

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
THURSDAY, OCTOBER 1, 1987, 7:30 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
- Bill Thorpe
- Arthur Werner

Council Member Smith was absent, excused. Also present were Town Manager David R. Taylor, Assisant Town Managers Sonna Loewenthal and Ron Secrist, and Town Attorney Ralph Karpinos.

Public Hearing on Rosemary Square Project

Mayor Wallace said the purpose of the hearing was to receive opinions and factual information on the project from the public. He urged that the comments be limited to new information.

Manager Taylor gave a brief summary of background information on the project and a chronology of events leading up to the current date. He then reviewed the plans for the parking garage, financing, use of the facility and basic points of the development agreement. Manager Taylor said that there were essentially four items which needed to be resolved before closing could take place. These items included Council approval of a bond order for the Town's parking revenue bonds; Council approval of the Parking Garage Contract; Council approval of the project budget for both the public and private improvements; and Council approval of the parking lease. Mr. Taylor said the alternatives available to the Council were to proceed with closing according to the terms of the Development Agreement; negotiate with the private developer for different terms such as change in site, scale, design, parking use, etc., or deferral of closing deadline; or evaluate methods for and potential consequences of terminating the agreement. He said the latter involved determining the legal and financial liability if the agreement were terminated and proceeding from that point.

Council Member Preston asked when was the current anticipated closing date and if this hearing had any affect on that closing date. Manager Taylor replied that the Council had amended the Development Agreement to state that closing should occur no later than June of 1987 or not more than 6 months after the close of litigation on the project. He stated that six months from the adjudication of the litigation would be March 3, 1988 and that was the anticipated deadline for a closing date.

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Council Member Godschalk commented that the Development Agreement had included setting the cost per parking space to the Town not to exceed \$7500. He said that the estimate for the cost per space had increased to \$8500 several months ago. He asked if the Manager had an estimate of the current cost per parking space. Mr. Godschalk pointed out that the developer was having to subsidize the any cost per space over \$7500. Manager Taylor replied that approximately a year ago when the Town and developer had been working on closing, the cost per space had been estimated at \$10,000 to \$11,000. Manager Taylor stated that he was glad the Town had capped its cost on each parking space in the Development Agreement.

Council Member Pasquini asked for information on the value of the land and the air rights. Manager Taylor said that at the time of the Development Agreement the value had been estimated at \$1 million but that since revaluation he was sure it would be higher and that he would get that information for the Council.

Council Member Werner commented that the report indicated that \$2.4 million was to be allocated for construction costs while the bond order was to be for \$3.5 million. He asked for what would the other \$1.1 million be used. Manager Taylor responded that there needed to be a debt service reserve of approximately \$500,000 and capitalized interest during construction was estimated to be \$400,000, and that there were insurance costs of around \$100,000 as well as other miscellaneous costs associated with the bond issue.

Council Member Werner said that with these costs included then the cost per parking space for the Town was actually about \$10,000.

Council Member Howes asked if the Town were to build the parking spaces anywhere else in the Town would the costs be the same. Manager Taylor replied that the costs associated with the bond issue would be the same but that the construction costs would probably be more due to the current costs of construction.

Council Member Andresen asked how much money the Town had spent on the project, not including staff time. Manager Taylor responded that the Town had already spent approximately \$185,000 on the project not including the enormous amount of staff time that had been spent on the project.

Council Member Godschalk asked if the \$185,000 included the legal fees the Town incurred in the lawsuit. Manager Taylor replied yes.

Roy Kuebler, Jr., speaking as a resident spoke in support of the Rosemary Square project. He said the project had gone through the process like any other development project and that the Council had granted approval in January of 1985. Mr. Kuebler said that as such the Town should proceed with the project.

James Heavner, speaking as a resident and businessman, spoke in support of the project. He encouraged those interested in the project to get the correct facts on the project before attempting to pass judgement on the project. He criticized the Chapel Hill Newspaper's reporting of the project. He pointed out that the project had been in the proposal and planning stages since 1983.

Marilyn Sparling, speaking as a resident who lives close by the proposed project, spoke in support of the project and urged the Council to move the project along as there had already been too many delays.

Steve Bullock, speaking as a resident and businessman, spoke in support of the project saying that he felt it would solve more problems than it would create.

