

STATE OF NORTH CAROLINA
COUNTY OF MOORE

BEFORE THE MOORE COUNTY
BOARD OF COMMISSIONERS
FILE NO.: 11152022

APPLICANT: Tri South Builders, Inc.
PARID: 00034394

ORDER DENYING
SPECIAL USE PERMIT
FOR PRELIMINARY PLAT
UNION CHURCH ROAD
MAJOR SUBDIVISION
QUASI JUDICIAL HEARING

THIS CAUSE, being heard by the Moore County Board of Commissioners on May 16, 2022, June 2, 2022, June 23, 2022, July 18, 2022, August 1, 2022, and August 23, 2022, in the Historic Courthouse, 2nd Floor Meeting Room, Carthage, NC for a quasi-judicial hearing on Tri South Builders Inc.'s application for a Special Use Permit for the approval of a Preliminary Plat for a Major Conservation Subdivision located on Union Church Road, Carthage, NC, owned by Dennis J. Ring and Jon F. Ring per Deed Book 5786, Page 82. The Moore County Board of County Commissioners has proper jurisdiction over the parties and subject matter and the parties are properly before the Moore County Board of Commissioners. After reviewing the documents of record and hearing from all parties and witnesses, the Board of Commissioners by sufficient evidence, based on the standards and Unified Development Ordinance of Moore County, NC and relevant North Carolina General Statutes including Chapter 160D, enters the following order:

FINDINGS OF FACT

1. All parties were properly notified of all hearing times and dates; and
2. The Applicant is Tri South Builders, Inc. and
3. The property owners' names are Dennis J. Ring and Jon F. Ring per Deed Book 5786, Page 82. The Applicant did not have the correct owners' names on the preliminary plat. The preliminary plat submitted by Applicant stated that James and Carolyn Ring are the owners of the property; and
4. Tri South Builders Inc.'s applied for a Special Use Permit for the approval of a Preliminary Plat for a Major Conservation Subdivision located on Union Church Road, Carthage, NC. The approval process involves the Moore County Board of County Commissioners conducting a quasi-judicial hearing to determine if the preliminary plat meets ordinance standards and all relevant North Carolina General Statutes.
5. The hearing was quasi-judicial before the Moore County Board of Commissioners. The hearing dates were on May 16, 2022, June 2, 2022, June 23, 2022, July 18, 2022, August 1, 2022, and August 23, 2022 in the Historic Courthouse, 2nd Floor Meeting Room, Carthage, NC

6. All Moore County Board of County Commissioners were present as follows: Chair Frank Quis, Vice Chair Catherine Graham, Commissioner Otis Ritter, Commissioner Jerry Daeke, and Commissioner Nick Picerno. All five commissioners attended each quasi-judicial hearing date except Chair Frank Quis was absent from the July 18, 2022, hearing due to illness.
7. Attorney Nick Robinson represented Applicant Tri South Builders, Inc.
8. Attorney Michael Parker represented the Opponents to the Applicant's request for approval of a Special Use Permit. Attorney Parker represented the following Opponents: himself, Carol Parker, Matthew Parker, Jeana Whitmore; Linda Frisbee; Eddie Hipp; Teresa Hipp; Pam Henderson; Karen Frye; John Stinnett; Ernie Legg; Carl Kinz; Scott Smith; Brian Logue; David Johnson; Jerry Hall; Teresa Hall; Charles Henderson; Lacy Frye; Edith Frye; David McDonald; and Zory McDonald.
9. County Attorney Misty Leland informed the Board of the conflicts of interest standard. The County Attorney stated: "Before opening the hearing, I'd like to give Board members a chance to reveal any possible conflicts and withdraw from these proceedings if necessary. Conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection." No commissioner indicated there was a conflict. However, it was noted that the Engineer for applicant Tri South Builders, Inc. Philip Picerno is the nephew of Commissioner Nick Picerno. However, the County Attorney stated the conflicts of interest statute for quasi-judicial hearings, G.S. 160D-109(f), does not apply nephews or nieces when determining legal conflicts.

