

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MAY 9, 2005**

The Henderson County Board of Commissioners met for a special called meeting at 6:00 p.m. in the auditorium at West Henderson High School.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, County Manager David E. Nicholson, Assistant County Manager Justin Hembree, County Attorney Russell Burrell, and Deputy Clerk to the Board Amy Brantley.

Also present were: Planning Director Karen C. Smith, Planners Autumn Radcliff and Matt Cable, Planning Project Manager Lori Sand and Zoning Administrator Natalie Berry.

Absent was: Commissioner Shannon Baldwin.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order at approx. 6:05 p.m. and welcomed all in attendance. He explained that two public hearings were scheduled for the meeting. The first would be on Economic Development Incentives for Raflatac. The second would be on the proposed zoning map amendments for the U.S. Highway 25 North Zoning Study Area and re-consideration and potential re-adoption of the Interim Development Ordinance for the U.S. Highway 25 North Interim Development Area.

PUBLIC HEARING ON ECONOMIC DEVELOPMENT INCENTIVES RAFLATAC, INC.

Commissioner Messer made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

The Board had been asked to consider granting economic development incentives to Raflatac, Inc., a business having a manufacturing plant located in Henderson County and wishing to expand production at their facility by purchasing new machinery and equipment. The public benefit to be derived from the capital project was an initial taxable capital investment in the machinery and equipment upgrade that is expected to be \$24,000,000, and the creation of 110 new jobs by the end of 2010, with an average starting weekly wage of \$604.00 plus benefits.

Raflatac, Inc. was requesting economic development incentives from Henderson County in the amount of \$672,000 to be paid over a seven year period at \$96,000 per year, toward a portion of the cost associated with its upgrade plan.

N.C.G.S. §158-7.1 required that the Board hold a duly advertised public hearing on the proposed economic development incentives prior to approving the same. If the Board wished to approve the request at the close of the public hearing, it would be appropriate to condition the approval on an economic incentives agreement being entered into after being duly approved by all parties to the agreement, with the Chairman being authorized to enter such a contract on behalf of the Board.

Scott Hamilton introduced Dan O'Connell, the President of Raflatac, who provided some background on the project. Mr. O'Connell stated that for 20 years Raflatac had been part of the Henderson County community. Approximately five years ago Raflatac had come before the Board and announced their intention of building their first North American facility in Henderson County. That had been a very successful venture, and approximately a year ago they had announced plans to expand their facility. The project was well underway, and things were moving along well.

DATE APPROVED _____

Mr. O'Connell felt they had supported and encouraged the community, and had developed strong partnerships with the Partnership for Economic Development, Blue Ridge Community College, and the JobLink Center to name a few. Because of the success they'd had, especially with the quality of the workforce and the strength of their ties to the community, it made sense to look at expansion in this area. He outlined the investment proposal presented, and thanked the Board for their consideration.

Public Input

1. Carroll Justus – Mr. Justus stated that he was opposed to giving economic development incentives to manufacturing industries because they do not work. In the last seven years manufacturing jobs had been lost almost every month. Such incentives give the government more power over our lives, and make it harder to find jobs. Such incentives ultimately cost the tax payers, and will continue to cost more and more. Mr. Justus felt that the Board should take a different approach to ensuring jobs, like trying to get back the jobs being sent overseas.

Scott Hamilton stated that Henderson County's incentive policy was threshold and performance based. Before a manufacturer is eligible for any incentive, they must perform to the threshold set in the contract between the County and the manufacturer. Additionally, the incentives do not take money out of the general fund before a project makes an investment, but rather after the company is paying their taxes. Additionally, the incentives received do not exceed the amount of tax paid to the County, so the County does realize a net cash flow.

Chairman Moyer agreed that western North Carolina was facing an exodus of jobs to other places in this country, and other countries as well. He felt the county should take the steps necessary to try to retain the good businesses that we have. He asked how many jobs Raflatac had added to the community in the past five to ten years, and what their investment had been. Scott Hamilton answered that five year ago Raflatac had contracted with the County to invest \$45 million and create 200 jobs over the next seven years. Currently, they were at the job mark within five years, and had so far invested \$65 million. With the recent expansion, they contracted for an investment of \$38.5 million additional dollars and 70 additional jobs. When this project is completed, the investment Raflatac will have made in Henderson County is over \$126 million.

Commissioner McGrady made the motion to go out of public hearing. All voted in favor and the motion carried.

