

Minutes

RANDOLPH COUNTY PLANNING BOARD

July 10, 2012

The Randolph County Planning Board met at 6:30 p.m., on Tuesday, July 10, 2012, in the 2nd Floor Meeting Room, Randolph County Historic Courthouse, 145 Worth Street, Asheboro, North Carolina.

1. **Chairman Reid Pell** called to order the Randolph County Planning Board meeting at 6:30 p.m.
2. **Hal Johnson**, Planning Director, called roll of the members: **Reid Pell**, Chairman, present; **Wayne Joyce**, Vice Chairman, present; **Chris McLeod**, present; **Phil Ridge**, present; **Jim Rains**, present; **Kemp Davis**, present; and **Larry Brown**, present. County Attorney **Ben Morgan** was also present.
3. **Rains** made the motion, seconded by **Joyce**, to **approve** the Minutes of the June 5, 2012 Randolph County Planning Board meeting. The motion passed.
4. **REQUEST FOR PROPERTY REZONING:**

THE LESTER GROUP, INC., Martinsville, Virginia, is requesting that 37.93 acres located at 3874 Bethel Drive Extension, Trinity Township, be rezoned from LI to HI-CD. Tax ID# 6798099710. Primary Growth Area. The proposed Conditional Zoning District would specifically allow the existing facilities to be used for wood processing as per site plan.

- **Technical Review Committee Recommendation**

The Technical Review Committee met and found that this proposal was in compliance with the standards outlined in the 2009 Growth Management Plan adopted by the Board of County Commissioners. The Technical Review Committee recommends to the County Planning Board that this request be **approved** with the condition that a Level 1 buffer be maintained on the site where it adjoins residential zoning districts.

Examples of some Growth Management Policies that the Technical Review Committee found supporting this recommendation are:

Policy 1.7 Planning and development decisions should be based on the principal of promoting investment in Randolph County to expand employment opportunities while preserving and improving the quality of life for all county residents.

Policy 3.1. Industrial development should be on land that is physically suitable and has unique locational advantages for industry. Advanced planning for the identification of such land should be encouraged.

Policy 3.2 Heavy industrial sites should be separated from nonindustrial areas by natural features, green belts and/or other suitable means.

Jim Farrell, The Lester Group, said that they are planning to use the facility for the same type of business originally operated at this location by 84 Lumber. Farrell said that they will only be using the area that is paved for wood storage shipped by truck and rail. Farrell said the wooded area would be used for future expansion. Farrell said the property was occupied by 84 Lumber from 2005-09. **Johnson** said the property was vacant for so long that they were required to have the property rezoned to the appropriate district. Farrell said they will be pressure treating wood at this facility. Farrell said that they probably won't have as much traffic coming in as 84 Lumber had in the past.

There was no one present in opposition to this request.

McLeod made the motion, seconded by **Rains**, to recommend to the Commissioners that this request be **approved**. The motion passed unanimously.

5. **SPECIAL USE PERMIT REQUEST:**

Swearing in of the Witnesses - "Do you swear or affirm that the information you are about to give is the truth, the whole truth, and nothing but the truth, so help you God."

Two people took this Oath.

A: **ROBERT YORK**, Asheboro, North Carolina, is requesting a Special Use Permit for a Rural Family Occupation to operate a used automotive sales lot (maximum display of 5 cars) at his residence located on 3.39 acres at 1485 Burney Road, Union Township, Secondary Growth Area, Zoning District RA, Tax ID# 7655585686.

York was present and explained his intentions to renew his dealer's license. York said that he currently has a dealer's license at Randolph Auto Parts in Asheboro. York said that he will not be selling parts at this location. York said that he may not have cars here but he plans to maintain his license. York said that the only sign he will have at this location will be on the building.

There was no one present in opposition to this request.

Joyce made the motion, seconded by **Brown**, to approve this request for a Special Use Permit. The motion passed unanimously.

- B: **CHRIS ELKIN**, Asheboro, North Carolina, is requesting a Special Use Permit for a Rural Family Occupation to allow an existing 30' x 70' open shelter to be used for Special Events (weddings, etc.) at his residence located on 4.16 acres at 6732 US Hwy 220 South, Richland Township, Primary Growth Area, Zoning District RA, Tax ID# 7666238906.

Elkin was present and explained his intentions for an existing open shelter at his residence to be used for weddings and gatherings. Elkin said that he will generally manage the events, but the property will be leased for these events.