Mike Miles, speaking as a resident, professor at UNC, and businessman, spoke in support of the project. He said he cared about the ambience of Chapel Hill and Franklin Street and said that he hoped the project would help to maintain and enhance that ambience. He said the Town had negotiated in good faith for the citizens of Chapel Hill for this project. He said that as such the project should go forward. Mr. Miles said that if the Town chose to walk away from the project, the Town would owe the developer at least \$2 million, and that this was \$2 million that could be used for more parks and open space, etc. He also said that the downtown area was already losing business to outlying areas primarily because the lack of adequate parking facilities and complementary business endeavors. He said the Town needed Rosemary Square to help revitalize the downtown area and Rosemary Square needed the support of the Town to make it a success.

Len Van Ness, speaking as the Executive Director of the Chapel Hill - Carrboro Chamber of Commerce, said the Chamber supported the project and the goal of increased parking facilities in downtown Chapel Hill. He said the Chamber and Downtown Chapel Hill Association had been working diligently since 1982 to provide sufficient parking in the downtown area, but that their efforts had not just been for more parking but for a project to help revitalize the downtown area and Chapel Hill in general. He said the proposal would enlarge the parking facilities, bring people downtown to shop at the different stores, increase the non-residential tax base in Chapel Hill, and expand employment opportunities.

Mike Helpingstine, speaking as a resident and businessman, said that he had been a downtown businessman for four years and if the project were not built now, it would only hurt the community.

Whit Morrow, speaking as a resident and as the developer of the project, said he looked forward to completing the project. He said the company wanted to move forward and had been acting in good faith towards this end over the last several years. He pointed out that there was still a long and complex process ahead and that the Town and company needed to work together to make the

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project a success. Mr. Morrow pointed out that the development company had already spent over \$2.2 million on the Rosemary Square project. He concluded by saying he was looking forward to holding work sessions with the Council on the project.

Rosemary Waldorf, speaking as a resident, commented that she had not spoken either in support or in opposition of this project before, but that she did not want the Council to spend tax dollars to get out of a contract that they had signed in good faith and that if litigation had not occurred, the project would have been well under way by now. She said for the Council to back out of the project now and have to pay over \$2 million in damages was ridiculous. She said she did not want her tax dollars being spent in this manner.

Joe Herzenberg, speaking as a resident, commented that the project was not all good and not all bad. He said he felt, however that there were some legitimate concerns about the project and how it would affect the surrounding neighborhood. He pointed out that already the project was being used as a basis for further development of the area. He stated that the traffic impact of Rosemary Square might be within the bounds of the traffic corridor but he wondered what the combined effects of Rosemary Square and other additional developments along the corridor would be to the adjoining neighborhoods. He asked that the Town investigate just how much it would cost to get out of the development agreement.

Phil Szostak, speaking as the architect for the project said he was available to answer questions regarding the utility access. He said the project was technically one of the most complex projects that would be undertaken in Chapel Hill. He said that digging down through bedrock to the water table was a challenging problem to solve without creating additional problems. He said the new addition to the Smithsonian in Washington experienced some of the same problems anticipated with this project. Mr. Szostak said the Fraser/Morrow company had contracted with a company out of Washington, D.C. which had done the excavation work for the Smithsonian and other projects along the Potomac and other locations. He said there were risks involved in the excavation and development but that he hoped they would be minimal. Mr. Szostak said the utility location was also an area which involved problems and hopefully innovative solutions. He said OWASA had indicated that it had to have a 30' right-of-way for the sewer easement alone. He stated that the plans called for an 18' alley between the back of the current businesses along Franklin Street and the Rosemary Square project. He said that over the year and a half the company had worked with OWASA there had been two alternatives which seemed to be workable solutions. He said the final plans had not been submitted to OWASA for review but that the company planned to do so in the near future. He stated that he did not see any reason why the utility problems could not be solved.

Council Member Andresen asked what risks were involved in the excavation of the site. Mr. Szostak said the biggest risk was the draw down of the water table in order to excavate and build the garage. He said this could cause consolidation in the soil underneath the Franklin Street buildings. He said the company had tested Franklin Street, the alley, the site, and Rosemary Street to see how the soils drained and consolidated, and these tests indicated that the soils would not consolidate. However, the company planned to put in re-charge wells which would allow for water to be pumped into the soils if there were any sign of consolidation. Mr. Szostak stated that there would be seismic monitoring around the site at all times in order to verify any movement of the soil surrounding the project.

