

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

April 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. Donovan McLaurin

Members Absent

Mr. Harvey Cain, Jr.
Mr. Charles Morris
Mrs. Sara Piland

Others Present

Mr. Tom Lloyd
Mrs. Laverne Howard
Ms. Donna McFayden
Mr. Rick Moorefield
(County Attorney)
Mr. Marshall Faircloth
(County Commissioner)

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF / ADJUSTMENTS TO AGENDA

Mr. Lloyd advised the board that case P10-17 would be moved from Public Hearing Consent Items to Public Hearing Contested Items.

Mr. McLaurin made a motion to approve the adjustment to the agenda, seconded by Mr. Hostetter. Unanimous approval.

III. PUBLIC HEARING DEFERENTIAL/WITHDRAWAL

There were none.

IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

V. APPROVAL OF THE MINUTES OF MARCH 16, 2010

Chair Epler asked that the recording of the minutes from the March 16th meeting be reviewed, specifically the motion and who made it in reference to item number two, adjustment to the agenda, and correct who made the motion.

Ms. Hall made a motion to accept the minutes as submitted with the change, seconded by Mr. Hostetter. Unanimous approval.

VI. PUBLIC HEARING CONSENT ITEMS

REZONING CASES

- A. **P10-14:** REZONING OF .44+/- ACRES FROM C1(P) PLANNED LOCAL BUSINESS/CUD CONDITIONAL USE DISTRICT FOR AN OFFICE AND R10 RESIDENTIAL TO C1(P) PLANNED LOCAL BUSINESS OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 4300 AND 4310 CUMBERLAND ROAD, SUBMITTED BY DREW AND KATHRENE BOXWELL (OWNERS).

The Planning & Inspections Staff recommends approval of the request for C1(P) Planned Local Business District based on the following:

1. Although the district requested is not entirely consistent with the location criteria for planned local business as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan because public sewer is required but not available, the request is reasonable due to the subject property being predominantly surrounded by commercial and industrial zoning and uses;
2. The area is transitioning to primarily non-residential uses at this location; and
3. The subject property is located on a major thoroughfare.

There are no other districts considered suitable for this request.

A motion was made by Mr. Clark, seconded by Mr. Turner, to follow the staff recommendation and approve case P10-14 as submitted. Unanimous approval.

- B. **P10-16:** REZONING OF .14+/- ACRES FROM C1(P) PLANNED LOCAL BUSINESS AND R6A RESIDENTIAL TO R6 RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 5448 PARKTON ROAD, SUBMITTED BY MARY L. STEVENSON (OWNER) AND GENE G. WOLF.

The Planning & Inspections Staff recommends approval of the request for R6 Residential District based on the following:

1. Although the district requested is not entirely consistent with the location criteria for medium density residential as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan because public sewer is required but not available, the request is reasonable due the subject property being predominantly surrounded by medium and low density residential zoning and uses;
2. The request is consistent with the surrounding land use; and
3. The subject property is located on a major thoroughfare.

There are no other districts considered suitable for this request.

A motion was made by Mr. Clark, seconded by Mr. Turner, to follow the staff recommendation and approve case P10-14 as submitted. Unanimous approval.

VII. PUBLIC HEARING CONTESTED ITEMS

- A. **P10-17:** REZONING OF 8.16+/- ACRES FROM R10 RESIDENTIAL TO R6A RESIDENTIAL/CUD CONDITIONAL USE DISTRICT FOR A 14 LOT SUBDIVISION

AND THE PERMIT, OR TO A MORE RESTRICTIVE ZONING DISTRICT; LOCATED AT THE SOUTHEAST END OF SELMA DRIVE, EAST OF US HWY 301 (I-95 BUSINESS/GILLESPIE STREET); SUBMITTED BY WILBUR E. DEES FOR WEBTEC, INC (OWNER).

There were three people present to speak in opposition and one person present to speak in favor.

Chair Epler asked all speakers to come forward to be sworn in.

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

Mr. Lloyd stated that this case was heard a little over a year ago, it included the entire R10 located to the south. The general location is off of I-95 Business through Alabama Lane. The current zoning in the area consists of R6A to the northwest and the current zoning of R10 surrounding the subject property to the south, east, and west. The request is for a CUD for 14 lots only. The reason the applicant went for R6A is because the adjacent property is zoned R6A but he could very easily come in with an RR/CUD and done the same thing.

