

*Approved January 4, 2005*

**Cherokee County Planning Commission  
Public Hearing  
Minutes  
Tuesday, December 7, 2004  
7:00 p.m.**

The Cherokee County Municipal Planning Commission held its regularly scheduled public hearing on Tuesday, December 7, 2004, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Planning Commission were Chairman Rob Cutting, Jay Wallace, Donnie Henriques, Bill Jarrard, Michael Oxley, Ashley Holcomb, Betty Callahan, Marsha Lathem and Dick Hall. In attendance for Cherokee County staff were Mark Mahler, County Attorney, Jeff Watkins, Planning Director, Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician. The meeting was called to order at 7:05 pm.

**Old Cases**

**Case #04-09-057 K B Home Atlanta, LLC** requesting to rezone 90 +/- acres from R-40 to RZL (Revised to RD-3). If rezoned the property would be utilized for a residential subdivision. The property is located off Neese Road at Dachsund Court in Land Lot(s) 1097, 1098, 1099, 1100 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N18, Parcel(s) 61, 82, 85, 86, 116, and 117.

**Applicant and City of Woodstock have requested this case be postponed.**

**Chairman Cutting made a motion to postpone until further notice. Seconded by Bill Jarrard. Motion passed unanimously 9-0.**

**Case #04-10-067 CW Matthews Contracting Company, Inc.** requesting to rezone 14 acres from AG to HI. If rezoned the property would be utilized for an asphalt plant. The property is located on Hwy 369 and Lower Creighton Road in Land Lot 470 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N27, Portion of Parcel 62.

Vicki Taylor gave Staff findings that The Future Land Use Map shows a classification of Agriculture/Forestry, although the immediate 190 acre area has been in mining use for some time. The 14 acre tract is entirely within the parcel owned by Vulcan Materials and being used for mining operation.

Attorney Marion Pope represented this case and Bryant Lawrence of C. W. Matthews made a presentation to the Board.

Kevin Brackett spoke in favor.

John Ridings spoke in favor.

Attorney Bob Dyer spoke in opposition representing the Northeast Cherokee Coalition Group and gave a history of this property through previous rezone attempts and the court cases involved subsequently. He stated these attempts have been going on for the last 14 years and Cherokee has denied these requests and the courts have upheld that decision. He stated that residential neighborhoods have developed in the area.

Gary Lipham spoke in opposition as the developer of Wolf Creek Subdivision. He stated Wolf Creek is an upscale subdivision. He stated he purchased the property with the understanding that the County would not allow an asphalt plant.

Melissa Flock spoke in opposition that she would lose her business as an organic farm with an asphalt plant in the area.

Charles Laughinghouse, Commissioner of Forsyth County spoke in opposition.

Allen Tuggle spoke in opposition. He stated he is the closest resident to the proposed plant.

Discussion ensued as to noise levels, smells and whether these plants are inspected by the Environmental Protection Agency (EPA).

Donnie Henriques stated he did not see a need for an asphalt plant in the area as it is residential.

Michael Oxley stated that decisions in the past had been with an understanding that an asphalt plant would not be at this site.

Chairman Cutting gave a history of attempts for an asphalt plant.

Dick Hall stated a zoning of HI would be creating an isolated zoning.

Chairman Cutting thanked C. W. Matthews for being a good neighbor in the County.

**Jay Wallace made a motion to recommend denial. Seconded by Donnie Henriques. Motion passed unanimously 9-0.**

### Continued Cases

**Case #04-11-075 Union Hill Road Associates, LLC** requesting to rezone 37.56 +/- acres from GC to RZL. If rezoned the property would be utilized for a residential subdivision. The applicant is also requesting a variance to disturb and replant along the eastern, southern and western property lines and to eliminate the required 35' buffer along the northern property line. The property is located on Evans Cook Road and Union Hill Road

in Land Lot(s) 1008, 1009, 1010 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 14N29, Part of Parcel 139.

Vicki Taylor gave Staff findings that the Applicant has requested the elimination of the 35-foot buffer between RZL and GC to the north, however, as designed with the Parkway no buffer would be required here. Applicant has also requested permission to disturb and replant the buffers along the eastern, southern, and western property lines. The density of the proposed development is 3.51 D.U.A. with a minimum of 10% greenspace.

Attorney Gee Harvey represented this case. He then asked the Board if they could not see a density of 3.5, then his client would prefer the case be denied instead of a zoning that they could not use.

