

Walter Clark,
Chair
Cumberland County

Patricia Hall,
Vice-Chair
Town of Hope Mills

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Charles C. Morris,
Town of Linden



Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Vikki Andrews,
Diane Wheatley,
Carl Manning,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon & Godwin

Planning & Inspections Department

MINUTES

October 1, 2013

Members Present

Mr. Patricia Hall, Vice-Chair
Mr. Donovan McLaurin
Dr. Vikki Andrews
Mr. Carl Manning
Mr. Harvey Cain, Jr.
Mr. Charles Morris

Members Absent

Mr. Walter Clark
Mr. Benny Pearce
Mrs. Diane Wheatley

Others Present

Mr. Thomas Lloyd
Ms. Patricia Speicher
Ms. Donna McFayden
Mrs. Laverne Howard
Mr. Rick Moorefield
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF / ADJUSTMENTS TO AGENDA.

Mr. Morris made a motion, seconded by Mr. Manning to approve the agenda as submitted. Unanimous approval.

III. PUBLIC HEARING DEFERRAL /WITHDRAWAL

There were none.

IV. ABSTENTIONS BY BOARD MEMBERS

There were none.

V. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd stated that counsel for each side would be given five minutes to speak and other people signed up to speak would have ten minutes for each side, and there would be three minutes for rebuttals for each side.

VI. APPROVAL OF THE MINUTES OF SEPTEMBER 17, 2013

Mr. Manning made a motion to accept the minutes as submitted, seconded by Mr. McLaurin. Unanimous approval.

VII. PUBLIC HEARING CONTESTED ITEMS

CONDITIONAL ZONING DISTRICT

P13-45. REZONING OF 978.40+/- ACRES FROM A1 AGRICULTURAL TO A1/CZ AGRICULTURAL/CONDITIONAL ZONING DISTRICT FOR AN OUTDOOR FIRING RANGE AND AGRICULTURAL USES OR TO A MORE RESTRICTIVE ZONING DISTRICT, LOCATED AT 2850 TIGERSWAN DRIVE, SUBMITTED BY D. STEWART PRECYTHE ON BEHALF OF PRECYTHE PROPERTIES, LLC. (OWNER) AND STEVEN M. SWIERKOWSKI ON BEHALF OF TIGERSWAN, INC.

Vice-Chair Hall opened the public hearing.

Mr. Lloyd stated that the Planning & Inspections Staff recommends approval of the requested rezoning to A1Agricultural/CZ Conditional Zoning district for an outdoor firing range and agricultural uses based on the following:

1. The request for A1 Agricultural and the use as an outdoor firing range coupled with the continued farming of the subject property is consistent with the 2030 Growth Vision Plan and Growth Strategy Map, which designates the area where the subject property is located as "rural" with a stated policy of "*Premature conversion of rural areas to urban level development and the resulting loss of valuable farmland and open space is to be discouraged*" - also an often stated desire of property owners in the rural areas of the County- the outdoor firing range will aid in ensuring this goal is accomplished. Note: Bona fide farms are not subject to zoning provisions; however, *agricultural* use is listed only because it is the predominate use of the subject property.
2. The request is also consistent with the mandated location criteria for "agricultural" as listed in the Land Use Policies Plan of the 2030 Growth Vision Plan, which requires the subject property to be located outside the Sewer Service Area and be an existing farm or agricultural operation;
3. The specific requested use of an outdoor firing range, evidenced by the application, site plan and supplemental documents, along with the attached Ordinance Related Conditions is reasonable as all of the provisions listed in the text amendment approved by the County Commissioners on June 17, 2013, including all other zoning ordinance standards, for outdoor firing ranges is met or exceeded;
4. If developed according to the recommended plan, the use will not materially endanger the public health or safety if located according to the plan submitted and recommended as it is designed and constructed to be consistent with the safety guidelines of the US Department of Energy's *Range Design Criteria* as documented by a licensed professional engineer and included with the application;
5. The range complex will not materially endanger the public health, safety or welfare if operated and located according to the plan submitted, subject to the ordinance related conditions, and is in harmony with the area in which it is to be located.

There are no other zoning districts suitable related to this request. The property owner and applicant have verbally agreed to the Ordinance Related Conditions.

Mr. Lloyd reminded the Board that they have always gone along with what the particular municipalities have wanted in various cases, and have always upheld the wishes of the Town. The ordinance amendment went to the Board of Commissioners' and they said what conditions they wanted met and the areas they wanted this use located in light of that, the Board should respect the wished of the County.

Charles Meeker spoke on behalf of TigerSwan Inc., 150 Fayetteville St., Raleigh, NC. Mr. Meeker stated that the application presented by TigerSwan complies in all respects with the text amendment passed by the County Commissioners' last June. This site is 978 acres, almost five times the size the amendment requires. The location is very remote and away from everything. It is the perfect location for this kind of use in the County. Noise is not a problem, shooting is inside the fifteen foot berms and when you are up to a mile away the noise is not a problem. There have been no noise violations against TigerSwan. Helicopters are not permitted by this conditional use zoning, they are not out there now nor are there any plans to have them out there in the future. The rumors about helicopters are not true. Firing ranges are needed by law enforcement, military and recreational shooters as a place to fire their guns. It's a place where you can improve your skill. This kind of use is a legitimate use in Cumberland County.

Gordon Rose of 7933 McArthur Ct., Linden NC, spoke in favor. Mr. Rose stated that he was responsible in assisting TigerSwan with the layout of the firing ranges that are depicted on the plan. Mr. Rose stated that the plan meets the criteria in the County's ordinance, specifically; Section 907.1 Firing Ranges Outdoor Part A, it does comply with the range design criteria from the US Department of Energy, and they comply with all of the requirements of the EPA manual.

Mr. McLaurin asked Mr. Rose about the drop zone that was depicted on the site plan.

Mr. Rose said that was in the initial site plan that was done some time ago, where someone could parachute into there.

Mr. McLaurin said so they wouldn't be rappelling in from a helicopter? But there might be people parachuting in from airplanes?

Mr. Rose said that was his understanding.

Steven Swierkowski of 6812 Munsford Dr. Fayetteville, NC, spoke in favor. Mr. Swierkowski answered Mr. McLaurin's questions about the drop zone, he said that the drop zones are there in the event there is a jump which would not involve a helicopter landing or a plane landing on the range. We know that we would have to come back before the board if we wanted to do that. Mr. Swierkowski went on to give some background information on himself, and stated that he had a large role in the design and building of ranges at Egland Air Force Base, he also oversaw firing ranges on eleven different army installations before his retirement from the military. Mr. Swierkowski went on to say that TigerSwan complies with all of the safety standards that were used in the military which are more stringent than the Department of Energy.

Scott Manning of 6313 Faircloth Bridge Rd., Stedman, NC, spoke in favor. Mr. Manning stated that he was the president of Stedman Gun Club. Mr. Manning asked the board to approve the request for rezoning. Mr. Manning's club uses the ranges at TigerSwan for recreational shooting. TigerSwan offered their facility to the Stedman Gun Club which gave them a solution to what was denied them when they applied for rezoning to set up a range of one hundred and thirty acres. Mr. Manning stated that the TigerSwan facilities exceed the ordinance requirements in safety and reduced noise complaints because they are located two miles off the road, encompassing almost one thousand acres. It is not in someone's back yard or in a residential community. TigerSwan is a facility that trains our military and law enforcement officers who have pledged to protect and serve this County, State, and Nation.

