

Lori Epler,  
Chair  
Cumberland County

Roy Turner,  
Vice-Chair  
Cumberland County

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Patricia Hall,  
Town of Hope Mills  
Charles C. Morris,  
Town of Linden



# COUNTY of CUMBERLAND

## *Planning and Inspections Department*

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Walter Clark,  
Sara E. Piland,  
Cumberland County

Benny Pearce,  
Town of Eastover

Donovan McLaurin,  
Wade, Falcon, & Godwin

### MINUTES

July 20, 2010

#### Members Present

Mrs. Lori Epler, Chair  
Mr. Roy Turner, Vice Chair  
Mr. Garland Hostetter  
Mr. Benny Pearce  
Mr. Walter Clark  
Ms. Patricia Hall  
Mr. Harvey Cain, Jr.  
Mrs. Sara Piland

#### Members Absent

Mr. Donovan McLaurin  
Mr. Charles Morris

#### Others Present

Mr. Tom Lloyd  
Mrs. Laverne Howard  
Ms. Donna McFayden  
Ms. Patricia Speicher

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Clark delivered the invocation and led those present in the Pledge of Allegiance.

#### II. APPROVAL OF / ADJUSTMENTS TO AGENDA

**Mrs. Piland made a motion to accept the adjustment to the agenda, seconded by Mr. Hostetter. Unanimous approval.**

#### III. PUBLIC HEARING WITHDRAWAL

**P10-27:** REZONING OF 16.71+/- ACRES FROM RR RURAL RESIDENTIAL TO R7.5 RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE SOUTH SIDE OF NC HWY 24 AND WEST SIDE OF SR 1831 (BAYWOOD ROAD); SUBMITTED BY DAVID ALLEN FOR BAYWOOD POINT, LLC. (OWNER).

#### IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

#### V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd read the policy statement.

#### VI. APPROVAL OF THE MINUTES OF JUNE 15, 2010

**Ms. Hall made a motion to accept the minutes as submitted, seconded by Mr. Clark. Unanimous approval.**

VII. PUBLIC HEARING CONSENT ITEMS

REZONING CASES

- A. **P10-29:** REZONING OF 2.00+/- ACRES FROM A1 AGRICULTURAL TO R40A RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3200 CULBRETH ROAD, SUBMITTED BY ZOLTAN AND MARILYN W. NEMETH (OWNERS) AND SHARON K. TILLEY.

The Planning & Inspections Staff recommends approval of the R40A Residential district based on the following:

1. The district requested is consistent with the 2030 Growth Vision Plan, which calls for “rural area” at this location, as well as meeting the location criteria for rural density residential development as listed in the Land Use Policies Plan;
2. The request will ensure comparable lot sizes with the one acre lots currently recommended for this area; and
3. The request is consistent with the surrounding land use.

The A1A Agricultural district could also be considered suitable for this location.

**A motion was made by Mrs. Piland, seconded by Mr. Clark, to follow the staff recommendation and approve case P10-29 as submitted. Unanimous approval.**

- B. **P10-31:** REZONING OF 1.46+/- ACRES FROM C3 HEAVY COMMERCIAL TO A1 AGRICULTURAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE WEST SIDE OF SR 2215 (FIELDS ROAD) AND EAST OF I-95 N; SUBMITTED BY ALLEN B. AND SHERYLENE M. COSAND (OWNERS).

The Planning & Inspections Staff recommends approval of the A1 Agricultural district for this request based on the following:

1. The district requested is consistent with the 2030 Comprehensive Plan, which calls for “urban area” at this location, as well as meeting the location criteria for agricultural land use as listed in the Land Use Policies Plan;
2. The request will ensure comparable lot sizes with the two acre lots currently recommended for this area; and
3. The request is consistent with the surrounding land use.

There are no other districts considered suitable for this request.

**A motion was made by Mrs. Piland, seconded by Mr. Clark, to follow the staff recommendation and approve case P10-31 as submitted. Unanimous approval**

VIII. PUBLIC HEARING CONTESTED ITEMS

## CONDITIONAL USE DISTRICT AND PERMIT

- C. **P10-18:** REZONING OF 3.14+/- ACRES FROM A1 AGRICULTURAL TO C2(P) PLANNED SERVICE AND RETAIL/CUD CONDITIONAL USE DISTRICT FOR A TRADE CONTRACTOR AND THE PERMIT AND R40 RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3370 COLEMAN ROAD, SUBMITTED BY ROBERT W. MCLAURIN (OWNER) AND DARYL W. MCLAURIN.

Chair Epler asked all people who signed up to speak to come forward to be sworn in. (Scott Flowers, Robert McLaurin, Daryl McLaurin, Erica McLaurin)

Chair Epler asked if any board member had anything to disclose in reference to the case. There were no disclosures.

Mrs. Piland advised the Board that she would participate in the proceedings; however, as stated at the previous meeting when this case was deferred, she did have a conversation with Mr. McLaurin prior to that meeting, but believes she could handle this case in an impartial way.

Chair Epler asked Mrs. Piland if there was any information that needed to be disclosed.

Mrs. Piland stated no.

### **Public Hearing opened.**

This case was on your June 15, 2010 agenda and at that meeting the applicant requested a deferral to the July 20, 2010 meeting. The Planning & inspections Staff recommendation remains the same, in that:

Mr. Lloyd reviewed the site information and presented a building/zoning permit that was issued in 2004 and showed a building that was built as an accessory structure. The permit clearly says not for commercial use and the type of work is described as storage building. On the handwritten permit it specifies that this is not to be for commercial use and the permit was issued for a storage building. The subject property is in violation, there are two relevant facts, one is in 2008 east of Baywood, there was a request for an RR to C(P) CUD for a trade contractor, staff recommended denial subsequently denied by the board, and it was withdrawn. Also, less than a year ago, there was a rezoning request to the north, which was also denied by this board. Mr. Lloyd stressed that the permit was issued for an accessory structure, it stipulated accessory structure, on it in two places.

Mr. Lloyd stated that the Planning & Inspections Staff recommends denial of the requested rezoning to C2(P) Planned Service and Retail/Conditional Use District [C2(P)/CUD] for a trade contractor and the R40 Residential based on the following:

1. The area in which the requested commercial portion of the subject property is located is not consistent with the location criteria for light commercial uses as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan – SR 1721 (Coleman Road) is not a major thoroughfare and public sewer is not available to this site;
2. The portion of the requested residential portion of the subject property does comply with rural density residential location criteria as listed in the Land Use Policies Plan;

however, the entire request is not consistent with the Eastover Area Detailed Land Use Plan which calls for “farmland” at this location;

3. Consideration of the C2(P) district for this area is arbitrary and would not serve a viable public purpose; and
4. The degree of difference in uses allowed on the existing surrounding properties and the uses allowed in the requested districts qualify this request as being unreasonable.

The Planning & Inspections Staff also recommends denial of the Conditional Use Permit based on the following:

1. The location and character of the use, if developed according to the plan as submitted and recommended, will not be in harmony with the area in which it is to be located and will not be developed in conformance with the development ordinances – the property owner is requesting an alternate yard setback of two feet on the south side of the subject property and to provide a gravel drive and off-street parking in lieu of a permanent surface area;
2. The request for the subject property is not in accordance with the adopted Land Use Policies location criteria for light commercial, specifically: public sewer is not available, not serving as a transition between residential and heavy commercial zoning, does not have other light commercial uses in the area, is not providing convenient goods and services to the immediate surrounding neighborhood, is not located in an area that is in transition to commercial and is not at the intersection of two collector streets;
3. This development most likely would endanger the public safety if located according to plan submitted since the structure was built under the guise of a residential accessory building and permitted as such without the proper inspections to ensure compliance with the NC Building Code for commercial structures, and SR 1721 (Coleman Road) is not a major or minor thoroughfare and is not suitable nor intended to serve commercial operations;
4. The use is not in harmony with the area in which it is located, the subject property is completely surrounded by agricultural and residential zoning and uses; and
5. The degree of difference in this specific use and the site layout requested as related to the existing surrounding uses makes this request unreasonable.

There are no other suitable zoning districts to be considered for this site.

Chair Epler asked how long the business has been in operation at this location.

Mr. Lloyd was unsure about that; it was actually targeted by Ms. Speicher when the applicant came in for a building permit on the front part for a residence and we pulled the aerials from 2008, because the permit was issued in 2004. It could have gone on since 2004.

