

JACKSON COUNTY PLANNING BOARD

MINUTES

Date: May 13, 2024								
Time Begin: 6:06 p.m.								
Time End: 7:10 p.m.								
Location: Department on Aging, Heritage Room								
Members	Present	Absent		Present	Absent		Present	Absent
Emily Moss		X	Nathan Shepherd	X		Elmer Rhodie Humbert	X	
Brian Barwatt		X	Ollin Dunford	X		<i>Vacant</i>		
Adam Holt		X	Joyce Cooper	X		<i>Vacant</i>		
Ken Brown	X		Beverly Crespo	X				

Staff Present:

Anna Harkins- Planner I
 Allison Kelley- Administrative Assistant III

Call to Order and Quorum Check

Chairman Nathan Shepherd called the meeting to order at 6:06 p.m. and a quorum was present.

Approval of the Agenda

Ken Brown made a motion to approve the agenda as written. Elmer Rhodie Humbert seconded the motion, and it carried unanimously.

Approval of the Minutes

Ollin Dunford made a motion to approve April 11, 2024 minutes. Joyce Cooper seconded the motion, and it carried unanimously.

Public Comment

- Ken Brown: Mr. Brown stated that this past Thursday he went to Macon County Planning Board and asked them to table an effort by the Board of Commissioners to rescind their floodplain ordinance, which will become an ecological disaster but they did table it. In addition, he stated one of the Commissioner members bought a bunch of land in the floodplain, and if they fall in suit to Swain County, where they rescinded their erosion control board sometime last year. He stated there were about 25 speakers including himself at the Commissioner meeting and the environmental community spoke out against it and they tabled it so that they could absorb some of the scientific reasoning behind not doing any with it. There are big scientific reasons not to along with ecological reasons and cultural reasons. Mr. Brown stated there is a sort of a move around us and some of the more conservative candidates to I guess do away with ordinances that protect our land.
 Ms. Crespo inquired if FEMA regulations would supersede that. Mr. Brown stated absolutely not.

Old Business

a) **General Ordinance Discussion**

Ms. Harkins stated this was in regards to the last meeting, Ms. Crespo mentioned adding old business to the agenda and this is if there was anything that we wanted to discuss from the previous meeting about the general ordinance.

Ms. Crespo stated she was referring to and I do not think we should drop the five items that we itemized that we simply are going to address.

Mr. Shepherd stated his understanding on what has been kind of guiding us through this is we have gone through a whole series of things we thought were important, and I think it was 11 things or something. However, he stated I think we have still been in that process as we had Tony Elders come and talk to us about floodplains, erosion control and dilapidated buildings, and then Anna Harkins spoke to us about historic preservation. Mr. Shepherd stated in sake of kind of keeping our eye on the goal, we need to continue to focus on those items and I think we have been of those 11 items. In addition, he stated we have learned about five of those items, and we have not come up with actual policy at this point.

Ms. Crespo made a motion that we go back, and we list those five items and we document them tonight, and then at the next meeting, we handle item one and maybe item two if we can. Mr. Brown seconded that motion, and inquired if those five points that we picked out were not documented in the last meeting and if so could we not make the motion to plan to address those one piece at a time in future meetings as we are going forward. Ms. Harkins stated she would double check with Mr. Poston on that. Ms. Crespo stated she would amend her motion because she did not remember the order of the five issues.

Ms. Crespo stated she knows erosion floodplain practices was one of the five points. Mr. Shepherd stated Tony Elders came and talked to us about that. Ms. Crespo stated but we did not come up with any additional plans to address that.

Mr. Shepherd stated his understanding was that we are maxed out in terms of what we can actually enforce, for example we not only have a floodplain ordinance, but under federal regulation we can have up to a two feet water board and we have that exact amount. He stated there is no room to increase our floodplain in Jackson County unless we went to a state level because it is set by FEMA, and then if we wanted to appeal to the North Carolina Supreme Court or however that works.

Ms. Crespo read from Chapter 160D "any local government may enact and enforce floodplain regulation or flood damage prevention regulations" and stated that is what we need to address. Mr. Shepherd stated we have a County full of that.

