

MINUTES
JOINT MEETING OF THE TRANSYLVANIA COUNTY BOARD OF
COMMISSIONERS & BREVARD CITY COUNCIL
February 22, 2010 – TRANSYLVANIA COUNTY LIBRARY, ROGOW ROOM

The Transylvania County Board of Commissioners met jointly with the Brevard City Council on February 22, 2010 at 7:00 p.m. in the Rogow Room at the Transylvania County Library. The purpose of the meeting was to discuss 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, Planning and Economic Development Director Mark Burrows, County Planner Mike Thomas, and Clerk to the Board Trisha Hogan.

Council members present were Larry Canady, Rodney Locks, Mack McKeller, Mayor Pro-Tem Mac Morrow, and Dee Perkins. Also present were Mayor Jimmy Harris, City Manager Joe Moore, City Attorney Mike Pratt, City Planner Josh Freeman, and Interim City Clerk Desiree Perry.

Planning Board members present were John Dorner, Joey Galloway, Jay Kaiser, Scott McCall, Mason Sexton, Mark Tooley, and Jackie Whitmire.

There were approximately 40 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 7:04 p.m.

Mayor Jimmy Harris presiding called the Brevard City Council meeting to order at 7:05 p.m.

Mayor Pro-Tem Morrow made a motion to accept the meeting agenda, seconded by Councilman Canady and unanimously approved.

INTRODUCTION OF BOARD/COUNCIL MEMBERS AND STAFF

Members of the Board of Commissioners, Brevard City Council, the Transylvania County Planning Board and City and County staff introduced themselves.

PRESENTATION FROM PLANNING BOARD

Planning Board Chairman Mason Sexton provided a brief history about this project. The Planning Board was tasked in January 2009 with putting together a proposal that would address the issues and concerns presented by Brevard City Council and meet the desires of the County Commission. The Planning Board met over 20 times since January and drafted the Pisgah Forest Community Zoning Ordinance. They presented the document to the Board of Commissioners at a special meeting in December 2009. They subsequently met again in 2010 to finalize the proposal.

County Planner Mike Thomas showed a Power Point Presentation outlining the history and discussing the draft ordinance in greater detail.

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
- Latest draft Ordinance posted online 1/5/2010

Study Recommendations (Ordinance based on recommendations from Study Committee chartered by the Board of Commissioners and Brevard City Council)

- 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:

- NC General Statutes
- Other jurisdictions (Brevard, Counties of Buncombe, Henderson, Jackson)
- School of Government publications
- Division of Community Assistance
- Department of Transportation
- Planning Board reviewed proposal word by word

Two zoning districts were proposed in the draft ordinance:

Corridor Mixed Use District (regulates non-residential uses)

- Applies to parcels on corridors
- Regulations for new/expanded non-residential uses and for Planned Unit Developments (PUD's)
- Regulations include highway access, setbacks, buffers, storm water control, surface water protection, slope, parking and loading requirements
- 3 prohibited uses (adult entertainment establishments, hazardous waste disposal, radioactive waste disposal)

Open Use District (regulates high impact uses)

- 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 (same as for corridor mixed use)

Mr. Thomas noted that the PUD's require approved site plans in both districts. The County also has a number of land use ordinances that apply as well (signs, mobile home parks, flood damage control, and cell tower ordinances, etc.) and these would apply in addition to regulations outlined in the proposed zoning ordinance.

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: The Ordinance allows one unit per 1.5 acres beginning at a 25% slope and decreases to one unit per 10 acres at over 50% slope. The City allows over 25% slope in some situations of one unit per every 3 acres. There are a number of additional requirements, such as maximum cut-and-fill slopes for roads, limitations on cleared areas, limitations on deforestation, re-vegetation plans, etc.

Approval Authority

- Open Zoning High Impact Uses
 - Planning Board Recommendation
 - Board of Commissioners' Approval
- Corridor Mixed Use Non-Residential
 - 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
 - Pisgah Forest Community from the National Forest to US 64
 - Several combinations of corridor extensions/infill between corridors

Recommended Area Map 01

- Includes original study area but does not extend beyond ETJ possibility
- Addresses Study Committee recommendations
- Open use of the corridors impacts only new high impact "special uses"
- Best preserves community character

Mr. Thomas reviewed the proposed zoning map. The area including the corridor parcels is proposed to be zoned as corridor mixed use. The remaining area is proposed to be zoned as open

use. The total area extends out to Hudlin Gap Road on Highway 280, northeast to the Pisgah National Forest, and south to approximately Glade Creek Road on Highway 64. The proposed zoned area totals approximately 720 acres.

Path Forward

- March – City position communicated to County
- March – Implementation/budget development
- April – Public Hearing on draft ordinance
- April – Action on draft ordinance
- July – Possible implementation FY 2010-2011

DISCUSSION BY BOARD MEMBERS

Mr. Thomas noted that since the draft was posted online on January 5, 2010, the Planning Board has met and reviewed the administrative functions of the ordinance based on inputs from the City Planning Department and others and plans to make some minor changes to the ordinance with respect to the administrative functions.

Commissioner Phillips asked for clarification about the City's primary interests for protection. Mayor Harris stated that the City's primary interest is the corridors. The City expects the most growth from the corridors and also expects requests for utilities to come from this area. City Council members agreed. Mr. Sexton noted that the corridors do not contain enough acreage to implement zoning regulations. The State requires a minimum of 640 acres. The corridors consist of approximately 208 acres.

Commissioner Phillips offered an alternate proposal for protecting the citizens in Pisgah Forest. He proposed that the two elected Boards draft an agreement that states that both elected bodies understand the citizens of Pisgah Forest do not wish to be zoned and furthermore states that the City is only interested in protecting the corridors. He proposed to leave the residential areas as they are now and draft an agreement whereby the City and County agree to protect the corridors.

Councilman McKeller said the corridor itself does not take in enough acreage for the County to implement a zoning ordinance unless the County decides to extend all the way to the County line in both directions.

Mr. Sexton noted that the County gets its power from the State so it can not implement any agreements or regulations as Commissioner Phillips as recommended because they would not be enforceable. Commissioner Phillips said he is unaware of any law that prohibits the City and County from entering into such an agreement. He believes such an agreement would benefit the citizens of Pisgah Forest.

Mr. Thomas added that although the County must have the minimum acreage to enforce zoning in North Carolina; there is nothing in NC General Statutes that says what regulations have to be implemented in any particular district. The Planning Board's proposal includes certain regulations in the corridors and certain regulations for the open use district in regards to high impact uses. He said he supposes there can be open use districts with virtually no regulations; however the Planning Board felt that the high impact uses would have detrimental effects on residents in the open use district. Commissioner Phillips said he would like to do further research on other options or alternatives that may be doable.

Planning Board member Jackie Whitmire believes the draft ordinance protects the residents of Pisgah Forest. She said these types of ordinances have been tested and proved in other counties and communities and she does not believe the Planning Board can make a better

recommendation. Commissioner Phillips responded that prior to the intention of the City to extend its ETJ, the residents in Pisgah Forest have never asked for protection from the County. Planning Board member Joey Galloway noted that the Planning Board decided not extend zoning to the County line and past the proposed ETJ limits because residents beyond those points were never included in the proposed extension of the ETJ.

Mayor Harris stated that City Council and City Planning staff have reviewed the proposed ordinance and they believe it is a good document. He recognized the County Planning Board and County Planning staff for the work they have put into this document. Upon clarification on the proposed zoning map, Mayor Harris said the proposal is acceptable to the City and they agree to the map and document as presented.

Mayor Pro-Tem Morrow made a motion to receive the document as presented tonight. The motion was seconded by Councilwoman Perkins and unanimously approved.

Mayor Harris instructed the City Manager to make official communication to the Board of Commissioners with regards to the action taken by City Council.

Councilman Locks reminded everyone of the uniqueness of this process, saying that nowhere else has a city, county and community come together to draft an ordinance and agreement. He commended the Planning Board and the County Commissioners for all their work in order to make this possible.

Commissioner Hogsed suggested adjusting the boundaries of the zoning map such that it would satisfy both Boards. He proposed to include the corridors and the communities in the Davidson River and Cemetery Roads communities and to remove the residential areas in Pisgah Forest area because those residents do not wish to be zoned. He noted that the residents in the Davidson River and Cemetery Roads communities are under consideration for extension in the ETJ; however they wish to be protected by the County. He encouraged the City to give his suggestion strong consideration as they move forward with their plans.

As City Council members began to respond to Commissioner Hogsed's request, Mayor Harris asked them to respect the advertisement for this special called meeting, which was to discuss the draft Pisgah Forest Community Zoning Ordinance, and direct their comments toward the presentation that was given tonight.

Mr. Sexton noted that the Planning Board did not discuss implementing any zoning restrictions in the areas mentioned by Commissioner Hogsed because it was understood that these areas were already under consideration by the City for the extension of the ETJ. Furthermore, the City had agreed to delay the expansion of the ETJ until this process was complete.

Chairman Chappell noted that the Board of Commissioners has already accepted the report and is following the timeline as recommended. He asked the City to address any of their questions or concerns in writing to the County. Mayor Harris responded that the City has reviewed and commented on the proposal and they now have accepted the report with the understanding there may be minor amendments. The City fully accepts the report recommended by the County Planning Board and they are okay with moving forward with the timeline and schedule that the Transylvania County Planning Board has offered.

Chairman Chappell stated that the Board of Commissioners will discuss this again at a future meeting and decide how to proceed.

PUBLIC COMMENTS

Michael Moore: Mr. Moore said he owns property on Hudlin Gap Road off Highway 280. He said the zoning proposal is not perfect but he feels it is better than the City's proposal to extend its ETJ. He expressed his opposition to the zoning concept.

Kline Sentelle: Mr. Sentelle asked both Boards to seriously think about what they are doing to the people of Pisgah Forest.

Larry Wilson: Mr. Wilson is a property owner in Pisgah Forest. He also commented that the proposal is not perfect. He encouraged both Boards to concentrate on keeping the corridors commercial and industry friendly in order to bring more jobs to Transylvania County. Mr. Wilson asked both Boards to put their differences aside and begin to work for the people.

Ken Norman: Mr. Norman thanked those who continue to fight for people's property rights and for listening to the residents of Pisgah Forest. He believes the zoning proposal should be implemented in the Davidson River community and that the City should allow the County to manage those properties. Mr. Norman also commented that the City would generate more revenue by selling water to County residents. He concluded by saying all the people want is to have a voice in their government.

FINAL BOARD COMMENTS

Mayor Harris thanked the Board of Commissioners for this meeting and for the presentation. He said the Planning Board's proposal satisfies City Council and they now turn this process over to the County to move forward.

Chairman Chappell also thanked City Council for meeting with the County this evening.

ADJOURNMENT

Councilman McKeller moved to adjourn the Brevard City Council meeting, seconded by Councilwoman Perkins and unanimously carried.

Commissioner Phillips moved to adjourn the Board of Commissioners' meeting, seconded by Commissioner Bullock and unanimously carried.

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board