

Regular Session, May 16, 2011, 7:00 p.m.
Catawba County Board of Commissioners

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The Catawba County Board of Commissioners met in regular session on Monday, May 16, 2011 at 7:00 p.m. in the Robert E. Hibbits Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Lynn M. Lail and Commissioners Dan Hunsucker, Barbara Beatty and Randy Isenhower.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, Assistant County Manager Dewey Harris, Deputy County Attorney Anne Marie Pease and County Clerk Barbara Morris. County Attorney Debra Bechtel was absent.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Chair Barnes led the Pledge of Allegiance to the Flag.
3. Vice-Chair Lynn M. Lail offered the invocation.
4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Regular Meeting of the Board of Commissioners and the Special Meeting with Catawba Valley Community College (CVCC) Board of Trustees of May 2, 2011. (Commissioner Hunsucker noted the attendees of the CVCC meeting had been corrected.) The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed all present and specifically recognized students from Bandys High School AP Government Class. Chair Barnes explained some of the procedures that this Board used that were a departure from the norm and noted that the Commissioners served at large. County Manager J. Thomas Lundy then introduced Emily Leik who was filling an intern position in the County Manager's Office for the summer.
6. Public Comments for Items Not on the Agenda: None.
7. Public Hearings:
 - a. Planner Chris Timberlake presented a request for the Board to hold a public hearing and approve a request by Pace Commercial LLC to rezone one parcel totaling 2.17 acres, located at 6178 Highway 16 South in the Sherrills Ford Small Area Planning District, from R-40 Residential to the HC Highway Commercial district.

The parcel was zoned R-40 and contains a vacant single-family dwelling. A parcel to the north is zoned HC Highway Commercial and is the site of Sagebrush Restaurant. A parcel to the south is split-zoned HC Highway Commercial and R-40 Residential. The portion of the property having road frontage is zoned commercially and contains a vacant single-family dwelling. Parcels to the east and west are zoned R-40 and R-20 and contain a single family home and accessory structures.

The Catawba County Unified Development Ordinance, Section 44-418, HC Highway Commercial District states, "...this district provides areas for regional highway-oriented business, office, services and civic uses. The district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are compatible with the surrounding area."

The R-40 Residential District is considered a low-density residential and agricultural district. The subject property is located in a Mixed Use Corridor-Overlay (MUC-O) District and WS-IV Watershed Protected Area. The MUC-O district restricts specific uses and provides for higher architectural standards and pedestrian amenities. The WS-IV Protected Area limits the built upon (impervious) area of non-residential properties for new construction in order to protect water supplies.

The Highway Commercial District allows for a maximum floor area ratio (FAR), which is the ratio of gross floor area to land area. The FAR for the HC district is 1 to 3. The property is 94,525 square feet, which would provide for 31,508 square feet of gross floor area. Public water is available along this portion of NC 16, but public sewer is unavailable.

Highway 16 South is considered a minor arterial road. Traffic counts taken on NC 16 in 2009 in the vicinity of the site measured 13,000 vehicles per day. The vehicle capacity of NC 16 in this area is 15,800, according to the Catawba County Thoroughfare Plan. Traffic projections in the Thoroughfare Plan indicate that, once completed, the bypass should reduce traffic counts along this portion of NC 16. There are no scheduled improvements for this section of NC 16 at this time.

The Sherrills Ford Small Area Plan serves as the current land use plan for this area. The property is located in an area designated for a regional commercial center, envisioned to provide a mixture of uses such as commercial, office-institutional, and multi-family. The Catawba County Planning Board held a public hearing on May 2, 2011. No one spoke in favor or in opposition to the request. The Planning Board voted 5-0 to recommend adoption of a statement affirming the consistency of the rezoning request with the Sherrills Ford Small Area Plan and the rezoning of the property from R-40 Residential to HC Highway Commercial.