Mr. Brown stated I think what we need to do is there is a lot about that ordinance that I learned myself personally from my experience with water and with conservation issues, that we should address that in a way that is more methodological. In addition, he stated I think the questions that come up there are how that is enforced, to what degree or to what extent we emphasize that and what parts of that ordinance do we need to emphasize more. He stated he had been looking at all this over the years and it is a tremendous volume of material to try to understand. In addition, he stated he did not think any of us really understand how the building code enforcement people are trying to accommodate the language of that ordinance for enforcement and he thinks it is important and it is not getting enforced the way it should. Ms. Crespo stated absolutely and they determined at the last meeting it is because we need to address that for code enforcement. Mr. Brown stated he believed they need to take each one of those issues and pick up one at a time in a future meeting.

Ms. Harkins inquired if they are saying they would want to discuss floodplain again next month for enforcement purposes. Ms. Crespo stated yes that is number one, and number two

on the list was manufactured housing. Mr. Shepherd stated Tony Elders came in to talk to the Board and Michael Poston went through that information including the number of distance, if it is paved or not, where you can put them in, and a slope analysis, etc. Ms. Crespo stated what our contention here is to bring manufactured housing into compliance with this new 160 code, we do not have that yet.

Ms. Harkins stated the Jackson County ordinance as it is today, we went through the updating process when 160D was adopted by the state and we went through the process of updating to what the state requires of us from 160D to be compliant with the new land use law. In addition, she stated our Unified Development Ordinance (UDO) is compliant with 160D, and it is not like we have to update it to 160D because we that process has already been done.

Ms. Crespo stated what we are talking about is what ability do we have within our County to further enhance that. In addition, she stated it lays out in a lot of things that we can address such as appearance and roof pitches, and it lists a lot of things that we can take out and buy and take steps on, that is what we are trying to do.

Mr. Shepherd stated I think we can talk about that, but I am recalling Mr. Poston saying in terms of our regulations on both the floodplain and those two things, we talked about those and we brought in other officials about those items, and I think both of them were saying we are kind of unable to do anything else. Ms. Crespo stated you are right, they did say that because that is what we have to address, it is why they cannot do more.

Mr. Brown stated I know that what is laid out here is that we are up to date on the UDO, and we cannot exceed that which the state lays out in front of us and the county has adopted those state standards. In addition, he stated I think there is a lot of subjectivity in the observing these kinds of changes and in enforcement too there is a lot of subjectivity, and we need to be more directly and I think at least this Planning Board needs to be more directly responsible for guiding. Mr. Brown stated they should not be subjective decisions made about these ordinances and they need be as clear as they can be, and I have seen that happen even in this office. Ms. Crespo stated I think that is well put, further clarification on these issues is what we are asking to address within the limits of what we are able to do, and that we take those steps.

Ms. Harkins inquired if they would want to start with staff coming back next month with information of any extra enabling statutes within 160D for floodplain and for manufactured housing regulations, and with any extra enabling actions that we could do. Ms. Crespo stated absolutely according to what is laid out. Mr. Brown stated a more clear understanding of how those things are more objectively supported or enforced. Ms. Crespo stated to keep in mind, I am like Mr. Brown, we can write all this and come up with this and bring that up all day long and enhance and do everything that they are allowing us to do here, but if we do not have a means to enforce it in Jackson County it's all for naught.

Mr. Brown stated I brought this up to the erosion control department and to the head of the erosion control Danny Lewis, that I had called in a site in the county numerous times and this with this one particular contractor nothing was ever done. In addition, he stated he told him he was photographing and filming mud going off this site into Blanton Branch into Scott Creek and if you do not do something about it, he was going to go to Division of Energy, Mineral, and Land Resources (DEMLR), and to Division of Water Resources. He stated they called the staff meeting out at that site next day, so a lot of this just takes putting a little kind pressure on the department to actually do something, because they are hogtied in ways I cannot tell you, I do not know myself, but I know that the purview of that department is so broad, they need a department of erosion control. Mr. Brown stated what has been suggested is that an erosion control department be completely separate from code enforcement which regulates the building code, because both of those departments are wrapped up on one head right now and

that is just too broad for one person to cover, it is just impossible. In addition, he stated even when we have a county attorney, and I have heard Heather Baker who I respect deeply convey that the county tries to draw the line when they think that enforcement issues might become a lawsuit against the county, and I think there is a little bit too much emphasis on that. In addition, he stated that is what we need to kind of stir up and decide what is the extent to which those ordinances that are egregiously not working and how can they be enforced more directly and more effectively.