The County Attorney also asked if Board members who have any information or special knowledge about the case, to please describe that information for the record so that interested persons will know and can respond. No commissioner indicated he or she had information of special knowledge.

At the beginning of the August 23, 2022, the meeting day in which the Board would vote on the approval or denial of the Special Use Permit, Commissioner Nick Picerno asked the Board to be recused from the proceedings, including voting on the matter, because he no longer felt he could be impartial due his nephew being the engineer for the Applicant. The Board voted unanimously to recuse Commissioner Picerno, who left the meeting following his recusal. After the recusal, the Board voted 4-0 to Deny the Special Use Permit.

10. All witnesses were sworn and testified; and
11. The County Attorney explained that the Board's discretion is limited when deciding on Special Use Permits in quasi-judicial hearings because all decisions must be made based upon competent, relevant, and substantial evidence in the record and each of the findings of fact must be satisfied:
 - a. The use will not materially endanger the public health or safety;
 - b. The use meets all required conditions and specifications
 - c. The use will not substantially injure the value of adjoining property unless the use is a public necessity.
 - d. The use will be in harmony with the surrounding area and compatible with the surrounding neighborhood; and,
 - e. The use will be in general conformity with the approved Moore County Land Use Plan.
12. That the proposed site details are as follows:
 1. The parcel is located within Rural Agricultural – 40 (RA-40) zoning classification;
 2. The parcel consists of 73.77 acres;
 3. The parcel is located within the Watershed - Cape Fear Basin – Little River (Vass) Stream – High Quality Water Basin – WS-III – P;
 4. The current use of the property is vacant;
 5. There are 53 proposed lots for the Union Church Road Major Conservation Subdivision;
 6. The parcel has areas identified as wetlands by the US Fish & Wildlife.
13. The Applicant's proposed use for a major conservation subdivision is allowed in the Rural Agricultural-40 (RA-40) zoning district upon the issuance of a Special Use Permit; and
14. The proposed development is located on Union Church Road and is classified as a rural secondary State Road.
15. That the UDO defines a Major Subdivision in Section 18.6 as follows: All subdivisions shall be considered major subdivisions except those defined as exempt, family, or minor subdivisions. Major subdivisions are further classified as a division of a lot of land into 5 or more lots of land at initial time of division or accumulative over a period of 3 years or the creation, change, or expansion of a new or existing private or public streets.
16. Pursuant to UDO Section 18.6.D., preliminary plats shall meet the specifications set forth in Chapter 18, be submitted as either a conservation or conventional subdivision, shall meet all applicable zoning and subdivision requirements, and include applicable statements required in Section 18.16.

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, and Additional Findings of Fact, the Moore County Board of Commissioners makes the following Conclusions of Law with respect to the requested Special Use Permit:

1. The matter and parties were properly before the Moore County Board of Commissioners.
2. The parties were properly noticed and had an opportunity to be heard in a quasi-judicial hearing over a period of six meeting dates.
3. During the quasi-judicial hearing, the Board of Commissioners determined if the Applicant's Special Use Permit request satisfies each of the following findings based upon competent, substantial, and material evidence:
 - A. The use will not materially endanger the public health or safety;
 - B. The use meets all required conditions and specifications;
 - C. The use will not substantially injure the value of adjoining property unless the use is a public necessity;
 - D. The use will be in harmony with the surrounding area and compatible with the surrounding neighborhood; and
 - E. The use will be in general conformity with the approved Moore County Land Use Plan.
4. **The Applicant failed to show the use will not materially endanger the public health or safety if located where proposed and developed according to plan because of the following:**

A. Traffic Safety:

Three traffic assessments were provided by the Applicant's expert witness Traffic Engineer Travis Fluitt with Kimley-Horne and Associates, Inc.

