

Donovan McLaurin,  
Chair  
Wade, Falcon & Godwin

Lori Epler,  
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,  
Roy Turner,  
Sara E. Piland,  
Cumberland County

Benny Pearce,  
Town of Eastover

### MINUTES

April 21, 2009

#### Members Present

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

#### Others Present

Mr. Tom Lloyd, Director  
Mr. Grainger Barrett, County Attorney  
Mrs. Laverne Howard  
Ms. Annie Faircloth

#### I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mrs. Piland delivered the invocation and led those present in the Pledge of Allegiance.

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

There were none.

#### III. PUBLIC HEARING DEFERRAL – STAFF INITIATED UNTIL MAY 5, 2009

**CASE P09-11:** REZONING OF 6.00+/- ACRES FROM R6A RESIDENTIAL TO C(P) PLANNED COMMERCIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED ON THE SOUTH SIDE OF CHARMAIN STREET, WEST OF MURCHISON ROAD, SUBMITTED BY ATTORNEY GARRIS NEIL YARBOROUGH AND OWNED BY CHARMAIN COMPANY, LLC.

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

#### IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

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

Mr. Lloyd read the policy statement.

VI. APPROVAL OF THE MINUTES OF APRIL 7, 2009

**Mr. Turner made a motion to accept the minutes as submitted, seconded by Mr. Cain. Unanimous approval**

VII. PUBLIC HEARING ITEMS

A. **CASE P09-01:** REZONING OF 1.50+/- ACRES FROM A1 AGRICULTURAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 3662 GABE SMITH ROAD, SUBMITTED AND OWNED BY THADIUS AND ANNIE L. BOATWRIGHT.

The Planning & Inspections Staff recommends denial of RR Rural Residential because the entire subject property consists of hydric and hydric inclusion soils; however, Staff recommends approval of R40A Residential district based on the following:

1. The request is consistent with the Eastover Land Use Plan, which calls for farmland at this location;
2. The request is consistent with the land uses currently allowed within the general area; and
3. Public utilities are available to the site.

The A1A, R30A and RR districts could also be considered suitable for this location.

The applicant has given verbal agreement to the staff recommendation of rezoning case to R40A Residential.

This case was deferred from January 20, 2009 to the April 21, 2009 Planning Board Meeting.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-01. Unanimous approval**

B. **CASE P09-02:** REZONING OF 2.00+/- ACRES FROM A1 AGRICULTURAL TO A1A AGRICULTURAL OR TO A MORE RESTRICTIVE ZONING DISTRICT LOCATED AT 11519 DUNN ROAD, SUBMITTED AND OWNED BY HELEN AND LUIS LINARES.

The Planning and Inspections Staff recommends approval of A1A Agricultural district based on the following:

1. The request is consistent with the 2010 Land Use Plan, which calls for farmland at this location; and
2. The request is consistent with the land uses currently existing in the general area.

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

This case was deferred from March 17, 2009 to the April 21, 2009 Planning Board Meeting.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-02 as submitted. Unanimous approval**

C. **CASE P09-08:** REZONING OF 1.69+/- ACRES FROM A1 AGRICULTURAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 1701 HALLINA DRIVE, SUBMITTED AND OWNED BY AMY LYNN PARKS AND LARRY E. PARKS, SR.

The Planning & Inspections Staff recommends denial of RR Rural Residential because the subject property is not connected to public water and sewer as required by the Proposed Land Use Policies Plan; however, Staff recommends approval of R40A Residential district based on the following:

1. The recommendation is consistent with the 2010 Land Use Plan, which calls for farmland at this location; and
2. The recommendation is consistent with the land uses currently allowed within the general area.

The A1A, R40A and R30A districts could also be considered suitable for this location.

The applicant has given verbal agreement to the staff recommendation of rezoning the subject property to R40A Residential.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-08. Unanimous approval**

D. **CASE P09-09:** REZONING OF 4.50+/- ACRES FROM A1 AGRICULTURAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 10595, 10603 & 10619 COLLIERS CHAPEL CHURCH ROAD, OWNED AND SUBMITTED BY CONNIE MCBRYDE, TYNISHA L. AND ANTOINETTE L. MCNEILL.

