

**MINUTES OF THE MEETING OF THE  
ROWAN COUNTY BOARD OF COMMISSIONERS  
February 2, 2004 – 9:00 AM  
J. NEWTON COHEN, SR. ROOM, ADMINISTRATION BUILDING**

Present: Gus Andrews, Chairman  
Frank Tadlock, Vice-Chairman  
Leda Belk, Member  
Chad Mitchell, Member  
Steve Blount, Member

The County Manager, the Clerk to the Board, the County Attorney and the Finance Director were also present.

Chairman Andrews convened the meeting at 9:00 am and called for a moment of silence in memory of Representative Eugene McCombs.

Commissioner Mitchell provided the Invocation and Commissioner Tadlock led the Pledge of Allegiance.

**ADDITIONS**

- County Manager Tim Russell requested an Executive Session for the purpose of discussing an Economic Development issue and a litigation matter.

**LIAISON REPORTS**

Commissioner Belk said she would like to comment on three (3) “good things” that are happening in Rowan County:

1. Commissioner Belk applauded the Parks Commission, the Board and staff for pushing forward to add Dunn’s Mountain as a county park.
2. Commissioner Belk said it was a great pleasure to work with the DSS Board and said the board had not abandoned the group home issue. Commissioner Belk said with the assistance of Representative Lorene Coates, the board

hoped to “get some things done in Raleigh” regarding group homes. Commissioner Belk mentioned senior issues and the effort to provide a quality of life for seniors to enjoy any stage of their lives.

3. Commissioner Belk expressed her appreciation to EMS and the Rescue Squad for their daily efforts to provide rescue services to the citizens.

### **CONSIDERATION OF CONSENT AGENDA**

Commissioner Belk requested to pull Item B concerning the Classroom Supply Money for discussion.

Commissioner Blount moved to approve the Consent Agenda with the exception of Item B. Commissioner Tadlock seconded the motion and the motion carried unanimously.

The Consent Agenda consisted of the following items:

- A. Approval of the January 20, 2004 minutes
- B. Rowan Salisbury Schools Classroom Supply Update
- C. Set a public hearing for Z-01-04, a request from Bobby Lankford rezoning from IND-CUD to RA
- D. Budget Amendments
- E. Approval of Grants from the Health Department for:
  - a. Targeted Infant Mortality Reductions
  - b. Kate B. Reynolds Charitable Trust Pharmacy

Commissioner Belk discussed the Teacher’s Supply Money and moved that the deadline for purchases be extended until the end of March in order to allow teachers additional time to evaluate their needs in the classroom for the second semester.

Commissioner Belk moved that the deadline for submission of the receipts to the Finance Department be extended until mid-April. Commissioner Blount seconded the motion.

Commissioner Belk requested that the Salisbury Post inform the teachers that the reimbursement forms are available in the Rowan County Finance Department.

Chairman Andrews questioned why the teachers had not responded to the supply money as in years past. Finance Director Leslie Heidrick reported that all receipts must be dated by January 31, 2004 and that the receipts were due to the Finance Department by February 16, 2004. Ms. Heidrick said many teachers had waited “until the last minute” to utilize the funds and that the Finance Department was now receiving approximately 20-25 reimbursement requests each day.

In response to a query from Commissioner Tadlock, Ms. Heidrick said the expenditures by the teachers were “running a little behind.” Commissioner Tadlock said the funds were designated and expressed concern why the money was not being utilized. Commissioner Tadlock said if the funds were not needed, the Board might need to consider the issue during budget discussions.

Commissioner Blount suggested that staff look into the matter and report back to the Board.

The motion to extend the deadline for purchases and submission of receipts passed unanimously.

### **PROCLAMATION IN MEMORY OF EUGENE McCOMBS**

Chairman Andrews welcomed Jean McCombs, wife of Eugene McCombs to the Board meeting. Chairman Andrews read a Proclamation honoring the memory of Eugene McCombs for his dedication and commitment in serving the citizens of Rowan County in an elected office for thirty-eight (38) years.

Chairman Andrews called Ms. McCombs forward and requested that the Board approve the Proclamation. Commissioner Mitchell moved to approve the Proclamation followed by a second from Commissioner Blount. The motion passed unanimously.

Chairman Andrews declared it to be an honor to present Ms. McCombs with the Proclamation in appreciation of her husband's service. A round of applause followed the presentation.

Ms. McCombs was accompanied by her daughter and Rep. Lorene Coates.

