

**STANLY COUNTY
BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
AUGUST 8, 2016**

COMMISSIONERS PRESENT:

T. Scott Efirm, Chairman
Peter Ascitutto
Joseph Burluson
Tony M. Dennis
Janet K. Lowder
Gene McIntyre

ABSENT:

Bill Lawhon, Vice Chairman

STAFF PRESENT:

Andy Lucas, County Manager
Jenny Furr, County Attorney
Tyler Brummitt, Clerk

CALL TO ORDER

The Stanly County Board of Commissioners (the "Board") met in regular session on Monday, August 8, 2016 at 7:00 p.m. in the Commissioners Meeting Room, Stanly Commons. Chairman Efirm called the meeting to order with Commissioner McIntyre leading the invocation and pledge of allegiance.

APPROVAL / ADJUSTMENTS TO THE AGENDA

Due to Vice Chairman Lawhon's absence, Chairman Efirm requested the Board take action to excuse him from the meeting. Commissioner Dennis moved to do so and was seconded by Commissioner McIntyre. Motion carried by unanimous vote.

By motion, Chairman Efirm requested that item # 6 – Law Enforcement Support Resolution be moved and added as item # 2A on the agenda. Commissioner Lowder seconded the motion which passed by unanimous vote.

ITEM # 1 – RETIREMENT AWARD PRESENTATION FOR JUDIE DEMUTH, FORMER HEALTH DEPARTMENT ADMINISTRATIVE ASSISTANT II

The Board took a moment to recognize Ms. Judie DeMuth for her thirty-two (32) years of service to the county.

ITEM # 2A – LAW ENFORCEMENT SUPPORT RESOLUTION

Presenter: Chairman Scott Efird

For consideration, Chairman Efird read the proclamation followed by a request for its adoption.

By motion, Commissioner Dennis moved to adopt the resolution as presented and was seconded by Commissioner Lowder. The motion carried by unanimous vote.

See Exhibit A

Resolution in Support of All Law Enforcement Officers

ITEM # 2B – SHERIFF'S OFFICE AWARD PRESENTATIONS

Presenter: Sherriff George Burris

Sheriff Burris was in attendance to make the following presentations: Detective Sergeant George Miller and Captain Roddy Tomberlin received Advanced Certificate awards and Sergeant Mike Haigler received both the Advanced Service and Training & Service awards.

ITEM # 3 – PRESENTATION ON THE LANDTRUST FOR CENTRAL NORTH CAROLINA

Presenter: Travis Morehead, Executive Director

For the Board's information, Mr. Morehead provided an overview of the services provided by the Landtrust for Central North Carolina. The non-profit organization has a volunteer board of directors which serves a ten (10) county region in central North Carolina. Staff works closely with the board to identify properties that should be protected and preserved in addition to also working with families and their communities to understand the options available to protect and conserve these properties.

The presentation was for information only and required no action from the Board.

ITEM # 4 – TAX COLLECTOR'S ANNUAL SETTLEMENT FOR FY 2015-16

Presenter: Clinton Swaringen, Tax Administrator

Pursuant to GS 105-373, the Tax Collector presented the annual settlement report to the Board which provides an overview of the collection activity for the year. The statutory remedies of garnishment, attachment, debt setoff, escheat and pre-foreclosure have been utilized to the extent possible for collection of taxes. As part of the settlement, it was also requested the Board charge the Tax Collector with collecting taxes for the current 2016--2017 fiscal year.

By motion, Commissioner Lowder moved to accept and approve the annual settlement report and charge the Tax Collector with collection of the current fiscal year taxes. Commissioner Burleson seconded the motion which passed by unanimous vote.

ITEM # 5 – PLANNING & ZONING

Presenter: Michael Sandy, Planning Director

A. CUP 16-01 – Rex Greg and Gina Slack

Mr. Sandy stated that Mr. and Mrs. Slack have requested an amendment to Conditional Use Permit (CUP) 07-01 to remove condition # 9 – “Construction on applicant’s house located on Lot 10 in the Running Creek Estates Subdivision will begin within one year of issuance of certificate of occupancy for the business.” The CUP is for Lot 11 in the subdivision and is located at 28727 Hunters Lane Albemarle, NC (Tax Record Numbers 29041 and 29042). The business was constructed in 2007 on the portion of Lot 11 which was zoned as M1-CUP with 9 conditions recommended by the Planning Board and adopted by the Board of County Commissioners. The business, known as S & S Saw Service, is operated by Rex Greg and Gina Slack and is located in a 9,000 square foot building located in the M1-CUP zoned district. Lot 10 has a 2,000 square foot barn for horses. Because no home has been constructed on the lot, the owners are not in compliance with requirement # 9 of the CUP. After receiving an inquiry in March 2016, Stanly County Planning Staff informed the owners they must come into compliance with the CUP. The Slacks have decided to request an amendment to the CUP since they have indicated to staff that they plan to build a home on Lot 10 in the future, but are not prepared to do so at the present time. Planning Staff recommended removal of condition #9 due to there being no adverse impact due to the business being located on the property. The Planning Board forwarded the case to the county commissioners with a recommendation to approve CUP 16-01.