Chair Epler asked if a building inspector had been inside to see what it would take to get it up to code for commercial use.

Mr. Lloyd stated not to his knowledge, but it wouldn't be the building inspector's job to do that, it would be up to the individual and then call for an inspection and then they would see. They would do that if asked, Mr. Lloyd didn't know if they had been asked.

Mr. Scott Flowers spoke in favor. Mr. Flowers, Attorney with the Law Firm of Hutchins, Senter, and Britton in Fayetteville, representing Robert McLaurin and Daryl McLaurin, owners and applicants. Mr. Flowers presented Exhibit 1 to the board, a sworn statement signed by Mr. Robert McLaurin by affidavit. Mr. Flowers stated that the purpose of the affidavit is to give the board a more detailed history of the subject property from the owner, Mr. Robert McLaurin. In 2003 Mr. McLaurin purchased this tract of land, in 2004, as previously stated, he constructed a small warehouse for his commercial refrigeration business on this property, in doing so he hired Andy Nichols of Nichols Building, a licensed general contractor, who constructed the building. The building has been used since that time by Mr. McLaurin in his business which is a commercial refrigeration business, he employs 12 people here in the Fayetteville Eastover area, in this particular building Mr. McLaurin works and there is also one other employee that works in this building, that would be Mr. McLaurin's secretary. Otherwise, the building is used for storage. In 2006 Mr. McLaurin added two small offices in the building for use by himself and his secretary, at that time he also installed a handicapped accessible bathroom and a septic tank approved by the County, electricity, running water, and a security system was installed. Earlier this year, his son Daryl, in planning the construction of a home for Daryl and his family on the site, contacted the Planning department to conduct an inspection of the property and found this commercial building and advised the McLaurin family that it was not in compliance with the zoning ordinance. This is before you now, not as the result of a complaint by a neighbor, even though this business has been in operation in this location for five or six years, there have been no complaints to Mr. McLaurin or to anyone else by any of the surrounding property owners. Paragraph 10 of the affidavit says that Mr. McLaurin has been a resident of Eastover for 60 years, he's been operating his commercial refrigeration business basically since he got out of two tours of Vietnam with the Navy, his son Daryl was planning to build a home on this site and continue operation of the business if allowed at this location. Also, the site plan for the home would place it between the commercial building and the road, which is significant. Finally, it's significant in paragraph 16 Mr. McLaurin states that to his knowledge during his lifetime this tract of land has never been used as farmland. As you are aware the requirements of findings that the board must make in order to allow Mr. McLaurin's request are set forth in section 504 of the Cumberland County Zoning Ordinance and I would like to briefly go through each of those and speak briefly about why the facts in this case support each of those findings. The first is that the use will not materially endanger the public health or safety, first of all, this is not a high traffic area and it will not become a high traffic area by allowing Mr. McLaurin to continue his business. Mr. McLaurin and one other employee work at this location, it's a commercial refrigeration business, generally his clients do not come to this location, and it is not a retail location, so there will not be any significant traffic as a result of Mr. McLaurin continuing his business.

Mr. Flower's presented Exhibit 2 to the board, an affidavit signed by the contractor who constructed the building, Mr. Nichols. With regard to this idea as to whether this use will endanger public safety, there are two considerations. First, consideration of the general public, inhabiting the area and using the area around the building; secondly, for those folks who actually will be inside of the building using the building. Mr. Flowers reminded the board that he had spoken on the idea as to whether this building poses any danger to folks around the building by how this will not increase the amount of traffic in the area or have any

adverse impact on the surrounding area as far as public safety goes. The purpose of this affidavit is to demonstrate to the board that this building was constructed by a licensed general contractor and that at the time of its construction it did meet international and North Carolina building codes. Including the walls, roofs, and slab, this is what Mr. Nichols constructed. If you'll recall, at the time that this building was constructed it was constructed not for the purpose of being an office building, so Mr. Nichols can speak to what he constructed, which are the structural elements, so the structural elements of this building are built to North Carolina building code and there's absolutely no evidence before the board contrary to that. Mr. McLaurin would welcome an inspection by the Cumberland County building inspector with regard to the interior of the property and would absolutely take any steps necessary to bring anything that's out of compliance into compliance with the building code. So this building does not pose a danger to the public, either the surrounding public or the folks who work in this building.

The second element set out in section 504 of the code that the board would have to find is that this use meets all required uses and specifications, as already stated the structural elements of the building were built to code and would be glad to have any interior inspection done. As far as the outparcels or the parking, I think gravel was mentioned by the planning staff as opposed to paved surface, again, Mr. McLaurin would be willing to take any steps necessary with that regard, but would ask the board to keep in mind that he is a small business owner with limited means, operating in a rural area. With regard to the house itself I believe but for the request for the Conditional Use Permit for the business the house itself would be a permissible use of this property. So with regard to the request for the home, I don't believe there is any issue about whether it meets all the required conditions and specifications.

The third issue is whether the use will maintain or enhance the value of adjoining or abutting properties or that the use is a public necessity. So the question is will this use maintain or enhance the value of the adjoining or abutting properties? According to Mr. McLaurin's affidavit when he purchased this property in 2003 it was a vacant tract of land that had a dilapidated house that no one was occupying. It goes without question that taking a vacant three acre tract of land that is not being used for any purpose that has a dilapidated house on it and putting a viable commercial operation there and a home there, certainly enhances the value of the adjoining properties.

The last element is that the location and character of use will be in harmony with the area in which it is to be located and in general conformity with Cumberland County's most recent Land Use Plan and adopted plan policies. Mr. Flower's presented Exhibit 3 to the board, photographs of the subject property. You will see that there are, as it was pointed out earlier, there is a home right next door. The homeowner who has no objection to Mr. McLaurin's use of the property, in one picture there is another home across the road, sort of catty-cornered to the property down the road just a bit. As far as Mr. McLaurin knows that homeowner has no objection to his use of the property. Certainly allowing Daryl McLaurin to build a home on this site would be in conformity with the current uses of the surrounding property.

Mr. Flowers stated that these were the four elements that the board must find in order to allow Mr. McLaurin's request, the facts support each of those elements, and if the global purpose of the Planning Board is considered, it is to put land to its highest and best use consistent of the strategic goals of Cumberland County and its municipalities. This property was a vacant 3 acre tract of land, surrounded by fields with an old abandoned house on it, a house that posed a danger, frankly, to the surrounding neighborhood and Mr. McLaurin is taking it and trying to turn it into something viable and useful for that community.

Mr. Flowers addressed the staff recommendations. First, with regard to the comment of the use would not be consistent with location criteria for light commercial uses as listed in the Land Use Policies Plan and is not a major thoroughfare and public sewer is not available to this site. The whole point of Mr. McLaurin's request is that this is a low impact use in a rural area, and he is not going to change the fact that this is a quiet rural area. So to say that his request is not consistent with the surrounding use of that area on the one hand and on the other hand to say we are going to deny his request because it's not a major thoroughfare, seems to be inconsistent. The point being made on Mr. McLaurin's behalf is that it is a quiet neighborhood and there will be low impact from his business. With regard to whether public sewer is available, clearly it's not, but Mr. McLaurin shouldn't be punished for the fact that the County has not yet provided sewer to this location, hopefully that wouldn't be held against Mr. McLaurin. He has installed a septic system that has been approved by the County.

Secondly, according to the statement that the portion of the requested residential portion of the subject property, does comply with rural density residential location, however, the entire request is not consistent with the Land Use Plan for farmland. The way Mr. Flowers reads that statement means that the house is okay. I will get into, in just a few minutes the permitted uses of how it's zoned now A1 and Mr. Flowers reading of that is that single family dwelling is permitted, even if the board decides that commercial use is not okay, to not deny Mr. McLaurin's request to put a home on this location, since it appears, but for the fact that that commercial structure is there, he could of put a home on that location if he had so desired. Second it says that it is not consistent with the Detailed Land Use Plan which calls for farmland at this location. Well, there is no farmland at this location. This is three acres of land that abuts the road right outside of Eastover. Mr. McLaurin says in his 60 years he doesn't know of it ever being farmed. Mr. Flowers stated that he would dare to say that it is not going to be farmed, if it was going to be farmed, there are plenty of farmers in that area that would have been farming this three acres of land before now. The fact that somebody at some point in the past thought that this would be a good place to farm shouldn't hold us back now after it should be clear to everybody involved that this is not a farm and is never going to be a farm. To deny his request for that reason is going to have the effect of not allowing any use on this property.

