

Greg Edds, Chairman  
Jim Greene, Vice- Chairman  
Mike Caskey  
Judy Klusman  
Craig Pierce



Aaron Church, County Manager  
Carolyn Barger, Clerk to the Board  
John W. Dees, II, County Attorney

## Rowan County Board of Commissioners

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### MINUTES OF THE MEETING OF THE ROWAN COUNTY BOARD OF COMMISSIONERS September 7, 2021 – 3:00 PM

J. NEWTON COHEN, SR. ROOM  
J. NEWTON COHEN, SR. ROWAN COUNTY ADMINISTRATION BUILDING

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Present: Greg Edds, Chairman  
Jim Greene, Vice-Chairman  
Mike Caskey, Member  
Craig Pierce, Member  
Judy Klusman, Member

County Manager Aaron Church, Clerk to the Board Carolyn Barger, County Attorney Jay Dees, and Finance Director James Howden were also present and/or participating remotely.

Chairman Edds convened the meeting at 3:00 p.m.

Chaplain Michael Taylor provided the Invocation.

Chairman Edds led the Pledge of Allegiance.

#### **CONSIDER ADDITIONS TO THE AGENDA**

Commissioner Klusman requested to move agenda item #8 (*Update on Status of Consolidation Efforts Between Vaya Health and Cardinal*) to agenda item #2a in the order of discussion.

#### **CONSIDER DELETIONS FROM THE AGENDA**

There were no deletions from the agenda.

#### **CONSIDER APPROVAL OF THE AGENDA**

Commissioner Klusman moved, Commissioner Caskey seconded and the vote to approve the agenda as amended passed unanimously.

#### **CONSIDER APPROVAL OF THE MINUTES**

Commissioner Klusman moved, Commissioner Caskey seconded and the vote to approve the minutes of the August 16, 2021 Commission Meeting passed unanimously.

## **1. CONSIDER APPROVAL OF CONSENT AGENDA**

Commissioner Klusman moved approval of the Consent Agenda. The motion was seconded by Commissioner Pierce and passed unanimously.

The Consent Agenda consisted of the following:

- A. Proclamation for Patriot Day - A Day of Remembrance for September 11, 2001
- B. Proclamation - First Responders Appreciation Day
- C. Proclamation For Constitution Week
- D. Proclamation For Library Card Sign-up Month
- E. Contract Between DSS and American Children's Home
- F. Contract #22179 Between DSS and Genesis - A New Beginning
- G. Contract #22173 Between DSS and Masonic Home for Children Oxford, Inc.
- H. Cooperative Extension Grant Programs
- I. Release of RFP for Federal & State Lobbying Services
- J. Bi-weekly Environmental Health Report
- K. Contract Between Rowan County and Aviation Management Consulting Group
- L. FY21 5307 Urbanized Area Formula Grant Agreement
- M. Salisbury-Rowan Community Foundation Grant
- N. Mid-Carolina Regional Airport Holiday Observance
- O. Position Change Request
- P. Airport Fuel Discount Program
- Q. Schedule Public Hearing for Z 06-21: Ruth Fisher, for September 20, 2021
- R. Schedule Public Hearing for Z 07-21: Carolyn Withers, for September 20, 2021
- S. Purchase of Equipment for Landfill
- T. Schedule Quasi-Judicial Hearing for SUP 03-21: Kevin Settineri, for September 20, 2021
- U. Ambulance Franchise
- V. Purchase of Whole-Body Scanner
- W. Sign-On Bonus and Referral Program for ALS Providers
- X. Award Contract to Piner Appraisal for Tax Revaluation 2023
- Y. Permission to release RFP for Fleet Management Services
- Z. Purchase of Microsoft EA
- AA. Proclamation Honoring the 75th Anniversary of the Harold B. Jarrett American Legion Post 342
- AB. Schedule Public Hearing for September 20, 2021 for Incentive Agreement with NorthPoint Development

## **2. PUBLIC COMMENT PERIOD**

Chairman Edds opened the Public Comment Period to entertain comments from any citizens wishing to address the Board. With no one coming forward, Chairman Edds closed the Public Comment Period.

## **2a. UPDATE ON CONSOLIDATION EFFORTS BETWEEN VAYAHEALTH AND CARDINAL**

(Note: This item was moved from agenda item #8 in the order of discussion).

Brian Ingraham, Chief Executive Officer (CEO) of Vaya Health, discussed the merger with Cardinal. Mr. Ingraham provided a power point for the Board and discussed Vaya's strengths, as well as the consolidation transition planning. According to Mr. Ingraham, the transition would be seamless and be complete next year. All individuals would continue with the services and providers they were currently seeing. Additionally, quality Cardinal staff would stay in place to maintain continuity of care during the transition.

Mr. Ingraham highlighted the expansion of services and supports; comprehensive treatment to support the Department of Social Services and Department of Juvenile Justice involved children and families.

At this point, Mr. Ingraham introduced Brian Shuping, Executive Director of Community Relations, as well as Zack Shepherd, Care Coordination Manager, who would be the County's local contacts.

Continuing with the power point Mr. Ingraham compared the number of Vaya non-Medicaid members served in FY 2019-20 to the numbers served by other providers.

Mr. Ingraham stated Vaya was considered a statewide leader on the Department of Health and Human Services (DHHS) "Super Measures" and was one (1) of only two (2) LME/MCO's that had consistently met all required benchmarks.

In response to Chairman Edds and the fact that Rowan County would be surrounded by counties that had gone in other directions, Mr. Ingraham assured the Board the County would be getting the same service as other counties, regardless of location.

Chairman Edds thanked Commissioner Klusman for her work with Cardinal and with the Cardinal and Vaya merger. Chairman Edds said the County had been under tremendous pressure to make other decisions and he expressed hope that the County would verify to other counties Rowan had made a good choice.

Mr. Ingraham said Vaya was already making great progress and the Board should expect "good things".

## **3. PUBLIC HEARING: FY23 TRANSPORTATION GRANT APPLICATION DESCRIPTIONS AND AMOUNTS**

Airport and Transit Director Valerie Steele provided a power point for the Board as she discussed the FY 23 Transportation Grant Application. The North Carolina Public Transportation Division was accepting Transportation Program applications for FY 23 and the public hearing was to allow residents of the community an opportunity to

comment on community transportation needs and the Rowan Transit System (RTS) grant applications.

