

Madison County Planning Board
Special Meeting Minutes (Draft)
Date: 2/16/2022
Location: Marshall Public Library

6:35 PM: Madison County Planning Board Special Meeting: Called To Order by Chair Jered Silver

Members in Attendance: Jered Silver (Chair), Sue Keener, Alan Wyatt (Acting Vice Chair), Josh Norton, Daniel Rice. **Absent:** Mary Rice (excused due to family member in hospital?) Kevin Morton (un-excused, but reportedly with sick child), Jackie Ball (un-excused, but apparently ill)

* Quorum was confirmed with a minimum of five (5) Voting Members in attendance

Welcome and Overview:

Terrence Dolan, Madison County Director of Planning & Zoning, provided a brief overview of this Special Planning Bd. Mtg., along with County Attorney John Noor (Roberts and Stevens-Asheville).

I. Motion to Approve December 14, 2021 Planning Board Meeting Minutes: Motion to Approve made by Sue Keener and Seconded by Allan Wyatt. Vote was 5-0 To Approve the Minutes.

II. The single Agenda Item to be heard at this meeting is a Special Use Permit Request to be considered by the Planning Board, in regard to Roam Farm, a Vacation Rental proposal with 18 cabins on two combined parcels totaling +/- 52 acres, to be located at 108 Howell Road, Marshall, NC 28753. This hearing was originally to be heard at the January 18, 2022 Planning Bd. Mtg., but was postponed due a severe snow storm event. John Noor first asked the Board Members if there had been any Ex Parte' Communications with anyone; having none, Mr. Noor then discussed and queried the Board if any of the Board Members felt they had a need to recuse themselves from participating and voting on this matter. Chair Jered Silver reported he has a brother and his mother that own a parcel of property that lies adjacent to the Roam Farm applicant's property. Therefore he felt the need to recuse himself. A Motion was made by Allan Wyatt and Seconded by Danny Rice that Chair Silver be allowed to recuse himself. The vote was 5-0 to allow the Chair to recuse himself from voting on this matter. Mr. Silver departed the meeting at this point at 6:45 PM.

No other Conflicts were noted by any other members.

Daniel Rice then made a Motion to select Allan Wyatt to Chair the remainder of the meeting. Josh Norton seconded the Motion, and it was approved by a 4-0 Vote. Terrey Dolan noted that the meeting had been properly Legal Noticed in *The News Record* in both the Feb. 2nd and 9th editions.

III. **Roam Farm:** John Noor walked the audience through the procedures for the evening. Attorney Jessie Swords (Allen, Stahl & Kilbourne), representing the applicant, asked for a clarification of "Legal Standing" vs. "General Public" comments from Mr. Noor. Mr. Noor replied that "Special Damages" are distinct from the rest of the community at large.

Chair Allan Wyatt then swore in the applicant, Ms. Joanna Cahill, who provided a brief summary of her project proposal.

- 18 Vacation Rental Units
- "Not a Glamping Facility, like her existing facility in Asheville". Would take a considerable amount of time to develop the full facility "over several years". Built to Residential Codes, with sprinklers for fire suppression.
- Only local contractors being utilized.
- She emphasized this is designed to be a "Quiet Lodging Complex. Not intended to be a Wedding Venue, nor a Music Venue".
- Her best friend is to be designated as the Local Contact Person.

Next, the Board recognized Ms. Jamie Stokes, attorney representing her clients Kelly & Kirby Boone, Kevin Boone (and his son, Ransom). Chair Wyatt then swore in Ms. Stokes. The Boones had collectively expressed opposition to

the approval of the Roam Farm project over the past two months, with several of the (related) Boone Family members owning adjoining property to the southerly and westerly sides of the 52 acre holdings that comprise Roam Farm. Ms. Stokes noted her clients' addresses were 201 & 348 Boone's Farm Road, Marshall, NC 28753. Ms. Stokes, for the purpose of maintaining her client's rights to appeal, commented that her concerns were primarily based on **1. Traffic 2. Excessive Light & 3. General Noise.**