In the first report, Fluitt based his analysis on "highway capacity." The data Fluitt used (which was classified by Fluitt as "the most recent data") was from 2016 and showed 2,400 cars per day on Union Church Road. Engineer Fluitt stated the "available data suggests overall growth rate in this area is flat or slightly negative." Engineer Fluitt applied a "conservative" two percent increase from 2016. He estimated 2,700 cars on Union Church Road in 2022 and 2,900 in 2025. However, the Opponent offered the most recent data from April 11-12, 2022, which showed there were an average of 3,400 cars per day on Union Church Road. This data showed 500 more cars in 2022 than Fluitt's estimate for 2025. This data represents a 41.6 percent increase in two years, with an average of 20.83 percent increase per year. Engineer Fluitt did not consider that the Town of Carthage approved over 2,000 homes since 2016 or that the Town of Vass approved over 300 homes since 2016. Further,

Engineer Fluitt did not know there are four schools on Union Church Road, one of the main roads linking Carthage and Vass.

In Engineer Fluitt's Second Report, Fluitt revised his "highway capacity" analysis based upon the new numbers. Engineer Fluitt revised the vehicle count per day to 3,400, estimated six percent growth, and estimated 4,050 cars by 2025. Fluitt stated the Department of Transportation will look at requiring a turning lane at a 4,000 per day vehicle count but stated there was no need for a turning lane here.

The most recent traffic data for the area around Henderson Road and Union Church Road indicates an increase in traffic of 41.6% over two years. Averaged over this two-year period, the data indicates an increase in traffic of 20.8% per year. However, Engineer Fluitt averaged the increase over six years (2016-2022), claiming a 6% increase per year. Regardless of the method used, the actual increase is dramatically higher than the "conservative" 2% increase originally estimated by Fluitt from 2016 to present in his first report. Further, none of this data supports Fluitt's first report conclusion that the "available data suggests [the] overall growth rate in this area is flat or slightly negative."

Engineer Fluitt continued to revise his reports when questioned by Attorney Parker. Engineer Fluitt's Reports One and Two stated there had been no crashes at the Henderson Road/Union Church Road intersection in five years, but he could not remember whether he used 100 or 200 feet range from the Henderson Road/Union Church Road intersection.

In Engineer Fluitt's Third Report, Engineer Fluitt revised Reports One and Two, finding that there had been eight vehicle crashes in five years over a distance of one mile of the Henderson Road, Union Church Road intersection. Fluitt noted this crash rate is well below the state average; therefore, there is no problem. Although Engineer Fluitt's report continued changing, Fluitt always reported it was not a problem.

Opponents tendered Traffic Engineer Baohong Wan of VHB Engineering in Raleigh, NC, who stated capacity is not the same as safety. Engineer Baohong expressed that Engineer Fluitt presented a capacity analysis and not a safety analysis. Capacity uses driver expectation. Engineer Wan stated the governing board decides which level of service it desires. Engineer Fluitt used service level "D." For example, Engineer Fluitt pointed out the level of service expected at D equates to waiting at a stop sign for 35 seconds. Engineer Wan stated that waiting 35 seconds at a stop sign in a rural community could breed aggressiveness.

Engineer Wan stated that capacity will never be reached because when the current traffic on Union Church Road reaches 85% capacity, NC Department of Transportation (NCDOT) will add new lanes, which allows a further increase in

capacity. Adding new lanes will change a rural agriculture area, which is the current zoning.

Based upon all the testimony, the Board finds the following facts:

- Engineer Fluitt's reports changed three times; and
- In Reports One and Two, Engineer Fluitt presented a capacity analysis and not a safety analysis; and
- Engineer Fluitt's capacity analysis was based upon inaccurate traffic data; and
- Engineer Fluitt's capacity analysis failed to accurately estimate the rate of growth in traffic volume on Union Church Road; and
- Even after identifying more accurate traffic data, Engineer Fluitt failed to recommend a turning lane for the proposed subdivision; and
- Engineer Fluitt took three reports to finally conduct a safety analysis.

Based upon these findings, the Board finds that Fluitt's testimony is discredited and not trustworthy. Thus, Applicant failed to show that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to plan.

B. No Storm Water Management Plan.

Opponents tendered Dr. James Douglas Gregory as an expert in hydrology, soil science, and wetlands. Dr. Gregory stated the Applicant did not submit the required stormwater management plan as required and defined under UDO Section 18.7.M., which states:

A stormwater management plan shall be required as part of the application submittal. All structural stormwater Best Management Practices (BMPs) shall meet the most current edition of the North Carolina Department of Environmental Quality, Division of Water Quality's Stormwater Best Management Practices Manual. All stormwater control structures shall be designed by a state registered professional with qualifications appropriate for the type of system required. Residential subdivisions shall have systems designed to protect to the ten (10) year storm level, and commercial and industrial shall be protected to the twenty-five (25) year storm level. Each lot shall contain a suitable building area safe from inundation and erosion. Sanitary sewer systems, septic tank drainfields, water systems, wells, and adjacent properties shall be protected from inundation by surface water. Where a subdivision is traversed by a stream or drainage way, an easement shall be provided conforming with the lines of such stream and be of sufficient width to provide adequate drainage for the subdivision. UDO Section 18.7.M. requires a stormwater management plan to be submitted as part of the application submittal.

Dr. Gregory testified that a stormwater management plan, as required and defined under UDO Section 18.7.M., is necessary to protect and not materially endanger the public health or safety. He stated that if the subdivision moves forward with the current poorly developed conceptual storm water management plan, there will be runoff going into a stream causing a polluted stream, which would in turn degrade the quality of water that's going downstream from this point. Further, Dr. Gregory testified that people would have cause for concern including taking legal action.

In addition, Dr. Gregory noted the preliminary plat did not include the creeks coming out of this property, the wetlands are not accurate, grades are not noted, and impervious surfaces are not calculated. Dr. Gregory noted that if creeks are not on the plat, then they were not factored into the stormwater plan. If impervious surfaces and grades were not estimated, the true runoff cannot be determined. If wetlands are not accurate, the "stormwater plan" is not workable. A non-functioning stormwater plan is not a plan. Downstream residents have a right to be concerned about untreated runoff into a high-quality watershed and the effect on their homes and animals.

Dr. Gregory stated the very poor-quality storm water management plan violates the UDO and standards of widely accepted engineering practices. In addition, Dr. Gregory stated the final plat should conform substantially to the approved preliminary plat if approved, and there are a tremendous number of changes that need to be made to make the proposed plan into a workable quality plan. UDO 18.11.A. maintains that final plats may only have minor changes and it defines minor. (UDO 18.11.A. *states [s]uch minor changes may include, but not be limited to, small site alterations such as realignment of streets and relocation of utility lines due to engineering necessity.*) Moreover, UDO 18.10(F) states the final certification of the engineer is that the plans have been installed in conformity with the Preliminary Plat. Mr. Gregory stated that the very poor-quality stormwater management plan proposed by Applicant will materially endanger the public health and safety.

Additionally, witnesses testified they lived downstream of the proposed subdivision property and engage in agricultural activities that would be impacted by the lack of stormwater plan affecting their health and safety.

- 5. The Special Use Permit Application for a Major Conservation Subdivision "Union Church Road" does not meet the required conditions and specifications of the Moore County Unified Development Ordinance.**
 - A. The preliminary plat does not include the type of map required by the Unified Development Ordinance Section 18.15 Subdivision Plat Requirements as specified below:**
 - a. The preliminary plat does not include the correct property owner;

- b. The preliminary plat does not include the telephone number of the correct property owner;
 - c. The preliminary plat does not include the location of proposed buildings and distances to property lines;
 - d. The preliminary plat does not include the stream located on the property;
 - e. The preliminary plat does not include proposed topography 100 feet beyond property showing contour intervals of no greater than 5 feet;
 - f. The preliminary plat does not include proposed entrance signs into the subdivision;
 - g. The preliminary plat does not include storm drains, swales, and detention ponds;
 - h. The preliminary plat does not include the percentage of the entire project covered with impervious surfaces;
 - i. The preliminary plat does not include the street layout appropriate grades; and
 - j. The preliminary plat does not include impervious surface totals by streets and maximum allowed for each lot.
- B. The Applicant did not submit a storm water management plan with the Special Use Permit application for the Major Conservation Subdivision as required by the Moore County's Unified Development Ordinance Section 18.7.M. entitled Drainage under Section 18.7 entitled Major Subdivision Minimum Design Standards as Shown on Preliminary Plat.
- C. Moore County Planning Director Debra Ensminger testified the preliminary plat failed to comply with the specifications set out in 18.15.
- D. The Applicant admitted to the plat's deficiencies by submitting an "illustrative plat" to show how they could fix the deficiencies. The Board finds that the illustrative plat is an "admission of deficiency."
- 6. The proposed use, a Major Conservation Subdivision on Union Church Road, is not in harmony with the surrounding area and is not compatible with the surrounding neighborhood.**

The surrounding area of the proposed subdivision consists of a rural community that includes single family residences on 1-acre parcels or greater, large tracts of land used for farming, and a church. The surrounding area is identified as a rural land use classification on the Future Land Use Map in the 2013 Moore County Land Use Plan. Residents of the surrounding neighborhood engage in agricultural activities including farming chickens and livestock, managing hay fields, managing beehive farms, and growing and maintaining gardens.

The 2013 Land Use Plan, under Rural Agricultural strongly discourages major subdivision developments in rural agriculture areas of the County.¹ The Land Use Plan states the primary use of rural agricultural land should be to support rural residential life associated with agricultural uses (e.g. row crops, forestry, horticulture, grazing, poultry, dairy, swine operations, and intensive agricultural uses in certain areas) and other rural activities. The Land Use Plan further states family subdivisions and subdivisions of four or less lots should be considered, but “[m]ajor subdivisions are strongly discouraged.” Thus, the proposed use of a Major Conservation Subdivision, consisting of less than one-half acre lots with 2400-4400 useable square feet with setback separations of 15 feet between homes, is not in harmony with the surrounding rural farmland and is not compatible with the surrounding rural community. Minimum lot sizes in the RA 40 zoning district are no less than 40,000 square feet. Applicant has proposed lot sizes ranging from 20,000-22,000 square feet in this rural area under the Major Conservation Subdivision option. Additionally, the Land Use Plan states, “When developments are proposed away from existing municipalities, they should seek a form that yields a ‘sense of place’ and reinforces a character indicative of Moore County uniqueness while avoiding a generic style subdivision.”² The dense nature of this proposed Major Subdivision is not in conformity with the surrounding rural area.

“An Applicant for a special use permit must make out a prima facie case, by competent, material, and substantial evidence, meeting all the conditions in the zoning ordinance.” *American Towers, Inc. v. Town of Morrisville*, 222 NC App. 638 (2012). Pursuant to Section 6.1 of the UDO, a “major subdivision – residential” is a conditional use for a RA-40 zoning designation subject to the specific use standards. The specific use standards for major subdivisions are set forth in Sections 18.6-18.11. Section 18.6(D) notes that Major Subdivision Preliminary Plats must comply with all the specifications in Chapter 18. A proposed major subdivision that fails to comply with Chapter 18 of the UDO in at least ten significant ways cannot be said to be a use that is permitted by this UDO. Because the Applicant’s proposed use, as evidenced by the preliminary plat, does not comply with Chapter 18 of the UDO, the specific use standards for major subdivisions have not been met and the proposed use is not a permitted use by the UDO. If the proposed use cannot be determined to comply with the UDO, then the Applicant cannot make a prima facie showing of harmony and the Applicant does not gain the benefit of a rebuttable presumption of harmony.

Even assuming the Applicant did gain the benefit of a rebuttable presumption of harmony, we find that competent, material and substantial evidence showing non-harmony was presented to overcome the prima facie case and we find that this proposed use is not in harmony with the surrounding area.

7. The Major Conservation Subdivision “Union Church Road” is not in general conformity with the approved 2013 Moore County Land Use Plan.

¹ Moore County Land Use Plan, Page 82, (2013).

² Moore County Land Use Plan, Page 81, (2013).

The Opponents offered the testimony of Mr. Glenn Harbeck, an expert in planning, who testified that he reviewed the 2013 Moore County Land Use Plan. Mr. Harbeck noted that he identified an overall theme of “Town and Country” that was meant to guide development in Moore County. Specifically, the Land Use Plan seeks to preserve the rural and agricultural heritage of the county in the “country” and that development should be focused on the towns. Mr. Harbeck noted that, over time, previous “country” areas may become “ripe” for development as towns expand outward. Mr. Harbeck noted that the Union Church Road’s Major Conservation Subdivision is not in harmony with the surrounding community and is not in conformity with the 2013 Land Use Plan. Based upon a detailed review of the 2013 Land Use Plan, we find this testimony compelling.

The 2013 Land Use Plan, under Rural Agricultural, strongly discourages major subdivision developments in rural agriculture areas of the County.³ The Land Use Plan states the primary use of rural agricultural land should be to support rural residential life associated with agricultural uses (e.g. row crops, forestry, horticulture, grazing, poultry, dairy, swine operations, and intensive agricultural uses in certain areas) and other rural activities. The Land Use Plan further states family subdivisions and subdivisions of four or less lots should be considered, but “[m]ajor subdivisions are strongly discouraged.” Thus, the proposed use of a Major Conservation Subdivision, consisting of less than one-half acre lots with 2400-4400 useable square feet with setback separations of 15 feet between homes, is not in harmony with the surrounding rural farmland and is not compatible with the surrounding rural community. Minimum lot sizes in the RA 40 zoning district are no less than 40,000 square feet.⁴ Applicant has proposed lots sizes ranging from 20,000-22,000 square feet in this rural area under the Major Conservation Subdivision option. Additionally, the Land Use Plan states, “When developments are proposed away from existing municipalities, they should seek a form that yields a ‘sense of place’ and reinforces a character indicative of Moore County uniqueness while avoiding a generic style subdivision.”⁵ The dense nature of this proposed Major Subdivision is not in conformity with the surrounding rural area.

In addition, the Land Use Plan recommends development within municipal planning jurisdictions while preserving large agricultural areas and/or natural spaces which are paramount importance.⁶ Please refer to the following excerpt from the Land Use Plan:

Furthermore, the Steering Committee stated throughout the process their desire to encourage development where adequate infrastructure and services were available to accommodate. Much of the County’s planning jurisdiction lacks many of the urban services such as public water and sewer, as well as other public services; nor a mix of land uses to support large scale residential development. In that regard, the plan seeks to encourage developers to locate developments primarily within the municipal

³ Moore County Land Use Plan, Page 82, (2013).

⁴ Moore County UDO, Section 5.1 Table of Area and Setbacks (UDO Last Rev. 2022)

⁵ Moore County Land Use Plan, Page 81, (2013).

⁶ Moore County Land Use Plan, Page 81, (2013).

planning jurisdictions of the community, and/or to propose viable and appropriate mixed-use developments within the County's planning jurisdiction. However, when development is proposed in the County's planning jurisdiction, efficient use of existing and proposed infrastructure, and the preservation of large agricultural areas and/or natural spaces are of paramount importance.⁷

The proposed development's location does not have access to public sewer but does have access to public water in the East Moore Water District system which is located within the area. However, the Land Use Plan states that the intent of the East Moore Water District system is to supply water to rural residents to improve their quality of life; not necessarily designed to promote growth or support large subdivisions.⁸

Additionally, the following are Goals, Recommendations, and Action items from the Land Use Plan which supports the finding that the proposed Major Conservation Subdivision "Union Church Road" is not in general conformity with the Land Use Plan:

Goal 1: Preserve and Protect the Ambiance and Heritage of the County of Moore (inclusive of areas around municipalities)

