

# Stanly County Planning Board December 11, 2023 - Meeting Minutes

**Call to Order** Chair Jay Eckman called the meeting to order on December 11, 2023 at 6:30 p.m. in the Gene McIntyre meeting room at 1000 N. First Street, Albemarle, North Carolina.

**Stanly County Planning Board members attending** David Underwood, Jay Eckman, Michael Williams, Joel Mauldin, Kevin Brickman, TJ Smith & Tim Fesperman

Absent: none

Stanly County Planning Staff Attending: Bob Remsburg, Planning Director & Bailey Cline, Planner 2

Chair Eckman asked if there were any conflicts of interests with the items to be heard due to financial or personal relationships.

There were none

Chair Eckman asked if there were any other additions to the agenda that the board needed to consider.

There were none.

Chair Eckman asked for a motion to approve the proposed agenda.

Motion: David Underwood Second: Tim Fesperman

Approved: 7-0

Chair Eckman asked for a motion to approve the minutes from November 14, 2023.

Motion: Michael Williams Second: David Underwood

Approved: 7-0

Chair Eckman asked for a motion to approve the meeting dates for 2024.

**Motion: TJ Smith** 

Second: Kevin Brickman

Approved: 7-0

Chair Eckman shared the first item on the agenda was CR 23-04, a request by Ali Darwich to rezone a portion of two adjoining parcels located at 24426 NC 24/27, Albemarle, NC and 24414 NC 24/27, Albemarle, NC totaling 5 acres from County, RA to a Conditional Zoning District.

## Chair Eckman invited county staff to share the details of this request.

Planning Director, Bob Remsburg gave a summary of the request for an Auto Sales lot to be located on the 5 acres by Mr. Darwich. Community members were present and shared their concerns with the Planning Board. Since Mr. Darwich was not present at the meeting and the Planning Board stated that they did not have enough information to make a decision the item was tabled until the next Planning Board meeting.

David Underwood made a motion to table the item until the next Planning Board meeting.

Second: Kevin Brickman

Passed: 7-0

Chair Eckman introduced the second item on the agenda, a request by Burleson Development for the addition of three lots in Garmon Mill Estates, Phase 2.

Chair Eckman invited staff to share the details of this request.

## Bob Remsburg shared the following:

I am going to start off by showing this. Statute 160D-801 does state the following: Decisions on approval or denial of preliminary plats may be made only on the basis of standards explicitly set forth in the subdivision ordinance or UDO. Other portions of NCGS 160D provide that the standards to be applied are those in effect at the time of the acceptance of the application or any newer adopted standards. Whichever the applicant chooses. This is called permit choice, I just wanted to make that clear because I think that is the situation that we are going to run into this evening with this case.

What we have is a request from Burleson Development Group for an addition of three lots in Garmon Mill Estates Subdivision, Phase 2. These three lots are served by easements off of Galloway Drive. Those were already in the plans and put in place and this was kind of put in place through a recombination and subdivision of those existing lots that were there. The new lots will be from 38,057 square feet to 1.8 acres in size. It is considered a major subdivision because it is a change to a major subdivision that you all had already approved which is Garmon Mill, Phase 2. That plan was in place and approved. I drove through it the other day, the roads are paved and the lots are being prepared for development and quite a number of the lots are sold already according to the signs on the lots. It could not be a minor subdivision although it is only dealing with three additional lots, we have a rule that says you cannot do a minor subdivision within 12 months of the division of a property.

So, some of you were on the board when we made a change to that rule. It used to be that every January 1st the clock reset but the current rule says that if you do a subdivision of property and generally it is a minor subdivision of property, you can't subdivide that minor subdivision for 12 months. So, because of that and our interpretation of that, the Burleson Development Group could not come back and do it as a minor sub before April of 2024. As you all know the rules have changed and that would not necessarily be acceptable at this point because of the size of the lots. However, Burleson Development Group seeing that rule was potentially going to change put in the application prior to that for this as a major subdivision change and it took a while. Some people were asking why we were doing this in December when the application was received in June, we were waiting for the approval of the Fire Marshall. We have now received that. It does meet the subdivision requirements that were in place at the time of the application which was June 20, 2023. These lots will have Stanfield water and individual septic systems and there is a small conservation area along the creek and with that it meets the construction criteria points.

Mr. Remsburg displayed maps of the property showing the recorded lots and the requested additional lots.

These meet the minimum lot sizes that were in place prior to the changes that took place in September. What was in place in June allowed for 30,000 square foot lots. Again, the smallest lot is 38,057 square feet. It met the code as of June 20th.

The Board had no questions for Mr. Remsburg.

Chair Eckman invited Mr. Burleson to speak in favor of his request.

Mr. Burleson shared the following:

I think Bob pretty much covered everything front to back on there. We were meeting the criteria set forth by the county in June when the application was submitted and basically it took the Fire Marshall about that long. I think we were right ahead of the November meeting but it was too close to when you guys were meeting so that is the reason we are here tonight. It took some time to get that because I think the Fire Marshall was out on leave. I am basically here if you have any questions for me.

**Chair Eckman** "So, the easements, are there bridges going over the creek there?" **Mr. Burleson** "There will be culverts."

David Underwood "How many entrances and exits are there?"

Mr. Burleson "To what?"

David Underwood "The whole subdivision."

Mr. Burleson "One. Right at the front. But they are all state maintained roads now or will be once they except maintenance of it. We have to wait until the development is 70 percent built out per NCDOT, they want us to get all the construction, traffic and concrete trucks off of it then repair any damage and then they will take over. They approved this design as well."

**David Underwood** "So, for a major subdivision we only have to have one exit?" **Mr. Remsburg** "Yes."

Chair Eckman invited others concerning this request to come and speak.

#### Kelly Hart shared the following:

I understand everything that has been said and you all know that I have been here before about this subdivision. I have major concerns about a subdivision with 101 homes and only one way in and one way out. I think that is putting people in very bad positions. I also have a problem with all of the septic tanks with the blue creek that runs through here not counting all of the others in the area. There are more septic tanks in that area than probably the rest of Stanfield with the subdivisions that have been approved right in that very area.

I also have a concern because I called the Fire Marshall on Thursday and asked him if there was any limit on how many houses could be in a subdivision with one entrance and exit. He said there are two and I said sir I live right there and there is only one exit into that development. He said no ma'am there is one from Renee Ford Road and one from River Road. Is there one from Renee Ford Road? No, there is not. Where there used to be a driveway that I assume he was speaking of going into the development, it now has power poles going down the middle of it. You could not get in there that way no matter what you did. I think it is a mistake to add more problems on top of what is already in my opinion, a big problem. Thank you.

## Kristie Kay shared the following:

I live on Mattie Lane which is kind of behind where I think Phase 2 is I believe but I am not sure. I am not sure what lots he said on that one page that they were 1.8 but when you go to the Stanly County GIS they are 2.84, 2.57 and 1.96. I don't know if those are the lots they are talking about adding but we have suffered significant water runoff from the clearing that has already been approved and happening. Our yard is completely flooded. I have videos and pictures and have sent them to a Mr. Hoenycutt, whose information I was given when I visited the Burleson Development Office in the Market area of Locust. I have not received any information. They have not done anything to keep the water runoff from just demolishing the houses behind this development. I have hen

houses that have flooded, a goat pen that is flooded, we have just a river of mud running down the middle of our yard and I don't know what clearing another 7 acres is going to do. That creek is not built to withstand that much water when we get a massive amount of rain. I don't know what the plan is to keep that. That creek runs through our road. We have a culvert that we have already had to upsize and replace when they did the homes on River Road and Renee Ford Road, that development there. I don't know how much more the creek can withstand with more clearing. There is nowhere for this water to go. It is not going into the creek now and when we went down there yesterday after the rain, the creek was almost empty but there was a massive amount of water that was coming through our yard and it is not being diverted to that creek anymore, I don't know what happened back in there that has blocked it from going where it is supposed to but it is running through our yard and taking away foundation, tons of soil just running down and through the yard. Another 7 acres, I don't know what more that area can withstand if they just keep taking and clearing and not doing anything about that water.

Kristie Kay gave the board pictures of her property. She indicated on September 22nd that four of the perk testing sites were full of water.

### Christina and Dustin Barnhardt shared the following:

We live at 12432 Mattie Lane and we are also right behind the Garmon Mills Development. Right now they have taken a lot of trees out. We go out on our back porch and we no longer see a lot of woods, we see a development right outside our back door. We don't really want 100 homes behind us with septic tanks because we do not know what that is going to do to our house and land. Like her, I am kind of confused about where the lots are that you are speaking of tonight but I do believe that it is right behind my house. At the top of our neighborhood off of RL Lane and Mattie Lane, the home that was built changed the direction of water and we have a lot of water runoff to our home and around our foundation. I am afraid that if they go out in this field behind us and cut out a plot for a home to go if it is going to run off into our property because our property cannot handle anymore water. The buffers, if they put a house in this field behind us then we will not have anything separating us from any new homes.

They talked about our natural preservation area near the creek yet where they have the stakes up for lot 101 it is less than 100 yards from our property line. There is no buffer. We are neighbors with Mrs. Kay, the lady who was previously up here. The water runoff is really a major concern for all of us here. There is not going to be any buffer between us and these 500,000 dollar homes and we are a neighborhood of modular homes. We do not want to feel like we are included in this giant neighborhood that we didn't really want behind us. They are taking out all of the trees, I mean this neighborhood was here before and it is going to be like we are joined to this other neighborhood and the homes are way higher than the homes that are currently there. If you put something on this property right behind us then this home is going to tower over us. Even with a privacy fence, we are not going to have any privacy. They are going to look directly over it. They can see our backyard and in our windows. It is just a lot. I don't necessarily think this whole neighborhood should have been approved for this many homes in this location. West Stanly is being overtaken by development. Our schools cannot handle the amount of children that will be living in this neighborhood already. Stanfield alone had 100 new students over the past year. We already are suffering with teachers and bus drivers. I mean how much more can we take on the West Side without help? We are going to need schools, we are going to need bus drivers to bus these kids.

We know it has already been approved and there are going to be 90-100 homes, do we really need 3 more? Especially over that creek. No water is hardly going in at all, we do not want to be flooded out. We work really hard to have our home and our property and to protect it and we just don't want to see it destroyed.

### Jennifer Tice shared the following:

I reside at 12420 Mattie Lane. One of the properties in question backs up to my property, lot 101. My concern with losing the countryside and the field this development is the damage that has been caused to my neighbors, happening to my property. How do I know this damage will not be caused to my property as I am watching it done to my neighbors? Also, you can see from Christina's photos which were actually taken at mine and her property line, one of these properties, lot 101 will be built right over top of mine. Although this is one of the lots that is considered to be bigger in size, this house would be built directly over top of mine. This is a two story house, 4-500,000 dollar house that not even a 6 foot privacy fence would create privacy. I am asking that the board consider mine and my neighbors please to vote against any further properties being built. This creek can't handle this. We are wiping out the natural scenery and there is nowhere else for this water to go. The trees, the grass, the bushes, they all consumed a lot of that water. It also diverted into the creek which now it is not. I am really concerned about that happening to my property with lot 101 being built over top of mine. Which lot 101 is the one in question where they would have to do a culvert. I have watched a culvert built. I have watched my neighbors not be able to cross over their road because we do live on a private road and we are considered to fix what is ours. We came together as a neighborhood to help fix this culvert. That creek is not going to withstand another property being built right there. Thank you.

## Chair Eckman asked if there was anyone else wishing to speak for or against.

Mr. Burleson "I will be happy to address some of the concerns that came up. I have not seen the pictures or whatever you guys are looking at. I will say about 3 of the lots were the only ones that were cleared and the entire lot was not cleared. It was just where the home site was at, just the pad of the house. So, when we are talking about clearing, not sure where that is coming from because we have not hardly taken out any trees. We did not start clearing any until probably the beginning of last week, you can go out there and look. You can take aerial photos and look. As far as the creek and any kind of flooding, we had to get permits from Army Corps of Engineers and Department of Environmental Quality so we are following all those and we are routinely inspected. We are inspected every month. We are following all of that. Over the weekend we did get about three inches. It was a lot at one time. I live on top of a hill and I had water running into my garage yesterday and it is sloped away from the house but at times it was coming down so hard. So, days like that are not normal but I am happy to look at whatever pictures you guys are looking at and I would be happy to address anything like that. We are meeting all the requirements so you guys have any further questions after that I will be happy to answer any of those questions.

TJ Smith "I have questions for Bob."

**TJ Smith** "So, how long does it usually take to get approval from the Fire Marshal's office? Does he not have assistance?"

Mr. Remsburg "In fact the approval I think came from his assistant but it can take two to three months. That is not uncommon and Mr. Barnham was out for medical leave so I think that slowed a few things down as well. Not uncommon to take a pretty good while to get a review from the Fire Marshal's office."

**Joel Mauldin** "When were these pictures taken?"

**Audience member** "Yesterday. The actual photos, some of those are from September 9, September 22nd and then yesterday."

**David Underwood** "Do you know how big of a rainstorm it was when you took them?"

**Audience member** "Yesterday, yes. September, I don't remember. It was not as bad as what we got yesterday. But either way, a lot of rain or a little bit of rain it is still just flooding."

Mr. Remsburg "Mr. Burleson may correct me on this but I think on this particular plat on this diced area that is shaded a little bit I believe is a tree line. This area was a field so it was open and no trees along the middle part I believe but along the edge there was a tree line."

Joel Mauldin "Is there a floodplain designation anywhere on that?"

Mr. Burleson "That is kind of what you see along that stream. The center of the stream is the actual stream and then the darker stuff along the side....\*inaudible\*

Mr. Remsburg "But, it is not a designated flood zone."

Mr. Burleson "Right but with stuff like we had yesterday that is where you are potentially going to see water but it is not a designated flood zone."

Tim Fesperman "Do you have a retention pond on that?"

Mr. Burleson "It has been taken out now."

Mr. Remsburg "You all have probably figured this out but Mattie Lane runs along this left side."

David Underwood "Is there a power line that runs through here anywhere?"

Mr. Remsburg "Yes, up here."

Chair Eckman asked if there were any further questions.

Chair Eckman "We are voting on if this meets the requirements, correct?"

Mr. Remsburg "If it meets the requirements for the three lots."

Chair Eckman "I need a motion so we can discuss."

Joel Mauldin "Is the stormwater plan still in effect as far as the silt fencing and things such as that on new lots that are coming up?"

Mr. Burleson "We haven't installed anything on the new lots so we haven't graded anything over there to it."

David Underwood "But, there will be?"

Mr. Burleson "There will be yes, so it will alleviate any, I mean, I am certainly going to look into the pictures that I just saw."

Joel Mauldin "Lets just say the lower side is the west, the area that you have already developed and you have already taken up all of that silt fencing a lot there to that creek..."

Mr. Burleson "No, everything along the creek line the silt fence is in for lot 43, 58, 59 there is still a fence there. We have additional measures and we have riff raff out around where the pipe is on our new road. The retention pond is not in, we took that out. Once everything is seeded and strawed and construction is done you take that out. That was not even anywhere near the creek, the retention pond is on lot 63 & 64, kind of off the screen. This site here since it is a septic system we are not mass grading any of this. It is not a mass graded site. Just graded the roads in and that is it and then the pad where the actual house sits."

Audience member "I am sorry, there is no silt fencing, I live behind lot 58, there is no fencing anywhere. There are just stakes with flags and lot numbers, there is no fencing, there is no barrier, there is nothing. There is a ditch that runs through all of that that leads water into that creek that I don't think they are keeping clear, I don't know if stuff is just rushing. They have had massive fires, they have cleared a lot of woods. Yes, a lot of that was a big field but they have taken out a lot of woods as well. They keep coming further and further in so I don't know if they plan on coming all the way into my property or if they plan on stopping at some point but there is no silt fence in site back there. There is supposed to be but there is not and when he says there is one, there is not. I was out there today, there is nothing back there."

**Kelly Hart** "I know that like on mobile homes you have to have more than one way in for 40 or more or up to 40 is what I read on the information on your site. Is there no requirement for houses, how many can have one way in and one way out?"

Mr. Remsburg "There should be, but I don't believe that there is anything in the ordinance that states that. Bailey has a pretty good read on that too. This does have a stubbed out road to the north near the railroad track which could eventually lead back to Renee Ford Road but that would be a far future thing."

