

MINUTES

**Wake County Planning Board
Wednesday, February 3, 2010
1:30 P.M., Room 700
Wake County Courthouse
316 Fayetteville Street
Raleigh, N.C.**

Members Present (9): Mr. John Miller (chair), Mr. Loftie Smith (vice-chair), Ms. Beth Trahos, Mr. Dale Bouldin, Mr. Graham Cawthorne, Mr. Calvin Pippin, Mr. Joseph Springer, Mr. Douglas Ball, and Mr. Alan Swanstrom

Members Not Present (1): Mr. Michael Golder (excused for medical reasons)

Staff Members Present (10): Mr. Frank Cope (Community Services Director), Mr. Tim Maloney (Community Services Manager), Mr. Steven Finn (Land Development Administrator), Ms. Sharon Peterson (Long-Range Planning Administrator), Mr. Larry Morgan (Planner III), Mr. Keith Lankford (Planner III), Mr. Bryan Coates (Planner II), Ms. Brenda Coats (Planner II), Mr. Justin Rametta (Planner I), and Mr. Matt Burton (Clerk to the Board)

County Attorney Present (1): Ms. Shelley Eason, Deputy County Attorney

Board of Commissioner Members Present (1): Ms. Lindy Brown

1. Call to Order – Mr. Miller called the meeting to order at 1:30 P.M.

2. Petitions and Amendments – There were none.

3. Approval of Minutes of January 20, 2010, Planning Board Meeting – Ms. Trahos made a motion to approve the January 20, 2010, minutes as written. Mr. Pippin seconded the motion, which was approved unanimously.

4. OA-03-09: To consider changes to the Wake County Unified Development Ordinance (UDO) updating Section 4-11, *Use Table*, and the creation of Section 4-59, specifically to create a redevelopment option for nonconforming uses in the Residential-40 Watershed (R-40W) zoning districts and related standards.

Mr. Finn came forward, entered the staff report into the record, and gave a brief update on this UDO text amendment that was introduced to the Planning Board last October. This is a process proposed that would create a special use option for nonconforming uses to redevelop in R-40W districts. It would create a new category in the Land Use Table and give the Board of Adjustment discretion with site specific developments.

Prior to 1997, the Wake County Zoning Ordinance allowed unlimited expansion and change of nonconformities so long as the Board of Adjustment approval determined that the potential adverse impacts of denial on the owner of the nonconformity outweighed the potential adverse impacts of the proposal. This allowed the owner of a nonconforming site to expand and/or change a nonconforming use on their property without having to comply with any regulation with which the existing development did not comply. This process was utilized approximately 15 times in

the two years prior to the repeal by the Wake County Board of Commissioners on June 16, 1997 [Ordinance Amendment O-97-24].

Ordinance amendment O-97-24 proposed that the County's treatment of nonconformities mirror those employed by most local governments to allow nonconformities to exist ("grandfather"), but to prohibit their expansion or enlargement other than routine maintenance or repair. It further allowed the routine maintenance and repair of nonconformities and to allow the reconstruction of such structure if only partially destroyed.

This theme was carried over and updated through the adoption of the Unified Development Ordinance (UDO) which was adopted on April 17, 2006.

The proposed amendment seeks to create an option to redevelop sites with nonconforming uses in R-40W zoning districts. In general terms, a new use category, *Elimination and Redevelopment of Nonconforming Use*, would be created in Section 4-11 of the UDO. In this section, an 'S' (Special Use Permit required) would be designated under R-40W. The redevelopment option would not be allowed in any other zoning district. A new Section, 4-59, would also be created, implementing use standards for the proposed redevelopment option.

The proposed amendment as written would allow existing nonconforming uses in R-40W zoning districts to be redeveloped to a wide range of uses if certain improvements are made and the Board of Adjustment approves a Special Use Permit site plan. The proposed uses which would be permitted would differ from those currently permitted by the UDO in R-40W. For example, commercial uses such as eating and drinking establishments and banks would be options under the proposal; however any commercial use would have to be located in an Activity Center as designated on the Wake County Land Use Plan.

The proposal also differs from current standards in that setbacks for all sites redeveloped subject to the text change would be thirty (30) feet for front, corner, and rear and fifteen (15) feet on the sides. The UDO currently places more restrictive setbacks for some uses. For example, neighborhood retail uses must meet a fifty-foot (50') front and twenty-five-foot (25') side setback.

In anticipation of pending regulations from the North Carolina Environmental Management Commission, sites redeveloped in accordance with the proposed text change would also be required to reduce post-construction nitrogen and phosphorous loading rates by at least fifty-five percent (55%) and sixty-five percent (65%), respectively. The proposed nitrogen standard exceeds the established recommendation of the local stakeholders group of 40%, but does not meet their recommended standard of 77% for phosphorous loading.

The proposal as written would have a significant impact on the Board of Adjustment. They would be given an increased amount of discretion and flexibility. For example, the UDO currently has standards in place for limits on floor area of commercial buildings. Under the proposed text change, no limit is set, as the Board of Adjustment is given authority to determine whether a proposed structure is of an appropriate size. Another example of increased discretion given to the Board of Adjustment by the proposed text change is that they may approve off-site parking and outside storage, both of which are currently limited or prohibited for most uses by current standards in the UDO. The number of parking spots required appears to be determined through the site plan. Finally, the Board of Adjustment would have

discretion to approve the number, type, height, and size of signs on a site developed subject to the proposed text change.

