Minutes of 4/18/2012 Planning Board Meeting [adopted]

Russ W O'Melia on 05/07/2012 at 10:43 AM
Category: Planning Board Minutes

MINUTES

Wake County Planning Board
Wednesday, April 18, 2012
1:30 P.M., Room 700
Wake County Courthouse
316 Fayetteville Street
Raleigh, N.C.

Members Present (9): Mr. Dale Bouldin, Mr. Joseph Springer, Mr. Graham Cawthorne, Mr. Matt Martin, Mr. Matthew Brubaker, Ms. Nancy Szabados, Mr. Douglas Ball, Mr. Michael Birch, and Ms. Michelle Muir

Members Not Present (1): Mr. Loftee Smith

Staff Members Present (4): Mr. Steven Finn (Land Development Administrator), Mr. Bryan Coates (Planner III), Mr. Keith Lankford (Planner III) and Mr. Russ O'Melia (Clerk to the Board)

County Attorneys Present (1): Mr. Kenneth Murphy

Board of Commissioner Members Present (0): None

1. Call to Order – Mr. Martin called the meeting to order at 1:30 p.m.

2. Petitions and Amendments – There were none.

3. Approval of Minutes from the April 4, 2012 Planning Board Meeting –
Mr. Cawthorne made a motion to approve the minutes. Mr. Bouldin seconded the motion. By a vote of 7-0, the minutes were approved.

4. ZP-878-12: Proposal is to rezone a proposed 2.11-acre lot (part of 2700 Burlington Mills Road) from Residential-30 (R-30) to Conditional Use-Heavy Commercial (CU-HC)

Mr. Lankford presented the staff report to the board.

Location: The subject property is located at 2700 Burlington Mills Road, which is on the southern side of Burlington Mills Road about one-third of a mile east of its intersection with Capital Boulevard (US 1).

Present Zoning: Residential--30 (R-30)

Proposed Zoning: Conditional Use-Heavy Commercial (CU-HC)

Existing Land Uses: Agricultural

Petitioner: Michael Adams

Design Firm: Michael Adams/Taylor Blakley

Owners: Gracie Macon, Jack Adams, Alice Adams, Michael Adams, Traci Fixx, James Macon, Angela Macon, Greg Adams, Sandra Adams

PIN #: 1738-68-8040

Surrounding Land Uses and Zoning Districts

Direction	Land Use	Zoning
North	Burlington Mills Road, vacant, wooded	Wake Forest ETJ (Rural Holding District)
East	Single-family residential, agricultural, wooded	Residential 30 (R-30) (Wake County)
South	Agricultural, wooded	Residential 30 (R-30) (Wake County)
West	Agricultural, single-family residential, multi-family (Wake Forest jurisdiction)	Residential 30 (R-30), Wake Forest town limits (Highway Business, Office & Institutional, Residential-10)

Land Use/Zoning History

- 1976: General zoning was first applied to the northeastern portion of Wake County
- 2001: Northeast Area Land Use Plan was adopted and designated this area as an "Industrial/Major Employment Area"

Wake County Land Use Plan

The subject property is located in Wake County's planning jurisdiction and is designated as an "Industrial/Major Employment Area" as shown on the Northeast Area Land Use Plan. The Industrial/Major Employment Area is defined as land that is "suitable for manufacturing, warehousing, industrial and business uses, research and development, and supporting commercial and residential uses, in a manner appropriate for its location relative to other development and environmental constraints".

The Land Use Plan's policies and goals, which have been adopted by the Board of Commissioners, address how development is to occur in the county so as to maintain and enhance the character of the area and the quality of life for its residents. These policies and goals direct more intensive uses to specified areas (such as activity centers and this Industrial/Major Employment Area) as identified on the Land Use Plan. The Northeast Area Land Use Plan was jointly developed by the planning staffs of Wake County and the towns of Wake Forest and Rolesville, and a community advisory committee, via an extensive public participation process.

In accordance with the North Carolina General Statutes and the Wake County Unified Development Ordinance, any proposed rezoning should be consistent with the Wake County Land Use Plan. The requested Heavy Commercial zoning and the listed nonresidential uses would be appropriate for the designated Industrial/Major Employment Area.

Any future use on this property will have to be determined to be consistent with the Land Use Plan via a site-specific development plan before it could be approved for development. Below are the petitioner's proposed conditions including the listing of permissible uses that would

remain possible if the rezoning petition is approved. In preparing the rezoning conditions, the petitioner has voluntarily excluded 53 possible uses that would otherwise be permissible. It was noted that some of these excluded uses may not have been viable given various constraints upon the land (both regulatory and physical).