Bishop Patricia Simmons of 705 Doe Hill Rd., Fayetteville, NC, spoke in favor. Bishop Simmons stated that her church is a neighbor to the TigerSwan facility and has not had a problem with noise. Her church holds several services during the week and the noise is not a problem. TigerSwan is very supportive of the church, they help to feed two hundred and fifty families a month, they support the community center and thanks to TigerSwan they now have a children's playground. Bishop Simmons stated that the church is right next to the TigerSwan facility, closer than any family in the community, and they can barely hear the shooting. The church is thankful to TigerSwan for their support.

Mr. James Reese, 2847 Tiger Swan Rd., Autryville, NC, spoke in favor. Mr. Reese is the CEO and owner of TigerSwan. Mr. Reese gave a little background on how TigerSwan came to be and how they wanted to give back to the community with what they learned during their time in the military. They wanted to provide the County with a premier firing range on the east coast and the County asked them to stay in the County and they have followed every requirement that was put before them and did everything that was asked of them. Mr. Reese stated that this range is for the County, they allow law enforcement to come out and shoot for free, to be good stewards and neighbors. Mr. Reese stated that they are not a school, they are a firing range and they are proud of that. They have invested two million dollars so far, and have another twelve million to invest, thirty more jobs, but won't do it because they don't want to sit in court while trying to do this.

Mr. McLaurin asked Mr. Reese if they have more money to spend if the activity would increase.

Mr. Reese said not necessarily right now, because we are at a loss right now.

Ms. Robin Currin spoke in opposition. Ms. Currin said she represents a group of neighbors who have opposed this facility for three years. Ms. Currin stated that they have been to court twice, the County decision was this was a permitted use, TigerSwan said this was a permitted use and it went to the Supreme Court and the decision was reversed. Then the ordinance was changed and they were given a permit to operate and they went to court again and won. They have been an illegal use. The court has

said they are a vocational school, not a firing range. Ms. Currin asked why they don't wait until there is a final decision from the court. It is the opposition's belief that they are operating illegally. Ms. Currin provided the Board with a packet of statements and affidavits about the noise and dangers from people who live in the area.

Mr. Lloyd said that the court case is based on a Board of Adjustment case that did not consider the definition of firing range so the issue in the court case wasn't whether this was a firing range or not, but it was a challenge to the Board of Adjustment case, they didn't consider this ordinance amendment. This amendment was adopted after the Board of Adjustment meeting, seeing we needed to define firing range, and TigerSwan falls within the definition that was adopted by the Commissioners'.

Ms. Currin stated that they disagree that TigerSwan falls under that definition.

Mr. Moorefield stated for clarification that the ordinance amendment just went into effect in June of this year. The case Ms. Currin was referring to was based on an interpretation of the ordinance as it existed in 2011. The way the ordinance now reads is that if firing range is in the use that would be the principal use.

Mr. Franz Lohr of 5005 White Pond Dr., Stedman, NC, spoke in opposition. Mr. Lohr stated that he has lived in the County for fifty-one years, and was present to support his friends and neighbors. Mr. Lohr said that the noise from TigerSwan is unbelievable and should be an indoor facility.

Mr. Walter Morman Jr. of 4902 Cedar Creek Rd., spoke in opposition. Mr. Morman stated that he supported the idea of the county providing for outdoor recreation, specifically for range facilities. The use of the facility is what's in question, there's no doubt that there is a firing range, but what else is there is what we have a question about. They are conducting military training, what they have done was move Ft. Bragg from west Cumberland County to east Cumberland County. Mr. Morman stated that he felt that this was the wrong activity for those who live in the area. Mr. Morman said that the hours of operation, level of intensity, and air traffic are not addressed in the application, and Mr. Morman stated that he's got C130's flying over his house. Mr. Morman asked the board to seriously consider some of the conditions.

Mr. Walter Morman of 209 Ellington St., Fayetteville, NC, but owns property on Cedar Creek and stays out there frequently, spoke in opposition. Mr. Morman stated that he can hear the activity at TigerSwan, his property is about four to five miles away. Mr. Morman asked the board to make this as restrictive as possible.

