

Planning Board Meeting

April 19, 2021

Minutes

Members Present: Chairman Jonathan Olson, Terry Allen Swaim, Levin Jones, Ryan Zakany, Deans Eatman, Jimmena Huffman-Hall, Cande Killian Wood and Michael Firstbrook.

Members Absent: None

Staff Present: Niki Jones Planning Director, Bryan Coates, Assistant Planning Director, Jeannine Ngwira & Linda Barbour.

1. Meeting Called to Order

Chairman Olson called the meeting to order at 7:00 pm and recognized that a quorum (minimum of 5 members) was present.

Pledge of Allegiance was recited.

2. Adjustment and Approval of Agenda

Chairman Olson asked for a motion to approve the Agenda. Deans Eatman made the motion and Michael Firstbrook seconded the motion. The agenda was approved unanimously.

3. Approval of the Minutes

3a. Wendell Planning Board minutes from March 15, 2021. Chairman Olson asked if all had a chance to review these minutes. Deans Eatman made a motion to approve & Levin Jones seconded the motion; all were in favor and the minutes were approved unanimously.

4. Administrative Reports

None

5. New Business-

5a. CD20-05 – Conditional District request for Belle Grove

POTENTIAL ACTION: Recommendation to the Town Board.

5b. ZTA21-04 – Text Amendment on Billboards

POTENTIAL ACTION: Recommendation to the Town Board.

5c. ZTA21-05 - Text Amendments for Chapter 160D of the NC General Statutes

POTENTIAL ACTION: Recommendation to the Town Board.

6. OLD BUSINESS

6a. Blueprint Wendell 2030 Update

Bryan Coates, Assistant Planning Direct, presented the following information shown in *italics* below.

5a. Item Title:

CD20-05 – This request is to rezone approximately 47.42 acres from Residential Agricultural (RA) to R7 (Residential-7) Conditional District for the Belle Grove Subdivision located off Lions Club Road.

Specific Action Requested:

The Planning Board is being asked to consider the proposed rezoning request and make a recommendation to the Board of Commissioners, to include a statement of plan consistency and reasonableness.

Item Summary:

The applicant has requested to create an R7 Conditional District for 42.75 acres of property currently located in the town’s extraterritorial jurisdiction (ETJ). The applicant’s proposed R7 conditional district, will feature 98 single-family homes and 107 townhomes.

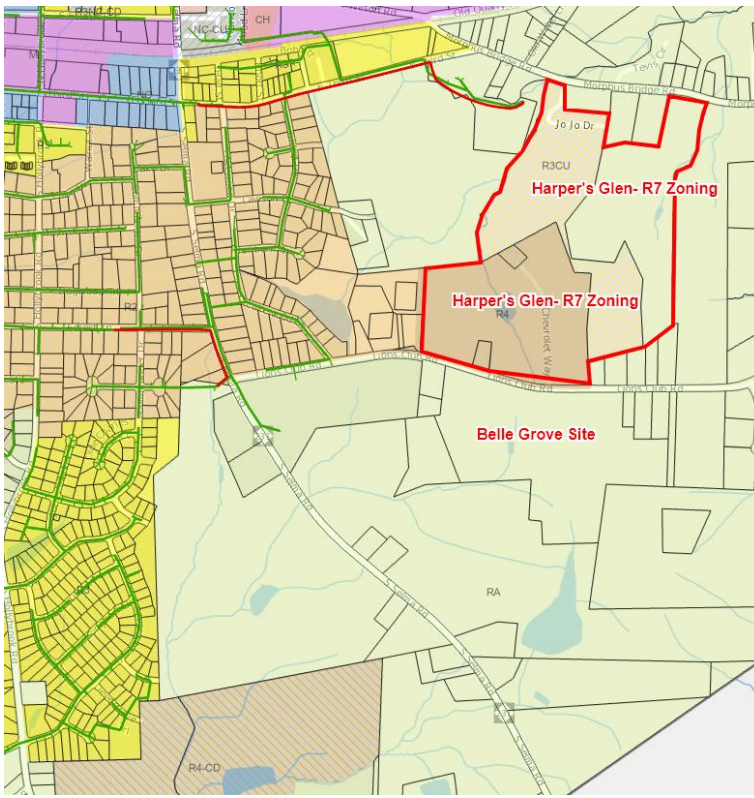
The Overall Site Plan is included as Attachment B (Along with a link to the full Master Plan for download).

Project Profile	
Location	Off Lions Club Road Addresses: 0 Lions Club Road PINs: 1793-26-3863
Current Zoning	RA
Requested Zoning	R7-CD
Area of Request	42.75 acres
Corporate Limits	Town of Wendell ETJ – will need to annex to receive utilities
Property Owner	Ollie Roy Baker & Annie Sue Faison
Applicant	Bryan Duncan of the Spaulding Group, PA

Project Setting – Surrounding Districts and Land uses:

DIRECTION	LANDUSE	ZONING
North	Residential/Vacant	RA/R7-CD
South	Residential/Agricultural	RA
East	Residential/Agricultural	RA
West	Residential/Agricultural	RA

Aerial (Subject



Zoning District:

The subject property is currently located in the RA zoning district. The surrounding properties are zoned Residential-Agricultural (RA) to the east, west and south. The recently approved Harper’s Glen development with R-7 CD zoning is to the north.

The request of Residential-7 Conditional District (R7-CD) has a minimum lot size of 3,500 sq. ft.

- » *The applicant is proposing a minimum lot size of 4,600 sq ft and an average lot size of 5,704 sq. ft. for the single-family lots within the proposed development plan.*

The lot dimensions required for single family homes by the Unified Development Ordinance and those proposed by the applicant are below.

<u>R-7 UDO Required Dimensions</u>	<u>Proposed Dimensions by the Applicant</u>
<i>Lot Width- 24ft.</i>	<i>Lot Width- 40ft.</i>
<i>Lot Depth- 100ft.</i>	<i>Lot Depth- 100ft.</i>
<i>Front Setback- 10ft.</i>	<i>Front Setback- 20ft.</i>
<i>Side Setback- 3ft.</i>	<i>Side Setback- 5ft.</i>
<i>Rear Setback- 25ft.</i>	<i>Rear Setback- 25ft.</i>

The lot dimensions required for townhomes by the Unified Development Ordinance and those proposed by the applicant are below.

