

Charles C. Morris
Chair
Town of Linden

Donovan McLaurin
Vice-Chair
Wade, Falcon & Godwin
Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman



COUNTY of CUMBERLAND

Planning and Inspections Department

Thomas J. Lloyd,
Director

Clifton McNeill, Jr.,
Roy Turner,
Lori Epler,
Sara E. Piland,
Cumberland County

MINUTES MAY 2, 2006

Members Present

Mr. Charles Morris, Chair
Mr. Donovan McLaurin, Vice-Chair
Mr. Harvey Cain, Jr.
Mrs. Lori Epler
Mr. Garland Hostetter
Mr. Clifton McNeill, Jr.
Mrs. Sara Piland
Mr. Roy Turner

Others Present

Mr. Tom Lloyd, Director
Ms. Patti Speicher
Ms. Donna McFayden
Mrs. BJ Cashwell
Mr. Grainger Barrett,
County Attorney
Ms. Diane Wheatley,
County Commissioner

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Chair Morris delivered the invocation, and Mr. McNeill led those present in the Pledge of Allegiance.

II. APPROVAL OF/ADJUSTMENTS TO AGENDA

Mr. Lloyd asked that the Extension of Sewer Perspective be added to the Agenda and Chair Morris said it would be added as Item "B" under Discussion. **A motion was made by Mrs. Epler and seconded by Mr. McLaurin to approve the Agenda with the above change. 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 Board's policy regarding public hearing time limits.

VI. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF APRIL 18, 2006

A motion was made by Mr. McLaurin and seconded by Mrs. Piland to approve the Minutes of April 18, 2006 as written. The motion passed unanimously.

VII. PUBLIC HEARING ITEM

A. P06-04: REZONING OF A 155.80 ACRE PORTION OF 2 PARCELS TOTALING 159.80 ACRES, FROM A1 TO R10 AND CD, OR A MORE RESTRICTIVE ZONING DISTRICT, NORTH OF TOM STARLING RD, WEST OF NC HIGHWAY 87 SOUTH, SUBMITTED BY CHALMERS MCCOMBS, OWNED BY TOMMY WOODELL ET AL.

Ms. Speicher told the Board that at the April 18 meeting the applicant said they would voluntarily request a Conditional Use District & Permit. She informed the Board that on April 24 a revised site plan was submitted and the applicant voluntarily limited the development to 400 lots. Maps and slides were displayed illustrating the zoning and land use in the area. She explained to the Board that the Highway Plan shows Tom Starling Road classified as Priority 1 for widening purposes but the right of way had not been acquired as the project was not yet funded. She said once the project was funded it would be designated as High Priority. She presented a slide from the 2010 Land Use Plan showing Rockfish Creek as an Environmental Corridor for its protection and preservation. She showed slides of the various buffers discussed at previous meetings. She informed the Board that the revised site plan submitted shows 301 single-family lots and 99 multi-family units. She explained to the Board that including the 6.6 acres in conflict that the average lot size would be 15,322 square feet per lot and minus the 6.6 acres, the average lot size would be 14,414 square feet. Ms. Speicher reported that the Planning staff recommended denial of the request as originally submitted and all previous discussions and/or agreements presented to the Board on February 21, 2006 and April 18, 2006, but approval if the applicant agreed to the Conditional Use District and Permit and the request would be approved in accordance with the site plan submitted to Staff on April 24, 2006 – maximum of 400 residential units. This recommendation of approval is based on the following:

1. The request is consistent with the 2010 Land Use Plan which calls for “Open Space and Low Density Residential” at this location; and
2. The applicant has acknowledged the previous Staff request for a riparian buffer and is offering to provide a buffer along Rockfish Creek, which has been established as an environmental corridor deserving of protection and preservation in the 2010 Land Use Plan.

