

MINUTES OF MEETING OF THE
CITY COUNCIL OF THE CITY OF SANFORD
SANFORD, NORTH CAROLINA

The City Council met at the Sanford Municipal Center, 225 E. Weatherspoon Street, on Tuesday, July 21, 2009, at 7:00 P.M. The following people were present:

Mayor Cornelia P. Olive
Council Member James G. Williams
Council Member Charles Taylor
Council Member Mike Stone
City Manager Hal Hegwer

Mayor Pro Tem Joseph Martin
Council Member Steve Brewer
Council Member Walter H. McNeil, Jr.
City Attorney Susan C. Patterson
City Clerk Bonnie D. White

Absent:

Council Member Linwood Mann

Mayor Olive called the meeting to order. Council Member Mike Stone delivered the invocation.

PUBLIC COMMENT – (Exhibit A)

Reverend William E. Gorham, representing the Abundant Life Ministries located across from the Lee County Courthouse and Jim Womack, residing at 1615 Boone Trail Road, spoke regarding social issues, crime, homelessness, and teen pregnancy. They would like to see council members speak more about what can be done about these issues.

APPROVAL OF AGENDA

On motion of Council Member Taylor, seconded by Council Member Brewer, the agenda was approved.

CONSENT AGENDA

Approval of Ordinance to Erect Stop Signs Within the City of Sanford Chapter 36, Traffic Code of Ordinances – (Exhibit B)

Ordinance was approved to erect stop signs within the Carbonton Cove Subdivision located off Carbonton Road, developed by Terry Stewart.

Ratification of Resolution in Support of the Temporary Closure of a Portion of North Avenue for the Purpose of a Vacation Bible School “Fun Day” by East Sanford Baptist Church – (Exhibit C)

Resolution was ratified to close North Avenue from Third Street to Fourth Street for the purpose of a Vacation Bible School Fun Day for East Sanford Baptist Church on Saturday, July 18, 2009, between the hours of 8:00 a.m. and 3:00 p.m.

Approval of Resolution Accepting and Endorsing the Solid Waste Management Plan of 2009-2019 for Lee County – (Exhibit D)

Resolution was approved accepting and endorsing the Solid Waste Management Plan of 2009-2019 for Lee County which complies with General Statute 130A known as the Solid Waste

Management Act of 1989. The plan evaluates the adequacy of solid waste services to meet the local needs and to protect the human health and the environment, and it is submitted as a companion to the Lee County Plan. Mandatory updates to the plan are required every three years to correct any parts that have been found to be in error or unrealistic. This plan update is from July 1, 2009, through June 30, 2019, and is due to the Solid Waste Section in August.

Approval of Ordinance to Amend the City of Sanford Code of Ordinances Chapter 18, Fire Prevention and Protection and Chapter 8, Buildings and Building Regulations – (Exhibit E)

Ordinance was approved to amend the Code of Ordinances, Chapter 18, Fire Prevention and Protection and Chapter 8, Buildings and Building Regulations from where it reads in Chapter 18, Section 31, “All references to “*North Carolina State Building Code, Volume V, Fire Prevention*” and all references to “*Fire Prevention Code, NCSBC Volume V,*” shall be replaced with the “*International Fire Code with the North Carolina Amendments.*”

The consent agenda items were approved upon motion of Council Member Mike Stone. Seconded by Council Member Walter McNeil, Jr., the motion carried unanimously.

SPECIAL AGENDA

Presentation of National Night Out Proclamation – (Exhibit F)

Mayor Olive read the proclamation proclaiming August 4, 2009, as National Night Out in Sanford.

CASE FOR PUBLIC HEARING: held jointly with the Planning Board.

Petition by the City of Sanford - to apply the Residential Design Standards Overlay Zoning District (RDSOD) to 2,809.03+/- acres in West Sanford and more specifically Ward 1 of the City of Sanford. The proposed overlay zoning district would be applied to 2,848 parcels. – (Exhibit G)

Assistant Community Development Director Marshall Downey explained that a request to apply a new set of fencing regulations in the form of a zoning overlay district was recently adopted in the Unified Development Ordinance (UDO). It was approved by Sanford, Lee County, and the Town of Broadway. This rezoning request is an intent to apply residential design standards overlay zoning district to Ward 1 only, which would affect 2,848 parcels. He referred to the fencing standards in Exhibit F that were adopted in the early summer. Of the 2,848 parcels, 91 percent of them are residential. This would only affect new fences that were constructed in this area in terms of height restrictions as well as materials. Mr. Downey described the style fences that are allowed and the heights.

Mr. Downey explained that staff placed two, half-page ads in the *Sanford Herald* as opposed to sending letters. When more than fifty property owners are affected, the general statutes allow you to place ads in the newspaper in lieu of sending letters. A community meeting was held for the public last Thursday, at 6 p.m., in the Council Chambers, to answer any questions the public may have and only three individuals attended. Mr. John Bass, submitted a list of his concerns (see Exhibit H) stating that his main concern is discrimination when one side of the road is affected and the other side is not.

Mayor Olive opened the public hearing.

Council Member Williams asked Mr. Downey if Mr. Bass has a fence. Mr. Downey replied yes; however, existing fences are grandfathered in unless he would tear down his fence and install a new one. Council Member Brewer stated that Mr. Bass was worried about how the line was drawn with one side of the road being in the boundaries and the other side is not. Mr. Brewer said that Mr. Downey and he talked about just taking neighborhood by neighborhood, but it would be simpler to do it by the Ward 1 boundaries. Mr. Bass was not opposed to the idea; he was opposed to how it was done because Mr. Bass felt it looked like Mr. Brewer was trying to run for re-election.

Council Member Taylor asked for clarification that if a resident is grandfathered in and they try to change the materials of the fence, would that disqualify them. Mr. Downey replied that if they change the material, it would be substantial changes – it would be like putting up a new fence. A resident is grandfathered as long as the fence stays with the same material that it is.

Council Member Stone asked City Attorney Susan Patterson referring to Mr. Bass's letter, if we can be charged for discrimination for passing the ordinance for a specific district. City Attorney Patterson replied that someone can sue you for anything that they choose to sue you for. By its very nature, zoning categories treat property differently. You can do something within a commercially-zoned area that you cannot do within a residentially-zoned area. Those two different zoning categories carry with them things you can and cannot do. But, there are boundaries to every zoning district. A conditional use zoning is usually a boundary drawn around one piece of property. It is uniquely zoned. Attorney Patterson explained that this request proposes to have an overlay district. The overlay district would come over top of the regular zoning and the regular zoning would remain in place with the parcels. This would be additional design requirements similar to what we already have for design requirements such as the highway corridor district. We have the same sort of overlay district for the historic district.

You can be charged with discrimination if a person so chooses, but whether it would be successful or not is a different question. The argument would be that the rule applies on one side of the road and not on the other, but every zoning district has that sort of an application. The intent is to allow regulations for fencing to have additional design requirements in a portion of town that coincides with the boundaries of the electoral district. Basically, those neighborhoods that were developed on the west side of town, many of them were developed with restrictive covenants that have now expired. This would be an attempt to legislate some standards for that area so that neighborhoods are consistent.

Council Member Stone said he has not seen any neighborhood associations come before Council. He knows what is trying to be achieved, but if there is a bad record ahead of Council, he would like to know that before going down that road. Attorney Patterson added that she has spoken to the zoning expert at the Institute of Government. When they do surveys in regards to information on who has overlay districts, they do not ask what did you base that on for the boundaries. David Owens, at the Institute of Government, told Attorney Patterson that he has not researched it to determine whether they have had it, and he is not aware of any that exists in the State of North Carolina that are drawn by electoral ward boundaries. Mr. Owens said he felt

it was legally defensible. Attorney Patterson asked Mr. Owens about having design standards for fencing for an overlay district and Mr. Owens replied that would be okay.

Council Member Brewer asked if it is possible to have the public hearing tonight; vote on this issue at the next meeting and delay it until we encompass those areas in question that Mr. Bass was concerned with that we were leaving corners of neighborhoods out? Mr. Bass suggested U.S. Highway 421 to U. S. #1, south and west. Is it possible to encompass those areas so it takes effect the same time, etc? Attorney Patterson said that the current setup is that we have the public hearing tonight and then it goes to the Planning Board for their recommendation. The recommendation will come back to Council at its next meeting for a vote. You can delay that vote; pass the vote with a delay in the effective date; you can have the overlay to coincide with an additional area; or you can expand or subtract areas from what has been advertised. If you expand, you would have to provide proper notice to additional areas. You could have the effective date of enactment delayed.

Several council members questioned maybe doing this by neighborhoods. Attorney Patterson replied that when you make a zoning district, you have similarly situated properties treated similarly; you can have it applied to all R-20 zonings throughout the town or whichever boundary that you decide to draw. It has to be rationally related to the use or the design standards of the property. The attempt here was that there are design standards that have been experienced in this area before; the City cannot enforce restrictive covenants, but it would be to legislate design standards that promote the compatibility of the neighborhood.

Council Member Taylor asked Attorney Patterson if she had called the League of Municipalities to see if there has been precedent set on a case that may involve an overlay of fence. Attorney Patterson replied that she has not contacted the League, because the League tends to be a promoter of legislation that cities and counties ask the League to lobby for. She said that she goes to the School of Government when there are research issues or legal issues, because the experts there help write the books and laws for local government.

Mr. Taylor said the boundaries split a neighborhood in half. He has the right side of Valley Road and the right side of Wilkins Drive in his ward. Council Member Brewer has the left side of Valley Road and the left side of Wilkins Drive in Ward 1. It is an inconvenience to council members from a representation standpoint. He expressed concern over some language in 4.15.2.1.3.1 about materials commonly used in conventional construction. He said chain link fence is a commonly used material in fencing. He also wanted to know who is going to monitor and enforce it.

Council Member Brewer stated that when Mayor Olive and he got elected, improving the aesthetic value of the city was a big issue. When you get elected, you ride and look at things a lot differently than you do if you have been here for three to four years. He said that six-foot fences with barbed-wire wrapped around the top of them in people's front yards are very unbecoming. It is predominantly in East Sanford and people there are scared of crime and it is a shame and these are two separate issues. As he rode through town, there was a six-foot chain link fence with rottweilers in it at the corner of Bennett Street. He gave other examples through town with large fences on them and it made him think about the aesthetic value of his ward and

what it looks like. He expressed concern over the aesthetic values of neighborhoods if individuals put up barbed wire fence everywhere. He is willing to do whatever it takes to try to make this work to protect the property values of the people in Ward 1, and to protect the look of our City, because that is entirely what this is designed to do.

Council Member Stone said he appreciates what Mr. Brewer is trying to come up with - a nice approach to make some of our neighborhoods look better. He felt that maybe neighborhood by neighborhood might be a better solution than you have the neighborhood telling us what they want.

No one spoke in favor.

Susan Sikes, residing at 1520 Stoneridge Drive, spoke in opposition. Mrs. Sikes said that she has spoken with Mr. Brewer and Attorney Patterson. She stated that Stoneridge Drive is one road over from Valley Road. When they purchased their home, they intentionally did not want restrictive covenants. She investigated the covenants on the land and there have never been any. She investigated all the ordinances that might apply to their property before they made an offer on the house. They personally do not want restrictive covenants enforced by the City. They do not have a fence and have no intention of building a fence. However, they feel the application of this ordinance opens a door to later ordinances that might directly affect them. They are opposed to the application of this ordinance to what is effectively an artificially created political subdivision of the City of Sanford. Ward 1 was established based solely on population numbers alone. She said that as Mrs. Patterson mentioned, zoning regulations and zoning overlay districts need to have a reasonable relationship to the property that is being zoned. There is no rational basis for how Ward 1 is created that applies to fencing ordinances. There is no rational reason that the houses on the other side of Valley Road and Wilkins Drive should not have the same ordinance that you are seeking to apply to Ward 1.

Mrs. Sikes informed Council that she is an attorney for the State Legislature and works on criminal issues. She believes there is a legitimate argument for not only a due process claim because of the fact there is no rational relationship and also an equal protection claim because you are not applying this to all property similarly situated. She does not want the City to restrict her property; she may not like it if a neighbor puts up a fence, but she will respect that neighbor's right to choose what they want to do with their property, as long as it does not threaten the public health and safety. They are opposed to the ordinance and the application. If it is going to be applied, it should be applied on a rational basis. The line should be drawn based on the property, nature of the property, size of the lot, and the type of establishments that are located on the property; not using a political subdivision that was created solely based on population numbers with no rational relationship to the ordinance proposed.

With no one else requesting to speak, the public hearing was closed.

The Planning Board retired to the West End Conference Room.

REGULAR AGENDA

Consider Resolution Temporarily Closing Several Streets in Support of National Night Out – (Exhibit I)

City Manager Hal Hegwer stated that this resolution temporarily closes several streets in support of National Night Out. He noted that the street closing for Winthrop Place will be removed from the resolution due to the fact that Fairway Woods Subdivision will not be hosting an event this year.

Mayor Pro Tem Joseph Martin made the motion to adopt the Resolution Temporarily Closing Several Streets in Support of National Night Out. Seconded by Council Member Walter McNeil, Jr., the motion carried unanimously.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2009 - 2010 – (Exhibit J)

City Manager Hal Hegwer explained that this ordinance amends the budget by transferring \$20,000 from Contingency to Public Building for the appropriation of the purchase of property at the Martin Luther King Park. This is additional property to the existing property that the City now retains for the park. The first property for the park was donated by Brick Capital. Staff has been concerned about the size and the scope of the project and how it would affect people who would want to visit the memorial. Staff has negotiated the purchase of the property behind the park for parking. The price is \$20,000 for approximately one acre of land.

Council Member Walter McNeil, Jr., made the motion to adopt Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2009 – 2010. Seconded by Council Member James Williams, the motion carried unanimously.

OTHER BUSINESS

Council Member Brewer made the motion to table the vote on the fencing until further notice, because he wants to get more information and feedback. He would like to discuss it further with Council at the next Law and Finance Committee meeting. He felt it was prudent for people to know we can discuss it more. Attorney Patterson said that the matter has past on the agenda and we have moved beyond it. If we are going to vote, you can vote to table the matter at Council's next meeting.

Council Member Taylor thanked Reverend Gorham and Mr. Womack for coming tonight and he hopes we can take to heart their concerns regarding crime, teen pregnancy, and homelessness.

Council Member McNeil asked City Clerk Bonnie White to check with Charter Communications about a problem with the signal during the news around 6 p.m. and later on at night.

City Manager Hal Hegwer advised Council and the public that we need to change our next City Council meeting on August 4, 2009, from 7 p.m. to 1 p.m., in the City Council Chambers due to National Night Out activities that night.

Mr. Hegwer stated that the Lee County Economic Development Corporation has been in contact with the Lee County Board of Commissioners about having a meeting to discuss the Economic Development Corporation (EDC). There have been some concerns raised. The EDC has written a letter to the County. The City was not copied on it, but he will pass this along so we can be involved in a meeting to discuss some issues.

Council Member Taylor said that Mr. Martin and he sit on the United Way Board. In their meeting, they have come up with a program to locate meters downtown that are old, used parking meters that have been converted to receive money for homelessness. This would help keep people from panhandling and encourages the message don't give to panhandlers and give it to an organization that will take the money and work with this. Brad Butler indicated to him that 20 percent of Lee County residents have received food from the Christian United Outreach Center.

CLOSED SESSION

City Attorney Susan Patterson requested a motion to go into closed session in accordance with N.C.G.S. 143-318.11(a)(3) and (5) to deal with matters within the attorney-client privilege and to instruct the public body staff on the negotiating terms for the acquisition of real property. So moved by Council Member James Williams and seconded by Council Member Steve Brewer, the motion carried unanimously.

ALL EXHIBITS CONTAINED HEREIN ARE HEREBY INCORPORATED BY REFERENCE AND MADE A PART OF THESE MINUTES.

RETURN TO REGULAR SESSION AND ADJOURNMENT

With no further business to come before the council, the meeting was adjourned on motion of Mayor Pro Tem Joseph Martin; seconded by Council Member Steve Brewer, the motion carried unanimously.

Respectfully submitted,

CORNELIA P. OLIVE, MAYOR

ATTEST:

BONNIE D. WHITE, CITY CLERK