

MINUTES
JOINT MEETING OF THE TRANSYLVANIA COUNTY BOARD OF
COMMISSIONERS & TRANSYLVANIA COUNTY PLANNING BOARD
December 15, 2009 – Community Services Building, Conference Room

The Transylvania County Board of Commissioners met jointly with the Transylvania County Planning Board on Tuesday, December 15, 2009 at 7:00 p.m. in the Conference Room of the Community Services Building. The special meeting was called for the purposes of discussing the draft Pisgah Forest Community Zoning Ordinance.

Commissioners present were Lynn Bullock, Chairman Jason Chappell, Mike Hawkins, Daryle Hogsed, and Vice-Chairman Kelvin Phillips. Also present were County Manager Artie Wilson, County Attorney Curtis Potter, and Clerk to the Board Trisha Hogan.

Planning Board members present were Vice-Chairman Joey Galloway, Jay Kaiser, Scott McCall, Chairman Mason Sexton, Mark Tooley, and Jackie Whitmire. Also present were Planning and Economic Development Director Mark Burrows, County Planner Mike Thomas, and Administrative Assistant Trish Hamilton.

There were approximately 20 people in the audience.

Media: *Transylvania Times* – Mark Todd

WELCOME/CALL TO ORDER

Chairman Jason Chappell presiding called the Board of Commissioners' meeting to order at 7:00 p.m. He welcomed everyone to the meeting and thanked the Planning Board for the hard work they have put into this project over the last year.

Chairman Mason Sexton presiding called the Planning Board meeting to order at 7:01 p.m. and welcomed everyone to the meeting.

PRESENTATION OF BOARD MEMBERS AND STAFF

Chairman Chappell introduced the members of the Board of Commissioners and staff in attendance. Chairman Sexton introduced the members of the Planning Board and staff in attendance.

PRESENTATION FROM PLANNING BOARD

County Planner Mike Thomas showed a Power Point presentation highlighting the draft proposal and offered some background on the process.

Draft Ordinance Background

- Process began initially as the City of Brevard was considering its options for ETJ extension
- Citizens in Pisgah Forest expressed concern that they would rather be regulated by the County as opposed to the City
- Joint City and County Committee established to explore options

- On 1/13/2009 the Planning Board was charged with developing regulations from the recommendations of the joint committee
- Planning Board began their work on 2/19/2009
- Planning Board met 16 times over the last year to develop a proposal to meet the charge given to them
- Draft Ordinance recommendation posted online 12/2/2009

Study Recommendations

- Protect community character
- Maintain safe roads and highway access
- Consider corridor setbacks and buffers
- Use existing ordinances (signs, flood, subdivision, cell tower, etc.)
- Evaluate need for steep slope control depending on the area
- Remain industry/commerce friendly
- Evaluate current water and sewer policy

Ordinance Development

In developing the proposed ordinance, the Planning Board looked at number of resources:

- General Statutes (powers given to the County in terms of enacting zoning regulations)
- Other jurisdictions (Brevard, Counties of Buncombe, Henderson, Jackson)
- School of Government publications
- Division of Community Assistance (DCA reviewed proposed ordinance and provided input)
- Department of Transportation
- Planning Board reviewed proposal word by word

Two zoning districts were proposed in the draft ordinance:

Open Use District

- Applies to parcels off the corridors
- Most uses allowed
- High impact uses allowed with conditions (11 high impact uses include concrete plants, motor sports tracks, chip mills, etc.)
- 3 prohibited uses (adult entertainment, hazardous/radioactive waste facilities)

Corridor Mixed Use District

- Applies to parcels on corridors
- Regulations for new/expanded non-residential uses and for larger residential developments (PUD's)
- Regulations include highway access, setbacks, buffers, storm water control, surface water protection, parking and loading requirements, etc.
- Possible slope regulations

Comparison

This is a basic comparison of some of the specific regulations in this proposal compared to some of the regulations in mixed use type districts for the City:

- Access requirements are the same

- FSR (front-side-rear) setbacks: Draft ordinance shows 0 setback requirements from the front because there are fairly large rights-of-way; 10 feet from the side; 10 feet from the rear. City requirements are fairly more stringent at 10/30/40.
- Buffers: Draft ordinance requires a 15-20 feet buffer depending on the size of the lot; there are some other mitigation factors that might reduce the buffer requirement. The City requires a 20-30 feet buffer.
- Storm water: Draft ordinance recommends containment of a 1 year, 24 hour storm, which is basically 4 inches of rain. The City requires containment of 10 years of storm water, which is a little over 7 inches.
- Surface water (protection generally for creeks; a non-encroachment of the buffer area); Draft ordinance has a 20 feet buffer and is the same as what was recently adopted in the County's flood ordinance. Trout streams have a 25 feet buffer. The City requires a 30 feet buffer.
- Parking and loading requirements are the same
- 25% + Slope: This has not been developed for the draft ordinance as of yet. The City generally does not allow development on slopes of 25% or greater (The City does allow in some instances)

