

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

Planning and Inspections Department

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

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

MINUTES

March 8, 2005

Members Present

Mr. Clifton McNeill, Chair
Mr. Charles Morris, Vice-Chair
Mr. David Averette
Mr. Harvey Cain, Jr.
Dr. Marion Gillis-Olion
Mr. Donovan McLaurin
Mr. Joe W. Mullinax
Mr. Roy Turner

Others Present

Mr. Tom Lloyd, Dep. Director
Ms. Donna McFayden
Ms. Patti Speicher
Ms. Barbara Swilley
Mr. Grainger Barrett,
County Attorney

I. INVOCATION AND PLEDGE OF ALLEGIANCE

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

II. APPROVAL OF/ADJUSTMENTS TO AGENDA

A motion was made by Mr. Mullinax and seconded by Mr. Turner to approve the Agenda as submitted. The motion passed unanimously.

III. APPROVAL OF THE MINUTES OF FEBRUARY 15, 2005

A motion was made by Mr. Averette and seconded by Mr. Turner to approve the Minutes of February 15, 2005 as written. The motion passed unanimously.

IV. POLICY STATEMENT REGARDING PUBLIC HEARING TIME LIMITS

Mr. Lloyd explained that there would be no actual time limits for the public hearing. He said that there would be a presentation by staff and then time for comments and questions from the members of the audience.

V. PUBLIC HEARING ITEM

A. P05-21. AMENDMENT AND REVISIONS TO THE CUMBERLAND COUNTY ZONING ORDINANCE, DATED JULY 3, 1972, AND SUBSEQUENT AMENDMENTS TO THAT ORDINANCE.

Mr. Lloyd gave a presentation and showed slides illustrating the major changes to the Ordinance that included:

- PND becomes dormant, and a new Mixed Use District is created

- Creation of a Density Development Conditional Use District allowing development density of the underlying district on 60 percent of a tract
- Conditional Use District Rezoning replaces the Conditional Use Overlay District
- Density in the A1 District changes from allowing one dwelling on two acres to one unit on one acre
- Buffering of outside storage (to be completed within two years)
- Creation of the R87 District for primarily residential uses only
- All nonresidential districts to be planned districts requiring site plans
- Planning Board to review Ordinance one year after adoption.

Mr. Morgan Johnson, Eastover Sanitary District Board member, appeared before the Board and stated his concerns. He said Section 107A indicates that zoning permits become void after six months if nothing substantial is done on a site. He said that he would recommend this be changed to 12 months.

Mr. Johnson then addressed Section 1102K. He requested that staff and Board consider regulating parking of tractor-trailers in residential areas. Mr. Barrett said that it was possible to regulate this, but he wasn't sure that it was wise to do so at this time.

Regarding the Density Development proposal, Mr. Johnson said that one-half acre lots could be created, so it is actually rezoning of property, and this would not be fair to people owning property around the tracts. He expressed concern about maintenance of the required open space. He said that better solution needed to be proposed than homeowners' associations to maintain and monitor the open space.

Mr. Johnson then addressed the A1 District allowing one unit per acre. He said this would basically rezone all the A1 Districts within the County and allow twice the number of homes now allowed. He said this wouldn't make the land any easier to sell and didn't see the advantage to the change.

Mr. Johnson said that the residents of Eastover did not feel they could accept the Density Development proposal or the A1 District allowing one unit per acre.

Mr. Johnson invited the Board members to a meeting that the Eastover Sanitary District is having with the County Commissioners on March 31, 2005.

Mr. McLaurin asked if the Eastover Land Use Plan recommended one-acre lots for Eastover. Mr. Johnson said that it does; however there is a lot of land in the area that is zoned A1 with the two-acre lot requirement. He said that Eastover has a lot of wetlands, and this becomes an environmental issue. He said that the wetlands should remain as they are and not have a lot of homes around them.

Ms. Liz Reeser, Eastover Sanitary District Board member, appeared before the Board and showed a map indicating a large amount of land in the Eastover Land Use Plan designated for farmland preservation, hence A1 zoning. She said that the designation was made with the understanding that it would require two acres for each residence. She said that she was undecided on the Density

Development proposal because she thought it would work great throughout the County and be a horrible alternative for Eastover.

