

**MINUTES OF THE MEETING OF THE
TOWN COUNCIL
TOWN OF PINEVILLE, NORTH CAROLINA
MAY 13, 2008**

The Town Council of the Town of Pineville met in regular session on Tuesday, May 13, 2008 at 6:30 p.m. at The Hut Meeting Facility in Pineville.

ATTENDANCE

Mayor: George Fowler

Mayor Pro-Tem: Libby Boatwright

Town Council Members: Les Gladden, Jim Eschert, and David Phillips

Town Administrator: Mike Rose

Town Clerk: Barbara Monticello

Planning and Zoning: Kevin Icard and Travis Morgan

Planning Board Members: Jim Knowles, Terie Davis, Kelly Turner, Paul Sullivan and Judy Osborne

CALL TO ORDER

Mayor Fowler called the meeting to order at 6:33 p.m. and welcomed those in attendance. Town Administrator Mike Rose invited anyone wishing to speak on an agenda item to sign the speaker list.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Fowler called upon Council Member Les Gladden to lead the Pledge of Allegiance to the Flag.

Mayor Fowler called for a moment of silence for the following people: Charles Yandell (ill) and family, Ann Whetstone (passed) Ollie Satterfield (ill) and the rest of the Satterfield family, Betty Bass (passed) and Lilly Mae Brewer (ill), Scottie Earnheart (heart attack) and David Yomen (open heart surgery).

ORDER OF BUSINESS

Adoption of the Agenda: Upon the motion of David Phillips, seconded by Mayor Pro Tem Libby Boatwright, the Council unanimously voted to adopt the agenda for the May 13, 2008 meeting. There were ayes by all.

Approval of Minutes for the previous Regular Town Council Meeting of April 8, 2008: Mayor Fowler called for a motion on the minutes from the April 8, 2008 Regular Council Meeting. Council Member Les Gladden moved to approve the minutes, which were seconded by Mayor Pro Tem Libby Boatwright. There were ayes by all.

Special Recognition: Mayor Fowler stated that there was a lot on the agenda to cover. He recognized five different proclamations for the month of May. Council Member David Phillips

moved to approve the Proclamation for Pineville Heritage Day, which was seconded by Council Member Les Gladden. There were ayes by all. Mayor Pro Tem Libby Boatwright moved to approve the Proclamation for Betty Raskey honoring her 100th birthday. Motion was seconded by Council Member Gladden. There were ayes by all. A motion was made by Council Member Gladden, seconded by Mayor Pro Tem Boatwright to approve The National Police Week Proclamation. There were ayes by all. Mayor Pro Tem Boatwright then moved to approve the Proclamation honoring National Public Works Week. Council Member Gladden seconded the motion which was approved unanimously. Lastly, Mayor Pro Tem Boatwright moved to approve the Proclamation in honor of Municipal Clerks Week, which was seconded by Council Member Phillips. There were ayes by all.

Mayor Fowler recognized Mr. Jim Garges of Mecklenburg County Parks and Recreation. Mr. Garges presented the County-wide Comprehensive 10 Year Master Plan via a Power Point presentation. Mr. Garges stated that the plan set the vision of where the County Parks and Recreation Department might go in the next ten years. Research was presented from focus groups along with responses to 7,000 surveys that had been sent out. The presentation addressed three key areas: conservation and stewardship, parks and greenways, and recreational programs and facilities.

The general direction of the group was to do something better than the national average by developing parks and recreational facilities close enough to residents so that no resident should have to travel more than a few miles to get there. Mr. Garges had hoped that the Mecklenburg County Master Plan was viewed as a vision and roadmap that provides the best possible system of parks and recreational services to residents using the resources that are available to the county. Mayor Fowler wished him luck in getting the support needed to get these projects started. Mr. Garges stated that he needed the support of the towns to push the county.

CONSENT AGENDA

The following items are included: a) *Set Zoning Public Hearing Dates;* b) *Audit Contract;* c) *NC DOT Sidewalk Agreement.* Mayor Fowler noted that there were no public hearings scheduled for June and that the price on the audit contract had been higher but was negotiated to a lesser amount. A motion was made by Council Member Gladden and seconded by Mayor Pro Tem Boatwright to approve the Consent Agenda. There were ayes by all.

