

MINUTES OF A PUBLIC HEARING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, JANUARY 22, 1985, 7:30 P.M.

Mayor Joseph L. Nassif called the meeting to order. Council Members present were:

Marilyn Myers Boulton
Jonathan Howes
Beverly Kawalec
David Pasquini
Nancy Preston
R. D. Smith
Bill Thorpe

Council Member Winston Broadfoot was absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Manager Sonna Loewenthal and Town Attorney Grainger Barrett.

Resource Conservation District

Grainger Barrett made a presentation explaining that there had been changes made in the draft for the Resource Conservation District Ordinance since the January 4 work session. These changes included: addition of impervious surface and land disturbance limitations (Section 10.5.2.2.); change in language to allow flexibility in determining the area covered by this ordinance (changing "100 year storm" to "Resource Conservation District" (Section 10.8a and 10.8j); changing stormwater runoff requirements from capturing "the first inch to stormwater runoff", to not allowing direct discharge into a watercourse (Section 10.8d); providing for roads and access 18" above the 100 year storm elevation (Section 10.8e); and calling for preparation of a Resource Conservation District Manual (Section 10.10). Mr. Barrett went on to state the intent of the ordinance and asked the Council to incorporate into the record the portion of the Town of Chapel Hill's Comprehensive Plan entitled Natural Environmental Characteristics and dated January 1978. (See Clerk's file). He stated that that document provided much of the conceptual underpinnings for the Resource Conservation Ordinance draft. The boundaries of the Resource Conservation District include all areas two feet above the 100 year flood plain as specified on the Town's official records, as well as buffer areas 50' from all perennial streams. Also included was an exemption for land disturbing activities normally associated with single family homes and duplexes. Mr. Barrett explained the Grandfather clause, stating that in Section 10.4, new development beyond the low intensity permitted uses in the overlay district, occurring after March 19, 1984 would be prohibited except as might be permitted or allowed pursuant to a variance under the ordinance. Mr. Barrett also stated he would change the wording in Section 10.4 to read "the status of any development for which construction has substantially begun on March 29, 1984...", instead of "...development existing on March 19, 1984..." The date of March 19, 1984 was chosen because it was the date of the first public hearing on this matter. The draft also stated that any development that was damaged, demolished, destroyed or substantially renovated to the extent of 50% or more of its assessed taxable value, may be renovated, rebuilt or replaced, if otherwise permitted by law or ordinance, pursuant to any appropriate permit or approval; provided, that the owner of such development shall demonstrate to the satisfaction of the Town Manager, or such body as has jurisdiction over the issuance of any appropriate permit or approval, that the entire development, as renovated, replaced or rebuilt, will benefit the public by significantly improving (a) the development's provision of the open spaces or greenways, (b) its effect on water quality of the Town's actual or potential water supply sources, and (c) its

protection of persons and property from dangers caused by flooding; and further provided that any single family or duplex dwelling may be rebuilt substantially as it existed on March 19, 1984.

An owner who alleges that the provisions in Sections 10.4 and 10.5 (Permitted uses within Resource Conservation District) leave no legally reasonable use of his property remaining may apply to the Board of Adjustment for a variance. Section 10.6 deals with variances from the Board of Adjustments. It stated that an owner should apply to the Board in order to obtain a variance; what the role of the Board of Adjustment is and what should be considered when evaluating a claim. Section 10.7 addressed site plan requirements while Section 10.8 set the standards for development in the Resource Conservation District. Section 10.9 involves the removal of structures which violate the ordinance and Section 10.10 states that the Town Manager shall cause to be prepared a Resource Conservation District manual to provide presumptive criteria and guidelines for interpretation. Mr. Barrett went on to state that Section II of this ordinance provides the calculation for the Floor Area Ratio for property partially within the Resource Conservation District.

Lightning Brown, representing the Planning Board, stated the Board unanimously recommended adoption of the Resource Conservation District. He also stated that while the proposed ordinance would prevent future increases in flooding, it would not solve existing problems. Therefore, the Board urged continued action to develop storm water management facilities to eliminate current hazards due to flooding. (For complete text, see Clerk's file).

Manager Taylor stated that he recommended adoption of an ordinance creating a Resource Conservation District.

Henry Whitfield, speaking as a citizen, read a letter from his mother addressed to the Mayor and Council, in which she stated she felt the proposed ordinance did nothing for the present problem of flooding and that this ordinance would in effect confiscate her land. She further wrote that she had offered to sell her land to the Town in 1983 but had been turned down. (For complete text, see Clerk's file).

