

MINUTES OF A PUBLIC HEARING HELD BY THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,
MONDAY, OCTOBER 19, 1987, 7:30 P.M.

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

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

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

Public Hearing on Westcourt Application for Special Use Permit

Citizens wishing to speak to this item were sworn in by the Town Clerk.

Manager Taylor requested that Agenda item #1, "Westcourt - Application for Special Use Permit (SUP-85-M-20)", dated October 19, 1987 be entered into the record of this meeting along with the following:

- Applicant's Statement of Justification
- Applicant's Project Fact Sheet
- Traffic Impact Analysis

Manager Taylor asked Dave Roesler, Planning Development Coordinator, to give the staff presentation.

Dave Roesler, Development Coordinator, said the application was for two new buildings for office, residential and commercial use at the intersection of West Franklin Street and Church Street, and on Rosemary Street. He said the total proposed development would be approximately 117,900 square feet. Mr. Roesler stated the applicant proposed to remodel a building on West Franklin Street for use as shops and offices; construct parking and 24 dwelling units over the existing parking lot at the northwest corner of West Franklin and Church Streets; and construct parking and 23 dwelling units at the existing parking lot on West Rosemary Street. He said the key issues were traffic, amount of parking, and certain design principles. Mr. Roesler stated that the traffic analysis indicated that the proposal would change the level of service of the affected streets but could have the tendency to increase delay times at the Rosemary Street

intersections. He said the Development Ordinance required a minimum of one parking space per residential unit located in the Town Center district and that the applicant proposed to provide only the minimum requirement. Mr. Roesler commented that the applicants had said they would specify to prospective buyers that the residential units would be limited to one parking space and that nearby parking could be difficult. Mr. Roesler said the third area of concern for the staff was with regard to certain design principles. He said both the Planning Board and Appearance Commission had expressed concern over the buildings' elevations and the need to make them compatible with the character of downtown. Mr. Roesler stated that in an attempt to address these concerns the staff recommended adding a list of design criteria to be used in the approval of the building elevations by the Appearance Commission as part of the Special Use Permit approval.

Council Member Andresen asked the staff to explain the bonus intensity which was given to the development, and how much extra floor area was allowed as a result of this bonus intensity. She also asked if the project had any retail space on the street level. Ms. Andresen asked if the staff felt the one parking space per residential unit was adequate. Mr. Roesler replied that he would calculate the bonus intensity figures and provide a report later. He said there were no plans at present for there to be retail on the street level of the proposal. Mr. Roesler stated that one parking space per residential unit might be adequate for the proposal due to its location and the constraints which exist in the downtown areas.

Council Member Werner asked for clarification of stipulation #11 in the Manager's recommendation. He said that it appeared to indicate that the Appearance Commission granted approval to the project after the Council granted approval of the Special Use Permit. Mr. Roesler responded that the Appearance Commission was already authorized to approve the detailed building elevations and landscaping plans of a proposal once the Council granted a Special Use Permit. He said that stipulation #11 just meant the Appearance Commission would have a little more authority in the process.

Council Member Howes suggested the Council hold their questions until after receiving the remainder of the presentation on the project.

Guilford Waddell, speaking as one of the applicants, West Franklin Preservation Partners, said that he would like to enter into the record of the meeting 45 petitions from area citizens in support of the proposal and a packet of information on the proposal. He said the West Franklin Preservation Partners was a general partnership of people interested in the redevelopment, preservation and revitalization of West Franklin. He stated that the group wanted to bring people back into downtown Chapel Hill to live, work and play. Mr. Waddell said his proposal was to renovate the existing old Southern Bell/Belk building into retail

shops and offices and connect that building with a courtyard to 24 residential units. He commented that there would be a sister building built on West Rosemary Street which would contain 23 residential units. Mr. Waddell stated that each building was self contained with its own recreation facilities and parking. He said he felt it was an exciting proposal that would benefit downtown Chapel Hill.

Bob Anderson, speaking as the architect for the applicants, spoke in support of the project. He asked that the applicant's traffic impact analysis dated April, 1987 be entered into the record. He said the West Rosemary building would have its garbage transferred to the West Franklin site for Town pick-up. He said it would be part of the daily job of the maintenance/janitorial service to take the garbage to the other site for Town pick-up. He said the retail space was proposed for the lower two levels of the old Southern Bell/Belk building and that there would be an inviting courtyard for pedestrians and shoppers to use to access the retail shops. He said there would be separate parking entrances and levels for the retail and residential uses. Mr. Anderson said the lower level of parking at the West Franklin building would be for retail use and the upper level for residential use, and parking for the office personnel would be at the building on West Rosemary. He said the West Rosemary site would also include separate parking facilities for the staff and for residents.