<u>NC UDO Required Dimensions</u>	<u>Proposed Dimensions by the Applicant</u>
<i>Lot Width- 16ft.</i>	<i>Lot Width- 20ft.</i>
<i>Front Setback- 0ft.</i>	<i>Front Setback- 20ft</i>
<i>Side Setback- 5ft-10ft (btwn)</i>	<i>Side Setback- 5ft (btwn)</i>
<i>Rear Setback- 0ft.</i>	<i>Rear Setback- 10ft</i>
	<i>Corner Side Setback- 10ft.</i>

Proposed Conditional District Conditions:

The applicant is proposing 11 Conditions for the proposed CD, as follows:

1. *Anti-monotony: In order to promote variation in home appearance, no single-family front façade shall be duplicated for three (3) lots in a row or directly across the street. For corner lots, this shall apply to the lots catty-cornered across the intersection.*

2. *Garage doors shall either contain windows or carriage style adornments.*
3. *The use of vinyl-siding shall be prohibited, except for trim elements of the dwelling unit façade.*
4. *The community will have a homeowner's association. The HOA will be responsible for the Townhome's roofs, yard maintenance, and pest control.*
5. *UDO Section 2.7 B. 1. – the minimum lot size for single-family shall be 4,600 sq. ft.*
6. *UDO Section 5 – Front-loaded single-family lots shall have a minimum allowed lot width of 40 feet.*
7. *UDO Section 9.7.E.4- Maximum cul-de-sac length shall exceed 300' on street 'H' as necessary to preserve environmental and topographical features.*
8. *UDO Section 2.3 A. – Multifamily dwellings (limited to townhomes only shall be a permitted use in R7-CD and shall not exceed 53% of the total number of units – UDO 2.7B Such multifamily dwellings may be front-loaded - UDO 5.10 B.*
9. *Multifamily lots shall not all be identical in width.*
10. *Foundations: top of slabs shall be elevated a minimum of 8 inches above finished grade. Finished grade shall fall a minimum of 6 inches within the first 10 feet away from the structure to ensure positive drainage.*
11. *A six-foot tall wooden/pvc/vinyl privacy fence shall be installed along the western boundary line at the developer's expense (except within environmentally sensitive areas); more specifically adjacent to Wake County PINS 1793173213, 1793162989 (Wendell Lions Club) & 1793162567 (Wendell Swim Club). The fence shall be maintained in perpetuity by the homeowner's association.*
12. *An earthen berm with a minimum height of 4' shall be constructed adjacent to Wake County PINS 1793173213, 1793162989 (Wendell Lions Club) and Wake County PIN 1793356563 (Bridgers Family Properties LLC) except within environmentally sensitive areas and/or existing trees remain.*

Public Utilities:

Development of this site will require connection to city water and sewer which is available nearby. The parcel will need to be annexed and the applicant has filed an annexation petition to gain access to municipal utility services.

Environmental:

The applicant will need to obtain stormwater and sedimentation-erosion control permits from Wake County Environmental Services before any site work can commence. The proposed development plan will need to meet the requirements of the UDO. Wake County provides stormwater, sedimentation, and erosion control services for the Town of Wendell.

- *The proposed plans show two stormwater ponds located in the southern portion of the development plan. The site does not contain any floodplain; however, the applicant has identified wetlands in the southern portion of the property.*

Buffers- UDO Section 8.6.A requires a 20-foot Type B buffer between R7 and RA zoning districts where a more intense proposed use abuts and existing single family residential use.

- *The applicant is providing an earthen berm and fence as well as the 20ft Type B buffer along the western boundary.*
- *The applicant is providing a mix of buffer widths along the eastern and southern boundaries of 20-40ft Type B buffers. Portions also contain an earthen berm within the buffer.*

A type B buffer is a minimum 20ft. and has a minimum planting of one tree every 25ft and 1 shrub every 6 feet.

Open Space-

UDO Section 7.5 requires 1,750 sq. ft. of open space per single-family dwelling units and 1,000 sq. ft. per townhome unit. UDO Section 7.4 requires that 75% of the required open space be passive and 25% be improved park space of which 1/3 needs to be considered active.

- » *The applicant is required to provide 6.40 acres of open space. The development plan is providing 8.68 acres of open space.*
- » *The applicant is providing 1.67 acres of improved and fully active park space. The active open space contains two volleyball courts, a tot lot, and an area for public art and a pedestrian connection to the Wendell Swim Club*

Streets:

The applicant will be responsible for making the required road improvements to Lions Club Road which is a 3-lane undivided right-of-way that contains curb & gutter, 5-foot

bike lanes, 6-foot sidewalks and street trees. The property contains roughly 1,500 of road frontage along Lions Club Road.

The Town of Wendell Arterial and Collector Street Plan shows a 79' 3-lane undivided roadway running north/south through the site. The applicant is providing the required right-of-way with a 2-lane divided roadway with curb & gutter and sidewalks. Staff supports the 2-lane divided roadway as it provides a more pedestrian friendly design and can include turn lanes as needed.

The Town of Wendell UDO requires a street connectivity index requirement of 1.5 within the R7 zoning district. The applicant's design is providing an index of 1.64 which is higher than required. The street layout contains two access points to Lions Club Road and 4 stub connections to neighboring properties. The internal streets are well connected to each other and the collector road.

A driveway and unpaved dirt path exist in portions of the eastern and southern property boundaries and will remain to allow access for neighboring property owners.

The applicant is providing off street parking spaces at the tot lot/mail kiosk area as well some designated on-street spaces within the townhome section/volleyball court areas.

Traffic Impact Analysis (TIA)

The Traffic Impact Analysis has been completed for the development plan and NCDOT is requiring a southbound turn lane on NC 231 (S Selma Road) of 75' onto eastbound Lions Club Road.

Phasing:

The proposed development plan has 5 phases for the project. Phase 1 includes a mix of townhomes and single-family homes as well as the tot lot and mail kiosk area. Phase 2 includes townhomes and single family as well as the volleyball courts and the connection to the swim club. Phases 3-5 include single family homes and the public art installation.

Comprehensive Plan:

The Wendell Comprehensive Plan defines the subject property as being within the S-4 Controlled Growth Sector.

The Comprehensive Plan states that S-4 areas "are typically close to thoroughfares and at key cross-road locations. This sector is where moderate intensity new development is appropriate and where the majority of the community's new growth should occur. The typically envisioned community type for S-4 is a traditional neighborhood development (TND), which includes neighborhood serving commercial and civic uses surrounded by a

mix of housing types that decrease in density as they get farther away from the commercial area.”