The third thing is the request is arbitrary and would not serve a viable public purpose. Mr. Flowers stated that he wasn't sure about the term arbitrary, but to say that it would serve a viable public purpose is not accurate, here is a small business owner, for a couple of decades has employed up to a dozen people in the Eastover community and continues to do so and needs to be able to do so. If there is some confusion it may be the fact that he and his secretary work at this location, he has 10 or 12 contractors that work out on job sites. But his company employs all these people. To say that this is not a viable public purpose, Mr. Flowers doesn't feel that is accurate, there are not that many small business owners in Eastover who have managed to have the ability to give 12 families a good income.

Number four, the degree of difference in uses allowed on the existing surrounding properties and the uses allowed in the requested districts qualify this request as being unreasonable, unreasonable kind of goes with that term arbitrary, Mr. Flowers is not sure what that means when that term is used.

Next, Mr. Flowers reviewed the reasons of staff recommendation of denial of the Conditional Use Permit. Number one the property owner is requesting an alternative yard setback of 2 feet and the off street parking has gravel instead of a permanent surface. As far as the 2 feet goes, what is being referred to here is a corner portion of the property, not the whole wall,

but we can pull that up and look at that. Again we're talking about a tract of land that abuts farmland, trees, and a field on the other side. So the fact that a small portion of this building may encroach on the setback, Mr. Flowers doesn't think that this poses any significant public danger. There is no testimony or evidence that there are any damaging effects from the buildings location, such as runoff or anything of that nature to the adjacent property. No evidence on the record of any harmful impact as a result of the buildings location on the lot. As far as the permanent surface question goes, again if that's what is required of Mr. McLaurin, in order to operate his business there, I'm sure he'd be willing to pave that driveway.

Number two, it states that it is not providing convenient goods and services to the immediate surrounding neighborhood, just because something is not a retail business that you can sort of *ipso facto* draw a conclusion that it doesn't provide any meaningful goods to the immediate surrounding neighborhood. Mr. McLaurin does provide a service to the area, he provides commercial refrigeration equipment and he services and maintains that equipment and he uses this location as part of that process.

Number three, this development would most likely, would endanger the public safety if located according to the plan submitted since the structure was built under the guise of residential accessory building. Well, I could see how that may have been an appropriate finding at the time it was written without the benefit of Mr. Nichols affidavit, although I think that the affidavit would rebut that and Mr. McLaurin would invite any building inspector to come in and inspect the building interior of the property. I don't think it's an accurate inference to say that just because it was constructed as a residential accessory building, means that it was not constructed in compliance with North Carolina building code. I'm sure there are plenty of residential accessory buildings that are built in compliance with the North Carolina building codes, and this is one.

Number four, the use is not in harmony with the area in which is located, the subject property is completely surrounded by agriculture and residential zoning uses, well that's true, it is in an agricultural use zoned district, but key here is the fact that for the last five or six years, Mr. McLaurin's been doing this without any objections from any of his neighbors, and this business has low if any impact on the surrounding neighbors.

Mr. Flowers spoke about the laws of the State regarding Conditional Use zoning, and referenced the case of Chrisman vs. Guilford County, which the decision handed down by the North Carolina Court Supreme Court in 1988 gave the cite to the case, 322 North Carolina reporter 611. The Chrisman case was the first time that the North Carolina Supreme Court according to the Court and its decision took up the issue of the practice of Conditional Use zoning. In the Chrisman case there was a gentleman by the name of Mr. Clap, Mr. Clap owned a 3.1 acre tract in an A1 Agricultural zoned district, on this tract of land he had his house and at the back of the tract he had his fertilizer business, where he both made fertilizer and sold fertilizer to local farmers. Mr. Clap also owned a 5 acre tract across the road, several years after he had been operating his business he was successful and went across the street and expanded. One of his neighbors didn't like that, a dispute arose, Mr. Clap applied to the Guilford County Planning Board for a Conditional Use zoning permit and it was allowed, Mr. Chrisman, his neighbor then, sued the Board to stop the permit from being issued, and the case went all the way up to the North Carolina Supreme Court. The Court examined this issue of Conditional Use Permits and the court in examining that issue held that the practice of Conditional Use zoning is an approved practice in North Carolina so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary, nor unduly discriminatory, and in the public interest. So the Court said that it



is permissible as long as the action that the Board takes is reasonable, is not arbitrary, or unduly discriminatory, and is in the public interest. Furthermore, a property rezoned to a Conditional Use District does not have to be available for all the uses allowed under the corresponding general use district. A zoning ordinance that singles out and reclassifies a relatively small tract owned by a single person surrounded by a much larger area and uniformly zoned tract is allowed under the following conditions: those are previously stated reasonable not arbitrary, discriminatory, and in the public interest. So, on top of that, there is a long history in this state of the courts disfavoring the restrictions on the use of land. So the courts would be, Mr. Flowers thinks, and the law of the State and the public policy of the State would be squarely behind Mr. McLaurin's request.

Mr. Flowers reviewed the uses that are allowed under agricultural zoning designation and referred to section 403 of the Cumberland County Zoning Ordinance which is the use matrix and read some of the uses already allowed and stated that all they were asking for was a commercial refrigeration business. Mr. Flowers doesn't see this as a big leap but as more of a baby step, considering what others would be allowed to do under the same designation.

In conclusion, Mr. Flowers went over the main points he was trying to make, first, the facts of this case demonstrate that Mr. McLaurin's request meets the elements that the board should find in order to allow this request. This is not an arbitrary or unreasonable request by any means, since 2005 Mr. McLaurin has operated this business with no complaints from any neighbors, he puts this land to its highest and best use, the fact is it's not farmland and it's never going to be farmland and to try and restrict it to farmland is just a waste of this land. Mr. McLaurin is a lifelong member of the Eastover community, he is a Vietnam Veteran, he's a small business owner, and we ask the board to try and help him. There is no harmful impact from this business, certainly there has been none demonstrated in the record before the board, there would not be any demonstrated. Mr. McLaurin's use is consistent with other allowable uses; it's very similar to some of the things already allowed. Finally, would like to ask the board that even if you disagree with everything said here, and deny Mr. McLaurin's request with regard to the commercial building, that you don't restrict his son Daryl, from being able to build his home on this property.

Chair Epler asked Mr. Flowers how many of Mr. McLaurin's clients or people that he provides services for, live in that neighborhood.

Mr. Flowers stated that he didn't know.

Mrs. Piland asked if Mr. Flowers could explain why the permit was requested for residential instead of commercial.

Mr. Flowers stated that his understanding was that first of all, when the property was purchased there was a house located on the property albeit one that nobody lived in and one that probably nobody wanted to live in. Secondly, Mr. McLaurin would tell you that he hired a general contractor and told him to go build a building and the general contractor built a building.

Mrs. Piland stated that she was assuming Mr. Flowers was referring to Mr. Nichols, although, there was a Mr. Jones on that building permit, and she wasn't sure who that was as far as the contractor.

Chair Epler asked if Mr. Nichols filled out the building permit application.

Mrs. Piland stated that the contractor was listed as a Mr. Ronald Jones, and of course we have an affidavit from Mr. Nichols, but if Mr. Nichols was indeed the person who handled this, he did not provide any testimony regarding that permit in his affidavit. Mrs. Piland asked Mr. Flowers if he had any explanation for that.

Chair Epler clarified that the address given for Mr. Ronald H. Jones listed an address that is the business address for Nichols building. He probably works for the company.

Mr. Flowers stated that he was looking at an application for a building permit signed by Wyman Nichols, who is the builder. The larger point is clearly, the building is not proper as it currently exists. Clearly, it's not in compliance with the A1 zoning, clearly Mr. McLaurin could have done a better job in how he went about constructing that building. The question before the board is what do we do about it now? Do the facts before the board support the four findings that are set forth in the zoning ordinance? Mr. Flowers pointed out that there was nothing in those four findings that talks about prior conduct. Certainly, there's nothing in there that would support penalizing Mr. McLaurin for past mistakes. In that same vein, as far as prior requests being objected, that is not relevant either. The way the law is read on zoning ordinances, each tract stands on its own merits.

Mrs. Piland asked if Mr. Flowers understood the rationale for the uses that he read and if he could explain them.