Mr. Shepherd stated what I am hearing is if we hit all five of those topics, and then we are asking staff to come up with actionable steps for better enforcement or gaps that they see in each of those that we kind of all discussed to come in the next meeting with what are the weak link in each of those five things. Ms. Harkins stated it might be worth looking at taking them one at a time, going based off of our conversations.

Ms. Crespo stated let us go on to something else and come back around to floodplain, because unsafe housing was top of the list and if you remember before Mr. Taulbee died we were asked to prioritize. In addition, she stated manufactured housing and unsafe buildings was at the top of my list, and they are two separate areas in the code in 160D, and in light of a couple of really unsafe situations that I know of I think we need to address that quickly. Ms. Crespo stated it was floodplain, manufactured housing, historic preservation, which we covered that beautifully last time and I know where we stand on that. In addition, she stated the others was community appearance, which we touched on that last time as well, and then the last one was unsafe buildings.

Mr. Brown stated he believed a meeting should be held just about erosion control. In addition, he stated I can tell you that we are touted as the trout capital of North Carolina, and it is a joke we are the laughingstock, because our streams are so sediment that we have no reproducing populations of fishes of the trout. He stated the only reason we were touted number one is because we stock 96,000 trout in the waters. Mr. Brown stated the sediment is the number one pollutant and we are getting people coliform counts, that will eat the hide off of you in every stream we test and that is directly related to erosion control.

Ms. Crespo inquired if 160D is a separate section in 160D or is it tied into the floodplain. Ms. Harkins stated I do not believe that it is part of land use law specifically, I think it is addressed differently, but I'm not one hundred percent sure, I would have to look into that. Mr. Brown stated he thought we need to add erosion control to the list, and unsafe buildings and manufactured housing they all need to be prioritize.

Mr. Shepherd stated to add erosion control to the list and then for the sake of sticking to the list that we had come up with we can do the unsafe buildings as it sounds like Ms. Crespo feels strongly about that. Ms. Crespo stated that house is near that old school and something has to be done about that. Mr. Shepherd inquired if this unsafe building was the one that Mr. Elders saying that because he does not have the access to an attorney the Commissioners are throttling Mr. Elders back on using out sourced attorneys that he has said he literally cannot do anything. In addition, he inquired what has been Ms. Crespo's experience with Mr. Elders about that exact structure. Ms. Crespo stated Mr. Elders has done everything within his power to deal with that structure. Mr. Shepherd inquired that Ms. Crespo is saying is if he had more power within 160D that different result would be expected. Ms. Crespo stated we do not have an official code enforcement department to deal with that. Mr. Shepherd stated that will be tough for the Planning Board to reorganize county government and that is outside of our purview. Ms. Crespo stated I know we can't but we can make suggestions, and Mr. Elders and his department has done what they are supposed to do about that unsafe building, it is an old store building. In addition, she stated the last that Ms. Baker told me about that was they can't do anything unless

they take it to Superior Court. Ms. Crespo stated that has not happened, and because it touches on the highway they turned it over to the Department of Transportation (DOT), so we need to take steps with the DOT and we do not have anyone to take those steps and try to get that done because we don't have enforcement for that. In addition, she stated Mr. Elders has done it to his ability within his department to do. Mr. Shepherd inquired that Ms. Crespo is saying if we had policies within 160D, that Mr. Elders would have the ability to put a condemned thing on there, and then three weeks a trackhoe would come knock it down. Ms. Crespo stated no, it is a process and it has been condemned a long time ago, and no one did anything about because there is not anyone to handle the condemnation. Mr. Shepherd stated at the next meeting they could ask staff to discuss as our pointed topic. Ms. Crespo stated that she thinks that has gone so long that it is going to be a little legally touchy.

Mr. Brown stated there is a lot of that in this County and especially around in more populated areas. In addition, he stated finding ways to address that, because it is a problem and we cannot just throw our hands up and go we can't do that. He stated if we are going to be a Planning Department via code enforcement group there needs to be method, and I started a task force in the state and some other environmental groups to try to seek loopholes and holes in the ordinances and statutes in this state in regard to erosion control. Mr. Brown stated finding ways to enforce it is what we need to address, and is there some avenue of approach.

