MINUTES – DECEMBER 14, 2020

The Caswell County Board of Commissioners met in special session at 9:00 a.m. on Monday, December 14, 2020. The meeting was held electronically using Zoom Webinar software. Members present: David J. Owen, Chairman, Jeremiah Jefferies, Vice Chairman, William E. Carter, John D. Dickerson, Nathaniel Hall, Rick McVey, and Steve Oestreicher. Also present: Bryan Miller, County Manager, Matthew Hoagland, Planning Director, Scott Oakley, Committee Member for the HIDO and Brian Ferrell, County Manager. Paula P. Seamster, Clerk to the Board, recorded the minutes.

WELCOME

MOMENT OF SILENT PRAYER

Chairman Owen opened the meeting with a moment of Silent Prayer.

PLEDGE OF ALLEGIANCE

The Board of Commissioners and all the guests in the attendance recited the Pledge of Allegiance.

CLOSED SESSION

Commissioner Oestreicher moved, seconded by Commissioner McVey to enter Closed Session to preserve the Attorney Client privilege (NCGS 143-318.11(a)(3)). After a roll call vote, the motion carried unanimously. (Commissioners Carter, Dickerson, Hall, Jefferies, McVey, Oestreicher, and Owen voted in favor.)

REGULAR SESSION

Commissioner Oestreicher moved, seconded by Commissioner McVey to resume the regular meeting. After a roll call vote, the motion carried unanimously. (Commissioners Carter, Dickerson, Hall, Jefferies, McVey, Oestreicher, and Owen voted in favor.)

HIGH IMPACT DEVELOPMENT ORDINANCE (HIDO)

Table of Classifications

Chairman Owen stated that the Board will discuss concerns and issues that the Board has with the HIDO and what it has heard from the residents. He stated that he wanted to start with the two items that he heard the most about which were the Table of Classifications and the Land Use Table. Chairman Owen stated that once these two items were address the commissioners could bring up any issues that they may have and hopefully after this meeting the Board will be able to enact the HIDO. He asked if there were any commissioners that had any issues with the Table of Classifications.

Commissioner Oestreicher questioned the need for Ready-Mix Concrete Suppliers to be in there as Class III especially if the definition was clear that the suppliers are just making the ready-mix concrete, transporting that concrete, and nothing else. Chairman Owen read the definition for ready-mix concrete suppliers ‘includes establishments, such as batch plants or mix plants, primarily engaged in manufacturing concrete delivered to a purchaser in a plastic and unhardened state, where such establishments are not engaged in mining or quarrying sand and gravel.” He asked Commissioner Oestreicher if this definition met the requirements he was seeking. Commissioner Oestreicher stated that he believed the definition met his requirement. Chairman Owen recommended moving Ready-Mix Concrete Suppliers to Class II. Commissioner Oestreicher stated that he did not think Ready-Mix Concrete should be included in the list at all. He asked Mr. Scott Oakley to comment on the Ready-Mix Concrete Suppliers since he was involved in the drafting of the HIDO. Mr. Scott Oakley stated that as he researched the other counties Ready-Mix Concrete Suppliers was regulated in just about all the ordinances and he thought in Alamance County it was listed as a Class II. He stated that the problem with this type of industry is it is taking all the difference aggregates and mixing them together and the concern is the emissions from the mixing. Commissioner Oestreicher asked if the state regulated the emissions. Mr. Oakley responded yes that it was regulated by DEQ and DAQ. Commissioner Oestreicher asked if Ready-Mix Concrete Suppliers could be moved to Class I. Chairman Owen recommended Class II.

Chairman Owen stated that several panelists were invited to attend the meeting today and Mr. Scott Oakley was one of those invited. He stated that Mr. Oakley served on the HIDO Committee. Chairman Owen stated that Mr. Russell Johnston from the Planning Board was also invited. He stated that the Planning Director Matthew Hoagland was invited to attend the meeting as well.

Chairman Owen asked how the Board felt about moving the Ready-Mix Concrete Supplier from Class III to Class II. No one opposed this move. Chairman Owen asked if there were other issues with the Classifications.