Town of Wake Forest Review Comments
As part of the Wake County planning staff's review of this rezoning request, a copy of the petition was forwarded to the Town of Wake Forest's planning staff since this site lies within their Short-Range Urban Services Areas (SRUSAs). The subject 2.11-acre tract is surrounded by the balance of the 97-acre parent tract and three small residential lots that are under Wake County's zoning jurisdiction and zoned Residential-30 (R-30). But beyond the parent tract's boundaries, the lands to the east (250 feet) and to the west (1,500 feet) are within the town's corporate limits, and the land to the north, directly across Burlington Mills Road, is within the town's extra-territorial jurisdiction (ETJ).

The Wake Forest planning staff indicated that they may have some additional comments at the site plan stage, but their only comment at this time is related to the amount of right-of-way that they anticipate needing to widen Burlington Mills Road, at some point in the future, in accordance with the Town of Wake Forest Transportation Plan.

Wake Forest's planning staff has noted that they would like to see a 25-foot right-of-way dedication, or for the future development on the subject property to be moved further back from the right-of-way line to accommodate the future road widening. The Wake Forest Transportation Plan proposes to widen Burlington Mills Road from the existing 24-foot pavement width to a proposed 75-foot pavement width (including bike lanes and curb and gutter). The town's roadway cross section proposes a landscaped median with turn lanes as needed (versus a continuous center turn lane as noted in Wake County's Transportation Plan).

In response to the comments from Wake Forest's planning staff, the petitioner has indicated that they will accommodate for the future road widening. The Wake Forest planning staff will have an opportunity to provide review comments on the right-of-way issue, and other matters, during the site plan phase of any subsequent development proposal that would require a Planned Compliance Permit (if the rezoning gets approved).

Input from Neighboring Property Owners
As per our normal process the planning staff mailed out letters to all property owners within 1,000 feet of the subject property (i.e.—the proposed 2.11-acre lot) and also posted a public meeting notice sign on the subject property. The planning staff has not received any phone calls or walk-in inquiries in response to these notification efforts. The petitioner has indicated that he had spoken with some of the neighbors individually and that the project has been generally well received.

Required Statement of Consistency with the Land Use Plan and Public Interest
North Carolina General Statute 153A-341 and Section 19-20-6 (E) of the Wake County Unified Development Ordinance require that the Planning Board provide the Board of Commissioners with a statement of whether or not the proposed rezoning petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare. In making a determination of whether or not to approve the rezoning petition, the Board of Commissioners must adopt a statement describing whether or not the proposed petition is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, or why it chose to deviate from the Land Use Plan and how that decision is reasonable and in the public interest.

The petitioner has provided several statements indicating (1) why they believe that the

proposed rezoning and subsequent use is a public necessity, explaining (2) its impact on the surrounding neighborhood and adjacent properties, and (3) how the proposed use will benefit the adjacent and surrounding properties. They have also provided statements of (4) how the rezoning conforms with the Land Use Plan; and (5) how rezoning otherwise advances the public health, safety and general welfare. These statements are included in the attached petition package.

Two-Step Conditional Use Rezoning Process
The Wake County Unified Development Ordinance (UDO) establishes a two-step conditional use rezoning process. The first step is to obtain a conditional use rezoning from the Board of Commissioners. The second step requires that the Wake County Planning Board review a Planned Compliance Permit (PCP) for **most** uses (although some commercial uses could be approved administratively by staff if they were less than 2,500 square feet in building size). Any commercial use with gas sales, regardless of building size, would require a PCP.

The Planning Board acts as the permit issuing authority for uses requiring a PCP (as per Section 19-22 of the UDO). The PCP process requires the petitioner to submit a detailed site plan to the planning staff and the Planning Board to demonstrate that the project conforms with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of PCP or class of PCPs. A copy of the PCP plans will be sent to the relevant municipality, in this case the Town of Wake Forest, for their review and comment. The planning staff and Planning Board will also ensure that any rezoning conditions are incorporated into the PCP site plan. The Planning Board may impose additional "reasonable" conditions to address any impediments to the board reaching the required findings that are necessary for approval of the PCP.

A General Use Permit would be processed administratively by the planning staff for commercial uses of less than 2,500 square feet in building size (except for those with gas sales) after demonstration of full compliance with all applicable regulations and standards.

