

Clifton McNeill, Jr.  
Chair  
Cumberland County

Charles C. Morris, Vice-Chair  
Town of Linden  
David Averette,  
Dr. Marion Gillis-Olion  
Roy Turner  
Cumberland County



## COUNTY of CUMBERLAND

### Joint Planning Board

MINUTES  
September 21, 2004

Nancy Roy, AICP  
Director  
Thomas J. Lloyd,  
Deputy Director

Joe W. Mullinax,  
Town of Spring Lake  
Donovan McLaurin,  
Wade, Falcon & Godwin  
Vacant,  
Town of Stedman

#### Members Present

Mr. Clifton McNeill, Chair  
Mr. David Averette  
Dr. Marion Gillis-Olion  
Mr. Donovan McLaurin  
Mr. Joe W. Mullinax  
Mr. Roy Turner

#### Members Absent

Mr. Charles Morris,  
Vice-Chair

#### Others Present

Ms. Nancy Roy, Director  
Mr. Tom Lloyd, Dep. Dir.  
Ms. Donna McFayden  
Ms. Barbara Swilley  
Mr. Grainger Barrett,  
County Attorney

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

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

Mr. Lloyd asked that Cases P04-64 and P04-65 be moved from Consent items to the Public Hearing items. In addition, he asked that Case P04-59 be moved from Public Hearing items to Consent items because the petitioner agreed to the R10 rezoning. Chair McNeill asked that a report on the County Commissioners' meeting be added to the Discussion items. A motion was made by Mr. Mullinax and seconded by Mr. Averette to approve the Agenda as amended above. The motion passed unanimously. Dr. Olion was not present for the vote.

#### III. PUBLIC HEARING DEFERRALS

A. P04-60: REZONING OF 19.25 ACRES FROM RR TO C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, AT 8024 RAEFORD ROAD, OWNED BY ANN P. KIRBY.

Mr. Lloyd said that the applicant asked that Case P04-60 be deferred for one month. The members agreed to defer Case P04-60 until October 19, 2004.

#### 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 SEPTEMBER 7, 2004

A motion was made by Mr. Turner and seconded by Mr. McLaurin to approve the Minutes of September 7, 2004 as submitted. The motion passed unanimously. Dr. Olion was not present for the vote.

### REZONING CASES

- A. P04-58: REZONING OF FOUR PARCELS TOTALING 1.30 ACRES FROM R6A TO C(P), OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE WEST SIDE OF DEAVER CIRCLE, SOUTH OF ROCKFISH ROAD, SUBMITTED BY ROBERT M. BENNETT.

The Planning staff recommended approval of the C(P) Planned Commercial District based on input from the planner for the Town of Hope Mills.

The Planning staff found that the subject property is also suitable for the R6 District.

No one appeared in favor of or in opposition to the request.

**A motion was made by Mr. Mullinax and seconded by Mr. Averette to follow the staff recommendations and approve the C(P) Planned Commercial District. The motion passed unanimously. Dr. Olion was not present for the vote.**

- B. P04-59: REZONING OF .39 ACRES FROM C3 TO R6, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 1310 MACK STREET, SUBMITTED BY SAMUEL C. SMITH.

The Planning staff recommended denial of the R6 Residential District and approval of the R10 Residential District based on the following:

The Spring Lake Land Use Plan calls for low-density residential development at this location.

No one appeared in favor of or in opposition to the request.

**A motion was made by Mr. Mullinax and seconded by Mr. Averette to follow the staff recommendations and deny the R6 Residential District and approve the R10 Residential District. The motion passed unanimously. Dr. Olion was not present for the vote.**

- C. P04-61: REZONING OF 6.02 ACRES FROM A1 TO R40A OR A MORE RESTRICTIVE ZONING DISTRICT, AT 592 MAGNOLIA CHURCH ROAD, OWNED BY DOROTHY L. SPEARS.

The Planning staff recommended approval of the R40A Residential District based on the following:

The uses allowed in the R40A District are consistent with those currently in the area and compatible with the character of the neighborhood.

The Planning staff found that the subject property is also suitable for the A1A and R40 Districts.