The following development types and uses are appropriate for the S-4 sector:

- *traditional neighborhood developments*
- *neighborhood centers*
- *single-family and multi-family residential*
- *neighborhood-serving commercial uses (retail and office)*
- *civic uses*
- *industrial uses.*

The proposed development on the site meets the appropriate uses.

Statement of Plan Consistency Reasonableness:

Any recommended change to the zoning map should be accompanied by a statement explaining how the change is consistent with the comprehensive plan and is reasonable in nature.

- o *The requested zoning map amendment is consistent with the uses outlined in the Wendell Comprehensive Land Use Plan for the S-4 Sector and is reasonable in that it supports Principle #6: “Provide for a range of housing opportunities including upscale housing, senior housing, and downtown living choices.”*

Technical Review Committee (TRC) Comments:

The Technical Review Committee has completed their review of the applicant’s Master Plan and the applicant has made corrections based on their comments. Additional review would occur upon submittal of construction drawings (final development plan for conditional districts).

Staff Comments:

- *The proposed development plan for Belle Grove is consistent with the Wendell Comprehensive Land Use Plan and staff recommends approval of the conditional district rezoning.*

Comments/Questions following this presentation:

- **Chairman Olson asked about condition # 4 concerning stormwater devices, who is in charge of maintaining these?**
- **Bryan replied the HOA.**
- **Carter Kennemur read a letter from property owner Annie Sue Faison.**
- **Ms. Faison said she lives nearby and that she looks forward to the changes.**
- **Ms. Stacy Wood signed up to speak but said she is giving her time to her uncle Mr. Ollie Baker who owns the land.**

Mr. Bridgers thanked the Board for all they do. He said that he is a third-generation business owner, and he was a member of the Planning Board for years. He said he enjoys all the progress that has been made, he said he lives near the Lions Club and he does have some concerns. He wants to know if there will be a fence and if so how high will it be and who will maintain it? He said he missed a meeting a few months ago and wants to know why there is a stub on his driveway and will the runoff go into his pond?

Mr. Ollie Baker spoke, he said he has lived there for 85 years and he understood that Wendell is a nice place to live, and he want the planning board to continue doing what they have been doing. He said he wants them to know that he is in support of this development. Those who are against it could have purchased the land, but they did not. He also said that his Great, Great, Grandpa would have liked this.

Chairman Olson asked if the Board had any questions.

Brian Duncan from Spaulding Group showed a PowerPoint presentation to the Board. He showed the site plan and location he spoke about the enhancements they have made. He also spoke about the history of the property that he learned from talking to the families and he said they had many positive feelings about the development.

He spoke about what makes a make a quality neighborhood:

- **Low maintenance**
- **Having an HOA**
- **Townhomes will be maintenance free.**
- **Architectural Design**
- **Volleyball court, a playground, open space and a park with some art.**
- **Golf cart path to the Wendell Pool Club.**

- **Feedback from neighbors inspired them to address concerns.**
- **Held several meetings with adjoining property owners.**
- **Met with St. Eugene's Church- they are onboard. Paul White was in favor of a quality development.**
- **Lorraine Dickson of the Lions Club said they were concerned about safety and about neighbors complaining about the noise.**
- **Brian Duncan said the developers will use extra buffers and fence and berm etc. so kids can't climb over it.**
- **Wendell Pool Club thought it will add to their membership.**
- **There will be a fence and some privacy buffers, and they will add connectivity down the line.**

- **Mr. Duncan said that he met with the Bridgers on 5 occasions, and they will back off the road connection to preserve his property.**
- **They have relocated a road from his residence to a different property.**

- Will add extra buffers around his property and will allow an encroachment on the property to maintain the farm path.
- Install 1500 ft of earth and berm, a privacy fence and landscaping to isolate them for now and will keep the Bridger driveway and as the phases are being constructed the buffers will be added.
- They will make improvements on the road working with Harper's Glen such as a turning lane and widening the road.
 - Bryan Coates said the stub street meets the towns requirements; it has 3 stubs.
 - Chairman Olson said that Steven Bridgers' email said he was worried about environmental damage to the pond. What is Mr. Duncan doing about this?
 - Mr. Duncan replied that the construction drawings show the storm water management will reduce the runoff when the project is completed. The erosion control measures will be part of the plan that will be approved by Wake County Environmental, and they will be sensitive to the downstream area.
 - Ryan asked that Glen Bridgers wanted a privacy fence, are you planning on doing that?
 - Mr. Duncan said yes, it is part of the plan.
 - Chairman Olson asked about phases and said it looked like Mr. Bridgers' fence will be done in phase 4 or 5, is this correct?
 - Mr. Duncan replied yes, the berm, landscaping and fence will all be in place at that time.
 - Chairman Olson asked about environmental protection.
 - Mr. Duncan said that the applicant has already planned to follow all of the Wake County requirements.
 - Ryan asked about the easement on the south side.
 - Mr. Duncan said the paths and driveway will be preserved.
 - Deans asked if Mr. Duncan had a copy of the email from Steven Bridgers last week?
 - Mr. Duncan replied yes.
 - Deans asked Mr. Duncan about allowing people to buy the 2 lots.
 - Mr. Duncan said "That's not a question I can answer. If the desire still remains, that is something that can be discussed with the builder down the road. We essentially eliminated several lots through there based on his (Mr. Bridgers) concerns- 40 foot landscape buffer adjacent to his residence and 20-30 foot varying width open space. We have essentially given up a few lots in that area in an effort to work with him."

Chairman Olson asked for a motion.

Ryan Zakany made a motion to approve, and Leven Jones seconded the motion.

Mr. Swaim said he was glad to hear that they were going to put the fence and buffers up on the property but Townhomes again? We have so many, and it will not stop.

Mr. Swaim said no.

Final vote:

For - Ryan Zakany-Levin Jones-Deans Eatman & Chairman Olson

Against – Mr. Swaim, Jimmena Huffman-Hall-Cande Killian Wood & Michael Firstbrook

Niki Jones, Planning Director presented the following information in *italics* below.

Item Title:

Text Amendment (ZTA21-04) to the Unified Development Ordinance (UDO) to update the billboard sign language and requirements in the ordinance.

Specific Action Requested:

The Planning Board is asked to make a recommendation to the Board of Commissioners on the proposed text amendment request to the UDO to include a statement of Comprehensive Plan consistency.

