

MINUTES OF A CONTINUATION OF THE FEBRUARY 10, 1986 REGULAR MEETING OF THE MAYOR AND COUNCIL OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING, MONDAY, FEBRUARY 17, 1986, 7:00 P.M.

Mayor James C. Wallace called the meeting to order. Council Members present were:

- Julie Andresen
- David Godschalk
- Jonathan Howes
- David Pasquini
- Nancy Preston
- R. D. Smith
- Bill Thorpe
- Arthur Werner

Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist, and Town Attornev Ralph Karpinos.

Abandonment and Revocation of Special Use Permit

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT ORDINANCE 86-2-10/0-3. THE MOTION PASSED UNANIMOUSLY, (9-0).

The ordinance, as adopted, reads as follows:

AN ORDINANCE AMENDING THE CHAPEL HILL DEVELOPMENT ORDINANCE (86-2-10/0-3)

BE IT ORDAINED by the Council of the Town of Chapel Hill that the Council finds:

- a) that the transfer of authority to approve abandonment of special use permits from the Town Manager to the Council; and
- b) that allowing the Council to revoke special use permits when new development is approved incorporating appropriate conditions of those special use permits

are changes in the development ordinance in conformity with the intent of the Development Ordinance and reflect the changing conditions in the community.

BE IT FURTHER ORDAINED by the Council of the Town of Chapel Hill that the Chapel Hill Development Ordinance be amended as follows:

SECTION I

AMEND Subsection 8.6.4, Abandonment of Special Use Permit, to read as follows:

8.6.4 Abandonment of Special Use Permit

On request by the holder of a Special Use Permit or Modification of Special Use Permit, Council shall approve the abandonment of the Permit or Modification if it determines that

- a) no construction or activity authorized by the Permit has been started and the starting time limit has not yet expired; or
- b) the development or use authorized by the Permit or Modification no longer requires a Special Use Permit, and all conditions of the Special Use Permit have been satisfied.

166
In addition, the Council must determine that the permit holder has submitted a signed affidavit clearly stating the holder's intent to abandon the Permit or Modification.

If Council approves the abandonment, it shall not be effective until the affidavit of abandonment is recorded in the office of the appropriate County Register of Deeds.

SECTION II

INSERT the following as the third paragraph of Subsection 8.6.6, Revocation of Special Use Permit:

On request by the holder of a Special Use Permit or Modification of Special Use Permit, the Council may revoke the Permit or Modification if it determines that:

- a) construction authorized by the Permit or Modification has been started and the completion time limit has not yet expired; and
- b) the request is made in conjunction with an application for approval of a development other than that authorized by the Permit or Modification; and
- c) the proposed development as approved by Council incorporates adequate consideration of the site's already disturbed land area in its design and previous commitments made under the Special Use process.

SECTION III

That all ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 10th day of February, 1986.

Report on Citizen Petition Regarding Traffic Study for Franklin Street Between Plant Road and Elliott Road

Manager Taylor said that this was an interim report on the process for conducting this study. He said the Town already had a consultant working on a study along Franklin Street in this area and felt it would be appropriate to add this study request to the scope of work already being done by the consultant.

Council Member Preston asked if the Elizabeth Street area was part of the study. Manager Taylor replied that it was a part of the study.

Council Member Thorpe asked how much this additional study request would cost the Town. Manager Taylor said that he thought it was an additional \$600.00 to the contract cost.

Council Member Werner said he was concerned about the carbon monoxide levels at the intersection of Estes and Franklin and asked if it were possible to add a study of these levels to the current study and if not, to get the information to the Council through another means. Manager Taylor replied that he was not sure it could be added to the current traffic study but that he would investigate the means of getting this information to the Council.

Mayor Wallace suggested having the Air Quality Section of the Division of Environmental Management do the study.

Proposed Amendments to Rosemary Square Project

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER HOWES TO ADOPT RESOLUTION 86-2-10/R-4.

COUNCIL MEMBER ANDRESEN MOVED A SUBSTITUTE MOTION, SECONDED BY COUNCIL MEMBER WERNER TO REFER THIS MATTER TO THE PLANNING BOARD TO REVIEW THE PROJECT WITH THE PROPOSED CHANGES.

Council Member Andresen said the Planning Board had not had a chance to review the plans for the Rosemary Square project since the Board of Adjustment ruling in December.

Mayor Wallace read and introduced into the record a memorandum on the proposed amendments to the Rosemary Square project dated February 17, 1986 in which he discussed the implications of the proposed changes and the validity of the project as proposed. The following is a copy of the memorandum as read into the record of the meeting:

The Board of Adjustment on Dec. 4, 1985 determined that the Rosemary Square contract and the Development Ordinance, construed together, required the developer to furnish 275 parking spaces for the project, 100 more than called for in the contract. The Board also found that Sec. 6.6.3a of the Ordinance, (the "counter-cyclical" peak-usage provision) allowed the developer to fulfill his requirement for 100 additional spaces by using 100 of the Town's 325 spaces. To trigger the use of Sec. 6.6.3a, the Town Manager certified (see Attachment A) that the peak periods for hotel parking and "downtown retail parking" were countercyclical, and that "...up to one-half of the parking spaces in the parking facility, other than those assigned to hotel use, may be considered to be available for the hotel use for purposes of determining if the joint process...provides adequate off-street parking to meet the requirements of said ordinance" (emphasis supplied). Please note that both the Board of Adjustment and the Manager construed Sec. 6.6.3a to authorize satisfying the developer's requirement for additional spaces out of non-hotel (that is, Town) parking spaces.

As pointed out in a January, '86 memorandum circulated to the Council, if the Town builds 100 parking spaces for the use of the developer, thus relieving him of the expense of building these spaces with his own funds, the Town will be subsidizing a hotel business in violation of the public purpose provision of the N.C. State Constitution.

If the developer's proposal of Dec. 23, 1985 to reduce the number of lodging units in the hotel from 225 to 188, and to restripe the parking deck to accomodate 13 additional cars (with such additional spaces belonging to the developer) is acceptable to the Town, the number of spaces constituting an illegal subsidy to the developer is reduced from 100 to 50 (now 55, as the latest proposal increases the retail parking requirements, including the health spa, from 50 spaces to 55).

140

The latest proposed amendments to the Rosemary Square contract, in addition to reducing the subsidy from 100 to 55 parking spaces, proposes to eliminate the remaining 55 space subsidy by disregarding and acting contrary to the Board of Adjustment's determination that Sec. 6.6.3a applied to countercyclical parking usage between the hotel and the parking facility. The Manager now (February, 1986) proposes to certify that the 55 spaces come not from the Town's 325 spaces, but from the 188 spaces that the hotel is required to provide for its registered guests. In doing so, he construes Sec. 6.6.3a to apply between the hotel and the retail businesses, and not between the hotel and the parking deck. This change would be effectuated without consideration or approval by either the Planning Board or the Board of Adjustment.

This new construction of Sec. 6.6.3a (together with the use of Sec. 6.6.3b to permit the developer's 188 spaces to absorb the requirement for 32 (now, 33.8) restaurant spaces) results in this section of the Ordinance being used to permit double usage of 94 spaces required by hotel registrants. It may be reasonable to permit 33.8 hotel guests to share their parking spaces with restaurant customers, because frequently a guest and a customer may be the same person, but it is not reasonable in addition to expect 55 hotel guests to share their parking spaces with 55 merchants and their customers. Such an arrangement is obviously an attempt to get around the unconstitutional subsidy by the Town of the hotel business. It has not been considered, much less sanctioned, by any administrative body, and it should not be allowed by the Town Council.

Sec. 6.6.3 contemplates two "uses" on a single zoning lot. The latest proposal unrealistically ignores the parking use - the primary purpose of the whole arrangement - and endeavors to make two uses out of the developer's single project: a hotel with a shopping arcade. This strained and illogical interpretation of the section was not argued before the Board of Adjustment, and in fact a motion by a member of the Board to construe Sec. 6.6.3a to permit the spaces in controversy to come out of the developer's required spaces was, after debate, withdrawn (see p. 7, Board's draft minutes).

The proposed new Rosemary Square arrangement which would authorize the developer to satisfy his requirement for 55 retail parking spaces out of his required 188 spaces for hotel guests should not be accepted because:

1. This interpretation of Sec. 6.6.3a has not been approved by the Planning Board or the Board of Adjustment, and in fact it is an improper construction of the section, and contrary to the Board's earlier findings.

2. The Town Manager's proposed certification of the applicability of Sec. 6.6.3a as between the hotel and the retail businesses (each a part of a single project of the developer) is contrary to his above-quoted application of the section as between the hotel and the Town's parking facility.

3. The new proposal would result in the developer being required to furnish parking spaces well below the number required to satisfy multiple demands for parking created solely by the project. The excess demand would seek accommodation on spaces built at Town expense, but such spaces may not be available at times when demand is greatest.

