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3 **Minutes of the New Bern Planning & Zoning Board**
4 **June 4, 2013**
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8 The regularly scheduled meeting of the New Bern Planning & Zoning Board was held in the City
9 Hall Courtroom, 300 Pollock Street, on Tuesday, June 4, 2013 at 6:30 pm, preceded by a 5:30
10 pm work session on zoning and zoning amendments.
11

12 **Members present:** Mr. Tim Tabak, Chair
13 Mr. Kenneth Peregoy, Vice-Chair
14 Ms. Stevie Bennett
15 Ms. Tiffany Dove
16 Mr. Patrick McCullough
17 Mr. Bill Stamm
18 Ms. Velda Whitfield
19 Mr. Paul Yaeger
20

21 **Members excused:** Ms. Dorothea White
22 Mr. Jimmy Dillahunt
23

24 **Members absent:** None
25

26 **Staff present:** Mr. Bernard George, AICP
27 Planning Division Manager
28
29 Mr. Kevin Robinson, AICP
30 City Planner
31
32

33 Chairman Tabak called the meeting to order. Roll call was taken and a quorum declared.
34

35 **Prayer:** A prayer for guidance was given by Mr. George.
36

37 **Minutes:** Minutes from the May 7, 2013 meeting were not available at the time of this
38 meeting. Therefore the minutes will be reviewed at the July 2, 2013 meeting.
39

40 Chairman Tabak announced that Ms. Stevie Bennett had been reappointed to the Planning &
41 Zoning Board. Board members congratulated Ms. Bennett on her reappointment.
42

43 Chairman Tabak noted the two agenda items are listed for 'consideration', but are discussion
44 items only. Therefore, there will be no vote taken on either item.
45

46 **New Business**

47 **A. Consideration of a request by the City of New Bern to amend the Public Notification**
48 **Provisions of the Land Use Ordinance so as to provide for a unified system of public**
49 **meeting notice consistent with State Law.**
50

51 **Staff Comments:** Mr. Kevin Robinson handed out an updated proposed ordinance to the board
52 members, informing them that the attachments were revised from the previous information they
53 had received in their board packets. He noted that revisions are still being made and this review
54 session is for discussion purposes only. Mr. Robinson advised the purpose of the revisions is to
55 clarify and organize some of the ordinances, remove some inconsistencies, and streamline notice
56 processes in a way that is easier to understand. He discussed the following aspects of the meeting
57 notice requirements.
58

59 **Annual Update:** This is required by General Statutes 143-318.12 and requires 7 days
60 notification prior to any public meeting. Proper notification requirements were discussed.
61 Revisions to the dates will need to be made at least 7 days prior to the meeting date and re-
62 posted.
63

64 **Notification of Applicant/Appellant:** This notice shall be provided to owner/applicant or a
65 person who makes a request for a notice, including other citizens and newspapers, no later than 7
66 days prior to the meeting. Mr. Robinson advised there is an exception to this requirement.
67 Zoning map amendments require 10-25 days notification.
68

69 Ms. Stevie Bennett questioned Mr. Robinson on reducing notification requirements for the Board
70 of Adjustment from 15 to 7 days. Mr. Robinson advised that is correct, that an across-the-board
71 standardized policy is the goal, with the exception of those required notifications in additional
72 state statutes. Ms. Bennett asked if what had been done in the past meant it had violated state
73 statute. Mr. Robinson advised in his thorough review, no statute has been violated, nor would it
74 be with the standardized 7 day notification period.
75

76 Ms. Bennett felt that 7 days is not sufficient notification, especially for individuals living out of
77 town. Mr. Robinson advised there are additional notification procedures as well, including
78 newspaper notice, City of New Bern website and TV station.
79

80 Mr. Bernard George agreed with Mr. Robinson, reiterating the goal of standardizing the
81 notification process due to its wide array of requirements. Additional discussion with Ms.
82 Bennett ensued.
83

84 Vice Chair Peregoy noted that the notification must only be post marked 7 days, which may not
85 be a full 7 days to the recipient of the letter. Mr. Robinson advised the City's 7 day policy
86 typically means the notifications are sent out 9 days prior, including weekend days. Mr.
87 Robinson also noted due to HPC design review requirements, 7 days notification provides ample
88 time for staff receipt of applicant documents, review by staff, and design review meeting for
89 discussion.
90

91 Chair Tabak asked if it was possible to readjust the dates/time requirements of design review to
92 better accommodate more notification time. Mr. Robinson advised the amount of effort going

93 into review of documents for board meetings is significant and he would be hesitant to extend
94 this process any longer for applicants. Additional scenarios on summer time activities and future
95 changes in mail delivery were discussed with the challenges these possibilities pose on the
96 notification process.

97
98 Board member agenda information deadlines were discussed with Chair Tabak and Ms. Bennett
99 noting additional review time would be beneficial for the board members. Mr. Robinson advised
100 the topic being discussed was notification of applicant and appellant and that notification for
101 board members was a topic to follow. Chair Tabak acknowledged this, but noted he was trying
102 to discuss both as they are correlational. Chair Tabak recognized the latest proposed amendment
103 revisions, but questioned if the final information packet will be provided within the discussed 7
104 day review period. Mr. Robinson advised that might work for some boards; however, the HPC
105 has design review meetings prior to its regular board meetings so members are familiar with
106 upcoming board agenda items.

107
108 Mr. George asked the board how much time they require to review their packet. The board noted
109 it would depend on the complexity of the items for review. General consensus was longer than 5
110 days and as much as 7-10 days. Mr. George clarified that the intent tonight was to bring these
111 proposed draft changes to the board for input and discussion, and in the July meeting, have the
112 board consider the final draft of proposed amendments.

113
114 Additional discussion ensued on the time frame for affected residents to receive notification and
115 other residents that may want to have input, but are outside the current notification boundary for
116 affected property owners. Ms. Bennett voiced concern with the 100 foot notification
117 requirement for property owners. Additional discussion ensued.

118
119 Mr. Robinson requested that a specific distance is suggested for consideration. Vice Chair
120 Peregoy noted that the 100 feet currently used, only reaches those immediately surrounding the
121 property in question. He feels there should be consideration given for those 300 feet or 500 feet
122 away from property in question. He also realized a standard has to be set, as not all homeowners
123 can be notified. He further stated some will need to be notified through the public notices and/or
124 word of mouth.

125
126 Mr. George advised he feels the current 100 foot notification has at times filled the courtroom
127 with residents, and doesn't feel something that currently works needs to be changed. He cited
128 the requirements of the public notices in the newspapers as well as the other avenues of notifying
129 the public (posting at City Hall, posting on the website, posting on the TV channel).

130
131 **Public Comment:** *Rose Williams, 220 Metcalf Street*, advised she is a former member of the
132 HPC and understands both sides of the issue. Pertaining to minimum distance of notifying
133 adjacent property owners, 100 feet doesn't seem to be feasible for proper notification. She
134 requested the distance be extended. Regarding notification, she referenced the way things used
135 to be when notification was placed in doorways. Her mail goes to a post office box which she
136 does not check every day making notification difficult. She requested that more notification time
137 be considered. She also noted that she hasn't subscribed to the Sun Journal in decades; therefore,

any public notice placed in the paper she doesn't see. She requested that another notification process be implemented.

Chair Tabak asked what type of media she uses. Ms. Williams advised she uses the web for most all things now, and will occasionally read articles on the Sun Journal's website.

From her previous experience as a member of the HPC, she noted they received their packet a full 7 days prior to a meeting, and feels anything less than this is insufficient for full review of meeting information. Mr. George asked Ms. Williams if they conducted design review meetings during the time she served on the HPC. She replied they did not, but a 1-hour public work session was scheduled prior to regular HPC meetings.

Subject Property Posting: Mr. Robinson provided the existing ordinance, and advised that it covered most methods of notification.

Mr. Robinson advised that during a regularly scheduled meeting, if the time and place for a special meeting is established, then no additional notice is required.

Chair Tabak summed up the discussion by noting everyone feels more time is needed for notification as well as board review. However, processes and details have come to light making it clear that the discussed changes could be a challenge. In addition some changes are regulated by state statutes and are not eligible for revision.

Mr. Robinson requested the board specifically identify what time frames they would like extended and the time frame they are proposing so staff is clear on what changes to consider.