Adele Ellis, representing Brookwood Homeowners Association, stated it was opposed to Section 10.4 of the ordinance, feeling it is ambiguous and suggested the Council redefine to include residential units not just single family homes and duplexes. Ms. Ellis went on to appeal to the Council to remember that the residents of Brookwood were their neighbors and to please take them into consideration when discussing this issue. She also asked Council to explain why the sunset provision was included and what was its intent.

Valerie Hall, speaking as a citizen, wanted clarification of Section 10.5 (Permitted Uses Within Resource Conservation District). She asked whether one could pave a driveway or build a tennis court. Mr. Barrett replied that upgrading a driveway would be permitted but that tennis courts would probably not be allowed.

Nancy Elias, speaking as a citizen and resident of Brookwood, asked for further clarification of Section 10.4 as to why single family homes and duplexes and not condominiums were excluded from these regulations. Mr. Barrett replied that the exemption was intended for single family owners, not large multi-family rental property. The exemption is from the requirement showing improvement. If it was unit existing prior to March 19, 1984, it could be rebuilt. Ms. Elias asked what would be the provision for

rebuilding more than one unit. Mr. Barrett replied that they could all be rebuilt because other provisions in the ordinance would allow them to be rebuilt if there was less than 50% of the development destroyed. Ms. Elias went on to express dissatisfaction with the provision because it required that the condominium owners fulfill the three provisions in 10.5 if damage was assessed at over 50% of its assessed taxable value.

Mayor Nassif stated that he would like the citizens to address their comments to the Council and not to initiate a discussion with the staff.

Gordon Brown, speaking as a representative of the Board of the Chamber of Commerce, stated the Chamber had voted unanimously to support this proposed ordinance. He stated that the Board also had specific comments on four areas: retroactive legislation; updating base measurement; comprehensive plan; and several miscellaneous issues regarding the wording of certain sections. (See Clerk's file for complete text).

Robert Smythe, speaking on behalf of the NC Chapter of the Sierra Club, strongly endorsed the proposed ordinance and commended the Town Attorney and Council on their handling of this project.

Margaret Holton, representing the League of Women Voters, stated the League strongly endorsed the intent of the Resource Conservation District and that the Town should develop a comprehensive water conservation plan. She also urged the Council to take steps to ensure that more development in sensitive floodplain areas does not occur. (For complete text, see Clerk's files).

Samuel Holton, speaking as a citizen, was generally in favor of taking steps to improve flood control but had some concern with the proposed ordinance, especially Section 10.4 as it pertains to casualty losses. He stated that there needs to be more updated data on just what constitutes the flood plain. Dr. Holton also expressed concern over the damaged property in excess of 50% of assessed taxable value. He felt that there are probably some property owners, him included, who have already developed or improved their properties to more than adequate level and therefore would not need to further improve if damaged to the stated extent.

Bonnie Bechard, representing the Board of Neighborhood Alliance and Glen Lennox neighborhood, stated that flood plain preservation, open space, parks and green space are still a major concern and that groups appreciate the hard work the Town has done on this issue. She stated they did have some concern about the flood plain data designating where the flood plain actually exists. She said their group would like a moratorium or discussion on proposed development near the flood plain. Ms. Beshard also expressed concern about the parks and greenways in the Glen Lennox area and how this proposal might be affected.

Edward Billings, Executive Director of OWASA, expressed support of Resource Conservation District. He further recommended two other requirements with respect to limited expansion of existing structures in the District. These concerned keeping first floor levels above existing manholes. He also made additional comments re Sections 10.3; 10.6.5; 10.7; 10.8. (For complete text, see Clerk's files).

Robert Page, speaking for two land owners in flood plain stated in general they were not opposed to the ordinance but were against the reduction in the density. He stated that if Council reduces density, they reduce the availability of funds by a developer to take care of runoff in these areas. He felt certain

properties could be developed and water management improved by the development itself.

Council Member Howes spoke against the Sunset provision. He stated that this provision was not what was needed, rather there needed to be a provision for Council to regularly review this ordinance. Mr. Howes also asked the Attorney to explain, briefly, the provision for the taking of people's property in this ordinance. Mr. Barrett replied that the basic principle was that regulatory actions must be very overwhelmingly onerous to be classified as taking that required payment of just compensation. An owner must be allowed a reasonable use of his property. The regulatory action taken must be for valid, public purposes. He felt that this ordinance would be considered a valid public purpose and that property owners would have the right to appear before the Board of Adjustment. Council Member Howes asked if an ordinance this strict had withstood this kind of test in North Carolina and across the country. Mr. Barrett replied that there were no precedents in North Carolina and no directly comparable effort in other locales around the country.

