



## Planning, Development & Inspections

A Division of Community Services  
P.O. Box 550 • Raleigh, NC 27602  
[www.wake.gov](http://www.wake.gov)

### MINUTES OF REGULAR PLANNING BOARD - March 1, 2023

**LOCATION:** Wake County Justice Center, 301 S. Salisbury St., Room 2700, Raleigh, NC

#### MEMBERS PRESENT:

1. Mr. Thomas Wells (Vice Chair)
2. Mr. Jason Barron
3. Ms. Brenna Booker-Rouse
4. Mr. Danny Kadis
5. Dr. Kamal Kolappa
6. Mr. Ted Van Dyk

#### MEMBERS ABSENT:

1. Mr. Asa Fleming (Chair)
2. Mr. David Adams
3. Mr. Amos Clark
4. Mr. Bill Jenkins

#### COUNTY STAFF:

1. Mr. Steven Finn
2. Mr. Tim Gardiner
3. Mr. Tim Maloney
4. Mr. Josh McClellan
5. Mr. Akul Nishawala
6. Ms. Liz Oliver
7. Ms. Sharon Peterson
8. Ms. Beth Simmons

#### COUNTY ATTORNEY:

1. Mr. Kenneth Murphy, Deputy County Attorney

#### GUESTS:

1. Mr. Barney Blackburn, Environmental Health Manager
2. Mr. Donald Mial, Wake County Commissioner

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1. **Meeting Called to Order:** Mr. Wells called the Planning Board meeting to order at 1:38 pm.
  2. **Petitions and Amendments:** None.

3. **Approval January 4, 2023, Minutes:** Motion to approve the minutes from January 4<sup>th</sup>, 2023, was made by Mr. Kadis and seconded by Dr. Kolappa. The minutes were unanimously approved as presented.
4. **Proposed Unified Development Ordinance Text Amendment – OA-03-22**  
Request that the Planning Board recommend approval to the Wake County Board of Commissioners the following amendments to the Wake County UDO:
  1. Amend Section 8-42 *Lakes and Dams* to amend requirements for impoundments that are part of a subdivision; and move the requirements to a new section 14-23 *Impoundments and Dams*.
  2. Amend Section 20-14-4 *Criminal Penalty* to repeal 'criminal penalties' as an enforcement action for violating the Unified Development Ordinance in accordance with recent changes to state law.

**Presentation by Staff: Mr. Timothy Maloney, Planning, Development & Inspections Director**

Mr. Maloney began by explaining that the proposed text amendment for consideration by the Planning Board and is the result of discussions with County staff, the Code and Operations Committee and the County's Homebuilders Association. If approved, the amendments will be considered for final approval by the Board of Commissioners at an upcoming meeting. He noted that the proposed text amendment has two distinct items combined into one proposal.

1. **Amend Section 8-42 *Lakes and Dams* to amend requirements for impoundments that are part of a subdivision; and move the requirements to a new section 14-23 *Impoundments and Dams*.**

Mr. Maloney identified the first element as an amendment to Section 8-42, pertaining to requirements for impoundments and dams that are constructed or retained as part of a subdivision. He noted that Section 8-42 of the UDO includes standards and requirements for lakes/dams that are constructed or retained within any new subdivision, whether a minor, minor-limited, or regular subdivision. The standards require the lake and its dam be constructed or upgraded to accommodate the runoff from a 24 hour, 100-year frequency storm. Additionally, dams that are 25 feet in height or more, or have an impoundment capacity of 50-acre feet or more, must obtain State agency approval. The State also regulates dams whose failure could result in loss of life or significant damage to property regardless of height or capacity.

He noted that these requirements, which apply to any type of subdivision (regular, minor, or minor-limited), are in place to ensure that newly constructed and existing dams meet certain safety standards and do not pose a threat to downstream properties. However, this requirement can be a costly and time-consuming barrier for customers seeking a minor or minor-limited subdivision (3 lots or fewer). Mr. Maloney informed the Board that Staff proposed to provide a new option for minor and minor-limited subdivisions. The new option would allow the customer to forego the requirement to hire an engineer and make upgrades to the dam prior to the County issuing a permit to subdivide. Instead, the customer would obtain a jurisdictional/hazard determination from the NC Dam Safety Program. This would include an identification number for the dam that is placed on the recorded subdivision plat with a note identifying the responsible party for maintenance and repair of the dam. In the meantime, the County would issue the subdivision permit to the customer. Staff felt this option will save time and money for the customer. Mr. Maloney did clarify that if applicants so desired, they would still be able to follow the existing requirements in the UDO, but the proposed amendment would provide them with flexibility.

Mr. Maloney also indicated that the proposed amendment would move the amended standards from Article 8 *Subdivision Design and Improvements* to a more appropriate section within Article 14 *Flood Hazard Areas*.

Mr. Barron asked for clarification about the “responsible party” for maintenance and repair, noting Section 14-23-3 required identification. Mr. Maloney indicated that the plat recorded with the County would include language identifying the “responsible party” be included on a stamp for the property owner to sign, so that both the identification number and responsible party would be visible when recorded.

Mr. Maloney listed the benefits of the change as:

1. Simplifies the process and reduces costs to applicants when seeking a minor or minor-limited subdivision permit when a lake or dam is on the property.
2. Time saving for customers.
3. Maintains protection of public health and safety as it pertains to hazardous dams.
4. Moves the standards to a more appropriate section within the UDO.
5. The changes are supported by the Home Builders Association.

He then offered to answer any questions from the Board and introduced Barney Blackburn, an Environmental Health Manager, to assist with any technical queries.

Mr. Kadis asked for clarification regarding the necessity for landowners to register a dam on their property if the amendment was approved. Mr. Maloney responded that even with the proposed text amendment, property owners were responsible for seeking an ID number and register with the State Dam Safety Program. The registration number would be required on the recorded plat before being recorded with Wake County. Mr. Blackburn explained that some dams would already be registered with the State and that their program had indicated a desire to examine aerial imagery to identify dams that are not currently in their inventory, and that he felt this amendment would assist in filling in gaps in their database.

Ms. Booker-Rouse asked about the distinction between naturally occurring dams and man-made dams, particularly as to whether the former was subject to the same registration and regulation. Mr. Blackburn responded that earthen impoundments would not normally appear on aerial imagery or survey maps and would not be subject to the same regulation. He suggested that the Wildlife Resource Commission might have authority over organic debris tree impoundments.

Hearing no further questions to the first component of the proposed amendment, Mr. Maloney continued with his presentation.

**2. Amend Section 20-14-4 *Criminal Penalty* to repeal ‘criminal penalties’ as an enforcement action for violating the Unified Development Ordinance in accordance with recent changes to state law.**

Mr. Maloney explained that in 2021, the North Carolina General Assembly decriminalized violations of land development ordinances pursuant to S.L. 2021-138 (SB 300), criminal penalty can longer be used as a punishment for violation of the UDO. Accordingly, UDO Section 20-14-4 Criminal Penalty is proposed to be removed to remain consistent with Senate Bill 300. The County will still be authorized to enforce the UDO with fines, civil penalties, and court action. Mr. Maloney informed the

Board that Staff recommended that they adopt the Statement of Consistency, and as a second motion to recommend the ordinance amendment be submitted to the Board of Commissioners.

Hearing no questions from the Board, Mr. Maloney closed his presentation.

### **Public Hearing**

Mr. Wells opened the floor for public comment at 2:01 p.m.

### **Board Discussion**

Hearing no comments from the Board, Mr. Wells entertained a motion to OA-03-22.

### **Board Motion #1 – Adoption of the Statement Consistency in OA-03-22**

Motion was made by Mr. Barron in the matter of OA-03-22, that the Planning Board adopt and offer to the Board of Commissioners the following recommended statements finding that the proposed text amendments are consistent with the Wake County Comprehensive Plan and Wake County Unified Development Ordinance (UDO). The purpose of the Wake County Comprehensive Plan and the Wake County UDO, as seen in Article 1-22, is to provide a guide for the physical development of the County, preserve and enhance the overall quality of life of residents, and establish clear and efficient development review procedures. The text amendments included herein accomplish this as described in the following statements.

1. Amendments to Section 8-42 *Lakes and Dams* modifies the County's requirements for assessing existing lakes or dams on proposed minor or minor-limited subdivisions (three lots or fewer). The amendment provides an option that eases requirements on these types of small subdivisions but require the existing lake/dam to be registered with the State of North Carolina Dam Safety Program for determination of high hazard risk. The amendment also moves the standards to a more appropriate location within Wake County UDO under the section titled Flood Hazard Areas. These changes are consistent with the Wake County Comprehensive Plan and the Wake County UDO by simplifying the requirements of this section and protecting the public health and safety.
2. Amendments to Section 20-14-4 *Criminal Penalty* are prompted by recent State law changes. Pursuant to S.L. 2021-138, also referred to as SB 300, violations of land development ordinances have been decriminalized. The amendments align the Wake County Comprehensive Plan and the Wake County UDO with State law.