Ms. Sara Piland, Eastover Civic Club member , appeared before the Board and said that she was against the reduction in the A1 District from two acres to one because it would not be in the best interest of the rural communities. She said that the rationale is that one-acre lots would mean less farmland would be sold for development, but it actually encourages rural sprawl. She said that farmlands and forested areas absorb rainwater, and developers create hard surfaces that don't allow for the filtering value and water holding capabilities that the undeveloped areas do. She said that the wetlands should be kept, or a great deal of money will be needed to replace them. She asked that the rural and farmland areas be preserved by leaving the A1 requirements at one unit for every two acres.

Mr. McLaurin asked if Ms. Piland thought that the best way to prevent sprawl was the two-acre lots. Ms. Piland said that it was more complex than that, but the rural character needs to be maintained. She said that the actions of the Eastover community will impact the entire County.

Mr. McLaurin asked where people of low wealth would live if they have to buy two acres for a home. Ms. Piland said that there are great opportunities for redevelopment within the urban areas. Mr. McLaurin said that he understood the soil concerns, but homes can't be built on the acreage if it's wet. He said that the Density Development encourages clustering, but Eastover may not be able to take advantage of it because of wetlands.

Mr. Lloyd explained that the Density Development allows density up to the density of the underlying district—possibly only one and one-half of the density allowed. He said that it follows a plan. He explained that it is negotiable, not an automatic rezoning and on a case-by-case basis.

Mr. Barrett said that maintenance by a homeowners' association is a requirement in the current Ordinance for common areas such as trails, recreational areas, etc. He said that the documents creating the homeowners' associations are reviewed by the County Attorney's office, and he looks for liens imposed and ways to enforce the documents and whether they can be amended. He said that he prefers at least a 75 percent vote to amend the documents. He said that this is currently done on all planned subdivisions.

Mr. McLaurin said if the objections are about appearance, one only has to drive down Dunn Highway through Eastover to the County line to see how unsightly some of the areas are with junk and abandoned vehicles. He said it is not a well-kept area, and the Density Development would help clean it up. Mr. Johnson said that the Density Development is not the answer, it should be cleaned up by the inspectors working with the residents. Mr. McLaurin said that appearance and density are two different issues.

Mr. Paul Williams appeared before the Board as a County resident and said he has been studying how to get more growth in the community, and it's a simple formula.

He said if more growth is desired, then there needs to be more freedom, and that's higher density. He listed some principles for living and economic growth which included:

- People should be allowed to live and work where and how they want
- Strict plans should be avoided
- Densities and land use should be market driven—not plan driven
- Communities should be allowed to have as diverse a design as the market allows
- Decisions of neighborhood development should be decentralized
- Local planning procedures should incorporate owner rights

He said that the Planning Department did a great job on the Ordinance. He added that when quality of life is discussed, it's important to ask whose quality. He said that it should be the least among us. He said that changing the permit time from six to 12 months gives more economic freedom. He concluded by stating that some of the least developed countries provide the most pollution.

Mr. Lawrence Buffaloe, a resident of Eastover, appeared before the Board and thanked the staff and Board for their work on the Ordinance. He said that Eastover wants to preserve the rural character. He said that it appeared that the Density Development provides a way to use undevelopable land and wetlands and give the developers an advantage. He said that he likes the open space and buffering requirements, but he doesn't want to give the developers the advantage. He asked what prevents someone from developing the 60 percent of the land when 40 percent couldn't be developed anyway. Chair McNeill said that this was permissible under the proposal. He said that the developer would be allowed to use the wetlands to get the density he wants, and this can be done today using Zero Lot Line subdivision development.

Mr. Barrett said that a different slant would be that the land that is not developed would be preserved, and some of this would be wetlands that are crucial to air and water quality and wildlife and fauna habitats. He said a developer with a cookie cutter plan would disturb more land than using the Density Development where development is concentrated on 60 percent of the land and 40 percent is protected.

Mr. Buffaloe asked how the one-acre lots recommended in the Eastover Land Use Plan fit in. Mr. Lloyd said that the one-acre lots are a misnomer because already lots can be developed at less than one acre by using Zero Lot Line. He said it is permitted and has been done since the Plan was written. He explained that the plan is interpreted to intend that development density be one unit per acre.

Chair McNeill said that land use plans are an attempt to suggest how an area may be developed, used as guidance for newcomers to an area, etc. He said that they don't usurp Ordinances.