Russ Burrell stated that prior to considering the contract, a date within that contract needed to be changed in two places. On page 4 of the document in paragraphs 6 and 7, the date should read January 31, 2008, rather than 2007.

Commissioner McGrady made the motion for the Board to enter into an economic development incentives contract with Raflatac Inc. on the terms stated in the Board's agenda packet with the change of that date, and that the Chair be authorized to execute the contract on behalf of the Board. All voted in favor and the motion carried.

PUBLIC HEARING ON PROPOSED ZONING MAP AMENDMENTS FOR THE U.S. HIGHWAY 25 NORTH ZONING STUDY AREA (REZONING ACTION #R-05-01) AND ON RE-CONSIDERATION AND POTENTIAL RE-ADOPTION OF THE INTERIM DEVELOPMENT ORDINANCE FOR THE U.S. HIGHWAY 25 NORTH INTERIM DEVELOPMENT AREA

Commissioner Messer made the motion to go into public hearing. All voted in favor and the motion carried.

Staff Presentation

Karen Smith reminded the Board that the next public hearing dealt with the proposed amendments to the official zoning map of Henderson County that relate to the US Highway 25 North Zoning Study. The zoning study had been in progress for about two years, and Mrs. Smith updated the Board on the more recent activities of the project. She presented and discussed the following PowerPoint presentation:

Public Hearing on Proposed Zoning Map Amendments for the U.S. Highway 25 North Zoning Study Area (Rezoning Action #R-05-01)



Henderson County Planning Department
May 9, 2005

Time Line

January 12, 2005

- Board of Commissioners workshop on US Highway 25 North Zoning Study

February 7, 2005

- Scheduling of public hearing on US 25 North Zoning Study (Rezoning Action #R-05-01)

February 23 & 24, 2005

- Drop-in sessions for US 25 North Zoning Study Area property owners and residents

Time Line

March 9, 2005

- Postponement of public hearing on Rezoning Action #R-05-01
- Approval of Order temporarily halting permit issuance in the US Highway 25 North Zoning Study Area

March 29, 2005

- Recommendation on Interim Development Ordinance by Planning Board
- Amendment of Planning Board recommendations for Rezoning Action #R-05-01

Time Line

April 4, 2005

- Adoption of Interim Development Ordinance
- Expiration of temporary Order halting permit issuance
 - Scheduling of May 9, 2005 Public Hearing (Rezoning Action #R-05-01)

April 20, 2005

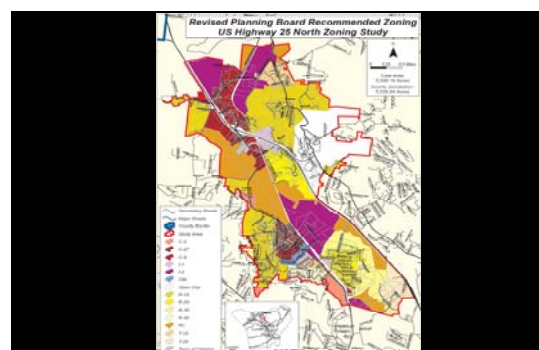
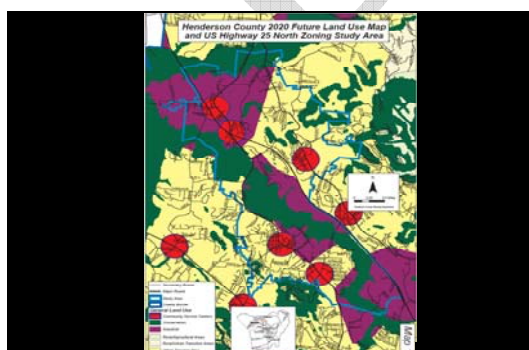
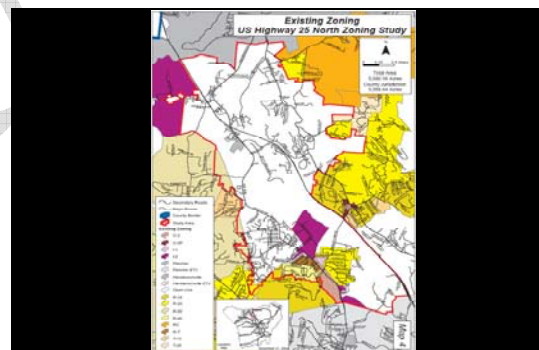
- Scheduling of public hearing on re-consideration and possible re-adoption of the Interim Development Ordinance

May 9, 2005

- Public hearings on proposed zoning map amendments (Rezoning Action #R-05-01) and Re-consideration of the Interim Development Ordinance

US Highway 25 North Zoning Study

- First small area plan recommended by the Henderson County 2020 Comprehensive Plan (CCP).
- Zoning recommendations based on development policies established by the CCP.
- Intended to balance existing conditions with policies of the CCP for growth management, economic development, natural resources, etc.
- Special attention given to widening of US 25 North and protection of capacities of the highway.