PUBLIC HEARINGS

- A. ***Public Haring #1 – Conditional Use Permit for property located at 10500 Industrial Drive for Red Clay Properties to allow a Material Recovery Facility on the property for concrete recycling.*** Mayor Pro Tem Libby Boatwright moved to open the first Public Hearing, which was seconded by Council Member Jim Eschert. There were ayes by all. Mayor Fowler called for all those speaking on this item to come forward to be sworn in.

Town Planner, Travis Morgan, stated that the applicant, Jim Smith of Red Clay Properties was seeking a Conditional Use Permit for a material recovery facility to crush and recycle concrete and brick. Mr. Morgan submitted into evidence an Air Quality Permit, the site plan for the recovery facility to be located at 10500 Industrial

Drive, and nine letters and a signed petition received from residents opposing the project. Using the site plan, he pointed out that a mobile crushing unit would be located at the back of the site near a heavily vegetated area that would be maintained. The property to the south is zoned as Residential Mixed Use which does require a buffer area of at least 100 feet. The site plan also showed an optional berm that would screen any storage material and the installation of sidewalks, trees and street lights at the front of the property which is now required for the overlay districts recently adopted.

Mr. Morgan noted the two biggest issues with a facility of this type would be the dust and noise it would generate. The applicant, however, had submitted noise studies and an air quality permit showing that he is compliant. Staff recommended that the equipment not generate noise greater than 80 decibels which is still at a tolerable level. The noise studies submitted to staff noted that the noise of the machine whether idling or crushing is about the same. Water sprayers would be used to contain dust. Staff did not support the crushing of asphalt at this facility and suggested the following times for operation of the business:

7:00 a.m. until 8:00 p.m. on weekdays
9:00 a.m. until 8:00 p.m. on weekends

Mr. Morgan stated that a video with audio had been taken at their site off of Westinghouse Blvd. The video was taken at 300 feet from the machine, 200 feet from the machine, 100 feet from the machine and 50 feet from the machine. Mr. Morgan explained what was happening in the video as it was being presented to the audience.

Mayor Fowler called for questions and comments from Council members. Council Member Les Gladden asked what material was being crushed at the time of the video. Mr. Morgan responded that asphalt was being crushed because that's what was on hand at that time. He also acknowledged to Mr. Gladden that the owner knew they were coming out to video the process. Council Member Jim Eschert asked about the path leading up to the crushing machine. Mr. Morgan replied that it was mostly dirt but some portions of it were recycled concrete.

Mayor Fowler recognized members of the audience that wished to speak on the subject. Toi Warren of 106 Juanita Drive spoke first representing residents of the Franklin Park neighborhood. She stated that she had been sworn in and that it was ironic to listen to a Parks and Recreation presentation for more green space, followed by a request for a concrete recycling facility. She expressed concerns about the water being sprayed and the runoff as well as the dust and noise levels. She questioned the type of microphones used in the video as it didn't seem to pick up a lot of noise yet she feared that the noise would be louder than what was presented in the video. This was not the quality of life that she and her neighbors wanted and instead of home values increasing, she believed that a facility of this type would make home values decrease. She questioned why the owner would need two such sites so close to one another.

Sarah Thomas of 722 Brian Circle stated that she had been sworn in and that her

major concern was her health. Most of the people in her area of the neighborhood are aging seniors with health problems. She has respiratory problems and was recently diagnosed with asthma. She asked Council to please think about health concerns when considering this request.

Skip Norris of the Building Center stated that he owns the business located directly across the street from the proposed site. He has a completely paved site with a showroom for homebuilders and buyers alike. He is concerned about the negative impact the dust and noise would have on customers that visit the showroom.

Aaron Weltz stated he resides at 7311 Ricewell Road in Charlotte. He had been sworn in. He is the General Manager for Keller Crescent, the property directly adjacent to the property under consideration. His company employs a total of 105 employees and is a printing facility that also does packaging components for medical products for such companies as Johnson and Johnson and Schering Plough. The site has waste removal systems that draw in a lot of outside air. His major concern is with dust that the concrete crushing facility would generate. He is not satisfied that there would be sufficient dust suppression. He is concerned about particle size and distribution of the dust along with any special filters that might be needed. He asked what recourse his company would have if there was dust generated from the proposed facility. His final concern was an administrative one: sharing the same address as the applicant.

Heather Tutwiler of 330 Marine Way stated that she had been sworn in and represented the residents of the Traditions neighborhood. She stated that a petition was signed by 94 residents opposed to the recycling facility. One thing that no one else had considered was the noise from the trucks that would be going back and forth to the facility. Her property is already backed up to the railroad tracks and she vacuums everyday because of dust. She had researched the effects of dust and stated it was found to be a known carcinogen. She is concerned about what effect the exposure to dust would have on children and seniors alike.

Hegla Hess of 238 Juanita Drive stated that she had been sworn in and lived in the Franklin Park neighborhood comprised of homes and residents that had been there over 30 years, seniors in the Ridgely Green section and the newer Traditions section made up of all ages. They're a close-knit group that enjoys the tranquility and quality of life that Pineville offers them. They consider this facility to be heavy industrial and not appropriate for the area. With the severe draught that the county was in last year, she asked what would happen when there is no more water. She urged Council to vote against the CUP.

Bart Key stated that he had been sworn in and lived in Matthews, NC. He wanted to clarify a few things: that the machine was a dust-free machine, that the tree buffer and berm would also help contain any dust, and that the DOT had approved the use of recycled concrete. Mayor Fowler asked what his relationship to the applicant was. Mr. Key stated that he was helping with the project as a consultant. Council Member Les Gladden asked Mr. Key if he would want this type of facility within 1,000 feet of his home in Matthews. Mr. Key stated that with the proper tree buffering he would.

Mayor Fowler recognized Ian Williamson who stated that he worked for the company that supplied the machines to the applicant, Mr. Jim Smith. He stated that he lived at 715 India Drive in Kernersville, NC. The previous machines purchased in 2002, did not have the safety devices that the more modern machines now have and the older machine was replaced in 2007. These machines have 12 spray nozzles that are atomizers. They spray 8 gallons of water a minute into the air where the dust attaches itself to the water. He stated that the more modern machines do not make a lot of noise – most of the noise comes from the engine. Mr. Williamson provided additional information on the equipment in the form of a booklet which was presented into evidence.

Council Member Gladden asked if the machine would shut off automatically if the water supply was cut off. Mr. Williamson answered that the machine would not automatically shut off. Council Member Eschert asked how old the previous machine was. Mr. Williamson responded that it was six years old and that it did not have atomizers on it like the new ones do. The new machines are much more efficient. Council Member Phillips asked if the brochure that was handed out is also given out to potential customers and if the machine was advertised as “dust-free”. Mr. Williamson indicated that the pamphlet was made up by him for this presentation and was not given out as advertising and the machine was actually more of a “dust suppressor” than “dust-free”.

Mr. Smith introduced himself, stated he had been sworn in and that he resided in Waxhaw, NC. He stated that he had been crushing since 2001 and had trouble with bad employees in the past. A new program was implemented whereby employees would be terminated if water wasn't sprayed. He has six surprise visits a year and recently had two this year and passed both times. He admitted that dust had been a problem in the past with the start up and shut down of the machine but with new machinery and employees in place, things have improved greatly. He clarified that he has a main office in Hebron and that the property on Westinghouse Blvd. was for sale and that is why he is considering Pineville. He stated that it is better to recycle concrete than to have it buried in a landfill somewhere that could potentially make its way into the water supply. He wanted to let the residents know that there are two quarries in Pineville that produce more dust than his machine does.

Council Members asked several questions of Mr. Smith regarding his current operations. He stated that he had been using the new machinery for about 12-14 months and had been inspected six times in that timeframe with no violations. His water truck holds approximately 2,000 gallons of water which usually lasts a whole day but the crusher machine doesn't run all day. They also have some portable water stored in large plastic tanks. Eventually they would like to put in a well to use well water so they do not run out of water. His current hours of operation are Monday through Friday from 6:30 a.m. until 7:30 p.m. and Saturdays from 7:00 a.m. until 3:00 p.m. They do not work Sundays unless it is an absolute emergency.

He stated there were approximately 50-75 loads of crushed concrete leaving his facility each day using about 10 trucks per hour but no trucks are stored on site. He

has one or two wheel loaders and one or two tractors on site. Only one crusher would be on site – the one purchased in 2007 would be brought over from the Westinghouse location. When asked about large rocks that were seen on his property, Mr. Smith stated that there was a lot of debris left on the site when he arrived and that someone had deposited the rocks on that site. He intended to bury them in the berm, not crush them. His gate has a bolt and lock on it now so that no one could get in and dump additional material at his property.

Mayor Pro Tem Libby Boatwright asked if there was any quality control at the company – she wanted to know how long a problem could go on for until someone finally realized it, such as air quality issues. Mr. Smith indicated that as part of his in-house program, there was someone who was responsible for quality control. Mr. Smith also stated that he had bought the property last year knowing that he could perform this type of work on it but he could not submit his plans in time before the new overlay districts were adopted and that is why he was before council today.

Discussion continued with additional questions from Council regarding the assessment data pertaining to the machine, mobility of the machine and problems with OSHA. Mr. Williamson clarified that concrete was not considered a hard rock. It was considered soft as opposed to granite which was considered a hard rock. The noise level, according to the data distributed by Mr. Williamson, would increase when crushing hard rock. This prompted Council Member Phillips to ask again if hard rock was intended to be crushed at his site. Mr. Smith again answered that no hard rock would be crushed at the new site. He also stated that the highest pile of concrete they had was about 30 feet tall. He did not object to Council Members coming out to look at his current facility as long as he knew they were coming so that his employees would not turn them away. Mr. Smith added that the crushing machine did not have to move around a lot and that he never had any problems with OSHA.

Council asked again about violations, water capacity, and the boulders on his property. According to information Council Member Gladden had, someone asked Mr. Smith if they could unload some rocks onto his property and Mr. Smith agreed, conflicting what he said earlier that he did not know who unloaded them. Council Member Gladden asked Mr. Smith if the project were to be approved, would he agree in writing to pay fines for any violations committed, possibly \$10,000 for a third violation. Mr. Smith indicated he would agree to something but not a \$10,000 fine. Mr. Gladden again asked about the water capacity of the sprayers. Mr. Williamson clarified that there were actually 4 separate sprayers each spraying 8 gallons of water a minute. By Mr. Gladden's calculation, that would be a total of 62 ½ minutes of total spray time per truck which conflicts with what Mr. Smith said earlier about one spray truck lasting all day.

Mayor Fowler called for a motion to close the Public Hearing. Mayor Pro Tem Boatwright moved to close the hearing, which was seconded by Council Member Phillips. There were ayes by all. A short recess was called for by Mayor Fowler at 8:32 p.m.

The meeting resumed at 8:39 p.m. with Mayor Pro Tem Libby Boatwright motioning to open the second Joint Public Hearing. Council Member David Phillips seconded the motion and there were ayes by all.

B. Joint Public Hearing #2 – Proposed text changes to the Pineville Zoning Ordinance for changes to Section 2.6 relating to Conditional Uses. Zoning Director Kevin Icard stated that when the powers and duties of the Planning Board were changed, he had forgotten to change the corresponding text in the Pineville Zoning Ordinance as well. He reviewed the changes with Council noting that requests for Conditional Use Permits would no longer go through the Planning Board but through Council. An informational meeting was held and this was the public hearing to formally present the text changes; a Planning Board recommendation was still needed. There was no discussion on the change and a motion was made by Mayor Pro Tem Libby Boatwright and seconded by Council Member Jim Eschert to close the second Joint Public Hearing. There were ayes by all.

C. Amendments to the Town Code – Ordinance amending the Town Code at Chapter 26, Floods, pertaining to flood plain regulations as required by State and Federal Law. Town Administrator Mike Rose clarified that the next item on the agenda would normally fall under New Business, not under the Public Hearings section, but it was being included here to have a more consistent flow of related items together on the agenda. Planning Director Kevin Icard stated that an amendment was being made to the Town Code under the section entitled, “Floods”. Mr. Bill Tingle who is the Flood Plan Administrator for the county was in attendance to present the changes.

Mr. Tingle stated that in order for citizens to get flood insurance, the local community has to adopt a compliant flood plain ordinance and map. He noted that the last time he was in Pineville was in 2000 when new flood plain maps were introduced so it was time once again to update the flood plain ordinance and the maps. FEMA examines all flood ordinances to be sure they are up to date. A motion was made by Mayor Pro Tem Boatwright and seconded by Council Member Jim Eschert to approve the changes. There were ayes by all.

D. Joint Public Hearing #3 – Proposed changes to the Subdivision Ordinance submitted by the Town of Pineville to update items related to floodplain requirements in the town. Council Member Gladden moved to open the third public hearing. Council Member Phillips seconded the motion. There were ayes by all. Kevin Icard stated that an informational meeting was held previously for a text change to the Subdivision Ordinance relating to floods. What Mr. Tingle just presented were the changes incorporated into the Subdivision Ordinance. There was no discussion and a motion was made by Council Member Gladden and seconded by Mayor Pro tem Boatwright to close the Public Hearing. There were ayes by all. Mr. Icard concluded with an announcement that both the Planning Board and the Board of Adjustment would be meeting on May 29th.

OLD BUSINESS

(None)

NEW BUSINESS

A. Minimum Housing Code Amendment – Proposed amendment to the Town Ordinance at Chapter 28, entitled, Housing. Planning Director Kevin Icard stated that our ordinance regarding Minimum Housing Codes was sparse and that the requirements needed to be strengthened. He proposed to mimic Charlotte’s requirements where the Code Enforcement Officer can monitor and enforce the requirements. He introduced Pineville Code Enforcement Officer, Aaron Parks.

Mr. Parks stated that he is currently able to enforce minimum housing requirements on dwellings that are less than 20,000 square feet and that a Mecklenburg County Building Inspector would need to be called in for situations over 20,000 square feet. Town Administrator, Mike Rose, added that the town was talking with Charlotte and their attorneys to develop ordinances for larger commercial establishments.

Libby Boatwright asked if Mr. Parks was authorized to go into a dwelling and inspect it. Mr. Parks stated that he would need to get an administrative warrant to go into the home if the resident refused to let him in but he always asks permission first. He has 24 hours to serve the warrant. Jim Eschert wanted to know how long a resident has to fix the house to which Mr. Parks responded that owners are given 30 days to come into compliance. Findings of Fact are then presented and the owner has 30 more days to comply. If they do not show up for a hearing, the Findings of Fact letter goes out with civil penalties attached. If they still do not respond, the case is taken to court to have the dwelling demolished.

Mr. Icard added that they intended to do a field study to identify potential houses not meeting the standards. A list would be drawn up and each would be inspected and treated in the same manner. Details of responsibilities would have to be worked out as yet. Hearing no further discussion, Council Member Gladden moved to approve the amendments to the Minimum Housing Ordinance, seconded by Mayor Pro Tem Boatwright. There were ayes by all.

B. *Interlocal Agreement with Mecklenburg County – for Solid Waste.* Mike Rose stated that the town had an agreement with the county since 1989 to allow us to dump waste at their facility. This agreement was being revised to go through June 30, 2028 with major changes planned for the facility. The agreement would allow us to continue to use their facility with the option to terminate the agreement with 6 months notice. Mr. Rose noted that the county would in turn sell recycled material and make money. It would not hurt the town financially, however, if we were to go with another waste hauler. Mayor Pro Tem Boatwright motioned to continue the agreement, which was seconded by Council Member Phillips. There were ayes by all.

C. *Staff Update –1) Memorial Day Dedication; 2) Town Hall Day Schedule; 4) Budget Workshop and Public Hearing Schedule* - Town Administrator, Mike Rose asked Terie Davis to give an update on the Civic and Cultural Arts Center of Pineville. Ms. Davis updated council on the art festival that was planned at Lake Park on Saturday, May 24th and the meeting they had with CMC who agreed to sponsor them. The Compass Group, a food service organization had also offered to sponsor them. They have formed their first Advisory Board with representatives from the Compass Group and Chris Hummer from the hospital as the first official members. They had also met with Kristy and Mike to interact and support each other and plan to meet with members of the James K. Polk site as well. She informed the group that their website was up and running.

Mike Rose reminded Council that the Memorial Dedication Service for Pineville veterans was scheduled for Sunday, May 18th, Town Hall Day was June 4th, and two Budget Workshops were planned for May 20th and May 22nd.

ADJOURNMENT

There were no additional comments and a motion was made by Libby Boatwright and seconded by Les Gladden to adjourn the meeting at 9:46 p.m. Ayes by all.

Barbara Monticello, Town Clerk

George C. Fowler, Mayor