

**MINUTES OF A CLOSED SESSION
OF THE CHAPEL HILL TOWN COUNCIL
MONDAY, SEPTEMBER 9, 2002, AT 10:41 P.M.**

Mayor Kevin Foy called the meeting to order at 10:41 p.m.

Council members present were Flicka Bateman, Pat Evans, Ed Harrison, Mark Kleinschmidt, Bill Strom, Dorothy Verkerk, Jim Ward, and Edith Wiggins.

Staff members present were Acting Town Manager Sonna Loewenthal, Assistant Town Manager Florentine Miller, Town Attorney Ralph Karpinos, Public Works Director Bruce Heflin, Public Works Urban Forester Curtis Brooks, Planning Director Roger Waldon, and Town Clerk Joyce Smith.

Ms. Loewenthal stated that there were three items for discussion this evening: the acquisition of additional property at the proposed public works site; a Board of Adjustment case; and, the purchase or non-purchase of the McMasters Street property.

1. Acquisition Of Additional Property at the Proposed Public Works Site

Ms. Loewenthal said that in 2006 the Town would lose its lease on the current Transportation and Public Works sites, and the Town has been searching for an alternate site. She said they were able to locate only one area, on Eubanks Road adjacent to the UPS property and the Town's park and ride lot. Ms. Loewenthal said the staff believes this property will have room for both the Transportation and Public Works facilities.

Ms. Loewenthal noted some property had been acquired in 2001 and 2002, and the Town had to purchase options from developers. She stated that the Everett family, owner of 28 acres, has been talking with us since 1999. In the last year, she said, we negotiated a proposal to purchase this property including a utility easement, which adjoins the Town's land on Eubanks Road. Ms. Loewenthal said the Town already owns 54 acres adjacent to this property.

Council Member Bateman asked how much would be used for buffer, and how much for actual facilities. Ms. Loewenthal answered that if the Town purchases the land in question, the buffer would be 100 feet along I-40, and 50 feet along the outside acres, plus 150 feet in the RCD. Council Member Bateman questioned the need for so much acreage. Ms. Loewenthal indicated the Town was in the process of hiring a consultant to study these types of questions.

Ms. Loewenthal stated the staff recommended purchasing 13.3 acres for \$220,000. If this is purchased, she said, funds are available in the Transportation budget now accumulated for a local match of 10%.

Mayor pro tem Evans asked if the property had been surveyed. Ms. Loewenthal answered yes, and an environmental assessment had been conducted. She added that the acreage is \$16,750 per acre, even though the appraisal set the value at \$9,000 to \$10,000. The Town had already

purchased property at a much higher rate, she stated, and that was why the owners refused to sell for a lower price. Ms. Loewenthal noted that the bottom line is that the Town needs the property.

Ms. Loewenthal said the staff is asking for authorization to sign an agreement to purchase this property.

Council Member Ward asked for specific figures on how the property will be used. Curtis Brooks gave specifics about use of site. He said to build the two facilities, we would need considerably more space than the current site because of impervious surface. Mr. Brooks noted we will need to spread out and create a system of stormwater ponds, and there is the issue of the Urban Services Boundary which dissects the property. That limits the use of the northern portion of the site, he said. Mr. Brooks said the larger facilities, for buses for instance, would have to be in the southern portion of the site, noting that that section has 15.5 acres that is developable, due to buffers. He said we would need to build about a 5,000 square foot Public Works facility, adding that this would meet the needs of 2006.

Council Member Ward asked about the use of the northern part of the site. Mr. Brooks said if we do not build structures, we could use it for such uses as bulk storage, such as for gravel, storm debris, or a tow lot for impounded cars, and could be accommodated as urban services.

Mr. Loewenthal emphasized that the projects are preliminary, and we do expect to have to expand the Public Works and Transportation facilities.

Mayor Foy asked if the Council wished to authorize the purchase of the additional site.

MAYOR PRO TEM EVANS MOVED TO PROCEED WITH THE PURCHASE, SECONDED BY COUNCIL MEMBER WARD.

Council Member Ward asked Ms. Loewenthal where were we in discussions with the University about the current site. Ms. Loewenthal answered that there was another meeting on Friday of this week. Council Member Ward said there was a possibility to share space, and we should pursue that.

THE MOTION WAS ADOPTED UNANIMOUSLY (9-0).

2. Board of Adjustment Case

Mr. Waldon noted that the property in question was located across from the BP station in the old bank building at the corner of Estes and Franklin Streets. He said that under the terms of the old 1977 SUP, the staff determined the use was limited to a bank. That was challenged and taken to court, he said.

Mr. Waldon noted that, based on the Court's decision, the use could be for any business with a drive through window, not just a bank. The case was referred back to the Board of Adjustment, he said, and it concluded that the use of that SUP was ceased. Mr. Waldon stated that the case

went back to court, and this week the court ruled to reverse Board of Adjustment ruling, allowing any type of business with a drive through window. He said the court's determination is being drafted into an order, and the Town is obligated to respond to the draft order. Mr. Waldon said we have the option to try to negotiate the language. He said our concerns were based on the first ruling which is that the SUP was issued for a drive-in business, no matter what type.

Mr. Waldon said that in anticipation of a court appearance, we had attempted to work with the owner. He noted that Caribou Coffee is scheduled to use that space. Mr. Waldon said we asked that they close off the drive-in window, and to close the curb cut closest to Franklin Street. The day before the hearing, he said, we authorized a Zoning Compliance Permit (ZCP). Mr. Karpinos added that the ZCP is now inconsistent with what the court decided, so we should void the ZCP as nonconforming. Now, he said, the judge says the SUP is valid, so the ZCP no longer conforms to that SUP.

Council Member Harrison asked what would we gain if we win the appeal. Mr. Karpinos said our concern is the determination that the court reached that the SUP for the drive-in business in 1977 would allow any drive through business. He said we would argue that the SUP was for a financial institution only. What we want to do, he said, is to try to negotiate into the order that the SUP clearly limits access from Franklin Street into the property, which would reroute travel to the drive-in window. Mr. Karpinos said our position is that any modification would require a modification to the SUP. Mr. Karpinos said if we sign the order, we give up our right to appeal. Mr. Karpinos said if the order is narrow enough so that it does not leave the owner wide open to change the use to a fast food restaurant, for instance, then we would not be as concerned as a broadly written order that would lead to other uses.

Council Member Harrison asked Mr. Waldon if our goal was to not have to go through a SUP modification process. Mr. Waldon answered that only financial institutions have received permission for drive through windows, according to the Comprehensive Plan, for the past twenty years.

Council Member Kleinschmidt said we should negotiate to remove the drive through, and if we fail, then we should appeal. Mr. Karpinos said our concern is that staff concluded that a change in the use would require a modification of the permit, since the 1977 SUP was for a bank. Also, he said, our appeal would be due to the cessation of use.

Council Member Ward asked for the cost. Mr. Karpinos said legal expenses would be about \$2,000. But, he said, he would like to look at that more closely to make sure there was no charges made for damages. Mr. Karpinos suggested waiting until we receive the draft order, then negotiate for language that would address our concerns.

Mayor Foy asked if it was the sense of the Council that we get the order narrowly tailored, and if it seems suitable then we live with it, and if not, we appeal.

Council Member Strom supported appealing the ruling.

Mayor pro tem Evans asked if we reach an agreement and the owners agree to close the drive through window, and then the business goes out of business, would the drive through remain closed with the new occupants. Mr. Karpinos answered that someone else could try to reopen it and we would be in the same position but that the specific facts would be different. So, he said, we want to try to get the order narrowly drawn to prevent such an event.

The Council agreed by consensus with Mr. Karpinos' suggestion.

3. Caldwell/Wadsworth property on McMasters Street

Mr. Karpinos said he believes the owners think that the Council's previous action authorized the purchase of their property, but what the Council did was authorize a study. He said the owners agreed to allow the Town to survey the property, and then changed their minds. Mr. Karpinos said the owners had applied for a variance, which was denied. He said we had requested a survey to see if the property could be reused.

Mayor Foy said at this point they do not want to sell it to us, so we can take it or not. Mr. Karpinos said that this property had been a problem in the Northside neighborhood for some time, and we need to know if it is of such concern that the Council would want to purchase it so it could be demolished.

Mayor Foy said he believed that the neighborhood would object to the Town's taking it by eminent domain. Mr. Karpinos said he did not believe we could be business with the owners, stated that they were difficult to negotiate with, the property has been under construction for ten years, we have been to court, and Mr. Caldwell, one of the owners, is very difficult to work with. Mr. Karpinos said it is likely we would want to demolish the structure if we acquired it.

Mayor pro tem Evans asked is we could require that it be boarded up. Mr. Karpinos said it was still under construction, even though Mr. Caldwell did not receive his variance.

Council Member Ward asked if a Certificate of Occupancy (CO) had been issued. Mr. Karpinos answered no, because there was a question about the survey lines, noting that was why the Town had asked for a survey. He added that as long as some kind of work was done, then Mr. Caldwell could continue to renew his building permit every six months.

Mayor Foy said we could purchase the property, which he believed no one wanted to do, or we could take the property through eminent domain, which he believed the neighborhood would not approve. He said the Town would have to pay fair market value, which would be set by a jury, and may not be the actual value.

Mr. Karpinos said the owners are asking for \$420,000 for the property. He said that Mr. Caldwell is under the impression that the Council stated its intent to purchase the property, and if that is not what the Council wants to do, then we need to clarify our position.

Council Member Ward said he wanted to know if the structure is legally placed on the lot, and what its actual value is based on that finding.

Council Member Wiggins said we should also decide what we would want to use it for if we purchased it.

Council Member Strom asked if the Board of Adjustment could make it eligible for a CO, so that theoretically the owners could sell the duplexes on the private market. Mr. Karpinos answered that there is a dispute as to where the property line is, and we have evidence to suggest that it is not correct. But, he said, if the owners come in with a survey, we could issue a CO and they could have it occupied. Mr. Karpinos said there is a question as to whether Mr. Caldwell can even finish the construction of the property, and there is evidence that suggests he is not moving towards completion.

Council Member Strom said if Mr. Caldwell gets a CO and completes the construction, the problem goes away.

Mayor pro tem Evans asked how many bedrooms were in the structure. Mr. Karpinos said it is a duplex with 3 bedrooms on each side, with several other large rooms.

Council Member Bateman said she believes that if the Town has clearly written out the steps that, 1) we survey it, and 2) they accept our offer, then if they refuse we walk away. Ms. Loewenthal stated it needs to be said that these two steps are the only two we will consider. She added that we would determine a price after a survey, then get an appraisal. Ms. Loewenthal said that during a recent meeting with both owners, we were very clear about exactly what was needed, and they agreed. She said that two hours after the meeting, they called and refused the survey. Council Member Bateman suggested one more try, and if we fail, then no further discussions would take place, and we would walk away.

The Council agreed by consensus that the Attorney proceed as Council Member Bateman suggested.

The Closed Session adjourned at 11:44 p.m.