

CASWELL COUNTY BOARD OF COMMISSIONERS
MEMBERS PRESENT

July 18, 2022
OTHERS PRESENT

Rick McVey, Chairman
Nathaniel Hall
Jeremiah Jefferies
Steve Oestreicher
H. Vernon Massengill
John Dickerson (Joined Remote)

Bryan Miller, County Manager
Carla Smith, Clerk to the Board
Brian Ferrell, County Attorney (Joined Remote)

The Board of Commissioners for the County of Caswell, North Carolina, met in regular session on Monday, July 18, 2022 at 6:30 pm in the Historic Courthouse.

WELCOME:

Chairman McVey called the meeting to order. Then all paused for a moment of Silent Prayer, and the Board of Commissioners and all the guest in attendance recited the Pledge of Allegiance.

Chairman McVey said before we get started I have a comment that I'd like to make to the Board. As Chairman, I believe it's my responsibility to make sure that each meeting of the Board of Commissioners is held in an orderly fashion. As shown, I expect each member of this Board to treat every other member of this Board with dignity and respect. I hope moving forward we can conduct peaceful meetings and have meaningful discussions without the need for political controversy.

PUBLIC COMMENTS:

Elin Claggett: I'm from 108 Jay Lane in Providence, North Carolina. I would like this recorded verbatim please. The annual budget audits are due to the Secretary of the Local Government Commission as soon as possible after the close of the fiscal year, typically by October 31st. The fiscal year closed June 30, 2022 and no contract for the auditors is on tonight's agenda. In 2019 under the previous Finance Director, that audit was completed on November 9th. The following year, it was completed nine months late in June. June 30, 2021 budget audit was due typically in October of 2021. In November, I was told it would be complete by the end of the year. Hasn't happened. Last week the Manager, like a broken record, reiterated "once again, at this time there are no firm dates for the completion of the audit." There are lies of omission. You've been emailed the timeline by State and Local communications to and from explaining some of the delays and some of the questions from the North Carolina Treasury, the local government, the tax payers, and the Manager. You've approved an extra \$75,000 for a CPA consultant, but the audit is not done. You approved a CPA position in May, but 2 months later it's still not posted due to lack of a job description last week. Software and the previous finance director are not the problem as blamed in last year's delay. How do you run a business without balancing the books

July 18, 2022

for over a year? As you spend millions of taxpayers' dollars, when will Commissioners, as our representatives, address this debacle publicly and hold someone accountable? Thank you.

Elin Claggett also emailed her comment to the Clerk since she requested it be recorded verbatim.

Board of Commissioners' Meeting on 7/18/2022

Public Comment - Please record verbatim

By Elin Claggett, Ph.D @ Providence, NC

Annual budget audits are due to the Secretary of Local Government Commission as soon as possible after the close of the fiscal year, typically by Oct 31st. 2019 audit, under the previous financial director was completed on Nov. 20, 2019. The 2020 audit was completed 9 months late on June 18, 2021. The fiscal year closed June 30, 2022 and no contract for auditors is on tonight's agenda. The June 30 2021 annual audit was due Oct, 2021 and in November, I was told it would be complete by the end of the year. Hasn't happened. You've been emailed a timeline that includes communications from NC Treasurer office, Auditors, NC Open Government Coalition, taxpayers and the Manager. Last week the Manager, like a broken record, reiterated "Once again, at this time there are no firm dates for the completion of the audit." There are lies by omission.

You approved an extra \$75,000 for a CPA consultant but the audit is not done. You approved a CPA position in May but 2 months later, it's still not posted due to lack of a job description. The software and previous finance director are not the problem as blamed for last year's delay. How do you run a business without balancing the books in over a year? As you spend millions of taxpayer dollars, when will Commissioners, as our representative, address this debacle publicly and hold someone accountable?

RECOGNITIONS:

There were no recognitions.

AGENDA:

APPROVAL OF AGENDA:

A **motion** was made by Commissioner Jefferies and seconded by Commissioner Massengill and **carried unanimously** to approve the agenda. (Commissioners Dickerson, Hall, Jefferies, Oestreicher, Massengill, and McVey voted in favor)

APPROVAL OF CONSENT AGENDA:

- a. June 13, 2022 Budget Meeting Minutes
- b. June 20, 2022 Regular Meeting Minutes
- c. June 22, 2022 Budget Meeting Minutes
- d. June 27, 2022 Budget Meeting Minutes
- e. June 29, 2022 Budget Meeting Minutes

July 18, 2022

A **motion** was made by Commissioner Jefferies and seconded by Commissioner Massengill and **carried unanimously** to approve the consent agenda. (Commissioners Dickerson, Hall, Jefferies, Oestreicher, Massengill, and McVey voted in favor)

DISCUSSION ITEMS:

DRUG FORFEITURE FUNDING:

Sheriff Durden said Good evening. As a requirement of the Department of Justice and the Department of Treasury, the Sherriff has to come in front of the governing body of Caswell County to request the usage of forfeiture funds from the DEA Forfeiture Fund. I am coming before the governing body to ask that we use \$22,000 of forfeiture funds this year. Any questions?

The Chairman said we don't have to make a motion. The Sheriff just needed to come before us to tell us what was going on.

ACTION ITEMS:

PROPOSED UDO AMENDMENT:

County Manager Miller said Commissioners, in your agenda package you'll find a following resolution.

A resolution amending Article 9 and Appendix A of the Caswell County Unified Development Ordinance.

Be it resolved and ordained by the Board of Commissioners of Caswell County, North Carolina:

WHEREAS, the Board of Commissioners received an application to amend Article 9 and Appendix A of the Caswell County Unified Development Ordinance concerning Recreational Vehicles; and

WHEREAS, the Caswell County Planning Board recommends adoption of the amendment, and

WHEREAS, the Planning Board has provided a written statement to the Board of Commissioners that the amendment is consistent with the County's Comprehensive Plan; and

WHEREAS, the Board conducted a public hearing on the amendment.

NOW THEREFORE BE IT RESOLVED, that the proposed amendment is consistent with the County's Comprehensive Plan because it is in keeping with existing Recreational Vehicle Park regulations, flood damage protections, and development review processes.

NOW THEREFORE BE IT ORDAINED, that the Caswell County Unified Development Ordinance Article 9 and Appendix A, is hereby amended as shown in the attached revised Ordinance.

This amendment shall become effective upon adoption. Adopted by the Caswell County Board of Commissioners this 18th day of July, 2022.

July 18, 2022

Commissioners, this is a resolution you'll be voting on tonight. In the following page, you have the amendments made to Article 9 and Appendix A. We have with us this evening our County Planner, Matthew Hoagland. I'll ask Mr. Hoagland to add any additional comments he has, and then we'll open it up to the Board of Commissioners for questions to the County Planner.

Mr. Hoagland said thank you Mr. County Manager and Mr. Chairman. The amendment that you have before you tonight is really just a modest change from what you reviewed, I believe at the second meeting in June if I recall correctly. It's more formatted in line with standard legal text, where for example the language to be removed is struck through and the language to be added is underlined. Then other vital minor technical corrections like capitalizing the term Recreational Vehicle Park since that also appears in the appendix. I edited this with the assistance of the County Attorney prior to what you have before you tonight. I'm happy to answer any questions that you might have.

Commissioner Dickerson said I have a question. Why was it originally not allowed under the rules to have an RV Park in a floodplain? County Planner Hoagland said you know I'm not entirely sure. The UDO was put together in September of 2013. My first day with the county was in 2018. So I just assumed at the time when they constructed the ordinance in 2013, that either the Board at the time or the Piedmont Triad Regional Council did not see the need to allow for RV Parks in a flood zone. But I'm not 100% sure Mr. Dickerson. Commissioner Dickerson said how about this then. If the county approves it, it becomes legal under the Ordinance, and a flood comes through and those RVs are damaged or somebody is hurt, are we exposed to any liability if we take this step to approve it? County Planner Hoagland said I'm not sure if I can answer that question. I'll say that the proposed text of the amendment does require for example that signs be placed on the site notifying individuals that it's in a flood zone and that an evacuation route will be established. So there are some safety mechanisms in place in the text amendment with regards to liability. I'm just not sure that I can answer it. Commissioner Dickerson said is our County Attorney present tonight? Attorney Ferrell said I am, Commissioner Dickerson, and thank you for the question. I do not believe that this change increases the County's liability for potential placement of a use. That use and whether or not it is in a flood zone would still be the responsibility of the owner to make the site safe and usable for its patrons. So I do not believe the change increases the County's liability in the nature of what you suggested. Commissioner Dickerson said I appreciate that answer. I do, but we're not talking in absolutes here. Is it possible for somebody to sue and win based upon us overturning a rule that would have stopped it originally? Attorney Ferrell said well it's always possible for someone to sue. There's no doubt about that, but there are... Commissioner Dickerson said well how about this. Is there a way that we can put it in writing that the people that open the RV Park are responsible for any liabilities or for anything that goes on there, and take the county out of it completely? I don't have any problem with an RV Park. I just have problems with opening up any kind of litigation to the County, and the taxpayers ultimately being responsible for it if we lose. Attorney Ferrell said right. Well just like there's any number of permitted uses that are allowed under the County's

July 18, 2022

Unified Development Ordinance, just because the county regulations permit a use doesn't mean the county is responsible for what a private owner or operator does in installing that use. So the disclaimer if you will, I believe is implicit in all uses that developers undertake on their private property. The risk is theirs whether or not the regulations permit the use or not. Commissioner Dickerson said well I think you kind of have murky water appearance here because if you are looking at the original rules, they said no RVs in a flood plain. Now we're going to take a step tonight to make them legal in a flood plain, and no one can tell us why they were originally illegal to put in a flood zone. They stopped them from putting them there. If that was something that was a legitimate legal concern and we override it tonight, doesn't that kind of change the whole context of whether or not we're legally liable for anything from that point forward? You're not talking about just any standard ordinance. You're talking about an act here tonight where we're going to override an existing rule that said you can't do this. So by that kind of logic, I think a sharp attorney would use that to their advantage. I would like to see the county protected from it. Attorney Ferrell said well again whether or not this is a good idea is a matter of policy, which is what you're deciding tonight, and there may be a number of reasons why you're opposed to the change personally or why the county's opposed to the change is a matter of policy. Is this what it wants to see in these designated areas? That's the question before you tonight. I think it is an important policy question. I see it again more as a policy of the County about what kind of development it wants to see where rather than a legal liability question. But I think your point is well taken. Is this the kind of development the county wants to see in these designated areas? And that's exactly what you're deciding on tonight. Commissioner Dickerson said okay how about this one. If there's a stipulation in there that an RV can't be there more than six months, am I looking at that correctly or was I told correctly. Matthew Hoagland said I'm sorry sir, was the question about occupancy in the RV Park being more than six months? Commissioner Dickerson said yes. What is the time frame? Can they be there six months or can they be there two years? Is there a time limit on an RV being parked there? Mr. Hoagland said yes sir, that's correct. Six months for an RV park or 180 days for an individually placed RV. Commissioner Dickerson said okay so if they moved it to another spot within that same park, would that satisfy that six-month rule where they could start over again. Mr. Hoagland said theoretically if they move from space A to space B, I suppose they could. Yes, sir. Commissioner Dickerson said man, sounds like this hadn't been really well thought out. To be honest with you fellas, there's a whole lot of loopholes here that ought to be shut in my opinion before we vote on whether or not it ought to be done. I understand what the County Attorney is saying about policy, but still it boils down to I'm not getting a clear-cut answer from him on whether or not we're protected from liability when we're changing a rule that was in place to stop this from being put in a flood plain. A good attorney looking at that's going to say well you should have did your due diligence and figured out why it was prohibited in the first place. You all overrode it. Who knows? The way these juries are crazy nowadays and awarding outrageous settlements, I don't want to see us in the middle of a battle like that with any possibility of losing. I want to see some kind of wording in agreement with whoever's going to open this RV Park that explicitly says the County is not

