

**VILLAGE OF WESLEY CHAPEL  
PLANNING BOARD MEETING MINUTES  
February 25, 2013, 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.

**Present:** Chair Stephen Keeney, Vice Chair Chuck Adams, Bill Bennett, Jeff Davis, John Grexa; Alternate Jim Mullis

**Others Present:** Mayor Brad Horvath, Council Member Becky Plyler, Cheryl Bennett, Clerk; Joshua Lagen, Planning/Zoning Administrator, Nadine Bennett from Centralina Council of Governments, Carol Mullis, Bill Rodriguez, Stan Schwartz, David Boyce

The meeting was called to order at 7:00 pm; a quorum was present.

1. Pledge and Invocation

Chair Keeney led the pledge and Chuck Adams gave the invocation.

2. Public Comments – Mayor Horvath reported that Stephen Keeney accepted the position as Chairman of Planning Board. John Grexa nominated Chuck Adams to be Vice Chair. Jeff Davis seconded the motion.

The motion passed unanimously.

Board of Adjustment members David Boyce, Bill Rodriguez and Stan Schwartz were present for the training session and were introduced.

3. Additions, Deletions and Approval of Agenda

Chuck Adams made a motion to adopt the agenda; Jeff Davis seconded the motion.

The motion passed unanimously.

4. Approval of Minutes

Chuck Adams made a motion to approve the January 28, 2013 minutes; Bill Bennett seconded the motion.

The motion passed unanimously.

5. Land Use Planning Centralina Training

Nadine Bennett, who was the first land use administrator in Wesley Chapel and who helped write our ordinances did a training session. She reviewed the types of decisions - administrative (permits) made by land use administrator, legislative (re-zonings, text changes, conditional zoning) made by governing board, and quasi-judicial (variances, administrative appeals) made by Council or Board of Adjustment. Nadine Bennett noted variances should be really hard to get, they are specific to your property, don't result from the owner's action, and you can't make any use of the property otherwise; she cited the example of a garage that had to be torn down due to staking errors. She reviewed the roles of each body including planning board, which serves as an advisor to elected

officials, approves minor subdivisions, and makes recommendations on re-zonings, land use ordinance text changes and major subdivisions. Council does not have to agree with their recommendation. NC GS 160A-36 requires a municipality to have a planning board before it can exercise zoning authority, and GS 160A-387 requires all land use text amendments to be submitted for Planning Board review and recommendation. GS 160A-361 requires Planning Board to have three or more members; most common is five to seven members. Per GS 160A-361 a planning agency may: make studies of the area within its jurisdiction and surrounding areas, determine objectives to be sought in the development of the study area, prepare plans for achieving these objectives, and develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans. Planning Board duties include recommendations on re-zonings, conditional use permits, ordinance text changes, and subdivision plats. A conditional use permit is approved by Council after a quasi-judicial hearing and recommendation from Planning Board; the decision is made based on evidence gathered at the hearing, fair and reasonable conditions may be attached to the approval, and you must consider findings of fact (even if the first finding of fact is negative, you still must go through all the findings of fact). The School of Government recommends planning boards not make a recommendation on CUP's because they don't carry much weight.

Tools to make land use decisions include the future land use plan, other locally adopted plans, whether it is good for the community, citizen concerns, is it reasonable and consistent with the plans, and must reference conformity with the Land Use Plan and other adopted plans. If you are going against the land use plan, you should change the land use plan at the same time. The Land Use Ordinance provides regulation for how property can be developed; the form and content is up to the individual local government, and it should be clear and consistent. You must provide a possible place for adult uses. The Land Use Plan should address what the community is like now, where the town wants to grow, how it can get there. It should provide guidance for community leaders when making land use decisions, and help interested parties understand the town's goals and policies. Nadine noted she has collected a lot of land use plans in working with CONNECT; preferred are the ones that are specific, they can still change and evolve. Whereas planning board can listen to citizen opinions, the board of adjustment must only consider expert opinions such as a traffic engineer.

A zoning permit is required before the applicant receives a building permit or business license, is issued by the land use administrator, and must follow the land use ordinance regulations. Building permits and certificates of occupancy are issued by Union County. Nadine Bennett explained that spot zoning is a relatively small piece of land zoned differently from surrounding areas, there must be a reasonable public policy basis for creating the "spot". She went over conflicts of interest, per NC GS 160A-381(d) an elected official or planning board member cannot vote or make a recommendation on any zoning map or text amendment where the outcome "is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member". Impermissible conflicts of interest may include having a fixed opinion that is not susceptible to change, having undisclosed ex parte communication, a close family, business or other association, or a financial interest in the outcome of the matter. Rules of Procedure detail how many members constitute a quorum, how votes are taken, who can make a motion, what to do if a member is chronically late or absent, and the appropriate time to bring new issues

before the board. The rules should be formally adopted and reviewed annually. The rules are adopted by the Planning Board, not Council. Last, she reviewed open meetings law, NC GS 142-318.9-18; all official meetings are subject to the law, public decisions regarding land use issues should be made in a formal environment with adequate public notification and with discussion out in the open.

Questions and answers were held; minor subdivisions are approved by Planning Board; Council does not review them. If you don't like something about a subdivision but it meets the ordinance, you have to wait to change the rules if they have made a substantial investment. If you have a conflict of interest you should ask to be recused, because you don't even want a hint of a conflict of interest; it is best to consult with the attorney. If you are recused you should leave the building to avoid any body language. It was asked if we can tell a builder how to do access roads; you can if it is in your ordinance. An example was given of the State not accepting part of a subdivision's roads but the County held the road bonds; they should have been transferred to the town. Joshua Langen described a problem where roads are built and then heavy construction traffic causes road deterioration. He said with the new economy we need smaller lots and lower value, do we have to listen to these concerns or continue as before. Nadine Bennett commented you don't have to change, but instead of farmland, you will get subdivisions, ultimately citizens vote in elected officials who respond to their requests. Weddington has conservation subdivisions that are density neutral, not cluster subdivisions which allow density bonuses. She was asked if we can require road standards above state requirements; she thought so, but said check on the requirements. A question was asked about CUP changes, if it is changing drastically you need a new CUP, if it is basically the same layout then a CUP amendment is in order.

Thanks were given to Nadine for her training.

#### 6. Article 4 – Subdivision – Section 408 Fees-in-Lieu

Changes to “Nature of Land to be Dedicated” were reviewed; John Grexa questioned why we are helping developers. Langen said this allows the developer to state his case. Chair Keeney said if open space is desired, it gives the developer a chance to get on board with this or just offer a fee. He questioned that if you are not getting what you asked for, you can buy your way out. Grexa asked about the dedicated open space as part of lots; there is a difference between open space and buffers; if I don't like the buffer, can I can cut down trees? Langen said yes, but you can't build a garage in the buffer. John Grexa said we took out the ability to sell the land, he thought it is good to require the land be maintained for the owners, and for Council to have a choice. He did not want developers buying swamp land and putting in houses. Langen said we do have a requirement that you can't use flood land for the required lot size. Grexa said he thought certain amenities should be required, and thought form based codes might be a good idea. Bill Bennett agreed that if you give a developer an opening they will take it, and we should be specific. Langen said the requirements in section 408.1 had been taken out in the draft months ago, now we are requiring buffers, larger lots or a fee in lieu. Langen noted we had this fee in lieu, and are trying to make it simpler and clearer, it is Council's only way to raise money in this state. Grexa said we need to think about citizens and homeowners, not developers. The Mayor noted if a developer says they will build certain amenities, it is a contract between them and the property owners. Grexa asked if we can

have bonds and cash them in to hold developers accountable. Langen said on the plats, it may say after half the homes are built we will do X, and then if they don't do it, you can have developer agreements. Langen said right now, if you don't have 70 homes in a development (70 x 1/35<sup>th</sup> of an acre=2 acres) this gives them a choice to not have to write a check. Bill Bennett said Langen wrote the changes as asked in the last two meetings; we are doing buffering to keep the rural look. Davis and Adams agreed. Grexa said he was not happy, but ready to move ahead. Bill Bennett made a motion to recommend this text amendment to Council; Jeff Davis seconded the motion.

The motion passed unanimously.

The recommended text is as follows:

**VILLAGE OF WESLEY CHAPEL  
TO ADOPT SUBDIVISION ORDINANCE TEXT AMENDMENT**

**ARTICLE 4 – SECTIONS 405 & 408**

THAT WHEREAS, the **Village of Wesley Chapel 2030 Vision Master Plan** participant survey showed approximately sixty seven percent of survey respondents were satisfied with the clean and healthy environment of Wesley Chapel; and

WHEREAS, the Village of Wesley Chapel would like to preserve our clean and healthy environment through the regulation of recreation facilities and open space dedication requirements; and

WHEREAS, **North Carolina State Statute § 160A-372. Contents and requirements of ordinance.** states,

*(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights of way or easements for street and utility purposes including the dedication of rights of way pursuant to G.S. 136 66.10 or G.S. 136 66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.....*

*(c)..... The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula*

*enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served; and*

WHEREAS the following text amendments are found to be compatible with the **2003 Village of Wesley Chapel Land Use Plan;**

**ARTICLE 4**

**REQUIRED IMPROVEMENTS, DEDICATION, RESERVATION,  
AND MINIMUM STANDARDS OF DESIGN**

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**SECTION 405        Road Standards and Buffering Along Thoroughfares**

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**405.4 Buffering Along Thoroughfares**

1. Where side and rear lot lines of proposed private lots abut along a major or minor thoroughfare, as designated on the Village of Wesley Chapel Zoning map adopted Transportation Plan, the subdivider shall provide a natural buffer between the lot lines paralleling the thoroughfare and ~~the~~ platted, maintained, adopted, NCDOT proposed, or Village of Wesley Chapel Transportation Plan proposed thoroughfare road right-of-way, whichever is farthest from the thoroughfare centerline, for Major Subdivisions. The natural buffer shall materially screen all principal and accessory uses from public view from thoroughfare. The buffer shall consist of a natural planting or a berm with natural planting. ~~Any walls, fences or other~~ constructed devices not expressly allowed within the buffer area by this Ordinance and/or the Village of Wesley Chapel Zoning Ordinance ~~shall may be allowed by exception if~~ be approved by the Zoning Administrator. The buffer shall be separately platted and dedicated to and maintained by a Homeowners' Association, if a Homeowners' Association is proposed. Otherwise, the buffer shall be located within and be a part of the proposed private lots.

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17. The area of the buffer required by Section 405.4 shall not be substituted for by fees in lieu. Buffers located within private lots shall be in addition to lot area as required by the Village of Wesley Chapel Zoning Ordinance and setbacks as prescribed in said Zoning

Ordinance shall be measured from the nearest edge of the buffer to any structure of the lot. The buffer area shall become part of the lot on which it is located, or in the case of commonly owned property, shall be deeded to the homeowner's association.

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**SECTION 408. Dedication of Land for and/or Fees in Lieu of Park, Recreation, and Open Space Purposes**

**408.1 Dedication of Land**

a) **General Provisions.** Every subdivider who proposes a subdivision of land for residential purposes for a Minor or Major Subdivision shall dedicate a portion of land, or pay a fee in lieu thereof, in accordance with this Section, for ~~public park, greenway, recreation, and open space sites to serve the recreational needs of the residents of~~ within the subdivision or development.

b) **Amount of Land to be Dedicated.** At least one thirty-fifth (1/35) of an acre shall be dedicated for each dwelling unit or proposed in the subdivision plat or development.

~~The minimum amount of land which shall be dedicated for a public park, recreation, or open space shall be no less than two acres in size. When the area to be provided is less than two acres, the subdivider shall be required to make payment in lieu of the dedication to be used for the acquisition or development of recreation, park, or open space sites which would serve the needs of the residents of the subdivision.~~

c) **Nature of Land to be Dedicated.** The primary purpose of any land to be dedicated is to buffer neighborhoods from adjoining roads in order to maintain a rural appearance from the road and to buffer homes from roadway traffic. Therefore, dedicated open space shall take the form of additional buffer area along non-thoroughfare public roads, as designated on the Village of Wesley Chapel adopted Transportation Plan, if any such roads are present and are adjacent to the proposed subdivision. Otherwise, the secondary purpose of any land to be dedicated shall be to allow for larger lots which reflect the rural character of the Village or for the protection of environmentally sensitive areas and natural features of the land, as best suits the subdivision. Therefore, any open space dedication not used to buffer adjoining roadways shall be designated as additional lot area for proposed lots or for the protection of environmentally sensitive areas and natural features in order to enhance the rural character of the subdivision. Dedicated open space shall be separately platted and

dedicated to and maintained by a Homeowners' Association, if a Homeowners' Association is proposed. Otherwise, the dedicated open space shall be located within and be a part of the proposed private lots. Open space located within private lots shall be in addition to lot area as required by the Village of Wesley Chapel Zoning Ordinance and setbacks as prescribed in said Zoning Ordinance shall be measured from the nearest edge of the buffer. Wetlands, Special Flood Hazard Areas, Floodways, lakes and other bodies of water may not be included in computing any of the dedicated land area. In no case shall a slope on the usable portion of dedicated land exceed fifteen (15) percent.

~~Except as otherwise required by the Village Council at the time of preliminary plat approval, all dedications of land shall meet the following criteria:~~

~~**Unity.** The dedicated land shall form a single parcel of land, except where the Village Council determines that two or more parcels would be in the best interest of the public, given the type and distribution of open spaces needed to adequately serve the proposed development. In such cases, the Village Council may require that such parcels be connected by a dedicated strip of land at least thirty (30) feet in width.~~

~~**Usability.** Two thirds (2/3) of the dedicated land shall be useable for active recreation. Furthermore, lakes and other bodies of water may not be included in computing any of the dedicated land area. Land dedicated only for greenways need not follow the requirements of the sub-section.~~

~~**Shape.** The shape of the portion of dedicated land which is deemed suitable for active recreation shall be sufficiently square or round to be usable for any or all recreational facilities and activities, such as athletic fields and tennis courts, when a sufficient amount of land is dedicated to accommodate such facilities. Land dedicated only for greenways need not follow the requirements of this sub-section.~~

~~**Location.** The dedicated land shall be located so as to reasonably serve the recreation and open space needs of residents of the subdivision.~~

~~**Access.** Public access to the dedicated land shall be provided either by adjoining public street frontage or by a dedicated public easement, at least thirty (30) feet wide, which connects the dedicated land to a public street or right of way. Gradients adjacent to existing and proposed streets shall allow for reasonable access to the dedicated land. Where the dedicated land is located adjacent to a street, the~~

~~developer or subdivider shall remain responsible for the installation of utilities, sidewalks, and other improvements required along that street segment. Public access or dedicated walkways to greenway dedications only shall be at least twenty (20) feet wide.~~

~~**Topography.** The average slope of the portion of dedicated land deemed usable for active recreation shall not exceed the average slope of the entire subdivision to be developed. In no case shall a slope on the usable portion of dedicated land exceed fifteen (15) percent.~~

~~**Landscaping.** Dedicated parks, recreation, and open space areas shall have a sufficient natural or manmade buffer or screen to minimize any negative impacts on adjacent residents.~~

#### **408.2 Payments of Fees in Lieu of Land Dedication**

- a) **General.** The payment of fees, in lieu of the dedication of land under Subsection 408.1 above, may occur at the request of the subdivider or developer. However, the decision to require the dedication of land ~~for recreational purposes~~, or a payment of a fee in lieu, shall be made by the Village Council after having evaluated the proposed dedication and the relationship suitability of such dedication for the buffering of subdivisions, preferable lot configuration or the protection of environmentally sensitive areas ~~would have with the Village's overall recreational needs.~~

~~The preliminary plat approval and the decision to either accept land for recreational purposes or fee in lieu of shall rest with the Village Council.~~

- b) **Time of payment.** The fees in lieu of dedication shall be paid prior to final plat approval ~~by the Village Council.~~
- c) **Amount of payment.** The amount of the payment shall be the product of:
1. The number of acres to be dedicated, as required by Subsection 408.1 above;
  2. The assessed value for property tax purposes of the land being subdivided, adjusted to reflect its current fair market value at the time such payment is due to be paid.
    - a) Procedures for determining the amount is as follows:
      1. An appraisal of the land in the development shall be performed by a professional real estate appraiser selected by the developer from an

approved list maintained by the Village Council. The appraisal shall not be done prior to submission of the preliminary plat. The cost of the appraisal shall be borne by the developer.

2. Professional real estate appraiser who is licensed by the State of North Carolina and has a general State appraisal certification and has expertise in performing raw land appraisals who, in the opinion of the Village Council, has the expertise and / or certification to perform an adequate appraisal.

### **408.3 Procedures**

- a) At the time of filing a preliminary plat, the subdivider shall designate thereon the area or areas to be dedicated pursuant to Section 408. If the subdivider desires to make a payment in lieu of the dedication of land, a letter to that effect shall be submitted with the preliminary plat. The request to make a payment in lieu shall be reviewed by the Planning Board during preliminary plat review. The request shall then be submitted to Village Council for consideration at the time of filing for final plat review. The Village Council reserves the right to refuse to accept any request for payment in lieu of dedication of parcels for public park, recreation, or open space.
- b) Where a dedication of land is required, such dedication shall be shown on the final plat when submitted, and such plat shall be accompanied by an executed general warranty deed conveying the dedicated land to ~~the Village~~ the Homeowners' Association or shall be shown as part of proposed lots, if no Homeowners' Association is proposed. Where a payment in lieu of dedication is approved by the Village Council such payment will be made before the final plat is signed and recorded.

### **408.4 Authority to Sell**

- ~~a.) The Village Council shall have the authority to sell land dedicated pursuant to Section 408. The proceeds of such sale shall be used for the acquisition and / or development of other recreation, park or open space sites.~~

### **408.54 Provisions of Equivalent Facilities Under Neighborhood or Community Home Owners Association of Management.**

The Village encourages neighborhood or homeowner associations or management to construct, operate, and maintain private parks and recreation. The construction, operation, or maintenance of such private facilities shall not, however, diminish or eliminate the responsibility and obligations of the subdivider under Subsection 408.1, et

seq.

**408.6 Greenways**

~~Greenways may be credited against the requirements of Section 408 provided that such greenways are part of the Village's greenway plan and dedicated to public use.~~

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NOW, THEREFORE, BE IT RESOLVED that the Village of Wesley Chapel Council hereby adopts the above listed Zoning Ordinance text amendments.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2013.

Attest:

\_\_\_\_\_  
Cheryl Bennett, Clerk

\_\_\_\_\_  
Mayor Brad Horvath

7. Wesley Chapel Land Use Plan Map

Joshua Langen reported the map shows medium density, but didn't define it. We should add which zoning districts are medium and low density. He will strike the study area boundary, it was the ETJ limits. Cheryl Bennett noted the red line is the area of consideration. Langen said we don't have agreements with neighboring towns, as we have no bargaining chips and they can't be enforced. Langen will make R-40 and RA-40 be low density, and R-20 be medium density. Chuck Adams asked why we would allow acre lots to apply for R-20, when as a town we want R-40. Jim Mullis noted when annexations occurred, we kept lots zoned R-40 in the County as R-40 in the town, and R-20 if zoned that way by the County. Langen said he is not recommending we make anything R-20 if it is not already zoned R-20. He added that RUC zoned subdivisions would be medium density, if less than half the lots in a subdivision are one acre we will make it medium density, if more than half are one acre, we will make it low density. This changes the land use designation, not the zoning. Langen noted at Potter and Highway 84, just parts of the lots are designated; and asked what the board wanted. If the Land Use Plan supports a re-zoning, it is easier to justify office than retail. Grexa said he was against it since we haven't built out our shopping centers, he preferred it be designated residential; Adams, Bill Bennett, and Davis agreed. Langen said he would leave Siler Church and Wesley Chapel United Methodist Church as on the current map.

There is a lot south on Billy Howey road that is B-1. Discussion was held on the farm garage, and the L-I land on Will Plyler Road.

8. Other Business

Mayor Horvath presented a template, whoever wants an ordinance change would complete the form. He noted the park will be re-bid, and we are going back to the State with some changes, mostly grading changes.

9. Topics to Discuss at Next Meeting

Topics include the Land Use map and the State is reviewing the flood damage prevention ordinance. Langen will find out if someone can reside in a B-1 zone.

10. Adjournment

Adams made a motion to adjourn the meeting; Bill Bennett seconded the motion.

The motion was approved unanimously.

The meeting adjourned.

Respectfully submitted

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Cheryl Bennett, Village Clerk

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Chair Stephen Keeney