

Minutes  
Catawba County Board of Commissioners  
Regular Session, Monday, May 1, 2006, 9:30 a.m.

**Appointments**

Public Health Board 243 05/01/06

**Commendations**

Certification as Local Government Finance Officers – Rodney Miller and  
Jeanne Jarrett 243 05/01/06

**County Code**

Chapter 44, Article III, Districts – Section 44-89 Conditional Zoning 244 05/01/06

**EcoComplex**

Exemption for Petra Engineering 244 05/01/06

**Grants**

Gang Violence Prevention Grant 243 05/01/06

**Hickory City Schools**

Letter of Commitment for FY206 243 05/01/06

**Planning**

Amendment to Code – Chapter 44, Article III, Districts – Section 44-89  
Conditional Zoning 244 05/01/06

**Proclamations**

Peace Officers' Memorial Day and National Police Week 243 05/01/06  
Mental Health Month 243 05/01/06  
Older Americans Month 243 05/01/06  
Soil and Water Stewardship Week 243 05/01/06

**Social Services**

Update on NACo Prescription Drug Plan 244 05/01/06

**ZONING**

Conditional Zoning District 244 05/01/06

The Catawba County Board of Commissioners met in regular session on Monday, May 1, 2006 at 9:30 a.m. in the 1924 Courthouse, Robert E. Hibbits Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Dan Hunsucker, Commissioners Glenn E. Barger, Lynn M. Lail and Barbara G. Beatty.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Joellen Daley, Assistant County Manager Lee Worsley, County Attorney Robert Oren Eades, Attorney Debra Bechtel and County Clerk Barbara E. Morris.

1. Chair Katherine W. Barnes called the meeting to order at 9:30 a.m.
2. Chair Barnes led the Pledge of Allegiance to the Flag.
3. Commissioner Lynn M. Lail offered the invocation.

4. Vice-Chair Dan Hunsucker made a motion to approve the minutes from of April 17, 2006. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed all those who were present to receive the numerous proclamations and commendations on the agenda.
6. Comments for Items not on the Agenda. None.
7. Presentations:
  - a. Vice-Chair Hunsucker presented the Peace Officers' Memorial Day and National Police Week Proclamation to Sheriff David Huffman, the Police Chiefs or their designees from Brookford, Catawba, Claremont, Conover, Hickory, Long View, Maiden and Newton and Carl Pope, President of the Catawba County FOP. This proclamation declared May 15, 2006 as Peace Officers' Memorial Day and further proclaimed that all flags on County property to be flown at half-staff on this day and that May 15-21, 2006 be designated at National Police Week in Catawba County.
  - b. Commissioner Lail presented John Hardy, Director of Mental Health with a proclamation declaring May as Mental Health Month. Mr. Hardy thanked the Board for their continued support of Mental Health. Chair Barnes commended Mr. Hardy for his work in the divestiture and change in Mental Health and for ensuring that the transition had gone so well in the county, which was not the case throughout the state.
  - c. Commissioner Glenn E. Barger presented the Older Americans Month Proclamation to Grace McLeod, Adult Social Work Manager. Ms. McLeod thanked the Board for their continued support of the needs of the older citizens of Catawba County. She said she was shocked at some information she had received from the state – currently 17% of the population is in the 60+ age group but it is projected that between now and 2030, Catawba County will have an 81% increase in that age group. She said this was a call to the County to be doing some serious strategic planning for this population. County Manager J. Thomas Lundy noted that this was Grace McLeod's 21<sup>st</sup> anniversary with the County.
  - d. Commissioner Barbara G. Beatty presented the Soil and Water Stewardship Week Proclamation to Ray Henderson, Supervisor, Soil & Water Conservation District. Mr. Henderson said that the Soil and Water District had educational programs going on during the observance of the Stewardship Week and thanked the Board for their support.
  - e. Chair Barnes presented Rodney Miller, Finance Director and Jeanne Jarrett, Assistant Finance Director, with commendations recognizing their accomplishments in qualifying as Certified Local Government Finance Officers. Mr. Miller and Ms. Jarrett are two of only six finance officials to achieve certification this year.
8. Appointments:

Commissioner Barger recommended the appointment of Jay Schwarz, Vice-President of Alex Lee and is also responsible for pandemic issues with Alex Lee, to a first term to replace Sherry Butler who was not eligible for reappointment, Dianne Hickmon for a third term and Dr. Robert Rights for a first full term on the Public Health Board. These recommendations came in the form of a motion. The motion carried unanimously.
9. Consent Agenda:

J. Thomas Lundy, County Manager, first apologized for the “beep” that could be heard intermittently throughout the meeting. A band had performed at NewtonFest and had unplugged the sound system and there were some problems that now had to be resolved with the system. Manager Lundy then presented the following three items on the consent agenda which had been recommended by subcommittees:

  - a. Acceptance of a \$100,000 grant to the Salvation Army Boys and Girls Clubs of Hickory from the Department of Juvenile Justice and Delinquency Prevention to be used to reach a minimum of 2000 youth - primarily middle school students – to educate them about gangs and teach them methods to avoid or leave gangs. The Salvation Army Boys and Girls Clubs will be providing the 25% local match and there are no county funds that are involved but the County will be the pass through agent financially.
  - b. Two separate requests by Hickory Public Schools – the first was a request for a letter of commitment of \$800,000 to complete work at American Legion Facility which was bought several years ago. This will be the Schools first priority from a capital standpoint and Mr. Lundy said he would be recommending this project in the budget. Mr. Lundy pointed out that the Board had had a similar request at the previous meeting from Newton-Conover, trying to get ahead of the summer and the building schedule to get projects done by the time school opens. He stated no funds would be allocated by the County until July 1<sup>st</sup>. The

second request was for a transfer of \$15,000 that was left in an old Grandview School project to complete the heating/air-conditioning work at their administrative services building. Appropriation is as follows:

Transfer:

From: 420-750100-865200-32103-3-02	Grandview heating	\$15,000
To: 420-750100-865200-32150-3-10	Central Office HVAC	\$15,000

c. An exemption, which is allowed under General Statute 143-64.32, for engineering or professional services for the EcoComplex. This would be for the Petra contract which the Board had already approved based on their qualifications and expertise.

Chair Barnes asked if any commissioner would want any item broken out from the consent agenda and none were requested. Commissioner Barger made a motion to approve the consent agenda. The motion carried unanimously.

10. Departmental Reports:

a. Social Services:

Jo Sloan, Family Support Program Manager, came forward to update the Board on the NACo Prescription Drug Discount Plan. The Catawba County Prescription Drug Discount plan was launched on March 1, 2006. With this plan, the County is making free prescription drug discount cards available to citizens under a program sponsored by the National Association of Counties. The cards may be used by all county residents, regardless of age, income or existing health coverage and are accepted by all of the county's pharmacies. A cardholder may use the card any time when the prescriptions are not covered by insurance. The program helps citizens reduce the out-of-pocket of cost prescription drugs.

During the month of March, citizens attempted to use the card to purchase 963 prescriptions. 89% of the time, the discount card offered the customer a savings over the pharmacy's regular retail price. 475 persons filled 857 prescriptions with the cards. Discounts averaged 22.5% or \$10.12 savings per prescription. Catawba County Citizens saved \$9,744.32 during this first month of service.

Cards remain available at many sites around the county, including:

- Catawba County Social Services
- Catawba County Health Department
- All Catawba County Public Libraries
- All Hickory City Public Libraries
- West Hickory Senior Citizens Center
- The Cooperative Christian Ministry of Hickory
- The Eastern Cooperative Christian Ministry in Newton
- The Salvation Army
- The Faith Task Force on Poverty
- Local Pharmacies
- Centro Latino
- The United Hmong Association
- The Catawba County Chamber of Commerce offers cards to its members.

Ms. Sloan thanked the Board for bringing the program to the County and said it was probably the simplest thing they had ever implemented and the program had given tangible savings from the first day of use.

b. Planning:

Chair Barnes noted that consideration of this upcoming item had been postponed from the last meeting. Jacky Eubanks, Planning Director, presented a request to amend County Code, Chapter 44, Article III, Districts, to add Section 44-89, Conditional Zoning District. Mr. Eubanks said that at the Board's request at the last public hearing on April 17, 2006, the County had a community meeting with the Sherrills Ford Small Area Planning Committee on April 20, 2006. At that meeting, the Sherrills Ford Small Area Plan was reviewed and there were discussions about how conditional zoning and development agreements could be effective tools to ensure that large scale projects do in fact meet the intent of the small area plan. Mr. Eubanks said all active members of the committee were present and none expressed any concern with the conditional zoning as a tool. As a follow up to that meeting, on April 27, 2006, a community wide forum took place. Approximately 400 people attended