July 18, 2022

liable for any legal liabilities from them opening that park up. If they got to take out an insurance policy, a bond, or whatever the legal technicalities would be to make sure they can handle any kind of legal claims to come up, I'm all for the RV Park. I think it'd be nice to have the overflow from VIR coming, maybe bring some jobs here, and some revenue for the County. I like it, but not at the risk of opening us up to a potential lawsuit, whatever percentage of reality involves the winning of it. There is a chance somebody could lay it on us, and I don't want to do that to the taxpayers. I would rather see them protected. Matthew Hoagland said Mr. Chairman, let me just clarify one point. I apologize. I misspoke slightly previously to your question Mr. Dickerson. Occupancy is allowed up to six months, but it's within one 12-month period. So for example someone hold a permit today and stay there six months, they would not be allowed to re-enter until July 18, 2023. Commissioner Dickerson said well back to what I just said. Is there a way to put wording in there that protects the county absolutely from being sued over this? Attorney Ferrell said I don't think there's a way to protect the county from being sued absolutely as to any matter. Commissioner Dickerson said well you answered my question. You made my mind up for me. I appreciate it. Chairman McVey asked if there were any more discussion. Commissioner Hall said just a comment. I can't remember how long ago, but this Board took action to make flood insurance available for all County citizens. Not only RV Parks, but there are several homes in flood zones. We try to make that known to all citizens, and we also try to make that known that we took action to make sure that flood insurance was available if they wanted it.

Commissioner Jefferies said I think it has been about eight years ago we voted this down. The County Manager said yes, when the UDO was originally passed, it was not allowed. This usage was not allowed in a flood zone. Commissioner Hall said I made that comment because the opposite side of that is we don't restrict citizens from building homes in flood zones. We don't restrict other businesses from building in flood zones. So there's two sides to this thing that we need to look at. Chairman McVey said any more comments. If not, what's your pleasure?

Commissioner Hall said what is the question again. Chairman McVey said I asked if there were any more questions. Commissioner Hall said I mean relevant to this UDO. What's on the table for us to do? County Manager Miller said so Commissioners, the resolution that I read at the beginning of the meeting is what you have on the table in front of you and whether you decide to approve the resolution or deny the resolution. I'm happy to read it again if you would like me to. Commissioner Hall said no, you don't have to read it again for me. What I want to know is what is the essence of the resolution. County Manager Miller said the essence of the resolution is if approved RV Parks would be allowed in flood zones. It's not specific to this one individual that may or may not be planning this. It will allow RV Parks in any of the flood zones that we have. Commissioner Hall said okay, I got it now. I just want to make sure because I want to make a motion.

July 18, 2022

A **motion** was made by Commissioner Hall and seconded by Commissioner Oestreicher and **carried 4-2** to approve this resolution. (Commissioners Hall, Oestreicher, Massengill, and McVey voted in favor. Commissioner Dickerson and Jefferies voted no against the motion)

VOTING DELEGATE FOR THE NCACC:

County Manager Miller said Commissioners, as you'll see on your agenda the NCACC Annual Conference is being held the 11th through the 13th of August in Charlotte. We have two commissioners that plan to attend the Annual Conference. Those commissioners are Commissioner Hall and Commissioner Jefferies. So they have asked that you appoint a voting delegate and an alternate. So since you have two commissioners going, I would suggest you make Commissioner Hall and Commissioner Jefferies either the voting delegate or the alternate. So I think we need a motion from the Board to make one or the other the voting delegate and then the other the alternate. Chairman McVey said any discussion?

Commissioner Massengill thanked both of the Commissioners for going to the conference.

A **motion** was made by Commissioner Oestreicher and seconded by Commissioner Massengill and **carried unanimously** to make Commissioner Hall the voting delegate and Commissioner Jefferies the alternate delegate. (Commissioners Dickerson, Hall, Jefferies, Oestreicher, Massengill, and McVey voted in favor)

COUNTY MANAGER'S UPDATES:

The County Manager said Commissioners, I have two updates for you. One fairly quick and one really quick. Governor Cooper has indicated that he will lift the North Carolina state of emergency declaration on August 15th, and I think we can all agree that that's good that the state has gotten to a place where we can lift that state of emergency. However, it does mean a couple changes for local government. The most impactful change for this Board that it makes is the state of emergency law specifically allowed for remote board member participation needs. It provides the elected city and county board members who are participating remotely to count towards the establishment on forum, may vote, and have their votes counted as long as they are connected. Although the open meeting law recognizes electronic meetings as official meetings, before the state of emergency law there was no statutory authority for elected board members to participate remotely. County commissioners voting and quorum statutes make reference to members having to be present and members having to be physically present. That fact suggests that remote participation is not authorized. Furthermore, there is the fact that the state of emergency law specifically provides that board members participating remote count towards a quorum, and when voting there would be no need for these provisions if these boards already had that authority over the existing law. After taking all that into consideration, it seems that after the state of emergency law expires city and county governing boards will have no clear authority to participate in remote meetings at all. That does not mean you can't continue to Zoom your

July 18, 2022

meetings. You can if that's the way the Board wishes to continue. You can still Zoom these meetings out to the public, but in my opinion what it does mean is there will be no more commissioner links. There will only be the public link. If a commissioner decides I want to watch it remotely, they would use the public link and would not be allowed to participate in discussion, voting, or count towards the quorum. So that is to become effective on August 15th. That's when we expect Governor Cooper to rescind the state of emergency. August 15th happens to be a meeting day for us, and it's a night meeting. So that will happen during the day. Theoretically it'll happen during the day; so that will be the first meeting that remote participation will no longer be allowed. Are there any questions?

Commissioner Massengill said is that what the County Attorney believes also? County Manager Miller said the County Attorney is with us so I will let him speak towards that. Attorney Ferrell said thank you for that question Commissioner Massengill. Largely yes. I think the prevailing view that local governments will not have the ability to vote and for quorum purposes have remote attendance from board members. I do believe the biggest risk factor is that there's no express statutory authorization outside of the emergency declaration. So if you took an action that relied on a quorum from a remote member or relied on a deciding vote from a remotely participating member, the action itself could be called into question. So that's the legal issue and that's why the guidance that the County Manager has suggested about remote participation is strict. I will say that some local governments have adopted policies that permit remote participation in certain instances from board members so long as it's not necessary to constitute a quorum that is physically present in the hearing room or enough commissioners to meet the quorum. And also that there are safeguards in place that a remote participant does not cast a deciding vote on any given issue because there again that opens the county's actions to challenge based on that remote participation. So the County Manager has outlined to you a bright line rule that's relatively easy to implement and follow which is as to the governing board you know remote attendance and participation isn't permitted after the emergency declaration is lifted. That's certainly one approach. If the county's interested in perhaps some more flexibility, I think there are ways to do that, but such a policy would need to be carefully crafted to make sure we don't run afoul of the statutory authority that we have. That's my view on it. Commissioner Massengill thanked Attorney Ferrell for his response.

County Manager Miller asked Commissioners, are there any other questions? Commissioner Oestreicher said what about boards that meet? Does this cover that as well? County Manager Miller said this applies to, and please correct me Mr. Ferrell, but my interpretation is it applies specifically to elected boards. There may be some authority for other boards to participate remotely, but not county, town, and city elected boards. Attorney Ferrell said the one addition I would add to that is I believe it also applies to any quasi-judicial decision-making body. So for instance the Board of Adjustment would need to meet in person when hearing quasi-judicial matters, special use permits to the extent that they're required to advise on those, and ordinance

interpretation appeals. Any quasi-judicial board is subject to the in-person requirements we've just talked about. County Manager Miller said any additional questions.

So the last update I have for you Commissioners is that tomorrow night is Caswell County night at the Burlington Sock Puppets game. I know there'll be a number of residents from the county and a number of county employees attending the game. Please if you're so inclined come out and enjoy Caswell County night at the Burlington Sock Puppet Stadium. If you have any questions about the game, it starts at 7 o'clock tomorrow night. If you have any additional questions, please contact myself or Carla, and we'll get you the information that you need.