Chairman Efird introduced the item stating that CUP 16-01 is a request by Greg and Gina Slack for an amendment to CUP 07-05. The hearing on this matter is quasi-judicial in nature and will be conducted in accordance with special due process safeguards. He then requested that all persons wishing to testify in the case to please sign in if they have not already done so and to proceed to the front of the room to be sworn in. Chairman Efird continued stating that the issuance of a CUP is made based on a quasi-judicial hearing. Therefore, the NC State General Statutes requires that the Board of County Commissioners base its decisions only on testimony given under oath. Any person who while under oath during this proceeding willfully swears falsely is guilty of a Class 1 misdemeanor. If anyone refuses to be sworn, your statements will not be treated as evidence on which to base a decision but merely as arguments. The following individuals were sworn in: Ms. Gina Slack, Mr. Keith Andrews, Mr. Jerry Burleson, Mr. Tony Miller and Mr. Lanny Burleson.

Prior to opening the public hearing, Chairman Efird requested the Board members reveal any possible conflicts they may have and to withdraw from the proceedings if necessary. None were noted.

Chairman Efirm requested if any Board members have information or special knowledge of the case, have been contacted by the property owners, or by anyone for or against the case to please describe this information for the record so that interested persons can respond during the hearing. Commissioner Burleson stated that Ms. Slack had contacted him when the issue of non-compliance arose and he referred her to Planning Staff for further direction.

Chairman Efirm noted the Order of Business for the hearing would be to hear from Planning Staff first, the applicant and their witnesses secondly, followed by opponents to the request. Parties may cross-examine witnesses after each testifies when questions are called for and any written evidence to be reviewed by the Board should ask that it be introduced during or at the end of their testimony. It was also requested that each witness clearly identify themselves for the record prior to beginning their testimony.

Chairman Efirm declared the public hearing open. Property owner Ms. Gina Slack came forward to speak in favor of the request and presented a map and petition signed by nearby property owners in support of the request. With no objections from the Board, the information was submitted as evidence. Ms. Slack stated that after the CUP was granted in July 2008, shortly thereafter her husband was diagnosed with cancer. After the first year, she contacted Mr. Sandy to notify him that due to her husband's illness, the building of a home would be delayed indefinitely. Planning Staff responded stating that the Slacks should still work toward the goal of building the home but that it would not be an issue unless someone filed a complaint. During this time, S & S Saw Service submitted letters annually indicating the company was still in business. Mr. Sandy requested that Ms. Slack contact the Planning Department should any changes to the status of the business occur. Ms. Slack explained that her husband's medical condition has continued to be a challenge, but that the business continues to operate and employs five (5) people.

Following Ms. Slack's testimony, Commissioner McIntyre asked if the Slacks request is to remove condition # 9 or modify it to where there is no time limit to construct the home. Ms. Slack reiterated her intentions to build a home in the future noting that she spends a lot of time there now due to the business and having horses located on the property. She also stated that by removing the condition, it would be less stressful for her husband while dealing with his health issues.

Prior to staff testimony, Planning Director Michael Sandy was sworn in since he was not under oath at the time of his previous testimony. Mr. Sandy restated the request and referenced the report given earlier and asked that this information be considered in order to proceed.

With no questions from the Board, the public hearing continued.

To answer Commissioner McIntyre's earlier question as to whether or not to remove condition # 9 or modify it, Mr. Sandy stated that either decision would have the same effect.

Dr. Keith Andrew of Noritake Trail and neighbor of the Slacks came forward in support of their request. He stated that while attending the Planning Board meeting in June, complaints of gunshots and other noise coming from the Slacks property were mentioned. Mr. Andrew stated that the noise is not coming from the Slacks' property but surrounding areas.

Mr. Jerry Burleson also addressed the Board in support of the request stating that his land adjoins their property and that they are exemplary people who are an asset to the community. He feels for their situation and supports their request to amend the CUP.