Item Summary:

In 2017, Fairway Outdoor Advertising expressed an interest in constructing an electronic billboard along US 64. The company noted they constructed a similar electronic billboard in Rolesville near the new bypass. At that time, Chapter 12 of the UDO prohibited billboards of any type. As a result of these regulations, the applicant submitted a zoning text amendment request to allow electronic billboards and included specific standards related to their size, height, location, and operation.

At that time, the applicant proposed specific language as part of the amendment request. In general, the applicant’s proposal allowed electronic billboards in the Community Center zoning district along US-64. Such signs would have a 3-mile separation requirement from other

electronic billboards, would be from 12 to 50 feet in height, and have a sign face of up to 672 square feet.

The applicant, Aaron Guyton of Capital Outdoor, has requested that the UDO be amended to allow digital emergency, community and business communication along Wendell Boulevard. The applicant proposes to amend Section 12.7.D.7 of the UDO to allow appropriately placed digital messaging centers while also limiting their use on certain roadways. Existing spacing requirements will need to be modified in order for this to occur.

As a “clean-up” staff is proposing to amend Section 12.9 of the UDO to delete Billboards from the list of prohibited signs.

Applicant’s Proposed Amendments:

- I. Amend Section 12.7 (Permitted Principal Use Signs) of the Town of Wendell Unified Development Ordinance to read as follows (Changes have been **highlighted**. Deletions are shown with strikethroughs. Additions are **bolded and underlined**).

12.7 – Permitted Principal Use Signs

D. Temporary Signs Requiring a Permit

~~7.~~ **E.** Billboard signs are free-standing signs exceeding 12 feet in height, but not taller than 50 feet in height above road grade. Billboard signs are permitted with the following standards:

~~a.~~ **1.** Billboards are only permitted on private property within land zoned CC (Community Center), CH (Highway Commercial), **NC (Neighborhood Center)** or M&I (Manufacturing & Industrial) along and facing US 64 (a future interstate). ~~No billboard signs shall be permitted along and facing US 64 Business (Wendell Boulevard).~~

~~b.~~ **2.** Electronic Billboard signs shall be placed a minimum of ~~15,840 feet~~ **10,560 feet** (~~three~~ **two** miles) apart, measured between the centers of Billboard sign poles facing the same street regardless of whether such sign is within the Town's planning jurisdiction.

~~c.~~ **3.** Where the structural support is visible from any street, the display shall be constructed on a single steel pole.

~~d.~~ **4.** The immediate premises shall be kept free from debris or undergrowth. Where the base of the pole is visible from any public street (as determined by the administrator), landscaping shall be installed and maintained as follows:

a. A minimum of 12 shrubs planted in a landscape area no less than 100 square feet. **Lesser plantings may be permitted by the administrator, if appropriate.**

~~e.~~ **5.** All displays shall be maintained in a state of good repair. The backs and supporting structures of all billboard signs shall be kept painted in a neutral color to blend with the natural environment.

~~f.~~ **6.** While minor repairs, maintenance and the posting of new messages on billboard signs made nonconforming by this UDO are permitted, no changes in size shall be permitted except to make the sign comply with the requirements.

~~g.~~ **7.** Billboard signs may be placed back-to-back or in a v-type construction. Not more than one face is allowed on each side of the display.

~~h.~~ **8.** All Billboard signs must be Digital Billboards or Smartboards. Digital Billboards or Smartboards are defined as a type of Billboard sign utilizing digital technology, capable of changing the static message or copy on the sign electronically. A digital billboard may be internally or externally illuminated. Digital Billboards shall contain static messages only and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure. Each static message shall not include flashing, scintillating lighting or the varying of light intensity.

~~i.~~ **9.** The digital message of a Digital Billboard shall not change more than once every eight seconds.

~~j.~~ **10.** Size, height, and setback requirements are as follows:

Dimensional Standards	
Maximum surface area	672 square feet
Minimum side & rear setback	10 feet
Maximum height (measured above road surface)	50 feet

2. Amend Section 12.9 (Prohibited Signs) of the Town of Wendell Unified Development Ordinance to read as follows (Changes have been highlighted. Deletions are shown with strikethroughs).

12.9 – Prohibited Signs

~~E.~~ Billboards

Statement of Plan Consistency:

Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan.

- The requested zoning text amendment is consistent with Principle # 4 of the Wendell comprehensive plan: “Diversify and increase the per capita tax base. Provide for a diverse workforce with a broad range of skills, making Wendell a more self-sustaining community.”

Staff Comment:

Staff recommends the following modifications:

- “Billboards are only permitted on private property within land zoned CC (Community Center), CH (Highway Commercial), **NC (Neighborhood Center)** or M&I (Manufacturing and Industrial) **along and facing US 64 (a future interstate). No billboard signs shall be permitted along and facing US 64 Business (Wendell Boulevard) east of Selma Road, and along Morphus Bridge Road, Lions Club Road, Poole Road, Selma Road, Martin Pond Road, Wendell Falls Parkway, Eagle Rock Road, Lake Glad Road and Old Quarry Road.**
- Item 4. be modified as follows:
 - a. A minimum of ~~12~~ **18** shrubs planted in a landscape area no less than 100 square feet **and maintained to the standards of Section 8.12 of the UDO. An approved Landscape Plan required. Lesser plantings may be permitted by the administrator, if appropriate.**
- The following item be added:

10. The required setbacks must comply with the UDO and are measured from the street’s future cross-section.

- Modify the table to include dimensions for other roads.

Dimensional Standards	
Maximum surface area (Interstate)	672 square feet
Maximum surface area (Other)	400 square feet
Minimum side & rear setback (Interstate)	10 feet
Minimum side & rear setback (Other)	25 feet
Maximum height (measured above road surface) (Interstate)	50 feet
Maximum height (measured above road surface) (Other)	30 feet

Comments/Questions following this presentation:

- Chairman Olson asked if there were any questions.
- Deans Eatman asked “What is the Town’s interpretation of the billboard ordinance? Specifically, the spacing requirements?”
- Niki said under the existing ordinance, billboards are required to be 3 miles apart- using a radius.
- Deans said it sounds like if there is not another one on the same street it’s ok.
- Chairman Olson said in 2017 we wanted to make it so you did not see a billboard every few feet, and as he remembered it, there was not a 3 mile radius requirement. He remembered that it was 3 miles along the same road.

