

MINUTES

March 6, 2001

7:00 p.m.

Members Present

John M. Tyson, Chair
Joe W. Mullinax, Vice-Chair
Dallas Byrd
C.S. "Pete" Connell
John M. Gillis
Clifton McNeill
Jerry Olsen
Jeff Reitzel

Others Present

Barry Warren,
Planning Director
Thomas J. Lloyd
Donna McFayden
Barbara Swilley

Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Byrd delivered the invocation, and Chair Tyson led those present in the Pledge of Allegiance.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Chair Tyson asked that a Proposed Resolution on Interbasin Water Transfer be added to the Discussion items.

A motion was made by Mr. Olsen and seconded by Mr. Byrd to approve the Agenda as amended. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

IV. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd read the Planning Board's policy regarding public hearing time limits.

VI. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF FEBRUARY 20, 2001

A motion was made by Vice-Chair Mullinax and seconded by Mr. Byrd to approve the Minutes of February 20, 2001 as written. The motion passed unanimously.

PLATS AND PLANS

- A. 01-025. CONSIDERATION OF THE WANDA JANE HUGGINS PROPERTY (SUBDIVISION REVIEW) IN AN A1 AGRICULTURAL DISTRICT FOR A VARIANCE FROM SECTION 3.17 "STREET DESIGN," COUNTY SUBDIVISION ORDINANCE, ON THE NORTH SIDE OF NC HWY. 210, WEST OF HOLLOW BRIDGE ROAD.

A motion was made by Vice-Chair Mullinax and seconded by Mr. Byrd to follow the staff recommendations and approve the requested variance. The motion passed unanimously.

- B. 01-032. CONSIDERATION OF THE NORTH CAROLINA NATURAL GAS PROPERTY (M(P) SITE PLAN REVIEW) IN THE M(P) PLANNED INDUSTRIAL DISTRICT FOR AN ALTERNATE FRONT SETBACK OF 80 FEET, SECTION 12.45, "PLANNED COMMERCIAL AND INDUSTRIAL DISTRICTS," COUNTY ZONING ORDINANCE, ON THE NORTH SIDE OF WILKES ROAD, EAST OF OLD WILMINGTON HWY.

A motion was made by Vice-Chair Mullinax and seconded by Mr. Byrd to follow the staff recommendations and approve the requested variance. The motion passed unanimously.

VII. PUBLIC HEARING ITEM

- A. P00-74A. CONDITIONAL USE OVERLAY DISTRICT AND PERMIT FOR A COIN OPERATED UNMANNED CAR WASH AND OIL EXCHANGE OPERATION IN AN RR DISTRICT ON THE SOUTHWEST SIDE OF FISHER ROAD, BETWEEN LAKEWAY AND KENMORE DRIVES, THE PROPERTY OF THE GILBERT BUIE HEIRS.

Mr. Lloyd explained to the Board that they heard this case in December, at which time approval was recommended. The Commissioners denied the case in January, and then voted at their February meeting to have the issue again heard by the Planning Board. A new case was assigned, and additional information is available. Maps were displayed outlining the zoning and land use in the area. A video of the site was shown. Mr. Lloyd said that the Planning staff recommended denial of the Conditional Use Overlay District and Permit based on the following:

1. The adopted 2010 Land Use Plan calls for medium-density residential use at this location;
2. Approval of this request will encourage strip commercial development of Fisher Road, and the adopted Land Use Plan recommends no new strip

- commercial development and encourages concentration of commercial use in specified areas or nodes;
3. The request arguably constitutes spot zoning because it would grant special development privileges to one property not enjoyed by other similarly located properties with similar characteristics in the area.
 4. A commercial node has already been created within a mile of the subject property to serve this neighborhood's commercial needs; and
 5. Approving this application would not meet the Transitional Use Zoning Policy of the adopted 2010 Land Use Plan to provide a transition from more intense to less intense development to protect residential development from the encroachment of noncompatible land uses.
 6. The Health Department expressly recommended in its comments for this case that it "not be approved unless PWC water and sewer is provided." Also, PWC stated "water and sewer is available, and extension may be required."
 7. Sufficient undeveloped commercial property already exists nearby.

To approve a Conditional Use Overlay Permit, legally certain criteria **must** be found. If any **one** cannot be found, then the permit may not be approved as a matter of law. **All** of the findings in Attachment A must be made in order to approve a Conditional Use Overlay Permit. The Planning staff believes that this request:

1. Would materially endanger the public health and safety [see item 6 above];
2. Would not be in harmony with the area in which it is to be located [see items 1, 2, 3, 4 and 7 above]; and
3. Would not be in conformity with the Land Use Plan, Thoroughfare Plan or other Plan officially adopted by the Board of Commissioners [see items 1, 2, 3, 4 and 7 above].