Commissioner McIntyre addressed Mr. Sandy to ask if condition # 9 is removed, would it affect the business. Mr. Sandy responded no, but the Slacks would still be in violation since all conditions of the CUP have not been met and would be fined. Commissioner Lowder asked for the amount of the fines to which Mr. Sandy stated that the first violation is \$50, second violation is \$200 and the third violation is \$500 and would remain at \$500 daily until the violation is corrected.

Chairman Efirm then asked for anyone opposed to the request to come forward. Mr. Tony Miller of 28751 Hunters Lane stated that he had opposed the rezoning in 2007 when he learned it was to construct a building for a backyard business. After being approved by the county, he learned the business included construction of a 100 'x 100' metal building with the condition that the Slacks would begin construction of a home within one year. He indicated concerns with the shooting range that is located on the property as well and the effect the noise has on himself and his wife at their home. He stated that illness and death are a fact of life and should have no bearing on the Board's decision.

Mr. Lanny Burleson of Salisbury and owner of a farm near the Slacks' property spoke against the request. He noted his opposition to the original rezoning in 2007 and the proposed amendment due to concerns of what may happen if the property is sold and another business locates there. Mr. Burleson also felt that it is a bad precedent to determine a zoning issue based on an individual's health.

With no other testimonies, Chairman Efirm entertained questions from the Board. For clarification, Commissioner Dennis asked Mr. Sandy to verify that when zoned M1, only the

business stated on the Conditional Use Permit is allowed to operate on the property to which Mr. Sandy replied yes, that is correct.

In response, Ms. Slack stated that when they originally applied for the CUP, it was explained that only the business listed on the CUP application could operate on the 3.1 acre tract and the remaining property would remain RA (Residential-Agricultural). Ms. Slack stated that half of the shop is used for the business and the other half houses Mr. Slack's race car. A shooting range is located on the RA property as well and is used approximately twice a month.

With no further questions or comments from the Board, staff, or other parties present, Chairman Efird stated that once the hearing is closed, no additional facts or arguments may be presented. He then declared the public hearing closed and opened the floor for further discussion.

Commissioner Burleson stated his support of the removal of condition # 9 noting that in his opinion, this is the reason the county has Conditional Use Permits and feels the Slacks are using it for the purpose intended with the best of intentions. He feels deeply for them and would support removal of condition # 9 of the CUP.

With no further comments or discussion, Chairman Efird stated the Board will review the four findings of fact:

1. Finding # 1 – That the project will maintain or enhance the public health, safety and general welfare if located where proposed, and if developed and operated according to the plan submitted.

Commissioner Dennis made the motion to find this fact to be true based on the evidence presented and was seconded by Commissioner Burleson. The motion carried by unanimous vote. Chairman Efird stated the Board finds this fact to be true.

2. Finding # 2 – That the project will maintain or enhance the value of contiguous property.

Commissioner Dennis made the motion to find this fact to be true based on the evidence presented and was seconded by Commissioner Burleson. Motion passed with a 6 – 0 vote. Chairman Efird stated the Board finds this fact to be true.

3. Finding # 3 – That the project has adequate sewage disposal facilities, solid waste and water provisions; police, fire and rescue squad protection; and transportation systems/roads available within and around the site.

Commissioner McIntyre made the motion to find this fact true based on the evidence presented and was seconded by Commissioner Dennis. Motion carried by unanimous vote. Chairman Efird stated the Board finds this fact to be true based on the evidence presented.

4. Finding # 4 – That the project complies with the general plans for physical development of the County as contained in the Land Use Plan as adopted by the Board of Commissioners in 2010.

Commissioner Dennis made the motion to find this fact to be true based on the evidence presented and was seconded by Commissioner Burleson. The motion passed by a 6 – 0 vote. Chairman Efird stated the Board finds this fact to be true.

Chairman Efird then requested a motion to approve the Findings of Fact, the Conditional Use Permit with the revised conditions to remove condition # 9, and the zoning as CU-M1. Commissioner Dennis moved to approve the items as stated and was seconded by Commissioner Burleson. The motion passed by unanimous vote.

