

Approved February 21, 2011

Minutes of the Special Meeting of January 4, 2011  
at 6:30 P.M.

The Union County Board of Commissioners met in a special meeting on Tuesday, January 4, 2011, at 6:30 p.m. in the Commissioners' Conference Room, first floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina, for the following purposes: 1) to consider appointments to the Planning Board and make such appointments, if desired; and 2) to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations in accordance with G.S. 143-318.11(a)(4). The following were

PRESENT: Chairman Jerry Simpson, Vice Chairman Todd Johnson, Commissioner Tracy Kuehler, Commissioner Kim Rogers, and Commissioner Jonathan Thomas

ABSENT: None

ALSO PRESENT: Cynthia A. Coto, County Manager; Wes Baker, Interim Assistant Manager; Lynn G. West, Clerk to the Board; Jeff Crook, Senior Staff Attorney; H. Ligon Bundy, County Attorney; Richard Black, Planning Director; members of the press and interested citizens

At approximately 6:30 p.m., the Chairman convened the special meeting, and Commissioner Thomas moved to recess the special meeting to reconvene immediately in the Commissioners' Board Room, first floor, Union County Government Center. The motion passed by a vote of three to two. Chairman Simpson, Vice Chairman Johnson, and Commissioner Thomas voted in favor of the motion. Commissioners Kuehler and Rogers voted against the motion.

The Board members moved to the Board Room, and, at approximately 6:35 p.m., the Chairman reconvened the special meeting.

### **Appointments to Planning Board:**

The Chairman stated that originally the special meeting had anticipated the need for a closed session; however, the closed session is no longer necessary. He opened the floor for discussion regarding appointments to the Planning Board.

Vice Chairman Johnson moved appointment of Jim Thornton, Everett Medlin, and Phillip Hall to serve on the Planning Board. His clarified that his motion is to fill the vacant slots on the Planning Board as follows: Everett Medlin to fill the position previously held by John Darsey with the term expiring April 20, 2013; Jim Thornton to fill the position previously held by Patricia Freeman with the term expiring April 20, 2013; and Phillip Hill to fill the position previously held by Kathy Broom with the term expiring April 20, 2012.

Jeff Crook, Senior Staff Attorney, asked for clarification if Mr. Thornton currently serves as alternate on the Planning Board. Mr. Crook stated that he had spoken with the Clerk today regarding the need for an updated Disclosure Form from Mr. Thornton, and he had understood from his conversation with Mrs. West that Mr. Thornton was expecting to attend today's special meeting and to provide a signed and notarized Disclosure Form prior to this meeting. He stated that he did not believe the signed form had been received.

Since the disclosure form has not been received, the Vice Chairman asked Mr. Crook to explain the Board's options regarding appointment of Mr. Thornton. Mr. Crook responded that if it is anticipated that Mr. Thornton will be coming to tonight's meeting, the Board could wait for him to arrive before making the appointments, but noted that the Planning Board will be meeting tonight at 7:00 p.m. He further added that since Mr. Thornton currently serves as an alternate on the Planning Board, he could sit as an alternate at the Planning Board's meeting tonight, and the Board could consider his appointment as a regular member at a future Board of Commissioners' meeting.

Vice Chairman Johnson stated that he did not have a problem delaying Mr. Thornton's appointment. He amended his motion to delete the appointment of Mr. Thornton.

At the request of Chairman Simpson, Mrs. West restated the motion as amended as follows: to appoint Everett Medlin to fill the position on the Planning Board previously held by John Darsey with the term expiring April 20, 2013, and to appoint Phillip Hill to fill the position previously held by Kathy Broom with the term expiring April 20, 2012.

Commissioner Kuehler stated that when she heard that the appointments were going to be considered tonight, she could not believe what she was hearing. She said that she understood that there is a public hearing before the Planning Board tonight and that there had been some last minute resignations from that board. She stated that there was information in the agenda package taken from the boards and committees book that states that appointments to the Planning Board need to be made far enough in advance to provide for a 30-day training period. Commissioner Kuehler noted that there are currently six vacancies on the Planning Board, and the Board of Commissioners is now trying to decide whether to appoint two or three individuals and the motion is not to appoint to fill the positions that were vacated first. She said that the individuals appointed will be attending a Planning Board meeting tonight to rule on a project that is a very controversial development, and there has been no training for these appointees. She further said she imagined that these individuals did not know they were going to be appointed tonight, and they have not read the application that is being considered tonight and do not know the status of the project.

She stressed that the project being considered by the Planning Board tonight is a very sensitive project, and she thought it was wrong to fill only some of the vacancies on that board and for those appointees to attend the Planning Board meeting tonight and make a decision on the project without any prior review of the project. She stated that while she might be able to support appointment of some of the applicants, she could not support their appointments tonight under the present circumstances.

Commissioner Rogers stated that typically when nominations are made, the Board discusses each nomination. She said that she thought it was important to disclose relationships of Commission members to those individuals who might be appointed and the reasoning for their nominations. She shared her knowledge regarding the three nominees. She stated that she could not support any one of the three nominees.

Chairman Simpson clarified that there were only two nominations at this time because Mr. Thornton had not submitted the signed and notarized Disclosure Form.

Commissioner Thomas questioned what is controversial about the project that the Planning Board would be hearing tonight. Cynthia Coto, County Manager, requested that Richard Black, Planning Director, address Commissioner Thomas' question.

Mr. Black explained that the project required a Special Use Permit. He further explained that under the County's Land Use Ordinance, an adjacent landowner can request a delay in hearing a project until the next regular Planning Board meeting. He stated that at the December 13, 2010, meeting of the Board of Adjustment, which is a quasi-judicial hearing, there was one individual who spoke in opposition to the project. He said that it was his understanding that the applicant worked with the Hunter Oaks Homeowners' Association regarding the project, and the Homeowners' Association voted in favor of the project. He stated that the applicant had made several changes to the project including relocation of the loading dock from the back to the side, which is further away from the neighbors, changes in the building materials, introduced a lower type of lighting that would be less intrusive, and additional landscaping. Mr. Black stated that based on the comments at the Board of Adjustment's December 13, 2010, meeting, he did not think he could add much more to address any possible controversy regarding the project since Hunter Oaks' Homeowners Association voted in favor of the project. He said this project was not as controversial as some of the previous projects proposed for that area.

Commissioner Rogers commented that based on her previous conversations with some residents in that area, she thought Mr. Black was correct. She said she did not believe there is an issue so much with the project itself, but she feared that if the Board appoints members to the Planning Board tonight, it might create an issue. She said that she thought there is a good relationship with the residents and the developer, and she did not want to do anything to stop it.

Mr. Black clarified that the more rigorous process is the special use permit process, but said the process before the Planning Board tonight is more administrative in order to update the PUD permit to reflect the special use permit approved on December 13, 2010. He explained that the Planning Board does not have the discretion to disapprove this project unless: 1) the application is not complete, or 2) the project in some way violates a portion of the County's land use regulations.

Commissioner Thomas said that both Commissioners Kuehler and Rogers have made good points tonight in their comments. He said that Mr. Black mentioned that the project has completed all the required hurdles, and citizens have been given an opportunity to share their input. He stated this is the type project that is needed in the County to offset residential. He said the County cannot continue to sustain the residential growth. He said that he did not like the fact that the Board is considering these appointments at ten

minutes to seven, but the fact is that two years ago, the entire Planning Board was terminated in order to implement the Disclosure Form, and since that time there has been infighting among the board members, and four board members have resigned. He stated he did not believe it was right to penalize a good corporate citizen that has done everything that staff has asked it to do for the project. He said it is time to move forward, and the reason he liked the proposed nominees is because one of them has served previously on the Planning Board, one nominee is currently serving as an alternate on the Planning Board, and the third nominee is new to the process and can bring an objective point of view to that board. He gave his full support to the three nominees.

Commissioner Kuehler stated that she has not seen the proposed plans for the project, but said things look very different on paper than when they are built. She stated her concern that this is an ends that justifies the means, and this action is not following the County's rules and policies. She stated that if the Board of Commissioners is going to reconstitute the Planning Board, then all the vacancies on that board should be filled. She said her understanding is basically that the Planning Board is given its authority through the Board of Commissioners, and it makes its decisions accordingly. She asked Mr. Crook, given the current situation as a result of resignations from the Planning Board, could the Board of Commissioners hear the project and make a ruling. She expressed her thoughts that all positions should be filled at the same time.

Mr. Crook responded that he did not believe under the Land Use Ordinance, the Board of Commissioners could hear this matter and make a ruling.

Commissioner Rogers said that she did not disagree with Commissioner Thomas' comments regarding the previous Planning Board. She stated that she thought it could be viewed two ways. She said that the previous Planning Board was not handpicked robots to rubber stamp everything that the Board of Commissioners decided, but it had its own unique personalities and its own unique opinions. She said the fact that there had been resignations from the Planning Board disappoints her, but she would rather have a board that is individual than one that gives the appearance of being hand selected. She said that she could make nominations for appointments of individuals to attend tonight's Planning Board meeting and could do so as well as the three persons nominated tonight. She said this action was not what she would expect from a Board of Commissioners that said it was going to work with the full members and do everything in the open.

Mr. Thornton joined the meeting and provided the required Disclosure Form.

Upon receipt of the signed Disclosure Form, Vice Chair Johnson offered a further amendment to his motion to add the appointment of Jim Thornton, as was included in his original motion, to fill the vacancy previously held by Patricia Freeman with the term ending April 20, 2013.

At the request of Chairman Simpson, Mrs. West restated the motion as amended. It was clarified that the expiration date of the term of Phillip Hill should be April 20, 2012 rather than April 20, 2013 as stated by Mrs. West. The motion as amended passed by a vote of three to two. Chairman Simpson, Vice Chairman Johnson, and Commissioner Thomas voted in favor of the motion. Commissioner Kuehler and Commissioner Rogers voted against the motion as amended.

Chairman Simpson asked Commissioner Rogers if she now wished to offer her nominations as she had mentioned earlier. Commissioner Rogers declined to offer any nominations stating that she had proposed to offer her nominations in lieu of the three appointments that have now been elected.

With there being no further comments or discussion for the special meeting, at approximately 7:00 p.m., Vice Chairman Johnson moved to adjourn the special meeting. The motion passed unanimously.