

MINUTES OF A CONTINUED MEETING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
THURSDAY, AUGUST 25, 1983, 4:00 P.M.

Mayor Joseph L. Nassif reconvened the meeting. Councilmembers present were:

Marilyn Boulton
Winston Broadfoot
Jonathan Howes
Beverly Kawalec
David Pasquini
R. D. Smith
Joseph Straley
Jim Wallace

Also present were Town Manager, David R. Taylor; Assistant Town Manager, Sonna Loewenthal; and Town Attorney, Grainger Barrett.

Resolution Approving a Modified Special Use Permit for Laurel Hill V

Mayor Nassif stated that this item was continued from the Monday, August 22, 1983, Regular Meeting of the Town Council.

Mayor Nassif stated that on August 22, 1983, the Council voted to go into Executive Session at the beginning of the Regular Meeting. Subsequently, there had been a question among Councilmembers re whether or not to return to Executive Session or to continue the public session.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER KAWALEC, TO ADJOURN TO EXECUTIVE SESSION.

Councilmember Smith questioned the reason for the motion, since this meeting was a continuation of the Monday, August 22, 1983, meeting.

Councilmember Boulton explained that the August 22 Executive Session had not been completed and it had been decided in the Executive Session that this item would be continued.

Councilmember Howes felt it should be made clear to those present that the August 22 Executive Session had considered only the litigation aspects of the matter, and not the substance of the matter.

Mr. Barrett stated that there was no new information re the litigation.

Councilmember Wallace felt that nothing would be gained by going into Executive Session.

Councilmember Straley felt that citizens attending this meeting should be given the opportunity to be heard. Mayor Nassif responded that unless there was a motion to suspend the rules, he would have to rule that petition time was over, since this meeting was a continuation of the August 22 meeting.

Councilmember Broadfoot stated that he did not feel that there was a need for an Executive Session and would oppose the motion.

Councilmember Howes stated that he wished to hear the Mayor's comments re a need for an Executive Session, since the Mayor had been absent from the August 22 Executive Session. Mayor Nassif responded that he had been briefed on the discussion that took place in the Executive Session and was prepared to vote.

Councilmember Wallace stated that he opposed the motion because it would not give those citizens attending this meeting a chance to speak prior to the Council's reaching a consensus.

THE MOTION FAILED TO PASS WITH A VOTE OF 2 TO 7 WITH COUNCILMEMBERS STRALEY, AND BOULTON SUPPORTING, AND COUNCILMEMBERS WALLACE, KAWALEC, PASQUINI, BROADFOOT, HOWES, SMITH, AND MAYOR NASSIF OPPOSING.

Mr. Barrett advised that any comments re reconvening a public hearing or re the proposed settlement would be appropriate; the Council could not, however, take evidence or hear comments directed to the substance of the Special Use Permit.

COUNCILMEMBER PASQUINI MOVED, SECONDED BY COUNCILMEMBER STRALEY, THAT COUNCIL PROCEDURES BE SUSPENDED TO ALLOW CITIZENS TO SPEAK AT THIS MEETING RE POSSIBLE SETTLEMENT OR RECONVENING A PUBLIC HEARING.

THE MOTION CARRIED UNANIMOUSLY.

Mr. Chuck Rupkalvis, President of the Parker Road/Laurel Hill Neighborhood Association, submitted a statement supporting the proposed resolution and agreement for the provision of permanent access via Bayberry and Parker Roads. He did express concern, however, re the flow of traffic onto Azalea Drive and requested that the Council take steps at the earliest opportunity to facilitate construction of Bayberry Drive westward to Mt. Carmel Church Road. Mr. Rupkalvis added that the Association would favor a public hearing if future development of the Hunt tract were considered.

Mr. Barry Lentz, representing the Morgan Creek Hills and Farrington Hills Homeowners' Association, spoke against the extension of Bayberry Drive across the Arboretum. Mr. Lentz stated that the 1981 adoption of the Preliminary Sketch for Laurel Hill IV required that "any extension of Bayberry across the Arboretum be temporary, and be closed as soon as an alternative access became available." He expressed concern that a "temporary" connection might become permanent.