B. ZA 16-04 – Ron and Sheila Bales

Mr. Sandy began by stating that Mr. and Ms. Bales had submitted a request to rezone approximately 2.5 acres of a 23.32 acre tract located at 24285 NC 49 Hwy South, Richfield, NC from RA (Residential Agricultural) to GB (General Business). A portion of the property is currently zoned RA and a portion is zoned GB. The 2.5 acres is located adjacent to and south of the present GB zoning district extending to Hwy 49 (Tax Record Number 8384). This highway is designated as a North Carolina Scenic Byway which is a designation by the NCDOT and is for tourist purposes and does not include any development restrictions. Planning Staff recommended the project as it is located in a growth corridor along a moderately traveled road with nearby property zoned Highway Business and M1-Light Industrial. At the Planning Board meeting on June 13, 2016, those who spoke against the rezoning expressed concerns related to the current condition of the General Business section of the Bales property and that the property could be an example of spot zoning. The Planning Board forwarded this case to the Board of County Commissioners with a recommendation to deny ZA 16-04 because the property is in violation of zoning compliance.

With no questions from the Board at the time, Chairman Efird declared the public hearing open and requested those who would like to speak in favor of the rezoning to come forward.

Mr. Ron Bales came forward stating he has lived on the property for twenty-seven (27) years and owned a small business known as Carolina Crane Repairs from 1992 – 2013. In January 2013, he sold the business to his brother-in-law and his business partner. After his brother-in-law passed earlier this year, the business partner got behind on the payments. Mr. Bales, who had co-signed on the note, took the business back. Mr. Bales stated since he is no longer physically able to make repairs to signs, he began selling commercial trucks as part of his business and placed them at the front of his property next to the highway. When Mr. Cosgrove

filed a complaint, Mr. Bales moved the trucks to the back of the property and filed an application to request the property be rezoned for GB since the original rezoning approved in 1993 did not include road frontage. For the Board's information, he submitted his employee payroll records as evidence.

With no one else coming forward, Chairman Efird requested those opposed to the rezoning to come forward.

Dr. James Link of 24249 Hwy 49 South in Richfield, NC spoke on behalf of himself and three other landowners (Mr. and Mrs. Richard Cosgrove, Mr. Randy Sells and Mr. Michael Sells) whose property borders Mr. Bales. He noted concerns related to the impact that past and the currently proposed zoning requests have had on the value of their own properties. The property along the highway consists of rolling hills, pasture land and hardwoods. When Mr. Bales purchased the property in 1993, he removed an old barn and replaced it with a metal building which later became a shop and used to establish a crane repair and sign erection business. After being found in zoning violation at that time, he petitioned the Planning Board to have the property rezoned from RA to GB. When the Planning Board refused to rule on the request, it was forwarded to the County Commissioners who ruled to spot zone 4.7 acres of property behind the shop. Dr. Link stated that based on the current condition of the property, it appears to be a salvage yard and has now become a truck sales lot. He expressed concerns that Mr. Bales will not abide by the zoning requirements and requested no further zoning changes be approved for the property.

Jim Scarboro, attorney for Dr. Link, provided a handout which included aerial photos of the Bales property, information regarding General Business districts permitted uses, the county's 2010 Land Use Plan Sustainability Plan and the NC DOT's Scenic Byways Program. Mr. Scarboro noted the photos show debris and open storage areas on the property which are only allowed in an area zoned for heavy manufacturing. He also feels if the request is granted, this will only aid in expanding the violation area and believes that Mr. Bales should be required to come into compliance prior to requesting additional zoning amendments. Mr. Scarboro stated if the property is rezoned for General Business, this could potentially allow for numerous businesses to operate on the property and felt it would be better to consider the request as a Conditional Use Permit. On a final note, he stated the property is located on the Uwharrie Scenic Highway between Asheboro and Concord and that placing a truck sales lot on the highway would not coincide with the NC DOT's definition of a scenic highway.

Mr. Bales requested Zoning Officer Tim Swaringen come forward to verify that much of the debris has been removed from his property. Mr. Swaringen stated that as of his last inspection

the prior week, the owner has made considerable progress towards bringing the property into compliance but is still in violation due having seven (7) unlicensed/inoperable vehicles on the property. Per the zoning ordinance, RA district properties are allowed one (1) unlicensed/inoperable vehicle on the premises which also includes any new unlicensed vehicles.

In response, Mr. Bales noted that he has been a licensed NC truck dealer since 1992 and that every vehicle on his property is operational but not licensed until sold. Therefore he will have unlicensed vehicles on the property which are inspected annually by the NC Highway Patrol to ensure compliance.

With no further comments, the public hearing was closed.

Commissioner McIntyre made the motion to concur with the Planning Board's decision to deny ZA 16-04 and was seconded by Commissioner Lowder. The motion passed with a 5 -1 vote.

Ayes: Chairman Efird, Commissioner Burleson, Commissioner Dennis, Commissioner Lowder and Commissioner McIntyre.

Nos: Commissioner Ascitutto

RECESS

Chairman Efird called for a short recess at 8:35 p.m. The meeting was then reconvened at 8:40 p.m.

ITEM # 6 – ONE-QUARTER CENT (1/4 CENT) SALES TAX SPECIAL ADVISORY REFERENDUM RESOLUTION

Presenter: Chairman Scott Efird

Chairman Efird requested the Board discuss the potential adoption of a resolution calling for a Special Advisory Referendum concerning the levy of a one-quarter cent (1/4¢) county sales and use tax during the November 2016 general election.

Commissioner Burleson stated that he feels the Board should identify what the funds are to be used for and recommended they be designated for K – 12 education and public safety. Commissioner Dennis questioned if Stanly Community College would be included for funding as well. Commissioner Burleson stated he felt the referendum would be more successful if designated for K-12 only and that the community college will receive funding from the Connect NC Bond which passed earlier this year. Commissioner McIntyre concurred with Commissioner Burleson's comments.

Commissioner Lowder disagreed with Commissioners Burleson and McIntyre noting that the workforce training programs offered by the community college encourages economic development in the county and therefore feels that proceeds from the referendum should be for all public education to include the community college. Commissioner Dennis agreed with Commissioner Lowder's comments but also felt that public safety is important and should be included as well.

Commissioner Lowder stated her support of the referendum only if proceeds are dedicated for public education and not for public safety. She feels that public safety has been funded adequately in the past through the county's budget appropriations and the greater need is for public education.

Commissioner Ascutto agreed with Commissioner Lowder's comments noting that the referendum failed previously when public safety was included. He feels the greater need is for public education in order to provide the tools, courses and programs in the schools as well as for school facility improvements. He stated his support of the referendum with proceeds being designated for public education but not public safety.

By motion, Commissioner Burleson moved to designate the funds for public safety and public education. Commissioner McIntyre seconded the motion.

Prior to the vote, Commissioner Ascutto reiterated that he would vote against the resolution if any portion of the proceeds is designated for public safety. Commissioner Lowder stated the same.

Commissioner Efird stated that he understands the importance of both public safety and public education and feels if the Board is not united on this, it will be difficult for the referendum to pass.

With no further discussion, Chairman Efird restated the motion requesting adoption of a resolution calling for a special advisory referendum with proceeds dedicated to public education and public safety. With a motion and second on the floor, Chairman Efird called for a vote. The motion passed with a 4 – 2 vote.

Ayes: Chairman Efird, Commissioner Burleson, Commissioner Dennis, Commissioner McIntyre

Nos: Commissioner Ascutto, Commissioner Lowder

See Exhibit B

A Resolution Calling For A Special Advisory Referendum Concerning the Levy of a One-Quarter Cent (1/4¢) County Sales and Use Tax With the Proceeds Dedicated for Public Education and Public Safety During the November 2016 General Election

ITEM # 7 – CONSENT AGENDA

- A. Minutes – Regular meeting of July 11, 2016.
- B. Finance – Request approval of the attached vehicle tax refunds.
- C. Health Department – Request approval of budget amendments # 2017-03 and #2017-04.

Commissioner Dennis moved to approve the above items as presented and was seconded by Commissioner McIntyre. The motion carried by unanimous vote.

PUBLIC COMMENT – None.

BOARD COMMENTS, ANNOUNCEMENTS & COMMITTEE REPORTS

Commissioner Ascutto welcomed new School Superintendent Bill Josey who was in attendance.

Commissioner Dennis reported that although last month's traffic numbers were down at the airport due to the runway lights not working properly, they have now been repaired.

Commissioner Burleson reminded everyone of the Law Enforcement Day of Prayer scheduled for Tuesday, August 12th at 6:00 p.m. at the Agri-Civic Center.

Commissioner McIntyre encouraged everyone to attend the Law Enforcement Day of Prayer to show their support of the Sheriff's Office and law enforcement officers.

Chairman Efird also welcomed Superintendent Josey and wished him good luck in his new position.

CLOSED SESSION

Commissioner Burleson moved to recess in to closed session to discuss economic development in accordance with G. S. 143-318.11(a)(4) and a real estate transaction in accordance with G. S. 143-318.11(a)(5). Commissioner Dennis seconded the motion which carried with a 6 – 0 vote at 9:05 p.m.

ADJOURN

With no further discussion taking place, Commissioner Dennis moved to adjourn the meeting and was seconded by Commissioner Burlison. The motion passed unanimously at 9:35 p.m.

Terry Scott Efird, Chairman

Tyler Brummitt, Clerk