Council Member Preston wondered when the Storm Water Management Plan would be developed. Manager Taylor stated in approximately 18-24 months. Council Member Preston also expressed concern over Section 10.4 and its affect on condominium owners.

Council Member Pasquini stated that he was against the Sunset provision and was also concerned about Section 10.4. He also expressed concern regarding Section 10.6.4 where the provision states "significantly ...significantly..." Council Member Pasquini felt it needed to be more defined. Mr. Barrett stated it was impossible to predict the varieties of factual situations that will be faced. Mr. Barrett said that significantly was supposed to mean a measurable change. Council Member Pasquini felt that this could be a problem with the Board of Adjustment in deciding what constituted significant. Mr. Barrett replied that that was an appropriate function of a Board of Adjustment. Council Member Pasquini expressed favor for the updating of the Flood Plain data. Mr. Barrett stated he felt this concern was being currently addressed, in a general sense, in the existing flood damage ordinance but that he would make this more specific.

Council Member Thorpe also expressed disagreement regarding the Sunset provision. He also questioned why March 19, 1984 was set as the benchmark date. Mr. Barrett replied that it was the date of the first Public Hearing and was under the impression that from that date Council desired that no irreversible change would occur in the flood plain area while this ordinance was under consideration. Council Member Thorpe stated he understood Mr. Barrett's reasoning but still felt that the ordinance should be effective only from when passed by Council.

Council Member Boulton asked whether the ordinance was considered strict. Mr. Barrett stated that he considered it very strict but that using terms like significantly, etc. gives a little leeway for the Board of Adjustment to work with regarding variances. Council Member Boulton asked if Council could meet with the Board in the beginning to express Council's views on this. Mr. Barrett stated that he felt Council could, by formal resolution, indicate certain views with the understanding that the Board could act in whatever manner the Board deemed fit, or the Council could take over the role of the Board of Adjustment.

Mayor Nassif spoke regarding existing structures. He stated that he felt if a structure exists now, it was something which the Town didn't have the provision to prohibit and therefore to be accepted. The provisions of the new ordinance should state that the Town will not allow any new structures of these types. Mayor

Nassif stated that instead of the three standards of Section 10.4 being met, it should be that when rebuilt, there should be no increase in water runoff potential from the previous level. This would allow property owners to rebuild what they had. He also suggested that property owners be allowed to build back no greater than 10% larger than the original structure. This would make it economical to build. Mayor Nassif went on to suggest that property owners could move or shift existing buildings (like in Eastgate) as long as it didn't change the water runoff. Mayor Nassif then asked for clarification on Section 10.6.4 regarding the 75% overlay. Mr. Barrett stated that if the Resource Conservation District overlays more than 75% of a property owner's land the presumption is that he should be allowed some kind of variance to the minimum necessary. Mayor Nassif stated that this may call for a certain zone for this kind of situation to allow the owners to build on this property.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER BOULTON TO REFER TO MANAGER. MOTION PASSED UNANIMOUSLY (8-0).

Development Ordinance Text Amendment re Exemption Minimum Size of Planned Development

Planning Director, Roger Waldon, make a brief presentation on the text amendment. He stated these were two separate items being considered. The first concerns the minimum sizes for Planned Developments specified in the Ordinance and the second concerned the provision in the Section 8.8.3 specifying conditions under which the minimum size requirements could be waived.

Lightning Brown, representing the Planning Board, stated the Board recommended maintaining the minimum sizes specified in the Development Ordinance. Four members of the Board also voted to remove Section 8.8.3 pending amendment to provide that Planned Developments for commercial uses not be permitted to encroach into residential zones. (For complete text, see Clerk's file).

Manager Taylor recommended that no change be made to existing regulations and that Council retain the flexibilities and safeguards of the present ordinance.

Gordon Brown, representing the Board of the Chamber of Commerce, concurred with the Town Manager's recommendation.

Henry Whitfield, speaking as a citizen, stated that this ordinance should be retained as is.

Ann Fleming, speaking as a citizen, was concerned about what effect Article 8.8.3 would have on the stability of residential zoning located near commercial and office zones; and as such urged for the Council to delete or modify Article 8.8.3. (For complete text, see Clerk's file).

Margot Wilkinson, speaking as a citizen, stated she felt 8.8.3 posed potential problems for residential areas in sensitive areas -- i.e. I-40 interchange areas, and she hoped the Council would consider this when deciding on the issue.