Mr. Flowers stated that his understanding is that the idea that it is supporting the surrounding community and thinks that the idea is that Mr. McLaurin is not surrounding the surrounding community because he's not a retail business, and takes issue with that. That's a fundamental flaw; you can be in a business other than retail and be supporting the surrounding community. But also thinks that is not the only question, the other question is what's the harmful impact to Mr. McLaurin if his request is denied, what's the harmful impact to the community if his request is allowed. What is the positive impact on the community if his request is allowed? But it should also be weighed with the harmful impact on the property owner because folks want to be able to use their property, and of course they have to be in compliance with the law but, does it support the community, his affidavit states that he employs 12 people, these are not minimum wage type jobs, these are people who are skilled technicians who work on maintaining and installing commercial refrigeration equipment, are probably one of the few jobs left that a person can go out with a high school education and some amount of training and make a living to support a family, there's not a lot of those left in this community and we have 12 of them here, and when you have a situation where you can do something to support that that has no harmful impact on the community, what's the boards obligation than?

Mr. Lloyd stated that the affidavit by Mr. Nichols addressed the concrete slab footing designed for the mentioned building is in compliance with all relevant building codes. The way that sentence reads he's only addressing the concrete slab, we don't know anything about the electrical or the plumbing. With respect to the safety of the employees, this affidavit doesn't bear out that the building is safe for the employees, it only bears out that the slab footing meets the design. The North Carolina building code is set the way it is for employees that work in it, this affidavit merely states that the slab meets North Carolina building code. As far as the dilapidated structure is concerned, if it wasn't for the dilapidated residential structure, the accessory use would have never been permitted to begin with, that's why it's called an accessory use. The function of that dilapidated house was to allow the issuance of the accessory use. With respect to the four criteria, in the Supreme Court case *Chrisman vs. Guilford County*, that case merely bared out that conditional use zoning was legal that it

wasn't contract zoning that's what that case bore out if these conditions were met, until that time you couldn't just say that we want to stick this use on this property or we're going to rezone it commercial so we can put that use on there. That's why you have certain conditions, such as the use will not materially endanger the public health, safety, or welfare of the citizenry. We already talked about the building, if there's 10-12 employees on the road, I would assume that would mean, and I'm not sure, how many trucks that are associated with this business that are loading onto that road.

Mr. Flowers stated that the point they were trying to make is that Mr. Nichols affidavit sets out that with regard to the structural elements of the building, the slab, footings, wall, and roof are done in conformance with the building codes. He says North Carolina and International at one point, perhaps his affidavit could have been more detailed. What is clear, on the converse is that there's absolutely nothing in the record to show affirmatively that this building is not built in compliance with the building code nothing. The planning staff makes a leap, an inference, but there are no facts, there is no report of an inspector. There is nothing from which the board could determine that it is not built to code, and we would welcome an inspection, and do whatever would be needed to get it into code and compliance if it's not in compliance. As far as the trucks go, Mr. Flowers is not sure how many trucks go in and out. Mr. McLaurin could answer that.

Mr. Lloyd stated that the building may be in compliance but we don't know that for sure, we can also vote to whether or not to even accept this affidavit, so it's up to the board to accept this affidavit. Mr. Lloyd stated that the bottom line question was if this came in for a commercial rezoning or if this came in for a CUD at this location and you considered these would you grant it. One thing yes, there would be other things that would be required, like an erosion control permit, it is over an acre. There's different parts of the code that need to be addressed this affidavit states that but the reason you have a choice to accept this affidavit is the person who signed this is not here to be cross examined. That's why you do have inspections and an occupancy permit before the building is ever occupied by the workers. With respect to the location and character of the use if developed in accordance with this plan will be in harmony with the area in which it is to be located and in general conformity with Cumberland County's most recent Land Use Plan. It clearly is not in conformity with Cumberland County's most recent Land Use Plan. At this point in time that's all I have.

Mr. Flowers clarified for the record is it accurate that it's the role of the planning staff to advocate against a request of this nature?

Chair Epler stated that it wasn't, but it is their job to make the board aware of the reasons for their recommendation and if they'd like to expound on those reasons then we as a board appreciate their position. That's a fine line that we cross, they don't advocate either way, they do explain to this board why they've made the recommendation that they have.

Mr. Flowers stated fair enough and thanked Chair Epler and stated that Mr. McLaurin was available to answer any questions.

Mrs. Piland asked Mr. Lloyd to explain the definition of arbitrary for Mr. Flowers, specifically when the board takes action what considerations should be taken when they determine that it is or is not arbitrary.

Mr. Lloyd stated that the easiest way to say it is the board has approved plans, both the 2030 Plan and Land Use Policies Plan, and there's certain criteria that you have laid out as a

board and Commissioner's that should be met in order for specific land use to take place or specific zoning classification to take place. Arbitrary to on some cases to go against those criteria, than on other cases not, on either plan.

Mrs. Piland asked if any actions taken for this case, has implications for future cases that might come before the board in this regard.

Mr. Lloyd stated that it could. Unless you state as a board your specific reasons why, for example, you don't feel that public sewer must be needed, for example, this particular use. Or why you wouldn't need to be located on an intersection up to collector streets or minor thoroughfare. Why this would be a different use that would allow you to deviate from those criteria.

Mr. Flowers stated that he would answer differently, and said that he's not an expert in this area in the law, but just from reading the law and the zoning ordinance, his understanding is that each case is decided upon the merits of that case just like any other case in our justice system. The reason why this is a quasi-judicial proceeding is because we're talking about property right here. Mr. McLaurin has due process rights with regard to his property. His case cannot be impacted by any other case and no future case can be impacted by Mr. McLaurin's case, that would be unconstitutional and it would not be supported by the case law neither would it be supported by the zoning ordinance. So Mr. Flowers would answer no to Mrs. Pilands question. Possibly, Mr. Lloyd is referring to the equal protection clause of the Constitution, Mr. Flowers doesn't feel that that is implicated in this case; each case stands on its own merits.

Mr. Lloyd stated that Mr. Flowers response was a good summary, but the original question of what is arbitrary though is, regardless of whether it would have future implications if you deviate from the plan, why this case standing on its own would afford you the ability to do that.

Chair Epler asked if there were any more questions for Mr. Flowers. There were none.

**Public hearing closed.**

Ms. Hall asked Mr. Lloyd if part of the request for rezoning was for residential, to build a dwelling. Can the dwelling be built on A1 as it stands now?

Mr. Lloyd stated yes, as long as there are two acres.

Chair Epler asked if the Conditional Use District and or permit are denied can that home can still be built there.

Mr. Lloyd stated that was correct.

Chair Epler stated that the structure that is there now operating as a business will have to become an accessory structure.

Mr. Lloyd responded yes.

Vice-Chair Turner asked if it was normal for a contractor when he builds a building to ask an inspector to inspect the final job.

Mr. Lloyd stated yes, that's why you have a certificate of occupancy issued.

Vice-Chair Turner asked if this was ever done.

Mr. Lloyd responded no.

Chair Epler stated that her understanding was that with an accessory structure there is no certificate of occupancy because no one is going to be occupying it.

Mr. Lloyd stated that was correct, the inspectors didn't know about it in that light.

Mr. Clark asked with regard to that, he assumed that there was electrical power to the structure (Mr. Lloyd stated yes), so wouldn't there have to be some kind of inspection before the power was turned on at the offices.

Chair Epler stated that with her experience, especially in rural areas, that when the power company comes to turn that power on if there is not a sticker on it saying that an inspector has passed the wiring on that building, but there again the standards for an accessory structure maybe different than they are for a structure that's to be used for commercial uses.

Mr. Clark stated that that was what his question was, how would they have power if something hadn't been inspected.

Mr. Lloyd stated that he would have to go back and ask the inspectors, there are different ways that power can be turned on.

Mr. Clark asked if this was built as a storage building and related to the existing structure that was there, right? (Mr. Lloyd said that was correct) At such time that he started storing or using it to put equipment in there, was he non-compliant at that point? (Mr. Lloyd said yes)

Mr. Lloyd said if he was using the building as storage for a home occupation, which there's a whole other group of criteria, you could start with employees that would be okay. But it actually exceeded the square footage of a home occupation building, so that wouldn't even be relevant. He was issued a building/zoning permit only as an accessory building.

Mr. Clark asked if his request was denied would he be able to still store refrigeration equipment there.

Mr. Lloyd said no, because it would then deal with a business. If conducted out of a home, would not meet the home occupation requirements of square footage, number of employees, vehicles.

