

*Approved  
June 3, 2003*

**MINUTES FOR CHEROKEE COUNTY  
MUNICIPAL PLANNING COMMISSION  
PUBLIC HEARING**

**Tuesday, May 6, 2003**

**7:00 p.m.**

The Cherokee County Municipal Planning Commission held its regularly scheduled public hearing on Tuesday, May 6, 2003, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Planning Commission were Cecil Atchley, Bill Jarrard, Marsha Lathem, Michael Oxley, Dick Hall, Wayne Kosbe, Rob Cutting, Ashley Holcomb and Jay Wallace. In attendance for Cherokee County staff were Mark Mahler, County Attorney, Jeff Watkins, Planning Director, Vicki Taylor, Zoning Administrator. The meeting was called to order at 7:00 PM.

**Tabled Cases**

**Case #03-04-022 Chattin Road LLC** requesting to rezone 36.49 acres from R-80 to LI. If rezoned the property would be utilized for light industrial uses. The property is located on Chattin Road in Land Lot 22 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N19, Parcel(s) 015 and 016. Applicant requested this case be tabled for 30 days.

**Case #03-04-026 McDonald's Corporation** is requesting to rezone 1.3 acres from R-40 to GC. If rezoned the property would be utilized for a McDonald's Restaurant. The property is located on Sixes Road in Land Lot 563 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N15, Part of Parcel 007. Applicant has requested this case be tabled for 30 days.

**Mr. Jarrard made a motion to table these cases. Seconded by Mr. Oxley. Motion passed.**

**Old Cases**

**Case #03-04-023 Richard A. Duncan** requesting to rezone 55.98 acres from AG to R-15. If rezoned the property would be utilized for a residential subdivision. The property is located on Darnell Road in Land Lot(s) 187, 246 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N25, Parcel 001 and Tax Map 15N26, Parcel(s) 015, 016.

Vicki Taylor gave staff recommendation for approval to R-15 allowing that there are considerable development issues yet to be resolved.

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Richard Duncan represented this case. He explained they originally were requesting RZL zoning of approximately 56 acres as an extension to Middlebrook Subdivision. At that time he stated he met with the residents of Middlebrook Subdivision to discuss the issues they may have and their concerns were one entrance and traffic. He stated he re-evaluated and changed the zoning to R-15. He stated the project was changed to 48 acres with a density of 2.08 with 100 lots. He discussed the reason they were talking to Middlebrook in the first place was due to road and access issues to the property. He discussed that Darnell Road is not up to County standards and has only a 30-foot right-of-way. He stated he spoke with the Darnell's and they granted him an opportunity to purchase the additional right-of-way to widen it to a 50 foot right-of-way at his expense which will run him 100,000 to 150,000 dollars between buying the extra right-of-way and putting in the road they need. He stated he would do that. Mr. Duncan stated they did have sewer availability on the property. He stated Land Sellutions, the developer of Middlebrook, has granted him the access to tie in to the sewer. He stated he had met with Storm Water Sewer and they said the capacity of the line is plenty enough to handle the project.

No one spoke in favor.

Jim Hubbard said most of the concerns he had during the public participation meeting had been addressed, but he was still concerned over density. He would like to see the density stepped down.

Discussion ensued regarding the neighboring McCauley property annexation by Holly Springs.

Mr. Jarrard asked if Croft Drive, as shown on the site plan, is the same as Darnell Drive? Is that the road that would be upgraded to meet the specs of the 50-foot right-of-way. Mr. Duncan answered, yes.

Mr. Cutting asked Mr. Duncan if he was committed to widening the road and that the project would be done on sewer. Mr. Duncan replied that was correct.

Mr. Jarrard made a motion to approve. Seconded by Mr. Hall with the condition applicant to make improvements to road and sewer.

**Case #03-04-024 Michael A. White** requesting to rezone 2.02 acres from R-80 to OI. If rezoned the property would be utilized for office use. The property is located off Eagle

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Drive in Land Lot(s) 901, 972 of the 21<sup>st</sup> District and further described as Cherokee County Tax Map 15N05, Parcel 110.

Vicki Taylor gave Staff recommendation for approval.

Benson Chambers represented this case.

No one spoke in favor.

John Scaggs spoke in opposition. He stated he neighbors this property as a member of Wellsley Subdivision to the east of this property and that 103 people signed a petition in opposition. He stated health, safety and welfare related concerns for residential bordering businesses. He stated they had met with Mr. Craig Kipp on three separate occasions and they thought they had an agreement exception on the one issue of berms. They wanted a berm, because it is not seasonal and protects against noise and does not dilapidate like a fence. But they could not agree on the berm. Mr. Chambers told them Mr. Kipp wasn't authorized for negotiations. He felt they had gotten no cooperation.

Chairman Holcombe clarified with Mr. Scaggs where they would like to see the berm. Mr. Scaggs stated west, north and south of the property.

Bob Blanchard spoke in opposition representing The Gardens Assisted Living Facility that their residents are over 80 years old and they had moved there for peace and tranquility. He stated concerns for the lighting in the parking facility for the office buildings shining down on the people in their facility.

Benson Chambers spoke in rebuttal. He stated the berm issue was unreasonable. He stated they wanted an 8-foot high berm on the outside of the 50-foot buffer. This berm would require a 36-foot wide footprint and that then would make it an 86-foot wide buffer and this was not acceptable. Mr. White sent Mr. Kipp to discuss the concerns of the adjacent property owners and Mr. White could not agree with it. He said they did agree to do a 50 foot buffer and the inclusion of one or the other an 8 foot high privacy fence or a natural vegetative screening of Leland Cypress trees and an offer to place the fence or screen on the inside of the buffer.

Mr. Wallace asked who Mr. Kipp is. Mr. Chambers answered a real estate agent.

Mr. Cutting asked about the driveway going through the buffer. Mr. Mahler stated the Board of Commissioners could allow the drive to go through the buffer.

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**Mr. Kosbe made a motion to approve with the condition that applicant is to provide a 50-foot buffer to the east and west with Leland Cypress plantings and that the applicant is to meet with the adjacent homeowners to go over OI permitted uses and to compile a list of uses meeting homeowners concerns and bring a list of those to the Board of Commissioners meeting next week. Mr. Hall seconded. Motion passed unanimously.**

**New Cases**

**Case #03-05-027 Weatherby & Associates** requesting to rezone 11.429 acres from R-20 to RTH and GC. If rezoned the property would be utilized for an attached town home community and retail commercial. The property is located on Bells Ferry Road and further described as Cherokee County Tax Map 21N09, parcel 573.

Vicki Taylor gave Staff recommendation for approval, but did point out Engineering concerns of inadequate access, heavy traffic volumes and accident history.

Parks Huff represented this case.

No one spoke in favor.

Dorothy Bobo spoke of traffic safety concerns.

Win Chan spoke in opposition and asked for buffers on either side of his property.

Christel Cason spoke in opposition due to traffic safety concerns.

Mr. Jarrard stated his concerns over approving this rezone when there are so many safety concerns with the road.

Mr. Huff stated they would certainly address these issues on their end. He stated the projection date for DOT upgrade is 2005. Mr. Huff stated they would comply with any of the DOT requirements.

Mr. Hall clarified there would be a 50-foot buffer along any residential including Mr. Chan's. Mr. Huff stated that is correct.

**Mr. Cutting made a motion to approval of RTH and GC with the following conditions: 1) Provide a 50 foot buffer abutting all residentially zoned property. 2)**

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**Provide a 50-foot buffer between the GC and R-20 on the north portion of R-20 property. 3) Provide fencing along east PUD, with like height and not less than six feet where fencing absent, and provide fencing along GC and R-20 properties. Seconded by Mr. Hall. Passed.**

**Case #03-05-028 ISI Commercial, LLC** requesting to rezone 35 acres from AG and R-20 to R-20. If rezoned the property would be utilized for a residential subdivision. The property is located on East Cherokee Drive and further described as Cherokee County Tax Map 03N11, Part of Parcel 156.

Vicki Taylor gave Staff recommendation for approval.

Grover Swilley represented this case.

No one spoke in favor.

Dave Turner spoke in opposition representing Woodmont HOA. He stated he opposed to the proposed 1650 sq.ft. minimum for the houses. He stated the minimum house size in Woodmont is 3200 sq.ft. and proposed to change the minimum sq.ft. for the homes to 2400 sq.ft.

Larry Smith spoke in opposition due to size and value of the homes.

Mr. Swilley spoke in rebuttal. He stated usually their homes are 2400 sq.ft., but not all can afford this. He stated he could agree to 1650 or 1850 sq.ft. homes.

