

**MINUTES OF JOINT MEETING -
LEE COUNTY COMMISSIONERS, TOWN OF BROADWAY COMMISSIONERS,
and SANFORD CITY COUNCIL**

with

Lee County Planning Board and City of Sanford Planning Board

Tuesday, March 30, 2021 – 6:00 P.M.

Dennis Wicker Civic Center, Sanford, NC

The Sanford City Council, Lee County Board of Commissioners, and Town of Broadway Commissioners met with members of the Lee County Planning Board and the City of Sanford Planning Board at the Dennis Wicker Civic Center, located at 1801 Nash Street, Sanford, North Carolina, on Tuesday, March 30, 2020, at 6:00 p.m. The following people from the City of Sanford were present:

City:

Mayor T. Chet Mann
Council Member Sam Gaskins
Council Member Charles Taylor
Council Member James Williams
City Clerk Bonnie Davis
Management Analyst Holly Marosites

Mayor Pro Tem Byron Buckels
Council Member Rebecca Salmon
Council Member Norman “Chas” Post, III
City Attorney Susan Patterson
Deputy City Clerk Vicki Cannady

Absent:

Council Member Jimmy Haire
City Manager Hal Hegwer

CALL TO ORDER

City Attorney Susan Patterson opened the meeting and explained that revisions to the Unified Development Ordinance (“UDO”) are necessary because of changes by the North Carolina Legislature. Each board called the meeting to order, with Mayor Mann opening the meeting for the Sanford City Council. She introduced Attorney DeWitt “Mac” McCarley, an attorney who has practiced municipal law for more than 43 years, including four years as Assistant General Counsel to the North Carolina League of Municipalities; 13 years as City Attorney for the City of Greenville; and 17 years as City Attorney for the City of Charlotte. He is a partner with the Parker Poe law firm in Charlotte and has represented local governments for the past nine years.

Mr. McCarley explained that after a six year process, the North Carolina Legislature passed a massive re-write in 2019 to state planning and zoning statutes. The drafting committee was comprised of local government attorneys; an attorney representing substantial developer interests; and a professor from the UNC School of Government who specializes in land use. Each new draft was opened during the process for comments to the NC Chapter of the American Planning Association, to City and County attorneys, and those on their mailing list. More than 85 comments were submitted by local government attorneys, including City Attorney Susan Patterson (in summer 2017) and they were all used to refine the proposal. There was a point when it appeared the bill would fail when homebuilders presented an additional component that would have dramatically changed local government planning law but there were enough votes to prevent that, making it a re-write rather than a total revision of law theory and contributing to the lengthy process. We must revise our UDO before

July 1 or it will not match state law, making it impossible for local elected officials, planning board members, developers, property owners and citizens to determine the correct rules. While all local governments in the state must revise their UDO, ours is somewhat easier because we have a unified ordinance for all three jurisdictions. He explained that if revisions are made and the revised UDO is adopted, it will automatically make all of Chapter 160D applicable to our UDO.

Mr. McCarley reviewed information on the attached exhibit and explained that the goal was to consolidate municipal and county land use regulations and make them uniform. Development regulations were previously spread throughout the chapter with no particular pattern. Zoning, subdivision, minimum housing codes, historic preservation, building code enforcement, inspections, airport zoning, and cell tower provisions were spread throughout many different places. This was due to history rather than logic and the goal was to consolidate zoning, planning and development regulations into a single place. He explained that municipal and county regulations have mildly diverged from one another over time. An example is a city rule that an ordinance (including zoning ordinances or anything related to development codes) cannot be adopted on its first reading without a super-majority vote whereas counties do not have this rule (a simple majority will suffice on a first reading). This was revised so that the rules for cities now matches the rule for counties, with a super-majority no longer required on the first reading of anything covered by Chapter 160D, which is helpful for developers and attorneys who work in multiple jurisdictions. The statutes were also reorganized to make them more logical and user-friendly. Chapter 160D now begins with definitions and general provisions, then branches out to cover jurisdictions; organization of boards and staff; administration; enforcement; appeals; planning statutes; zoning regulations; subdivision regulations; specifics on building code enforcement; minimum housing codes; and judicial review of anything covered by Chapter 160D. There is a logical flow, making it easier to find a particular topic. Clarifying amendments were made, including some very clear and expanded definitions. There is now one statute laying out all vested rights, how they are acquired and how long they last. Language was also modernized to fit current practice.

Mr. McCarley reviewed time frames and explained that the deadline to act is July 1, when Chapter 160D becomes the law of the state, regardless of whether the UDO has been amended. He and staff have worked on this project for a year and the boards now have three months to study, revise it if needed, and adopt it; however, little discussion should be needed regarding revisions since most of them were simply bringing the UDO into compliance with 160D. A review was done of each article in UDO (374 pages, 13 chapters, three appendices) and while there is no need for board members to read the entire UDO, he and staff did in order to find all instances where the law changed. They also purchased a book published by David Owens, the UNC professor who was a member of the drafting committee, to guide their work on revisions. It describes the history of Chapter 160D, significant changes, a table showing where to find previous provisions from 153A and 160A, and additional information on what was added and removed. They revised, edited, deleted and added provisions to make the UDO comply, including a new requirement that members must take an oath before serving on a planning board and a new requirement regarding conflicts of interest for staff members. A version was done to track changes and there are website links to the city's website showing each article and appendix, along with a "track change" version which he encouraged board members to read.

Mr. McCarley explained that another change is a provision that staff is now specifically allowed to make minor changes to previously approved plans. If a developer is doing a fairly large conditional zoning project with a highly detailed site plan and it is discovered that soils on one corner of the property won't support what they want to do, they may need to move a detention pond onto the poor soils and move streets and homes to the area where the detention pond was planned. Staff could approve this change if there is no impact on anyone who supported or opposed the project. Limits are laid out in the statute specifying what constitutes a "minor" amendment. The goal is to prevent developers from having to file a new application, go through the Planning Board and governing body for approval of minor changes. He noted that these revisions are noted with margin comments. There is also a process for determining which regulations are applicable to parcels which are split by jurisdictional lines and the jurisdictions can agree on which set of regulations would apply to the whole parcel.

All references to Chapter 160D and 153A have been updated and these references have been reviewed by him, three attorneys and staff, along with definitions in the UDO and Appendix A. A new provision has been included prohibiting staff from making a decision on a project where they have a relationship with anyone involved on behalf of the applicant. The types of subdivision guarantees have also been modified. One item that came out of separate 2019 legislation was pushed by homebuilders regarding restrictions on what can be used for a guarantee, specifically stating that the developer can choose which of the allowed provisions they can use to guarantee subdivision improvements, rather than having comply with jurisdictional requirements. Down-zonings (moving from a more intensive use to a less intensive use) are now prohibited by third-parties: only the landowner or local government can file a down-zoning application but a bill was introduced in this legislative session allowing only the landowner only to apply. Another revision now allows administrative notices (notices of violation, permit decisions, revocations, stop-work orders, appeals, decisions) to be emailed, hand-delivered or mailed first-class mail rather than through certified mail only. Mr. McCarley reviewed an example of comment boxes documenting the exchange between City Attorney Susan Patterson and himself illustrating their thought process and he urged everyone to pay attention to these comment boxes.

Mr. McCarley explained that after tonight, all three Planning Boards will review UDO revisions and make a recommendation. A notice would then be published in *The Sanford Herald* stating that each governing board will consider the material and the planning boards' recommendations before the changes could be adopted, but they must be adopted no later than June 30.

Responding to questions, Mr. McCarley confirmed that some of these changes to the UDO were allowed but not mandated by changes to Chapter 160D, such as the authority for staff to approve minor amendments to previously adopted plans. These changes will have comment boxes and can be removed by the governing bodies. He estimated that approximately 500 revisions were made but about 300 of them were citations, and about 40 percent of the changes are substantive, something was added (the conflict of interest provision) or removed (the automatic inspection with any application). He noted that this meeting would have been held in October 2020 but the COVID-19 pandemic delayed it, so the legislature extended the time frame to July 1. He noted that four or five of the articles

City Council – Joint Meeting with
Lee County Board of Commissioners, Town of Broadway Board of Commissioners,
Lee County Planning Board, and City of Sanford Planning Board
March 30, 2021

have almost no changes but some articles have significant changes, and encouraged anyone with questions to contact him, staff or the attorneys.

Council Member Charles Taylor questioned whether pending House Bill 401 will have any impact on these UDO updates. Mr. McCarley explained that the bill would allow “middle homes” – any housing between single-family and multi-family (duplexes, tri-plexes, quad-plexes, townhomes) – in any residential district. He explained that he was not aware of any response from the League of Municipalities or County Commissioners’ Association but it would be a major blow to neighborhoods.

City Attorney Patterson thanked Mr. McCarley for his work and explained that revisions to the UDO are necessary to comply with Chapter 160D.

ADJOURNMENT

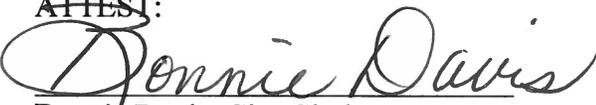
Each board adjourned its meeting, with Council Member Salmon making a motion to adjourn the City Council meeting. The motion was seconded by Council Member Gaskins and carried unanimously.

Respectfully Submitted,



T. Chet Mann, Mayor

ATTEST:



Bonnie Davis, City Clerk