Ms. Steele reported the Community Transportation Program (CTP) covered administrative costs, including salaries, travel, communications, utilities, advertising, and a secured parking lot. For the 5311 CTP funding, the County was requesting \$250,300 (\$212,755, 85% grant with \$37,545, 15% County match).

With regards to the 5310 State/Rural funds, the grant request was as follows:

- Enhanced Mobility of Seniors and Individuals with Disabilities
  - RVO, TLC, Dialysis-Rural
- Requesting \$385,000
  - \$192,500 (50% grant)
  - \$192,500 (50% match from contract revenue)
  - Dialysis-Rural (50% match from ROAP funding)

The 5310 State/Rural funds supported Rowan Vocational Opportunities, Inc. (RVO), Trinity Living Center (TLC) and Davita Kidney Care.

Combined Capital:

- Funding to replace two (2) raised roof vans and one (1) 20' light transit vehicle. All with lifts.
  - No guarantee NCDOT approval
  - Delivery may be delayed
- Requesting \$211,520
  - \$190,368 (90% grant)
  - \$21,152 (10% County match)

The FY 23 Transit grant applications totaled \$846,820. Of the total, \$595,623 was grant funding; the County match was \$58,697 and contract revenue was \$192,500. All grant agreements would be brought back to the Board for official acceptance, the certification that funding was available, and the approval for signature by the County Manager.

Chairman Edds opened the public hearing to receive citizen input regarding the FY 23 Transportation Grant Application. With no one wishing to address the Board, Chairman Edds closed the public hearing.

Commissioner Pierce moved, Commissioner Greene seconded and the vote to approve the FY 23 Transportation Grant Applications passed unanimously (4-0). (Note: Commissioner Klusman had left the room without being excused and was therefore counted in the affirmative).

Commissioner Greene moved to adopt the CTP Public Transportation Program Resolution followed by a second from Commissioner Pierce. The motion passed

unanimously. (Note: Commissioner Klusman had left the room without being excused and was therefore counted in the affirmative).

#### **4. Z 05-21 REAPER'S REALM, LLC [CONTINUATION FROM 8-16-21 MEETING]**

Planning Director Ed Muire said the Commission conducted a public hearing at its August 16, 2021 meeting and opted to table its decision on this item in favor of considering a temporary use permit application for the venue. The public hearing for this item was closed and since it was not re-advertised, no additional public comment should be received.

As suggested by the Commission, the applicant's agent, Albert Benshoff, submitted TEMP 01-21 for consideration by the Commission. TEMP 01-21 was an agenda item to be heard by the Board later in the meeting. Mr. Benshoff had not withdrawn the Z 05-21 application.

Mr. Muire said Planning Staff provided the same set of material as included for the August 16, 2021 public hearing for reference with the addition of the Noise Monitoring Survey.

Based on the information in the agenda packet, the request was from Reaper's Realm, LLC for a conditional district zoning request for all or a portion of four (4) parcels owned by TJ and Angela Jenkins. The request includes Tax Parcels 147-001; 147-004; 147-006; and 147-116 which are located between Daugherty Rd and Old Linn Road.

The primary reason for the request was to obtain approval for the annual seasonal operation of events at Reaper's Realm Haunted House and Trail, which is classified as an Amusement Service and may only be petitioned for in the County's non-residential zoning districts (CBI, NB and IND).

Previous operation of Reaper's Realm as a seasonal Halloween event had been authorized through issuance of temporary use permits by the Commission in 2017 for a 2-year period and 2020 for 1 year only. In granting the 1-year permit, the Commission's directive advised the event needed to seek rezoning for continued future operation given its been an annual occurrence as opposed to "temporary".

At its July 26, 2021 meeting the Planning Board recommended denial of the Z 05-21 request. The Planning Board's Statement of Consistency and Reasonableness for consideration, states, "Z 05-21 is not consistent with the East Rowan Land Use Plan based on the following: It is an expansion of business that would conflict with surrounding residential uses and the proposed use would be a benefit to the owner at the expense of neighbors or community in regards to noise and traffic."

The suggested action for the Commissioners was to discuss the case and develop Statements of Reasonableness & Consistency and to vote on the Z 05-21 application.

County Attorney Jay Dees said the Board had closed the public hearing on August 16, 2021 and it was now up to the Board of Commissioners to discuss the substance of what was recalled from the public hearing and review the recommendations of Staff, the Staff Report, as well as the prior actions of the Planning Board. Mr. Dees said procedurally the Board should determine what it would like to do with regards to the Statements of Consistency and Reasonableness and whether the Board wanted to deny or approve the rezoning.

Chairman Edds asked if the Commissioners wished to hold further discussion. Chairman Edds said the Board was finishing the discussion and debate on the zoning request from the last meeting. Chairman Edds said there was a Temporary Use Permit (TEMP) request from Reaper's Realm scheduled for 6:00 p.m.

Chairman Edds moved to deny Z 05-27. Chairman Edds said the Planning Board's recommendation was to do the same. Chairman Edds continued by saying the Planning Board's Statement of Consistency and Reasonableness stated, "Z 05-21 is not consistent with the East Rowan Land Use Plan (LUP) based on the following: It is an expansion of business that would conflict with surrounding residential uses and the proposed use would be a benefit to the owner at the expense of neighbors or community in regards to noise and traffic."

Mr. Muire said the Board needed to adopt Statements of Consistency and Reasonableness and that the two (2) could be combined. Mr. Muire said the Statement just read by the Chairman was the Planning Board's. Mr. Muire explained that if the Commissioners heard anything else that might not have been addressed in the Statement, he would encourage the Commissioners to talk about it and add to the Statement(s).

County Attorney Jay Dees added that the Planning Board combined the two (2) Statements and if the Commissioners agreed with their assessment, the Commissioners could combine the Statements into one, as well.

The motion on the floor was seconded by Commissioner Klusman and passed unanimously.

Chairman Edds said the Board would take the matter back up as a Temporary Use at 6:00 p.m.

