



Planning, Development & Inspections

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A Division of Community Services
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MINUTES OF REGULAR MEETING

Wake County Planning Board

Wednesday September 4, 2019 (1:30 p.m.)
Wake County Justice Center
300 S. Salisbury St., Room 2700
Raleigh, North Carolina

Members Present: (8) Mr. Jason Barron (Chair), Mr. Thomas Wells (Vice-Chair), Mr. Amos Clark, Mr. Ted Van Dyk, Ms. Brenna Booker-Rouse, Ms. Susan Sanford, Ms. Meredith Crawford, Mr. Daniel Kadis

Members Absent: (2) Mr. Bill Jenkins, Mr. Asa Fleming

County Staff: (7) Ms. Melinda Clark, Mr. Barney Blackburn, Mr. Tim Maloney, Ms. Sharon Peterson, Mr. Steven Finn, Ms. Beth Simmons, Mrs. Loretta Alston

County Attorney Present: (1) Mr. Kenneth Murphy (Senior Assistant County Attorney)

Guests: (0)

- 1. Meeting Called to Order** – Mr. Jason Barron called the meeting to order at 1:32 p.m.
- 2. Oath of Office** – Mr. Kenneth Murphy administered the oath of office to new Board member, Mr. Daniel Kadis. Mr. Barron welcomed Mr. Kadis aboard and thanked him for his willingness to serve Wake County.
- 3. Election of Chair and Vice-Chair**

Mr. Barron opened the floor for nominations for chair of the Planning Board. Mr. Van Dyk nominated Mr. Barron for chair. Nomination was seconded by Mr. Clark. There were no other nominations. Mr. Barron was elected chair of the Planning Board by unanimous consent.

Mr. Barron opened the floor for nominations for vice-chair of the Planning Board. Mr. Clark nominated Mr. Wells for vice-chair. Nomination was seconded by Mr. Van Dyk. There were no other nominations. Mr. Wells was elected vice-chair of the Planning Board by unanimous consent.
- 4. Petitions and Amendments:** Motion to adopt the agenda as written was made by Mr. Clark and seconded by Mr. Wells. The agenda was unanimously approved as presented.
- 5. Approval of Minutes from August 7, 2019:** Motion to approve the minutes from August 7, 2019 was made by Mr. Clark and seconded by Mr. Wells. The minutes were unanimously approved as presented.
- 6. OA-01-19 – Text Amendment for Stormwater and Erosion Control** – Ms. Melinda Clark, Watershed Manager with Wake County Environmental Services Department, presented the proposed text amendments as a request to amend Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control of the Unified Development Ordinance (UDO) to update related surface water rules for legislative changes, to provide clarity of provisions and to improve the effectiveness of the ordinance.

Background of review

Ms. Clark stated that the last comprehensive review of the surface water rules contained in UDO Articles 9 and 10 culminated in the adoption of a new Stormwater Ordinance in 2006 and the adoption of a substantially revised Article 10 Erosion and Sedimentation Control in 2007. In the fall of 2017, Watershed Management staff initiated a new comprehensive review of the stormwater and erosion control rules. A stakeholder group was formed to work with staff in reviewing and updating the rules. The stakeholder group met six times over the next 18 months. The stakeholder group concluded its work in February 2019. This process identified ten (10) proposed changes to Article 9 Stormwater Management and thirty-seven (37) proposed changes to Article 10 Erosion and Sedimentation Control.

The proposed changes have been reviewed by the County Attorney. Given Wake County's Erosion and Sedimentation Control program is a delegated program of the State, Julie Coco, P.E., N. C. State Sediment Program Engineer also reviewed and gave input on the proposed Article 10 regulations.

Mr. Blackburn, Plan Review Group Team Lead, was introduced and talked about the highlights of proposed Article 9 stormwater management.

Article 9 Stormwater Management Amendment Summary

1. **9-12** Added Applicability, **9-12-1** Exemptions.
2. **9-12-2** Minor and Minor-Limited Subdivisions - moved paragraph here from 9-20-3 and renumber as 9-12-2, added "Other applicable stormwater regulations are in addition to this requirement."
3. **9-20-3(C)(1)– (2)** Spelled out United States Department of Agriculture.
4. **9-20-4** Added Stormwater Control Measures (A) Location, (B) Easements and (C) Setback Requirements - Wastewater Systems.
5. **9-22** Added Downstream Impact Analysis requirements, **9-22-1** General Standards, **9-22-2** Policies and Procedures.
6. **9-31-2** Clarified as-built plans to be prepared by a licensed surveyor.
7. **9-32-2(A)** Added reference to Stormwater Agreement.
8. **9-32-5** Added Annual Maintenance Inspection and Report requirements.
9. **9-32-6** Added "Environmental Services".
10. **9-40** Added Illicit Discharges, 9-40-1 Illicit Discharge Definition, 9-40-2 Discharge Restrictions, 9-40-3 Prohibited substances.

Board Discussion on Article 9

Mr. Clark and Mr. Barron requested language clarification on section 9-22, in regard to the 10 percent rule and/or 10-year storm runoff rate rule. Mr. Blackburn agreed they would look at that language but also stated that they will evaluate on a case-by-case basis.

Mr. Wells inquired if there was an incentive or penalty for not providing the annual maintenance inspection report. Mr. Blackburn stated that there is not a penalty for not providing the report. Ms. Clark stated that there are penalties elsewhere in the UDO for violations of the various provisions in order to enforce rules.

Mr. Wells inquired further if there was a way to improve the process and get better compliance with submissions of the annual maintenance inspection report or perhaps deleting that requirement. Mr. Blackburn stated that the form is just one page so should not be burdensome.

There being no further board discussion on Article 9, Mr. Barron asked Ms. Clark to provide the amendments to Article 10.

Article 10 Erosion and Sedimentation Control Amendment Summary

1. Throughout **Article 10** capitalized Article.
2. Throughout **Article 10** updated agency names to current.
3. **10-10-3** Added last sentence: "Whenever conflict exists between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply".
4. **10-12 Definitions** - Added definitions per State Model Ordinance: Act, Commission, Department, Larger Common Plan of Development or Sale, Plan, and Undertaken. Modified definition of Director of North Carolina Division to update agency reference to Division of Energy, Mineral and Land Resources. Added to definition of NC Sedimentation Pollution Control Act "...regulations...also referred to as Act." Revised definition for "Working Days" to exclude state and federal holidays.
5. **10-13-1(A)** Revised to clarify regulations of Article 10 apply to land disturbances of one acre or more and to land disturbances that are less than one acre if part of a larger common plan of development or sale, added "including without limitation a subdivision".
6. **10-13-2(A)** Agricultural Activities – made language consistent w/recent changes to NC SPCA.
7. **10-13-2(B)** Forestland Activities – Revised section to clarify exemptions and that timbering toward development is not exempt from the requirements of Article 10 and that the N.C. Forest Service is the agency that determines if land disturbing activities undertaken on forestland are conducted in accordance with Forest Practice Guidelines Related to Water Quality. Updated agency name.
8. **10-20-5 (A)** Added ... "Plan and...", Struck "Greater Than One Acre of Disturbed Area"
9. **10-20-5 (A)(1)-(3)** Revised to clarify that a plan and permit are required for land disturbances one acre of more and to land disturbances less than acre that are part of a larger common plan of development, added "including without limitation a subdivision". **(2)** and added "...and maintain..."; and **(3)** added, "The person conducting the land disturbing activity", changed 15 and 21 days to 14 and struck unnecessary words.
10. **10-20-5(B)** Struck "One Acre or Less of Disturbed Area"
11. **10-20-5(B)(1)– (3)** Clarified when a plan and permit is not required; if the land disturbance is less than one acre and is not part of a larger common plan of development or sale, added "...and maintained...". **(2)** Struck "gravel pad" replaced with "construction entrance". **(3)** Made "side" plural by adding an s, now "sides".
12. **10-20-5(B)(7)** Clarified when a plan and permit is not required.
13. **10-20-6(A)** streamlined wording.
14. **10-20-8, 10-20-11, 10-20-12(J)** Updated agency names, spelled out United States Department of Agriculture, changed "Soil Conservation Service" to "Natural Resources Conservation Service".
15. **10-20-9 (B)** Referenced stabilization timeframes and added tables below paragraph: General Ground Stabilization Requirements and Falls Lake Watershed Ground Stabilization Requirements.
16. **10-20-10(A)** Updated agency name.
17. **10-20-10(c)** Added "...particle".
18. **10-20-10(E)** Ground Cover – changed to 7 days.
19. **10-20-11** Added standards specifics to Falls Lake Watershed (15A NCAC 04B. 0132), renumbered section that follows to 10-20-12 Standards for Landfills.
20. **10-22-2** Updated agency name, **10-22-2(B)(2)** changed "of" to "or" and updated agency name.
21. **10-22-3(A)(2)(e)** Updated agency name.
22. **10-30-1(A)** Clarified a plan and permit is required of land disturbances one acre of more and of land disturbances of less than acre that are part of a larger common plan of development or sale, added "including without limitation a subdivision".
23. **10-30-1(B)** Clarified that the County may require a plan for land disturbances of less than acre that not part of a common plan of development if needed to protect against off-site damages.
24. **10-30-2(B)(2)(a)** Changed "his authorized agent" to "their Attorney in Fact", changed "designated" to "registered".
25. **10-30-3(A)** Updated agency name.