Mrs. Smith discussed the recommendations made by the Planning Board in a written report regarding the study area. The Board had tried to balance existing conditions with policies of the Comprehensive County Plan (CCP) concerning issues of growth management, economic development, housing, natural resources and the like. The report stated that the Planning Board also gave special attention to the ongoing improvements on US Highway 25 North, and its recommendations were intended to help protect the capacity of that roadway as future development occurs. The Board noted that its recommendations could better implement policies of the CCP if the tools recommended in the plan were currently available. The Planning Board also noted that it would like to be able to revisit the study area following the completion of the land development code to modify its recommendations and better implement the CCP.

Mrs. Smith then discussed the maps included in the above PowerPoint presentation, pointing out the particular areas on the map entitled "Revised Planning Board Recommended Zoning U.S. Highway 25 North Zoning Study". For the record Mrs. Smith noted that the hearing had been advertised in accordance with the Henderson County Zoning Ordinance and State Law. Notices of the hearing were published in the Hendersonville Times-News on April 22nd and 29th, 2005. The Planning Department had notices of the hearing sent via first-class mail to owners of properties within the study area and adjacent to the study area on April 21, 2005. Planning Staff posted signs promoting the public hearing at various locations within the study area on April 22, 2005.

Chairman Moyer questioned whether Planning Staff had held meetings with people who objected to the proposed zoning, and made a list of those individuals. Karen Smith answered that a list had been prepared prior to February, with concerns raised at the drop-in sessions noted on a different list. She stated that Planning Staff had not recommended any changes to the map from the Planning Board's recommendations.

Chairman Moyer stated that at this point the Board would receive public comment. Rather than having two hearings as shown on the agenda, one record would be created for the U.S. Highway 25 North issues.

Public Input

1. Carr Swicegood – Mr. Swicegood owns and leases property on Highway 25 on both sides of the interstate. He felt it was wrong for the Board to put a moratorium on permits. He was not against planning, but did not feel that permits should be halted along a five lane highway. He requested that if the moratorium remained in place, the Board should reconsider the taxes being charged on those properties.
2. Doug Thigpen – Mr. Thigpen was present speaking for William B. Taylor. Mr. Taylor owned property adjacent to Mr. Swicegood. On March 10th he signed a contract to sell his property, and then found out the moratorium had been passed. Mr. Thigpen stated that Mr. Taylor would be happy with the C-4 zoning recommended for the property. The moratorium put the contract on the property in jeopardy, and Mr. Taylor wished to opt out of the moratorium or have the Board proceed with the C-4 zoning. On Mr. Taylor's behalf and as a precautionary measure, Mr. Thigpen had filed an application for determination of a vested right.
3. Fred Barbour – Mr. Barbour stated that he was representing Bill Tabor. Mr. Tabor and his family owned several parcels at the corner of Highway 25 and Naples Road. One of the parcels was recommended for C-4 zoning, and the Tabor's would accept that zoning if it would allow them to opt out of the moratorium. The second, larger parcel, had a portion recommended for R-15. Mr. Barbour presented some photographs for the Board's consideration. He noted that Mr. Tabor would accept the proposed C-4 zoning recommended for the majority of the property. Regarding the smaller portion recommended for R-15, Mr. Tabor requested that portion also be considered for C-4 zoning as it was not really suitable for residential uses, but would accept all recommended zonings if it would allow him to opt out of the moratorium.

4. Tom Ramer – Mr. Ramer owned a parcel about 300 yards from the intersection of I-26 and Highway 25, about 300 yards from Hardee's. The property was recommended for commercial zoning, and Mr. Ramer hoped such zoning would be adopted. He requested that if the property were not zoned commercial, that he be allowed to opt out of the moratorium. He did not feel that to hold those properties up for 18 months would be in the County's best interest.
5. Barbara Darden – Ms. Darden spoke to a development she had planned. The proposed zoning for the property was R-15. R-15 would only allow her 7,500 square feet per unit for two units. The chalets proposed in her plan were four units, and 20 chalets were planned. They had also planned for a four story building for condos, as well as medical facilities for assisted living and intermediate care. The project was planned for 65 acres. She hoped the moratorium could be waived on the property, and that the property could remain zoned Open Use.
6. Ed Groce – Ed Groce stated that he represented Larry Holbert, Ronnie Gray and a third party. He had previously submitted photographs and written statements, but to no avail. He discussed each of the four parcels involved.

