

MINUTES OF A PUBLIC HEARING OF THE MAYOR AND COUNCIL  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
TUESDAY, SEPTEMBER 27, 1983, 7:30 P.M.

Mayor Joseph L. Nassif called the public hearing to order. Councilmembers present were:

Marilyn Boulton  
Winston Broadfoot  
Jonathan Howes  
Beverly Kawalec  
R. D. Smith  
Joe Straley (arrived late)  
Jim Wallace

Councilmember Pasquini was absent, excused. Also present were: David R. Taylor, Town Manager; Sonna Loewenthal and Ron Secrist, Assistant Town Managers; and Grainger Barrett, Town Attorney.

Mayor Nassif requested that citizens keep comments brief.

COUNCILMEMBER BROADFOOT MOVED THAT THE COUNCIL CONSIDER AGENDA ITEM #10 FIRST (re comments on the Development Ordinance). THE MOTION FAILED FOR LACK OF A SECOND.

Request to Allow Personal Services in OI and OI Planned Development (to amend Section 4.3 of the Development Ordinance)

Mr. Mike Jennings, Planning Director, stated that the applicant wished to establish a hair styling salon on property zoned OI-2. Staff felt that this type of business should stay in the "personal services" grouping designated in the Development Ordinance because of the nature of the business (walk-in trade, outdoor advertising, etc.) There was a lack of consensus among staff members, however, that this was sufficient reasoning to justify zoning separations; if so, this suggested that a manifest error had been made.

Mr. Mike Levine, representing the applicant, Alice Stone, felt that other permitted businesses in OI-2 zones could be classified as "personal services"; i.e., dentists, psychiatrists, medicine, etc. He stated that this business would have "appointments only" customers and traffic would not differ from other uses in this zone. He felt that the distinctions between types of uses were not clear enough to deny the request.

Ms. Gina Cunningham, Chair of the Planning Board, stated that the Board unanimously recommended denial of the request, feeling that (1) zoning separations did not represent a manifest error in the Development Ordinance, and (2) to grant the request would allow personal service businesses to locate in zones not designated for such uses.

Mr. Taylor stated that the staff was divided on this matter; the Manager's recommendation was to approve the request.

Ms. Lucy McKerrow, a citizen felt the request should be denied as it would set a precedent to allow less desirable businesses to locate in OI-2 zones.

No other citizens requested to speak.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER WALLACE, TO REFER THE MATTER TO THE MANAGER AND ATTORNEY. THE MOTION CARRIED UNANIMOUSLY (7 to 0).

Proposal to Increase Buffer Area Requirements (to amend Section 6.12)

Mr. Jennings explained that the current buffer matrix required 5 to 20-foot-wide buffers. An intermittent visual obstruction of 20 feet in height was also required.

This method was easy for applicants to use and staff to administer. With the increase in intense development adjacent to non-intense development, concern for adequate buffers and screens was felt.

Staff recommended that the matter be referred to the Manager and the Planning Board to formulate variable requirements based on lot sizes and use differences. Staff requested an additional 60 days to complete the report to the Council.

There were no comments or questions from citizens or the Council.

COUNCILMEMBER WALLACE MOVED, SECONDED BY COUNCILMEMBER HOWES, TO REFER THE MATTER TO THE MANAGER, TOWN ATTORNEY, AND PLANNING BOARD, AND TO GRANT THE REQUEST TO EXTEND THE TIME PERIOD. THE MOTION CARRIED UNANIMOUSLY (7 to 0).

Proposal to Request Height Limits to 50 Feet in All Zones in Which the Limit is Now Greater, Except OI-3 (to Amend Section 5.11.1, -.2, and -.3)

Mr. Jennings explained that the proposed amendment to the Development Ordinance would establish a 50-foot maximum secondary height limitation for all districts except R1, R-1, OI-3, and TC-1.

(Councilmember Straley arrived at 7:51 P.M.)

Mr. Jennings stated that existing buildings exceeding a height of 50 feet would become non-conforming. The proposed change would retain the flexibility in design, by affecting only the more intense districts.

The Manager's preliminary recommendation was to retain the existing limits.

The staff requested an additional 60 days to prepare and submit a final report.

Mr. Watts Hill, Jr., speaking on behalf of the Chamber of Commerce, felt that a height limit of 50 feet in Town Center-1 or TC-2 was not realistic as he felt it would virtually negate the possibility of any public/private development on Parking Lots #1 or #2. He felt it would be difficult for a developer to meet these constraints and still have an economically feasible project.

Mr. Hill also felt that zoning should be compatible with the area. There was considerable difference between height limitations in the Town Center and those in residential areas.

No other citizens requested to speak.

Mr. Jennings responded to Councilmember Broadfoot that a bonus height was allowed only in TC-1 and TC-2 and only when there was mixed use development. Councilmember Broadfoot questioned the desirability of allowing a height bonus through mixed use.

Mr. Barrett stated to Councilmember Boulton that a public hearing would be required in order to reconsider zoning overlay.

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER SMITH, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD AND TO GRANT THE TIME EXTENSION REQUESTED. THE MOTION CARRIED UNANIMOUSLY (8 to 0).

Proposal to Exclude Adjacent Rights-of-way and Open Space (Gross Land Area) in Computing Floor Area and Other Intensity Limits and Standards for a Development Site (to amend Section 5.6)

Mr. Jennings stated that the proposed amendment was in response to Council's concern over the intensity of development and would calculate land use intensities using net land area instead of gross land area. This would create non-conformities unless Land Use Intensity ratios and lot sizes were revised.

Staff had found that using gross land area was a useful tool in obtaining additional rights-of-way and open space. To eliminate this method of calculation would necessitate readjustment of lot sizes and land use intensity ratings to avoid creating non-conformities.

Staff felt that a better way to control the intensity of development was through a change in land use intensity. Were the Council to change from using gross land area to net land area, the recommendation for land use intensities for R-1 and R-5 (Agenda Item #5) would have to be re-evaluated to prevent the creation of non-conformities.

The Manager's preliminary recommendation was to retain the use of gross land area with the request for an additional 30 days to prepare a final report.

No citizens requested to speak.

Mr. Jennings explained to Councilmember Smith that the difference between gross land area and net land area was based upon a standard lot with an adequate right-of-way on one side.

Councilmember Broadfoot expressed the desire to have such terms as intensity, bonus level, density, land use intensity, site plan review, etc., defined in the glossary of the Development Ordinance.

Councilmember Smith expressed concern for the need to provide adequate parking for high intensity developments. Mr. Jennings responded that parking ratios of Land Use Intensity were low for Chapel Hill, due to the amount of student-oriented housing. The Development Ordinance had increased parking requirements for developments which had more bedrooms. This was also a concern for multi-family developments and parking needs were being re-evaluated.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER HOWES, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD AND TO GRANT THE TIME EXTENSION REQUESTED. THE MOTION CARRIED UNANIMOUSLY.

#### Proposal to Reduce Maximum Floor Areas Permitted in R-1 and R-5 Zones

Mr. Jennings stated that the proposed amendment would reduce the floor area ratio in R-1 from .081 to .076 and would reduce the floor area ratio in R-5 from .566 to .429. Other land use intensity ratios would be revised to be consistent with the floor area ratio changes. These reductions were the maximum possible without creating nonconformities.

The Manager's preliminary recommendation was to reduce the floor areas in R-1 and R-5 for Use Groups A, B, and C as proposed. Staff requested 60 days to prepare the final report.

Mr. Watts Hill, Jr., representing the Chamber of Commerce, stated that the Chamber supported the Manager's recommendation for this and other items on this agenda, as they were much needed steps toward fine-tuning the Development Ordinance.

No other citizens requested to speak on this item.

Mayor Nassif responded to Councilmember Broadfoot that the Council had stated (during the preparation of the Development Ordinance) that they did not wish to create non-conformance because of legal ramifications.

Councilmember Boulton asked Mr. Barrett if the densities should be lowered in all areas as this would reduce the number of non-conforming developments in Chapel Hill. If this were done, she asked if non-conforming developments could be made exempt.