The Planning & Inspections Staff’s recommendation is contingent upon the applicant’s agreement to further restrict the development so that the land area shown on the site plan to be zoned CD Conservancy will remain under one contiguous ownership by either an Owners’ Association or be dedicated to a conservancy organization, such as the Sandhills Area Land Trust. In addition, the Staff recommended the applicant be approved for Staff approval of any necessary future revisions provided the maximum number of units is not exceeded.

The public hearing was opened.

Mr. Chalmers McCombs was sworn in.

Mr. McCombs informed the Board that their position had not changed from the last meeting. He said he had submitted a plan showing 400 units and that the CD area had been increased by 2 ½ acres. He asked the Board if they would consider allowing 425 units versus 400 units. He said once they determined how the decrease in lots would affect their feasibility study and their infrastructure that the price of lots would be increased.

Chair Morris asked if the increase would be in the multi-family or single-family lots. Mr. McCombs said the increase would be in single-family lots as there are powerlines toward the east that would limit the multi-family development as well as to the west. He told the Board depending on the market conditions that the R10/CUD would allow the flexibility to adjust the lot lines and single-family mix.

Mr. Barrett, County Attorney, explained that a Conditional Use District did not require a site plan but the Conditional Use Permit requires that a site plan be in place that has to be submitted to the Board.

Mr. McCombs informed the Board that Mr. Richard Galt represented the property owners' regarding the title to the land in development. He said Mr. Galt could explain the status of the property dispute.

Chair Morris asked if the 6.6 acres was still included in the development. Mr. McCombs said it was still a consideration. Mr. Lloyd said if this is still a consideration that Mrs. Epler abstained from this portion of the hearing. Ms. Speicher explained that the applicant still claims ownership and it is shown on the site plan.

Mrs. Epler told the Board that she was informed this afternoon that the 6.6 acres would not be included and would have abstained at the beginning of the hearing if she knew it was to be included.

---Mrs. Epler left the room---

Mr. Richard Galt was sworn in.

Mr. Richard Galt, Attorney representing Bill Clark Homes, told the Board that a title search had been done going back a number of years and the acreage overlap was not found. He said they felt confident that the sellers of the property have good title to the property. He said the title of the predecessors of the neighboring land could not be established prior to 1969. He said the other owners have hired Mr. Lewis, Attorney, to conduct a title search. He informed the Board that the surveyor for Bill Clark Homes and the surveyor for the adjoining property are working together to help resolve the issue. He said he did not know if in the end there would be a dispute.

Mr. McNeill asked if he knew when this issue would be resolved. Mr. Galt said that they had provided information to Mr. Lewis to speed up the process but could not give a definitive answer as to how long it would take.

Mr. Lloyd explained to the Board that that according to the Ordinance that with a Conditional Use District & Permit that all owners have to be in agreement. He said if the 6.6 acres is not included, Mrs. Epler could be included in the discussion of the case. He said if the 6.6 acres in dispute is included then the other property owners have to be in agreement.

Mr. Galt asked if the adjoining property owner did not dispute the title or if the dispute could be worked out then that would not be an issue in this case.

Mr. Lloyd explained that the property owner would have to agree to the conditions as stated in the Ordinance. He said if there are two property owners then they would both have to agree.

Mr. Barrett said we have before us a claim of disputing property ownership and it has to be resolved. He said if the 6.6 acres is to be included in the development, the property owner must be in agreement or that piece of property needs to be excluded.

Mr. Lloyd said this could be alleviated if the 6.6 acres was excluded from the request but could be added back in once the property dispute had been resolved. He said the other alternative is to defer the request and the developer come back and request the 425 units.

Chair Morris asked if they wanted maintain the 6.6 acres in the district or withdraw that portion and submit it at a later date.

Mr. McNeill asked if the disputed property was located in the CD District, would the property owner have to agree with all conditions or only the CD portion. Mr. Barrett said the owner would not have to consent to a rezoning but only agree to the conditions for a Conditional Use District & Permit.

