

**VILLAGE OF WESLEY CHAPEL  
PLANNING BOARD MEETING MINUTES  
August 26, 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, Members Bill Bennett, Jeff Davis, John Grexa; Alternates John Bowen and David Boyce

**Others Present:** Clerk Cheryl Bennett, Interim Planning/Zoning Administrator Bill Duston, Mayor Brad Horvath, Council Member Becky Plyler, Attorney George Sistrunk, Carol Mullis (was a non-voting stakeholder member of the Master Plan Committee), Van Southard (Moser Group), Matt Kearns and Drew Rouzer (Meritage Homes) , Linda Southard, Robert Reddick, Bruce and Kyle Hrenyo

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

1. Pledge and Invocation

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

2. Public Comments

Carol Mullis said that she was once not in favor of R-20 but is now in favor of it; she was asked if it was because she had land for sale and that may be part of it because the more houses you can fit on the land, the more you can get for the land. She also asked about the Downtown Committee and why it didn't get anywhere.

3. Additions, Deletions and Approval of Agenda

Vice Chair Chuck Adams and Stephen Keeney were administered the oath of office for their new terms on the Planning Board. Vice Chair Chuck Adams made a motion to adopt the agenda, Jeff Davis seconded the motion.

The motion passed unanimously.

4. Approval of Minutes

Chairman Keeney said on page 41 of the minutes, in the third line of the second paragraph, it should be changed to "inside to outside". Bill Bennett made a motion to approve the July 22, 2013 minutes with this change. Jeff Davis seconded the motion.

The motion passed unanimously.

5. Announce Chair confirmation by Council

Mayor Horvath noted Council confirmed the appointment of Stephen Keeney as Chair.

6. Announce Interim Planning & Zoning Administration coverage by Bill Duston from N-Focus

Mayor Horvath noted Bill Duston who works for N-Focus Planning is providing interim planning and zoning services for the Village until we hire a new employee which we hope to do by the end of September.

#### 7. Rezoning RZ 13-2

Chair Keeney said in July Planning Board heard the application from Meritage Homes and recommended approval to go from R40 to R20 with discussion on extensive conditions, but the motion neglected to include the conditions. They met with Council in August and Council recommended they withdraw the initial application and put in an application for conditional use zoning, but the applicant stayed with a straight re-zoning application, and a public hearing is scheduled for September 9, 2013.

Bill Duston said they had extensive discussions with the applicant, and they decided to stay with the original application. This is a straight re-zoning which means if re-zoned, there are not many differences in uses, but it impacts the lot size, and if the land were re-sold the new owner can do whatever is allowed under R20, irrespective of the owner. He heard the site plan was shown to Planning Board, and some thought this is what we get if we re-zone. With a straight re-zoning, you can't look at a site plan because with a straight re-zoning the owner can do anything allowable under R20. Also statements of reasonableness and consistency should come with the recommendation from Planning Board per the NC general statutes. It is whatever the Board thinks is reasonable, as far as consistency, it is whether it is consistent with the Land Use Plan and Map. The Statutes don't say if it is inconsistent you must deny it, but they say the statements are necessary. The Land Use Plan is ten years old. He handed out excerpts from the Land Use Plan map and text. Mr. Duston noted on page 2 the next to last bullet point, said "The standard housing type will continue to be single family residential. Low-density residential development, approximately 1 house per acre, should be the standard ...". On page 3 he pointed out item 1 "Low-density residential development, with a gross density of approximately one house per acre, shall be the standard except at specifically designated locations" and item 4 "Residential densities shall not be a function of the presence of water and sewer." Mr. Duston pointed out the property on the map, it is on Potter Road below Beulah Church Road, and is zoned R40 and in the area marked Low density on the Land Use Map. He said it is your call as to whether the Land Use Map needs to be tweaked or not and you need to add to your motion why.

Chair Keeney said the application came to us with the then Zoning Administrator's recommendation of approval.

Applicant Drew Rouzer spoke next; he said this is a unique situation, they met with the former staff member three times; R40 is the by right zoning on this parcel. There are about 45-50 acres out of the 125 acre parcel that are unusable, due to floodplain and power lines. Under R40, he said the land is not usable. The site has water and sewer. Using the area in the middle, you get about 66 lots. He asked Langen about R40, and if we had something like Weddington which is R40 cluster, but Langen said no we just have R40 and R20. Rouzer said conditional use is more for commercial, it would require you to do about \$50,000 worth of work and a lot of time, and you could come back against it.

Chair Keeney asked Bill Duston about the conditional use process, Mr. Duston said it is applicable, but you have to be really specific, it is a two-step process, re-zoning and the

issuance of the CUP where you show the site plan. Another form of zoning has been enacted since then, Wesley Chapel hasn't adopted it, it doesn't require as much specificity, and they just did language for Mineral Springs where you can waive some standards as desired.

Chair Keeney asked attorney Sistrunk, Sistrunk said the point was you can't condition a straight rezoning request.

Chair Keeney said per Section 12.1.5 there were four options; one of those is to grant the rezoning with a reduction of the area requested, and he thought this was consistent with what they are proposing. Bill Duston said you can consider that. Chair Keeney asked if everyone on Planning Board had the by right site plan of R40. Bill Duston said you cannot consider site plans whether shown in the past or not. Recommendations should not be based on a site plan. The site plan should not have been submitted with the application. Mr. Duston said you have to consider the spectrum of what is allowed in straight R20, not a site plan. Duston said the site plan is conditions, and it comes back to what the attorney said, you cannot attach conditions.

Drew Rouzer said there is R40 and R20 and nothing else in the code we can use except conditional use, and that is too long and too expensive. Bill Duston said there is other language out there in other municipalities. Rouzer said he can't do the by right plan he showed, it goes all over the place. John Grexa said you can go over the creek. Rouzer said it is too expensive to cross two hundred feet of creek. Rouzer said unless you have sites that are flat as a table, you can't build. John Grexa said the site plan had 66 one acre lots, Rouzer said then we clustered 66 half acre lots. John Grexa said we have a plan in place, we just went through the plan, and it doesn't show R20, this was based on the feedback of what the majority of people in Wesley Chapel want. If the people want R0, that's what we will do, but except for a few people who want to sell, they want R40.

Grexia said his concern was that this will be a domino effect.

Drew Rouzer said the neighboring subdivisions will have a buffer from the floodplain; this will be an encapsulated subdivision. This gives more conservation area than your by right plan. He said instead of re-zoning all the land, re-zone the 71 acres in the middle, that is the only thing he can do. Chair Keeney asked if that was his request. Rouzer said that is his compromise. Rouzer asked if anyone had been to one of the Meritage Homes neighborhoods, and had a sheet of accolades on Meritage Homes, and showed pictures of model homes.

Chair Keeney said the question was not the quality of the homes or the neighborhoods, our problem is you are asking for rezoning to R20; our own zoning administrator said based on the conditions illustrated, it was more attractive than total build out at R40. But our recommendation comes with conditions such as a three times wider buffer on Potter Road, the withdrawal of the buildable property, the exclusion and never to be built on properties that you will not build on. Rouzer said he can't build on the left side, under the power lines, can't cross the creek, and can't build on flood lands. He said the reverse front lots on Potter Road which may be four lanes someday, are hardest to sell, and you want the biggest buffer there.

John Grexa asked the attorney, if there were some legal issues with certain areas in the town, and something was changes, and it was about that area, can they come back and recoup; Sistrunk said he can't give legal advice in this meeting.

Vice Chair Chuck Adams said this property was annexed into the town by the Adams family (no relation), they requested higher density, there was a lengthy lawsuit, and we won that lawsuit. Sometime after RD Harrell made a presentation on the property to go R20, and it was denied because it was not R40. They were going to make it Quintessa II, and they didn't have the sewer hookups. Now owned by Frank Howey, he is one of the largest landowners in the county, so this is the third proposal, and has been twice denied. Attorney Sistrunk said he can give advice in a closed session, each decision stands on its own, rarely does a precedent apply.

Bill Bennett said he has heard multiple times, in Council meetings, at parks, and in the design of the seal, that we want the rural look and feel. He said who doesn't fear this would open the door for other things, a 14 story retirement community, or R10. He asked Drew Rouzer if he lives here, Rouzer said no. Bill asked why he said Wesley Chapel was a great place to live. Rouzer said taxes and schools. Rouzer said the land use map shows low density, and the plan says i.e. R40, if this site were flat as a table, he wouldn't be here, but it is not; it is likely to stay vacant ten or more years; there will be suburban sprawl. John Grexa said that may be more reason to keep it R40. John Grexa said some developers are not very scrupulous, in his neighborhood they have to pay for ten acres across the street they can't even use, he said he is trying to help people and maintain one acre zoning.

Bill Duston said he has been here three days, and he has had three requests to look at less than R40 size lots.

Chair Keeney said now the request is to re-zone on 71 acres. Can we do that with conditions: Bill Duston said the only condition is Rouzer is saying he can live with just 71 acres re-zoned, you cannot put conditions on the remaining acreage. Vice Chair Chuck Adams said the re-zoning would go against our land use plan; the plan should be changed first.

Rouzer said the Land Use Plan is a guide, not a Bible.

Bill Duston said ten years have gone by, you might want to make an exception but give reasons, or say it is still reasonable and it gives a message to Council.

Vice Chair Chuck Adams said Wesley Chapel is an R40 town, and this will set a precedent, and in this month we had a number of requests for R20, he didn't think we should approve this before we do some other things, the citizens of this town have said on several surveys that they want R40.

Rouzer said R40 cluster doesn't give more density; developers don't get rich, there are other costs, they are the guy in the middle who gets pushed from both sides; R40 is a big lot, with acre lots you get outside the price point of people.

Chair Keeney asked Bill Duston about his comments in the office. Bill Duston said conditional use zoning is very specific and more for shopping centers, he talked to Rouzer, it is expensive and there is no guarantee. Weddington has conservation subdivisions; another option is cluster zoning, or another form of conditional zoning where the developer shows the site plan with ranges of lot sizes and density, which sets up parameters. We don't have either of those avenues in Wesley Chapel.

Mayor Horvath said the Master Plan survey had 623 respondents, they preferred R40 zoning, as part of the survey, there were two visual surveys, 50-60 were in each, they showed pictures and asked whether it was favorable or not, two cluster subdivisions were shown and one was found favorable, and the other was found unfavorable. He said he

was an R40 proponent, but this is 125 acres, 40 acres you can't build on, and some more acres are very expensive to build on due to the creek and power lines, in the Land Use Plan, gross density is used, and we are not exceeding the gross density of that property. Bill Duston said the Land Use Plan says gross density should not exceed one house per acre.

Carol Mullis was a non-voting stakeholder member of the Master Plan Committee, she said we did like clustering; at the last Planning Board meeting no concerns were raised and three voted in favor and after the meeting a concern came up. John Grexa said that is incorrect, he had concerns during the vote. Carol Mullis said regarding precedent, does this set a precedent for future Planning Board meetings, if one person is not here or one is not unsure afterward, does this set a precedent for things to be thrown back. Some heated argument ensued.

Chair Keeney said we have to decide on the petition before us. Chair Keeney said the ordinance book sets creates the very kind of things we are trying to legislate against. R40, R20, R60, R80 has parameters, if we have to fit every project into this, and we have to craft ordinance; we have to have a provision that lets us look at a property and say whether it is a good thing or not, and where can we put it in. That is exactly why we voted to send this to Council with the conditions; legally I am not sure how to do it appropriately.

Chair Keeney said he would read into the record findings from the last meeting, as follows.

In the proposed developments of the Wesley Chapel re-zoning, it actually enhances the re-zoning to R20 when the proposed conditions are included, and those were verbalized proposed conditions. Notwithstanding, the application has received the zoning administrator's staff recommendation and the findings are listed in the July administrator's approval to Council. The definitions that have immediate relevance, I think, in this pursuit are reservation of open space, open space being, an area, land and or water, generally lacking in manmade structures, and reserved for the enjoyment in its unaltered state, that is what they are wanting to do.

John Grexa asked if this was what Keeney surmised; John Bowen said this was what Langen presented at the last meeting.

Keeney continued: a reservation is a designation of land that does not involve any transfer of property rights but constitutes an obligation, which we are asking from them, to keep the property free from development for a stated period of time. Our own R20 definition is this, The R20 district is established to accommodate low density single family residential development at low densities consistent with the land use and rural character of the village. That's R20. The enhancements to be considered are substantial. By the reservation of open space and the commitment to the aesthetic insulation through the tripling of the Potter Road buffer and the preservation of the surrounding acreages; now these are conditions I believe need to go with the recommendation to Council. The benefits will be realized by the immediate properties bordering all four sides having a natural open space as opposed to an R40 build out to the road's edges, because that is what they are entitled to do in R40. The low to medium density for the homeowner who buys in there, who chooses to live in Pinetops, and the low to no density for the Village residents who travel the roads bordering those 125 acres. I'm saying there is going to be an insulation occurring by the very way they construct it. The lot size average that they

are proposing is nearly 30,000 square feet with the largest one at 45,000 and the smallest one at 22,000 square feet. For homeowners who want the insulation from traffic and other developments and might not want to maintain a whole acre lot, the clustering creates a chosen environment while at the same time, and in my opinion, more importantly, for the Village it enhances the Article 4 ordinances, that we have, by the way, worked on for a year. Some of those are like this requirements of landscaped buffers, and the reservations of open spaces, to encourage greenways, connectivity and much improved rural character of the district. I believe, and I think the vote proved, that if a voting public hearing would compare the two proposals, the re-zoning with stated conditions attached, would win approval hands down.

Vice Chair Chuck Adams stated we cannot have any conditions at all, it is not allowed. And in this development, there is no connectivity.

Chair Keeney said we took the reserved land from within the development, and put it around the development to connect developments and to buffer and insulate. He said one of the biggest problems is driving around and seeing the back end of someone's house with a berm. This is a positive approach to 125 acres.

Vice Chair Adams said we don't have the zoning in place that we probably need in the future, this has created interest in several developments to come forward with R20 that we haven't seen in the past. He asked Attorney Sistrunk if we zone this R20 how difficult would it be to deny in the future; Sistrunk said each request is determined on its own set of facts, it is not legally binding.

Drew Rouzer asked if folks want larger lots or lower density, we are achieving lower density.

Bill Bennett asked if it is possible to create language that we won't do any more R20 developments until we change the ordinance.

Bill Duston said the language has tightened up on moratoriums, if applications come in we have to consider them. We can do conjecture but a formal moratorium is harder to do. Mr. Duston said he talked to Jordan Cook the Weddington planner, regarding how you process subdivisions, he can ask him about cluster subdivisions, it wouldn't take long to write the language, about 3-5 hours. Mayor Horvath said the process takes about 90 to 120 days.

Vice Chair Adams asked if tonight's recommendation will go to Council. Mayor Horvath said yes, because one option is to reduce the acreage involved.

Bill Duston said if the recommendation goes on the reduced acreage, that would trump the previous recommendation; in theory you could have several votes tonight, since the reduced acreage has been introduced.

Bill Duston said the public hearing is for 125 acres, if the recommendation is for 71 acres, and it goes forward, it is R40 to R20 no matter what. Attorney Sistrunk said Council still has the same options you have. Bill Duston said this is a legislative procedure; there is no swearing in or evidence.

Bill Bennett motioned to recommend approval of R20 within 71 acres, to be specifically identified later out of the 125 acres, and leaving the rest of the land as currently zoned. The motion died for lack of a second.

Vice Chair Adams motioned to recommend to Council that we deny the petitioner's request to re-zone from R40 to R20. John Grexa seconded the motion.

Bill Duston asked for statements; Vice Chair Adams said regarding consistency, since we are primarily R40 as previously stated and this sets a precedent going forward. John Grexa said it is consistent due to the current Land Use Plan Policy on page 2, that is the second to last bullet point in the Land Use Planning Process where it says “Low-density residential development, approximately one house per acre, should be the standard except at specifically designated locations.”; also on page 3 under Goal 1 where it says “Low-density residential development, with a gross density of approximately one house per acre shall be the standard except at specifically designated locations”; also the Land Use Map shows one acre lots. Vice Chair Adams and John Grexa said it is reasonable because of surveys conducted in the Village, these statements are to be included in the motion. Attorney Sistrunk asked that the motion be re-seconded. Adams amended his motion to add these statements to the motion, and the amended motion was re-seconded by John Grexa.

Vice Chair Adams asked if we were supposed to do these statements in the past; Sistrunk and Duston said yes, they are required.

The vote was voted upon; the vote was 3 yea (Adams, Grexa and Davis) and 2 nay (Keeney and Bill Bennett).

The motion passed

Vice Chair Adams motioned for Bill Duston to work on the wording for cluster R40 zoning for Wesley Chapel. Bill Bennett seconded the motion.

The motion passed unanimously.

Chair Keeney asked about the year limitation on a new request. Bill Duston said if Council denies the re-zoning, and the applicant wants to re-submit for re-zoning 75 acres, it would be substantially different, and he would process that. If they want to re-submit for a rezoning under new wording, it would be okay.

8. Preliminary Plat – Wesley Pond – 7 lots at Cuthbertson Road – cannot be considered minor subdivision per Ordinance Section 111.2

Clerk Bennett said this is an informational item; the applicant was told it would be a minor subdivision by the former zoning administrator, but creation of an easement, public water and sewer and a private road cause it to fall under major subdivision rules. Bill Duston is meeting with them on Thursday and we expect to see a plat. Mayor Horvath said Council approved a subdivision modification on this regarding panhandle lot sizes and including the acreage of the panhandle in the minimum lot size.

9. Retention of Existing Vegetation, Subdivision Ordinance Section 404.3

Chuck Adams motioned to table this item until next month. John Grexa seconded the motion.

The motion passed unanimously.

10. Other Business

Mayor Horvath asked for the attorney to review the amendment on sections 405 and 408, before calling for a public hearing, and he wanted Planning Board to see the attorney comments. We do have an adopted transportation plan, which relates to one of the

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comments. This just got to Planning Board so they will review it and put it on the next month's agenda.

11. Topics to Discuss at Next Meeting

Bill Duston said there have been some legislative changes, and he is working on that text as well; it is about the Board of Adjustment.

12. Adjournment

Vice Chair Chuck Adams made a motion to adjourn the meeting; Jeff Davis seconded the motion.

The motion was approved unanimously.

The meeting adjourned at approximately 9:10 pm.

Respectfully submitted

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Cheryl Bennett, Village Clerk

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Chair Stephen Keeney