Estelle Mabry, speaking as a resident of Northside and as an investor in the project, spoke in support of the proposal. She said it was a good proposal that would bring residential uses back into the downtown area.

Dr. William Kohn, representing the Downtown Chapel Hill Association, spoke in support of the proposal. He said this type of development was needed west of Columbia Street and that he hoped this project would receive Town-wide support.

Larry Meisner, representing Kimley-Horn Associates, said he was available to answer questions regarding the traffic impact analysis.

Robert Joesting, speaking as a resident of Northside, spoke in support of the project. He said he felt it would be a positive addition to the neighborhood. He said he was concerned with the pedestrian view along the streets with the use of the brick walls. He said this project along with the existing conditions in the area could require that a traffic signal be placed at the intersection of West Franklin and Church Streets. He said he hoped a traffic signal would be placed at this intersection both for vehicular and pedestrian traffic.

David Bonk, Transportation Planner, said he was available to answer questions.

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Cassandra Sloop, representing the Appearance Commission, said the Commission had voted in favor of the proposal saying it would improve and enhance the neighborhood. She said there had been a question of the street trees along Franklin Street and the pedestrian view along Franklin Street with the use of the brick walls, but that she thought these questions had been addressed by the applicant. Ms. Sloop said the Commission did not discuss the contents of Resolution A or B as neither were available at the time the Commission discussed this application. She said therefore the Commission could not make a recommendation as to a preference for Resolution A or B. She said, however, that as Chair of the Commission, she felt Resolution A was adequate.

Council Member Preston asked Ms. Sloop why she supported resolution A versus the Manager's recommendation, resolution B. Ms. Sloop responded that she felt there were adequate regulations already in the Development Ordinance which would address the Commission's concerns.

Roger Waldon, representing the Planning Board, said the Board recommended approval of resolution A.

Manager Taylor said that his preliminary recommendation was for the Council to adopt resolution B to approve the project with conditions.

Council Member Andresen said she was surprised at Ms. Sloop's recommendation. She asked if the requirements specified in stipulation #11 of Resolution B were the same as those the Appearance Commission currently operated under. Ms. Sloop replied basically yes.

Council Member Andresen said she liked the project because it had residential uses. She said she would prefer that there be retail space along the street level for pedestrian viewing instead of the proposed brick wall. She asked Mr. Roesler if he had the figures on the bonus intensity. Mr. Roesler replied that the bonus level for the proposal allowed approximately 10,000 additional square feet to the project.

Council Member Howes asked if there was or had been a study on installing a traffic signal at the Church and Franklin Street intersections. David Bonk, Transportation Planner, said that the Town had asked NCDOT to survey the intersection and that the report indicated that at this time there were not enough DOT warrants to justify a traffic signal. Mr. Howes asked if current and expected pedestrian traffic was included in the survey. Mr. Bonk replied that current pedestrian traffic was included but that anticipated pedestrian counts were not included.

Council Member Howes said he felt the proposal was an exciting project. He stated that pedestrian traffic was certainly going to increase with this proposal. He said he hoped NCDOT would take this into consideration.

Guilford Waddell, speaking as one of the applicants, said that they would be willing to help fund the cost of a pedestrian signal at the intersection of Church and Franklin Streets.

Council Member Howes commented that he was pleased to see the project and that he hoped the market survey done on the project was correct and that there was a market for the residential units. Mr. Waddell replied that there had already been considerable interest in the project from prospective buyers. Mr. Howes asked what would be the composition of the retail tenants. Mr. Waddell responded that interest was being shown by up-scale men and women retailers.

Council Member Preston said she thought it was an excellent concept. She said that she had some concerns with the appearance of the structures. She asked if the landscaping as indicated on the model of the proposal was indicative of what was proposed. Mr. Waddell replied yes and that they planned to put in large, well developed trees. Council Member Preston asked what was the distance between the two sites. Mr. Anderson replied 310 feet. Council Member Andresen asked if the two lots between the two Westcourt sites would remain. Mr. Anderson responded that as far as he knew those two lots would remain. He said the applicants did not own those sites. Council Member Preston said that the scale of adjacent building would have been useful in reviewing the project. She said she was concerned with the relationship of this project to the houses across Rosemary Street. Council Member Preston also asked for clarification of the level of service of Church Street and Franklin as a result of the proposal. Larry Meisner, of Kimley-Horn and representing the applicants, said the level of service for the Church and Franklin Street intersection would not increase but that there would be some delays.