Mr. McCombs said they would withdraw the 6.6 acres of the overlap land from this request. Chair Morris said if the dispute was resolved it could become part of the site plan. Mr. Grainger said they could submit an application to amend the Conditional Use District & Permit once this issue was resolved to include the 6.6 acres.

---Mrs. Epler returned to the room.---

Ms. Fran Primeaux was sworn in.

Ms. Primeaux appeared before the Board in opposition and said the residents of the Tom Starling Road area were opposed to the R10/Conditional Use District & Permit. She said they would prefer R15 and would like all the lots not to be smaller than 15,000 square feet. She told the Board there were 1,300 or more automobile travelling on Tom Starling Road and it is not designed for heavy traffic and the R10 would allow too many houses too close together.

Ms. Debra Ward was sworn in.

Ms. Ward appeared before the Board in opposition and said she resided between the two curbs at Tom Starling Road. She told the Board that she was concerned about the volume of houses that would be built. She said she had contacted Mr. Gary Burton with NCDOT and he told her that there were no plans up to 10 years to widen Tom Starling Road. She said there was no money to move the major utilities and DOT funds were not available. She told the Board the developer may not develop all the property and might sell off parcels. She said her main concern was the widening of Tom Starling Road and only the turn lanes would be done for this development.

Ms. Janet Carter was sworn in.

Ms. Carter appeared before the Board in opposition and said the main reason she signed up was to speak for the overlap property owners. She said they had retained Mr. Lewis and he was trying to resolve the property dispute.

Ms. Kim Perkins was sworn in.

Ms. Kim Perkins appeared before the Board in opposition to the request and said she represented the owners of the properties that back up to this property. She said they were asking for R15 with no less than 15,000 square feet and a larger buffer. She said the state requires 300 feet and would like the buffer to be closer to that amount to preserve Rockfish Creek. She told the Board there would be too many house on too little land that would cause congestion, traffic and over crowding of schools. She said their main concern was to maintain the quality and charm of country living.

Ms. Amber Boling was sworn in.

Ms. Boling appeared before the Board in opposition to the request representing her father, David Boling. She said her father had moved to Tom Starling Road because it was out in the country and was in favor of R15. She said her Dad understood that the applicant was required to meet the 300 foot buffer and not the 200 foot buffer they were proposing. She said this development would surround her Dad's property.

Mr. Ronny Ward was sworn in.

Mr. Ronny Ward appeared before the Board in opposition to the request and said he was in agreement with what the other residents had said. He told the Board that the County Newsletter had an article on Rockfish Creek and knew that some of the Board members and County Commissioners had visited Rockfish Creek. He said he was in agreement of a 300 foot buffer and said you had to live with development because it was coming.

Mr. McCombs appeared before the Board in rebuttal and said he had addressed all the residents concerns in the plan. He said they could not control the traffic and Tom Starling Road is a Priority 1 with NCDOT for widening of the road. He said they had addressed the buffer to protect Rockfish Road and they were working very well with the Board and community to address their concerns.

---Public Hearing is closed---

Chair Morris asked if the 400 units would be feasible. Mr. McCombs said it would work but they would have to raise the prices of the lots and reduce the amenity package but it would still work.

Mr. McNeill said that the engineer at one of the meetings stated that the development was designed with less than 20% being taken up for roads and asked if they had determined how many lots R15 would allow. Mr. McCombs said it would be about 404 if the property in dispute would be included. Mr. McNeill said the 6.6 acres had been excluded and asked how many lots would there be without the 6.6 acres. Mr. McCombs said it would be about 384 lots.

Mr. McNeill said several residents have said they would like to see R15 with restricted lot sizes. He said with a straight rezoning with zero lot line development that there would be smaller lots even in an R15. He said with a straight rezoning that we could not require a minimum lot size. He said the applicant had requested a Conditional Use which allows the Board to agree to certain conditions with the applicant and one condition is requiring a site plan. Mr. McNeill said a resident had talked with Mr. Burton, NCDOT representative, and they probably were told that the Tom Starling Road widening project was not included in the NCDOT TIP but the TIP changes year to year. He said if DOT determines there is a need in the area then funding is accelerated and designated as a high priority.

Ms. Epler said that some of residents were concerned that the developer might sell off some of the property at a late date but regardless who owns the property that once the Planning Board and Commissioners approve the site plan and the Conditional Use District/Permit that the owner or developer would have to adhere to the site plan and Conditional Use District/Permit. She said in order to change the site plan or Conditional Use District/Permit that the developer would have to come back before the Planning Board and County Commissioners for approval.

Chair Morris said another public hearing would have to be held if changes were desired and notices sent to the residents. He said prior to adoption of the new ordinance in June 2005 that when a rezoning was approved that the developer would develop his site with the density requirements of the ordinance and we would normally not see a site plan or the infrastructure plans. He said with the adoption of the CUD and Permit regulations in 2005 that the community is allowed their input along with being able to review the site plan. He said once the CUD has been approved, it becomes a binding agreement.

Mr. McNeill said if the disputed property was included in the request, it would be equivalent to an R15 and without the property, it would allow them 384 lots. He said the developer had considered 425 lots and felt that would be too many and that R15 standards were more appropriate. He said the residents were concerned with a buffer along Rockfish Creek and that the developer is providing more buffer than what would be required with a straight R15 zoning.

Mr. Lloyd said that the developer is providing more buffer than any statute at the state level requires and normally larger buffer requirements are only along rivers.

Mr. McNeill asked Mr. McCombs if he would consider an R15 Conditional Use District & Permit. Mr. McCombs said they would only be interested if the 6.6 acres in dispute was included.

A motion was made by Mr. McNeill and seconded by Ms. Epler to deny the R10 and CD originally requested and approve CD Conservancy/Conditional Use District and R10 Residential/Conditional Use District subtracting out the overlapping 6.6 acres, because the application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. The motion passed unanimously.

A motion was made by Mr. McNeill and seconded by Ms. Epler to approve the Conditional Use Permit with the 6.6 acres excluded 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 officially adopted by the Board of Commissioners. The motion is to include the conditions in the staff recommendation that the applicant has agreed to and to allow only a maximum of 400 units. The motion passed unanimously.

VIII. PLAT & PLAN

- A. 06-065: CONSIDERATION OF DALTON RIDGE SECTION 3, ZERO LOT LINE SUBDIVISION REVIEW, REQUEST FOR A WAIVER FROM SECTIONS 3.2 "RELATION OF PROPOSED STREETS TO ADJOINING STREET SYSTEM" & 3.18 "BLOCK LENGTHS", CUMBERLAND COUNTY SUBDIVISION ORDINANCE, LOCATED AT THE END OF HEARTPINE DRIVE, SOUTH OF SR 2233 (BUTLER NURSERY ROAD).

Ms. Speicher told the Board that Mr. Franklin Johnson was requesting a waiver from Section 3.2 and Section 3.18. She informed the Board that they had previously granted a waiver for a block length to exceed 1800 feet and had approved 3500 feet for the existing section of Heartpine Drive. She told the Board that Mr. Johnson was asking for an additional 2400 foot with no break in the block length which calculates to 5900 feet. She said the Staff is requesting that a street stub for Pine Bark Court and Tree Ring Court be installed to extend out to the east and west side of the property. She informed the Board that the Cain property to the east is landlocked. She said that the Kathleen Story property on the west side has road access but was a 99 acre tract. A stub needed to be in place for the possible future development of the property. Ms. Speicher explained that Mr. Johnson felt he would jeopardize the marketability of his development if this was done and he has offered to give two 20 foot strips for the Cain property for access purposes.

Ms. Speicher reported that the Staff recommends denial of the waiver based on the following:

1. Both lots to be provided access are large tracts which could be developed at a future date, the stubs would allow for the land-locked tract to be provided access and future connectivity for development; and
2. The stub to the west could give a second access point for the Dalton's Ridge Subdivision which would help Emergency Services provide services to this development.

