

Minutes

Work Session

Aberdeen Town Board

June 8, 2015

Robert N. Page Municipal Building

Monday, 6:00 p.m.

Aberdeen, North Carolina

The Aberdeen Town Board met Monday, June 8, 2015 at 6:00 p.m. for the Work Session. Members present were Mayor Robert A. Farrell, Mayor Pro-tem Jim Thomas, and Commissioners Joe Dannelley, Buck Mims, Pat Ann McMurray, and Elise Goodwin. Staff members in attendance were Planning Director Pam Graham, Police Chief Tim Wenzel, Planner Jae Kim, Planner Daniel Martin, Parks & Recreation Director Adam Crocker, Town Manager Bill Zell, and Town Clerk Regina Rosy. Attorney T.C. Morphis, Ken Howell, Bob Friesen, Kenneth Byrd, Ron Utey, Elena Jones, John May, Barbara Allred, Murray Williamson, and Reporter for The Pilot Ted Natt were also in attendance for the meeting.

Mayor Farrell called the meeting to order at 6:01 p.m.

1. Public Hearing for Conditional Zoning #15-01 Requested by Ken Howell to Conditionally Rezone Property located on Highway 211 from R20-16 to General Commercial - Conditional District.

Mayor Farrell opened the public hearing for Conditional Zoning #15-01 requested by Ken Howell to Conditionally Rezone Property located on Highway 211 from R20-16 to General Commercial – Conditional District.

Director Graham stated the total parcel taxable acreage is 7.17 acres, and at least 2/3 of the parcel is utilized by John Deere Landscapes, Howell's Masonry, and Jim's Gems and Gold. Director Graham stated an area comprising 4.8 acres was zoned General Commercial in 2004. A 200' x 525' area along the rear property boundary retains R20-16 zoning.

Director Graham displayed and reviewed a zoning map of the subject property and surrounding properties. Director Graham displayed an aerial image of the property, and also a Google earth aerial image from 2015. Director Graham displayed a survey of the property that showed where the zoning for the property changes. Director Graham stated the owner proposes a 30' easement to remain at the rear of the property.

Director Graham stated tonight's public hearing is to accept input from the public and the applicant on the proposal to conditionally rezone approximately 2.41 acres from R20-16 to General Commercial – Conditional District. Director Graham stated conditional zoning districts allow for the establishment of certain uses, which because of their nature or scale, have particular impacts on both the immediate area and the community as a whole. Director Graham stated conditional zoning is a legislative decision and is not quasi-judicial. Director Graham stated conditional zoning creates a new district specific to the parcel under consideration. The approval process imposes the standards for the district, limited to the subject property only, and may impose additional standards as determined to be appropriate. Conditional zoning was adopted by the General Assembly in 2005 and was not an option when the 2004 rezoning of the front portion of the property was approved. A standard rezoning to a business use district would not have permitted the Board to impose site-specific conditions to the property.

Conditional Zoning to the General Commercial – Conditional District allows the owner to expand business operations, but with conditions intended to reduce impacts that might be expected from the rezoning. The existing R20-16 zoning on the rear portion of the property carries no screening requirement for the adjacent residential uses.

Director Graham stated four structures are on the 7.17 acre site and serve three businesses: John Deere Landscapes, Howell's Masonry, and Jim's Gems & Gold.

Director Graham stated there is an undeveloped parcel immediately to the west and is adjoined by Aberdeen Bait & Tackle on its west side. Residential properties to the south (across Highway 211) and the east are generally rural in character and set back from the highway. Residential properties to the north (Bethesda Farms) are zoned R30-18 and are +/- ½ acre in size.

Director Graham stated there is a significant cross-slope which exists and has been altered through terracing of the property between the John Deere operation and the portion of the parcel to the east.

Director Graham displayed a GIS image from 2010 with conditions of the property and surrounding properties and the topography.

Director Graham stated the Future Land Use Map was adopted in 2005 and reflects the current split zoning of the property and is therefore inconsistent with the proposal. A finding of inconsistency does not preclude approval of the proposal but should be a part of the deliberation.

Director Graham stated the anticipated impact of the business expansion authorized by the rezoning is restricted to the adjoining residential properties to the rear and one adjoining property to the west. A mandated buffer/screening condition is recommended to address this impact. The amount and type of buffer/screening is at the Board's discretion. The impact of the expansion is not expected to have a negative impact on the community as a whole. The existing driveway and vehicle accommodation areas are adequate to support the expansion. The property exhibits significant tree cover and screening along the right-of-way.

Director Graham reviewed the recommended conditions:

(1) The applicant must conduct a community meeting with mailed notice prior to the public hearing. (This requirement has been met and may be removed).

Director Graham stated she received a report of the mailed notices, and those in attendance at the community meeting.

(2) A "Type A" buffer as described in the UDO shall be provided along the full length of the rear and side property boundaries to a depth of no less than thirty feet from the rear property line. This condition may be satisfied by the use of preexisting vegetation, newly planted vegetation, or a combination of both. A solid plank fence may also be incorporated to partially satisfy the requirement but shall not constitute a full satisfaction of the requirement. Existing vegetation shall be maintained along the side property boundaries and along the highway right-of-way to a depth of no less than thirty feet from the property lines as required by Article XIX of the UDO. A site study shall be conducted to determine the most feasible use of either a berm with a fence of no more than six feet or an eight foot solid fence, or some combination thereof, to afford the best noise and light restrictions to neighboring properties to the north and the property to the west that adjoins the property proposed for rezoning, and to protect as much vegetation as possible.

(3) As required by Article XIX of the UDO, the removal of existing trees with a diameter at breast height of 12" or greater is prohibited without the expressed approval of the Planning Director.

(4) Conditional and Special Use Permits for the uses on the property are not required. The conditional zoning is contingent on approval of a final site plan, to include a stormwater management plan, by staff to insure compliance with the UDO. The plan shall include calculations showing that the post development runoff is no greater than the pre-development condition.

Director Graham discussed the Type A buffers and what it includes:

- (1) 1 understory tree with a minimum height of 8' at the time of planting per 500 square feet (every 16.5 feet).
- (2) At least 40% of the trees must be evergreen and must reach a height of 20-30' when mature.
- (3) 1 shrub per 200 square feet (every 6 feet) of a species expected to reach a height of 36" or more within 5 years of planting.

(4) Existing vegetation may be used to meet part or all of the requirements.

Director Graham stated she received an email from Mr. Bowman, who lives at 1308 Devonshire Trail, with some questions. Director Graham read the email which stated Mr. Bowman does not support the rezoning request. Mr. Bowman's concerns/requests include: mailed notice did not allow for sufficient time to rearrange schedule, noise survey to be completed, hours of operation 8 a.m. -5 p.m. Monday thru Friday only, and no weekends or holidays.

Director Graham read a letter received from Mr. Bob Friesen, who is representing Ken Howell on this matter. Director Graham stated the letter from Mr. Friesen speaks to the recommended condition #2 and stated any site study required may also allow as a determination that no fence shall be required and he objects to the requirement of a solid plank fence to satisfy the buffer requirement. Director Graham stated she also received a video from Elena Jones of work being performed on the property at night. Mayor Pro-tem Thomas asked how much of a 30' buffer is still left at this point. Director Graham stated she does not know if the buffer left would meet the Type A buffer requirement of 30'. Mr. Ken Howell stated right now, currently, he plans to have a minimum of at least 80' for the buffer. Mayor Pro-tem Thomas asked if anything has been cleared within 30' of the rear property line? Mr. Howell stated no, he has not cleared within the 30' buffer.

Mr. Ron Utley stated he questions how we even ended up here tonight. Mr. Utley stated his kids were woken up one morning at 2:45 a.m. while work was being done on the site. Mr. Utley stated back in 2004 he believes the Board was trying to protect local residents from this business, and he thinks what is happening currently on the property is downright criminal. Mr. Utley stated he proposed a 130' buffer, rather than just a 30' buffer. Mr. Utley stated greed is driving this issue. Mr. Utley stated there is an erosion problem because of the clearing that is taking place. Mr. Utley stated by the time he received the mailed notice for the community meeting, the date of the meeting had already passed. Mr. Utley stated what he would ask the Board to consider is to honor the 200' buffer that was agreed upon in 2004.