No one appeared in favor of or in opposition to the request.

**A motion was made by Mr. Mullinax and seconded by Mr. Averette to follow the staff recommendations and approve the R40A Residential District. The motion passed unanimously. Dr. Olion was not present for the vote.**

D. P04-62: REZONING OF .31 ACRES FROM C(P) TO R6A, OR A MORE RESTRICTIVE ZONING DISTRICT, AT 5000 CUMBERLAND ROAD, OWNED BY HOLLIS L. LUDLUM.

The Planning staff recommended approval of the R6A Residential District based on the following:

The 2010 Land Use Plan calls for medium-density residential development at this location.

No one appeared in favor of or in opposition to the request.

**A motion was made by Mr. Mullinax and seconded by Mr. Averette to follow the staff recommendations and approve the R6A Residential District. The motion passed unanimously. Dr. Olion was not present for the vote.**

#### CONDITIONAL USE OVERLAY DISTRICT AND PERMIT

A. P04-36: REZONING OF 2.10 ACRES FROM M(P) TO RR/CU, OR A MORE RESTRICTIVE ZONING DISTRICT, AND A CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ENFORCE COMPLIANCE WITH THE ZONING ORDINANCE, AT 1440 KINGSTOWN COURT, SUBMITTED BY TOMMY L. DAVIS.

The Planning staff recommended approval of the Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest.

The Planning staff recommended approval of the Conditional Use Overlay Permit based on the findings that 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 2010 Land Use and Thoroughfare Plans.

The Planning staff recommended that the following conditions be added to the Conditional Use Overlay Permit:

1. The applicant provide proof of legal access at the time of permit application;
2. The site be completely cleaned up within 90 days; and
3. The site is to be developed in accordance with the proposal as shown on the site plan.

No one appeared in favor of or in opposition to the request.

Chair McNeill asked if the applicant agreed to the conditions, and Mr. Lloyd said that he did.

**A motion was made by Mr. McLaurin and seconded by Mr. Averette to follow the staff recommendations and approve the Conditional Use Overlay District based on the findings that the request is reasonable, not arbitrary or unduly discriminatory and in the public interest. The motion passed unanimously. Dr. Olion was not present for the vote.**

**A motion was made by Mr. McLaurin and seconded by Mr. Averette to follow the recommendations and approve the Conditional Use Overlay Permit based on the findings that 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 2010 Land Use and Thoroughfare Plans.**

**The motion included the following conditions being added to the Conditional Use Overlay Permit:**

- 1. The applicant provide proof of legal access at the time of permit application;**
- 2. The site be completely cleaned up within 90 days; and**
- 3. The site is to be developed in accordance with the proposal as shown on the site plan.**

**The motion passed unanimously. Dr. Olion was not present for the vote.**

## VII. PUBLIC HEARING ITEMS

- A. P03-91: MODIFICATION OF CONDITION ON A PERMIT FOR A PREVIOUSLY APPROVED CONDITIONAL USE OVERLAY DISTRICT AND PERMIT TO ALLOW A JUNK YARD AND OPEN STORAGE OF EQUIPMENT IN AN A1 DISTRICT ON 3.21 ACRES ON THE NORTHEAST SIDE OF WHITEHEAD ROAD, NORTH OF NC HIGHWAY 24, OWNED BY ZARKO JOHNSON.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd explained that the applicant was asking for an extension to the time allowed to complete or demolish a structure on his property. Mr. Barrett added that the applicant was given six months with an additional 30 days to complete the work. The 30-day period ends on October 16, 2004, and the Commissioners will rehear the case on October 18.

Mr. Lloyd reported that the Planning staff recommended that the Planning Board follow the decision from the Board of County Commissioners when they heard this case.

The following are the conditions approved by the County Commissioners:

1. No more than 20 cars are allowed on the site at one time, and no more than the existing equipment (three dump trucks, one asphalt roller and one paving machine) to be stored on the site;
2. The building must be completed within six months (all permits must be obtained) or the building must be demolished within 30 days of the six-month period;
3. The buffer is to be in accordance with the site plan;
4. No commercial operations other than those allowed in the A1 District and specifically listed in the application shall be allowed;
5. Equipment will enter and exit the property between 7:00 a.m. and 7:00 p.m. daily; and
6. The site plan shows a 10-foot natural buffer on the north, east and west property lines.