The Planning and Inspections Staff recommends approval of RR Rural Residential district based on the following:

1. The request is inconsistent with the 2010 Land Use Plan, which calls for farmland at this location, it is consistent with the land uses and lot sizes currently existing within the general area; and
2. Public water is available to the subject properties.

The A1A, R40A and R30A districts could also be considered suitable for this request.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-09 as submitted. Unanimous approval**

E. **CASE P09-12:** REZONING OF 1.59+/- ACRES FROM A1 AGRICULTURAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 7735 SIM CANADY ROAD, SUBMITTED AND OWNED BY EARL R. SLAPPE, III.

The Planning & Inspections Staff recommends denial of RR Rural Residential because the subject properties do not have public water available, which is recommended by the proposed

Land Use Policies Plan; however, Staff recommends approval of R40A Residential district based on the following:

1. The request is consistent with the 2010 Land Use Plan, which calls for farmland at this location; and
2. The request is consistent with the land uses and lot sizes currently existing in the general area.

The A1A, R40, R40A, R30 and R30A districts could also be considered suitable for this location.

The applicant has given verbal agreement to the staff recommendation to R40A Residential.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-12. Unanimous approval**

F. **CASE P09-13:** REZONING OF 1.70+/- ACRES FROM A1 AGRICULTURAL TO RR RURAL RESIDENTIAL OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 6614 & 6624 FAIRCLOTH BRIDGE ROAD, SUBMITTED AND OWNED BY SANFORD L. & SHARON A. ISHAM.

The Planning & Inspections Staff recommends denial of RR Rural Residential, but recommends approval of R40A Residential district based on the following:

1. The request is consistent with the 2010 Land Use Plan, which calls for farmland at this location; and
2. The recommendation is compatible with the uses, lot sizes and character of the surrounding area.

The A1A Agricultural, R40A and R30A Residential districts could also be considered suitable for this location.

The applicant has given verbal agreement to the staff recommendation of rezoning the subject property to R40A Residential.

**A motion was made by Mrs. Piland, seconded by Mr. Turner, to follow the staff recommendation and approve case P09-13. Unanimous approval**

## VIII. CONSENT PLATS & PLANS

A. **CASE NO. 09-019.** CONSIDERATION OF MARINERS POINTE, SECTION 2, ZERO LOT LINE SUBDIVISION REVIEW; REQUEST FOR WAIVER FROM SECTION 2302.A, MUNICIPAL INFLUENCE AREA, COUNTY SUBDIVISION ORDINANCE, REGARDING HOPE MILLS' DEVELOPMENT STANDARDS: TWO ACCESS STREETS AND FIRE HYDRANT INSTALLATION; ZONING: RR; ACREAGE: 42.94 +/-; LOCATED ON THE SOUTH SIDE OF SR 1003 (CAMDEN ROAD), EAST OF SR 3438 (MILL CREEK ROAD). (HOPE MILLS MIA)

The above referenced development is the second phase of a 111 lot subdivision, consisting of 61 lots. The developer initially requested waivers for this section related to the Town of Hope

Mills' Municipal Influence Area (MIA) development standards, regarding two access streets serving this portion of the development and installation of fire hydrants. The Hope Mills Board of Commissioners heard this request at their regular meeting on April 6, 2009. At that meeting, the developer and the Town resolved the issue concerning the second street access.

Both the Hope Mills and County subdivision regulations require installation of fire hydrants when public or community water is available for use. This development is to be served public water by Aqua North Carolina. The Town Board voted to recommend approval of the fire hydrant waiver due to the community water system having hydropneumatic storage tanks and because of which, the NC Department of Environment and Natural Resources (NCDENR) will not allow installation of fire hydrants. This assertion is supported by the attached email from Lynne W. Johnson, Area Manager for Aqua, dated March 31, 2009.

The staff has tried to elicit a recommendation from Freddy Johnson, Chief of the Stoney Point Fire Department, whose service area includes this development; however, as of the date of this memorandum his recommendation has not been received.

