

**Minutes of the
New Bern Planning & Zoning Board
February, 5 2019 – 5:30 P.M.
New Bern City Hall - 300 Pollock Street**

The regular meeting of the New Bern Planning & Zoning Board was held in the City Hall Courtroom, 300 Pollock Street, on February, 5 2019 at 5:30 p.m.

Members Present: Raymond Layton, Chair
Sonny Aluzzo, Vice Chair
Willie Newkirk Sr.
Don Black
Jeffrey Midgett
Marshall Ballard
Jerry Walker
Pat Dougherty
Haron Beatty (arrived approximately 5:31 P.M.)

Members Excused (E)/ Absent (A):

Staff Present: Morgan Potts, AICP, City Planner

Others Present: Jennifer Campbell, Recording Secretary

Chair Raymond Layton called the meeting to order at 5:30 P.M.

Roll Call

Staff Member Morgan Potts delivered the roll call of all members and quorum declared.

Approval of Minutes:

There were no minutes to approve.

Old Business:

- A. Consideration of a request to rezone 2.4 +/- acres from R-20 Residential District to C-3 Commercial District by Moffett Enterprises LLC/John Thomas Engineering, located at 4526 US Highway 17 South. The property is further identified in Craven County Parcel Identification Numbers 8-206-079. (Extra Territorial Jurisdiction)**

42 **Staff Comments:**

43 Staff Potts reviewed the information regarding this matter from the previous meeting. She
44 stated that the Board requested staff investigate the assertion that Rocky Run residents were
45 promised upon annexation and initial zoning that no commercial uses would be permitted
46 in the area. Staff researched the matter and found no evidence of the assertion, per the
47 attached minutes from the Board of Aldermen meeting, dated May 25, 1999. Staff has also
48 attached a petition from the Rocky Run Community requesting annexation and zoning, which
49 is attached. In addition, "contractual zoning" is not a legal practice in the State of North
50 Carolina. All public notice requirements have been fulfilled. City staff advises the Planning &
51 Zoning Board to recommend approval of the rezoning request to the Board of Aldermen.

52
53 Chair Layton questioned if Board Member Heron Beatty desired to request recusal during
54 deliberation on this topic. **Subsequently Board Member Don Black made a motion to**
55 **recuse Mr. Heron Beatty from the proceeding deliberations.** Vice- Chair Sonny Aluzzo
56 seconded the motion. The motion passed unanimously.

57
58 **Board Discussion:**

59
60 Mr. Black began by thanking the planning department for finding the information regarding
61 this old business item. He stated that he went to several different sites including the library,
62 the Sun Journal, and the University of North Carolina at Chapel Hill to see if there was any
63 information from the Newspapers. He stated that he was unable to find any from that time
64 period from both in 1994 and 1999. He went on to state that what the board does know is
65 the area that is being rezoned from residential to commercial was originally a railroad track
66 right- of- way. He stated that this meant that the property was not historically a residential
67 area. He went on to stipulate that the board was also aware that the City of New Bern didn't
68 encroach on the Rocky Run area and that the development was fronted on Highway 17 and
69 he believes that the City has acted in good faith. Mr. Black said that the Board should consider
70 the heritage of this land and the families that have lived on this land for generations, and
71 presses that board to be considerate when the old established families of New Bern raise
72 their concerns, and the board should take them into consideration. He also stated that
73 consideration should be taken in regards to the importance of Highway 17 flows equally
74 from the south into New Bern and how..... Mr. Black concluded by thanking the Board for
75 giving additional time for him to review the matter.

76
77 Board Member Marshall Ballard followed this discussion, by stating that he believes that a
78 meeting should be rescheduled for the residents of Rocky Run on Highway 17 to bring them
79 up - to - date with what is going on. Chair Layton asked Staff Potts if the adjacent property
80 owners within the legally required distances were notified. Staff Potts confirmed that they
81 were notified; the notification was posted and disseminated. She also state that since the
82 board continued the discussion, the notification automatically rolls over to the next public
83 meeting. Chair Layton responded to Mr. Ballard that he understood Mr. Ballards' request, but
84 in regards to legality, everything that is legally required to be done as far as notifying the
85 community has been done. Chair Layton went on to state that this request is a rezoning
86 request, so the use of the property while there is a large range of uses that are acceptable or
87 allowed by right within the request of zoning, the actual use is not part of the application.