Ms. Crespo stated 160D was handed to us in 2021 and all we have to do is act. In addition, she stated it says "any local government may enact an enforce erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply with all applicable provisions of that Article and, to the extent not inconsistent with that Article, with this Chapter. Fees charged by a local government under its erosion and sedimentation control program shall not exceed that authorized in G.S. 113A-60(a)." Ms. Crespo stated it is not like we can't do anything, we have to stick within the statute.

Mr. Brown stated there are things that we believe can be done but they just don't have the capacity, and we need to try to figure out what we need to do to find the capacity to get rid of this unsafe building and to help us with erosion control enforcement. In addition, he stated there needs to be some kind of language or at least expression of how can we go forward and make this more effective. Ms. Crespo stated they don't lay out how to improve this, and it's up to us to lay out how to improve on this.

Mr. Shepherd stated I think for the next meeting, we will do a deep dive into the condemned buildings, and then go to erosion control for the following meeting. In addition, he stated we have our six items that we want to continue to work through and we have an agenda for the next meeting to a deep dive on that.

Ms. Crespo stated of the list there was manufactured housing, erosion control, unsafe buildings, and we covered historic preservation and community appearance. Mr. Shepherd stated signage is another topic of interest.

Ms. Harkins stated to remember we talked about community appearance last time of how it's almost like an HOA in a way, it isn't really any type of an enforcing body and it's more of a body that does studies and awards. In addition, she stated occasionally they would look at a site plan and give a recommendation, but that's usually only if a suggesting body or a governing body hands it down to that board based off the research that we have done on those at the county level.

Mr. Brown stated he believed the only way you can address that at all, is to put aesthetics into the Mountain and Hillside Development Ordinance (MHDO), subdivision ordinance and that kind of thing. In addition, he stated we are not considering aesthetics and that is an aesthetic feature and it can't be addressed, as Ms. Harkins said any other way that is

pretty ineffective as she pointed out. Mr. Brown stated if we have aesthetic standards, I know they did not want to do that back in the day when they did these ordinances, but it's in the language of other ordinance in places around the country, and if we don't put aesthetic in there we can't do anything about it.

Ms. Crespo stated actually the code and the ability to change things and enhance what we can do here, we have the longest list given to us in 160D for powers and duties for a board like ours to improve community appearance and we have a lot of latitude on community appearance. In addition, she stated what this is to put it into an ordinance and we have to decide what it is and then hand it off to see if the commissioners approve it. Mr. Shepherd stated one of those topics will probably take us a while and we need staff to kind of give us a little update on that and then we can have our discussion. In addition, he stated we could add that to our list, and I feel we have covered historic preservation and we don't need to have on this kind of refined list. Ms. Crespo stated she also thought that was well covered last time and I think it's well taken care of.

Ms. Crespo stated she had four topic items and as a Board we need to prioritize them and those are unsafe buildings, erosion control, manufactured housing, and community appearance. Mr. Shepherd stated I think a lot of things fall under community appearance that we can work on. Ms. Crespo inquired from the Board what their opinion was and what they wanted to cover first. Mr. Brown stated I think all those things are equally important and we just need to pick one and make a motion that we address all of these four issues going forward and we will do them one at a time in future meetings.

Mr. Brown made a motion that we address all four issues to discuss them one at a time in future meetings. Ms. Crespo seconded the motion, and it passed unanimously.

Mr. Dunford stated his input in this is that we make a motion and we pick one of the items we want to address and inquired how do we get out of the situation of they all seem like a tailspin and they are not going anywhere. In addition, he stated it is a tailspin and then we talk about it over and over and nothing has really happened because we keep talking about the situation and there are no solutions. Mr. Dunford inquired so how do you come up with solutions because I do not think or feel we can enforce anything and asked who are the enforcers, and now that we established who the enforcers are we pressured them to give us some guidelines on how we approach each item and then we got their blessings to attack the situation. In addition, he stated so there is the guidelines and we start chipping away because I do not feel we have a situation where we chop away anything in any of those. He stated so we chip away at the situations with each guideline, we address them and then maybe we start to see some improvement in what we are trying to accomplish here.