Mr. Kevin West of 4656 Cedar Creek Rd., spoke in opposition. Mr. West stated that he owned a large parcel of land next to TigerSwan, he asked all of the people in the audience that he was there representing to stand. Mr. West stated that their concerns were safety, surface danger zone, noise concerns, regulatory enforcement, and the effects of this on their ever day lives and quality of life. Mr. West feels that the elected officials should look out for the residents of the county.

Mr. Charles Meeker spoke in rebuttal. Mr. Meeker stated that permits were issued to TigerSwan under the ordinances prior to the June text amendment. The court cases do not deal with the most recent amendment. In terms of the noise, you can barely hear any sounds from the street; the C-130's in the area have nothing to do with TigerSwan. A small piece of the property is actually being used for shooting. Mr. Meeker said that this conditional zoning request meets the requirements of the text amendment approved in June 2013.

Ms. Currin spoke in rebuttal. Ms. Currin stated that this case falls under the interpretation that was before the court whether this falls under the definition of a vocational school that has not changed. With respect to noise the people present hear the noise every single day. This is one range that is operating right now and they want to increase it to seven, there's no telling what the noise will be like then. The use is not in harmony with the current zoning, agricultural district is intended for agricultural uses.

Public hearing closed.

Mr. McLaurin asked Mr. Meeker about an article in the Fayetteville Observer where Mr. Reese was quoted as saying he would increase spending at TigerSwan and increase volume and also said that there was going to be a mock village. What is the mock village for?

Mr. Meeker said that would be something Mr. Reese would need to address.

Mr. Reese stated that the mock village is already there and has been for three years. It's a range that law enforcement uses to train for situations with active shooters.

Mr. Morris asked Mr. Rose if fifty caliber projectiles were being expended.

Mr. Rose stated that his understanding is no, the largest bullet that they have used on the range is the 556 M190, that is what the surface danger zones are based on.

Mr. McLaurin asked Mr. Rose if he did the work on the Hope Mills Dam.

Mr. Rose stated that he was a part of the firm that worked on the dam.

Mr. Morris asked Mr. Lloyd if there was any reason why the hours of operation had not been addressed on the application.

Mr. Lloyd stated that they didn't have to be addressed.

Mr. Morris asked Mr. Meeker if he could address the hours of operation.

Mr. Meeker stated that they operated during daylight hours, occasionally there is night shooting but it stops by 10 pm., and the night shooting is only a few times a month.

Mr. Swierkowski stated that the hours of operation are from 8 am to 10 pm. Monday through Thursday, and the community is notified when we will be doing night shooting.

Mr. McLaurin stated that A1 is for agricultural uses and this seems to be more than a shooting range. Mr. McLaurin made a motion to deny the request. The motion failed due to the lack of a second.

Mr. Morris asked if the applicants would consider reasonable hours of operation.

Mr. Meeker said that the current hours they request, the night shooting can be after dark up to 10 pm. Mr. Meeker said they could agree to hours from 8 am to 10 pm with no more than five shoots after dark per month.

Mr. Morris made a motion to adopt and approve the reasonableness statement, finds the request consistent with LUP and approves A1/CZ for outdoor firing range and agricultural uses with conditions and to approve with the condition of Normal (daylight) range operations shall only be conducted between the hours of 8:00 am to 5:00 pm. In addition, on no more than five days each calendar month, the hours will extend to 10:00 pm for conducting night fire operations, provided that public notice is given of the extended hours at least 12 hours in advance. The form by which public notice is provided shall be approved by the Planning Director. Under no circumstances, shall range operations be conducted after 10:00 pm., the motion was seconded by Mr. Manning. The motion passed with Mr. McLaurin voting in opposition.

VIII. DISCUSSION

DIRECTOR'S UPDATE

There was none.

IX. ADJOURMENT

There being no further business, the meeting adjourned at 8:25 p.m.