and the same presentation was presented as had been given to the small area plan committee. Mr. Eubanks said he believed the forum was effective in that they had received approximately 123 questions and comments from about 98 citizens. In scanning the comments and questions, they did not find any negative comments concerning conditional zoning as an effective tool. At these presentations it was explained that conditional zoning would allow for the consideration of certain uses that are not necessarily supported by the underlying zoning. This new tool would allow for the establishment of conditional use zoning districts and provide the Board of Commissioners with flexibility to determine what uses are in the best interests of the citizens of Catawba County. The districts would contain specific uses that would not otherwise be allowed without the zoning change. The specific uses would be permitted and conditioned. They would only stay in existence as long as the use continued. Once the use ceased, the underlying zoning would be restored to the property. Staff and the Planning Board recommend approval of the ordinance.

In the 1980s North Carolina cities and counties began use of conditional use district zoning. In this technique a new zoning district with no automatically permitted uses is created and a concurrent conditional use permit is issued for a particular development within the new district. An example of how the conditional use district zoning could be used relates to permitting a residential property, which is adjacent to a commercial property, to be used for a specific commercial purpose. With the conditional use zoning tool, the residential property could be restricted to a specific use, with conditions such as screening and hours of operation, rather than rezoned to permit the traditional family of uses that correlates with a commercial district. Once the specific commercial use ceased, the property would return to the residential use. Conditional use district zoning is used on a voluntary basis and allows for flexibility and discussion between the local government and the specific property owner(s).

In 2005, amendments to the existing statutes addressed the origin and nature of conditions that may be imposed. Specifically, the owner or the government, with citizen input, may suggest conditions but only those conditions mutually acceptable to both the owner and the government may be incorporated into the individual permit involved. In addition, conditions or site-specific standards imposed are limited to those (1) that address the conformance of the development and use of the site to county ordinances and officially adopted plans and (2) those that address the impacts reasonably expected to be generated from the development or use of the site.

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. The districts are attached to individual properties. Conditional zoning districts allow for the consideration of certain uses that because of their nature or scale have particular impacts on both the immediate area and the community as a whole. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of conditional zoning. Conditional zoning districts will accommodate those situations. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.

Parameters for conditional zoning districts:

- Voluntary and optional to the developer;
- Must be consistent with adopted plans as would any other rezoning request;
- Must be able to withstand the "Spot Zoning" challenge. Spot zoning occurs when a relatively small tract of land is zoned differently than the surrounding area. In North Carolina, spot zoning is not illegal in and of itself. The four part test to determine spot zoning is:
  - Size of tract;
  - Compatibility with adopted plan;
  - Public benefits and detriments of proposed rezoning; and
  - The relationship between proposed use and current use of adjacent properties.
- Conditions mutually agreed to by the County and developer with input from the public may include but are not necessarily limited to the following:
  - Additional buffering, screening and landscaping;
  - Hours of operation;
  - Additional open space;

- Lighting;
  - Setbacks;
  - Architectural design;
  - Public facilities; or
  - Any other reasonable amenities or improvements that address the impacts of the proposed development.
- Board of Commissioners in exercising its legislative discretion determines it is in the best interests of the community to approve the conditional use zoning district.

Commissioner Beatty said she had received a call from a citizen who was concerned that the school would not allow any type of citizen input and asked Jacky to explain what the process would be. Jacky said that under this zoning, a site plan would have to be submitted with the standard conditions, i.e. – minimum of 5 acres; must be 50,000 aggregate square feet; must be more of a large scale development - based on the ordinance. There would be a two-step process just as done today – a Planning Board public hearing and recommendations and then coming before the Board of Commissioners which would also have a public hearing. County Manager Lundy clarified that the examples Jacky had used – 5 acres; 50,000 square feet – that these were “or” not “and” requirements – any one could be met, not all of them have to be done. Vice-Chair Hunsucker asked how many questions they had ended up with after the meeting. Jacky said there were about 123 questions – 97 individual questions and 26 from one individual. Chair Barnes said there had been four commissioners at that meeting and she felt there were more issues that had to do with development agreements rather than the ordinance at issue.

Attorney Martin Pannell came forward and requested a copy of the proposed amendment and he was given a copy.

