

Monroe A. Miller, Jr.
2200 Camp Branch Road
Waynesville, NC 28786
(828) 456-3718
October 28, 2019

The Grievance Committee
The North Carolina State Bar
208 Fayetteville Street
PO Box 25908
Raleigh, NC 27611
(919) 828-4620

Subject: Complaint against James Weaver "Kirk" Kirkpatrick the III.

I, the undersigned hereby complain against

ID 21711
James W. Kirkpatrick III
37 Branner Avenue
Waynesville, NC 28786
(828-452-0801
kirk@wklaw.net

I agree to cooperate by furnishing to the representatives of the North Carolina State Bar all pertinent information and records in my possession concerning the alleged misconduct of said attorney. I further agree that if a hearing or inquiry is ordered concerning the alleged misconduct of said attorney, then I will furnish evidence concerning the facts by submitting to deposition or personal attendance at the hearing or inquiry. I hereby indicate that this information is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged misconduct of the above named attorney. I understand that I may also need to reveal this information to a privately-retained attorney to pursue private remedies on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 applies only to those statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused attorney for his response to a formal inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

This grievance coincides my grievance filed against Frank Queen, ID 7275, on October 24, 2019. The Grievances are co-related, and exhibits with the two grievances share commonality.

The information in this complaint raises questions of whether James Weaver "Kirk" Kirkpatrick the III, violated the North Carolina Rules of Professional Conduct, as more specifically set forth herein, or in the alternative, whether James Weaver "Kirk" Kirkpatrick the III exhibited bias and a conflict of interest which significantly impaired his professional judgement, performance and competency as an attorney, and whether James Weaver "Kirk" Kirkpatrick the III had engaged in conduct which is contemptuous and considered contrary to community standards of justice, honesty, or good morals.

James Weaver "Kirk" Kirkpatrick the III participated in the Quasi-Judicial Hearing held by Haywood County Commissioners on October 21, 2019, as one of five county commissioners.

See the video of the Quasi-Judicial Hearing:

<https://www.youtube.com/watch?v=KxqyA46PsEU&feature=youtu.be>

As cited in Frank Queen's grievance, Frank Queen attempted to hold an impromptu Quasi-Judicial Hearing without proper notice at a regular scheduled meeting of the Haywood County Commissioners, in having prospective witnesses administer an oath without a Bible nor witnesses placing their left hands on said Bible, and failing to have the Chair of the Haywood County Commissioners, Kevin Ensley, recuse himself for a conflict of interest in a vote during an appeal of a variance.

James Weaver "Kirk" Kirkpatrick the III is no stranger to Quasi-Judicial Hearings, as he has participated in more than one conducted at the Town of Waynesville Planning Board Meeting, 9 South Main Street, Waynesville, NC 28786, specifically on May 20, 2019.

See the attached Exhibit 1:

[PB Agenda Packet 05-20-19.pdf](#) and

[Buchanan Drive-Digital Version 2018-199-006 \(1\).pdf](#).

This link takes you to an audio recording of the May 20, 2019 meeting:

<http://www.haywoodtp.net/pubII/190520PlanningBoardMeetingLakeBuchanan.mp3>

James Weaver "Kirk" Kirkpatrick the III represented Browning Branch, LLC, the applicant in this matter.

See the Minutes portion of the Town of Waynesville Planning Board packet for the meeting dated July 15, 2019. See the attached exhibit: [PB Agenda Packet 07-15-19.pdf](#). It should be noted that James Weaver "Kirk" Kirkpatrick the III missed a portion of the regularly scheduled Board of County Commissioners held at 5:30 pm on the same date to attend this Planning Board meeting.

It is my view that there were three (3) people that knew what was going on when commissioners held the impromptu Quasi-Judicial Hearing at the county commission meeting on October 21, 2019:

- James Weaver "Kirk" Kirkpatrick the III,
- Frank Queen, who officiated the meeting, and
- myself.

See the 10/21/2019 Haywood County Commission meeting agenda as an Exhibit.

See Attachment 5 from New Business, Item 3, of the 10/21/2019 agenda.

The person officiating the Quasi-Judicial Hearings at the City of Waynesville Planning Board meetings, was the Chair of the Planning Board, Patrick McDowell. The person who should have officiated the Quasi-Judicial Hearing at the Haywood County Commission Meeting should have been the Chair, Kevin Ensley (who failed to recuse himself as a voting member at that meeting). However, Kevin Ensley cannot even read the Consent Agenda without making a mistake at a regular meeting, let alone officiate a Quasi-Judicial Hearing. Kevin Ensley cannot even pronounce the word "Adjudication" [re: video of previous county commission meeting]. Time was evidently too short to be able to teach Kevin Ensley how to officiate this meeting.

It was well known that Terry Ramey was going to speak on behalf of Doyle Sutton at the meeting. It is my view that James Weaver "Kirk" Kirkpatrick the III conspired to concoct this Quasi-Judicial Hearing for the express purpose of eliminating the possibility of Terry Ramey speaking on behalf of Doyle Sutton. Frank Queen spent considerable amount of time during the meeting informing everyone that the applicant had to be represented by a lawyer.

One of James Weaver "Kirk" Kirkpatrick the III's comments during the meeting to Doyle Sutton was that this was one meeting he should have been represented by a lawyer. This is called kicking someone while they are down.

How the [expletive deleted] did Doyle Sutton know this was even going to be a Quasi-Judicial Hearing? Doyle Sutton was sandbagged by Frank Queen and James Weaver "Kirk" Kirkpatrick the III.

James Weaver "Kirk" Kirkpatrick the III, being a lawyer, should have stepped forward, either before or during the meeting to address the issues brought forth in my Grievance against Frank Queen. They are:

1. Frank Queen attempted to hold an impromptu Quasi-Judicial Hearing without proper notice at a regular scheduled meeting of the Haywood County Commissioners,
2. In having prospective witnesses administer an oath without a Bible nor witnesses placing their left hands on said Bible,
3. Failing to have the Chair of the Haywood County Commissioners, Kevin Ensley, recuse himself for a conflict of interest in a vote during an appeal of a variance.

The first item.

See the notice sent to Doyle Sutton from Kris Boyd, the only notice Doyle Sutton received about his variance request. This is the only notice Doyle Sutton received from Haywood County, by Kris Boyd, dated 9/10/2019 forty-two (42) days before the review by county commissioners. The appeal was bumped until the next meeting on October 21, 2019, invalidating § 160A-388 a(2). The reason for the delay was that the county had not yet posted a sign on the property, as required by § 160A-388 a(2). There is nothing in the notice Doyle Sutton received that made any mention of a "Quasi-Judicial Hearing". For all Doyle Sutton knew, this matter was going to be for "Consideration of a Variance Request". This improper notification to Doyle Sutton invalidates the "Quasi-Judicial Hearing" held by Frank Queen at the 10/21/2019 county commission meeting.

James Weaver "Kirk" Kirkpatrick the III should have been cognizant of the notice and notice requirements. James Weaver "Kirk" Kirkpatrick the III should have halted the quasi-judicial hearing and never allowed it to proceed.

The second item.

James Weaver "Kirk" Kirkpatrick the III is fully cognizant of the stringent requirements for swearing in people with an oath. He is a lawyer, for God's sake. He should have stopped the process by Frank Queen when Frank Queen had people stand in place for the oath.

See the video of the 10/21/2019 county commission meeting,

<https://www.youtube.com/watch?v=KxqyA46PsEU&feature=youtu.be>

where Frank Queen asked everyone to stand where they are to be sworn in [re: 30:20 into the video].

See screen shot of video [re: 31:22 minutes into the video] showing people standing in place, with Candace Way at the podium. See attached Exhibit.

See the witness list of people signed up to speak, as an Exhibit.

See the single sentence Candace Way read to witness's, as an Exhibit.

The third item.

During Frank Queen's monolog describing the "quasi-judicial hearing", Kevin Ensley meekly asked Frank Queen if he should recuse himself from voting. Kevin Ensley's house is nearly adjacent to the land Doyle Sutton purchased, separated by a tiny 33 foot sliver of land owned by:

ENSLEY, MEGAN R
136 STARLING HILL LN
CLAYTON, GA 30525
PIN 8628-23-5671

Frank Queen indicated that General Statues require him to vote. Frank Queen's "opinion" was that there was no conflict of interest in Kevin Ensley voting on this issue. However, during the witness testimony, people as far away as .55 miles [re: Gwen Phillips - first speaker, Attached] complained about a potential decrease in property value. So how could it be that Kevin Ensley, whose land is only 33 feet from Suttons property would not be adversely affected. Kevin Ensley eventually voted "NO!" on all five aspects of § 114.14 [re: Attachment 5 on the agenda, Sutton letter Attached].