Mr. Ferrell stated that Resource Extraction was listed in Class III and Class IV and he asked for a clarification on which class this belonged. Chairman Owen stated that the final decision from the Committee was Class IV. Mr. Oakley agreed. Mr. Ferrell thanked Chairman Owen for the clarification.

Land Use Table

Chairman Owen stated that the Board would look at the various components of the Land Use Table and he gave the Board examples of what acreages would look like using property in Yanceyville.

Commissioner Carter stated that he had received several telephone calls about the 1800 feet barrier.

Commissioner McVey stated that he received several telephone calls about the 1800 feet as well. He added that he thought the HIDO was modeled after the Alamance County HIDO and they have this as 1200 feet, and it seems to be working well. Commissioner McVey stated that the HIDO was a living document and it could be changed at any time. He asked for this to be changed to 1200 feet like the Alamance HIDO. Commissioner Oestreicher responded that his comment on this was that once again he is looking at permit choice so if the county starts out with 1200 feet and someone submits an application they are locked into 1200 feet and he thought 1800 feet was more appropriate. He stated that with the HIDO the Board was trying to protect the citizens from emissions from polluting industries. Commissioner Oestreicher stated that he would like to start with 1800 feet and then reduce it to. He stated that when looking at the public comments that the Board had received at least one-third of the comments wanted to see an increase on the setbacks.

Mr. Oakley stated that he was happy to show graphics on the comparisons of all the counties that were researched. Chairman Owen asked if the graphics related to land spacing. Mr. Oakley responded that it was land spacing as related to the other counties.

Commissioner McVey asked if the 1200 feet land spacing was good enough for Alamance why was it not good enough for Caswell. He added that he has not heard of Alamance having any problems. Commissioner Oestreicher asked how many asphalt plants Alamance had. Commissioner McVey stated that the county was not getting fair representation on the HIDO Committee. He added that the Board formed the committee and he voted for the committee but the only people on the committee are from one area and the only person from Pelham was Chairman Owen. Commissioner McVey stated that there were no individuals from Locus Hill or any other districts except for Anderson and Prospect Hill. He added that Alamance County did not have zoning and the model that Caswell County is following is the HIDO that Alamance County enacted. Commissioner Carter agreed with Commissioner McVey.

Commissioner Dickerson asked what the state average for the setbacks. He added that he was listened to a conversation and the person stated that if the county was going to go with 1800 feet this would be excessive and outside the norm and the county could possible lose a legal challenge with this and he wanted to know if there was any merit to this statement. Chairman Owen responded that he was going to let Mr. Oakley share his slides.

Mr. Oakley explained what the land use spacing consisted of. He added that each county has a definition for land use spacing. Mr. Oakley showed a comparison of the counties that the committee was tasked to compare.

Commissioner McVey stated that looking at the chart it looked like all the counties were in the mountains. Mr. Oakley responded that the counties in the chart are the counties that do not have zoning but do have some type of land use spacing ordinance. Commissioner McVey asked if there were other counties that were east of Caswell that could be compared to. Mr. Oakley responded that these were the only counties that he knew of and if there were others, he was not aware of them. He added that Alamance changed its land use spacing in February of 2020, Alamance was 2000 feet and it changed to 1200 feet, but Alamance also did a definition change. Mr. Oakley stated that Mr. Hoagland called Alamance to see why the change was made.

Chairman Owen asked Commissioner Dickerson if this explanation helped him. Commissioner Dickerson responded that he did.

Commissioner McVey asked if Person and Rockingham Counties were looked at or were, they zoned. Mr. Oakley responded that Person and Rockingham Counties are both zoned. He added that every county around Caswell was zoned expect for Alamance County.

Chairman Owen asked the other commissioners if they had any questions about land use spacing.

Commissioner Carter stated that he agreed with Commissioner McVey that the land use spacing needed to be changed to 1200 feet.

Commissioner McVey stated that he was willing negotiate the land use spacing but he did not agree with 1800 feet.

(At 10:18 a.m. Commissioner Jefferies joined the meeting.)

Chairman Owen stated that he would like to see the land use spacing at no less than 1500 feet.

Commissioner Oestreicher stated that he would be good with 1700 feet.