Dr. Cecil Sheps, a citizen, expressed concern for the need for a Thoroughfare Plan to address traffic concerns, with an understanding of the road conditions of this area.

No other citizens requested to speak.

Councilmember Wallace felt that the Thoroughfare Plan was "intimately related to the road system in the whole area." He felt there was a need to review the plans for the entire Laurel Hills development simultaneously and that enough information had been heard to justify a public hearing.

COUNCILMEMBER WALLACE MOVED, SECONDED BY COUNCILMEMBER BROADFOOT, ADOPTION OF RESOLUTION 83-R-113a (to reconvene the public hearing).

Councilmember Boulton questioned Mr. Jennings if the entire 200 acres could be considered, if only a portion was being considered for development. Mr. Jennings responded that there was no way to compel a developer to show an entire tract of land.

Councilmember Broadfoot stated that he felt that there was a need to proceed "in good faith to reach a solution with the real parties at interest," by holding a public hearing.

Councilmember Howes felt that a second public hearing would be an honest effort on the part of the Council to receive sufficient additional information to make a judgment, stating that this was "anextraordinarily complicated matter."

Mayor Nassif stated that this issue had been before the Council many times. He stated that he had not been able to find any record where the Council had considered "new information" at any of these public hearings. He considered the request to consider the revised traffic analysis as "intimidation and unconstitutional." Mayor Nassif stated that the Council was here to uphold the law and decide on a planning matter, and should not arbitrarily drag cases out if there was a way to reach a solution. Citizens had stated that they were not opposed to the proposal, but desired a solution to the problems in future considerations. Mayor Nassif stated that the proposed resolution offered a solution to all the concerns previously addressed by the Council that he could recall.

Councilmember Smith concurred with Mayor Nassif. Citizens had not opposed the proposed development, but requested a satisfactory and realistic plan of street networks prior to the onset of developments. The lack of a Thoroughfare Plan was not the reason that the street networks were not satisfactory. He felt that the town should "push the State" to do road improvements necessary in this area. Councilmember Smith also stated that the 30 acres of land in this proposal could not be tied in with the remaining 200 acres in reaching a decision.

Councilmember Broadfoot felt that a decision should not be connected with or delayed because of the Thoroughfare Plan. A time limit for a decision should be set.

Councilmember Broadfoot stated that "Mr. Messer has never consummated the purchase of Laurel Hill V, nor has he paid any monies toward it. The Contract of Purchase appears to be wholly non-binding on both parties to it at this point. Mr. William Hunt has never relinquished control or title." Councilmember Broadfoot continued "If these facts are so, Mr. Messer has no standing with us or in court." He stated that it was "negligence not to get this information up-front on everybody who comes in and says they are an applicant."

Councilmember Broadfoot also stated that he would like to hear full discussion of "the possibility that we might change the present viewpoint about cutting Bayberry Road across the Hunt Arboretum, even temporarily."

Mayor Nassif responded to Councilmember Broadfoot by directing questions to Mr. Taylor. Mayor Nassif asked Mr. Taylor if the Special Use applications were valid. Mr. Taylor responded that they were valid.

Mr. Barret responded to further questioning from Mayor Nasif that Mr. Messer presently had the right to build Bayberry because of the approved plat for Laurel Hill IV. State law stated that an applicant had to be an owner or a contract purchases unless waived by the local government. Mr. Barrett stated that "Mr. Messer is a contract purchaser. He has not consummated the contract; he has not put money towards it, nor acquired title, but he is a contract purchaser."

Mr. Barrett continued, "The important point, however, is that the Superior Court of Orange County has ordered this Board to issue a Special Use Permit to Mr. Messer, and it did so, pursuant to that order."

Councilmember Broadfoot asked Mr. Barrett if he felt that the Town "might have been able to get the case thrown out of court if, at the...beginning...we had claimed he was not a party at interest."

Mr. Barrett responded that "given all the facts we know today, there would have been a resonable chance of convincing the judge of that...."

Councilmember Broadfoot stated that "it makes some sense to get this information into our files on each case...on each applicant."

THE MOTION (to approve resolution 113a, to call a public hearing) FAILED TO PASS 4 TO 5 WITH COUNCILMEMBERS WALLACE, BROADFOOT, HOWES, AND STRALEY SUPPORTING, AND COUNCILMEMBERS KAWALEC, PASQUINI, BOULTON, SMITH, AND MAYOR NASSIF OPPOSING.

COUNCILMEMBER PASQUINI MOVED, SECONDED BY COUNCILMEMBER BOULTON, ADOPTION OF RESOLUTION 113c.

Mr. Barrett explained to Councilmember Pasquini that there was an amendment to the Agreement that conditions of the resolution and its Attachment would be binding on any successor to either the land or to the Special Use Permit.

COUNCILMEMBER WALLACE MOVED THE PREVIOUS QUESTION. COUNCILMEMBER BOULTON SECONDED THE MOTION.

VOTE TO TERMINATE DEBATE FAILED 3 TO 6 WITH COUNCILMEMBERS WALLACE, BOULTON, AND SMITH SUPPORTING, AND COUNCILMEMBES KAWALEC, PASQUINI, BROADFOOT, HOWES, STRALEY, AND MAYOR NASSIF OPPOSING.

Councilmember Broadfoot asked if Bayberry Drive was permanent or temporary, under this Agreement.

Mr. Barrett responded that the stipulations did not affect the Laurel Hill IV Preliminary Plat approval which stated that that access would be "temporary until two other means of access other than the connection are available." He stated that the language re Bayberry Drive referred to where it terminated at Arboretum across the Arboretum Drive itself.

Councilmember Wallace called the question.

VOTE TO ADOPT THE FOLLOWING RESOLUTION CARRIED 7 TO 2 WITH COUNCILMEMBERS BOULTON, HOWES, KAWALEC, PASQUINI, SMITH, STRALEY, AND MAYOR NASSIF SUPPORTING, AND COUNCILMEMBERS WALLACE, AND BROADFOOT OPPOSING:

A RESOLUTION APPROVING A MODIFIED SPECIAL USE PERMIT FOR LAUREL HILL V
(83-R-113c)

BE IT RESOLVED by the Town Council of the Town of Chapel Hill that it hereby approves a Modified Special Use Permit, in the form attached hereto as "Attachment A" and subject to the stipulations set forth herein for the Laurel Hill V development pursuant to the plans submitted to and received by the Town, February 22, 1983; provided, however, that such approval, and the effectiveness and validity of this resolution, shall be expressly conditioned upon the subject to the fulfillment and implementation by August 30, 1983, of that certain Memorandum of Settlement Agreement, between the Town and Roger Messer, substantially in the form as presented to this meeting by Counsel for the Town and if such Memorandum is not fulfilled and implemented by August 30, 1983, then and in such event the above approval and this resolution shall automatically be null and void and of no further force and effect, without further action by this Council; and

BE IT FURTHER RESOLVED, that the form of Memorandum of Settlement Agreement between the Town and Roger Messer, as presented to this meeting by Counsel for the Town, is approved, provided said Agreement is amended to make it specifically binding on successors and assigns of Mr. Messer with respect to both the Special Use Permit hereby modified and the land comprising the Laurel Hill V tract; and

BE IT FURTHER RESOLVED, that this Council authorizes the Manager to execute said Memorandum of Settlement Agreement, as amended as herein provided, on behalf of the Town; and said Memorandum shall be retained with the permanent records of this meeting.

This the 25th day of August, 1983.

(The Memorandum of Settlement Agreement, entered into by Roger D. Messer and the Town of Chapel Hill on August 29, 1983, is hereby entered into the permanent record of this meeting:)

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

MEMORANDUM OF SETTLEMENT
AGREEMENT

THIS MEMORANDUM OF SETTLEMENT AGREEMENT is entered into this the 29th day of August, 1983, by, among, and on behalf of ROGER D. MESSER and THE TOWN OF CHAPEL HILL, a municipal corporation organized and existing under the laws of the State of North Carolina.

W I T N E S S E T H:

WHEREAS, Roger D. Messer has filed certain civil actions against the Town of Chapel Hill and its current and former officials in the Superior Court of Orange County, with civil action numbers 79 CVS 1047, 80 CVS 17, 80 CVS 145, 81 CVS 9, 81 CVS 145, and 82 CVS 62, and in the United States District Court for the Middle District of North Carolina with civil action numbers C-80-58-D and C-80-162-D, wherein Roger D. Messer claimed that he was entitled to monetary and injunctive relief by virtue of the actions of the Town of Chapel Hill and its current and former Mayor and Council members in connection with the requests by Roger D. Messer for approval by the Town of Chapel Hill of certain proposals for development of that area known as Laurel Hill V within the extra-territorial jurisdiction of the Town of Chapel Hill; and,

WHEREAS, Roger D. Messer and the Town of Chapel Hill have engaged in good faith negotiations attempting to resolve the outstanding matters in controversy and to settle the issues and claims presented in the aforesaid actions; and,

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WHEREAS, the Town of Chapel Hill and Roger D. Messer have reached a settlement agreement, which upon satisfaction of certain conditions which are outlined below, will be a full and complete settlement, satisfaction, and compromise of all issues and claims presented in the aforesaid civil actions; and,

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, the sufficiency of which are hereby expressly acknowledged by Roger D. Messer and the Town of Chapel Hill, the parties hereto agree as follows:

I. TERMS OF SETTLEMENT AGREEMENT

1. Roger D. Messer agrees to file a motion with the United States District Court for the Middle District of North Carolina, pursuant to Rule 41 of the Federal Rules of Civil Procedure, requesting that the civil actions styled Messer v. Town of Chapel Hill, et al., C-80-58-D and C-80-162-D, be dismissed with prejudice as to all defendants. Roger D. Messer agrees to file the aforesaid motion on or before September 1, 1983.

2. Roger D. Messer, the Town of Chapel Hill, and the other parties to that civil action known as Messer v. Town of Chapel Hill, 82 CVS 62 (Orange County Superior Court), agree to file a joint motion with the Superior Court of Orange County, pursuant to Rule 60 of the North Carolina Rules of Civil Procedure, requesting that the Superior Court enter an order vacating the Judgment dated August 6, 1982, and dismissing that action with prejudice.

3. The Town of Chapel Hill and the other parties appellant, agree to withdraw their appeal in the case styled Messer v. Town of

Chapel Hill, et al., case number 82 15 SC 1269, which is currently pending before the North Carolina Court of Appeals.

4. Roger D. Messer agrees to construct an extension of Bayberry Road, from the current end of paving with Arboretum Drive through the tract of land known as Laurel Hill IV to Rhododendron Drive within that tract of land known as Laurel Hill V. This extension shall be completed to State or Town standards prior to issuance of any certificate of occupancy for Laurel Hill V.

5. Roger D. Messer and the Town of Chapel Hill agree to cooperate in good faith in the future to develop plans for an additional road through those tracts of land known as Laurel IV, V, and VI, and other properties east of Laurel Hill V in order to develop a proposed second paved road connection from Bayberry Drive in the Laurel Hill IV tract to Parker Road.

6. The Town of Chapel Hill agrees to express in writing to the North Carolina Department of Transportation its willingness to see Parker Road paved to State or Town standards between the current end of pavement of Parker Road and the southwestern corner of the Laurel Hill V property with Parker Road.

7. Roger D. Messer agrees to execute the General Release which is attached as Exhibit A to this Memorandum of Settlement Agreement.

II. CONDITIONS OF AGREEMENT

1. Roger D. Messer and the Town of Chapel Hill hereby acknowledge and agree that this Memorandum of Settlement Agreement shall become void and of no effect unless both of the following events occur by August 30, 1983:

- a. The Superior Court for Orange County, pursuant to the Rule 60 motion to be filed by the parties, vacates the Judgment in 82 CVS 62, and that action is dismissed with prejudice.
- b. Roger D. Messer's current application for modification of the special use permit for Laurel Hill V to allow the construction of 51 units plus 9 lots is approved by the Town of Chapel Hill with those conditions recommended previously by the Town Manager except for construction of Sylvan Lane and Aster Place.

2. Unless this Agreement becomes null and void under the provisions of the preceding paragraph, all rights and obligations of the parties to this Agreement shall remain in full force and effect.

3. The rights and obligations of the parties to this Agreement shall continue in force and shall not be affected by the failure or success of (a) the parties' efforts to plan a road network through Laurel Hill IV, V, and VI, and the property east of Laurel Hill V, (b) the parties' efforts to cause the North Carolina Department of Transportation to acquire the Parker Road right-of-way and pave Parker Road, or (c) Roger D. Messer and/or others in developing that property known as Laurel Hill V.

III. GOVERNING LAW

This Agreement shall be governed by the law of the State of North Carolina.

IV. MODIFICATIONS OR ALTERATIONS

This Agreement shall not be altered, amended, or changed except in writing signed by the party against whom the enforcement of the alteration, amendment, or change is sought. This Agreement along with Exhibit A, constitutes the entire Agreement between the parties.

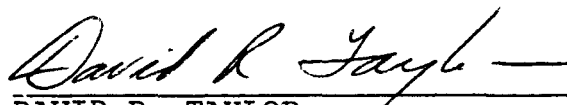
V. SURVIVAL

The obligations set forth in this Agreement shall be binding upon the successors and assigns of the interest of Roger D. Messer in Laurel Hill V, and upon the successors and assigns of any special use permit granted for the development of Laurel Hill V.

IN WITNESS WHEREOF, the undersigned have set their hands and seals in execution of this Agreement, this the day and year first above written.



ROGER D. MESSER (SEAL)



DAVID R. TAYLOR (SEAL)
Manager, Town of Chapel Hill

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EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

GENERAL RELEASE

KNOW ALL PEOPLE BY THESE PRESENTS that ROGER D. MESSER (hereinafter referred to as Messer) for and in consideration of the terms set forth in the Memorandum of Settlement Agreement of August 1983, the warranties contained therein and the mutual promises contained therein, the receipt and sufficiency of which are hereby expressly acknowledged in the full accord and satisfaction, has released, acquitted, and forever discharged and does hereby for himself, his employees, agents, successors and assigns, release, acquit, and forever discharge the Town of Chapel Hill (hereinafter referred to as the Town), along with its current and former officials, employees, agents, successors and assigns from any and all liability, claim, or demand, now accrued or which may hereafter accrue on account of any and all rights, claims, and causes of action, known or unknown, which Messer may have against the Town or any of its officials, employees, agents, successors, and assigns from the beginning of time to this date based upon facts now in existence, known or unknown, for any and all acts and matters arising out of or connected with, or which are the basis for, those civil actions styled Roger D. Messer v. The Town of Chapel Hill, et al., which have been filed in the Superior Court for Orange County, North Carolina, or the United States District Court for the Middle District of North Carolina since January 1, 1979.

In further consideration of the aforesaid Memorandum of Settlement Agreement, Messer hereby warrants, recognizing that the truth of the warranty is material to said consideration having passed, that

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Messer has not assigned, transferred, or conveyed at any time and to any individual or entity, any alleged or unalleged right, claim, or cause of action of Messer against the Town or its current or former officials, employees, agents, successors, and assigns that could be asserted after the pending litigation between the parties is ended in accordance with the provisions of the attached Memorandum of Settlement Agreement.

This General Release shall not apply to any obligations of the parties imposed under or by virtue of that certain Memorandum of Settlement Agreement dated August 29, 1983. The obligations set forth in the aforesaid Agreement are present and executory and shall survive the signing of this General Release. Nothing contained in this General Release or in the Memorandum of Settlement Agreement dated August 29, 1983, shall be construed as an admission or concession by the Town of any liability for or to Messer for the claims alleged in the lawsuits between Messer and the Town.

Further, the undersigned has read and understood this General Release and has received a true copy prior to the execution of the original.

Further, Messer expressly acknowledges that by this Release he does release, acquit, and forever discharge any right or claims he has to recover costs of the aforesaid civil actions between Messer and the Town, which rights may include but are not necessarily limited to, any right to recover attorney's fees in connection with the aforesaid civil actions.

In addition, Messer expressly agrees to indemnify the Town and its current and former officers, employees, agents, successors

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and assigns against any loss from any and all further claims, demands, or actions for damages or other relief arising out of those events which are the subject of the aforesaid civil actions, and that may hereafter be brought against the Town or any of its current or former officials, employees, agents, successors, and assigns by Messer or by a present or future owner of Laurel Hill V or anyone asserting an interest derived from Messer or any present or future owner of Laurel Hill V.

WHEREFORE, the undersigned has set his hand and seal this the 29th day of August, 1983.

Roger D. Messer
ROGER D. MESSER (SEAL)

Ratified and Approved:

Cletus P. Lyman
Cletus P. Lyman
Attorney for Roger D. Messer

STATE OF NORTH CAROLINA
COUNTY OF Durham

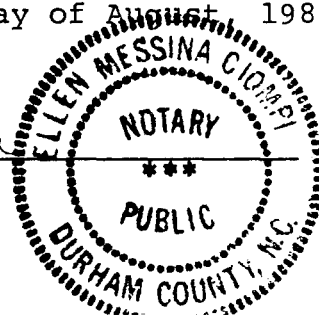
I, Ellen Messina Ciampi, a Notary Public in and for the County and State aforesaid, do hereby certify that ROGER D. MESSER personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and notarial seal, this the 29 day of August, 1983

My commission expires:

11/9/81

Ellen Messina Ciampi
Notary Public



As there was no further business to come before the Council, the meeting was adjourned at 5:00 P.M.



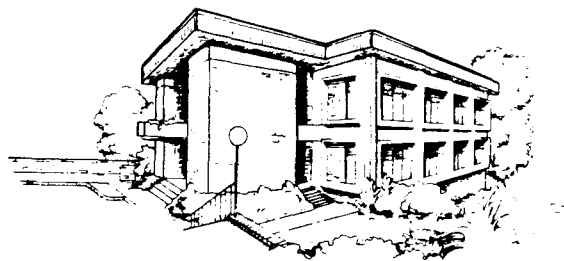
Joseph L. Nassif, Mayor



David B. Roberts, Clerk

TOWN OF CHAPEL HILL

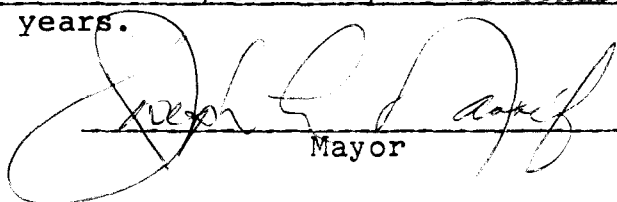
306 NORTH COLUMBIA ST.
CHAPEL HILL, N.C., 27514
(919) 929-1111



NOTICE OF SPECIAL MEETING OF THE CHAPEL HILL TOWN COUNCIL

TO: Marilyn Boulton
Winston Broadfoot
Jonathan Howes
Beverly Kawalec
David Pasquini
R. D. Smith
Joe Straley
Jim Wallace

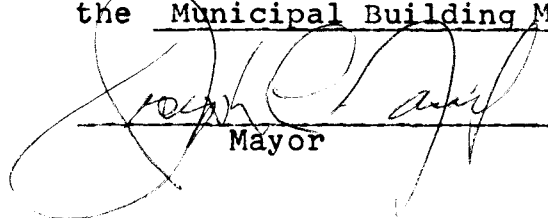
You, and each of you, are hereby notified that the Town Council has called a Special Meeting, to be held in the Municipal Building at 7:30 P.M. on August 29, 1983, to consider adoption of a resolution calling for a public hearing on whether the maximum time period for issuing sanitary sewer bonds should be extended from 7 to 10 years.



Mayor

ACCEPTANCE OF NOTICE

We, the undersigned, members of the Chapel Hill Town Council, hereby accept notice of a Special Meeting of the Council, called by Honorable Joseph L. Nassif, Mayor, to be held in the Municipal Building Meeting Room.



Mayor

David A. Pasquini
Winston Broadfoot
Jonathan B. Howes
R. D. Smith
Joe Straley
James C. Wallace
Marilyn B. Boulton
Beverly Kawalec