The public hearing was opened.

Chair McNeill asked if permits were needed to demolish a building, and Mr. Lloyd said that a demolition permit is necessary.

Mr. Zarko Johnson appeared before the Board and said that it took four months for him to get paid from a job at Fort Bragg, and now he has enough money to repair the building. He said that he needs the building in order to park his equipment. He said if he tears it down, he will just have to rebuild it. He said he went for permits, but decided to wait until the case was settled before he got them.

Mr. McLaurin asked if the cars on the lot are from Raleigh and Raeford Roads. Mr. Johnson said that they are, and they were moved in to fix, but he hasn't had time to get them fixed. He said that some will be fixed, and some will be removed. He said that the building has 14-foot tall cinderblock walls that would be very expensive to replace, and he now has the money to put a roof on the building. He said that the trees could be cleaned out in the next few weeks. Mr. McLaurin said that the trees have been there for so long that it may harm the structure of the walls when they are removed. Mr. Johnson said the trees are still small enough that they shouldn't do any harm. He said three of the walls are in good shape, and the fourth needs completion.

No one appeared in opposition to the request.

The public hearing was closed.

Mr. Averette asked exactly what the request was. Mr. Barrett explained that Mr. Johnson is asking for an additional six months in which to repair the building. He said that the original six-month period granted by the Commissioners expired on September 16, and the 30 days to complete the work ends on October 16.

Chair McNeill asked how long it would take to complete the work on the building. Mr. Johnson said that he could remove the trees in two to three weeks. Chair McNeill said that a permit allows six months to begin the work and then is good until

completion. He said that it would have shown good faith for Mr. Jackson to have obtained the needed permit(s).

Mr. McLaurin said that Mr. Johnson has owned the property for 10 years, and Mr. Johnson said that he intended to sell because of vandalism and problems with the neighbors, but he has now decided to stay.

Mr. Averette asked if the Board could allow the additional six months with the stipulation that Mr. Johnson obtain the necessary permit(s) and begin work within 30 days. Mr. Barrett said that the Board could do that.

Mr. McLaurin said that Mr. Johnson has owned the property for 10 years and hasn't done anything, and 10 years is long enough to have made the needed repairs.

**A motion was made by Mr. McLaurin and seconded by Mr. Mullinax to follow the staff recommendation and follow the earlier decision of the County Commissioners and deny the extension. The motion passed unanimously.**

B. P04-54: REZONING OF FOUR PARCELS TOTALING 149.01 ACRES FROM A1 TO R10, OR A MORE RESTRICTIVE ZONING DISTRICT, SOUTH OF UNDERWOOD ROAD, EAST OF RIVER ROAD, SUBMITTED BY JOHN KOENIG.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported that upon further review and input from the Eastover Sanitary District, the Planning staff recommended denial of the R10 Residential District and approval of the R40 Residential District based on the finding that the Eastover Land Use Plan calls for one-acre lots at this location.

The Planning staff found that the subject property is also suitable for the A1A and R40A Districts.

Mr. Richard Wiggins, representing Mr. John Koenig, appeared before the Board and said that his case was heard one month ago, and the staff recommended R20. He said at that time there were extensive arguments in favor and extensive criticism from the neighbors regarding the request. He said that he was surprised that the staff changed the recommendation made earlier, and he wasn't sure he understood the input from the Eastover Sanitary District because PWC is willing to put in a lift station for the site at a cost of \$225,000 to Mr. Koenig and has assured them that they will extend the sewer. Mr. Wiggins said that zoning throughout the County should be consistent—not arbitrary or capricious. He said that failing to rezone the property would take away the owner's ability to use the property at its highest and best use. He said that Mr. Koenig intends to put in an upscale development and originally planned to have sidewalks, curb and gutter. He said that Mr. Koenig has agreed to take out some of the amenities if the property can be rezoned R30, which would equate to one-acre lots when streets and easements are considered. Mr. Wiggins said that this should be an adequate compromise to make reasonable use of the land. He added that Mr. Koenig didn't think it was feasible to wait six months for the possibility that the new Ordinance might contain a proposal that would make the development possible.