Council Member Preston questioned whether or not the number of spaces reserved for retail parking would be enough. Mr. Waddell responded that what was being provided met the minimum requirements of the Development Ordinance. He said that they had looked at the option of a payment in lieu of providing on-site parking and had decided to provide on-site parking. He said they had decided on the latter even though it would have been less expensive to make the payment to the downtown parking fund (\$9600 vs. \$7200).

Council Member Preston asked the Manager why he had recommended including the appearance issues in stipulation #11. Manager Taylor responded that this had been an attempt to address some of the concerns expressed by the Planning Board and Appearance Commission.

Council Member Preston asked what were indentations in the brick wall on Franklin Street. Mr. Anderson replied that they were an attempt to create a break in the wall.

Council Member Smith asked exactly how much additional right-of-way would be necessary on Rosemary Street for the proposed landscaping plan. He said that he had concerns about the traffic analysis. He said to say that the proposal would not have an

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impact on the traffic on Rosemary, Franklin and Church Streets would be untrue. He asked if the Town was currently experiencing problems on these streets. David Bonk, Transportation Planner, responded that currently the intersection of Rosemary and Columbia experienced some problems with delays during the morning peak hours.

Council Member Smith asked for clarification of the refuse collection for the proposal. He asked if it would be Town pick-up. Mr. Waddell responded yes and that the refuse from the Rosemary Street site would be taken, by the building staff, to the Franklin Street site for Town pick-up.

Council Member Smith said that all the parking spaces should be assigned spaces. He asked where the applicant expected guests of the residents to park. He asked if the applicant had considered increasing the number of spaces. He also asked how many retail parking spaces were going to be provided. Mr. Anderson replied 34. Mr. Smith asked where the other people would park. He said he was concerned about the possible spill over of parking into the adjacent residential neighborhood.

Council Member Thorpe asked if an additional stipulation could be added indicating that the applicant would participate in the cost of installing a traffic signal at the Church and Franklin Street intersection. He said he was pleased with the way the developer had handled this project by having a series of public meetings and soliciting neighborhood input. He also said he liked the fact that Mr. Waddell had delivered to the Council his prepared statement on the proposal on the Friday before the meeting.

Council Member Pasquini asked why the application was only for one Special Use Permit when the proposal was for two separate facilities at two different locations. Roger Waldon, Planning Director, replied that the applicant had submitted two applications for one Special Use Permit for the two tracts, and that the staff had handled the project as requested by the applicant. Council Member Pasquini asked what differences would occur if the two tracts were split into two SUP's. He also asked the staff to provide information on the break down of livability space and open space; the surrounding property; adding a traffic light stipulation and the costs involved; what exactly were the proposed street improvements and landscaping planned for the right-of-way; the average number of parking spaces for a typical retail business of 20,000 square feet. Mr. Pasquini commented that he also had some concerns about the brick walls. He asked what or if there were any design standards for brick walls. He concluded by saying he was concerned with the apparent difference of opinion between the staff and Appearance Commission regarding the design of the building and what steps should be taken.

Council Member Werner said that it was a nice development. He asked that the Council and staff look into the Town's policy regarding downtown parking requirements. He suggested that as

well as having a minimum number of parking spaces there should also be a maximum number of allowable spaces. He said he did not need a report on this for the next meeting but would like the staff to investigate and report back at a later date.

Council Member Andresen concurred with the questions asked by Council Member Pasquini and also expressed concern about the potential for spill over traffic and parking in the adjoining residential area. She also said that she was concerned about the Rosemary Street site and building height because of its proximity to the other neighborhood and how it might affect future developments in the area.

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

Public Hearing on Smith-Breeden Associates Application for Special Use Permit

Citizens wishing to speak to this item were sworn in by the Town Clerk.

Manager Taylor requested that Agenda item #2, "Smith-Breeden Associates - Application for Special Use Permit (SUP-26A-12)", dated October 19, 1987 be entered into the record of this meeting along with the following:

- Applicant's Statement of Justification
- Applicant's Project Fact Sheet
- Traffic Impact Analysis

Manager Taylor asked Dave Roesler, Planning Development Coordinator, to give the staff presentation.