Staff Findings

In summary, the text changed as proposed would create a new process allowing for the redevelopment of nonconforming sites in R-40W zoning districts to a wide range of uses, subject to approval by the Board of Adjustment. The proposed change has potentially positive and negative impacts, and changes the role that the Board of Adjustment has historically played in reviewing development proposals.

Mr. Swanstrom asked if this change would only apply to R-40W and not to R-40 zoning. Mr. Finn said this was correct. Mr. Swanstrom said this would suggest that a non-watershed zoning classification would be more restrictive than a watershed zoning. Mr. Finn said this is an inference.

Mr. Britt Stoddard came forward and said he has participated in some of the staff discussions on this amendment and wanted to enumerate some of the important policy questions that were raised in the meetings. They included: amending the range of uses that are allowed in residential areas and how the ranges determined; applying the policy only to redevelopment sites; and in which zoning districts would the range of uses be permitted.

Mr. Lacy Reeves of 150 Fayetteville Street, Raleigh, NC, came forward and said he was present representing the applicants, commended Mr. Finn for his staff report, and said he had been present at the previous committee meetings and at the January 20 full board meeting. He submitted this text amendment several months ago after several property owners in the county in R-40W districts expressed concern that it was impossible under the current UDO provisions to redevelop nonconforming uses within activity centers in these districts for land uses that are authorized in the county Land Use Plan. This proposal is purposely restrictive and any requests would have to go through a special use permit process and meet all provisions of the UDO, including the watershed and stormwater regulations. He has consulted with representatives of the City of Raleigh and the North Carolina Environmental Management Commission. The proposal specifically requires that any commercial development that might result under this amendment must occur within an Activity Center, and any redevelopment that results under this amendment must be within the context of a Special Use Permit. He clarified that the proposal only deals with redevelopment, and does not create any new development options.

Mr. Swanstrom asked how the petitioner would respond to a property owner who had a similar nonconformity in an R-40 parcel. Mr. Reaves said he is not suggesting a change in the process nor is he ruling out a reconsideration of policies applicable in other districts, and noted that would be up to the county. He said the proposal focuses on the R-40W district because any changes or nonconformities would be more damaging there. Mr. Swanstrom cautioned that if this amendment is approved, it could create a groundswell of similar changes in other districts and multiple amendments to the UDO. Mr. Reaves reminded the board that any citizen can propose a text amendment. Mr. Miller added that in the next calendar year, the Code and Operations Committee may take a closer examination of the UDO. Mr. Swanstrom asked if this is the case, why would the Planning Board make an exceptional decision today that might preempt the broader flexibility of the review of the UDO uses. Ms. Trahos responded that the watersheds are treated differently

than the rest of the county, and suggested that this consideration makes sense now without regard to impacts outside of the watershed.

There was no one else that wished to speak in favor of the text amendment.

Mr. John Grace of 1105 Kinsdale Drive, Raleigh, NC came forward and read from a letter dated February 3, 2010, that he submitted to the Planning Board [*appendix I*]. Mr. Miller asked what he believes should happen to the nonconformities in R-40W districts anywhere in the county. Mr. Grace replied that when the nonconformity goes away, the property should be treated as an undeveloped piece of land. Mr. Swanstrom asked what the current nonconforming use is on the relevant property under consideration. Mr. Grace said it is a lumberyard with much impervious surface coverage. Mr. Cawthorne asked since there is no stormwater devices and much impervious surface on the site, would it not be a benefit to the watershed to reduce the impervious to 24% and input stormwater devices to reduce nitrogen and phosphorus discharge. Mr. Grace said it would be a benefit over what is present now. Mr. Miller asked if his belief is that once the nonconforming occupancy is gone, the parcel should go back to natural land. Mr. Grace responded that it should not go back to natural land, but back to as if it were natural. Mr. Cawthorne asked if he felt there should be any activity centers within the watershed. Mr. Grace said they serve a purpose and he does not see a problem with them, although in a perfect world, he would prefer they were not in a watershed. Mr. Miller reminded everyone that the board is not treating this petition as a single piece of property in the watershed, but that the request would apply to all R-40W properties in the county, and there are potentially multiple properties that the amendment could apply to.

Ms. Trahos asked what the maximum impervious surface limitations are in the R-40W district. Mr. Finn answered 12% and 24%, and if 12% is exceeded, there must be onsite stormwater management. These requirements would be the same whether it was a new development or a redevelopment. Mr. Cawthorne asked if there would have to be compliance with nitrogen and phosphorus reduction if there was residential versus commercial development. Mr. Stoddard answered no, and that the phosphorus limit would kick in if the development was nonresidential, and would not apply if it is. Mr. Reaves returned to the podium and referred to page two, item c in the petition, and noted in the provision that nitrogen reduction of 55% and phosphorus reduction of 65% applies in any case where the amendment applies (residential or non-residential), but would not apply with a bare piece of land.