Vice-Chair Hunsucker made a motion to adopt the amendment to the Code, Conditional Zoning District. The motion carried unanimously. The adopted code change reads as follows:

#### **Ordinance No. 2006-04**

#### **AMENDMENT TO THE CATAWBA COUNTY ZONING ORDINANCE**

**BE IT ORDAINED** that the Catawba County Code of Ordinances, Chapter 44, Article III. Districts is hereby amended to add Section 44-89 Conditional zoning district, which said section reads as follows:

#### **Sec. 44-89. Conditional zoning district**

- (a) Intent. The conditional zoning districts included herein allow for the consideration of certain uses that because of their nature or scale have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.
- (b) Applicability. Conditional zoning districts are appropriate only when one or more of the following factors, separate or in combination, are proposed:
  - (1) The tract is a minimum of 5 acres;
  - (2) The tract is within a designated non-residential node, corridor, village or commercial center as identified in the small area plans, as amended from time-to-time;
  - (3) The aggregate square footage of the non-residential building(s) on a single zoning lot is more than 50,000 square feet gross leasable area regardless of the number of uses within the building or structures planned;

- (c) Application. Except as herein provided, petitions to establish a conditional zoning district must be submitted and will be processed in accordance with the provisions in the Catawba County Code. Petitioning for a conditional zoning district is a voluntary procedure and can be initiated only by the owner(s) of the property(ies) in question or by his/her authorized agent. Applications shall be submitted on a form provided by Catawba County.
- (d) Contents of Application. All applications include a concept plan for the site, drawn to scale, and supporting text that, as approved, will become part of the ordinance amendment. The concept plan for the site shall include any supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that in addition to all predetermined ordinance requirements, will govern the development and use of the property. The applicant shall, at a minimum, include each of the items listed below, in addition to the items required in Section 44-45, entitled Amendment, as the same may from time to time be amended, and any other applicable sections of the Catawba County Code. The concept plan, including all additional information shown on it, and the following checklist shall constitute part of the petition for rezoning to a conditional zoning district:
- (1) A vicinity map showing the property's general location in relation to major streets, railroads, waterways.
  - (2) A drawing of the parcel, including the parcel identification number.
  - (3) All existing easement, reservations, and rights-of-way on the property(ies) in question.
  - (4) Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps for Catawba County and delineation of watershed boundaries labeled with their respective classifications.
  - (5) Existing and proposed topography at 5 foot contour intervals or less.
  - (6) For residential uses, the number of units and an outline of the area where the structures will be located. For nonresidential uses, the approximate square footage of all structures and an outline of the area where the structure will be located.
  - (7) Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets including typical parking space dimension and locations along with typical street cross sections. This shall include all existing and proposed points of access to public streets.
  - (8) All proposed setbacks, buffers, screening and landscaping required by these regulations and regulations of other agencies or otherwise proposed by the petitioner. In addition, the location of significant trees or tree stands on the subject property must be identified.
  - (9) Generalized information on the number, height, size, and location of structures.
  - (10) A sample of the exterior features of proposed principal structures.
  - (11) Proposed phasing of the project.
  - (12) Proposed number, location, type and size of all signs. This must include a sample diagram of the sign design.
- (e) Additional Information. When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the planning director, planning board and/or board of commissioners may request additional information in addition to that required above as they deem necessary.

