

The Smithfield Town Council met in special session on Tuesday, February 21, 2019 at 6:30 p.m. in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:

Travis Scott, Mayor Pro-Tem  
David Stevens, District 2  
Dr. David Barbour, District 4  
Emery Ashley, At-Large  
John A. Dunn, At-Large  
Stephen Rabil, At-Large

Councilmen Absent

Marlon Lee, District 1  
Emery Ashley, At-Large

Administrative Staff Present

Michael Scott, Town Manager  
Stephen Wensman, Planning Director  
Mark Helmer, Senior Planner  
Julie Edmonds, Administrative Support Specialist

Present:

Bob Spence, Town Attorney

Administrative Staff Absent

Shannan Parrish, Town Clerk

## CALL TO ORDER

Mayor Moore called the meeting to order at 6:30 pm.

## INVOCATION

The invocation was given by Mayor Pro-Tem Scott followed by the Pledge of Allegiance

## APPROVAL OF AGENDA:

Mayor Pro-Tem Scott made a motion, seconded by Councilman Stevens, to approve the agenda as submitted. Unanimously approved

## PUBLIC HEARINGS:

1. **ZA-18-06 Town of Smithfield:** The Smithfield Planning Department was requesting an amendment to the Unified Development Ordinance (UDO), Article 5, to update the development review process to include adding a required public notice prior to preliminary subdivision approval.

Councilman Barbour made a motion, seconded by Mayor Pro-Tem Scott, to open the public hearing. Unanimously approved

Planning Director Steven Wensman addressed the Council on a request by the Planning to amend article 5 of the UDO. Mr. Wensman explained January 2, 2018 – The Town of Smithfield approved an ordinance amendment to allow for administrative approval by the UDO Administrator when major site plans and final plats are found to meet or exceed minimum development standards. Since that time, staff encountered a situation whereby it was uncertain if a public hearing was required. This proposed amendment was brought before a Planning Board subcommittee for review and recommendation was made to the full Planning Board. While the Planning Board was generally acceptant of the amendment, they found issue with the Planning Board no longer conducting public hearings. Mr. Wensman reminded the Council that prior to the UDO update, the Planning Board held public hearings for legislative and quasi-judicial matters. The Planning Board has made it clear they desire more public comments at their meetings.

Mr. Wensman questioned the Council's preference for whether or not they wanted the Planning Board to go back to conducting public hearings. He further explained the School of Government did not recommend holding two quasi-judicial public hearings because the minutes from the Planning Board could be considered as ex-parte communication for the Town Council. Also, the Town is burdening the developer with multiple notices, multiple hearings, multiple expenses and a longer approval process.

Mayor Pro-Tem Scott stated the Council should support the Planning Board and they should conduct the public hearings first. He stressed the importance of notifying adjacent property owners for all public hearings.

Councilman Barbour questioned if the Planning Board allowed public comments. Mrs. Wensman responded the Board does take public comments, but there was no prior notification other than the meeting was posted on the Town's website. Councilman Barbour stated it was important to hear the public's opinion and it was important for a developer to hear any concerns.

Mayor Moore questioned if in Article 5, the Council was specifically considering amendments to preliminary plats. Mr. Wensman responded in the affirmative, but he explained it also pertained to other articles that need to be amended. Mr. Wensman stated the ordinance could be drafted to include two public hearings (one at the Planning Board and one at the Town Council) or it could be drafted to have the official hearing heard by the Planning Board or the Town Council.

Senior Planner Mark Helmer explained the Planning Board was currently reviewing text amendments and map amendments. The adjacent property owners are being notified in accordance with North Carolina general statutes. The Planning Board was no longer reviewing special use permits or major site plans. Staff reviews major site plans and special use permits are only heard by the Town Council. All legal notifications and adjacent property notifications for the special use permit application and public hearing are still being done in accordance with the law. The Planning Board was no longer reviewing special use permit applications and conducting a quasi-judicial public hearing as it had done in the past.

Town Manager Michael Scott stated it was his understanding that with special use permit requests and rezonings, the UDO had not changed much from previous versions. Although not required, the former Planning Director made a decision to conduct public hearings at the Planning Board meetings. The UDO did not require that public hearing, but the practice changed.

Councilman Barbour questioned if the Planning Board desired to have public comments and public hearings. Mr. Helmer responded in the affirmative. Councilman Barbour further questioned if the Planning Board felt that holding public hearings and hearing public comments was necessary for them to make good decisions for the Town. Mr. Wensman responded in the affirmative.

Councilman Scott questioned if the Planning Board could conduct the quasi-judicial hearing and the Council then make a final decision without conducting another public hearing. Town Attorney Bob Spence responded most Town Councils do not want a final decision being made by the Planning Board. The Town Manager further responded he was unsure if a quasi-judicial hearing could be held in North Carolina without conducting a public hearing.