Council Member Pasquini asked if there would be joint liability if there were damages to adjoining buildings. Town Attorney Karpinos stated that the Development Agreement provided that the Town be named as a co-insurer on the insurance policy for the project and therefore the Town would be covered. Council Member Pasquini said that this meant the Town would not be held liable if there were damage to adjoining properties. Attorney Karpinos said that the Town was named in the insurance policy and therefore would be protected in the event of any damage to adjoining property. Council Member Pasquini asked what was the limit of liability. Attorney Karpinos replied that he would look into this question.

Mayor Wallace asked if sovereign immunity would be considered in this instance. Attorney Karpinos responded that sovereign immunity would not be involved.

Council Member Godschalk said in terms of the easements for the utilities, a recent project had included a utility corridor under the building as a method of relocating the utilities. He asked if Mr. Szostak had considered this as an alternative. Mr. Szostak said they had looked at having the sewer line run through the parking deck, but that this alternative was not one of the ones initially considered for the project. He said they were still looking at the technical aspects of this alternative.

Council Member Preston asked if there were any risk to adjoining property owners with the blasting of the rock in order to excavate the site. Mr. Szostak said there was always a risk when using explosives but that they hoped to keep the risk to a minimum and do not anticipate damages to adjoining properties. He said the soil tests indicate a solid bedrock at 25 to 28 feet and the possibility of a ledge or shelf in the rock. He stated that the blasting would be done with low-pressure charges to crack the rock, not break it so that the bulldozers could move the rock. Mr. Szostak said the adjoining properties would be protected during the blasting process.

Henry Whitfield, speaking as a resident, spoke against the project saying he felt it would be a risky undertaking just in

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the construction phase alone. He expressed concern that the blasting which would be needed to excavate the site for the parking garage would damage adjoining buildings. He also expressed concern that the parking garage itself would not have adequate ventilation for the carbon monoxide exhausts or have adequate facilities to remove water if the garage were flooded. He suggested that Lot #5 would be a better site for the facility.

Tomas Baer, speaking as a resident, spoke in support of the project saying the downtown area needed diversity. He said the project should go forward.

Charlotte Adams, speaking as a resident, spoke against the project.

John Tomkovick, speaking as a resident and businessman, expressed his full and complete support for the project.

Everette Billingsley, representing the Orange Water and Sewer Authority, said he wanted to bring to the Council's attention that the arrangements to bring water and sewer services to the project and the existing properties had not been satisfactorily resolved. He said there had been meetings with the Town staff, developer, architect and project engineer and reviews of three sets of plans. Mr. Billingsley stated that the water and sewer concerns had been repeatedly stated in a series of letters to those involved. He provided copies of the letters. He said at the time the lawsuit had been initiated, these concerns had not been resolved. He stated that the concerns were in two categories, the physical considerations for the installation and operation, repair and reconstruction of the facilities, and the legal questions with regard to present and future circumstances which might have significant impacts. He asked Wayne Munden, OWASA Chief Engineer to address the physical considerations and Robert Epting, Counsel for OWASA to address the legal questions. He said that hopefully satisfactory solutions could be agreed upon so that the project and adjoining properties could be served by appropriate water and sewer services now and in the future.

Council Member Godschalk stated that he was puzzled as to why Mr. Billingsley was making the presentation to the Council. He asked if what was being presented were not technical issues which had yet to be resolved in the design of the project. He said he was surprised at OWASA's appearance, at the documentation, and that it raised real questions in his mind about the procedure. He asked if the problems were not technical matters to be worked out as the project proceeded.

Mr. Billingsley said that as the documentation showed, OWASA staff had been involved in this for several years. He said that in the correspondence from OWASA, they had on several occasions, raised concerns about the provision of water and sewer for the project and adjoining properties. He said the alley was very narrow and would be congested further by the construction. Mr.

Billingsley said the record was well documented about what OWASA had been trying to do to work the problems out, but that it had been a good while since OWASA had heard anything from the project engineer on the project. He said OWASA was concerned that the project was moving forward too rapidly without careful consideration being given to the utility issues. He said there needed to be some proposals from the developer that were responsive to the needs of the situation.

Council Member Godschalk said that it seemed to him that since the project had been held up in court due to litigation, there probably had been some slowing down of the work on the technical issues, but that the concerns seemed to him to be technical issues which had technical solutions.