- (e) Review. In evaluating an application for the establishment of a conditional zoning district, it is appropriate for the planning board and board of commissioners to consider the following:
1. Adherence to the policies and objectives of the adopted land use plan, particularly in relation to the proposed site and surrounding area;
  2. The potential adverse impacts on the surrounding area, including but not limited to traffic, stormwater, land values and the compatibility of land use activities;
  3. The potential positive impacts on the surrounding area, including but not limited to the absolute certainty of the specific use(s) proposed, higher standards and conditions that may be proposed for the development, and other community benefits mutually agreed upon by the developer and County.
  4. Meets the test for spot zoning;
    - a. Size of tract;
    - b. Compatibility with adopted plan;
    - c. Public benefits and detriments of proposed rezoning; and
    - d. The relationship between proposed use and current use of adjacent properties;and
  5. The reasonableness of the proposed rezoning, defined as:
    - a. Supporting the policies, goals and objectives of the adopted comprehensive land use plan and small area plans;
    - b. Promoting the harmony and compatibility of the proposed conditional use in relationship to the surrounding land uses; and
    - c. Serving the best interest of the community
- (f) Conditions of Approval of Petition. In approving a petition for the reclassification of a piece of property to a conditional zoning district, the planning board may recommend and the board of commissioners may of its own accord require that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions shall be limited to those that address the conformance of the development plan and use of the site to county ordinances and an officially adopted comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. For example, conditions that relate to the relationship of the proposed uses to the surrounding property, proposed support facilities, e.g., parking areas, pedestrian circulation systems), screening and landscaping, timing of development, street and right-of-way improvements, water and sewer improvements, provisions of open space, and other matters that the planning board and board of commissioners may find appropriate or the petitioner may propose. Such conditions of approval may include, but are not limited to, the dedication of right-of-way or easements for streets and/or utilities to serve the development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the board of commissioners. Only those conditions mutually agreed upon by board of commissioners and the applicant, with input from the public, may be incorporated into the conditional zoning district.
- (g) Effect of Approval. If a petition for conditional zoning district is approved the development and use of the property shall be governed by:
- (1)The standards and regulations applicable to the district's zoning classification;
  - (2)The approved site plan for the district;
  - (3)Any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district; and
  - (4)All general and additional rules, regulations and conditions are binding on the property as an amendment to these regulations and the Zoning Map.
- (h) Zoning Map Designation. Following approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation followed by the letters "CD."
- (i) Determination – Major Change Requiring an Amendment. Before making a determination as to whether a proposed action is an amendment based upon a major change, the planning director

shall review the record of the proceedings on the original application for the approval of the conditional zoning district.

(1) An amendment comprising a major change requires approval by the board of commissioners and shall be handled as a new application. A change in a specific or general use category shall constitute a new application.

(2) The planning director shall use the following criteria in determining whether a proposed change is an amendment constituting a major change to the approved conditional zoning district:

- a. Any change in location or any increase in the size or number of signs.
- b. An increase in intensity of use which means an increase in:
  - 1. Usable floor area by over 10% or 1,000 square feet, whichever is less;
  - 2. Number of dwelling or lodging units by over 10%; or
  - 3. Outside land area devoted to sales, displays, or demonstrations.
- c. Any change in parking areas resulting in an increase or reduction of 10 percent or more in the number of spaces approved by the board of commissioners. In no case shall the number of spaces be reduced below the minimum required by this chapter.
- d. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved plan.
- e. A 5 percent or more decrease in the amount or location of open space, recreation facilities, or landscape screening.
- f. Substantial changes in pedestrian or vehicular access or circulation.

(3) If the planning director determines that the proposed action is an amendment, he shall require the applicant to file a request for approval of the amendment, which shall be submitted to the planning board and board of commissioners. The planning board shall hold a public hearing and make a recommendation to the board of commissioners who shall hold a public hearing and approve or disapprove the amendment.

(j) *Minor Changes and Modifications.* The planning director shall have the delegated authority to approve minor changes in the conditional zoning district provided they are in harmony with the action of the board of commissioners. A minor change shall mean any change(s) that:

- (1) Increases the intensity of nonresidential development by no more than 10% or 1,000 square feet, whichever is less;
- (2) Any change(s) that increases the density of residential development by no more than 10%;
- (3) Any time an applicant agrees to impose standards that are more stringent than those previously approved by the board of commissioners; or
- (4) All other changes or modifications to the conditional zoning district shall be treated the same as amendments to these regulations or the zoning map and shall be processed in accordance with Section 44-45 of this Code.

(k) *Review of Approval of a Conditional Zoning District.* It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than 5 years after the date of approval of the petition, the planning board may examine the progress made toward developing the property in accordance with the approval petition and any conditions attached to the approval. If the planning board determines that progress has not been made in accordance with the approved petition and conditions, the planning board shall forward to the board of commissioners a report which may recommend that the property be classified to another zoning district in accordance with the procedure set out in Section 44-45, entitled amendments, as the same may from time to time be amended.

This 1st day of May 2006.

11. Other Items of Business: None.
12. Attorneys' Report. None.
13. Manager's Report. None.
14. Adjournment. Chair Barnes stated that the following day was Election Day and encouraged people to exercise their opportunity and right to vote. Commissioner Beatty made a motion to adjourn at 10:03 a.m. The motion carried unanimously.

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Katherine W. Barnes, Chair  
Board of Commissioners

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Barbara E. Morris, County Clerk