Dr. Kolappa seconded the motion, and it was adopted unanimously.

### **Board Motion #2 – Approval of the Proposed Text Amendments in OA-03-22**

Dr. Kolappa moved to recommend approval of text amendments in OA-03-22 to the Wake County Board of Commissioners and that the Board find that the adoption of this proposed text amendment is consistent with the Wake County Comprehensive Plan and Wake County Unified Development, is reasonable and is in the public interest.

Mr. Barron seconded the motion, and it was adopted unanimously.

## **5. Middle Creek Area Draft Plan - Presentation by Akul Nishawala, Planner III**

Mr. Nishawala began his presentation with an update on the Middle Creek Area Draft Plan, identifying the map presented to the Land Use Committee in February. After review by Staff and the Board about use of the available land for agriculture and forestry, the determination was that considering these uses would not be an undue burden on landowners to develop their property. He informed the Board of a Community Workshop at Amplify Church on February 16<sup>th</sup> in conjunction with the Soil and Water Conservation District to ensure farmers were aware. Mr. Nishawala indicated that staffing levels did not meet the capacity of attendees and that only 40 citizens signed in – he expressed confidence to the Board that turnout was higher. WRAL also covered the event. He compared the amount of engagement to the Lower Swift Creek Plan, noting that the larger geographic area and lack of developed land resulted in higher interaction.

Mr. Nishawala shared photos from the event, noting that Soil and Water also informed visitors about the Voluntary Agriculture District program. He also made note that online survey responses were strong, and identified several notable responses. While respondents preferred automobiles as transportation, when offered a “safe and convenient” alternative mode, the percentage of respondents shifted from 75% to 50% willing to use different methods, including public transportation, bicycles, and walking. Mr. Nishawala reported that key words from the requirements for “safe and convenient” transportation included “sidewalks,” “greenway,” “accessible”, and “protected.” He explained that taking these requests into consideration would better help the County in determining how land use should be explored in the Middle Creek Area.

Citizens also provided several responses to questions about the type of non-residential development they would prefer, leaning heavily on farming, forestry, and smaller retail establishments. Citizens expressed interest in more public events, and Mr. Nishawala identified upcoming events, including monthly workshops in conjunction with Juniper Level Missionary Baptist Church. On March 22<sup>nd</sup>, the County will partake in the Keeping the Farm Workshop to continue outreach to farmers after seeing positive results at Amplify Church.

With that in mind, Mr. Nishawala explained to the Board that more time with input from the public was paramount, and therefore staff determined that an additional 30 days of outreach would be necessary prior to submitting the draft plan in April, as the initial timeline had projected. Mr. Nishawala closed his portion of the presentation by informing the Board that Tim Gardiner would be providing an update on the 401 Corridor, as it pertained specifically to the Middle Creek Area Land Use Plan.

Mr. Barron asked what the next step after feedback had been collected, and Mr. Nishawala responded that one portion of the community workshops involved members of the public physically marking a map with suggestions of where to make the best use of land. He explained that he had been comparing the recommendations with available land identified by the County to reflect the desires of residents.

### **US 401 Corridor Update – Tim Gardiner, Transportation Planner III**

Mr. Gardiner began his presentation by noting that the US 401 New Location Study intersected with the Middle Creek Land Use Area Plan in that decisions made by the Board may be impacted directly by CAMPO’s study. He noted that this study was separate from the US 401 Bypass Study but remains designed to find transportation solutions along 401. The purpose of the study, Mr. Gardiner explained, is to find a new location for 401, as it will no longer run through Fuquay-Varina. The study would develop roadway solutions to meet future demand and manage development around proposed facilities to limit future impacts.

He provided the Board with a brief overview of the original Bypass concept based on the NCDOT Raleigh to Fayetteville Study from 1990. Considering the changes to the County in the ensuing 30 years, revisiting the original plan was agreed upon to determine if the Metropolitan Transportation Plan (MTP) was still viable. Mr. Gardiner shared a slide with three proposed locations, identified as W, X, and Z. X and Z, Mr. Gardiner noted, are bypass locations, while W would continue to use part of 401 and connect to an improved NC 55 to create a separate bypass. He noted that the W corridor was already undergoing improvements and would be addressed in various stages involving lane width and design speeds. Mr. Gardiner turned to a slide focused on design impacts, explaining to the Board that the impacts directly affected the Land Use Plan. Transportation impacts remained similar, but land use impacts would dovetail with any decisions made by the Board.