The first was just north of Industrial Drive, and six to eight feet below the level of the road. There is industrial zoning behind and to the south of the parcel. For some reason there was a portion of property proposed for O&I which would destroy the value of the property. In order to be used, the property will require substantial infilling to bring it to the level of the new road, which would not be financially feasible with the proposed zoning. He felt it should be zoned C-4.

The second piece of property was located just across the road. He stated that there was a similar issue with the need to infill this property. Additionally, O&I was not suitable for this property due to the rerouting of a branch by DOT. He felt it should be zoned C-4.

The third piece of property was just north of the intersection of Mountain Road and Hwy. 25. Mr. Groce stated that parcel needed to be zoned C-4 because it was being used as commercial property.

The fourth piece of property was located to the north of Rugby Drive, and to the west of Hwy. 25. The property was located above the road bed, and it would again be cost prohibitive to have it zoned RC. He felt it should be zoned C-4.

Mr. Groce stated that he and his clients were against continuing the moratorium because it held everybody in limbo. The property should be zoned for its highest and best use. There was an Interstate highway, a railroad and a 5 lane road impacting each of these parcels and he felt that indicated an industrial and commercial use.

7. Kerry Bodenhamer – Mr. Bodenhamer stated that he was the owner of a race car fabrication shop in Mountain Home, at the corner of Holbert Road and Hwy. 25. He'd had a residence there since 1977, and the business since 1981. The DOT was planning a turning lane at that intersection, and there were businesses on both sides. The proposed zoning was C-2, which he believed would make most of the businesses in that area non-conforming. He felt the area should be zoned commercial.
8. Danny Goodrich – Mr. Goodrich stated that he and his wife owned a piece of property on Blade Street and Highway 25. He'd had a business there since 1981. Businesses create jobs, and we need to try to maintain good jobs in Henderson County. He felt that if C-4 were not granted for everything in contact with Highway 25, it would jeopardize current and future businesses that serve Henderson County.

9. Craig Justus – Mr. Justus was present representing Bryan Vaughn and Gene and Cathy Wilkie. Mr. Justus stated that the Board had a unique opportunity to determine the future of Highway 25. He felt the job done by the Planning Board and Planning Staff was very commendable. However, he cited the following reasons why the property of his client should be zoned C-4: it was in the urban services area, it was on the main corridor between Fletcher and Hendersonville, the corridor is already 5 lanes, water already exists along the corridor and sewer is planned, the property is located at an intersection, the current uses are already predominantly C-4, C-4 is a regional zoning district and Highway 25 is not a neighborhood road, there are not existing environmental issues, most people want C-4, and C-4 best meets the location and scale of use.
10. Bryan Vaughn – Mr. Vaughn stated that he had been serving the motoring public for 29 years from his location on Holbert Road. He felt that his property should be zoned C-4 because it was located on a regional highway and all the businesses located around that intersection were regional as well. As it stood in the area, there were no other businesses offering the service of offering any major repairs. He requested the Board allow him to continue to provide that service to Henderson County residents and those traveling through the area.
11. Tommie McCraw – Mr. McCraw stated that US 25 had always been a commercial highway. On old maps it was called Old Dixie Highway from here all the way to Florida. He felt it should be left a commercial highway to help the people of Henderson County.
12. John Pace – Mr. Pace stated that he owned approximately 17 acres which he had purchased 20 years ago. His intent when buying the property was to locate his office and repair garage. He had obtained all the necessary permits from the Army Corps of Engineers and DENR, the property had been filled accordingly and the property currently has buildings on it. He requested the Board look at his property, and consider I-2 zoning which would be in harmony with contiguous property.
13. Angela Beeker – Ms. Beeker was present representing John Pace. She stated that they felt I-2 would be appropriate for the property for the following reasons: it was immediately adjacent to a proposed I-2 district, that I-2 district was adjacent to existing industrial uses in the City of Hendersonville, the CCP calls for the Board to zone uses compatible with the municipalities, the property has direct access onto US 25, public water was available, the property was in the urban services area, though in the flood plain it had already been filled, and there was an existing industrial use on the property. She discussed portions of the CCP and how case law would support an I-2 zoning district.
14. Ronnie Smith – Richard Cort, with the law firm of McGuire, Wood and Bisette spoke in place of Mr. Smith. Mr. Cort stated that he was representing Eleanor Kemp as the manager of KEM Corp, LLC, which owns the building formally occupied by Diamond Brand. Mr. Smith was present in his representative capacity as a member of KEM Corp. LLC. Mr. Cort stated that the owner was satisfied with the proposed zoning of C-4. They wished to have that property exempted from the IDO, as it was currently being marketed for sale or lease. Being free from the IDO may expedite the process of getting that property re-occupied.
15. George Pendleton – Mr. Pendleton stated that he and his family currently live at 35 North Cureton Place. That property has frontage on both I-26 and Highway 25. He purchased the property 19 years ago, recognizing the potential value of commercial property. He estimated that on a daily basis, 70,000 to 75,000 cars passed within 300 feet of his property. The Planning Board recommendation for the property was C-4. He stated that the question was not whether zoning should take place, but how. He questioned whether property you could not develop or improve had any value whatsoever, and requested his property be zoned C-4 and dropped from the IDO.