Mr. Brett Buie appeared before the Board and said that he has owned and operated The Oil Exchange with minor auto repairs for 10 years on Hope Mills Road. He said that the widening of the road will mean he'll lose his parking spaces, and he needs the space to operate the business. He said that he has looked into operating on Hope Mills Road, and it would be very expensive. He said that a relative offered the subject property to him, and it is affordable. He said that his relative owns the property from the subject property to the Food Lion at the intersection. He said that there are three or four houses nearby that are abandoned, and his operation will not damage the community. He said that he plans to run a supervised car wash six days a week and added that he lives within two miles of the site. He reminded the Board that they recommended approval of the request at their earlier meeting.

Mr. Byrd asked how far the Food Lion is from the subject property. Mr. Gillis said that the site is approximately 800 feet from undeveloped commercial property and 1,500 feet from the Food Lion.

Mr. Gillis asked why the applicant chose the subject property as opposed to the property adjacent to the existing C(P) land. Mr. Buie said that his relative owns all of the land, and this is the strip that is affordable. He added that he was not offered the other property because his relative has plans for it. He said that he is buying the property all the way back to the rear property line, and some of it isn't developable because it is wet.

Chair Tyson asked about what the strip of property is that was not included as part of the request. Mr. Buie said that it contains a ditch and allows access to the rear of the property. He said that it is close to the house next door. Mr. Buie added that there are many other businesses on Fisher Road—dog groomers, two landscape companies, day care, etc.

Chair Tyson asked if the applicant could comply with the sewer condition mentioned in the staff recommendations if the request is approved. Mr. Buie said that he is aware that sewer is nearby and he's researching the possibility. Chair Tyson pointed out that the Health Department said that water and sewer are necessary, and PWC said that it is available. Mr. Buie said that a septic tank is expensive, and he wasn't sure what he could do at the present time.

Chair Tyson asked Mr. Buie if he could buy the adjoining property on Hope Mills Road. Mr. Buie said that he leases the property where his business is now located. He said that 50 feet will be cut off of the side of his property, which is now used for parking, and his business cannot function without the parking area.

Mr. McNeill asked where the drain field would be in a septic system was used. Mr. Buie said that it would drain to the rear on his property. Mr. Buie was asked why he didn't indicate a septic tank on the site plan. Mr. Buie said that he didn't know how much area was needed, and he would add it to the site plan if needed.

Mr. Byrd asked if Mr. Buie could acquire the property that adjoins the current C(P). Mr. Buie said that he could not because he'd be required to buy a large acreage, and he couldn't afford it. He said that purchasing the site next to the C(P) would interfere with the owner's plans for the property. Mr. Byrd suggested purchasing the property next to the C(P) and meeting any conditions the property owner may place on it so that he'd agree to sell less acreage. Mr. Buie said that the property would still be too expensive.

Mr. McNeill asked if Mr. Buie had checked into sewer and suggested it may be cheaper than septic tanks. Ms. Lori Epler (representing the applicant) responded that the sewer is extended to the R10 (within one-fourth mile), but she didn't know what the elevation of the property is and whether the applicants can put in the sewer. She said that she didn't want the applicant to have to

spend any more money than necessary until the Conditional Use Overlay District/Permit are approved and they can develop the property. She said that it would cost approximately \$10,000 for septic tanks, and sewer should be cheaper. She added that the owner is not willing to chop up his C(P) property, and the property behind the subject property is useless to the property owner, and that's why he's willing to sell it for less.

Mr. Reitzel asked the applicant if he had been to PWC? Ms. Epler responded that her company engineer has been there, but a decision wasn't made on the sewer system. Mr. Reitzel said that a force main is about 1,000 feet away and would probably cost \$10,000 to connect. He said if gravity sewer is needed, it could cost \$30,000 to \$40,000. Ms. Epler said if the applicants can't afford a septic tank or sewer, they won't develop at this location.

Mr. Olsen asked if the applicant understood the Board's dilemma in that the Health Department recommended "no approval of the subdivision until public water and sewer are provided." Chair Tyson said the Board could include the requirement as a condition of the Conditional Use Overlay Permit.

Mr. McNeill asked for comments on staff recommendations. Mr. Barrett, County Attorney, explained the two-step process for a Conditional Use Overlay District/Permit. The first is for rezoning the overlay, a legislative decision with a lot of leeway. If the rezoning is approved, then the permit can be approved if findings are found that the request meets all of the criteria required. [1) Will not materially endanger the public health and safety; 2) Will not substantially injure 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, thoroughfare or other plan officially adopted by the Board of Commissioners.]

Mr. Barrett told the Board to consider the reasons one through five and seven as listed above when considering the Overlay District. He said that the sixth reason should help the Board in determining whether the Permit should be issued.

Chair Tyson noted that the Land Use Plan calls for medium-density residential use. He said that the land is zoned RR, and that allows a number of commercial and agricultural activities as a matter of right. Mr. Lloyd pointed out that the Land Use Plan did not follow the existing zoning. He said that the purpose of the RR District is low-density residential and agricultural uses that are compatible with a rural area. He said that the Land Use Plan took the traditional step-down process in this area by recommending the step-down process from commercial to residential. Mr. Warren added that the current map indicates the commercial nodes that the 2010 Land Use Plan calls for.

Chair Tyson asked if a freestanding business would be considered strip development. Mr. Warren said that one would not, but it would lead to it. Mr.

Lloyd added that approval of commercial at this location would negate any residential use between the site and the commercial node.

Mr. Olsen said that approval of commercial at this location would be spot zoning.

Mr. Barrett pointed out that with a CU, the Board must find that the use is compatible with the surrounding area. He said if the area is inevitably going to be commercial, then there should be an analysis of the area to see if it all should be commercial. He said that a CU may or may not be strip zoning as the finding must be that the use is compatible with uses allowed in the area and does not grant special privileges not enjoyed by surrounding properties.

Chair Tyson said that spot zoning isn't necessarily illegal, and Mr. Barrett agreed if there is a reasonable basis.

Mr. McNeill said that he didn't have a problem with approving the district, but he couldn't approve the permit because of the findings that are required.

Mr. Lloyd said that the Planning staff anticipated sewer when the 2010 Plan was created, thus medium-density residential use was designated for the area.

Mr. Barrett said that the 2010 Land Use Plan recommendation is a major reason for the staff recommendation. Chair Tyson said that the Board must view the overall planning as a result of all zoning and plans because each has weight.

Mr. Reitzel apologized for missing an earlier meeting in which the original case regarding this property was heard. He said that he sympathized with the applicant's intent, but it would be an error on the Board's part to approve an overlay and require water and sewer. He said that Fisher Road is not ready for commercial use. He added that the applicant should have taken time to find out how to get sewer in place before requesting the overlay. Mr. Reitzel said based on the Health Department and PWC comments and reasons clarified by the staff, he could not support the request.

A motion was made by Mr. Reitzel and seconded by Mr. Olsen to follow the staff recommendations and deny the Conditional Use Overlay District.

Mr. Gillis said that he agreed with Mr. Reitzel's basic premise. He said that there is danger in beginning a trend, and development as currently exists along Hope Mills and Cumberland Roads and other rural roads in the County would inevitably occur on Fisher Road. He said that a planned development with controlled access into commercial is a good plan. He said that it is time for the Board to encourage good needed commercial development. He asked what would prevent another subdivision. He said if there is a demand for commercial

services in the area, and the property owner can provide a good reasonably planned development, then Board approval could keep development such as is along Hope Mills and Cumberland Roads from occurring. He concluded that the Board would be setting a precedent if they approve the current request.

Chair Tyson said that traditionally in a rural community, service stations, parts stores and auto supply stores are common. He said that the request is for a compatible use within rural areas.

Mr. Olsen said if the Board approves the request, he could see all of the RR between the subject property and the commercial node turning commercial. He said if the Board approves the request, then they're committed to approving the rest of the commercial requests in the area. He said that if the owner isn't able to provide sewer and decides not to develop the property, he can walk away, but the Board has already done the damage in setting a precedent by approving the commercial use.

Chair Tyson noted that the permit would be specific, and if the owner couldn't afford the sewer, then the commercial development occur. Mr. Barrett said that the permit would be specific, but not limited to the current applicants. He said that the permit could be activated in the future by other owners.

Mr. Warren suggested that a condition could be placed on the permit that the land would revert back to RR if the current applicants were unable to develop the property.

Mr. Olsen reminded the Board that once the decision to approve the commercial is made, the Board would be obligated to do the same on the next request in the area. Chair Tyson asked if approval of the Conditional Use Overlay District and Permit would be precedent setting. Mr. Barrett said that he believed that it would.

Mr. Reitzel said that the applicant should have been prepared with water and sewer plans. He said if the Board approved the District and moved on to the permitting process, then there should be a water and sewer plan. He added that a commercial use should not be introduced into the area, and he agreed with the staff recommendations.

Mr. McNeill said that he didn't have a problem with the business, and with water and sewer along Fisher Road, the area won't remain RR for very long. He said that it will become more dense residential or commercial. He asked the Board how they could meet the findings for the permit? Mr. Barrett said that this is a separate issue, and Mr. McNeill's point addresses whether the rezoning is consistent with the Land Use Plan.

Mr. Gillis asked Mr. Buie if he had purchased the land. Mr. Buie said that there is an option on it. He said that he agreed that the area will have commercial development when sewer becomes available, but the Board has a choice to either approve a single commercial development or give the property owner a chance for planned commercial. He said that the Board should not take the cheap and dirty way and create additional traffic that will years later force the property owners to relocate and added expense for taxpayers in solving the problems created by approving a single commercial request with no overall planning involved. He said that the Board should instead force some planned development and avoid the easy solutions that lead to cheap and dirty development.

Mr. Reitzel agreed and added that the Board has an opportunity for real planned commercial as opposed to strip development.

Mr. Barrett said that the Planning Board could also initiate a rezoning for the whole area.

Ms. Epler said that the owner is not ready to further development the property at this time, and he required Mr. Buie to buy the entire six and one-half acres back to the subdivision to square off the property and eliminate an area in the rear that the owner cannot develop.

Mr. Olsen reminded the Board that they have an option to deny the request and leave the land residential.

Mr. Reitzel asked about a strip that was not included in the request. Ms. Epler said that a 25-foot strip was left in case the Buies want to access the land in the rear. Mr. Reitzel noted that the land in the rear would allow 10 residential units behind the business to be accessed through a private road.

Chair Tyson said that they could widen the road by taking some land from the CU property.

Upon a vote on the motion, it failed with a 4 to 4 tie vote. Those voting in favor of the motion were Messrs. Gillis, McNeill, Olsen and Reitzel. Those in opposition to the motion were Chair Tyson, Vice-Chair Mullinax and Messrs. Byrd and Connell.

A motion was made by Mr. Reitzel and seconded by Mr. Connell to forward the case to the County Commissioners without a recommendation on the Conditional Use Overlay District.

Mr. Gillis said that the Board must encourage property owners to use good planning to develop their property. He suggested incentives to large landowners to use good planning.

Chair Tyson asked how much land Mr. Buie's relative owns in the area. Mr. Buie said that he owns 115 acres that he bought in 1951.

Upon a vote on the motion, it passed 6 to 2 with Chair Tyson and Vice-Chair Mullinax voting in opposition.

Mr. Barrett said that the Board should address the permit for guidance for the County Commissioners.

The Planning staff offered the following conditions if the Conditional Use Overlay Permit is approved.

1. Public water and sewer are required (according to instructions from the Health Department)
2. Any lighting used to illuminate the site is to be directed away from adjacent properties and to the interior of the lot;
3. The signage for this development is to be in accordance with applicable sign regulations as set forth in Article IX of the County Zoning Ordinance for C1 Local Business District zoning, and proper permit(s) be obtained prior to the installation of any permanent signs on the property.
4. The hours of operation are limited from 6:00 a.m. until 11:30 p.m.
5. Car washes as a primary use shall be limited to a maximum of four bays with space for only one vehicle within each bay at any one time. The use may be a combination of automatic and self-service car washes; however, only one of the bays may be devoted to an automatic car wash.
6. Stacking lanes with capacity of up to three vehicles shall be provided for vehicles waiting to use automatic car wash facilities and two vehicles per bay for self-service car washes.
7. No storage, repair or servicing of vehicles shall be allowed within the car washing facility.
8. The associated lanes and driveways shall be covered with an all-weather surface. A storm drainage plan shall be evaluated to determine that water from the facility will not have a detrimental effect on adjacent property or streets.
9. The facility shall be designed to allow adequate traffic flow for cars to enter and exit the facility safely.
10. The use shall provide a safe access to the street only through defined driveway locations.
11. Buffering shall be provided surrounding the operation in accordance with Section 7.27 of the Cumberland County Zoning Ordinance.
12. Parked or waiting vehicles may not block sidewalks, driveways or streets.
13. Single-bay facilities with automated brushes and multiple-bay self-service facilities shall provide an area for the parking of one car per bay to be used as a dry down area.

14. All fluids from vehicles serviced in the oil exchange operation shall be disposed of according to approved environmental procedures and the EPA regulations.

Mr. Gillis asked if the conditions were the same as those proposed for the earlier case on this property. Mr. Warren said that the conditions were taken from an earlier car wash Conditional Use Overlay District that was approved by the Board as well as some site specific conditions.

A time limit to begin development was suggested to be added as a condition. After discussion, the following condition was added:

15. A building permit is to be issued within 24 months of approval of permits.

Mr. Reitzel said that he reviewed the hours of operation on the application, and they are more limited than the ones listed above. He suggested that the hours be those listed in the application.

A motion was made by Mr. McNeill and seconded by Mr. Gillis to approve Conditions 1 through 15 above as conditions that should be required as part of the Conditional Use Overlay Permit if the County Commissioners approve the Conditional Use Overlay District and Permit. The motion passed unanimously.

Mr. Reitzel said that he reviewed the hours of operation on the application, and they are more limited than the ones listed above. He suggested that the hours be those listed in the application.

VIII. DISCUSSION

A. LAND USE CODES COMMITTEE REPORT – JOHN GILLIS

Mr. Gillis reported that the Land Use Codes Committee met prior to the Planning Board meeting and discussed the Averagesboro Battlefield Historic District and the Recreational Vehicle Overlay District for the Town of Spring Lake. He said that the RV Overlay District was finalized.

Mr. Gillis offered a Committee motion to schedule the Recreational Vehicle Park Overlay District Amendment for public hearing at the March 20, 2001 Planning Board meeting. The motion passed unanimously.

Mr. Gillis said that the Committee recessed until 6:00 p.m. on March 20, 2001 at which time the Private Street Amendment will be considered.

B. FLEX INDUSTRIAL SPACE PRESENTATION – HARRY WHALEN (FAEDC)

Mr. Harry Whalen gave a presentation to the Board on flex industrial space. He showed several slides of buildings similar to the one he is proposing for Cumberland County and explained the advantages of such structures.

Following the presentation, a question/answer session was held. Mr. Whalen responded to questions regarding the proposal as well as potential locations for such.

C. RESOLUTION REGARDING INTERBASIN WATER TRANSFER

A copy of a resolution (see attached) regarding transfer of water from the Cape Fear River Basin was given to the Board members. There was discussion regarding the additional water to be taken from the Cape Fear River by communities above Fayetteville. The water is currently recycled into the Neuse River and the danger of water shortage to the County if the practice continues was discussed.

A motion was made by Mr. Reitzel and seconded by Mr. Gillis for the Joint Planning Board to take a public position on this issue. The motion passed unanimously.

There was discussion about the resolution that supported conditions placed on the interbasin water transfer. Mr. McNeill said that he couldn't support the resolution because he didn't think that the additional transfers should be allowed. Mr. Byrd agreed.

Mr. Reitzel explained that the resolution was written to support PWC's position that additional water could be transferred if a wastewater treatment plant is built to discharge into the Cape Fear River, rather than the Neuse. He said if the position is not supported, then the treatment plant may not be built, and the water will most likely still be transferred. Mr. Gillis said that he agreed based on the public hearing on the matter that he attended.

After a lengthy discussion, the resolution was changed, and the members agreed to support the new wording requesting that no additional water be taken from the Cape Fear River Basin, or in the alternative that a wastewater treatment plant be built to discharge water back into the Cape Fear River.

A motion was made by Mr. Byrd and seconded by Mr. Reitzel that the Joint Planning Board take a public position on the above issue and support the resolution. The motion passed unanimously.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Mr. Warren reported that the Adult Entertainment Ordinance is currently at the County Attorney's office for comments. He said that he would get Mr. Barrett's comments and have a draft ready for the next meeting.

Regarding the McArthur Road Study, Mr. Warren said that the area has been agreed upon, and the study will require more joint meetings before a draft is ready for committee review and recommendation.

Mr. Warren announced that the City is beginning a River Study and will meet on April 19, at 3:00 p.m. in City Hall.

Mr. Warren reported on a very successful meeting with staff, representatives from the Town of Spring Lake and engineers from NCDOT. He said that several alternatives were discussed to alleviate traffic problems in Spring Lake. The matter will be taken before TCC and TAC within the next few weeks.

Mr. Warren and Chair Tyson are to schedule a date to meet with the Planning Directors and Chairs from Fayetteville and Hope Mills to discuss common concerns and joint efforts.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 10:55 p.m.