

Town of Maggie Valley
Regularly Scheduled Planning Board Meeting
October 7, 2010
MINUTES

Members Present: Chairman Billy Brede, Doreen Pauley, June Johnson, Bob Knoedler, and Tom Benoit
Staff Present: Planning Director Nathan Clark and Town Clerk Vickie Best
Others Present: Ron Hancock with the N.C. Community Assistance and James Harden Senior and Jr.

Meeting Called to Order

Chairman Brede called the meeting to order at 5:33 p.m. in the Town Hall Boardroom.

Approval of Minutes: September 2, 2010

**MS. PAULEY MADE A MOTION TO APPROVE THE MINUTES OF
SEPTEMBER 2, 2010 AS PRESENTED.**

**MR. BENOIT SECONDED THE MOTION.
MOTION CARRIED UNANIMOUSLY.**

Text Amendment: Real Estate Signs

Real Estate signs have been discussed and public comment has been received over the last two meetings. After a full analysis, the following recommendations for a text amendment were presented by Director Clark. The size of signs permitted in the Maggie Valley Sign Ordinance will not change. Wording has been added to clarify the requirements.

Current Text:

“For Sale” or “For Rent” signs pertaining to realty, on the premises offered for sale or rent which do not exceed 8 square feet and which are not illuminated. There shall be a limit of 1 such sign for each lot and the sign must state what is for sale or rent such as house, lot, and the like. Any tract of land with 3 or more acres or 500 feet or more of road frontage will be allowed 1 sign not to exceed 16 square feet. All the signs shall be removed within 5 days from the rental or sale closing;

Proposed Text:

“For Sale” or “For Rent” signs pertaining to realty, on the premises offered for sale or rent which do not exceed 8 square feet and which are not illuminated. There shall be a limit of 1 such sign for each lot. Any tract of land with 3 or more acres or 500 feet or more of road frontage will be allowed 1 sign not to exceed 16 square feet. Open House signs shall be allowed on day of event only. Open House signs shall not exceed 8 square feet in size. Sign size calculations shall be based upon perimeter of sign. All the signs shall be removed within 5 days from the rental or sale closing;

Town of Maggie Valley
 Regularly Scheduled Planning Board Meeting
 October 7, 2010
 MINUTES

Mr. Knoedler felt the proposed text was still unclear. Does this apply to single sided or double sided signs placed parallel or perpendicular to US-19? Is it 16 square feet for a single sided sign or 8 square feet per side on double sided signs?

Director Clark explained that the measurements are taken from the perimeter of the sign; double sided or single sided is taken out of the equation.

Mr. Benoit felt the proposed text was as unambiguous as possible. Ms. Johnson suggested adding "Do not exceed 8 square feet per side".

Chairman Brede felt that the Town should allow two signs for the Open House sign requirements; an open house and a directional sign.

**MR. KNOEDLER MADE A MOTION TO ACCEPT THE PROPOSED TEXT
 ADDING THAT TWO OPEN HOUSE SIGNS ARE ALLOWED AND ADD
 WORDING STATING THAT DOUBLE SIDED SIGNS ARE ALLOWED NOT TO
 EXCEED 8 SQUARE FEET PER SIDE.
 MR. BENOIT SECONDED THE MOTION.
 MOTION CARRIED UNANIMOUSLY.**

Recommendation: Aesthetic Standards and Design Review

Director Clark explained that one of the issues of concern has been construction companies storing materials and equipment in the Commercial 1 District. The original suggestion was to require screening, but after further discussions it was determined that construction companies can not have outdoor storage of materials and equipment.

Mr. Hancock stated that he recently attended an N.C. Planning Conference and was informed about a new case law in North Carolina (Land v. Village of Wesley Chapel). Due to the judge's ruling, Maggie Valley will need to make some additions to the listed permitted use table. **Attached is the information pertaining to Land v. Village of Wesley Chapel.**

The suggested additions are as follows:

- ⊙ Under Residential add Group Homes and/or Foster Homes
- ⊙ Under Commercial add Retail Services/ delete high-volume and low-volume traffic generators
- ⊙ Add construction companies and recycling facilities under commercial.
- ⊙ Add churches, kennels, EMS, stables, and equestrian

Excerpt from the N.C. School of Government's Law Blog:

Planners, attorneys, zoning officials, and board members need to review their own zoning ordinances and procedures in light of this case and consider the following suggestions:

- *Develop permitted-use tables that are as comprehensive and explicit as possible*

Town of Maggie Valley
 Regularly Scheduled Planning Board Meeting
 October 7, 2010
 MINUTES

- *Avoid listing both permitted and prohibited uses for the same zoning district.*
- *Integrate the coding from the North American Industry Classification System (NAICS) into the ordinance.*
- *Rid the ordinance of language that gives the zoning administrator substantial discretion in determining which activities are allowed in particular district.*
- *If a zoning official rejects a proposal for a use that is not clearly disallowed in a particular district, then:*
 1. *Ensure that the citizen is provided with a copy of the interpretation in writing.*
 2. *Inform the citizen of the right to appeal the decision to the zoning board of adjustment.*
 3. *Assist with the development of a proposed zoning text change allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not.*

There will be a blanket statement pertaining to offensive uses, and then the applicant would need to go before the Zoning Board of Adjustment for approval or denial. All applicants must be allowed to have due-process.

Mr. Hancock stated that he felt good about the zoning amendments and the way it flows with the design document. Using a table rather than having a list of permitted uses helps with clarification.

A few recommendations for the final copy were: do not highlight the categories; it makes it difficult to read. Have a key/title block/ footer on each page of the permitted use table explaining what the letters mean for easier understanding.

The Planning Board has worked on the Aesthetic Standards & Design Review document for two and a half years and is ready for the document to go to the Board of Aldermen for a public hearing.

CHAIRMAN BREDE MADE A MOTION TO ACCEPT THE TABLE OF PERMITTED USES WITH CHANGES TO THE USES THAT MR. HANCOCK HAS PROPOSED, ADD GROUP HOMES, RETAIL SERVICES, TO REPLACE TRAFFIC GENERATORS, ADD RECYCLING CENTERS UNDER CONSTRUCTION FIRMS, REMOVE BUSINESS OFFICE AND REPLACE WITH BUSINESS PROFESSIONAL IN SECTION 4, ADD KENNELS BEFORE VETERINARIANS, ADD CHURCHES, AFTER FIRE AND POLICE ADD EMS, ADD STABLES AND EQUESTRIAN, ADD A KEY/NOTE/TITLE BLOCK EXPLAINING EACH USE AND DESCRIPTION FOR THE PUBLIC'S EASE OF READING, INCORPORATE WHAT HAS BEEN DISCUSSED TONIGHT TO THE FINAL DOCUMENT.

**MR. BENOIT SECONDED THE MOTION.
 MOTION CARRIED UNANIMOUSLY.**

Town of Maggie Valley
Regularly Scheduled Planning Board Meeting
October 7, 2010
MINUTES

The text amendment to the sign ordinance pertaining to Real Estate Signs and the Aesthetic Standards & Design Review will be placed under the consent agenda at the October Board of Aldermen meeting to schedule a public hearing for both issues at the November 16, 2010 Regularly Scheduled Board of Aldermen Meeting. There have been numerous informational meetings to allow for input from the public conducted by the Planning Board. It appears that the Aesthetic Standards has been revised to meet the desire of Council and the citizens at large.

It would be beneficial for the Planning Board members to attend the November 16, 2010 Board of Aldermen meeting in the event Council has questions.

Chairman Brede asked that Director Clark get the text amendments and the Aesthetic Standards to Council in a timely manner in case there are any questions or concerns that need to be resolved prior to the public hearing.

Other Business

Ms. Johnson, as stated before, is a member of the Haywood County's Planning Board representing Maggie Valley. The County Planning Board has worked for several months on high impact uses. Each member was directed to go back to their respective entities to get their input regarding protected uses and uses subject to regulations.

A form from the County was distributed to each member; they were directed to complete the form recognizing the uses that need the least regulation to uses that need more stringent regulations.

The members were directed to complete the form and return to Director Clark within one week.

Planning Director's Report

- ▶▶ The Health Care Facility has begun to frame walls.
- ▶▶ Phillips and Jordan Company has made amazing progress in the landslide mitigation.
- ▶▶ The Moody Farm Road Sidewalk project is moving forward. One pedestrian bridge at the west end has been installed and looks very nice.
- ▶▶ The Planning Board members tentatively scheduled December 6, 2010 for the Planning Board Christmas Dinner at the Maggie Valley Club.
- ▶▶ Director Clark explained how Mr. Clayton Davis addressed Council a few weeks ago with a proposal to beautify Maggie Valley by having something blooming all year long. It is Mr. Davis's belief that Maggie Valley could become the prettiest little town in North Carolina in three years and move to the prettiest little town in the US in a few years after that. Mr. Davis has received a donation from Home Trust Bank, and talked with NCDOT about funding; making it possible so that Maggie Valley could receive \$150,000 over the span of two years for beautification projects. The Town will be planting tulips and daffodils within the next month on Town owned property. Residents and business owners will be able to purchase bulbs through the Town at cost for folks wanting to implement

Town of Maggie Valley
Regularly Scheduled Planning Board Meeting
October 7, 2010

MINUTES

the Beautification Plan on their private property. NCDOT will draft a plan for the State's rights-of-way in Maggie Valley. The goal is to plant 50,000 daffodils and tulips within the next month in order to see a blast of blooms in spring 2011.