Council Member Pasquini stated he had argued during the work session to hold a Public Hearing on this issue. He hoped those who are concerned about this issue will let their feelings be known in the next few weeks. Council Member Pasquini asked the Manager to prepare a list with addresses and current construction status of those planned developments with less than five acres of Gross Land Area.

Council Member Preston asked if Article 8.8.2 (which allows for a 10% reduction in minimum land area requirements) was not also

being considered, especially with regard to the Medical Foundation Office Building. She said there was no commercial establishment beside it and this project had been allowed the 10% reduction in a minimum land area required. Council Member Preston also asked when the 10% reduction should be allowed. Mr. Barrett replied that the 10% reduction should be allowed if the features that are needed to meet the four findings for a Planned Development could be accommodated in 90% of the normal area. Council Member Preston then asked what would be the effect of deleting 8.8.2. Mr. Barrett stated he would investigate this request.

Mayor Nassif stated that the Town staff should go back beyond 1981 for their list of Planned Developments of five acres or less.

Council Member Pasquini asked about the "high degree of control" Council supposedly has over Planned Development. Mr. Barrett stated that Council has the ability to deny if Council felt that the Planning Department was inappropriate. This would depend on the ability, under the facts, to fail to make one the four findings. Council Member Pasquini stated that this was a difficult procedure and could lead toward court cases. Mr. Barrett stated Council should pay strict attention to the Comprehensive Plan and Goals and Objectives in making the four findings. These will indicate to the Community what types of things Council will or will not allow.

COUNCIL MEMBER BOULTON MOVED, SECONDED BY COUNCIL MEMBER PASQUINI, TO REFER TO THE MANAGER. MOTION PASSED UNANIMOUSLY (8-0).

Development Ordinance Text Amendment - Height Limits

Roger Waldon made a brief presentation on the text amendment to reduce secondary height limits to 50' in all but the TC and 01-3 zoning districts.

Lightning Brown, representing the Planning Board, overwhelmingly recommended that height limits be retained as currently prescribed in Development Ordinance. (For complete text, see Clerk's files).

Manager Taylor recommended that existing height limits be retained.

Gordon Brown, representing the Board of the Chamber of Commerce, stated the Chamber Board by unanimous vote, concurred with Manager's recommendation.

Council Member Boulton stated she'd like to see all buildings below a certain height and wanted to know why 50' was set as a limit. She stated a developer had said 60' was the average height. She also felt that developers would tend to build to the maximum limit. Mr. Barrett stated that Council could work on the design manual to give further guidance to developers, and Council could also state in the Comprehensive Plan generally the expected relationship of tall buildings in certain areas.

Council Member Preston agreed with Council Member Boulton regarding requiring all buildings to be below a certain height. She would like to reduce all secondary height limits in all the zones except R-1 and R-3 with the provision that if good cause could be shown, the height could be adjusted by Council to the secondary heights that are deemed appropriate, possibly those now allowed.

Council Member Howes asked if this was not what was already being done. He stated that Council has the discretion to allow or disallow the secondary height.

Mr. Barrett suggested that the real policy problem was the relationship between the land disturbance and remaining low on the site. Council might want to meet with the Planning and Engineering staff to work out some criteria regarding this.

Mayor Nassif stated he felt developers do not go to the maximum in height all the time, primarily because of the cost involved. He suggested Council could make the height a part of the SUP application.

Council Member Smith suggested Council take into consideration the trend with regard to building height and availability of land for the future. He felt with the limited availability of land, the future will probably show developers leaning toward higher buildings. Council should also consider a process for which they decide whether a development goes up or out. Council Member Smith felt Council needed to set height limits and agreed with Mayor Nassif's suggestion for further controlling height through SUP applications.

Mayor Nassif then stated he felt his suggestion regarding using SUP's to control height would probably create more meetings or problems than help. He stated that if Council was in favor of a height limit, then they should establish a limit.

Council Member Howes felt that the Council should have a vision of the community where they were willing to accept tall buildings. He felt there were valid areas within the city, not necessarily in the Town center, where tall buildings would be appropriate. He cited the areas around I-40. Council Member Howes felt the zoning and development ordinance should be the vehicles in which to address this problem.

Council Member Pasquini stated that it was becoming a question of whether or not this Council wanted to deal with the problem or not. He said that already certain apartment complexes were close to the 50' height limit and that it probably won't be long before developers will want to go over the 50' limit.