Commissioner Dickerson stated that he wanted to be clear that the setbacks only apply to the industries that are listed in the different categories and that other normal industries would not be hindered by these setback requirements. Chairman Owen responded that this would be correct as well as any business that is already in existence such as the quarry in Pelham unless they expand or open a new location in the county.

Chairman Owen asked the Board for a consensus on the land use spacing.

Consensus of the Board was not to leave the land use spacing at 1800 feet.

1700 feet – Commissioner Oestreicher

1500 feet – Commissioners Owen, Dickerson, Hall and Oestreicher

1200 feet – Commissioners McVey, Carter, and Jefferies

Consensus was 1500 feet for Class III Asphalt Plant and Class IV

Commissioner Hall stated that the Board discussed Class III and Class IV, but Class I had nothing listed for land use spacing and he was concerned because Class I included Fuel Bulk Storage. He thought there should be some land use spacing for bulk storage tanks. Commissioner Oestreicher responded that the operations setbacks was 150 feet which was from the inside of the property line to the operations area.

Commissioner Carter stated that depending on the type of storage tank it should have a 200 to 300 feet land use spacing. Mr. Oakley responded that if the area were increased the operations area for a 10-acre lot would be reduced to practically nothing. Chairman Owen asked Commissioner Carter if he was speaking about operational setback or adding land use spacing. Commissioner Carter responded that he was talking about the distance from the outside of the facility which would be land use spacing.

Commissioner Hall stated that he also wanted to tie this in with the stream setback and if there is a stream running through the property how would that be handled. Mr. Oakley responded that if there was a stream on the property where the area of operation is located there would be a 100 feet setback on both sides of the stream for a Class I and Class II and 150 feet setback for a Class III and Class IV. Commissioner Hall stated that he was having a problem with the bulk storage when it was next to a stream because there was no protection for the water supply. Mr. Oakley responded that this was a concern for any of these industries and it was a good point. Commissioner Hall stated that now was the time to address the concerns. Commissioner McVey responded that he assumed that the company had to under state regulations have a containment area.

Chairman Owen asked Mr. Hoagland if the bulk storage facilities had been addressed as far as further setbacks or stream setbacks. He also asked if Mr. Hoagland knew if bulk storage was required to have a containment site as well. Mr. Hoagland responded that a few things came to his mind as this discussion was going on and added that Mr. Oakley’s depiction of the property was 100% accurate and the developer would have to abide by the operational setbacks as well as the stream setback. He added that during the committee discussions the state required 50 feet stream or perennial water body setback and watershed protections are 80 feet and with the county setting a 100 feet or 150 feet the county as well above other watershed, flood zone, and other state level requirements.

Commissioner Jefferies stated that as a farmer he had to remove his fuel tanks from underground; the state requires that fuel tanks to above ground.

Commissioner McVey asked if anybody had an answer to the containment area of the fuel bulk storage. Mr. Hoagland responded that he did not know the answer to that question. Commissioner Carter responded that he was pretty sure that a containment area is required for fuel bulk storage. Mr. Miller stated that Commissioner McVey is correct; the bulk fuel storage facilities are required to have a containment area and that containment area has to be able to contain the amount of fuel or whatever is being stored in the tank.

Chairman Owen asked Commissioner Hall if this satisfied his question. Commissioner Hall stated that he would be satisfied if the county was covered. He asked about how propone fuels would be handled. Commissioner McVey responded that he thought it would be the same. Commissioner Hall stated that he thought staff could get an answer to this later because he did not want to delay the discussion.

Commissioner Dickerson asked the question if 150 feet was enough to protect the adjacent property owners if one of these bulk storage facilities were to have an explosion. Chairman Owen responded that this was a good question.

Chairman Owen asked the Board if it wanted to move the bulk fuel facilities to Class II.

Commissioner Dickerson asked if there was a way to differentiate between someone who has small tanks, or someone will huge storage tanks. He is worried about a loophole and an industry comes into the county and put the citizens at risk and this was not seen. Chairman Owen responded that this may need to be clarified in the definition and added that he did not think this would include the small industries. Commissioner Dickerson stated that the reason he was bringing this up was that he received a call the other day about a nuisance in the county where someone is testing the explosion of tanks which creates a lot of noise and actually shakes individual houses. Commissioner Oestreicher responded that he thought the state regulated those larger facilities. Mr. Oakley responded that this was a good point and added that this could be looked at in two different ways. He stated that there were a lot of things that was included that would not impact the small business operations.

