

**Madison County Planning Board**  
**Special Meeting Minutes (~~Draft~~) Final**  
**Date: 3/3/22**  
**Location: Marshall Public Library**

**6:30 PM: Madison County Planning Board Special "Continuance" of the February 16, 2022 Meeting:** Called To Order by Chair Jered Silver  
**Members in Attendance:** Jered Silver (Chair), Allan Wyatt (Vice Chair), Sue Keener, Mary Rice, Josh Norton, Daniel Rice  
**Absent:** Jackie Ball (un-excused), Kevin Morton (un-excused)

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

I.

**Welcome and Overview:**

Terrence Dolan, Madison County Director of Planning & Zoning, welcomed the crowd to this "Continuance" Hearing for the Roam Farm Vacation Rental Complex, from the February 16<sup>th</sup> Initial hearing. This hearing is considered "Special" Meeting. He then requested some clarifications from Dr. Allison Fender who had rec'd "Legal Standing" at the Feb. 16<sup>th</sup> hearing. He asked Dr. Fender (for the record) if she had a PhD. or an M.D., and from what university did she receive her advance degree from. Dr. Fender replied she actually was awarded a Doctorate in Science (DSc.) in Health Science (with a Specialty in Neurology), from the University of Maryland, Baltimore County (UMBC).

A Motion to Approve the February 16th Planning Board Meeting Minutes was then made by Daniel Rice, seconded by Josh Norton, with a Vote of 6-0 to Approve.

Attorney John Noor was then introduced. Chair Jered Silver again recused himself from any participation in the upcoming agenda for the evening. He then turned the meeting over to Vice Chair Allan Wyatt and departed the building.

John Noor then polled the Board if anyone had any Ex Parte' Communications since the February 16<sup>th</sup> initial hearing. Acting Chair Allan Wyatt reported that a Mr. Hollifield had called him to discuss Mr. Wyatt's recently announced candidacy for Madison County Commissioner, and to inquire how he was going to vote on this pending Planning Board item. Mr. Wyatt reported that he immediately instructed Mr. Hollifield that he could not legally discuss the Roam Farm hearing with him. He further reported that Mr. Hollifield got "somewhat belligerent with him" on the phone when he refused to discuss the hearing, and Mr. Wyatt told him the call was over.

John Noor asked if that phone call had swayed his thinking on this pending hearing in any manner, and Allan Wyatt said it had not. No other reported Ex Parte' Communications by the Board.

John Noor then asked Board Member Mary Rice (since she could not attend the Feb. 16<sup>th</sup> initial hearing for health issues) if she now felt informed enough and comfortable with participating and voting on the Roam Farm Vacation Rental matter. She indicated that Terrey Dolan had provided her with entire audio tape for the Feb. 16<sup>th</sup> hearing; she listened to it in its entirety, and she did feel comfortable with fully participating in deciding the matter. No other legal representatives in attendance had any further issues with Ms. Rice participating in the process.

Terrey Dolan made note of a few additional exhibits provided for the Planning Board's benefit: **A. Boone/Roam Farm Agreement Draft Conditions**, **B.** An aerial exhibit showing the various Boone and Fender properties in relation to the Roam Farm +/- 52 acre land holdings, and **C.** A side by side table document provided by the applicant addressing the Planning Board's (Land Use Ordinance) mandated "*a through h*" issues that are required to be addressed in order for the Board to be able to issue the needed "Special Use Permit" for the vacation cabin rental complex being proposed.

II. Prior to additional presentation by the applicant, Chair Wyatt said he wished to make a few comments: He noted that this Planning Board is a Voluntary Board and each of them was raised in Madison County. He stated that this work is difficult and none of them are paid for their time and dedication. He also stated that Ms. Sue Keener has been an active member for nearly 20 years and he has been on the Board for 18 years. He concluded that despite what some online commenters say, this is not an "incompetent Board" and they take pride in their work, having participated in writing both the Madison County Comp Plan and the Land Use Ordinance. He concluded that he wanted that said *for the record*.

