

MINUTES OF A JOINT MEETING OF THE MAYOR AND COUNCIL AND  
THE BOARD OF ADJUSTMENT AND LIBRARY BOARD OF TRUSTEES  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
MONDAY, OCTOBER 5, 1987, 7:30 P.M.

Mayor Pro-tem Bill Thorpe called the meeting to order. Council Members present were:

- Julie Andresen
- David Godschalk
- Jonathan Howes
- Nancy Preston
- David Pasquini
- Arthur Werner

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

Board of Adjustment members present were:

- Jeannette Gay Eddy, Chair
- James Ellis
- Charles House
- Robert Joesting
- Ken Bagwell
- Betty Sanders
- Helen Urquhart
- Ted White

Board Members Land, Mason, Minsley, Spiller, and Peace were absent. Also present were Roger Waldon, Planning Director, and Diana Woolley, Planner.

Library Board of Trustees present were:

- Lisa Price, Chair
- Ken Broun
- Joe Herzenberg
- Margaret Siefert
- Doris Wilson
- Zora Rashkis

Also present was Kathleen Thompson, Library Director.

Board of Adjustment

Gay Eddy discussed some of the changes which had occurred on the Board of Adjustment (BOA) over the last year with regard to the Board's rules and procedures. She said the role of the alternate had changed so that they could participate in the discussions at the public hearing but still could not vote unless there were

less than ten regular members present. Ms. Eddy also said the Board had changed its rules so that ten members, instead of eight, had to be present in order to hold a public hearing, unless the applicant agreed to less than 10 members.

Council Member Howes asked if this change had had any affect on the process of reviewing cases. Ms. Eddy replied that the Board had just adopted this change, but at the last meeting ten members had not been present and the applicant had chosen postponement.

Ms. Eddy said the Board had reviewed its attendance record since January, and it indicated that 4 members had attended all 8 meetings; 2 members had attended 6 meetings; 1 had attended 5 meetings; 2 had attended 4 meetings and 1 had attended two meetings. She said as a result, the Board was contemplating using the provision in the ordinance which stated that members who miss three consecutive meetings or were absent for more than 50% of the meetings were subject to removal from the Board. She said the Board had never really enforced this rule but that since the Board had changed their rules to require ten members for a public hearing they would now be more inclined to strictly adhere to attendance requirements.

Council Member Andresen asked if Ms. Eddy felt the policy was adequate. Ms. Eddy responded that she did not think the Board had been enforcing this part of the policy, but that once enforced it would be adequate.

Board Member White said that because of the somewhat specialized nature of the cases reviewed by the Board of Adjustment the Council should insist that the Board give recommendations or comments on all the applicants for the Board of Adjustment because the Board might be able to make constructive comments on the applicants. Council Member Howes said that the Board had that opportunity.

Ms. Eddy said the Board was also concerned with the effect of the Joint Planning Agreement on the Board's composition. She stated that the agreement called for a member of the Board to be from the Transition Area. Ms. Eddy said it was not clear if this meant that an additional member would be added or that one of ten regular members should be from that area. She stated that the ordinance would probably have to be amended if the number were increased. Ms. Eddy also pointed out that as the Transition Area and Extraterritorial Jurisdiction Areas were reduced by being incorporated into the Town limits further changes might be needed in the ordinance. She said it might be better to incorporate language into the ordinance to take care of this so the ordinance would not have to be being revised so often.

Ms. Eddy said there had been an increase in the Board's work when the Resouce Conservation District ordinance was passed. She said the Board was not sure how the recent changes in the RCD ordinance would affect the Board. She pointed out that five members

had participated in the day-long work shop on the RCD. Board Member Joesting said that after the revisions had been adopted he had looked over the cases the Board had reviewed. He said that with perhaps two or three exceptions, all the others would have been covered by staff decisions or were permitted uses, therefore he said it looked like there would be very few RCD cases which would now go to the Board of Adjustment.