Mr. Spence stated one issue was there was not a lot of opportunity for conversation between surrounding property owners and the developers. In the event of an adversarial quasi-judicial hearing, the Town doesn't have a process where there is open dialogue between a developer and the surrounding property owners affected by the development. Mr. Spence suggested allowing the Planning Board meeting to be more of an informal discussion between the two sides. The Planning Board could essentially act as mediators and all adjacent property owners would be notified.

Mayor Moore stated it appeared one of the major issues was the notification to the adjacent property owners. Mayor Moore questioned if the Planning Board heard quasi-judicial hearings. Mr. Wensman responded it was dependent on the case. The Planning Board used to conduct quasi-judicial hearings for special use permit requests. Town Manager Michael Scott clarified that the Planning Board conducted every public hearing prior to the Council conducting the same public hearing. Thus making a duplication in the process.

Since it was the request before the Council, Mayor Moore questioned the preliminary plat process. Mr. Wensman responded preliminary plats were neither quasi-judicial nor legislative. Preliminary plats do not even require a public hearing and it could be all staff approved. Mr.

Wensman further explained that currently, an applicant meets with Planning Staff with a plan. It is then taken to the Planning Board for review and then to the Town Council for public hearing and final approval. The purpose of conducting the public hearing is to allow citizen input even though it is not required. Staff was seeking guidance as to where the Town Council wished to hold the public hearing. He questioned if the public hearing should be conducted at the Planning Board level, the Town Council level or both. The Planning Board's recommendation was to conduct two public hearings as had been done in the past

Councilman Barbour questioned if there were any public hearings being conducted by the Planning Board stating he was not in favor of removing the quasi-judicial hearings from the Planning Board because they should have the ability to hear public comments and the adjacent property owners should be notified. Mr. Wensman responded the issue with the Planning Board conducting the quasi-judicial hearing was the Planning Board minutes, which are included in the Town Council agenda packets, could be considered ex-parte communication because the Council has prior knowledge of the testimony they are about to receive. Mayor Pro-Tem Scott stated that point was invalid because any member of Council could attend the Planning Board meeting as a private citizen. Mr. Spence advised against members of the Town Council attending a quasi-judicial hearing held at the Planning Board. The Town Manager further responded if a member of the Town Council attends the Planning Board meeting, the Councilmember may have to recuse himself when the matter comes to the Council for a final decision. Mr. Spence explained for quasi-judicial hearings, the Town Council must act as impartial judges and therefore should be kept away from any conversation about the particular case. Mayor Pro-Tem Scott suggested staff not include the Planning Board minutes in the Town Council agenda packets.

Councilman Barbour stated that part of the process was the Planning Board reports to the Council. Information provided to the Council from the Planning Board is a part of the Council's decision making process. Mr. Spence responded the Planning Board could play a role in quasi-judicial hearings by holding more informal discussions. The Planning Board hearing could be more of a mediation and less like a formal quasi-judicial hearing since all quasi-judicial hearings must be based on evidentiary facts.

Mark Lane, Vice Chairman of the Planning Board, explained to the Council that the Planning Board members know they can only base their ruling on facts in a quasi-judicial hearing. Mr. Lane further explained the process worked in the past.

Mr. Wensman stated for all quasi-judicial, preliminary plats and legislative decisions an informal meeting could be held at the Planning Board with final approval coming before the Council. Mr. Spence responded there was a major trend for municipalities to eliminate quasi-judicial hearings and use conditional use zoning districts.

Mayor Moore stated if the Planning Board conducted the quasi-judicial public hearing and listened to the testimony provided, the Town Council at its hearing could hear the concerns of its citizens that would not be allowable at the Planning Board because it was not considered as expert testimony. Mr. Spence responded the Town must make the process as fair as possible and eventually the Council may want to consider conditional zoning districts.

Stephen Upton, Chairman of the Planning Board, explained that public hearing held at the Planning Board level brought the community together. It was a process which worked well in the past. People attend the Planning Board meetings because they feel they can express their opinions.

Mark Lane stated that allowing the Planning Board to conduct the public hearing was beneficial for the Town Council. Problems that arose at the Planning Board meeting were normally solved before the case was heard by the Town Council

Mayor Moore stated it appeared the direction of the board was the Planning Board would hear legal testimony and make a recommendation to the Town Council.

Emma Gemmel of 207 Hancock Street in Smithfield stated the Planning Board needs the time where the community can come together and discuss important items.

Mayor Moore stated there were times when the Town Council did not agree with the recommendation made by the Planning Board. He questioned if the Council would still have the authority to overturn a ruling made by the Planning Board. Mr. Spence responded in the affirmative.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to close the Public Hearing. Unanimously approved

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to table this item.

2. **ZA-18-08 Town of Smithfield:** The Smithfield Planning Department was requesting an amendment to the Unified Development Ordinance (UDO) to amend and incorporate the Town of Smithfield Code of Ordinances, Chapter 15, Planning, Article III, Historic Properties Commission into the Unified Development Ordinance, Article 3, and to make certain amendments to other sections as they pertain to the UDO Administrator's duties, the Board of Adjustments, the Planning Board, and the Town Council.

Councilman Barbour made a motion, seconded by Mayor Pro-Tem to open the public hearing. Unanimously approved.

Councilman Barbour questioned why this amendment was coming before the Council. Planning Director Stephen Wensman responded that in his review of the UDO, it was discovered that the Historic Properties Commission was covered under the Town's administrative code and not the UDO. The purpose of this amendment was to simply move it out of the administrative code and add it to the UDO.

Other changes include the following: 1) Changing the name from Historic Properties Commission to Historic Preservation Commission. 2) Clarification of staff driven changes and commission driven changes.

Mr. Wensman reminded the Council that the Downtown Historic Property District only applies to approximately thirty property owners. Councilman Barbour questioned if staff had informed the property owners of the proposed changes. Mr. Wensman responded it was legally advertised in the newspaper as required by statute, but individual property owners were not notified. Councilman Barbour stated if the Town was going to make changes that affected property owners, they should be notified.

Dr. Oliver Johnson, a member of the Historic Properties Commission and the Planning Board, explained these changes were important because it provided guidance to the members of the Commission. It also assisted with the placement of historical markers in Town.

Emma Gemmel of 207 Hancock Street in Smithfield stated in the small community of Smithfield, property owners should be notified by the Town and not simply place an advertisement in the newspaper.

Councilman Barbour made a motion, seconded by Councilman Rabil to close the public hearing. Unanimously approved.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to table the request pending further revisions. Unanimously approved.

## **Business Items:**

### **1. Discussion Concerning adoption of an Annexation Policy**

Planning Director Stephen Wensman addressed the Council on a request to consider adopting an

annexation policy for new subdivision. Mr. Wensman explained the policy would provide clear expectations to potential developers and staff.

Key provisions of the policy are as follows:

- All request for Town utilities shall first be accompanied by a request for annexation.
- If utilities are provided without annexation, the party will enter into a binding agreement to petition for annexation in the future when the property meets the requirements for satellite annexation; the property becomes continuous to the Town limits, or the Town requests annexation.
- If residential structure or subdivision is within 350 feet of Town water and or sewer, connection is required.
- Annexed subdivisions are required to be in conformance with the Town of Smithfield UDO.

Mr. Wensman did inform the Council that he and the Town Attorney would have to amend the policy in regards to the second bullet point.

Councilman Barbour stated there should be different requirements for contiguous annexation then there are for noncontiguous annexation. Councilman Barbour stated the Council needed to decide what they were willing to accept because if the Council puts more requirements on developers than those placed on them by the County, they won't want to annex into the Town.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to table this request until staff revised the policy. Unanimously approved.

## **2. Hurricane Matthew Home Acquisitions and Elevations**

Town Manager Michael Scott informed the Council that currently there are seven home acquisitions (buy-out) and one potential home elevation as a result of Hurricane Matthew. The only way affected citizens can benefit from this federal program is if the municipality participates. The Town Council approved the hiring of a third party to assist staff with this project. As staff began to move forward, it became apparent that the state had changed how reimbursements would be issued. Local governments could no longer submit a contractor's invoice to the state for reimbursement. The local government must now pay the invoice before the state will reimburse the Town. With potentially eight home buy-outs, the cost for everything associated with the acquisitions estimated to cost \$1.75 million. The state sent the Town information about a zero interest revolving loan, but the application only applies to homes damaged in Hurricanes Florence and Michael. The hope was that this revolving loan would be accepted for Hurricane Matthew victims as well. The Town Manager stated there were three options: 1) apply for the loan 2) the Town use its own money to front the project or 3) completely withdraw from the program. If the Town withdrew from the program, none of the affected property owners would be assisted.

Councilman Barbour questioned if the funds for these buy-out were guaranteed. The Town Manager responded the federal government had already sent the funds to the state.

Councilman Barbour further questioned if the land acquired through these buy-outs could be used as greenspace for parks. The Town Manager responded that staff had already looked at that option and while it was a great idea, it was not viable at this time.

It was the general consensus of the Council to allow the Town Manager to apply for the zero interest revolving loan.

In another matter, Mayor Pro-Tem Scott asked that all PowerPoint presentations be included in the minutes and provided to Council in paper form at the meeting. The Town Manager explained that all PowerPoint presentation are archived with the amended agenda.

**Adjourn**

Being no further business, Mayor Pro-Tem Scott made a motion, seconded by Councilman Barbour, to adjourn the meeting. The meeting adjourned at approximately 8:14pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk