In this Issue:

Process Dynamics cover

Webinars p. 5

Letter from the Chair David Heinold, 6

Profiled Planner Jacqui Kamp, AICP, 7

Webinars p. 5

APA 2018 Session Requests p. 9

Growing Agritourism p. 10

August is Safe and Active Transportation Month!

Process Dynamics: A Site Plan Approval Case Study

Steven Finn, Land Development Administrator
Wake County (Raleigh), NC

Introduction

This article shares the framework and relevance of a stakeholder appeal to an administrative staff decision in November, 2015. It is being shared given the unique nature of the related quasi-judicial hearing and impact on staff given two recent and relevant court cases here in North Carolina. Moreover, given the related theatre and complications experienced, sharing with peers as an example of “lessons learned.”

What was initially seen as a routine review landed before the Board of Adjustment and the court system. Four separate appeals were filed given the administrative approval of a site plan for a 150’ telecommunications tower. The latter a permitted use in the zoning regulations use table. Specifically, towers under 200’ are permitted, whereas anything 200’ or over requires Special Use Permit approval from the Board of Adjustment. In general terms, these appeals contended the administrative site plan approval was 1) not allowed by staff, 2) a public hearing should have been required, 3) the related environmental concerns conflicted with the stated purposes of the Unified Development ordinance, and 4) the development should have been treated as an expansion of a nonconforming use.

The site location is located on the west side of Blaney Franks Road, at the southwest intersection of Penny Road and Blaney.
Franks Road w/ a designation of Residential-40 Watershed District (R-40W). Of significance, the site and neighborhood and properties in the broader vicinity are located in the Swift Creek Land Management Plan area. It is noted as a Non-Urban Area Water Supply Watershed, and located in the Non-Critical area of the watershed. Density, lot sizes and impervious surface are the primary zoning regulations in place to implement and honor Wake County’s “low density option” in the eyes of the state. It should be noted that the associated Plan was established by the state legislature in the early 1990s. Moreover, an amendment to the session law c. 2009 allowed for anyone living or owning property in the watershed to be considered one with “standing” and can participate (read testify) as interested in any quasi-judicial hearing. Additionally, in that same amendment staff considered “liable” for approving any permits in error.

The associated zoning map below reflects the aforementioned R-40W zoning (seen in peach color) as well as R-80W zoning (seen in light green), being considered part of the Critical Area of the watershed. The immediate site and properties to South and West R-40W, properties to the East split zoned and properties to the North entirely R-80W.

History

On January 20, 2015 we received a commercial permit application and site plan for review of a proposed 150 foot mono-pole cellular communication tower to be erected at 7208 Blaney Franks Road. The permit submission also included an application for accompanying electrical equipment shelters. By virtue of our development review process, this would result in specific site plan approval and the building permit to construct the tower. The approval based on the permit application tempered with the zoning regulation and building code review. Regarding zoning, it appeared routine. Specifically, the property zoning of (R-40W) allows as stated in the Use Table “Freestanding Telecommunication Facilities that are less than 200 feet tall are allowed by right.” Such uses and applications are “ministerial approvals” (in-house, no Board approval required) in ART 19-16 of the Unified Development Ordinance.

The property historically was used in connection with a bona fide farm operation. There remains a metal building, two open-air covered shelters, and two tall grain silos from the bona fide farm use. During the initial review, it was discovered that a commercial landscape contracting business was using the subject property to store landscape equipment and vehicles. This type of business is prohibited in the R-40W Zoning District, and represented a violation of the Wake County Unified Development Ordinance (UDO). The developer (SkyWay Towers) and property owner (Greenview Farms) were notified of the landscape business violation, and that the site plan for the tower could not be approved until the business ceased operating from the property and all vehicles and equipment were removed.

Additionally, at that time of the code enforcement effort, in May, 2015 staff became aware of concern from adjacent property owners expressing their concern over the proposed cell tower development. Accordingly, through the months of June and July, staff met with the area residents as well as corresponded via a protracted e-mail engagement to address many of their concerns. Shortly thereafter, staff was notified by Greenview Farms Inc. that the illegal landscape business had ceased operating from the property and all vehicles and equipment had been removed from the property. We verified this on site and subsequently approved the cell site plan on July 14, 2015. A week later the building permit issued. All stakeholders were notified via calls and e-mails. It should be noted that no public hearings are required or formal notifications of concerned stakeholders.
Throughout the site plan reviews, notably after the concern surfaced, a very intense public education was engaged to detail the related zoning regulations noting some of the concerns and questions. Much of the discussion at that time focused on the agriculture business activities and the question of expanding a nonconforming use. The subject property in fact operated as a bona fide dairy farm from 1921 until 1986, which are permitted within all residential zoning districts and are exempt from zoning regulation. Non-farming activities however are subject to zoning regulation. Once the farm operation ceased sometime in 1986, the property reverted back to a residential use. Staff concluded Greenview Landscapes LLC, which operated from the property sometime on and after May of 2000, was never approved as a legal land use and consequently was NOT a Legal Nonconforming use as defined in Section 7-12-1 of the UDO. A nonconforming use is a use that lawfully existed prior to the adoption of the UDO or any amendment to the UDO. This was not the case in this circumstance.

Board of Adjustment (BOA) Actions

Being a quasi-judicial hearing, as noted via North Carolina General Statute, the BOA hearings are evidentiary and fact finding efforts. Hearsay and irrelevant testimony and testimony from those without “standing” in the eyes of the law should not be allowed. In these cases, given the law, any resident or land owner in the entire watershed is considered to have standing. There are key findings the BOA must establish for a decision. As seen in ART 19-41-7 of our UDO, the BOA must consider the following:

1. The Board of Adjustment is the final decision-making body on appeals in Wake County. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and may make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances.

2. Under this section, the Board of Adjustment has all of the powers of the officer from whom the appeal is taken.

3. The burden of proof is on the appellant by submittal of competent evidence.

4. An appeal may be affirmed only if the Board of Adjustment finds that the administrative official erred.
The decision of the Board of Adjustment must include findings of fact and conclusions of law and must be based upon substantial evidence or testimony that is competent, relevant, and material. Findings concerning the existence or nonexistence of crucial facts must be based upon sworn evidence.

It should further be noted that the Board may require additional evidence or memoranda of authority to be submitted. In the instance with these four appeals, the Board did in fact solicit additional information from the North Carolina Department of Environmental and Natural Resources germane to the environmental related standards and history.

Based on the applicable Wake County Unified Development Ordinance provisions, and on the testimony and evidence submitted in the matters of the four associated appeals, the Board established findings and concluded that the Planning staff's determination should be upheld and the granting of the general use permits are affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to:

“Evidence that the granting of the General Use Permit for a 150 foot free-standing telecommunications facility was not granted in error, and the subject property is not an elimination and redevelopment of a nonconforming use.”

The BOA decisions were immediately appealed to the court system, but did not gain any traction and were summarily dismissed without prejudice. Of significance, given the appeals and attention to the tower and related building permit, the heaviest lifting was done prior to the BOA sessions considering each of the appeals reviewing the records.

Results (The Aftermath)

I share this not as a complaint, rather observation: this site plan approval and four appeals were the most involved I’ve ever experienced in terms of associated staff man hours (hundreds!) and highly stressful dealings with informed, professional and experienced stakeholders. It was also difficult to process the appeals as generally we felt all the claims of adversity and contention were a ploy to hold off the tower from being built and after being built. To be more specific, without merit. That said, noting recent precedent with court cases, particularly Morningstar Marinas/Eaton Ferry, LLC v. Warren County which essentially dictates staff cannot refuse an application for the BOA, we had a long, challenging foray.

This can readily be categorized as an example of “ politicized zoning” with staff front and center. Given the political pressure with the undertaking, the policy board directed staff to evaluate our process with notifications. As a direct result, our UDO was amended shortly thereafter in March, 2016 to require notification of property owners within 1000’ of the tower base after site plan approval for towers permitted by right (being under 200’). The Special Use Permit process is still in place as a requirement for towers 200’ and higher with specific notification procedures unchanged. To date, we have had one administrative approval of a telecommunications tower with the new 30 day notification period. This played out with no incident and the building permit issued shortly thereafter.