Mr. Barrett stated that he could prepare a response to the Council with the Manager's recommendation. He felt it would be more difficult to deal with non-conforming structures than with non-conforming peripheral issues (parking, etc.). If a structure were destroyed, it would be more difficult to deal with, legally.

COUNCILMEMBER WALLACE MOVED, SECONDED BY COUNCILMEMBER KAWALEC, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD AND TO GRANT THE TIME EXTENSION REQUESTED. THE MOTION CARRIED UNANIMOUSLY.

Proposal to Limit the Density of Residential Units to 15 per Acre

Mr. Jennings stated that the use of floor area ratio was the basic control over the intensity of development. The proposed amendment would limit the number of units to 15 per acre in any zoning district.

Staff felt that floor area ratio was the best control of the number of people living on a property. Concern was that a limit on the number of dwelling units would encourage a development to build larger units.

The Chamber of Commerce concurred with the Manager's recommendation.

Mr. Tom McCurdy, a resident, felt that a bias existed in the Development Ordinance toward higher density as a result of using the floor area ratio concept.

No other citizens requested to speak.

Councilmember Smith felt the size of units constructed for the student market were unreasonably small. Mr. Jennings responded that often several students rented a unit as a way to afford rent. The intent of the proposed amendment was to allow the construction of smaller dwelling units for individuals preferring to live singly. There was a dirth of single bedroom apartments in Chapel Hill. He felt it was important to recognize that the number of dwelling units per acre did not control the number of people living on a piece of property.

Mayor Nassif felt that developers would not build larger units because there was no demand for them. A cap on the number of units would be an adequate method of density control.

Councilmember Straley felt that students who wished privacy and low cost would be attracted to larger dwelling units. Councilmember Smith felt the cost would be too high. Councilmember Straley stated that one must be prepared to pay for privacy.

COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER WALLACE, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD. THE MOTION CARRIED UNANIMOUSLY.

Proposal to Prohibit Transfer of Allowable Floor Area to a Portion of Planned Development Site in a Less Intense Zone

Mr. Jennings stated that the proposed matter would allow more flexibility in the site design and eliminate zone changes. The Council could deny a transfer of intensity, if it was felt to be inappropriate. Additional buffers, etc., could be required.

Staff's preliminary recommendation was to retain this provision in the ordinance and requested 60 days to prepare the final report.

The Chamber of Commerce concurred with the Manager's recommendation.

No citizens spoke on this item.

Councilmember Smith questioned when the Council could deny the request without necessitating the applicant to begin the process again. Mr. Jennings responded that this aspect could be addressed in the review process.

COUNCILMEMBER KAWALEC MOVED, SECONDED BY COUNCILMEMBER BOULTON, TO REFER THE MATTER TO THE MANAGER. THE MOTION CARRIED UNANIMOUSLY.

Proposal to Prohibit Duplexes in Residential-1 Zones

Mr. Jennings stated that the proposed amendment to the Development Ordinance would prohibit duplexes in R-1 districts. An amendment would cause some duplexes to become non-conforming.

Staff recommended that current regulations be retained and asked for a total time period of 60 days to prepare a final recommendation.

The Chamber of Commerce concurred with the Manager's recommendation.

Mr. Gary Saleeby, a real estate broker in Chapel Hill, stated that he did not support the proposed amendment, as there was a need for duplexes in Chapel Hill, offering affordable housing for young families. He felt the proposed amendment would create non-conformities which should be avoided. He suggested that particularly sensitive tracts could be zoned differently, i.e., R-1a, which would restrict that tract to single family dwellings.

Mr. Timothy Denny, a Chapel Hill resident, stated that according to Section 18.37a of the Development Ordinance duplexes did not have to be "attached structures." He felt that the Ordinance should require two times the minimum lot size for construction of a duplex rather than 1.5 times the minimum lot size. As the ordinance now existed, two separate single-family structures were permitted on single-family lots.

Mr. Henry Whitfield, a Chapel Hill resident, stated that even though he supported rental units within a structure, unattached duplexes could present more of a problem.

No other citizens requested to speak.

Councilmember Broadfoot felt that a clearer definition of "duplexes" should be added to the glossary of the Development Ordinance. He requested information on the number of single-family dwellings in R-1 districts.

COUNCILMEMBER HOWES MOVED, SECONDED BY COUNCILMEMBER SMITH, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD AND TO GRANT THE TIME EXTENSION REQUESTED. THE MOTION CARRIED UNANIMOUSLY.

Proposal to Hold Hearings on Applications for Special Use Permits and Development Ordinance Amendments in Each Month Except June, July, August, and December

Mr. Jennings stated that there was a need for more frequent public hearings. A proposed ordinance amendment would allow the Council to set public hearing schedules by resolution. A corollary resolution would permit a longer review period, giving staff additional time to prepare documentation for the Council.

Mr. Watts Hill, Jr., representing the Chamber of Commerce, stated that the Chamber felt that development in Chapel Hill did not stop doing business during the summer; therefore, Town government should not stop doing business during the summer. He asserted that summer months were primary construction months. The lengthy process for approval of a Special Use Permit combined with a summer delay lengthened the process.

No other citizens requested to speak.

Councilmember Smith preferred to meet one summer month in exchange for a winter month.

Councilmember Broadfoot felt that there should be a limit on the number of applications that the Planning Department processed at any given time to allow better control of work loads and schedules.

Mayor Nassif explained that Chapel Hill was a unique area, a university town; many townspeople left for the summer. He did not object to scheduling a public hearing in a winter month, but felt that none should be scheduled during the summer. He did not feel that summer months were crucial to construction.

COUNCILMEMBER BROADFOOT MOVED, SECONDED BY COUNCILMEMBER SMITH, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD. THE MOTION CARRIED UNANIMOUSLY.

Receipt of Comments on the Development Ordinance

Mr. Roscoe Reeve, speaking as a member of the Planning Board, stated that the Board supported the Development Ordinance. "It was intended to be a living document to be reviewed and improved in order to carry out the goals and objectives of the Comprehensive Plan."

Mr. Reeve referenced recent editorials which stated that Chapel Hill was "unprepared to meet expanded Town sources....demanded by unregulated development...[because of]...our overaccommodating zoning regulation...[of] 1981...[for] uncontrolled high density development." Other comments, which equated infill with high density development, stated that the ordinance was a threat to established neighborhoods, and that infill would cost the Town and taxpayers and damage the beauty and character of Chapel Hill.

Mr. Reeve felt that these statements and concerns were not true, stating that "Chapel Hill has the most restrictive and protective Development Ordinance in the State of North Carolina." An 11-year drought of moderately priced housing in Chapel Hill had existed; yet, an improvement in the economy which brought new housing opportunities for moderate income citizens in Chapel Hill was being described as a destruction of tradition in Chapel Hill. He felt "the beauty, tradition and rare ambiance of our village comes from the diversity in interest of our people--University vs. non-University--and this must be preserved."

Mr. Reeve concluded that the Planning Board and staff had worked hard and worried about the survival and vitality of downtown Chapel Hill, only to have these efforts misunderstood. He stated that "higher density residential development downtown is the only chance in the world for the survival of diverse businesses in competition with proliferating outside shopping centers."

Ms. Gina Cunningham, Chair of the Planning Board, stated that the Board would like to have the following items considered:

1. Density transfer in relation to the flood plain,
2. Town Center intensity,
3. Zoning of specific properties,
4. Bufferyards,
5. The need for a means of assessing housing availability, and
6. The need for a precise definition of uses permitted in Neighborhood Commercial and Community Commercial zones.

Mr. Lightning Brown, speaking as a member of the Planning Board, stated that the Board often found it difficult to apply the theory of the Development Ordinance to real developments and contexts. The jargon of the Ordinance was complicated; it was difficult and stressful for lay property owners to interpret the meaning of various terms, making it difficult for staff to communicate the intent of the Ordinance.

Mr. Brown continued that the Planning Board was ready to begin the review of the Land Use Plan and meet with Town citizens to discuss zoning issues in detail.

Mr. Neil Litman, speaking re the impact of the Development Ordinance on the Chancellor Street Project, stated that if the Council decided to put a cap on the number of units per acre, he would prefer to see this "in writing so that when we plan...we don't have an unknown as to the number that are allowable in a specific parcel of property."

Mr. Litman stated that it would be "grossly unfair at this time to go back on the Chancellor Street Project and attempt to change the rules and force it to live by a different set of criteria." He stated that he felt that "we would, I think, protest with...vigor...."

Mr. George Taylor, a resident of Kings Mill Road, stated that allowable density in the Development Ordinance was excessive. He felt that the intent of the old Zoning Ordinance was to bring to Chapel Hill "a maximum amount of population onto a place where facilities existed, to reduce the use of fuel, and to make the growth of the area as economical as possible." He felt that Chapel Hill "could, under the current Ordinance,...be made to hold a total of 100,000 people." He felt citizens would suffer under these conditions and this would encourage citizens to move to rural developments that had no benefit of planning and which were rapidly destroying the concept of the Greenbelt around Chapel Hill.

He invited the Council to

1. "Examine and...enact all of the [proposed] amendments to the Code."
2. "Begin...discussions...for the adoption of [a] development plan [that] would examine...the future of this region."

Mr. George Griffin, speaking for concerned citizens of the Elkin Hills Development, submitted a petition (please refer to the Clerk's files) which expressed objection to (1) a developer's proposal to "move another house into the backyard of a property on Powell Street to make two separate dwellings on one lot," and (2) "inappropriate development in residential areas."

He stated that the current Development Ordinance allowed the addition of a second separate dwelling on R-2 lots, as it did not differentiate between a separate and an attached dwelling. This would lead "to the dissentigration of stable, established neighborhoods in Chapel Hill.

The petition requested that one or more of the following stipulations be added to the Development Ordinance to prohibit the addition of second separate dwellings on lots in established, single-family, residential neighborhoods:

1. That a two-family dwelling (duplex) be defined as a single structure under one roof; and/or
2. That two-family dwellings be allowed only on lots at least twice the minimum area required by the zoning specifications; and/or
3. That any proposed two-family dwellings must be approved by a majority of lot owners within 500 feet of the lot in question.

Ms. Susan Hodges, a resident of the Elkin Hills development, stated that this neighborhood was composed of modest single-family dwellings built approximately 25 years ago. Most of these lots were wide, but not deep. Most were owner-occupied; only one contained a duplex within the unit. A developer proposed to move a second rental house into a backyard. She felt this would encourage a trend and would destroy the character of this settled, stable neighborhood.

She felt that the Development Ordinance should be rewritten to effectively preserve existing, single-family neighborhoods. She stated that the same zoning regulations applied to R-2 zoning of her neighborhood as it did to the R-2 property located on the essentially undeveloped area on Smith Level Road.

Mr. Griffin concluded that Chapel Hill citizens were concerned about developments in all stable neighborhoods in Chapel Hill, but many of the petitioners "expressed pessimism that any changes would be made...."

Ms. Anne Fleming, a resident of the University Heights community, thanked the Planning Board and Council for the careful consideration they had given issues in the past. She felt there was "a lot that was right with this Ordinance." She did express concern for the effect of "non-residential planned development in residential zoning" in moderate income neighborhoods. She expressed concern that:

1. Issues important to radical changes in land uses were not always addressed by the four findings necessary for approval of a Special Use Permit request.
2. The flexibility of size regulation in the Development Ordinance allowed ease in converting residential property into non-residential use.

She requested the Council to consider this flexibility from the point of view of moderate income neighborhoods and to tighten regulations of the Ordinance.

Mr. Henry Landsburger, President of Kings Mill Road Neighborhood Association and speaking on behalf of its Executive Committee, encouraged the Council to "tighten the Development Ordinance" to restrict infill and mixed housing in single-family neighborhoods.

Mr. Joe Capowski, a resident of Coolidge Street, stated that residents, armed with only personal interest, not well-versed, and not out for profit, often spent long hours fighting a proposal. These citizens often felt pitted against well-paid informed lawyers. To fight for an issue was their only chance. Mr. Capowski proposed that an aid to citizens and the Town and developers would be to charge a small administrative fee for initial review of a proposal. This review would indicate if the proposal met standards acceptable for further consideration.

A general plea was for reduction in developmental growth to protect Chapel Hill's residents.

Mr. Ben Bisbain, a Chapel Hill realtor, felt that the Development Ordinance was good and the Council should "stick with it." He stated that he travelled all over North Carolina and did not feel that "there was a town anywhere that had a [Development] Ordinance as good as Chapel Hill's." It seemed that citizens in Chapel Hill were trying to blame the current development in Chapel Hill on the Development Ordinance. He asserted that the present trend was a result of demographics.

Mr. Bill Graves, a citizen, felt that the quality of life in Chapel Hill was threatened by quantity. He commended the Council for their efforts to address these concerns. He felt that there was a need for improved communication between the Council and the Planning staff. He also felt smaller developments would be better for the Town as well as for potential buyers.

Mr. Henry Whitfield, a long-time resident of Chapel Hill, felt that younger families often moved away from Chapel Hill because it was too expensive to live here. He also felt the Building Code and Development Ordinance should be implemented by the developers and the Planning Department, with less time-consuming debate by the Council. He felt the Council should be more involved with more important issues like water shortage, the Thoroughfare Plan, the sewer outfall plan, etc.

Mr. Paul Marion, a resident of Markham Court, stated that his statements reflected concerns of other citizens about the future of Chapel Hill. He felt that the increase in development was not totally due to an upsurge in the economy, but was also a result of the desirability of living in the area. He supported all proposed changes in the Development Ordinance. He supported reduction in the floor area ratio in all zones and spot zoning non-conforming developments. A second suggestion was to totally eliminate R-4, R-5, and R-6 high density development, a density not necessary in Chapel Hill. He felt that infill should be interpreted to mean development within the Town limits of Chapel Hill, and not necessarily to increase density within the Town. He felt R-1 zoning of such areas would receive less opposition from the community.

Mr. Robert Joesting, a member of the Chapel Hill Board of Adjustment but speaking as an individual, felt that some established neighborhoods in Chapel Hill were zoned wrong and should be down-zoned, referencing the Elkin Hills area. He also felt that the high density of the proposed Oxford Hills area was not appropriate because there was no way to provide adequate access for a development of this density in a low-density area. He felt more zoning problems could be prevented by careful changes in the existing zoning of some tracts and through strict application of the current Development Ordinance.

He felt that there should be more small rental units closer into town to help reduce the trend of rental units in stable neighborhoods and to address concerns for the quality of life in Chapel Hill. He also supported an increase in bufferyard depth and density.

Mr. Tom McCurdy suggested that the Council consider the need for and benefits of having a Zoning Administrator to provide a quasi-judicial review of a proposal in accordance with the current requirements. He also felt that a system that permitted the current amount of development without adequate sewer, water and highways was not reasonable. He submitted a letter into the records (please see Clerk's permanent files). He stated that in his letter he proposed the "administration of a zoning system that is tied to the provision of infrastructure," and proposed other "active" techniques available to Chapel Hill in controlling growth.

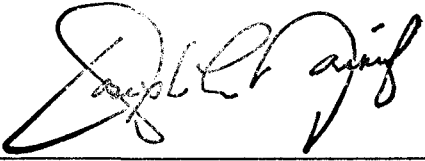
Mr. Ron Davis, a Chapel Hill resident, stated that the Council should communicate by its official acts a concern for the welfare and protection of its citizens.

Councilmember Smith did not feel that the Development Ordinance was "the most restrictive in North Carolina." The effect of the Ordinance was just now being realized. The purpose of the public hearing was to improve the Development Ordinance.

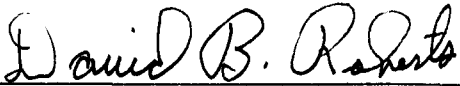


COUNCILMEMBER BOULTON MOVED, SECONDED BY COUNCILMEMBER WALLACE, TO REFER THE MATTER TO THE MANAGER, ATTORNEY, AND PLANNING BOARD; THE MOTION CARRIED UNANIMOUSLY.

As there were no other matters to come before the Council, the public hearing was adjourned at 10:42 P.M.



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Joseph L. Nassif, Mayor



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David B. Roberts, Town Clerk