Dave Roesler, Development Coordinator, said the application was for an office building with 21,836 square feet on Eastowne Drive at Providence Road. He said the proposal was for a two-story building with parking in front of and behind the building. Mr. Roesler stated that the proposal met the requirements of the Development Ordinance and was consistent with the Comprehensive Plan. He said two issues with regard to the project were the use of brick pavers at the side entries located within the road right-of-way. Mr. Roesler stated that the staff recommended that an encroachment agreement be secured and recorded for the brick pavers. He said the other issue was the provision of a bus shelter and bench. He said adoption of Resolution A would provide for approval of the application with these conditions.

Doug Breeden, speaking as the applicant, said Smith-Breeden Associates was a financial consulting firm that dealt with hedging interest rate risk for savings and loan associations. He

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said his company currently occupied about 3000 square feet of office space but expected to eventually use the entire new building. Dr. Breeden stated that he anticipated having only 50 employees working in the building, with 40 offices, 4 conference rooms, 3 kitchens, 1 multipurpose room, recreational facilities including a squash court, and a library. He said that since the number of employees was expected to be low, he proposed providing the minimum amount of parking.

Bob Anderson, speaking as the architect for the project, commented that the building would be governed by both the Town's Development Ordinance and the deed restrictions on the Eastowne area. He said the applicant proposed to have the entryway to the building include water features such as pools and fountains. He said they proposed to use retaining walls to reduce the amount of cut and fill and to keep as many trees as possible on the site. Mr. Anderson stated that the garbage would be located in dumpsters at the rear of the building accessible for Town pick-up.

Council Member Smith said that the staff report indicated that the building would be located on the low portion of the site. He asked if any drainage problems were anticipated. Mr. Anderson said the building would be located on the hillside above the valley and that no drainage problems were anticipated.

Council Member Preston asked if the proposed ponds connected and if the water would be recirculated. Mr. Anderson replied yes.

Manager Taylor said that the Planning Board and Transportation Board recommendations were in the agenda memorandum and that they both recommended adoption of Resolution A.

Cassandra Sloop, representing the Appearance Commission, said the Commission recommended unanimous approval of the project feeling it would be an asset to the Eastowne area and that the project made good use of the trees and existing vegetation.

Manager Taylor said his preliminary recommendation was for the Council to adopt Resolution A to approve the project with conditions.

Council Member Werner asked if this area was within the Town's corporate limits. He said the site map indicated that it was not. Manager Taylor replied that the property was within the Town's corporate limits as recently annexed.

Council Member Pasquini asked for information on off-site improvements and specifically what was required for buildings other than residential units.

Council Member Howes asked for a description of what kind of business Dr. Breeden operated, i.e. what market, etc. Dr. Breeden replied that they operated nationally but did not have any clients in North Carolina. Mr. Howes asked why the company

had located in this area. Dr. Breeden responded that he had opened this branch in the Chapel Hill area because he had wanted to live here and raise his family here. He also said he was on the faculty of Duke University. Council Member Howes asked how many employees were currently employed by the company. Dr. Breeden replied approximately 14 in Chapel Hill and 14 at the other office in Kansas City, Missouri with an annual payroll of about \$2 million and revenues of \$6 million. Council Member Howes said he had asked the questions because the Town talked of ways of relieving the residential property tax base and ways of diversifying the economy and that the Smith-Breeden Associates had done both of these by providing an attractive non-residential property within the Town limits and by providing a substantial payroll it was providing buying power in the area. He said approval of the project would allow for a continuation of these factors and was something the Council needed to consider when it thinks of the details of the building and site. He said the purpose of the building and what it meant to the economy seemed to him to be even more significant in this case than the design of the building.

Council Member Andresen commented that she thought the proposal was well planned, and well suited to the site. She said she especially liked the brick pavers.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (8-0).

Public Hearing on Special Use Zoning - Proposal for Development Ordinance Text Amendment

Manager Taylor stated that since this item involved legal issues he would like the Town Attorney to give the staff presentation.

