She has never seen a violation that she knows of in all the documentation she went through stating an issue with the garden.

Ms. Jones stated a key note on No. 15 is the statement that in 1954 Mr. Saba's father began recycling the metals "outdoors" on the property. Mr. Hickok alluded to the term that was used that attorney Marty took the Code as saying "in the open". Staff interprets it to mean outdoors, and that language is in the Code because Code requires such things to be done inside a building. It is not about being behind a fence. It needs to be inside building.

Ms. Jones stated as to No. 16 attorney Marty makes a statement about the disassembling, sorting, and recycling of materials. Again, doing that sort of activity outdoors is a big issue here and it is happening outside a building.

Ms. Jones stated as to No. 17 there again is a note about the garden and, again, garden has never been considered a violation in this case.

Ms. Jones stated as to No. 18, the statement the current zoning of the property also does not allow the establishment of a new land use involving recycling. She wanted to clarify that it has never been allowed in the first place. It is not about being established as a new use. It was never allowed when it first started in 1954.

Ms. Jones stated as to No. 20, which states the City has the burden of proving the zoning of the property over time. Again, to clarify, no, the City has the burden to prove what the zoning requirements were when the use first was established. Again, that refers back to the 1953 zoning ordinance.

Ms. Jones stated as to No. 21, the statement about the 1949 ordinance. Again, the 1949 ordinance does not have any bearing about the use here. It is about the 1953 code the Commission has to look at.

Ms. Jones stated as to No. 24, description here about staff not having a map. Again, Mr. Hickok

touched on this. The map does not really matter because, in addition to the map, in that code the City was described by a legal description which areas were residential and which areas were commercial, which areas were industrial.

Ms. Jones stated as to No. 26, the statement says the map to the 1953 ordinance is also missing. No it is not. Attorney Mary has been given this more than once. Actually they had it originally listed in the list of exhibits and listed as the 1953 code including the map. Staff took it out of the exhibits because it does not matter. It is described legally in the text. Again, it does not matter because it does not matter if the property is zoned residential, commercial, or industrial. They do not have a special use permit so they are not allowed to have a junk yard use and never have been allowed.

Ms. Jones stated as to No. 27, the statement about locating and showing some drawing but that is not the map from 1953. Again the statement is incorrect.

Ms. Jones stated as to No. 29, there is a statement about because of the language in the Code is unclear as to what the zoning is. It is not unclear. Mr. Hickok covered that. It was specifically described, the location, the property, and the Code.

Ms. Jones stated as No. 31, stating that in 1949 and 1953 the ordinances are not clear. She would say that is very wrong. It is very clear that recycling is only allowed in the industrial zoning with a special use permit.

Ms. Jones stated as to No. 32, attorney Marty states that in 1949 and 1953 the ordinance must be interpreted as allowing Mr. Saba's use of the property in 1954. But again, the use as a junk yard was never okay as indicated by 52 plus years of code enforcement letters.

Ms. Jones stated as to No. 33, it states the use of the property was a residence, family garden, and recycling continues since 1954 and may remain as legal non-conforming uses. The residence and the garden can, but not the recycling. Just to clarify. It is not a legal conforming use.

Ms. Jones stated as to No. 34, refers to in 1985 the City had a new zoning ordinance. That is incorrect, 1983 was the year when the change occurred in the zoning code ordinance and that the 1983 code would have applied in 1985 when that court case was going on. Attorney Marty refers to this junk storage in the open and Ms. Jones looked but could not find that language in the 1983 Code and is not sure where attorney Marty is pulling that from.

Ms. Jones stated as to No. 37, the agreement could not have occurred as Mr. Saba's use of the property was illegal. Frankly, the agreement itself if it exists is not legal. It is not legal because it was not approved by the City Council. It states that this agreement had gone past the city administrator and the city council and approved. There are memos, yes, indicating that the staff was thinking of putting this discussion before the city council, but they have no proof. There is no record of it. Ms. Jones has looked through all of the City council minutes from that time

period. Looked through resolutions and they had the County search their documents. No one has ever seen anything indicating this went before the City Council.

Ms. Jones stated as to No. 39, the statement, this agreement was run past and approved by the court. There is no record of it being recorded at Anoka County.

Ms. Jones stated as to No. 41, the statement, as required Mr. Saba did get city approval for his fence, purchased lumber, dug holes, and constructed a six-foot fence along the north portion of his lot and moved his recycling behind the fence. Staff showed the Commission in a 1989 aerial, the fence was not completely constructed according to the drawing the petitioner submitted as their exhibit of this plan.

Ms. Jones stated as to No. 42, the City understood that Mr. Saba would continue to recycle but wanted the screening from the public right-of-ways. The City has no record of this.

Ms. Jones stated as to No. 44, the agreement allowed the City to hound Mr. Saba when he brought recyclables onto the property and did not place them behind the fence promptly enough. The City documentation indicates chronic violations of this. She hardly thinks with the limited staff the City had at that time to park somebody out there and watch every minute of the day that he would bring some junk into the yard. There is documentation upon documentation of this continuous chronic appearance of materials outside the fence.

Ms. Jones stated as to No. 45, the City and Mr. Saba honored this agreement for many years. He did not honor the agreement. He did not keep the materials inside the fence.

Ms. Jones stated as to No. 46, in 1998 the City again initiated a prosecution of Mr. Saba for his junk yard recycling use. And that is because he was in violation of the Code.

Ms. Jones stated as to No. 47, the case confirmed the 1985 agreement referring to the 1998 court case confirming the 1985 agreement requiring Mr. Saba to keep his recyclables behind the fence and allowing recycling inside the fenced area. The City has documentation and other letters saying that is wrong. He was told to keep everything behind the fence also. Get rid of everything behind the fence also.

Ms. Jones stated as to No. 48, the court probationary conditions specifically noted that recycling inside the fence was fine only exterior storage outside the fence violated the agreement. Ms. Jones would contend that just because the court documents stated that, that does not prove that is what the City was requiring him to do.

Ms. Jones stated as to No. 49, in 2010 the City prosecuted Mr. Saba for illegal land use and exterior storage resulting in a jury acquittal of Mr. Saba of both charges. Again, that was only for that date of offense.

Ms. Jones stated as to No. 56, they have already touched on that, *in the open* means outside the

building.

Ms. Jones stated as to No. 58, the City has not identified any condition on the property which unreasonably annoys, injures, or endangers the life, safety, comfort, repose of anyone. There are numerous times in her presentation where code enforcement letters were sent out because of a complaint that had been received. One piece of evidence she did not actually submit was a letter that she found in the building file records from the developer who developed the properties on Evert Court and was begging the City to do something about the junk yard at 7345 Central Avenue because he could not build the type of houses he wanted to build there because he could not market it next to a junk yard.

Ms. Jones stated as to No. 59, the City also has not identified any considerable members of the public who are annoyed, injured. The photos she presented tonight, and she has a lot more, indicate it is reasonable to assume that someone could be annoyed by looking at it out their window every day. When she was taking the pictures of the site last week, she was approached by a resident in the neighborhood asking why she was taking pictures of the junk yard. They call it in the neighborhood, the junk yard. He wondered why in the seven years they had lived there the City has not done anything about it.