Mr. Lloyd reviewed the site information and stated that the Planning & Inspections Staff recommends approval of the requested rezoning to R6A Residential/CUD Conditional Use District (R6A/CUD) for the manufactured home residential subdivision based on the following:

1. Although the area in which the subject property is located generally is not consistent with the location criteria as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan for "medium density residential," – primarily due to public sewer not being available and the site is not located within two miles of a public recreation area – the requested district and uses allowed within that district are consistent with the zoning and land uses immediately adjacent to the subject property;
2. The request is reasonable because it will allow for development comparable with the existing development in the immediate area and even though the subject property is located within the approach to Runway 10 at the Fayetteville Regional Airport, if approved, the request will ensure considerably less residential lots than what is currently allowed at this location resulting in an average lot size exceeding that allowed in the R20 district; and
3. Community water is available to the subject property.

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

1. The use will not materially endanger the public health or safety if located according to the plan submitted, the proposed site layout of 14 residential lots is designed in such a manner that at a minimum the development standards of the ordinances will be met or exceeded, including County Environmental Health Department approval for the private septic tanks as addressed by Condition No. 2 of the attached *Ordinance Related Conditions*;

2. The use and the proposed development will meet all required conditions and specifications if developed according to the site plan, application and the attached *Ordinance Related Conditions*;
3. The use will maintain or enhance the value of adjoining or abutting properties if developed as proposed in that the property owner proposes a similar development to what is existing in the area and as a consequential benefit, the wetlands to the south and east of the subject property, undevelopable under current standards, will act as a natural buffer between the subject property and the existing development to the southeast; and
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located – the adjacent Tanglewood Estates subdivision lots contain manufactured homes and the site in general will be developed in conformance with the development ordinances and adopted planning policies.

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

The property owner who is also the developer has voluntarily agreed to this staff recommendation and all attached *Ordinance Related Conditions*.

Wilbur Dees spoke in favor. Mr. Dees stated that he resides at 2927 Middlesex Rd. Fayetteville NC 28306 and had previously been sworn in. Mr. Dees stated that he has a piece of property that is 35 acres surrounding the area of the subject property. On the 35 acres there are 20 acres of very heavy swamp land and the swamp land divides two portions of what is good land on the property. Mr. Dees indicated on the hydric soils map where the two portions of property were located and which part was conducive to building and where the natural barrier would be. Mr. Dees stated that the swamp land is poor land, but the good land is excellent and it has all natural drainage. None of the woodlands or wetlands would be destroyed by this proposed layout. The layout as shown restricts the area of about 8 acres to 14 lots. Under the present zoning somewhere around 50 units could be put on those 8 acres, so we are reducing the density there. That is a maximum of 14 lots; we're not talking about something that would expand if approved.

Chair Epler asked Mr. Dees if soil evaluations had been done on the 14 home sites.

Mr. Dees stated that soil evaluations had not been done yet.

Chair Epler explained to Mr. Dees that the application was for a conditional use district and that he was limiting himself until he came back before the board and the County Commissioner's at 14 lots.

Mr. Dees stated yes, 14 lots maximum and if we have one that doesn't perk, we lose a lot. Knowing the land and the conditions, he feels very confident that all the lots will perk.

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

Charles Thaggard spoke in opposition. Mr. Thaggard stated that he resides at 3409 Corleo Dr. Fayetteville and had previously been sworn in. Mr. Thaggard stated that several things stand out, one, the access to this property would be through a heavily

populated, existing mobile home area, as his understanding from what was presented. Second, the subject property is located very close to the airport and very close to the auxiliary or side runway; this property would be very much in that pattern. This creates some problems for increased density of population in that area. Another fact that stands out, this will be an area that Mr. Dees talked about that drains into Lake Lynn which is a 26 acre lake that is the center of our Lake Lynn community. We already see from the increased density in the other areas problems with that runoff into the lake; we think additional septic tanks would increase that runoff. Mr. Thaggard stated that he was present representing the Lake Lynn Homeowners board.

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

Don Rightnour spoke in opposition. Mr. Rightnour stated that he resides at 3303 Davidson Dr., currently works for Westinghouse Corporation for approximately 25 years, and had previously been sworn in. Mr. Rightnour stated that there are two trailer parks, Smith's and AAA trailer park, back in the mid to late 1990's he was assigned to a second shift working from 6pm to 6am and on weekends. It wasn't uncommon to be called up front by the security guards because of automatic weapon fire coming from these trailer parks, Mr. Rightnour stated he had seen naked men and women coming from the trailer parks and vandalized cars. Mr. Rightnour stated that he's not insinuating that that would happen with anyone else's trailer park, but he has witnessed it and seen it. His concern's are that bringing more units to that area that could generate more problems, the neighborhood has built up within the last five years, we've got high dollar houses there and real good people, but since there's more people we've had problems with break-ins and stray dogs and cats. By bringing in another 50 trailers the problem will just be doubled and tripled. Lake Lynn is a private homeowner's association, right now there are people walking these streets all hours of the night, and this is about 4 or 5 blocks from where this trailer park is going to be built. How are we going to keep them out of our community? Basically, when I first moved here 30 years ago, I built up on Roxie Ave. and up on Ireland Dr. they decided to put some apartment complexes down there, close to Raeford Rd. area. At that time my insurance agent told me to move. After about 2 or 3 years I started to understand what he was talking about, I had items stolen right out of my backyard, there was lots of crime. I lived on a dead end street about 5 or 6 blocks from these apartments. No disrespect to anybody, but I don't see how this will benefit the many versus the few.

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

Bobby Howard spoke in opposition. Mr. Howard stated that he resides at 3205 Davidson Dr. and had previously been sworn in. Mr. Howard indicated on the map where he lived at. Mr. Howard stated that he was all for the betterment of the community. Mr. Howard has been a County employee for 29 years, there isn't a road in this County that he hasn't been down and picked up paper on myself. I started when I was 19 years old, but I can tell you, if we had a need for more manufactured housing in this County it would be a little bit different, but I know that we do not need any more manufactured homes in this County. I tear them down regularly, people live in them and they might be 4 or 5 years old, the County gets the property because nobody can fix the home and we have to come and tear them down and the property is sold on the Courthouse steps. Mr. Howard stated that the reason he is against this is because we live on a hill and if you come to any of our driveways and look out you will be looking at the tops of those manufactured homes and whatever is going on

out there. I have a personal interest in this, but I also know that I tear down manufactured homes on the County's dime every month.

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

Public Hearing closed.

Chair Epler stated that this case was heard years before for a straight rezoning and some of the same people present now were here before and many more. The major complaint from the people in the Lake Lynn Subdivision was that they sit at a higher elevation than the wetlands are and Mr. Dees neighborhood sits at a higher elevation, they were afraid, now they have a natural buffer there, they have no control over what happens to the wetlands. Chair Epler asked Mr. Dees if he considered including that part of the wetlands that is between him and Lake Lynn as a natural area or as open space or something, just making sure that it stays natural in the state that it is now, because if we rezone just the 14 lots that you're asking for, the other property is not affected whatsoever, except for the restraints of the wetlands, and that doesn't guarantee that those trees won't be cut down someday. That would probably go a long way to satisfying most of the opposition from the Lake Lynn community.

Mr. Dees stated that he would have no objections to that being added as a conditional use, that there would be no cutting of any vegetation in the 20 acres that go around there. As it exists today, if you are standing at the highest point where Mr. Howard lives, and look in the area of where this subdivision is that's what you see from the road (Mr. Dees presented a photograph for the board to review).

Chair Epler stated that she thought what the concern was that there are a lot of nice trees and a vegetative buffer where aesthetically their homes are not associated with your neighborhood at this time and I believe they just want to make sure it stays that way. I can't speak for them, but what I'm hearing I think that's the case.

Mr. McLaurin stated that there were two things that stood out about this rezoning case. This County spent two years and a lot of money working on the 2030 Plan and it's just been adopted this year by the County and all of the municipalities. In doing the 2030 Plan we kept stating that nothing is set in stone, because we had a 2010 plan and if it was set in stone we would have never needed a 2030 plan. This rezoning according to number 1 you have to find that the district is suitable. Another thing that stands out to me is Article 1 Administrative Provisions Section 101 – Intent and Purpose. Mr. McLaurin read the paragraph for the board. Going back to the 2030 plan that was the purpose of spending two years on this, to try and encourage more orderly development in this county. Somewhere along this road when this land got rezoned, this whole tract of land was zoned R10 which is for 10,000 square foot lots, on the average, with stick built homes. That was done to encourage orderly development. Across the way over there, I see there is a lot of C(P), and so forth, R6A across the line over there where the mobile homes are was done to encourage orderly development over there. The people that bought homes in the Lake Lynn area, bought in there because they were banking on Article 1 Administrative Provisions Section 101 – Intent and Purpose, it being zoned R10 to protect a certain method of construction and a certain type of home. So they bought over here and it's all R10, now we're sitting here tonight being asked to change orderly development by encroaching in this R10 that these people have banked their 25-30 year payments on maintaining what they thought R10 would be and now we're trying

to inject R6A into this area, which is totally against anything and any reason to be on this board. Mr. McLaurin stated that he would like to make a motion.