Chair Layton followed by stating that the board allows staff to state if this plan fits within the Land Use Plan, staff tell the board that it does fit within the Land Use Plan, so He feels that there is no grounds for scheduling a public meeting and no requirement for it, and staff tells the board that all legal requirements have been satisfied.

Mr. Ballard responded with the desire to explain why he believes there should be an update for the community. Mr. Ballard stated that the purpose he proposed the meeting is in regard to the plot of land the owner has purchased. He stated that on this plot of land there are two large holes and he believes that the community needs to know the plans in terms of safety and children in regard to these holes. Chair Layton commented that the Planning and Zoning Board has to rely on the process of approval of the rezoning. He stated that once the site plan has been approved by the Board of Alderman, the site plan then goes in front of all the departments of the City of New Bern and they will make suggestions and recommendations for that site plan. Chair Layton suggested that if any residents are concerned, then their concerns should be directed to Development Services.

Mr. Ballard responded that he hoped they would have a meeting with residents who are affected by the changes, so the residents would know the plan for safety. Chair Layton replied that is not something that the Planning and Zoning Board can require, but it can be requested by the residents, the developer, or owner of the property. He followed by stating that a meeting is not something this board can require or place as a stipulation that we can include in the rezoning application. Staff Potts stated that the owner would be placing a fence around the retention pond area on the property if this was a cause of some of the concern. Chair Layton reiterated that this stipulation is not part of this Board's perview, but a part of the departmental site plan review, that is required before a building permit can be purchased. This is where all the departments review.

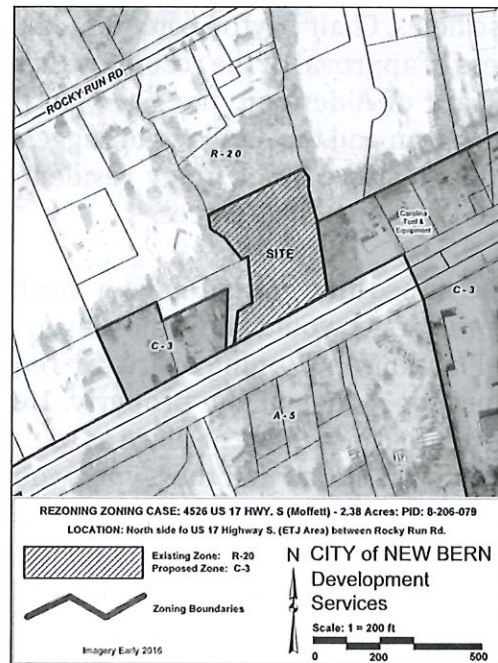
Board Member Jeffrey Midgett asked if the site plan was available at this time. Staff Potts stated that the site plan was not available at this time and that the board is looking at the rezoning request. Chair Layton followed this by stating that the site plan would not come back before this board, but it will go to departmental review. He suggested these particular safety questions can be directed to Development Services or the Inspections Department. Mr. Ballard asked if there would be time for representatives from Rocky Run to present. Chair Layton said there would be time for public discussion.

Staff Potts stated that there were two items of note and that the only thing the board could do to hold their feet to the fire was what was listed in the ordinance, and second is only the Planning and Zoning Board recommendation goes to the Board of Alderman and the Board of Alderman have the final say in rezoning. Chair Layton responded by stating that the reason it did not go to the Board of Alderman after the last meeting was because this Board tabled it, to allow staff to acquire additional information. Chair Layton stated that he hoped that the board would render some sort of recommendation for the Board of Alderman tonight.

Applicant Comment:

John Thomas with Thomas Construction represented the applicant and his offices are located at 1316 B Commerce Dr. New Bern, NC 28560. He began by stating that the owner and

company upon doing review and research couldn't find anything that does not agree with the request and would like to move forward with the rezoning. He identified the property in question and that there was a question about an adjacent gap. He stated that He believes that this gap is a mapping error. Mr. Thomas believed that c-3 on neighboring property comes to our property line. He also wanted to point out that this property is a very cut up, difficult piece of property. He stated that on the western side of the property are some wetlands and on the east side, there is a blue line stream, more heavily buffered with wetlands and Mr. Thomas' company are required to stay 50 feet away. The company's plan is to stay in the middle of the property.



Mr. Ballard asked Mr. Thomas how large the office building would be. Mr. Thomas replied that the plan is still in the works, but the building is proposed to be between 8,000 and 10,000 square feet.

