

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
December 2, 2013 – SPECIAL MEETING/WORKSHOP

The Board of Commissioners of Transylvania County met in a special meeting/workshop on Monday, December 2, 2013 at 6:00 p.m. in the Rogow Room at the Transylvania County Library.

Commissioners present were Vice-Chairman Larry Chapman, Jason Chappell, Chairman Mike Hawkins, Daryle Hogsed and Page Lemel. Also present were County Manager Artie Wilson, County Attorney Tony Dalton, and Clerk to the Board Trisha Hogan.

Media: *The Daily Waterfall* – Kevin Brian Smith
The Transylvania Times – Eric Crews
 People for Clean Mountains – Michael Trufant (video)

There were approximately 75 people in the audience.

WELCOME AND CALL TO ORDER

Chairman Mike Hawkins presiding called the meeting to order at 7:04 p.m.

Chairman Hawkins explained the purpose of the workshop was to discuss alternatives to a High Impact Land Uses Ordinance, an issue that was raised when Commissioners approved a moratorium a few months ago on a specific industry. He explained that Commissioners intend to hold a series of workshops over the next year on various topics. The idea for these workshops came out of their recent retreat and their desire to talk in depth about different topics. The workshops will be informal and Commissioners will have the ability to speak and ask questions freely.

He introduced Commissioners and staff in attendance and thanked the members of the audience for participating in their County government.

DISCUSSION ON HOW TO ADDRESS TERMS OF MORATORIUM

The Manager explained that the moratorium on biomass facilities passed by Commissioners a few months ago states that the moratorium was necessary to provide time for the development, consideration, and implementation of potential County regulations to address the impacts of these facilities on the County. Staff has explored alternatives and will present them to Commissioners during the meeting.

ALTERNATIVES TO ORIGINAL PROPOSED HIGH IMPACT LAND USES ORDINANCE

Planning and Economic Development Director Mark Burrows made a presentation and provided Commissioners with options to address the terms of the moratorium.

Background

Commissioners adopted the Biomass Facility Using Municipal Solid Waste Moratorium on August 26, 2013. The primary objectives of the moratorium were to prohibit a very specific manufacturing business from being established in Transylvania County and to provide Commissioners and staff with time to develop alternative strategies by July 31, 2014. Staff was instructed to report back to Commissioners in November 2013.

In September and October, staff contacted County Commissioners, Planning Board members, Economic Development Advisory Board members, and business owners for their input. Almost an equal number of responders wanted no new ordinance or policy; however, should an ordinance or policy be considered, responders believed it should be simple, acknowledge that some high impact uses are desirable and needed for future economic growth and employment, support existing businesses, and be business friendly.

As a result, staff developed alternatives for County Commissioners to consider, along with the pros and cons and a timeline for implementing each.

The options for consideration are:

1. Do nothing – let the Biomass Moratorium expire
2. Modify and Extend the Existing *Pisgah Forest Community Zoning Ordinance*
3. Modify the existing draft *High Impact Land Uses Ordinance*
4. Consider County-Wide Zoning

Option 1 – Allow the current Biomass Facility Using Municipal Solid Waste Moratorium to Expire July 31, 2014

Pros

- Status quo is not changed
- Requires no additional staff time and effort

Cons

- Does not address the bigger issue regarding high impact land uses and other land concerns
- Does not protect land owners/community from high impact land uses
- Fails to proactively enhance economic development

Implementation

- None

Option 2 – Modify the Existing Pisgah Forest Community Zoning Ordinance to include the major corridors (US 276, US 64, NC 280) and other roads, as determined

Pros

- Extension of an existing ordinance
- Buffers higher impact land use development along corridors with a set distance (i.e., 500' or 1000')
- Prohibits certain uses
- Provides specific setbacks and separation distances
- Supports existing property owners/community concerns
- Minimizes regulatory authority outside the corridors

Cons

- Public perception may be negative by extending zoning beyond the Pisgah Forest area
- Does not address areas outside designated corridors
- May require more staff support over long-term

Implementation

- 3-6 months and fits within timeframe of addressing moratorium

- Staff review and updates, County Commissioner reviews and updates, stakeholder approval, public meetings and public hearing

Option 3 – Modify the existing draft High Impact Land Uses Ordinance

Pros

- Avoids the use of “zoning”
- Regulates high impact/polluting uses based on separation distances, not zones or districts
- Other NC counties have used similar regulations with limited to no negative effect on economic development
- Legal challenges to similar ordinance have been upheld
- Template for ordinance exists, minimizing staff time