## **5. CONDUCT QUASI-JUDICIAL HEARING FOR SUP 02-21: TAYLOR CLAY PRODUCTS**

The Chairman read the Chairman's Speech (Exhibit A) and declared the hearing for SUP 02-21 to be in session. Chairman Edds said the hearing would focus on an application submitted by Bryce Evans on behalf of Taylor Clay Products for a 7,875 square foot building expansion on Tax Parcel 408-020 located at 1225 Chuck Taylor Lane.

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

Assistant Planning Director Shane Stewart presented the Staff Report (Exhibit B) and also provided a power point (Exhibit C) to the Board to depict the site and surrounding areas. Mr. Stewart reported that Taylor Clay was seeking a Special Use Permit (SUP) to expand their existing brick manufacturing operation with a 7,875 square foot building addition. Per section 21-58 and 21-60 (3)(a), operations that are subject to a special use permit as identified by the table of uses (21-113) in the Zoning Ordinance require a special use permit for all new and expansion of existing operations. Taylor Clay received previous special use permits (formerly identified as conditional use permits) in 2002 and 2006 for the addition of a brick kiln and a new building addition respectively.

The SUP requirements for minimum lot size was five (5) acres for manufacturing uses and the site in question totaled twenty-nine (29) acres.

With regards to the location of structures, storage of materials, the requirement was that principal structures and storage of flammable / hazardous materials shall be two (2) times the required buffer. The proposed addition would be 110' to the nearest property corner, which is a parcel owned by Taylor Clay (parcel ID 408-079). The nearest property use was the Cabarrus Concrete batch plant at 1155 Chuck Taylor Lane. No buffer would be required between two (2) "heavy impact" uses.

Mr. Stewart continued to review the SUP requirements and Evaluation Criteria as outlined in the Staff Report (Exhibit B).

According to Mr. Stewart, public notice of the hearing was mailed on August 23, 2021 to eight (8) adjoining land owners (within 100 feet of the subject property) and a sign was posted on the property on August 25, 2021.

Mr. Stewart provided the Board with example Findings of Fact (Exhibit D) based on the criteria he had outlined in the Staff Report (Exhibit B).

Chairman Edds opened the public hearing to receive citizen input regarding SUP 02-21 and with no one coming forward, Chairman Edds closed the public hearing.

Commissioner Greene moved the development of the property in accordance with the proposed conditions will not materially endanger the public health or safety.

The fact as listed in the Example Findings (Exhibit D) was:

- The 7,875 square foot addition to the existing staff estimated 250,000 square foot facility will be subject to Building Inspections plan review and permitting.

The motion was seconded by Commissioner Pierce and passed unanimously.

Commissioner Greene moved 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.

The fact as listed in the Example Findings (Exhibit D) was:

- No material evidence was presented suggesting this request would injure property values.

The motion was seconded by Commissioner Pierce and carried unanimously.

Commissioner Greene moved 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.

The fact as listed in the Example Findings (Exhibit D) was:

- According to the staff report, Taylor Clay Products began operation at this location in 1949.
- This request complies with all seven (7) specific special use standards designed to address impacts associated with heavy impact uses.
- The Eastern Rowan Land Use Plan identifies this property as a Commercial / Industrial Area and within the I-85 / US 29 corridor, both of which support the request.

The motion was seconded by Commissioner Pierce and passed unanimously.

Commissioner Pierce moved, Commissioner Greene seconded and the vote to approve SUP 02-21 carried unanimously.

## **6. PUBLIC HEARING: FY 19-20 HOME FUNDING INCREASE**

Planning Director Ed Muire said the Commission conducted a public hearing on March 18, 2019 to adopt its FY 19-20 HOME Action Plan. The funding amount advertised for its public hearing suggested the County would receive \$147,366 but due to changes in Consortium participation and HUD allocations, the County's allocation increased to \$192,081. The County received notice of this funding increase in May 2019.

Accordingly, the County budgeted the increase in funding (\$192,081) and administrative costs (\$11,525), but was not advised of the need to conduct another public hearing. Based on a similar occurrence of funding increase in the FY 21-22 application, Staff recommended the Commission schedule another public hearing to acknowledge receipt and acceptance of these programmed funds.

Notice of this public hearing was advertised in the Salisbury Post on Thursday, August 26, 2021.



Chairman Edds opened the public hearing to receive citizen input regarding the FY 2019-20 HOME funding increase. With no one wishing to address the Board, Chairman Edds closed the public hearing.

Commissioner Klusman moved to approve the FY 19-20 HOME Action Plan in the amount of \$192,081. The motion was seconded by Commissioner Pierce and passed unanimously.

Please note that following agenda item #7, Mr. Muire came back to the podium to ask the Board to clarify the approval for the FY 19-20 HOME Action Plan. A second motion was then made: Commissioner Klusman moved to authorize the County Manager and related Staff to sign the annual agreement on behalf of Rowan County once processed. The motion was followed by a second from Commissioner Pierce and carried unanimously.

### **7. CONSIDER SNIA 06-21: FOLEY HOME SALES**

Assistant Planning Director Shane Stewart said Planning Staff received a Special Non-Residential Intensity Allocation (SNIA) request from Foley Home Sales, LLC to construct a 12,000 square foot shell building on Lot 3 of the recently developed Horsepower Park Subdivision. The property was addressed as 180 Nitro Alley Mooresville and referenced as parcel ID 230D-003. According to the property owner, the building would be upfitted for a race shop and warehouse use initially with other future tenants to follow thereafter (see enclosed site plan).

Mr. Stewart said approving the request would allow the project to exceed the administrative allowance of 12% built-upon area (e.g. buildings, pavement, gravel) limitation requirement of the Coddle Creek watershed and allow up to seventy (70) percent built-upon area for the project. A total of 10% of the watershed acres may be removed from the 12% limitation and permit up to 70% built upon area.

The applicant, Doug Foley, came forward in the event the board had any questions. Mr. Foley briefly discussed the plans for the project.

Commissioner Klusman moved, Commissioner Pierce seconded and the vote to approve SNIA 06-21 carried unanimously.

### **8. UPDATE ON CONSOLIDATION EFFORTS BETWEEN VAYAHEALTH AND CARDINAL**

This update was moved to agenda item #2a in the order of presentation.

### **9. BUDGET AMENDMENTS**

Finance Director James Howden presented the following budget amendments for the Board's consideration:

- Social Services – Budget HCCBG CARES Funding that expires September 30, 2021. \$38,524
- Health Department – Disperse awarded funding from Agreement Addendum #361 ELC Reopening Schools SH Liaison. \$115,000
- Finance – Budget for the Emergency Management FY 2021 Tier II Grant for Disaster Preparedness, accepted by the BOC on 4/19/2021. \$1,000
- Finance – Budget the FY20 Homeland Security Grant Program awarded to Rowan County for the project entitled: Exercise-Lost at the Lake. This award was approved by the Commission on 10/19/20. \$35,000
- Budget the FY 20 Hazardous Material Emergency Preparedness Grant awarded to Rowan County for a HMEP project. This award was approved by the Commission on 10/29/20. \$9,600
- Finance – Budget the FY19 Homeland Security Grant awarded to Rowan County. The grant was accepted by the Commission on 10/21/2019. \$29,217
- Sheriff – Recognize funds from 2018 Justice Assistance Grant and budget to correct expense accounts to allow for approved purchases. \$14,778
- Finance – Reduce Soil & Water’s FY 22 Outdoor Educational Learning Grant budget to actual available. \$2,206
- Finance – Budget the EMPG-S Disaster Relief Grant awarded by the NCDPS. Rowan County is responsible for a 50% match. \$17,569
- Finance – Increase Cooperative Extension’s Contracted Services to cover Rowan County’s portion of the MOA and employment of Cody Craddick at NC AT&T. \$29,029
- Finance – Recognize reserved funds from FY 2021 for Emergency Services. Reserved funds represent money received by a Department for a restricted purpose. The funds that have not been spent by year-end are budgeted for expenditure in the new fiscal year. \$24,925
- ES/Finance – Requesting use of ARPA funds for PPE, cleaning supplies equipment for CCP program, temporary housing. \$243,000

Commissioner Pierce moved approval of the budget amendments as presented. The motion was seconded by Commissioner Caskey and passed unanimously.

**10. CONSIDER APPROVAL OF BOARD APPOINTMENTS**  
**CENTRALINA WORKFORCE DEVELOPMENT BOARD**

David Hollars with the Centralina Workforce Development Board recommended that Desiree Dunston be appointed to replace a previous member, whose term was set to expire on June 30, 2022. If approved, Ms. Dunston would continue representation from the Health Care sector and she would be eligible for reappointment for a two-year term beginning on July 1, 2022.

Commissioner Klusman moved, Commissioner Greene seconded and the vote to appoint Desiree Dunston as requested passed unanimously.

## **JUVENILE CRIME PREVENTION COUNCIL**

Carl Dangerfield applied to fill the vacant seat for a member of the Business Community. The term would expire June 30, 2022.

Commissioner Klusman moved the appointment of Carl Dangerfield followed by a second from Commissioner Caskey. The motion carried unanimously.

## **LOCAL EMERGENCY PLANNING COMMITTEE (LEPC)**

- Josh Bergeron, Salisbury Post Editor, applied to fill a vacant Media seat.
- Alyssa Harris, Rowan County Health Director, applied to fill a vacant seat for Environmental/Health/Transportation.
- Michael Hedrick with the North Carolina Department of Transportation, applied to fill another vacant seat for Environmental/Health/Transportation.

The LEPC has approved and recommends these appointments. There are no term ending dates for the members of this Committee.

Commissioner Klusman moved the appointment of Josh Bergeron, Alyssa Harris and Michael Hedrick. The motion was seconded by Commissioner Caskey and passed unanimously.

## **ROWAN COUNTY PLANNING BOARD**

Greg Hannold's first term on the Planning Board will expire on September 30, 2021 and he has applied for reappointment.

An application was also received from Joseph Strickland; however, there are no other vacancies at this time.

The selected applicant's term would be for three (3) years and expire September 30, 2024.

Commissioner Caskey moved the reappointment of Greg Hannold. The motion was seconded by Commissioner Pierce and carried unanimously.

**Chairman Edds recessed the meeting at 3:57 p.m.**

**Chairman Edds reconvened the meeting at 6:00 p.m.**

At this point, Chairman Edds said the County Attorney had raised a point of order regarding the zoning hearing for Z 05-21 in that the Board needed to make some findings to support the motion to adopt the Board's Statements of Consistency and Reasonableness.

- Chairman Edds said with regards to the Statement of Consistency, the request for CBI rezoning is not consistent with the I-85 South Corridor Plan commentary that more separation is needed between residential uses and business and

industrial uses. Likewise, the request is not consistent with East Rowan Land Use Plan recommendation that proposals for expansion of existing businesses that minimize conflict with surrounding residential uses through design standards or impact mitigation techniques are encouraged in the Planning area.

- With regards to the Statement of Reasonableness, Chairman Edds said the surrounding areas are predominantly residential and the Planning Board's adopted Statement of Reasonableness says Z 05-21 is not consistent with the East Rowan Land Use Plan based on the following: It is an expansion of business that would conflict with surrounding residential uses and the proposed use would be a benefit to the owner at the expense of neighbors in the community in regards to noise and traffic. If changed to CBI, three (3) of the applicant's proposed uses for the property are compatible with the RA District but the proposed use as an amusement and recreation service is not allowed in the RA District and lack of sufficient road frontage for the applicant's property would limit the non-residential structures square footage to 2,000 if permits had been obtained. The property is not in compliance with RA standards now.

Chairman Edds offered the findings as a motion to support the Statement of Consistency and the Statement of Reasonableness. The motion was seconded by Commissioner Greene and passed unanimously.

**11. 6:00p.m. TEMP 01-21: REAPER'S REALM HAUNTED HOUSE AND TRAIL**  
**[PUBLIC COMMENT]**

Chairman Edds announced that staff was dealing with some technical issues regarding the projector and the audience would be unable to see the presentations via the overhead screen. Chairman Edds said audience members could use the Zoom application via their cell phones to see the power points that would be provided.

Planning Director Ed Muire reported that Albert Benshoff of The Brough Law Firm, PLLC, submitted a Temporary Use Permit (TEMP) application on behalf of Reaper's Realm Haunted House, LLC (RR) to operate a haunted house and trail for the Halloween 2021 season on property owned by Tony and Angela Jenkins. The property, further described as Tax Parcel 147-001 /004 /006 /116 and 145 was located between Old Linn and Daugherty Roads and primarily accessed by private right-of-way identified as Shuffler Woods Road.

The property was zoned RA. Included in the TEMP 01-21 application were the requested dates and hours of operation, fifteen (15) suggested conditions offered by the applicant and a generalized site plan of operations.

Following the Commission's action on August 16, 2021 to table its decision regarding the Reaper's Realm Haunted House and Trail Conditional District Z 05-21 rezoning application, along with a directive for the applicant to prepare a Temporary Use Application for consideration, representatives from the North Carolina Department of

Labor and Rowan County Departments of Fire Marshal, Building Inspections and Planning met on site to view the buildings and trail utilized in the Reaper’s Realm Haunted House and Trail on August 23, 2021.

The intent of the visit was to determine which structures used in the “haunt” had obtained permits and identify those that needed permits and / or plan review to be deemed “code compliant”.

Below is a list of the structures on site, which were assigned a number and the corresponding column indicates its status from a compliance perspective based on an understanding of how the structures are used in the haunt.

<b>Structure Number</b>	<b>Name</b>	<b>Building Plan</b>	<b>Building Permit</b>	<b>Electrical Permit</b>	<b>Fire Inspection</b>
1.0	Haunted House	Approved	Approved	Approved	Approved
1.1		Required	Needed	Needed	Needed
1.2	Gift Shop/ATM	Required	Needed	Needed	Needed
1.3		Required	Needed	Needed	Needed
1.4	Concessions	Required	Needed	Needed	Needed
2.0	Granny’s Place	Required	Needed	Needed	Needed
4.0	Storage Trailer	Required	Needed	Needed	Needed
6.0-6.3	Asylum	Approved	Needed	Needed	Needed
6.4		Required	Needed	Needed	Needed
7.0	Slaughterhouse 1 & 2	Approved	Needed	Needed	Needed
7.1	Junkyard Building	Required	Needed	Needed	Needed
7.2	Skinning Building	Required	Needed	Needed	Needed
7.3	Mineshaft	Required	Needed	Needed	Needed
8.1-8.3		Required	Needed	Needed	Needed

Mr. Muire said he believed the applicant would provide information later in the meeting about removing and/or placing padlocks on some of the structures.

Mr. Muire said the applicant provided the tour for the inspections and afterwards, a follow-up letter was sent to Mr. Jenkins and his attorney to advise as to the status of the inspections, plan review process, etc., if he chose to take this route.

When looking at the application, Mr. Muire said the applicant asked for 15 days of operation starting September 24<sup>th</sup>. Mr. Muire highlighted the proposed dates and hours of operation.

Mr. Muire showed the site plan, which was also included in the agenda packet, and he pointed out there was no access via Old Linn Road.

The suggested conditions by Staff were outlined by Mr. Muire as follows:

1. Close operations and have attendees off the premises by midnight.
2. Have an ambulance on site for dates and hours of operation requested for the Halloween season and provide executed contract with Rowan County Rescue Squad.
3. Have at least five (5) municipal or county law enforcement officers and five (5) private security guards with NC Private Protective Services Board certification on-site during operating hours.
4. Provide proof and amount of liability insurance.
5. Provide permit or approval documentation from the NC Department of Labor for use of the Vortex.
6. Have the EI Group obtain decibel measurements at 10:00 pm on Halloween night (October 31, 2021) at each of the sites in the Project ID: IHCH210078.00 report submitted as an exhibit in the Z 05-21 application. Provide the results of this documentation to the Rowan County Planning Department by November 30, 2021.

Mr. Muire noted item #6 would not be required (decibel measurements) since the rezoning application was denied.

7. Obtain all necessary building and fire code related plan review(s), permits and inspections for all structures used in the haunt prior to the first event of the 2021 Halloween season occurring.
8. All parking shall be provided on-site and not along Daugherty or Shuffler Woods Roads.
9. An emergency access lane on Shuffler Woods Road shall be provided and available at all times during operation to allow for emergency vehicle access.
10. TEMP 01-21 is for the 2021 Halloween season only and no other one (1) or two (2) day public events are allowed.
11. No alcohol sales allowed on site by the owners or others.
12. Have Vortex locate in the Haunted House permitted and inspected by the NC Department of Labor prior to operation.
13. Have the Rowan County Fire Marshal inspect and obtain an approved Fire Code Operations Permit for the overall venue.
14. Property owners, Tony and Angela Jenkins, should consent to these conditions and any others added by the Commission, in writing.

Mr. Muire said the Board had broad authority in considering, approving or denying the application. Mr. Muire said the Board could modify or supplement any of the above conditions. In determining whether to issue the permit, approve deny or table, the conditions should satisfy the findings in Section 21-281(s), which state:

1. Use will not endanger the public health, safety or general welfare;
2. Use will not have a substantial negative impact on adjoining parties;
3. Use will be approved for a specific period of time not to exceed two (2) years.

Mr. Muire said the hearing was a courtesy hearing and the notice provided to adjoining property owners noted there would be 10 minutes for the applicant to make their case and the same would be allotted for the public.

Commissioner Klusman asked if the County had the authority to enter the premises at any time during operating hours if RR were to receive approval for the temporary permit. County Attorney Jay Dees responded the County would be allowed to access the property to inspect and verify compliance with the conditions. Mr. Dees said the County typically reached out to an owner to make the accommodations during regular business hours.

Commissioner Greene asked if there was sufficient time between now and the event to get the permits. Mr. Muire responded that he did not have anything to do with inspections; however, he thought the majority of items to cause delays for Mr. Jenkins was having the engineered plans submitted for plan review. Once the plans were approved, Mr. Muire anticipated the approval and permits would happen pretty quickly.

Chairman Edds said the Board held public comment on the matter during the prior rezoning hearing and the Board opted to limit time for the current permit application. Chairman Edds said ten (10) minutes would be allotted to the applicant or his representative and ten (10) minutes would follow for public comment.

- Attorney Al Benshoff, representing the client, provided a handout that contained the application, Mr. Jenkins' proposed conditions, and staff's conditions.

Mr. Benshoff requested the Commissioners turn to page 8 of the handout where the applicant was willing to add two (2) new conditions below that had been suggested by County Attorney Jay Dees:

New: 16. Applicant Will Not Apply for Another Temporary Use Permit At The Shuffler Woods Road Properties. This would be the last time RR operates at this property.

New: 17. Applicant Consents to Entering A Temporary Restraining Order in Rowan Superior Court if Conditions Are Violated.

Mr. Benshoff said Mr. Muire had explained there were three (3) findings the Commission must make when granting a temporary use permit. Mr. Benshoff discussed how the conditions speak to and answer the criteria/conditions.

Using a power point, Mr. Benshoff reviewed a table that highlighted which conditions showed the proposed use would not endanger the public's health, safety and welfare.

CONDITIONS	DESCRIPTION
Staff Conditions 3 Applicant Condition 4	Hire 5 LEOs + 5 private security guards
Staff 2, Applicant 1	Rowan Rescue ambulance and crew on site
Staff 4, Applicant 11	Proof of Liability insurance coverage
Staff 9, Applicant 8	Widen Shuffler Woods Road to 24 feet
Staff Conditions 5 and 12	Obtain NC Department of Labor Permit re: Vortex
Staff 7, Applicant 14	Obtain Building and Fire Code Permits for all structures used in the Haunt
Applicant Condition New – County Attorney’s Suggestion	Provide a signed Temporary Restraining Order to be used if Applicant violates conditions
Applicant Conditions 5, 6, 7	No walk-in customers, No drop-offs. No unescorted minors without adult 18 or older
Staff 6, Applicant 10	Noise per County Ordinance. Another noise study unnecessary as applicant will not apply for another Temporary Use Permit.
Staff 8, Applicant 9	All parking on-site
Staff 13, Applicant 13 and 14	Fire Marshal inspect and permit
Staff 11	No alcohol sales

With regards to the conditions that the proposed use would not having a substantial negative impact on the adjoining properties, Mr. Benshoff highlighted the following:

CONDITIONS	DESCRIPTION
Staff 10, Application	Temporary Use Permit for 2021 Halloween Season Only
NEW Applicant Condition (County Attorney’s suggestion)	Applicants will NOT apply for a Temporary Use Permit for this site again
Staff 1, Application	Staff recommends closing at midnight; Applicant suggests 10:00 p.m. on October 24, 28, 31 and 12:30 a.m. other nights with speakers and noise turned off at midnight.
Staff 11	No alcohol sales
Applicant 12	Lighting, all lights directed inward
Staff 13, Applicant 13 and 14	Fire Plan
Applicant 15	Sanitation Plan
Applicant Conditions 5,6,7	No walk-in customers, No drop-offs. No unescorted minors without adult 18 or older
Staff 6, Applicant 10	Noise per County ordinance. Another noise study unnecessary as applicant will not apply for another Temporary Use Permit
Staff 8, Applicant 9	All parking on-site
Applicant Condition New. County Attorney’s suggestion.	Provide a signed Temporary Restraining Order to be used if Applicant violates conditions

According to Mr. Benshoff, the third finding to be made by the Board was a given in that the use would be approved for a specific period of time, perhaps 2 days in September and 13 days in October.

Mr. Benshoff referred to page 7 of the handout, which was the staff conditions. Mr. Benshoff said the conditions highlighted in yellow had been consented to by the applicants. Mr. Benshoff stated the 14<sup>th</sup> condition said the Jenkins’ should consent to the conditions and any others added by the Commissioners in writing.



Mr. Benshoff said such a requirement was for a conditional district rezoning and not a temporary use permit. Mr. Benshoff said he would not strenuously object to the condition since it was listed.

- Mr. Jenkins said he had been “here” for 10 years and he recalled that last year he was standing before the Board applying for a temporary use permit. Mr. Jenkins said the permit had been approved with less conditions last year and he stated no neighbors had contested the application. Mr. Jenkins said he was previously told the Board did not hold RR responsible for the shooting that had occurred on opening night last year. Mr. Jenkins said there had never been a complaint regarding public safety other than the one night. Mr. Jenkins felt he was being held responsible as a result of the incident.

Mr. Jenkins said he had tried to address all the concerns pertaining to safety and to traffic.

- Attorney Richard Yeoman from Iredell County said he was representing the neighbors who were opposed to the temporary use permit for RR. Mr. Yeoman provided a power point, as well as a handout of the slides that were used in the power point.

Mr. Yeoman said there had been discussion about the temporary use permit issued in 2020. In reviewing the paperwork for the 2020 permit, Mr. Yeoman noted RR was instructed to seek a permanent zoning change, which had been denied earlier today. Mr. Yeoman said it was apparent in reading the documentation that the Board did not plan to allow further temporary use permits for RR and he took the position the current temporary use application could be denied on the basis that it was against the Board’s 2020 directive.

Mr. Yeoman said there was no need to review all of the slides as they had already been discussed. Mr. Yeoman said he would focus on the following points:

- Dangers to Public Health, Safety, and Welfare
- Negative Impact on the Neighborhood
- Temporary vs. Permanent
- Repeated and Flagrant Noncompliance

Mr. Yeoman said what had been seen in the past was a blatant disregard for the conditions and directives by the Board.

Mr. Yeoman referred to the unpermitted buildings that persist on the property and as outlined in the chart by Mr. Muire. Mr. Yeoman asked how the unpermitted structures were consistent with the public health, safety, and welfare. Mr. Yeoman also pointed out the application did nothing to address traffic concerns

which were especially troubling given the inability for emergency services to reach the site following the shooting on September 26, 2020.

Mr. Yeoman discussed the neighborhood impact and the fact that a petition had been submitted by 156 neighbors against the proposed zoning change. Mr. Yeoman described the venue as a large commercial enterprise the Jenkins' had chosen to operate in an exclusive single-family residential area. There was noise, trash and property damage to neighbors as a result of RR and creating an intrusion into neighbors' privacy and sense of security. The use was also not consistent with the East Rowan County Land Use Plan.

Continuing with the power point, Mr. Yeoman stated the use was not a temporary or seasonal operation. Mr. Yeoman noted that by Mr. Jenkins own admission, RR had been operating for 10 years. Mr. Yeoman said of those 10 years, only 3 had been with the approval of the Commissioners with a temporary zoning permit. The remainder of the time RR operated without permits and outside of the law, which he stated was unacceptable.