Mr. Swords provided a rebuttal that the Boones did not have legal standing, as they did not offer any expert witnesses on any of their expressed complaints. Chair Wyatt reminded Ms. Stokes that her client must provide evidence to facilitate further review on these specific issues. Further, Mr. Swords indicated that "opinion and speculation is not expert testimony", and that "Special Damages" means a diminution of property values, but Ms. Stokes did not bring forth any expert witnesses to justify any of these claims. However, Bd. Member Daniel Rice made a Motion to Approve Ms. Stokes' clients (Boone Family), and it was seconded by Sue Keener, a vote to provide the Boone Family with Legal Standing was approved 4-0 by the Board, with Attorney Swords objecting "For the Record, due to the lack of any expert testimony being provided"

The next individual to seek Legal Standing was Dr. Allison Fender, Chair Wyatt swore her in. She submitted a compilation of papers that is now referred to as Exhibit "Fender #1". Mr. Swords objected to the material being entered as evidence, which County Attorney John Noor corrected, by allowing its submission, but not yet as being accepted as "evidence". Dr. Fender reported she owns a hayfield lying adjacent to the Roam Farm property. She first, incorrectly stated her address as "176 Laurel Branch Cemetery Road", (but this specific property was found to be one of the two parcels that comprise Roam Farm, formerly Mr. David Parker's property). She later corrected her address as being 81 Laurel Branch Cemetery Road.

She noted all the surrounding farms rely on deep wells, or the properties are spring-fed for potable water supply. She indicated that in her submitted exhibit package that there was a photo of a flapping silt screen that was not being maintained by the applicant as the applicant attempts to construct her roadway system on the Roam Farm lands. She also played a short audio tape of the flapping silt fence. Dr. Fender (incorrectly) identified the Roam Farm two parcels, and all surrounding properties as "*agricultural lands*"; however, county records show all tracts in the area to be zoned "R/A" (Residential/Agricultural), which allows for the submittal of applications to be considered and approved for vacation rental units, via the issuance of a *Special Use Permit* by the Madison County Planning Board. No technical evidence or expert witnesses was provided by Dr. Fender, as noted by Attorney Swords. Dr. Fender was asked what her Doctorate (Phd?) was in, and she replied in Health Science, with a focus in Neurology. Chair Wyatt made a Motion to Accept Dr. Fender as having Legal Standing, and Ms. Sue Keener seconding the Motion. A vote was taken, with a 4-0 Vote to approve Dr. Fender's legal standing.

No other parties requested Legal Standing.

Break 7:35 PM-7:42 PM

Upon return from the brief break, Attorney Swords presented his first witness for the applicant: Mr. Shane Dickerson, a NC Licensed Real Estate Agent and member of the National Association of Realtors. Chair Wyatt then swore Mr. Dickerson in. He admitted he was not a NC Certified Real Estate Appraiser, but could offer Market Values and Comps for any given property. He stated that there should be no drop in market values to any surrounding properties as a result of this project being built. He further indicated that his work experience consisted of working with existing residential properties (i.e. homes) where concepts being considered were to convert the property into a "Short Term Rental" (i.e. STR). No objections were received from Dr. Fender or Ms. Stokes. Chair Wyatt then accepted Mr. Dickerson as a real estate expert. There were no further questions of this witness.

Attorney Swords then proceeded to provide a comprehensive presentation of the requirements of the Planning Board to consider and approve a "Special Use Permit".

Under Section 12.1.B.7.b ("a-h") of the Madison County Land Use Ordinance:

A. Transportation (Ingress and Egress):

Mr. Swords first called witness Transportation Engineer, Jeffrey Moore, (Gannon Fleming) to testify. Chair Wyatt then swore in Mr. Moore. His 20-year work experience as a Transportation Engineer includes work for the NC Dept. of Transportation (NCDOT), the City of Asheville and the military. He holds a Bachelor's Degree from Clemson

University, and is a registered Professional Engineering "P.E." in both North & South Carolina, Georgia and Florida. He has previously testified in Buncombe and Madison Counties, and the City of Asheville. Chair Wyatt admitted him (without a vote) as an Expert Witness. Mr. Moore indicated he has analyzed the present and projected traffic flow and produced a technical memorandum, labeled as "Exhibit 1".

