



John M. Gillis, Jr., Chair
Cumberland County

Clifton McNeill, Jr., Vice-Chair
Cumberland County
David Averette,
Cumberland County
Dallas Byrd, Town of Stedman
Charles C. Morris,
Town of Linden

Nancy Roy, AICP
Planning & Inspection
Director

Joe W. Mullinax,
Town of Spring Lake
Jerry Olsen,
Wade, Falcon
& Godwin
Dr. Marion Gillis-Olson,
Cumberland County

COUNTY of CUMBERLAND

Planning and Inspection Department

MINUTES
June 3, 2003
7:00 p.m.

Members Present

John M. Gillis, Chair
Director
Clifton McNeill, Vice-Chair
David Averette
McFayden
Dallas Byrd
Charles Morris
Marion Gillis-Olson
Joe W. Mullinax

Members Absent

Jerry Olsen

Others Present

Nancy Roy,

Thomas J. Lloyd
Donna

Matthew Rooney
Barbara Swilley
Grainger, Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Mullinax delivered the invocation, and Chair Gillis led those present in the Pledge of Allegiance.

II. APPROVAL OF AGENDA/ADDITIONAL ITEMS

Plats were moved to be heard before the Land Use Study. A motion was made and seconded to approve the Agenda with the above change. The motion passed unanimously.

III. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

IV. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

V. CONSENT ITEMS

A. APPROVAL OF THE MINUTES OF MAY 20, 2003

Mr. Barrett said that the date needed to be changed on when Hickory will host the NCAPA Convention. A motion was made by Mr. Mullinax and seconded by Vice-Chair McNeill to approve the Minutes of May 20, 2003 with the above change. The motion passed unanimously.

VI. PLATS AND PLANS

A. 02-149: SAND HILL FARMS ZERO LOT LINE SUBDIVISION REVIEW ON THE SOUTH SIDE OF SAND HILL ROAD, WEST OF SOUTH FORTY DRIVE FOR A VARIANCE FROM SECTION 3.5, "ACCESS TO UNSUBDIVIDED PROPERTY," CUMBERLAND COUNTY SUBDIVISION ORDINANCE

Mr. Lloyd explained the reason for the variance. Maps of the site were included in the packets. Mr. Barrett asked that the condition be worded more precisely.

Mr. Ken Bledsoe appeared before the Board and said that his research shows that access to the highway has been through the lots owned by family members. He said that the other access isn't legal, but has been used for 50 years. Mr. Bledsoe said that he does not want access through the single-family neighborhood to an area in the rear where he believes drugs are used. He said that there are about 50 or 60 existing homes in the area.

Vice-Chair McNeill asked if people were driving through Mr. Bledsoe's property prior to the road being in place. Mr. Bledsoe said that they were.

Mr. George Jeffries appeared before the Board and said that he and his son live on the cul-de-sac. He said that the road was never used because a sprinkler system was in place with a proposed garden in the rear. He said in the summer, boom boxes and profanity can be heard all night long. He said Ms. Creek's property will become nonconforming if the road is opened, and they will all be bothered with traffic and noise. He said when the Commissioners approved the plans, the road was not included, and if it is added, the case should go back before the Commissioners.

Vice-Chair McNeill said that he didn't understand why the Board was considering the request. Mr. Barrett said as one tract develops, there should be a means of orderly access to landlocked parcels. He said that subdivision owners who want to stub out were present, but many of those affected were not present because they weren't notified. He suggested that a letter be sent to all affected.

Mr. Barrett further suggested that the condition be changed to read: "Proof be provided to the Planning staff that both parcels have legal access prior to final plat approval of the last section of Sand Hill Farm Subdivision." He added that the reason for approving the variance also needed to be very clear.

Vice-Chair McNeill asked Mr. Lloyd if access is currently gained through the subdivision. Mr. Lloyd said that there is another way in, but it is not an approved road. Vice-Chair McNeill said that it seemed like the Board would be penalizing the developer if they required that he provide public right-of-way to parcels not accessed in this way. Mr. Lloyd said that the staff would look into it. Vice-Chair McNeill said that an access requirement should be based on the historic use. Mr. Barrett said that the Ordinance has an objective to provide road or access ways. He said that this is a whole sub region with a network of roads. He said that there are policy problems and land use problems.