Mr. Black asked if it would be a multi-storied building. Mr. Thomas replied that it would be a single - story building. Mr. Black followed with a question regarding how many parking spaces would be on the property. Mr. Thomas replied that there would be the amount of spaces that the city code requires.

Mr. Ballard requested detail about what the plans are for the two large holes previously discussed by the board. Mr. Thomas stated that two holes are on the left and right side of the property are within the natural wetlands and they do not tend to go into that area; it will remain wooded. He also stated that there are some smaller holes from the original railroad tracks and Thomas Construction intends to go in to do re-grading of this area.

Mr. Midgett asked if within the areas that are allowed, would the construction company be doing any fill or elevation to the property. Mr. Thomas stated that the front middle of the property is quite elevated and doesn't anticipate filling or elevating this area, with the

possibility of cutting the elevation back a bit. He also stated that they would need to control storm water, so they will be installing some sort of storm water mitigation structure on the property to slow the water down. He also stipulated that the square footage of parking and the building will place them in a plan where they would need to treat the storm water as well. Mr. Midgett responded with a follow-up question as to the location of the water retention pond. Mr. Thomas stated that the pond would be in the back of the property. The front of the property would be the building and the wrap around parking lot. Mr. Midgett also asked if the grading of the land would be toward the rear of the property or the front of the property. Mr. Thomas stated that the drainage for the facility would be directly toward the back where the storm water pond will be located. He continued by stating that the overflow from the storm water pond would most likely flow to the drainage on the east side where the stream is and is the deepest part of the property.

Public Comment:

Constance Simmons of 4420 Highway 17 South, New Bern, NC 28562, requested to speak in opposition of the proposed plan. Her question was in regards to the public notice for a public hearing on January 8, 2019. She stated that on that date she was at City Hall for two hours before becoming aware that the meeting location was changed to First Street. Her main question is how are residents notified that the hearing is being held tonight. She stated that she found out only because she had called the planning office. Staff Potts replied, stating that the original notice was made for the January meeting that we held at 303 First Street. This item was continued, so it automatically rolls over to the very next meeting. Mrs. Simmons replied by asking how are residents to know it was continued when the notice still has the January date on it. Staff Potts requested the reason why the residents were not at the January date. Mrs. Simmons replied that she was present the night of the January meeting and stayed at City Hall for two hours before realizing it was at a different location. Mrs. Simmons wanted to know how are residents to know that the meeting had rolled over to the next meeting if the signs are not updated. Staff Potts replied that when an agenda item has been continued it will legally and automatically roll over to the next meeting and the city is not legally obligated to continually update the notice each time the item is continued.

Vice-Chair Aluzzo asked for clarification in regards to the original notice and if the notice stipulated the location would be at City Hall. Staff Potts clarified that the meeting in question was held on January 8, 2019 at 303 First Street. Chair Layton asked if the agenda was posted on the door of City Hall as normal procedure. Staff Potts confirmed that it was posted on the door as well as the door of Development Services, and also on the city website. Staff Potts stated that the statutes say that once the first notice is published, that is the legal requirement once it is continued. She stated that if it were to be continued tonight, it would be continued till March, however the sign and notice would not change, because the city has met the legal requirements.

Chair Layton asked for clarification as to meeting notices. He asked that once the Planning and Zoning board makes their recommendation to the Board of Alderman, does the notices and sign stay the same. Staff Potts stated that because it is a different board, a new notice will go in the newspaper, and a new sign will be posted that states the meeting, date, time,

208 and location of the new meeting. Staff Potts concluded by stating that the aforementioned
209 policy is what the general statutes required and the city met the minimum requirements.

210
211 Mr. Black asked Mrs. Simmons if she would like to share anything further. Mrs. Simmons
212 stated that her concern was that she has a business between her residence and another
213 residence and if another business were being constructed, she would want to know.

214
215 Haron Beatty of 407 Rocky Run Rd, New Bern, NC 28562 stated that he was not present to
216 speak in opposition of the proposed change. His desire was to know how to retain a
217 residential community when commercialism spreads into the community. He also requested
218 who the community members can speak to find out how to place safeguards within the
219 community, in regards to the spread of commercialism. He stated that hesitation stems from
220 his history of work with city programs and seeing how commercialism can negatively impact
221 the community and the community can lose their history. Some of the details he requested
222 were information regarding any matters that the community can bring before the Board of
223 Alderman so the community can set parameters with how commercialism spreads back
224 north into the community and east into New Bern. Mr. Beatty reiterated what Mr. Black
225 stated that this community is worthy of looking at the history of the residence and the Rocky
226 Run community.

227
228 Mr. Beatty stated that he respected Mrs. Simmons question, but was unhappy with the
229 response and tone of the board. He concluded by addressing Mrs. Simmons and stating that
230 as a community they have to look out for themselves and let everyone know they are not a
231 vicious community, that they love people, and they desire for the community to grow. He
232 also commented that the response to Mrs. Simmons question could have been handled more
233 humbly and the tone could have been different.

234
235 Chair Layton asked for any further comments. There were no other comments of opposition
236 so Chair Layton closed public comment.

237
238 Mr. Black asked out of curiosity if Highway 17 was a commercial corridor in New Bern. Staff
239 Potts stated that there is an overlay. Chair Layton stated that from a zoning and land
240 development point of view that it is not uncommon for commercial zoning to abut residential
241 zoning, and as a part of extra territorial jurisdiction and the agreements that were set forth,
242 Highway 17 and the corridor overlay allows for the commercial land uses that abut the
243 residential uses in that area. He continued by stating that staff has stipulated that the
244 agreements are concurrent with land use law.

245
246 Mr. Black asked if the commercial overlay encroached at all on the Rocky Run Rd. Chair
247 Layton stated that it was a good question, but was unable to answer.

248
249 Chair Layton requested a motion to close the public hearing. **Board Member Don Black**
250 **moved to close the public hearing.** Vice-Chair Sonny Aluzzo seconded the motion. The
251 motion passed unanimously.

254 **Board Discussion:**

255
256 A question was asked in regards to the current zoning and if it was R-20, which is residential.
257 This question was confirmed. It was stated that east and west of the property is C-3
258 (commercial), while north of the property is R-20 (residential). Mr. Black stated that
259 historically this property was not residential, but railroad. Mr. Midgett asked where precisely
260 did the railroad track run. It was stated that the railroad was roughly 200 feet from the
261 highway line. A question was asked as to whether the homes located around the property
262 were there when the railroad was still in use. The Board did not have an answer to this
263 question. It was stated that the typical right-of-way of a railroad is 50 feet either side of the
264 tracks.

265
266 Chair Layton entertained a motion of this topic. **Mr. Black introduced a motion to approve**
267 **the zoning as a recommendation to the Board of Alderman. Board Member Pat**
268 **Dougherty seconded the motion. The motion passed unanimously (8-0).**

269
270 **New Business:**

271
272 **A. Informational Session, "New Bern Redevelopment Commission", by Jeff**
273 **Ruggieri, AICP, Executive Director of the New Bern Redevelopment**
274 **Commission.**

275
276 Staff Potts stated that the informational meeting has been pulled from the meeting's agenda
277 and will come before the board at the March meeting.

278
279 **B. Approval of Proposed Redevelopment Area Boundary, by Jeffrey Ruggieri, AICP,**
280 **Executive Director of the New Bern Redevelopment Commission.**

281
282 Staff Potts stated that the approval of the Redevelopment Area Boundary has been pulled
283 from the meeting agenda and will come before the board at the March meeting.

284
285 At this time Chair Layton entertained a motion to have Haron Beatty rejoin the board. **Mr.**
286 **Black made a motion to have Haron Beatty rejoin the board. Vice- Chair Aluzzo**
287 **seconded the motion. The motion passed unanimously.**

288
289 **C. Consideration of Major Subdivision General Plan Approval, submitted by**
290 **Weyerhaeuser NR Company/McKim & Creed Inc., is a proposed 250 +/- acre, a**
291 **2 - lot major subdivision located to the north of Downey Drive and south of NC**
292 **Highway 43 North. The property is further identified as a portion of Craven**
293 **County Parcel ID's 8-209-13001. (Extra Territorial Jurisdiction)**

294
295 Chair Layton requested recusal during the deliberation of this agenda item due to conflict of
296 interest. **Mr. Black made a motion to recuse Chair Raymond Layton during this part of**
297 **the meeting. Vice - Chair Aluzzo seconded the motion. The motion passed**
298 **unanimously.**

Staff Comments:

Staff Potts stated that on December 28, 2018, the City's Departmental Subdivision Review Committee reviewed the proposed general plan for Craven 30 West Lot 4 and determined the plan substantially meets the requirements for approval. Staff recommends the Planning and Zoning Board approve the proposed general plan as presented.

Board Discussion:

There was no board discussion.

Public Comments:

There was no public comment

At this time Vice- Chair Aluzzo closed the public comment.

Board Discussion:

There was no further board discussion.

At this time Vice-Chair Aluzzo entertained a motion to accept or reject consideration. **Board Member Jerry Walker made a motion to consider the Major Subdivision General Plan Approval, submitted by Weyerhaeuser NR Company/McKim & Creed Inc. proposed 250 +/- acre, 2 lot major subdivision located to the north of Downey Drive as further described in Part C of the regular meeting agenda and approve the general plans. Mr. Dougherty and Mr. Midgett seconded the motion. Motion passed unanimously (8-0)**

At this time **Mr. Black made a motion to have Chair Layton rejoin the board. Vice- Chair Aluzzo seconded the motion. The motion passed unanimously.**

D. Consideration of Major Subdivision General Plan Approval, submitted by Robert Chiles Engineering, is a proposed 12.44 +/- acre, 3-lot major subdivision located to the west and east of Newman Road and to the south of Wellons Boulevard. The property is further identified as Craven County Parcel ID's 8-212-8010, 8-212-076, and 8-212-8009. (Ward 6)

Staff Comments:

Staff Potts stated that on December 14, 2018, the City's Departmental Subdivision Review Committee reviewed the proposed general plan for Robert Chiles Engineering/Wellons Road and determined the plan substantially meets the requirements for approval. Staff recommends the Planning and Zoning Board approve the proposed general plan as presented.

Board Discussion:

There was no board discussion

Public Comment:

Chair Layton opened the floor for public comment to support or oppose this agenda item.

There was no public comment. Chair Layton closed the floor to public comment.

Board Discussion:

There was no further board discussion.

At this time Chair Layton entertained a motion on this topic. **Mr. Black made a motion to approve the subdivision plan as proposed, which is the 12.44 +/- acres submitted by Robert Chiles Engineering. It is a 3-lot major subdivision located to the west and east of Newman Road and to the south of Wellons Boulevard and the properties are further identified as Craven County Parcel ID's 8-212-8010, 8-212-076, and 8-212-8009, all within Ward 6.** Vice- Chair Aluzzo seconded the motion. The motion passed unanimously.

- E. Thomas Engineering/Stars & Stripes 4F, LLC, is requesting final subdivision plan approval for "Tyler, Home on the Lake" (formally known as "Lake Tyler") Phases 7, 8, 11 &12; a proposed 105-lot residential Planned Unit Development (PUD). This section of the multi-phase development is located on a combined 15.32 +/- acres in the R-10A Residential District. The site is located to the northwest of Washington Post Road and to the south of Gracie Farms Road. (Ward 5)**

Staff Comments:

Staff Potts stated that staff has reviewed the proposed final subdivision plan and finds that all technical and legal requirements for final subdivision plan has been approved. Therefore, final subdivision plan approval of Tyler, Home on the Lake is recommended as presented.

Board Discussion:

Chair Layton stated that this item before the board tonight is the final plan approval, so the Planning and Zoning board is the final decision. He continued by stating that if the board should elect to approve the final subdivision plan, this would authorize the developer and owner to begin selling lots.

Chair Layton requested that Staff Potts give explanation to the performance bond that the board members received. Staff Potts stated that the board members were given a copy of the performance bond for their information. The company has satisfied all necessary requirements for the performance bond, legal counsel has reviewed and staff is content with it.

Board Discussion:

There was no board discussion.

At this time Chair Layton entertained a motion for this particular item. **Mr. Black made a motion to approve plan as described of "Tyler, Home on the Lake" (formally known as "Lake Tyler") that includes a 105-lot residential Planned Unit Development (PUD), that is approximately 15.32 +/- acres and the site is located Northwest of Washington Post Road and south of Gracie Farms Road. Mr. Beatty seconded the motion. The motion passed unanimously.**

Adjourn

Mr. Black made a motion to adjourn. Mr. Walker seconded the motion. The motion passed unanimously. The meeting was adjourned at 6:20 p.m.

Date Approved 01-07-2020



Don Black, Chair

Attest 

Jeff Ruggieri, Director of Development Services