Ms. Jones stated as to No. 60, defines some of the language, attorney Marty kind of skipped over some of the key words which are noise, odors, liquid, solid waste. As she indicated earlier, they are concerned about PCB's, Freon, oil, antifreeze, automotive fluids, all the things that are the result of an automotive recycling process and appliances that have been done over the years outside the building. It is reasonable to be concerned about that being a public nuisance.

Ms. Jones stated as to No. 64, the only items identified by the City as objectionable are items related to the residential use of the property are items legal in a commercial zone. The staff is concerned about the materials outside the fence, too. That is what most of these letters are about is the material outside the fence. Staff frankly does not know what is inside the fence. She has never been inside the fence. Staff is not permitted to go onto the property. They can only look at what they can see from the public right-of-way.

Ms. Jones stated as to No. 66, items behind the fence also are screened from the public right-of-way except for the items as mentioned in the zoning ordinance. Again, only by special use permit would that be allowed.

Ms. Jones stated No. 67 refers to residential items like the chairs. The chairs became an issue because they were related to a catering business. Most people do not have 50 chairs sitting in their backyard stacked up.

Ms. Jones stated as to No. 68, the commercial items include commercial trucks, plows, and trailers. They have not talked about this much, but this equipment is not allowed. That is the whole issue of the junk yard. The snow plowing equipment and the landscaping equipment and one of the things you see in the picture there in the far background is a wood chipper. Those

types of things are not allowed to be stored outside in the C-1 district.

Ms. Jones stated as to No. 69, again, has that same language in the public nuisance ordinance. She would argue that the noise and odors possibly being a problem too, as a lot of these heavy equipment being moved in back and forth in and out of the site. Landscaping type trucks, snow plowing type trucks have those back-up beepers. Think about how annoying that is to have next door to you and that sort of noise going on all the time. That is why the City does not allow those types of uses in the C-1 district that is usually right next to a residential area.

Ms. Jones stated as to No. 70, under state law, a public nuisance poses a harm to any considerable number of members of the public. The concern about chemicals going into the soils and providing a habitat, when you look at the aerial view of what is behind the fence, think of that habitat for rodents to hang out. She would not want that next door to her house.

Ms. Jones stated as to No. 74, states the use of the property at 7345 Central Avenue is a residence, family garden, and recycling which legally it began in 1954 and may continue as a legal non-conforming use. Again, no, that is not correct to the recycling part. Yes to the residence and the garden but not the recycling part which was never legal.

Mr. Hickok stated they are not talking about recycling your pop cans on a residential property here; your plastic bottles or your papers, right?

Ms. Jones replied, right.

Ms. Jones stated as to No. 75, the 1985 agreement changed the status of a use. That is incorrect. There was no change to the City Code.

Ms. Jones stated as to No. 76, since 1985 the use of the property at 7345 Central Avenue as a residence and family garden remained a legal non-conforming and the recycling was legal as long as it was within the fenced area. Again, City Council did not make any code changes and did not approve any special use permit that would permit that.

Ms. Jones stated as to No. 77, only by special use permit. Same thing for No. 78, exterior storage, only allowed within the fenced area with a special use permit.

Ms. Jones stated as No. 79, neither the use of the property or the exterior has been shown to be a public nuisance. The City disagrees with that. It would say a public nuisance.

Attorney Erickson stated much has been made of the acquittal of Mr. Saba on criminal charges and, as Ms. Jones pointed out, a criminal citation represents a snapshot of a day and time. There is a date of offense and that is presented to the jury. More importantly, what is important to remember about criminal jury trials is that the jury goes out to deliberate and renders a single verdict of either guilty or not guilty. There are no special findings made by a jury in a criminal matter. There is not a breakdown of what the use, legal in each of these elements proved by the

prosecution. Essentially you have no idea what the basis of the jury's verdict is. It is either a "yes" or a "no". To hang the head on and rely on an acquittal as somehow providing cart blanche to the property owner what he or she chooses and somehow acts it is a determination that it is a legal non-conforming use. We do not know why the jury acquitted Mr. Saba, but the significance of an acquittal has been overstated by the property owner.

Attorney Erickson stated a couple of other items she wanted to touch on are the public nuisance aspects about this case. Attorney Marty introduced an exhibit, Exhibit M; and she turns to City Code which is appropriate for determining what is a public nuisance and the Commission will note on the first page under Section 110.02, public nuisance defines that there are a total of maybe six items that are defined as public nuisances. Mr. Saba and his counsel have tried to somehow connect the requirement to Section 5 which discusses the accumulation of open and discarded and disused machinery, household appliances, and so forth as somehow requiring endangerment of the public health, safety, comfort and repose of a considerable number of members of the public. That language is not in Section 5. These are each separate disjunctive grounds for activities that constitute public nuisance. The property owner and counsel are reading into that section something that does not exist. She wanted to highlight that for the Appeals Commission members.

Commissioner Jones asked was this trial a civil trial or a criminal trial?

Ms. Jones replied, criminal.

Commissioner Jones stated he thought it was a civil trial. Is there a different burden of proof in a civil trial vs. a criminal trial?

Attorney Erickson replied, yes. She is glad he asked the question. The burdens of proof in civil trials and criminal trials are very different. Obviously, because of imprisonment and significant fines and probation are at play in a criminal trial, the Constitution requires an incredibly high burden of proof - that being proof beyond a reasonable doubt. Then in civil cases it is a preponderance of the evidence. There is a big difference between the burden of proof that exists in a criminal jury trial, very high, than that in a civil proceeding or civil trial where it is much lower. Again, this goes to the acquittal, she thinks it has been overstated. There are no special findings that are made by the jury. They simply know that the jury did not believe that the very high burden of proof had been met.

Commissioner Jones stated he really did not get a chance to read this beforehand but is there some place in their packet that says this was a criminal trial?

Attorney Erickson if he refers to Exhibit K. It will tell them that what she has submitted and attorney Marty would agree, that she has submitted on the first page of Exhibit K, these are jury instructions, and the language here shows that it is determining, for the jury to look at to determine whether a person is guilty of a crime and in fact that language exists in this document. The next page describes more of the legal defense that exists and counts, but then more

importantly, take a look at the third page which talks about conditions of sentence. These are conditions that are imposed if there is a sentencing that would occur for a defendant. Conditions of sentence are not imposed on civil matters. Finally, if you take a look at the last two pages attorney Marty attached, verdict of guilty and not guilty which is a classic expression that this is a criminal case. It is also captioned, the State of Minnesota vs. Steven Robert Saba. That is how criminal cases are captioned.

Attorney Erickson stated, again, these are separate disjunctive individual grounds and when you construe ordinances, you cannot read into ordinances, language that does not exist. That is what Mr. Saba is requesting the Commission do. That somehow the Commission should transpose and carry over requirements of one type of nuisance to another. She wanted to clarify that for the Appeal Commission tonight.

Attorney Erickson stated another interesting fact they should pay attention to is the 1998 prosecution of Arline Saba in this matter. Attorney Tello was Mr. Saba's attorney as she understands it at the time of the alleged 1985 agreement. Attorney Tello's name appears on documents that attorney Marty has presented. If you take a look at that 1998 prosecution in attorney Marty's exhibits, Exhibit G, attorney Tello has signed one of these documents. This is a petition, and counsel typically signs as the attorney for the defendant presumably attorney Tello did here in this document.

