

**DRAFT SUMMARY MINUTES OF A PUBLIC HEARING  
OF THE CHAPEL HILL TOWN COUNCIL  
MONDAY, OCTOBER 20, 2008, AT 7:00 P.M.**

The resolutions and ordinances for this meeting are printed at the end of the minutes.

Present were Mayor Kevin Foy, Mayor pro tem Jim Ward, Council Member Matt Czajkowski, Council Member Laurin Easthom, Council Member Sally Greene, Council Member Ed Harrison, Council Member Mark Kleinschmidt, and Council Member Bill Strom.

Staff members present were Town Manager Roger Stancil, Deputy Town Manager Florentine Miller, Assistant Town Manager Bruce Heflin, Town Attorney Ralph Karpinos, Planning Director J.B. Culpepper, Long Range & Transportation Manager David Bonk, Principal Planner Phil Mason, and Acting Town Clerk Sandra J. Kline.

Mayor Foy announced that James Taylor was in Chapel Hill, and they wanted to welcome him home.

**1. [Public Hearing: Aydan Court, 2100 NC 54 East - Applications for Zoning Atlas Amendment and Special Use Permit](#)**

Mayor Foy opened the public hearing for Aydan Court.

Mr. Stancil pointed out that there was no preliminary recommendation from the Manager on this item. He said that the Comprehensive Plan has conflicting values; the property is environmentally sensitive, and also in a main transportation corridor. Mr. Stancil stated that he wanted to hear comments from the Council, and public before making a recommendation.

Mr. Mason highlighted the two applications, and asked that they be presented together in conjunction with each other, and that action would be taken at a later meeting. He also noted that a folder of emails was provided for the record, and passed around for the Council to look through. He reviewed the request for the modifications, and reiterated that there were conflicting goals within the Comprehensive Plan that will require special consideration.

Mayor Foy clarified that the testimony would be for both the ZAA and SUP.

Carol Ann Zinn, the developer of Aydan Court, presented a PowerPoint presentation outlining the applications being considered. She highlighted changes that had been made to the proposal since the concept plan presentation in 2007, and said the development had been reduced by one-third in size. She stated they were very aware that Aydan Court is located next to the Upper Little Creek Wildlife impoundment, and they plan to move well beyond Chapel Hill's already stringent stormwater management standards. She said they intend to make Aydan Court a model for stormwater management, and for organic landscaping practices within the watershed that flows into the impoundment. She said Marty Linn from Jeff David architects will later illustrate

this point.

Ms. Zinn pointed out benefits to Chapel Hill. She said although located in Durham County on the NC 54 corridor, it will provide a handsome and dignified entry for the Town. She said "empty nesters" love Chapel Hill; they benefit from their proximity to world-class medical facilities, and university amenities; Aydan Court is targeted to "empty nesters".

Marty Linn reviewed the topography of the property, and said it slopes to the east toward the Upper Little Creek Wildlife Impoundment. He said they have taken advantage of the slopes by placing the buildings perpendicular, with underground parking. He said placement of the buildings helps to delineate smaller water shed areas that can be managed individually to reduce runoff intensities. He said terracing, and leveling of the site with courtyards, stairways and retaining walls were other features that will help constrain runoff velocities, and mitigate erosion potential. He said they also plan layers of landscape plantings, and collection of rain water.

Mr. Linn reviewed the existing intermittent stream, and said access to this site requires crossing the stream, and two RCD (Resource Conservation Districts) areas. He said no construction was proposed in the RCD areas except for the crossing of the stream. He noted that a pipe arched culvert would be used under the bridge.

Mr. Linn said that the Planning Board's comments noted areas of concern. He said that 100% was not realistic. He reviewed their stormwater plan which exceeds the Chapel Hill standards.

Earl Lewellyn, traffic engineer with John R. McAdams Co., spoke on the traffic and transportation issues. He said the TIA (Traffic Impact Analysis) was prepared by the Town's independent consultant, and has since been reviewed by the NC DOT, the Town staff, and himself. He said Aydan Court has agreed with all the improvements requested by the NCDOT, and the Town, and will have negligible traffic impact on the area.

Scott Radway, planning and zoning consultant, spoke regarding the rezoning aspects, and said they would need to make findings for the Special Use Permit. He said this was a medium density development; they were proposing the R-SS-C district, instead of the R-4, because the R-4 does not provide sufficient square footage to do contemporary design, or account for the fact that garages with additional space on a garage floor can be tucked underneath buildings. He reviewed the land use plan elements, and also the transit plan.

The Council requested that Mr. Radway clarify the source and date of his data.

He said the staff had given it to him, so could they direct their request to them. He said it was in a PowerPoint presentation sometime in June 2007.

Mr. Radway spoke about the wildlife hunting area, and described the regulations regarding the proximity to residential developments.

Mr. Radway responded to several questions raised by the Council.

Mike Brough asked Mr. Radway to explain how the Comprehensive Plan came to be designated as open space.

Mr. Radway said as he remembered from when the Comprehensive Plan was prepared, it was believed that the entire property, UNC and Aydan Court were one property; which was not the case. He said by identifying it as park and open space it gave the Town perhaps more of a hand in negotiating with the University. He said the University did not, and does not own the property, but at the time they thought they did. He said they believed that this parcel got tainted by association by wrongful knowledge.

Mayor Foy said to his recollection, UNC did not own that property at the time of the Comprehensive Plan; in fact, the Town tried to inquire about ownership of both of those properties.

Ms. Zinn said at the time of the closing when she bought the land, the Lloyd family explained to her the history of the property. She said the Lloyds gave the UNC Foundation property to the University many years ago, and the people that she met with had been given a small piece out of the whole portion. She said it would be good to research, but that is what she had been told two years ago.

Council Member Harrison said he did not believe that it was in University ownership until this decade; but it was something the staff should clarify.

Bill Tate, appraiser, said Ms. Zinn requested his opinion of how her development would impact values of property around her land. He said he believed Aydan Court meets the criteria needed, and would be a plus to the area.

Michael Collins, Planning Board representative, pointed out that the Planning Board recommends denial of the project. He said their primary concern was that it did not meet the Comprehensive Plan, with regard to the environmental impact. He said they believe there were no benefits associated with it that could outweigh the almost certain environmental damage to the impoundment. He said they also expressed doubt that the development would serve the mass transit goals, as the residents would mainly belong to an older demographic, who would be less likely to use mass transit.

Richard Hamilton, said he had been a wildlife biologist for 37 years, currently with the North Carolina Wildlife Federation, whose sole purpose was to protect fish, and wildlife habitats. He said he was quite familiar with the Aydan Court development, as they had been following it for a long time, due to their close association with the Wildlife Resources Commission. He said they would accept the recommendation of the Planning Board, as this was a very valuable, and sensitive area; and do not support rezoning this property for multi-family residential.

LeAnne Silver, real estate agent, said she had worked as an on-site broker in Meadowmont. She said there was a need for this type of lifestyle; Aydan Court will meet the demand for buyers looking to scale down from a larger home, and yet retain all the elegance of their former home. She said she was in support of the project.

Loren Hintz, said he was here to oppose the change from R-1 to R-SS-C; there was a great need to protect the wildlife habitat. He said as a biologist trained in ecology, he was concerned about the destruction of habitat.

George Cianciolo, read text from a handout he had given the Council that reaffirmed what Mr. Collins had said about the reasons the Planning Board had denied the project.

Jacquelyn Wallace, with the NC Wildlife Resource Commission said she had no statement, but was there to answer any questions they might have about the material she had submitted.

Council Member Kleinschmidt restated the question he had asked earlier about the hunting safety buffer.

Ms. Wallace said the regulation is that you are not to discharge a firearm from 150 yards of a residence, but their recommendation state-wide, was that permanently inhabited residences not be established within 150 yards external to a game land.

Council Member Kleinschmidt asked what kind of enforcement measures do they recommend be put in place in such situations.

Ms. Wallace said they do not have the ability to enforce anything like that; they don't govern land use; that would be up to the local governments.

Council Member Harrison asked what was the implication for the aquatic animals when that land was flooded more than usual.

Ms. Wallace said the impoundment did flood, and the management will flood it on a periodic basis like every five years, so any animals that are denning in the slopes will have to move elsewhere for habitat.

Council Member Czajkowski asked if they were able to keep any statistics on the amount of hunting activity.

Ms. Wallace replied that they do not have the staff capacity to collect that type of information, but they do know it is used.

Council Member Czajkowski said the number of people that use the area should have some relevance; what are the restrictions for shooting near the highway.

Ms. Wallace said she was not sure, and would need to look it up. She said bow hunting is allowed up to the property line.

Del Snow said she believes that rezoning of this property is totally inappropriate for a number of reasons, and explained them. She said it is currently labeled a park and open space for good reason.

Julie McClintock, said on behalf of NRG, they urge the Council to reject both applications before them. She said this development will have a negative impact on the sensitive land in which it is located.

Robert Dowling, OCHLT, wanted to comment on the affordable housing aspects of the project. He said the Council is well aware of his current concerns with the amount of houses, also of his concerns for the need of funding that will be needed to make the Land Trust successful in the future. He said they may be less aware of current concerns with the impacts of the current economic conditions. He said mortgage rates have gone higher, and as Council knows higher interest rates means less affordability, and the need for more subsidy. He said he supported the applicant's housing plan; he doesn't think they need eight more condos; four would be fine, and the payment in lieu for the remaining units.

Mayor pro tem Ward asked what impact the HOA dues had.

Mr. Dowling explained how the assessments, and transfer fees were handled.

John Kent said he spoke at the Planning Board, and his advice as one who cares about the local environment, was to protect the Jordan game lands. He said he had asked the National Heritage Program if they would comment on the Aydan Court proposal, and he read it into the record. He said they strongly urge current zoning for this site be retained.

Jon Dehart, 102 Larkspur Way, expressed support of the Aydan Court neighborhood. He said it is his experience as a mortgage broker, that there are a wide variety of home buyers, and not everyone wants the big house with the yard; there are a lot of people that like the higher density housing. He said he thought it supports the Town's plan for use of public transportation, and he hopes the Council can support this.

Mike Brough, legal council for the applicant, said the issue was not whether to rezone this property from a status of no development, to a status that would allow development; this property was already zoned for residential use at three units per acre. He said, it is true that it is designated on the Comprehensive Plan as being open space, but they all know that it is not realistic to think that it can stay that way as long as the property stays in private hands; so the question was not whether the Council wants to see the property developed, but how the property will be developed; and what was the more environmentally sensitive way. He said this applicant has already demonstrated that she plans to go well beyond the existing ordinances with respect to protection of the environment. He said the question was whether this development can, and will be, more environmentally sensitive than alternative forms of development, some of which they have seen. He said the single family development cannot have nearly the central management,

cannot have nearly the type of programs with respect to fertilizer maintenance, and management programs. He said the natural heritage area is a plan just like their comprehensive plan; a state wish list; there are many, many sites listed on the natural heritage areas that are desired, but until the state gets the funds to acquire them, they remain just that, just like the plan they have. He said the important thing is the zoning that can be done, and the preferable development that could be done in this situation.

Council Member Strom, directed his question to the staff; he said he wanted to know what type of development they could expect under the current zoning for this type of property. He said in exchange for rezoning they were getting certain things from the applicant; and he wanted to know what things would not be required under the existing zone. He said he was really concerned about the steep slopes, and wanted to know how they would be treated under the R-1 zoning. He said he would like to know what the benefits might be to the rezoning versus forcing someone to come in under R-1.

Council Member Harrison asked how many units R-1 will allow, and how much flexibility can they get out of the floor space. He asked if there is anything that would prevent an applicant from doing an R-1 cluster.

Mayor Foy said he believed it was okay to get answers to their questions in writing at their next meeting.

Mayor pro tem Ward said he thought it was important for them to get as clear a picture as they could of what the applicant was proposing, compared to what R-1 zoning would typically put there. He said as the applicant's attorney stated, because it will not be left in the current state, unfortunately; it is not an option that is easy to see their way too. He said in reference to trying to keep the stormwater on site, he said the same goals needed to be accomplished during construction. He asked how can the Town be confident that the stormwater plan will work into the future; what things can be put into place to ensure that it was being maintained. Mayor pro tem Ward asked what were the enforcement mechanisms of the organic fertilizer, and recycling programs; how will they keep the work ongoing, and was there a way to get this community active in the issues created by this project.

Council Member Czajkowski said he would like to be clear on the land area, and floor area allowable under the existing zoning. He said he would also like to understand the 46 percent impervious surface clearly, and wanted to know how the stormwater requirements would compare under R-1 versus the current proposal. He said he would be interested in the maximum distance a person would have to walk from a residence in the proposed project to a bus stop; and compare it with the distance someone would have to walk at the Saint Thomas More project to get to the bus stop.

Council Member Easthom said she appreciated the map with the North Carolina Wildlife Commission material, but asked the staff for one with more detail regarding what the applicant plans to do with the vegetative buffer, what is suggested by the Wildlife Commission; and what is allowable by law in terms of firearm discharge.

Mayor Foy said he wanted to make a few observations, and they know Ms. Zinn can do good developments because she has. He said he was concerned about juxtaposing this proposal with R-1 because maybe neither one is the right one for this property. He says he is concerned with all the modifications, and is not sure that this is the best way to use this property. He said it seems like this is just too much. He said when he adds up all of these factors, he cannot say that he supports it.

Ms. Zinn said they had explored the 17-lot neighborhood in anticipation of this meeting, and she believed it did far more damage to the wildlife area than the current proposal. She said the kind of controls that they can provide over the stormwater, the way that the management is part of what the people can actually see, the micromanagement of the environment so that people become aware immediately, that this is an environment that relates to the adjacent wildlife area, and of which they were caretakers. She said she did not know what else they can do; and asked them what they can do to address these concerns.

Mayor Foy said he was not so concerned about the number of units, as much as the land disturbance, and steep slope disturbance at this really intense level.

Ms. Zinn said if they look at the 17-lot layout which is what they calculated, this is their alternative. She said those footprints are those of houses they could build, and there will be just the same amount of disturbance to steep slopes without the controls they were offering them.

Council Member Strom reminded her that no one was making any decisions tonight; he just believed it was the Council's obligation to understand what the underlying use of right zoning is versus what she is asking to change. He said they were just gathering information; and it may be that they determine that the rezoning is better; that's the process they were in right now.

Council Member Harrison asked Ms. Culpepper if the intent of the lower density was 17 lots or units. He said he is talking about the gross density that R-1 allows, not the lots.

Ms. Culpepper said they will come back with a few different scenarios.

Mayor pro tem Ward said he wanted to know, to what degree can the Town direct the applicant to do one project, rather than the other, or were all the scenarios that they bring ones that the applicant can pick.

Ms. Culpepper said they will describe the regulator context as well.

Council Member Greene asked if R-1 and R-SS-C were the only two alternatives. She said she was bothered by the degree that they were departing from the steep slopes regulation; and was there a way to do a development that they could be happy with, without doing so much damage to the steep slopes.

Mayor pro tem Ward wanted to know the reason for the regulations for the steep slopes; he

believed that it was for sediment control. He said if that was the issue, it seems like the applicant had addressed those concerns, at least in word, by the plans they were committing to.

MAYOR PRO TEM JIM WARD MOVED, SECONDED BY COUNCIL MEMBER BILL STROM, TO RECESS THE PUBLIC HEARING TO DECEMBER 8, 2008 AND REFER THE COMMENTS TO THE MANAGER AND ATTORNEY. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

2. **Public Hearing: Land Use Management Ordinance Text Amendment -Sustainability Committee Liaison to Community Design Commission**

Ms. Culpepper said the text amendment would allow for the appointment of a liaison from the new Sustainability Committee to the Community Design Commission. When the Council created the Sustainability Committee, they indicated a member would sit with the Community Design Commission, and they were there tonight to put that in place, she said. They recommended the enactment of the text amendment, she added.

COUNCIL MEMBER BILL STROM MOVED, SECONDED BY MAYOR PRO TEM JIM WARD, TO RECESS THE PUBLIC HEARING TO NOVEMBER 10, 2008. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

3. **Development of the 2011-2017 Transportation Priority List. (R-1)**

David Bonk introduced the item, and said he was there tonight to get Council approval of the 2011-2017 Transportation Priority List.

Mayor Foy said he wanted to remind the Council that this was an action item for tonight, because it was referred from their last business meeting.

Council Member Strom said he would like them to consider moving that section of Morgan Creek Greenway Phase Two into the top five or six slots. He said they had made a huge investment acquiring the land, and it was an important project. He said his recommendation was to move it to # 6.

Council Member Greene said that bumps down the Fordham bridge project. She said let's move Morgan Creek to #7.

Mayor Foy said let's move it to #8.

Council Member Strom said that would be fine.

Council Member Harrison asked Mr. Bonk if the TIP (Transportation Improvement Program) will actually pay for sidewalks.

Mr. Bonk said hopefully, and the other benefit of this was that they can then use the existence of these projects in the regional TIP list to guide their decision making, and requesting funding for some other sources.

Council Member Harrison asked if it all gets ranked when it goes to the TAC (Transportation Advisory Committee).

Mr. Bonk said, yes, the projects all get pulled apart, and put into categories by their type: sidewalk, bicycle, transit; and they will then be ranked regionally using the criteria that the MPO (Metropolitan Planning Organization) has evolved over the past several years.

Mayor Foy asked about Cleland Drive/Burning Tree Drive. He said he was concerned that the people say they want sidewalks, but, when they find out that it will be in their front yards, it may be different. He asked if there was a mechanism to broach this with the community.

Mr. Bonk said yes, they can engage the neighborhood; maybe survey the neighbors, have a neighborhood meeting, and give them some options.

Mayor pro tem Ward said he believed they would get a lot more value out of addressing #7, Town-wide Intersection Improvements, in terms of safety, and how it was going to impact the safety of pedestrians and bicyclists; and he would like to move #7 and #8 up to #4 and #5, and move #4 and #5 down to #7 and #8.

Council Member Easthom said she would like to stick up for # 4, Homestead Road; frequently when she went down the road to the women's shelter, she saw women with their little kids in strollers on Homestead Road trying to get to a bus stop. She said there was no sidewalk on the south side of the street.

Mayor Foy asked if they could compromise and move #7, Town-wide Intersection Improvements up to #5, and Seawell School Road down to #8, and leave Homestead Road alone.

Mayor pro tem Ward asked what was the reality of the funding issue.

Mayor Foy said the reality was that it is important to be on the list in case money crops up, and every once in a while it magically appears, but it's not like they were splitting up a pot of money.

Mayor pro tem Ward said he believed this was a step in the right direction, so he was happy.

Council Member Harrison said as a follow up on the 15 intersections; some of these were getting improved over time. He told the staff there may need to be a progress report on actually what they have gotten done.

COUNCIL MEMBER BILL STROM MOVED, SECONDED BY COUNCIL MEMBER MARK KLEINSCHMIDT, TO ADOPT R-1 AS AMENDED. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

[A RESOLUTION APPROVING THE 2011-2017 CHAPEL HILL TRANSPORTATION PRIORITY LIST \(2008-10-20/R-1\)](#)

The meeting adjourned at 10:28 p.m.