The Planning and Inspections Staff recommends the Planning Board follow the Town's recommendation and grant approval of the fire hydrant waiver, based on the following:

- a. Because of the type of public water system available at this location, installation of fire hydrants within the development would cause an unnecessary and special hardship to the property owner and would be inequitable specifically because the water provider has stated hydrants are not authorized;
- b. The public purposes of the Subdivision and Zoning Ordinances can still be served to an equal or greater degree with use of the lake water abutting the development as a water point for emergencies - though it should be noted this is not the preferred method of fire suppression; and
- c. The property owner would not be afforded a special privilege denied to others if this request is approved since NCDENR's regulations concerning installation of hydrants applies throughout the state to all community water systems.

Ms. Hall stated that she wasn't sure that the staff recommendation encompasses what the Hope Mills Town Board recommended. The letter is attached, but Ms. Hall didn't see any reference to the Town Board's recommendation. Ms. Hall was specifically referring to the requirement for access streets, where the Hope Mills Ordinance requires two access points. It says that the Hope Mills Board of Commissioners' heard this case at the April 6, 2009 meeting, at that meeting the developer and the Town resolved that issue concerning the second street access. The way that was resolved, as the letter states, it was recommended that the developer obtain a second road entrance, and if it could not be obtained, a twenty foot emergency access road is required. In the packet with the staff recommendation, it does not refer to that.

Mr. Lloyd stated that that requirement could be added, the petitioner, Mr. Kizer, was present in the audience if he wanted to come up and address Ms. Hall.

Mr. Jim Kizer came forward and stated that at the Hope Mills Commissioners' meeting there was discussion about two access points; and they were told that if they could not obtain an access point off of Mill Creek Farms at the end of one of the cul-de-sacs, they could have a twenty foot emergency ingress/egress easement to Camden Road. There was some language

on the plat that was in question and we had talked with the Planning Department and they told us we needed to get a legal opinion. Mr. Kizer had a statement from Rebecca Person which stated that the plat did not give the right and they were planning on putting in the twenty foot emergency access easement as provided for in the conditions of the Hope Mills County Commissioners.

Mr. Barrett asked Mr. Kizer if the developer would agree to a condition of this waiver request providing an emergency access easement.

Mr. Kizer stated yes.

Mr. Barrett asked Ms. Hall if she was moving to amend the waiver approval.

Ms. Hall stated that she was.

**Ms. Hall made a motion, seconded by Mr. Hostetter to grant the waiver as requested with the condition that the developer has agreed to install a twenty foot emergency access easement. Unanimous approval**

**B. CASE NO. 09-034:** CONSIDERATION OF THE MICHAEL L. WANAMAKER, GROUP DEVELOPMENT REVIEW; REQUEST FOR A WAIVER SECTION 2303.C, COUNTY SUBDIVISION ORDINANCE, REGARDING STREET FRONTAGE; ZONED: A1; ACREAGE: 11.85 +/-; LOCATED EAST SIDE OF COWBOY DRIVE, SOUTH OF SR 2224 (NASH ROAD).

The developer is requesting a waiver from the requirement to have 20 feet of road frontage off of either a public or approved private road for the placement of a second dwelling. The property is an 11.85 acre tract, which uses a 60 foot recorded ingress-egress easement for access. The easement is located along the path of the existing dirt trail named "Cowboy Drive" by the Streets & Addressing Section. The proposed second dwelling is a singlewide manufactured home.

The existing deeded lot is an exempt lot from the definition of subdivision and would not typically be subject to the requirement for road frontage under the terms of Subdivision Ordinance; however, the second dwelling unit proposed qualifies the request as a group development and the standards for actual road frontage for the lot is required.

The Planning and Inspections Staff recommends approval of the waiver request from Section 2303.C based on the following:

- a. Because of the size of the existing lot of record, 11.85 +/- acres, it would be inequitable not to allow a second unit on such a large tract, and strict compliance with the provisions of the ordinances would cause a special and unnecessary hardship if the developer were required to upgrade the ingress/egress easement to "street" status given that the majority of the land area in which the easement crosses is not under the current property owners' control;
- b. The purposes of the County's Subdivision and Zoning Ordinances are being served to an equal or greater degree, in that there is an existing deeded ingress/egress easement, assigned a street name for emergency services purposes that assures access to this lot and adjacent lots within the area;

- c. The property owner is not being afforded a special privilege denied to others since the Planning Board has approved similar requests when there has been comparable facts and circumstances.