4. While the Town Manager has certified to the countercyclicity of peak usage as a fact, it is questionable. It is likely that peak usage of both the hotel and the retail spaces will overlap in late afternoon when the majority of hotel guests have registered, the retail establishments are still open, and the restaurants and bars on and off the site have begun to fill up. Unsatisfied demand on the parking deck at this time, during which the evening rush hour also occurs, could result in chaotic traffic conditions in this vicinity.

5. The issue of constitutionality is not one that should be so lightly disregarded; it can be raised in court by any taxpayer up to and probably even after closing. Resolving the issue at that later date would be far more costly to both Town and developer.

6. The developer's offer to delay closing to December, 1986, provides an abundance of time for referral of the issues raised by this new proposal to the Planning Board for orderly consideration, or for a public hearing by the Council itself, to be certain that the issues raised are thoroughly considered and disposed of in a legal and binding manner.

Council Member Preston asked when the Planning Board would be able to review this project. Ms. Pat Evans, representing the Planning Board said that the Board's schedule was extremely heavy for the upcoming months. Roger Waldon, Planning Director, said that he believed the earliest the project could be reviewed was March 18.

Council Member Preston asked if the proposed delay in the closing date to December 1986 would be affected if the project were sent back to the Planning Board for review. Manager Taylor said that as of this meeting the developers were asking for the deadline for closing to be December 31, 1986 but that the notice for closing was still May 22, 1986. He said that if the Council approved the revised contract to include a revision in the deadline for closing the staff expected to receive notice that actual closing would not take place on May 22nd but at a later date. Manager Taylor said that if the Town received notice of closing later than June 30 and July 1, then the Town would have to go back to the Planning Board and Historic District Commission, respectively, to get their approval for the revised closing dates only, not the entire project. Manager Taylor said that if the Council were to send the proposal back to the Planning Board tonight, the Town could, if the Council wished and with the developer's agreement, ask the Planning Board to reconsider that date as a part of their deliberations. He said currently closing was still scheduled for May 22, 1986.

192
Council Member Preston asked when the project would come back to the Council if it were sent to the Planning Board to review on or about March 18. Manager Taylor replied that it normally took about 10 days after the Planning Board has their meeting for an item to be brought before the Council.

Council Member Pasquini said he felt the Planning Board needed time to thoroughly review the proposal both prior to the meeting and during the meeting. He said the Planning Board should review the project with regard to all the proposed changes, not just those relating to the parking situation.

Council Member Thorpe said the motion was for the Planning Board to review the project with regard to all the proposed changes.

Council Member Godschalk asked what purpose would be served by referring the project to the Planning Board. He asked just what the Council would be asking the Planning Board to decide, i.e. is it better to have fewer hotel rooms rather than more; to have a lower building rather than a higher; to have more sunlight rather than less? He thought if these were the questions to be put to the Planning Board then he felt it would be a waste of time. He asked for a clearer statement of exactly what the Council wanted from the Planning Board.

Council Member Andresen said that one question that might be asked was if the developer was meeting the requirements of the ordinance. She said she was bothered by the fact that 55 hotel guests would be expected to share their parking spaces with retail customers.

Mayor Wallace said the Council should have its support groups, i.e. Planning Board and Historic District Commission, review the project since all the numbers involved from hotel rooms to square footage to parking spaces were proposed to change.

Council Member Godschalk said that what he was trying to decide was whether or not the motion to send to proposal to the Planning Board was a delaying tactic by those who were legitimately opposed to the project or whether there was some matter of substance that the Planning Board might deal with. He said the Board of Adjustment in their December meeting said the developer had to provide 280 parking spaces without regard to Section 6.6.3a, but they then went on to pass a motion stating that under this section the project allows up to half of the 325 parking spaces to be used to satisfy the parking space requirement for the private components. He said he felt the Board of Adjustment had acted rather specifically.

Council Member Howes agreed with Council Member Godschalk that having the Planning Board review the proposal would be a waste of the Board's time. He said the Planning Board was supposed to be a body which gives the Council long range strategic planning advice on how the Town should grow and develop. Council Member Howes said that with regard to the Rosemary Square project the Council had asked the Planning Board whether or not there should be a jointly sponsored public-private mixed use development on the site of the present parking lot #1 and the Board said yes. He said the major point appeared to be whether or not the Town should engage in this project and not in the number of parking spaces delegated to each partner. He felt the question of the number of parking spaces should be negotiated through the Town's management team and not by the Council who should be involved in the general strategic concept of whether or not the Town should engage in this project.

Council Member Howes said he felt this question had already been answered both by the Council and the Planning Board. He said the only new item to be discussed was the information presented in the Mayor's memorandum and that this information could stand some analysis and reaction by the developer, the staff, and attorney, but he saw no reason to go through the process of sending the proposal to the Planning Board.