Ralph Karpinos, Town Attorney, said the proposal was for a text amendment to the Development Ordinance to eliminate a procedural problem which had been highlighted by a recent decision of the N.C. Court of Appeals. He said that Council had enacted amendments in 1986 to the Development Ordinance to establish a procedure for Special Use Zoning in Chapel Hill. Mr. Karpinos stated that under that procedure, based on a 1985 amendment to the General Statutes, land could be placed in the Special Use district only upon application of the property owner. He said in April of 1987, the N.C. Court of Appeals decided the case of Chrismon v. Guilford County which was the first case in North Carolina which discussed the issue of contract zoning as it applied in a Special Use Zoning context. He stated that he had reviewed the Town's Ordinance based on that decision and identified one major problem and two minor problems with the Ordinance. (Council Member Pasquini left the meeting at this point, 9:40 p.m.) Mr. Karpinos said some the procedural changes prompted by the Chrismon case were enacted simply by changing the administrative processing of the applications as they came before the

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Council but the Ordinance itself required a change. He said a change was needed specifically to Section 20.3.7 whereby an applicant for rezoning to a Special Use District had to indicate at the time of rezoning his consent to the proposed conditions in a Special Use Permit application. He stated that the Chrismon case had identified and made clear that the application for Special Use Zoning had to be separate from the application for the Special Use Permit (SUP). Mr. Karpinos said therefore, he had determined that Section 20.3.7 included an improper linkage between the zoning and SUP by requiring the consent prior to the zoning decision being made. He stated that his recommendation was to delete in Section 20.3.7 that particular paragraph from the ordinance. He said that two other changes he proposed to the Ordinance were a minor modification to Section 20.2 which currently required that an applicant make a joint application for the rezoning to a Special Use Zone and the SUP. Mr. Karpinos said the change suggested for Section 20.2 made permissive the current requirement stating that the applicant may apply but was not required. He stated that the other change suggested applied to Section 20.3.8 which currently included a presumption that there would be a joint application. He said the recommended change eliminated that presumption of a joint application so that it was permissive but not required. Attorney Karpinos stated that copies of the agenda were sent to parties interested in a current application before the Council (Women's Center Special Use Zoning and Special Use Permit application).

Council Member Werner asked for an explanation of how the Special Use Zoning process would work if the Council adopted the proposed changes. Attorney Karpinos said an application for Special Use Rezoning could still be made by a property owner but the property owner would not have to apply at the same time for a Special Use Permit. Mr. Karpinos said the rezoning would still have to occur first and would have to be based on a determination as to the appropriateness of the property for any possible use allowed in the Special Use Zoning District for which the application was made. Council Member Werner asked how SUZ would differ from a general use rezoning. Attorney Karpinos responded that the difference between SUZ and the a parallel general use district was that the uses which were allowed as a matter of right, i.e. by site plan approval in a general use district, would not be allowed by right in a Special Use district. He said all uses listed in the table of permitted uses for the general use district would require in the parallel Special Use district, a Special Use Permit. He said this meant any and all uses would have to come before the Council as a Special Use Permit application. Mr. Karpinos stated that the difference between the process as it currently stood and the proposed changes was that under the current Ordinance, the Council, before it rezoned to a Special Use district must hear from the applicant and must be told by the applicant that he consented to all conditions on the Special Use Permit. He said this particular requirement ran afoul of the Court of Appeals decision therefore, the Council had a choice under the current ordinance to strictly comply with the

procedural requirements and violate the requirement of the Court of Appeals decision or the Council could comply with the principles of the Court of Appeals decision and not follow the Town's Ordinance. He said this legal dilemma was why the staff recommended a change in the Ordinance. Attorney Karpinos said the staff recommended that the proposed changes be adopted to bring the Town's Development Ordinance into compliance with the applicable Appellate Court decision.

Council Member Werner said the reasons for adopting the Special Use Zoning procedures involved wanting to allow certain uses on certain properties but did not want to rezone the property. He asked if the proposed procedure would allow the Council to accomplish what it wanted to accomplish based on the rationale that the Council used when originally deciding to use Special Use districts, or would the proposal be just creating new zoning classifications that would not get the Council to the point of flexibility that it wanted. Attorney Karpinos said that it was difficult to discuss in the abstract, but said that the Ordinance allowed flexibility in the rezoning in the sense that with the authority of the Special Use Permit, which could be approved or denied in any specific case, rezoning to the Special Use district itself did not create a right to any specific use. He said therefore the Council still would have the discretion at the Special Use Permit stage as to whether or not an applicant was able to meet the requirements for the Special Use Permit. He stated that the change which the court decision called for was to eliminate the greater flexibility at the rezoning stage. Attorney Karpinos stated that the staff had tried to give the Council that greater flexibility in the original draft of the ordinance but that with the court decision the Council would not be allowed that much discretion at the rezoning stage. He said that at the rezoning stage the Council had to consider the "possibility" of all uses. He said in his judgement the Council did not have to find that the land was "suitable" for all uses because all uses were not permitted.