Mr. Swanstrom asked about the process differences implied in this proposal. Mr. Finn said the process is covered in Article 7 of the UDO, and if someone seeks to redevelop and takes advantage of this option that does not currently exist, they could pursue a redevelopment scenario under this proposal with the Board of Adjustment. Ms. Eason added that the option would depend on what the individual wants to do with the property, and that if that person wants to continue or expand a nonconforming use, he or she would have to go to the Board of Adjustment. If the individual wanted to get rid of the use altogether, they should treat it like any other piece of property in a general use permit process.

Mr. Swanstrom asked about the dramatically expanded role of the Board of Adjustment. Mr. Finn said in this proposal, there is additional discretion of uses that the board can consider than it already does. Mr. Swanstrom asked if an individual was across the street from the R-40W district and did not have an existing nonconforming use, he or she could not take advantage of the relaxed standards. Mr. Finn said this was correct. Mr. Grace posed that the Board of Adjustment is not

a protective organization as it operates under greatly different rules than the Planning Board.

Mr. Smith said the Code and Operations Committee examined this amendment four times and looked at all aspects of the issue. He added that there is a minimum required setback, not "a minimum," which would be reserved to the purview of the Board of Adjustment. He asked if there is a current nonconforming use that has ceased to be used, is it still nonconforming. Ms. Trahos recalled the timeframe was 120 days in the UDO. This does not mean the county would come in and remove the entire impervious surface, but the business could not reopen. Ms. Eason added that it applies only to the land of the nonconforming use.

Mr. Finn noted that there was an additional letter dated February 3, 2010, provided to the board, from a Mr. Robert Mulder, expressing opposition to the amendment [*appendix II*]. Mr. Miller asked if there was any recommendation from staff. Mr. Finn answered no. Mr. Smith asked about the abandoned property question, and suggested that the ordinance may be written indicating this applies to the nonconforming use. Ms. Eason responded that it is her understanding that if there is a use, it does not have to be abandoned; it can be a current, nonconforming use. There is no distinction listed between existing and abandoned nonconforming uses.

Mr. Pippin confirmed that the Code and Operations Committee examined this amendment at four meetings and at its last meeting, there was unanimous approval to bring it forward to the full Planning Board to consider recommending approval to the Board of Commissioners.

Mr. Pippin made a motion that the Planning Board recommend that the Board of Commissioners approve OA-03-09. Mr. Bouldin seconded the motion. Mr. Miller asked Ms. Brown if the tenets of the issue as examined today would be clear enough to the Board of Commissioners. Ms. Brown answered yes. Through a voice and hand vote, the motion carried 8-1, with Mr. Swanstrom's vote in the negative.

5. ZP-872-09: This proposal is to rezone a total of 6.733 acres from Residential-30 (R-30) and Residential-40 (R-40) to Conditional Use-General Business (CU-GB) to allow for one or more of the following uses: Single-family residential and agricultural uses; child and/or adult day care facilities; church or religious assembly; eating and drinking establishments other than bars and nightclubs; financial institutions, not including pawn shops or "pay-day" loan services; office; and neighborhood or convenience oriented retail with or without gas sales.

Mr. Lankford came forward and entered the staff report and PowerPoint presentation into the record. Before the case was heard, Ms. Trahos recused herself as her law firm represents the Town of Knightdale.

Location: 3713 Smithfield Road and 5821 Poor Boy Farm Road, on the eastern side of Smithfield Road between Poor Boy Farm Road and King Farm Lane.

Present Zoning: Residential-30 (R-30) and Residential-40 (R-40)

Proposed Zoning: Conditional Use-General Business (CU-GB)

Existing Land Uses: Agricultural

Applicant: Thomas C. Worth; Isabel Mattox

Design Firm: None

Owner: Poor Boy Farms, Inc.

PIN #s: Portions of 1763-30-6821 and 1763-31-5586

Surrounding Zoning Districts and Land Uses

| Direction | Land Use | Zoning |
|------------------|--|-----------------------|
| North | Poor Boy Farm Road (private), agricultural and residential | Residential-30 (R-30) |
| East | Agricultural and residential | Residential-40 (R-40) |
| South | Agricultural and residential | Residential-40 (R-40) |
| West | Smithfield Road, agricultural and residential | Residential-30 (R-30) |

Land Use/Zoning History

- **1976:** The property was originally zoned Residential-30 (R-30) and Residential-40 (R-40)
- **2000:** The East Raleigh/Knightdale Area Land Use Plan was initially adopted
- **2001:** The East Raleigh/Knightdale Area Land Use Plan was updated to expand the NAC near the Smithfield Road/Poole Road intersection to its current configuration (which did not include the subject property).
- **2004:** The East Raleigh/Knightdale Area Land Use Plan was updated
- **2009:** This area was reclassified from Knightdale’s Long-Range Urban Services Area (LRUSA) to Knightdale’s Short-Range Urban Services Area (SRUSA)

In 2009, this area was reclassified from Knightdale’s Long-Range Urban Services Area (LRUSA) to Knightdale’s Short-Range Urban Services Area (SRUSA), as shown on the Wake County Land Use Plan General Classifications Map. The SRUSAs are intended to be urbanized and served by municipal services, probably within the next ten (10) years.