Ms. Hall asked if this happened gradually in the beginning, his home was his office. Then he added the office to the warehouse facility.

Mr. Lloyd stated that he couldn't say.

Ms. Hall stated that the affidavit said that's the way it happened. It said the original office was in his home then he hired one employee and built an office in the warehouse.

Mr. Lloyd said that the question then would be if the home was dilapidated, was he living in that home?

Ms. Hall said that the affidavit said in his home, so she was assuming that he lived in it. Would O&I zoning cover this?

Mr. Lloyd read item 2 of the affidavit which said when Mr. McLaurin purchased the land there was an old house on it and the primary intention was to tear down the house and give part of the land to his son so that he could build another house. So you would have to live in that house in order for it to be a home occupation.

Chair Epler asked if this building under no circumstance would meet the ordinance requirements for a home occupation because of the size of it for one thing.

Mr. Lloyd stated that was correct.

Ms. Hall stated that item 6 said that prior to the addition of the offices in the warehouse, Mr. McLaurin ran the business out of his personal home one half mile from the warehouse.

Chair Epler said on a different piece of property.

Mr. Lloyd said that all he could tell the board was that the permit was issued as an accessory use, he wasn't involved in the conversation, but does know on the handwritten permit application it's written in two places, one, not for commercial use, and above that the described use as a storage building. So it specifically states on the handwritten application, which is part of the record, not for commercial use.

Chair Epler stated that she found herself in a hard situation just like she was sure the rest of the board members did. She was trying to see this case and trying to make her judgment, and will make her decision based on if this request came before the board today and that building was not there, and this gentleman wanted to build a home on this property and have a non residential use on the back portion of it under the ordinance requirements of the conditional use district, would we grant his request. Two wrongs don't make a right, but she believes that, and it's just her personal opinion but people make mistakes, not sure if he did it intentionally or not, but things like this happen, but based on the merits of this case and the evidence that has been presented, she still has reservations about granting a district and permit. Because, number one Eastover has a Land Use Plan and we have tried to back our different municipalities on their Land Use Plans and a lot of effort went into that and a lot of work and thought by volunteers and staff members went into that. This doesn't comply with that Land Use Plan, and no it doesn't meet the criteria for that Land Use Plan, there is no sewer, and while I wouldn't penalize this applicant because they don't have public sewer, that is one of the requirements for light commercial, so no Mr. Flowers we are not penalizing your client because the County has not provided him sewer, but that is one of the criteria for the zoning and the use that he is asking for. Another thing that really concerns me is, and I am not an appraiser, but should this applicant's son build that home there and for whatever reason someone else becomes the owner of the property where that house sits, I would venture to say that I would not want to buy a piece of property that had a driveway for a commercial use going right by my house. That would devalue that front piece of property, but that's Mr. McLaurin's own property. But, her concerns are that he has 12 employees, the pictures that Mr. Flowers presented showed 6 or 7 vehicles, large truck, a trailer sitting on that property and I'm sure there are refrigeration trucks that they use every day to go out and service their clients at different locations. That's a commercial use, that's a lot of traffic going in and out of there in a rural area. While we appreciate the fact that he is employing people in that neighborhood, he is not providing, not necessarily a retail service, but this looks like a commercial business that probably provides services to larger refrigeration units than the

ones you and I have in our kitchen. There again, my heart goes out to Mr. McLaurin because he's built his business and I'm sure he's spent a lot of years doing this, and I'm sure he wants to pass that business on to his son, to run that business right out of his backyard would be the ideal situation for him. That's just to let you know my thoughts. This is a conditional use district, and we don't know how that's going to expand in 5 years, he could have 25 employees in 5 years. Once we grant this conditional use district it's there forever and goes with that property. Chair Epler asked how the other board members felt.

Vice-Chair Turner said that Chair Epler made a valid point, a man that works most of his life to build something up, and it could be something that he didn't know anything about and it escalated. Vice-Chair Turner asked Mr. Lloyd if that area could be zoned an M1(P), light industrial where he's got his business.

Mr. Lloyd stated that he thought that Mr. McLaurin had been advised by staff with what they understood to go on here, that this was actually the best use, that would be trades contracting, if it was merely just storage, and he would have to look at the ordinance, or warehousing it could be alright. This particular use would be allowed. But, you can't consider it on this request.

Chair Epler asked if it met the dimensional requirements of M1(P)? With regards to the side yard setback too, I know it's only 2 feet short of the required side yard setback and it's only on part of the building, but that's farmland adjacent to it, (Chair Epler directed this to Mr. Flowers) that's farmland today, but that individual who owns that farmland may not farm it forever, and whoever ends up with that property may decide to subdivide it and some single family residential person may end up with that building in their backyard and that's why we have setbacks. We don't know what's going to happen with that adjacent property and we certainly don't want to decrease the value or the use of the particular part of it that backs up to where this building is. That's another thing that we have to consider. Chair Epler asked Mr. Lloyd about the setbacks for M1(P).

Mr. Lloyd stated that the setbacks were the same, 2 feet short.

Chair Epler stated that Mr. McLaurin would fall short on the setbacks for that as well, on a corner.

Mr. Lloyd said but again if the board chose to approve this they could make that adjustment.

Ms. Hall asked when the ordinances are changed, are the current ones grandfathered in?

Mr. Lloyd stated yes, legal non-conforming. But if it was destroyed it wouldn't be able to be built back as that use.

Chair Epler stated that she thought Ms. Hall's question was would this use ever have been allowed in A1.

Ms. Hall asked about mini-warehousing and Mr. Lloyd explained what that was.

Mr. Lloyd pointed out that a lot of the uses that had been pointed out in A1 are special uses, if they had gone to the Board of Adjustments they would have additional conditions put on them. With respect with what's happening at this building the least impacting district we could find is what he's applied for.

Chair Epler said if there's no more discussion do we have a motion. Chair Epler asked Mr. Lloyd and Ms. Speicher about the footnote about other suitable districts for this site. Obviously staff did not feel that the manufacturing zoning would be suitable, why did staff feel that way?

Mr. Lloyd stated that the same criteria are laid out at the very least for commercial would be the criteria laid out for industrial.

Chair Epler stated that that was not any friendlier transition zoning, that's less friendly than the Conditional Use District is to the neighborhood in agricultural.

Mr. Lloyd stated that there were heavier and noxious uses allowed in industrial.

Ms. Hall asked if this warehousing would be allowed under another zoning. It would under the M(P).

Chair Epler stated that it will but this site doesn't meet the criteria for M(P) zoning and there are so many other uses allowed in M(P) zoning that's why staff did not recommend that they apply for that.

Chair Epler called Mr. McLaurin forward.

Mr. Robert McLaurin stated his address as 3003 Coleman Rd., Eastover

Chair Epler asked Mr. McLaurin if he lived at 3003 Coleman Road and before he put the warehouse on the property and if he was essentially doing business out of his home.

Mr. McLaurin stated out of the garage that's attached to it. We had a phone set up, business got better and I needed someplace to put our secretary where she would have restroom facilities and that kind of stuff.

Chair Epler asked if anyone else had any questions for Mr. McLaurin.

Mr. Turner asked Mr. McLaurin how large the lot that he lives on is.

Mr. McLaurin stated one quarter of an acre.

Ms. Hall asked how many trucks come in and out a day.

Mr. McLaurin stated that the trucks that he has, he lets the technicians take home. They leave their home and go to the job site. They are in and out some, but they are not there all the time. They don't go in every morning they go straight to the job site which is mostly Fort Bragg, Mr. McLaurin stated that he didn't see where high traffic would come in.

Mr. Clark asked if he worked on any units at the subject property.

Mr. McLaurin stated maybe once every three months, or something might come in that we might have to work on.

Mr. Clark clarified if it was minimal work done on site.

Mr. Pearce asked if Mr. McLaurin recovered refrigerant on the site.



Mr. McLaurin responded no, we do it on site.

Mr. Pearce asked if his primary purpose for this site was for office space.

Mr. McLaurin stated that was correct, parts and storage.

Mr. Pearce asked if he was regulated by any industrial agency.

Mr. McLaurin stated that he was regulated by OSHA.

Mr. Pearce asked again if he stored any refrigerants.

Mr. McLaurin stated on the trucks, we have msds data.

Mr. Clark asked if the office space was outside the warehouse.

Mr. McLaurin said it was inside the warehouse, two offices.

Mr. Clark asked if it had electricity.

Mr. McLaurin said it did, we had to get it inspected. They wouldn't cut the power on until we had the permits.