26. **10-30-3(G)** Added as last sentence: "Plan approval shall be conditioned upon the applicant's compliance with federal and state water quality laws, regulations and rules".
27. **10-30-4(C)(5)** Updated agency name.
28. **10-30-9(A)** Updated section reference.
29. **10-30-9(B)** Revised to allow for multiple extensions of the land disturbance permit in increments of either one or two years.
30. **10-30-9(C)** struck *Commentary: The phasing of large and/or complex projects should be considered when it is anticipated that the maximum permit validity period of 4 years (the original permit has a 2 year validity, plus the maximum renewal period of 2 years) may be insufficient to complete all work or in instances where it may be desirable to obtain certificates of completion for phases, rather than one certificate of completion for the entire project.*
31. **10-31-2(A)(2)** Added stabilization requirements per NC General Permit for Construction.
32. **10-32-1(D) (1)– (2)** Updated agency name.
33. **10-40-2** Added "...and the land disturbance permit requirements of this Article."
34. **10-42-3(A)-(B)** Made first paragraph (A). Under (B) Clarified violator must either pay assessment, appeal assessment or request a remission of the penalty within certain timeframes.
35. **10-42-4 (A)-(B)** Made first paragraph (A), added "...in determining whether to uphold, reduce or waive the civil penalty.". Added paragraph (B) State Remission of Civil Penalties per NCGS, 113A-64.2
36. **10-42-6** added "...in accordance with G.S. 115C – 457.2."
37. **10-46-1(B)** Struck comma after article at end of paragraph; added a period.

Board Discussion on Article 10

Ms. Sanford asked Ms. Clark about section 10-10-3 and the level of restrictions. Ms. Clark stated that where conflict exists between federal, state or local ordinance, the local ordinance must be as strict as state regulations and can be more restrictive. Wake County has a history of being more restrictive than the state.

Ms. Crawford asked Ms. Clark if there were any properties that are grandfathered in. Mr. Murphy replied that if a permit has been issued and that permit has not been completed yet, but it is in process then it would be allowed to continue that development under the previously existing rules. Any permits that are applied for and issued after these changes are adopted, if adopted, would function under the new rules.

Mr. Kadis inquired about the agricultural regulations regarding Erosion Control, and Mr. Murphy clarified that state law significantly limits what a county can and cannot regulate on land that is being used for farm purposes. Wake County cannot be more restrictive or less restrictive regarding building permits.

After much discussion of larger common plan of development and the Erosion Control Ordinance, Mr. Murphy recommended that the board suggest revisions to make the language clearer to the UDO Article 10 revisions as UDO 10-20-5(B)(8):

"Notwithstanding the provisions of subsection (B)(1) herein, a permit is not required for land disturbing activities that disturb less than one acre upon a lot for which a certificate of occupancy for a single-family dwelling previously has been issued."

Proposed Ordinance Text

See attached redlined Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control as Appendix 1. *Note: Proposed deletions are shown in strikethrough while proposed additions are shown in color.*

There being no further discussion, Mr. Barron entertained a motion from the Board.

Motion to Adopt Written Recommendation to The Board of Commissioners Addressing Plan Consistency (1st Motion)

In the matter of OA-01-19, Mr. Clark moved that the Planning Board adopt and offer to the Board of Commissioners the following recommended statement finding that these proposed text amendments are consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance:

- 1) The Planning Board finds that these proposed text amendments are consistent with the Wake County Land Use Plan and the Wake County Unified Development Ordinance because the purpose of the Wake County Land Use Plan, and of the Unified Development Ordinance as seen in Article 1-11, is to promote a guide for the physical development of the County, preserve and enhance the overall quality of life of residents, and establish clear and efficient development review procedures. These purposes are advanced by these text amendments to Article 9 Stormwater Management and Article 10 Erosion and Sedimentation Control, which will clarify regulations and include applicable legislative rule updates;
- 2) The Planning Board finds that these proposed text amendments are reasonable and in the public interest because it provides the regulatory framework for development review and permitting in Wake County for stormwater management and erosion and sedimentation control for land disturbing activities and advances user understanding of regulatory requirements.
- 3) The Planning Board adopts the following language to the UDO Article 10 revisions as UDO 10-20-5(B)(8), *“Notwithstanding the provisions of subsection (B)(1) herein, a permit is not required for land disturbing activities that disturb less than one acre upon a lot for which a certificate of occupancy for a single family dwelling previously has been issued.”*

Motion was seconded by Ms. Sanford and passed unanimously.