There was no one present in opposition to this request.

Rains asked if the Board felt there should be any hours or days of operation attached to the permit. Rains said possibly to control any noise problems. **Elkin** said that there is a race track approximately 1/4 mile from this site and it is way noisier than anything that could go on here.

McLeod made the motion, seconded by **Ridge**, to approve the request for a Special Use Permit. The motion passed unanimously.

6. **Review of Quasi-Judicial Special Use Permit Proceedings and requirements for Planning Board members** - Hal Johnson, Planning Director

Johnson said that the Commissioners have not yet decided if they will authorize County staff to begin the process of obtaining permits for a Regional Landfill. Johnson said if the Board does authorize this process to begin, the County must first obtain a Special Use Permit from the County Planning Board.

Johnson reminded the Board members that he has sent each of them a letter advising them of their responsibility.

Johnson read the letter into the record:

As members of a planning board, some of your decisions are conducted in a “quasi-judicial” manner. Many of these decisions arise out of applications for a special use permit. If they are not done correctly, the board and county can be sued.

As you may know from media coverage, it is possible that this board will consider a

special use permit related to a regional landfill with in the next few months. Such hearings are very important to parties on each side, and sometimes they generate considerable public discussion. I would like to remind you of the rules governing quasi-judicial proceedings so that, if an application is filed, this board will follow the law conscientiously.

Quasi-judicial proceedings involve matters where an applicant must demonstrate that he or she meets the requirements of certain standards. In order to determine whether the applicant meets those standards, the planning board, to a great extent, wears the same type of robe that a judge wears when he or she considers evidence, makes findings of fact and adopts conclusions of law.

In a quasi-judicial proceeding, evidence must be presented under oath, parties have a right to cross-examine witnesses, and the evidence presented must be relevant to the issue. The evidence must also be “substantial” in nature in order to support the board’s findings. These procedural requirements are considered to be “due process” rights protected by our Constitution.

Another extremely important aspect of this protection is a party’s right to have decisions made by an impartial board. An impartial board must make its decision after hearing all evidence and not upon evidence learned outside of the hearing. When citizens approach you outside of the hearing to discuss the issue, it is called an “ex parte communication.” Such conversations or communications are improper because they can influence planning board members’ opinions before they hear all the evidence, the statements are not under oath, and they are not subject to cross-examination by other parties. It is no exception when the person says “this is just you and me talking” or “I can’t be at the hearing, so I’m telling you now.”

If someone approaches you to discuss any matter that may come before you as a special use permit or other matter that is quasi-judicial, you are obligated to explained that the law prevents you from discussing this type of matter outside of the hearing. If you do receive letters or emails or someone approaches you, you are required to disclose those communications before the hearing. If it is later discovered that a board member had an undisclosed ex parte communication, the board can be sued and the decision overturned.

I know that this is complicated, but governing according to laws that protect citizens’ rights is seldom easy. If you have any questions, please feel free to call me.

Johnson said that if the Commissioners make this decision, this will be the first time the County has requested a permit from the County Planning Board (itself). Johnson said this would cause an issue with legal representation. Johnson said that Ben Morgan is the

Attorney of the Board of County Commissioners. Johnson said that it could be considered a conflict of interest for Morgan to represent the County Planning Board during the Board's consideration of this issue. Johnson said that the Commissioners have approved another attorney to be hired to represent the Planning Board for that hearing, if the hearing is held.

Johnson said that the County's Zoning Ordinance, as it relates to landfills, has not be updated since 1979. Johnson said the staff recommends the Ordinance be updated to reflect current State regulations and requirements which have greater restrictions on landfills than those originally put in the County Special Use Permit rules of 1979. Johnson said as a result of this we will be reviewing updates at our August meeting to be forwarded to the Commissioners for their consideration in September.

Johnson said at one time, we discussed the possibility of this request as a board. Johnson said at that time, it was asked could we as a board visit the site. Johnson said that we can do this, but it would be a public meeting and no opinions could be expressed at that time.

Morgan said that these procedures and requirements don't only apply to regional landfills, but all Special Use Permit request.

7. The meeting adjourned at 7:23 p.m. There were 15 citizens present for this meeting.

**NORTH CAROLINA
RANDOLPH COUNTY**

HAL JOHNSON

Planning Director

JILL WOOD

Date

Clerk/Secretary