In 2017, when the first temporary application was granted, there was a list of 6 conditions provided. However, based on the lack of approved permits for the structures used in the haunt, all of the conditions were not met. There were many buildings open to the public without proper permits, or inspections by the Fire Marshal. Operations were supposed to be limited and the hours of operation were repeatedly violated.

Mr. Yeoman said the applicant wanted to talk more about new conditions and how the application would change; however, Mr. Yeoman was focused on the past and how RR had approached the past conditions that were issued by the Board. Mr. Yeoman felt the disregard of those past conditions was the best evidence of what could be expected of RR going forward.

Other examples provided by Mr. Yeoman was that a permit issued in 2017 by the Board was to last for 2 years and only be for a period of time in September and October for Halloween. Mr. Yeoman said the event turned into a Halloween Carnival and something very different happened than what was anticipated. In addition, Mr. Yeoman said there were events that occurred in February for Valentine's Day and Saint Patrick's Day in March, as well as mud bogs in the summer. Mr. Yeoman noted some of the events continued into 2019 and 2020 despite the fact there were no permits issued for those years.

Mr. Yeoman said Mr. Jenkins had admitted there were times he had been unable to meet the condition for the number of law enforcement that was to have been onsite, and also having guests to leave RR by midnight, etc. Mr. Yeoman said RR's website listed multiple examples on the conditions being violated.

In closing, Mr. Yeoman stated that for the 10 years RR had been operating, temporary permits had only been obtained twice for 3 seasons. Mr. Yeoman said RR had had years to get everything into compliance and to get the zoning, or, move to a new location. Mr. Yeoman said RR was asking the neighbors to bear the brunt of a year-round RR. Mr. Yeoman asked that the petition be denied.

Chairman Edds stated the Board would now discuss the findings and conditions and either grant, deny or table TEMP 01-21.

Commissioner Caskey referred to the condition for no alcohol sales and said at the last meeting the Commissioners were told there was no alcohol at RR. The County had since found out that alcohol had been sold at RR events. County Attorney Jay Dees responded that he thought a local brewery had set up on the site and sold the alcohol for St. Patrick's Day. From his seat in the audience Mr. Jenkins confirmed this to be true.

Commissioner Klusman asked if the property owner was required to get an ABC permit for alcohol sold on their property by an outside entity. Mr. Dees said he did not know the ABC rules. Mr. Dees said the general note was that no alcohol was to be sold at RR whether it was by a third party or not.

Mr. Jenkins responded that the breweries had to buy an event license. Mr. Jenkins reported the breweries took the money and RR did not make a dime from any alcohol sales. Mr. Jenkins said the breweries got the ABC permit and were vetted by the ABC.

Commissioner Klusman pointed out the applicant had agreed to have 5 law enforcement officers (LEO) and 5 private certified security guards on site. Commissioner Klusman said she did not see any notations that if the required number of officers was unavailable, RR would not be open. Mr. Benshoff responded, "It doesn't say that." Mr. Benshoff said RR proposed a condition that if RR could not get 5 LEO that RR be allowed to hire 3 private security guards for each LEO slot not filled. Mr. Benshoff said this was a suggested alternate condition. Mr. Benshoff said, "If you're asking that all the conditions say they have to be met, I believe that is understood; I believe that is implied.

Mr. Dees said the conditions are implied that if Mr. Jenkins did not have 5 LEO from Rowan County then RR cannot operate.

Commissioner Klusman again questioned the substitutions for LEO. Mr. Benshoff said the substitution would only be made if LEO were unavailable. Mr. Benshoff used an example of RR hiring 4 Sheriff's deputies and 5 private security officers, plus 3 more private security officers for a total of 8 private and 4 LEO. Mr. Benshoff said the suggested condition from RR was on page 3, #1.

Commissioner Klusman sought clarification regarding the LEO issue. Commissioner Klusman asked if no LEO were available, if the evening's operations would not continue. Mr. Benshoff said that was the implication. Mr. Benshoff said the staff had suggested conditions and the Jenkins' had suggested conditions.

Commissioner Klusman said she understood; however, at the last meeting she had asked a lot of safety questions. Commissioner Klusman said at the last meeting she had asked a most pertinent question, which was if there were not enough LEO, would RR be open. Commissioner Klusman said Mr. Jenkins had said yes and then retracted his answer.

Commissioner Klusman felt it was a major issue if the applicant was asking the Board to approve the use of substitutes for LEO. Mr. Benshoff said, only if we cannot get the required number of LEO, which was discussed at the last meeting. Commissioner Klusman said this was an issue for her. Commissioner Klusman said she was hearing the answer to her question to be, "If there are no LEO but you have the other private security people, you will open." Mr. Benshoff responded, "If that is what the condition says." Commissioner Klusman asked if the answer was "implied or did it need to be in writing?"

Mr. Dees said RR was proposing their own condition that if RR could not get LEO, they would substitute with their own private security officers. Mr. Dees said if the Board felt there needed to be LEO with arrest authority on site, the Board could impose the condition. Mr. Dees explained that RR was just proposing an option.

Commissioner Klusman asked about the process and timeframe for obtaining restraining orders. Mr. Benshoff said if the process had been consented to by Mr. Jenkins in advance, it would make the process easier; however, it would depend on the availability of a judge to sign the order.

Mr. Dees said the worst-case scenario would be if there was a violation over the weekend. Mr. Dees said the County would file for injunctive relief on Monday morning to stop the event from occurring on subsequent weekends. Mr. Dees said he had suggested the consent as a means of enforcement to make it easier to get the initial relief to stop the event. Mr. Dees confirmed to Commissioner Klusman that if a condition was violated on a Friday night, the operation would continue to Monday morning. Mr. Dees said there were other intervening methods that could be used; however, one could safely predict that Monday morning would be the first chance for relief.

Commissioner Klusman referred to page 12 and asked Mr. Benshoff to define "substantial" negative impacts. Mr. Benshoff asked Mr. Dees if there were any precedents in Rowan County for "substantial." Mr. Benshoff said he did not want to interpret the County's Zoning Ordinance without giving Mr. Dees the chance to weigh in.

Mr. Dees responded that his definition may be different so he would allow Mr. Benshoff to answer the question.