**Ms. Hall made a motion, seconded by Mr. Hostetter to follow the staff recommendation and approve the waiver request. Unanimous approval**

## IX. PUBLIC HEARING CONTESTED ITEMS

**CASE P09-10:** REZONING OF .74+/- ACRES FROM A1 AGRICULTURAL TO C1(P) PLANNED LOCAL BUSINESS DISTRICT/CUD CONDITIONAL USE DISTRICT & PERMIT (FOR A VARIETY GIFT, CRAFT, & COFFEE SHOP) OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 2982 COLEMAN ROAD, SUBMITTED AND OWNED BY ALEXANDER AND PATRESHA JOHNS.

Mr. Lloyd reviewed the site information and stated the staff recommends denial of the C1(P) Planned Local Business/Conditional Use District [C1(P)/CUD] for the variety gift, craft and coffee shop, based on the following:

1. The district requested is inconsistent with the Eastover Area Detailed Land Use Plan, which calls for farmland at this location;
2. Consideration of the C1(P) district for this area is arbitrary and would not serve a viable public interest; and
3. The degree of difference in uses allowed between the existing surrounding zoning and the proposed zoning and uses requested, qualify this request as being unreasonable.

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

1. This development could endanger the public safety if located according to plan submitted since Coleman Road is not a major or minor thoroughfare and is not suitable nor intended to serve commercial operations;
2. It is highly probable the use would be a danger to the public safety due to the existing residential structure in close proximity to a right-of-way being converted to commercial use and cannot comply with sufficient setbacks from the right-of-way and without public sewer being available, the use and the plan proposed would be in contradiction to the proposed Land Use Policies Plan which recommends all commercial uses to be served by public sewer;
3. The use is not in harmony with the area in which it is located – with the exception of a pre-existing industrial use, the subject property is completely surrounded by agricultural and residentially-zoned properties; and
4. The degree of difference in this specific use and the site layout requested as related to the existing surrounding uses makes this request unreasonable.

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

There were three people present to speak in favor and one person to speak in opposition. Acting-Chair Epler asked the speakers to come forward to be sworn in.

Acting-Chair Epler gave board members the opportunity to reveal any possible conflicts and withdraw from the proceedings if necessary.

Mrs. Piland stated that she did not have a conflict, but in the interest of full disclosure she wanted to say that she had received two emails and one telephone call regarding this case, but is totally prepared to consider the case on the merits of the information provided.

Acting-Chair Epler asked Mrs. Piland if she felt she could rule fairly and impartially and if she wished to withdraw.

Mrs. Piland stated she could and did not wish to withdraw.

Public Hearing opened.

Acting-Chair Epler asked what the setbacks were for the right-of-way.

Mr. Lloyd said the front yard setback is required to be 45 feet for C1(P) zoning.

Patresha Johns, the applicant, spoke in favor. Mrs. Johns stated that her husband was supposed to be present to speak, but was called away on military duty. But Mr. Johns provided a written statement that Dr. Michael Hodges would read on Mr. Johns' behalf.

Dr. Michael C. Hodges read the statement written by Mr. Johns. Mr. Johns' statement addressed the concerns that staff had. The first concern was with the request being inconsistent with the Eastover Land Use Plan which calls for farmland at this location. The request is not for the entire lot to be rezoned, just three quarters of an acre where the house currently sits; to Mr. Johns' knowledge this portion of the lot had never been farmed and had been used as a residence, boarding home, or post office in the past. The second concern of the request not serving a public viable interest, Mr. Johns wrote that he felt that serving a viable public interest was subjective and asks for consideration on that quality of life businesses should be considered as a viable public interest, not only gas stations or convenience stores at every corner. The third concern, the degree of difference in uses allowed between existing surrounding zoning and the proposed zoning and uses requested - Mr. Johns wrote that he felt that integrating businesses into the landscape is the best way for Eastover to keep its hometown essence, because it shouldn't be expected that all businesses are to exist on Dunn Road. The fourth concern addressed was in reference to endangerment to public safety. The proposal is for a small coffee shop and craft store in an existing house. Customer traffic will be modest and should no more endanger public safety than six or seven trains travelling through Eastover every day. Mr. Johns went on to address public safety, he gave some estimates on daily water use for an average family, and said that this request would use approximately 145 gallons of water a day going through the septic system, which is less than the average family uses on a daily basis. The next concern about the use being in harmony with the area, the proposed use is in harmony with the surrounding area and will reflect the character of Eastover, that's the charm of a country style store. The final concern addressed in Mr. Johns' letter was the degree of difference and site layout request, Mr. Johns feels that it is unreasonable for Eastover to use County guidelines that are not tailored to Eastover's unique character. Eastover should set its own guidelines to be the pearl of the County not just status quo. Based on the recommendations from the Planning & Inspections staff the only area that would be suitable for businesses in Eastover would be along Dunn Road. The character of Eastover is not along Dunn Road. Mr. Johns' letter also stated that the application is on the contested items because they



would like to have a gravel driveway and parking instead of asphalt or concrete. Asphalt or concrete would not blend in to the rural character of the community and will dramatically draw away from the country ambiance that the applicants are seeking to create. A well manicured small driveway will blend in with the atmosphere and be aesthetically appealing, much more so than asphalt. To adhere to the handicap requirements, they plan to have a paved small section of parking that directly connects to the sidewalk leading to the handicap ramp. There are also some concerns that the applicants have concerning the roots of two one hundred year old pecan trees on that side of the house because too much pavement could adversely affect the health of the trees.

Mrs. Johns stated that it was important to know that the house they purchased and would like to turn into a store has been a dream that she and her husband have had for the past eighteen years. Mrs. Johns stated that she has prayed about it for a long time and truly believes that this is a place that God has taken her to. They are not there to destroy it, they want to preserve it, and make it what it could be. It is a diamond in the rough and has been vacant for ten years, a lot has happened to the house in that time. They believe in the home and are not there to just be a convenience store, they are there to give a place for people to come to for hope and for peace. Our shop will be about the Lord, family, and country. It is about sitting on a porch swing looking over at the cow farm and watching the trains go by. It is something innocent and pure, someplace you would be proud to bring your families to. It is in perfect harmony with the countryside, it will intertwine into Eastover beautifully. This is something that God wants us to have. Mrs. Johns stated that she understood that there wasn't much they could do about sewer, they are right across from the railroad track and public sewer will not be extended there. Mr. Bob Ratliff has set up a septic system that would hold whatever needs that the customers would have for that farmhouse. Regardless, farmhouse or store, a new septic system was needed and that has been installed.

Mr. Lee Hedgecoe spoke in favor. Mr. Hedgecoe stated that he had a vision for Eastover and believes that the request fits into his idea of what Eastover should be: a small town that offers some things that are local. The stores like Walmart, we don't want, we don't want high profile, we want things that portray Eastover as a small town that is welcoming. What the applicants are offering is perfect. It is something for Eastover to be proud of, also something for Cumberland County to be proud of.

Ms. Liz Reeser spoke in opposition. Ms. Reeser stated that the request sounds like a lovely idea and appreciates the thought that went into it. Unfortunately she is serving in the capacity of a citizen representative for the Eastover Detailed Land Use Plan and that area was not an area that was planned for any businesses, the business corridor is Dunn Road with the nodes around Murphy and Baywood Roads to keep it consolidated to preserve the rural character of Eastover. Also, Ms. Reeser was present to represent the Eastover Sanitary District Board as the Vice-Chairman. Mr. Morgan Johnson and Mr. Crumpler the Secretary were unable to make the meeting but they are all voting against the application based on the Land Use Plan.

Mrs. Johns spoke in rebuttal and restated her position and stated that she expected this to happen. Mrs. Johns stated that she understands the concerns, but she truly believes in this project and felt it would be the best thing for Eastover.

Public Hearing closed.

Mrs. Piland stated that this has been a dilemma for her. Mrs. Piland stated that she appreciates the staff's concerns because what they are recommending is consistent with what has been done in Eastover over the last few years. The staff has identified sufficient reason to deny the request. The fact that it is inconsistent with the Eastover Land Use Plan, which is a plan that has been in existence for a

very long time, Mrs. Piland stated that she believed the Eastover Land Use Plan had been adopted by the Town of Eastover since its incorporation.

Mr. Lloyd stated that was correct.

Mrs. Piland went on to say that, given the area around the subject property, it is an agricultural area and there are cows in the pasture nearby. It's a very beautiful place, and injecting any type of commercial into that area could be detrimental to the agricultural and rural character of the area. Mrs. Piland stated that she felt compelled to concur with the staff's recommendation.

Acting-Chair Epler stated that she would be interested in Mr. Pearce's feelings as a representative of the Town of Eastover.

Mr. Pearce stated that the Eastover Council has discussed the fact that Dunn Road is the place for something like this. The Council, on a number of occasions has tried to talk about the vision for commercial strip along Dunn Road. Mr. Pearce stated that he feels the applicant's idea is commendable, but not sure that a church in the area might not be able to meet some of the requirements and do what she is trying to accomplish. For those reasons it does not meet the Land Use Plan as already specified and for the reason it is not where the commercial district should be located. Mr. Pearce stated that he would have to vote against the request.

Mr. Turner stated that this is a great idea and it just isn't in the right area for the Eastover Land Use Plan, and hoped that they could find a place that would be better suited. Mr. Turner stated that he was inclined to agree with everyone else that this would not work in this particular area.

Acting-Chair Epler stated that her heart went out to Mrs. Johns and it's very important to have a dream. She has made a business for herself and God has blessed her and there is no doubt in her mind that she will continue to be blessed.

**Mrs. Piland made a motion, seconded by Mr. Pearce that the Joint Planning Board fails to find that this Conditional Use District application is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest, and that it therefore be denied. Unanimous approval**

Mr. Barrett stated that often times people's comments about spot zoning were not founded. Mr. Barrett expressed some legal concern about Land Use Laws and Spot Zoning.

## X. CONTESTED PLATS & PLANS

**CASE NO. 08-177:** CONSIDERATION OF THE GILBERT SMITH FAMILY, LLC, PROPERTY, SUBDIVISION REVIEW; REQUEST FOR WAIVER FROM SECTION 2302.A "MUNICIPAL INFLUENCE AREA, COUNTY SUBDIVISION ORDINANCE, REGARDING FAYETTEVILLE'S DEVELOPMENT STANDARDS, SPECIFICALLY SIDEWALK INSTALLATION; ZONING: A1; TOTAL ACREAGE: 19.50+/-; LOCATED ON THE NORTH SIDE OF SR 1724 (SWEETIE ROAD), EAST SIDE OF SR 1714 (RIVER ROAD). (FAYETTEVILLE MIA)

The developer is requesting a waiver from the City of Fayetteville's *Municipal Influence Area* (MIA) development standard that requires construction of a sidewalk along SR 1714 (River Road); the subject property is located within the City's MIA. According to City policy, the developer is not required to construct a sidewalk along SR 1724 (Sweetie Road) since this road is an unpaved but public, State-maintained road.

This request was presented to the Fayetteville City Council on March 23, 2009 and the Council voted to recommend denial of the request and that the sidewalk be constructed along SR 1714 (River Road) for that portion of the development that abuts SR 1714 (River Road).

The Planning and Inspections Staff recommends the Planning Board follow the Fayetteville City Council's recommendation of denial for the waiver request, based on the following:

- a. Because there are no unusual conditions present that are directly related to the property and no evidence has been submitted indicating that the nature of the adjoining area would prevent strict compliance with the provisions of the ordinances and therefore, there is not a special and unnecessary hardship if the developer is required to construct the sidewalk;
- b. The purposes of the County's Subdivision and Zoning Ordinances will not be served to an equal or greater degree in that the Board of County Commissioners has by interlocal agreement and by ordinance, established that developments in this area will comply with the development standards of the City of Fayetteville and the Fayetteville City Council is recommending that sidewalk be constructed; and
- c. The property owner would be afforded a special privilege denied to others since the Fayetteville City Council has consistently required sidewalks for developments within their corporate boundaries and is expected to do the same within their MIA.