Chair Barnes opened the public hearing. No one spoke in favor or in opposition to this rezoning during the public hearing although Jeff Watson, one of the developers, did come forward to speak in favor of the rezoning. Chair Barnes then closed public hearing. Commissioner Beatty asked if NCDOT would determine the need for a turn lane into the property. It was confirmed that this would be a DOT determination and that DOT would also determine if Hicks Drive would be used for the entrance to the property. Commissioner Beatty made a motion to adopt the consistency statement and approve the zoning amendment. The motion carried unanimously. The following statement and ordinance apply:

ZONING MAP AMENDMENT CONSISTENCY STATEMENT

On May 16, 2011, at the request of Pace Commercial LLC, the Catawba County Board of Commissioners conducted a public hearing for the purpose of considering a zoning map amendment (Case #RZ2011-1).

Upon considering the matter, the Catawba County Board of Commissioners finds the item to be consistent with the Sherrills Ford Small Area Plan and reasonable for rezoning based upon:

- (a) The proximity of existing HC Highway Commercial properties; and

(b) The Sherrills Ford Small Area Plan depicting this property within a designated regional commercial center.

The Catawba County Board of Commissioners therefore approves the zoning map amendment. This approval was affirmed by a vote of 5 - 0 of the Catawba County Board of Commissioners.

Ordinance No. 2011-_____

AMENDMENT TO THE CATAWBA COUNTY ZONING MAP

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Catawba County Official Zoning Atlas is hereby amended by rezoning the following described property from R-40 Residential to HC Highway Commercial District.

One parcel totaling 2.17 acres located at 6178 S NC 16 Highway in the Sherrills Ford Small Area Planning District, Mountain Creek Township, and further identified as Parcel Identification Number 3686-15-63-8394.

PLAN CONSISTENCY STATEMENT:

Pursuant to NCGS 153A-341, and upon consideration of the recommendations and guiding principles of the Sherrills Ford Small Area Plan, the Catawba County Board of Commissioners finds the rezoning request to be consistent with the Small Area Plan based upon:

- (a) The proximity of existing HC Highway Commercial properties; and
- (b) The Sherrills Ford Small Area Plan depicting this property within a designated regional commercial center.

This, the 16th day of May 2011.

b. Planner Chris Timberlake presented a request for the Board to hold a public hearing and approve a request by Mr. Terry Rudisill to rezone one parcel totaling 1.38 acres, at 5928 Highway 150 East in the Sherrills Ford Small Area Planning District, from O-I Office-Institutional to the HC Highway Commercial district.

The parcel was zoned O-I Office-Institutional and has a structure that was remodeled to occupy several office uses. A parcel to the north and west is zoned R-20 Residential and is vacant. Parcels to the south are zoned R-20 Residential and have a single family dwelling or are undeveloped. One is zoned HC Highway Commercial and is the location of Little Mountain Veterinary Clinic. A parcel to the east zoned R-20 Residential is occupied by a single-family residence.

The Catawba County Unified Development Ordinance, Section 44-418, HC Highway Commercial District, states, "...this district provides areas for regional highway-oriented business, office, services and civic uses. The district regulations are designed to protect and encourage the transitional character of the districts by permitting uses and building forms that are compatible with the surrounding area." Under Section 44-419, the O-I Office-Institutional district provides for office, institutional, civic, or other low intensity commercial uses. It may buffer single-family residential neighborhoods from higher intensity residential neighborhoods or commercial districts.

The property is located in a Mixed Use Corridor-Overlay (MUC-O) district and WS-IV Watershed Protected Area. The MUC-O district restricts specific uses and provides for higher architectural standards and pedestrian amenities, while the WS-IV Protected Area limits the built upon (impervious) area of non-residential properties for new construction in order to protect water

supplies. Both the O-I and HC districts allow for a maximum floor area ratio (FAR), which is the ratio of gross floor area to land area. The FAR for the HC district is 1 to 3. The property is 60,112 square feet, which would provide for 20,037 square feet of gross floor area. The gross floor area of the existing buildings is 5,048 square feet, well under the allowable FAR. Public water is available along NC 150, but public sewer is unavailable.