Chairman Owen asked Commissioner Dickerson if he thought moving the Bulk Fuel Storage from Class I to Class II would be sufficient. Commissioner Dickerson responded that he was hoping that someone who drew up the HIDO could help him, but he did not want to hurt the local propane distributor or diesel distributor who delivers to the farmers. He wanted to know if there was a way to separate the small operations from the large operations. Mr. Oakley stated that another definition or class could be created to cover the larger facilities. Chairman Owen read the definition of Fuel Bulk Storage Facilities ‘This definition shall not include filling stations used solely for distribution to individual consumers’ and he asked if this included Thomas Brothers. Mr. Oakley responded that this would represent a gas station. Chairman Owen continued ‘nor shall it include fuel stored at or on an agricultural farm, residence, business, or other facility where use of the fuel stored is limited primarily to on-site consumption.’ Mr. Oakley responded that direct consumer is the key language. Chairman Owen asked for Mr. Hoagland to comment on this. Mr. Hoagland responded that Chairman Owen read the provision that he was going to point to and added that from an administrative point of view he could see how it could be interpreted that this included Thomas Brothers because they are distributing this kind of material directly to consumers. He added that he did not think it would be too hard to come up with a calculation for the volume of material stored to have a threshold to put a facility into a larger category versus a smaller category. Mr. Hoagland stated that it may take some time to come up with a good matrix, but he did think this would be achievable.

Commissioner Dickerson asked Mr. Hoagland if he could look at the larger facilities when doing this research to see about their distance setbacks. Mr. Hoagland responded that he would.

Chairman Owen reminded the Board that there is a need to get the HIDO passed quickly and it may need to be handled at the Board’s next meeting. He added that the HIDO would be a living document that could be changed at any time. Chairman Owen suggested that the simplest solution for Fuel Bulk Storage Facilities may be to move it to Class II. Mr. Oakley responded that the Board has two options: it could be moved or if Mr. Hoagland is able to get a definition quickly there could be two separate categories. Chairman Owen stated that this information would need to be sent out to all the Commissioners as soon as possible because the Board will need to cover the changes at its next meeting and then vote on the HIDO. Mr. Hoagland responded that regarding the existing definition it could be left alone and then amend the ordinance later in order to get the ordinance approved. Chairman Owen stated that he did not think this would include Thomas Brothers. Mr. Oakley responded that Thomas Brothers has a separate storage facility and that is where the ordinance would come into play. Mr. Hoagland stated that since Thomas Brothers is in the town, the county would not regulate that property and the HIDO is for future developments in the county outside of the jurisdictions of the towns. Chairman Owen directed Mr. Hoagland to research the fuel bulk storage facilities. Commissioner Dickerson suggested moving this category to another Class until the research could be done to offer more protection for the citizens. Chairman Owen responded that he did not have a problem with moving it to Class II and asked if this was okay with Commissioner Dickerson. Commissioner Dickerson stated that it would be okay on a temporary basis so the HIDO could be passed but he would still like for Mr. Hoagland to do the research because it could possibly go into a higher category.

Commissioner Carter agreed with Commissioner Dickerson. The Board agreed to move Fuel Bulk Storage Facilities to Class II until further research could be done.

RECESS

The Board took a brief recess.

Land Use Spacing (cont’d)

Chairman Owen asked if there were any other issues on the Land Use Table.

Chairman Owen stated that only problem he had with land use is the lot size for Class IV and that it needed to be 100 acres because this did not offer any more protection to the citizens because the facilities could be 500 feet from the property line. He added that he understood that quarries use a lot of acreage, but he was not sure about other industries would need 100 acres and this would eliminate another industry from coming into the county in that same area. Mr. Oakley responded that he only prepared a visual presentation on what 100 acres would look like with the setbacks. He added that the committee followed the Alamance County HIDO on setting up lot sizes, but other counties do not require minimum lot sizes.

Chairman Owen asked the Board if there were other issues with the HIDO that needed to be addressed.

Fee Schedule

Chairman Owen asked Mr. Hoagland if the proposed fee schedule was consistent with the surrounding counties. Mr. Hoagland responded that he would defer this question to Mr. Oakley because he thought he did the research on the neighboring county fee schedules. He added that the Renewal Fees were in line with the Outdoor Storage Fees. Mr. Oakley responded that he did not investigate the fee schedules at all. Chairman Owen asked Mr. Hoagland to look at the surrounding counties’ fee schedules as quick as possible. Mr. Hoagland responded yes sir.

Bond Requirements

Commissioner Hall asked if the County could require any type of bonding for these types of businesses. Chairman Owen asked the county attorney to respond to this question. Mr. Ferrell responded that this was an interesting question. He stated that this was looked at in connection with the Well Repair Fund that was originally proposed to be a part of the HIDO. Mr. Ferrell stated that after researching this there was nothing in the legislative authority that allowed for this and this would have to be listed as an authority in order to require it so there is a question if this is allowed. Mr. Ferrell stated that he was not aware of any legislative authority that would allow the county to do this.

Commissioner Oestreicher stated that he was destressed to see that this fund was removed from the HIDO. He recommended that it be left in the HIDO and let it be challenged. Mr. Ferrell responded that the legal issue is that if counties exceed its authority in permitting regulations the counties can be liable for attorneys’ fees of the challenger in any challenge to the imposition of the fees. He added that if the county would like to explore implementing a bonding requirement or a well repair fund and that would be to ask the legislature for a local bill for specific authority to implement this program. Commissioner Oestreicher stated that from what he read the imposing of a fee was outside the county’s authority but the question about requiring a bond was not clear and wanted to know what the implications would be if this was included in the ordinance. Mr. Ferrell responded that legislature would not grant the authority and the ordinance would be legally problematic. Commissioner Oestreicher stated that then the County would remove this from the ordinance. Mr. Ferrell responded that if the County wanted to take a progressive approach it could but there are potential legal implications by doing so.

Commissioner Dickerson asked Chairman Owen if the gentleman that runs the rock quarry in Pelham ever sent him any information. Chairman Owen responded that he did receive that information and that it was sent out to the commissioners. Commissioner Dickerson stated that he had not seen that information, but he wanted to know the response on the Well Repair Fund. Chairman Owen responded that he only sent in points of concern but no explanations. He added that none of the HIDO would apply to that business unless the business is expanded or moved to another location. Commissioner Dickerson stated that one of the questions was what would be the mechanism that would prove that the damage came from the operation of the quarry and not a normal situation like hot weather conditions, etc. Chairman Owen responded that this would be one of his concerns as well on how this would be determined. Mr. Oakley stated that an outside person would have to make this determination.

Chairman Owen asked the Board if it wanted to put the Well Repair Fund into the HIDO and if so does the Board want to go through the process to get it approved by the legislature or just take a chance on it not being caught.

Commissioner Jefferies stated that Person County did have a Well Repair Fund. Commissioner Dickerson did not like the fact that the county could be sued and recommended that if the Board wanted to have the Well Repair Fund to go through legislation to get it approved first. Chairman Owen responded that he agreed with this. Commissioner Oestreicher recommended put it in pending legislative approval. Chairman Owen responded that he would like to get the approval before putting it in there. The consensus of the Board was the leave the Well Repair Fund out of the HIDO.

Commissioner Oestreicher stated that he was willing to leave it out as soon as the Board was going to seek legislative authority to put it in there. The consensus of the Board was to seek legislative approval to put the Well Repair Fund into the HIDO. Chairman Owen asked the Mr. Ferrell to determine how this needed to be done. Mr. Ferrell responded that he would work with the county manager on this.

Chairman Owen asked if there were other issues on the HIDO.

Chairman Owen stated that he would like to see page numbers on a Table of Contents to make it easier to individuals that are trying to location certain items.