- Deans asked if other towns have them.
- Niki said staff conducted a comparative analysis and found that most of the towns in Wake County do not allow billboards, but Rolesville does.
- Mr. Swaim said he knows for a fact that Wake Forest allows billboards because during the first billboard text amendment all he heard about was Wake Forest.
- Chairman Olson said let's not change our goal from 2017 about not having two Billboards within view of one another.
- Ryan said he does not like the location but wants to change the language for the future.
- Mr. Swaim asked why we are reducing potential locations for billboards.
- Ryan replied residential reasons.
- Niki said yes.
- Chairman Olson said he doesn't understand why a circumference measurement is being considered.
- Niki said that using a radius is best practice. He then went over the staff comments:

Wendell Blvd will be widened, and we need to take the future right-of-way into consideration.

Niki shared the standards that staff created with the board.

- Chairman Olson said 400 sq. ft. seems large.
- Deans said he doesn't understand why the setback is larger on other roads than the interstate.
- Niki replied that the area is residential.
- Deans asked if this is a one-sided setback.
- Niki replied that setbacks would be required from the front and the side.
- Chairman Olson said why are they different from town to rural areas?
- Mr. Swaim said, "25 ft. setback.
- Michael Firstbrook said if we have big developments and growth why not big signs?
- Deans said let's table this until we can change the wording.

Deans made a motion to table this until next time.

Cande Killian Wood seconded the motion.

- Chairman Olson said we should give the staff the direction that we are looking for.
- Jimmena agreed with Chairman Olson.
- Ryan asked should we use linear or radius?
- Chairman Olson thinks 400 sq. ft. is too large.
- Niki said what spacing requirements would you like?

- Deans said it appears that the current language allows this billboard now.
- Ryan agreed with Deans.
- Jeannine said according to the current language of the UDO no billboard can be on US 64 Business so the proposed billboard would not be allowed without a text amendment.
- Chairman Olson said that the idea behind a 2-mile distance is so you can't see one from the other.
- Chairman Olson said he does not like a radius measurement.
- Mr. Swaim said no one wants radius.
- Michael said an ordinance a few months ago was made for signs to be larger, he also said growth and more growth.
- Niki asked Jeannine to look up the ordinance.
- Niki asked if the board could tell staff what setbacks they want.
- Ryan wanted to know the locations of future signs like the one for Wake Tech.
- Deans said we have plenty of time for discussion on that.
- Chairman Olson asked is it permissible with 400 ft to stack two 200 ft signs?
- Niki replied no.
- Ryan asked Jeannine if she found the sign ordinance. She said that she did and it said that for a building of 25,000 sf or greater, the maximum size of a wall sign is 200 sf per façade facing right-of-way.

Mr. Guyton, the applicant, ask if he could give some clarification:

He would like to know that spacing requirements, the line of sight and that he agrees with not having too many billboards.

He said that digital billboards are a large investment, and he does not want more than one. He stated that he was a former resident of Wendell and owned property and that he believes in growth.

Digital billboards help find missing children.

His intention is to spread them out. He thinks the Vardy property is a good location as the area is growing and a 2-mile radius is appropriate for now. Changes can always be made in the future. Billboards, diversify and promote businesses without using any services but they do pay taxes. He cautioned the board not to make too big of an issue concerning radial and linear spacing. He thinks setbacks are good but initially he did not like the future roadway setbacks.

- **Mr. Guyton asked about the side setbacks.**
- **Niki replied we are happy to have a conversation about that.**
- **Mr. Guyton said the property owner has a location picked out and did not like the side setback.**
- **Mr. Guyton said his recommendation would be that the side setback is greater on the interstate and less on arterial roads.**

Chairman Olson asks Deans to amend his motion to include staff to come back at the next meeting with changes. He then called for a vote on the amended motion.

All voted in favor and the motion carries.

Jeannine Ngwira presented the following information in *italics* below.

Item Title:

ZTA21-05 Zoning text amendments to comply with Chapter 160D of the NC General Statutes

Specific Action Requested:

The Planning Board is being asked to consider the proposed text amendment request and make a recommendation to the Board of Commissioners to include a statement of Comprehensive Plan consistency.

Item Summary:

Chapter 160D of the North Carolina General Statutes is a new chapter that consolidates current city- and county-enabling legislation for development regulations into a single, unified chapter. Chapter 160D creates a more logical organization of the regulations. The new law does not make major policy changes or shifts in the scope of authority granted to local governments. The changes do provide many clarifying amendments and consensus reforms that are required to be incorporated into the Town's UDO and Code of Ordinances. Chapter 160D is effective now but local governments have until July 1, 2021 for adoption of text amendments to comply with State law.

This fourth round of proposed text amendments deal with Bona Fide Farm Exemptions and Minimum Housing Code. The following items are included in the proposed amendments:

- ***Must*** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- ***Must*** follow standardized process for housing code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)

While the second item from the checklist is very specific, the impacts were varied throughout the Minimum Housing Code Section. This required staff to look at our entire Minimum Housing

Code and compare it to the language from 160D. Consequently, the updates affected most sections of our Minimum Housing Code.

Proposed Amendments:

To comply with Chapter 160D of the North Carolina General Statutes, staff recommends amending the following sections of the Town of Wendell Code of Ordinances and Unified Development Ordinance to read as follows (Changes have been highlighted. Deletions are shown with strikethroughs. Additions are **bolded and underlined**).

Must exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)

Town of Wendell Unified Development Ordinance

Chapter 1 – PURPOSE AND APPLICABILITY

1.5 – Compliance or Required Conformance to UDO Provisions

B. Exemptions for Bona Fide Farms

1. As established by House Bill 168 (Session Law 2011-363) and described in G.S. 160D-903, property that is used for bona fide farm purposes within Wendell's Extra Territorial Jurisdiction (ETJ) shall be exempt from the provisions of this ordinance. For the purpose of applying exemptions to bona fide farms, "property" means a single tract of property or an identifiable portion of a single tract. In order to determine whether a property is being used for bona fide farm purposes, refer to G.S. 160D-903, or see the definition for "Bona Fide Farm" contained in Chapter 19. **Property that ceases to be used for bona fide farm purposes shall become subject to exercise of the Town of Wendell's extraterritorial planning and development regulation jurisdiction. For purposes of complying with State or federal law, property that is exempt from the exercise of municipal extraterritorial planning and development regulation jurisdiction pursuant to this subsection shall be subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.**
2. As permitted under Senate Bill 263 (Session 2011), an accessory building of a "bona fide farm" as defined by G.S. 160D-102(3) within the Town of Wendell's zoning jurisdiction has the same exemption from the building code as it would have under county zoning as provided by 160D-903 of the General Statutes.
3. **A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide farm purpose pursuant to this subsection shall subject the building or structure to applicable zoning and development regulation ordinances in effect on the date the property no longer meets the requirements of this subsection.**

Chapter 19 - DEFINITIONS

Agritourism means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions.

Bona Fide Farm. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, **grains**, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture as defined in G.S. 106-581.1. **Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this ordinance, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located.** For purposes of this ordinance, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a) A farm sales tax exemption certificate issued by the Department of Revenue.
- b) A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d) A forest management plan.
- e) ~~A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.~~

See Sections 1.5B for exemptions relevant to bona fide farms.

Must follow standardized process for housing code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)

Town of Wendell Code of Ordinances

Chapter 34 - HOUSING

ARTICLE II. – MINIMUM HOUSING CODE

Sec. 34-20. - Definitions.

Deteriorated means a dwelling that is unfit for human habitation and can be repaired, altered, or improved to comply with all of the minimum standards established by this article, at a cost not in excess of **40 50** percent of its value, as determined by findings of the ~~minimum housing inspector~~ **public officer**.

Dilapidated means a dwelling that is unfit for human habitation and cannot be repaired, altered, or improved to comply with all of the minimum standards established by this article at a cost not in excess of **40 50** percent of its value, as determined by the findings of the ~~inspector~~ **public officer**.

Extermination means the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping, or by any other recognized and legal pest elimination methods approved by the ~~inspector~~ **public officer**.

~~Inspector means the minimum housing inspector of the town or any agent of the inspector who is authorized by the inspector.~~

Owner means **the holder of the title in fee simple and every mortgagee of record.** any person who alone, or jointly, or severally with others shall have:

~~(1) The title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or~~

~~(2) Charge, care, or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.~~

Parties in interest means all individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.

Public officer means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Article.

Sec. 34-21. ~~Minimum housing inspector~~ **Public Officer**; duties and powers.

(a) ~~The zoning administrator shall serve as the minimum housing inspector and the~~ **public officer** ~~to shall~~ enforce the provisions of this article. His duties shall be as follows:

(1) To investigate the dwelling conditions, and to inspect dwellings and dwelling units, located in the town in order to determine which dwellings and dwelling units are unfit for human habitation, and for the purpose of carrying out the objectives of this article with respect to such dwellings and dwelling units;

(2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated.

(3) To keep a record of the results of inspections made under this article and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and

(4) To perform such other duties as may be herein prescribed.

(b) ~~The minimum housing inspector~~ **public officer** is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions in the town in order to determine which dwellings therein are unfit for human habitation.

(2) To administer oaths and affirmations, examine witnesses and receive evidence;

(3) To enter on premises for the purpose of making examinations and inspections, as long as such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession; and

(4) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purpose of this article.

(5) To delegate any of his or her functions and powers under the ordinance to other officers and other agents. (2019-111, s. 2.4.)

Sec. 34-22. - Owner and occupant responsibility; duties during inspection

- (b) Duties during inspection; authority of ~~inspector~~ **public officer**. Owners and occupants have the following duties during an inspection:
- (1) Authority of ~~minimum housing inspector~~ **public officer**. For the purpose of making inspections, the ~~inspector~~ **public officer** is authorized to enter, examine, and survey at all reasonable times all dwellings, dwelling units, rooming units and premises.
 - (2) Free access. The owner or occupant of every dwelling, dwelling unit, or rooming unit, or the person in charge thereof, shall give the ~~inspector~~ **public officer** free access to such dwelling, dwelling unit, or rooming unit and its premises at all reasonable times for the purposes of inspection, examination, and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of the dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this article or with any lawful order issued pursuant to the provisions of this article.

Sec. 34-24. – Periodic Inspections.

(a) Except as provided in subsection (b) of this section, the code enforcement department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. However, when the code enforcement department determines that a safety hazard exists in one of the dwelling units within a multifamily building, which in the opinion of the public officer poses an immediate threat to the occupant, the code enforcement department may inspect, in the absence of a specific complaint and actual knowledge of the unsafe condition, additional dwelling units in the multifamily building to determine if that same safety hazard exists.

For purposes of this section, the term "reasonable cause" means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period, (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected, (iii) the code enforcement department has actual knowledge of an unsafe condition within the building, or (iv) violations of the local ordinances or codes are visible from the outside of the property.

In conducting inspections authorized under this section, the code enforcement department shall not discriminate between single-family and multifamily buildings or between owner-occupied and tenant-occupied buildings. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A local government may require periodic inspections as part of a targeted effort to respond to blighted or potentially blighted conditions within a geographic area that has been designated by the Board of Commissioners. However, the total aggregate of targeted areas in the local government jurisdiction at any one time shall not be greater than 1 square mile or five percent (5%) of the area within the local government jurisdiction, whichever is greater. A targeted area designated by the local government shall reflect the local government's stated neighborhood revitalization strategy and shall consist of property that meets the definition of a "blighted area" or "blighted parcel" as those terms are defined in G.S. 160A-503(2) and G.S. 160A-503(2a), respectively, except that for purposes of this subsection, the planning board is not required to make a determination as to the property. The local government shall not discriminate in its

selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan, (ii) hold a public hearing regarding the plan, and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

- (c) In no event may a local government do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission under Article 11 or Article 12 of Chapter 160D from the local government to lease or rent residential real property or to register rental property with the local government, except for those individual properties that have more than four verified violations in a rolling 12-month period or two or more verified violations in a rolling 30-day period, or upon the property being identified within the top ten percent (10%) of properties with crime or disorder problems as set forth in a local ordinance, (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy, (iii) levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties, unless expressly authorized by general law or applicable only to an individual rental unit or property described in clause (i) of this subsection and the fee does not exceed five hundred dollars (\$500.00) in any 12-month period in which the unit or property is found to have verified violations, (iv) provide that any violation of a rental registration ordinance is punishable as a criminal offense, or (v) require any owner or manager of rental property to submit to an inspection before receiving any utility service provided by the local government.

For purposes of this section, the term "verified violation" means all of the following:

(1) The aggregate of all violations of housing ordinances or codes found in an individual rental unit of residential real property during a 72-hour period.

(2) Any violations that have not been corrected by the owner or manager within 21 days of receipt of written notice from the local government of the violations. Should the same violation occur more than two times in a 12-month period, the owner or manager may not have the option of correcting the violation. If the housing code provides that any form of prohibited tenant behavior constitutes a violation by the owner or manager of the rental property, it shall be deemed a correction of the tenant-related violation if the owner or manager, within 30 days of receipt of written notice of the tenant-related violation, brings a summary ejectment action to have the tenant evicted.

- (d) If a property is identified by the local government as being in the top ten percent (10%) of properties with crime or disorder problems, the local government shall notify the landlord of any crimes, disorders, or other violations that will be counted against the property to allow the landlord an opportunity to attempt to correct the problems. In addition, the local government and the county sheriff's office or city's police department shall assist the landlord in addressing any criminal activity, which may include testifying in court in a summary ejectment action or other matter to aid in evicting a tenant who has been charged with a crime. If the local government or the county sheriff's office or city's police department does not cooperate in evicting a tenant, the tenant's behavior or activity at issue shall not be counted as a crime or disorder problem as set forth in the local ordinance, and the property may not be included in the top ten percent (10%) of properties as a result of that tenant's behavior or activity.
- (e) If the local government takes action against an individual rental unit under this section, the owner of the individual rental unit may appeal the decision to the housing appeals board or the zoning board of adjustment, if operating, or the planning board if created under G.S. 160D-301, or if neither is created, the governing board. The board shall fix a reasonable time for hearing appeals, shall give due notice to the owner of the individual rental unit, and shall render a decision within a reasonable time. The owner may appear in person or by agent or attorney.

The board may reverse or affirm the action, wholly or partly, or may modify the action appealed from, and may make any decision and order that in the opinion of the board ought to be made in the matter. (2019-111, s. 2.4.)

Secs. 34-~~2425~~—34-49. – Reserved.

DIVISION 2. - MINIMUM STANDARDS

Sec. 34-52. - Basic equipment and facilities.

(b) Heating system. Every dwelling and dwelling unit shall have facilities for providing heat in accordance with this subsection.

(6) Insulation.

a. Where there is no insulation, or the existing insulation does not cover the entire area, insulation of R-30 shall be required. Where it is infeasible to install insulation and fully meet this requirement, including the R-30 rating, adjustments or modifications to this requirement may be made on a case-by-case basis by the ~~housing inspector~~ **public officer** (example: flat roof). Exception: Knob and tube wiring shall not be covered with insulation

DIVISION 3. - ENFORCEMENT

Sec. 34-88. - Investigation, notice, and hearing.

- (a) Whenever a petition is filed with the ~~minimum housing inspector~~ **public officer** by a public authority or by at least five residents of the town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the ~~inspector~~ **public officer**, upon inspection, that any dwelling or dwelling unit is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served on the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that ~~a~~ **an administrative hearing will be held before the inspector public officer, or the officer's designated agent,** at a place therein fixed, not less than ten nor more than 30 days after the serving of the complaint.
- (b) The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise; and give testimony at the place and time fixed in the complaint. Notice of the hearing shall also be given to at least one of the persons signing a petition relating to the dwelling. Any person desiring to do so may attend the hearing and give evidence relevant to the matter being heard.
- (c) The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the ~~inspector~~ **public officer.**
- (d) After giving notice and conducting a hearing, the ~~inspector~~ **public officer** shall state in writing his determination whether the dwelling or dwelling unit is unfit for human habitation, and, if so, whether it is deteriorated or dilapidated.
- (1) If the ~~inspector~~ **public officer** determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of that determination, and shall issue and cause to be served on the owner thereof an order directing and requiring the owner to repair, alter, and improve the dwelling or dwelling unit to comply with the minimum standards of fitness established by this article within a specified period of time, not to exceed 90 days. The order may also direct and require the owner to vacate and close the dwelling or dwelling unit until repairs, alterations, and improvements have been made: **only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and**

any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities.

- (2) If the ~~inspector~~ **public officer** determines that the dwelling is dilapidated, he shall state in writing his findings of fact to support the determination and shall issue and cause to be served on the owner thereof an order directing and requiring the owner to vacate and close the dwelling, and to remove or demolish it within a specified period of time, not to exceed 90 days. **However, notwithstanding any other provision of law, if the dwelling is located in a historic district and the Historic Preservation Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160D-949.**

Sec. 34-89. - Failure to comply with order.

- (a) In personam remedy. If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the ~~minimum housing inspector~~ **public officer** to repair, alter, or improve the same within the time specified therein, or if the owner of a dilapidated dwelling shall fail to comply with an order of the ~~inspector~~ **public officer** to vacate and close, and remove or demolish the same within the time specified therein, the ~~inspector~~ **public officer** shall submit to the board of commissioners at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing such owner to comply with the order of the ~~inspector~~ **public officer**, as authorized by G.S. 160D-1203(5).
- (b) Order to repair, posting, etc. After failure of an owner of a deteriorated dwelling or dwelling unit, or of a dilapidated dwelling, to comply with an order of the ~~inspector~~ **public officer** within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in subsection (a) of this section, the ~~inspector~~ **public officer** shall submit to the board of commissioners an ordinance ordering the ~~inspector~~ **public officer** to cause the dwelling or dwelling unit to be repaired, altered, improved, or vacated and closed and removed or demolished, as provided in the original order of the ~~inspector~~ **public officer**, and pending such removal or demolition, to placard the dwelling as provided by G.S. 160D-1203(4). **This ordinance shall be recorded in the office of the register of deeds in the county where the property or properties are located and shall be indexed in the name of the property owner in the grantor index.**
- (c) Demolition. – If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision shall not be exercised until the governing board shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties that the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county where the property or properties are located and shall be indexed in the name of the property owner in the grantor index.**
- (d) Abandonment of Intent to Repair. – If the dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to subdivision (b) of this section or after a public officer issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this subdivision, then the Board of Commissioners may find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight**

and the deterioration of property values in the area, and would render unavailable property and a dwelling that might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing board may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- 1) If it is determined that the dwelling is deteriorated, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days.**
- 2) If it is determined that the dwelling is dilapidated, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.**

This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

Sec. 34-90. - Appeals.

- (a) An appeal from any decision or order of the ~~minimum housing inspector~~ **public officer** may be taken by any person aggrieved thereby. Any appeal from the ~~inspector~~ **public officer** shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the ~~inspector~~ **public officer** and with the board of commissioners a notice of appeal which shall specify the grounds on which the appeal is based.
- (b) Upon the filing of any notice of appeal, the ~~inspector~~ **public officer** shall forthwith transmit to the board all the papers constituting the record on which the decision appealed from was made. When an appeal is from a decision of the ~~inspector~~ **public officer** refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the ~~inspector~~ **public officer** requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the ~~inspector~~ **public officer** certifies to the board, after the notice of appeal is filed with ~~him~~ **the officer**, that by reason of the facts stated in the certificate (a copy of which shall be furnished by the appellant), a suspension of ~~his~~ **the** requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown on not less than one day's written notice to the ~~inspector~~ **public officer**, by the board, or by a court of record upon petition made pursuant to G.S. 160D-1208(d) and section 34-89.
- (c) The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the ~~inspector~~ **public officer**, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the ~~inspector~~ **public officer**. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this article, to adapt the application of this article to the necessities of the case to the end that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done.
- (d) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board but not otherwise.
- (e) All appeals which may be taken from decisions or orders of the ~~inspector~~ **public officer** pursuant to this section shall be heard and determined by the board of commissioners. As the appeals body, the board shall have power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall perform the duties prescribed by this section and shall keep an accurate journal of all its proceedings.

Sec. 34-91. - Petition to superior court.

Any person aggrieved by an order issued by the ~~minimum housing inspector~~ **public officer** or a decision rendered by the board of commissioners shall have the right, within 30 days after issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the ~~inspector~~ **public officer** pending a final disposition of the cause, as provided by G.S. 160D-1208(d). **Hearings shall be had by the court on a petition within 20 days and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.**

Sec. 34-92. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by the ~~minimum housing inspector~~ **public officer** shall be served on persons either personally or by registered or certified mail. **When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing.** However, if the whereabouts of such persons are unknown and cannot be ascertained by the ~~inspector~~ **public officer** in the exercise of reasonable diligence, **or, if the owners are known but have refused to accept service by certified mail,** the ~~inspector~~ **public officer** shall make an affidavit to that effect, and the serving of such complaint or order on such person may be made by publishing the same once each week for two successive weeks in a newspaper circulating in the town.
- (b) Where service is made by publication **or regular mail**, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

Sec. 34-93. - In rem action by ~~inspector~~ **public officer**; placarding.

- (a) After failure of an owner of a dwelling or dwelling unit to comply with an order of the ~~inspector~~ **public officer** issued pursuant to the provisions of this article, and upon adoption by the board of commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. 160D-1203(5). and section 34-89, the ~~inspector~~ **public officer** shall proceed to cause such dwelling or dwelling unit to be repaired, altered, or improved to comply with the minimum standards of fitness established by this article, or to be vacated and closed and removed or demolished, as directed by the ordinance of the board of commissioners. He shall cause to be posted on the main entrance of the dwelling or dwelling unit a placard with the following words:

This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.

- (b) Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160D-1203(5). **If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.**

Sec. 34-94. - Costs as lien on premises.

- (a) As provided by G.S 160D-1203(7), the amount of the cost of any repairs, alterations, or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the ~~minimum housing inspector~~ **public officer** pursuant to section 34-89 shall be a lien against the real property upon which the cost was incurred.
- (b) Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. 160D-1201 et seq.

- (c) If the dwelling is removed or demolished by the **inspector public officer**, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the **inspector public officer**, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

Sec. 34-95. - Enforcement of order.

If any occupant fails to comply with an order to vacate a dwelling, the **inspector public officer** may file a civil action in the name of the town to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the **inspector public officer** produces a certified copy of an ordinance adopted by the board of commissioners pursuant to section 34-88 authorizing the **inspector public officer** to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the board of commissioners has ordered the public officer to proceed to exercise his duties under section 34-21 to vacate and close or remove and demolish the dwelling.

Sec. 34-97. – Violations.

It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the **minimum housing inspector public officer** duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with the order continues shall constitute a separate and distinct offense. It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to sections 34-88 through 34-91, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration, or improvement or its vacation and closing, and each day that such occupancy continues after the prescribed time shall constitute a separate and distinct offense.

Statement of Plan Consistency:

Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan.

- The proposed ordinance amendment is consistent with the Comprehensive Plan since it supports **Key Principle # 9: Make development decisions predictable, fair, and cost effective.**

Staff Recommendation:

Staff recommends approval of the proposed 160D text amendments.

Comments/Questions following this presentation:

- Chairman Olson asked if there were any questions.
- Deans Eatman asked about the Bona fide Farm changes to the Federal ID#
- Jeannine said in the 2017 Farm act it was taken out.
- Cande asked what about people who already have the status?
- Deans asked if you lost your ID, how so you get it back?
- Bryan Coates replied Bona Fide Farms have to be an active farm and meet all of the other requirements.
- Deans said he understands the criteria.
- Cande said if a small farm under 10 acres lost their status it could be 15 years before they can get it back.
- Mr. Swaim said aren't we superseded by federal law?
- Deans said no.
- Jimmena asked how is Farm Status Granted?
- Jeannine went over the requirements of Bona fide Farms.
- Chairman Olson said basically they just changed one item.
- Jeannine proceeded with 160D minimum housing code.
- Deans asked for the difference between deteriorated and dilapidated.
- Jeannine clarified the difference is that deteriorated can be repaired whereas dilapidated cannot be repaired.
- Deans asked about the section referenced A-34-24.- Periodic Inspections is it by the owner or property?
- Niki said it was by property.
- Deans asked are we having attorneys check our new sections to make sure they fit our town?
- Niki said we will be sending all of the 160D changes to the School of Government to review when we are finished.
- Deans referred to a section in 34-88 and said that we don't have a Historic Preservation Commission so that section from 160D should be removed.
- Deans referred to section 34-91 and asked if it was appropriate to add this information about Supreme Court to our UDO? Jeannine said that staff will look into it and either reword it or remove it.

Chairman Olson asked for a motion to approve 160D.

- Deans asked do we have an option to look this all over before we approve it?
- Niki replied we will be taking a holistic look at all of the changes at the end.

Deans made a motion to adopt and continue to work on changes. Jimmena seconded the motion.

All voted in favor and the motion was passed.

Mr. Swaim wanted to share that there are 12 members of the NC Lion's Hall of Fame. Bill Hinnant was chosen. He then went over the history of his life and accomplishments.

Deans made a motion to adjourn, Jimmena seconded the motion. All were in favor. The meeting was adjourned at 9:19 PM