Highway 150 East is designated as a boulevard in the 2035 Greater Hickory Urban Area Long Range Transportation Plan. This road, listed as a strategic highway corridor, is a major east-west route between Shelby, Lincolnton and Mooresville. The State Transportation Improvement Plan calls for the widening of Highway 150 East to a multi-lane facility. The planning and design portion of the project is currently funded, although right-of-way acquisition and construction remain unfunded. Traffic counts taken in 2009 to the west of the site along Highway 150 measured 10,000. The vehicle capacity of Highway 150 in this area is 14,200, according to the Catawba County Thoroughfare Plan.

The Sherrills Ford Small Area Plan serves as the current land use plan for this area. The property is located in an area designated for a regional commercial center, envisioned to provide a mixture of uses such as commercial, office-institutional, and multi-family. The Catawba County Planning Board held a public hearing on May 2, 2011. No one spoke in favor or in opposition to the request. A board member asked if additional right-of-way acquisition, for the future widening of Highway 150, would cause any issues. The existing parking is approximately 64 feet behind the current right-of-way and the building is set back approximately 125 feet. There should not be any issues, in this case, with increased right-of-way widths. The Planning Board voted 5-0 to recommend adoption of a statement affirming the consistency of the rezoning request with the Sherrills Ford Small Area Plan, and the rezoning of the property from O-I Office-Institutional to HC Highway Commercial.

Chair Barnes opened the public hearing and no one spoke in favor or in opposition to this rezoning during the public hearing although Mr. Rudisill did come forward to answer questions from the Board. He indicated full propane tanks would not be stored on the property but empty tanks would be stored behind the building. Vice-Chair Lail made a motion to adopt the consistency statement and approve the zoning amendment ordinance. The motion carried unanimously. The following consistency statement and ordinance apply:

ZONING MAP AMENDMENT CONSISTENCY STATEMENT

On May 16, 2011, at the request of Terry Rudisill, the Catawba County Board of Commissioners conducted a public hearing for the purpose of considering a zoning map amendment (Case #RZ2011-2).

Upon considering the matter, the Catawba County Board of Commissioners finds the item to be consistent with the Sherrills Ford Small Area Plan and reasonable for rezoning based upon:

- (a) The existing use and zoning designation of the property;
- (b) The proximity of existing HC Highway Commercial properties; and
- (c) The Sherrills Ford Small Area Plan depicting this area within a designated regional commercial center.

The Catawba County Board of Commissioners therefore approves the zoning map amendment. This approval was affirmed by a vote of 5-0 of the Catawba County Board of Commissioners.

Ordinance No. 2011-_____

AMENDMENT TO THE CATAWBA COUNTY ZONING MAP

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS, that the Catawba County Official Zoning Atlas is hereby amended by rezoning the following described property from O-I Office-Institutional to HC Highway Commercial District.

One parcel totaling 1.38 acres located at 5928 East NC 150 Highway in the Sherrills Ford Small Area Planning District, Mountain Creek Township, and further identified as Parcel Identification Number 3686-12-97-4377.

PLAN CONSISTENCY STATEMENT:

Pursuant to NCGS 153A-341, and upon consideration of the recommendations and guiding principles of the Sherrills Ford Small Area Plan, the Catawba County Board of Commissioners finds the rezoning request to be consistent with the Small Area Plan based upon:

- (a) The existing use and zoning designation of the property;
- (b) The proximity of existing HC Highway Commercial properties; and
- (c) The Sherrills Ford Small Area Plan depicting this area within a designated regional commercial center.

This, the 16th day of May 2011.

8. Appointments:
Commissioner Barbara Beatty recommended the appointment of Susan Hunsucker for a first term on the Library Board of Trustees to succeed Joyce Beatty who was not eligible for reappointment. Ms. Hunsucker's term will expire June 30, 2015.

These recommendations came in the form of a motion, which carried unanimously.

9. Departmental Report:
Finance:
Finance Director Rodney Miller presented a request for Board approval of the renewal of a three-year lease with the North Carolina Division of Forest Resources. The purpose of the Division of Forest Resources is to protect, manage and sustain forest resources in North Carolina. In Catawba County, the Forest Service works with other agencies to insure that adequate and quality forest resources are available to meet the present and future needs of our citizens. Catawba County currently funds 40% of the total Forestry budget in the county, with the State of North Carolina funding the remaining 60%.

The North Carolina Division of Forest Resources currently leases 604 square feet of the County's Agricultural Resources Center at an annual rate of \$5,100. The current lease agreement will expire on May 31, 2011, and the State has requested renewal of the lease for an additional three-year period. County and State officials have agreed that the new lease will begin on July 1 to coincide with the County's fiscal year and that the State will pay the monthly lease amount for June.

Commissioner Hunsucker made a motion to approve the renewal of the three year lease. The motion carried unanimously. The following lease applies:

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this the ____ day of _____, 2011 by and between CATAWBA COUNTY, hereinafter designated as Lessor, and the STATE OF NORTH CAROLINA, hereinafter designated as Lessee;

WITNESSETH:

THAT WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and amended on September 8th 1999 and April 1, 2003.

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the City of Newton, County of Catawba, North Carolina, more particularly described as:

Being ± 604 net square feet including 504 square feet of office space and 100 square feet of storage space in the Catawba County Agricultural Resources Center, located on South Brady Street, Newton, Catawba County, North Carolina.

(DENR-FOREST RESOURCES)

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of Three (3) years commencing on the 1st day of July, 2011, or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the 30th day of June, 2014.

2. The Lessee shall pay to the Lessor as rental for said premises the sum of \$5,100.00 per annum, which sum shall be paid in equal monthly installments of \$425.00, said rental to be payable within fifteen (15) days from receipt of invoice in triplicate. The Lessee agrees to pay the aforesaid rental to Lessor at the address specified or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

3. Lessor agrees to furnish to the Lessee, as part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee:

A. Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.

B. Janitorial services and cleaning services and supplies. This shall include maintenance and cleaning of lawns, shrubbery, sidewalks and parking areas, if applicable and disposal of trash.

C. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal including provision for the handling of recyclable items such as aluminum cans, cardboard and paper.

D. All utilities except telephone.

E. Elevator service, if applicable.

F. Parking.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in and operative condition. Maintenance shall include, but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the

Lessee's employees, property, or invitees, it shall then be lawful for the Lessee in addition to any other remedy the Lessee may have, to make such repair at its own cost and to deduct the amount thereof from the rent that may thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises be destroyed by fire or other casualty without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of the Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy. It is agreed the rental for any holdover period shall be at a monthly rental rate of \$425.00.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependant

upon and subject to the appropriation, allocation and availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premise leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at Mr. Rodney Miller, Finance Director, Post Office Box 389, Newton, North Carolina 28658 and the Lessee at Michael G. Bryant, Director, Purchase and Services Division, 1605 Mail Service Center, Raleigh, North Carolina 27699-1605. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

15. If lack of ADA compliance creates an operational problem for the Lessee, the Lessee reserves the right to terminate this lease upon ninety (90) days prior written notice to the Lessor of the intent to terminate, with no further liability to the Lessee.

16. The leased premises are generally accessible to persons with disabilities. This shall include access in the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

- 10. Other Items of Business: None.
- 11. Attorney's Report: None.
- 12. Manager's Report: None.
- 13. Adjournment: Commissioner Hunsucker made a motion to adjourn at 7:25 p.m. The motion carried unanimously.

Katherine W. Barnes, Chair
Catawba County Board of Commissioners

Barbara E. Morris
County Clerk