

**IREDELL COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING (4:00 P.M.) & BRIEFING (5:00 P.M.) MINUTES
APRIL 3, 2007**

The Iredell County Board of Commissioners met in Special Session on Tuesday, April 3, 2007, at 4:00 P.M., in the Iredell County Government Center (South Wing Conference Room, 200 South Center Street, Statesville, NC. The special meeting was followed by the regularly scheduled agenda briefing at 5 P.M.

Board Members Present

Chairman Marvin Norman
Vice Chairman Sara Haire Tice
Steve Johnson
Ken Robertson
Godfrey Williams

Staff present: County Manager Joel Mashburn, County Attorney Bill Pope, Deputy County Manager Susan Blumenstein, Acting Planning Director Steve Warren, Planner William Allison, Planner Ricky Hurley, and Clerk to the Board Jean Moore.

CALL TO ORDER by Chairman Norman

CONSIDERATION OF A PROPOSED RESIDENTIAL GROWTH MANAGEMENT SYSTEM ORDINANCE FOR THE BRAWLEY SCHOOL ROAD (BSR) PENINSULA: Acting Planning Director Steve Warren presented a proposed “stand alone” ordinance geared towards the establishment of a building permit system for the BSR peninsula. He said much data had been collected to determine the number of vacant lots of record, as well as the number of acres not platted. Warren said the ordinance would be repealed when the roadway (BSR) was improved. He said BSR applications would be available at the permit “window” and reviewed within ten days by the planners -- not the clerical staff. Warren said next, at the end of the month, there would be a lottery to select applicants for the available permits, and every 30 days thereafter, applicant numbers would be drawn based on the growth rate. Warren said on average, eight or nine applications would be drawn per month, and this was based on 100 permits available in a 12-month period. He said that if an applicant withdrew, after being selected, another draw would occur.

Action: The board chose a lottery method of drawing numbers out of a container along with advertising the date/time that each lottery would occur.

Attorney Pope said the draft ordinance was evolving as additional facts were received. He said there was an effort to separate what was anecdotal from empirical data. Pope said the ordinance was based on “police power” and this was to help regulate the health and welfare of the citizens, but there were limits on what could be imposed. He said (1) the board’s exercise of power could be of no more duration than necessary to solve the problem and (2) it had to be reasonable, along with being reasonably calculated to solve the problem, and not arbitrary or capricious. Mr. Pope said the ordinance would be eliminated when the roadway was improved, plus no particular individual would be restrained from obtaining a permit for more than one year. (“If your name isn’t drawn in 12 consecutive months, on the 13th month you’ll receive one.”) He said the cap, in that sense, would be more than 100. Pope said the ordinance was also tied to something reasonable and rational. He said there wasn’t a housing problem, rather it was a traffic problem. Pope said, however, a reasonable method to regulate cars on the road could not be found. He said to a great extent, the regulation of traffic had been pre-empted by the state and federal government. Pope said it was factual to say the average house in the county generated 9.6 trips a day, and if this were a fact, a manageable rate of increase, was four percent or less. He said the traffic count was known (25,000 cars a day on BSR), and using four percent, with 9.6 trips per household, it was easy to determine how many permits could be issued to limit growth to the four percent. Pope said he initially thought 180 permits would be used, but most of the consultants said anything beyond four percent was unmanageable. He said 100 permits were then evaluated, and he felt this would be defensible. Mr. Pope said findings of fact had been developed, but the commissioners would have to determine them after public hearing testimony from the experts. He said that if the board proposed to adopt an ordinance, the testimony should be heard and the findings verified. Pope said the facts had to compel a conclusion that

something needed to occur about BSR and an approach that regulated the increase of traffic was a reasonable and rational approach -- not arbitrary or capricious. He said the approach of having a 13-month true up for the people unlucky to obtain a permit meant that no person would be delayed for more than one year. Pope said a second part of the plan would be based on recently enacted legislation (G.S. 153A-349.1) that allows counties to enter into development agreements with developers. He said this legislation allowed county commissioners to enter into agreements with developers of tracts of 25 acres or more of developable property. Pope said it was felt that large developments were particularly problematic; therefore, the legislature decided to confer authority to the counties to deal with development in this fashion. He said this legislation could be applied to the Brawley School Road, along with Perth Road, and other "hot" spots. Pope said that in regards to the ordinance being applied to Perth Road, it was unlikely the data would support it. He said for the Brawley School Road, however, he was recommending the ordinance along with G.S. 153A-349.1.

Commissioner Johnson said he understood that if an applicant wasn't chosen in a 12-month period of time that during the 13 month, the person would be issued a permit.

Warren said correct – the staff would contact the applicant during the 13th month.

Commissioner Robertson asked if there were a mechanism to prevent a developer, who might not be ready to build, from going ahead and applying.

Warren said there would be one allocation per parcel, and if someone (large developer) came into the office there was a mechanism to allow only 20% of the drawing, in any one monthly period, for any one entity. (Example: If someone had 100 in the drawing and 4 were pulled, the staff would only allow 2 to be permitted for the following period. The other 2 would go back in the "hat.")

Robertson said that at the end of 12 months a developer could build a 100-lot subdivision.

Warren said yes. He said a developer would not be able to "cook" the process because if they didn't pay for the permit, their application would be null and void.

Commissioner Williams asked if the permits were transferable.

Warren said the allocation was granted to a specific applicant but it aligned more with the land.

Commissioner Tice asked about individuals already in possession of permits.

Warren said if permits were already purchased, they would be exempt. (If purchased before the effective date of the ordinance.) He said if applicants felt wronged, there was a process for appeal through the board of adjustment. Warren said there were provisions to make alterations to the ordinance, if needed.

Commissioner Johnson asked about vested rights.

Allison said it wasn't uncommon for applicants to obtain zoning and environmental permits, and then be faced with new regulations. He said that if the individual could show (1) substantial expenditures [this does not include purchase of the land], (2) good faith, (3) valid local approval – zoning/health permit, and (4) detriment [financial harm], this was a strong case for vested rights.

Commissioner Tice noted that one of the findings of fact needed correction. (Oak Tree Elementary should be eliminated and replaced by Lake Norman Elementary).

Hurley said there was state legislation in the northeast that allowed for this type of ordinance, but there wasn't any case law in North Carolina.

The board agreed to call for a public hearing on April 17 and to place the matter on the consent agenda.

The special meeting was adjourned at 4:50 p.m.

APRIL 3, 2007
BRIEFING MINUTES
5:00 P.M.

Board Members Present

Chairman Marvin Norman
Vice Chairman Sara Haire Tice
Steve Johnson
Ken Robertson
Godfrey Williams

Staff present: County Manager Joel Mashburn, Deputy County Manager Susan Blumenstein, Acting Planning Director Steve Warren, Planners William Allison and Ricky Hurley, Inspections/Support Services Director Lynn Niblock, Soil & Erosion Control Administrator Mark Selquist, Captain Jimmie Craven with the Sheriff's Department, and Clerk to the Board Jean Moore

CALL TO ORDER by Chairman Norman.

REQUEST FROM THE FOOTHILLS LAND & DEVELOPMENT COMPANY FOR THE RELEASE OF ZONING & SUBDIVISION JURISDICTION OF 18.443 ACRES TO THE TOWN OF MOORESVILLE (LOCATION: CORNER OF PERTH ROAD AND LAKESHORE SCHOOL ROAD IN MOORESVILLE, NC): Acting Planning Director Steve Warren explained this request and said it was the first case falling under the new public hearing and notice criteria.

Commissioner Johnson mentioned the possibility of approaching the Mooresville Town officials about a Roadway Protection Plan and an Urban Service Area. He said the county's land use plan could be conducive to Mooresville's without an undue expense to the town. Johnson said many contiguous areas to the Town were being used for residential purposes.

Commissioner Tice said an overture to Mooresville about the USA would be a good idea.

Mooresville Town Councilman Frank Rader, who happened to be in the audience, conceded that the Town's inventory of commercial/industrial property was "slack." He said this was the number one growth issue. Rader said he couldn't speak for the entire council, but he felt the other members would be receptive to a discussion.

The other agenda items were then reviewed, and a summary about these matters may be found in the regular minutes.

Chairman Norman adjourned the briefing at 6:10 p.m.

Approved: _____

Clerk to the Board