Mr. Clark asked Mr. McLaurin about his sewage.

Mr. McLaurin said that they put a new septic tank in, had plumbing done by a professional plumber, and he drew all the permits.

Chair Epler asked when Mr. Nichols applied for the building permit, did he know that he put on the permit that this was not for commercial use.

Mr. McLaurin stated that he did not know that.

Ms. Hall asked Mr. McLaurin if he realized that he was operating illegally.

Mr. McLaurin stated that when he ran the business out of his house and before that building was built, he rented a warehouse in Eastover after the building was built he moved everything into it. Later when he hired the secretary he built the offices. When he first built it he didn't intend to have offices in it.

Mr. Clark asked if he intended to store his refrigeration equipment.

Mr. McLaurin said that he did.

Ms. Hall asked Mr. McLaurin if Mr. Nichols took care of all of the permits, and if over the years it escalated into an office building in addition to the storage. Basically it's Mr. McLaurin and the secretary in the offices, and all of the workers go directly to the job site.

Mr. McLaurin said that was correct.

Mr. Clark asked if this case would go to Eastover at any point.

Chair Epler said that it wouldn't because it wasn't in the Town limits of Eastover. It is included in the Eastover Land Use Plan but it is not in the Town limits of Eastover.

Mr. Lloyd stated that if the board approves this case it will go to the County Commissioners as a consent item because there's been no opposition.

Vice-Chair Turner asked if this case was disapproved would that eliminate his business.

Chair Epler asked if Mr. McLaurin could appeal to the County Commissioners.

Mr. Lloyd said that it would automatically go, this is an advisory board.

Chair Epler asked Mr. Lloyd what would happen if there wasn't a motion.

Mr. Lloyd stated it would go to the Commissioners without a recommendation, and it would go as favorable.

Chair Epler said she wouldn't want this to go to the Commissioners without a recommendation.

Ms. Hall stated that since this wasn't in her MIA, she wanted to say what she felt. She couldn't see putting a man out of business and maybe potentially 12 families out of a job over such a fine line without zoning codes. She feels obligated to uphold the 2030 Plan and everything that this board stands for, but morally she could not vote against this request.

Chair Epler stated that the board has to be very conscious of public perception of how they make their recommendations to the County Commissioners, because, while they have heard the case and the testimony on the case and whatever recommendation is made to the Commissioners will be based on what was heard, because they all agreed to be impartial. The board does open the door for people in the future to say well this has happened one time, and if I could get away with it for a few years and go ahead and operate my business until somebody catches me, that is a fine line, and I'm sure that is understood. Chair Epler wanted to make sure that Mr. McLaurin understood that they have to be very careful.

Chair Epler asked the board if there was a motion.

**Mr. Clark made a motion, seconded by Mr. Turner, that the Joint Planning Board finds that this Conditional Use District is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest, and that the Conditional Use District for the trade contractor business be approved. Unanimous approval.**

**A motion was made by Mr. Clark and seconded by Ms. Hall to approve the Conditional Use Permit if all conditions are complied with after finding that when completed, the proposal: 1) will not materially endanger the public health and safety; 2) will not substantially injure the value of adjoining or abutting property; 3) will be in harmony with the area in which it is to be located; and 4) will be in conformity with the land use plan, thoroughfare plan or other plan as officially adopted by the Board of Commissioners. Unanimous approval.**

## REZONING CASE

- D. **P10-28:** REZONING OF 1.05+/- ACRES FROM R6 RESIDENTIAL TO C(P) PLANNED COMMERCIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 612 MONT DRIVE; SUBMITTED BY CHARLES W. AND GWENDOLYN B. WORTHY (OWNERS).

Mr. Lloyd reviewed the site information and stated that the County Planning Staff recommends denial of the request for C(P) Planned Commercial district based on the following:

1. The district requested is inconsistent with the location criteria for “heavy commercial” as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan because there is no direct access to a collector street – neither Mont Drive nor Hickory Street are designated as business streets;
2. The district requested is unreasonable since it is not consistent with the Spring Lake Area Detailed Land Use Plan, which calls for medium density residential at this location;
3. The request, if approved, will initiate the encroachment of “heavy commercial” in a residential area; and
4. The request is not in character with immediate surrounding land uses.

There are no other districts to be considered suitable for this request.

Mr. Lloyd stated that there were people present to speak.

Mr. Curtis Worthy spoke in favor. Mr. Worthy stated that the property shown was owned by him and his wife and the property shown in the hatch pattern belonged to his family, and had been in the family for 70 years. In trying to develop on that side of the street, first of all the Town of Spring Lake had initially proposed Hickory Street going all the way through to McNeil Street, after building the townhouses we asked Spring Lake their intent, they said they were going to close the street. So Mr. Worthy sent them a letter telling them that his understanding was if they close the street they should have to divide the land between the abutting land owners. Because the street doesn't go through it's no fault of theirs, it's the fault of the Town of Spring Lake. They also, in the hatch pattern, have a family home, originally he started to develop apartments on that side, but the elevation of the rear property is down the hill, there's no way to access sewer off of Mont Drive because of the elevation, when we get into the best use of the property we've got to come up with something. We have a tow business and we've got trucks on the property and we live in the house, so we need to protect the property, so we built the fence.

Chair Epler asked Mr. Worthy to clarify where he lived.

Mr. Worthy said he personally lived on Lynette Circle in Fayetteville. The property in Spring Lake is family property and has been in the family for 70 years. Ten years ago they proposed a site plan to develop that site and where the fence area is, they could not get sewage to come up hill into Mont Drive, so that went out the window. We could do Hickory Street, but Hickory Street in the Town of Spring Lake they've got a 1 – 2 inch water line which will not supply multifamily dwellings. Across the street he developed and had to pipe 200 feet of

pipng from the complexes up the hill in order to get water in that area. There's no fire hydrant except on Mont Drive until he built the apartments to put the fire hydrant near the apartments. He thought the 2030 Plan was a concept a plan, but thought it was flexible enough that if things didn't fall in place, that you have to go from plan a to plan b. He didn't realize that it was so rigid. What they tried to do was secure their equipment and make certain that they were on target. If they had a call every hour of the day with four vehicles they would be going in and out of their street 64 times a week. But we drive the trucks only when we're called. We don't use them otherwise, we started this business about 7 years ago and it grew from one truck to the next. They are licensed in Spring Lake, licensed by the County. This came about when they called Spring Lake because they wanted to build storage for two cars, where if you have luxury cars you could put them in an enclosed area instead of in a fenced area, so they applied for the zoning that they suggested they apply for. But there is no danger to the public safety of the community, we have very little impact on traffic, the only time additional individuals come is if they are coming to pick up a vehicle that's been towed, stored, or to tell us where to go with it. Mr. Worthy indicated all the properties that he owned and stated that it will not hamper or hinder the value of adjoining property. They are trying to get the best use out of the land, there's no way to put buildings down that hill because they can't supply sewage to it. The thoroughfare street that was proposed on the 2030 Plan, which the city closed, was going Hickory Street to McNeil Street.

Mr. Worthy stated that they do have four drivers and a secretary that depends on this, and the only thing that they are doing is saying that after six years if we had never applied for the storage building to put cars in, they would have been going, not knowing that they were doing anything wrong, that's why we're here. There's no fire protection other than Mont Drive, he also asked how many notices were sent out and was told 47 and there's no opposition present. The only other question he's got is if it doesn't fit a zoning what should be done, because we are there for the protection of our equipment, they have no choice to protect it and doesn't feel that the County will spend to reimburse them. They have also tried to see what off-street parking and storage requirements were to come into compliance and meet any kind of ordinance that would fit. We're not here saying give us this versus that, we're here saying this is our business, we've considered multifamily as the 2030 Plan suggested. There are things that prohibit that from working, such as fire, the guage of water provided by the City, and the closure of the street, closed by the City.

Chair Epler asked if Spring Lake still owned the land.

Mr. Worthy said that they still own the land. He wrote them a letter, because he knew as a former City Councilman, that if a street was closed, legally the law says you have to give the abutting properties that land. He wrote them and told them that, and they didn't know that apparently, they said they didn't know that existed. So they came and put some crepe myrtles at the end. All the property belonged to his family surrounding that land.

Chair Epler asked Mr. Worthy if he paid taxes on half of that street.

Mr. Worthy said all of that street, then said that they never gave it to them.