See the Exhibit with three (3) properties. The first is Doyle Sutton's property, the Second belongs to Megan Ensley, and the third belongs to Kevin and Alice Ensley. As can be shown from Megan Ensley's property, there is only 33 feet separating Kevin Ensley's property from Doyle Suttons Property.

Why was this underhanded maneuver taken, calling for a "quasi-judicial hearing", instead of letting the agenda as written take it's course? **The outcome would have been the same in both cases.** One plausible reason was that Grover Bradshaw, a local resident within spitting distance to Doyle Suttons new property wanted to insure that he:

- Mustered enough people to attend the county commission hearing and complain, and
- Prevent Terry Ramey from speaking on behalf of Doyle Sutton during the regular agenda issue as originally stated.

[By the way, Kris Boyd, the Haywood County Facilities Director that originally denied Doyle Sutton his use of land, is currently dating Grover Bradshaw's daughter. Can anyone spell "conflict of interest" here? This is an incestuous cesspool.]

This "quasi-judicial hearing" should be declared null and void for reason of invalid notification. If the county wants to have a "quasi-judicial hearing", it needs to be restarted and be properly noticed. Since it was not noticed properly, it deprived many other people of being able to attend a publicly noticed "quasi-judicial hearing".

This is about as underhanded as it gets.

By the way, James Weaver "Kirk" Kirkpatrick the III, a lawyer (Bar Card ID 21711) knows perfectly well the operations of "quasi-judicial hearings", as he and I have attended several at the City of Waynesville Planning Board (Lake Buchanan vote), and probably gave Frank Queen inspiration and guidance on how to run a "quasi-judicial hearing"

The following are but a few of the Rules of Profession Conduct that James Weaver "Kirk" Kirkpatrick the III allegedly violated.

RULE 1.1: COMPETENCE

RULE 1.3: DILIGENCE

RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

RULE 6.6: ACTION AS A PUBLIC OFFICIAL

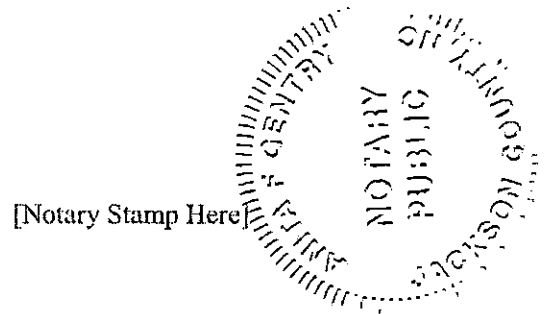
RULE 8.4: MISCONDUCT

It's about time that the North Carolina State Bar Grievance Committee did your job and call out James Weaver "Kirk" Kirkpatrick the III and revoke his Bar Car.

LIST OF EXHIBITS.

- Town of Waynesville Planning Board Agenda, 5/20/2019
Buchanan Drive Development
- Town of Waynesville Planning Board Agenda, 7/15/2019
Buchanan Drive Development - Minutes
- HC Board of Commissioners Agenda, October 21,2019
- Attachment 5, from 10/21/2019 Agenda
Letter from Sutton
GIS Photo
Ordinance 114 (First page only)
- UNC School of Government - Article
Notice of Hearings
- Notice from Kris Boyd to Doyle Sutton
- Oath for Witness's at quasi-judicial hearing - screen shot, Candace Way administering oath to people standing in place
- Witness Sign-up sheet at quasi-judicial hearing
- Three properties, printout from Haywood County GIS
Doyle Sutton
Megan Ensley
Kevin and Alice Ensley

Monroe A. Miller, Jr.
Monroe A. Miller, Jr.
2200 Camp Branch Road
Waynesville, NC 28786
(828) 456-3718



Jurat

Signed and sworn before me Arita F. Gentry, on this day, the 28 day of October, 2019.

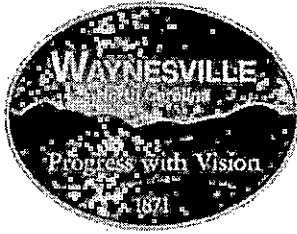
Signed: Arita F. Gentry

Printed: Arita F. Gentry

My commission expires on October 22, 2021

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TOWN OF WAYNESVILLE

Planning Board

9 South Main Street
Waynesville, NC 28786
Phone (828) 456-8647 • Fax (828) 452-1492
www.waynesvillenc.gov

Development Services
Director
Elizabeth Teague

Chairman
Patrick McDowell
Planning Board Members
Anthony Sutton (Vice Chair)
Marty Prevost
Robert Herrmann
H.P. Dykes, Jr.
Pratik Shah
Ginger Hain
Jason Rogers
Susan Teas Smith.

Regular Meeting
Town Hall, 9 South Main Street, Waynesville, NC 28786
Monday, May 20, 2019, 5:30 PM

A. CALL TO ORDER

1. Welcome/Calendar/Announcements
 - Comprehensive Plan update
2. Adoption of Minutes
 - *Motion:* To approve minutes of April 15, 2019 as presented (or as corrected)

B. BUSINESS

1. Public hearing to consider a major subdivision plan to create 19 residential, duplex homes and 3 residential quadrplexes on open land adjacent to Buchanan Drive, PIN 8604-94-0656

C. PUBLIC COMMENT/CALL ON THE AUDIENCE

D. ADJOURN

Planning Board Staff Report:

Subject: Substantial Change to Major Subdivision
Ordinance Section: LDS Chapter 15 Administration; 15.9.2 Major Subdivisions
Applicant: Browning Branch, LLC
Meeting Date: May 20, 2019

Summary Information:

Application Date: 4/29/19
Technical Review: 5/1/19
Pre-application Meeting: 3/28/18, 4/5/19
Project Location: PIN 8604-94-0656
Property Owner: Browning Branch, LLC
Acreage of site: 7.038 acres
Zoning District: Allen's Creek Neighborhood Residential (AC-NR)
Existing Development: Open Land

List of Evidence:

Application materials from previous hearing (June-July, 2018).

The Planning Board conditionally approved a master plan for this site in July of 2018 for 23 lots of duplexes, creating 46 units. Since then, the applicant has received an NCDOT Driveway permit, added landscaping, adjusted driveway and sidewalk locations, shifted lots 3-10 further away from the development entrance, and changed the lay-out of the proposed greenway. They also submitted engineering to the Town for stormwater management which resulted in changes to the originally proposed bio-retention areas and the loss of one lot.

They are requesting approval of the above changes to the plan, reducing the total number of lots to 22, and are requesting to convert the three largest lots into multi-family quadraplexes. This changes the plan to 19 individual lots of duplexes that provide 38 units, and 3 individual lots of quadraplexes that create 12 units, increasing the total number of units by 4 to a total of 50 units. Approval of this revised plan would replace the previously submitted plan.

The Town Land Development Standards ("LDS") by reference

This application is for a substantial change on a major subdivision which requires additional review by the Planning Board per Chapter 15 of the Town of Waynesville's Land Development Standards:

- A. **15.9.3 (F) Preliminary Plat Substantial Changes:** Substantial changes from the approved Major Subdivision Plan shall require an additional review by the Planning Board. Substantial changes shall include, but not be limited to, the redesign of streets, increasing the number of lots, altering the size and/or design of more than 20% of the lots, and/or reducing the number of lots by more than 20%.

The applicant has met with individual staff and with the Technical Review Committee regarding proposed changes. The TRC represents the Town's Fire, Public Works, Planning and Building Inspections

staff and Town Engineer. TRC feels the revised plan layout and the addition of multi-family is acceptable in terms of public safety and infrastructure. The multi-family buildings will be treated under the commercial building code and have additional requirements for fire protection associated with the building permit.

Proof of public Notification (LDS 15.3)

The Town placed an ad in the Mountaineer to run May 10 and May 17.

The Town sent by first class mail written notices to properties within 100 feet on all sides of the subject property on May 7, 2019.