Attorney Erickson stated attorney Tello, curiously he is here, but he has not provided any testimony to the Commission about what he has recalled and what he does not recall. As attorney Marty has pointed out, she seems to find fault with the City that it does not have documents that are important. Attorney Erickson would suspect that if she felt she was being harassed by the city for 35 years about the use of her property that she claimed was legal, she would sure keep a copy of any kind of alleged agreement close by.

Attorney Erickson stated and the Commission will note that Ms. Saba was charged with junk vehicles, exterior storage, allowing junk yard. These are illegal land uses and somehow this agreement that they cannot find any record of, a signed document, somehow exists. She would think that would be a pretty legitimate defense to try and raise in the criminal case and not plead guilty and try and resolve it that way. The simple fact is there is no signed written agreement between the parties. Even if there were signed written agreements, it would be void because no prosecutor, no city attorney can on their own initiative, grant land use rights. It simply is not possible. It is a void agreement assuming it even exists.

Attorney Erickson stated, additionally, if this mythical or alleged agreement exists, it has been breached repeatedly by Mr. Saba over the years. There is a doctoring of unclean hands, he is asking for enforcement of an alleged contract that he repeatedly broke. That kind of summarizes the points she thought were important to call out at this point for the Commission.

Mr. Hickok stated interestingly enough the petitioner reached to Steve Barg and he has now entered his name into the discussion by responding back on the petitioner's behalf on what the

City did in terms of post-1985 enforcement on the property. Mr. Hickok wants to put out that Steve Barg was here prior to his coming in 1994. As part of Mr. Hickok's review of how they did code enforcement here, the Saba case came out. Mr. Hickok was noticing endless letters to Mr. Saba without result. To which he learned from him that maybe a philosophical approach from a legal prosecution is a bit different.

Mr. Hickok stated the City actually at that point brought on another attorney, Fritz Knaak, to handle the code enforcement type of cases that go to court. The important thing about this was they needed to go beyond this point of just endlessly sending letters from the era that Steve Barg was here about, you need to get this corrected, you need to get this corrected, but not taking it all the way through court.

Mr. Hickok stated the fact that Steve Olson was not brought back. He does not know how far away Olson moved but the Commission will notice in the testimony, because Steve Olson moved away the City did not pursue the case; and they lost an incredible amount of time. That caused Mr. Hickok to talk to the City's prosecutors at the time and ask what, are you kidding, and they needed to raise the level if importance in the prosecution office, they needed to raise the level of importance at the court so they did not have these kinds of things happening again.

Mr. Hickok stated it is interesting the petitioner brought Steve Barg back into this because code enforcement was of a different brand back then and a lot of letters were being sent without a lot of result and, had there been a better understanding of land use law at that time, they probably would not be talking about it today in 2015. They could have resolved it pre-1985. It really has an effect on how they approach these things in court from that point forward.

Attorney Erickson stated she would be remiss if she did not point out for the Commission, the inference that attorney Marty and Saba are trying to draw from the exhibit that has been submitted as Exhibit E. There are multiple letters sent and attorney Marty admits she has gone in and kind of highlighted certain language for the Commission. However, Ms. Jones touched upon it and maybe just to bring it to a final point, that is what people saw. That is what the code enforcement officers could see. Just because they are referencing items in front of the fence does not mean there is any sort of valid agreement it was permissible to put things behind the fence. They would have to go get a warrant to go do that. An inference you can go off on these letters is that was what was in plain view for these code enforcement officers at the time. It does not result in a conclusion necessarily or you cannot say it is a definitive expression of the City's honoring of any such agreement that is alleged to exist.

Attorney Erickson stated, then on Exhibit F, attorney Marty points out that there is this complaint form that exists and the description of the complaint talks about "No violation of past agreement with City; is adequately screened". Attorney Erickson's assumption is that, and she could be wrong because they are looking at these documents many years later, but it could also equally mean not that there is a conclusion by City staff that this is acceptable, that is, we talked with Mr. Saba and this is what Mr. Saba has told us. It does not mean it is a definitive conclusion and there is an agreement that the property has alleged to exist. It simply could be

contemporaneous notes of, hey, I called up the property owner after we got this complaint form. We do not know. She does not think it can be treated as definitive proof of the City's honoring any agreement that, again, is merely alleged and not proved.

Chair Sielaff indicated that it was now Saba's opportunity for a rebuttal.

Attorney Marty stated she is not going to go back over the points that she has already made and the City has disagreed with. They did say a few things she thinks are not correct, and she wants to get back to her Exhibit A, the draft resolution, the second page, paragraph 19. The City planning staff argued strenuously that the uses were not legal when begun. That is possible. She disagrees. If you think that the uses were illegal when begun, then the question becomes were they ever legal? Because if they were ever legal, they may remain if the ordinance changes thereafter.

Attorney Marty stated that is the only conclusion she can draw from the 1985 agreement was that the City council, the city attorney, the city manager, and all those other staff people were involved in it, looked at it and interpreted their ordinance where it says, just how it is, in the open, storage in the open. They interpreted the ordinance to mean that if it were enclosed within a fence, it was not a junk yard; therefore, it does not need a special use permit. It did not need rezoning, it did not need anything except the fence. That is the only interpretation that makes sense of requiring the fence and then all those letters sent in future years telling him to either get rid of stuff or put it inside the fence. She is not making these documents up. These are City documents. The only way to make sense of it is to see that the City Council interpreted the 1985 or 1983 actually ordinance where it says a junk yard is in the open to mean if you have it enclosed in a fence, it is not a junk yard, they will let it be.

Attorney Marty stated, paragraph 19 of her proposed findings, just reminds the Commission of the point the City was glossing over, which is any use which is legal at any point in time may continue indefinitely as a legal non-conforming use. One of the Commission members asked this question and did not get a proper answer. You asked is there anything in the state law about these grandfathering things? The City gave the Commission a new exhibit, Exhibit 57, they did not give her 58, it does not matter. Exhibit 57 is good. It is Minn. Stat. Sec. 462.357 and it talks about grandfathered uses. On page two, at the top, it has subdivision 1(e), non-conformities. Those are the grandfathered uses. All the language that is in current state law regarding grandfathering is right there.

Attorney Marty stated the other provision she wanted to address, the City Attorney pointed again on attorney Marty's findings, page 5, paragraph 55, she brought out that the public nuisance ordinance, in paragraph 5, refers to accumulation, certain uses, etc. The City Attorney apparently thought that when she was describing paragraph 1 of City Code Sec. 110.02 that she was lumping that together with paragraph 5, but attorney Marty was not. Paragraph 1 (and this is in paragraph 57 of her findings) refers to maintains, conditions, etc. that upsets any considerable number of members of the public, which the City has not shown. Go back up to paragraph 55, two above there, talking about Section 110.02, paragraph 5. That one has great language except

it refers to someone who accumulates in the open, discarded or disused machinery. That is why paragraph 5 does not apply.

Attorney Marty stated the letters from 1961 on talk about the eyesore, really that is all they are addressing. The property was an eyesore. They wanted stuff cleaned up for that reason. The fence takes care of that. You can read those letters. The City has claimed repeatedly tonight that they are concerned about groundwater pollution and other pollution. This use has been there for 60 years now. It has been there since 1954. If the City is concerned, why have they not done any testing? They have no evidence. They cannot be very concerned. It is not that hard to do testing. They should have done something.