- Recommendation 1.1 Encourage the conservation of farmland for farming and forestland for forestry.
 - Action 1.1.4: Promote agri-tourism and cottage industries (such as small family farms and potteries) to enhance the County's heritage.
- Recommendation 1.2: Continue to encourage agriculture and agri-businesses throughout Moore County.
 - Action 1.2.1: Continue current support of operating environments for agriculture.
 - Action 1.2.2: Continue to support the development and accessibility to local and adjacent markets for agricultural products.
- Recommendation 1.3: Preserve large tracts of prime agricultural land to ensure that farming remains a viable part of the local economy.
- Recommendation 1.6: Preserve and maintain the rural character of Moore County, including historic sites and structures, crossroad communities, and other physical features that reflect the County's heritage.
 - Action 1.6.2: Develop land use policies that encourage the conservation and maintenance of significant crossroad communities, historic sites and structures, and other physical landmarks.
 - The future land use map identifies the Union Church Road area as rural agricultural. Major subdivisions are strongly discouraged within the rural agricultural land use classification.

⁷ Moore County Land Use Plan, Page 81, (2013).

⁸ Moore County Land Use Plan, Page 56, (2013).

- The proposed major conservation subdivision consisting of 20,000-22,000 square feet lots on 73.77 acres does not maintain the rural character of Moore County.
 - Action 1.8.5.: Support and promote infill development that will optimize the use of existing infrastructure.
- Goal 3: Optimize the Uses of Land within the County of Moore, Recommendation
 - Recommendation 3.1 Maximize accessibility among living, working and shopping areas.
 - Action 3.1.1.: Adopt policies that encourage development in mixed land uses, as appropriate, to provide easy access, reduce travel time, and improve convenience among uses surrounding the County's established towns and villages.
 - Recommendation 3.4: Encourage development in areas where the necessary infrastructure (roads, water, sewer, and schools) are available, planned or most cost-efficiently by provided and extended to serve development.
 - Action 3.4.1: Direct intensive land uses to areas that have existing or planned infrastructure. The East Moore Water District is available along Union Church Road. The intent of the East Moore Water District is to supply water to rural residents to improve their quality of life; the system was not necessarily designed to promote growth or support large subdivisions.⁹
 - The Union Church Road Major Conservation Subdivision development, consisting of 53 lots, located within the rural agricultural land use classification, has no existing or planned water infrastructure sufficient to serve large subdivisions.
 - The East Moore Water District is located within the area; the intent of the system is to supply water to rural residents to improve their quality of life; not necessarily designed to promote growth or support large subdivisions.¹⁰
 - The Union Church Road Major Conservation Subdivision is not in conformity with Goal 3, Recommendation 3.4 Action 3.4.1 of the 2013 Moore County Land Use Plan.
 - Action 3.4.2.: Encourage mixed-use developments along existing and planned infrastructure to reduce transportation needs.

8. **The use will not substantially injure the value of adjoining property unless the use is a public necessity.** Attorney Robinson for Applicant tendered real estate appraiser expert A. Franklin Dean, MAI, owner of Village Appraisers, LLC in Pinehurst, NC, who testified that the proposed subdivision will not substantially

⁹ Moore County Land Use Plan, Page 56, (2013).

¹⁰ Moore County Land Use Plan, Page 56, (2013).

injure the value of adjoining property. Opponents did not present any evidence to contradict Dean's testimony. The Board finds that the Applicant has met his burden pursuant to this issue.

9. The Applicant has not complied with Chapter 160D of the North Carolina General Statutes and the Moore County Unified Development Ordinance requirements for Special Use Permits for a Major Conservation Subdivision.

Wherefore the following is ORDERED, ADJUDGED and DECREED:

1. The Special Use Permit request and application of Tri South Builders, Inc. is hereby **DENIED** for the reasons stated above.

A copy of the Board Order shall be filed with the Clerk of the County of Moore, and a copy of such order shall be served by certified mail, return receipt to the applicant Tri South Builders, Inc. and shall be served by means of certified mail, return receipt requested upon any person specifically requesting service of the same.


So ORDERED by a unanimous vote of the Moore County Board of County Commissioners with a 4-0 vote (Commissioner Picerno recused).

This the 15th day of November 2022.



Frank Quis, Chair
Moore County Board of Commissioners

Attest:


Laura Williams, Clerk to the Board