Motion for Approval (2nd Motion)

In the matter of OA-01-19, Mr. Wells moved that the Board finds that the adoption of these text amendments is consistent with the Wake County Land Use Plan and Wake County Unified Development Ordinance and is reasonable and in the public interest and here by make a motion to recommend approval of these proposed text amendments to the Wake County Board of Commissioners, and includes the revisions to Article 10 as as UDO 10-20-5(B)(8).

Motion was seconded by Mr. Clark and passed unanimously.

7. Comprehensive Plan Update

Mr. Maloney and Ms. Peterson gave a brief update as follows.

- The second public surveys are being finalized, and the third and final survey will be implemented soon. Different tools were utilized this time to help those taking the survey options to drill down on public input and feedback in our planning process to look at graphics and images to help get a sense of what visions they might see in our policies going forward.
- Growth Alternatives: Staff is starting to look at those maps looking at concepts and policies behind some of that that steer us in a little different direction than how we currently grow. Mr. Maloney and Ms. Peterson will be sharing with Board growth alternatives in five different focus area shortly.
- The City of Raleigh large lot Property Owners Forum was held last Thursday. Some of the issues that were addressed:
 - Farmland preservation - wanting tools to identify how to do that;
 - ETJ, rezoning, annexation – what is the process and what is the State Law surrounding those types of statutes right now;
 - Internet access came up in terms of lack of or spotty reception and cost of installation;
 - New existing well water sampling – This area is part of the recommended area for existing well sampling. Raleigh Public Utility staff was on-hand to discuss being able to access the

Raleigh water/sewer and options that may be more costly or less costly for those that it has been determined that they exceed the level of radon in one of the other contaminants.

8. Reports

Committee Reports: None.

Staff Reports: Mr. Maloney made the following announcements:

- The Board of Commissioners (BOC) will meet on Monday, September 16 at 2:00pm. The following items will be on the agenda. Mr. Maloney requested the chair and vice chair be there to represent the Planning Board during these public hearings.
 - **Land Use Plan Amendment #01-19** Swift Creek Land Management Plan
 - **Land Use Plan Amendment #02-19** Benson Rd/Garner Activity Center
- Fuquay-Varina ETJ consideration of approval or not approval at the BOC September 16. The Board's recommendation that was approved at the May meeting was presented twice at BOC work session. Staff is concurring with the Planning Board recommendation and that recommendation was brought forward to the BOC and was the topic of a public hearing last night (9/3/19). Postcards were sent via mail to nearly 7000 property owners in the requested area. It is expected that consideration of the recommendation will be heard at the September 16th. Mr. Maloney took copious notes about comments and will debrief the manager's office later in the week and confirm the September 16th consideration by the board. Mr. Clark has already informed Mr. Maloney that he plans to attend the September 16th meeting.
- The Board of Commissioners will meet on Monday, October 7 at 5:00pm. The Ordinance Amendment that was heard today will be on the agenda. Representation from the planning board will need to be at this meeting as well.
- 2020 Census – Mr. Maloney asked the Board to encourage residents in our community to participate in the 2020 census because an accurate count means federal dollar distribution back to our community. The role of staff is to work with a complete count committee chaired by Commissioner Vicky Adamson to again promote, market, and educate our residents to participate in the census and more importantly reach out to those hard to count populations. If you are involved in an organization that would like us to visit and talk about the census, please contact Mr. Maloney.

Mr. Steven Finn reported that development remains consistent.

9. Chairman's Report

Mr. Barron reported that he will be making committee assignments for new members. There are three committees: Code and Operations, Land Use and Subdivision, and Transportation, and the descriptions and current assignments are on the FTP site. If new members have a preference on which committee they would like to be on, please email Mr. Barron.

Mr. Barron addressed staff and pointed out that the Planning Board website needs some updates to membership listings.

10. Adjournment

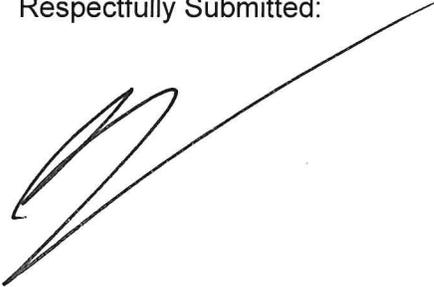
Having no further announcements, the meeting was adjourned at 3:01 p.m.

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REGULAR MEETING
WAKE COUNTY PLANNING BOARD
September 4, 2019

Jason Barron declared the regular meeting
of the Wake County Planning Board for
Wednesday, September 4, 2019 adjourned at 3:01 p.m.

Respectfully Submitted:

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a long, sweeping horizontal line that extends to the right.

Jason Barron
Wake County Planning Board

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