

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
SEPTEMBER 22, 2003
7:00 P.M.

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

ATTENDANCE

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

Others present: Manager David B. Hughes, Clerk Alice F. Lloyd and Attorney Paul S. Messick, Jr.

DISPOSITION OF MINUTES

Motion made by Commissioner Bryan seconded by Commissioner Walker to approve the minutes of the September 8, 2003 meeting with a correction on page one regarding the motion to approve a change order, add that the motion was seconded by Commissioner Walker.

Vote Aye-5 Nay-0

SCHEDULING A PUBLIC HEARING

Motion made by Commissioner Walker seconded by Commissioner Griffin to set a public hearing on an amendment to the Major Transportation Corridor for October 27, 2003 at 7:00 p.m.

REZONING REQUEST BY NORCAL ENTERPRISES
FOR PARCEL #60850 LOT A & B

VOTE OF VALIDITY OF PROTEST PETITION FOR LOT A.

Nick Robinson – representing Norcal, LLC. They agree that the protest petition for Lot B is valid because it has enough signatures from adjoining property owners. In regards to Lot A they firmly state that the protest petition is not sufficient.

He recognizes that this is some new ground for the Town. He would like to summarize legal argument that the petition as to Lot A is not sufficient.

Norcal's main interest is not to get involved in prolonged skirmish about protest petitions. What Norcal and the Krombachs want is to be allowed to put their corner property to a reasonable use at an intersection where all the other corner lots are zoned C2 for

unlimited commercial use. The number of votes needed for passage is something of importance to them. If the protest petition that certain surrounding landowners have signed is valid they would have to have four votes in favor of their proposal if not they would have to have three.

Pittsboro's ordinance essentially matches a state statute in describing what is the qualifying area from which you need to have 20% of the owners of that area to sign the petition to make it valid. If you read it you can read it any number of ways. If a protest petition has signatures of 20% of the qualifying area that it would be a valid protest petition. So what you are looking for is whether there is someone who signed the petition, if you add up their total interest and whether their acreage equals 20% or more of the qualifying area. That's pretty easy. The hard thing is figuring out what is the qualifying area. When you read the statute it's not always clear. Example: David Owens books has the questions about how to interpret the statute the first thing he says about it remains in GS 136-385(a) regarding the definition of the qualifying area he says a key question is how many individual qualifying sub areas the statute creates any one of which could constitute a qualifying area because the definitions is joined by a conjunctive. Some local governments interpret the statute to say there is just one additional sub area the 100 feet strip along the side and rear of the area being zoned. Other local governments read it to say there are three additional sub areas 2 sides and the rear. Still others read it to allow indefinite numbers of additional qualifying areas as if there is an irregularly shaped parcel with many jogs in the zoning district boundary. Situation is further confused if there are streets adjoining the rezoning area on more than one side or if there is no clear front and rear to the rezoned area. What is a fair way to interpret the qualifying area for purposes of this protest petition?

Summary of evidence at Public Hearing – Van Finch testified about size and acreage of surrounding lots that fell within 100 feet of the area proposed to be rezoned. The lots that fall within the 100 feet are the Thrift lot, the balance of the Krombach's lot, property where the body shop is currently located and Holmes Oil Company which is across the street. If you add acreages of these lots which fall within 100 feet of this property the total acreage is 3.65 acres (Thrift .68 acres/balance of Krombach .82/Body Shop .72 and Holmes Oil 1.43). The size of the Thrift lot has to comprise at least 20% of that figure in order for this to be a valid petition. You may ask why only the Thrifts – they are the only adjoining property owner that signed the petition, there were others that signed the petition but they did not own property adjoining Lot A. When you calculate it you would need .73 acres to be 20% and it is .68 acres. Their argument is that in order to determine qualifying area you take every lot within 100 feet of the property to be rezoned total up acreage and multiple by 20% and if signatures on the petition have acreage of more than 20% they win. You have to have 4 out of 5 votes and if they don't the petition is not valid and they have to have 3 out of 5 to prevail.

He does not agree with the Town Attorney, Mr. Messick so to break the tie he consulted NC Supreme Court Mr. Robinson went over court cases. The tie breaker would come from the Supreme Court which states that the Zoning Ordinances are to be liberally construed in favor of the property owner seeking the rezoning. He would like to

conclude that Lot A fails to meet the requirements for a valid petition therefore it is not valid and it would require only a simply majority for approval.

What is before the Board tonight is whether their proposal advance public health, safety and welfare that is the community in general and not just a few property owners nearby. He would also like to mention the petition his clients have with 193 signatures from people who live, work and do business in Town.

Pam Woods – stated she is not an attorney. When they first went through this they did not know about the requirements for a protest petition so they just submitted a petition from residents in opposition to the proposal. She has spent a great deal of time talking with Fleming Bell with the School of Government and she has been assured that their petition is a valid protest petition.

It is in GS 385 she believes were it states that in case however of a protest against such changes as signed by the owners of 20% or more of either of the area of the lots included and such proposed change or immediately adjacent in the rear thereof of one any side thereof of extending 100 feet there from or those directly opposite thereto extending 100 feet from street frontage of such opposite lots, such change shall not become effective except by favorable vote of $\frac{3}{4}$ of all members of the Town Board.

She has been assured by Mr. Bell, their Attorney and by Mr. Messick's written comments that it is a valid protest petition.

Only other question she has is that this lot has not been legally subdivided yet. She is not sure this would hold up in court.

Once again, she has been assured their protest petition is valid.

Commissioner Cotten asked if the location of this as pertaining to street and roads for example the area across from Sanford Road from this it is not adjacent because it is separated by the road does adjacency enter into this when it is separated this way?

Attorney Messick, said yes, the ordinance has two descriptions.

Commissioner Cotten states it appears that the Thrift property is 20% of Lot A.

Commissioner Walker stated there is enough doubt in his mind as to the sufficiency of the protest petition for Lot A based on total percentage in area of adjoining and property located across the street, he moved that the Board of Commissioners of the Town of Pittsboro conclude the Protest Petition filed July 21, 2003 with regards to NORCAL Enterprises, LLC application regarding Lot A rezoning from R-15 to C2CU is disallowed

because the owners of 20% of more of the relevant area established under Section 10.4.5 of the Town of Pittsboro Zoning Ordinance did not sign the petition, seconded by Commissioner Griffin.

Vote Aye-3 Walker/Griffin/Brooks
Nay-2 Bryan/Cotten

VOTE OF VALIDITY OF PROTEST PETITION FOR LOT B

Motion made by Commissioner Walker seconded by Commissioner Griffin to allow the protest petition because the owners of 20% or more of the relevant area established under Section 10.4.5 of the Town of Pittsboro Zoning Ordinance did sign the petition.

Vote Aye-5 Nay-0

VOTE ON REZONING FOR LOT A

Motion made by Commissioner Walker seconded by Commissioner Griffin that the Town of Pittsboro Board of Commissioners approve the rezoning application of NORCAL Enterprises LLC, seeking to rezone a parcel of approximately .42 acres designated as Lot A from R-15 to C2CU.

Commissioner Cotten asked for clarification that this vote would require a 3/5 vote and the other one would require a 4/5 vote.

Commissioner Bryan asked does it make any difference whether it has been divided or not.

Attorney Messick stated it did not, before the use can be allowed they will have to be separated.

Vote Aye-3 Walker/Griffin/Bryan
Nay-2 Brooks/Cotten

VOTE ON REZONING OF LOT B

Motion made by Commissioner Walker seconded by Commissioner Griffin that the Town of Pittsboro Board of Commissioners approve the rezoning application of NORCAL Enterprises, LLC seeking to rezone a parcel of approximately .82 acres designated as Lot A from R-15 to O & I CU.

Vote Aye-3 Walker/Griffin/Bryan
Nay-2 Brooks/Cotten

VOTE ON SPECIAL USE PERMIT FOR LOT A

Motion made by Commissioner Walker seconded by Commissioner Griffin to approve a SUP for C-2CU contract with Norcal Enterprises with following conditions: that Lot A be subdivided from parcel of approximately 1.247 acres, the applicant needs to create a 2 foot high earthen berm as a buffer along the entire property line shared with the Thrift

property adjacent to the north an a 8 foot non-transparent wooden fence be placed on the berm and that the planting shown on the plan be installed on the Thrift side of the fence but still on the applicants property. All utilities must be installed underground.

Vote Aye-4 Walker/Griffin/Bryan/Brooks
Nay-1 Cotten

VOTE ON SPECIAL USE PERMIT FOR LOT B

There will be no Lot B because of previous vote.

HABITAT FOR HUMANITY MAJOR SUBDIVISION OFF EAST CORNWALLIS STREET

Robert Scurlock stated he owns property in the area and he was present to speak in opposition to additional housing in this area. There is currently no where for the children to play for they are playing in the streets (he presented a photo of such), he would like to see some type of recreational area for children to play before any additional housing is allowed in this area.

Joni Powell stated she has made an effort to work with residents of Cornwallis Street. After much discussion about the fact that we have a lack of sewer available for this project a motion was made by Commissioner Walker to table this for a period of two weeks due to the availability of sewer, seconded by Commissioner Griffin.

Vote Aye-5 Nay-0

CONTRACT WITH KEN SHORSHER

Commissioner Brooks stated he has a problem with lottering/noise.

Mr. Shorsher stated it is going to be a self serve automatic car wash and the only place for lottering would be at the vacuum.

Commissioners Brooks asked if this goes well and he decides to put in other bays would he have to submit to a whole new set of rules.

Mr. Shorsher stated this car will be the first in the State to have a pet wash and that a video camera would be installed and he could see what is going on at his home. The car wash will be opened 24 hours a day 7 days a week. The lighting will have to have an automatic cut off on it.

Commissioner Cotten stated his only concern is the length of time.

Motion made by Commissioner Walker seconded by Commissioner Bryan to approve the contract with Ken Shorsher. Vote Aye-5 Nay-0

COMMISSIONER CONCERNS

Commissioner Cotten stated the time for repaving is growing short. We need to get an estimate to do the repairs on McClendahan which was approved earlier.

Commissioner Brooks asked if the Town has had any communications from the Gregory's since the approval of the parking lot for Dan Deacon at the Community Building.

Commissioner Brooks stated the NCDOT motor grader has done some damage on East Cornwallis Street after discussion it was decided not to pursue any reimbursements.

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

Vote Aye-5 Nay-0

Mayor

ATTEST:

Clerk