Mr. Brown stated we can enumerate the problems that we are identified, the problems we see with enforcement because that's what it boils down to, and then we would ask the code enforcement people in each one of those departments to come up with ideas, solutions or at least tweaks to where they can improve their enforcement capability for unsafe buildings, erosion control, etc. He stated he agreed that we spiral around and we talk about it but we don't get anywhere, and if you don't identify the problem directly which is important and what about enforcement can we change or can we delve into that somewhat to see what avenues we may change or ideas of the way it's enforced for ways that we can make it better.

Ms. Crespo stated we need to understand what our duty as a board is, and what standing and what empowerment we have to get things done. In addition, she stated the North Carolina Assembly has language of the purpose and duty of what this board was for every county, it's a board that is North Carolina sanctioned. Ms. Harkins stated there is also our enabling statutes in our local Unified Development Ordinance (UDO) that is established for this

specific Planning Board and its duties and its powers that has been adopted by the County Commissioners. In addition, she stated ours is in compliance with the state, but Jackson County's Planning Board is following what is within our UDO. Mr. Brown inquired if it mirrors the states. Ms. Harkins stated it would be compliant with but what we would be following is what our UDO says. Ms. Harkins inquired if that would potentially be somewhere that we would want to start next time instead and giving the Planning Department a little bit of time to comb through some of these topics because going through one 160D for unsafe buildings and trying to pull apart what we could do might take some time. In addition, she stated what we could do is come back next time discuss the Planning Department, Planning Board, Code Enforcement and where does the Planning Board sit in this, and where can you give suggestions if that is something the Board wants to discuss.

Ms. Crespo stated she did not know what it was for a while and had to do her own research to find out how it how it came to be. In addition, she stated then when I realized she thought this is very important to any county that we do our jobs, and then we don't delay on getting these issues handled. Mr. Brown stated having been here several sessions terms, I think that incoming Planning Board members should have a little training session with the reprise of responsibilities, etc. for that person to sit on that board, and what those rights or responsibilities are. In addition, he stated it is pretty well laid out in the UDO and they can look it over and go from there. Ms. Crespo stated we are here for a purpose, we are here to advise, and we are going to bring back from the community what the community is wanting and we are to share that information and depend on our Planning Board, our planning staff to help us get those done because that is what they are being paid for.

Mr. Shepherd stated at the next meeting he asked for staff to bring information regarding the Planning Board and their roles, duties and responsibilities along with how we fit into all of this. In addition, he stated and then the next step we will draw out the hat and we will number these one through four and we will get to them as we can based on other stuff staff is bringing to us.

The Board prioritized the list of items that they would like to discuss for future meetings as follows:

1. Manufactured Housing
2. Unsafe Buildings
3. Community Appearance
4. Erosion Control

Ms. Cooper stated I get the feeling that we can spend six months on these topics and come up with recommendations or suggestions and the Board of Commissioners can say no, so what good are we, we cannot do anything. Mr. Shepherd stated I think we can go formally request things to the Commissioners, but also the Commissioner meetings are public and we can go there. In addition, he stated based on my very limited understanding, we would have a well thought out agreed upon thing we would submit that to the Planning Department and then they would review it and talk to us about it, then kind of we would collectively agree with that, and then we would go to the Commissioners for actual adoption into enforceable regulations.

Ms. Harkins stated as planning staff we would communicate with the Commissioners about whatever is being proposed, and if they have any questions they can communicate with the Planning Board members or planning staff. In addition, she stated there can be conversation amongst that as well, and it's not quite an iron curtain of we are over here on this side and then we are just going to toss it over and see if they accept it. She stated it is an open conversation there and you are advocating for the good of the public and that is what they would be taking it as.

