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**Chowan County Planning Board
May 17, 2016
Chowan County Public Safety Center
305 West Freemason Street
7:00 pm**

Chairman Marvin Hare called the meeting to order. He asked Planner Elizabeth Bryant to call the roll. Jim Leggett, Marvin Hare, Jim Robison, Linda Peterson, Wayne Parrish and Bobby Winborne were present. William Monds was absent. Administrative Assistant Karen Castelloe and County Commissioner Jeff Smith were present.

Mr. Leggett opened the meeting with a prayer.

Mr. Hare asked for any changes or additions to the agenda.

There being none the agenda was approved.

Mr. Hare asked for any changes or additions to the minutes of the April 19, 2016 meeting.

Mr. Leggett asked that the comment that he made regarding the need for Planning Board members to speak loudly and clearly when making comments or asking questions be amended to reflect that he also asked that the Board members sit up straight at the table and address each other with respect.

Ms. Peterson stated that the question she asked regarding grant money for uninhabitable homes was in regard to regular homes and not mobile homes.

The minutes were approved with the corrections noted by Mr. Leggett and Ms. Peterson.

Mr. Hare noted that the next item on the agenda was the public comment period. He noted that a formal public hearing for the application on the agenda, **A Conditional Use Rezoning Application submitted by Top Notch Service Center Inc. to operate a salvage yard at 2728 & 2726 Virginia Road. (PIN 6990-00-18-2879 & 6990-00-18-2783)** would be held by the Board of Commissioners at a later date after the Planning Board had made their recommendation.

Phyllis Patterson, 108 Center Hill Road, stated that she was a neighboring property owner of the existing salvage yard owned by Joey Nixon on Virginia Road. She asked for clarification on the location of the proposed expansion.

Mr. Nixon stated that the expansion would be located on Highway 32 and would not go behind Ms. Patterson's property.

Ms. Patterson asked about the possibility of a privacy fence.

Mr. Nixon stated that shrubs would be planted and that they will grow and spread and provide screening. He stated that he intended to go back and replace any dead spots in the shrubbery surrounding the existing salvage yard when they did the landscaping for the expansion.

There being no further comment, the public comment portion of the meeting was closed.

Ms. Bryant gave a brief history of the Top Notch Service Center & Salvage Yard located at 2726 & 2728 Virginia Road. She stated that Mr. Nixon had received approval from the Board of Commissioners for his existing salvage yard on March 5, 2012. She stated that Mr. Nixon had contacted the Planning Office several months ago regarding expanding his business to a piece of property that he had purchased behind his current storage area. She stated that in researching what could be done she had discovered that the original salvage yard had not been properly permitted. She stated that the previous planner had been in touch with Mr. Nixon about the business and that they had come up with a plan to screen the vehicle storage area with fencing and landscaping. She stated that at that time it would have been appropriate for the planner to recommend that Mr. Nixon go through the Conditional Use Rezoning process to be properly permitted. She stated that in order for Mr. Nixon to expand his business both the existing storage lot and the expansion area would have to be conditionally rezoned. She stated that both the Board of Commissioners and Mr. Nixon had acted as they were advised by staff for the operation of the original salvage yard and that it was a staff oversight by the planner at the time. She stated that a conditional use rezoning was tied specifically to the conditional use permit application and that it was tied to the specific piece of property and to Mr. Nixon's business as it is. She stated that he would be able to sell his business as long as it continued to operate in the same manner. She stated that the Industrial classification would not transfer if the business use changed or if the business ceased to operate for a 6 month period. She stated that it would then become a null permit and that the property would revert back to the original A-1, Agricultural zoning.

Mr. Nixon thanked the Planning Board for opening the meeting with a prayer. Mr. Nixon stated that he was trying to expand his business and keep things organized. He stated that he had been leasing the corner lot located beside his service station and that he would like to expand onto the lot located on the other side of his property. He stated that his business was growing and that he needed more room to keep the vehicles stored in an organized fashion.

Mr. Leggett asked Mr. Nixon if there were 2 driveways on Highway 32.

Mr. Nixon stated that there were 2 driveways but the driveway leading into the salvage yard from Highway 32 was gated and was never used.

Mr. Leggett asked Mr. Nixon if he anticipated any more traffic being generated by the expansion.

Mr. Nixon stated that he did not anticipate any traffic increase.

Mr. Leggett asked for clarification on the fencing and screening.

Mr. Nixon stated that the bushes would grow and spread and would screen the fence. He stated that he knew that slats had been mentioned but that if slats were put in chain link fence it would create problems in windy conditions.

Mr. Leggett asked about the 5 acre minimum for a salvage yard as stated in the Zoning Ordinance. He asked if Mr. Nixon's property would be grandfathered.

Ms. Bryant stated that the vehicle repair business was grandfathered but that the salvage yard started after the Zoning Ordinance was in effect and would not be grandfathered. She stated that the Board of Commissioners did rule on the salvage yard and that Mr. Nixon had a vested interest due to that ruling.

Mr. Nixon stated that the vehicle repair business had been in existence 20 years or more. He stated that he bought the business in 2007 and that it had continued to grow and that they now need room to expand. He stated that the salvage yard came about due to the economy and more people buying used parts rather than buying new parts.

Mr. Hare asked if the new addition and any requirements put on the new addition would apply to the existing business. He asked if that when the expansion was approved and completed if the entire project would meet the Ordinance standards.

Ms. Bryant stated that because of what happened in 2012 that the Board is now dealing with existing conditions and can't impose new conditions on the existing business. She stated that imposing new conditions on the existing business would be overreaching and causing an unreasonable burden to the applicant. She stated that after the expansion the total acreage would be 3.6. She stated that the Ordinance regulations would apply to the expansion. She stated that the Board would be taking an existing situation with history and a desire from the business owner to expand. She stated that the previous permitting was not the proper procedure and that the Board would be putting it under the proper procedure and helping the applicant make the best move forward while helping the County at the same time.

Mr. Robison stated that had no objection to the project. He asked if spot zoning would be an issue. He suggested that the County Attorney give her opinion on the case.

Ms. Bryant stated that the County Attorney had reviewed the case and that a conditional use rezoning would be allowed under the Zoning Ordinance and under NC General Statute. She stated that a general rezoning would be spot zoning but that a conditional use rezoning was specific to a conditional use permit that is filed concurrently with the rezoning. She stated that the Board of Commissioners will hold a hearing for both the conditional use permit and the rezoning. She stated that there would be 2 decisions that they make and that you could not have one without the other. She stated that the property could not be rezoned without the conditional use permit.

Ms. Peterson asked Mr. Nixon how he disposed of fuel and oil.

Mr. Nixon stated that all the vehicles were drained and that there were companies that came and picked up the waste oil and antifreeze, etc. He stated that it was all stored on top of the ground in tanks that were stored in the building located on the corner next to their business.

Ms. Peterson asked Mr. Nixon if he had any issues with fire due to the flammability of the products.

Mr. Nixon stated that OSHA safety guidelines were met and that they had not had any problem.

Ms. Peterson stated that the language regarding screening was very specific in the Zoning Ordinance. She stated that it called for layers of screening and a graduated height of different types of plantings. She asked if that language was not applicable due to the 2012 ruling.

Ms. Bryant stated that it was her opinion that the requirements should be met for the screening. She suggested that she could meet with Mr. Nixon and his landscaper and talk about species and type when it was time to plant but that the new screening around the expansion area would have to meet the Ordinance Requirements. She suggested replacing dying shrubs from the existing area with new ones when the new landscaping was put in.

Mr. Winborne stated that Mr. Nixon did a lot of work for people in the community and that he has been dealing with fuels, etc. for a long time. He stated that Mr. Nixon was not new to handling things like that he had done a good job building his business and providing jobs and services to the community. He stated that Mr. Nixon has just run out of space and that he had made a deal with an adjacent landowner to purchase additional land so that he could expand his business.

Mr. Parrish stated that Mr. Nixon tows at least half if not more of the vehicles for the Fire Department when they respond to wrecks.

Mr. Hare asked if the existing fence was at least 50 feet from the right of way on Highway 32.

Mr. Nixon stated that he was not sure.

Ms. Bryant stated that she would have to measure it to be sure.

Mr. Nixon stated that the fence was 40 feet from the center of the ditch. He stated that he should be far enough back but that he could double check.

Mr. Hare stated that the Highway Corridor Overlay District called for a 50 foot setback from the right of way.

Ms. Bryant stated that this case was unique because the expansion area was not in the Highway Corridor Overlay District and would not be impacted by those requirements.

Mr. Hare asked if the existing business would have to be brought up to the Zoning Ordinance Standards.

Ms. Bryant stated that they would have to as much as possible but that they could not impose unreasonable conditions on the applicant because of the existing permission that was given by the Board of Commissioners.

Mr. Hare stated that he did not think it was unreasonable to move the fence if it was not 50 feet from the right of way or to require a privacy fence over the total area because neither one of those things would cause Mr. Nixon to go out of business or to lose business.

Ms. Bryant stated that it was within the Planning Board's right to add or delete conditions suggested by staff. She stated that as part of the Board's recommendation to the Commissioners they could suggest whatever conditions that they felt appropriate be added or any conditions that they felt were inappropriate be deleted from the conditions recommended by staff.

Mr. Leggett pointed out that the Zoning Ordinance states that the salvage materials should not be stored in piles higher than 10 feet. He asked Mr. Nixon if he stored any of his materials in piles.

Mr. Nixon stated that he did not.

Mr. Leggett asked if there would be any excessive noise generated by the equipment that Mr. Nixon used.

Mr. Nixon stated that there would not be.

Mr. Leggett stated that according to the Zoning Ordinance a salvage yard should not be located closer than 300 feet to an existing residence.

Mr. Nixon stated that there were no residences located within 300 feet of the expansion.

Mr. Winborne clarified that the only time Mr. Nixon had any materials stacked was when he was waiting for a truck to come and load the vehicles and take them away.

Mr. Nixon stated that was correct.

Ms. Bryant presented the staff report. (attached and included in the May 17, 2016 meeting file)

Ms. Peterson asked Ms. Bryant if she was recommending adherence to the Zoning Ordinance standards with the exception of the 5 acre minimum size and the gradations of the vegetative screening.

Ms. Bryant stated that was what she was recommending.

Ms. Peterson questioned the standard that stated that fuels shall be contained in below ground tanks meeting the requirements of the State of North Carolina. She asked if there was something in that

requirement that was not applicable to Mr. Nixon's business because the fuels were picked up and taken away.

Ms. Bryant stated that there must be or Mr. Nixon would not be able to operate as he currently is. She stated that she was guessing that Mr. Nixon had the necessary state permits for his current business so there must be something that allows for the above ground storage but that she was not sure if that had something to do with them being removed from the site. She stated that was something that would need to be determined as far as what the state regulation is in regard to storage of fuels.

Mr. Robison asked if the requirement for the paved driveway could be changed.

Ms. Bryant stated that the Planning Board could change that in their recommendation to the Board of Commissioners.

Mr. Robison stated that it seemed like an unnecessary expense for the owner.

Ms. Peterson stated that there was some discussion about paving the dumpsites at a recent Commissioner meeting and the point was made that it didn't really make sense because the heavy trucks coming into and out of the sites would destroy the surface.

Mr. Robison stated that paving the surface would also make it impermeable and then you had a water runoff problem.

Mr. Winborne stated that Mr. Nixon's auto repair business was his main business and that the only entrance to the salvage yard was through the auto repair business. He stated that a paved driveway was not required for an auto repair business. He stated that in an auto repair business you had vehicles being brought up leaking fluids and if it leaks on asphalt and it rains then it runs off into the ditch.

Mr. Robison stated that he did not agree with requiring underground storage due to the fact that the fluids could leak out into the ground.

Mr. Hare asked if any standards should be imposed on the salvage yard as far as rodent control.

Mr. Robison stated that he did not think so. He stated that there was nothing there that would attract rodents.

Mr. Nixon stated that the yard was maintained and the grass was kept down. He stated that he has never had an issue with rodents and that there was nothing there for them to feed on.

Ms. Bryant stated that there was a difference between a salvage yard and a vehicle graveyard. She stated that with a vehicle graveyard or junkyard that there probably would be an issue with rodents, snakes, etc. but that with a salvage yard, the cars would be moving in out more quickly. She stated that the Zoning Ordinance did require that the grass be kept at a maximum of 6 inches and that was probably to deter rodents, snakes, etc.

Mr. Winborne stated that there was no grass growing inside the salvage yard itself.

Mr. Nixon stated that was correct and that the inside of the compound was rocked.

Mr. Hare stated that he felt that the Planning Board was responsible for protecting the surrounding property owner's property values. He expressed concerns about the salvage yard negatively affecting the surrounding property values. He stated that the bushes planted at the existing business were not doing the job of screening the property.

Mr. Nixon stated that 75% or more the existing bushes were as tall as the fence. He stated that there were some that did need to be replaced.

Mr. Hare asked if they were supposed to be a visual barrier.

Mr. Nixon stated that the bushes were planted 2 years ago and that they were already 6 feet tall. He stated that what was planted was what the Board of Commissioners told them to plant.

Mr. Hare stated that his concern was that the bushes like the ones planted at the existing business were not sufficient for a highway corridor area. He expressed concerns about possible residences that may be built next to the salvage yard in the future.

Mr. Nixon stated that the surrounding land was a farm owned by Mildred Howell. He stated that it was difficult for him to get an acre to expand his business and that he did foresee anyone getting an acre to build a house on.

Ms. Peterson stated that she liked the idea of consulting with a landscaper to decide on options for plantings.

Mr. Winborne suggested planting wax myrtles. He stated that they grow fast and will screen the property.

Mr. Robison stated that if you just let the plantings grow that the screening will take care of itself.

Mr. Hare stated that at the public hearing the adjoining landowners will have the opportunity to talk about any loss of value on their property.

Mr. Nixon stated that all the surrounding property owners were supportive of his expansion.

Ms. Peterson stated that there was a provision in the Ordinance regarding hours of operation and noise generation. She mentioned that Mr. Nixon had stated earlier that he was sometimes called out in the middle of the night to tow vehicles.

Mr. Nixon stated that had nothing to do with the salvage yard. He stated that only entailed going in to get the wrecker, leaving and coming back.

Ms. Peterson asked if noise was an issue.

Mr. Nixon stated that the only noise was starting a vehicle, leaving, coming back and cutting the vehicle back off.

Mr. Hare pointed out that Ordinance stated that any equipment producing over 70 decibels should not be located closer than 400 feet from a residence. He asked for clarification on that regulation.

Ms. Bryant stated that any equipment producing more than 70 decibels could not be closer than 400 feet from a residential property. She stated that there were no residences that close to the property. She stated that it was her understanding that there was no consistent noise of that level being operated at the business. She stated that she thought that regulation was meant to address things like the constant crushing of cars or metal like was done at the landfill. She stated that nothing of that sort was done at Mr. Nixon's business on a regular, consistent basis.

Mr. Hare asked what Mr. Nixon used to load the cars on to the flatbed truck to be taken away.

Mr. Nixon stated that he used a tractor that was located at the front corner of the property.

Mr. Hare asked Mr. Nixon if there were complaints about the noise if he could continue to operate and abide by the regulation in the Ordinance.

Mr. Nixon stated that his business was not located within 400 feet of a residence so it was not an issue.

Mr. Hare asked if there was a need for any sort of performance bond or guarantee to make sure that the visibility standard is met.

Ms. Bryant stated it would be her job, if a complaint came in or that she noticed that the plants were failing and that was a condition of the permit, to contact Mr. Nixon to remedy the situation. She stated that the screening would be condition of the permit and would be subject to zoning enforcement.

Ms. Peterson asked for clarification on the modifications that the Planning Board wished to make to the Staff Recommendations.

Mr. Hare stated that he had noted Mr. Robison's suggestion that the driveways not be required to be paved.

After some discussion it was decided that "below ground" be removed from condition 9.

Mr. Hare asked if condition 2 addressing the vegetative screening needed to be strengthened.

Ms. Peterson stated that it was inferred that the Zoning Enforcement Officer would monitor the vegetative screening on a regular basis and work with Mr. Nixon to remedy any issues.

Ms. Bryant stated that it was inferred but that the Planning Board could strengthen it if they wished. Ms. Bryant stated that some jurisdictions specified the height that the plantings should be in a certain amount of time or they specify the size of the shrub planted to begin with. She stated that Chowan County's Ordinance did not specify the size of the shrub planted.

Mr. Hare asked if a specification such as visibility be at 15% by the second year could be put in the conditions.

Ms. Peterson stated that would be hard to enforce.

Mr. Robison stated that he felt that the maximum of 6 inches requirement be removed and that the screening should just be allowed to grow and that it would eventually cover the fence.

Mr. Leggett stated that screening the property with a fence would take care of the visibility problem.

Ms. Peterson stated that would create problems with high winds. She stated that she liked the idea of setting an expectation that within a year that whatever is planted should be 6 feet and that anything that has died be replaced.

Mr. Nixon stated that totally screening the salvage yard will deter business if nobody could see it. He stated that he was trying to grow his business. He stated that there was a certain number of people who drive by and see the business and then stop and do business. He stated that if it was totally concealed it would negatively impact his business. He stated that he had no problem with buffering but asked the Planning Board to keep the impact to his business in mind when making their recommendations. He asked what the Commissioners had ruled originally; screening or buffering.

Ms. Bryant stated that the Commissioners ruling stated screened.

Ms. Leggett asked if someone was interested in building nearby, if it would affect them in a negative way.

Mr. Nixon stated that he understood that was a concern but that there was a happy medium.

Ms. Bryant stated that any future buyers or builders would be "buyer beware". She stated that they would know what they were purchasing next to. She stated that the Ordinance was primarily written to protect existing properties that are there before the business is built or expanded versus someone who might build a house in the future.

Mr. Hare stated that he felt that the issue was location. He stated that the salvage yard was not in a location that has been defined as an area that is suitable for a heavy industrial use. He stated that the Land Use Plan deals with tourism and promoting agricultural residential areas in the main corridor area. He stated that the Land Use Plan speaks to the crossroads areas as an area that is supposed to be a cluster of commercial and residential sites. He stated that a salvage yard was something different and that the crossroads would become an industrial site 20-30 years from now.

Mr. Robison moved that the Planning Board recommend approval of the Conditional Use Rezoning application with the conditions recommended by Staff and the modifications made by the Planning Board stating that Mr. Nixon would not be required to pave the driveway, that there would not be any underground storage of fuels, fluids, etc., and that the screening would be reviewed periodically by the Zoning Officer to ensure compliance. Ms. Peterson seconded the motion. The motion carried unanimously. (6-0)

Ms. Bryant stated that Mr. Nixon's application would be heard at the June 6, 2016 Commissioner's meeting.

Mr. Hare noted the next item on the agenda, Items Considered Timely & Important.

Mr. Winborne stated that the Family Dollar located at the intersection of Highway 32 & Virginia Road had not cut the grass so far this year. He asked if there was anything that the County could do to make them maintain the grass.

Ms. Bryant stated that would fall under Code Enforcement and that she could definitely do something about that.

Mr. Leggett questioned the comment that one of the Commissioners had made about doing away with the Planning Board.

Mr. Robison stated that started in Currituck County and that Currituck County had decided that the Planning Board should not have any quasi-judicial hearings and that should fall under the purview of the elected officials. He stated that the School of Government had agreed with that and that he was in favor of that. He stated that he felt that the Planning Board should be an advisory board and should not have any legislative action whatsoever because they were not elected.

Ms. Bryant stated that NC General Statute gives counties and municipalities the authority to give those powers to delegated bodies but that they were not required to and it could vary county to county.

Mr. Leggett asked if there were any counties that did not have a planning board.

Ms. Bryant stated that she had done some research for the Board of Commissioners on how counties appointed their Planning Board members and she stated in a 16 county region she ran across 2 counties that did not have a planning board.

Mr. Hare stated that the planning board served at the pleasure of the Board of Commissioners and that they could limit or expand the power of the planning board as they wished.

Ms. Bryant stated that the Conditional Use Permit application from Apex Clean Energy had been received earlier in the day. She stated that they had met the deadline for the June Planning Board meeting but that she did not think that would allow adequate time for review. She stated that she would be getting assistance for technical review from experts and that most likely the application would be heard at the July Planning Board meeting.

Mr. Hare asked if the Planning Board should be paying attention to what they discuss outside of the meeting in regard to the proposed wind farm.

Ms. Bryant stated that it was less important for the Planning Board than the Board of Commissioners but that yes they should be. She stated that David Owens from the Institute of Government would be coming to speak to and answer questions from the Board of Commissioners on June 6th at either 3 or 4pm. She stated that it would be a workshop session for the Commissioners but that the Planning Board was welcome to come and listen. She stated it was to inform the Commissioners on what issues they would be facing as far as quasi-judicial decisions, ex-parte communications, etc. She stated that as soon as the time was nailed down she would send a reminder to the Planning Board with the official time of the workshop.

Ms. Peterson asked for an update on the CAMA grant.

Ms. Bryant stated that the CAMA grant was approved for the Land Use Plan update. She stated that the grant was for \$15,000 and that she was hopeful that they could find a consultant to do the work for that amount. She stated that she had heard from a few and that they think that the County & Town need to supplement that amount. She stated that a request for proposals from planning companies had been sent out.

Mr. Hare asked if the Planning Board would have some influence on what parts of the Land Use Plan were updated.

Ms. Bryant stated that they would and that a committee would be formed from the Planning Board, Board of Adjustment, and Board of Commissioners. She stated that there would be several public meetings and that there would be a chance to have input on what was revised.

There being no further business, the meeting was adjourned.

