

Minutes
PLANNING BOARD
June 27, 2006

MEMBERS PRESENT: Jim Boericke, Eric Oliver, Edna Ellis, Matthew Farrelly-Chair, Neil Jones, Paul Newton, Dave Remington, and Barrie Wallace

ABSENT: Toby Vandemark and Tom Campanella; absence excused.

STAFF: Margaret Hauth

ITEM #1: Call to Order and Confirmation of a Quorum.

Mr. Farrelly called the meeting to order at 7:01 p.m. and confirmed the quorum.

ITEM #2: Adoption of Minutes.

Ms. Ellis said on the first page of the June 5th minutes, she was referred to as Commissioner in two places. She said on the next page, she was concerned about the width of the street between the buildings, and wanted the width indicated. Ms. Wallace said on page 11 of the June 6th minutes, it indicated she said she had never fully understood the public hearing process. What she meant was that she had never been fully trained.

Mr. Oliver said on page 1 at the bottom, the word "have" should be "has"; on page 2 in the middle, the word said should be removed next to the word questioned. In the next paragraph on the second line, Mr. Oliver said the word "was" should be "were". He said in the second paragraph on page 5, next to the last line, the word "approach" should be "approaching". In the third paragraph, second line, Mr. Oliver said the word "meet" should be "met", and in the next line the word "meeting" should be "meetings". On page 7, second paragraph, he said the word "the" should be added before the word "site". He said in the third line of that paragraph, the word "every" should be "ever", and in the last line the sentence was incomplete. Mr. Oliver said in the second from the last paragraph, third line, the sentence should be clarified.

For the June 6th minutes, Mr. Oliver noted that on item #2, Mr. Vandemark should be Ms. Vandemark; first line of item #3, the word "the" should be "that"; on page 4, first paragraph, the word "change" should be "changes"; on page 5, last paragraph, the word "address" should be "addressed"; on page 6, top line, the word "with" should be placed after the word "begin"; and, on the last page in the next to last paragraph, the word "clearly" should be "clear."

Mr. Farrelly stated that on page 4 of the June 6 minutes, the sentence should read, "were the complaints captured."

MOTION: Mr. Newton made a motion that the minutes of the June 5, 2006 Special Hearing and the June 6, 2006 Planning Board meeting be adopted as amended.

SECOND: Mr. Boericke.

VOTE: Unanimously approved.

ITEM #3: Additions to the Agenda and Agenda Adjustment.

No additions were noted.

ITEM #4: Committee Reports and Updates.**Board of Adjustment**

Ms. Wallace stated the Board of Adjustment denied a request from the Orange County School Board to extend their permit to retain their modular office building downtown by a 3-1 vote. She said the Board had approved part of a Conditional Use Permit for a childcare facility on Lawndale Avenue, noting they had approved the building but the sidewalk issue would be back before the Board. Ms. Wallace said they had approved the site plan for Brookshire to add 25,000 square feet to its nursing home facility, with conditions to include landscaping, trees, and crosswalks.

Parks and Recreation Board

Mr. Jones noted that the Parks and Recreation Board had not met, and therefore he had no report.

Strategic Growth Plan

Mr. Newton stated they had met earlier this month and received a presentation of the Churton Street Corridor Plan, and received the four scenarios for Clarion to go back and run analyses. He said they had agreed to the draft plan for Clarion to run the four analyses on. Mr. Newton said one was the status quo in that nothing would change, one was an ideal planning scenario with all best practices, and one was a mixture of the previous two with market realities included. He said the fourth one, called a Vision for Hillsborough, was the scenario of what we would do if we had no water limitations or financial restrictions. Mr. Newton said they would not meet in July, but would meet on August 24 at 6:00 p.m. with the location to be determined. He described the maps and noted they would soon be available on the Town's website, and that Ms. Hauth had copies of some that could be emailed.

Staff Report

Ms. Hauth reminded the Board members to pick up a copy of the new Town street map, noting that everything in blue was in the Town's limits, with a red line indicating the Extraterritorial Jurisdiction (ETJ). She noted that new zoning maps would be produced by the end of the year.

Ms. Hauth stated that the US 70/Cornelius Street Task Force would have its first meeting tomorrow night at 7:00 p.m. in the Town Barn. She said they would be looking at pre-development in the Highway 70 Corridor.

Ms. Hauth noted that the Board's July public hearing schedule was full, and some items may have to be delayed. She asked the Board to mark their calendars for Monday, September 25 for a training session to include all boards with quasi-judicial responsibilities. Ms. Hauth said they were considering holding that meeting at the Holiday Inn Express, but they would be notified of the location.

ITEM #5: Recommendation to the Town Board regarding a Zoning Ordinance Text amendment to create "outlet sales" as a defined and permitted use in General Industrial and Light Industrial districts.

Ms. Hauth stated this was the text amendment that Vietri had requested. She said the amendment would add outlet sales as a use in the zoning ordinance and defines it with a

limit that it is not more than 10% of the building space and that what was being sold had to be directly related to what was being processed at the site.

Mr. Oliver stated that the first sentence of that definition was confusing and was not a complete sentence. Ms. Hauth replied that in the zoning ordinance the definitions were not always in sentence form. Mr. Oliver suggested revising that sentence to be more explicit, to make it clearer that the manufacturing and distribution uses referred to the zoning. He suggested “ancillary sales, by zone and manufacturing and distribution uses, of products manufactured or distributed on the same parcel.” Ms. Hauth asked if he was referring to areas that were zoned for manufacturing and distribution. Mr. Farrelly suggested making the section two sentences, one to state where it was allowed, and a second that outlet sales were allowed to be manufactured and distributed.

Mr. Oliver suggested rewording to say, “Ancillary sales were allowed by organizations located in manufacturing and distribution zoning districts.” Ms. Hauth suggested, “Ancillary sales of products manufactured or distributed on the same parcel as the outlet operation.” Ms. Ellis noted what needed to be made clear was that it had to be on the same parcel as the products were manufactured or distributed. Ms. Hauth restated the language as, “Ancillary sales of products on the same parcel as which they are manufactured and distributed.” Ms. Hauth reminded the Board that the language was not meant to be a sentence, that it was a definition.

Ms. Ellis stated her concern that this might allow uses that were not desirable, noting products could be brought in from other places. Ms. Hauth said that was what Vietri and Mid-Atlantic Steel did, noting they were distribution facilities.

MOTION: Mr. Oliver moved to recommend approval to the Town Board for a zoning ordinance text amendments to create “outlet sales” as a defined and permitted use in General Industrial and Light Industrial districts, subsequent to Ms. Hauth’s grammatical corrections to the definition.

SECOND: Mr. Newton.

DISCUSSION: Mr. Boericke stated he was in favor of this proposal with the understanding that the sales were of products that were manufactured and/or distributed on that same parcel, and that the amendment was worded to clearly reflect that. Ms. Hauth noted that she and the Town Attorney would prepare clearer language for the Town Board’s July meeting.

VOTE: Unanimously approved.

ITEM #6: **Recommendation to the Town Board regarding a Zoning Ordinance Text amendment to amend the definition of “junk car” to coincide with the Town Code definition.**

Ms. Hauth said currently the two definitions did not agree, noting the Zoning Ordinance allowed people to keep one car regardless of its status. She said the Town Code had a zero-tolerance policy. Ms. Hauth said feedback received included the idea that this was a revenue-generator for the Town. She said they had crafted a definition where a vehicle had to meet two or more of the criteria to be determined as junk.

Ms. Hauth said she had sent a notice spelling out the new proposal to everyone currently on her mailing list for this issue. She said the amendment would have the

definition in the Zoning Ordinance refer to the Town Code so that they would never again be amended independently. Ms. Hauth said at the public hearing one person had opposed the amendment, noting it may affect property values.

Mr. Oliver noted that the examples provided made this ordinance easy to understand, and the draft text amendment was clear. He asked about the second line that started out “Any residential lot may have no more....provided the vehicle does not otherwise violate this Code Section 11.31.” Mr. Oliver said that did not make much sense to him. Ms. Hauth replied that language would go into the Town Code, and it would be corrected at that time. She said it should say, “does not violate Section 11.31 of this Code.”

Mr. Boericke suggested taking the information and providing it as a handout. Ms. Hauth said she could prepare a handout that could be sent to people along with their notice of violation to provide better understanding of the change.

MOTION: Mr. Boericke moved to recommend approval to the Town Board to amend the definition of “junk car” to coincide with the Town Code definition, amended as noted.

SECOND: Mr. Oliver.

VOTE: Unanimously approved.

ITEM #7: **Recommendation to the Town Board regarding a Zoning Ordinance Text amendment to Section 3.8, special exemption permits for building heights.**

Ms. Hauth said she had provided all of this section to the Board to show that there were already processes in place for special exemptions. She said the County had requested this text amendment for the new Justice Facility building, and their memo noted where the height limit problems were occurring. Ms. Hauth said the Chair of the Historic District Commission had asked her to determine why the height limits were set the way they were when the ordinance was written. She had responded she did not believe that could be answered because she had found no methodology that was used to determine the height limits in the different districts. Ms. Hauth noted that this text amendment was specific to the Office-Institutional district.

Mr. Farrelly asked if it was Ms. Hauth’s opinion that the suggested text amendment drafted by Orange County was compatible with our Zoning Ordinance. Ms. Hauth said she believed it was workable, noting she had added section 6 at the bottom to state that when the request occurred in the historic district that the Historic District Commission would review it first, since they did have design guidelines regarding the appropriateness of the height of additions. Ms. Hauth added that this text amendment would have limited applicability, likely applying to only two buildings in town.

Mr. Oliver asked if Justice Facility was in the historic district. Ms. Hauth responded it was. He asked if the Historic District Commission had reviewed this, and she replied they were in the process of reviewing it now. Ms. Hauth said this text amendment would put the language in the ordinance to allow the County to apply to the Board of Adjustment as part of its site plan for a special exemption permit on the height. Mr. Oliver said then the County would still have to appear before the Board of Adjustment, and Ms. Hauth responded they would.

MOTION: Mr. Newton moved to recommend approval to the Town Board regarding a Zoning Ordinance Text amendment to Section 3.8, special exemption permits for building heights.

SECOND: Mr. Boericke.

VOTE: Unanimously approved.

ITEM #8: Review and discussion of possible text amendments relating to noise.

Ms. Hawth said it was up to this Board to decide if it was ready to move forward with these possible amendments to the zoning ordinance, particularly related to how commercial noise impacted residential areas. She said the Board had been provided with a list of things specifically exempted as well as things specifically prohibited. Ms. Hawth said there had been discussion about some of the language, especially in the exemptions, not being specific enough, and believed the Town Board would appreciate the Planning Board providing assistance with these possible amendments.

Ms. Hawth said the proposed language had been sent to the Chief of Police to see if he had any concerns about enforcement, and his reply was that the language was adequate and he saw now problem with enforcing it.

Mr. Farrelly asked if Piedmont had been engaged. Ms. Hawth said she had been able to contact them. Mr. Farrelly said he did not want to put them out of business or drastically alter their business paradigm, but they could fall within these specifications and that could result in a court battle. Ms. Hawth said they could be affected by taking language out of the Zoning Ordinance regarding permitted uses, referring to the language that said non-conforming uses had to adhere to the requirements of the section, and striking the language that said "provided that the noise was not the sole determinant of its non-conforming status."

Ms. Hawth said that provided the opportunity for enforcement against Piedmont, if we were interested in doing that. She said in fairness, that was what had started this process, in that Piedmont had expanded their operation to include a good part of many Saturdays and sometimes on Sundays. She said their operation did not match what they testified to before the Board of Adjustment when they added an additional crusher. Ms. Hawth said that neighbors had implied that Piedmont had expanded the intensity of their use that had generated additional noise. Ms. Wallace asked is that would restrict Piedmont's operation. Ms. Hawth said it would, but their operation was specialized and we had no way of knowing exactly what impact it would have. She said that was why she had been asked to engage them so that we could have a useful dialogue regarding the noise concerns. Mr. Oliver noted that their profit paradigm might state that they must operate six days a week, and if they were restricted to five days a week then their income could drop below the necessary level. Mr. Farrelly said it would be good to get their input, but on the other hand wouldn't they just come back and say that any further restrictions would hurt their business, no matter what.

Ms. Ellis said she believed this entire section of the ordinance needed to be discussed beyond what could be accomplished now. She said more discussion was necessary on what type of noise would be allowed and what was not. Ms. Ellis said she did not agree

with exempting construction activities on Sunday. She said she had read that other communities were having difficulties with noise from event centers.

Mr. Oliver said the use of a progression of penalties had been mentioned previously, and asked how that would be brought into this ordinance. Ms. Hauth said she would talk with the Town Attorney regarding that to get a progressive schedule of penalties.

Mr. Farrelly said there were many things that would be done in an event center that were already covered by the ordinance. Ms. Hauth said although they had abandoned the idea of pursuing a text amendment to allow an event center in the Town, the noise limits in the zoning ordinance still applied and had to be met.

Mr. Farrelly said that number 3 under Particular Noises Exempted noted that noises resulting from lawn care equipment and agricultural field equipment is during the daytime hours. He said that daytime hours needed to be specifically defined, such as 7 a.m. to 8 p.m., which he believed was reasonable. Mr. Farrelly said in number 9, it said "the operation of any noise-creating blower, power fan, internal combustion engine or other machinery..." He asked where a leaf blower would fall in that section, noting that a noise-creating blower sounded to him like something huge.

Mr. Farrelly said if you went back to the chart to see what was allowable, then none of those were allowable because of the decibel levels they produced. Ms. Hauth said that was the problem with the chart, noting that many jurisdictions did not list decibel levels because of the difficulties involved. She said she would investigate that. Mr. Farrelly said there were other things like dumpster pick-ups. Ms. Hauth responded that was controlled through the franchise agreements and probably better addressed in that way.

Responding to a remark by Mr. Jones, Ms. Hauth noted the amendment was to the Town Code only and enforceable within the Town limits only. She said the parts in the Zoning Ordinance that contained the decibel levels did apply outside the Town limits. Ms. Hauth said these types of nuisance ordinances were predominately within municipalities, since it was difficult for counties to enforce them. She added there was no enforcement mechanism within the ETJ.

Mr. Farrelly asked Ms. Ellis about construction on Sundays. Ms. Ellis replied she did not believe any construction should be allowed on Sundays. Mr. Farrelly said the ordinance allowed that from noon to six. Ms. Ellis said she did not believe anyone wanted to hear construction on a Sunday while they were enjoying a day at home. Ms. Hauth said they had surveyed other jurisdictions, noting that the Code had recently been amended from 5 a.m. to 10 p.m. on all days, but the Town Board had settled on the current language after looking at what other municipalities did. She noted that this ordinance applied to residences as well, and many people had only Saturdays and Sundays to do small projects at their homes, and that meant they needed to be able to make noise. Responding to a comment from Ms. Ellis, Mr. Hauth noted that she did not believe a distinction could be made between someone who produced noise for pay and someone who did it for enjoyment. Ms. Ellis reiterated she did not agree with allow such noise on Sundays.

Mr. Oliver said that State contracts, such as for roads, allowed seven-day-a week construction. He asked if our Town ordinance would apply, or would we be forced to allow that road work on Sunday mornings. Ms. Hauth said in cases when night work was required, NCDOT would notify the Town in advance and we would allow it.

Ms. Wallace said from her perspective she would like to be able to mow her lawn until dark. Mr. Farrelly said mowing after 8 p.m. would disturb young children trying to sleep. Mr. Boericke said his concern was more with the commercial rather than residential noise. He said dumpster trucks and parking lot sweepers were of concern.

Mr. Oliver said at least we needed to have an effective, clear, and easily enforceable ordinance what ever it may ultimately be, and what we had now was difficult to enforce. He said there were two documents to deal with, the Town Code and the Zoning Ordinance. Ms. Hauth said the Police could not enforce the Zoning Ordinance, and was generally used when building took place and things could be documented over time. She said she did not believe the Town would invest in decibel meters so enforcement would be a subjective standard. Ms. Hauth said she would encourage the Police Chief to conduct some routine training on enforcement of the noise provisions.

Ms. Hauth noted she would look at the dumpster times and the noise levels in other towns, and get in touch with Piedmont about penalties. Mr. Farrelly asked Ms. Hauth to research what others defined as daytime hours. Ms. Hauth noted this would come back at the next meeting, since this was not yet ready for a public hearing.

Mr. Farrelly said he was disappointed that the Police Chief did not comment further, noting he was sure they cataloged complaints of different varieties. Ms. Hauth said she could asked the Police Chief if there were particular instances that had come up in the last year that his officers could relate to the Board that were problematic for one reason or another, and perhaps address that in the ordinance. Mr. Farrelly said it would be helpful to know the time of day and the day of the week that the complaint occurred. Mr. Farrelly said it was important to note that noise traveled beyond a person's residence, and a homeowner could potentially be violating the ordinance.

Ms. Ellis asked to be excused from the July 25 public hearing and the Planning Board meeting on August 1, noting she was going on vacation.

ITEM #9: Adjourn.

MOTION: Mr. Newton moved to adjourn the meeting.

SECOND: Mr. Boericke.

VOTE: Unanimously approved. Mr. Farrelly adjourned the meeting at 8:12 p.m.

Respectfully submitted,

Margaret Hauth, Secretary