Town posted the property on May 7, 2019. By request of neighbor Charlie Deaver, the Town also posted notice along Allen's Creek Road on May 10, 2019.

Location Map and Zoning (LDS 2.4.1)

This property is zoned Allen's Creek Neighborhood Residential (AC-NR) in which duplex family homes and multi-family are permitted, with the following dimensional requirements:	
10 units per acre	compliant 50/7.038 acres = 7.1 units per acre
5% Civic Space	9.8% of total or 12.5% minus wetlands & buffer
Minimum lot size of 1/6 acre (7,260 sf)	compliant (smallest lot = 7,329.3 sf)
Lot width 50ft' at front of building	compliant
Pervious surface of 10%	compliant (lot analysis attached)
Setbacks	compliant
Building Height 3 stories max.	compliant (1 story duplexes and 2 story quads)

Lot Standards (LDS 4)

(4.2) Fraction of one-half or more = whole unit	compliant
(4.3) All lots front a public street, with one structure per lot.	compliant
(4.4) Single and double story structures proposed.	compliant
(4.5) No accessory uses or structures proposed	compliant

Building and Development Design Standards (LDS 5)

(5.4 and 5.5) Houses with adjacent front yards along street	compliant
(5.6) continue established rhythm of development	board determination*

*This project would create a new neighborhood with its own internal street system and a new pattern of development. Adjacent properties are single family homes along a private road to the north and east, and two manufactured home parks served by individual driveways from Pinewood Drive to the south.

Infrastructure (LDS 6)

- All engineering must comply with Town of Waynesville Specifications Manual and will be required *after* subdivision plan is approved but prior to building permits.
- (6.4.1 – 6.5 and 6.7.3) The project connects to the state Road of Allen's Creek through a platted right-of-way across another property. Since the summer, the access right-of-way has been adjusted away from Buchanan Drive and a sidewalk connection has been added.
- Proposed streets within the development and the access road that connects it to Allen's Creek Road are not part of, or connected to, a thoroughfare planned for widening.

- The street plan creates a low volume, low speed loop road with segments less than 500' (measured at centerline):

Property line to fork	= 110'
Fork past unit 27	= 425'
Unit 27 to units 9/11 int.	= 450'
<u>Fork past unit 8</u>	<u>= 240'</u>
Total loop (est.)	1,225'

Short street with T Turn-around between 250 and 500'.

Unit 37 to unit 45	= 235'
<u>Length of "T"</u>	<u>= 160'</u>
Total T from intersection	= 395'

Fire Access Road/Turn-around/connection "to the extent feasible":

Past unit 8 to fire access	= 90'
<u>Connection to Buchanan</u>	<u>= 100'</u>
Total	= 190'

Total new right-of-way created: =1,810'

- (6.6) Per original plan, the developer is providing a "Lane" (6.6.2.E) street classification and design. This includes 5' sidewalks on one side of the street, 5' planted strips on both sides of the street, and a 40' right-of-way. A 20' paved roadway surface is proposed at the request of the Technical Review Committee. Contextually, Allen's Creek Road is an estimated 18'-20' roadway within an estimated 20-26' right-of-way and which has no sidewalks (note: powerline to powerline is 50'). The other closest roadways are Buchanan Drive which is platted as a 12' right-of-way and Kimberly Lane and Lariat Loop which serve the adjacent manufactured home parks.

Planning Board should determine if the application of the Lane classification, can still apply with the introduction of multi-family. At the TRC level, staff believes that the proposed roadway provides adequate access and fire protection while serving the potential traffic generated for the uses and density proposed. The ordinance states:

"A. Care should be taken to ensure that context plays a primary role in the selection of the various right-of-way elements. B. right-of-way should be the minimum required to accommodate the street, median, planning (sic) strips, sidewalks, utilities and maintenance consideration." (6.6.1)

"6.6.2 D Residential Street. Streets serve as the primary transportation network of the community. Generally they are two (2) to six (6) blocks in length."

"6.6.2.E Lane. Lanes are intended to provide direct access to the front of a limited number of single-family structures. Lanes are limited in the number of lots served. Generally, they are very short; often less than 400 (400) feet. Items including to, but not limited to, traffic carrying capacity, topography and connectivity, shall be a consideration when permitting a lane in lieu of a street."

- (6.8) All utility installations within the right of way shall be consistent with the Town's standards for utilities, drainage, sidewalks and trails.
- (6.10) residential units generate just under 10 trips /day per ITE Manual, with duplex and multi-family units generating less than 7 trips per day. However, if you estimated 10 trips per day for Major Subdivision Application Hearing 5_20_19

each unit, at 50 units, the total is 500 estimated trips per day which is below the threshold for a Transportation Impact Analysis (TIA) (3,000 new vehicles per day).

- (6.11) Utilities are available from the Town of Waynesville (water and sewer). Public Works has confirmed that water and sewer capacity is sufficient. The plan proposes a 6" waterline that will connect to a 10" town main. Sewer will be served by a new 8" line that will connect to an existing 8" town line. The plan provides for the installation of three fire hydrants spread out through the development and the Fire Chief has confirmed that these are adequate for fire protection. The area is served by Duke Power.

Civic Space (LDS 7)

- (7.2.1 – 7.3) Plan has designated 25' stream buffers totaling 1.097 acres and 0.415 acres of delineated wetlands, totaling an undisturbed area of 1.512 acres which cannot count toward civic space. Plan indicates a civic space area of 0.105 with 60' of road frontage and adjacent to a proposed greenway that runs along Browning Branch. The greenway provides 0.227 acres of civic space in the form of a 15' wide trail area of 660 linear feet. Another 0.358 of civic space is provided in the middle of the development with over 60' of road frontage and accessible from three sides. Total civic space is 9.9% of total land area, or 12.5% of total land area minus the undisturbed areas of wetlands and stream buffer. 58% of the civic space is outside of the Special Flood Hazard Area.
- (7.2.2) Proposed civic space is accessible to, and within ¼ mile (1,320'), of all lots:
- (7.2.5) Civic space has not yet been programmed with amenities and the applicant should speak to their plans for these areas for compliance with 7.2.5.
- (7.2.8) Civic space will be held in private ownership of the developer who plans on retaining ownership of the entire development. A metes and bounds description of the space to be preserved must be recorded on the development plan. A portion of the larger open space will also be deeded as a bio-retention area as part of the stormwater plan.

Landscaping (LDS 8)

- (8.3) Existing trees within stream buffers and designated wetlands shall not be disturbed.
- (8.4) Introduction of multi-family, does not trigger additional buffer requirements. Applicant is proposing additional landscaping along Buchanan Drive right-of-way.
- (8.5) Proposal shows 1 canopy tree every 40 feet of street frontage within a 5' planted strip.

Parking and Driveways (LDS 9)

- (9.2) Offstreet parking is required at 1 space per unit for single and two family dwellings and is being provided at 2 spaces per unit; Parking is required at 1.5 spaces per unit for multi-family dwellings and is shown at 2 spaces per unit, or 8 parking spaces per quadruplex.
- (9.4 and 9.8) Offstreet parking is proposed on prepared surfaces of 12'- 25' wide, with combinations of parking in the front and side, with some driveways shared and others not. Where lots are adjacent to the sidewalk and parking is provided in the front of the structure, the

structures are setback more than 25' from the back edge of the sidewalk. Driveways shall be constructed to the specifications of the Town.

- (9.8.) Driveway Access standards are to ensure that access does not impair the function of adjacent roadways or public safety. Driveway access and construction to the proposed streets will be reviewed and permitted by the Town. Wherever feasible the Administrator shall require the establishment of joint driveway use. The Ordinance states that:

As determined by the Administrator, engineering judgement shall override the required dimensions set forth in district standards if warranted by specific traffic conditions. The Administrator may approve a reduction of the minimum separation distances in low traffic areas or for low volume traffic uses. When reducing the driveway separation distances, the cumulative impacts of various land uses shall be considered, however, the reduction of separation distance shall not exceed 40% of the current standards.

TRC does feels that the project creates a low-volume, low-speed, limited street network and traffic conditions which would allow for reducing of driveway separation distances without compromising safety.