Approval Authority

- Open Zoning – only permits required are for the 11 high impact uses spelled out in the draft ordinance or for PUD's
 - Planning Board Recommendation
 - Board of Commissioners' Approval
- Corridor Mixed Use
 - Zoning Administrator Approval
 - If denied by the Zoning Administrator, appeal to Board of Adjustment (Planning Board)

Define Area

- NC General Statutes requires 640 acres or more in 10 or more contiguous parcels
- The Planning Board explored several options for required acreage
 - Corridors only with minimum connection
 - Full ETJ expansion possibility
 - Several combinations of corridor extensions/infill between corridors

The Planning Board reviewed several maps during the course of their work and narrowed their consideration to three maps. The first map (Zoning Study Area Map 01) is comprised of one geographically contiguous area that includes all parcels that front NC Highway 280 and US Highway 64 corridors to the northeastern most extent of the City of Brevard's ETJ extension authority and any parcel that would be encompassed by parcels that front upon the corridor. The area extends to Hudlin Gap and Glade Creek Roads.

The second map (Zoning Study Area Map 07) is comprised of one geographically contiguous area that includes all parcels that front upon each corridor and any parcel that would be encompassed by parcels that front along the corridor. Parcels between the corridors and Capps Road are included for contiguity and to achieve the statutory minimum 640 acres required for zoning areas.

The third map (Zoning Study Area Map 08) is comprised of one geographically contiguous area that includes all parcels that front upon each corridor and any parcel that would be encompassed

by parcels that front upon the corridor. Parcels beyond the corridors are included for contiguity and to achieve the statutory minimum 640 acres required for zoning areas.

All the maps included a 66 acre parcel that has been in question since the start of this process. It was noted that the City owns a water tank on this parcel. The Planning Board realizes if this parcel is not included, further extension would be needed in order to achieve the required acreage.

Recommended Area Map 01

- Includes original study area but does not extend beyond ETJ possibility (includes the whole community up to Hudlin Gap Road along Highway 64; also extends to northwest of Highway 280 over to the Pisgah National Forest; does not extend beyond the ETJ recommendation because those residents have not been involved in this issue)
- Addresses study committee recommendations
- Open use off the corridors impacts only new high impact “special uses”
- Best preserves community character

Path Forward

- Will get further input and move forward (Planning Board meets this week)
- Joint meeting with City Council in near future
- Implementation plans and budget development
- Public Hearing on draft ordinance
- Action on draft ordinance
- Possible implementation FY 2010-2011

DISCUSSION BY BOARD MEMBERS

Jackie Whitmire said the Planning Board put a lot of consideration into their proposal and she feels the proposal best addresses the request made by the County Commission and the citizens of Pisgah Forest.

Chairman Mason Sexton pointed out that the Planning Board members have different professional backgrounds so they were able to address this issue from several different standpoints, including property rights issues, and business, real estate, farming, and engineering backgrounds. He said the Planning Board’s goal was to address the concerns of the City of Brevard and the citizens of Pisgah Forest, but he understands there will not be 100% satisfaction with the proposal. Chairman Sexton explained that the Planning Board did not include the citizens and parcels down the corridors to the County line in their proposal because they were not involved in the process from beginning and were not included in the City’s ETJ expansion.

Mark Tooley said the Planning Board’s discussion focused on protecting the community and being business friendly. With each issue, they first asked how it affected the community.

Chairman Sexton said the Planning Board also discussed steep slopes and mountain ridge protection and will study these issues further in 2010. County Planner Mike Thomas noted that the Planning Board has already compiled the data to insert into the proposed ordinance. The Planning Board is also working on a joint water and sewer policy.

Chairman Sexton noted that all the components of the proposal except one were approved unanimously by the Planning Board.

Ms. Whitmire stated that the Planning Board reviewed the draft ordinance word by word which was very tedious. Their goal was to make it more user friendly for citizens and staff.

Chairman Chappell inquired about the amendment process. He said the ordinance explains that recommendations for changes to the ordinance must come from the Planning Board and that Commissioners are required to adopt a statement describing whether its action is consistent with the Transylvania County Comprehensive Plan and why the action is considered to be reasonable to the public's interest. Mr. Thomas said NC Statutes requires the County Commission to make a statement when amending zoning ordinances.

Commissioner Hogsed thanked the Planning Board for the time and effort they put into this project. He also commended for them for adhering to policies that are already in place. Commissioner Hogsed asked for explanation on how the Planning Board arrived at the proposed zoned area.