Mr. Benshoff said, "It is more than slight. It has to do with both the amount of the negative impact and the duration of the negative impact. Is it a permanent negative impact or is it temporary? Mr. Benshoff said there were cases that dwelled at great length about "substantial." Mr. Benshoff felt he had provided a good rule of thumb definition.

Commissioner Caskey referred to the proposed condition from RR that it would not apply for a temporary use again at the Shuffler Woods Road property. Commissioner Caskey asked if the condition was legally binding for the rest of the Jenkins ownership of RR and that the Jenkins' could never come back with another request for a temporary use permit. Mr. Dees responded that the question was interesting in the manner in which Commissioner Caskey had framed it. Mr. Dees said with regards to real property, the restriction of "forever" was not realistic. Mr. Dees said there should be a realistic timeframe attached that would be enforceable. Mr. Dees said to leave the timeframe open ended was not realistic as a standard to bind an owner for real estate. Mr. Dees said if the Commissioners chose "to go down that road", the condition should probably have a time limit on it.

Mr. Jenkins responded, "We will never apply for another conditional use, temporary use permit for that property because we will not be there after this year. Our property will be sold as of November 1<sup>st</sup>."

Commissioner Caskey questioned the list of RR structures that had been approved or still needed approval. Mr. Jenkins discussed the uses for some of the structures. Mr. Jenkins said the structures used for storage would be padlocked. Mr. Jenkins said the Asylum building had been approved through Thomas O'Kelly (Director, Rowan County Building Inspections).

County Manager Aaron Church interjected that Mr. Jenkins meant the "plan review" was approved; however, the structure was never inspected. Mr. Church said Mr. Jenkins did not follow through and have the building inspected and the permits issued. Mr. Church said part of a plan review was that if you do a commercial building, you go to Building Inspections and present a plan. Mr. Church said the plan may have been approved but the building was never permitted by Rowan County to be occupied.

Mr. Jenkins said Mr. Church was correct; however, Mr. Jenkins stated he had been told by Mr. Muire not to go any further after plan review, which was why he stopped. Mr. Church said the fact remained the buildings have never been permitted to be occupied for commercial use.

Commissioner Caskey said according to the staff report, the only structure permitted and approved for occupancy was the structure identified as #1.0 (Haunted House).

Mr. Church confirmed to Commissioner Caskey that only 1 structure out of 20 was legally approved/permitted.

Mr. Muire clarified the statement made by Mr. Jenkins which alleged that Mr. Muire had told him not to go any further. Mr. Muire said he had told Mr. Jenkins not to go any further at the beginning of the rezoning application (public hearing held on August 16, 2021) because Mr. Jenkins had wanted to start making road improvements. Mr. Muire emphasized those instructions did not negate the fact that structures had been there without permits and more added in 2017, 2018, 2019 and 2020. Mr. Muire said he did not want the Commissioners to be misled by what Mr. Jenkins had just stated.

Mr. Church added that if one counted the number of buildings on the document Mr. Benshoff handed out, the numbers did not add up to what staff had seen during the site visit. For example, the attorney's document did not show there was a mineshaft and did not show several other buildings.

Mr. Jenkins said the mineshaft was on the list to be demolished on the application.

Mr. Church reiterated the plan before the Board did not include the mineshaft as was prepared by RR's engineer.

Chairman Edds said the Board must grant, deny or table the request. Chairman Edds said while he did not wish to cut off Mr. Jenkins "cold turkey," the bottom line was the Board was being asked to ignore too much to give Mr. Jenkins another temporary permit.

Commissioner Caskey said of all the structures at RR, only one had been properly permitted. Commissioner Caskey said people had been going through the buildings and he wondered what kind of liability the County would have if one of the structures collapsed on people, such as the mine shaft. Commissioner Caskey said there were too many questions for him to approve the application.

Commissioner Klusman said safety was her biggest issue. Commissioner Klusman said the fact there would not be a second way in/out of the site; the fact there were so many structures that had not been approved; the fact of the shooting incident that happened last year. Commissioner Klusman said in talking with the law enforcement officer that responded, she had gotten a much different picture than what had been presented at the last Commission Meeting. Commissioner Klusman said she did not take it lightly when a Sheriff's Deputy tells you he was afraid for his personnel.

Commissioner Greene said he understood the decision was the Board's job. Commissioner Greene stated Mr. Jenkins had been holding RR for 10 years and had one incident that was not of his making. Commissioner Greene said he wished there was a way to let RR operate, close down and move, which was what Mr. Jenkins indicated he planned to do.

Chairman Edds moved to deny TEMP 01-21. Commissioner Klusman seconded the motion.

Mr. Dees said the Board first needed to work through the Zoning Criteria.

Chairman Edds said the Board needed to consider the same three (3) issues/findings:

1. **The proposed use will not endanger the public health, safety and welfare.**  
Although established as a TEMP 01-17 and TEMP 01-20 permit conditions, the applicant has failed to have the majority of buildings at his venue that are open to the general public lawfully permitted and inspected. In fact, the number of non-permitted buildings used in the “haunt” have increased along with the frequency of events. Continuing to invite the public to these events knowing a majority of the structures utilized are not building and fire code compliant is a blatant disregard to the safety and health of the general public.
2. **Use will not have a substantial negative impact on the adjoining properties.**  
The Commission respects the property rights of an individual to use their property, but when a use creates impacts to the community such as noise and traffic late into the evening this use is not compatible with the surrounding area on a permanent or temporary basis.
3. **Use will be approved for a specific period of time, not to exceed two (2) years.**  
Traffic, noise and other issues resulting from previous temporary use permits issued in 2017 and 2020 substantiate that another TEMP request not be issued for this site.

Chairman Edds moved to offer the above as three (3) findings, followed by a second from Commissioner Klusman. The motion passed unanimously.

Upon being put to a vote, the motion on the floor to deny TEMP 01-21 passed 4-1 with Commissioner Greene dissenting.

## **12. ADJOURNMENT**

There being no further business to come before the Board, Commissioner Pierce moved to adjourn at 7:17 p.m. The motion was seconded by Commissioner Greene and passed unanimously.

Respectfully Submitted,



Carolyn Barger, MMC, NCMCC  
Clerk to the Board