Any rezoning decision must be made based upon **all** possible uses of the subject property as listed in the attached rezoning conditions.

Utilities
The property is proposed to be served by well and septic systems. Development on this property will be supported by an individual well and septic system unless and until municipal utility connections are provided by the Town of Wake Forest. Subsequent development proposals on the subject property would be required to connect to municipal water and/or sewer lines, in accordance with the provisions of Article 12 of the Wake County Unified Development Ordinance (UDO), if the town were to provide utility lines within this area.

Environmental Issues
There are no known environmental constraints (i.e.--Federal Emergency Management Agency (FEMA) regulatory floodplains, Wake County flood hazard soils, buffered drainageways, or regulatory wetlands) on the subject property.

Wake County Transportation Plan and Traffic Volume
The subject property has approximately 311 feet of frontage along Burlington Mills Road, which is classified as a major thoroughfare in the Wake County Transportation Plan. The county's plan proposes that the right-of-way of Burlington Mills Road (SR 2045) be widened from 75 feet to 100 feet. The proposed right-of-way widening will require the dedication of 20 feet of right-of-way along the subject property's Burlington Mills Road frontage during the site plan review process. The Wake County Transportation Plan indicates that Burlington Mills Road is proposed to be widened from a 24-foot wide two-lane cross section to a 64-foot wide five-lane cross

section, which includes a continuous center turn lane (eastward to Ligon Mill Road).

Burlington Mills Road's current 24-foot two-lane cross-section has a design capacity of 17,500 Vehicle Trips per Day (VTD) (according to the Wake Forest Transportation Plan). The most recently published Average Annual Daily Traffic (AADT) counts for this portion of Burlington Mills Road was 11,000 vehicles per day in 2009, which would be approximately 62.9% of its design capacity. This is more than a 27% decline in traffic from the AADT count of 14,000 VTD in 2005. That traffic reduction appears to stem from the opening of a section of I-540 that lies approximately 3 miles to the south, which may provide for a better alternative for some pass through traffic.

Given a standard 3% annual growth rate in traffic, the current traffic volume on this road is estimated at approximately 11,700 VTD, which would be 66.9% of the design capacity of the road, although it should be noted that most of this traffic volume occurs at peak commuting hours, and is relatively moderate during off-peak hours. The Burlington Mills Road intersection with Capital Boulevard (US 1) flares out to 3 westbound lanes, and tapers down from two eastbound lanes to accommodate the various turning movements at this major intersection (approximately one-third of a mile to the west of the subject property) and to help mitigate the traffic impact.

As noted in the Town of Wake Forest Review Comments section above, the town's Transportation Plan has a different proposed cross section for this portion of Burlington Mills Road (e.g—a 120 foot right-of-way) (versus Wake County's plan's 100-foot right-of-way). In response to the comments from Wake Forest's planning staff, the petitioner has indicated that they will move the relevant site features (e.g.—parking lot) back further to avoid conflicting with the future road widening.

Accident Report
The North Carolina Department of Transportation's Traffic Engineering Accident Analysis System report for the 3-year period from February 1, 2009 through January 31, 2012 listed ten accidents on the 0.765-mile section of Burlington Mills Road running from a point 300 feet east of its intersection with Capital Boulevard (US 1) eastward to Bratt Avenue. The planning staff, in consultation with NCDOT staff, chose to use a 300-foot offset from the Capital Boulevard intersection so as not to artificially inflate the accident report by including accidents that have occurred at the major intersection of Burlington Mills Road and Capital Boulevard (US 1). The resulting accident report is more representative of the traffic situation in front of the subject property.

The 3-year accident report indicated that there were no fatalities, and only one of these ten accidents involved an injury. Nine of the accidents were property damage only, with three incidents of a car striking an animal, and one vehicle running into the ditch. Of these ten accidents, three occurred at night and two occurred during wet weather conditions.

Traffic Impact Analysis
A Traffic Impact Analysis (TIA) would be required by the Wake County Unified Development Ordinance (UDO), during the site plan review process, for any development that generates more than 1,000 trips per day, or more than 100 peak-hour trips, as determined by the Institute of Transportation Engineers' Trip Generation M anual for specific proposed uses.