Ms. Booker-Rouse asked if there were concerns about community engagement if the decision made by CAMPO or the NCDOT superseded their input. Mr. Nishawala responded that the opposite was more likely the case – based on staff experience at Amplify Church, it became clear that rethinking the 401 Corridor was relevant considering the desire of residents to retain agricultural land. The information provided by residents in the Middle Creek Area gave planning staff a better starting point to considering possible new locations for 401. Mr. Gardiner added that plan W was a direct result of community input.

In conclusion, Mr. Gardiner added that the scope of the US 401 Corridor Study extended to a 2045 model and was considered a lower priority versus other highway projects based on the State's calculation of capacity over usage. At present, 401 was still rated at capacity into the foreseeable future, although Mr. Gardiner did note that 55 was under different considerations.

Mr. Nishawala indicated that response from the public has been positive regarding potential transportation expansion, but they saw an overwhelmingly negative response to increased development surrounding the potential corridors. Mr. Wells suggested it might be beneficial for Planning Board members to appear at future workshops. Mr. Nishawala agreed that would be beneficial and Mr. Gardiner added that the combination of both the Land Use Plan and the 401 Corridor Study were happening in conjunction with the Town of Fuquay-Varina. The Town had expressed concerns about development without clarity on how either project would impact their goals. Mr. Gardiner explained to the Board that the relocation study was scheduled for consideration in the summer of 2023, based on the responses of impacted communities and the Board's decision.

With no further questions from the Board, Mr. Nishawala and Mr. Gardiner closed their presentation.

## **6. Committee Reports**

### Transportation Committee:

Mr. Van Dyk noted that, while the Transportation Committee did not meet in February, he did have an update on the tree reforestation project. Contact had been made with Triangle Expressway Authority to discuss the pilot plan in the May Planning Board Meeting.

## **7. Planning, Development, and Inspections Report**

Ms. Peterson updated the Board that the next Land Use Area Plan would be focused on the Neuse Basin, separated into northern and southern portions. The City of Raleigh's Southeast Special Area Study was scheduled before the City Council on April 4<sup>th</sup>, and after public hearing the City would

coordinate with the County to begin the Southern Neuse Basin Land Use Plan. The Northern portion would follow, based on the Wake Forest and Rolesville areas within the County's planning jurisdiction.

Mr. Finn provided the board with updates involving complaints related to zoning enforcement, particularly regarding property access in non-residential uses. Over the past 60 days, staff had received several complaints and inquiries regarding non-residential access around Smithfield Road and Poole Road. He noted that transportation and property access had been evaluated based on these complaints. Mr. Finn also noted that pre-submittal meetings to date for FY23 – in a typical year, the average back to 2020 was 50 per Fiscal Year, and he anticipated that by the end of this year they expected to exceed that for non-residential use pre-submittal meetings.

Mr. Finn pointed out that 90% of County Land Use was for residential uses, but that PDI has seen a heavy increase in information requests pertaining to non-residential uses, leaning towards service oriented small retail but also telecommunication towers over the next 8 to 12 months.

Mr. Maloney indicated that OA-03-22 would be taken to the Board of Commissioners on March 20<sup>th</sup>, 2023, and that either Mr. Wells or Mr. Fleming would need to attend the meeting. He also mentioned to the Board that various stakeholders around Wake County had previously updated the Board, pre-pandemic, and that it might be advisable to schedule another presentation to provide information on developments. He noted a new RTP master plan, RDU's new runway, and Wake County's Economic Development or the Parks Department would provide the Board with information they might not otherwise be aware of. Mr. Maloney closed his report by noting that Chair and Vice Chair elections would be held at the April meeting.

## **8. Adjournment**

The meeting was adjourned at 3:04 p.m.

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REGULAR MEETING  
WAKE COUNTY PLANNING BOARD  
March 1, 2023

Vice Chair Thomas Wells declared the regular meeting  
of the Wake County Planning Board for  
Wednesday, March 1, 2023, adjourned at 3:04 p.m.

Respectfully Submitted:

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4/5/2023

Thomas Wells  
Wake County Planning Board

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