

THE FOUR HUNDRED AND THIRTY EIGHTH SESSION  
OF THE BOARD OF ALDERMAN  
VILLAGE OF ALAMANCE  
SPECIAL MEETING  
OCTOBER 8, 2014 – 7:00 PM

Present: Mayor Bundren, Mayor Pro Tem Tichy, Alderman Clemmons, Alderman Sharpe, Alderman Slaughter, Alderman Gregory and Clerk York.

Absent: Alderman Crouse

The Board of Aldermen met in special session to consider rezoning 2390 Woody Lane.

Alderman Clemmons gave the invocation.

The first item of business concerned Brookstone Drive. Clerk York reported that the Planning Board had approved the plat for Lot 1 of Phase 5A. After speaking with Kristin Foust, Clerk York is fairly confident that they want to build a spec house there. Mrs. Foust told Clerk when they spoke that it would be a residential home. After talking with her some more, Clerk York understood this to be a spec house, with a real estate office. Mayor Pro Tem Donald Tichy observed that the real estate office is a problem. Dan Tichy, a member of the Planning Board, commented, that at the Planning Board meeting, they just looked at it from a plat perspective. They approved it on that notion. They did not take into consideration what is being built; just that it can be built on. It is zoned R15. It is big enough for a house to fit onto it. It will meet all the offsets. As President of the Homeowners' Association, Dan Tichy stated they he really didn't like the way this was going. He doesn't understand why it has gone from Phase 5, Meadows and Estates, to Phase 5-A, B, and C, to now one lot being platted. It goes against everything that he thought and assumed from the beginning. Mayor Bundren asked Attorney Koonts if this was out of the ordinary.

Attorney Koonts commented that he didn't know if this was ordinary or not. He spoke to their engineer, Vince Townsend, this week. Attorney Koonts has looked at the plat, too. He did not have any changes to the plat. Attorney Koonts told the Mr. Townsend he needs to be sure that somebody has looked at the restrictive covenants in the subdivision, and if there is an architectural review committee. The lawyers for the home owner's association should review it, so that they know what they are doing. If something gets started out there, that doesn't meet those requirements, they will have a mess, from day one. It will make it more difficult as the Board goes through the process. Any time a large subdivision is done, there are always judgment calls that have to be made. It is much better to start off on a good foot, as opposed to a bad one. It is not the engineer's job to check the restrictions, but he assured Mr. Koonts that they were checking into that. It doesn't sound like they have communicated with the Homeowner's Association at all. It meets the requirements of the subdivision ordinance. This is what the Board reviews. It is an administrative duty. It has all the setbacks and square footage. Sometimes the law is reactive. If they try to use it in some way that is not permitted in R15, then there will be enforcement action. Mayor Bundren thanked Attorney Koonts. Alderman Clemmons made the motion to approve the plat. Alderman Gregory seconded the motion. The motion passed unanimously.

The next item of business, and the reason for the special meeting, was consideration of the rezoning of 2390 Woody Lane to Mixed Use. Mayor Pro Tem Tichy spoke for approving the rezoning to Mixed Use. He has been to the property, and driven around the neighborhood. The area around it has more business than residential use. He referred to the map, pointing out Quality Mechanical, the site under consideration, the cable installation site, another 2 commercial sites, and a machine shop. Then he pointed out two houses, and a third house. The area is more commercial use than residential use. Mr. Kosmos reported that they have done a sound check, and that Josh had no complaints. Clerk York reported that he also had received no complaints. Mr. Kosmos has had two other events. Mayor Pro Tem Tichy observed that this falls under the county's noise ordinance, and is not a problem of the Board. A farm operation is noisier than a party, at times. Mr. Kosmos added that this is just a Saturday issue. Mayor Pro Tem Tichy observed that if this is zoned MU, Mr. Kosmos could have an event any day of the week. It is what it is, in the neighborhood. This is what the Planning Board saw, when they gave it an unconditional recommendation. Mayor Pro Tem Tichy summarized that he looks at the land use, and it is an MU area. He thinks the zoning request should be approved, based on what is around there. Most of the neighbors had no objections, once the changes had been made. Actually, there wasn't anyone who objected, as long as there was communication. If the Board did end up going with a special use permit, the only restriction that Mayor Pro Tem Tichy feels comfortable with is the hours of operation. The Board does not have the right to do noise ordinances out in the ETJ. Noise is not particularly a zoning issue, it's a quality of life issue. That is addressed by the county, out there. The Board does not have its own noise ordinance, it uses the County's ordinance. Mayor Pro Tem Tichy is not comfortable with singling out this one property for a different noise standard, than applied everywhere else in the Village.