COMMISSIONER COMMENTS:

Commissioner Jefferies: The only thing I would like to know is where are they on Doll Branch Road. County Manager Miller said the clerk and I rode out with Representative Myer's Assistant probably three weeks ago. They wanted to find out what was going on on the Doll Branch Road. The clerk and I had been out to the road before, and we had spoken to Jason Julian with the Department of Transportation about the road. Interestingly enough the day that we rode out they were replacing the culvert on the Doll Branch Road with a larger culvert. I do not want to say and I don't know since we haven't had rain that was substantiated, but the engineers seemed to think that that would relieve them of the flooding concerns that they had. They actually said that the flooding was not necessarily coming from the rain falling there, but it was coming from the rising river backing up that flows into the river. That's why they were experiencing the flooding. So I know the Department of Transportation has worked on it. They've replaced the culvert I believe at this point, and they're searching within their budgets for money to pave what they need to pave. As you may know, there's one house that they can't seem to get authorization from, but they'll pave up to that house.

ANNOUNCEMENTS AND UPCOMING EVENTS:

- Commissioners Meeting August 1, 2022 at 9:30 am
- NCACC Annual Conference August 11-13, 2022 in Charlotte, NC
- Commissioners Meeting August 15, 2022 at 6:30 pm

ADJOURNMENT:

A **motion** was made at 7:04 pm by Commissioner Massengill and seconded by Commissioner Jefferies and **carried unanimously** to adjourn the meeting. (Commissioner Dickerson, Jefferies, Oestreicher, Massengill, and McVey voted in favor)

Carla R. Smith
Clerk to the Board

Rick McVey
Chairman

July 18, 2022

RESOLUTION OF AMENDMENT

A RESOLUTION AMENDING ARTICLE 9 & APPENDIX A OF THE CASWELL COUNTY
UNIFIED DEVELOPMENT ORDINANCE

Be it Resolved and Ordained by the Board of Commissioners of Caswell County, North Carolina:

WHEREAS, the Board of Commissioners received an application to amend Article 9 and Appendix A of the Caswell County Unified Development Ordinance concerning Recreational Vehicles; and

WHEREAS, the Caswell County Planning Board recommends adoption of the amendment, and

WHEREAS, the Planning Board has provided a written statement to the Board of Commissioners that the amendment is consistent with the County's Comprehensive Plan; and

WHEREAS, the Board conducted a public hearing on the amendment.

NOW THEREFORE BE IT RESOLVED, that the proposed amendment is consistent with the County's Comprehensive plan because it is in keeping with existing Recreational Vehicle Park regulations, flood damage protections, and development review processes.

NOW THEREFORE BE IT ORDAINED, that the Caswell County Unified Development Ordinance, Article 9 and Appendix A, is hereby amended as shown in the attached revised Ordinance.

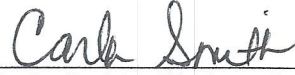
This Amendment shall become effective upon adoption. Adopted by the Caswell County Board of Commissioners this 18 day of July, 2022.

By:

Attest:



Rick McVey, Chair
Board of Commissioners



Carla Smith, Clerk to the Board

Article 9.

Part V. Recreational Vehicles

9.41.2.4 - Conditions of soil, groundwater level, drainage, and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable noise, odors, or other adverse influences, and no portion subject to unpredictable and/or sudden flooding, subsidence, or erosion shall be used for any purpose which would expose persons or property to hazards. No Recreational Vehicle Park shall be located in any flood zone floodway.

A Recreational Vehicle Park built in a floodplain shall require a Floodplain Development Application, Permit and Certification as specified in Section 10.3.2. A Recreational Vehicle Park shall also require the following:

9.41.2.4.1 Site Plan must designate all areas in the park property which are in a flood way and flood plain. No Recreational Vehicles are allowed in the floodway of a property and no entrances, exits or park roads may exist in the floodway.

9.41.2.4.2. Evacuation routes shall be constructed in a way that allows vehicles to exit the park outside of the flood zone unless no practicable alternative exists.

9.41.2.4.3. ~~Warning sign proposal as listed in Section 9.2.9.~~ Warning signs must be placed at all entrances informing occupants of flood zone and where to find the Emergency Evacuation plan.

Appendix A.

Recreational Vehicle (RV)

A vehicle, which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) On properly inflated wheels and designed to be self-propelled or permanently towable by a light duty truck; ~~and~~
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use; and
- (5) Be fully licensed and ready for highway use. (a Recreational Vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and had no permanently attached additions).