- Driveway separation is required to be 50', but a 40% reduction (or 20') to a minimum spacing of 30' could be approved by the Administrator (Planning Board). Areas to consider:
 - The 5 lots of units 15-28 are in the curve and are between 35' to 45' apart.
 - The driveway distance between units 31 and 32 is 28' but has room to be corrected.
 - The lots containing 49 and 50 and 41-44 are on either the end of the "T" and have driveways within 10' of the adjoining lot adjacent to the "T". The planning Board should determine if the "T" qualifies as a street and requires the same 50' separation. In one case the driveway is shared with the adjoining property which the ordinance encourages. In both, a driveway could be eliminated and the minimum parking requirement still be met.
- (9.8.3) Access separation between driveways and streets is required at 75', but can similarly be reduced up to 40% (30') up to a minimum of 45'. Areas to consider:
 - Driveway at unit 31 is only 25' away from the intersection and does not comply, but could be eliminated and minimum parking for the structure could still be achieved.
 - Driveway to units 29 and 30 is 45' from intersecting street.
 - Driveway to units 3 and 4, is the first driveway after the fork and is 40' from where the road starts to split.
 - Driveway to unit 11 is less than 45' from intersection but could be served from the adjacent side street.

Lighting (LDS 10)

- (10.3.5) Street lighting is required at 300' on center in the NR district and 5 streetlights are proposed. Streetlight spacing around the main loop road will need to be adjusted or another streetlight added to meet the minimum 300' requirement.

Environmental Standards (LDS 12)

- (12.3) The northern portion of the property closest to Buchanan Drive is in the floodplain. 12 of the proposed structures are within or partially within the floodplain and will have to comply

with the Special Flood Hazard requirements for new construction and substantial improvements and elevations. All public utilities and facilities shall be located and constructed to minimize flood damage. No disturbance to the streams is being proposed, and the applicant can further discuss their direct contacts with the NC State Department of Environmental Quality and the US Army Corps of Engineers.

- o (12.5) This is a high density project with a proposed post-development addition of impervious surface of 37.5% to 62.5% of pervious, open space. Any structure or paved surface or "built upon area" will have to be 30' from the edge of the water of a stream (including the 25' stream buffer area which is measured from the top of the bank) and will have to be verified on-site at the time of the building permit. Engineered drainage and stormwater retention plan has been submitted to the Town and meets the Town's requirements, but must include a maintenance agreement. Dedicated bio-retention areas must be recorded with the plats.
- (12.6) Original lot is below 2,900' and is relatively flat with topo ranging from 2,845 at the lower area near Buchanan Drive to 2,860' in elevation.

Staff Recommendations/Comments related to Findings Requirements

1. *The plan is consistent with the adopted plans and policies of the Town:*
 - Plan creates a duplex and multi-family housing within an area designated as medium to high density residential on the 2002 Land Use Plan Map.
 - Plan is consistent with the adopted Town Allen's Creek Neighborhood Residential (AC-NR) zoning designation for the neighborhood, at a density of 7.1 units per acre.

2. *The plan complies with all applicable requirements of this ordinance;*
 - The reduction of one lot, adjustments to the sidewalk and greenway space, and the introduction of multi-family does not change the compliance to the ordinances for density, setbacks, or environmental regulations.
 - Additional information from applicant is needed on civic space programming, and how the developer plans to provide amenities and maintain civic space areas.
 - Because of the density of the development, driveway distances and layouts will require the Administrative reduction and/or the redesign or elimination of 4 of the driveways based on the Planning Board's determination.
 - Spacing of street lighting along the main loop road does not meet the 300' on center minimum and should be adjusted or another streetlight added.
 - Documentation of NCDEQ Grading permit and USACE permit must be provided to prior to any work beginning. Herron Associates has provided engineering on the site grading, drainage and stormwater retention plans to the town for approval.

- At the time of the building permit and construction, building inspections will require a staked, on-ground verification of survey distances where proposed building or driveway footprint is close setbacks, property lines or buffers. Inspections will also require additional engineering if underlying soil conditions and compaction is a concern for stable footings.

3. *There exists adequate infrastructure (transportation and utilities) to support plan as proposed:*

- Water, sewer and power are available to the site.
- Board must determine if the proposed street system as a lane design is still adequate in consideration of the introduction of multi-family construction.

4. *The application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.*

- The proposal will create a new neighborhood in an area of mixed residential and are of the same zoning designation of AC-NR. The development will not prevent the continued use of neighborhood properties as they are now.
- Concern has been raised regarding the nature of the development into the future as a rental property and how the owner intends to manage the property and select tenants. A poorly managed and maintained rental subdivision could have negative impacts to adjacent properties, just as a well maintained and well managed one could have positive impacts.
- There was concern among adjacent property owners that the development would disrupt Buchanan Drive. Browning Branch LLC has adjusted the closest lots to the right-of-way to place landscaping separation between the road and those units and will connect to Buchanan Drive by only a fire access road for emergency vehicles only. This improves emergency access for those living along Buchanan Drive and those in the proposed development.

Attachments:

1. Location and Zoning Map
2. NCDOT Driveway Permit
3. Application Materials from 2018 Hearing

LEGEND

EP = Existing Iron Pipe or Pin	□ = Manhole
SP = Iron Pipe Set, 5/8" Meter with Survey Cap	○ = Catch Basin
EL = Existing Lateral Line	□ = Meter Valve
MC = Concrete Monument	□ = Power Service Pole
R/W = Right of Way	N/W = Nose of Formery
R/S = Right of Way	P/W = Post of
R/S = Right of Way	DB = Dead Bush
FS = Fence Stake	PG = Pole
CG = Cotton Gin Spike	B.S.L. = BUILDING SETBACK LINE
--- = Aerial Power Line	--- = PROPOSED 8" SEWER LINE
--- = Fence Line	--- = Proposed 8" Sewer Line (not shown)
--- = Boundary	--- = Survey to Line
--- = Survey Boundary Line	--- = Edge of Road or Other (Date of Survey noted)
--- = Adding Property Line (Not shown)	--- = Edge of R/W (Date noted)
--- = Survey to Line	--- = Edge of Easement (Date noted and dimensions)
--- = Edge of Road or Other (Date of Survey noted)	--- = Top of Ridge
--- = Edge of R/W (Date noted)	
--- = Edge of Easement (Date noted and dimensions)	
--- = Top of Ridge	

NOTES

- Acreage tabulated by Coordinate Computation Method.
- All property corners NOT described are computed "points" only.
- Property is subject to all applicable easements and rights of way of record.
- Error of closure meets or exceeds 1:10,000. All distances are horizontal.
- This Survey meets the requirements of a Class "A" Survey.
- Location of all underground utilities are approximate, unless otherwise indicated. Exact location to be determined by owner.
- If land disturbing activities in excess of 1.0 acre are planned, the property owner is required to obtain a Sedimentation and Erosion Control Plan to North Carolina Dept. of Environment Health and Natural Resources.
- This property has been inspected for wetlands and is as shown.
- There is NO recorded Historical Control within 2000'.
- Property IS PARTIALLY located in a special flood hazard area, in accordance with current FEMA and FIRM maps.
- North is "True North" of Plat Cabnet C @ Plat 192A.
- This plat represents a survey of land from 4918 maps 2103.
- Distances are NAVD 88 datum referenced and the Contour Interval is two feet.
- Attorney has performed a title search and identified the road right of way per evidence.

State of North Carolina, County of Haywood
 Filed for registration on the _____ day of _____, 20____ at _____ o'clock _____ and recorded in Plat Cabinet _____ of Plat _____

Register of Deeds - Haywood County
 by _____ Assistant Deputy

State of North Carolina, County of Haywood
 _____ Review Officer of Haywood County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

REVIEW OFFICER _____ (Date) _____

TYPE OF SURVEY PERFORMED

(X) This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.

() This survey is located in a portion of a county or municipality that is designated as to an ordinance that regulates parcels of land.

() This survey is of an existing parcel(s) of land and does not create a new street or change an existing street.

() This survey is of an existing building or other structure, or natural feature, such as a watercourse.

() This survey is a control survey.

() This survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision.

() The information available to the surveyor is such that the surveyor is unable to make a determination to the best of the surveyor's professional ability as to which type of survey listed above best describes the type of survey performed.

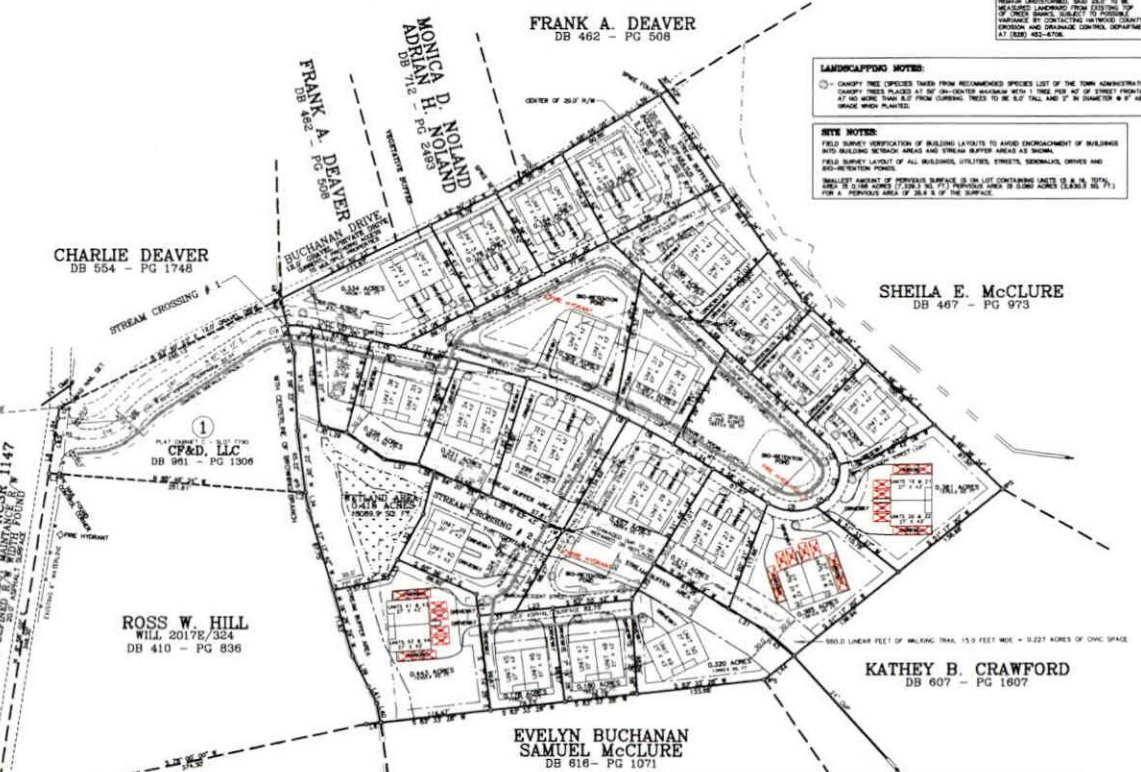
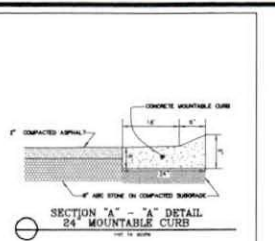
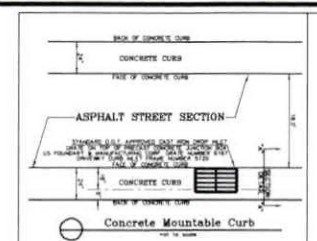
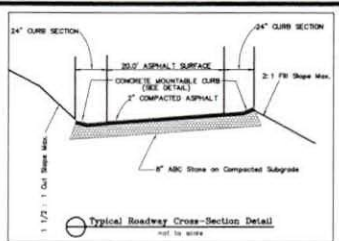
L. JONATHAN T. GILBERT, certify that this plat was drawn under my supervision from an actual survey made under my supervision, that the boundaries not surveyed are clearly indicated as shown from information found in referenced documents, that the ratio of precision as calculated is 1:15,000+, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this 29th day of APRIL, 2018.

Professional Land Surveyor
 License Number L-3971

7.038 ACRES TOTAL

SCALE IN FEET

Curve	Radius	Chord Bearing and Distance	Arc Length
1	100.00	N 00° 00' 00" E 100.00	100.00
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SITE DATA
 SUBJECT PROPERTY IS ZONED: ALLEN'S CREEK NEIGHBORHOOD RESIDENTIAL (AC-4R)
 BUILDING SETBACKS:
 FRONT - 10.0'
 SIDE - 10.0' FROM ADJACENT LOT LINE OR 5.0' FROM STREET
 REAR - 6.0' FROM ADJACENT LOT LINE
 6.0' SEPARATION BETWEEN BUILDINGS
 MAXIMUM DENSITY: 10 UNITS PER ACRE - PROPOSED DENSITY = 7.1 UNITS PER ACRE
 7.038 ACRES DIVIDED INTO 22 LOTS CONTAINING 90 UNITS
 43% (0.390 ACRES) WITHIN SPHA AND 0.400 ACRES OUTSIDE OF SPHA) OF DESIGNATED OPEN AREA FOR THE SITE (58% OF CIVIC SPACE OUTSIDE OF SPHA)
 MINIMUM LOT SIZE: 1/8TH ACRE (7,290 SQUARE FEET)
 CIVIC SPACE (OPEN AREA) OF 0.650 ACRES = 9.8% OF TOTAL AREA
 2.9 ACRES (41%) OF SUBJECT PARCEL IS LOCATED WITHIN THE 100 YEAR FLOOD HAZARD AREA.
 ALL LOT ACREAGES INCLUDE STREET RIGHT OF WAY AREA.
 200.0 LINEAL FEET OF NEW 20.0' WIDE ASPHALT ROAD TO BE BUILT.
 4.4 ACRES OF IMPERVIOUS SURFACE (BUILDINGS, DRIVEWAYS & STREETS)
 2.84 ACRES OF PERVIOUS SURFACE FOR WATER DRAINAGE
 OFF-STREET PARKING - EACH UNIT TO HAVE A LARGE ENOUGH DRIVEWAY TO ACCOMMODATE 2 PARKED CARS

OWNER OF RECORD:
BROWNING BRANCH, LLC

WETLAND AREA = 0.415 ACRES UNDISTURBED
STREAM BUFFER AREA = 1.097 ACRES UNDISTURBED
1.512 ACRES UNDISTURBED TOTAL

MASTER PLAN PREPARED FOR
BROWNING BRANCH, LLC
 Waynesville Township Haywood County, N.C.

Mountain Heritage Land Survey, LLC
 1007 LAWYER DRIVE, SUITE 200, WAYNESVILLE, NC 28786
 PHONE: 828-287-4444 FAX: 828-287-4444

DATE: 04/26/2018
BY: JTG
CHECKED BY: JTG
SCALE: AS SHOWN

1 of 1
 DRAWING NUMBER: 18B-198-006-A
 2018-198-006-A

LIST OF EXHIBITS.

- Town of Waynesville Planning Board Agenda, 5/20/2019
Buchanan Drive Development
- Town of Waynesville Planning Board Agenda, 7/15/2019
Buchanan Drive Development - Minutes
- HC Board of Commissioners Agenda, October 21,2019
- Attachment 5, from 10/21/2019 Agenda
Letter from Sutton
GIS Photo
Ordinance 114 (First page only)
- UNC School of Government - Article
Notice of Hearings
- Notice from Kris Boyd to Doyle Sutton
- Oath for Witness's at quasi-judicial hearing - screen shot, Candace Way administering oath to people standing in place
- Witness Sign-up sheet at quasi-judicial hearing
- Three properties, printout from Haywood County GIS
Doyle Sutton
Megan Ensley
Kevin and Alice Ensley



TOWN OF WAYNESVILLE

Planning Board

9 South Main Street
Waynesville, NC 28786
Phone (828) 456-8647 • Fax (828) 452-1492
www.waynesvillenc.gov

Development Services
Director
Elizabeth Teague

Chairman

Patrick McDowell

Planning Board Members

Anthony Sutton (Vice Chair)

Marty Prevost

Robert Herrmann

H.P. Dykes, Jr.