16. Ed Benson – Mr. Benson was opposed to the re-zoning. He felt that zoning stole the value of the property from the people.
17. Cathy Wilkie – Ms. Wilkie stated that in the early 1980's she and her husband had bought three tracts of land at the intersection of Highway 25 and Holbert Road. They built an office building there in 1985 and she had been running a real estate office from there since 1992. Her clients all travel Highway 25 to get to her office. About 60% of her clients arrive from the north and 40% from the south. She felt Highway 25 should be considered a commercial area. DOT had told Ms. Wilkie that the daily traffic count by her property was: 15,000 in 2002, 20,000 in 2003, with a 7% increase anticipated for the coming years. She felt that Highway 25 could have successful commercial and residential activity. She discussed the success of uses along the other sections of Highway 25.
18. Kenneth Miller – Mr. Miller stated that he had a small trucking company located around the intersection of Holbert Road and Highway 25. He felt the area should be zoned to allow that business to remain.
19. Buster Brown – Mr. Brown stated that he was currently under contract to purchase a piece of property which was located at the southern tip of the IDO. It was zoned C-2 prior to the zoning study, and was still recommended for C-2. He felt the 12 month moratorium on the property, especially in light of the fact that no zoning change was recommended, seemed to be unnecessary.
20. Gary Jones – Mr. Jones stated that he was representing several property owners in the sale of their property. The first of which was Art Veach, who owned Veach's Auto repair on the corner of Holbert Road and Highway 25. That property was proposed to be C-2, but the moratorium was the real problem holding up any interest in the property. The other property belonged to Mike Justus, which was proposed for C-4. There was a similar issue regarding the moratorium on this property. Mr. Jones discussed the value of the commercial development with regard to the tax base in Buncombe County.
21. Scott Jarvis – Mr. Jarvis stated that he grew up in Naples. When I-26 was built in the 1960's, his family moved. There were problems with Highway 25 back then. There was a lot of commercial traffic, and it was all C-4 even when it was a two lane highway. He stated that people had invested their lives and their work in businesses that were dedicated to C-4 activity on a commercial highway. He asked that the Board give those people some consideration.
22. Jerry King – Mr. King stated that he was the owner of King Auction Company and King Auto Auction. When the DOT widened the road, they left part of his property above the road level, causing him to lose the income he'd had for ten years renting that property. He was in the process of settling that with the DOT, but with the moratorium in place rental on the property would continue to be on hold.
23. David Bayless – Mr. Bayless stated that he had purchased property in 1987, and in 1993 had put together a master plan for the properties. A portion of that plan had been for commercial properties. He was concerned about the moratorium putting a halt to all plans for the next year. He requested the Board consider not applying the moratorium to his property because they already had a plan in place which would be a good thing for Henderson County.
24. Tedd Pearce – Mr. Pearce, Chairman of the Henderson County Planning Board, made a few comments from the Planning Board's perspective regarding how some of the decisions were made. There was considerable thought even from the CCP and how it applied. There were some

exceptions however. The Planning Board had looked at the present Zoning Ordinance and its inability to solve many of the problems the CCP wanted to solve. Therefore, in their recommendation, the Planning Board specifically made recommendations knowing that when there was a better tool to work with, they would immediately make recommendations to change those.