Mr. Billingsley said he agreed that many of the concerns were technical issues with technical solutions. He said some of the solutions had been discounted off-handedly as costing too much money. He stated that it would cost more than usual to put in satisfactory utilities for the project.

Mayor Wallace said that he had already allowed Mr. Szostak to allude to the engineering problems with which the developer was concerned and therefore he thought it would be appropriate to hear from the OWASA representatives.

Wayne Munden, Chief Engineer for OWASA, said the technical concerns centered around the need to provide adequate long term maintenance for the existing and future water and sewer lines and services in the vicinity of the project site. He said the project did not currently provide adequate maintenance accessibility. He said that the accessibility was limited due to the proximity of adjacent buildings, the building's foundation and the proposed landscaping which was currently planned over some of the water lines and the bridge connector with NCNB Plaza. He stated that if the water and sewer lines were installed according to the plans submitted in February of 1986, OWASA equipment would not be able to excavate and expose the repair area in an acceptable and timely manner. Mr. Munden also stated that there would be insufficient area for several maintenance vehicles to operate and that repair to sewer connections would be hindered or almost impossible due to the proximity of other utility lines. He said OWASA was willing to work with the project development team to resolve the problems. He said he thought the problems could be worked out but they needed cooperation between OWASA and the developer.

Council Member Werner asked if Mr. Munden was suggesting that the problem with the utilities was with the design of the building or with the design and placement of the utilities. Mr. Munden responded that he could not answer any questions on the design of the building but he felt OWASA's problems were with the utility placement and maintenance.

Council Member Thorpe commented that Mr. Munden was not an architect and therefore could not comment on the building design.

Mayor Wallace asked if the letters included in the information provided by OWASA were between OWASA and the Town staff? Mr. Munden responded that the letters represented correspondence between OWASA, the Town, the developer, and project engineers. Mayor Wallace said the correspondence appeared to terminate on May 7, 1986. Mr. Munden said that letter was about the last active correspondence OWASA had on the matter. He said he thought the lawsuit and other things took precedence.

Council Member Howes asked Mr. Szostak to comment. Mr. Szostak responded that the tight area in the alley with all the utilities, and the potential uncovering of all the utilities in case of problems was a very simple example of urban engineering for urban utilities. He said it might be a complex matter for a town the size of Chapel Hill to understand but in many urban localities there were people who did this type of work on a daily basis. He said there were experts available to advise in the design, location and maintenance of utility lines such as the developer proposed. He said the developer was trying to work the system out with OWASA and that they felt there was plenty of time remaining in which to accomplish this task.

Mayor Wallace expressed concern that all the correspondence on this issue had been between the developers, project engineers, OWASA and Town staff and not to the Council.

Council Member Godschalk asked if the Mayor or Council had requested the developer to keep the Council informed on all the technical details of the project. Mr. Szostak replied not to his knowledge.

Robert Epting, speaking as the Counsel for OWASA, said he had thought it incumbent upon OWASA to inform the Council of the problems with the design of water and sewer services to the project. He read into the record a letter he had sent to Mr. Billingsley addressing this issue. Mr. Epting also said he had advised Mr. Billingsley that no approval of the design, or construction, or operation of the utility lines as last proposed by the developer should be given or begun until and unless appropriate indemnities were executed by the parties to the Development Agreement that would assure that OWASA would be indemnified and held harmless from any claim of damage, loss or injury to person or property which might arise out of the Authority's approval, installation, operation, maintenance and reconstruction of the water and sewer facilities serving the project.



Council Member Howes asked the Manager if this evening was the first time he had seen the information packet from OWASA? He also asked if the staff had been aware of problems with the utility placement. Manager Taylor replied essentially yes. He said a copy of the cover letter and Mr. Epting's statement had been hand delivered to him that afternoon at 5 p.m. He said that throughout the process one of the primary conditions of the Development Agreement was that the developer had to satisfy the conditions of closing. He said it was incumbent upon the developer to meet the conditions. Manager Taylor said the staff had tried to stay out of the problem but at the same time the staff had worked with both parties to try to get them to come terms with the issue. He said the staff had thought progress had been being made about 18 months ago, but at that time all items on the project ceased due to litigation.

Council Member Thorpe said that Mr. Epting had served on the Council, and as such, he asked if it were not true that the normal process was for the administrative staff to handle the questions of utility placement and service. Mr. Epting replied yes and said that he had not appeared before the Council in order to highlight or blow up the issue as a problem, but rather because it seemed appropriate to inform the Council of this matter so that it could be discussed in what ever work sessions the Council would hold on the project.