Having experienced the heavy impact of such an engaged undertaking, would like to share some perspectives relative to the role of staff. It’s important to understand the related regulations effecting a specific proposal, here being a telecommunications tower permitted by right seeking site plan approval and associated building permit. Generally, I believe our standards and regulations are straightforward for the ministerial approvals with towers, largely due to being evaluated or amended four times in the past five years. Recognizing the details of the associated process once appealed is absolutely critical. Specifically, the nuances and structure of the quasi-judicial hearing and noticing requirements given the appeals. Moreover, be a stalwart of proactive and accurate record keeping. Be sure to anticipate any Board case to be appealed into the court system and document, document, document your records to have a clean, accurate file. Your counsel (in the event of an appeal) and stakeholders will appreciate the undertaking. Of significance, be mindful those seeking to advance the appeal will be looking for flaws in particular with the record and your files as a point of emphasis!
Process Dynamics: A Site Plan Approval Case Study, continued from page 4

Resources

http://www.wakegov.com/planning
http://www.wakegov.com/planning/zoning


Morningstar Marinas/Eaton Ferry, LLC v. Warren County 233 N.C.App. 23 (2014)

steven.finn@wakegov.com (919) 856-6228

The End

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Sponsor</th>
<th>Event #</th>
<th>CM Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>08.18.17</td>
<td>Zoning Reform in Massachusetts - Where Have We Been, Where Are We Going?</td>
<td>Massachusetts Chapter</td>
<td>#9131581</td>
<td>Approved</td>
</tr>
<tr>
<td>08.25.17</td>
<td>Finding Common Ground When Regulating electronic Message Centers</td>
<td>County Planning Division</td>
<td>#9131070</td>
<td>Approved</td>
</tr>
</tbody>
</table>

http://ohioplanning.org/aws/APAOH/pt/sp/development_webcast
Greetings County Planners!

Happy Summer! I’m providing you with a few updates regarding the news I shared in previous newsletters that have started to take effect. Here’s some exciting news from Monica Groh, Director of Emerging Professionals at APA, about the new student membership program that allows all part-time and/or full-time students, regardless of current or previous APA membership, who are actively matriculated in any college or university degree program (active degree status is defined by each university or college) for the duration of their studies. Students do not have to be in a planning program and we welcome individuals in allied programs like geography, urban studies, and more, who are interested in planning. After completing their studies, students can transition into a two-year membership program that offers discounted introductory dues. Please feel free to share this message with interested individuals. Click here for information.

The Division has a LinkedIn and Facebook page. Give us a ‘Like’ and let’s start a discussion on the issues that matter to you. We encourage all of you to submit ideas for blog post articles for our quarterly newsletter editions each year. If you have articles, news, job openings, or anything you think is appropriate for our newsletter, please send it to our newsletter editor at rhill@brookingscountysd.gov. Our next newsletter deadline will be here before you know it!

Please stay tuned into both the CPD newsletter and E-News for future updates on Division-sponsored webinars and educational sessions.

Lastly, please consider partnering with the Division on sessions or identifying opportunities to promote all divisions for your state and regional conferences in 2017. Feel free call or email me if you have an idea for a webinar, research project, future session, or any other ideas to expand the knowledge base of the organization.

David A. Heinold, Chair of the County Planning Division

OUR MISSION: The County Planning Division of the APA seeks to strengthen relationships among county planners, county elected officials, and other county personnel by facilitating the sharing of technical information, encouraging continuing professional development of its members, researching county planning issues, and building strong ties with other organizations and disciplines with related interests.
My planning story began with my first job out of graduate school, working for the City of Cambridge, a small city on the Eastern Shore of Maryland. Located just a couple of hours from Washington, D.C. and Baltimore, the city was feeling the development pressure as many from the city were seeking property near the beautiful Chesapeake Bay. Not too long after starting, the manager left and for a few months it was just me, new planner, in charge of all things planning and zoning.

It was terrifying! As development applications continued to come in, I did my best to keep processes moving (as I was learning them), including implementing a new zoning code, and administering the planning commission, board of zoning appeals and historic preservation commission. I just hoped that I wouldn’t mess anything critical up. Although it was challenging and stressful, it was an invaluable experience that helped me realize how much I could handle and how important planning is for a community.

After Cambridge, I worked for a joint city-county (Salisbury-Wicomico) planning department on the Eastern Shore of Maryland. Salisbury was another city experiencing an increase in new development and a renaissance of their downtown. As a community development planner, I worked with the Community Development Block Grant (CDBG) program and assisted low-income residents in housing rehabilitation, lead abatement, fair housing and other projects to support community initiatives, such as the Main Street program.

I now live on the other side of the country in Portland, Oregon, and work as a county planner for Clark County, Washington. Part of the Portland metropolitan area, Clark County sits in the southwestern part of the state, directly across the Columbia River from Portland. It is 656 square miles and has a population of 461,000. It was the first county in Washington and named after William Clark of the Lewis and Clark Expedition.