Kelly Hart "Did I hear you say that those power lines were underground?"

Mr. Remsburg "The power lines in the subdivision are underground, not the high tension lines."

TJ Smith "I have concerns with the water runoff."

Chair Eckman "I need a motion to discuss."

TJ Smith made a motion to deny the request. Second: Michael Williams

Chair Eckman stated the board could now discuss

David Underwood "I agree with TJ. I am concerned about their property. You know I remember approving this when it was brought before us. We talked about the power lines, development, lot sizes and lot numbers. At that time we did it based on what was happening just like he is coming back now. I realize that he's got every right to make as much money as he can on development but on the same token I can't see these people suffering with the houses that they have had for a long time and the runoff affecting their homes. Can it be fixed? Maybe. Should it be fixed? Absolutely. What caused it? I can't say, obviously when grading I am not there but I am concerned."

Tim Fesperman "The pictures are disturbing with that much water. There are agencies responsible for assuring that the runoff is minimized and the silt remains on the property as much as possible and that is the Department of Environmental and Natural Resources. They set the standards for the fencing, the silt fencing and they do get actively involved in water runoff issues. Particularly in a new development when you see the bright orange colors. That is truly a sign of runoff or some type of disturbed area. Regretfully, I am not sure that that is in our purview as the Planning and Zoning Board to look at that obvious problem. So that puts us in a dilemma or me in a dilemma because I have lived your current nightmare for seven years now in a development where the creek is completely stopped up with the silt and DENR got involved and there are not any easy answers sometimes, I hate to say it. That is a dilemma that I see. The construction folks can do and meet the plan, we can get unforeseen rains like yesterday. So, I don't know what to do."

Chair Eckman "What you are saying is there are other agencies who this falls under."

**Tim Fesperman** "Yes, it is in the purview for them. You call regardless of whether these three lots are added or not. You can call and the numbers are available from Bob or whoever but it is the Department of Environmental and Natural Resources and they will come out, they will look at what you got and they will hold if they find somebody at fault, accountable and mitigate them. So, that is one avenue that I would strongly suggest that you all take regardless if this panel approves three lots or not. So that is all I got to say about that.

Chair Eckman "The motion is to deny approval of the three additional lots, is that correct?"

Mr. Remsburg "I need the justification, I need to know why."

TJ Smith "I said the concerns with water runoff and septic."

**Chair Eckman** "A vote in favor of the motion is a vote to deny based on water runoff. Does that make sense to everybody?"

**David Underwood** "Under the construction criteria, storm drainage is there Bob. Is that addressing his issue or not?"

Mr. Remsburg "Storm drainage would be the engineered plans to make sure that storm drainage is appropriate."

David Underwood "So based on these pictures it wasn't."

Mr. Remsburg "That may be possible, the catch is of course as Mr. Fesperman pointed out, storm drainage is not something that we enforce. So that is not in our purview."

Mr. Burleson "If I may, I just pulled up a picture from Thursday of last week if you all want to see an aerial photo with the silt fence installed. It is here and this photo was taken Thursday by drone. Just to rebut comments that were made I am trying to put some accurate information up."

Audience member "I would like to see it. At lot 58? Because my lot is right there and there is nothing there."

Chair Eckman "Okay, let's take a vote. A vote in favor of this motion is a vote to deny based on water runoff."

Mr. Burleson asked for a roll call to be done to see who voted for and against.

Vote: 5-2

Motion passed to deny.

**Tim Fesperman** "There are certain agencies that their job responsibilities and expertise and power exist to help mitigate these types of situations.

Chair Eckman shared the third item on the agenda, ZA 23-12, a request by Martha Ingold to rezone a 4.2 acre parcel located on Harmony Road in Norwood from RA to R40.

Chair Eckman asked county staff to share the details of the request.

## Bob Remsburg shared the following:

This item is coming back to you. The Board of Commissioners looked at this and in talking with Mrs. Ingold, determined that she should come back to you. This is the rezoning of a 4.2 acre tract on Harmony Road. In our original understanding as a staff was that Mrs. Ingold wanted to mirror the north side of the road which was 7 or 8 lots and in order to do that it had to be R20 or some type of conditional zoning district. But as time had gone on and what she presented to the Board of Commissioners was instead of 7 or 8 to just do 3 lots. So, there are two ways that could be approached and that is why the commissioners sent it back to reconsider whether it would be acceptable for just three lots to be built out of this 4.2 acres. We can do that one of two ways. First off we did not have it surveyed to divide off into three lots and, if it had been, we might have brought it to you as conditional zoning but that has not been done. So, the other approach is to simply go to R40. Now, the minimum lot size is 40,000 square feet but as you will see in a second she is proposing three different lots but if she is zoned R40 she could do four lots. The proposal is for three lots and it is currently zoned RA and wants to divide it into three parcels, it is currently a 30 foot wide private right-of-way. The new lots would be approximately 180 feet deep. R40 requires the lots contain at least 40,000 square feet and the lots will be well and septic. We have already discussed that there is low traffic in this area and it is in a Rural Preservation Area and at this point there has been no soil evaluation done on these lots.

Mr. Remsburg displayed photos of the parcel.

It is all zoned RA in this area and as you know Mrs. Ingold approached us after the Board of Commissioners voted to make the minimum lot size larger in the RA and Rural Preservation Area. That is where we are at. It comes back to you in a different form. We could treat this as Conditional Zoning but we do not have a survey for Environmental Health so we figured it was best to do it as R40 and see if that is the acceptable way to go. You recommended denial with R20 and the commissioners heard that but also heard Mrs. Ingold and wanted to send it back to you all and see if you thought it was more acceptable for a different lot size."

#### There were no questions for Mr. Remsburg

### Mrs. Ingold shared the following:

I would like to say that I do not have any children to inherit this property and most of it will be given to charity and I want to sell the first lot and build two houses on the back lots which is on a hill and the one of the front lot is on a

hill also and you could put a half basement in that one. There is a ditch between them and nobody has ever complained about water, the ditch or anything until this happened to me. I have owned this property for 20 years. I have a tree line that is two feet off of my line when I had it surveyed twice by Dent Turner, they are two feet off the line on my side. I know that I am not on anybody's property and no one has complained until this. So, I appreciate you all considering my position because I lost my last child four years ago and because I could not get it divided, I was in the hospital in April and March and I was on oxygen for 6 weeks. I was very sick and they gave me up to die but I did not. So I would like for you all to let me do what I want with my property for the time that I have left. I was not able to do any surveying for the first part of this year. My income tax could not be filed until October. Since I have no heirs on my property, I still pay tax on my property, I pay for the land and my husband was disabled. I would appreciate it if you all would let me do what I want with the time I got left because I deserve it and I did not know anything about having to get all of this done by September.

# Genna Smith shared the following:

I am Mrs. Ingolds sister in law and I spoke at the Commissioner meeting and I can really attest to her illnesses at the first of the year. I am a nurse practitioner. I heard the concerns proposed before the zoning board the first time and I know there are concerns proposed about water tables being low but I don't know a whole lot about water tables but until recently I understand that we have been in a moderate drought in our area. So, that will affect the water tables. I know we had rain this weekend but that is not what we are talking about here. We appreciate everyone for their patience and for hearing us and others throughout this process. We really respectfully ask that you consider the R40 request. Thank you so much.

## Charlotte Barringer shared the following:

We are still against it. As you can see where the proposed lot three would be, my house is less than 36 inches from the property line and her trees that she planted two feet on the other side are 15 feet over on my property. My biggest thing is the water. We had 2.6 inches of rain and I can show you that on her lot line the water was flooding where the driveway comes across. Their septic tanks are going to be higher and if anything overflows then it is all going in my yard. She said her wells are 300 feet deep but mine are 200. It is not fair.

#### Tommy Curlee shared the following:

Yes, our water table is down low. My well is only 200 feet deep and I have been having trouble for the last several weeks with mine. It did rain yesterday so hopefully that helps. I would not want to see a housing development go up and drill more wells and take the table down. I would like to see it remain agricultural.

Genna Smith "Mrs. Ingold is not planning to put up a lot of houses. She is only planning to put two houses on the 4.2 acres. I just want to clarify that."

David Underwood "This may be a little personal, but does she have any grandchildren?"

Mrs. Ingold "I want you to know I lost my first child in '83. The next year, in '84, my husband had a stroke and I don't have any grandchildren because my last child died four years ago from a massive heart attack. I have no children and no grandchildren. No one has complained about the water until now. My wells are 300 feet deep."

Chair Eckman asked for a motion.

David Underwood made a motion to deny the request because it is in the Rural Preservation Area and because she only wants to sell two lots but if it allows for three, then she can sell three.

Second: Michael Williams seconded the motions and shared that a lot of time and resources went into making the Land Use Plan and if the board goes back on that now, where does it end.

Chair Eckman "I am in favor of letting people do what they want with their land but this is the precedent that the commissioners have set and this is the way that they want to go."

Chair Eckman stated a vote in favor of the motion is a vote to deny.

Motion passed: 5-2

Chair Eckman stated that Planning Staff would consult with Mrs. Ingold to see if she would like to proceed with her rezoning request. If she does, it will be considered by Commissioners at their meeting on January 2, 2023 at 6:00 PM.

Chair Eckman introduced the fourth item on the agenda ZA 23-10, a text amendment requests to define "substantial expenditure" in both the Zoning and Subdivision Ordinances. The item was recommended to be sent back to the Planning Board by the County Commissioners.

Chair Eckman invited county staff to share the details.

### Bob Remsburg shared the following:

We added some language because there were a couple of things that they [the Commissioners] did not like and they had some questions so that is why it was sent back. Basically, they were not happy with the 10 percent. They thought it should be more. You can play with that number if you would like. This is not my call, it is yours. They also were concerned about how long this lasts. Common law vested rights pretty much go on forever. It does not make sense that they would go on forever and ever and ever. There should be some kind of natural drop off. That is where the language about 5 years comes in. If the developer is doing a subdivision and they do not do anything about it for 5 years and make no progress then no, they have lost their common law vested rights. I stuck the number 5 in there after doing a little bit of research. It could be 10, 5, 7, whatever. We have all experienced economic down turns, is 5 years a reasonable amount of time for the economy to turn around? What is the magic number? I am going to hand this to you all for you to figure it out.

**David Underwood** "How did you come up with 20? I read the minutes and I know what they said, so where did 20 come from?"

Mr. Remsburg "If you look at the Commissioner minutes I think they said 30. It is up to you all."

David Underwood "Why didn't they change it? Is that a substantial change? What is it right now?"

Mr. Remsburg "Well, there is nothing in there right now. What it is right now is that substantial is determined by the zoning administrator. The only thing this does is give guidance to the Zoning Administrator."

**TJ Smith** "Are you referring to the project that came before us? It said on the paper 2 and a half years but in reality it was 3 and a half years and there was nothing touched."

**Chair Eckman** "But, that is where we talked about substantial expenditure. Nothing has to be touched but if she spent a million dollars on engineering is that substantial even though she did not touch the land?"

David Underwood "It was two years right?"

Mr. Remsburg "It gets confusing because you have a difference between common law vested rights and site specific vested rights. Site Specific are two years. I just stuck 20 percent in there because part of me thinks that 30 percent may be too much but that is me and it is not my call."

**David Underwood** "Obviously it does not matter because we told them 10 and then they turn around and want 30. Why didn't they just make it 30 since they get the final say."

Mr. Remsburg "Partly because of the 5 year thing and if there is a substantial change [to the proposed ordinance language] then what has been advertised is not what has been reviewed by the Commissioners so it then has to come back to you. That is up to the County Attorney to determine if this is substantial or not."

**Tim Fesperman** "Could we just say, we don't really care what you do? I mean could we just send it back and say keep it like it is?"

Mr. Remsburg "You could tell them that you think it should not change and you think it should just be left up to the zoning administrator determination."

**David Underwood** "If the time runs out then they could come back and re-apply under the current rules so I don't figure time is that big of a deal. I would like to see that as 3 years."

**Chair Eckman** "If they want something different then they can have something different but we debated it for a while and said what we thought was best. We thought that 10 percent was not burdensome but it was enough to be considered substantial."

**David Underwood** "We are not trying to solve this, we are trying to appease the Commissioners right now. If they want to change it, then we could send them whatever we want but let them change it. They will have the final say so."

Chair Eckman "Did they have specific numbers that they wanted?"

Mr. Remsburg "I think Mr. Barbee mentioned 30 percent but there was no consensus among them for what it should actually be."

**David Underwood** "Would anybody have a problem with 3 years? Maybe it should say 20 percent in 3 years. If they apply within that 3 years then all it does is extend it another 3 years, right?"

Mrs. Cline "I just feel like with the Site Specific and then you have the Common Law Vested rights, you have 2 and a half years with Site Specific and then you are going to put 3 years on a Common Law Vested right, then you have a 6 month period where you can either say it is one or the other. There is not much time between the two. I just dont think it makes much sense to have both if you are only going to have a 6 month period."

Mr. Remsburg "I don't know that I would go much longer than 5 but I hesitate to go much shorter. 4 might be okay. I think site specific could be changed if you wanted to because it could be 3 years or longer if you wanted."

**David Underwood** "I could go for changing site specific and put them both at 3."

Mr. Remsburg "I might need to research that a little bit."

**David Underwood** "Why would you not want it that way?"

Mrs. Cline "I guess this would be a question for you Bob, but if they were both at 3 would the zoning officer not have to determine which vested right it is and then determine if it is substantial or site specific."

Mr. Remsburg "Yes, correct. By statute for site specific you have to have two years but it could be longer. Common law vested rights run with the land. If you don't have anything in the ordinance then it potentially would run forever. The School of Government says that it would make sense for it to eventually run out but there is nothing to say what eventually is. Case law has not come down on this. I think 4 or 5 years is plenty but I would not go over 7."

Michael Williams made a motion to amend the language to reflect 20 percent in 4 years.

Second: Kevin Brickman

Approved: 7-0

Chair Eckman shared that the County Commissioners will hear this text amendment at their January 2, 2024 meeting.

Chair Eckman introduced the last item on the agenda ZA 23-11, a text amendment request to remove the provision in section 405 of the Zoning Ordinance, allowing a manufactured home to be placed on a 2 acre or larger lot along with another home. This item was recommended to be sent back to the Planning Board by the County Commissioners.

Chair Eckman asked staff to share the details.

# Mr. Remsburg shared the following:

This was recommended to be sent back also. The basic idea is that currently in the RA zoning district only because that is the only zoning district that allows for mobile homes, you can have one of those residences as a mobile home. That means you can have a mobile home and a modular home, 2 mobile homes or a mobile home and a site built home. That is current. What we sent up was that you could have one mobile home on the lot as long as it was 3 acres or larger and the other home had to be a site built home. The commissioners did not like that and they want it to say only one home on a lot. It eliminates section 405.3.

Mr. Remsburg showed the current and proposed language.

Michael Williams "What about if you have a mobile home on your land while you are building your home?" Mr. Remsburg "You can do that because you do not have a CO on the house. That will still be okay."

David Underwood made a motion to accept the amendment as stated with one dwelling per lot in section

Second: Kevin Brickman

Approved: 7-0

Mr. Remsburg "The other component here is the accessory dwelling unit language in section 421. The idea is that you would eliminate that one line that says it cannot be no more than 800 square feet and keep the line that says it cannot be more than 50 percent. This seems to be what you all wanted at the last meeting. The reason the 800 square feet was there to begin with was because you did not want people to start building another home on their property but if someone has a large home they should be able to have a rather large guest home."

David Underwood "What would keep someone from renting it out?"

Mr. Remsburg "Well they could, we do have a short term rental ordinance."

David Underwood "Should there be language to prevent that."

Michael Williams "I don't think so, if they have an extra home they should be able to rent it out."

Mr. Remsburg "There is sort of a movement in the planning world that would eliminate single family districts and encourage ADUs and rental properties. As we all know the cost of dwellings and rent is so high, you could hear from realtors that they can't find anywhere that people can afford. They still have to meet setback rules and that sort of thing."

David Underwood made a motion to accept the changes as mentioned to remove the requirement of 800 square feet in section 421.

Second: Tim Fesperman

Approved: 7-0

Chair Eckman entertained a motion to adjourn.

**Motion: TJ Smith** 

Second: Tim Fesperman

Approved: 7-0

Adjournment: 8:32 PM

Clerk, Bob Remsburg

Chan, Jay Eckman