Council Member Thorpe asked Mr. Epting that if the Council had not called this public hearing what kind of process would he have used to inform the Council of the current utility problems? Mr. Epting said that he did not know and that it could have been possible that he might not have thought to inform the Council of the issue.

Council Member Preston asked for clarification of the question posed by Mr. Epting in his statement regarding the title to the alley. Mr. Epting responded that in some work he had previously done in the area had indicated that some of the Franklin Street property lines went all the way to the far side of the alley, and if this were the case, easements would have to be granted from those property owners for the relocation of the water and sewer lines.

Helen Urquhart, speaking as a resident, spoke against the project. She introduced into the record a copy of a newspaper article by James Webb which endorsed the idea of an above ground parking deck in place of the proposed project. She said it would cost more to recoup the funds proposed to be expended for the parking garage than it would for an above ground deck. She said that if the Town were to build a parking deck she would like to see it named after former Council Member Winston Broadfoot.

Roland Giduz, speaking as a resident, spoke in support of the project. He said in the last two years there had been a greater need for parking and revitalization in the downtown area. He pointed out that the project had been originally proposed by the Town who had solicited proposals from various developers. He

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said the developer selected was a local developer who had proposed a creative, practical project that would be a model for other localities. Mr. Giduz said he hoped the Town would move ahead with the project.

William C. Logan, speaking as the construction engineer for the project, spoke in support of the project and said he was available to answer any questions of the Council.

E. T. Baysden, Jr., speaking as a resident and businessman, spoke in support of the project saying downtown Chapel Hill needed a project like Rosemary Square.

Robert Varley, speaking as a resident and businessman, spoke against having the Rosemary Square project at the proposed location. He spoke in support of having a parking deck on the site but not a hotel complex. He pointed out that parking lot #1 had originally been purchased by Chapel Hill merchants who had seen a need for parking in the downtown area. Mr. Varley said the merchants had subsequently sold the parking lot to the Town.

Walter Daniels, representing Fraser Development Company of North Carolina, spoke in support of the project. He said the company had presented the Rosemary Square proposal at the invitation of the Town in response to requests for proposals to revitalize the downtown area. He said the company had been acting in good faith since the beginning of the project. Mr. Daniels said the company believed in the project and wanted to go forward with it. He stated that to ask the question if the Town could get out of the project without liability totally missed the point of the project which was to provide a more parking facilities for the Town and provide a means of revitalizing the downtown area. He said the language in the Development Agreement was not as important as the spirit of what the developer, and he hoped the Town, was trying to accomplish in downtown Chapel Hill.

William Kohn, representing the Downtown Chapel Hill Association, spoke in support of the project and urged the Council to proceed without delay towards closing.

Tom McCurdy, speaking as a resident, spoke against the project stating that it would have a negative environmental impact on the area due to air pollution created by the increased influx of vehicles in the area. He stated that an environmental impact study should have been done on the proposal before any approval had been granted.

Ken Jackson, speaking as a resident and businessman, said that downtown Chapel Hill needed more parking facilities. He said if Rosemary Square were not built, there still needed be a way to provide additional parking in the downtown area. Mr. Jackson said the Council needed to make a decision as to whether or not it would continue with the project, and if not, then he said he

had a proposal for a parking deck. He said the proposal was for a three level deck, 10' would be below ground and 21' would be above ground. He stated that the proposal included a park on top of the parking deck that would be planted with trees and shrubs and could include a small amphitheatre for outdoor concerts. Mr. Jackson said that he did not have the exact figures on the cost of his proposal but would be glad to provide them to the Council as soon as possible. He said the immediate need was for more parking downtown.

Council Member Howes said that he hoped the Council would set a time at the next Council meeting to meet again to discuss how the Council wanted to proceed with this issue. He said this public hearing had been at the request of numerous citizens in Chapel Hill and that he felt it had been fruitful.

Council Member Howes commented that Dr. Graham, the person who had presented the petition to the Council to call this public hearing on the Rosemary Square project, was in the audience. He asked Dr. John Graham if he would like to comment on the proceedings or the project. Dr. Graham replied that he would abstain from commenting on the project on advise from counsel.

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

The meeting adjourned at 11:12 p.m.

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