

Minutes
Regular Board Meeting
Aberdeen Town Board

March 8, 2010
Monday, 6:00 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Town Board met Monday, March 8, 2010 at 6:00 p.m. for the Regular Board Meeting. Members present were Mayor Elizabeth B. Mofield, Mayor Pro-tem Robbie Farrell and Commissioners Pat Ann McMurray, Jim Thomas, Alan Parker, and Walter Wright. Staff members in attendance were Planning Director Kathy Liles, Planner Patti Jilson, Police Chief Mike Connor, Town Attorney T.C. Morphis, and Town Clerk Regina Rosy. Reporter for the Pilot Hannah Sharpe, Tony Robertson, Shirley Starkey, Elease Goodwin, Maurice Holland, and Ashley Baker were also in attendance for the meeting.

Mayor Mofield called the meeting to order.

1. Public Hearing

- a. Zoning Code Text Amendment ZA#10-01 submitted by staff to amend §155.004, §155.45 (B), §155.45A (B) and add a new Section §155.071 to the Zoning Code regarding Electronic Gaming Operations.

Mayor Mofield opened the public hearing on Zoning Code Text Amendment ZA#10-01 submitted by staff to amend §155.004, §155.45 (B), §155.45A (B) and add a new Section §155.071 to the Zoning Code regarding Electronic Gaming Operations. Planning Director Liles stated the purpose of this zoning code text amendment is to provide for definition of electronic gaming, and to define the districts in which it may occur.

Planning Director Liles stated electronic gaming is not currently taking place in Aberdeen. Planning Director Liles stated the Town just needs to be sure that proper zoning and regulations are in place before a business of this nature comes to Aberdeen.

Planning Director Liles gave an overview of what an electronic gaming operation is, what it could include, and supplemental requirements which include hours of operation of 8:00 a.m. – 10:00 p.m., 7 days per week, electronic gaming operations must be at least 0.5 mile apart as measured in a straight line, and must be at least 1000 feet from any residential use.

Planning Director Liles stated the Board had received three maps showing 500 feet, 750 feet, and 1000 feet buffers. Planning Director Liles displayed the 1000 feet buffer on the screen for the Board to see. Planning Director Liles stated she believes this larger buffer size is sufficient to still provide for an electronic gaming operation.

Planning Director Liles stated the Planning Board found the request to be not inconsistent with the adopted 2030 Land Development Plan. The Planning Board recommended approval with a 500 feet residential buffer and a 1000 feet separation between electronic gaming operations.

Mayor Mofield questioned the time of operation of 8:00 a.m. – 10:00 p.m. Mayor Mofield wanted to know if that time of operation could be limited, such as perhaps 6 days a week. Attorney Morphis stated there is some case law that states pretty clearly that you cannot restrict days of operation. Mayor Mofield questioned if the hours could be 1:00 p.m. – 10:00 p.m. Attorney Morphis felt that would be permissible. Chief Connor stated he agreed with Mayor Mofield on reducing the hours of operation due to being short staffed at the Police Department.

Mayor Mofield asked if this ordinance was specifically for electronic gaming. Planning Director Liles stated this ordinance was specifically for electronic gaming. Commissioner Parker clarified for the public that the Board is only considering this zoning code text amendment so that the Town can protect itself if the courts find these electronic gaming operations to be legal.

Mayor Mofield asked the Board if they were agreeable with changing the hours of operation to 1:00 p.m. to 10:00 p.m. Mayor Pro-tem Farrell was concerned that may not be justifiable since other businesses are not limited to those hours. Attorney Morphis stated that is a legitimate concern, and the Board would need to articulate a specific reason for limiting the hours of operation. Mayor Mofield stated the police force is not full force at 8:00 am in the morning due to directing school traffic.

Commissioner McMurray asked if this would only apply to electronic gaming – such as a café that serves food and also has gaming machines. Planning Director Liles stated that is correct, the café could operate 8:00 a.m. - 10:00 p.m., but gaming machines would not be able to be used until time designated.

Commissioner McMurray stated she received an e-mail from Mr. King, asking the Board to do the right thing and not allow people to spend their hard earned money gambling. Commissioner Parker stated if the State says e-gaming is legal, then there's nothing we can do. But we should have guidelines in place so that we can regulate e-gaming facilities.

Mayor Pro-tem Farrell stated a friend of his called him and wanted to know how the Board feels about e-gaming. Mayor Pro-tem Farrell stated he told his friend the Board was against it. Mayor Pro-tem Farrell stated his friend stated he owns electronic gaming facilities in three locations. Mayor Pro-tem Farrell stated the amount of money generated from these machines is staggering.

Commissioner Parker asked if Chief Connor would be supportive of anything that narrows the business hours of e-gaming facilities. Commissioner Parker wondered if school traffic has to be directed again from 2:30 p.m. – 3:00 p.m. and would it not be better to limit the hours from 4:00 p.m. – 10:00 pm. Chief Connor stated his resources are most limited first thing in the morning rather than later in the day due to shift change, etc.

Mayor Mofield asked if there were any comments from the public on this issue. Mayor Mofield stated it appeared that the Board should act quickly on this issue.

Ashley Baker, with Inn at the Bryant House, stated she recently went down to Pinebluff to see an e-gaming facility. She stated age 18 and under were not allowed. She stated there was no security, and she did not feel safe. She stated people were running back and forth to their car to get cash. She stated smoking was also allowed inside the facility. She stated she is personally not in favor of these facilities.

Attorney Morphis stated there are four electronic gaming operations in Pinebluff right now. Attorney Morphis stated Pinebluff is looking at adopting some new language to place restrictions on these facilities.

Commissioner Parker clarified this is not a vote to allow this activity in Aberdeen. Commissioner Parker stated the State of NC will decide if this activity is legal, the Board can only place restrictions. Mayor Mofield asked how Pinebluff already has these. Attorney Morphis stated Pinebluff treats e-gaming facilities as entertainment uses, folks pulled permits, and starting operating.

Commissioner McMurray asked if Taylortown has an e-gaming facility. Chief Connor stated there is an e-gaming facility already operating in Taylortown.

Attorney Morphis stated the General Assembly tried to ban this use – an injunction was applied statewide to prevent law enforcement from taking any action against these establishments.

With no further discussion, Mayor Mofield closed the public hearing on Zoning Code Text Amendment ZA#10-01 submitted by staff to amend §155.004, §155.45 (B), §155.45A (B) and add a new Section §155.071 to the Zoning Code regarding Electronic Gaming Operations.

2. Setting of the Agenda

A motion was made by Commissioner Wright, seconded by Commissioner Thomas, to approve the agenda as presented. Motion unanimously carried.

3. Approval of the Consent Agenda

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held except on request by a member of the Board of Commissioners.

- a. Minutes of Regular Board Meeting on February 8, 2010, Closed Session on February 8, 2010, Special Called Meeting on February 16, 2010, and Work Session on February 25, 2010.

A motion was made by Commissioner Thomas, seconded by Commissioner Wright, to approve the Consent Agenda as presented. Motion unanimously carried.

4. Informal Discussion and Public Comment

Tony Robertson thanked the Town Board for the opportunity to speak to them tonight. Mr. Robertson stated this Board is doing a wonderful job for its citizens. He praised the Board for doing curbside garbage pickup, and now curbside recycling. He stated the Board has made a lot of progress over the last few years. Mr. Robertson stated a few years ago the Board hired Bill Zell and Bill has done an excellent job for the Town. Mr. Robertson stated he is here to speak about the letter he received about the RPZ, a backflow preventer. Mr. Robertson stated he understands that this ordinance is not the Board's fault, because this was mandated by the State of NC. Mr. Robertson stated he does not know of any sprinkler systems that have caused a contamination. Mr. Robertson stated the State of NC has cost municipalities million of dollars by their unfunded mandates. Mr. Robertson stated he has to spend \$400-\$500 on an RPZ, and then he has to have it inspected annually. Mr. Robertson requested that the Town Board and the citizens start pressuring the people in Raleigh and let them know how they feel.

Mr. Robertson then changed subjects, and stated Time Warner Cable is terrible. Mr. Robertson stated he and his wife tried to watch the basketball game and it went off eight times during the game. Mr. Robertson wanted to know why Time Warner Cable doesn't carry baseball anymore. He stated there are a lot of elderly citizens who would like to be able to watch baseball. Mr. Robertson requested the Board to bring this up during the next renewal for the franchise which was last done for a 15-year term.

Mayor Mofield stated she felt Mr. Robertson had made two good points. Mayor Mofield stated she thinks the Town should send a formal letter of complaint. Mayor Mofield requested the manager at Time Warner Cable come to the Work Session before the May meeting.

Mayor Pro-tem Farrell stated he is also president of the Bethesda Cemetery Association Inc. and they received a letter about the RPZ. He stated it is going to cost a fortune to put a RPZ out at the cemetery.

Mayor Mofield asked if there was a time limit on installing a RPZ. Manager Zell stated the ordinance the Board adopted states the RPZ must be installed within 60 days after receiving a letter from the Town. Attorney Morphis stated if a citizen had a hardship then they could ask for an extension.

Commissioner Wright pointed out that the weekly report last week showed his permit fee had been voided – and he felt it made it look like he hadn't paid his permit fee. Commissioner Wright stated it looked like he was crooked when he had in fact paid his permit fee. Commissioner Wright asked the Board to consider reducing the Town inspection fee to \$0 on RPZs to save the property owners some money. Mayor Pro-tem Farrell stated he was concerned that Town personnel will be going out for up to 700 inspections per year and with no permit fee, the Town would receive no revenue for this expense. Commissioner Parker pointed out that there may not be as many as 700 inspections to do, because some of those property owners may already have a RPZ installed. Commissioner Wright wanted to know exactly what Building Inspector Rodney Childress does when he goes out for one of these inspections. Commissioner Wright suggested putting out a letter to citizens stating what their expected cost should be for the installation of a RPZ.

Tony Robertson wanted to know what would happen if the Town did not comply with this ordinance. Planning Director Liles stated the Town would be in violation of state code with DENR.

Dale Streicker, wanted to know why he didn't get his letter until March when the ordinance was approved last September. Mr. Streicker stated he brought a copy of the City of Charlotte's ordinance and what they plan to do for the Board to review. Mr. Streicker stated the City of Charlotte is just requiring a backflow preventer. Mr. Streicker felt if the City of Charlotte can get away with less standards, the Town is doing something that is not legal.

Mayor Mofield asked the Board if they had any ideas on how to handle this situation. Mayor Pro-tem Farrell wanted to know why Moore County, Southern Pines, and Pinehurst are not requiring this. Commissioner Wright withdrew his motion regarding inspection fees for RPZs.

5. Financial Report

Manager Zell stated the General Fund is \$448,000 in the black. Manager Zell stated the Water and Sewer Fund is \$227,700 in the black with this month being a billing month. Manager Zell pointed out that the Water and Sewer Fund has been in the black this fiscal year for all months except July. Commissioner Parker asked if accounting was done by cash or accrual basis. Manager Zell stated it is accrual basis.

Commissioner McMurray stated she was very thankful for the new leaf truck. Mayor Mofield stated she was very thankful for her new recycling container.

6. Old Business

None

7. New Business

- a. Project Budget Ordinance for FY 09/10 Clean Water Partners – Supplemental Grant Program.

Manager Zell stated this is the grant from the rural center. Preliminary numbers are from Hobbs, Upchurch and Associates. A motion was made by Commissioner Parker, seconded by Commissioner Thomas, to approve the Project Budget Ordinance for FY 09/10 Clean Water Partners – Supplemental Grant Program. Motion unanimously carried.

- b. Ordinance Amending the Aberdeen Zoning Code to Define and Regulate Electronic Gaming Operations.

Attorney Morphis stated he will need the Board to decide what hours of operation they would like for electronic gaming operations. Mayor Mofield asked for input from the Board on hours of operation. A motion was made by Commissioner Thomas, seconded by Commissioner Wright, to make the hours for electronic gaming operations be from 1:00 p.m. – 10:00 p.m., 7 days per week. Commissioner Parker stated he wasn't sure why the Town wouldn't wait to vote on this item, to see what the courts do. Attorney Morphis stated staff could continue to deny conditional use permits until the courts make a ruling.

Commissioner McMurray asked who would check for violations of hours of operation. Attorney Morphis stated zoning violations would be handled by the Planning Dept. Attorney Morphis suggested changing the word to device, rather than machine.

Motion unanimously carried to change the hours of operation. A motion was made by Commissioner Thomas, seconded by Commissioner Wright, to approve the Ordinance amending the Aberdeen Zoning Code to Define and Regulate Electronic Gaming Operations as amended. Motion unanimously carried.

A motion was made by Commissioner Thomas, seconded by Commissioner Parker, finding this ordinance before the Board to be not inconsistent with the 2030 Land Development Plan. Motion unanimously carried.

- c. Ordinance Adopting a Privilege License Tax for Electronic Gaming Operations.

Planning Director Liles stated the ordinance has been amended to provide for the changes requested by the Town Board. A motion was made by

Commissioner Parker, seconded by Commissioner Thomas to approve the Ordinance Adopting a Privilege License Tax for Electronic Gaming Operations. Commissioner Parker stated he would like for the public to know what the Town Board is requiring of these establishments. Commissioner Parker read Sections 2 and 3 from the ordinance to the public. Motion unanimously carried.

- d. Ordinance Amending the Aberdeen Minimum Housing Code GP#10-01.

Planning Director Liles stated this item has already been to public hearing and there have been no changes since that time. Planning Director Liles stated the code was amended to be consistent with state statute. A motion was made by Commissioner McMurray, seconded by Commissioner Wright, to approve the Ordinance Amending the Aberdeen Minimum Housing Code GP#10-01. Motion unanimously carried.

- e. Ordinance to Amend the Aberdeen Zoning Code with Regard to Kennels, Other Animal-Related Facilities and Explosives.

Planning Director Liles stated this item is consistent with what was presented during the Public Hearing and Work Session with the Board. A motion was made by Commissioner McMurray, seconded by Commissioner Wright, to approve the Ordinance to Amend the Aberdeen Zoning Code with Regard to Kennels, Other Animal-Related Facilities and Explosives. Motion unanimously carried.

Attorney Morphis stated the Board also has to approve this item is not inconsistent with the 2030 Land Development Plan. A motion was made by Commissioner Parker, seconded by Commissioner Wright, that the Board does not find the Ordinance to Amend the Aberdeen Zoning Code with Regard to Kennels, Other Animal-Related Facilities and Explosives to be inconsistent with the 2030 Land Development Plan. Motion unanimously carried.

- f. Resolution Authorizing the Advertisement for Bids for the Sale of Certain Property.

Manager Zell stated these are items from the Public Works Department that need to be made surplus property. A motion was made by Commissioner Wright, seconded by Commissioner Parker, to approve the Resolution Authorizing the Advertisement for Bids for the Sale of Certain Property. Motion unanimously carried.

8. Other Business

Manager Zell reminded the Board that tomorrow night is the Budget Work Session for the Planning Department. Manager Zell reminded the Board of all the departmental budget presentations during the month of March and the Ethics Webinar on March 25th from 4:00 p.m. – 6:00 p.m.

Planning Director Liles stated she also has information for the Board about the Sandhills Farm to Table Program.

9. Closed Session - Attorney-Client Privilege

A motion was made by Commissioner Wright, seconded by Commissioner Farrell, to go into Closed Session for attorney-client privilege and to delay the Closed Session for Personnel. Motion unanimously carried.

10. Closed Session - Personnel: Manager's Evaluation

Agenda Item delayed.

11. Adjourn

The Board returned from Closed Session with no action taken. With no further discussion, a motion was made by Mayor Pro-tem Farrell, seconded by Commissioner Wright, to adjourn the meeting. Motion unanimously carried.

Regina M. Rosy, Town Clerk

Minutes were completed in
Draft form on April 8, 2010

Elizabeth B. Mofield, Mayor

Minutes were adopted
April 12, 2010