Mr. Barrett said that the land use plans are a guide to implement the Ordinances, and decisions are made on a case-by-case basis by the Commissioners. He said

ultimately, the assurance that the communities have is that the Commissioners give consideration to individual cases using the Ordinances.

Mr. Buffaloe thanked the Board and reminded them that the residents of Eastover want to preserve the rural character of their community. He said that it appears that any way you cut it; the new proposals will allow higher density.

Mr. McLaurin said under Zero Lot Line, the same can currently be accomplished. He asked if Mr. Buffaloe's concern was that the developers can use the open space to get higher density. Mr. Buffaloe asked if that was true, and Mr. Lloyd said that it was. Mr. Buffaloe said that he would then be opposed to the Density Development proposal because it just allows more density.

Vice-Chair Morris said that residents should understand that using the Density Development would still require open forums and public hearings, and approval by the County Commissioners. He added that the Density Developments require plans for all to see, and rezoning doesn't do this.

Mr. Buffaloe asked how it would be guaranteed that the owners would actually develop property according to the plans. Mr. Barrett said that the tracts have to be developed according to the plans as submitted. Mr. Buffaloe asked who makes sure this happens. Mr. Barrett responded that this is the responsibility of the Planning and Inspections Department.

Vice-Chair Morris added that currently the same thing can be done under the Zero Lot Line, with no plans or oversight—totally at the developers' discretion.

Mr. Lloyd said that he thought that the Commissioners would prefer R40 CUD in the one-acre areas in Eastover rather than just A1 to R40 rezoning. He said that it would only mean that 60 percent of the land would be developed. He added that the proposed Ordinance is to cover the entire County, and each case would be considered individually.

Mr. McLaurin asked if the residents of Eastover who were concerned about the Density Development wanted the Board to review how much wetland could be included in the 40 percent open space requirement. He was told that they did, and they want part of the 40 percent to be developable land.

Ms. Piland asked how the Planning Board and staff considered the impact on ecosystems when considering zoning. Mr. Lloyd said that the staff looks at soils and input from the Health Department. Chair McNeill said that the Board listens to the testimony and questions staff. Ms. Piland said that she hoped they were looking at the long-term impact.

Mr. Tom Hollinshed appeared before the Board and said that the majority of the Density Developments will not involve wetlands. He said that density could be greater if wetlands are considered, but not in other cases. He expressed a concern about open space and said that maintenance needs to be strictly addressed. Mr. McLaurin said that no one maintains the wetlands now.

Mr. Benny Pearce, an Eastover resident, appeared before the Board and asked where the closest Density Development has been implemented and asked if the staff had received feedback on its success. Mr. Lloyd said there are developments in Orange and Wake Counties and near Chapel Hill. Mr. Barrett said that two of the developments are Southern Village and Meadowmont near Chapel Hill.

Chair McNeill said that Mr. Randall Arendt came to Fayetteville to give a presentation on the concept to the planners, developers and citizens of the community.

Mr. Pearce said before mistakes are made, it is important to see where the concept has been successful.

Vice-Chair Morris said that historically, the concept is used in Washington, DC and at military academies.

Mr. Pearce asked if the A1 District was even needed if the acreage was reduced to one unit per acre. Mr. Barrett explained that there are many nonresidential uses allowed in the A1 District that are not allowed in other districts.

Mr. Tom Brooks, resident of McCormick Farms, appeared before the Board and asked the Board to favorably consider the Density Development. He said that this would be a tool he could use to preserve open space if he ever decided to develop his property.

Mr. Jimmy Kizer appeared before the Board representing the Homebuilders' Association and the engineering community. He said that many of his folks didn't receive copies of the Ordinance until this week because they were out of town. He asked that the Board consider continuing the public hearing until the first meeting in April in order for the engineers and homebuilders to participate in the process.

Vice-Chair Morris said that the homebuilders and engineers were included in a meeting about six weeks ago and have had copies of the Ordinance for several weeks. Mr. Kizer explained that they have three different drafts, and the latest is the one they just received. He said that they have appreciated being part of the process, but want to make sure that everything is covered.

Ms. Piland said that Mr. Williams referred to Smart Growth. She asked if the Density Development came from that movement. Mr. Lloyd said that it did, but originally it had its origin in the conservation movement. She asked if it would be a good idea to meet with the folks from this field. Mr. Lloyd said that it would be more appropriate to meet with them during the Comprehensive Plan process.