Cons

- Patch work solution to broader land use issues/concerns
- Perceived as “business unfriendly”

Implementation

- 3-6 months
- Staff review and updates, County Commissioner reviews and updates, stakeholder approval, public meetings and public hearing

Option 4-Consider County-wide Zoning (Open use or other)

Pros

- Proactively address current and future land-use concerns on county-wide basis
- Regulates new high impact land uses through separation distances and setbacks based on “zones” or districts
- Supports long-term economic growth by protecting property investment (agriculture, residential, commercial and manufacturing)
- Provides opportunities for county-wide planning
- Facilitates water and sewer extensions

Cons

- Community-wide support may be lacking
- Public concern about “zoning” and property rights
- Need to develop Land Use Maps
- Staff time could be significant

Implementation

- 1-1.5 years (however, should look at in a very comprehensive way for the next 10-20 years)
- Extensive public engagement

NEXT STEPS

Commissioners participated in a lengthy discussion and asked several questions. This is a summary of their discussion:

1. Why was the comment made that Option 3 is less business friendly than option 2?

Mr. Burrows replied that depending on how it is structured, Option 3 does not define a zone or a district, but rather setbacks for different types of uses. This is much more onerous and not as business friendly

2. How does Option 2 address high impact businesses?

Working with the community and other groups, staff would begin trying to define those high impact uses and decide if they should be excluded from the corridor mixed use or allowed upon certain conditions. Certain types of businesses will be allowed, but they will be allowed to operate only in a manner that is more conducive to the community. Option 2 essentially establishes a high impact land uses ordinance for a particular corridor.

3. What is a PUD?

A PUD is an acronym for Planned Unit Development. These are discussed in the Pisgah Forest Community Zoning Ordinance. If a development is fairly large, the developer would negotiate with the Planning Board and staff on how it is going to be developed and how it fits onto a piece of property. PUD's are defined as being over 35,000 sq. ft.

4. The subject of sawmills was mentioned in more than one option. One option describes sawmills as an operation employing 10 or more full time employees; another option describes it as having 3. There should be some consistency.

These are defined in two very different ordinances; however, staff would have changed the definition to be 10 or more full time employees in both cases.

5. How much land would a property owner have left after complying with all the buffers, setbacks, and other land use requirements?

That is certainly something that will need to be addressed. There are concerns with how to site facilities because there are not many large acre lots in the County. One of the goals in the process is to be business friendly.

6. Referring to the moratorium, there is no data to support the buffer distances. There should be a reason to support buffers for a particular high impact land use that may have a negative consequence on a community. How does the County define those buffers and give them meaning?

It is important to provide rationale for the buffer distances. There are already other ordinances in effect that cover some issues. For environmental issues, counties rely on the State. Beyond that though, citizens want the County to ensure they are protected. The challenge will be determining the appropriate amount of buffers or setbacks that makes sense for Transylvania County.

7. Several types of industries/activities are listed in the draft as being prohibited. More than half of the County is already zoned or protected either by being State or federal lands, within City or Town limits, within gated communities having covenants adopted by Home Owners Associations, located in the floodplain, etc. There appears to be enough regulated areas in the County.

Mr. Burrows agreed the list of prohibited industries/activities may appear extensive, but in his experience as Planning Director someone will come along with something that was not included that will be of

concern to a county. He suggested the possibility of a “catchall” that allows for further review by the Planning Board/Board of Adjustment and the Board of Commissioners.

In terms of existing zoning in the County, the statement is absolutely correct. Approximately 54% of the County is either in federal or State holding. Another 5% is in the flood plain and approximately 20% is zoned residential with restricted covenants that have been adopted by Home Owners Associations. There is also zoning within the incorporated jurisdictions. In order to craft something that fits Transylvania County, there will be a need to hold community meetings and seek input from citizens. However, there may be businesses that Commissioners do not want here because they do not fit with Transylvania County. The goal would be to allow businesses to come into Transylvania County that will be beneficial to the community and tax base and provide an opportunity for people to work, but all in a way that is consistent with what the people of this County want to see.

8. There is reference to a Zoning Administrator. Please explain the process an entity would go through when making application. The process for a High Impact Land Uses Ordinance is clear because there is a Board of Adjustment, with the appeal level being the Board of Commissioners.