Mr. Oakley asked if he could get clarification on the changes to the HIDO. He stated that the Land Use Spacing for Class III and Class IV would be changed from 1800 feet to 1500 feet and the two Class IIIs could be put together and only difference between Class III and Class IV would be the minimum lot size. Chairman Owen responded that this was correct.

Commissioner Oestreicher stated that he would like to see the HIDO put on the next meeting agenda for approval.

Mr. Miller stated that Mr. Oakley had agreed to email the slides out to all the Board members after today’s meeting.

ZONING – DISTRICT ZONING

Chairman Owen asked if everyone was able to see the voting by voting districts on the zoning referendum and added that he would like for the Board to have a discussion on the final referendum results. The results were shared with everyone.

Commissioner Oestreicher stated that the referendum on countywide zoning failed by 512 votes and that the referendum was a non-binding referendum and that the Board needed to keep it in mind what the residents wanted.

Commissioner Carter stated that zoning was put on the ballot and the majority of the resident voted that they did not want zoning in the county and added that he is not opposed to zoning areas such as Prospect Hill where the majority wanted zoning.

Commissioner Dickerson echoed what Commissioner Carter said and added that he felt differently on the district zoning. He stated that zoning was put on the ballot and voted on as countywide zoning and to go against that the Board would be circumventing the will of the majority of the voters in the county. Commissioner Dickerson stated that he was going to respect the will of the voters and he would not support zoning in Caswell County unless the voters say they want it across the board. He stated that elections have consequences.

Commissioner Jefferies stated that he agreed with Commissioners Dickerson and Carter. He stated that zoning had been on the ballot at least 3 times and the residents of Caswell have voted it down. Commissioner Jefferies stated that he would not vote for separate zoning in the county.

Commissioner McVey asked if the Board enacted the HIDO if the HIDO would take care of the problems with zoning. Chairman Owen responded that the HIDO would not take care of all the issues, but it would take care of the polluting industries. Commissioner Oestreicher responded that this was not correct and added that the HIDO did not prohibit any industry from coming into the county; zoning would prohibit certain industries from coming into certain areas in the county. He stated that there was a big difference.

Chairman Owen stated that the Board needed to give some direction to the county manager and planning director on how to proceed or not to proceed with countywide zoning, district zoning, etc. He stated that he thought there was a consensus that countywide zoning was not an option and added that he did not want to see countywide zoning. Chairman Owen stated that his district was definitely against zoning.

Commissioner Hall stated that he wanted to make an observation and asked that the chart that showed how the county voted be put back on the screen. He stated that not long after he moved to the county there was a landfill group that wanted to come to Pelham and the residents in Pelham came before the Board and asked for something to be done and now it seemed that the residents of Pelham had forgotten about this. Commissioner Hall added that in Anderson and Cherry Grove there was a racetrack that wanted to come to the county and the residents came to the Board and said to do something. He stated that the Board needed to do something and what the chart showed was that the results were mixed. Commissioner Hall stated that this was an advisory referendum and action was needed by the Board because something else will come up. He stated that the Board is not doing a good service to the citizens of Caswell County if the Board does not do anything. Commissioner Hall stated that a lot of the citizens did not know what zoning could accomplish in the county and the Board needs to let the citizens know what zoning can accomplish and then work on something that is suitable for Caswell County.

Commissioner Oestreicher stated that he fully endorsed every word Commissioner Hall said.

Chairman Owen asked for an official motion on not pursuing countywide zoning.

Commissioner McVey moved, seconded by Commissioner Carter to not pursue countywide zoning. After a roll call vote, the motion carried by a vote of five to two. (Commissioners Carter, Dickerson, Jefferies, McVey, and Owen voted in favor. Commissioners Hall and Oestreicher voted against.)

Chairman Owen asked if the Board had other types of zoning it would like to look at.

Conditional Zoning

Commissioner Oestreicher stated that at the last meeting there was a zoning talked about called conditional zoning and that the county manager and the county planner was going to bring back more information on this. He added that district zoning is a different product. Commissioner Oestreicher stated that the Board was talking about extending the moratorium and it was his understanding from discussions with the county attorney that if the Board wished to extend the moratorium there needed to be a plan in place on what was going to be done during that extension. He stated that the Board did not necessarily need to decide on what this would be before extending the moratorium but had to have a plan by the end of the extension. Commissioner Oestreicher proposed to develop a plan to look at district zoning and to have discussions and debates with the residents that do not fully understand zoning.