Looking at adjoining properties from this area to Fletcher, and even up to Buncombe County, there are similar zonings to C-4, but they also have a lot more conditions to those zonings, such as access management and design standards. Mr. Pearce recommended that if the Board did not go with some type of moratorium, they adopt the Ordinance as presented. He answered several questions from the Board regarding recommendations on some specific properties.

Chairman Moyer questioned the County Attorney regarding the options available to the Board. The moratorium was currently in place for 12 months, so the Board would need to take no action with respect to that unless they wished to change it. With respect to the zoning, Chairman Moyer questioned whether the Board had the option of adopting zoning on all the properties on which no question had been raised. Mr. Burrell answered that the Board did have the option to adopt all or part of the Planning Board's recommendation. The Board could then set a workshop at which action could be taken with respect to all contested cases.

Commissioner McGrady made the motion for the Board to go out of public hearing. All voted in favor and the motion carried.

The Board took a brief recess.

Board Discussion

Chairman Moyer proposed the Board adopt the zoning study as put forth by the Planning Department and Planning Board for all of those properties where there had been no dispute or question raised respect to the zoning on that property. He further proposed continuing the hearing to a date certain where the Board of Commissioners would examine the facts on each of the cases raised. The Board would then lift the moratorium with respect to all of the properties.

Commissioner McGrady questioned how the properties which would be subject to the motion were to be identified. Chairman Moyer stated that he had spoken to Karen Smith about that matter. Already identified and listed were all of those properties where any question had been raised at any time. Ms. Smith would contact the owners of those properties, and let them decide whether they wished to stay on the disputed list for additional review.

Commissioner McGrady questioned whether the Board could review that list at this meeting. He discussed the areas where he was comfortable with the recommended zonings, stating that he would be comfortable taking those properties out of the moratorium and adding them to the group of properties proposed for zoning.

Commissioner Messer stated that he was in agreement with Chairman Moyer's proposal. He felt the moratorium should be lifted, as evidenced by the discussions of properties owners in that area. He supported lifting the moratorium, accepting the zoning as is, and listening to those property owners with regards to contested properties.

Chairman Moyer stated that with respect to Commissioner McGrady's earlier question, a complete list of those properties in question could not be provided at this meeting. However, that list would include every property which had been questioned at any time. Commissioner McGrady questioned whether Chairman Moyer anticipated adopting a motion to zone all of the property not being contested, with staff drawing up

a map to reflect that motion. Commissioner McGrady stated that property owners needed clarity, and should be able to know within a few days whether or not their property had been zoned. He stated that he would support a motion to direct staff to bring back such a map for adoption at the next meeting.

There followed discussion among the Board about the direction to take. *Chairman Moyer stated that his motion was to adopt the zoning map and study as presented by the Planning Department and Planning Board except for those properties where there is a dispute, and lift the moratorium. He further moved that this meeting be continued with a pledge to hear the problem cases and get them resolved.* Russ Burrell clarified that the Board was directing Planning Staff to develop a list of all the properties in dispute, and attempt to contact those property owners.

Mr. Burrell stated "I think you have a difficulty with asking people whether they opt out between now and a, when there's already a final adoption but they could opt out of a final adoption. I think you run into a real contract zoning question at that point, and that could invalidate at least that parcel's zoning one way or the other."

Chairman Moyer stated "Well they can't opt out of a final adoption."

Mr. Burrell stated "But they may be effectively opting into a final adoption by saying they no longer dispute, and that is effectively, that really brushes up pretty hard against contract zoning at that point."

Chairman Moyer stated "Okay, well then we won't do it that way. We'll adopt all of those where there's no dispute and we'll take action with respect to any that are on the list, they can't opt in or out, we'll take specific action on each of those at a later date."

Chairman Moyer stated that the motion was on the floor was *to adopt the Zoning Ordinance as recommended by the Planning Department and Planning Board except for those properties where a specific challenge, objection, to the zoning put forth in that study has been raised. The Board would lift the moratorium effective immediately and continued this hearing to a date certain when the Board would start plowing through each of the challenged cases. No one can opt in or out, the Board will look at each case brought forward by the Planning Director that's not on the map being approved at this meeting, and will take action with respect to that. The motion carried 3-1 with Commissioner McGrady voting nay.*

Adjourn

The Chairman adjourned the meeting at approximately 8:30 p.m.

Attest:

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman