

CITY OF HENDERSONVILLE
BOARD OF MAYOR AND ALDERMEN
MINUTES OF REGULAR MEETING
JULY 12, 2011

PRESENT

GARRY FORSYTHE, VICE-MAYOR
STEVE BROWN, ALDERMAN
ARLENE CUNNINGHAM, ALDERMAN
TOMMY ELSTEN, ALDERMAN
HAMILTON FROST, ALDERMAN
JIM HOBACK, ALDERMAN
JACK LONG, ALDERMAN
FRED QUALLS, ALDERMAN
MATT STAMPER, ALDERMAN
LISA WEST, ALDERMAN
JOHN BRADLEY, CITY ATTORNEY
KAY FRANKLIN, INTERIM CITY RECORDER

ABSENT

SCOTT FOSTER, MAYOR
CHRIS GALLAHER, ALDERMAN
SCOTT SPROUSE, ALDERMAN

AGENDA

Elsten moved; seconded by Qualls to pull from the agenda, Ordinance 2011-17, an Ordinance rezoning property to be known as Watermark Subdivision located at 143 Waterview Drive and approving a Preliminary Master Development Plan to govern the development of said property, until the public hearing is held.

There was a unanimous vote for approval to pull the above item.

Frost moved; seconded by Cunningham to accept the agenda as amended.

There was a unanimous vote for approval.

MINUTES

Stamper moved; seconded by Elsten for approval of the June 28, 2011 minutes.

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There was a majority vote for approval with Forsythe abstaining. Forsythe declared the motion carried.

CITIZENS COMMENTS

E. P. Ausbrooks, 140 Fairways Drive, addressed the Board citing the recent newspaper articles on a lawsuit involving Halo Properties and the effect of this lawsuit on the TIF approved by the Board.

As there was no one else desiring to speak, Forsythe declared Citizens Comments closed.

REPORTS

Finance Committee – no report.

General Committee – sent to the Board without a recommendation, Ordinance 2011-20 annexing into the City property located on the south side of Stop 30 Road and on the east and west sides of New Shackle Island Road and reported the Committee recessed and will reconvene after the Board meeting to finish review of the agenda items.

Public Safety Committee – discussed amending the Municipal Code regarding parking on streets.

Public Works Committee – reviewed Parks' storm damage insurance claims; received an update on the Kids Kingdom rebuild project; reviewed the Parks' inmate/restroom facility; reviewed large drainage projects, reviewed street acceptance in Mansker Farms and recommended rejection of the bid for the Cherokee Road drainage project.

Capital Projects Committee – no report.

Planning Commission – recommended the final plat for The Triangle; recommended the Preliminary and Final Master Development Plans for Indian Lake Village, Phase VII; and recommended the Site Plan for the McDonald's rebuild on Main Street.

Mayor – Forsythe stated without the TIF, the City would be less \$1 million a year in sales tax revenue, \$40 million of improved property, a \$12.5 million road at no expense to the City, a \$1 million bridge, and a \$1 million park and that the City has no liability on those bonds.

Frost questioned if the park located on Saundersville Road has been deeded to the City.

Bradley explained the park is open space as required by the PUD and the City is collecting taxes on that property. He further stated other open spaces have not been deeded to the City and he does not see a reason to have this open space deeded to the City.

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Brown stated he feels this is a good time for the Finance Committee to receive a status report on the TIF.

Bradley stated the Board should take formal action to reject the bid for the Cherokee Road/Sequoyah Drive drainage project.

Long moved; seconded by Frost to amend the agenda by including a vote on rejecting the bid received in the amount of \$221,000 for the Cherokee Road/Sequoyah Drive drainage project.

There was a unanimous vote to add the above item to the agenda.

Qualls moved; seconded by Long to reject the bid received in the amount of \$221,000 for the Cherokee Road/Sequoyah Drive drainage project.

There was a unanimous vote for approval to reject the bid.

ORDINANCES AND RESOLUTIONS

Qualls moved; seconded by Brown to add to the agenda first reading of Ordinance 2011-20.

There was a unanimous vote for approval.

The caption of Ordinance 2011-20 was read on first reading, an Ordinance to annex into the City of Hendersonville, Tennessee, property located on the south side of Stop 30 Road and on the east and west sides of New Shackle Island Road. Qualls moved; seconded by Elsten.

Qualls stated his concern that some of the staff comments were removed by the Planning Commission including the bonding requirement.

Forsythe stated the issue before the Board is annexation only and does not affect a previously approved plat.

Qualls states he understands the need for annexation for tax purposes but stated his concern that a variance was granted removing the bond requirement for this property that has not previously been done.

Elsten stated his concern about annexing roads that may require improvements.