Mr. Jarrard asked Mr. Swilley if he could agree to 1850 sq.ft. homes? Mr. Swilley answered, yes sir.

**Mr. Jarrard made a motion to approve with 1850 sq.ft. minimum house size. Seconded by Mrs. Lathem. Passed.**

**Case #03-05-029 Luther Stanley Smith** requesting to rezone 22.8 acres from R-80 and R-40 to AG. If rezoned the property would be utilized for horse stall bedding and farming use. The property is located on Old Mill Road and further described and Cherokee County Tax Map 03N22, Parcel 011.

Vicki Taylor gave Staff recommendation for approval.

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David Flint represented this case. He stated this is a down zoning back to Agriculture. He stated the opposition was not for the agriculture zoning, but because of the use. He explained Mr. Smith picks up the wood shaving from a mill and delivers it to the different horse farms. He stated some of the neighbors had signed a petition in support of Mr. Smith rezone request.

No one spoke in favor.

Jeannette Citta of 604 Westwind Trace spoke in opposition due to Old Mill Road being a winding, hilly, narrow road and spoke in concern of traffic safety issues.

Chris Phillips, Premiere Planning and Development spoke in opposition. He stated his Company was the one who rezoned the property and stated they did not take the 22 acre tract due to soil problems. He did state they had under development 56 lots and 10 to 15 lots that would be directly affected. If Mr. Smith did go back to AG there are no rules to keep Mr. Smith from clear cutting his entire 22 acres. He stated he was opposed due to the trailers and noise. He understood Mr. Smith would be running a chipper.

David Lackey spoke in opposition due to trucks on the road. He stated Mr. Smith has a trucking business. He stated trucks go as late as 11:30 pm at night and the noise is a constant irritation. He stated Mr. Smith did not ask what the property was zoned and the rest of the community should not pay for his mistake.

Robbie Blalock, 748 Old Mill Circle, spoke in opposition. He turned in a petition in opposition and turned in pictures of the road.

George Lathem, 754 Old Mill Road, spoke in opposition. He stated Mr. Flint did not mention he is hauling in the chips with tractor trailers and the road is only 19 feet wide. He stated Mr. Smith did not mention running a chipper.

Mr. Flint spoke in rebuttal and stated there is no chipper. He stated he was shocked when hearing Mr. Phillips stated the property was let go because it was not economically feasible to develop the property for residential development. He stated Mr. Smith's property is only economically feasible as Agriculture land. He stated Mr. Smith has 8-acres, the home is sitting on, where he could run this business. He stated Mr. Smith's business is an Agricultural use. Mr. Flint said the road was not the best and hoped the County would put a better road there and everybody wants a better road. He stated not to

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rezone the property Agriculture would be a violation; otherwise, this would be a taking of Mr. Smith's property in violation of the Constitution.

Mr. Wallace asked what the hours of operation would be. Discussion ensued with Mr. Smith regarding hours of operation. Mr. Smith said the night shift at the mill starts at 9:30 pm and goes until 6:00 am in the morning. Mr. Wallace said he wanted to get an idea of his hours. Mr. Smith stated he was trying to get in to daylight hours as soon as possible. Mr. Wallace asked Mr. Smith to clarify for the record about the chipper. Mr. Smith stated he does not use a chipper, that he does not produce the chips.

Mr. Hall asked Mr. Mahler to clarify what makes this an agriculture operation. He stated it sounds like normal trans-shipping; distribution other than this is for horses. Mr. Mahler stated agriculture businesses allowed are feed stores and hay production so it is the nature of the product and is considered an agricultural support business.

Mr. Cutting asked Mr. Smith if he uses Old Mill Road to Hwy 369 or to Hwy 20. Mr. Smith stated for the purpose of the business he had been using Old Mill to 369. Mr. Cutting asked if he would be willing to use Old Mill Road to Hwy 20? He stated he could.

Discussion ensued over size and number of trucks. Discussion ensued regarding Mr. Mahler's statement that Mr. Smith was told he could haul the chips in and out, but no parking of trucks on the property.

**Mr. Jarrard made a motion to approve with the following conditions: 1) Applicant has 90 days after approval of BOC to comply with a) Hours of operation from 7:00 am to 7:00 pm and b) To limit trucking access to Old Mill Road to Hwy 20 only. 2) Applicant to provide 50 foot buffer along all adjacent residentially zoned property. 3) Driveway may continue to be used with no enlargement to drive. 4) No swine or poultry. 5) No wood chipper. Seconded by Mrs. Lathem. Passed.**

**Case #03-05-030 Landholder Advisors, LLC** requesting to rezone 56.52 acres from AG & R-80 to NC, RM-16 and RZL. If rezoned the property would be utilized for a professional building, retail shops in the NC District, assisted living facility in the RM-16 district and residential subdivision. The property is located on Cumming Hwy and further described as Cherokee County Tax Map 03N11, Parcel 015.

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Vicki Taylor gave Staff recommendation for conditions to be placed on this rezone request or either a less intense zoning be recommended.

Jay Jenkins represented this case.

Dennis Jennings, 6409 Cumming Hwy, spoke in favor. He stated he felt they needed a medical center and a day care center. He stated the assisted living is a splendid idea.

Marcus Beavers, 1049 Beavers Road, spoke in opposition. He stated there was not enough water supply, not compatible with surrounding zoning, traffic safety concerns.

Bob Dye spoke in opposition. He stated he moved to Burns Lane not to be in a neighborhood and stated traffic safety concerns.

Amy Youngblood spoke in opposition and stated Burns Lane is a gravel road and this development would change their surroundings. She stated concerns for the wildlife.

Jay Jenkins and Jim Hardin spoke in rebuttal. Mr. Jenkins stated this development would create 100 new jobs. He stated 14 out of 20 adjacent owners had signed a petition in favor of the project and turned in those petitions. Mr. Hardin said their plan had addressed traffic issues with decel lanes for access and had been working with DOT. He stated they had addressed storm water management, water and sewer issues.

Mr. Hall stated this project is not close in proximity to other commercial development.

Chairman Holcomb stated he was sure that these type projects aimed at the empty nesters and assisted living would be coming forward more often and people in communities would want their parents close by to watch after them. He stated there is nothing in the Ordinance that addresses these type projects other than RZL. He stated he thought this would need to be addressed with the Ordinance in the near future.

Mr. Jarrard stated he did not see the need for some of the facilities. He stated some of the uses might be good such as the daycare facility. He stated he was concerned with setting a precedence to establishing RZL zoning in the community.

Mr. Cutting stated his remark to the Tribune was more specific to the services, not on the utility side, but the on amenity side. He stated he supports the concept for empty nesters and assisted living and these services are not there in that area.

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Mr. Oxley stated the market would dictate the need for these type projects. He stated he had an 18-month old daughter and it would be great to have the grandparents by him and the parents wouldn't be able to afford a big lot house and a cottage would be great.

Chairman Holcomb restated that the Board of Commissioners would need to address this market with a better tool to use other than RZL.

**Mr. Hall made a motion to deny. Seconded by Mr. Jarrard. Motion passed with Mrs. Lathem, Mr. Cutting and Mr. Oxley in opposition.**

**Case #03-05-031 Pridemark Homes, Inc.** requesting to rezone 11.62 acres from R-40 to RTH. If rezoned the property would be utilized for attached town homes. The property is located on Red Barn Road and further described as Cherokee County Tax Map 15N06, Parcel(s) 140, 142, 133, 134.

Vicki Taylor gave Staff recommendation for approval.

Frank D'Aries represented this case.

No one spoke in favor.

Bennie Worthy spoke in opposition. Mr. Worthy stated in the past he had tried to purchase 35 feet more to go with the 15 feet he has for a driveway easement and failed. He stated he wanted a commitment from Mr. Daries that he would let him purchase this land or work out an agreement. Mr. Worthy stated that the plans had 3.6 acres not to be developed, but it is scheduled to be rezoned and he is concerned it could be developed without coming back through zoning at a later date.

Mr. Cutting asked Mr. Daries if he plans to develop the undeveloped portion in the future. Mr. Daries answered no and he could commit to it remaining undeveloped.

Discussion ensued regarding Mr. Worthy's access easement.

**Mr. Wallace made a motion to approve 93 units as shown on site plan. Seconded by Mr. Cutting with the condition that that portion shown as open and undeveloped remain per site plan. Passed.**

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**Other Agenda Items**

Approval of April 1, 2003 Minutes.

**Mr. Hall made a motion to approve these minutes. Seconded by Mr. Kosbe. Passed.**

Meeting adjourned at 8:35 pm