Council Member Howes asked the Manager how he felt Council could address this issue. Manager Taylor replied that possibly a combination of what had been suggested -- limit secondary height to 50' or 60' and anything greater than that would be considered under SUP.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER HOWES, TO REFER TO MANAGER. MOTION PASSED UNANIMOUSLY (8-0).

Completion Time Limits for Development Permits

Roger Waldon made a brief presentation on the proposed changes in the completion time limits for Development permits.

Lightning Brown, representing the Planning Board, supported the staff recommendations, with two additional changes relating to when construction was considered to have started and simultaneous permits. (For complete text, see Clerk's file).

Manager Taylor recommended adoption of Resolution A to revoke certain expired SUP's and adoption of Resolution B.

Council Member Thorpe asked for clarification on allowing administrative staff the right to grant extensions for SUP's.

Manager Taylor said there might be someone who was not 100% complete with a project and was able to convince the staff it was due to circumstances beyond their control. This ordinance gives the staff the power to grant the year's extension. But if the developer hadn't completed the requirements of the SUP within one year extension, then the developer would have to go to the Council for any further extensions. The reasoning behind this was to lessen the amount of time Council would have to spend on this subject, especially since the staff felt there would be a considerable number of developers requesting this extension.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PRESTON, TO REFER TO MANAGER. MOTION CARRIED UNANIMOUSLY (8-0).

Development Ordinance Text Amend - Definition of Gross Land Area
Roger Waldon made a brief presentation on defining gross land area.

Lightning Brown, representing the Planning Board, stated the Board supported the Manager's recommendation and that the definition of Gross Land Area in Section 5.5.1 and 18.50 be reworded for a clearer meaning of permanent open space. (For complete text, see Clerk's files).

Manager Taylor recommended retaining use of gross land area and to reduce the limit on the amount of permanent open space that could be credited to Gross Land Area from 20% of net land area to 10% of net land area.

Joe Capuskey, speaking as a citizen, stated he felt it was wrong for developers to be able to take advantage of the Gross Land Area concept to enable them to build certain buildings on lots which without the Gross Land Area would not be allowed on these lots. He questioned why the Gross Land Area was included in the ordinance and asked Council to reject the concept of Gross Land Area.

Jane Norton, speaking for the Alliance of Neighborhoods, suggested using net land area instead of Gross Land Area in order to reduce intensity of land use and simplify the system.

Henry Whitfield, speaking as a citizen, spoke in favor of the Gross Land Area.

COUNCIL MEMBER BOULTON MOVED, SECONDED BY COUNCIL MEMBER HOWES TO REFER TO MANAGER.

Council Member Smith stated that developers shouldn't be given any way to "claim" more property than they rightfully own.

THE MOTION PASSED UNANIMOUSLY (8-0).

Dedication of Recreation Areas and Payments in Lieu of Recreational Space

Roger Waldon made a brief presentation on changes in section 5.7.8 and 7.9 of the Development Ordinance regarding dedication vs. reservation; county tax appraisals vs. current fair market appraisal; payments in lieu of recreation improvements in multi-family developments, Planned Housing Developments and Residential Portion of mixed used Planning Development and off-site land substitution.

Lightning Brown, representing the Planning Board, stated the Board unanimously supported the amendments to Articles 5 & 7 of Development Ordinance. (For complete text, see Clerk's file).

Roger Waldon stated the Parks and Recreation Commission supported these amendments but encouraged Council to base the appraisal for

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payments in lieu in both subdivision and planned unit development on fair market value of raw land not developed land. (For complete text, see Clerk's file).

Gordon Brown, representing the Board of the Chamber of Commerce, endorsed the Manager's recommendation with exception of the developer having no choice in whether there will be a dedication or reservation. He felt developers should be given a choice of these two options.

Doug Lay, speaking for the Alliance of Neighborhoods, stated he felt there were possibly other avenues available to the Town and developers re dedication vs. reservation. He suggested using Impact taxes to make developers pay their way.

Mr. Barrett stated that there was no developer prerogative. The subdivision statute, and by analogy under SUP's clearly would allow Council to require dedication in each and every case. He also stated that the impact taxes had not as yet been authorized by the North Carolina law.

Council Member Smith expressed concern about offering land away from the site. He felt it might lead toward there being a lot of little pieces of land scattered throughout but no large tracts.

Manager Taylor replied that this amendment was established to provide Council with several options.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER HOWES FOR REFERRAL TO MANAGER. MOTION PASSED UNANIMOUSLY (8-0).

The Hearing was adjourned at 10:38 p.m.

Mayor Joseph L. Nassif

Nancy Wells, Information Services