### **PUBLIC HEARING FOR THE APPROVAL OF THE REVISIONS TO THE SCATTERED SITE HOUSING GRANT**

Gary Wilson of CMR Services, Inc provided a brief background regarding the amendment for the Scattered Site CDBG Housing Program. Mr. Wilson said of the \$400,000 grant, \$50,000 had been budgeted for relocation funds and \$10,000 for acquisition. Mr. Wilson said that since the funds were not needed for relocation and acquisition, that the funds be transferred into the rehabilitation line item.

Commissioner Belk referenced a specific situation and thanked Mr. Wilson for being so responsive and improving the quality of life for that particular senior citizen.

Chairman Andrews opened the public hearing to entertain citizen input concerning the amendment. With no citizens wishing to address the Board, Chairman Andrews closed the public hearing.

Commissioner Mitchell moved to approve the revision to the Scattered Site Housing Grant. Commissioner Belk seconded the motion and the motion passed unanimously.

**PUBLIC HEARING FOR Z-19-03/CUP-01-04, REQUEST FROM ASHLEY MORROW TO REZONE RA TO CBI (CUD)**

Chairman Andrews read the Chairman's Speech (Exhibit A) and declared the public hearing for CUP-01-04 to be in session. Chairman Andrews said the hearing would focus on an application submitted by the applicant, Ashley C. Morrow. The requested approval is to rezone a 1-½ acre parcel from Rural Agriculture to Commercial Business Industrial associated with a parallel conditional use district. A conditional use permit will be accompanied with the rezoning application and will be included as part of the approval process for case Z-19-03/CUP-01-04. The property in question is identified as Tax Parcel 368 085 and addressed as 12745 US Hwy 52 in Gold Hill, North Carolina.

The Clerk swore in those wishing to provide testimony in the case.

Matt Ward of the Rowan County Planning Department located at 402 North Main Street, Salisbury, North Carolina, presented the Background (Exhibit B) regarding the case. Mr. Ward said that rezoning case Z-19-03, originally seeking RA to CBI was denied on January 5, 2004. During the initial consideration the Rowan County Board of Commissioners directed staff to inquire about a parallel conditional use district to accommodate Mr. Ashley C. Morrow's plans. Mr. Ward said staff presented the material to Mr. Ashley C. Morrow and he agreed to develop a CBI (CUD).

Mr. Ward described the property as being identified as Tax Map 368 Parcel 085 and zoned RA (Rural Agricultural) has a request by Mr. Morrow to be rezoned from RA to CBI (CUD). The property in question is located in the 8600 block of US Hwy 52 and the site's location is situated between Goldpark Road to the south and St. Peters Church Road to the north along US Hwy 52. Mr. Ward said the requested rezoning would replace approximately 1.500 acres zoned RA with CBI (CUD) zoning and the conditional use would qualify the property to limited uses permitted on site.

Mr. Ward explained that the applicant is requesting to rezone said property in order to establish a retail business that will provide the future occupant of the building opportunity to establish a tire retail business where the repair of automobiles and their parts can be permitted.

Mr. Ward reviewed the Staff Report (Exhibit B) as follows:

1. The relationship and conformity with any adopted plans is still the same as when presented the first time. There are no adopted plans or policies at this time. The said property was zoned RA when zoning was initiated in 1998 and also the property adjoining Mr. Morrow's was zoned CBI in 1998 for Donny's Western Store located at 12725 US Hwy 52.
2. Consistency with this article and the requested zoning district's purpose and intent. Rural Agricultural (RA) zones surround the property with the exception of one adjacent parcel zoned CBI. Rezoning this particular parcel would not pose an inconsistency with the existing land uses.

3. Compatibility of all uses within the proposed zoning district classifications. The proposed CBI zoning was the first recommendation by Staff. The business will provide business services to the neighborhood and all of Rowan County. It will not create any further inconsistent uses or disturb the character of the area anymore than the rest of the businesses, companies and towns located on US Hwy 52. Tax records indicate that the building has been there for years and is uniform to the properties surrounding it. Looking at the general make up of the structure, it could accommodate a business or residence. Properties located directly across the road and railroad tracks appear to be open fields.
4. Potential impact on facilities such as roads, utilities or schools in the area. Any business in a rural agricultural zone has the potential to disrupt the quality of life in the neighborhood; however, this will not negatively harm any infrastructure facilities in that area. Staff would like to see an approved commercial driveway permit from NCDOT due to the nature of Hwy 52's heavily traveled corridor.

Mr. Ward reported that the Planning Board favorably recommended that the Board of Commissioners approve the rezoning.

Mr. Ward referred to the Board of Commissioners decision on January 5, 2004 and said, "It was denied contingent to Mr. Morrow creating a conditional use district and following those standards."

Mr. Ward said staff's new recommendation would be rezoning of the parcel listed as Tax Map 368 085 from an RA to CBI (CUD). Mr. Ward reviewed the conditions that need to be met prior to having an opportunity to issue a permit:

1. NCDOT commercial driveway permit, which has gained approval.
2. Type A buffering along side and rear property lines that adjoin parcels with residential dwellings and in said case a 20' buffer was proposed for Tax Map 368 085 under CBI (CUD).
3. Uses restricted as below (see table of uses in Staff Recommendation, Exhibit B) to existing structures.
  - (a) Other uses or additional buildings on site will require amendments of the conditional use permit.

Mr. Ward responded to a query from Commissioner Andrews and confirmed that Mr. Morrow had agreed to Staff's Recommendations (Exhibit B). Mr. Ward verified that Mr. Morrow understood the restrictions.

Commissioner Blount pointed out that Mr. Ward had indicated during his presentation that the Board of Commissioners had denied the request. Commissioner Blount said the Board "did not actually take a vote to deny that." Commissioner Blount pointed out that if the Board had denied the request, the applicant would have to wait one (1) year before he could file another application. Mr. Ward responded that he would "change that."

Commissioner Belk said she had met with the individuals of Donny's Western Store and they had expressed concern with the types of businesses that could locate "next door." Commissioner Belk verified with Mr. Ward that only the types of businesses listed in Staff's Recommendations could locate on the said property and that any other proposed use would have to be brought before the Board.

With no other citizens sworn in to address the Board, Chairman Andrews closed the public hearing.

Commissioner Tadlock moved to accept staff's recommendations. Commissioner Blount seconded the motion and thanked the applicant for his patience during the process. The motion carried unanimously.

Chairman Andrews declared the **Findings of Fact** to be as presented in staff's recommendations:

1. NCDOT commercial driveway permit, which has gained approval.
2. Type A buffering along side and rear property lines that adjoin parcels with residential dwellings and in said case a 20' buffer was proposed for Tax Map 368 085 under CBI (CUD).
3. Uses restricted as below (see table of uses in Staff Recommendation, Exhibit B) to existing structures.
  - (a) Other uses or additional buildings on site will require amendments of the conditional use permit.

### **PUBLIC HEARING FOR Z-23-03, REQUEST FROM RUBY PORTER TO REZONE FROM RA TO NB**

Matt Ward presented the Background concerning Z-23-03. Mr. Ward said the property owner, Ruby Jean Porter, who is also the mother of the applicant, Starla Daniel, was requesting a favorable recommendation from the Board regarding a petition to rezone property from RA (Rural Agricultural) to NB (Neighborhood Business). Mr. Ward described the property as being approximately 0.95 acres in size and located at the intersections of Zion Church Road and Old Beatty Ford Roads. The applicant is in the process of remodeling the house to accommodate a beauty shop at this location and needs.

Mr. Ward said for the purpose of zoning compliance, the applicant needs a neighborhood business zoning to accommodate a beauty shop at the location.

Mr. Ward reviewed the Staff Report as follows:

1. Relationship and conformity with any adopted plans and policies.
2. Consistency with this article and the requested zoning district's purpose and intent.
3. Compatibility of all uses within the proposed zoning district classification with other property and conditions in the vicinity.
4. Potential impact on facilities such as roads, utilities or schools in the area.

Mr. Ward pointed out that the General Criteria was listed in the agenda packet.

The Planning Board unanimously agreed on December 22, 2003 to favorably recommend approval of the rezoning.

Staff recommended approval to rezone the parcel listed at Tax Map 382 041 from Ra to NB.

Chairman Andrews opened the public hearing to entertain public input. With no citizens wishing to address the Board, Chairman Andrews closed the public hearing.

Commissioner Tadlock moved to accept staff's recommendation for the rezoning for Tax Parcel 382 041 from RA to NB. Commissioner Belk seconded the motion and the motion passed unanimously.

**PUBLIC HEARING FOR CUP-02-04, REQUEST FROM HARRY ALBRIGHT FOR SUBDIVISION OF PROPERTY IN CBI**

Chairman Andrews read the Chairman's Speech (Exhibit A) and declared the public hearing for CUP-02-04 to be in session. Chairman Andrews said the hearing would focus on an application submitted by Harry T. Albright, for subdivision of property in a Commercial Business Industrial (CBI) zoning district. Property in question is identified as Tax Parcel 316 003 and addressed 6225 US HWY 70 in Salisbury, NC.