Attorney Marty stated they heard a lot of opinion tonight, but she is still waiting for evidence showing any pollution, any considerable number of members of the public. Who are these? They are not getting any evidence. They are getting a lot of opinion. The City disputes whether the fence was done. It disputes whether there was a 1985 agreement. She was going to ask attorney Tello to answer these questions. He was involved. He was there. He was there then. Mr. Hickok has stated openly that he was not even hired until 1994. Ms. Jones has not said she was there in 1985. Attorney Tello was and it is not his property. He is not personally involved in this, but he did get dragged to come here tonight. She asked attorney Tello to explain what happened in 1985. She would appreciate it.

Attorney Michael Tello stated he is an attorney of 30 years. He went to Spring Lake Park High School. He wrestled with a couple of Steve Saba's older brothers and, as a result, they would always hang out over at Steve Saba's house. He was familiar with the property. He got subpoenaed into the original criminal matter just recently because of the fact he had knowledge based back on what the property looked like, which is consistent with what Steve Saba's brother had said.

Attorney Tello stated in addition, he was asked to explain this agreement that had been eluded to that does not exist but has paperwork that shows it does exist. However, he finds it interesting the judge did not allow him to testify to any of that information. The jury made that decision without any information or any knowledge this agreement actually existed. Mr. Hickok indicates he knows what the jury was concluding, but then the prosecutor says nobody knows what the jury was concluding. He finds that an interesting statement. He does know, however, that they did not convict Mr. Saba on the violation without any reference to this agreement.

Attorney Tello stated he is here to tell them, he told people for many years, you don't have to like me but you got to respect me. That's what he wants. He wants them to respect him. Because to him integrity is a benchmark on how you practice law and how you do business. Your word is what you have to live with. He is here, not because he is getting paid. He is here because he is offended. He finds this whole situation appalling. He knows what he negotiated. He knows what he entered into and to try and say it does not exist is smoking mirrors. It really is.

Attorney Tello stated years and years and years ago they created a Constitution, and they

created a means by which the government could function. And then somebody came out of the ether and said, you know what? We have this huge entity but there is no way to control it. What are we going to do? They created the Bill of Rights to protect the individual. To protect your rights. To protect your property. You guys are doing that. You are here to determine whether the City is running amuck, whether there is an agreement, and whether they need to keep prosecuting and harassing and bringing Mr. Saba into court.

Attorney Tello stated he entered into an agreement in 1985 that resolved this matter. Let's just go back to the records if they will allow him. He asked if staff would pull up Exhibit D.

Attorney Tello stated if they will give him a little latitude here. He was approached prior to February 7, 1985, by Mr. Saba for a ticket he had gotten for storing material on his property. He asked Attorney Tello if he would defend him, and he agreed to do that. At the time he was doing a lot of criminal law.

Attorney Tello stated when he got into the matter, he started looking up exactly what is being addressed here, is grandfathering. Okay. What does it mean, where does it go. He went to court. He met with the City Attorney, Mr. Eckstrom; and Mr. Eckstrom expressed to attorney Tello some consternation he had with whether he could prevail on a criminal charge. In other words, was Mr. Saba guilty. They talked back and forth, and attorney Eckstrom said what can we do to resolve this? Mr. Eckstrom indicated to attorney Tello, why don't we build a fence around the area so nobody can see it; and he can conduct his activity and that will be just fine. Attorney Tello said he can propose that to my client. Attorney Eckstrom said, well he first of all, has to go to the City and get permission from those folks to allow him to do this. Attorney Tello said, fine, and he can talk to Steve Saba and see what he has to say.

Attorney Tello stated that is exactly what attorney Eckstrom did. Attorney Eckstrom went to the City, he spoke to them, and he got permission. If they look at Exhibit D there is no contract. Anybody that ever entered a contract knows there's negotiations, and negotiations are a means by which you get the terms down. And then when you get the terms down you give it to the other side. And when you give it to the other side, they either reject it or accept it. That's called an offer and acceptance. Tags were issued resulting in court appearance and a request for jury trial. That was by attorney Tello. Trial was set for February 27. Since Steve Olson is no longer an employee of the City, the tags he issued will not be admissible and our prosecutor has stated that the violation should be withdrawn.

Attorney Tello stated, not really, because every prosecutor, every defense counsel, has a right to have a subpoena. He does not care if he is an employee now. You can subpoena that person's appearance, and you can get him into court, and he has to testify. Attorney Tello knows because he was subpoenaed to Steve Saba's trial. He is an officer of the court and as an officer of the court means he cannot make misleading statements to a judge to a court. He could lose his license. Put that in the back of your mind. Think about that, because he will get to that later on.

Attorney Tello stated he goes on to indicate, if counsel has no objection, I recommend we

proceed with this proposal, requesting the court date be cancelled or extended until such time as a satisfactory agreement is obtained from Mr. Saba and his attorney. That's the feelings of the City.

Attorney Tello asked staff to pull up the February 14, 1985, letter addressed to him, subject matter, Steve Saba, signed by attorney Eckstrom. Mr. Eckstrom was an attorney. Mr. Eckstrom subsequently became a judge for this particular county. Somebody respected him enough to appoint him as a judge. As an attorney he wrote this letter to attorney Tello and said, this will confirm our negotiation and settlement which we arrived at concerning your client, Steve Saba. As stated, the State is prepared to request a continuance for dismissal.

Attorney Tello stated a continuance for dismissal is a means by which you simply say, look, we are not going to go forward with the trial; however, if certain conditions are met, we will dismiss the charge. Like it never existed. There is no plea. There is nothing. It is gone. And it goes on to annunciate exactly what the terms and conditions were. No. 3, you will be required to submit his designation for the construction of a fence (they saw that proposal on the next page) to the City and receive the City's approval prior to commencing construction. Nobody in their right mind would adopt that terrible writing except it's his. What it says is approval will not be unreasonably denied. Why did he want that? Because he did not want to be back in court, and he did not want to be fighting with these people and say, oh no, the fence has to be 6' 2" or this or that and they start nitpicking it. No, it was an agreement that the City said we will dismiss the charge if you put up this fence. That's it and keep the stuff contained within the fence.

Attorney Tello stated, last sentence, paragraph. I anticipate being able to read this negotiation into the record on February 26, 1985. Folks, that's what was done. That agreement was read into the record. This is your contract. There is nothing ambiguous about it. It is clear. It was binding. It is your word. He is asking them to enforce the word of the city attorney who met with the city council who entered into this agreement.

Attorney Tello stated, now, he had subsequent conversations with the City; and he was told the fence was completed. He looked at that fence. He was there. It was completed. Whatever information they got he would submit as erroneous.

Attorney Tello stated, now, do we have somebody's word here or do we just have serial prosecution? Well, things were going along just fine and then all of a sudden he gets a call about 1995. Well, Steve Saba says you are not going to be happy with me, and by the way he gave him permission to talk about what he had under the confidential agreement, attorney/client privilege. He said, I screwed up. He left some things outside the fence and they are prosecuting my mom. Attorney Tello was not very happy with that and said to Steve Saba, you screwed up, it was outside the fence. Mr. Saba replied, yes, I know. Attorney Tello had known Mr. Saba's mother for probably 10-15 years, a good part of his years growing up, and he represented her for nothing because he thought Mr. Saba screwed up. He testified in open court. He screwed up. Why because the agreement was to keep it within the confines of the fence. Did he keep it within the confines of the fence? No.