III. Jessie Swords, Attorney for the Roam Farm applicant, then began his presentation's (conclusion comments), as they had been ceased at the end of the Feb. 16<sup>th</sup> initial hearing. He noted that:

- Generally speaking, this requested land use is compatible with other lands in the area, and with the allowed land uses for the Residential/Agricultural ("R/A") Land Use District. He noted that even without the agreed-upon conditions reached in settlement with the Boone Family members, this project is entitled to receiving a Special Use Permit (SUP).
- Mr. Swords concluded that he and his client recognize that if, at any time, the applicant is found to not be in compliance with the conditions of the S.U.P., the project could potentially be shut down, per Section 8.6.1 of the County's Land Use Ordinance (Vacation Rentals).

IV. John Noor quickly reviewed that the "Case Exhibits", so far rec'd included for the record:

- **Exhibit #1: Gannett Transportation Memorandum-Jeff Moore**
- **Exhibit #2: The Roam Farm/Boone Family drafted (agreed upon) Conditions for Approval**
- **"Fender 1", which is Exhibit #3 (accepted by the Board, but not admitted into Evidence)**
- **Exhibit #4: GIS color Aerial Map of Roam Farm and surrounding properties, produced by Terrey Dolan**

V. Allan Wyatt then had some questions for the applicant's consultants. Mr. Wyatt then asked Jeff Moore (Gannett Transportation) to clarify the existing conditions of Howell Road. Mr. Moore stated it is considered by NCDOT as a "*secondary roadway*", and is considered to have a +/- 50' wide ROW, acting as a "transportation easement". He also noted that Howell Road is the legal access to the Roam Farm property. He further confirmed Howell Road is used daily for general public traffic.

Ms. Stokes (representing the Boone Family) stated that her clients presently have no issues with the project as long as the drafted Agreement Conditions (Exhibit #2: Boones Exhibit One) are made part of the SUP Approval.

Dr. Allison Fender was then recognized (still under oath from the Feb 16<sup>th</sup> Initial Hearing). She stated that the (drafted) Conditions Agreement reached between the Boones and the Applicant was only with *some* Boone Family members, but not with her. She went on that she had water table concerns as five adjacent homes have spring-fed potable well systems. Mr. Swords noted that all wells and septic systems must first be approved by the Madison County Environmental Health Dept.

Dr. Fender then called Ronnie Massey to ask him some questions.

Chair Wyatt then swore him in. Mr. Swords reminded the Board that only "competent legal evidence may be considered by the Board". John Noor further explained that there are personal observations which are allowed ("*I heard... I saw,...etc.*"), and then there is "Opinion Testimony" only allowed and provided by credible experts (measured by credentials, training and experience).

Dr. Fender then attempted to ask Mr. Massey a series of "nuisance-caused questions" to which Mr. Swords objected as "speculation", and the Chair sustained. Mr. Massey noted his family has a vintage barn that is about 150' from Howell Road, across Silver Mill Road.

Dr. Fender then called on Ms. Sandra Melton, (residing at 555 Will Green Road, approximately two miles away from Howell Road). Ms. Melton testified about fire potential in the general area and invasive pampas grass in the Petersburg Area. Chair Wyatt asked about the relevancy of her testimony. She attempted to hand out a brochure from the U.S. Forestry Service, and it was not accepted by the Board. Mr. Swords asked Ms. Melton if she was aware of any residential fire regulations for pampas grass control (in Madison County). She indicated she did not, only that the grass is quite invasive. Mr. Swords objected to the overall testimony, and the Chair sustained the Objection. Mr. Wyatt then thanked Ms. Melton for her testimony, noting her (and his) concerns over cabin fire rings and the nearby access to water accessibility.

Dr. Fender then called upon nearby resident Michael Boone. Chair Wyatt swore him in. Mr. Boone has had an area landscape business, performing exterior maintenance and tree care for +/- 30 years. He stated he is not a Certified Arborist. Chair Wyatt then accepted him as an Expert Witness, based on his years of experience with landscaping, and his training with regard to general forestry knowledge. No objection by Mr. Swords or others. Mr. Boone noted that in times of high winds no camp fires should ever be permitted on the Roam Farm property.

Dr. Fender then called upon Ms. Gloria Sundquist (residing at 1407 Paint Rock Road, Hot Springs, NC, 28743). Ms. Sundquist discussed the adjoining property to hers, known as "Paint Rock Farm" ("about a half mile away"). Her issues with Paint Rock Farm targeted both noise and traffic being generated by the Glamping Facility. Mr. Swords then objected to the relevancy of her testimony, as it was not a comparable facility, to which Chair Wyatt sustained. John Noor then noted for the benefit of Dr. Fender there is a distinction to be made between presenting "evidence", and the receipt of any general public comments.