Mr. McLaurin said at the last meeting, Mr. Koenig said he would put in about 233 homes, and he asked what the proposal would be under the R30. Mr. Koenig said that the R30 would allow about 173 homes and still be feasible without all of the amenities (sidewalks, curb and gutter) that were originally planned for the site. Mr. Koenig said that more than six acres contain wetlands, and there is a 100-foot easement as well as three streams and a canal on the property.

Mr. Turner asked about ground water runoff and whether it would change if the amenities were changed. He was told that it would not.

Mr. Jimmy Kizer, engineer, appeared before the Board and said if curb and gutters are not used, side swales or asphalt wedge curb would be used to minimize the impact of runoff. He added that the runoff would be the same when developed as it is now because the water will be collected and released over time to minimize the impact of runoff water. Mr. Turner asked where the water would be released, and Mr. Kizer said that it would be released toward Middle Road where there is an existing drainage canal. Mr. Turner asked if the canal is sufficient to carry all of the water. Mr. Kizer said that it was designed a long time ago for those times, and it has been impacted by all development since that time. He said that everyone who has built has added to the flooding problems in the area. He said that they plan to use several collector areas.

Mr. Morgan Johnson, from the Board of Eastover Sanitary District, appeared before the Board and introduced two other elected officials of the Board—Mr. Charles Register, Chair, and Ms. Jenny Williams, Secretary. He said that he met with the Planning staff, and representatives of PWC and possibly has some suggestions that may work for the rezoning. He said that the Eastover Sanitary District has authority equivalent to any metropolitan entity by State statute. He said this allows them to levy taxes, condemn land and zone property; however, they don't want to zone and would rather leave it to the County. He said that PWC cannot come into Eastover arbitrarily, and they acknowledge that. Mr. Johnson said that he wants to continue meeting with the staff to go over planning in the Eastover community. He said the community does not oppose rezoning in general, and they want more time to work with the staff. He said that the new Zoning Ordinance will be ready in six months, and it may offer solutions to this request. He said that he would suggest continuing to work with PWC and the Planning staff to come up with a workable solution. He asked the Board to leave the land in Eastover A1 unless the Eastover Sanitary District approves otherwise. He recommended that the Board deny the request.

Ms. Liz Reeser, a resident of the area, appeared before the Board in opposition and gave the Board members pictures of flooding in the area. She said that any clearing along Middle Road will affect runoff to her property, and she would appreciate the Board following the recommendations of the Eastover Land Use Plan. Mr. Averette asked what zoning Ms. Reeser would prefer, and she said that the R40 District would follow the Eastover Plan.

Mr. Lawrence Buffaloe, resident of the area, appeared before the Board in opposition and thanked the Board for their dedication to the residents of the County. He said that he opposed any rezoning to less than one-acre lots. He said he had a petition with more than 150 signatures of residents in the area who oppose the rezoning and

asked those present in opposition to the rezoning stand. About three-quarters of the audience stood. He said that the Eastover residents want to preserve and protect the rural area. Mr. Buffaloe pointed out two subdivisions in Eastover that contain two- and three-acre lots. He said that the character of the community is low-density, single-family, and the Eastover Plan calls for one-acre lots. He added that he would like for the developer to wait until the new Ordinance is ready. Mr. Averette asked Mr. Buffaloe if R40 would be acceptable to him as with the last speaker. Mr. Buffaloe said he didn't want anything less than one-acre lots and didn't understand why the property had to be rezoned before the Ordinance is finished.

To clarify statements made earlier, Mr. Barrett said that the entire area is under the zoning authority of the Board of County Commissioners. He said that the Board of Commissioners also adopted the small area plan for the Eastover area. Mr. Barrett said that there are many requirements that must be met before a sanitary district can obtain the authority to zone. He agreed that sanitary districts have statutory authority to exercise other powers, but there are specific limitations on zoning. Mr. Barrett said that the staff recommendation of R40 is consistent with the Eastover Area Plan. He added that the Zoning Ordinance currently under review may contain provisions to assist with developments such as this, and that is a legitimate argument. He said that the Eastover Plan went through a lengthy process of planning, review, public hearings and approval and is designed specifically for the area as are other plans written for other parts of the County. Mr. Barrett said that he heard representatives from PWC acknowledge that they consider water and sewer customers of the area to be customers of the Eastover Sanitary District.

Mr. Buffaloe again stated that he had a petition with 150 names in opposition, and they want no more density than what the R40 District allows. He asked for members of the audience who would agree to the R40 zoning to stand. Nearly all who acknowledged opposition earlier stood again.

Mr. Barrett clarified that the staff recommendations were not based solely on comments from the Eastover Sanitary District, but on the Eastover Land Use Plan recommendations and input from the Sanitary District.

Dr. Olion asked Mr. Barrett again about the customers being served in the area. He replied that PWC considers the residents of the area to be customers of the Eastover Sanitary District. He said that PWC provides the water wholesale to the Sanitary District, and they sell retail to the residents. Dr. Olion then asked if PWC could provide the water and sewer. Mr. Barrett said that there are significant engineering issues that would involve PWC, but PWC would provide it wholesale. Mr. Lloyd said that the information the Board received regarding PWC being the provider was prepared before staff realized the role of the Eastover Sanitary District. He said in the future, the data sheets would probably state "Eastover Sanitary District/ PWC."

Mr. Averette asked Mr. Kizer about the involvement of PWC and Eastover Sanitary District. Mr. Kizer said that Eastover currently has no sewer capability and contracts with Norcross; therefore, Mr. Koenig's only option is to tie into PWC. Regarding jurisdiction, he said PWC had not reviewed the contract prior to the meetings referred to earlier and is doing that now. He said that there might be caveats in the contract to cover these concerns. He added no matter what the tract is zoned, the



Eastover Sanitary District cannot deny service according to their charter, and denial could harm their future.

Mr. Rad Rich appeared before the Board in opposition on behalf of the Eastover Civic Club, a nonprofit organization with over 100 members, whose goal is to promote the welfare of the Eastover residents. He said that the Club was instrumental in creating the Eastover Sanitary District. He said that there are many long-time residents of Eastover, and they want some control of their destinies. He said any zoning less restrictive than the R40 would meet a lot of opposition from the Eastover residents.

Mr. Tom Grubb appeared before the Board in opposition and commended the Board on the process and surrounding itself with wise counsel such as the staff. He said that this case seemed to be a fishing expedition—R10 was requested, R20 was then agreed to, and now the developer will settle for R30. He said that the Eastover Plan calls for R40, and the burden of proof should be on the developer—not the citizens or the Plan. He said that the proposal was initially for over 240 homes, and now it is down to 170. He said that he heard that this developer intends to develop three more sites in the area. He said this is a test case and reminded the Board that the Commissioners adopted a Plan that calls for R40 zoning.

Ms. Kim Fisher appeared before the Board in opposition and said that she wants to maintain the rural character of the community. She questioned Mr. Koenig having the Eastover residents' best interest at heart. She said that schools are at capacity, and there is a need to control growth. She said that railroad tracks run along the rear of the property and asked who would want to buy property near railroad tracks.

In rebuttal, Mr. Koenig, proposing R30, stated that he would have to eliminate some of the amenities he intended for the development if it was rezoned to R30, but it would still be quality homes that would uplift the value of existing homes in the area.

Chair McNeill asked if Mr. Koenig had anything in writing from PWC indicating that they were willing to put in the lift station. Mr. Koenig said he had only their word.

The public hearing was closed.

Mr. Turner asked Mr. Johnson (a retired engineer) if he could explain the drainage. Mr. Johnson said the best drainage is in farmland and forested areas, the worst where pavement is in place. He said anytime there is concrete added, it will make the drainage worse. In response to Mr. Barrett's earlier statements, he said that their attorney assured the Eastover Board that they meet the qualifications to have zoning authority, but that is not their intent. Mr. Turner asked if the Eastover Sanitary District could rezone the current case, and Mr. Johnson said that before they would have authority, they would have to announce their intent and give one year's notice.

Mr. Barrett said that he disagreed with some of the comments and was comfortable with his earlier comments. He said that he did hear, however that the Eastover Sanitary District Board wants to rely on the Planning Board and land use plans.

Mr. Averette said that most plans haven't addressed zoning or density specifically. Ms. Roy agreed and said that the "one-acre lots" recommendation is unusual. She said most plans typically state low- or medium-density or farmland, for example.

Chair McNeill said when this plan was written, the residents thought that this would be the best way to preserve the rural character.

Mr. Averette asked if zero lot line and clustering could be used, and Mr. Barrett said that they could because the Subdivision Ordinance applies to the entire County.

Mr. McLaurin said that there were several problems in the County such as storm water runoff, and that large A1 tracts retain water and fill the aquifers. He said gathering of rainwater is bad for the environment. He added that the County has problems with low-level ozone, and it must be reduced or the County could lose a lot of funding as well as it not being a good draw for industry. He said that the County has a chance to reverse some of the problems, and a proposal in the new Zoning Ordinance addresses increasing density while maintaining open space.

**Mr. McLaurin made a motion to deny the R10 and approve the R40 District based on the environment and maintaining the rural character of the area and the Eastover Land Use Plan recommending one-acre lots at this location. Mr. Mullinax seconded the motion.**

Mr. Averette said that the Board's policy in agricultural areas is to zone at whatever the infrastructure will support, and when water and sewer are available the Board normally approves rezoning denser than R40. He said to be consistent with the policies of the past, the Board should look at what the proposed infrastructure will support to get the best use out of the land. He said he could not support the motion.

Mr. McLaurin agreed with Mr. Averette's statements about infrastructure, but said the policy didn't take into account storm water runoff and low-level ozone. He said that the proposal in the new Zoning Ordinance would allow the developer to have the number of units he wants.

Mr. Barrett said that because his client is the Board of Commissioners, he had to point out that the staff and Planning Board can rely on policies, but the Land Use Plan is the officially adopted document of the County.

Chair McNeill said that a month ago when this case was originally heard, the Board recommended a deferral for the developer and the residents of Eastover to work some things out as well as allow time for the new Zoning Ordinance to take effect. He said he was disappointed that the applicant chose not to take advantage of the deferral. He said there is potential for a first class development at this site, and he'd prefer delaying; however, he would support the motion.

Mr. Averette said that he did the calculations under the proposal in the new Ordinance, and 72 would be the most allowed on the 150 acres. Mr. McLaurin said he figured the calculations on the R40 District, and he got 259 lots, and the rural character would still be maintained with 60 of the acres remaining undeveloped.

**Upon a vote on the motion, it passed five to one with Mr. Averette voting in opposition.**

- D. P04-63: REZONING OF A .77-ACRE PARCEL AND A .70-ACRE PORTION OF A 280-ACRE TRACT FROM A1 TO R40, TOTALLING 1.47 ACRES, ON THE NORTH SIDE OF CARL FREEMAN ROAD, NORTHEAST OF NC HIGHWAY 210 SOUTH, OWNED BY JOHN HORNE.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd said that the desire of the applicant could be accomplished with a “No Approval Required” parcel recombination. He reported that the Planning staff recommended denial of the R40 Residential District based on the following:

1. The 2010 Land Use Plan calls for farmland at this location; and
2. There is no other R40 District zoning in the area.

The public hearing was opened.

Mr. John Horne, applicant, appeared before the Board and said he wants to build a storage building and doesn't have enough land. He said the owner of the adjoining property is only willing to sell him .70-acre, which will still not be large enough to build a structure under the A1 zoning.

Mr. Averette said that it would not be legal for the owner of the large tract to sell only a .70-acre portion—it would have to be two acres in the A1 District. He said that a recombination would have to be used. Mr. Barrett said that the owner of the large tract would have to sell only enough land to total two acres when added to Mr. Horne's .77 acre to make it legal in the A1 District.

Mr. McLaurin asked the reason for the request, and Mr. Horne said that he wants to build a structure to store insulation materials used for his business. Mr. McLaurin pointed out that the structure for storage is not allowed in the R40 District.

Ms. Rachel Offenstein appeared before the Board in opposition and said that the residents of the area have fought to keep businesses and trailers out of the area. She said that this land couldn't handle an additional structure because of the well and septic tank unless it is at least two acres.

Mr. Richard Player appeared before the Board in opposition and said that he moved there to be in a rural area. He added that the water table is high and drainage poor.

The public hearing was closed.

Mr. Averette said since the applicant would not be able to do what he wants to do if the land is rezoned, he would be better off to get two acres and keep the land A1 because the A1 District allows the structure for storage.

**A motion was made by Mr. Averette and seconded by Mr. McLaurin to follow the staff recommendations and deny the R40 District. The motion passed unanimously.**

- C. P04-64: REZONING OF THREE PARCELS TOTALING 64.65 ACRES FROM RR TO R10, OR A MORE RESTRICTIVE ZONING DISTRICT, ON THE SOUTH SIDE OF SNOW HILL ROAD, WEST OF CLAUDE LEE ROAD, SUBMITTED BY CRAWFORD DESIGN COMPANY.

Maps and slides were displayed indicating the zoning and land use in the area.

Mr. Lloyd reported that the Planning staff recommended approval of the R10 Residential District based on the following:

1. The 2010 Land Use Plan calls for low-density residential development at this location; and
2. Public water and sewer are available to the site.

The Planning staff found that the subject property is also suitable for the R15 Residential District.

The public hearing was opened.

Mr. Scott Beasley appeared before the Board and said that he is the engineer for the developer, who intends to build single-family homes at the R10 density. He said that the R10 is a good match with the current residential use in the area.

Chair McNeill asked about sewer. Mr. Beasley said that the sewer is along Rockfish Creek. Chair McNeill asked if the subdivision to the west has water and sewer, and Mr. Beasley said that most of it is undeveloped.

Mr. David A. Simms, resident of Riverview Estates, appeared before the Board in opposition. He said Riverview Estates is zoned R15, and he didn't want R10 zoning because it allows modular homes. Mr. Lloyd stated that the current RR zoning allows manufactured homes and that both the R10 and R15 Districts allow modular homes. He said possibly the restrictive covenants of Riverview Estates do not allow modular homes, but all districts in the County allow them.

Mr. Robert Robinson, who lives on Myron Road, appeared before the Board in opposition. He said that he wanted the tract zoned R15 so they can't use modular homes. Mr. Averette said that modular homes are allowed in all zoning districts, and he explained the difference in modular homes and stick-built homes.

In rebuttal, Mr. Beasley said that the developer was called out of town and unable to attend the meeting; however his plans are to build single-family stick-built homes, and he does not intend to have modular homes. He said he originally thought he could build 180 homes, but the wetlands won't allow that many. Mr. Lloyd said using zero lot line would allow the density as wetlands are considered in the calculations.

Chair McNeill asked if the applicant would agree to R15 zoning. Mr. Beasley said that he would not because it would increase the size of the lots.

Mr. Turner asked if Mr. Beasley was sure that the homes would be stick-built, and Mr. Beasley said that he was. Chair McNeill pointed out that modular homes are allowed, so the applicant is free to build either.

Mr. Lloyd said that the current zoning allows Classes A, B and C manufactured homes. He said that they are not allowed in the R10 and R15 Districts. He again stated that modular homes are allowed in all residential districts.

The public hearing was closed.

Mr. Averette said that the subdivision on Myron Road allows mobile homes.

**A motion was made by Mr. Averette and seconded by Mr. McLaurin to follow the staff recommendation and approve the R10 Residential District.**

Because Mr. Simms kept insisting that modular homes are allowed in the R10 District but not in the R15, Chair McNeill said that if Mr. Simms received information to that effect, he was given incorrect information. He said the only difference in the R10 and R15 Districts is lot size, and uses are identical. He said that neither district allows mobile homes, but the current zoning does.

Mr. Barrett reminded the Board not to base their vote on the intent of the developer, but to consider whether all uses allowed in the R10 District are suitable for the area.

Chair McNeill explained to the audience that the Board does not rezone based on intent, and the developer is allowed to do whatever the district allows. He said that the developer could also use restrictive covenants to further restrict his development, but the Planning Board can only consider the uses allowed in the district—not specifically what it is intended to be built on the property.

Mr. McLaurin said that the Board tries to uphold the integrity of the neighborhood, and the RR District allows some uses that the neighbors probably would not like. He said that the R10 District allows only residential uses.

**Upon a vote on the motion, it passed unanimously.**

D. P04-65: REZONING OF 1.79 ACRES FROM A1 TO R40 AT 1333 CYPRESS LAKES ROAD, SUBMITTED BY ROBERT M. BENNETT.

Maps and slides were displayed indicating the zoning and land use in the area. Mr. Lloyd reported that the Planning staff recommended approval of the R40 Residential District based on the finding that the Cypress Lakes Area Study calls for low-density residential development at this location.

Mr. Robert Bennett appeared before the Board representing the owner, Mr. McCoy. He said when Mr. McCoy was unaware that the County zoned the tract A1 when he purchased the property. He said that there is no adjoining land for sale, and Mr. McCoy wants to remove an existing manufactured home and build a stick-built home to replace it. He said that the A1 District requires two-acre lots.

Mr. Harry Whisnant appeared before the Board in opposition and said that he wants one stick-built home on the lot and opposed a second unit. Mr. Lloyd explained that only one lot would be allowed, but two structures could be built under R40 zoning.

Mr. Bennett said that the owner only wants to have one home on the lot.

Mr. Lloyd explained that if the lot existed prior to 1980, one unit would be allowed following the A1 setbacks, even though the lot is less than two acres. Mr. Bennett said that the lot was created a couple of years after zoning.

Mr. Averette asked how much frontage the lot contained, and Mr. Bennett said it had 50 feet. A gentleman in the audience said he measured only 20 feet of frontage.

Mr. Lloyd said if the lot was cut out prior to August of 1984, it would be legal, nonconforming, but because the date is unsure, it would be safer to rezone to R40 to make the tract legal.

Chair McNeill said that Mr. Bennett said the lot was created illegally after zoning, so he can't get permits unless it is rezoned. Mr. Lloyd said that zoning and subdivision regulations are handled differently, so the date the lot was cut may comply with the Zoning Ordinance and not with the Subdivision Ordinance. He said it's a gray area.

The public hearing was closed.

Mr. Barrett said an additional problem could arise in that a mortgage company would want to base its decision on clear-cut law rather than an administrative interpretation.

Mr. Lloyd pointed out a few R40 and R20 rezonings in the area that were recently approved by the Board. Mr. Averette said that Board policy has been to zone less than 10 acres in the A1 to R40. He added that it would also clear up any problems.

**A motion was made by Mr. Averette and seconded by Dr. Olion to follow the staff recommendations and approve the R40 Residential District. The motion passed unanimously.**

#### VIII. DISCUSSION

##### A. REPORT ON THE COUNTY COMMISSIONERS' MEETING—DR. OLION

Dr. Olion reported the Commissioners approved a case that the Board had recommended for denial, and followed the Board's recommendations on the rest except they allowed open storage where the Board did not on the Conditional Use Overlay request.

##### B. REPORT ON EXECUTIVE COMMITTEE—CHAIR McNEILL

Chair McNeill said that the Executive Committee, (Chairs and Vice-Chairs of the City, Hope Mills and County Planning Boards) met regarding beginning the 2030 Land Use Plan. He said that he would have some ideas to present to the Board at the next meeting. He said that the process will evolve into a lot of work for everyone.

#### IX. FOR YOUR INFORMATION

##### A. DIRECTOR'S UPDATE

Ms. Roy said that she didn't have any agenda items for the first meeting in October. A motion was made by Mr. Averette and seconded by Mr. McLaurin to cancel the October 5, 2004 meeting. The motion passed unanimously.

#### X. ADJOURNMENT

There being no further business, the meeting adjourned at 10:15 p.m.