Chair Epler asked if there was any more discussion.

Ms. Hall stated that she understood what Mr. McLaurin was saying, but when she looks at the map in order to get to the subject property you come through the R6A development, to me it's more of an extension of the R6A development and also the paragraph Mr. McLaurin read about it not being consistent with the 2030 Plan, it's mainly due to public sewer not being available, is that correct, that's what it says (Ms. Hall read the staff recommendation). However, we already have houses in that area without the recreation area and without public sewer. So in a way we're trying to impose stricter standards on this property owner than have already been imposed on all of the surrounding property owners.

Mr. Lloyd stated that Mr. McLaurin is right and doesn't like the way the condition is stated. The applicant can come back with an RR and do exactly what he wants to do, he was advised by staff, but I guess he chose to do R6A because it's adjacent. The fact is that the standards that Mr. McLaurin is talking about, this would be more in conformance with the standards and the fact that they could do R10 density right now in existing zoning and he's going down to a density of RR which would be rural. But he could come back with an RR and do what he wants and meet the standard of the Land Use Policies Plan. The other thing is that we found out during our visit with the representative from the Institute of Government, we get pretty sketchy when we start differentiating between types of dwelling units, stick built and manufactured homes, with respect to crime, in light of testimony heard tonight, unless there is something substantive submitted as evidence, it couldn't be used to judge the public health, safety, and welfare. The way this condition is written it doesn't meet the standard for medium density, but this is a CUD, and the way the CUD is submitted it does meet the Land Use Policies Plan, in that the density is actually going to be a rural density.

Chair Epler asked if the case was deferred and the applicant worked with staff and come back with that swampland, he calls it, that surrounds his piece of property as part of the conditional use district, and he asks for a rezoning of CD, and I'm not even saying all of the swampland, some of it is high land, I wouldn't recommend that he include all of the property, but at least a buffer to buffer this neighborhood from the Lake Lynn neighborhood and maybe this neighborhood 300 feet south of it into that wetlands, if you include all of that area with his conditional use district application I would venture to say that his density is probably going to be somewhere up around RR on the whole tract.

Mr. Lloyd stated it would be less than that. Right now it's RR density on the 14 lots (eight acres).

Chair Epler stated that Mr. Dees has been working on this piece of property for years, because we've seen it. He's managed to narrow his opposition down quite a bit, and mostly what we're hearing is that buffer problem. Chair Epler asked Mr. Thaggard to come back up to the podium and asked him about his conversations with his neighbors and if their concerns seemed to be about buffering and being afraid of what's going to happen between them and this new section of the subdivision.

Mr. Thaggard stated that he would hesitate to speak for the other members of the association and residents. The part of Lake Lynn on the northern side of the lake that is adjacent to the subject property is property that homes in the last several years have been much more of a larger size, and the residents there would be concerned about that, that the buffer zone might afford some protection.

Chair Epler asked if there were a 200 or 300 foot buffer between the properties of Lake Lynn and this new development that was zoned CD, and through that CD zoning it would require them to leave the trees there

Mr. Thaggard asked if that would be in the form of a natural area that could not be disturbed.

Chair Epler stated yes, that is an official zoning that is imposed by the County.

Mr. Thaggard stated that he would say that he couldn't speak for everyone but he would have concerns and would have to look at the area and see what kind of effect that would have and if that is a choice that might afford some leniency.

Mr. McLaurin stated that CD zoning is not set in stone, this board changes CD zoning at times, or portions of it.

Chair Epler stated that if it's part of his conditional use district it would have to come back before this board and the commissioner's and if it's included in the conditional use district we can impose a condition on it that no trees be cut.

Chair Epler called Mr. Howard back up to the podium and asked if he understood the conversation that was going on.