A Zoning Administrator would handle the administrative duties. The title would be different depending on the type of regulations in place. The process would include staff working with a business owner to navigate through the regulatory process in a business friendly manner, whether it is zoning or an ordinance. Staff does that now with existing ordinances. Variances may be granted; however, if too many variances are issued over a period of time, this may be an indication that the ordinance should be rewritten because an area is no longer valid or has changed significantly.

9. With regard to a High Impact Land Uses Ordinance, what is the potential burden to existing businesses in the community who are nonconforming, should Commissioners adopt such an ordinance, and then that business tries to expand. The ordinance allows nonconforming businesses to expand two times.

Mr. Burrows confirmed that nonconforming businesses could expand two times to a certain size which is a percentage of their existing area. This is an area staff needs to continue studying. This was included as a way to address being business friendly to existing businesses.

10. There are concerns with some of the initial baselines that were established. For example, a con under Option 1 is that it fails to protect economic development. That is a staff opinion; not a fact. Both sides of this issue can be argued. There is also concern about the County having control over how much a business expands because this does not help economic development. With regards to the comment that there is no negative economic development impact on communities where High Impact Land Uses ordinances have been enacted, is there any hard data to confirm this?

No, there is no hard data.

11. Has performance-based zoning been considered? In lieu of setbacks, separation distance, etc., there would be certain expectations from the business owner in terms of pollution mitigation, noise mitigation, traffic, etc. The County would not identify how these items are to be achieved, but only monitor and verify that they are compliant.

The County could not go above and beyond what the State requires as far as environmental impacts. This possibility can be explored for other requirements.

12. Does the County have the ability to vote against having a particular business come here?

Commissioners did that with the biomass facility. The Pisgah Forest Zoning Ordinance prohibits certain types of businesses within that zoning district, but does not affect the County as a whole.

13. Hypothetically speaking, should Commissioners decide to do nothing, could small area community planning still occur like in Pisgah Forest?

Yes. This can occur if there are 640 contiguous acres, 10 property owners, and other factors. Citizens can come to the Board of Commissioners and appeal to them for zoning in their community as long as certain criteria are met.

14. What are the negative impacts of spot zoning on local government?

As Planning Director in this County Mr. Burrows has not had a lot of dealing with zoning issues. Spot zoning itself is illegal. There can be zoning in communities and it not be considered spot zoning. These zoning districts would be defined as corridor mixed use or open use zoning. It might be challenging for the County to enforce zoning in multiple zoning districts.

15. Can the County establish zoning guidelines whereby each community, should they decide they wanted zoning, would have the same zoning regulations?

Yes, for the ease of staff time and enforcement, or for consistency and cost effectiveness, Commissioners can establish these guidelines. There still must be 10 property owners and at least 640 acres in order to establish a boundary. However, the question remains if the County would be meeting the needs of the citizens in this instance.

16. Once zoning like this exists, is it easy for contiguous property owners to be included in the zoning boundary?

Yes. The minimum zoning requirements have been met.

17. Going back to the purpose of the moratorium, this would not necessarily prevent a problem occurring from a patchwork of self-desired land use planning?

Correct. An unwanted business could be built right outside the zoning boundary. Although much of the County is already under some form of regulation, as mentioned earlier, there are still enough areas outside of this area that it makes sense to look at the process in a more holistic manner.

18. What is the Planning and Economic Development Director's definition of land use planning?

Land use planning is when a community collectively determines how it wants to see land identified in its current use and how they want to see it developed in the future for that community. It must be defined by the community and adopted by the local jurisdiction. This is the importance of having a comprehensive plan and a land use map that identifies where things are spatially to other areas like floodplains, national forests, existing residential areas, etc.

19. Using this definition, which option is considered land use planning – the Pisgah Forest Zoning Ordinance or the High Impact Land Uses Ordinance?

The Pisgah Forest Zoning Ordinance would be considered land use planning. The High Impact Land Uses Ordinance deals with separation and identifying things not wanted or of concern.

20. Commissioners urged one another to not lose sight of personal property rights during these discussions or this process and whatever is considered should have the least negative impact to the citizens and on existing businesses. The challenge will be to address non-desirable businesses and make non-desirable business more desirable with certain restrictions placed upon them.

BREAK

There was a short break and Commissioners reconvened at approximately 8:00 p.m. for iPad training.

iPAD TRAINING

Information Technology Dean Landreth and the Clerk distributed new iPads to Commissioners and conducted a brief training on how to use them and the new paperless agenda system.

ADJOURNMENT

There being no further business to come before the Board, **Commissioners adjourned the meeting.**

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan, Clerk to the Board