Chairman Owen asked Mr. Ferrell if he would go back over conditional zoning and district zoning. Mr. Ferrell responded that the 160D-703B lists the options. He stated that legislature provides 5 types of zoning districts that local governments can implement: ‘(1) Conventional districts, in which a variety of uses are allowed as permitted uses or uses by right and that may also include uses permitted only with a special use permit. (2) Conditional districts, in which site plans or individualized development conditions are imposed. (3) Form-based districts, or development form controls, that address the physical form, mass, and density of structures, public spaces, and streetscapes. (4) Overlay districts, in which different requirements are imposed on certain properties within one or more underlying conventional, conditional, or form-based districts. (5) Districts allowed by charter’. Mr. Ferrell stated that conditional districts are unique and 160D provides a definition for this ‘Property may be placed in a conditional district only in response to a petition by all owners of the property to be included.’ He stated that base level zoning had to be in place and a zoning ordinance had to be implemented to have conditional zoning. Mr. Ferrell stated that zoning could be complicated and technical, but the planning director is a great resource to use when questions arise on zoning.

Mr. Miller stated that it was his understanding that there is a legislative decision and a quasi-judicial decision and the two are separate and apart. Mr. Ferrell responded that prior to the 160D this was correct but now with the 160D in place there is only a one step approval process which is the legislative process. He added that the Board can implement zoning in certain areas of the county and no other areas if the minimum acreage requirements are met. Mr. Miller informed the Board that the information that Mr. Ferrell just went over was just sent out to the Board from a UNC School of Government publication.

Chairman Owen asked if there were any other questions.

Commissioner Oestreicher asked if the neighboring property owners would have any input in this approval or denial process. Mr. Ferrell responded that the statutory requirement is that all the owners of the property to be included must seek the conditional rezoning district zoning. He added that for any zoning there is a public hearing requirement so other property owners could express their thoughts on the rezoning through the required public hearing process. Commissioner Oestreicher stated that it would be strictly up to the Board of Commissioners to approve or deny the conditional zoning. Mr. Ferrell responded that the Board of Commissioners could not designate rezoning authority; the Board just make this decision as a board.

Commissioner McVey stated that if the Prospect Hill area was zoned residential and agricultural and a business bought property in that zoned area the business could ask for conditional zoning and the Board of Commissioners would have to make a decision on whether or not that business could do this. Mr. Ferrell responded yes if conditional zoning district was available and commercial zoning is a conditional use.

Commissioner Oestreicher asked if the base zoning would supersede anything the Board of Commissioners would do without having to rezone all that area. Mr. Ferrell responded that there would be a list of permitted uses in the district zoned areas. He added that there are different tools that could be used to accomplish different things.

Commissioner Dickerson asked what the cost would be associated with developing conditional zoning and the enforcement of it after it is implemented. Mr. Ferrell responded that there would be a drafting cost; the county planning and committee did the first cut with the HIDO but there is a legal review in the process so there are costs associated with this legal review of a zoning ordinance. He added that there are models in other counties that the county could pull from so that would save the county some money but there are administrative costs associated with this process. Mr. Ferrell stated that after the implementation there would be cost associated with the enforcement and added that the county planner enforces the zoning districts in the Hyco Lake area. Commissioner Dickerson asked if the current staff would be able to handle this if it is implemented or would it require more positions. Mr. Ferrell responded that this question would have to be deferred to the county manager and planner. Mr. Miller responded that he did not see a need for additional staff especially if the zoned area was consistent but if the county had different areas that were zoned differently additional staff may be needed. Mr. Hoagland agreed with Mr. Miller’s statement, but it would be very important on how it was set up on the front end.

Commissioner McVey asked if conditional zoning had been implemented in any of the local counties. Mr. Ferrell responded that he had not done a survey of what jurisdictions had conditional district zoning, but he thought Guilford County had it. Mr. Hoagland responded that the Town of Yanceyville utilizes conditional rezoning as well as 50% of local governments in North Carolina use some type of conditional rezoning as of a 2018 survey.

Mr. Miller stated that Mr. Hoagland prepared a short presentation on conditional rezoning and he asked if this could be emailed to the Board after the meeting.

Chairman Owen asked Mr. Ferrell if the Board were to decide by a consensus that it was willing to research and investigate conditional district zoning the moratorium would need to be extended what would be the process. Mr. Ferrell responded that if the Board wanted to implement zoning for certain areas of the county with a zoning ordinance that would include a conditional district option the Board can move forward at any time. He added that to extend the moratorium the Board would need to have a public hearing and then identify the issue that is trying to be remedied with the moratorium and what steps are going to be taken during the moratorium extension. Chairman Owen asked if the Board does not take official action to pursue the conditional district zoning would there be a problem with extending the moratorium without official action. Mr. Ferrell responded that there are four findings that the Board has to make in the ordinance extending the moratorium and the fourth item on the list is a statement of the actions and the schedule of the actions proposed to be taken by the local government during the duration of the moratorium so the Board has to say what it is planning to do as well as the schedule. He added that no one would predict what the Board will do and he gave the example that the statement of the actions could be to direct the county planner and the county manager to bring back a zoning ordinance for x areas and to have it include a conditional district option and then preview that the Board will move quickly through the review process such that a vote could be taken prior to the expiration of the extended moratorium and this would meet the statutory requirement.

Chairman Owen asked the Board for a consensus to direct the county manager and staff to look into this type of zoning and to bring back before the Board a zoning plan and at which time the Board would vote on the plan and this would allow the moratorium to be extended for up to 6 months.

Commissioner Dickerson asked how the 650 acres of land that was mentioned in conditional zoning play into this. Mr. Ferrell responded that it is 650+ acres of contiguous property is the minimum acreage that can be partially zoned. Mr. Miller added that he believed there was a parcel limit to this as well. Commissioner Dickerson asked if this would be where Commissioner Oestreicher was talking about zoning a certain part of the county or would be just be a 650+ acreage of land somewhere in the county. Mr. Miller responded that the way he understood this was the Board is looking to zone the areas that voted for zoning on the referendum.

Commissioner Carter stated that it was his understanding that the Prospect Hill area was the area that the county was looking into district zoning. He asked if other areas were being investigated as well. Commissioner Oestreicher responded yes to the other areas for zoning. Commissioner McVey stated it would be Anderson, Prospect Hill, Leasburg, and part of Yanceyville.

Chairman Owen stated that the consensus is not a vote to do zoning but a vote to direct the county manager and staff to bring the Board a plan to do conditioning district zoning and then the Board would review it and vote yes or no.

Chairman Owen asked the Board if the commissioners wanted to explore conditional district zoning in the specific areas of Anderson, Prospect Hill, Leasburg, and part of Yanceyville. The Board came to a consensus to direct the county manager and staff to bring back a plan to the Board on conditional district zoning in the specific areas of Anderson, Prospect Hill, Leasburg, and part of Yanceyville. (Commissioners Carter, Hall, McVey, Oestreicher and Owen voted yes. Commissioner Dickerson and Jefferies voted no.)

Mr. Ferrell stated that the Board will hold a public hearing on the moratorium which is a required step in the ordinance adoption process and the Board will need to consider an ordinance at some point shortly after the public hearing and the ordinance has to spell out the things that have been discussed today.

Commissioner Oestreicher asked if the Board would direct the county attorney to draft what is necessary to extend the moratorium. Chairman Owen asked Mr. Ferrell if the Board had enough with the consensus to extend the moratorium. Mr. Ferrell responded that he had enough to put together a draft ordinance for the Board’s consideration subject to further input following the public hearing.

ADJOURNMENT

At 12:23 p.m. Commissioner Carter moved, seconded by Commissioner McVey to adjourn the special meeting. After a roll call vote, the motion carried unanimously. (Commissioners Carter, Dickerson, Hall, Jefferies, McVey, Oestreicher, and Owen voted in favor.)

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Paula P. Seamster David J. Owen

Clerk to the Board Chairman

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