Vice Chair Peregoy suggested that perhaps there isn't one solution that will fit all the board's timing and criteria needs, so standardizing may not work across all boards.

Ms. Bennett brought us some concerns she has with additional information being handed to board members, citing recent HPC meetings, that was not available for the public to review, and how to address that. Mr. Robinson advised he felt that was a bit off topic and stated HPC has a policy that addresses that issue and is currently being reviewed.

Chair Tabak noted some verbiage regarding quasi-judicial board, which the Planning & Zoning Board is not, but the Board of Adjustment and HPC Boards are. He questioned what difference that would make on processes for the boards as Planning & Zoning does not follow the same regulations as a quasi-judicial board.

Mr. Robinson agreed, stating some information and requirements do need to be separated out depending on the board and expectations.

Mr. George advised a hearing itself is another opportunity to review all available information. The board must set guidelines for showing how the board reaches its decision based on facts, which at times are difficult for the public to determine. During a hearing, additional information

may be submitted since it is an open, ongoing process of fact determination. An applicant is free to provide additional information up to the time of a decision.

Vice Chair Peregoy agreed that the additional submitted information at a hearing assists the board in making its decision.

Pertaining to the initial discussion on timeframe to review documents, Vice Chair Peregoy again stated he prefers to have 7 days to review information prior to a meeting. He suggests notification to the public 7-10 days prior, but does not recommend 5 days' notice to the public.

Member Patrick McCullough, citing suggestions from Vice Chair Peregoy, inquired as to how the suggested changes would impact submission dates, noting currently in some situations, there is 3 weeks between submittal and a meeting/ruling. Mr. Robinson advised submission days would have to be adjusted as well.

Mr. George pointed out that while the board needs time to review, staff requires even more time to thoroughly review the information as well. Mr. George thanked the board for their input, noting staff will review their comments for further consideration and will continue to review the processes for streamlining and efficiency. The board will consider the proposed amendment at its next meeting.

Ms. Bennett questioned what would happen if the City wrote a land use ordinance, implemented it for years, then research was done and it was found to violate state statute. Mr. Robinson advised that was a question better posed to the City Attorney. Member Yaeger pointed out if that happened, it could potentially cost a resident a lot of money if statutes are not followed. Mr. Robinson advised they are aware of the state statutes, therefore they do not feel that would be a problem.

B. Consideration of a request by the City of New Bern to amend the Land Use Ordinance provisions of Article VII "Enforcement and Review" and Article XXI "New Bern Historic District", in addition to Chapter 38 Article I of the Housing Code. The purpose of the requested amendments is to create a unified graduated penalty system for code violations enforced by the Development Services Department's Planning and Inspections Divisions.

Staff Comments: Mr. George advised the proposed ordinance amendment is designed to create a consistent system of penalties for violations of the Land Use Ordinance. Currently the penalty is \$50/day and each day is a separate violation. Members have been provided two copies of the draft amendment with current language as well as proposed language.

Article VII, Enforcement and Review: Mr. George gave an explanation of the current Article. Currently the penalty for all violations is \$50 per day. It is being proposed the fine be changed to \$500 for a violation that occurs and is not addressed within the first 31 days of notice of violation. The hope with this change is that residents will take a faster and more proactive approach to avoid this fine and correct the violation. Proposed change would charge \$1,000 if

the violation is not corrected within 61 days of notice. Proposed change would charge \$2,000 if the violation is not corrected within 90 days of notice. This fine would be collected as a tax assessment. In addition, there are repeat offenders of the same violation, so it is being proposed if violation is repeated within 12 months, the penalty would be double the initial assessment. The goal is to impact the habitual offenders.

Article XXI, New Bern Historic District: Mr. George gave an explanation of the current Article. Currently this penalty is \$50 per day. It is being proposed the fine be changed to \$500 for a violation that occurs and is not addressed within the first 31 days of notice of violation. The hope with this change is that residents will take a faster and more proactive approach to avoid this fine and correct the violation. Proposed change would charge \$1,000 if the violation is not corrected within 61 days of notice. Proposed change would charge \$2,000 if the violation is not corrected within 90 days of notice. This fine would be collected as a tax assessment. In addition, there are repeat offenders of the same violation, so it is being proposed if the violation is repeated within 12 months, the penalty would be double the initial assessment. The idea is to have greater compliance impact on habitual offenders.