New Business

a) **Subdivision Regulation Amendments**

Ms. Harkins stated she wanted to introduce this topic and as we go through our day-to-day enforcing of our codes, we come across some things that we might need to change or address based off of how they are working in our every day jobs. She stated a couple of the things that we have noticed, last year we adopted our Campground Ordinance and that has been going very great. In addition, she stated we have received applications for campgrounds and most of them ranging from two campsites to six, and we have not received anything major campground wise, so no Level 2 Campgrounds has come through. However, she stated something that we picked up on was our road requirements for campgrounds. Currently, in the ordinance for campgrounds, we are directing your road standards for all campgrounds Level 1 (2-15 campsites) and Level Two (15 or more campsites) to have the same road standards which are found in our Subdivision Ordinance. Ms. Harkins stated the reason we did that is because of the width of the major subdivision roads, we felt that those were good especially for campers going through RVs. However, those roads have to be paved all of our major subdivision roads have to be paved, and asking a property owner to pave your road for two campsites we are seeing that is becoming a bit of a sticky patch and a little bit much. In addition, she stated since the majority of our campsites that we are seeing are that lower level maybe we should revisit this. The planning staff sat down last week and we took a look at it and we still agree that the width of the roads for campgrounds is good, maybe we should keep it wider than what you would have for regular shared drive or for unpaved drives or things like. In addition, she stated they want to consider that maybe only requiring for a Level 1 that you can have an unpaved road and it still has to be to that width, but it can be unpaved unless it is over 15% grade which is steeper and they would be required to pave it.

Ms. Harkins stated because of the Campground Ordinance we went back to the Subdivision Ordinance we were reading through and we noticed a few things. She stated the main thing is just fixing some unclear regulation. Currently, there is a little bit of misleading text about when a road should be paved or not, and where any of our major subdivision roads need to be paved. There is a section where it is talking about if it is above 15% grade, and there is some inconsistency there where we need to go back in and clean that up where no matter if it is 15% grade or not any of our major subdivision roads need to be paved and that is just the way the ordinance is intended.

Mr. Brown stated we need to tweak that very badly because impervious surfaces are creating huge volumes of stormwater. In addition, he stated the water needs to be dispersed properly so that it can be absorbed into the ground, because we are losing our groundwater recharge and that is our only source of fresh water is groundwater recharge, we have no underground aquaphor whatsoever.

Ms. Harkins stated this is to clarify what the ordinance is saying about our major subdivision road paving standards and to make sure that it is clear for people who are coming in. In addition, she stated we have not seen a problem with it yet, but we picked up on it when we were looking through for the Campground Ordinance and we need to go back in and fix that which would be a text amendment. Ms. Harkins stated staff is coming to ask tonight is if the Board would want us to bring a strikethrough version of the text at the next meeting.

Mr. Brown stated yes, I think that is wonderful and getting that information ahead of the next meeting gives Planning Board members the opportunity to look through understanding or make possible suggestions for how it might be tweaked to improve it for various reasons.

Ms. Cooper inquired how staff arrived at 15%. Ms. Harkins stated the 15% grade that is what has been in there previously and is noted and that is what was in the ordinance that we

would be taking out because it is not what is applied. In addition, she stated all of our major subdivision roads, regardless of the grade have to be paved and it says in a subtext that any above 15% must be graded and we want to take that out so that way there is no confusion about that. Ms. Harkins stated we do not want someone thinking that well over here it says if you are above 15% grade you have to be paved, but my road is below so I do not have to, it is clarifying some unclear text and it is contradictory.

Ms. Harkins stated we have a private subdivision road construction standards table in our Subdivision Ordinance that goes over all of the different road types and what they are supposed to have paving wise. In addition, she stated within that there were some standards that do not reflect the current practices for road construction and we consulted with a civil engineer that we know who took a look at it and said this material is not even used anymore and this is the language that developers use now. Ms. Harkins stated it would be going back in and modifying and modernizing that table to make sure that it reflects what is happening currently in construction development.

Mr. Brown inquired if the Planning Department could send a link to the board members to that part of the UDO that deals with construction standards. Ms. Harkins stated yes, it would be for our road standards for the major subdivisions.

Ms. Crespo stated I work in a community right now, where there are about 20 roads that are unpaved. In addition, she inquired if that mean that if an owner decides to build on one that is unpaved that the community will be required? Ms. Harkins stated no this is for subdivisions only, and if someone has a tract of land that they are wanting to subdivide and build homes or sell the lots to build homes, that is when those road standards would come into play. In addition, she stated if the planning board wants, we will bring back a redline version of the text itself to the Board and potentially call for a public hearing to move it forward. The Board gave direction to staff to bring back the redline version of the proposed amendments.

Adjournment

With no further business, Ken Brown made a motion to adjourn. Joyce Cooper seconded the motion, and the meeting adjourned at 7:10 p.m.

Submitted by:



Allison Kelley
Administrative Assistant – Planning

Approved by:



Nathan Shepherd
Planning Board Chairman

