

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
FEBRUARY 28, 2005
7:00 P.M.

Mayor Nancy R. May called the meeting to order and gave invocation.

ATTENDANCE

Members present: Mayor Nancy R. May, Commissioners Max G. Cotten, Burnice Griffin, Jr., Clinton E. Bryan, Jr., Gene T. Brooks and Chris Walker.

Other staff present: Manager David Hughes, Clerk Alice F. Lloyd, Attorney Paul S. Messick, Jr. and Planner David Monroe.

AGENDA APPROVAL

Motion made by Commissioner Brooks seconded by Commissioner Cotten to approve the agenda as presented with the addition of placing an item under old business concerning the wastewater allotment for the Volunteer Fire Department adjacent to Horton School on 15-501 that we take some action and put this thing to rest.

Commissioner Cotten stated under the public hearing action required should say to refer to the Planning Board.

Vote Aye-5 Nay-0

CONSENT AGENDA

Motion made by Commissioner Cotten seconded by Commissioner Griffin to approve the consent agenda.

1. Minutes of February 14, 2005 Board of Commissioners regular meeting.
2. Schedule a public hearing for March 28, 2005 for a rezoning request by Mr. Heath Williamson for property at 287 East Street. He requests a rezoning from M-1 to C-2. He has amended his original request and asked that the Special Use Permit be withdrawn.

Vote Aye-5 Nay-0

CITIZENS MATTERS

NONE

PUBLIC HEARING

Motion made by Commissioner Cotten seconded by Commissioner Griffin to go into a public hearing and refer to Planning Board for recommendation.

Vote Aye-5 Nay-0

- 1. Conduct a public hearing to consider a rezoning request by James A. Webster, Jr. The rezoning is for five contiguous parcels (9742-20-70-5560, 9742-19-70-2673, 9742-19-60-9810, 9742-19-60-7671, 9742-19-60-6623) located on the north side of Park Drive and west of Webster Chevrolet. The property is currently zoned R-15 and the applicant requests a change to R-12.**

PUBLIC COMMENTS:

NONE

Motion made by Commissioner Cotten seconded by Commissioner Griffin to go out of public hearing. Vote Aye-5 Nay-0

OLD BUSINESS

**CONTRACT WITH JOHN BLAIR
PITTSBORO VOLUNTEER FIRE DEPARTMENT**

Patrick Bradshaw stated he is representing Pittsboro Fire and Rescue Department. On October 9, 2001 the Town approved an agreement with John Blair that reserved 20,000 gallons of water and wastewater for the 5.67 acre tract that he owned in the southern part of town. He prepaid over \$16,000 in capital recovery fees.

Mr. Blair gave the Town an easement for a driveway to gain access to the Town water tank, easement for a water line for no additional compensation and released the town from liability from damages done to the property for a number of years caused by the town flushing the water tank that flowed across the property.

Section C-3 states: “this agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, executors, administrators, successors and assigns; provided, however, that the capacity reserved hereby shall not be assigned, transferred, or used by any other property without the prior written consent of the Town. In the event any such assignment or transfer of capacity is authorized, Blair shall not be entitled to be reimbursed for more than the Capital Recovery fees paid by him.”

In 2003 Mr. Blair sold the property and the water/wastewater allocation to the Volunteer Fire Department. Relying on the language in the agreement Mr. Blair nor the fire department sought the consent of the Town to the assignment of the reservation. Last week he learned officials of the Town were interpreting the language of C3 of that agreement to conclude the assignment to the Fire Department is not valid because the Town did not consent to it. This is an extremely important issue to the Fire Department because it creates uncertainty about whether the Town intends to honor its agreement to reserve those 20,000 gallons per day capacity for this property. It was the intentions of the parties to the agreement that the water/wastewater capacity allocation could be used on this property without any further consent from the Town. But that a transfer for use on another property would require the consent of the Town. He does admit that sentence in the agreement may not diagram out perfectly but he believes very strongly that both the Town and Mr. Blair intended the meaning he just described. If it doesn't mean that then the whole second part of that sentence makes no sense and doesn't mean anything at all.

He realizes that wastewater capacity is a precious and limited resource in the Town of Pittsboro these days. The Town and Mr. Blair also realized that in 2001 when they negotiated this agreement. This issue was considered at, at least three meetings of this board. Both sides were represented by attorneys. The fact that resources are limited is not a reason for the Town to renege on its contracts that were negotiated in good faith.

Attorney Messick stated he drafted this language and it was his intent that the Board approve any change of capacity.

Mayor May stated four members on the board now were on the board at that time.

Manager Hughes stated it has nothing to do with the dwindling capacity. When this was sold to the fire department last year if you look at the paper flow calculation provided to the Board last year he had 1,000 gallons for the fire department because he thought that would be plenty. He told Mr. Blair the same thing over a year ago. It had nothing to do with the dwindling capacity it has to do with how he read the paragraph.

Manager Hughes stated he called Attorney Messick when the issue came up. He is not trying to save sewer capacity he was trying to interpret the contract.

Commissioner Griffin stated it understood it was to keep Mr. Blair from transferring that allotment to another piece of property. Would make no sense for him to pay that type money for something he can't guarantee somebody when they came to buy the property.

Commissioner Bryan stated he was under the impression that it stayed with the property.

Attorney Messick stated it may stay with the property forever or at least 12,000 gallons of it whether it is developed or not and that is where part of the rub is. 8,000 will go away if it is not developed within five years but the other 12 will not ever go away.

Motion made by Commissioner Brooks to reaffirm its original intention that the 20,000 gallons per day of wastewater capacity reserved for the property owned by the Fire Department adjacent to Horton School by agreement with John Blair in October 2001 can be assigned to owners of that property without further consent of the Town and if the language of the agreement is ambiguous on this point that the attorney for the Fire Department and Town Attorney draft an amendment to the agreement to clarify the language consistent with this motion and present the amendment to the Board of Commissioners at its next meeting, seconded by Commissioner Bryan.

Commissioner Brooks stated that because of the growth on the northern side of Town the Fire Department may want to sell this property so that they can better serve this community.

Vote Aye-5 Nay-0

**REVISION – TOWN CODE
CHAPTER 19 “PARKS AND RECREATION”**

- 1. Consider minor revision to Chapter 19 “Parks and Recreation” of the Town code.**

Motion made by Commissioner Cotten seconded by Commissioner Walker to approve the minor revision to Chapter 19 “Parks and Recreation” of the Town Code.

Vote Aye-5 Nay-0

**A COPY OF AN AMENDMENT TO CHAPTER 19 OF THE TOWN CODE IS
RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGES 1-5**

FY 2004-2005 BUDGET AMENDMENT

- 2. Consider a budget amendment to fund the new police patrol officer position.**

Motion made by Commissioner Cotten seconded by Commissioner Griffin to approve the budget amendment to fund the new police position.

Vote Aye-5 Nay-0

**AN ORDINANCE AMENDING THE FY 2004-2005 BUDGET IS RECORDED IN
THE BOOK OF RESOLUTIONS NUMBER ONE, PAGE 6**

REZONING REQUEST – CYNTHIA PERRY

- 3. Consider a rezoning request by Cynthia Perry for the property at 179 Hillsboro Street. The request is to rezone from R-12 to O&I.**

Motion made by Commissioner Brooks seconded by Commissioner Bryan to approve the rezoning request for 179 Hillsboro Street from R-12 to O & I.

Vote Aye-5 Nay-0

AN APPLICATION FOR REZONING IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 24-29

REZONING REQUEST – STEVE CARR

- 4. Consider a rezoning request by Steve Carr for his property at 23 Rectory Street (Rectory and West Street). The request is to rezone from C-2 CU to C-2.**

Motion made by Commissioner Cotten seconded by Commissioner Griffin to approve rezoning request with the condition that any parking lot plan developed incorporate a permeable surface and be approved by the planner as recommended by the planning board.

Commissioner Brooks asked if this will meet our current parking requirements. Planner Monroe stated 32 parking spaces would be required.

Planner Monroe stated our policy allows the board to approve an alternative surface if requested, that is the reason the planning board recommended a permeable surface.

Vote Aye-5 Nay-0

AN APPLICATION FOR REZONING IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 30-31

FINAL PLAT – BISHOP’S WAY SUBDIVISION

- 5. Consider a final plat for the Bishop’s Way Subdivision by Habitat for Humanity.**

Amy Powell stated they are waiting for it to dry out so that they can do the curb and gutter.

Commissioner Cotten asked if an application had been applied for through DWQ for a permit for this development, that way the allocation would be official.

Motion made by Commissioner Walker seconded by Commissioner Bryan to approve the final plat for Bishop's Way Subdivision by Habitat for Humanity.

A COPY OF THE FINAL PLAT IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGE 32

NEW BUSINESS

REQUEST FROM CHATHAM COUNTY

- 1. Consider a request by Chatham County to waive the \$3,700.00 sewer and water access fee for a modular office building to be erected on Camp Drive.**

Motion made by Commissioner Cotten seconded by Commissioner Griffin to deny the request.
Vote Aye-5 Nay-0

EXTENSION OF MORATORIUM

- 2. Consider a possible one year extension of the moratorium concerning major residential subdivisions. Moratorium is scheduled to expire March 8, 2005.**

Motion made by Commissioner Cotten seconded by Commissioner Griffin to table until the March 14, 2005 meeting so that he can do some research.
Vote Aye-5 Nay-0

COMMERCIAL SITE PLAN – BELLEMONT STATION

- 3. Consider a commercial site plan for Bellemont Station, a 34 acre tract of land at the southeast corner of US Hwy 15-501N and US 64 By-pass.**

Planner Monroe stated that the revised plan has satisfied all minor changes requested.

Commissioner Cotten asked about the width of the street. He was told the right of way was 50 feet and this street would meet DOT standards.

Manager Hughes stated 17,000 gallons of wastewater will be allocated to this site.

Planner Monroe stated that this size of Lowe's will use approximately 1,110 gallons of wastewater which will leave 15,900 for the rest of the site.

Manager Hughes stated with this we can be pushed up close to capacity.

Manager Hughes stated we have received a \$200,000 and \$20,000 matching grant from Rural Center.

Vote Aye-5 Nay-0

COMMISSIONER CONCERNS

Commissioner Brooks stated there is some confusion about the business of the thoroughfare. He is under the impression that should not be taken into consideration when considering rezoning. Need to get this resolved.

Planner Monroe stated the discussion was to amend the zoning language of the Major Transportation Corridor. It was discussed at the planning board but DOT discussion was only a part of the discussion.

Commissioner Cotten asked if the board was still interested in pursuing discussion with the County about changing the water contract and funds in lieu of taxes.

Mayor May stated she asked Tommy Emerson about it about 3 weeks ago and they have not discussed it.

Commissioner Cotten stated we were promised a year ago that they would consider it and they have not let us know anything yet.

Commissioner Griffin stated he had received a complaint about the need of another street light on JA Farrell Street close to the day care center.

Manager Hughes stated he would check into that.

Commissioner Brooks stated he does not think we need to meet with the County.

ADJOURNMENT

Motion made by Commissioner Cotten seconded by Commissioner Brooks to adjourn.

Vote Aye-5 Nay-0

Nancy R. May, Mayor

ATTEST:

Alice F. Lloyd, CMC, Town Clerk