A unique program I’m fortunate to manage is the county’s Commission on Aging. The commission is tasked with implementing the Aging Readiness Plan, which was put in place to anticipate the needs of the community as our population ages. We are expecting a silver tsunami with 1 in 5 people 65 or older by 2030. The plan, which focuses on housing, transportation, healthy communities, supportive services and community engagement, received an APA County Planning Division award of excellence in 2013, which is how I became involved in the division.

In my current job, my department’s core responsibility is on the regional side of planning in implementing and continuously updating the county’s 20 year comprehensive growth management plan. Washington has a state Growth Management Act, which requires counties above a certain population to adopt and carry out comprehensive plans and set urban growth boundaries surrounding cities where urban growth will occur. This is to protect and preserve farm and timberland and concentrate the growth in the cities.

Comprehensive plan processes can be the most complex and contentious project any planning department experiences. Clark County’s first plan adopted in 1994 culminated in 60 plus appeals to the state’s Growth Management Hearings Board. The 2007 update was followed by a multitude of appeals that took almost 10 years to resolve. In June of 2016, the county completed its third update and the process was full of contention, drama and, of course, politics. The conflict between private property rights and protection of natural resources came to a head and will be debated and worked out in the courts.

Planners typically believe that land use changes should be reviewed through the lens of long term livability for the community and all its citizens. However, an elected decision maker’s timeframe of concern is typically more short term. Because of that and other factors, the planner’s job in keeping the community’s vision on track is challenging. Remember that the planning process is your friend (so follow it carefully) and continuous information and open communication with the public and the decision makers is critical.

I have thoroughly enjoyed being the APA county division’s newsletter editor for the last three years and learning about the interesting projects and issues that county planners are working on throughout the country. I have now transitioned to the role of Secretary and I’m excited to continue working with the division and supporting the sharing of information and professional development opportunities for our members.
August is Safe and Active Transportation Month!

Refurbished Youth Bicycles given away at the Pettigrew Heights Neighborhood Night Out event in Sioux Falls, South Dakota (Minnehaha County, SD)

Along with the bicycle giveaway, volunteers from various organizations conducted a bicycle safety skills course for children to test out their new bikes and learn some new skills for riding around their neighborhood! Helmets were given away to 18 kids provided by South Dakota EMS for Children. Locks and Blinking Lights were also given to the children along with the bicycles. As part of Safe and Active Transportation month, this activity teaches youth the importance of safe techniques for bicycling around the community. These life lessons are critical in early childhood to form correct behaviors for later in their lives regardless of how they travel around cities, counties, states, and the country. Do you have an idea for article, blog post, or guide that helps planners engage the communities they live and work in? If so, please reach out to me with any thoughts, suggestions, or ideas. Thank you!
**2018 Session Proposals Needed for 2018 National Planning Conference**

**Apply by 8/29/2017**

Hello,

**Calling ALL members for conference session proposal submission**

APA is soliciting session proposal ideas until **August 29** to be reviewed by the track committees next month. If you have an idea for a session presentation at the National Planning Conference in New Orleans next year, then click **here**!

**NOTE:** The proposal submission portal closes at 11:59 p.m. (CT) on Tuesday, August 29, 2017 for session and mobile workshops. If you have any questions, please email me!!

David Heinold, Chair
APA County Planning Division

---

**APA election balloting is on! Remember to VOTE by September 7!**

APA has partnered with Survey & Ballot Systems to administer the association's 2017 election. Electronic ballots were distributed to members on August 7 and 8. If you did not receive a ballot, please email getinvolved@planning.org — including your full name and APA ID — to request one. (To ensure you receive future ballot messages, add noreply@directvote.net to your list of approved senders.) Return your completed ballot by September 7.

---

**2017 National Community Planning Month: Innovation in Planning**

The countdown is officially on! Have you thought about what you're going to do for National Community Planning Month (October) yet? Divisions are encouraged to use this month-long platform to help members educate local officials and residents about the key role planning plays in creating stronger, more just, and more innovative communities.

This year's theme — *Innovation in Planning* — underscores the important role planning in helping communities address and adapt to 21st-century challenges. Email your stories to ncpm@planning.org and we'll help you celebrate your successes all October long. Planning a community tour, meeting, or other special event to mark the occasion? Let APA know. They have resources to help you prepare.
Growth Agritourism in Martin County Florida

Agritourism is a form of tourism that seeks to educate and entertain the public about agriculture in its many forms. It provides a secondary form of income for farmers and ranchers, especially for the small to mid-sized independent operator. Examples of agritourism activities include corn mazes, u-pick’em farms, hayrides, farm tours and wineries. Many states promote agritourism and have programs for branding and marketing agritourism venues. Notable examples are Virginia, Colorado, California and Georgia.

While Florida is internationally known as a mecca for tourism and its agricultural production, it has only recently begun promoting agritourism. In 2013 the Florida Legislature passed an agritourism bill. The legislation defined agritourism, established a limit on liability for agritourism operators and prohibited local governments from regulating agritourism operations on bona fide agricultural lands.

“Agritourism activity” means any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity regardless of whether the participant paid to participate in the activity (Florida Statute 570.86).

Martin County is a small coastal community on the east coast of Florida, nestled between two mega regions: Orlando to the north and Miami/Fort Lauderdale/West Palm Beach to the south. It is known as green and decidedly slow growth. Martin County established its first Comprehensive Plan in 1982. Wetland protection policies far exceed both State and Federal regulations and the Urban Service Boundary was established to prevent sprawl into western Martin County. Plan policies have channeled growth pressure, so that residential, commercial and industrial development has occurred where public services and facilities are planned. At the same time, the County’s Plan policies have preserved the agricultural character of a 555 square mile county, while continuing to make Martin County a highly sought after place to live, work and retire.

In order to further understand and promote agritourism activities, the Martin County Growth Management Department, the Martin County Office of Tourism and Marketing, and the University of Florida Institute of Food and Agricultural Sciences (UF/IFAS) Extension Martin County Office began a working group to understand, explain and promote agritourism. The group produced a Frequently Asked Questions (FAQ) and sought funding sources to provide educational and outreach efforts for agritourism.

The group assisted the UF/IFAS Extension Martin County Office in hosting an Agritourism Conference and Farm Tour June 15-16, 2017. Funding was provided in part by a Florida Department of Agriculture and Consumer Services specialty crop block grant awarded to the University of Florida as part of a state-wide effort to support agri-tourism. In addition, the Martin County Office of Tourism received funding from Visit Florida, the State of Florida Tourism Office, to develop an Agritourism website showcasing Martin County’s farms, agricultural based events, green markets and equestrian activities. The website also has a list of resources to assist potential agritourism providers along with FAQ’s developed by the group. The Tourism Office is also developing a marketing campaign that will drive traffic to the new website. It is our hope that providing resources, guidelines and a free tool in which providers can market their businesses, we will be able to support and encourage more agritourism opportunities. markets and equestrian events. The website was unveiled at the Conference.

http://growninmartin.com/
The attendees came from all over Florida and the networking that occurred allowed new relationships to form among the participants. The farm tour visited an urban farm in downtown Stuart (the County seat), a local organic farmer who does farm to table dinners and weddings, a shrimp farmer (who due to the rain storm met us at the adjacent vegetable farm), and a winery. The conference featured speakers on trends and opportunities for agritourism in Florida, a profile of Agri-tourism in Martin County and a session on what consumers want and how to market your operation. Conference attendees ate a lunch catered by one of our local farm to table restaurants, and then heard presentations on funding resources, business planning, and the myriad of regulations that affect an agritourism operator. Lastly conference attendees heard from successful agritourism operators.

**Lessons Learned:**

People are hungry for information on agritourism.

Resources are available. Network with agricultural organizations, tourism organizations, local and government and consumers!

Farming is one of the most regulated industries in the country. The difference between giant agricultural producers and small agricultural operators is huge. Agritourism operators are typically small farmers.

Local governments in Florida don’t know that State Statute prohibits them from adopting or enforcing local rules. More outreach is needed for local officials.

While the State of Florida has adopted legislation to encourage agritourism, more work at the state level is needed to clarify the state rules. One of our handouts was a 6 page matrix of five different state agencies whose rules may affect an agritourism operator.

Providers, government entities and tourism offices can work together to support and market local businesses.

**Author bio:** Nicki Belville van Vonno, AICP, is the Growth Management Director for Martin County, Florida. She has been a member of the County Planning Division since its creation. Nicki routinely speaks at national and state conferences, most recently on redevelopment activities, EcoArt as a planning tool, and Martin County’s preservation of environmentally sensitive land. Her recent work is focused on amendments to the County’s comprehensive plan, recovery residences regulation, medical marijuana and the promotion of eco-art and agritourism.

Stay safe and be careful, Did you know that a golf club makes an excellent lightning rod?