Mayor Wallace commented that he felt the Planning Board should have the opportunity to review the proposal to see if it adheres to the Town's Development Ordinance with regard to the joint use of 55 parking spaces by the hotel and retail establishments.

Council Member Andresen said her desire to refer the proposal to the Planning Board was an effort to get some clarification of the responsibilities involved, not as an effort to delay the project.

Council Member Preston said she was in favor of the project but that she felt there were some questions to be answered. She asked that if the Planning Board reconsidered the project they also reconsider the new closing date.

Council Member Thorpe said that he wished the developers had held preliminary discussions on the proposed changes with the Council prior to asking for Council consideration and approval. He said he felt talking about the proposed changes in a informal manner would have been more advantageous for the developers and the Council than just informing the Council of the proposed changes via a letter. He said he had been and still was very supportive of the project. Council Member Thorpe asked the Town Attorney if the Planning Board had the authority to call a public hearing on the proposed changes.

Town Attorney Karpinos replied that the Planning Board's rules and procedure provide that for all matters coming before the Board, the chairman shall request comment from members of the public. He said that while it may not be a formal public hearing, there is an opportunity for the public to comment.

THE SUBSTITUTE MOTION CARRIED, (6-3), WITH COUNCIL MEMBERS GODSCHALK, HOWES, AND SMITH VOTING AGAINST.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER THORPE TO AMEND THE MOTION TO HAVE THE PLANNING BOARD CONSIDER IN THEIR DELIBERATIONS A NEW DEADLINE FOR CLOSING AS DECEMBER 31, 1986. THE MOTION CARRIED, (7-2) WITH COUNCIL MEMBERS SMITH AND GODSCHALK VOTING AGAINST.

THE MOTION AS AMENDED CARRIED, (6-3), WITH COUNCIL MEMBERS GODSCHALK, HOWES, AND SMITH VOTING AGAINST.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REFER THE MEMORANDUM PRESENTED BY MAYOR WALLACE TO THE COUNCIL DATED FEBRUARY 17, 1986 TO THE STAFF AND ATTORNEY FOR WRITTEN COMMENT BACK TO THE COUNCIL.

Council Member Godschalk asked for the reason for this motion. Council Member Howes replied that there were questions raised in the Mayor's memorandum which would continue to be raised and he felt it would be better to have the answers in writing for referral.

Council Member Godschalk suggested the staff and attorney also review the question of conflict of interest within the Council regarding the project.

THE MOTION PASSED UNANIMOUSLY, (9-0).

Traffic Signal at Pittsboro and McCauley Streets

COUNCIL MEMBER THORPE MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 86-2-10/R-5.

Council Member Preston asked what had occurred to increase the anticipated cost of this traffic signal from \$8,000 to \$15,000. Manager Taylor replied that NCDOT's initial estimate had been \$8,000, but that since then, NCDOT had completed their studies and seen what needs to be installed at the intersection and their estimate is now \$15,000 which would include additional control equipment for the other signals to make it a totally integrated system.

THE MOTION PASSED UNANIMOUSLY, (9-0).

Council Member Thorpe commented that there had been a bad traffic accident at this intersection last Friday and that the new traffic signal needed to be put in as soon as possible.

Council Member Howes asked why NCDOT could not turn on the present traffic signal until a new one was added. Manager Taylor replied that NCDOT had said that since the present traffic light was not synchronized it would cause further havoc to have it turned on.

194
The resolution, as adopted, reads as follows:

A RESOLUTION REQUESTING IMMEDIATE INSTALLATION OF NEW TRAFFIC SIGNALS AT THE INTERSECTION OF PITTSBORO STREET AND McCAULEY STREET WITH INITIAL FUNDING BY THE TOWN OF CHAPEL HILL IF NECESSARY, AND SUBSEQUENT REIMBURSEMENT TO THE TOWN BY THE N. C. DEPARTMENT OF TRANSPORTATION (86-2-10/R-5)

WHEREAS, new signals are needed at the intersection of Pittsboro and McCauley Streets in Chapel Hill, as determined in the N. C. Department of Transportation's recent study; and

WHEREAS, such signals are estimated to cost approximately \$15,000; and

WHEREAS, these signals have top priority for funding by the N.C. Department of Transportation, but funds are not available at present; and

WHEREAS, State law authorizes the Town and the N.C. Department of Transportation to enter into a municipal agreement for signal improvements;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby requests the N.C. Department of Transportation to install new signals at the intersection of McCauley and Pittsboro Streets in the immediate future; and, if the new signals cannot be installed immediately due to lack of State funds, the Council requests the N.C. Department of Transportation to enter into a municipal agreement with the Town whereby the Town will provide funding so that the signals can be installed in the very near future and whereby the Town would receive reimbursement of such funds at a later date.