Elena Jones, 1306 Devonshire Trail, stated this started back on March 28th at 8:00 a.m. when large trees began falling on the property. Ms. Jones stated she is concerned about what if Mr. Howell went out of business, what business would go in next, and would be within 30 feet of her property boundary. Ms. Jones stated this business operates Monday – Sunday, all hours of the day currently. Ms. Jones stated she believes this will also affect the value of real estate in the area. Ms. Jones stated there was a house for sale in her neighborhood, but once the potential home buyer realized the buffer was being reduced, the offer was taken back.

Elena Jones read a letter from Paul Whitaker, 1304 Devonshire Trail, and he purchased property in 2001 and he is not in favor of this conditional zoning either.

Murray Williamson stated his company The Basil Group is building homes in the Devonshire area, which will be adversely affected by this potential zoning change. Mr. Williamson stated several months ago, there was a large storm that came through (2 trenches had been dug) and all the water ran down the easement towards his properties he is developing. Mr. Williamson stated he believes this type of action is criminal. Mr. Williamson stated if proper buffering and water management takes place, then maybe he could look favorably at this. Director Graham stated she walked the property with Mr. Williamson to research the drainage issues he referenced. Director Graham read excerpts from the UDO that addressed the drainage issues, and the impacts to Mr. Williamson's properties did not meet the threshold. Director Graham stated she did speak with Kenny Love with John Deere to let him know of the local residents' concerns about the drainage.

Director Graham stated the removal of the vegetation is not a violation of the UDO, and she did not see any evidence of trees greater than 12" in diameter that had been taken down. Director Graham stated the 200' buffer has been encroached upon by Mr. Howell.

Mr. Howell stated the mailed notices were mailed on a Monday, but additional notices were also put in the mailboxes on Tuesday, and the meeting was held on Thursday at 3:00. Mr. Howell stated he contacted John Deere to see why there was business going on during the night hours. Mr. Howell stated there was a delivery of sod late one night, and that type of operation has now ceased. Mr. Howell stated his grading contractor delivered equipment on a week day, not a weekend. Mr. Howell stated the operating hours for John Deere are 7:30 a.m. – 4:30 p.m. Mr. Howell stated there is still work to do when the business is closed. Mr. Howell stated LKC Engineering looked at the drainage issue, and 26% of the 7.17 acres is impervious. Mr. Howell stated the average is 75%, so he is 1/3 average. Mr. Howell stated he leases space on his property to other businesses, as part of his business.

Commissioner Mims asked Mr. Howell if the Board would consider approval of this item, would Mr. Howell consider addressing the drainage issues. Mr. Howell stated "sure".

Mr. Friesen stated he agrees the notice was short for the community meeting, but he feels like nonetheless the notice was given. Mr. Friesen stated it does not appear there were any violations of any of the trees that were removed. Mr. Friesen stated any owner could have done the same thing removing vegetation. Mr. Friesen stated this is a great opportunity to allow expansion of John Deere, and impose restrictions to protect the residential properties nearby. Mr. Friesen stated all of these issues brought up tonight will not be addressed, if this conditional zoning is not approved in some form.

Mayor Farrell stated he was on the Board in 2004 and when he voted in 2004 he was comfortable with a 200' buffer at the rear of this property. Attorney Morphis stated there would not have been a written agreement in 2004 for the conditions of the rezoning, since all the Board could have done back then was either approve or deny, with no conditions. Mayor Farrell stated he would not have voted for the development of Mr. Howell's property unless there was a 200' buffer.

Commissioner McMurray stated the Board in 2004 was very conscious of protecting the residents behind the property.

Attorney Morphis stated if the Board is inclined to approve the rezoning, he would ask the Board to consider and discuss spot zoning. Attorney Morphis stated he would not really consider this spot zoning. Attorney Morphis stated if a judge believes this is spot zoning, then they will want to know if the Board has good reasoning. Attorney Morphis stated if the Board is inclined to approve this item, he would want this discussion included in the record:

- Size of the tract at issue (in this case the tract is small, and would not be permissible).
- Whether the proposed zoning is compatible with the existing comprehensive zoning plan.
- Benefits and detriments resulting from the rezoning to the property owners in the surrounding community.
- Relationship between uses of the new zoning and present adjacent uses.

Director Graham stated the staff report includes a statement that the "proposal is considered by staff to be consistent with goals, strengths, and opportunities included in the plan but inconsistent with the plan's Future Land Use Map."

Mr. Utley asked Attorney Morphis if the Board can impose additional conditions on the proposed conditional zoning to protect the residential neighbors. Attorney Morphis stated in quasi-judicial matters, the Board can impose whatever conditions they feel are appropriate. Attorney Morphis stated with conditional zoning, the Board can ask for certain conditions, but the applicant has to agree to those conditions. Commissioner Mims asked for a rezoning such as this, can you include a condition, that if the business owner changes, the conditional zoning would be removed. Attorney Morphis stated no you can't, but you could limit the use of the property to current uses, and if the owner wants to change it, then the conditional zoning would be out.

Mr. Utley asked if the Board does not approve this conditional zoning, what would prevent Mr. Howell from cutting down additional trees. Director Graham

stated she would only have authority to stop the cutting of trees 12" in diameter or greater, and only as a precursor to development activities. Director Graham stated the tree ordinance only provides protection for development activity. Director Graham stated residential against residential, there is no requirement in the UDO.

Commissioner Dannelley asked Mr. Howell if any consideration has been given to using other portions of the property to allow the additional business space needed, without using the 200' buffer area. Mr. Howell stated he has looked at every opportunity, and unfortunately due to elevations on the property, the right side of the property would not be an option, but the left side could potentially be used if a new driveway was cut in, but that is not the preferable option. Commissioner Dannelley asked in 2004 when Mr. Howell knew there was a 200' buffer did he always hope to keep that buffer to protect the residents. Mr. Howell stated at the time in 2004 that was all he could get the Board to approve, but he always hoped to get it rezoned so he could expand his business on the property. Mr. Howell stated if he were to develop the rear 2 acres being considered for conditional zoning as residential properties, he would only be required to have a 15' buffer, rather than the current 200' buffer.

Commissioner Mims stated everything comes down to protecting families. Commissioner Mims stated it's always a goal to find a middle ground. Mayor Farrell stated Aberdeen is the fastest growing city in the Cape Fear region, according to the Fayetteville Observer. Mayor Farrell stated a good part of the growth is residential. Aberdeen was also rated the 8th most business friendly in the State of North Carolina.

With no other discussion, Mayor Farrell closed the Public Hearing for Conditional Zoning #15-01 Requested by Ken Howell to Conditionally Rezone Property located on Highway 211 from R20-16 to General Commercial - Conditional District.

2. Consider action on Conditional Zoning #15-01 Requested by Ken Howell to Conditionally Rezone Property located on Highway 211 from R20-16 to General Commercial - Conditional District.

Commissioner Mims stated he would like to have the opportunity to visit the site and consider this item further before action. A motion was made by Commissioner Mims, seconded by Commissioner Goodwin, to move this item to the

June 22nd Regular Board Meeting agenda. Commissioner Dannelley stated he has listened very carefully to both sides, and he would offer up a challenge. Commissioner Dannelley stated what he is hearing is that there is some possibility for compromise. Commissioner Dannelley stated he has heard fences, 30' to 100', berms, fixing problems not even related to the public hearing, etc. Commissioner Dannelley stated he hears compromise, but he does not have enough information to determine how to reach that compromise. Commissioner Dannelley stated he feels like there is some unfinished business to attempt to reach a compromise. Commissioner Dannelley stated he would encourage all of those involved to work with the Planning Director to see if there might be a compromise reached. Commissioner Mims stated both parties will win if a compromise can be reached. Attorney Morphis stated since it is sounding like there could be new information presented, he recommends the Board consider reopening the public hearing and continuing it to 6/22/15 meeting so that additional notice would not have to be provided. Commissioner Mims withdrew his motion.

A motion was made by Commissioner Dannelley, seconded by Commissioner Goodwin, to reopen the public hearing and continue it to the Regular Board Meeting scheduled for 6/22/15. Commissioner Dannelley stated the expectation is that in 2 weeks at the 6/22/15 meeting, the Board can make a decision on this item. Motion unanimously carried 5-0. Mr. Howell stated he will hold another community meeting on the property prior to the 6/22/15 meeting.

The meeting moved from the Rotunda to the Conference Room at this point.

3. Variance and Special Exception Amendment Draft.

Director Graham stated there is a backlog of text amendments that will be coming before the Board. Director Graham explained a recent site inspection for a lot located at 175 Devon Circle where staff observed a pre-fab shed on the adjacent property that did not appear to meet the required 10' side setback requirement. After researching, it was discovered that no zoning permit had been pulled and staff began attempting to contact the property owners. Communication was difficult as it was learned that one of the property owners had deployed to Afghanistan. Staff began an enforcement case on the matter, but delayed levying civil penalties as they attempted to work with the homeowners using a less stringent approach. Director Graham stated she reached out to the Town Attorney to see if other options were

unavailable and the possibility of using the "Special Exception" section of the UDO. Director Graham stated Special Exceptions allow for special circumstances to be considered when setback requirements are not being met, however, the language applies to building setback requirements and does not address accessory structure setback requirements. Director Graham stated staff is proposing the Board consider adding a new subsection "F" to the Special Exception language that specifically addresses accessory structures, and allows for setback reduction to as little as zero feet when the following requirements have been met:

- that issuance of the permit will not create a threat to the public health or safety; and
- that issuance of the permit will not adversely affect the value of adjoining or neighboring properties. Competent evidence of this must be demonstrated, with one method being that a petition signed by affected property owners be submitted stating that they do not believe their property values will be adversely affected by issuance of the permit.

Director Graham stated this is for information only at this point. Attorney Morphis stated the reason special exceptions exist is to provide relief from the ordinance.

4. Schedule Public Hearing for Local Incentive Agreement with Reliance Packaging.

Item scheduled for Public Hearing on 6/22/15.

5. Schedule a Public Hearing for Conditional Use Permit #15-02 submitted by Concrete Services, LLC.

Item scheduled for Public Hearing and New Business on 6/22/15.

6. Schedule a Public Hearing for Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC.

Item scheduled for Public Hearing and New Business on 6/22/15.

7. An Ordinance Amending the Aberdeen Code of Ordinances to Prohibit the Use of Tobacco Products and E-Cigarettes on Town Park and other Recreational Property.

Parks & Recreation Director Adam Crocker stated in the interest of public health, he is recommending banning the use of all tobacco products and e-cigarettes in Town parks and other recreational properties. Attorney Morphis stated it is lawful to regulate these products currently, but the State could change the law down the road. Agenda Item scheduled for New Business on 6/22/15.

8. **An Ordinance Amending the Aberdeen Code of Ordinances with Regard to the Discharge of Firearms and the Possession of Weapons on Town Properties.**

Chief Tim Wenzel stated as a result of last July 4th, there was some concern about citizens carrying weapons on town properties. Attorney Morphis stated Towns have authority to outright prohibit open carry on any Town properties. Attorney Morphis stated there is a statute that protects concealed carry weapons. Commissioner Mims wanted to know why this was proposed. Chief Wenzel stated 2-3 people approached police staff about a gentleman that was openly carrying a gun this past July 4th. Commissioner Mims stated he would not want to have a knee jerk reaction to a situation that doesn't warrant it. Commissioner Mims stated he is an advocate for citizens legally carrying weapons. Commissioner Dannelley stated he would like to understand how this item went from banning open carry weapons at special events only, versus "all town properties, 365 days a year". Attorney Morphis stated he will research it and determine why Attorney Benschhoff recommended this ordinance. Director Crocker stated Attorney Benschhoff was concerned about defining what is a special event, etc. Commissioner Dannelley suggested just focusing on specific events, rather than broadening the ordinance. Agenda Item scheduled for New Business on 6/22/15.

9. **Parks & Recreation Fees and Charges Amendment.**

Director Crocker stated this amendment is to include fees for Ray's Mill Park. A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Mims, to approve the Parks & Recreation Fees and Charges Amendment. Commissioner Dannelley thanked Director Crocker for quickly getting these fees added in, since Ray's Mill Park is now open for business. Motion unanimously carried 5-0.

10. **Petition for Voluntary Contiguous Annexation submitted by PCC Realty, LLC.**

a. **Accept the Petition Requesting Annexation.**

Director Graham thanked John May for attending this unusually long meeting, since he is representing the applicant for this item. Attorney Morphis pointed out that the Town would not be taking over the maintenance for Clearwater Drive, which is located on the proposed property. Attorney Morphis stated there is a subdivision plat and this proposed annexation does not include lots 5, 10, 14, 15, 17, 20, 21, 22, 25, 29, 30, 31, 32, 35, 36, 37, 38, 46, and 48. A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to accept the petition requesting annexation. Motion unanimously carried 5-0.

b. Resolution Directing the Clerk to Investigate a Petition for Annexation.

A motion was made by Commissioner Mims, seconded by Commissioner Goodwin, to approve the Resolution Directing the Clerk to Investigate a Petition for Annexation. Motion unanimously carried 5-0.

c. Accept the Clerk's Certificate of Sufficiency.

Agenda Item scheduled for Consent Agenda on 6/22/15.

d. Resolution Fixing Date of Public Hearing on Question of Annexation.

Agenda Item scheduled for Consent Agenda on 6/22/15.

11. Fiscal Year 2015/2016 Budget Deliberation.

Manager Zell reviewed the changes he has made to the FY 2015/2016 Budget since the public hearing. Manager Zell stated a 1% cost of living increase for employees is now included in the budget, and a line item was created for the Friends of the Aberdeen Library for \$1,000. Commissioner Dannelley stated the original budget did not include any funds to move forward with the Aberdeen Police Department project, but Manager Zell has now been able to include \$58,000 in the budget to obtain architectural renderings for the project. Commissioner Dannelley stated \$151,000 was freed up by holding off on the stormwater project, since NCDOT was not in a position to put up any money. Commissioner Dannelley expressed concern about spending \$58,000 for the drawings for the Police Department, without knowing for sure if it's exactly what Aberdeen needs. Commissioner Mims stated he would like to hire a professional to work with the Town staff on designing this building so that we can make sure we get the best

design for Aberdeen. Mayor Pro-tem Thomas stated he believes Aberdeen could see a more direct effect by getting take home vehicles for officers, instead of spending \$3 million on a new building. Agenda Item scheduled for New Business on 6/22/15.

12. Discuss Goals/Objectives for Strategic Plan.

Commissioner Dannelley stated we are down to the final 2 goals for the Strategic Plan and he is proposing those to be:

- Enhance Town Departmental Core Services
- Balanced Capital Improvement

Commissioner Dannelley stated the plan will be to integrate these into the daily business and agendas for meetings. Commissioner Dannelley stated he offers these up for discussion. A motion was made by Commissioner Goodwin, seconded by Commissioner Mims, to approve the final 2 goals with objectives for the Strategic Plan. Motion unanimously carried 5-0.

13. Other Business.

a. Amendment to the Code of Ordinances.

Director Graham stated a local business owner has proposed an amendment to the Code of Ordinances to allow "beer tents" during special events. Director Graham stated a public hearing is not required for this item, but the Board could elect to have a public hearing if they would like. Mayor Farrell asked if Southern Pines and Pinehurst currently allow this. Director Graham stated yes, this has become very common, and Southern Pines and Pinehurst already have such an ordinance. Commissioner Dannelley and Mayor Farrell stated it is time for Aberdeen to take a look at this. Director Graham is going to research some language to be used for the ordinance. Agenda Item scheduled for Public Hearing and New Business on 6/22/15.

14. Closed Session pursuant to N.C.G.S. 143-318.11 (a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

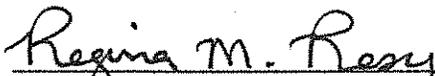
A motion was made by Commissioner Mims, seconded by Commissioner Goodwin, to go into Closed Session pursuant to N.C.G.S. 143-318.11 (a)(4) to discuss

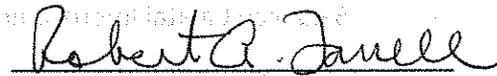
matters relating to the location or expansion of industries or other businesses in the area served by the public body. Motion unanimously carried 5-0.

The Board returned from Closed Session.

15. Adjournment.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Mims, to adjourn the Work Session. Motion unanimously carried 5-0.


Regina M. Rosy, Town Clerk


Robert A. Farrell, Mayor

Minutes were completed in
Draft form on June 8, 2015

Minutes were approved
on June 22, 2015