Acting-Chair Epler reminded the Board that in accordance with the Interlocal Agreement that was adopted with the City of Fayetteville and the newly adopted 2030 Growth Vision Plan we have already agreed to uphold the City's development standards on this case or any other case in their MIA. Those standards will require the construction of sidewalks for this development. We do not have the luxury on this Board to offer them the concession of paying in lieu of installing those sidewalks. That is just the way the Interlocal Agreement is written. Acting-Chair Epler just wanted the Board to make note of that as this case is considered. Acting-Chair Epler would also like, during discussion, to discuss delegating to the Planning Director or his designee the authority to act on waiver requests in other municipalities MIA's consistent and in compliance with the recommendation of the applicable governing board.

**Mr. Turner made a motion, seconded by Mr. Hostetter to follow the Fayetteville City Council's recommendation for denial of the waiver request. Unanimous approval**

## XI. DISCUSSION

Acting-Chair Epler restated that cases like Case 08-177 is not really in our jurisdiction to rule on.

Mrs. Piland agreed with Acting-Chair Epler and stated that she had asked Mr. Lloyd why this was on the agenda.

Ms. Hall stated that Hope Mills was a little different, because they have planning and not zoning and wondered if that would make a difference with the motion.

Mr. Barrett stated that it would not make a difference.

Mrs. Piland asked if once the Director made a decision, what the appeal process would be. Mr. Barrett stated that the Director would be acting on behalf of the Planning Board, if an applicant disagreed with the decision it would then go to court.

Ms. Hall stated that she still was not clear on why a case would not go to the Planning Board.

Mr. Barrett went on to explain why it wouldn't go to the Planning Board. Mr. Barrett went on to say that his understanding was where the Board of Commissioner's of the County have granted a Municipal Influence Area to a town, what is being said is that as a County and as a Planning Board, then will apply a Town Board's development standards. As a matter of philosophy appropriate to not put the Planning Board in a position where they could disregard the recommendation of the governing board of the town. Since that is a mechanical procedure, the Planning Director can take action on the waiver request based on the governing board's decision.

Ms. Hall said she understood, but was still concerned that a case could fall through the cracks like with the earlier case where the Town Board and developer agreement to an alternative for streets were not referenced in the case information. Legally he wouldn't be held to the agreement made since the Planning Board makes a decision based on what is in the case information. The developer made an agreement with the Town Board and we were able to incorporate that into the motion that was passed here tonight.

Acting-Chair Epler stated that it would be Mr. Lloyd's or his designee's responsibility to contact each one of the municipalities when someone applies for one of these waivers and ask what their recommendation is and make sure that recommendation is followed.

Mr. Barrett stated that the resolution states that the Board of Commissioners' comments and views was a decision that would be implemented by staff. There is a distinction between the authority principle and the delegation principle and carrying out the delegation. The delegation here is to the staff to act only consistently with the governing board's recommendation. If there is a concern about something slipping through the cracks, maybe the corrective action to be taken could be to report back to the Board.

Mr. Lloyd stated that apparently there was a mistake that was made. The way it should work and the way it has worked all this time is that the condition sheet should reflect the change and it didn't. But this motion has nothing to do with that, there was a mistake made on the staff's part. Basically the motion being made is when the Board makes a recommendation it will be carried out.

Mr. Barrett stated that there is a lot of work that goes into preparing a waiver request to come to the Planning Board, just to vote the way the governing board wants it done anyway. So this motion will cut down on resources that are being used and should not be used. To address the concern that Ms. Hall raised about something falling through the cracks, Mr. Barrett suggested that staff report back to the appropriate authority on maybe a quarterly basis.

**Mrs. Piland made a motion, seconded by Mr. Pearce to delegate to the Planning Director or his designee the authority to act on waiver requests in MIA's for other municipalities consistent with and in compliance with the recommendation of the applicable governing board. Unanimous Approval**

## XII. FOR YOUR INFORMATION

## DIRECTOR'S UPDATE

Mr. Lloyd advised the Board that the 2030 Growth Vision Plan which includes the Land Use Policy Plan was approved by the Board of Commissioners at the April 20, 2009 meeting.

Acting-Chair Epler stated that the Commissioner's praised the Planning Board and staff for the work that they do. They have a lot of confidence in our ability to do the job that they ask us to do. They understand and appreciate that we don't make a dime doing this job, and we are truly public servants.

## XIII. ADJOURNMENT

There being no further business, the meeting adjourned at 8:10 p.m.