The Clerk swore in those wishing to provide testimony in the case.

Matt Ward of the Rowan County Planning Department provided the Background (Exhibit B) regarding the case. Mr. Ward described the Albright family property as a 9.61-acre tract located at 6225 US Hwy 70 in Salisbury. Mr. Ward reported that Mr. Harry T. Albright had come to the Planning Office on January 13, 2004, requesting a family subdivision approval. Mr. Ward explained the purpose of the subdivision is to provide an 8.000-acre tract with road frontage and the back portion of the 1.16-acres remaining would be for himself. Mr. Ward said the 1.16-acre lot would continue to be accessed by a 30' easement, Stoney Knob Lane, from US Hwy 70.

Mr. Ward reviewed the Required Findings (Exhibit B) and explained that further guidelines and findings have to be met to comply with the special standards required in a conditional use.

1. The development of the property in accordance with the proposed conditions will not materially endanger the public health or safety. Not applicable.
2. That the development of the property in accordance with the proposed conditions will not substantially injure the value of adjoining or abutting property, or that the development is a public necessity. Does not apply.

3. That the location and character of the development in accordance with the proposed conditions will be in general harmony with the area in which it is located and in general conformity with any adopted county plans. Does not apply.

Mr. Ward discussed the Evaluation Criteria (Exhibit B) as follows:

- a. Adequate transportation access to the site exists. A 30' easement currently provides access to US Hwy 70. Mr. Ward reported that at one time he had thought the NCDOT was requiring a driveway permit but in his last conversation with Mr. Albright, Mr. Albright had indicated otherwise.
- b. The use will not significantly detract from the character of the surrounding area. Does not apply.
- c. Hazardous safety conditions will not result. Does not apply.
- d. The use will not generate significant noise, odor, glare or dust. Does not apply.
- e. Excessive traffic or parking problems will not result. Does not apply.
- f. The use will not create significant visual impacts for adjoining properties or passersby. Does not apply.

Mr. Ward referred to the Staff Recommendation (Exhibit B) and said staff recommends approval to divide family land on Tax Map 316 003 located in the CBI district.

Commissioner Blount asked if the request was for a Family Subdivision. Mr. Ward said, "It is in the fact that Mr. Albright will be keeping the back portion of the property for himself." Mr. Ward said the request meets the standards for a family subdivision and that he or immediate family members would have to live on the property.

Commissioner Blount said he had the impression that the 8-acre tract might be used for "something else other than for a family member to live on." Mr. Ward believed it to be the applicant's intentions to sell the eight acres and he would live on tract 2. Mr. Ward said the 8-acre tract would be a conforming lot and meets the requirements for minor subdivision and he could divide the property as is.

Commissioner Blount said he did not have any objection to the applicant using the property for commercial purposes and living on the back portion. Commissioner Blount said, "I just want to make sure we approve the right thing."

Commissioner Belk questioned why CBI was applicable to Family Subdivision and said she did not want to approve an application that would limit the applicant.

Mr. Ward said there was two homes on the 8-acre tract and said the applicant planned to remove the mobile home.

Commissioner Blount said if it were a Family Subdivision, that he understood the original tract of record – that a family member must reside on that property, and the new parcel that is developed by the subdivision must also have a family member living on the property. Commissioner Blount said it appears the applicant is creating a lot that he plans to “move to” and then he plans to do “something else with the original lot, which may or may not be a family member living on it.” Commissioner Blount said if a family member was not living on the property, then it would not be a Family Subdivision.

Harry Albright, the applicant, and Marion Lytle, County Planner, came forward to be sworn in.

Mr. Albright referred to comments regarding the “subdivision” and said the land in question had always belonged to the family and was part of 260 acres that had joined an additional 260 acres. Mr. Albright said most of the property within five miles and in any direction was in the family. Mr. Albright said he did not want to sell his part and said he was selling his sisters portion of the land. Mr. Albright referred to the location of the original home place and his son’s residence, saying that his son understood the property was being sold and that he had until May 1<sup>st</sup> to move the mobile home.

Commissioner Blount asked who the property would be sold to. Mr. Albright said, “Individuals that work at the power plant.” Mr. Albright said the individuals are not family members.

Commissioner Blount stressed to Mr. Albright that the Board was trying to approve the request in the “proper way so that you can do what you want to with the land.”

In response to a query from Commissioner Blount, Mr. Lytle confirmed that if the Board approved the request for a Family Subdivision, it was the intent of the ordinance for family members to live on the property.