No one spoke in favor.

Angie Rubel spoke in opposition due to increased traffic. She stated that Paul Corley had told her this new development would be using Forest Creek's amenity area.

Herbert Epperson spoke in opposition and asked that it remain GC.

Paul Corley, President of PEC Development spoke in rebuttal.

**Bill Jarrard made a motion to recommend denial. Seconded by Dick Hall. Motion passes unanimously 9-0.**

### New Cases

**Case #04-12-076 Bonifey Development, LLC** requesting to rezone 33.85 +/- acres from AG to R-40. If rezoned the property would be utilized for a residential subdivision. The property is located on Old Mill Road in Land Lot(s) 746, 767, 818 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N22, Part of parcel 036 and parcel 036A.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Agriculture/Forestry although the area has predominant residential use. The density of the proposed development is approximately 0.91 dwelling units per acre for Tract 1 and a minimum lot size of 40,000 square feet. The Engineering Department has expressed the opinion that Old Mill Road can successfully handle the additional 22 homes proposed without any significant change in the level of service. The School Board has estimated the addition of 16 students and on-site sewage disposal systems will be required.

Attorney Benson Chambers represented this case.

No one spoke in favor.

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Douglas Odum spoke of his concerns that the properties behind this proposed development did not have water.

Debra McDory spoke of her concerns that this would affect adversely her property value and stated she wanted the property to remain AG.

Benson Chambers spoke in rebuttal.

Discussion ensued as to several scenarios of R-60 zoning.

**Bill Jarrard made a motion to recommend approval of R-40. Seconded by Dick Hall. Motion passes 8-1, with Michael Oxley in opposition.**

Case #04-12-077 MBC Properties, LLC requesting to rezone 13.71 acres from R-40 to RTH. If rezoned the property would be utilized for single family attached townhomes. The property is located on Victory Drive in Land Lot(s) 898, 903 of the 21<sup>st</sup> District and further described as Cherokee County Tax Map 21N11, Parcel(s) 153, 157, 158.

Vicki Taylor gave Staff findings that while consistent with the Future Land Use Map, this density may be premature to the infrastructure currently in place. The Engineering Staff have expressed some concerns over the entrance location and the need for a left turn lane, as well as the impact of this development on the intersections at Woodstock Road and Kellogg Creek Road. They further state that it is their opinion that Victory Drive can tolerate the addition traffic but with the expectation that the level of service at the intersections will be worsened. Public Water and sewer is available and the School Board estimated the addition of 32 students.

Attorney Benson Chambers represented this case.

Bill Abernathy, the property owner, spoke in favor of this rezone.

Attorney Jeffrey Rusbridge spoke in opposition as he represents the opposing parties.

Discussion ensued as to the surrounding zoning.

**Bill Jarrard made a motion to recommend denial. Seconded by Donnie Henriques. Motion passes 5-4, with Ashley Holcomb, Rob Cutting, Marsha Lathem and Dick Hall in opposition.**

Case #04-12-078 George Hovis requesting to rezone 103 +/- acres from AG to R-40. If rezoned the property would be utilized for a residential subdivision. The property is located on Conns Creek Road in Land Lot(s) 318, 329 of the 4<sup>th</sup> District and further described as Cherokee County Tax Map 04N08, Parcel 003.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Agriculture/Forestry although the area has significant residential use. The density of the proposed development is approximately 0.91 dwelling units per acre and a minimum lot size of 40,000 square feet. The Engineering Department has expressed the opinion that Conns Creek Road can successfully handle the additional 94 homes proposed without any significant change in the level of service. The School Board has estimated the addition of 69 students and on-site sewage disposal systems will be required. Environmental Health has noted that without public water, lots will have to be larger than the proposed 40,000 square feet to support individual wells.

Tom Harris represented this case.

No one spoke in favor.

Michael Anginzer spoke in opposition for petitioners. He stated there was no water, spoke of concerns to the quality of their wells being affected by septic tanks, increased traffic and school overcrowding.

Marion Wilson spoke in opposition due to the condition of Conns Creek Road. He stated there is no other R-40 in the area. He asked the case be denied.

Tom Harris spoke in rebuttal and further stated he had been unable to arrange a meeting with the School Board.

**Dick Hall made a motion to recommend denial. Seconded by Marsha Lathem. Motion passed unanimously 9-0.**

**Case #04-12-079 Dean Woodall** requesting to rezone 231.86 acres from AG to R-40. If rezoned the property would be utilized for a residential subdivision. The property is located on Upper Sweetwater Trail in Land Lot(s) 12, 13 of the 22<sup>nd</sup> District and further described as Cherokee County Tax Map 22N06, Parcel(s) 91, 92, 93, 119 and part of parcel 121.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Agriculture/Forestry although the area is predominantly residential and has an R-40 subdivision adjacent to the north boundary. The density of the proposed development is approximately 1.039 dwelling units per acre with 23.7% greenspace. While the Engineering Department has expressed the opinion that Upper Sweetwater Trail can successfully handle the additional traffic, it is assumed that the majority of new residents will utilize the intersection at State Rote 20, where there are safety issues. The School Board has estimated the addition of 175 students and on-site sewage disposal systems will be required.

Attorney Benson Chambers represented this case.

Hugh Thacker spoke in favor of the rezone as one of the property owners.

Linda Holmes Rubin spoke in opposition. She stated to rezone the property to R-40 would be a spot zoning in the area. She spoke of traffic problems and requested the property remain Agriculture.

Roy Smith spoke in opposition to access of the proposed subdivision, it being in a dangerous location. He stated there was only a volunteer fire department and referred to the number of fireman positions not filled. He spoke of school overcrowding.

John Turner spoke in opposition due to increased traffic, the road being winding and no water or sewer in the area. He requested the property remain Agriculture.

Jerry Kinzy spoke in opposition to this proposed development and stating there is a dangerous intersection and there is no relief in site until 2010 by the Atlanta Regional Commission.

Benson Chambers spoke in rebuttal and stated Mr. Woodall would agree to place a red light at that intersection and to raise the minimum house size to 1,800 square feet.

Bill Jarrard discussed an R-60 zoning and R-80 for outlying lots.

Donnie Henriques excused himself from discussion due to a possible conflict of interest.

Discussion ensued regarding the previous AR (Agriculture Recreation) zoning in the area that was done away with in 1992.

**Dick Hall made a motion to recommend approval of R-40, capped at 200 lot maximum; however, if the developer decides to develop the property as R-40 Conservation Subdivision, then there should be the following conditions: 1) Buffers outside the deeded lots, 2) 30 percent of greenspace, 3) Mandatory Homeowners Association and 4) A minimum house size of 1,800 square feet of heated space. Seconded by Jay Wallace. Motion passed 7-1, with Bill Jarrard in opposition and Donnie Henriques recused.**

**Case #04-12-080 Tree-Breeze, LLC** requesting to rezone 358.58 +/- acres from AG to R-40. If rezoned the property would be utilized for a residential subdivision. The property is located on Hwy 108 (Fincher Road) in Land Lot(s) 9, 10, and 11 of the 14<sup>th</sup> District and 127, 161, and 162 of the 22<sup>nd</sup> District and further described as Cherokee County Tax Map 14N04, Parcel(s) 001, and 001A.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Agriculture/Forestry. The density of the proposed development is approximately 0.98 dwelling units per acre with 27.8% greenspace. While the Engineering Department has expressed the opinion that State Route 108 can successfully handle the additional traffic,

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they suggest the traffic study recommendations be followed. Obviously, Georgia DOT has jurisdiction over all entrance requirements. The School Board has estimated the addition of 254 students and on-site sewage disposal systems will be required. Environmental Health has noted that without public water, lots will have to be larger than the proposed 25,500 square feet to support individual wells.

Benson Chambers represented this case. He further stated that an agreement had been reached with the Board of Education.

No one spoke in favor.

Linda Holmes Rubin spoke in opposition and stated the Future Land Use Map designates this area for agriculture and forestry. She spoke of the dangerous intersection. She stated this is a rural area and spoke of her concerns for the watershed and wildlife. She stated she wanted the property to stay Agriculture.

Jerry Kinzy spoke in opposition due to the dangerous intersection. He stated there is no R-40 adjacent to this property.

Susan Dyer spoke in opposition due to school overcrowding.

Malcolm Fox spoke in opposition.

Benson Chambers spoke in rebuttal.

Chairman Cutting stated a traffic light needs to be at the intersection and the traffic study should be adhered to.

**Ashley Holcomb made a motion to recommend R-60 and to cap the lots at 225; however, if the developer decides to develop the property as a R-60 Conservation Subdivision, then there be a 30 percent greenspace requirement. Seconded by Marsha Lathem. Motion passes 7-2, with Bill Jarrard and Jay Wallace in opposition.**

Case #04-12-081 Clyde McFarland requesting to rezone 29 acres from AG to R-30. If rezoned the property would be utilized for a residential subdivision. The property is located on Harmony Drive in Land Lot(s) 860, 861, 862 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N04, Part of Parcel 008 and parcel 009.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Agriculture/Forestry, however, Laurel Creek, an R-40 subdivision, borders this property on the north. The density of the proposed development is approximately 1.10 dwelling units per acre with a minimum lot size of 30,000 square feet. It is the Engineering Department's opinion that Harmony Drive and State Route 20 can handle the additional volume of traffic generated by this 32 home development. The School Board has estimated the addition of 24 students and on-site sewage disposal systems will be required.

Benson Chambers represented this case.

No one spoke in favor.

Joel McKinney spoke in opposition to R-30 and stated there are no R-30's in the area, increased traffic, overcrowding of schools and the bad roads. He recommended R-60.

Melinda Brown spoke in opposition due to a decrease in the value of homes in the area if this rezone goes through. She spoke of the issue of water run off, dangerous intersection and the affect to underground streams.

Robert Combs spoke in opposition due to lot size, concerns of water run off and inadequate infrastructure. He asked for R-40 zoning.

Jim Allen spoke in opposition and said the developer knew about the topography of the property when he bought it.

Kathy Buelow spoke in opposition due to school overcrowding.

Benson Chambers spoke in rebuttal.

Donnie Henriques stated the present legislation doesn't allow the Board to recommend denial due to school overcrowding.

Michael Oxley suggested R-40.

**Marsha Lathem made a motion to recommend approval of R-40. Seconded by Bill Jarrard. Motion passed unanimously 9-0.**

**Case #04-12-082 Al Sharis** requesting to rezone 1.07 acres from R-40 to GC. If rezoned the property would be utilized for a small restaurant. The property is located on Cumming Hwy in Land Lot 808 of the 3<sup>rd</sup> District and further described as Cherokee County Tax Map 03N10, Parcel 202.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Undeveloped allowing for some flexibility in land use and there is commercial use adjacent and nearby on this busy state highway. Engineering Staff notes entrance requirements will have to meet Georgia DOT standards.

Al Sharis represented this case.

No one spoke in favor.



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Mary Catarineau read a letter for Bill Majure as he was sick of his concerns of the encroachment of general commercial toward his property.

**Dick Hall made a motion to recommend NC (Neighborhood Commercial) with the condition that property be used as a restaurant only. Seconded by Marsha Lathem. Motion passed unanimously 9-0.**

**Case #04-12-083 Glen Nedza** requesting to rezone 3.22 acres from R-40 to LI. If rezoned the property would be utilized for an office warehouse. The property is located on East Rope Mill Lane in Land Lot 592 of the 15<sup>th</sup> District and further described as Cherokee County Tax Map 15N15, Parcel 074.

Vicki Taylor gave Staff findings that the Future Land Use Map shows a designation of Industrial within the I-575 High Technology Mixed Use Corridor for the subject property. Engineering Staff states the existing roadway system can possible handle the additional traffic, but notes a primary concern of the possible impact to the level of service for the intersection with Highway 5. This is dependent on the number of trucks per day generated by the proposed office warehouse. A flow test has been ordered and Environmental Health has asked for verification that public sewer is not available.

Glen Nedza represented this case.

No one spoke in favor.

Allene Callahan spoke in opposition and asked the Board not to make a decision at this time until her and Mr. Nedza's property line dispute was settled.

Chairman Cutting explained that Mr. Nedza could only rezone his property and when the property line dispute is settled it would not affect her property.

**Bill Jarrard made a motion to recommend approval. Seconded by Marsha Lathem. Motion passed unanimously 9-0.**

### **Other Items**

Approval of November 2, 2004 Minutes.

**Ashley Holcomb made a motion to accept the minutes. Seconded by Marsha Lathem. Motion passed unanimously 9-0.**

Chairman Cutting advised the Board in accordance with the **Rules of Government and Operation for Cherokee County Municipal Planning Commission, Article VII - Officers, Section II - Election of Officers**, that election of Officers will be held the last

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work session of this year. He stated that date will be December 20, 2004. Bill Jarrard stated he did not agree and voiced his objection.

**Marsha Lathem made a motion to adjourn. Seconded by Ashley Holcomb. Motion passed unanimously 9-0.**

Meeting adjourned at 11:45 pm