Vice-Chair McNeill asked the petitioner if he had read the staff recommendations. He said that he had, and it would be a shame to allow people to go back into the area where drugs are being used. Vice-Chair McNeill asked if he would feel the same way if it wasn't a nuisance situation. He added that he wasn't convinced that

this had to be acted upon by this particular development. Mr. Lloyd said that staff would work with Mr. Bledsoe to make sure that this matter is correctly resolved.

Mr. Barrett said that if it is demonstrated to staff that there is alternative legal access, then the developer doesn't have to provide a stub out.

Chair Gillis said that the dilemma is an issue of land use, and that's all that is within the Board's authority. He asked if the same person owns all Lots 1 and 2 and the large tract that touches Cypress Lakes Road. Mr. Lloyd said that he would find out. Mr. Lloyd said if the alternative access is proved, then the case won't have to go back before the Board.

Vice-Chair McNeill asked Mr. Barrett if he had made a determination on the neighborhood road matter that the Land Use Codes Committee had given to him. Mr. Barrett said that he had, and the courts have put a gloss in the Statutes where a road used as a public means of access between 1921 and 1941 and continues to be used today is a legal road. Mr. Lloyd said that the matter would soon go back to the Land Use Codes Committee. Mr. Barrett added that a prescriptive easement may work in this case.

Mr. Averette asked if the trail between Tract 1 and the subdivision was on the petitioner's property. Mr. Bledsoe said that it runs down the middle.

Mr. Averette said if the Board could find reasons to approve, the condition may keep what the owner was requesting from happening. Mr. Bledsoe said that the owner of Tract 1 owns the land all the way to the highway. He said if the Board approves the variance, his road could be used, and the owner of Tract 1 would have to put a road in.

Mr. Barrett said if Tract 1 has an easement, and it can be demonstrated, then the stub out would not be required.

After finding that the criteria for granting a variance were met, a motion was made by Mr. Averette and seconded by Vice-Chair McNeill to grant the variance with the condition that proof be provided to both lots of legal access. The motion passed unanimously.

B. CASE 03-92: JAMES HEMINGWAY SUBDIVISION REVIEW ON THE WEST SIDE OF ELLIS JACKSON ROAD, NORTH OF CAMDEN ROAD, FOR A VARIANCE FROM SECTION 3.20d, "LOT STANDARDS," CUMBERLAND COUNTY SUBDIVISION ORDINANCE

Mr. Lloyd explained that the group development occurred in 1997 and qualifies for the variance, but needs Planning Board approval. Maps of the area were included in the packets.

After finding that the criteria for granting a variance were met, a motion was made by Mr. Averette and seconded by Vice-Chair McNeill to follow the staff recommendations and approve the revision. The motion passed unanimously.

VII. PUBLIC HEARING ITEMS

A. JOINT LAND USE STUDY

Ms. Roy said that the Commissioners viewed the Joint Land Use Study on May 5 and deferred action on the resolution because of concern over the recommendations regarding the proposed legislation that would take land use out of local control. They also indicated the need for public notice and involvement. She said that the hearing was to invite input and expand knowledge of the issues facing property owners in the area. She introduced Mr. Jim Dougherty to explain the proposal.

Mr. Dougherty said that he had given the first presentation to the Board on March 4, and the Board offered many suggestions that were incorporated into the Study. He said that the Fort Bragg Regional Land Use Commission has now adopted the Study. Mr. Dougherty introduced several individuals in the audience from Fort Bragg and Pope Air Force Base.

Mr. Dougherty gave the history of the Commission and efforts. He said that the recommendations made by the original Commission in 1991 were dated and ineffective. He said that urban development has continued to encroach around Fort Bragg. He showed slides indicating the growth from 1983 until the present. He said that Fort Bragg is now nearly entirely surrounded by development, and the encroachment is a real problem in a few areas.

Mr. Dougherty explained that the Commission was reactivated to form the Study and recommendations. He said that data was assembled and analyzed, meetings were held in each County involved, and a Plan was drafted, finalized and adopted.