Commissioner Blount asked if the Board could approve the subdivision of the property as a new lot in the CBI district. Mr. Lytle responded that the problem was with the 1-acre tract in the back. Mr. Lytle explained that the property needed state road frontage.

Commissioner Blount said the request did not “quite meet the standards” of a Family Subdivision. Commissioner Blount said he was willing to help Mr. Albright with subdividing the property but that he did not want to approve an application that could be challenged. Commissioner Blount asked for staff advice regarding the issue.

Mr. Lytle suggested that the Board table the issue “for a couple of weeks” and provide staff with the opportunity to review the application.

With no further public input, Chairman Andrews closed the public hearing.

Commissioner Blount moved to table the issue to the Board's next regular scheduled meeting. Commissioner Tadlock seconded the motion and the motion carried unanimously.

**PUBLIC HEARING FOR A UNANIMOUS PETITION FOR "TARHEEL TRAIL"**

Fredda Greer of the Rowan County Planning Department said the road in question services Mobile Manor Mobile Home Park, which has 15 lots. Ms. Greer said Thomas Head, Jr owns the mobile home park and had submitted a petition to name the road Tarheel Trail. Ms. Greer said the mobile homes are not located on Hartley Road but currently use Hartley Road for addressing purposes.

Ms. Greer said staff recommends approval of Tarheel Trail.

Chairman Andrews opened the public hearing to entertain citizen input. With no citizens wishing to address the Board, Chairman Andrews closed the public hearing.

Commissioner Blount moved to approve the road name as requested by staff. Commissioner Belk seconded the motion and the motion passed unanimously.

**PUBLIC HEARING FOR A MAJORITY PETITION FOR "MUDDY BOOTS LANE"**

Fredda Greer presented the Majority Petition for Muddy Boots Lane, explaining that the road is off of the 2200 block of Hobson Road. Ms. Greer said three of the four property owners signed the petition.

Ms. Greer stated that staff recommends approval of Muddy Boots Lane.

Chairman Andrews opened the public hearing to entertain citizen input. With no citizens wishing to address the Board, Chairman Andrews closed the public hearing.

Commissioner Belk moved to approve staff's recommendation of Muddy Boots Lane. Commissioner Tadlock seconded the motion and the motion carried unanimously.

**POSSIBLE RECOMMENDATION TO SET A PUBLIC HEARING FOR Z-24-03, PROPOSED ZONING TEXT AMENDMENTS**

Ed Muire of the Rowan County Planning Department distributed a memo, which contained the proposed text amendments to Article II and Article IV Section 10 (c) as recommended by the Rowan County Planning Board.

As Mr. Muire prepared to provide a power point presentation, Chairman Andrews stressed the importance of the Board's understanding of the proposed changes.

Mr. Muire began the power point presentation by reviewing the definitions in Article II.

Mr. Muire discussed the Planning Board Recommendations for regulating airspace in regards to horizontal surfaces. Mr. Muire said the recommendation meant “no tower taller than 150’ can be within this horizontal surface.” Mr. Muire said based on staff’s calculations, the 5,000’ horizontal surface regulates approximately 1800 acres concerning “towers; not houses, not barns, not silos, trees, nothing taller than 150’ above the airport elevation.” Mr. Muire said this was important due to “the airport elevation, as you understand the way the topography is in the county, the runway may be higher at one end than the other. Rather than using an average of the two, the FAA requests that when these folks file their airport with them, there is an elevation established based on that point and that is the elevation that we’re using as referred to in the definitions.”

Mr. Muire responded to a question from Commissioner Andrews concerning the application of the text to “silos.” Mr. Muire said the text before the Board only applies to towers and not silos.

Mr. Muire continued with the power point presentation and explained the Approach Surface concept. Mr. Muire described the inner edge of the Approach Surface as being the same width as the runway, expanding 22.5 degrees from either side of the centerline of the runway.

Commissioner Blount referred to the “oval” in the power point graph and asked if the oval was incorrect and the sides would be “straight.” Mr. Muire agreed with Commissioner Blount. Mr. Muire said the anticipated acreage within the extended Approach Surface was approximately 10,000 acres. Mr. Muire pointed out the presentation was “not to scale” but was a “graphic representation.”

Mr. Muire discussed the Transitional Surface concept, explaining that the surfaces extends at right angles to the runway centerline and parallels the runway at a 7:1 slope. Mr. Muire said that once the “stairstep effect” reaches 150’, “everything out beyond there would be limited to 150’.”