Alderman Sharpe stated that she does not object to what Mr. Kosmos wants to do. Her concern is what happens if Mr. Kosmos should decide to move. Then, anything could come in there. She would rather see a special use permit. Mr. Kosmos would have the privilege to do what he wants to do, but the next person would have to come in and get there business idea approved.

Mayor Pro Tem Tichy added that, long-term, the Village needs to look at zoning. They just have a generic place hold on the Village, right now. Mayor Bundren stated that the Village does have a long range plan. Mayor Pro Tem Tichy responded that he has never seen it. That pre-dates him, and he commented that he would like to see the plan. His impression, after talking with Clerk York, is that the entire ETJ is already zoned. Clerk York stated this is correct. Mayor Pro Tem Tichy understands that, basically, the plan is not to allow industry anywhere within the Village, or the ETJ. Mayor Bundren explained that the plan allows mixed use along the corridor of the new, proposed bypass. Mayor Bundren asked that Clerk York share the Land Use Plan with the Board. There was a committee from the ETJ that met with the Board, as well, to formulate the Land Use Plan. This was done early, in the year 2000, when she became Mayor.

Alderman Clemmons asked Attorney Koonts to speak to the Mixed Use zoning, should Mr. Kosmos no longer own the property. Attorney Koonts stated that the zoning stays in place, no matter who owns the property. If a new owner comes in, they could apply to have it rezoned back to RA, or use it for any of the other mixed uses that are allowed under the ordinance. Alderman Clemmons asked about the other mixed uses that are allowed. Attorney Koonts provided a list: advertising shops; antique shops; auto servicing shops; beauty shops; single family dwellings; government office buildings; by special permit: home occupations, incidental; offstreet parking and loading areas; professional offices; printing shops; by special permit: public utility substations and utility towers; service stations; upholstery shops. Alderman Clemmons asked about the definition of special use permit. Attorney Koonts replied that, in the chart, the uses are either P for "Permitted" (they don't have to apply) or S, which requires a special use

permit to do home occupation, incidental or public utility substations, or utility towers. Even if it is zoned MU, then applicants have to come in for a special use permit. In home occupations, incidental, a special use permit crosses all zones, whether R15, R20, RA, H, or MU. Alderman Clemmons asked, if a car repair shop was put out there, and lots of cars were placed out there, whether the county would have any control over that. Attorney Koonts said this would fall under the same guidelines as any auto servicing shop that was in the Village, or in the ETJ. The only thing that could apply would be a junk car ordinance, or something like that. He hasn't looked to see if the Village has any specific restrictions on auto service shops. To meet the zoning, they would have the same restrictions that are in the town. Alderman Clemmons stated that his concern is what's happened. Attorney Koonts responded that one of the difficult questions faced is that there is an area zoned RA, but the actual use of it is clearly mixed. There are a variety of businesses that have cropped up out there, that didn't have to go through any process. They have just developed, under the radar. Some of them are in the ETJ. Mayor Bundren noted this happened prior to the zoning moving out that far. Attorney Koonts observed these things do happen in RA zones, because they are holding areas. There are auxiliary uses, because there is never a point where they have to come to the town to get any approval. Nobody asks, and they are there for 10 years, until it becomes a problem. Alderman Clemmons spoke, saying he has given this a lot of thought, especially after the last meeting. Before, he thought the special use permit was the answer. He has moved over to Mayor Pro Tem Tichy's point of view. You have to look at what is going on there. It's mixed use. He worries that it will be sold and that something, not done right, would be a detriment to the community. Then again, Mr. Kosmos and his wife's family own the property, and he can't imagine them doing anything to hurt them. After listening to Mayor Pro Tem Tichy's points, Alderman Clemmons supports the mixed use zoning.