BE IT FURTHER RESOLVED that the Council approves, and the Manager is authorized to enter into on behalf of the Town, a municipal agreement with terms substantially as described above.

This the 10th day of February, 1986.

Nuclear Waste Repository

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER WERNER TO ADOPT RESOLUTION 86-2-10/R-6. THE MOTION PASSED UNANIMOUSLY, (9-0).

The resolution, as adopted, reads as follows:

RESOLUTION OPPOSED TO THE SITING OF A HIGH-LEVEL NUCLEAR WASTE REPOSITORY IN REGION J, NORTH CAROLINA (82-2-10/R-6)

WHEREAS, the U. S. Department of Energy has identified the Rolesville Pluton in portions of Johnston, Wake, and Franklin Counties as the possible site of a high-level nuclear waste repository; and,

WHEREAS, the Counties of Johnston and Wake, and the Towns of Rolesville, Wake Forest, Knightdale, Wendell, and Zebulon are located in or adjacent to the study area, and are members in good standing of the Triangle J Council of Governments; and,

WHEREAS, the proposed repository site is dangerously close to major urban centers of the Triangle J Region, whose population is increasing at four times the national average, and the study area includes the Little River watershed, whose valuable surface and ground water reserves have been recently documented by the North Carolina Department of Natural Resources and Community Development; and,

WHEREAS, the County of Wake and the Towns of Wendell, Knightdale, and Zebulon have recently passed resolutions petitioning the State of North Carolina to reclassify the Little River as WS-1, the strictest degree of water supply protection available under state law; and,

WHEREAS, the Governor of North Carolina and Secretary of Natural Resources and Community Development oppose the siting of a nuclear waste repository anywhere in the state;

NOW, THEREFORE BE IT RESOLVED THAT the Council of the Town of Chapel Hill opposes in the strongest possible terms the location of a high-level nuclear waste repository in the Rolesville Pluton study area.

This the 10th day of February, 1986.

Eubanks Road Subdivision

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER HOWES TO ADOPT RESOLUTION 86-2-10/R-7A. THE MOTION PASSED UNANIMOUSLY, (9-0).

The resolution, as adopted, reads as follows:

RESOLUTION RECOMMENDING APPROVAL OF EUBANKS ROAD SUBDIVISION
(86-2-10/R-7a)

BE IT RESOLVED by the Council of the Town of Chapel Hill that it recommends that the Orange County Board of Commissioners approve an application for the division of 5.99 acres of land (Chapel Hill Township Tax Map 18, Lot 27B) into five lots, as proposed by application and preliminary plat (application submitted January 15, 1986; preliminary plat dated August, 1985), subject to the following conditions:

1. That a control corner be provided on the plat.
2. That culvert(s) location/size be indicated on the plat.
3. That the clustered septic tank drainfield be designated as a separate lot, exclusive of road right-of-way, and referenced as Lot #5 and a notation placed on the plat which states:

"This lot is of restricted development potential because of its use for a clustered septic system drainfield."
4. That a stormwater management plan which satisfies the standard for control of the first one half (1/2) inch of stromwater runoff from impervious surfaces be submitted for review and approval by the Sedimentation and Erosion Control Officer prior to the approval of the final plat.
5. That engineered plans for the community sewer system must be submitted for review and approval by the Orange County Health Department prior to approval of the final plat.
6. That a perpetual maintenance agreement for the community sewer system be submitted for review and approval by the Orange County Attorney prior to recordation of the final plat.

This, the 10th day of February, 1986.

Nominations and Appointment to the Transportation Board

Council Member Werner nominated Clinton Jones.

Council Member Thorpe stated that Mr. Jones was Black and the Transportation Board did not currently have any Black representation.

196

For one seat on the Transportation Board, the following vote was taken:

Roberta Black	(1)	Godschalk	
Edie Elterich	(1)	Preston	
Jeffrey Obler	(1)	Howes	
Clinton Jones	(6)	Andresen, Pasquini, Wallace, Werner	Smith, Thorpe,

Clinton Jones was appointed.

A MOTION WAS DULY MADE AND SECONDED TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (9-0).

The meeting adjourned at 7:55 p.m.

Mayor James C. Wallace

Harvey J. Belli
Town Clerk