Council Member Werner said with the current ordinance projects above 20,000 square feet in building space or 40,000 land disturbance required a Special Use Permit. He said for projects of this size was there any difference for them between general use rezoning and having a Special Use Permit and applying for a Special Use Zoning and having a Special Use Permit. He said that the difference would be that with general use zoning there would be some uses less than the 20,000/40,000 square foot cut off which would be allowed by site plan review. Council Member Werner stated that what this meant that the additional flexibility for the Council would be with regard to projects smaller than the 20,000/40,000 square foot cut off.

Milton Van Hoy, speaking as a resident, asked for clarification of what was meant that for a Special Use rezoning the rezoning had to be based on consideration of all possible uses. He also asked about the requirement that the property revert to its

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original zoning if the SUP on the property ceased to exist. He said if this requirement was removed then he did not see the purpose or safeguard in having a Special Use rezoning.

Dave Lineberger, speaking as a resident, said that as long as the Special Use Permit was applicable then he did not see the need for Special Use Zoning. He suggested that the Council repeal the Special Use Zoning ordinance.

Estelle Mabry, speaking as a resident, said she agreed with the concerns expressed by the previous speakers. She said that by having the Special Use Zoning ordinance it meant that one could not plan as effectively for land use.

Robert Joesting, speaking as a resident, spoke against the Special Use Zoning district and said that even with the proposed changes the Appeals Courts would probably not look in favor at its use. He said he felt the best thing would be to repeal the Special Use Zoning ordinance. He suggested that the Town look into the possibility of having additional types of Special Use Permits to cover any contingency.

Council Member Andresen asked Mr. Joesting if he had a solution for the use of the Masonic Lodge site for offices. Mr. Joesting replied no, and that it was a problem. He suggested the possibility of an adaptive re-use Special Use Permit. He said that he felt the property along thoroughfares should only be zoned residential, with large buffers between the road and the buildings.

Council Member Thorpe asked Mr. Joesting for his opinion of the Allenton Offices and Howell Office property. Mr. Joesting said he felt the property should have remained residential.

Council Member Howes commented that the reason the Council had adopted the Special Use Zoning district ordinance was to allow the Council discretion in land development and that this ordinance had been adopted in large part because the citizens had requested that the Council use this discretion. He said it appeared from some of the comments that evening that the discretion be removed in favor of a type of certainty for land use.

Robert Joesting stated that any rezoning was always a trade-off. He said he felt good planning was important and that it was more important to know what could be placed on the land.

Council Member Werner said that the proposal meant the Council had to treat Special Use Rezoning in essentially the same manner as a general use rezoning. He said this meant the Council had to consider all uses. Attorney Karpinos said the Council had to consider the uses, but in his judgement, the Council did not have to find that the land was suitable for all permitted uses because there were no permitted uses. Council Member Werner said presumably the only reason the Council would review a Special Use

Zoning request was if there were a project proposed for the site. He asked what would be the Town's legal standing if it had knowledge of a proposed use for a particular site at the time of the public hearing for the request to rezone. Attorney Karpinos responded that when the Council had before it, in July, two applications for rezoning, the rezoning ordinances contained "whereas" clauses which had the Council making the finding that the Council considered and found that it was possible for any of the uses to be on the site provided the Council subsequently made the appropriate Special Use Permit findings based on competent evidence. He said that the Council would not be saying that it knew about, and was finding, that the specific use proposed was appropriate but that all of the uses might be suitable if the Council were able to make the findings for a Special Use Permit. Attorney Karpinos said the SUP findings would have to come as the result of a specific application after the property were rezoned. He said the Council might know about the application but would have to make the rezoning decision based on considering all possible uses. Attorney Karpinos said the issuance or non-issuance of the Special Use Permit was a separate issue. Council Member Werner said he understood the procedural issues. He said it appeared to him that if the Council considered a Special Use Zoning request, the Council would know that there was a project to be proposed for the site. Attorney Karpinos said that if the Council made the finding that it considered all possible uses and found that they would all be suitable providing the Council could subsequently make the findings for a Special Use Permit, and that evidence were in the record, and based on competent support as to the land being suitable, then he said he thought the rezoning to a Special Use district would be defensible.