**Break taken at 7:40 PM and return at 7:50 PM**

Upon return, Dr. Fender called Monica Roberts. Chair Wyatt swore her in. Ms. Roberts is a member of the nearby Laurel Branch Baptist Church. Her primary concerns deal with potential sex offenders renting cabins and possibly conducting "predatory activity" on children at the church, especially while the children are out playing basketball on church property. She desired to make a nexus with cabin renters being strangers and possibly being un-reported sex

predators; therefore, the community may have associated and elevated risks being close to the church and its children. Mr. Swords objected and the Chair sustained his objection.

Next Dr. Fender then provided a singled handout to John Noor, **(to be called Fender Exhibit #2)**. Dr. Fender maintained that Howell Road was not safe for two-way traffic and she had provided some photos to demonstrate the narrowness of the ROW. Mr. Swords objected that she is not an expert in Transportation, and that Mr. Moore had already testified that Howell Road safely handles two-way traffic daily. John Noor also confirmed she is not an Expert in roadways. Chair Wyatt sustained Mr. Sword's objection. Dr. Fender then provided photos to attempt to prove that Calcium Chloride applied on gravel roads will damage her hay crop. Again Mr. Swords objected and the Chair sustained his objection. The Chair further stated to Dr. Fender he has first-hand knowledge that many acres of hay are produced yearly in Madison County along gravel roads, and he is not aware of any evidence of damage from the dust or calcium chloride being used in close proximity to the hay crops. Dr. Fender then provided photos of pigs and these exhibits are referred to as "Fender Exhibit 3". Mr. Swords objected to the relevancy of the pig photographs, and the Chair sustained his objection. At this point, John Noor asked Dr. Fender to please stick to relevant issues. She then again provided only a single copy to Mr. Noor of a "draft set of conditions" for the Board to consider if they were to approve the project, **(Fender Exhibit #4), but this exhibit was never voted on by the Board or otherwise admitted into the Record.** (Note: Dr. Fender did not provide the full Board, the applicant's attorney, or the Madison County Planning & Zoning Director with any copies of her exhibits she was presenting throughout the evening).

Dr. Fender then closed her testimony. (Note: @ 1:38:35 of the Hearing's Audio Tape)

VI. Applicant Joanna Cahill (still under oath from the Feb 16<sup>th</sup> Initial Hearing) then began her testimony. Her attorney, Mr. Jessie Swords asked her how many times she had attempted to reach out to Dr. Fender. Ms. Cahill stated there were two "Open Houses" that Dr. Fender was invited to but did not attend, and at least two other times.

Ms. Cahill further reported there is no pampas grass on the Roam Farm property, as she was aware of the issues with it and they take it quite seriously. General comments were made about "expected and required guest behavior". She also noted that the Boones' cows had gotten loose, and as a "good neighbor" worked with the Boones to round the cows up and return them to a secured pasture. General Comments made by Ms. Cahill:

- The higher (\$300/nightly rate) to rent her cabin units should help greatly in discouraging any drug abusers or sex predators from renting at Roam Farm.
- Quiet Hours are to be strictly enforced. Any offenders shall be asked to leave with no refunds given.
- There shall be cameras to monitor public areas.
- She will eventually rent cabin units through Airbnb and VRBO, but those companies have been proven to be more difficult to evict guests, if needed.
- Minimum two-night stay on Week Days (Monday –Thursday), and a three-night stay minimum on Weekends (Friday-Sunday)
- All cabins shall be built to Code, with fire suppression sprinklers
- Use of Sound Proofing in the Cabins
- Internal Roads shall only be gravel (not paved) to assist in keeping speeds down (Max 5 mph)

- Welcome Center shall be a “Phase Two” project, as money is tight for the time being.
- Brief explanation of geodesic dome camping, as she presently has at her existing “Asheville Glamping” facility. That is not the same as her proposed wood framed cabins at Roam Farm.
- No motorcycles or RV’s shall be permitted.
- No Tent Camping allowed.
- No cabin unit shall exceed 1,200 sq. feet in size, unless allowed by a future Land Use Ordinance Revision.

Chair Wyatt then asked Ms. Cahill about her willingness to construct a new heavy woven wire fence along her property’s interface with the adjacent Laurel Branch Cemetery (@ 84 Laurel Branch Cemetery Road property (PIN# **99726586803**). This re-enforced wire fencing would be comprised of heavy panels known as “Pig Fencing”. This would be a **new Condition (#7)**, in addition the six conditions already accepted in the Boones’/Roam Farm Conditions Agreement. Ms. Cahill then agreed to fence her property’s +/- 330 L.F. interface with the Cemetery’s boundary. (**Note:** this linear measurement is approximately 330 linear feet, per a Madison County GIS Aerial determination by the Planning & Zoning Dept).

Mr. Jeff Moore (Transportation Consultant) was again asked about Howell Road. He further emphasized that Howell Road had never been declared a nuisance or hazard by NCDOT for safety reasons. He noted that any application of the use of calcium chloride (“never use sodium chloride on gravel roads”) should be done by professionals, and always in consultation with the NCDOT.

County Attorney John Noor then asked the Chair to poll the Board Members to close to the “Evidentiary” portion of the hearing. Ms. Stokes once asked that her clients’ Conditions Agreement made with Roam Farm be part of any final permit issued by the Board. Dr. Fender then asked for a reduction of the number of permitted cabin units as “it was too much for the community to take!” Chair Wyatt hearing no opposition from Board Members officially closed the Evidentiary portion of the Hearing (9:00 PM)...

**Break taken from 9:05 PM-9:15 PM**

Upon return from break, John Noor added that the discussed additional conditions for the *Special Use Permit (SUP)* go above and beyond the conditions needed to be considered by the Board.

- VII.** The hearing then moved to the General Public Comment Phase. Mr. Noor again reminded the Board that no commentary from the general public may be used to formulate a Board Member’s opinion in ruling on the issuance of the SUP; that the evidence that had been already presented are the only factors the Board is allowed to rule on.

**General Public Comments (Max. 3 minutes allocated per speaker):**

- **Cecelia Roberts Ward:** Stated the project is not compatible with the surrounding community, thus cannot be found to be “in harmony”. Would entice undesirable transients to come into the Laurel Branch Community.
- **Alice Caldwell Elkins:** Concurred with Ms. Ward’s comments. And noted that she did not wish for Madison County to become another Buncombe County.

Used a quote: "Keep Madison County as Nice a Place to Live as it is a Place to Visit".

- **Juanita Boone:** Stated "she is the oldest person in the room", and thanked the Board for its Service. Had affidavits from other elderly residents to present to the Board, but understood that she was instructed they could not be used as evidence for the case.
- **Gloria Sundquist:** Stated that approved businesses in Madison County never stay in compliance with what they are approved for. Noted there is no way to even find out if music festivals are required to obtain permits.
- **Ronnie Massey:** He has concerns for the surrounding community's safety due to cabin renters' negligence. Stated that there is a heightened concern for safety, and there is a need for monitoring the guests.
- **Monica Roberts:** Grew up in community and had been an educator for 27 years. Had general criticisms with Short Term Rentals.
- **Tony Ponder:** Thanked the Board for its Service. Questioned the business model as being profitable, and expressed fears that these units could become full year-long rentals, with ease. Criticized National and State Leaders.
- **Michael Boone:** Stated there is no guarantee that any money from these renters will be spent in Madison County. Fears of "undesirables" (sex offenders, pedophiles, convicted rapists) infiltrating the community. Concerns for the church congregation's children playing outside at the church after dark, which is a tradition. (Note: @ 2:47:00 of the Audio Tape)

**(9:40 PM)** John Noor reviewed (for the Board's benefit) the terms of how a Board must measure evidence provided in a Quasi-Judicial Hearing. He reminded them of the three measures as:

1. Competent Evidence
2. Material Evidence (must be relevant)
3. Substantial Evidence.

He noted the burden is fully on the Applicant to prove their case, in meeting each of the Madison County's Land Use Ordinance's Standards for the issuance of the SUP. He stated that opinions from lay witnesses shall not be used in weighing the evidence. An exchange between Chair Wyatt and Mr. Noor resulted in taking each Special Use Permit Standard "***a through h***" individually, with a separate vote:

- a. **Ingress and Egress/Transportation:** No comments from Board Members. Mary Rice made a ***Motion to Approve*** that the applicant had met the Standard. Daniel Rice 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**
- b. **Refuse (storage and disposal):** No comments from the Board. Josh Norton made a ***Motion to Approve*** that the applicant had met the Standard. Sue Keener 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**
- c. **Off-Street Parking:** No comments from the Board. Mary Rice made a ***Motion to Approve*** that the applicant had met the Standard. Sue Keener 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve.**
- d. **Utilities:** No comments from Board Members. Daniel Rice made a ***Motion to Approve*** that the applicant had met the Standard. Josh Norton 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**
- e. **Screening and Buffering:** Josh Norton made a ***Motion to Approve*** that the applicant had met the Standard. Daniel Rice 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**

- f. **Signage:** No comments from Board Members. Sue Keener made a **Motion to Approve** that the applicant had met the Standard. Daniel Rice 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**
- g. **Required Yard and Open Space:** No comments from Board Members. Daniel Rice made a **Motion to Approve** that the applicant had met the Standard. Mary Rice 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**
- h. **General Compatibility (with adjacent and other properties in the area):** Attorney John Noor reviewed this Standard with the Board. No comments from Board Members. Mary Rice made a **Motion to Approve** that the applicant had met the Standard. Daniel Rice 2<sup>nd</sup> the Motion, **Vote: 5-0 to Approve the Motion.**

Furthermore, John Noor, opined that in his review of the Land Use Ordinance requirements of **Section 8.6 (Vacation Rentals)** he had concluded that the Board must also to take a **Vote on Consistency** with:

**Section 8.6.1.g: (Road Design and Traffic needs to be consistent with the County's Sub-Division Control Ordinance).** Sue Keener made a **Motion to Approve Consistency**, Seconded by Daniel Rice. **Vote 5-0 to Approve Consistency** for road design and traffic with the Sub-Division Control Ordinance language.

**Section 8.6.1.h: (On-site Parking Spaces):** No discussion by the Board. Mary Rice made a **Motion to Approve Consistency**, Seconded by Daniel Rice. **Vote 5-0 to Approve Consistency.**

John Noor reminded the Board if the Applicant has demonstrated meeting all Standards, (under North Carolina laws) the Board must therefore issue the requested Special Use Permit.

Having met all requirements, provisions and standards of Section 8.6 (Vacation Rentals), the Planning Board then needed to vote on the issuance of the Special Use Permit for the Roam Farm Vacation Rental Complex. John Noor first called for a vote by the Board for a **Motion to Approve** that all standards were met in consideration of **Section 8.6 (Vacation Rentals)**. **Motion to Approve** was made by Allan Wyatt, with a Second made by Mary Rice.

**Vote was 5-0 to Approve Consistency of all Standards within Section 8.6.** being found to be met.

Chair Wyatt then requested that John Noor prepare the **Findings of Fact** and bring back a drafted **Final Order** for the Board to consider and approve at next months' Planning Board Meeting. Further conversation was held with a review of additional items that would be inserted into the Final Order:

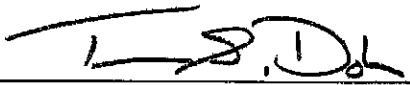
- **Per Ms. Cahill, only very small, intimate weddings (or elopements) may take place, with no amplified music on the premises.**
- **The Local Contact lives only six minutes away, and shall be available on the property during daytime hours, and be able to be contacted "24/7". All surrounding neighbors shall be provided with contact information.**
- **No cabin unit shall exceed 1,200 sq. feet in size.**

Chair Wyatt, speaking directly to Ms. Cahill, asked her to be a good neighbor and do not ever attempt to change their heritage.

The Chair then called for a Motion. Daniel Rice made a **Motion to Approve the Special Use Permit with Conditions, (as previously expressed)**. Josh Norton Seconded the Motion. **Vote: 5-0 to Approve the Special Use Permit. (10:20 PM, at 3:25:40 on the Audio Tape).**

Having no further business to discuss a **Motion to Adjorn** was made by Josh Norton, seconded by Mary Rice, ... **5-0 Vote to Adjorn** the Hearing. (10:23 PM).

Signed: \_\_\_\_\_

  
Terrence S. Dolan, CZO  
Madison County Planning & Zoning