The Alleghany County Board of Commissioners met in regular session on Wednesday, January 7, 2009, at 4:30pm in the Board Meeting Room of the County Administration Building, 348 South Main Street, Sparta, North Carolina. The purpose of this meeting was to discuss the process/procedures for planning violations.

Present: Chair Ken Richardson, Vice-Chair Randy Miller, Commissioner Doug Murphy, Commissioner Milly Richardson, Commissioner Steve Roten, County Attorney Donna Shumate, County Manager Don Adams, and Clerk to the Board Karen Evans.

Chair Ken Richardson called the meeting to order.

County Manager Don Adams reviewed the contents of the packets that were provided to the Commissioners. He talked about the Board had previously approved the non-compliance violation procedure list, which ended at step seven about the Board of Commissioners taking further action to follow through with civil or criminal penalties.

County Attorney Donna Shumate stated that most of the ordinances allow for civil penalties or criminal penalties or both. She explained both examples.

Commissioner Doug Murphy and County Attorney Donna Shumate talked about which one would allow for the most recourse for the citizens.

Commissioner Steve Roten and County Attorney Donna Shumate talked about who would prosecute the cases. She stated that Ashe County mainly goes through the civil process.

Chair Ken Richardson asked would either one work or what would work better.

County Attorney Donna Shumate answered that the Board can do either one. She explained that the civil action can be postponed to allow time to correct the situation. She further explained that either action could be dismissed if the individual complies. She talked to the Board about the costs for each route.

Kathy Murphy, Planner, provided the Board an update on the process, and currently the County does not have an enforcement officer.

Commissioner Milly Richardson and Chair Ken Richardson talked about discussing case by case regarding going with civil or criminal penalties.

Kathy Murphy reviewed the issues that apply to the County ordinances.

Chair Ken Richardson said that the Board has to adopt procedures on how to proceed. He asked if this Board is going to be the board to see each one of these.

Commissioner Doug Murphy asked about other options.

Commissioner Milly Richardson stated that this Board has to be accountable for what is done.

Commissioner Randy Miller stated that the Commissioners will get the calls in addition to the Planner. He talked about taking action through the court system.

Commissioner Milly Richardson talked about the Board reviewing these as they come in.

Commissioner Randy Miller talked about if there is only one or two then bring them to the mid-month meetings.

Kathy Murphy talked about step seven is when it will come back to the Commissioners.

Commissioner Randy Miller asked do the people know.

Kathy Murphy answered that some do and some don't because some have never

responded to her letters. She reviewed the procedures at this time.

County Manager Don Adams and Kathy Murphy talked about all of the letters are sent certified letters with return receipt.

Chair Ken Richardson and Kathy Murphy talked about step seven will come before the board. She reviewed the action of the violations.

Commissioner Doug Murphy stated that ordinance violations are what The Board is dealing with.

Commissioner Milly Richardson made a motion that the Board of Commissioners makes the final determination on step seven before proceeding with civil or criminal summons. Commissioner Randy Miller seconded the motion. Vote 5:0.

The Board and Kathy Murphy started reviewing the list of current violations. She began with the Poole property and updated the Board on the current conditions being that it is with the Health Department and Inspections Department.

Commissioner Milly Richardson asked why the first one isn't being discussed.

Kathy Murphy stated that it was in place prior to the Property Rights Protection Ordinance, and NCDOT is working on it.

Kathy Murphy presented information about Woody's in Laurel Springs. She explained that this is off of the Laurel Springs store, and this year the owner put fliers out advertising rental properties. She said they have not applied for a conditional-use permit. She further said she needed to write a letter stating that she is in violation. She told the Board that the Health Department is involved because of the septic.

Commissioner Steve Roten talked about having to get to step seven before the Board can do anything.

Commissioner Doug Murphy and Commissioner Steve Roten talked about looking at only the ones that are at step seven.

Kathy Murphy presented the Redd property where there are vehicles on the property, and he is selling parts off of the cars.

Commissioner Milly Richardson, Commissioner Doug Murphy and Kathy Murphy discussed what is physically at this location.

County Manager Don Adams and Kathy Murphy discussed this was done after the ordinance.

Chair Ken Richardson talked about needing a motion on each individual case.

Commissioner Steve Roten and Kathy Murphy discussed that he is on step seven, and she is sure that this was not on this lot before the ordinance.

Commissioner Milly Richardson talked about him bringing in junk vehicles and storing junk cars on his property.

Commissioner Doug Murphy asked what happens if a residential area came on after the junk yard.

Kathy Murphy stated that most likely the junk yard would have vested rights because it is already there.

Commissioner Steve Roten and Kathy Murphy discussed there are on average five to six vehicles on the lot. They discussed this is not his residence but a vacant lot.

County Manager Don Adams reviewed the exemptions in the Property Rights Protection Ordinance.

Commissioner Steve Roten, based on what the Planner has said, made a motion to proceed on. Commissioner Milly Richardson seconded the motion. Vote 5:0.

County Attorney Donna Shumate asked which way to proceed.

Chair Ken Richardson asked should the County Attorney or the Planner decide the proper way to move on since the Board agreed to move forward.

Commissioner Randy Miller talked about going through the County Attorney.

Chair Ken Richardson stated that the Commissioners are giving the Planner the authority to go to the County Attorney to determine which way to go.

County Attorney Donna Shumate asked if the Board is giving her the authority to determine which way to proceed.

Commissioner Randy Miller talked about giving the County Attorney the authority to direct the Planner which way to proceed.

Commissioner Steve Roten stated based on his knowledge of the court system, the County would be better off to go criminal because of the expense.

The Board of Commissioners discussed which way to proceed; civil or criminal.

County Attorney Donna Shumate stated that it will only go on their record if they are convicted.

Commissioner Randy Miller asked should the Board decide which way now or allow the County Attorney and the Planner to determine which way to go on each case.

County Attorney Donna Shumate stated that her recommendation would be criminal charges. She talked about the need to have a procedure in place prior to taking action and the need to be consistent.

Commissioner Steve Roten made a motion to go with the criminal summons on the violations. Commissioner Randy Miller seconded the motion.

Chair Ken Richardson stated that this does not mean that the Board can't go back and look at it if the Board isn't satisfied.

County Attorney Donna Shumate explained that if they are criminally charged, they go through the court system and still don't comply; the County can file a civil summons.

The Board voted on the motion on the floor. Vote 5:0.

Kathy Murphy explained her actions regarding the Simons case including he came in to see her; she explained the ordinance, when it was adopted and the process to follow. She stated that the aerial photos were taken in 2005 showed nothing on this property. She talked about it is obvious that things are being sold now. She stated that it is worse now because he has expanded to junk cars. She talked about junk cars fall under DENR regulations because having to have a water quality permit.

Commissioner Milly Richardson talked about this gentleman has lived there a long time. She further talked about the subdivision around him, and this will hurt the developer's chance to sell lots. She said that he is on disability and doesn't doubt that he is doing this.

Chair Ken Richardson stated that if he is in violation, then he is in violation.

Kathy Murphy stated that he was not doing this before the sale of the property.

Commissioner Steve Roten stated that he knows for a fact that he has had stuff

on this property for a long time. He talked about serving as a state trooper and traveling those roads seeing a lot of stuff on that property.

County Manager Don Adams stated that the aerial photos are from March/April in 2005.

Commissioner Steve Roten stated that he had junk on that property 15 years ago.

County Attorney Donna Shumate said that if he had vested rights it doesn't matter. She explained that part of the problem is that he won't talk to the Kathy Murphy about the issue.

Commissioner Milly Richardson agreed with Commissioner Roten that he has been doing this for a long time.

Kathy Murphy explained her second step is to go to the tax office to see if they are a business. She stated that they didn't have a listing to say that he had operated a salvage operation. She showed the Board pictures of this property.

Chair Ken Richardson stated that the Board either has to vote to move forward or not then if the Board votes to not move forward what does the Board do.

Commissioner Steve Roten stated that he doesn't know if he is in violation or not. Commissioner Milly Richardson agreed.

Chair Ken Richardson said there comes a time when the Board has to act when the Planner brings information showing a potential violation.

Kathy Murphy talked about hauling in junk and selling it then it is a business.

Commissioner Milly Richardson stated that in his mind it is things that he does to get by and can't understand why he can't do things that he has always does.

County Manager Don Adams and County Attorney Donna Shumate discussed what establishes vested rights. County Attorney Donna Shumate asked if he was engaged in the activity of having junk/scrap on his property prior to the adoption of the ordinance.

Kathy Murphy stated that he said he didn't have a business, his son had a firewood business, a bunch of his friends had stuff to get rid of so they brought it to him, and he sold it for junk. She talked about if a business ceased for 180 days then they don't have vested rights.

Commissioner Steve Roten said that looking at those pictures, he has never seen it that junky. He further said he can understand why he doesn't consider that as a business.

Kathy Murphy talked about it is still a change of use because it is not residential use.

Commissioner Steve Roten talked about he has made no effort to come before the Commissioners.

Chair Ken Richardson said that the Board has to do something because if the Board doesn't, these things are just going to keep building up.

Kathy Murphy stated that he told her that he was cleaning it up but now he is continuing to haul stuff in and crush cars. She stated that there is more stuff there now than before.

Commissioner Doug Murphy asked if everyone is sure that he doesn't have vested rights.

Kathy Murphy answered he doesn't because there wasn't anything on the aerial photos in March 2005. She explained that her decision is based on the photos and the surrounding property owners who said that it was not there when the subdivision was done.

Commissioner Steve Roten asked the Planner who she talked to.

Kathy Murphy answered that she doesn't know all of their names. She talked about following the procedures, and everything was explained to him.

Chair Ken Richardson explained the Board has to be careful about setting precedence.