Mayor Wallace said in the absence of a proposed targeted use, which could only be achieved through a Special Use Permit, subsequent to a Special Use Zoning, the Council would not be rezoning. Attorney Karpinos said that the two minor changes he proposed would make it clear that a rezoning application to a Special Use district need not be accompanied by a Special Use Permit application. He said this meant that someone could apply for the Special Use Zoning application which the Council could or could not approve, and then at some later time apply for a Special Use Permit. Mayor Wallace said if the zoning of the property was considered and was satisfactory, what in the absence of a specific use to be contemplated, would be the justification for a proposed rezoning. Attorney Karpinos said it be a question of whether or not the rezoning was justified under the comprehensive plan and under the Town's Development Ordinance. He said the process of rezoning and considering justifications for rezoning was the same issue whether the request was for a general use district or a Special Use district. Mayor Wallace commented that it was not the same for one acre square, when discussing a district with 300 units. Attorney Karpinos said he felt it was the same issue at the rezoning stage. Mayor Wallace stated he felt one would not use the rezoning if one did not contemplate what was to follow.

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Council Member Werner asked if the Special Use districts were zones with no allowable uses. Attorney Karpinos said they would be zones with no permitted uses, i.e. there would be no use by right. He said all of the uses which would be allowed in the parallel general use district would require a Special Use Permit in the Special Use district.

Council Member Preston said the Special Use zone would be on land where any of the uses that could go into that zone might be applied for, but when applied for, they have to fulfill the Special Use Permit requirements. Council Member Preston said the rezoning for the designation of Special Use district was because whatever use applied to the property was not automatically permitted but had to have a Special Use Permit. Council Member Preston asked what was the difference between the rezoning to a Special Use district and spot zoning. Attorney Karpinos said the justification for rezoning in any case was spelled out in the ordinance whether it be a general use or special use district. He said the ordinance stated that the zoning ordinance should not be amended except to correct a manifest error; because of changed or changing conditions; or to achieve the purposes of the comprehensive plan. He said these principles as to when to rezone guide any rezoning whether it be to a general use district or to a special use district. Attorney Karpinos stated that the issue of spot zoning was issue of fact which might or might not be raised under the specific facts of any particular rezoning application, whether the rezoning were to a general use or special use district. He said it had to do with the size of the tract, the zoning of surrounding property, whether or not there were any similar zoning in the area. Council Member Preston said this meant the image of the dart throwing was true in either case. Attorney Karpinos said it was potentially true whether the application was for a general use rezoning or special use rezoning.

Council Member Preston said if the Council adopted the proposed changes and amended the ordinance to be applicable to all zones but residential zones, would it be worth having the Special Use district. She said the problem she had with the Special Use district was its potential affect on residential areas. She said she did not think it would be as detrimental to OI, CC or TC districts, but would it be worthwhile to have it only in these districts. Mr. Karpinos replied that the one case where the Council had used the Special Use district was a non-residential area. He said the Ordinance currently provided for Special Use districts in CC, NC, OI-1, OI-2, I, and R-5. He said that it appeared Council Member Preston was asking whether or not the Council should change the ordinance so that no residential property could be rezoned to one of the Special Use districts. He said currently an applicant of any property could apply for rezoning to any special use district. He stated that currently an applicant could apply for rezoning of any property to any district whether it be general use or special use district. He said any owner of R-1 property could apply for CC.

Council Member Werner said he was still trying to understand how the Council would ever use Special Use Zoning. He said the Council when considering rezoning to a Special Use district the Council would not have to determine that all uses, as defined for that district, would be suitable. Attorney Karpinos said the Council would have to determine that all possible uses would be suitable if the Council was able to subsequently be able to make the findings required of a Special Use Permit. He said that this was the flaw in the Chrismon case that he believed would be corrected by the Supreme Court. He said for example, when the Council rezoned property to a residential district now, it was not finding that that residential property was suitable for a shopping center, yet a shopping center on five acres in a residential district was potentially available with a Special Use Permit. He said that with Special Use zoning, the Council would be saying that these uses were all potential, and would be permitted if the Council later made the findings necessary in any specific case for the Special Use Permit. Council Member Werner said the proposal gave the Council the added protection of the SUP for small parcels. Attorney Karpinos replied yes.

Milton Van Hoy, speaking as a resident, said that one of the goals of the Comprehensive Plan was to have a simple and comprehensible zoning ordinance. He said observing the Council and the public that evening he said it seemed a lot of those present were confused. He said as such it should be rewritten in a way that was simple to everybody.

Robert Epting, speaking as a resident, said that because of the Chrismon case it appeared to him that the Council needed to call another hearing on the Women's Center request for Special Use Zoning and Special Use Permit because the process had been linked in the original hearing. He said the thrust of the information on the proposal was not that any OI use would be suitable, but rather that a specific use would be suitable for the site. He said therefore, that the Council needed to call another hearing to consider all possible uses of the zoning.

Council Member Preston said that if the Council voted to deny the procedural change, would the Council effectively kill this vehicle (Special Use Zoning) of rezoning. Attorney Karpinos said that if the Council did not make the changes to the Ordinance then the Council would have the same dilemma as currently existed: to follow the ordinance and violate the court decision, or follow the court decision and violate the Ordinance.

Joe Herzenberg, speaking as resident, agreed with all the comments made that evening. He said he would like clarification of what was meant by the phrase that the rezoning had be based on the consideration of all possible uses. He also asked what would happen to the property if it were rezoned to a Special Use district and no Special Use Permit application were made or approved. He said the best way to protect the neighborhoods, especially those under threat (those adjacent to the University

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or Town Center), from Special Use Zoning would be to abolish Special Use Zoning.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (8-0).

Public Hearing on Zoning Proposed Annexation - Cloverleaf Property

Roger Waldon, Planning Director, said the purpose of this public hearing was to receive citizen input on the proposed zoning for land located at the intersection of N.C. 86 and I-40, for which an annexation petition was pending. He said the proposal was to zone the property MU/OI-1. Mr. Waldon stated that the proposal was consistent with the Chapel Hill Land Use Plan, and pointed out that the property across N.C. 86 was zoned MU/OI-1. He said the Town had not received any development proposal for the site.

Council Member Andresen asked what was the zoning designation of the property which appeared to bisect the site. Mr. Waldon replied that it was under Orange County zoning and was equivalent to the Town's R-1 zoning.

Floyd McKissick, Jr., an attorney representing the applicant, endorsed the recommendation by the staff and Planning Board to zone the property to MU/OI-1. He said the applicant believed it to be ideally suitable for mixed use zoning. He said the individuals who owned the bisecting parcels had not objected to the proposed zoning. He said in fact they supported the applicants' petition. He said the property met the minimum threshold requirements for MU/OI-1, that being twenty acres. He said the proposal was for 36 acres. Mr. McKissick stated that the property was ideally situated for extensions of existing water and sewer lines.

Council Member Smith asked if in a mixed use zone a certain percentage of the floor area had to be used for residential use? Mr. Waldon replied that the Council had considered this option but had not included in the ordinance, rather there was a requirement that 60% of the floor area of any development proposal would have to be devoted to office-type uses and the remaining 40% could be any combination of residential or commercial.

Council Member Andresen asked if the residents of Northwood had been sent notice of this potential rezoning. Mr. Waldon replied that he did not know but that the proposal was not for rezoning but for an initial zoning of the property once annexed into the Town.

Harry Poole, speaking as the Vice-President of the Northwood Homeowners Association, said the residents had not been informed.

Council Member Andresen said she would prefer to hear from the Northwood residents before acting on this proposal.

Roger Waldon, representing the Planning Board, said the Board recommended zoning the site to MU/OI-1.

Manager Taylor said his preliminary recommendation was for the Council to adopt an ordinance zoning the property to mixed use.

Council Member Smith said he agreed with Council Member Andresen in that he would like to hear any comments from the Northwood residents before making a decision on this issue.

Mr. McKissick commented that the applicant had notified the owners of property surrounding the area proposed for annexation and zoning. He said the applicant had encouraged the property owners to come to the public hearing that evening and that they had specifically stated that they had no opposition to the proposal.

Manager Taylor suggested that the Council recess this public hearing and continue it at the beginning of the regularly scheduled meeting of the Council on November 9.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER SMITH TO RECESS THIS PUBLIC HEARING TO RECONVENE ON NOVEMBER 9, 1987 AT 7:30 P.M. THE MOTION PASSED UNANIMOUSLY, (8-0).

The meeting recessed at 10:58 p.m.