Chair Epler stated that she believed the general statute said that when that street was publicly closed by the Board of Alderman that property than reverted to Mr. Worthy. She didn't believe they have to do that by deed or anything. You might want to check on that.

Mr. Worthy said that he didn't raise the argument because he owned property on the left and his brother Charles owned the property on the right. He said to them he wanted to develop

his property. Keep in mind that Mont Drive is only a 20 foot street, and there is a cleaners, service station that bring big tractor trailers in every day, 20 feet from where they are, is commercial with all that property surrounded by their land.

Ms. Hall asked what type of business Mr. Worthy had.

Mr. Worthy stated that they have a tow operation.

Chair Epler reminded Ms. Hall that this case was a straight rezoning and a decision couldn't be based on the type of business.

Mr. Lloyd pointed out that the Town of Spring Lakes transmittal to the Planning Department was public utilities are available and they had no other comment.

Chair Epler stated they didn't make a recommendation either way.

Mr. Lloyd said that was correct.

Mr. Worthy asked what public utilities were needed.

Chair Epler stated that they have to base their decision not on what he are using the property for but any use that would be put on a C(P) zoning.

Mr. Lloyd clarified that his point was that the Town of Spring Lake didn't give any recommendation for or against.

Chair Epler asked Mr. Worthy if in looking at the subject property for residential purposes, be it single family or multifamily, there are ways to get sewer to areas that are lower than where his sewer is, and they can be serviced with sewer, did he investigate that possibility at all.

Mr. Worthy stated that he did and eventually they may develop the high ground, but the low ground is about 20 feet below the beginning and he's lived where sewage had to be pumped uphill and it's not a good feeling, especially for a multifamily unit. That's a totally different package and added cost. That lower part that is behind the house will never be developed to a multifamily dwelling that he can foresee in the future.

Mr. Worthy said that it's not that they don't want to improve the community, that's what they went there to do. But they also have to be good prudent business people in the process.

Mr. Bienvenido Perez came to ask some questions. Mr. Perez asked if the subject property was located near his house.

Chair Epler stated that it was about a block away from Mr. Perez's house.

Chair Epler asked how staff thinks whenever they make recommendations to the board, because they depend on staff and have a lot of respect for how they come to their decisions. Chair Epler referenced "this request is not in character with the immediate surrounding land uses", what did staff discuss regarding this decision?

Mr. Lloyd stated that to one side there is commercial, this is open storage, there is residential on three sides.

Chair Epler stated that there was commercial right across a very small street.

Mr. Lloyd stated that that was correct, but the Spring Lake Planning calls for commercial to a certain depth off Bragg Blvd.

Mr. Hostetter stated that Young's Cleaners and everything is on Bragg Blvd. and it's right behind where the subject property is located.

Chair Epler asked how far is the depth off of Bragg Blvd.

Mr. Lloyd stated that they try to go 300 feet and they have access off of Bragg Blvd. But again, there was no comment from the town.

Ms. Hall asked if the business was there when the apartments were built.

Mr. Worthy stated that they were. They had been in the apartment building for 15 years, and operating the tow business for 7 years.

Chair Epler said that she had reservations about zoning the property C(P) because they don't have adequate utilities for a commercial site and while this particular owner feels that it's adequate for his use, it isn't adequate for many other uses in a C(P) zoning. Did anyone discuss the possibility of doing a conditional use district on this application? Did he make the decision not to do that?

Mr. Worthy stated that what he was told was that this other zoning would suit him better and went with the advice of staff, because he didn't know. All he knows is that they tried to develop it for apartments and because of circumstances, now they're trying to make a living towing.

Chair Epler explained to Mr. Worthy that Conditional Use districts are a special type of zoning, in that they give the applicant permission as a property owner and business owner and operator to do things that would not be afforded other people, who may own that property later and may want to do other things and while you're request doesn't meet a lot of the criteria that it needs to in order for us to grant a recommendation for approval a Conditional Use District gives so much leeway and puts so many conditions on you.

Mr. Worthy said that he just wanted to conduct business and would not object to conditional use.

Chair Epler asked Mr. Worthy if the board chose to defer this case for 30 days and give him an opportunity to do a Conditional Use District was he aware of what it implies. Did he know what it would take in order for him to make that application?

Mr. Worthy said not exactly, but he would start as soon as possible to find out.

Chair Epler asked if he would be okay with deferring the case for 30 days to do that.

Mr. Worthy said that would be okay.

**A motion was made by Mr. Hostetter, seconded by Mrs. Piland, to defer case P10-28 for 30 days so the applicant could come back with a Conditional Use District & Permit. Unanimous approval.**

IX. PUBLIC HEARING WAIVER REQUEST

- A. **CASE NO. 09-122 & 10-050:** CONSIDERATION OF THE ROBERT MORRIS PROPERTY, REQUEST FOR A WAIVER FROM THE REQUIREMENT TO CONNECT TO PUBLIC WATER AND SEWER (COUNTY SUBDIVISION ORDINANCE, SECTION 2306.B, CONNECTION TO PUBLIC WATER AND SANITARY SEWER REQUIRED); ZONING: R6A; TOTAL ACREAGE: 0.91 +/-; LOCATED AT 3411, 3412, 3415 & 3416 SEAWELL STREET; SUBMITTED BY ROBERT & EUNICE MORRIS (OWNERS).

Mr. Lloyd presented the case information. Originally last year the applicant brought in a parcel for a group development. The health department issued a well and septic permit, but the health department says that they have to do that based on the regulations they follow. It doesn't say that they don't have to tie in to PWC. What it basically says here's a permit for your well and septic.

Chair Epler asked if the County's Subdivision Ordinance is the only thing that requires anyone to tie into public utilities.

Mr. Lloyd said that was correct within a certain distance. The applicant did have to come in for a group development review and on that condition sheet we said that 190 feet away are the utilities, so they would have to extend these because it was within 300 feet. The condition sheet wasn't followed and the permits were issued because quite frankly, in seeing the well and septic permit, didn't pay close enough attention to the condition sheet and issued the permits or the 2009 case wouldn't have happened without the extension of sewer. So it was a mistake they focused too much on the well and septic permit. This year the same applicant came in and wanted to recombine the lots and we feel with all these lots being combined you can put two manufactured homes or an existing dwelling and a manufactured home on one lot. If you have two manufactured homes on one lot it's not a manufactured home park, three or more would be, so you're allowed to do two. This time when the applicant came in, we again said you have to tie into public sewer as requested by our ordinance and PWC, which has agreed to that. The applicant is now here to request a waiver not to tie in, but as you can see if this continues you're basically going to be able to recombine lots running down this street and never have to extend the water.

Chair Epler said that she saw where the water was but wanted to know if sewer was available.

Mr. Lloyd went through the slides and showed Chair Epler where sewer was available. Mr. Lloyd pointed out that the Hope Mills Board of Commissioners at their regular meeting voted to recommend disapproval of the waiver request.

Ms. Hall asked if the waiver was for the entire thing or just the end of it.

Mr. Lloyd stated that the slide he was showing was to only show all the properties owned by the applicant.

Chair Epler asked if the 14' x 76' existing singlewide that sits parallel to Seawell Street, sit on a property line.

Mr. Lloyd said the lots were being recombined.

**Public Hearing opened.**

Chair Epler swore in Mr. Albert Rainer.

Mr. Albert Rainer spoke representing his grandfather Robert Morris; he also works for his grandfather and takes care of everything for him. Mr. Rainer stated that the problem with this is the properties on the right hand side have existing residences, they did not know about this at the time of putting the other two in about connecting into city sewer and water. They were approved for the manufactured homes to be put there all county inspections have been done and they have been occupied for about 6 months now.

Chair Epler asked if when the 2 manufactured homes went in on the east side of Seawell Street did that require any application process, group development, subdivision, and was the owner made aware of the condition sheet for that approval.

Mr. Lloyd said yes.

Chair Epler said that a condition of that approval in writing was that they had to connect to public utilities.

Mr. Lloyd said yes.

Chair Epler said to Mr. Rainer if the application process that the applicant went through in order to put those manufactured homes on the right hand side of that property, it was a condition of that approval that he did have to connect to public utilities. Staff makes sure that the applicant/owner is provided that information.

Mr. Rainer said that he wasn't aware of it and didn't think that his grandfather was aware of it either. Also on the slide that showed the water and sewer lines is within 300 feet but also calls for them to pay for an easement to go through there. What the slide doesn't show is that there are also in that field three double wide manufactured homes. We've checked with the owner of that manufactured home park because Seawell Street is a dead end street, and they are not willing to sell us an easement. The letter we have from PWC says they are responsible for the footage being laid, easement, and engineering process. But they are not willing to sell an easement because they would have to move their manufactured homes in order to bring the pipe through there, now we're in a bind. That's why we put in this request for a waiver, so that we could supply our own sewer and water there. It's almost impossible to get city water and sewer over there. If it was on Seawell Street we would not have a problem connecting to it, but since it's not, it's all the way in another subdivision which is on the end of Seawell Street.

Ms. Hall asked how long Mr. Rainer was speaking for his grandfather.

Mr. Rainer said he was speaking for him for 38 years.

Ms. Hall asked in November of 2009 was he involved at the time that his grandfather was conditionally approved for that development.

Mr. Rainer stated that he was involved with it but he handled the maintenance and everything and his grandfather handled the other aspects.



Ms. Hall stated that the condition was that he have public water and sewer.

Mr. Rainer stated that to his knowledge his grandfather was not made aware of those conditions.

Ms. Hall said that according to what she had the first case was approved with that condition and the second case is still pending.

Mr. Lloyd said yes. It is conditionally approved with the extension of sewer.

Chair Epler swore in Mr. Robert M. Morris.

Ms. Hall asked Mr. Morris if at the time that he initially requested this development of this lot

Mr. Morris told the board what was told to him, that the Planning department supervisor told him that when we put the first 2 in nobody knew anything about sewer. When they went to the second one on the left, 15 papers went out, when those papers came back that's when the planning department found out that sewer had to be hooked up, because they had already done the others. That's when they found out about it, that's when we stopped. We had already put the septic tank in the second part, been inspected, got a permit for a well. All the septic tanks are down on both sides, held off on the power because that's when planning told me that they made a mistake, so I held off to get it straight. Bob Bennett is recombining the lots and there was a mistake, everybody made a mistake. But we do not have an easement running to that property it's a dead end street. Mr. Morris said that he's got to pay for all of this, he got a rough estimate of \$80,000 plus he has to pay the engineers fees and pay for the easement. Mr. Morris said that he didn't know and nobody new until the last papers came back, that's the way it happened.

Chair Epler asked Mr. Morris if he remembered when someone brought a drawing and submitted it to staff as a group development in order to put more than one residence on a lot in November of 2009.

Mr. Morris said he drew that himself.

Chair Epler asked how he was told about the approval for that.

Mr. Morris said that they sent him a letter.

Chair Epler asked Mr. Morris is the letter was several different pages that had a list.

Mr. Morris said he didn't know. Mr. Morris said he's done this before and never had any problems before.

Chair Epler said that she understood, but things change and they can't be done the way they were done years ago, that would just create havoc. But, the approval that you received in the mail, that was a list of things that you had to do in order to be able to develop your site the way that you told the County that you wanted to do it and on that list of conditions is where they told you that you had to connect to those utilities.

Ms. Hall asked Mr. Morris if the two buildings were put on the property since November of 2009, or were they already there.

Mr. Morris said those went in, in December of 2009.

Ms. Hall said after the case was approved with the condition that you have water and sewer.

Mr. Morris said they put the septic tank in there for that and the health department came in and everything was inspected and everything was done right.

Chair Epler swore in Mr. Mike Bailey.

Mr. Bailey stated that neither Mr. Rainer nor Mr. Morris spoke to the Commissioners because it wasn't a public hearing. The Commissioners disapproved this waiver for various reasons. One was that they felt there was water and sewer available within 300 feet which is what our subdivision ordinance requires, not knowing the information they gave tonight, he didn't know if that would have made a difference or not in their decision. Mr. Bailey stated that Hope Mills is intending to annex on Elk Road in the near future, which this is adjacent to. So that raised some concerns for the Commissioners with regard to the future annexation. One Commissioner did say that there was a well off of Brooklyn Circle that had contaminated water and that he felt that was a concern by this area having well water. Mr. Bailey stated that he was just repeating what he was told about the Commissioners meeting.

Mr. Lloyd said that the health department is going to issue a permit if somebody comes to them, they feel they have to. Yes, we did send out the condition sheet to Robert Morris, the inspector overlooked that condition. That was for these lots over here (indicated on the map), they're there, you can grant that waiver, and they are still able to be there if you don't. These aren't occupied and basically two wrongs don't make a right.

Chair Epler asked if the waiver is not granted, the two on the right will stay there regardless, the ones on the left, how many manufactured homes can he put on this property on the left side of that street with no waiver?

Mr. Lloyd said just those two.

Chair Epler said just the two on the right hand side of Seawell Street he won't be able to put any manufactured homes on the left side?

Mr. Lloyd said two.

Chair Epler said if we don't grant this waiver, Mr. Morris can have four structures on this piece of property?

Ms. Speicher indicated that one manufactured home was already existing he's just relocating it, so he could leave that one where it is and then both lots would be tied up with the one manufactured home because it crosses the property line, so that would be one.

Chair Epler asked about the proposed structure.

Ms. Speicher said it would have to be pulled out, but he would still have the option to extend and connect to public water and sewer.

Chair Epler said that he could one of those structures on the left side of the street without a waiver.

Ms. Speicher said that the one structure is already there.

Chair Epler swore in John Allen.

Mr. Allen was present representing Public Works Commission. Mr. Allen stated that he went out to the site. There are some fences and some other issues; it's not a clear open easement access. So it's not an ideal location for getting an easement as far as operation and maintenance as far as operation and maintenance of the water and/or sewer lines go. But looking at the topography, the lower of Seawell Street is at the dead end, so if you were to install gravity sewer on Seawell Street it would need to come, ideally from the dead end, or part of that. The manholes in Perth Street are five feet deep we have done any detailed engineering or looked at it, but that may be too shallow to get gravity sewer there, but if it isn't you could conceivably get through there but they are right, there are some buildings there and some electrical and some underground issues that would need to be addressed through the design and/or engineering of that sewer extension. So it's feasible, but it may not be the best option.

Ms. Hall asked Mr. Allen if he had any idea of what that would cost the owner.

Mr. Allen said that he didn't, but they had prepared a letter that should be in the packet, but at that point in time, that estimate was about \$60,000 for the sewer and \$20,000 for the water, plus the engineering and easement costs.

Mr. Clark asked Mr. Allen if you weren't able to put in gravity sewer could they put in a wet well and a forced main sewer?

Mr. Allen said if they were just doing a grinder pump for one parcel that would fall under the plumbing code, however, if they were to do that, they would need to tie to the sewer out on Perth Street in a manufactured home park and all PWC would do is run a lateral from that man hole to the edge of the right-of-way in Perth Street. Then it would be the Morris's responsibility to obtain a private easement for that forced main from their grinder pump to our lateral. We would not provide assistance in acquiring that easement. If the board so chooses to require them to extend to gravity sewer that PWC operate and maintain, PWC would assist in obtaining that easement.

**Public hearing closed.**

**Ms. Hall made a motion to deny the request, seconded by Mr. Hostetter that the Joint Planning Board for the County of Cumberland having held a public hearing to consider the waiver request for Case No. 09-122 & 10-050 requesting not to be required to connect to public water and sewer as required by the subdivision ordinance and develop the subject property in a manner not permissible under the literal terms of the County Subdivision Ordinance and having heard all of the evidence and arguments presented, moves that the board makes the following finding of fact and draws the following conclusion: Because of the nature of the adjoining properties in the area and the location of public utilities, strict compliance with the provisions of the County Subdivision Ordinance would not cause a special hardship on this property owner, it would be equitable to uphold the standards of the ordinance. Unanimous approval.**

## X. DISCUSSION

Ms. Hall advised the board that the Nominations Committee met on June 28, 2010 and all members were present. The committee unanimously voted to re-elect Mrs. Lori Epler as Chairman and Mr. Roy Turner as Vice-Chair of the Cumberland County Planning Board. Both have accepted the nomination.

**Ms. Hall made a motion, seconded by Mrs. Piland to re-elect Mrs. Lori Epler and Mr. Roy Turner as Chairman and Vice-Chair. Unanimous approval.**

XI. FOR YOUR INFORMATION

DIRECTOR'S UPDATE

- Mr. Lloyd advised the board that the board would act on the work programs at the next meeting.

XII. ADJOURNMENT

There being no further business, the meeting adjourned at 10:12 p.m.