Attorney Tello stated he represented Mrs. Saba, probably a 75-80 year old grey haired woman. The jury would like her but they had a problem. It was outside the fence and what had they agreed to. Steve Saba should agree to it. The prosecutor had agreed to it. He put his name on this document as an officer of the court, and he agreed to it. They introduced that agreement into the record. The judge accepted it. The court accepted it. W

Attorney Tello stated, what do they need for a binding contract? He is not sure but he is reasonably certain that Steve Saba had to swear under oath that this was the agreement. In front of a court, two attorneys, officers of the court, said we accept this agreement. Steve Saba said it, while he was under oath, agreed to that. A district court judge accepted this and put in the record the terms and conditions of the negotiation which was what, read into the record as agreed to but needing prior approval from the City Council. Now, that to him represents authority, apparent and actual. What is he going to say for a city attorney to come in and say he cleared it through the County. We will withdraw our charges if you go for a year with no problem.

Attorney Tello stated Steve Saba is not a rich man. He never has been a rich man. That was a huge expenditure of money to build that fence. Steve Saba was a single parent, raised two kids. Steve Saba was a fireman for this City for 33 years. He was in recreation for 7 years. Do you think when they went to a call and there was a bad accident, blood and gore, he said, nah, that's a bad deal, I don't like that agreement. I think I'm not going to go to this call. No, he was there. If your life was on the line, he was there. He followed through on his agreement. This City should not do any less than follow through on an agreement that they had and entered into with him. That is all he is asking. He is indignant about this whole deal. He is sorry if he expressed his emotion.

Attorney Tello stated when they got to Arline Saba, the city attorney said, well, she pleaded guilty. That is not quite accurate. If they look at Exhibit G. It says Arline Saba. It has his horrible writing on it. There is no doubt about that. Indicates what she is charged with. Look at paragraph 3. I am pleading guilty because I committed the following facts. That says, Alford plea. He will explain to them what an Alford plea is. You do not admit under oath that you committed any violation. That is important. The City has no record of Steve Saba ever saying he violated the law. They have no record of Arline Saba indicating she violated the law. All she is saying is she is willing to accept the plea to get it done but will not admit fact that she committed any crime. Why was that? Because he would not let her. Why was that? Because he did not think there was a crime committed. He thought she was grandfathered in then and he still to this day believes she was grandfathered in.

Attorney Tello stated attorney Marty did an excellent job explaining that well to them. That was his feeling then. That is his feeling now. There is no violation. Now, also, let's look at that a little further. Look at paragraph 7. I'm entering this plea freely and voluntarily without any compromise the following plea agreement with the prosecutor: $500 fine (if you look at the back they take off about $300 so it was about a $200 fine), maximum jail time (he knew they were not going to put a grey-haired woman in jail), certify as a petty misdemeanor in one year. Why did

he do that? Because a petty misdemeanor is not a crime. You know what a petty misdemeanor is? It's a speeding ticket, it's 5 miles an hour. It's a parking ticket. It's nothing. You can fill out a job application and you can put on it, I've never been convicted of a crime. Steve Saba has not been convicted of a crime for this either. There have been no convictions here. But more importantly, to reinforce, to reiterate, to reaffirm, he put in there, no violations for activities conducted within the fence, only outside the fence for probation revocation.

Attorney Tello stated why do you agree to the same conditions and the same contract and the same provision, if it isn't there? For a prosecutor the answer is, it is there. Folks, to get this in, the agreement again, she raised her hand, she swore under oath, she said the Alford plea, and the prosecutor went through this agreement and he went through this agreement, paragraph by paragraph, do you understand you are waiving your rights to a speedy trial, do you understand this, do you understand your constitutional rights to have a jury to be found guilty beyond a reasonable doubt? Yes, your honor. Yes, your honor. Yes, your honor. And then they read this part of this agreement, paragraph 7 into the record. Do you understand that? Yes, your honor, I do. Are you willing to be bound by that? Yes, your honor I am. Here's the clinker. Mr. prosecutor, is this your agreement, Mr. Eckstrom, soon to be a judge, do you agree with this or whoever the prosecutor was at the time? Yes, I do. Are you the city prosecutor? Yes, I am.

Attorney Tello stated, integrity. Remember he started out with that word? A man's bound. A woman's bound. Integrity. He is asking them to have integrity. He is asking them to look at the facts and, when they come up with these smoking mirrors, and they come up with this no agreement, he has a lot of words he can use but none of which he is going to repeat now because it isn't true. There was an agreement. He was part of that agreement, and he is here under oath telling them there was an agreement. He is here under oath telling them he saw that fence. As an officer of the court, he would think to be an honorable person. One last thing. We wouldn't enter these agreements.

Attorney Tello stated, he sues the railroad and if anybody knows anything about railroads, they know how tough they are. They are tenacious. They fight tooth and nail. He represents people who were hurt on the railroad because they don't have workers' comp. What's the significance of that? Many times he settles cases. During trial. Right before trial. And you know what they do? They go in front of the judge. And you know what they do? They put the terms and conditions of that agreement in front of the court, and the court accepts it. What is the difference? Is that an agreement? Yes it is. Is it a binding agreement? Yes, it is. If he tried to get out of that agreement, would he get sued? Yes, he would.

Attorney Tello stated, well, maybe he screwed up and maybe he should have ordered the transcript, and maybe he should have gotten it today and say there was an agreement. He does not think he needs that. He has everything here that a reasonable person can conclude that they had an agreement. It is a binding agreement. When it was not followed there were consequences, and there should not be consequences when it is followed. That is what he can tell them from what he knows. And those are the facts and he hopes they can understand. He is there to answer any questions.

Commissioner Ostwald stated to attorney Tello he is talking about all the contracts and his word, etc. then there is a February 2, 1999, letter, Exhibit 30, where Arline Saba has violated the conditions of the speech he just made.

Attorney Tello asked, which agreement?

Commissioner Ostwald stated Exhibit No. 30 is a violation letter for the terms of the plea agreement.

Attorney Erickson asked Ms. Jones to put that letter up on the screen.

Commissioner Ostwald stated attorney Tello is putting out the importance of honoring your word and contract and very clearly there was a violation within a few months of this agreement.

Attorney Tello replied, the agreement was not to prosecute if Mr. Saba kept it inside the fence. Attorney Tello can put on there in all due respect that the smooth manner of blue cheese it doesn't make it true. And you have the right to a trial and you have the right to appear and you have your right to be heard. He does not know who wrote that. He has never seen the document. He cannot accept the accuracy of that document. He cannot attest to the accuracy of that document.

Commissioner Ostwald it is from the code enforcement officer of the City of Fridley.

Attorney Marty stated but she is not here.

Commissioner Ostwald replied, she still signed the document saying.

Attorney Tello replied, in all due respect, and not being flippant, he does not know what it relates to. In his arena that is hearsay and inadmissible. He does not know. He does know what was entered into. That is all he can tell them. And that was for prosecution.

Attorney Marty stated she has just a very few points she wanted to raise on the City's draft memorandum. Exhibit 56 she believed. Of course she hopes they will adopt hers entirely but she also expects the Commission will fully consider both of them.

Attorney Marty stated there are numerous points in it that she disagrees with. She is not going to go through all of those. She wants to cover only a few. If she can have them flip to page 6 on Exhibit 56, the top "Whereas" on that page reads, "Whereas City staff is following standard policy and procedures in completing an abatement of materials associated with nonconforming uses... ." Abatement is not a normal process to use for a nonconforming use. A case came down three or four years ago by the State Supreme Court, there are four ways to get rid of a legal nonconforming use. Abatement is not one of them.

Attorney Marty stated the only way that abatement would apply is if they had proven a nuisance which gets them down to the last "Whereas". Yes, the City has the authority to abatement nuisances but then on page six it says, "Whereas, any material stored outside a building related to a use that is not listed as a permitted use in the Zoning Code at the date such use was initiated on the Property shall be removed by the City in the abatement." Any material stored outside a building, if it was ever legal under the zoning ordinance, would remain as a legal nonconforming use. The City apparently wants to define as nuisance as anything outside a building, "related to a use that is not listed as a permitted use in the zoning code on the date such use was initiated on the Property." That definition of nuisance is nowhere in any law or ordinance that she has been able to find. If there is a nuisance from some stuff there, Mr. Saba is entitled to notice of what that is. What things are nuisances?

Attorney Marty stated in the court trial they tried to claim that Mr. Saba's stack of lawn chairs are nuisances. Mr. Saba has a large family. Family gatherings which occur more than once a month and tended to have 60 or 70 people, and 50 lawn chairs is completely reasonable when you have a family that size. The City wanted to have those removed. That is the kind of problem they are running into. The City is overreaching.

Attorney Marty referred to page 7, down at the bottom, paragraph 8, this is classic of what they are facing here. Steve Saba's use of the property is an illegal use. That is just incredibly overbroad. It is not correct. The house and garden are legal nonconforming uses. They have been there forever. The uses accessory to those, such as the playground equipment and lawn chairs, etc. are not illegal; and if you accept their arguments regarding the evidence regarding the 1985 agreement, things inside the fence are not illegal. Some stuff outside the fence may be illegal, but they have never been given notice as to what because the City just says, everything.

Attorney Marty stated the staff did introduce a lot of photographs, a lot of old stuff, trying to prejudice the Commission, bias them, showing them that, you know, this place has never been picture perfect. It is never going to be on Home Beautiful magazine. The abatement relates to what is there on the date the abatement is ordered. That was in 2011. Those details are sadly lacking from any of the City documents. They do not know what specific items are offensive and staff has not shown that any of these things constitute a nuisance.

Attorney Marty stated with that she does not believe she has any further rebuttal. If there is anything else the Commission has questions about. She knows Mr. Saba is now willing to testify to explain why it is a safety matter to move stuff out of the way of the tree trimming equipment. They require it. Of course they all know why it is a safety matter, to allow them to trim the trees so the trees do not knock the wires down in storms. Any questions they have she would be happy to answer them. She did not know if they want to see the pictures of the tree trimming or not.

Ms. Jones stated she saw the vehicles in the area on Wednesday morning.

Mr. Saba stated they have been there off and on for three weeks.

Commissioner Ostwald asked what does the tree trimming have to do with it?

Mr. Hickok stated why don't they put the photos up just so people can see them. Mr. Saba needs to present it.

Attorney Erickson stated it seems and appears as these are being offered as evidence. They form part of the record. She would submit that, because they are being shown, they need to somehow preserve what is being viewed by the Commission. They are forming part of the record and are documents and evidence that this Commission is viewing. The same holds true for the Polaroid photos. They were not offered into evidence. They were not shown.

Attorney Marty stated she gave them her only copy.

Attorney Erickson stated they need to label them as an exhibit is her only point.

Attorney Marty stated that would be "N" and these would be "O".

Mr. Saba stated these pictures were taken last week. A couple of them might have been the week before, and they are not done yet. All the branches are still there. Leaving them kind of a right-of-way to move their trucks in and out. They have to come in with a big truck and trailer and bobcats with the claw. The whole yard is covered with branches and stuff.

Chairperson Sielaff stated, his question is what is it they are showing here?

Ms. Marty replied, the City showed pictures showing Mr. Saba moved a lot of stuff outside of the fence; and he had to move it to get it out of the way of the equipment. It will go back inside the fence when the project is over. He is just showing the mess that is ongoing right now with the tree trimming. He has this great big property with lots of trees so it is taking a long time.

Mr. Hickok stated, under oath, he does not think Mr. Saba would mind testifying that he had to move everything out of the fence in relation to this. Is that what he is testifying?

Mr. Saba replied, yes.

Mr. Hickok stated they would like an answer under oath on that.

Attorney Marty asked, an answer to what question? Is that everything he owns outside the fence?

Mr. Hickok asked did he need to move everything that is outside of the fence, outside of the fence because of this tree trimming?

Mr. Saba replied, no, he did not. Trailers that are legal are outside the fence. They are staying

outside the fence. Some of the wood boxes, some of the crates that he has some stuff in he removed; and they will go back.

Attorney Marty stated but he has stuff outside the fence that he believes is legal without further issue.

Attorney Erickson stated she does not know if that answers Mr. Hickok's question.

Mr. Hickok stated one might believe that everything that is outside the fence, had to be moved outside the fence because of this evidence is being offered. What he was asking is that, they saw a number of things outside the fence. It was not just a trailer. There were pallets, there was other material outside the fence. As presented they could believe that stuff had to be moved out because they had to make way for this. Frankly, he can tell the Commission from the staff's viewing of the site that not a lot had to change as a result of this, that outside the fence the material list would vary, yes, but greatly; and he just wanted to make that point and under oath it was important to hear Mr. Saba at least describe so that one would not go away believing that everything was neatly tucked away but for now the tree trimming business.

Chairperson Sielaff asked attorney Marty if she was finished.

Attorney Marty replied, yes, she was.

Chairperson Sielaff asked whether they go through a second rebuttal?

Attorney Erickson replied, it is possible. Limited to the items that attorney Marty and Mr. Saba have raised and then they would have a chance to respond.

Mr. Hickok stated as to integrity. Integrity would also have you describing the other side of what an Alford plea is. It is not just a not guilty plea because if it was you would plead, not guilty. The other part of that is there is a preponderance of evidence that the City has or there is at least evidence that the City has that you could be convicted on. It is important to know the full definition, if you truly believed you were not guilty, you would just simply plead, not guilty. An Alford plea says, I could be convicted based on the evidence the City may have. So it is important, and he thinks integrity would have that full definition in front of them, but he wanted to point that out.

Mr. Hickok stated it was interesting that he chose to mention Steve Barg and code enforcement and shifting the philosophy on prosecuting attorneys in a large part because of this case. And they helped tell why that story is. You might have gone to law school but you do not necessarily understand land use law, and to think that you could conjure up an agreement that does not get approved by Council in the proper way according to State Statutes proves you do not understand land use law.

Mr. Hickok stated one thing that might have helped in that discussion today is if attorney Tello

had come with February 26, 1985, minutes showing that it was actually presented to the Council. If he wants to be upset with anyone, be upset with an attorney who did not present it apparently because in the letter he said it would but it did not get presented. It was not in the minutes, at least on February 26, 1985. Council would have at least had to hear it and at this point, if they had heard it, they likely would have said, staff, take us through the proper steps then to get us to an agreement. It did not make it that far. There is no agreement when it does not make it that far.

Mr. Hickok stated he mentioned earlier that they did go a different course with their prosecution because endless letters with no resolution, cases that were being dismissed that if you really truly understood land use law you would not. Also, cases of his are now being dismissed because the witness was not available? Really? Twenty years from the time he talked to that attorney about this, they are still talking about the Saba case; and it all has to do with understanding of land use law.