The TIA, if required, would provide an assessment of the traffic conditions and would provide recommendations to address any concerns, as would NCDOT's review of the subsequent development plans for the subject property. The petitioner will be required by the UDO to install any necessary roadway improvements that may be recommended by the findings of the TIA and/or the County's consulting engineer who reviews the TIA submittals (subject to

coordination with, and approval by, NCDOT).

Roadway Improvements for Future Development
Any future development on the subject property will be required to comply with the stipulations of the Wake County UDO related to the provision of transportation facilities identified on the Wake County Transportation Plan or any required Traffic Impact Analysis. These provisions would require the dedication of additional right-of-way and road widening improvements including any requirements imposed by the North Carolina Department of Transportation (NCDOT) deemed necessary to preserve the traffic flow or for safe ingress and egress for the site (e.g.—turn lanes, tapers, etc….).

The petitioner has had direct discussions with NCDOT regarding the subsequent development of this property and any roadway improvements that would be required during the site plan approval process. One possible use of the subject property is for a garden center. It is important to note that the garden center is just one of a variety of possible uses on the subject property (see the petitioner's conditions) and that any determination regarding the rezoning petition **must** be based upon **all** possible uses.

A consultant for the rezoning petitioner provided a preliminary site plan to NCDOT to illustrate the location of their proposed driveway for the site's ingress and egress (this coincides with an existing residential driveway). This preliminary site plan is **not** a part of the rezoning petition, and has **not** been included in this agenda packet. NCDOT has indicated that "the proposed development, as we currently understand it to be, will not create an adverse condition along Burlington Mills Road and therefore we will not require any roadway improvements at this time".

Any final determination on such issues as driveway locations and possible roadway improvements would be made during the subsequent site plan approval process. Any roadway improvements and/or driveway permits will have to be coordinated with, and approved by, the North Carolina Department of Transportation (NCDOT).

Conditions Proposed by the Petitioner

(1) Uses for the property will be the following:

- Outdoor Sales/Service, displays and/or storage
- Neighborhood/ convenience oriented retail with or w/o gas
- All other office except medical office, clinic or lab and conference center
- Recreation and Entertainment, Outdoor
- Contractors Office Landscaping, Grading, etc.
- All other retail sales and service

(2) Additional Conditions

Use of shielding lighting and cut off light fixtures to reduce off property glare. (all business

activity will be conducted during daylight hours except the possibility of evening Christmas tree sales)

Uses Excluded from Future Consideration By the Petitioner

It was noted that the petitioner has voluntarily excluded the following 53 uses from being considered as possible future uses on the subject property:

- Upper-story residence
- Business, trade, technical schools
- Library
- Cultural exhibits
- Child care home
- Child care center
- Adult care center
- Lodge or private club
- Botanical garden/arboretum
- Public recreation (assembly) buildings
- All other public parks and recreation uses
- Park and ride
- Religious assembly
- Governmental uses
- Veterinary
- Commercial or private kennel
- Animal shelter
- Body art service
- Bars and nightclubs
- Drive-through restaurant
- All other eating/drinking uses
- Automated Teller Machine (freestanding)
- Drive—through financial services facility
- Pawnshop, currency exchange or payday loan
- All other financial services uses
- Funeral home
- Gas Station
- Campgrounds and recreational vehicle parks
- Hotel/motel
- Rooming or boarding house
- Conference center/retreat house
- Medical office, clinic, lab
- Commercial parking
- Indoor recreation and entertainment
- Mobile home sales
- Sexually oriented businesses
- Vehicle repair/service
- Vehicle sales, lease or rental
- Artisan manufacturing
- Limited/light manufacturing
- Self-service storage
- Warehousing
- Wholesale trade
- Land-clearing and inert debris landfills, C&D landfills
- Recycling collection (household collection only)
- Sanitary solid waste landfill (municipal)

- All other waste-related uses
- Forestry
- Special Events
- Static Transformer Stations, Radio/TV and Towers, Relay Station
- Telecommunication Facilities—freestanding or co-located
- Water towers—stand alone or part of a subdivision

It was noted that the uses listed above do not indicate that they were viable uses for the subject property in regards to such factors as lot area, the availability of utilities, and compliance with all regulatory requirements or market demand. Rather this list merely indicates that in the absence of the petitioner's conditions, these uses would have been available for consideration.

Planning Staff Findings

1. The proposed Conditional Use-Heavy Commercial rezoning and the proposed uses are consistent with the Industrial/Major Employment Area designation as shown on the Northeast Area Land Use Plan.
2. The traffic volumes and accident reports from the North Carolina Department of Transportation do not indicate any significant traffic issues on Burlington Mills Road.
3. A detailed site plan, or subdivision plan, must be approved by the appropriate Wake County entity prior to future development.
4. There has been no opposition expressed to the planning staff by neighboring property owners or the Town of Wake Forest.

Planning Staff Recommendation

The Planning Staff recommends approval of the requested zoning map amendment, ZP-878-12, as presented, and find that the amendment is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, as required by UDO Section 19-21-6 (C).

Mr. Springer and Mr. Birch arrived at 1:41 p.m.

Mr. Brubaker asked about the "all other office uses" category.

Mr. Lankford said that "all other office uses" is one of the permissible uses in the petition.

Mr. Brubaker asked if the petitioner asked to be annexed into Wake Forest.

Mr. Lankford said that the petitioner spoke with the Town of Wake Forest, and the preference of the petitioner is to stay outside the town limits of Wake Forest. Wake Forest staff does not oppose the petitioner staying outside the town limits.

Mr. Brubaker asked if the applicant planned to have a garden center on the site.

Mr. Lankford said that the applicant has stated that he plans to put a garden center on the site, but the Planning Board's decision on the rezoning petition needs to be based on all of the possible uses.

Ms. Muir asked if the petitioner has access to water and sewer from the Town of Wake Forest

without being annexed.

Mr. Lankford answered that all municipalities in Wake County require annexation for connection to public utilities. He added that Wake Forest gets their water and sewer from the City of Raleigh, and any determinations of when they could connect would come from the City of Raleigh. The petitioner will use well and septic.

Mr. Martin asked whether there are any environmental concerns in terms of drainage and natural topography.

Mr. Lankford said that there are no environmental concerns.

Mr. Michael Adams, 3609 Royal Palm Arch, Virginia Beach, Virginia came forward to address the board. He said that a garden center is their primary goal for the site.

Mr. Brubaker asked if it would be a family run business.

Mr. Adams answered that it would be a family run business.

Mr. Brubaker expressed concerns about the list of excluded uses.

Mr. Lankford said that the conditions are intended to help mitigate the impact of the proposed use on the surrounding properties, and it is up to the petitioner to decide which, if any, uses to exclude in their conditional use rezoning request.

Mr. Brubaker asked if the Traffic Impact Analysis (TIA) is predicated by the site plan that the petitioner submits.

Mr. Lankford said that there is a provision in the Unified Development Ordinance that allows the Planning Director to waive certain unnecessary requirements. He said that a more intense use may require a TIA at the site plan stage. In Mr. Lankford's judgment, a TIA did not seem warranted for this project based on the design capacity and the number of accidents.

Mr. Ball and Mr. Brubaker expressed concerns regarding some of the excluded uses that could be appropriate for the site.

Mr. Adams said that he understands that he would have to submit another rezoning petition if he wanted to change the use of the site to one of the excluded uses.

Mr. Brubaker said that excluding many of the uses could limit the number of potential buyers of the land in the future.

Mr. Adams stated that his family has no intention of selling the property in the foreseeable future. He said that having a smaller list of uses for the property would make the board's decision easier.

Mr. Bouldin made a motion that the Planning Board recommends approval of the rezoning petition, ZP-878-12, as presented (with all other office uses included as a permissible use), and finds that the requested zoning map amendment is consistent with the Land Use Plan and otherwise advances the public health, safety, and general welfare, as required by UDO Section 19-21-6 (C). Mr. Springer seconded the motion. By a vote of 9-0, the motion passed.

5. Planning Board Handbook Amendment: Chapter 2, Section M, Paragraph 3

The board discussed the proposed amendment to the Planning Board Handbook which the board members received in writing:

> *Chapter 2 Planning Board Rules of Procedures*
>
> *M. Committees*
>
> *3. Standing Committee Appointments*
>
> *The Chair shall make annual appointments to standing committees at the Board's first regular meeting in May~~,~~ or at the Board's next regular meeting if no meeting is held in May~~.fourth meeting following the Commissioners' annual appointment of Board members, whichever is later.~~ The Secretary shall notify Board members of the upcoming annual appointments at least thirty (30) days before the meeting at which the appointments are to be made.~~ The Chair may reappoint members to a second term on the same standing committee, but may not reappoint members to a third successive term.~~*

The board will vote on the proposed amendment at its next meeting on May 2, 2012.

6. Ethics & Conflict of Interest Presentation

Mr. Murphy addressed the board regarding ethics and conflicts of interest. Referring to the Planning Board Handbook, Mr. Murphy said that there are five guiding principles that should inform members' service on the Planning Board. The five guiding principles are:

> *1. To serve the public interest: Appointment to the Planning Board, therefore, represents a public trust, giving a Board member a responsibility to care for the general welfare of the County and an opportunity to help in shaping the present and future quality of life in Wake County. Each Board member's primary responsibility is to represent the best interests of the County as a whole.*
>
> *2. To acquire adequate information and knowledge: Each Planning Board member has the responsibility to acquire whatever information and knowledge is necessary to fully understand and make wise decisions and recommendations in the interest of the County. To this end, a Board member is expected to depend on both his or her own personal background, experience, expertise, and familiarity with the County (especially that part of the County in which he or she resides), as well as the expertise and knowledge of, and information available to, County staff members. At Board meetings, members have the responsibility to insist that they are provided (by an applicant, interested party, or the staff) information of sufficient scope and depth to allow them to fully understand the issues before the Board and the alternative actions available to the Board.*
>
> *3. To be fair: Fairness requires that Board members avoid any bias or the appearance of any conflict of interest in their decisions, that the Board act in a timely manner, that the Board keep full and accurate records of its proceedings, and that the Board establish and make available the ground rules*

under which it conducts business.

4. To make rational decisions: The Planning Board has the responsibility to ensure that the decision-making process it applies to any issue before it is not only rational, but is also perceived as rational. This means the Board's decision should consist of conclusions that are based on findings related to the standards, policies, and considerations applicable to the particular type of decision. Furthermore, such findings should be supported by information available to the Board - that is, information contained in an application, staff report, or other document submitted to the Board, or included in any testimony presented before the Board, or explicitly stated by a Board member from his or her personal observations, knowledge, or experience.

5. To take a broad perspective: Board members have the responsibility to recognize the comprehensive and long-range nature of many of the Board's decisions. They must consider, as well as balance and integrate, not only the many physical aspects of the issue being decided, but often also its economic and social aspects. They must consider not only the decision's immediate impacts on those persons most affected, but also its future and secondary impacts on the County as a whole. The Board should thus explicitly evaluate all facts, alternatives, means, and consequences relevant to its decisions. As the County's body of elected officials, the Board of Commissioners are principally occupied with resolving pressing current problems that usually demand immediate action and that often involve the need to balance competing interests. The Commissioners, therefore, rely on the Planning Board to give them advice that reflects a broader and longer-range viewpoint than that demanded of them.

Referring to the Planning Board Handbook, Mr. Murphy discussed conflicts of interest.

To preserve public confidence in the integrity of the Planning Board and the County's governmental process, each Board member shall have the duty to avoid even the appearance of a conflict of interest. A Board member, therefore, shall ask the Chair to be excused from participation in any matter before the Board in which the member's impartiality might reasonably be questioned, including, but not limited to, instances where:

a. The Board member has a personal bias or prejudice concerning any interested party, or representative of a party, to a matter before the Board; or

b. The Board member has a close personal or financial relationship with any party or party representative; or

c. The Board member, or a member of the member's household, has a personal or financial interest that may be substantially affected (directly or indirectly) by the Board's action on the matter.

If any other person questions the impartially of a Board member before or during the Board's consideration of a matter, the Chair shall treat this as a request that the member be excused from participation. Any request that a Board member be excused from participation must disclose the basis for the request.

On concurring that an actual or apparent conflict of interest exists, the Chair

shall excuse the member from participation in the matter. On finding that an actual or apparent conflict of interest does not exist, the Chair shall refuse the request and allow the member to fully participate in the matter. No actual or apparent conflict of interest shall be deemed to exist where the matter would similarly affect all citizens of Wake County (as generally with consideration of county-wide policies and regulations), or where the Board member's bias, prejudice, relationship, or interest is so insignificant or so remote that it is unlikely to affect the member's actions in any way.

If excused from participation in a matter, a Board member may not sit with the Board during its consideration of the matter, and may not vote on, discuss, advocate, influence, or otherwise take part in the Board's consideration of the matter, either in public or in private.

Mr. Brubaker asked whether a conflict of interest would exist if a board member's employer could benefit. Mr. Murphy said that the board wants to avoid both conflicts of interest and the appearance of conflicts of interest. Mr. Murphy said that a board member's employer having the chance to benefit from a case could be perceived as a potential conflict of interest. He recommended that the board member should disclose the circumstances to the chair.