Mr. Franklin Johnson explained that they wanted to maintain the value of the neighborhood. He told the Board that the Cain property had been land-locked for awhile and that they were willing to donate a 20 foot strip for that property. He informed the Board that the Cain family would like to place two homes on their property and they were donating two 20 foot strips for access. He said if you look at the plat, he was going to provide a 20 foot strip between lots 7 and 8. He said he had provided another 20 foot strip between lots 1 and 19 due to the owner being landlocked but it has not yet been deeded.

Mr. McNeill asked what the Staff was requiring and Ms. Speicher said that they were requesting that both cul-de-sacs be stubbed out to the property line on the west and east side of the property line. Mr. McNeill asked how the extension of the cul-de-sacs breaks up the block length. Ms. Speicher said the block count would begin anew at the street stub.

Ms. Epler told the Board that Daltons Ridge Subdivision was a very nicely developed neighborhood and that the restrictive covenants were more extensive than what would have been written for a normal development. She said based on the regulations, the stub to be extended to the property line would not allow for the street frontage. She said that there presently is not any connectivity issues. She said if you saw the aerial photo that you would see that the land which backs up to this property to the west and south is densely overgrown and probably wetlands. She said she did not foresee that land being developed. She told the Board that the property had been landlocked for years by the family deeding land to other family members. She said other precedents have been set where 20 foot strips have been deeded and that had been agreeable between residents and developers.

A motion was made by Ms. Epler and seconded by Mr. McNeill to approve the waiver from Section 3.2 and 3.18 as the adjoining areas would likely be undevelopable due to wetlands. The motion passed unanimously.

IX. DISCUSSION

A. VOLUNTARY AGRICULTURAL DISTRICT

Mrs. Barnhart with the Comprehensive Planning Section informed the Board that she had provided them with copies of the Farm Advisory Board Bylaws and the Voluntary Agricultural District Ordinance. She explained that the Farm Advisory Board was created on June 7, 2004 by the Cumberland County Board of Commissioners. She informed the Board that the first task completed by the Board

was the creation of the Bylaws. She told the Board that Mr. George Autry, a member of the Committee, had suggested that a Voluntary Agricultural District Ordinance be written. She informed the Board that the Ordinance was completed and would be presented to the County Commissioners. She said she was asked to give the Planning Board an opportunity to review the information and possibly give their endorsement. She explained the purpose of the ordinance was to strive to maintain and preserve the agricultural areas in Cumberland County along with conserving open space and natural resources. She informed the Board that the program is voluntary and an applicant could at any time request to be removed from the program. She reviewed with the Board Article III, "Certification and Qualification of Farmland" and Article V, "Application, Approval and Appeal Procedures" as required in the Ordinance.

A motion was made by Mr. McNeill and seconded by Mr. Hostetter to endorse the Voluntary Agricultural District Ordinance. The motion passed 7 to 1 with Mr. McLaurin voting in opposition.

B. SEWER EXTENSION PERSPECTIVE

Mr. Lloyd informed the Board that there was a Sewer Extension meeting scheduled for May 16, 2006. Chair Morris asked the Board members to attend the meeting and that it started at 6:00 p.m. even though, they would have to leave to hold the Planning Board meeting at 7 pm.

Mr. Lloyd informed the Board that at the Sewer Extension meeting that the County will present their perspective on future sewer extension to include the Planning Board's perspective. Mr. Lloyd reviewed an outline of the perspective with the Board.

C. PLANNING BOARD MEETING SCHEDULE

Mr. Lloyd informed the Board that the Planning Board's first meeting in July was scheduled for the 4th. **A motion was made by Chair Morris and seconded by Mrs. Epler to cancel the meeting. The motion passed unanimously.**

Mr. Lloyd informed the Board that Mrs. Cashwell would be retiring and this would be her last meeting. The Board said that she would be missed.

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:40 p.m.