

**MINUTES
TOWN OF PITTSBORO
PLANNING BOARD MEETING
Monday, February 4, 2013, 7:00 PM**

ATTENDANCE

Members Present: Kenneth Hoyle, Raeford Bland, Alfreda Alston, Bob Butler {Alternate}.

Members Absent: John Clifford, Karl Shaffer, Shannon Plummer, Bob McConnaughey {Alternate}

Staff Present: Stuart Bass, Planning Director, Paul Messick, Town Attorney, Brian Gruesbeck, Town Manager.

A. CALL TO ORDER

Chairman Kenneth Hoyle called the meeting to order at 7:00 pm.

B. APPROVAL OF MINUTES

- **Approval of the minutes of meeting held on December 3, 2012 (Chair Hoyle)**
Motion made by Ms. Alston to approve the minutes.
Seconded by Mr. Butler.
Vote: 4-0
- **Approval of the minutes of meeting held on January 7, 2013 (Chair Hoyle)**
Motion made by Ms. Alston to approve the minutes.
Seconded by Mr. Bland.
Vote: 4-0

C. OLD BUSINESS

None listed in the Agenda

D. NEW BUSINESS

1. Spot Zoning

Action Needed- Presentation and Discussion

Mr. Bass addressed the Board and pointed out the handouts explaining and discussing Spot Zoning. Two are from David Owens from the UNC School of Government the other is from a book on Introduction to Zoning.

What is Spot Zoning? Spot Zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states. However, it must be clearly supported by a reasonable basis to be upheld. The following is a definition from a court case here in Raleigh and it defines sport zoning as a zoning ordinance for amendment that singles out and reclassifies a relatively small tract owned by a single person differently from the surrounding property. One thing to note from this case is that the area was owned by a single person and that is not necessarily always the case, the area could also be owned by more than one person. It is not usual for the tract to be owned by a large group of people but it could be owned by a few individuals.

Mr. Hoyle brought up a case in the past within Chatham Forest where a single individual owned a tract of land and the Board never considered Spot Zoning.

Mr. Bland asked, if it is legal why is it being discussed tonight, **Mr. Bass** responded because it could be illegal. There is spot zoning and then there is illegal spot zoning.

Mr. Messick stated that a request and authorization for spot zoning must be reasonable. The precise legal basis for invalidation certain spot zoning has not been explicitly set forth by the North Carolina courts but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges, the creation of monopolies or the violation of due process or equal protection of the law. The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation. Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezoning in which an owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

Mr. Bass explained that there are four factors to be used in a case by case analysis to determine if a particular spot zoning is reasonable:

1. The size and nature of the tract in question.
2. Compatibility of the disputed zoning action with an existing comprehensive zoning plan.
3. The benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community.
4. The relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts.

The first consideration is the size of the tract. The larger the area the more likely it will be reasonable, individual lots can be problematic. But also contents can be very important, a one acre tract in an urban area is considered large versus a one acre tract in the middle of one thousand acres. There is not specific minimum or maximum size area that would constitute spot zoning.

Secondly is compatibility with the existing plans, if a clear public policy rationale for the different zoning treatment is set out in the local government's adopted plans that evidences a public purpose for the zoning. The key point here is that is a clear public policy that has officially been adopted and somehow left by the governing body so it can be used as a rationale for part of the decision or recommendation.

Third is the impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community means that any action that has a substantial benefit for the owner will not necessarily offset substantial harm to others. A zoning decision that significantly harms neighbors or the community is unreasonable.

The fourth factor is the relationship between a previous zone versus a new zone. The degree of difference among the old and new zoning is important. The greater the difference in allowed uses, the more likely to rezoning will be found unreasonable.

The key questions would be, is spot zoning in the public interest rather than to the land owner? The zoning must be real and substantial for the community, not merely convenient. He read a quote from Professor Phil Green of the UNC School of Government. A root spot zoning is nothing but giving special treatment to one or a few property owners, without adequate justification. If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning.

The last handout included in the packet associated with spot zoning is a case that David Owens posted on Coates' Canons: NC Local Government Law Blog. The situation he describes is of Malcolm Tucker who decided to locate a nightclub out of town in a very rural area but with access to water and sewer. All the surrounding property was zoned RA-40 it states that in this instance rezoning a single parcel for commercial use when all the nearby property is zoned for low density residential-agricultural use is certainly spot zoning. Reading further in the article they do go through the four factors discussed previously. We may have a case where someone wants to do something similar in our ETJ.

Ms. Alston said that the information provided was very helpful, something to think about if any rezoning issues come up.

Mr. Bass agreed and said that the main point is that Spot Zoning is not illegal, is just a question of consideration as to the factors provided, who benefits and how much and what is the harm if any.

E. BOARD MEMBER CONCERS

None were presented

F. REPORTS AND ANNOUNCEMENTS

1. Internet Sweepstakes

Mr. Hoyle asked about an insert on Internet Sweepstakes included in their packet.

Mr. Bass state that it was just some information he provided in regards to the Supreme Court Upholding Internet Sweepstakes Ban.

G. ADJOURNMENT

Mr. Hoyle asked for motion to adjourn.

Ms. Alston made motion to adjourn, seconded by **Mr. Bland**.

Meeting adjourned at 7:41 p.m.

Next Planning Board Meeting is scheduled for Monday, March 4, 2013 at 7:00 p.m.