Ms. Eddy said the Board was conscious of the fact that the Board was not to discuss their cases with the Council or anyone else. She said the ordinance stated that the Board was not supposed to vary the ordinance when interpreting the ordinance. She said the Board, in granting variances, also had to keep in mind that it was not a legislative body, and therefore had no power to rewrite the ordinance, but could vary the application of the ordinance. Ms. Eddy said the ordinance establishing the Board of Adjustment also stated that when the Board discovered that a particular provision of the Development Ordinance was causing hardship throughout the community the Board should recommend to the Council that the Ordinance be amended. She said the Board had done this recently with regard to sororities and fraternities.

Council Member Preston asked for clarification of how the Board could grant a variance and not vary from the ordinance? Ms. Eddy said that what the Board did was grant variances which were exceptions to the rules.

Ms. Eddy said the staff relationship to the Board of Adjustment was confusing at times because the staff acted both as adjuncts to the Board and as advocates for certain recommendations.

Council Member Werner asked if there were any type of expertise needed for the members of the Board of Adjustment. Ms. Eddy said that a diversity of experience was needed. She said the RCD ordinance had been extremely technical and further expertise among the Board members might have been useful.

Board Member White said that the recent changes in procedures to have the alternates attend the meetings and join in the discussions was indicative of what the Board felt it needed with regard to expertise. He said what was needed was willingness to study issues, discuss them and vote.

Board Member House said that what was needed was a strong degree of common sense. He said he did not think there was any particular expertise needed, rather that the members represented the people of Chapel Hill.

Board Member Urquhart said that she was concerned because some of the Council Members had said both publicly and privately to her that the Board of Adjustment really struggled to get a 4/5 vote. She also said she would like the minutes of the Board of Adjustment to better reflect what the Board did, especially as the meeting could be the first step into the judicial system. Ms.

Urquhart said if anyone were to appeal the Board's decision, better minutes should be kept. She said the issue that the Board had a hard time getting a 4/5 vote had come up with the RCD revisions. She said she was sorry to think that the Council Members had voted unanimously for the staff recommendation and not paid any attention to the citizen proposal, thinking that it would be easier in that the Board would not be knocking themselves out to get that 4/5 vote all the time.

Council Member Godschalk said he had reviewed in the General Statutes the role of the Board of Adjustment (BOA). He said the Statutes stated that the BOA was an administrative agency which acted in a quasi-judicial capacity. He said the Board's duty was to investigate facts and from that investigation draw conclusions as a basis for official action and to exercise discretion of a judicial nature. He said the judicial role was the key that distinguished the BOA from other boards. Mr. Godschalk commented that he felt most of the other boards had a function that often invited them to advocacy. He stated that there had been some cases recently where there may have been some advocate factors entering into the decisions of the Board of Adjustment. Mr. Godschalk said that in the case of the Franklin Hills decision, where the BOA reversed the Manager's decision, there had been a court suit brought against the Board of Adjustment. He pointed out that the Judge's decision stated that the decision of the Board of Adjustment had been affected by error of law and was not supported by substantial competent and material evidence in the whole record. Mr. Godschalk said this case seemed to be one where the Town Attorney had advised the Board of those matters of law and that he expected the Board had been under considerable pressure from advocacy groups who wanted the Board to decide in their favor. He said he was disturbed with the appearance of advocacy coming from the Board especially because of the quasi-judicial function of the Board. Mr. Godschalk stated he was also disturbed frequently by the former chair of the Board coming before the Council in an advocate role for certain projects, or writing letters to the Council on behalf of certain positions about projects which might at some later date go before the Board of Adjustment. He said this was a delicate issue and he realized that in a small town like Chapel Hill one was not able to be a one-dimensional person. Mr. Godschalk said however that it was important for the Board of Adjustment not to appear to be advocates for a particular position.

Ms. Eddy said she thought the members of the Board would agree with Mr. Godschalk in that personal feelings and advocacy should not enter into the deliberations, and that the Board should base its findings on the information presented at the public hearings.

Board Member Joesting said that while he had come before the Council on a number of occasions advocating about policy, he said he could only think of one case where what he had discussed had come before the Board of Adjustment and in that case he said he had made sure both sides of the case knew he had advocated a

policy and gave them the option of having him removed from the case. He said that one of the reasons he had wanted to step down as chair of the Board was that he did want to be able to take a more policy oriented position in the Town.

Council Member Godschalk said that he felt if Mr. Joesting wanted to play a strong policy position in the Town then perhaps Mr. Joesting should be on a different board than the Board of Adjustment.

Board Member Joesting said that he did not plan finish his term.

Board Member White said that he resented and was extremely annoyed that anyone would accuse him of not giving his best to each case, or of not exercising his best sense of judgement on each case. He said he liked to think this was true for all the Board members.

Mayor Pro-tem Thorpe said that he likened the Board of Adjustment in local government to the Supreme Court in the state. He said that as such the Board would not have an advocacy role, but would just deal with the facts.

Chair Eddy concluded by saying she felt the Board had done a good job and would continue to do so, exercising good and fair judgement.

Board Member White commented that he was impressed with the job the staff did. He asked if there might be an opportunity to get assistance from the citizens as volunteers to help the staff with the work. He also wondered if the Council would be willing to relinquish some of the areas of responsibility they now retained, like the Special Use Process.

Council Member Howes commented that the Special Use Process was a sensitive area and that he felt both the Council and citizens expected the Council to deliberate and make the decisions on Special Use Permits. He said with regard to volunteers to help the staff he did not think the staff had looked at this possibility. He commented that there might be a question of liability and accountability.

Council Member Godschalk stated that he would like to be able to delegate some of the responsibilities now held by the Council. He said he felt the Council was too detail oriented and that the Town would appreciate a more policy oriented Council. He said that maybe in the future some of the responsibilities could be delegated away from the Council. Mr. Godschalk said the purpose of the joint meetings was to bring up issues of importance to the boards and the Council and to have a fruitful discussion of those issues. He said he felt this meeting had been good. He commented that the BOA had had some difficult assignments this past year and that it had performed well.

124  
Council Member Preston stated that this was the first time the Council had been able to meet with the Board of Adjustment as a group and that she felt it had been a productive meeting. She thanked the Board for their good work and encouraged them to continue.

#### Library Board of Trustees

Lisa Price, Chair of the Library Board of Trustees, said the Board had been pleased with the Bond Referendum for a new library and was actively involved in planning for the new building. She said the Council had appointed a Library Committee to work on site selection, design and function and that two of the Board members were on that Committee. Ms. Price said the Board was also pleased with the Council's authorization to purchase a new bookmobile.

Board Member Broun gave a synopsis of the Board's mission statement which included the goal to aid individual pursuit of self education, provide an up-to-date information center, to support educational, civic, cultural and recreational activities of the community, to maintain a pleasant environment, and to provide library service in conformity with the Library Bill of Rights.

Board Member Rashkis gave a brief presentation on the Board's priorities of services for the Chapel Hill community. These included an independent learning center, a popular materials library, preschoolers' door to learning, and a reference library; a community activities and information center; a formal education support center; and research center.

Board Member Siefert gave a list of present and future services the Library Board of Trustees have listed as necessary to be in conformity with the Library Bill of Rights and to meet the needs of the community. She said all of these have space needs above what was currently available, and included among others, parking, more books, children's programs, magazine and newspapers, meeting rooms, storage rooms, computerized circulation, and handicapped access.

Board Member Herzenberg commented that the Board was pleased with the present funding of the Library, and looked forward to being able to provide additional services as a result of the Bond referendum. He said that a new library and additional services would also require increases in staff support. Mr. Herzenberg said the Board hoped the Council would continue to be generous with their financial support.

Board Member Doris Wilson discussed the Library Board of Trustees' site and services survey. She said of the 161 returned surveys, the respondents urged both downtown and suburban locations as long as the site was accessible to public transportation and provided enough parking. Ms. Wilson said the top three services requested were an expanded book collection, video

cassettes, and computer software for loan. She stated that a copy of the survey and the compiled responses was included in the Council's packet.

Council Member Pasquini asked if the Library Board felt the focus for the library should be as an activity center. He wondered whether this kind of service should be the primary goal of the library or rather an ancillary goal. Board Member Rashkis and Price commented that the survey was just the first step in identifying the needs for the new library. Council Member Pasquini urged the Library Board to develop a more definite list of services expected to be provided because he felt such a list was part of the framework for development of the new library.

Council Member Pasquini also questioned whether or not the Board had considered the ways of providing some of the services requested. He said for example, with regard to the requests for computer software and computers, did the Board expect the library to have computer rooms for in-house patron use or would the software and/or hardware be loaned out. Board Member Herzenberg commented that the Board was generally old fashioned and had conventional notions, but that they had been impressed with the belief that a public library was more than just books and that providing things like computer software and video cassettes was something the community desired. He said the Board had not looked into the logistics of providing all the services identified in the survey.

Council Member Pasquini asked what were the fees paid by non-Chapel Hill residents to use Chapel Hill's library. He wondered if these fees were sufficient to meet the current demands and if these fees would be sufficient for the new facility. Board Member Price replied that there was a \$15 non-resident fee. She said the Board had not discussed fees for the new facility.

Council Member Pasquini asked the Board if they felt the library was more a regional facility than a Chapel Hill facility. Ms. Price replied that she felt the library was a Chapel Hill facility but that it served southern Orange County. Board Member Broun commented that the library was regional in location, i.e. in southern Orange County, but that the patrons came from all of Orange County, northern Chatham and southwestern Durham Counties.

Council Member Preston asked if the Chatham County patrons paid the same \$15 fee. Ms. Price replied yes.

Council Member Werner asked how the priorities and services of the library were affected by the proximity of the University's library. Board Member Herzenberg commented that the services and patrons differed between the two libraries.

Council Member Werner asked what services would be different in Chapel Hill's library if the University library did not exist.

Board Member Broun replied that there would probably be more emphasis on reference and research materials.

Council Member Andresen asked if the Board had discussed the framework of priorities for the new library and how to maximize the services with the funds that would be available. Board Member Siefert responded that the Board would be using the survey information as a basis for establishing the requirements for the new library. She said the Board had not discussed financing any new programs as yet.

Council Member Howes asked to what extent the Board felt the library should serve as a referral agency. He wondered how far beyond normal circulation should the library offer services.

Board Member Rashkis commented that she was not sure how far the library should go but that she was convinced that library usage increased in relation to the number of meeting rooms it provided for public use.

Council Member Howes also commented that other libraries had archival sections with local history displays. He asked if the Board felt that this was needed in Chapel Hill. Board Member Herzenberg responded that if there were space available and funds to maintain, he thought there would be patronage of an archives.

Council Member Godschalk stated that he felt the library functioned as a knowledge center and he appreciated the chronology of development of the library in the Council's packet. He asked what level of funding was provided by Orange County for the library. Board Member Price replied that she thought the funding was approximately 20% of the library's budget.

Manager Taylor stated that the level of funding from Orange County was based on a percentage of usage of non-Chapel Hill citizens. He said that this level had risen in the past two years but that the funding had remained constant. He commented that Orange County had not increased the funding because it had thought it was increasing the tax rate enough without increasing it for the library usage. Council Member Godschalk said that that should not be a governing principle. He said the funding should be equitable for all recipients.

Council Member Godschalk asked if there had been any more thinking of what would be the best use of the existing facility once the new library were built. Board Member Price commented that the Board had not really discussed this issue. She said the ideas that had been suggested ranged from a meeting facility, to archives, to offices.

Council Member Preston asked what kind of services were currently offered to the blind and visually handicapped in the library. Library Director Thompson replied that the library had a good selection of large print books and that it directed the visually



handicapped to the services provided by the State for books in braille, as well as cassette tapes of books.

Council Member Preston thanked the Library Board of Trustees for their work and for meeting with the Council.

A MOTION WAS DULY MADE AND SECONDED TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (7-0).

The meeting adjourned at 9:30 p.m.