Mr. Kurt Rutkofske explained the methodology established to define the rural areas and the one-mile buffer around Fort Bragg. He said that 25 percent of the land in the entire study area needs a high level of protection, 5 percent moderate, 36 percent low, and 34 percent need no protection. He said that the areas considered "critical" contain about 19,000 acres, and about 27,500 acres are within the area considered "important" for protection. Maps were displayed indicating the areas.

Mr. Dougherty reviewed the recommendations in the Study with many requiring bills from the North Carolina General Assembly to implement.

Vice-Chair McNeill asked if Fort Bragg was also working on a buffer of a mile, and in areas where Fort Bragg has the buffer, why the buffer on the outside was lessened. Vice-Chair McNeill asked if disclosure statements aren't already required. Mr. Dougherty said that they are not. Vice-Chair McNeill asked if any of the other bases throughout the nation have been successful in implementing their recommendations. Mr. Dougherty said that Fort Bragg is the leader, and that there is already an impressive track record with endorsements from eight towns, two counties and the military already received.

Dr. Olion asked if the buffer allows for growth. Mr. Dougherty said that it does because most of the land in Cumberland County is already developed or suitable for development. He said that 31 percent (5,300 acres) in Cumberland County are critical or important for protection. Dr. Olion asked if the recommendations allow for growth for Fort Bragg. Mr. Prilliman said that Fort Bragg is currently experiencing growth in the Special Operations area. He cited many new protects and said that they are able to accommodate them, and he was optimistic that Fort Bragg could handle future growth.

Chair Gillis asked about the definition of "low-density development" and the maximum density allowed in the critical and important areas. Mr. Dougherty said

that there doesn't need to be development in the critical and important areas. He said that there should be open space with nothing smaller than 10-acre tracts with one dwelling unit per tract.

Chair Gillis opened the public hearing.

Ms. Roy asked that two pieces of correspondence be entered into the record. Letters from Tom Brooks (representing the McCormick family) and James S. Rockefeller, who own large pieces of property in the "critical," area were cited.

Mr. Ralph Huff, president of the Homebuilders' Association of Fayetteville, appeared before the Board and said that he was speaking on behalf of the 400 member firms. He applauded the efforts of the Commission and said that the Study addresses a number of concerns. He said that the tools available should be adequate to address the problems without going to the General Assembly. He said that restitution is required, but what if the property owner doesn't want to sell? He asked what governmental body would determine a fair price. He asked where money would come from to provide trust funds when the State is already in financial trouble. He said that there must be concern for the property owners as well as the military. He added that the Homebuilders were not contacted for input in the Study.

Mr. Burgess Marshbanks, resident of Harnett County, appeared before the Board and said that he just found out that his property is in the critical area. He said that he served on a Planning Board in the past and appreciated their tough decisions. Mr. Marshbanks said that most of his questions had been expressed by Mr. Huff.

Mr. Jose Cardona appeared before the Board and said that he has lived in Fayetteville for over 30 years and is retired military. He said that Camp MacKall and Pope Air Force Base offer enough land to take care of all needed training. He said that the noise created by Fort Bragg has hurt homes in the County with no real solutions. He said that the Board could give Fort Bragg the power to keep anyone from building around the base. He said that Fort Bragg has more than enough training grounds without keeping the buffer area from being developed. He said that the problem is that the County partners with Fort Bragg, but with all the money that Fort Bragg receives, they haven't used their money to better the community. He said that decisions made by the Board could hurt the residents in the future.

Mr. Tom Brooks appeared before the Board and said that he represented the McCormick family. He said that the farm is in the critical area because of an agreement with the Fish and Wildlife Commission. He said that the family is concerned about the restrictions placed on the property and reduced land values.

Vice-Chair McNeill asked Mr. Brooks to be more specific about the recommendations that he considered to be detrimental. Mr. Brooks said that one would be allowing only one home per 10 acres. He asked if industrial or commercial uses would be allowed where only one home per 10 acre is allowed.