Minimum Housing Violations: Currently this penalty is \$50 per day. The City Attorney is currently reviewing the draft amendment and staff is requesting the Planning and Zoning Board's input. Mr. George gave an explanation of the current Code regarding minimum housing requirements and standards. The penalty is proposed to be changed to \$500 for a violation that occurs and is not addressed within the first 31 days of notice of violation. The hope with this change is that residents will take a faster and more proactive approach to avoid this fine and correct the violation. Proposed change would charge \$1,000 if the violation is not corrected within 61 days of notice. Proposed change would charge \$2,000 if the violation is not corrected within 90 days of notice.

Ms. Bennett did not understand how decreasing this amount would encourage residents to comply with the rules, when the \$50 per day times 30 days is more than the proposed \$500, as each fine subsequently following is also less than a \$50 per day fine.

Member Yaeger read the description that did not state specifically the \$50 was a per day fine. Mr. Robinson agreed that indeed the fines equal less than a \$50 per day fine.

Chair Tabak asked if there is any track record with the increase to prove it is more effective than the current \$50 per day fine. Mr. Robinson advised he did not have trending information to corroborate one way or another the effectiveness of the proposed increase.

Ms. Bennett provided the exact amount of money collected from fines between the dates of July 1, 2012 through May 31, 2013 to be \$20,542. If the new procedure is accepted, this amount could be cut in half.

Mr. George advised the current process for collecting money has been a long and tedious process. The hope with the proposed graduated penalty process is that the larger amounts will be more daunting to violators and encourage them to more quickly correct violations and comply with minimum housing and zoning codes.

275 Vice Chair Peregoy suggested the addition of "cumulative" to the verbiage so homeowners
276 understand it's not just the individual fines, but the fines will accumulate the longer they are
277 inactive in rectifying their violation.

278
279 Chair Tabak questioned how many violations the city has annually. Mr. George advised an
280 average number would be 5-10 violations per month, with varying penalty amounts. He noted
281 the legal cost of going after smaller fine amounts is not a good use of resources. The goal for the
282 City is to gain voluntary compliance by residents.

283
284 Ms. Bennett wondered how many properties have liens on them due to code violations and how
285 many properties should have liens but do not. She cited an example from her neighborhood. She
286 feels the City is slow to file property liens. She feels more enforcement tools and methods are
287 needed, as well as a time frame established in which the City must file a lien on a property.

288
289 Chair Tabak asked if the City goes through the small claims process. Mr. George advised it is
290 processed similar to a tax lien. Suggestions on how to obtain accrued penalties with limited
291 funds were discussed.

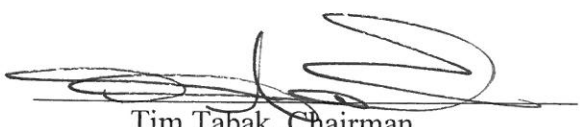
292
293 Mr. George advised usually there is a minimum housing hearing, with the building inspector.
294 The property owner can bring any representation they choose to the hearing. At the hearing, an
295 agreed time frame is approved in which bring the property up to standard. Some people will
296 request extensions after this initial hearing. If the violations are not corrected within the
297 specified period, the penalty period begins and the penalties accumulate.


298
299 Ms. Bennett cited another property in her neighborhood with over \$18,000 in fines, with no lien
300 filed. She noted with this home, the owner could sell the house and the fines would be wiped
301 clean upon sale of the home because they were not recorded on the deed.

302
303 Mr. Robinson noted if the homeowner isn't going to repair the property, then selling becomes
304 appealing as the new homeowners may be more apt to repair the property.

305
306 Chair Tabak questioned if additional verbiage could be included specifying when a lien would be
307 appropriate to file on a property with violations that have not been addressed. Mr. George
308 advised he would present this and all suggestions to the City Attorney for consideration.

309
310 Vice Chair Peregoy motioned for the meeting to be adjourned. Member Ms. Bennett seconded.
311 There being no further business, the meeting was adjourned.

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315
316

Tim Tabak, Chairman
7/2/13


Bernard George, AICP, Secretary