Mr. Mack Williams appeared before the Board and asked if regulations must be consistent Countywide. Mr. Barrett said that they have to be unified, and there could be classifications that would apply to certain areas that have the same characteristics. He said that these designations must be made carefully, for example all areas that are three feet under sea level could have the same regulations.

Mr. Johnson said that he recognized that land use plans aren't ordinances, but the desire of the residents. He said it doesn't behoove them to ignore the land use plans because they are the feelings and desires of the residents. He said that Zero Lot Line defeats the zoning for a tract of land. He said that it should be examined and not automatically granted to anyone who requests its use. He said that staff and Board should review it. Mr. Lloyd explained that the Subdivision allows the use of Zero Lot Line by anyone who requests it. Chair McNeill said that there would also be public hearings on the Subdivision Ordinance when it is amended.

Ms. Lori Epler, Larry King and Associates, appeared before the Board and said when developers are required to institute homeowners' associations, costs are driven up because of the extra fees to the homeowners. She said that this is a concern for developers.

Chair McNeill said that under the current proposal, a homeowners' association is only one of the options to maintain the open space. Ms. Epler said others include the landowner or the County being responsible. She said that the developers watch out for the consumer and developers, and one would have to be responsible for the maintenance of the open space. Mr. Lloyd said that the staff looked at many options and spoke with developers, who said that homeowners' associations work. Mr. Barrett said if common areas aren't included, and the developer is exempted, and no homeowners' association is created, the costs are transferred to the City and County governments. He said some common space is needed, and there is a demand for parks. He said that there is going to be a cost, and these developments should bear their own costs. Chair McNeill added that another option would be to lease the open space back to farmers to allow them to farm and possibly create some income. Mr. Lloyd said that developers and homeowners will know up front that the costs are there. He added that staff welcomes any suggested alternatives to the homeowners' association. Mr. Lloyd pointed out that the Ordinance is to be reviewed one year after adoption.

Ms. Kim Fisher appeared before the Board and asked who owns the open space. Chair McNeill said that the developer would own it and transfer ownership to a homeowners' association. Mr. Barrett said it could also be transferred to a nature conservancy, Sierra Club, etc. Ms. Fisher asked who pays the property taxes. Mr. Barrett explained that a proportionate share of the common space is included in the assessed value of each lot.

Concern was expressed about homeowners having to take on the extra cost. Chair McNeill said it's like people currently paying for streetlights. Mr. McLaurin said it's less than the homeowners would pay who own three acres. Mr. Barrett said that the 2/3-acre additional cost is taxed at a lower level because it is undevelopable land. Mr. Lloyd added that this isn't a new concept, and homeowners will be aware of what will be required when they purchase the land.

Mr. Hollinshed asked if the owners would be taxed if the homeowners' association gave the land to a land trust. Mr. Barrett said that they would not. Mr. Hollinshed

asked if a conservation easement could be used to reduce taxes by as much as 80 percent. He was told that it could.

Mr. Joe Gillis appeared before the Board and said that he has reservations about the 60 and 40 percents. He also expressed concern about homeowners being responsible for open space because there are so many absentee homeowners. He said that he would speak at the next public hearing.

The public hearing was closed.

Chair McNeill said that Mr. Kizer requested an additional meeting. After discussion, the members agreed to hold another public hearing at the first meeting in April.

A motion was made by Mr. Mullinax and seconded by Mr. McLaurin to continue the public hearing until April 5, 2005.

Chair McNeill said that the staff and Committee have given a year to the process, and they want to be thorough and deliberate, so he would prefer to continue the meeting to make sure the job is done right.

Vice-Chair Morris said that the review period is critical because the document hasn't been updated in 30 years. He said that trouble spots would be tweaked at that time.

Upon a vote on the motion, it passed unanimously.

Mr. Averette said that he would like the comments at the next meeting to include more than just the Density Development and change to the A1 District.

Mr. Jim Graves, President of the Homebuilders' Association, said that he enjoyed the comments and concerns expressed by the people. He said if more boards interacted as the Planning Board does, Fayetteville would be a better place to live.

VI. ADJOURNMENT

There being no further business, the meeting adjourned at 9:10 p.m.