Mr. Moore went on to explain the same memo that Dr. Allison Fender had included (in her memo exhibit package), in regard to his career time at NCDOT. He testified that he actually wrote that specific memo in 2009, and it is a commonly called a "*Condemnation Letter*" (by NCDOT), for the purpose of the State's Annual Paving Program. Howell Road, the sole roadway access into the Roam Farm Complex, was not approved to be paved, as not enough of the (six total) property owners had requested paving. Since, by State Policy, the road did not have the minimum 75% of owners desiring to seek approval of the required turn-over of Howell Road for the purpose of paving, Howell Road remains as a gravel-graded "*secondary unpaved roadway*" to this day. His 2009 Memo is known by NCDOT as a "*ROW Unavailable Letter*".

Mr. Moore went on to present his transportation analysis (using the Transportation ITE Manual Standards) to project "*Average Daily Trips*" and "*AM and PM Peak Hour Trips*" to be generated by the Roam Farm Project. Using the accepted transportation methodologies for the proposed 18 cabins, he projected a total of approximately 78 total trips a day generated by the project - as "Vacation Rental Units" only generate about 40% of what a Single Family Residence generates. He noted that the AM Peak Hour trip generation (7:00 AM-9:00 AM) would be about 15 total trips, while the PM Peak Hour trip generation (4:00 PM- 6:00 PM) would be about 13 total trips. Mr. Moore also indicated he ran the ITE Transportation Model to calculate what approximately 47 single family homes (i.e. roughly one home per acre of land) on the Roam Farm property would generate. He came up with an average daily trip traffic (ADT's) total of 953 trips for those single family units, as opposed to the 18 cabins' total daily trips equaling 78 ADT's.

(Note: Mr. Moore also indicated that in comparison an equal number of 18 single family homes would generate approximately 208 trips/day, with 16 AM Peak Hour Trips and 22 PM Peak Hour Trips).

He concluded that there is no indication of any adverse traffic impacts to be caused by the Roam Farm Proposal.

Further discussion ensued with Dr. Farmer questioning Mr. Moore about the application of potential dust control measures (i.e. use of Calcium Chloride). He stated for the record that all dust control work must first be sanctioned and approved by the NCDOT, and there is a process called "Encroachment" for carrying out any requests to perform such work.

Lastly, Mr. Moore concluded that total project traffic shall also adhere to Madison County's "Sub-Division Control Ordinance (Section 8.9)" and remain under the cap of ten (10) total trips per day per unit. (Note: The "10 Trips/Day/Unit" is only referenced in the Madison County Land Use Ordinance, (see Section 8.6.1.G - Vacation Rentals-Traffic), and is not specifically referenced in the County's Sub-Division Control Ordinance). As well, Mr. Moore noted that there should be no adverse impact to any surrounding county roadways as a result of this project.

Next, Mr. Swords presented the project's Civil Engineer, Mr. Michael Goforth (owner), and a 2008 licensed Professional Engineer (P.E.) in North Carolina, with High Country Engineering (Asheville). He is a Clemson University graduate with a BSCE Degree (Bachelor's in Civil Engineering) and possesses a Master's Degree from Clemson. He has worked in Western Carolina since 2007. Attorney Jessie Swords tendered Mr. Goforth as an Expert Witness. Chair Wyatt then swore him in, and accepted him as an Expert Witness.

Mr. Goforth testified that the project's only proposed access is via Howell Road. The internal roadways to the eighteen cabin units shall be designed to be 17' wide (with an 18 inch shoulder on each side). These internal roads shall be designed in accordance with the Madison County Sub-Division Control Ordinance standards. Roadway turnarounds shall meet NC Fire Code regulations for design and dimensions, and an Environmental Erosion Control Permit is obtained from the State already. All internal roads shall remain private, but the applicant is obtaining a new "Driveway Permit" from NCDOT.

Mr. Goforth went on to describe and address the next elements (B-H) for the required consideration by the Planning Board:

B. Refuse Collection: There shall be no large dumpsters placed on-site. The complex trash collection shall be handled by staff, with a private hauling service being employed, as needed.

C. Off-Street Parking: As stated, internal (private) roads shall be built to Madison County Road Design Standards, and there shall be two (2) parking spaces allocated for each cabin unit, as required.

D. Utilities: Pending the Madison County Environmental Health Dept. permit application review, a series of potable wells shall be sited the complex in unit clusters to each serve a small number (2 or 3) of cabin units. It was noted by Mr. Goforth that the daily potable water usage is likely to be far less than a typical single family home ("200-250 gallons/day/unit vs. the standard single family home usage of 400 gal/day"). Likewise, pending the Madison County Environmental Dept.'s review, septic/drainfield systems are being designed to serve a small cluster of cabin units. Appropriate permits have already been applied for.

E. Screening & Buffering/Exterior Lighting: There are no requirements for any buffering in the Madison County Land Use Ordinance, and none being offered by the applicant. Lighting shall not be pointed or oriented outward, and all shall remain very low key with only subtle porch lights or pathway lighting for each cabin. No spot lights.

F. Signs: No signage is being proposed by the applicant. Ms. Cahill (already sworn-in) testified that advertising is to be very specific, as to not encourage any random drive-through visitors. The address is only to be given to registered guests and an access gate will be installed.

G. Required Yards and Open Space: Mr. Goforth testified that the 52 acre cabin complex shall not become "even remotely close" to the stated maximum of 20% lot coverage.

H. General Compatibility: Mr. Swords re-iterated that the project shall be consistent with all land use considerations for the R/A ("Residential/ Agricultural) Land Use District. Roadways are to be minimal and considered as a "minor road network" (not expansive), only providing access to each cabin, with no pass-through ability. At this point there were no questions by any of the other parties of record. Mr. Swords then called Ms. Monica Hampton to testify in general about the type of facility being offered. Ms. Hampton presently runs the *Biltmore Village Inn Bed and Breakfast*, a "Four Diamond" rated facility, in Asheville. Dr. Fender asked about the type of clientele being targeted. Ms. Hampton noted the cabin rental pricing will be a bit higher so that should discourage any illegal activities. When asked if the Biltmore Village Inn facility had any history or evidence of illegal activity occurrences, she stated "No, not in her work experience." Chair Wyatt commented that he has experience in working with both VRBO and Air BnB's, and complimented both as excellent companies to work with.

Break: 9:00 PM till 9:13 PM

Note: At this point in the hearing, the audio tape ceased to record any further proceedings. All remaining Minutes are the results of hand-written notes compiled by Terrey Dolan, Planning & Zoning Director at the hearing.

Upon return from the Break, Chair Wyatt allowed Mr. Goforth to continue. He quickly reviewed the Land Use Ordinance's Sec. 8.6.1 (Vacation Rental) criteria's consistency. Each unit would be limited to 2 adults/bedroom, and reiterated there shall be two parking spaces at each cabin unit. There shall be no On-Street Parking. Complex appearance shall remain clean and orderly at all times. He also noted that the cabin complex shall remain in compliance with the County's Noise Ordinance. Mr. Goforth also noted that each cabin shall be constructed to be sprinkled (fire code compliant), and the square footage of any given cabin unit shall not exceed 1,200 sq. feet, per the Land Use Ordinance requirements. Lastly, he mentioned that the local contact person will be available at all times.

Mr. Swords summarize that this project proposal, even without the pending negotiated (additional) conditions made in concert with the Boones, is a great project for the county.

At this point in the proceedings, Chair Wyatt commented that the remaining portion of this hearing involves the General Public Comments. Terrey Dolan noted that the list signed-up to speak is approximately 10 people, but perhaps not all still wish to speak after hearing the presentations.

Chair Wyatt then made a *Motion to Continue* the meeting. Mr. Dolan checked with the Library Staff, and after some additional discussion about upcoming schedules by the parties, it was agreed that the Roam Farm hearing shall continue to be considered by the Planning Board on Thursday, March 3, 2022 at 6:30 PM, at the Marshall Library

IV. Motion to Adjourn, made at 9:35 PM, by Allan Wyatt and Seconded by _____, Vote: 4-0 to Continue

Signed: 
Terrence S. Dolan, CZO
Madison County Planning & Zoning Director

END