Mr. Jimmy Townsend appeared before the Board representing the Fayetteville Association of Realtors. He said that he had limited knowledge about the Study. He said that he didn't want to say anything negative about the military because they have done so much for the community. He said that his main concern was if the Study was adopted, that the vague references about a trust fund didn't guaranty that money would be available. He said from private property rights standpoint, the money must be in place.

Vice-Chair McNeill asked Mr. Townsend if he knew of any disclosure statements in place. Mr. Barrett said that there are disclosure statements, but a realtor can simply state that he's not making a disclosure. Mr. Townsend said that there are no disclosure statements regarding the distance from Fort Bragg. Vice-Chair McNeill asked if he knew anyone who bought a house within a mile of Fort Bragg that didn't know it was there. Mr. Townsend concluded by saying that the property could be purchased, but the property owners should be fairly compensated.

The public hearing was closed.

Dr. Olion said in the previous presentation federal funds were mentioned. She asked if this had been explored. Mr. Dougherty said that it had not.

Mr. Morris said that the term "encroachment" is deceiving. He said that it refers to adjacent properties, and they aren't actually encroaching into Fort Bragg—they are only adjacent to it. He commented about the recommendations concerning legislative approach and said that he would rather the Study recommend County, State, City and Federal funding to create tax incentives and purchases on a voluntary basis. He said that it is very important to support Fort Bragg, and there is a means in place to keep density down on a voluntary basis. He said not allowing sewer in the area will restrict growth. He said he'd rather see existing means used rather than creating trust funds and asking the Legislature to impose laws.

Mr. Morris asked the status of the blank bill that was proposed to be introduced. Mr. Dougherty said that he didn't know. He said that Senator Rand said recently that he anticipated creation of a study committee. He said that the NC Commission on Military Affairs approved the resolution asking that the Legislature approve six recommendations similar to those contained in the Study.

Mr. Barrett said that the crossover deadline has passed, and he didn't think that anything regarding the Study went through to the other house. He said that they can only create a study committee or attach it to a budget bill.

Mr. Morris said that they all realize the need to support Fort Bragg, and the Study is very good, but needs fine-tuning for balance for the property owners, Fort Bragg, Pope Air Force Base and Camp MacKall.

Colonel Bean addressed Mr. Morris' concern about the term "encroachment." He said that the activities in the outer areas of Fort Bragg do, in fact, keep Fort Bragg from effectively doing their job. Mr. Barrett said that possibly "constraints" would be a better word to use because the uses around Fort Bragg constrain activities within the Base.

Vice-Chair McNeill said that he fully agreed with Mr. Morris. He said that Fort Bragg is important, and the County is proud to be associated with them. He said that they're too important and too good at what they do to worry about closure. He said that he has concerns about a couple of areas, and the State shouldn't be responsible for trust funds. He said matters concerning a military operation should involve federal money—not state. He said that property owners' rights must be paramount. Vice-Chair McNeill said that disclosure is probably a good idea.

Vice-Chair McNeill said that our being first to suggest legislation in this area wasn't necessarily a good thing. He said that the Study needs fine-tuning. He said that he had concerns about a blank bill and cautioned that if something is worth doing, it's worth taking the time to do it right. Mr. Dougherty said that this Study is actually

way behind regarding legislative protection of military operations. He said that several states have legislation already in place.

Mr. Dougherty cautioned that BRAC (Base Realignment and Closure) is a serious issue even at Fort Bragg. He said that if civilian complaints multiply, the encroachment issue could become a reason for closure. He said that closure may not be likely, but a reduction in size is a real possibility.

Chair Gillis asked if Mr. Dougherty had copies of legislation from the other states. He said that the goals in the Study are good, but the implementation needs to be fine-tuned. He said that the trust funds, one house per 10 acres and industrial or commercial development being allowed are issues that need to be resolved. He said as a member of the Planning board, issues relating to land use and property rights are their concern. He said that the data from the other states would be helpful, especially information on trust funds and legislative initiatives. He said because this will benefit the Federal government, they should be the source for the funds. He said that the Board's dilemma doesn't relate to goals. He said that this is a strategic plan, and there is a difference between a strategic plan and an operational plan. He said that he'd like to bless the operational plan, and he didn't feel that all the data was in the current plan.

Mr. Morris said that the Commissioners tabled the matter and sent it to the Planning Board. He asked what the Board's responsibility was. He said that the Board had not formally been asked for a recommendation. He said that the Commissioners had questions and were reluctant to endorse the Study without more information. He said that they would take this hearing into account and the additional information received. He said that he didn't feel compelled to vote on the matter and would rather consider it as part of information gathering from the public at large. He said that the Study has some good points as a strategic plan. He said that this is a tough issue for the Commissioners, and they'll need to make their own decision. He said that providing information from other states would help. He said in land use planning, transfer of development rights is a good tool that is fair to all parties involved.

Mr. Dougherty said that he has copies of legislation already in place in other states; however, there are no compensation packages even proposed in other states.

Colonel Bean said that he is a planner and looks to the future of Fort Bragg and Pope Air Force Base continually. He said that he didn't envy the Board's position. He said that the Board must look at the greater good for the Cumberland County region.

Vice-Chair McNeill asked if anything had changed since the March presentation. Mr. Dougherty said that it had as they took the Board's comments seriously and modified the recommendations to reflect their suggestions. He said that the recommendations are balanced and if taken in their entirety all goals can be accomplished.

Mr. Barrett said that the tax incentives and purchase of development rights were added into the current Study. Mr. Dougherty agreed and said that it is all intended for willing sellers. Vice-Chair McNeill said that he didn't see anything about the buffer area being within the boundaries of Fort Bragg as well. Mr. Dougherty said that there was a slide indicating that Fort Bragg will continue to protect their area within the boundary. Vice-Chair McNeill said that he didn't see any of the area in

the County diminished where the buffering was within Fort Bragg. He said in many parts, there will be more than one mile.

A motion was made by Mr. Morris and seconded by Dr. Olion to forward the Minutes of the meeting and comments to the County Commissioners for their public hearing. The motion passed unanimously.

VIII. DISCUSSION

A. RECOMMENDATIONS FROM NOMINATIONS COMMITTEE—DALLAS BYRD

Moderator Byrd said that the Committee nominated Clifton McNeill to serve as Chair for the upcoming year and Charles Morris to serve as Vice-Chair. He asked for additional nominations. None were offered. The nominations were closed. Moderator Byrd said that the Board would vote on the nominations at the next meeting.

IX. FOR YOUR INFORMATION

A. DIRECTOR'S UPDATE

Ms. Roy said that she received a letter from the City of Fayetteville regarding the subcommittee that the Boards agreed to form in order to discuss the Municipal Influence Area (MIA) in the Northern Fayetteville area.

There was a lengthy discussion about whether the subcommittee was necessary because the County has no jurisdiction over the City's Ordinance and vice-versa. In addition, concern was expressed that it was the City's job to go to the Commissioners with their proposal, and the Planning Board really shouldn't have a role.

Ms. Roy suggested that the information contained in the recent report on MIAs that was compiled by the Comprehensive Planning Section might clarify whether an MIA is possible. The members agreed.

Chair Gillis said because of the unique situation created by the North Fayetteville Study, the subcommittee might be a good idea. He said that the subcommittee should look into whether there is a mechanism that can be used to implement an MIA, and the matter would then go before the Commissioners.

Dr. Olion added that she thought that the MIA should be tied to annexation, and if the City has no plans to annex in the North area, then an MIA wouldn't be needed. She said that she didn't think it was fair to have County inspectors responsible for City regulations or for the residents in an MIA to have to follow the regulations.

Chair Gillis said that the Commissioners rightly pulled the paragraph regarding the MIA from the Study.

Ms. Roy said that the MIA was created and agreed upon in the 2010 Land Use Plan, but it is not now possible to implement because of the separate planning organizations.

Chair Gillis asked for volunteers for the subcommittee. Messrs. Morris and Mullinax volunteered to serve. Mr. Mullinax asked the direction. Chair Gillis told him that the task would be to see if there is a mechanism by which the City can have an MIA in the North Fayetteville Area. Dr. Olion said that the goal should be to educate.

X. ADJOURNMENT

There being no further business, the meeting adjourned at 9:50 p.m.