Mr. Hickok stated a great deal of time has been spent tonight talking about things that would distract the Commission from the fact that this is all a side track from what land use law would tell them. Really why they are so passionate over here is staff spends their days working with what the land use law really is and making sure the City is kept neat and clean and the property values for neighbors stay up, and you do not have to look out your window at this kind of thing.

Mr. Hickok stated, integrity. Integrity would be having an agreement that you would stick to. Integrity would be saying that I would at least build a fence within the time I said I would do it. They have had now years and years and years of promises that were not fulfilled, and tonight they are being asked to consider a resolution. They have been given a couple of options for a resolution. He is done with his prompt. He does not know if there are others that want to offer, but he would ask the Commission to take a serious look at the City's position on this and vote in favor of a resolution that takes care of the problem here rather than pushing it down the road any further.

Attorney Erickson stated Mr. Hickok accurately states what an Alford plea is. An Alford plea is, she misspoke and she will own that statement, it was not technically a guilty plea; but it is a plea that says I am entering a plea because I believe the evidence is sufficient that if it were presented to a jury, I would be convicted. Mr. Hickok has accurately stated that.

Attorney Erickson stated there have been some remarks about the evidence of the City being hearsay because the code enforcement officer is not here. The same is true of evidence being presented by Mr. Saba and his counsel. They apparently believe that while you have to disregard letters that City staff have written because they are not here is hearsay and should be disregarded. The same should hold true then of Mr. Barg's letter. He is not here today either. We are living with 60, 50 years of documents that, heaven forbid some people may have passed away, that have been involved in these proceedings and this is a monumental amount of information.

Attorney Erickson stated with respect to attorney Tello's remarks, she is an officer of the court

herself and she also went to the law school and she studied land use law. What attorney Tello has said about agreements, you may be able to strike certain agreements with that type of fact situation but not in this instance. This is dealing with land use and special rights that did not exist at the time of the taking title by the Saba family. They did not exist. There is no grandfather right. The evidence shows that their use has never been permitted and, if it were to occur and be allowed, there would have to be action by the City as Mr. Hickok pointed out. The Council would have to follow the Land Use Act. A prosecutor, she likes to think that she would have the ability to go strike this agreement. She could not. She could work within the confines of the existing ordinances, but she cannot grant special land use rights that do not exist or that must be granted only through a certain process. They certainly cannot be extended in a plea agreement in a criminal case.

Attorney Marty stated as long as they are all being clean breasted about this. She was a city attorney for 15 years. She has been practicing land use law for 35. She brought them the chapter she wrote for a land use law book, non-conforming uses. She decided at the last minute not to hand it out because the Commission had enough stuff already to read.

Attorney Marty stated Mr. Hickok pretends that land use law is so complicated that only he can understand it. She is telling them she knows land use law better than anyone else in the State. She probably should not say that, but she has been studying it very hard writing this book.

Attorney Marty stated she is there to tell them that she thinks the whole case is about people who are so blind. There is a saying - there are none so blind as those who will not see. And that is the City's attitude here. They have lots of documents. They have everything that she has. All her stuff came from the City files. If the files repeatedly say, either remove everything or put it inside the fence, there must be some reason why they are saying put it inside the fence. It cannot be they are relying on Mr. Saba. He does not know land use law. They are not relying on attorney Tello because they did not call him. There has to be something the City is doing, and it is because they had interpreted their ordinance to say that if it is enclosed, it is not in the open, and that is all that is required to make it legal. That does not require City council minutes. That does not require a special use permit.

Attorney Marty stated when she was a city attorney, they routinely took things to city council that were not ever brought up in a public meeting because all you needed was the concurrence of a majority to do something. If it did not require an ordinance change, it did not require somebody's signature such as a code interpretation, then you just got the approval if you could and you went ahead.

Attorney Marty stated at this point there are three court decisions stating that the use is okay inside the fence. In 1985, 1998, and the acquittal in 2010. She thinks the City is turning a blind eye to a reality here, and she would urge the Commission to toss the abatement order and let Mr. Saba get on with his life. If the City really wanted to end this use, they could have amortized it back when that was legal. It is now illegal under State law. They could offer to buy his property. He has offered to sell it to them. The City is not interested. It just wants to persecute

him. She used that word probably because it is late at night, but it does start to feel that way after a while. He has an agreement, whether the use was legal when it began, it became legal in 1985. The City granted an interpretation of its own Code that if it was fenced in, it was okay, and it should not be an issue tonight.

Chairperson Sielaff stated he guessed the next step is for the Commission to decide. Is this like an appeals hearing?

Attorney Erickson stated it is not a public hearing but they can close the record. That could be appropriate.

Commissioner Jones asked Mr. Saba whether everyone from his group has said everything they want in the second rebuttal? Okay.

Mr. Hickok asked if the Commission could take a roll call and see if each of the Commissioners have enough evidence before them to render a decision? By closing it they are going to be closing that portion. Could they hear from each one that at least they have the evidence they need now to go into the deliberation phase?

ROLL CALL: Michelle Drury responded, yes.
Blaine Jones responded, yes.
Brad Sielaff responded, yes.
David Ostwald responded, yes.

MOTION by Commissioner Jones to close the presentation and the public record for this appeal. Seconded by Commissioner Ostwald.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SIELAFF DECLARED THE MOTION CARRIED UNANIMOUSLY.

The record and receipt of evidence were closed at 11 p.m. and the Commission took a five-minute break.

Attorney Erickson stated they had recessed, staff has made copies of attorney Marty's and Mr. Saba's photos so they can be labeled as exhibits and offered into evidence. The City has distributed a revised resolution that addresses some issues raised by attorney Marty and Mr. Saba. Specifically, she believes there are three changes to call the Commission's attention to.

Attorney Erickson stated the first change is on page 6, No. 2, it states that each and all of the exhibits presented by both parties to the Appeals Commission are incorporated. Before it had just said "all of the exhibits". They want to make clear that exhibits from Mr. Saba and the City have been received and are part of the record.

Attorney Erickson stated, second, attorney Marty had raised some issues in her rebuttal with

respect to other findings. She would direct the Commission's attention to page 7 of the resolution. Getting at that issue she does not think the City has ever contested that the house is not a legal non-conforming use and she does not think that the City contests that the house is a legal use. There has not been any dispute about those two items. To be clear this resolution in Finding No. 8 and Finding No. 9 has been modified to account for that. Steve Saba's use of the property for recycling outside storage and junk yard is an illegal use. That has been narrowed to reflect the facts that there is remarkably some agreement on.

Attorney Erickson stated, as to Finding No. 9, that Steve Saba's use of the property for recycling, outside storage and junk yard is not a legal non-conforming use. Again, restricted so as to reflect the acceptability of the house and the agreement on the house and garden area. She hopes that explains and addresses any kind of confusion that attorney Marty and Mr. Saba would have on this redistributed resolution.