Joey Galloway said he first thought it made better sense to include the parcels on the corridors to the County line in order to achieve the 640 acres needed for zoning. This would also eliminate the need for steep slope regulations. Later on in the process, he thought it made better sense to only include the parcels and citizens in the study area because the people beyond that area were not going to be affected by the City's ETJ expansion.

Chairman Chappell said some of the initial discussions involved around the possibility that Mills River and Etowah would extend their ETJ across county lines. Chairman Sexton said the Planning Board discussed this issue with Mills River and Etowah and both said they had no plans to extend their ETJ's across county lines. He also pointed out the original study area consisted of approximately 177 acres. The State requires a minimum of 640 contiguous acres in order to implement zoning regulations. Ms. Whitmire said the Planning Board considered many factors during their discussions and they feel like they have put forth the best proposal for the most people. She also noted that if the proposal only included the corridors, the zoning would have been more restrictive.

Mr. Tooley said it makes better sense to encompass the whole area in order to protect community character and define neighbors.

In response to a question from Chairman Chappell about participation from the public at the Planning Board meetings, Mr. Sexton said the Planning Board held two meetings in the Pisgah Forest community and at each there was representation from Pisgah Forest. Mr. Thomas said the community meetings were well attended.

Mr. Burrows said the Planning Board reviewed several maps. Several of the maps included areas outside the study area and members did not feel comfortable extending past the study area.

Mr. Burrows explained open use zoning for the parcels not touching Highways 64 and 280. Open use zoning has very few regulations and essentially anything that exists in the open use area can continue to exist and almost any new proposed use is allowed unless it falls under the 11 identified high impact uses; however these can be allowed as well. If a property owner proposes one of these uses, he or she would have to explain how they are going to protect the neighbors from noise, time of use, light, dust, etc.

Chairman Chappell inquired about the process a property owner would go through to expand a home or business in this area. Chairman Sexton said a building permit is all that is needed to

expand a home. Mr. Thomas explained that a business owner in the corridor would have to comply with the zoning regulations and make application to the Zoning Administrator. The business expansion itself would trigger the need for a zoning permit. A final permit would be needed before a certificate of occupancy is issued. The time frame for this process is one to two months. However, if there are other technical requirements, the Zoning Administrator has the authority to seek assistance or an opinion from an engineer at the cost of the business owner. High impact uses and PUD's are more extensive and the process could take four to five months. Mr. Burrows added that the time frame is lengthier in order to allow for public input on what is being proposed.

Chairman Chappell said the general practice in other areas is that zoning starts as open use and then becomes more restrictive. Mr. Burrows agreed saying that as communities become more populated, more uses are occurring resulting in expanded zoning districts. Chairman Sexton said the Planning Board was only charged with helping the citizens of Pisgah Forest. Commissioner Hogsed commented that a future Board can do something different regardless of what this Board does or does not put in place. Mr. Galloway pointed out the City can annex the area if they so desire.

Commissioner Hawkins asked for further explanation on the purpose of storm water requirements and why the Planning Board chose to include containment of only one year of storm water. Chairman Sexton said cost was a factor in their proposal and he noted that 80% of the pollutants would be caught with just the first inch of rain. The proposal also includes buffers. In previous meetings, the Planning Board discussed best management practices to help filter some of the storm water pollutants, such as the use of rain gardens.

Ms. Whitmire said the proposal does not restrict businesses from coming into the area.

Commissioner Hawkins asked if the Planning Board discussed possible legal challenges to the County's ordinances. Mr. Thomas replied that the Division of Community Assistance reviewed and okayed the ordinance as being legally sound. Staff also discussed the proposal with Planning Departments in surrounding counties.

Scott McCall said the Planning Board also removed most of the ambiguous language in the ordinance to make it more user friendly to citizens and staff.

Chairman Chappell asked if a timeline had been derived for expanding zoning County wide. The response from Planning Board members and staff was that they were only tasked with drafting a proposal to help the citizens of Pisgah Forest and at no time was County wide zoning ever discussed. Although the residents of Pisgah Forest did not necessarily want zoning in their community, they wanted protection and they wanted to be able to vote for those that set ordinances and rules for them. It was noted that if the City attempts to expand their ETJ elsewhere, other communities may come to the County asking for the same types of protections.

Commissioner Bullock said there may be some in Pisgah Forest that are not happy with the proposal but noted the restrictions would be more stringent if the City extended its ETJ into their area. He feels the Planning Board had their best interest in mind when crafting this proposal.

The Manager pointed out that the County has two options, either to move forward with this proposal or do nothing and allow the City to extend its ETJ into Pisgah Forest if they so desire.

PUBLIC COMMENTS

Ken Norman: Mr. Norman thanked the Planning Board and the County Commission for all their work in trying to help the citizens of Pisgah Forest. He said he hopes Commissioners will stand firm on private property rights even if it means possible litigation. Mr. Norman noted that the residents made it clear they did not want zoning in the communities and that the City only expressed interest in protecting the corridors.

Michael Moore: Mr. Moore lives in Rosman and owns property on Hudlin Gap Road in Pisgah Forest. He said the City never intended to extend to the other side of Hudlin Gap Road; however the proposal includes the other side of Hudlin Gap Road. He also mentioned that the proposal leaves out a large parcel at the end of the corridor. He questioned the map altogether and asked how the Planning Board arrived at this decision.

Sarah Mathis: Ms. Mathis thanked the Planning Board and County Commission for all their hard work. She also expressed concern over the proposed zoning map saying it was not the map chosen by the members of the study group. She said she is opposed to any zoning more than one parcel deep. Ms. Mathis asked the Planning Board to reconsider their proposal to extend further down the corridor to get the necessary minimum acreage.

Mr. Thomas explained that the proposed map is equal to the ETJ expansion area being proposed by the City. Mr. Burrows added that open use zoning has been recommended for the communities and a mixed use type zoning has been recommended for the corridors. Chairman Sexton said the area was already established by the City and if the Planning Board chose to extend further down the corridors, they would be including citizens that were not affected by the ETJ expansion in the first place.

Commissioner Phillips said his understanding is that the City can not cross over the corridors to extend their ETJ if the County has zoning in place along the corridors. Mr. Burrows said as long as the County has three factors in place (subdivision ordinance, building codes, and zoning ordinance) a municipality can not extend its ETJ. They could however extend their corporate limits. Commissioner Phillips said the City is only interested in protecting the corridors which is what they expressed to the County. Chairman Sexton said the City's proposed ETJ expansion map includes the residential areas as well. Mr. Burrows said there was discussion about extending along the corridors but the corridors alone is not a community and staff was not in contact with any residents outside of the proposed area. Commissioner Bullock expressed opposition to extending the proposal further down the corridors.

Mr. Burrows said someone recently commented to him that it appears as if the Planning Board's proposal to use the established ETJ expansion line as their zoning area is simply to stop the City from expanding its ETJ. He said this was never a consideration of the Planning Board or staff. The Planning Board defined a community which included the required acreage of 640 acres and crafted a proposal that had the least impact on most of the residents while protecting the corridor.

Larry Wilson: Mr. Wilson thanked the Planning Board for all their hard work. He inquired about the County's next steps if the City rejects this proposal. He also suggested only zoning the corridors, saying the City is not concerned with the communities. Mr. Wilson also questioned why the County is required to have a minimum of 640 acres to zone an area and the City does not. Mr. Galloway responded that the City is only adding to what they already have so they do not fall under these requirements. Mr. Wilson agreed that the proposed zoning is relaxed; however he does not think the City will accept this proposal and the County will have to make it

more restrictive in order to be acceptable. Chairman Sexton noted that the City's ETJ expansion map includes the corridors and the surrounding communities.

Ken Norman: Mr. Norman said that the residents of Pisgah Forest did not want zoning but they compromised and agreed upon zoning in the corridors. He said residents on Davidson River and Cemetery Roads are facing the same threat from the City and need the County's help. He suggested they be included in the proposed zoning area which gives the County the required acreage without having to extend further down the corridors. Staff responded that the City made it clear they plan to annex these areas. Mr. Norman asked if it was possible to come back at a later date and add more acreage in order to meet the requirements. Mr. Burrows responded that in order to implement any type of zoning, a minimum of 640 acres is needed.

Sara Champion: Ms. Champion suggested that one member of the Planning Board should represent Pisgah Forest, either a resident or a property owner. Chairman Sexton noted that the plan is to recommend two additional members for the Board of Adjustment.

John Dillon: Mr. Dillon lives on Highway 280. Mr. Dillon suggested moving forward with this proposal because it is better than being zoned by the City. He commented that the citizens and the County are at a disadvantage because the City has the State on its side with the ETJ law and that County zoning is the only way to deal with this until the law is changed.

Mike Ansari: Mr. Ansari is a property owner in Pisgah Forest. He thanked the County and the Planning Board for a great job. He said now is the time to move forward and if the City does not accept the proposal then the groups should meet again and determine what to do next.

BOARD COMMENTS

Chairman Sexton asked Commissioners to send any new requests for information or tasks to Mr. Burrows.

Mr. Burrows said he heard concerns from the public about the proposed map, but not the proposed regulations. When the Planning Board meets later this week, they will take into consideration all the comments made during this meeting.

Commissioners thanked the Planning Board and staff for their hard work and diligence on this project.

ADJOURNMENT

There being no further business, **both Board meetings were adjourned.**

ATTEST:

Jason R. Chappell, Chairman
Board of County Commissioners

Trisha M. Hogan
Clerk to the Board