Mr. Howard stated that he did, but didn't think that the board understood that when Mr. Dees purchased the property he knew it was zoned R10; he bought the property with the speculation that he was going to make some money. Mr. Howard stated that from his driveway he can see the tops of the manufactured homes.

Ms. Hall asked if Mr. Dees was willing to come back requesting CD zoning?

Mr. Dees stated yes.

Chair Epler asked Mr. Lloyd if the case would have to be deferred.

Mr. Lloyd responded yes, but it would be better to make a substitute motion since Mr. McLaurin had a motion to make, if in fact Mr. McLaurin's motion fails.

Mr. Moorefield stated that a motion hadn't actually been made; Mr. McLaurin asked to make a motion.

Chair Epler stated that they were still discussing and asked if there was no further discussion is there a motion?

Mr. McLaurin made a motion, seconded by Mr. Hostetter that the Joint Planning Board fails to find that the Conditional Use District application is reasonable neither arbitrarily nor unduly discriminatory and in the public interest and that it therefore be denied. The motion failed with Mr. McLaurin and Mr. Hostetter voting in favor of denying the request.

Ms. Hall made a substitute motion, seconded by Mr. Clark to defer case P10-17 until May 18, 2010, to give the applicant time to confer with staff. The motion passed with Mr. McLaurin voting in opposition to the deferral.

VIII. PUBLIC HEARING WAIVER REQUEST

- A. **CASE NO. 10-029.** CONSIDERATION OF THE KIDZ KASTLE DAYCARE REQUEST FOR A WAIVER FROM THE REQUIREMENT TO INSTALL A FIRE HYDRANT [COUNTY SUBDIVISION ORDINANCE, SECTION 2302, AREA-SPECIFIC STANDARDS, A. MUNICIPAL INFLUENCE AREAS AND SECTION 86-128(A)(1), FIRE HYDRANTS, HOPE MILLS CHAPTER(1985 VERSION)]; ZONING: R10; TOTAL ACREAGE: 0.63 +/-; LOCATED AT 4820 CAMDEN ROAD; SUBMITTED BY WILLIAM & ANGELA WRIGHT (OWNERS). (COUNTY JURISDICTION/HOPE MILLS MIA)

Mr. Lloyd stated there were to people present to speak in favor.

Chair Epler called all speakers forward to be sworn in.

Mr. Mike Bailey stated he resides at 3808 Windsong Circle and has been sworn in. Mr. Bailey was present representing the Town of Hope Mills Board of Commissioners who at their April 5, 2010 regular meeting voted unanimously for approval of the request for the waiver from the fire hydrant requirement. Since this case the standards have been revised, this particular case is in the municipal influence area, that's why we are involved in it. The subdivision ordinance has been rewritten, and it now says that if a water system cannot maintain the pressure for a fire hydrant than the condition can be waived.

Ms. Angela Wright stated she resides at 4820 Camden Road and has been sworn in. Ms. Wright stated that she submitted letters from the different water companies stating that they were not able to supply water for that area and that's why she is requesting the waiver.

Ms. Hall made a motion to approve the request, seconded by Mr. Clark that the Joint Planning Board for the County of Cumberland having held a public hearing to consider the waiver request for Case No. 10-029 requesting not to be required to supply a fire hydrant 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, the board makes the following findings of fact and draws the following conclusions (1) because of not having a water system that can supply a fire hydrant, (2) in the MIA that it is located the Town of Hope Mills has revised their subdivision ordinance to allow waivers under these conditions. I move to request that the request for the waiver be approved. Unanimous approval.

VII. DISCUSSION

- SEWER REQUIREMENT IN THE LAND USE POLICY PLAN – MEDUIM DENSITY RESIDENTIAL AND COMMERCIAL

Mr. Lloyd stated that when the Land Use Policies Plan was done, we put that sewer is required in certain instances, but there are some cases when sewer is not available.

Mr. Lloyd asked the board if they wanted to direct staff to look at rewording the Land Use Policy Plan, specifically the word "required", the board agreed and would like staff to look at revising the word "required".

- WORK PROGRAMS

Mr. Lloyd advised the board that work programs for each of the municipalities was due to him by May 18, 2010.

IX. FOR YOUR INFORMATION

DIRECTOR'S UPDATE

There was none.

IX. ADJOURNMENT

There being no further business, the meeting adjourned at 8:15 p.m.