Attorney Erickson stated to Chairperson Sielaff, there are a couple of things to address. This is now the process of deliberation for the Commission members. They recognize it is late at night, but attorney Marty has discussed with her, there is no requirement that a decision be reached here tonight. There is the possibility that the Appeals Commission could adjourn to another date if they feel it is too late, and the documentation is too voluminous to go through and it would not be feasible tonight. However, a decision does have to be completed, under the City ordinance rules, within the next ten days. She knows there is also a possibility there could be a waiver of that ten-day deliberation requirement if it is not possible for those deliberations to occur. They would ask for a waiver from Mr. Saba and attorney Marty. However, it certainly is up to the Commission. If the Commission feels they are up to the task and wish to deliberate and feel there is enough time and the Commission can do its job this evening, certainly there is nothing prohibiting doing that either. She puts that out there because there is no mandatory requirement that any decision be reached tonight. If they have questions about that process certainly feel free to ask them.

Chairperson Sielaff stated he senses that the Commission would like to get this decided this evening, is that correct?

Commissioner Jones replied, yes.

Chairperson Sielaff stated they will deliberate now. There is a voluminous amount of stuff to look at. Obviously he has not had a chance to study all of it but, based on the testimony, to him it can be distilled down all this information and testimony and rebuttals, everything comes down to him, anyways, what was the governing ordinance at the time the petitioner's family moved into this house and property. It makes sense to him what has happened is that whatever ordinance was on the books in 1949 is not the ordinance for this. When they moved into the house in 1954, it was the ordinance in 1953 that was on the books that they needed to comply with. That is his position. They needed to conform to the ordinance in 1954. It was on the books in 1953. That seems clear to him.

Commissioner Jones stated he agrees with that. He was a little confused about the map thing and everything like that, but then when it came to light there was an actual legal description. With that legal description anyone can find anything basically. That to him is better than a map because it gives clear instructions to whomever exactly what piece of property that they are looking at. It kind of cleared that up. Okay, it was clear what the zoning was and obviously the 1953 ordinance provided the zoning requirements or ordinances for that property.

Chairperson Sielaff stated the other thing is the 1953 ordinance requires a special use permit. It is clear they did not have that and had never been issued for this specific property.

Commissioner Jones stated, yes, and the fact it is not part of the title. His understanding is that a special use permit is on the title but, even if it were there, it does not necessarily go to the party acquiring because it has to get reviewed again if the property changes.

Attorney Erickson stated that is not an accurate statement of law, and she wants to make sure the Commission is proceeding with accurate legal information. A recorded special use permit would run with the land. That is why they are recorded so future owners can rely on and know that their use is sanctioned and permissible, valid.

Commissioner Ostwald stated that is how they get by with the single-family home on the property.

Attorney Erickson stated the City would agree that because the house existed and predated the 1953 ordinance as a residential use which typically is not allowed in a commercial district but, because it was there before that zoning occurred, it is a legal non-conforming use – that is the residential and garden use of the property.

Commissioner Ostwald stated he can have a garden in his yard and others can have a garden in their yard, why does the garden come in as part of the argument?

Attorney Erickson replied, as legal counsel she would indicate and submit to him that it would have to be a listed use under ordinance to be a permitted use. If it is not listed in an ordinance, in order to exist and continue and be a legal use, it needs to predate the ordinance. If it predated an ordinance, it would be a legal non-conforming use. If it is not set forth in a zoning ordinance, it would be an illegal use.

Chairperson Sielaff asked if any of the Commission members wanted to bring up anything else about the information they collected this evening?

Commissioner Jones stated a lot of it was very similar with the two sides of this thing. Same issue. The fact with the timing of the purchase in 1954 and the 1953 zoning ordinances, combined with having a legal description of that, and the requirement that there needs to be special use permit for any use that they are using it for. It kind of trumps all the other issues.

Chairperson Sielaff stated he agrees. As far as the issue of having an agreement or not really to him there is no substantial or conclusive evidence that an agreement had been signed. Although he does not know how much that would enter into his decision anyways. The thing for him was what ordinance was there when the property was acquired. That to him trumps a lot of things on the issue.

Commissioner Jones stated, yes, what ordinance was in place and what was going on at that time. The house was already there, the garden was there, and they could do that because that is kind of where the grandfathering comes in. However, they did not even own it in 1953.

Chairperson Sielaff stated why don't they look at the resolution the City has prepared. They should probably take some time and take a look at all the "Whereas" paragraphs.

Commissioner Jones stated the other thing here is, down at the bottom of the first page, the second to the last "Whereas", another kind of point is that you need a special use permit just to store things outside in this type of property; and it has been a problem here.

Chairperson Sielaff stated he has a question on the resolution, does this preclude the petitioner from getting a special use permit? With the way this is phrased, "Be it further resolved that based on these findings"?

Ms. Jones stated she did not understand why it would preclude the petitioner from applying for a special use permit.

Chairperson Sielaff stated he is just asking about the language.

Ms. Jones stated the petitioner does not have the proper zoning to apply for the special use permit.

Attorney Erickson replied, to answer the question legally, the property is zoned Commercial. The property owner can use the property for permitted uses listed in Commercial zoning and the property may apply for special use permits set forth in the Commercial zoning district. Those two options exist with this language. There is nothing prohibiting those two activities by a property owner.

Attorney Marty asked what section are they referring to?

Chairperson Sielaff replied, on page 8. It is the "to be further resolved and based on these findings, the Appeals Commission hereby affirms the abatement order of the City Planning Manager for the Property and the removal of all exterior storage on the Property. . ." He is questioning would a special use allow for exterior storage.

Commissioner Jones asked what date do they want? Today's date?

Ms. Jones asked if he was talking about the resolution?

Commissioner Jones replied, yes, because it is dated the 7th.

Ms. Jones replied she would correct the resolution date.

Chairperson Sielaff stated from what he understands then is this language here is such that it does not preclude the petitioner to come in for a special use permit for exterior storage.

Attorney Erickson replied, there is nothing in this language that prohibits the property owner from applying for a special use permit for uses under the Commercial section of the zoning ordinance that are allowable special uses. She does not want to enter any testimony into the record, but the property owner could apply for any special use permit or any special use that is allowable in the Commercial zoning district.

Chairperson Sielaff asked if exterior storage is one of those things that could be a special use?

Ms. Jones replied, there is no allowance in the C-1 code to get a special use permit for exterior storage but, as attorney Erickson was saying, it would have to be something related to a permitted use on the lot.

Commissioner Jones stated, for example, if you had an art shop on the property, you might apply for a special use permit for outside storage of your art shop or something like that.

Chairperson Sielaff asked if he has a motion?

Commissioner Jones asked how do they make the motion?

Attorney Erickson stated the record should reflect the meeting commenced on the 28th of January and we are now past midnight and into the 29th of January.

MOTION by Commissioner Jones to Approve and Adopt Resolution No. 2015-01 Affirming the Decision of City Code Enforcement Officer Related to 7345 Central Avenue and change the date of the Resolution to January 29, 2015. Seconded by Commissioner Drury.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SIELAFF DECLARED THE MOTION CARRIED UNANIMOUSLY.

Chairperson Sielaff stated this will go the City Council. He did not know what the timing of that is. They can appeal it to the City Council?

Ms. Jones replied they have 20 days.

Chairperson Sielaff stated to the petitioner he has 20 days to appeal it to the City Council.

2. OTHER BUSINESS:

ADJOURN

MOTION by Commissioner Jones adjourning the meeting. Seconded by Commissioner Ostwald.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON SIELAFF DECLARED THE MOTION CARRIED UNANIMOUSLY AND THE MEETING ADJOURNED AT 12:09 A.M. ON JANUARY 29, 2015.

Respectfully submitted,

Denise M. Johnson
Recording Secretary