Mr. Martin asked what would happen if a third party challenged that the chair has a potential conflict of interest. Mr. Murphy answered that the vice-chair would make a determination.

Mr. Murphy cited NCGS § 153A-340 (g):

A member of the board of county commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the board of county commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Mr. Ball asked if it is a conflict of interest if a board member has done business in the past with a firm who is before the board. Mr. Murphy advised the board to err on the side of caution.

Regarding quasi-judicial hearings, Mr. Murphy cited NCGS § 153A-345 (e1):

A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Regarding outside communications, Mr. Murphy referred to the Planning Board Handbook:

To preserve public confidence in the fairness of Planning Board deliberations and decisions, the Board should ensure that the public and interested parties have the opportunity to know, and respond to, all information the Board considers in making its decisions. The Board should also ensure that each Board member has the opportunity to know and consider the information available to other Board members.

When considering issues involving administrative determinations (such as a preliminary subdivision plan), or quasi-judicial determinations (such a request for a hardship variance from Subdivision Ordinance standards), the Board deals with parties who are directly affected by the Board's decision (such as the applicant and neighbors of the proposed subdivision or variance site). Each of these interested parties needs the assurance that other interested parties will not have unfair advantage in presenting their version of the relevant facts or concerns to the Board. In such cases, therefore, Board members shall avoid communicating with applicants or other interested parties about the proposal except at the Board meetings at which the proposal is being considered. If a Board member receives unsolicited communications about such a proposal outside of a Board meeting, the member has the duty to reveal the communications during the Board's consideration of the proposal. This ensures that the communicated information will become part of the record and that other Board members and interested parties will have an opportunity to consider and refute the information.

When the Board considers issues pertaining to the County as a whole or principally to the general public interest (such as the Comprehensive Plan, the Land Use Plan, ordinance text amendments, and comprehensive rezonings), it often finds access to a broad range of public input helpful in making a decision on the issue. In such cases, therefore, Board members may communicate with interested persons outside of the meetings at which the issue is being considered, but each member has the duty to reveal the general nature and scope of relevant information and opinions gleaned from such communications during the Board's consideration of the issue. To ensure that each Board member's decision is based on the full range of information and public opinion available to the Board, members should avoid committing themselves to a position on the issue during any outside communications.

When the Board considers rezoning petitions, it is considering a legislative determination, but one that generally pertains to a specific parcel of land, and thus directly affects the interests of specific parties. Because rezonings are legislative determinations, and the Planning Board's role is only advisory, Board members are not required to avoid outside communication about a rezoning proposal. To further foster the appearance of fairness in their deliberations, however, Board members are encouraged to do so.

Ms. Muir asked about site visits. Mr. Murphy said that board members need to disclose if they make any site visits.

Mr. Brubaker asked if there is a state statute that prohibits board members from meeting with a developer or landowner before a hearing. Mr. Murphy was not aware of any statute that addresses that circumstance. Mr. Birch said that Raleigh's bylaws are not more restrictive than

the state statutes on legislative matters.

Ms. Muir asked if it is possible that a project could arise in which it has not been determined whether a quasi-judicial hearing will be necessary. Mr. Finn said that it is possible that a subdivision review could result in a quasi-judicial hearing that was not apparent early in the multi-month review process. Ms. Muir asked if a board member could recuse herself in the event that she had ex parte communications on a case that unexpectedly resulted in a quasi-judicial hearing. Mr. Martin said that the board member could either recuse or at least disclose the situation and the chair can make a determination. Mr. Finn agreed. Mr. Murphy said that the general nature of the ex parte communications must be disclosed when the board is considering the matter.

Regarding open meetings law, Mr. Murphy cited NCGS § 143-318.10 (d):

> *"Official meeting" means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.*

7. Reports – There were no reports.

8. Planning, Development, and Inspections Report – Mr. Finn thanked the board for meeting to hear the rezoning case to accommodate the upcoming Board of Commissioners meeting schedule.

Mr. Coates reported that the state house subcommittee on ETJs recommended removing ETJ from counties with zoning. This would apply to Wake County and its 95,000 acres of land in ETJs. The full committee on ETJs will meet the following week for further discussion.

9. Chairman's Report – There was no report.

10. Adjournment – With no other business, the meeting was adjourned at 3:12 p.m.