Mr. Muire highlighted the map labeled as “Effects of Regulated Airspace as a Result of Planning Board Recommendations.” Mr. Muire said the map was indicative of the effects of the proposal countywide. Mr. Muire said the map showed fourteen airports, twelve of which were registered with the FAA. Mr. Muire expressed concern with the Bradley Airport located on Cooper Road, saying the airport was registered with the FAA but the airport was no longer in use. Mr. Muire said he felt a plane could not land at the airport due to the growth and the fact that at staff’s last check, the airport was becoming “forested.” Mr. Muire referred to Corriher Field located off of Lipe Road and said the “gentleman had registered with the FAA but for some reason, their database does not show him.” Mr. Muire said he was allowing the property owner to resolve the discrepancy with the FAA and the outcome would depend on whether Corriher Field was included as a registered airport. Mr. Muire said there were eighteen known airports in the county, with five being unregistered. Mr. Muire said the map reflected the 5,000’

Horizontal Surfaces and the extended Approach Surfaces, referred to as the “bowtie effect.”

Commissioner Blount asked if FCC regulations required the county to provide a place for broadcast towers. Mr. Muire responded that the situation was different as opposed to cell towers. Mr. Muire was of the opinion that the Telecommunications Act of 1996 was where “that all related from.” Mr. Muire felt that broadcast towers were under a different set of guidelines. Mr. Muire mentioned that Gig Hilton had said that the area he has to cover is Lexington. Mr. Muire said Mr. Hilton is moving that tower to the limits of where he can still provide city-grade coverage to Lexington. Mr. Muire said, “I don’t know from a zoning standpoint they would tell us, look, he has to be here and that’s something that Mr. Holshouser would probably need to look at in those terms.”

Commissioner Blount said he understood that Mr. Hilton “could also lower the power of the station to alleviate the interference. Mr. Muire agreed that this was a good point and said that Staff has had someone to look at those variables and ask more technical questions regarding the power and the location.

Commissioner Blount referred back to cell towers, which are covered by a different federal law. Commissioner Blount asked if federal law “trumped” county law, if the county’s ordinance prohibited the location of a cell tower due to its relative location to an airport. Mr. Muire said, “If they sued us and won, it would.”

Commissioner Mitchell asked how many existing towers would not have been approved by the Board if the ordinance had been in affect. Mr. Muire said there might be two, but he was only certain about one tower located on Hwy 150 at the Caldwell and Graham Road intersection. Mr. Muire said the tower was approximately twenty-five to thirty feet too tall relative to the established elevation of the Corriher Field.

Commissioner Andrews expressed concern for restricting adjoining property owners next to small, private airports from being able to develop their property with “anything of any height within several hundred yards.” Commissioner Andrews felt the restrictions could “eliminate a lot of value” and potentially damage the property for future development with the proposed width limitations. Commissioner Andrews said discussions started because of towers and the “airports became sort of a vehicle to move towards controlling the towers.” Commissioner Andrews said if the county is dealing with towers due to the height problem, buildings could also create height problems in future development of the rural areas. Commissioner Andrews asked if the county was establishing a Zoning Ordinance that would give airports the power to restrict land use around the private airports.

Commissioner Blount said he understood the ordinance would apply only to towers and not buildings.

Mr. Muire said if the regulations were adopted they would to some degree, prohibit property owners from putting a cell tower or broadcast tower on their property. Mr.

Muire discussed the coverage areas and visibility of the cell and broadcast towers. Mr. Muire said the pilots were concerned about the invisibility of towers and felt the pilots might want to see the towers when they are in the air.

Mr. Muire continued with the power point presentation, discussing the Historic Property Issues and highlighting the NC Scenic Byway.

In response to a query from Commissioner Tadlock, Commissioner Blount said the NC Scenic Byway had been approved by the Board of Commissioners approximately six or seven years ago. Commissioner Blount said the Scenic Byway controls the impacts along the Byway to maintain the visual corridor. Commissioner Blount said citizens were provided the opportunity to voice their opinion of the Byway at a public hearing before it was approved. Commissioner Blount said the Byway had been a DOT sponsored process.

Mr. Muire discussed the Minimum Lot Size and Zoning Districts for radio and broadcast towers. Mr. Muire referred to the presentation to indicate that the towers would be treated as conditional uses.

Mr. Muire referred to the handout and pointed out that the proposed amendments were in bold and italicized.

Mr. Muire also referred to the handout and pointed out the summary of twenty-one speakers from the courtesy hearing. Mr. Muire highlighted the comments:

- Fifteen of the speakers were in favor of the amendments “in some fashion or another”
- Twelve speakers commented that they were in agreement with the text amendments as proposed
- Two speakers, which were pilots, requested that the proposed amendments include a 4,000’ conical surface beyond the horizontal surface
- One speaker requested that the responsibilities of the local, state and applicant be strengthened (provided in Attachment A in the handout)
- Of the remaining speakers, three felt that the CBI District was not the appropriate district for broadcast towers; three felt that towers were needed for communication for radio service and one expressed concern that his airport was not included.

In response to a query from Commissioner Mitchell, Mr. Muire said the extended Approach Surface impacts approximately 10,000 acres.

Commissioner Mitchell questioned the maximum acreage that would be dictated by an airport. Mr. Muire responded 10,173.

Commissioner Mitchell asked how the ordinance compared to ordinances in other counties. Mr. Muire said he was aware of only one county that protects private airports and that was Iredell County. Mr. Muire said Iredell County uses a 30:1 slope, which is

considerably less than Rowan County's proposed 25:1. Mr. Muire said Iredell County does not use a Surface concept.

Mr. Muire confirmed to Commissioner Blount that Attachment A was not part of Staff's recommendation. Mr. Muire said Attachment A was comments that were made by Ms. Rollans at the courtesy hearing and the suggestions had not been "embraced" by the Planning Board. Mr. Muire said the Attachment was included only for the Board's information.

Commissioner Mitchell said he understood the FAA has different varying degrees of restrictions that apply to public airports. Commissioner Mitchell asked if the airports were public, how would the FAA's restrictions around those airports differ from the proposed ordinance. Mr. Muire said the FAA uses the Horizontal Surface concept at 5,000 feet for visual or utility runways and the 4,000 feet Conical Surface. Mr. Muire said the FAA Approach Surface concept is 250 feet in width off either end of the runway that expands to a defined total of 1,250 feet at either end of the Approach Surface, at 20:1. Mr. Muire said the Approach Surface stops at the Horizontal Surface "and when you reach the edge of that, the Conical Surface takes over." Mr. Muire said, "If these were all public airports, this is what they would be subjected to." Mr. Muire said, "they do have the Transitional Surfaces on the side." Mr. Muire said the difference is that the Conical Surface is not in the Planning Board's recommendation.

Mr. Muire confirmed to Commissioner Tadlock that approximately 1,800 acres was impacted in the 5,000' Horizontal Surface.

Commissioner Blount commented, "Even in that area that is the most controlled, there is still the opportunity to put towers on that land."

Mr. Muire said the CBI district allows cell towers to go up to 199 feet.

Commissioner Blount said the "bowties" give the visual appearance that "you can't do any towers anywhere in those bowties." Commissioner Blount asked Mr. Muire if that were true. Mr. Muire responded, "No." Commissioner Blount explained this was due to the fact that the "bowties" don't go to the surface and are on a sloped surface. Commissioner Blount pointed out that the "bowties" don't stop cell towers.

Mr. Muire referred to a map in the power point presentation and said the FAA standards for the slope was 20:1 and that 5,000' corresponds with the end of the Horizontal Surface. Mr. Muire said at the end of the runway with a 20:1 slope you reach 150' "off the ground at about 3,000 feet." Mr. Muire pointed to the map and said, "That plane continues on to 5,000 feet. At that point, that's where the Conical Surface takes over." Mr. Muire said the committee proposed 25:1, which was a less aggressive slope and at 3750' off the end of the runway based on the 25:1, it would be approximately 150' off of the ground.

Mr. Muire used the power point presentation and continued to discuss the Conical Surface, saying the FAA slope was 20:1, which was "hit" at approximately 3,000'. Mr.

Muire said when you reach the end of the Conical Surface at 9,000' you would be 350' off of the ground at 20:1. Mr. Muire used the power point presentation to demonstrate the committee's concern with the end of the Conical Surface. Mr. Muire said the concern with the pilots is the invisibility of the tower and the concern of the residents in the area is the visibility of the tower.

Chairman Andrews said that previous Boards had obviously felt that towers created a visual impact that was detrimental or the NC Scenic Byway would have never been established.

Commissioner Blount asked, "Do we have the right to turn down a tower purely on visual impact?" Commissioner Tadlock echoed the same concern.

Commissioner Blount asked Mr. Lytle if other counties decisions to turn down cell towers (based on visual impact) had been upheld within the courts. Mr. Lytle responded that he was not sure.

Mr. Muire explained that the Board had the ability, based on the evidence presented at the meeting where the case was heard, of whether the applicant had met their burden of proof. Mr. Muire continued by saying, "If they meet these Specific Criteria, we as Staff will go through it and ask these questions. We have a working relationship with the applicant going back and forth with the information they've presented. And then come to this Board and say the applicant meets these set of standards in our Zoning Ordinance. However, they still have to show that they meet these General Conditional Use Criteria." Mr. Muire said if the Board feels that the applicant failed to show that he met all six of those criteria, the Board could turn down the application based on the lack of "submittal" or based on the information presented from the community/experts.

Commissioner Blount commented that three (3) different law firms had attended the Planning Board meeting and that obviously the case would be litigated "whichever decision we make."

Mr. Lytle said the findings have to be a reasonable decision based on the facts presented. Mr. Lytle said if there was conflicting "expert testimony" it was up to the Board to decide which testimony to select. Mr. Lytle said, "It is not the role of the courts to substitute their judgment for the judgment of this Board. If this Board's judgment is reasonable and is supported by sufficient findings and evidence in the record, my understanding is the Judge is not supposed to substitute his judgment." Mr. Lytle said that as long as Staff does their job to ensure that the Board follows the adequate procedures, ensures that all information is included in the minutes and the records, the Board stood an "excellent chance of making it stand up."

Chairman Andrews commented that the towers are not tearing down historic properties, "they are just in view." Chairman Andrews said the visual impact of the towers obviously have an effect on historical properties that are on national record. Chairman

Andrews said if the towers were not detrimental in some way, it would be a mute point when presented.

Mr. Lytle said he had gone out during the day and looked at intersections at specific distances from the tower on Lipe Road. Mr. Lytle said he had also gone out at night from the same distances. Mr. Lytle said the impact from the day is “pretty significant but the impact at night of these towers from 2 or 3 miles away is just tremendous” and “it totally changes the whole landscape.” Mr. Lytle said there are clearly visual impacts.

Commissioner Mitchell said the current ordinance allows the Board to judge on a case-by-case basis the tower applications. The Board is allowed to judge the applications based on safety or visual impacts or any number of things. Mr. Lytle and Mr. Muire both agreed with Commissioner Mitchell’s comments.

Chairman Andrews thanked Planning Staff for a “fabulous” job and for their diligent efforts on the issue.

Mr. Lytle gave Mr. Muire credit for doing a wonderful job and tracking the issue for “a year.”

Commissioner Blount moved to set a public hearing on February 16, 2004 at a time designated by the Clerk. Commissioner Belk seconded the motion. Upon being put to a vote and with no further discussion regarding the proposed zoning text amendments, the motion passed unanimously.

Chairman Andrews called for a short break at 11:10 am.

Chairman Andrews reconvened the meeting at 11:15 am.

### **BOARD APPOINTMENTS**

#### **Agricultural Advisory Board**

Commissioner Belk nominated Kim Starnes, Gloria Correll and Darryl Nichols to serve on the Agricultural Advisory Board. The nomination passed unanimously.

#### **Rowan County Landmarks Commission**

Chairman Andrews said a replacement was needed for Mr. Charles Floyd who had resigned from this commission.

#### **Centralina Workforce Development Board**

Commissioner Belk moved to appoint Pam Cordts to the board and the motion carried.

#### **Rowan County Adult Care Advisory Board**

Commissioner Tadlock moved to approve Carolyn Jean Larson to the board. The motion passed.

**Rowan County Nursing Home Advisory Committee**

Commissioner Tadlock nominated to reappoint Harold Belk, Lynne Richardson and Linda Basinger. The nomination was approved.

Chairman Andrews pointed out there is one additional opening on the committee and asked the Board to consider citizens that might have an interest in serving.

Chairman Andrews also asked the Board to consider citizens that might have an interest in filling vacancies on the Salisbury-Rowan Human Relations Council and the Region F Aging Advisory Committee.

Commissioner Belk requested that the Clerk contact Rev. Nilous Avery regarding the Salisbury-Rowan Human Relations Council. Commissioner Belk requested that the Clerk contact Miriam Small concerning the Adult Care Advisory Board.

**PUBLIC COMMENT PERIOD**

There were no citizens wishing to address the Board.

**EXECUTIVE SESSION**

The Board went into Executive Session at 11:20 am and returned to Open Session at 12:30 pm.

**ADJOURNMENT**

Chairman Andrews adjourned the meeting at 12:30 pm.

Respectfully Submitted,

Rita K. Foil, CMC  
Clerk to the Board