Rogers stated if this property is annexed, it is the City's obligation to maintain the roads but the City is not obligated to make any improvements other than maintenance. He

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further stated as the property is developed, the buyers would be obligated to improve the frontage on all their roads.

Hoback questioned the allowed uses of this property.

Rogers stated the rezoning of the property was done in 2003 to a commercial planned unit development with specific uses listed. He explained the primary use is the lot located in the northeast corner with the anticipated use for a convenience store with gas sales which would generate a large amount of sales taxes. He further explained other uses include various retail and offices. He stated the property across the road belonging to Bible Baptist Church will remain agricultural and residential. He explained the reason to include the property located on New Shackle Island Road in the annexation is to make the City limits consistent.

Qualls stated The Triangle property must be getting close to development and stated the need for the annexation for the sales tax revenue but stated his concern with the removal of the bond requirement for this property

Long questioned the reason the Planning Commission chose to remove the bond requirement for this property.

Rogers explained the Planning Commission approved a final plat for this property and granted a deviation that does not require the posting of surety prior to the recording of the plat and the sale of the lots. He further explained that as the lots are purchased, the buyers would have the responsibility to make a payment-in-lieu-of to cover the required improvements prior to obtaining a building permit.

Long questioned the legality of the Planning Commissions actions and also how the property owner, who is a member of the Planning Commission voted.

Rogers stated the property owner abstained and stood down from the podium during the discussion of this action.

Bradley stated the Planning Commission's actions were legal.

Rogers stated the Subdivision Regulations does make provisions for the granting of deviations which specifies the justification for granting must be included in the Planning Commission minutes. He explained the justifications include:

1. That the triangle is surrounded on three sides by streets; two of which are major thoroughfares with substantial right-of-way to be dedicated which greatly diminishes the value of the property;
2. If the property on Goshentown Road develops as per the new Land Use Plan, it will be many years until additional right-of-way is needed;

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3. The amount of the surety for improvements to all three sides of the property is excessive and with current tight financing policies, it is difficult to secure such surety;

4. Due to the current economy, it is anticipated it will take many years for all four of the lots to sell and the developer's money would be tied up in the surety for a very long time.

Stamper stated the action of the Planning Commission was precedent setting and questioned how this will affect developers in the future. He stated he supports the annexation but not the actions of the Planning Commission.

Cunningham stated she also favors the annexation but that the justifications seem to favor the developer and leaves the City in a precarious position on future requests by developers.

Brown questioned the difference in payment-in-lieu-of and a letter of credit and the amount of money involved.

Rogers explained he does not have an estimate for the payment-in-lieu-of amount and that accepting this payment is not uncommon. He further explained that before recording the plat and making the lots available for sale, the regulations require that the street improvements would have to be made or a letter of credit posted or cash paid. He stated a payment-in-lieu-of is better than cash with the payment determined by the City Engineer. He explained the difference is that the City is not receiving the payment-in-lieu-of before recording the plat and making the lots available for sale. He stated the payment-in-lieu-of would be received after the lots are sold and prior to a building permit being issued for each of the four lots. Rogers explained the funds from a payment-in-lieu-of would already be in the City's bank and the improvements could be made at the City's discretion.

West question if there are any actions the Board can take regarding the actions of the Planning Commission.

Bradley stated the Planning Commission's role is authorized by the State legislature.

Frost stated he supports the annexation but is uncomfortable with the Planning Commission's actions. He stated he feels this has set a precedent to allow other developers to request the same waiver.

Long questioned if the payment-in-lieu-of is the same as a letter of credit.

Rogers explained that in the past, a letter of credit, cash or a performance bond was accepted but now only a letter of credit or cash is accepted. He further explained a payment-in-lieu-of is the equivalent of cash which the City will use to make the improvements when deemed necessary and could be used in conjunction with possible

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grants. He stated the City Engineer specified the buyer would not have the option to make the improvements so the road frontage could be widened at the same time.

Long questioned a worst case scenario that might be encountered by the Planning Commission's actions.

Rogers stated he cannot cite all ramifications but felt if the note on the plat disclosing to the buyer their responsibility for the improvements is not disclosed or the buyer does not do their due diligence or if future buyers are not aware of the note there could be ramifications.

Bradley stated this is an unusual tract of property and that the annexation should have been done at the time of the rezoning. He further stated the issues of concern are in the domain of the Planning Commission and the situation does not need to be compounded by not annexing the property.

There was a unanimous vote for approval of Ordinance 2011-20 on first reading.

Upon motion and second and followed by a unanimous vote for approval, the meeting adjourned at 8:25 p.m.

Approved: Garry Forsythe, Vice-Mayor

Attest: Kay Franklin, Interim City Recorder