

VILLAGE OF WESLEY CHAPEL
PLANNING BOARD MEETING MINUTES
June 2, 2009, 7:00 PM

The Planning Board of the Village of Wesley Chapel, North Carolina, met in the Fellowship Hall of the Wesley Chapel United Methodist Church at 120 Potter Road South, Wesley Chapel, North Carolina, with Chairman John Grexa presiding.

Present: Chairman John Grexa, Members- Chuck Adams (arrived late at 7:15 pm), Ray Davis, Stephen Keeney; Sandi Bush, (sat as regular member)

Absent: Member Jimmy Allison; Alternates Shirley Wilson, Bill Fairman

Others Present: Cheryl Bennett, Clerk; Joshua Langen, Planning/Zoning Administrator

Citizens: Carol Mullis

The meeting was called to order at 7:12 pm; a quorum was present.

1. Pledge and Invocation

Grexa led the pledge of allegiance, and the invocation.

2. Additions, Deletions and Approval of Agenda

Bush made a motion to reverse the order of items 4 and 5, and approve the agenda with that change. Keeney seconded the motion.

The motion passed unanimously.

3. Approval of Minutes – there were no minutes to approve.

4. Discussion of Recreation Facilities, Outdoor, (Parks, Playground,) Zoning Table Amendment

Langen said the suggestion for the amendment was made by Sondra Bradford, in case Village land was to be used as a park; he had originally mistakenly said the request for the change came from the Planning Board. Langen noted the six acres owned by the Village are zoned O-I, and the land we are expecting to receive at the JDH shopping center is zoned R-40. The only B-1, B-2 and L-1 parcels are at the shopping center and a couple of small parcels elsewhere. On land zoned O-I, a CUP would have to be obtained to build a park. Sandi Bush made a motion that on further discussion, and with additional information that the town property is zoned O-I and allows for a CUP for outdoor recreation use, the Planning Board rescind their vote in January and recommend no change to the Table of Uses. Stephen Keeney seconded the motion.

The motion passed unanimously.

Sandi Bush made a motion to recommend denial of the request to make a change to the Table of Uses for Recreation Facilities, Outdoor, (Parks, Playground,)” as

a conditional use in B-1, B-2 and L-1 districts. Stephen Keeney seconded the motion.

The motion passed unanimously.

5. Review of Residential Stormwater/Flood Protection Ordinance Amendments

Langen noted we have the new Flood Ordinance, and put Article 14 from the old ordinance into the new one. Council requested our engineer create a text amendment to strengthen residential stormwater. Also, the new Flood Ordinance only applies to land in the flood plain, and Article 14 applies to all lands, so this is to take Article 14 language and wetland protection and stormwater drainage out of the flood ordinance and put it back in the old ordinance, and add a new Section 4.1 on waivers. Grexa referred to the problems on Underwood Road, and asked how we can protect property downstream. Langen said Section 14.7.2 does that. Questions were raised on dams at Section 14.5, and clarification was asked for on what a dam is. Keeney asked about the reference to ETJ land which we don't have; Langen said he asked about that and they wanted us to leave it in should we get ETJ in the future. Discussion was held on the inspection and maintenance of stormwater facilities. Grexa asked about the penalty which is \$5,000 per day, and asked when the fine will stop. Langen said he sent this section to the attorney and he hasn't heard back from him. Bush asked where the amount came from. Langen said he thought it came from another town's ordinance that we were copying. It was noted this is very much a rough draft and there were many open questions. Concept stormwater plan requirements were added to Section 14.6.2. Bennett asked where the checklist is that is referred to on page 4. Langen said he called the engineer on that, but did not have an answer yet. Planning Board agreed in concept that we need some stormwater changes, but felt there were many questions pending, and this proposal was incomplete, so they could not make a recommendation on this even though Council has a public hearing on this pending June 16, 2009. It was clarified that these changes are not state or federally mandated. Keeney made a motion to delay the vote and recommendation on the wordage until the engineer and attorney and zoning administrator have reviewed this, and the zoning administrator can provide a complete document that answers all the concerns. Langen will check into the checklist, dam items on pages 6 and 12, waivers, and penalties. Langen asked if members have any further concerns to please e-mail them to him. Davis seconded the motion.

The motion passed unanimously.

It was noted it might be helpful to have the engineer here to answer concerns when the document is complete.

6. Discussion of Section 411. Homeowners' Associations Required of the Village of Wesley Chapel Subdivision Ordinance

Grexia asked if a HOA has common land, and if they want it to be natural, could they do that and not need a HOA. Langen said this is applying to new subdivisions. Adams said if you no longer have common land to be maintained,

could you then disband your HOA. He noted there is some means by which a HOA can be disbanded. Bush said means by which a HOA can be disbanded is in the by-laws of the HOA. Bush noted this would not be applicable retroactively. Langen proposed the following language:

SECTION 411. Homeowners' Associations Required

~~411.1 New major subdivisions in which public or private streets are proposed or necessary shall establish a homeowners' association for the maintenance of improvements and common areas not dedicated to and accepted by a public authority for the purposes of maintenance. Improvements and common areas, that may be required by this Ordinance and that shall be maintained by the homeowners' association, include but are not limited to: streets not yet accepted into the public street system for maintenance by NCDOT, sidewalks, curbs and gutters, street lighting, and landscaped thoroughfare buffers. The homeowners' association also shall be responsible for maintenance of common improvements and common areas that are proposed by the subdivider for the benefit of all residents of the subdivision although not required by this Ordinance, including but not limited to entry signs, monuments, perimeter walls, entry gates and gatehouses, clubhouses, ponds and lakes including dams and other associated structures, and parking areas and driveways serving common areas.~~

New major subdivisions in which common areas are proposed and require maintenance, such as landscaping or mowing, as opposed to common areas which are to be left in a natural state, shall establish a homeowners' association for the maintenance of those common areas. New major subdivisions in which facilities requiring maintenance, such as private roads, pools, tennis courts, parks, facility parking, stormwater facilities beyond curb and gutter, and clubhouses, are proposed, shall establish a homeowner's association for the maintenance of those facilities. Amenities, such as sidewalks, fountains, monument signs, street lighting, walls, gates and sculpture, are not required to be maintained through a homeowners' association.

411.2 The homeowners' association shall be organized and established as a legal entity prior to or as a part of the final plat approval and recording process. Membership in the homeowners' association shall be mandatory for each original purchaser of a residential lot within the subdivision ~~and each successive purchaser of such lot.~~ The homeowners' association shall be organized so that it has clear legal authority to maintain and exercise control over the required improvements, common areas and facilities, as specified in Section 411.1, and not dedicated to and accepted by a public authority for the purposes of maintenance.

~~a) The homeowners' association shall be responsible for the payment of premiums for liability insurance, local taxes, maintenance of recreational and other facilities located on the common areas, and payment of assessments for public and private capital improvements made to or for he~~

~~benefit of the common areas. It shall be further provided that: 1) upon default by the homeowners' association in the payment to the governmental authority of an ad valorem tax levied against the common areas or assessments for public improvements to the common areas; and, 2) should such default continue for a period of six (6) months; then, each owner of a residential lot in the development shall become obligated to pay to the taxing or assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the governmental authority by the total number of residential lots in the development. If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then the sum shall become a continuing lien on the real property of the then owner, his heirs, devisees, personal representatives and assigns of such lot, and the taxing or assessing governmental authority may either bring an action at law against the owner obligated to pay the same or may elect to foreclose the lien against the real property of the owner.~~

~~b) The homeowners' association shall be empowered to levy assessments against the owners of residential lots within the development for the payment of expenditures made by the homeowners' association for the items set forth in the preceding subparagraph and any such assessments not paid by the owner against whom such are assessed shall constitute a lien on the residential lot of the owner.~~

ea) As a part of the final plat approval process, the developer shall submit to the Village the following documents, should an association be required, for review:

1. Proposed Articles of Incorporation for the association. Such Articles of Incorporation shall provide for homeowners control when over 50% of the lots are sold.
2. Proposed bylaws of the association. Such bylaws shall provide for annual meetings of the association, election of officers and distribution of an annual financial accounting to members.
3. Proposed annual budget of the association showing monthly assessments. The monthly assessments must be set at a sufficient level to insure success of the association and necessary capital expenses.
4. Proposed restrictions and covenants for the common areas.

~~d. b)~~ b) All proposed common areas shall be designated on the subdivision plat as common areas to be held in separate ownership for the use and benefit of

residents occupying residential lots in the subdivision. Should these common areas and facilities require maintenance, Approval of these common areas by the Village Council as part of the final plat approval process requires submission by the developer of restrictions and covenants that will govern the ownership, management, and maintenance of the common areas. The Village Council reserves the right to conditionally deny approval of final subdivision plats if it finds that the restrictions and covenants do not properly address issues of ownership, management and maintenance of common areas.

- c) Organization of homeowners' associations shall comply with all applicable North Carolina State Statutes, however, homeowners' association bylaws and are strongly discouraged from being written to allow for the foreclosure of a lien based upon failure of a member homeowner to pay association dues or assessments. Only the imposition of a lien, without interest and to be satisfied behind debts from lending institutions at the time of sale, is encouraged under these circumstances. Barring use of any and all common ground, parks, pools and playgrounds located in the development for the negligent homeowner, until such assessments for dues are paid, is recommended as a potential option.

Adams proposed striking the word "required" from the title of Section 4.11. He suggesting adding in the last sentence of Section 4.11.1 "Subdivision providing only" in front of the list of amenities, and at the end of the sentence adding "so therefore a Homeowners Association is not required." Adams suggested changing Section 4.11.2 (c) to: Organization of homeowners' associations shall comply with all applicable North Carolina State Statutes. Homeowners' association bylaws shall not allow for the foreclosure of a home based upon failure of a member homeowner to pay association dues or assessments or fines. A lien may be imposed to satisfy non-payment of dues, assessments or fines without interest and may only be satisfied behind debts from lending institutions at the time of sale of the property. Barring the use of any and all common ground, parks, pools and playgrounds located in the development for the negligent homeowner, until such assessments for dues are paid, is recommended as a potential option and will be monitored by the Homeowners Association.

Langen said he thought there might be legal problems with the changes and referenced an e-mail from the attorney. Adams said he would like an attorney to say we can't do it or have Council change it.

Keeney referred to Section 4.11.2 (a) where it says local government unpaid taxes becomes a lien and the government may elect to foreclose the lien. He felt an HOA lien should go no further. Grexa noted this would only apply to new subdivisions, and Langen agreed. Keeney noted current HOA's can be overturned by votes per their bylaws; he felt it was a great way to draw attention to an objectionable thing. Adams noted the title of the section is Homeowners Associations, not new HOA's, and he wanted it to be a tool for existing HOA's.

Bush suggested adding language but didn't think you could arbitrarily change their bylaws based on Wesley Chapel regulations. Keeney suggested adding, existing HOA's may choose to comply with N. C. State Statutes. Adams recommended the amendment with the additional changes be sent to council for approval. The revised text will be presented at the regular June meeting and voted on then if Langen can get it done by Friday.

7. Topics to Discuss at Next Meeting

Topics include re-write of the HOA section, mobile vendors. Langen will talk to DOT regarding curb cuts and turning radii, but it won't be ready for the next meeting.

8. Other Business

Carol Mullis asked why there is a berm on Highway 84 at the JDH shopping center. Langen said he didn't know why; he said they called and claimed he forced them to do a wall, and he didn't recall requiring them to do so. Langen said he determined there has to be a wall between the shopping center and the adjacent residence in the southwest corner, because the buffer is forty feet and not fifty. Langen said no wall is called for in the front. Langen said he had a complaint about the wall, he called JDH, they said they had no idea why there was a wall, and McDonald's was not happy with it, they took it down, and now there's a berm. Langen will call them.

9. Adjournment

Bush made a motion to adjourn; Adams seconded the motion.

The motion passed unanimously.

The meeting adjourned at 9:15 pm.

Respectfully submitted

Cheryl Bennett, Village Clerk

Chairman John Grexa