Pratik Shah

Ginger Hain

Jason Rogers

Susan Teas Smith

Regular Meeting
Town Hall, 9 South Main Street, Waynesville, NC 28786
Monday, July 15, 2019, 5:30 PM

A. CALL TO ORDER

1. Welcome/Calendar/Announcements
 - Comprehensive Plan update
2. Adoption of Minutes
 - *Motion:* To approve minutes of May 20, 2019 as presented (or as corrected)
3. Approval of Order Approving Major Subdivision, May 20, 2019

B. BUSINESS

1. Public hearing to consider zoning 187 Secret Hollow Lane, PIN 8616-09-5980, to Dellwood Medium Density.

C. PUBLIC COMMENT/CALL ON THE AUDIENCE

D. ADJOURN

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This institution is an equal opportunity provider

of survey distances were proposed building or driveway footprint is close setbacks, property lines or buffers. Inspections will also require additional engineering if underlying soil conditions and compaction is a concern for stable footings.

3. *There exists adequate infrastructure (transportation and utilities) to support the plan as proposed:* Ms. Teague advised that water, sewer and power are available to the site. She also stated that the Board must determine if the proposed street system as a lane design is still adequate in consideration of the introduction of multi-family construction.
4. *The application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or another neighborhood, uses.* Ms. Teague advised that the proposal will create a new neighborhood in an area of mixed residential and area of the same zoning designation of AC-NR. The development will not prevent the continued use of neighborhood properties as they are now. She said that concern has been raised regarding the nature of the development into the future as a rental property and how the owner intends to manage the property and select tenants. She stated that a poorly managed and maintained rental subdivision could have negative impacts to adjacent properties, just as a well maintained and well managed one could have positive impacts. She advised there was concern among adjacent property owners that the development would disrupt Buchanan Drive. Browning Branch LLC had adjusted the closest lots to the right-of-way to place landscaping separation between the road and those units and will connect to Buchanan Drive by only a fire access road for emergency vehicles only. She said this improves emergency access for those living along Buchanan Drive and those in the proposed development.

Chairman McDowell invited the Applicant to present.

Kirk Kirkpatrick
Kirkpatrick Law firm
Browning Branch LLC

Mr. Kirk Kirkpatrick introduced himself and stated that he was representing Browning Branch, LLC, applicant in this matter. He advised that Browning Branch received conditional approval by the Planning Board for the master plan for the same site on July 2018 for twenty-three lots of duplexes, forty-six units, conditioned upon the receipt of the NCDOT driveway permit. He informed the Board that the DOT Permit was provided on October 2018 to Neil Ross and the Ross Property had been purchased by CF & D, LLC. He further explained that CF&D conveyed the right-of-way to Browning Branch LLC as shown on the proposed plat and he entered as Exhibit 1: the DOT Permit.

Mr. Kirkpatrick stated that Browning Branch LLC had also made additional changes to the conditionally approved master plan which enhanced the fire plan and addressed the issues submitted by neighbors on Buchanan Drive. He advised the Planning Board that Browning

Branch believed this plan addressed most of the neighbors' issues regarding the subdivision. He submitted the plat as Exhibit 2.

Mr. Kirkpatrick submitted the permit from the US Army Corps of Engineers as Exhibit 3.

He entered as Exhibit 4, a geotechnical survey by ECS South East LLP to determine the suitability of the soils, which he explained the applicant had done in response to the previous meeting's discussion of soil and sinkholes. Mr. Kirkpatrick also explained that as Ms. Teague described, the Town would still have to go out and approve where the construction is located and the soil's suitability as well.

Mr. Kirkpatrick discussed the required operations and maintenance agreements for Browning Branch LLC for the operation of the bioretention ponds shown on the plat. He stated there were three shown on the plat, and that they had prepared the operations and maintenance agreements for to be signed once the plat was approved. He advised that he had submitted the agreement to the Town's Engineer, Preston Gregg, and he had approved it. He entered this as Exhibit 5.

Mr. Kirkpatrick described the updated corrections made to the previous plan included the following:

- Improving and adding landscaping
- Adjusting driveway locations and entering distances
- Adding sidewalk locations
- Shifting units 3 thru 10 to the south to accommodate a 21-foot setback from the adjoining property line with Buchanan Drive residents
- Shifting lots 3 thru 10 further away from the development entrance
- Relocate the proposed greenway

Mr. Kirkpatrick explained to the Board that the applicant's intention of the 21-foot setback from the adjoining property line with Buchanan Drive was to make a concession to the primary concern of residents.

Board Member Susan Smith asked if there were houses right up the road. Mr. Kirkpatrick entered in Exhibit 6 a large plat map on a Board for the Board to review. He pointed out the right-of-way and subject properties.

Mr. Kirkpatrick continued with the application presentation and explained that the plan that is being submitted is due to a substantial change in the previous master plan. He advised that the change in the plan reduces the number of lots to 22 and converts three of the large lots into multi-family quadrplexes. He explained this leaves 19 individual lots of duplexes that provide 38 units and 3 individual lots of quadrplexes that create 12 units. Therefore, the total number of units is now 50.

He advised that they met with TRC to review the revised plat and TRC felt the revised plan layout in addition with the multi-family was acceptable in terms of public safety and infrastructure.

He informed that the property was in the ACNR district and that duplex and multi-family homes are permitted. Ten units per acre and the applicant was compliant. 5% civic space, Mr. Kirkpatrick advised the applicant was compliant as well, 12.5% total less wetlands and buffer equaling 9.8% civic space. He reviewed the lot size and impervious surface compliance. He advised all setbacks as being met as well as lot standards. He also informed that all lots front a public street with one structure per lot. He explained that only single and double story structures were proposed, no accessory structures are proposed.

Mr. Kirkpatrick discussed LDS 5.6 the building and development standards, the continued established rhythm of development. He stated that the development is in the Allen Creek neighborhood, adjacent to the subdivision are manufactured home parks to the south of the property and residential homes surrounding the property. He reviewed Exhibit 6 Plat Map. He advised that the project will create its own neighborhood with all streets serving the neighbors. He informed that the applicant did attempt to improve Buchanan Drive, which is a private Drive and the request was denied, which was their right, and so that is why they put in a different road. He advised that the development connects to Allen's Creek Road and there is no defined right-of-way for Allens Creek Road. A forty-foot right-of-way has been obtained from Allens Creek Rd across CF&D's connecting to the development. The street plan created has a low volume, low speed loop with a short street with a T turnaround and a fire access road with a turn around if necessary. He described the fire access road would be gated with the fire department and chief of police having the key for emergencies.

Mr. Kirkpatrick reviewed the Lane classification in LDS 6.2 and the definition of Lane and he advised that the lane street classification was approved in the previous plan. Mr. Kirkpatrick asked the Board if the Lane street classification could be utilized with the current plan by adding the quadraplexes. He added that the developer intended to place a 15-mph restriction on speed within the subdivision.

He advised that the utilities provided will be a six-inch water line connecting to the ten-inch town main and an 8-inch sewer line to the existing Town line.

Mr. Kirkpatrick reviewed the civic space. He informed that with the civic space total was a .358-acre parcel and that parcel would contain the following amenities: two picnic tables and a bike rack. Also, a .15-acre parcel would contain a picnic table and the green way of .227 acres would include two dog bag stations. He advised that additional seating or playground equipment might be installed or supplied after consideration of liability and makeup of the community as the development matures.

He informed that Browning Branch has added an additional vegetative buffer which will run along Buchanan Drive. CF&D LLC has agreed to allow the developer to place a vegetative buffer along the road as it leads out to Allens Creek, additional vegetative buffer will be placed at the access fire road and along a portion of that .315-acre tract that runs with Sheila McClure's tract. Mr. Kirkpatrick discussed the possibility of working with

neighbors and erecting a fence and placing vegetation on the inside at the request of the neighbors. He advised they are still working out the details of the fencing and vegetation.

He addressed the driveway reduction request stating that there are two spaces per unit and that they tried to put shared driveways in the plan where possible. He stated that they were asking for a 40% reduction from the Planning Board as the administrator. He advised this was approved in the previous plan, but there were corrections and updates that were made so it would need to be approved again. He also stated that the driveways for unit 31 was moved to the side, unit 11 was moved to the side. He described the T turn was previously approved but now within the T turnaround is one quadruplex. He also described that Fire Chief Webb did approve this plan for accessibility of emergency vehicles.

He described the street lighting being lit properly as a subdivision.

He stated that Browning Branch feels they have complied with all adopted plans and policies of the Town and asks the Town to find them consistent and compliant as well.

Mr. Kirkpatrick further entered into evidence a rental packet created by Select Homes, rental management Company that would be utilized to review all the tenants. He advised that the units rent for approximately 1000/month and will not be low-income or subsidized. He stated that due to the management and cost of the rental this nature should improve and not be detrimental to adjacent properties. He also advised that the development plans to locate a covered bus-stop along Allens Creek, by request of Buchanan Drive residents, this is for children to wait for the bus stop.

Mr. Kirkpatrick stated that Browning Branch feels they have created a new neighborhood in Waynesville, a new subdivision, and that they are filling a need for housing that is affordable.

Chairman McDowell asked if there were any questions for the applicant.

Board Member Jason Rogers asked Ms. Teague if there were footers on the site. Ms. Teague stated there are two lots that have been created under separate ownership with separate permits. Board Member Rogers asked if that would make the right-of-way a pre-existing non-conforming because they would be too close to the street. There was a short discussion over the location of the footings of the buildings and setbacks.

Board Member Jason Rogers asked about the driveway separation of unit 42 and 45 distance. The developer stated that it is shared. Short discussion took place.

Chairman McDowell asked Ms. Teague about the civic space and what's usable and if the applicant must state what they must do. Ms. Teague read LDS 7.2.5, Minimum Amenities. Chairman McDowell stated that it sounded as if this is meeting the intention. Ms. Teague advised the developers want to work with the type of families that move in and how the greenway will work.

Chairman McDowell asked if there were any other questions.

Ms. Teague asked the Applicant regarding the update of pulling back the 21 feet at the request if this was acceptable to the them?

Mr. Kirkpatrick advised that he had contacted Mr. Swanger and Mr. Deaver who were at the meeting and they were agreeable, but he did not have anything signed yet.

Chairman McDowell asked if there were anymore questions before public comment. He advised there were three citizens signed up at this time.

Chairman McDowell called on Mr. Charlie Deaver. He stated he had no comment.

Chairman McDowell called on Mr. Steven Swanger. He stated he had no comment.

Chairman McDowell called on Mr. Monroe Miller.

**Monroe Miller
2200 Camp Branch Road
Waynesville, NC 28786**

Mr. Miller introduced himself and stated that he had received the packet and a high-resolution drawing. He stated that it was his understanding that up to this afternoon there were changes being made to the packet and the drawing. He stated that he felt to eliminate any appearance of impropriety, it would be proper to defer this agenda item until next week when he and members of the public could have adequate time to review the changes. He thanked the Board for their time.

Chairman McDowell asked if there was any other public that wanted to speak. There were none. Chairman McDowell asked if there was any rebuttal or closing arguments.

Ms. Teague stated that the Town supports the changes the applicant made to the plan and appreciates that the neighbors and the developer are reaching some level of agreement. She also stated to the Board that in response to Mr. Miller's comments they always have the option to table or continue the hearing until a date if that is their desire.

Mr. Kirkpatrick thanked the Town and advised that the changes that were made to the plan were done due to trying to comply with requests and answering to those. He advised the plan presented on this day was not to harm but to help.

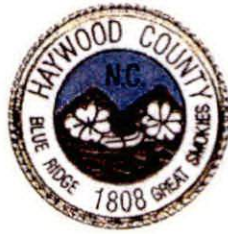
Chairman McDowell gave one last chance before closing the public hearing for questions of the applicant or staff.

LIST OF EXHIBITS.

- Town of Waynesville Planning Board Agenda, 5/20/2019
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BOARD OF COMMISSIONERS

L. KEVIN ENSLEY, CHAIRMAN
RANDON C. ROGERS, VICE CHAIRMAN
W. "KIRK" KIRKPATRICK, III
TOMMY LONG
MARK PLESS



COUNTY MANAGER
BRYANT MOREHEAD

COUNTY ATTORNEY
FRANK QUEEN

HAYWOOD COUNTY BOARD OF COMMISSIONERS
AGENDA FOR
October 21, 2019

The Board will meet in the HAYWOOD COUNTY COURTROOM
of the HISTORIC COURTHOUSE at 215 N. Main Street, Waynesville
beginning at 5:30 p.m.

Citizens must sign up for public comment prior to 5:20 p.m. and are limited to three (3) minutes. Audience members may not address the Board at any time during deliberations unless recognized by the Chairman.

- I. Call to Order – Chairman Kevin Ensley
- II. Pledge of Allegiance
Invocation – BOCC Chaplain - Rev. Patrick Womack
- III. Public Hearings/Call to Public Hearings
none
- IV. Public Comment Session
- V. Constituent Concerns
- VI. Administrative/Agency Reports/Presentations
none
- VII. Discussion/Adjustment to Agenda
- VIII. Consent Agenda
 1. Request approval of October 7, 2019 regular meeting minutes
 2. Request approval of resolution authorizing Haywood County to enter in a lease agreement with Meridian Behavioral Health Services, Inc. for County owned property located at 1207 East Street/307 Broadview Road, Waynesville, NC, parcel #8615-79-8012 - ATTACHMENT 1
 3. Request approval of payment of \$1,600 for operational costs to the Fairgrounds for the Santa Pals program provided by Evergreen Packaging to assist Haywood County school system.
 4. Request approval of Resolution of the County of Haywood Authorizing the Purchase of Up to ten (10) 2020 Dodge Charger Pursuits 5.7 Hemi V-8 MDS VVT AWD 5-speed Auto W5A580 from Ilderton Dodge Chrysler Jeep Ram Fleet for the Sheriff's Office per Exception to Competitive Bidding Requirements – ATTACHMENT 2

IX. Regular Agenda

1. Request approval of September 2019 - Refunds, Releases, Amendments and Discoveries - Tax Assessor Judy Hickman - ATTACHMENT 3
2. Request approval of September 2019 Tax Collections Updates and Refunds - Tax Collector Greg West - ATTACHMENT 4

5:43p

3. Consideration of appeal and variance of the County Junkyards and Other Facilities Ordinance by Doyle Sutton for a permit to operate a wrecker service with a storage lot on property located at 3039 Crabtree Road, Waynesville, NC, parcel #8628-33-4271, per County Ordinance Chapter 114: Junkyards and Other Facilities, §114.14, Appeals and Variances - County Attorney Frank Queen - ATTACHMENT 5

X. Appointments - County Manager Bryant Morehead
none

XI. Closed Session
none

XII. Adjournment

3. Quasi - Judicial Hearing - 1ST TIME!

Terry not a lawyer - ~~X~~ed out Speaking For Doyle Sutton.

17 people Swore to Tell The Truth.

Michael Sorrels
David Francis
Randy Sisk
Kris Boyd
Luke Weir
Grover Bradshaw

Boyd
6:15 Sutton
6:20 Phillips NO
6:23 Yates NO
6:29 Yates NO (wife)
6:34 Rammy Yes
6:58 Dave? NO
7:00 Sorrells NO
7:04 Martha Wills? NO
7:06 Wilham Hedrick NO
7:08 Bobby? NO
7:11 Jack? might be interested in purchasing the property NO
7:13 Alex Keith NO

Well organized By: Grover Bradshaw

Terry on a roll... (25 minutes) Implicated Enslley - Dist.

Hearing Closed

Variance	NO	YES
1	5	0
2	5	0
3	5	0
4	5	0
5	4	1

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8-6-19

TO Haywood Co. Commissioners

I Doyle Sutton would like to Appeal
the decision of the Enforcement Officer
on my plan submission for my wrecker
service on the property located at 3039
Crabtree Rd. 8628-33-4271,
^{Kris} ^{Boyd}

I Am asking the Haywood County Commissioners
to consider a variance to grant me a permit
to operate a wrecker service which requires
a storage lot for towed in automobiles.

Per the requirements by the NCSHP, Haywood
Co. Sheriffs and Towns in Haywood Co. Towing
services are required to have storage lots.

I AM ASKING for A Variance as I feel that
I AM WITH in the bounds of §114.14 Appeals and
Variances (B) - 1-5.

Doyle Sutton

8-6-19

CC Terry Ramey
CC County Commissioners
CC Randy Best
CC Kris Boyd



1 inch = 100 feet

3039 Crabtree Rd

Five Way III
the Southside

1972

CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

Section

- 114.01 Definitions
 - 114.02 Findings, Purposes and Objectives
 - 114.03 Geographic Coverage
 - 114.04 General Standards
 - 114.05 Additional Standards
 - 114.06 Exemptions
 - 114.07 Fencing and Screening Requirements
 - 114.08 Maintenance
 - 114.09 Registration and Permitting of Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
 - 114.10 Non-Conforming Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
 - 114.11 Permit Required
 - 114.12 Enforcement Provisions
 - 114.13 Penalties and Remedies for Violations
 - 114.14 Appeals and Variances
 - 114.15 Severability
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

ACTIVITY. The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

AUTOMOBILE GRAVEYARD. More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

BUILDING. Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

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Notice of Hearings: Evidentiary Hearings for Quasi-judicial Decisions

David W. Owens

April, 2014

Legislative summary(ies):

Summary:

When a local government board makes a quasi-judicial decision – deciding a special or conditional permit application, a variance request, or an appeal of a staff determination – it must hold an evidentiary hearing. Prior to 2013, state law left it to local ordinances to determine what “reasonable notice” of the hearing was to be provided. State law now sets a uniform standard for mandated notice of these hearings.

The local government holding the evidentiary hearing must provide both mailed and posted notice of the hearing. G.S. 160A-388(a2).

Mailed notice

A notice of the hearing must be mailed to the person who initiated the hearing, the owner of the affected property, and the owners of abutting properties. Some local ordinances expand the mailing requirement to the owners of all properties within a set distance of the affected property (typically within 100 feet). The notice must be deposited in the mail at least 10 but not more than 25 days prior to the hearing.

Posted notice

The local government must also post a notice of the hearing on the site involved. That sign has to be put up at least 10 but not more than 25 days prior to the hearing.

There is no state mandate as to the size or content of the posted sign. Most local governments post a standard real estate size sign and include a heading such as “Zoning Hearing” and have contact information for obtaining more information from the [i]

Published notice

There is no state mandate for publishing the notice of an evidentiary hearing in the newspaper, s

the purpose of these hearings is to gather facts about a particular case, not to solicit public opinion about a pending policy choice. The notion here is that the interests of those most directly affected who are most likely to have relevant evidence to offer are best served by mailed and posted notice while newspaper publication is oriented more to the general public. Some local ordinances, however, do require published notice of these hearings.

Open Meetings Law notice

The Open Meetings Law also applies to these hearings, so in addition to the specific requirements noted above, the notices required by that law must also be provided. G.S. 143-318.10. A copy of the regular meeting schedule must be filed in a central location and posted on the local government's site (if it has one). A special meeting held outside the regular meeting schedule requires posted written notice of the meeting on the local government's principal bulletin board, posting notice on the local government's web site, and mailing a copy of the notice 48 hours in advance of the meeting to each person who has made a request for notification. Notice of an emergency meeting must also be provided to the local news media.

Also see these blog posts in Coates Canons

Frayda Bluestein, Is a Quorum Necessary for a Public Hearing (April 2014)

David Owens, Mandated Notices in Land Development Regulation (January 2014)

For additional legal analysis, see

David W. Owens, Land Use Law in North Carolina (2ed. 2011)

[i] Another provision in G.S. 160A-388 does set a standard for the size and content of a posted notice. The owner of property receiving a staff determination is allowed by this statute to post a notice that a determination has been made, thereby providing notice to the neighbors that starts the time running on any appeal they may make to the board of adjustment. This sign must include letters at least six inches high and must include contact information for the city or county.

Accessibility

Knapp-Sanders Building
Campus Box 3330, UNC Chapel Hill
Chapel Hill, NC 27599-3330

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Megan Ensley
Kevin and Alice Ensley



Haywood County Development Services

157 Paragon Parkway, Suite 200
Clyde, NC 28721
Phone: 828-452-6632
Fax: 828-452-6798

September 10, 2019

Mr. Burnette Doyle Sutton
1691 South Main Street
Waynesville, NC 28786

Mr. Sutton,

Haywood County is in receipt of your appeal pursuant to section 114: 14 of Haywood County Code of Ordinances: Chapter 114: Junkyards and Other Facilities.

The Board of Commissioners are being made aware of your request. This request will be scheduled for a Board of County Commissioners regular meeting on or after October 7, 2019 at the Board Chairman's discretion.

Kris R. Boyd

A handwritten signature in blue ink, appearing to read "Kris R. Boyd".

Development and Facilities Services Director

cc: Bryant Morehead
Frank Queen
Randy Best
Kevin Ensley
Jodie Ferguson

Do you swear or affirm that the evidence you shall give to the Board in this action is the truth?

Haywood County Commissioners Meeting 10-21-19



Play (k)

31:22 / 2:00:09

Scroll for details



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Junkyard & Other Facilities Ordinance variance consideration
 Monday, October 21, 2019
 5:30 P.M.

SPEAKER'S LIST

NAME	PRINTED NAME
Gwen Phillips	Gwen Phillips
OL yates	OL yates
Linda yates	Linda yates
Terry Ramey	Terry Ramey
Gwen Phillips	David L. Hill
Michael Sorrells	Michael Sorrells
MARTA WILCE	
William Pedrick	William D. PEDRICK
Robert E. Rogey	Robert E. Rogey
Gwen Phillips	Jayla Whitaker
Alex Kettl	Alex Kettl

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COUNTY NC

Search Results Layers

Results List

Details

View Tax Card (taxhandler.ashx?id=8628-33-4271)

SUTTON, BURNETT DOYLE
474 BALSAM RIDGE RD
WAYNESVILLE, NC 28786-7824

PIN: 8628-33-4271 Acct#: 102081
Legal Ref 1: 968/1138 (DeedReference.aspx?target='968/1138') Add Ref 1: CAB/6284
Legal Ref 2: Add Ref 2:

Acreage
7.02 AC

Tax Information Tax Bill
: \$210,200 2018
Outstanding: \$0 2017
Market: \$210,200
Deferred: \$0

Total Assessed: \$210,200
Sale Info
Price: \$250,000
Date: 02/24/2019

Additional Information

Address: 3039 CRABTREE RD
Subdivision:
Year Built:
Heated Area:
Building Desc:
Land Desc: Commercial Secondary, Commercial Residual
Occupancy Desc:
Property Desc: 3039 CRABTREE RD #Y-3

Zoom To Clear
Select By Location Adjoiners



Map Scale: 1 inch = 100 feet

Buffer



COUNTY, NC

Search Results Layers

Results List

Details

View Tax Card (taxhandler.ashx?id=8628-23-5671)

ENSLEY, MEGAN R
136 STARLING HILL LN
CLAYTON, GA 30525-5131

PIN: 8628-23-5671
Legal Ref 1: 841/1662 (DeedReference.aspx?target='841/1662')
Legal Ref 2:
Acreage: 14.16 AC

Acct#: 229764
Add Ref 1: CAB/6284
Add Ref 2:

Tax Information

\$70,000
\$0
\$70,000
\$0

Tax Bill

2018
2017

Total Assessed: \$70,000
Sale Info
Price: \$70,000
Date: 2/26/2013

Additional Information

Address: YATES COVE RD
Subdivision:
Year Built:
Heated Area:
Building Desc:
Land Desc: Openland, Woodland
Occupancy Desc:
Property Desc: YATES COVE RD #Y-1

Zoom To

Clear

Select By Location

Adjoiners

Buffer





COUNTY | NC

Search Results Layers

Results List

Details

View Tax Card (taxhandler.ashx?id=8628-23-6180)

ENSLEY, LAWRENCE KEVIN
ENSLEY, ALICE S
170 YATES COVE RD
WAYNESVILLE, NC 28785

PIN: 8628-23-6180 Acct#: 171965
Legal Ref 1: 635/594 (DeedReference.aspx?target='635/594') Add Ref 1: A05/612
Legal Ref 2: Add Ref 2: CAB0C/4069

Acreage
10.05 AC

Information		Tax Bill
Land:	\$118,400	2018
Building:	\$251,700	2017
Market:	\$370,100	
Deferred:	\$81,356	

Total Assessed: \$288,744
Sale Info
Price: \$352,580
Date: 6/29/2005

Additional Information

Address: 170 YATES COVE RD
Subdivision:
Year Built: 1997
Heated Area: 2440
Building Desc: DWELLING
Land Desc: Homesite Primary, Openland, Woodland, Homesite Primary, Openland, Woodland
Occupancy Desc: Single-Family
Property Desc: 170 YATES COVE RD

Buffer