▶▶ Director Clark informed the members that at the last Council meeting Ms. Johnson received a plaque thanking her for the many contributions she has given over the last year i.e. painting the panels on the community pavilion, both town entrance signs, the Town Hall sign, and for spearheading the 2010 Spruce up Maggie Valley Campaign. Also each year there will be a recipient selected to receive the June Johnson Award for their efforts in the beautification of Maggie Valley. This award should mesh well with the Maggie Valley Beautification Program.

Public Comment

James Harden Jr. from 37 Bennett Drive questioned how citizens know when an ordinance changes.

Chairman Brede explained that the Planning Board is an advisory board. The Planning Board makes recommendations to the Board of Aldermen and then the Board of Aldermen hold public hearings to gather public input prior to the adoption of any new regulations.

The Clerk advertises public hearings through the Sunshine List and public notices in the Mountaineer newspaper. Zoning Ordinance changes require two public notices in the local newspaper. The minutes reflect all actions and discussions among all boards. The minutes of all meetings are sent out with the agendas on the Sunshine List.

As for the Aesthetic Standards and the Design Review documents, the Planning Board has conducted several workshops to gather public input. Posters were posted throughout the Town and notices were sent out on the Sunshine List and published in the Mountaineer several times.

Mr. Harden felt that it would be important to know the date that each ordinance takes effect.

Mr. Harden asked that the Planning Board consider redefining "green space". Due to the required green space Mr. Harden is unable to have the number of parking spaces needed for his garage business. Mr. Harden felt that all citizens should have the opportunity to receive due-process.

Director Clark explained that the Zoning Board of Adjustment members want to see the parking plan and how the required green space affects the number of parking spaces. Along Soco Road the area is well defined because of US-19. Director Clark would be in support of eliminating Mr. Harden's green space requirements because the business is located off Soco Road but a plan must be submitted showing the right-of-way and the green space.

6
Town of Maggie Valley
Regularly Scheduled Planning Board Meeting
October 7, 2010
MINUTES

James Harden Sr. addressed the board stating that he had come to Town Hall earlier and requested job descriptions for all of the officials and was informed that there were no job descriptions for the officials i.e. Board of Aldermen, Planning Board, and Zoning Board of Adjustments.

There was a misunderstanding in what Mr. Harden was requesting. He wanted a job description for the employees, not the officials.

Chairman Brede again explained that the Planning Board was appointed by the Board of Aldermen. There are no job descriptions because of the board being comprised of volunteers. All appointed and elected members follow State Guidelines for their respective boards. All employees of the Town have a job description for their position.

Mr. Harden felt that due to the bad economy and the lack of work, the bad economy should be taken into consideration especially now that the regulations are prohibiting someone from doing business.

Chairman Brede suggested the Harden's attend a Zoning Board of Adjustment meeting with the requested drawing/parking plan and to request a variance to the green space requirements. The Planning Board cannot act on the situation.

Mr. Harden stated that he would be attending the next Planning Board meeting. Mr. Benoit asked that all of the information from the past meetings with Mr. Harden be given to the Planning Board so there is a clear understanding of events leading up to this time.

Adjournment

**ON MOTION OF CHAIRMAN BREDE, SECONDED BY MR. BENOIT, WITH
ALL IN FAVOR, THE MEETING ADJOURNED AT 7:16 P.M.**

Chairman Billy Brede

Vickie Best, CMC, Town Clerk

Attachment

Town of Maggie Valley
 Regularly Scheduled Planning Board Meeting
 October 7, 2010
 MINUTES

Coates' Canons: NC Local Government Law Blog » A Shot across the Bow of the Zoning... Page 1 of 2

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A Shot across the Bow of the Zoning Ship?

Posted By [Richard Durkin](#) On August 31, 2010 @ 3:41 PM In [General Local Government, Land Use](#) | 2 Comments

A shot across the bow of another ship at sea can provoke an international incident if the action is improperly interpreted, or the matter can be resolved quickly. But in either case a shot across the bow tends to get the attention of those on the receiving end. A recent zoning decision by the North Carolina Court of Appeals should demand the attention of those in the zoning community.

At first blush the case of [Land v. Village of Wesley Chapel](#)¹¹ appears to involve a routine zoning interpretation case concerning a private shooting range in Union County in which a superior court judge and the Court of Appeals sided with the property owner. But a closer inspection of the Court of Appeals decision reveals language that possibly could be construed to put many North Carolina zoning ordinances in jeopardy.

Virtually all zoning ordinances are based on the premise that the ordinance shall list certain land uses that are permitted in each zoning district and that those uses not expressly permitted are prohibited. Indeed, the "permitted-use table" is a staple in most ordinances. If a new activity arises on the zoning scene that does not qualify as a listed permitted use, then it is presumed that the use is not allowed unless the ordinance is amended specifically to allow it.

However, a growing number of ordinances have added some variations on this theme. First, some ordinances have added supplemental provisions that expressly prohibit certain uses to bolster or clarify the conclusion that they are not permitted. The difficulty is that if the use is neither expressly permitted nor prohibited, then what? Another variation can spell even more trouble. Drafters of an ordinance may try to add flexibility by providing that if a use is not expressly permitted, the zoning administrator may allow it if it is sufficiently similar to a use that is expressly permitted. The idea is that an ordinance can thus accommodate various unlisted uses that seem to fit the purposes of the zoning district without beginning to look like an old-fashioned phone book.

In the case at hand Dr. Michael Land began using his 5.68-acre parcel for a private shooting range. The 1988 version of the Union County development ordinance that applied did not list shooting or firing ranges as permitted uses in any of its zoning districts. Apparently the zoning category that came closest to fitting a shooting range was a "privately-owned outdoor recreational facility," for which a special-use permit was required. The ordinance, however, provided that since the list of permitted uses "cannot be all-inclusive, uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed." (Italics added.) It also went on to say that "all uses that are not listed in (the permitted use table) and that do not have impacts that are similar to those of the listed uses are prohibited."

When the Village of Wesley Chapel attempted to enforce the county ordinance after annexing the property and Dr. Land appealed, the Union County superior court judge who initially heard the case and the Court of Appeals jumped all over this ordinance language. The Court of Appeals declared as follows: "The text of the 1988 Ordinance clearly incorporates the following philosophy: everything is proscribed except that which is allowed. The problem with this philosophy, however, is that it fails to clearly place the public on notice as how a particular use is to be classified absent an explicit mention in the Land Use Ordinance. While this presumptive language may be useful in applying an ordinance with a comprehensive schedule of categories, it is of little value when no similar use is listed in any category."

Later in the decision the Court of Appeals went on to say: "Were we to follow the logic of the 1988 Ordinance, a citizen seeking to use his land for otherwise legal purposes would have to

8
Town of Maggie Valley
Regularly Scheduled Planning Board Meeting
October 7, 2010
MINUTES

Coates' Canons: NC Local Government Law Blog » A Shot across the Bow of the Zoning... Page 2 of 2

speculate as to which governmentally permitted use was "similar to" a nebulous category in the county's Land Use Ordinance and then conform his conduct thereto. This approach leaves the landowner exposed to the arbitrary and capricious whims of the zoning authorities who may disagree with a landowner's decision concerning "similarity of use."

The Court of Appeals referred to a variety of cases (many from the 1950s) in which the court invoked the maxim that zoning is in derogation of private property rights and its provisions are to be liberally construed in the favor of the property owner. It neglected to mention the several dozen state appellate court cases in which our courts have employed less doctrinaire approaches in applying the language of a zoning ordinance to particular uses.

Ultimately, the Court of Appeals held that that Dr. Land was not required to obtain a special use permit for his shooting range and that Dr. Land's shooting activity amounted to a legal nonconforming use.

So, what does this Court of Appeals decision (which has not been appealed to the North Carolina Supreme Court) mean for those interested in zoning? Is it a provocative threat to existing zoning law? Probably not. Does a proper reading of the case suggest that the holding and dicta are largely confined to the facts of the case and the language of the ordinance? Probably so.

Wesley Chapel will not spell an end to permitted-use tables. Nonetheless, planners, attorneys, zoning officials, and board members need to review their own zoning ordinances and procedures in light of this case and consider the following suggestions:

- Develop permitted-use tables that are as comprehensive and explicit as possible.
- Avoid listing both permitted and prohibited uses for the same zoning district.
- Integrate the coding from the North American Industry Classification System (NAICS) into the ordinance.
- Rid the ordinance of language that gives the zoning administrator substantial discretion in determining which activities are allowed in a particular district.
- If a zoning official rejects a proposal for a use that is not clearly disallowed in a particular district, then:
 1. Ensure that the citizen is provided with a copy of the interpretation in writing.
 2. Inform the citizen of the right to appeal the decision to the zoning board of adjustment.
 3. Assist with the development of a proposed zoning text change allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not.

Properly interpreted, the Wesley Chapel decision can have the positive effect of encouraging better zoning practice.

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<http://sogweb.sog.unc.edu/blogs/localgovt>

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URLs in this post:

[1] Land v. Village of Wesley Chapel :
<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091465-1.pdf>

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