Commissioner Milly Richardson said that the Board is not going to have another example exactly like this, and it is hard for her to say that he is doing something wrong in his opinion.

Commissioner Randy Miller asked Commissioner Milly Richardson has she talked to him about this. He said that the Board has to do what the Board has to do. He talked about all he has to do is show some receipts showing that he was doing this before hand.

Commissioner Milly Richardson and Kathy Murphy talked about he can't get a permit because it is in a residential area. Commissioner Milly Richardson said that it wasn't residential until it was sold because it was agriculture around him but she sees what the Planner is saying. She asked can the County try to explain to him what his options are and to prove vested rights.

Commissioner Randy Miller asked her to talk to him.

Commissioner Milly Richardson said she will be happy to talk to him.

Commissioner Steve Roten made a motion to table this for 30 days for Commissioner Milly Richardson to talk to him and to prove to the Board that he is vested and if not, move on. Commissioner Randy Miller seconded the motion.

The Board talked about 30 days to comply or he is in violation.

The Board voted on the floor. Vote 5:0.

County Attorney Donna Shumate talked about if he is asking for the Board to review vested rights he has to come before the Board.

The Board of Commissioners, County Manager Don Adams and the Planner discussed the appeal procedures going before the Board of Commissioners or the Planning Board.

County Manager Don Adams asked for the motion to be amended to allow the case to go through the appeal procedures.

Commissioner Steve Roten amended his motion. Commissioner Randy Miller seconded the amendment. Vote 5:0.

Kathy Murphy talked about a sign on Highway 18 North.

Commissioner Steve Roten stated that the sign has just been put up.

Chair Ken Richardson stated that when the Board adopted the sign ordinance, it was for a certain period of time and that time is over. He stated that this Board wanted to see how it is going after a period of time.

County Manager Don Adams said that the Planner needs to come talk to you about it. He stated that he doesn't recall an expiration date on the ordinance and the ordinance is still on the books.

Kathy Murphy presented the Johnson case about campers. She explained that she made a site visited, took pictures, lady came in explained action of she is living in one, son living in one and somebody else is living in one. She said that she explained the options, and nothing else has been done.

Commissioner Steve Roten made a motion to proceed. Commissioner Randy Miller seconded the motion. Vote 5:0.

Kathy Murphy presented the 8/28/07 subdivision case. She explained that the attorney involved was to get the plat from a surveyor for her to review it, and it hasn't gone any farther.

Commissioner Milly Richardson made a motion to proceed. Commissioner Randy Miller seconded the motion. Vote 5:0.

Chair Ken Richardson said that the Board will wait for Kathy Murphy to bring additional violations, and the Board would like to see feedback on these from tonight.

Kathy Murphy asked about coordinating all of the departments; tax, inspections, planning because each department requires different permits. She talked about no one is aware when another department issues a permit. She said that the Planning Department receives the complaints, and her department has been writing the letters. She explained what is in her letters even some things that are not covered by her department then sends a copy of the letter to whoever is in involved. She asked the Board do they want to continue on this way.

Commissioner Milly Richardson stated that this is not the best way.

County Manager Don Adams stated that the County has received negative reactions about how she is doing this. He talked about making people aware that there are other laws to be complied with, and this is really a service. He asked does the Board want to continue this practice

Commissioner Milly Richardson, Commissioner Doug Murphy and Chair Ken Richardson stated that they have no problem in continuing to offer this service.

Commissioner Steve Roten talked about the Board should look at the ordinance on junk yards to determine how many vehicles are classified as a junk yards.

Commissioner Doug Murphy talked about the need to look at the ordinances in order to be proactive than reaction.

County Manager Don Adams stated that this needs to go to the Planning Board first, and there needs to be better definitions concerning junk. He further stated that he will direct Kathy Murphy to go to the Planning Board to ask for clarification on the definitions regarding junk yards

Chair Ken Richardson talked about if the Board needs another meeting, then the Board needs a meeting.

Commissioner Steve Roten stated that this needs to be addressed.

Chair Ken Richardson asked does it take about a month to get something drawn up.

Kathy Murphy answered yes. She explained the procedures for changes to the ordinance through the Planning Board.

Chair Ken Richardson explained that there may be other issues to be discussed.

Commissioner Milly Richardson agreed.

Kathy Murphy explained that the Council of Government is working on the

codification of the ordinances by unifying them into one ordinance, one application process and one permit. She further explained where they are on the process, looking at the definitions to have one set of definitions then come up the process.

County Manager Don Adams talked about it sounds like the direction from the Board is to tell the Planning Board to look at junk yards.

Commissioner Steve Roten reiterated how many unlicensed vehicles classify a junk yard.

Being no further business, Commissioner Milly Richardson made a motion to adjourn the meeting at 5:55pm. Commissioner Randy Miller seconded the motion. Vote 5:0.

Respectfully Submitted,

Karen Evans Clerk to the Board

Attest:

Ken Richardson Chairman