The 2004 amendment of the East Raleigh/Knightdale Area Land Use Plan was in response to a request from the Town of Knightdale to reflect changing development pressures related to the opening of the US Highway 64 Bypass, and to take into account the recommendations of the Town’s Master Plan. As part of this process several of the activity centers in the study area were converted from symbols to parcel-based activity centers. The nearest activity center to the subject property, located at the intersection of Poole Road and Smithfield Road, was established in its current configuration via a Land Use Plan Amendment that was adopted in 2001. The subject properties are not located within an activity center, nor have they been within an activity center.

The East Raleigh/Knightdale Area Land Use Plan designates this area for residential uses, at densities of less than 1.5 dwelling units per acre. The proposed rezoning does **not** comply with this plan because, if adopted, it would allow for commercial uses versus the intended residential uses, and because there is **not** an activity center at this location. The nearest designated activity center is a Neighborhood

Activity Center (NAC) that includes land located on the northeastern and southwestern corners of the intersection of Poole Road and Smithfield Road (see the attached Land Use Plan map). The subject property is located approximately one-tenth of a mile north of this NAC's northernmost boundary.

At 143 acres, this NAC is already considerably larger than the standard NAC size of 35 acres. This existing NAC also exceeds the standard size of a Community Activity Center (CAC), which is 120 acres. It appears that this NAC is as large as it is because it was stretched northward from the intersection at Poole Road to include the properties located on the southern side of King Farm Lane (about one-tenth of a mile to the south of the proposed site). Those properties along the southern side of King Farm Road had already been developed with some commercial uses (i.e.-mini-storage and a service/warehouse building) prior to the adoption of the East Raleigh/Knightdale Area Land Use Plan in 2000.

The Land Use Plan's policies and goals, which have been adopted by the Board of Commissioners, address how development is to occur in the County so as to maintain and enhance the character of the area and the quality of life for its residents. These goals direct more intensive uses to activity centers as identified on the Land Use Plan in an effort to prevent the adverse effects of sprawling development. The East Raleigh-Knightdale Area Land Use Plan specifically states these three goals (among others):

- Guide quality growth throughout the East Raleigh-Knightdale area in cooperation with local governments.
- Encourage growth that will take advantage of existing and planned infrastructure so that municipalities are able to provide basic public services in accordance with their adopted plans.
- Focus compact development in mixed-use activity centers that include housing, commercial, services and employment opportunities designed with convenient pedestrian and vehicular access from surrounding development areas.

The Wake County Land Use Plan also indicates that the concept of locating non-residential uses within activity centers is intended to ensure that adjacent uses are compatible with each other so as to eliminate potential conflicts. The plan also notes that the activity center design guidelines should apply to conditional use rezonings involving commercial, office or institutional uses.

The North Carolina General Statutes 153A-341 and Section 19-20-6 (E) require that the Planning Board provide the Board of Commissioners with a statement of whether or not the proposed rezoning petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare. In making a determination of whether or not to approve the rezoning petition, the Board of Commissioners must adopt a statement describing whether or not the proposed petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, or why it chose not to follow the Land Use Plan and how that decision is reasonable and in the public interest--if that is the case.

The petitioner has provided several statements indicating why they believe that the proposed rezoning and subsequent use is a public necessity, explaining its impact on the surrounding neighborhood and adjacent properties, and why it would be in the interest of the public health, safety and general welfare. They have also provided a Statement of Justification, and statements of Compliance with the Land Use Plan,

and Compliance with the Transitional Urban Development Policies. These statements are included in the attached petition package.

As part of the Wake County planning staff's review of this rezoning request, a copy of the petition was forwarded to the Knightdale planning staff since this site lies within their SRUSA. The Knightdale planning staff provided comments indicating their opposition to the proposed rezoning (see attached e-mail). In addition to noting that the proposed rezoning would be inconsistent with their land use planning efforts for that area, they felt that commercial development at this time would be premature in the absence of public utilities, and that the development of this site without utilities could make the town's future annexation of this site difficult. They have previously advised staff about their concerns regarding a commercial rezoning in this area and noted the incompatibility of the allowable uses, the resulting traffic and the establishment of a precedent if the rezoning was granted.

The Wake County Unified Development Ordinance (UDO) establishes a two-step conditional use rezoning process. The first step is to obtain a conditional use rezoning from the Board of Commissioners. The second step requires that the Wake County Planning Board grant a Planned Compliance Permit (PCP) for **most** uses (although some commercial uses could be approved administratively by staff if they were less than 2,500 square feet in building size). Any commercial use with gas sales, regardless of size, would require a PCP.

The Planning Board acts as the permit issuing authority for uses requiring a PCP (as per Section 19-22 of the UDO). The PCP process requires the petitioner to submit a detailed site plan to the planning staff and Planning Board to demonstrate that the project conforms with all regulations and standards generally applicable within the zoning district (and specifically applicable to the particular type of PCP or class of PCPs). The planning staff and Planning Board will also ensure that any rezoning conditions are incorporated into the site plan. The Planning Board may impose additional "reasonable" conditions to address any impediments to the board reaching the required findings that are necessary for approval of the PCP.

A General Use Permit would be processed administratively by the planning staff for all commercial uses of less than 2,500 square feet in building size after demonstration of full compliance with all applicable regulations and standards.

The Land Use Plan's Transitional Urban Development (TUD) policies define how current development should be designed in order to facilitate its future assimilation into an urbanized area served by urban facilities and services. Within SRUSAs, the Plan's TUD policies require that new development should connect to a municipal water and/or sewer system if feasible, otherwise it is required to at least dedicate the easements necessary to allow its eventual service by a municipal water and/or sewer system. Any future development on this site will be required to comply with the provisions of the Wake County UDO related to connection to the municipal (i.e.- Knightdale's) water and/or sewer system and/or the provision of utility easements.

Also, the TUDs policies require that new development be served by the types and levels of transportation facilities that can accommodate the vehicular, bicycle, pedestrian, and transit needs as required by the Wake County Thoroughfare Plan, Wake County's Land Use Plan, and/or the North Carolina Department of Transportation (NCDOT). Any future development on this site will be required to comply with the stipulations of the Wake County UDO related to the provision of transportation facilities identified on the Wake County Transportation Plan.

The property is proposed to be served by individual well and septic systems. Knightdale has indicated that they do not anticipate public water and/or sewer being extended into this area within the next few years. Most commercial uses, as proposed for this property, would generally require only a private service lateral to tap into a public water or sewer system (if and when the public line is extended into this area).

There are no known significant environmental issues associated with this site, with the exception of some possible flood hazard soils along the southern property line. The petitioner may need to conduct some field work to determine whether or not there are flood hazard soils on this property.

The site will be accessed from Smithfield Road. The right-of-way of Smithfield Road, which is classified as a major thoroughfare in the Wake County Transportation Plan, is proposed to be widened from 60 feet to 120 feet. The proposed widening will require the dedication of an additional 30 feet of right-of-way on the subject property's frontage on Smithfield Road. The roadway of Smithfield Road is proposed to be widened from a 24-foot two-lane cross section to a 70-foot four-lane cross section with a median.

Any future development on this site will be required to comply with the stipulations of the Wake County UDO related to the provision of transportation facilities identified on the Wake County Transportation Plan. These provisions would require the dedication of additional right-of-way and road widening improvements including any requirements imposed by the North Carolina Department of Transportation (NCDOT) deemed necessary for safe ingress and egress for the site.

A Traffic Impact Analysis (TIA) is required for any development that generates more than 1,000 trips per day, or more than 100 peak-hour trips, as determined by the Institute of Transportation Engineers' Trip Generation manual for specific proposed uses. The TIA must be submitted during the site plan approval process. The petitioner will be required by the UDO to install any necessary roadway improvements that may be recommended by the findings of the TIA (subject to coordination with, and approval by, NCDOT).

Smithfield Road's current two-lane cross-section has a design capacity of 12,000 Vehicle Trips per Day (VTD), and the proposed four-lane cross-section for the year 2025 has a design capacity of 31,500 VTD. According to the NCDOT District Engineer's office, the most recently available average annual daily traffic (AADT) counts for this portion of Smithfield Road was 11,000 vehicles per day in 2007 (it was 7,500 VTDs in 2005). This figure is approaching the stated design capacity of the roadway, however, it should be noted that the majority of this traffic is most likely associated with peak hour traffic flows in the morning and late afternoon as workers commute to and from employment centers within Wake County. The TIA that would be required as part of the subsequent development of this property would provide a more accurate assessment of the traffic conditions and would provide recommendations to address any concerns, as would NCDOT's review of subsequent development plans for the subject property.

During the preparation of this staff report a resident of the Amber Acres North Subdivision called the planning staff and indicated her concerns about a commercial use, such as a convenience store, at this location. She noted that she was concerned about traffic on Smithfield Road because it was already difficult to enter

the roadway in the mornings and mentioned accidents in the area. She said that they would want a traffic light installed at their intersection (i.e.—Sandy Run road) if additional traffic was added to Smithfield Road. Whether or not a traffic signal would be warranted at this intersection, or elsewhere along this road, would ultimately have to be determined by NCDOT. Staff observed a somewhat sharp curve between the subject property and Sandy Run road (see attached photograph). The NCDOT District Engineer's office indicated that roadway improvements **may** be necessary to address sight distance issues related to this curve.

In response to the Amber Acres North resident's phone call, the planning staff contacted the Wake County Sheriff's Department and the North Carolina Division of Motor Vehicles (NCDMV) to obtain any relevant accident reports in this area. The Sheriff's Department indicated that within the last two years that there had been a total of seven (7) accidents within the area of the subject property: one accident at Smithfield Road's intersection with Sandy Run road, one at Meadow Run road, two at Covington Cross Drive, and three at Poole Road. This segment of Smithfield Road is approximately 1.4 miles long with the subject property located near the middle of this road segment.

The site is located in the Town of Knightdale's SRUSA, and is designated for residential development at less than 1.5 dwelling units per acre on the East Raleigh/Knightdale Area Land Use Plan. The proposed rezoning petition and commercial uses are **not** consistent with the residential land use designation, **nor** is the subject property located within the significantly over-sized parcel-based Neighborhood Activity Center that is located approximately one-tenth of a mile to the south of the subject property.

The Town of Knightdale's planning staff is **opposed** to the rezoning petition because they feel it would be premature to allow commercial uses in this area at this time. Additionally, they noted concerns that the development of commercial uses without public water and sewer will make it difficult to annex this site in the future. They have previously advised staff about their concerns regarding a commercial rezoning in this area and noted the incompatibility of the allowable uses, the resulting traffic and the establishment of a precedent if the rezoning was granted.

The petitioner has provided several statements indicating why they believe that the proposed rezoning and subsequent use is a public necessity, explaining its impact on the surrounding neighborhood and adjacent properties, and why it would be in the interest of the public health, safety and general welfare. They have also provided a Statement of Justification, and statements of Compliance with the Land Use Plan, and Compliance with the Transitional Urban Development Policies. These statements are included in the attached petition package.

The Land Use Plan's Transitional Urban Development policies (TUDs) and the corresponding provisions in the Unified Development Ordinance (UDO) would require that subsequent development on this property would be required to provide transportation improvements in accordance with the Wake County Thoroughfare Plan, Traffic Impact Analysis, and NCDOT. The NCDOT District Engineer's office has indicated that the traffic volume on this segment of Smithfield Road has increased from 7,500 vehicle trips per day (VTD) in 2005 to 11,000 VTDs in 2007. The Wake County Sherriff's Department has indicated that there were seven (7) accidents in the last two years along the 1.4 mile segment of Smithfield Road between Covington Cross Drive and Smithfield Road (the subject property is approximately half-way between those two roads). NCDOT may require subsequent development on the

subject property to make roadway improvements, or other measures, to address safety concerns (e.g.—sight distances) in this area.

The TUDs and UDO provisions would require that development on this site should be designed to accommodate future municipal utility extensions. However, the Town of Knightdale has indicated that public water and sewer will not be extended to this area within the next few years, which means that any development on this site will initially be served by on-site well and septic systems.

If the rezoning petition is approved, the subsequent development of this property would, most likely, be required to obtain a Planned Compliance Permit (PCP) via a public hearing process before the Wake County Planning Board. The Planning Board may impose additional “reasonable” conditions to address any impediments to the board reaching the required findings that are necessary for approval of the PCP. There are no known significant environmental issues on this site that would impede its subsequent development.

Planning Staff Findings

1. The proposed rezoning petition is **not** consistent with the Land Use Plan’s residential designation.
2. The proposal is **not** consistent with the East Raleigh/Knightdale Area Land Use Plan because the site is **not** located within an activity center.
3. The Town of Knightdale is **opposed** to the rezoning of the subject property (the site is in their SRUSA).
4. Subsequent development on this site, if the rezoning were approved, would most probably require a Planned Compliance Permit via a public hearing process before the Wake County Planning Board.
5. There are no known significant environmental concerns on the subject property.
6. Subsequent development of this site will be required to comply with the TUDs policies and UDO provisions related to the provision of transportation improvements, and designed to accommodate future municipal utility extensions.
7. There is some indication of safety concerns related to traffic volumes (especially during early morning and late afternoon peak hour periods) and the number of traffic accidents along this portion of Smithfield Road.

Mr. Lankford noted that staff has been asked by the County Attorney’s Office to not make formal recommendations on rezonings, but rather to state the facts and let the boards impartially make determinations. Mr. Miller said his recollection is that the board has recently looked at a nearby site for a rezoning. Mr. Lankford said yes, there have been two recent rezonings nearby, and the board discussed their previous voting behavior at these two sites. Mr. Smith asked how the county came up with the 143 acre Activity Center figure. Mr. Morgan said when the Activity Center was expanded to 143 acres in 2001, it was done so under the old (pre-UDO) standard.

Mr. Tom Worth, Jr. of P.O. Box 1799, Raleigh, NC came forward and said he represents the applicant, Poor Boy Farms, Incorporated, but specifically Mr. Reuben Broadwell, who was present in the audience, as was Mr. John Phelps, a surveyor. Mr. Broadwell and his family lives close to the property and it has been a dream of his to operate a small, general store on the property, and he [Mr. Broadwell] opened conversations about this with staff in December 2008. At the time, the property was in the Town of Knightdale’s Long-Range Urban Services Area, and in September

2009, the area was changed to a Short-Range Urban Services Area. Mr. Worth said there was never a question of the Activity Center or the Comprehensive Plan, and he acknowledged staff's honesty and candor about the matter. The petitioner hired a soil scientist to ensure there were no soil concerns, and he hired Mr. Carl Simmons, a professional engineer, to examine the transportation aspects of the site. Mr. Phelps was hired to ensure there was enough room for buffers, septic fields, and the like, and produced a recombination plat [*displayed en large by Mr. Worth and recorded in the Register of Deeds Office in November 2009*] of the 6.73 acres on and around the site. Mr. Worth identified the local roads and land owners.

Mr. Worth and his colleague, Ms. Isabel Mattox, met with staff about this matter in July 2009. Staff suggested rather than having *prohibited* uses, that it would be better if the applicant had *permitted* uses identified. Conditions were revised [last week] to accommodate staff's suggestion, and to strengthen the buffer with Ms. Myrick's adjacent property. Mr. Worth handed a copy of the original, signed conditions to Mr. Finn, but copies were included in the board's materials. Mr. Worth noted that when he filed the case, it is his practice to always overestimate the distances between the subject property and neighbors, and in the course of his research, located 129 residents in proximity to this property. The applicant notified some neighbors of this rezoning request, even neighbors beyond the distances as required in the UDO. Eleven of these neighbors would be most directly-affected by a rezoning, and nine of these neighbors' names listed on Mr. Worth's display board have signed letters of non-opposition to the rezoning (copied provided to Mr. Finn). Only two neighbors have not responded to the notification: Mr. and Mrs. Harris (overseas for employment purposes) and Mr. Whichard (could not be located). These neighbors received a copy of the rezoning petition, the revised conditions, and an illustrative site plan.

Mr. Worth acknowledged the site is not in an Activity Center. They looked at how oversized the Activity Center to the south was, and stated that it would have been disingenuous on the applicant's part to come forward and seek a 'stretch' to an Activity Center that is already larger than the standard. He acknowledged Mr. Lankford's efforts to communicate with the County Attorney about this matter, and produced a copy of an e-mail dated January 25, 2010, between County Attorney Scott Warren and Mr. Lankford [*appendix III*]. The applicant understands what is required of him in order to have a public hearing before the Planning Board on a Planned Compliance Permit. Mr. Worth stated that it is the applicant's feeling that the Town of Knightdale is concerned that the applicant would rebuff an annexation opportunity. However, at such time when the town provides utilities and services to the site, and is subsequently ready to annex the property, Mr. Worth stated that the applicant would agree to it, and would work with the town on any easements when the town is ready to provide utilities.

Mr. Worth said that Mr. Simmons was not in attendance today, because the board packet arrived on Monday, February 1, and he has not had the chance to secure from NCDOT a professional traffic analysis on the local accident data. Mr. Worth stated emphatically that safety will not be compromised by his client in this area. The services provided by his client will be a positive to the area and provide conveniences that could limit longer trips that people make now to services further away. They are aware of the 120' width projection for the road in the future. The applicant will dedicate an additional 30' as part of the widening. The applicant is aware that he will have to make significant and extensive improvements as directed by NCDOT and Mr. Simmons, including a turn lane, as well as a Traffic Impact Analysis (TIA) in the future.

Mr. Smith asked what Mr. Warren is in agreement with [see Appendix III]. Mr. Worth said the question was consistency, as a condition precedent to approval, with the Land Use Plan. Ms. Eason said she is in agreement with this belief and Mr. Warren's conclusion. Mr. Smith asked if the applicant had spoken with the Town of Knightdale about the property. Mr. Worth answered regrettably, no, but the applicant would be glad to arrange one.

Mr. Jeff Triezenberg, Long-Range Planner with the Town of Knightdale, came forward and said the town is opposed to the rezoning and gave a number of reasons. The proposed rezoning does not fit with the town's comprehensive plan. There is a lack of connectivity in the area, as there is no alternative access between Marks Creek on the east, Poplar Creek to the west, the bypass to the north, and Poole Road to the south. All traffic must exit onto Smithfield Road currently. Traffic capacity is already exceeded in the area, and a TIA should have been done to examine peak hours of traffic and travel. He acknowledged that the service may be needed, but the location is the issue and concern for the town. Mr. Triezenberg noted that in the recent past a gas station location on Poole Road closed twice, in part for possibly being on the wrong side of the road for maximum traffic. He noted that this property is similarly on that same side of the road. He said the Ashley Hills Subdivision, which currently operates a package plant on Poplar Creek, is planned to be incorporated into the public sewer system. The package plant will be taken offline by the City of Raleigh. The Poplar Creek outfall is slated to be out for bid in a couple months, with construction completed in the summer of 2011. Water lines exist on Poole Road, and that is as far as he believes public extension will be. Developers may be asked to extend water to individual parcels as development occurs. He was not sure how this subject property would tap into the water lines, and that would need to be discussed with the City of Raleigh.

He appreciated the applicant's remarks about annexation and working with the town when that may occur. He concluded by saying that because this property is within the town's Short Range Urban Services Area, there is an expectation that any new development would be in closer concert to the town's development standards. Should this rezoning go forward, the town would like to see more consistency with their standards by the site, in addition to the current lighting standards. He also encouraged the board to require a TIA, or a preliminary TIA, for a rezoning, as the town also requires.

Mr. Miller said this is the third time the Planning Board has looked at sites in this area, and encouraged the town that if they want to have more control over the area, to speed up their process for managing the area. Mr. Smith asked for confirmation of the location of the Ashley Hills Subdivision – the subdivision the City of Raleigh will soon be managing. Mr. Triezenberg said it was near Sandy Run. Mr. Miller said it is not traditional that a rezoning request would be referred to a Planning Board committee for further consideration, but it might be a good idea to examine this case further in committee and to give the applicant a broader timeframe to meet requirements and consistencies.

Mr. Bouldin made a motion to refer ZP-872-09 to the Land Use Committee for further study, and Mr. Ball seconded. The motion passed unanimously 8-0.

6. Committee Reports – There were no additional or formal reports.

7. Planning, Development, and Inspections Report – Ms. Peterson said the Harris Lake item will be coming before the Board of Commissioners in a work session on Monday, February 8. The Southeast Activity Centers item will come before the Board of Commissioners at their first meeting in March. The Zebulon ETJ is expected to come before the Planning Board for a request to be referred to the Land Use Committee in March. Ms. Peterson concluded by saying the next parcel-based Activity Centers examination will be for the East Raleigh-Knightdale Area Land Use Plan.

Mr. Finn noted that the OA-03-09 will probably come before the Board of Commissioners in a month or so, to allow for advertising and an internal vetting process, and he would keep the board abreast of dates and times.

Mr. Miller said the Planning Board would be glad to offer any assistance to the Board of Commissioners if they would request a further understanding of the request ahead of time.

Mr. Maloney came forward and said the county was forced to make budget cuts in the current year, which eliminated six FTE positions, and Mr. Burton's position was one of these cut, as was a Planner II in Current Planning. He said there is anticipated another round of cuts for the FY2011 budget, perhaps 7% in total, which could include further FTE cuts.

Mr. Burton came forward and thanked the Planning Board for the time he spent as clerk to the Planning Board and the Board of Adjustment. The county was able to reassign him to the Northern Regional Center as chief executive assistant to the director. Mr. Miller and Mr. Smith thanked Mr. Burton on behalf of the Planning Board for his service and for his excellence in writing minutes, meeting preparation, and board development.

8. Chairman's Report – Mr. Miller recognized Ms. Brown's attendance today, and noted that the Board of Commissioners meeting was cancelled on February 1 due to the weather. He then thanked Ms. Trahos for her service to the Planning Board for a number of years (her term will be expiring on February 28). Ms. Trahos thanked the board for their collegiality and friendship during her years of service as chair and member.

9. Adjournment – Hearing no further business or discussion, the meeting was adjourned by unanimous vote at 3:37 P.M.

John Grace
1105 Kinsdale Drive
Raleigh, NC 27615

February 3, 2010

To: The Wake County Planning Board

Subject: Proposed Ordinance Amendment OA 03-09

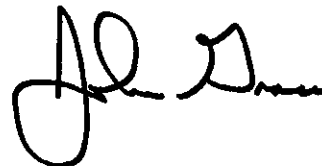
This proposal is designed to circumvent Wake County's nonconforming uses ordinance for the benefit of a single property owner. It does not even pretend that doing so will bring any significant benefit to the community as a whole. As such, this proposal is bad policy and should be rejected out of hand by the Planning Board.

In 1997, when the current ordinance was enacted prohibiting expansion and enlargement of nonconforming uses, it brought Wake County into agreement with the majority of local governments. If the Board of Commissioners now believe the current rules for handling nonconforming uses no longer serve the community well, then the entire ordinance needs to be revisited and possible revisions considered. Rewriting just a piece of these regulations for the benefit of one property owner hardly seems the best way to go about this.

This proposal is a sort of blackmail. The petitioner says, "If you free me from these onerous rules, I will rape the environment a little less than my present (nonconforming) use does." He wants to do a development (shopping center) that would never be allowed in this location under any circumstances if he were starting with an undeveloped piece of property.

Finally, this proposal would vest the Board of Adjustment with extraordinary policy making powers that this board does not presently have. Frankly, given the history of relations between the Board of Adjustment and the Board of Commissioners, I do not believe the Commissioners will look kindly on this. Of course, that is their decision to make.

I am a resident of Wake County and live in the Falls Lake water supply watershed. I am a founding member of the Watershed Protection Council and, for the last twenty years, have frequently advocated for smart development that protects our precious water supplies. During this time, I have served five years on the Wake County Board of Adjustment and on a number of watershed related stakeholder committees.

A handwritten signature in black ink, appearing to read "John Grace". The signature is stylized with a large, looped initial "J" and a cursive "G".

February 3, 2010

To: The Wake County Planning Board

Subject: Proposed Ordinance Amendment OA 03-09

I am a resident of Wake County and live outside of the water supply watershed in the City of Raleigh. I am a founding member of the Watershed Protection Council and, for the last twenty years, have frequently advocated for smart development that protects our precious water supplies. As a former member and chairman of the Raleigh Planning Commission I was and still am a strong supporter of efforts to prevent the degradation of our water quality. Given the recent publicity given to the impairment problems in Falls Lake, this proposed ordinance should not see the light of day. The only benefit that I can see is to one property owner in the water supply watershed.

An ordinance like this one sends the wrong message to all the other municipalities around Falls Lake. How do we convince Durham to help protect the water quality of our water supply when ordinances like this one are proposed?

I urge you to deny this proposed ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Mulder". The signature is written in a cursive, flowing style.

Robert Mulder
3116 Ward Road
Raleigh, NC 27604

Thomas C. Worth, Jr.

From: <swarren@wakegov.com>
To: <Keith.Lankford@wakegov.com>
Cc: <Steven.Finn@wakegov.com>; <curmudgtcw@earthlink.net>; <isabel@mattoxfirm.com>; <fcope@wakegov.com>; <dcooke@wakegov.com>
Sent: Monday, January 25, 2010 11:42 AM
Subject: Re: Rezoning--Land Use Plan Consistency Question

Hi Keith,

I wanted to weigh in on what is a good question but one that I think needs to be answered with finality. The Board of Commissioners does not have to rezone consistent with the adopted LUP. It just has to adopt a statement why it chose not to follow the LUP and how that decision is reasonable and in the public interest - if that is the case. Being inconsistent with the LUP does not preclude the process from going forward. GS 153A-341 and UDO 19-20-6(E) require a statement about consistency, not consistency in and of itself. I have not talked to Tom Worth about this, but from what I know, I think his position is correct. Thanks for bringing this to my attention and let me know if we need to discuss. Scott.

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1/25/2010