Alderman Sharpe stated that, after hearing what can be out there, it is a little clearer.

Mayor Pro Tem Tichy added that, in the future, the Board could look at moving something like auto shops into a special use permit, where they could place restrictions on the use. He would not be averse to updating the zoning, to require a special use on auto servicing, or anything else in that class. Attorney Koonts suggested the Board needed to work on the chart.

Alderman Slaughter commented that if they give Mixed Use to that property, then the people beside that property may decide they want mixed use. Just because there is mixed use all around them, it becomes mixed use. It was there before. Alderman Sharpe said that she has looked at all of this. It has really brought the neighborhood down. Mayor Pro Tem Tichy reminded that this was out of the Board's control, under any circumstances. Alderman Slaughter stated that the Board has control of what is in the Village. If they do that, she lives right beside the convenience store. Then, she decides she wants her property to be mixed use, because there is a mill here, a grill here, a store here, and other things. Where does it stop? She still feels uncomfortable with mixed use. Mr. Kosmos asked if Alderman Slaughter would have to come before the Board to change her property to mixed use. There was consensus that she would have to apply like everyone. Alderman Gregory said she could do that right now, that was why the Board needs to look at the chart. Alderman Slaughter asked why they couldn't give the Kosmos' special use and look at the chart, and make some decisions, before they just do mixed use. Attorney Koonts said that sometimes a special use permit gets thrown in. The question is, if the Board goes the route of special use, are there going to be restrictions put on it? That is why special use permits are out there. Attorney Koonts was in Elon recently doing one. They have a square footage requirement on commercial buildings of 30,000 sq. feet. His client wants to build a 50,000 sq. foot building. The special use was, will he be allowed to go to 50,000 sq. feet and make him do "x-y-z" along the way? It's not just a permitted use. Particular types of uses need some guidelines and parameters around them. The question is, if the Board does special use, what are these going to

be? What restrictions will the Board place on the use? The use that Mr. Kosmos has, is not anywhere in the Village chart, which makes it difficult. Guilford County's ordinance has a much bigger chart, but you have to fall under one of those categories. The Board is figuring this out, as you go along here. There is not a perfect answer.

Mayor Pro Tem Tichy asked if the Board has the ability, under the ordinance, to do a special use permit on the property. Attorney Koonts answered there would have to be an amendment to the ordinance. If the zoning is turned down, and if a special use permit application is made, (an application would need to be created), then there would have to be an amendment to the chart which lists this type of use, as special use option under MU or under RA. There would be the process of applying for a special use permit. It's a different type of hearing. A special use permit is a quasi-judicial hearing. Evidence has to be presented. Factors have to be reviewed, regarding the safety of the area, the increase/decrease of the value of the area, how it affects the long range plan, and whether it meets the requirements. There are four factors that have to be found. It's more burdensome on the applicant, certainly, for a special use permit. They can't just testify that they are not harming the value. At the one Attorney Koonts did earlier this week, they had an architect, two engineers, and an appraiser present. You have to have people that have the credentials to give the testimony. It's definitely a higher burden on the applicant. The Board would have to amend the existing ordinance to make this a special use permit. Clerk York asked how long this process would take. Attorney Koonts replied that the special use permit process goes pretty quickly. Typically, it does not go to the Planning Board. The amendment to the zoning ordinance would take more time. The Village's ordinance is great on definitions, and light on procedures. What he is used to seeing, is not all in there. It's not going to happen by the end of the month. Clerk York pointed out that the amendment would have to go before the Planning Board, and then the full Board. Clerk York asked if the change to the zoning ordinance would have to be advertised. Attorney Koonts observed that, typically this is a 30-day notice. That would put this into 2-3 months. What is before the Board now is the zoning, whether or not it is MU. The real question is, when you look at the surrounding uses of the property, and you can consider those inside and outside of the Board's control, can you decide if MU is an appropriate use for that land. Is it appropriate or not? If you're between a mill and a convenience store, would MU be appropriate? You'd probably say, yes, it would be. It could be. This is without really evaluating what that particular applicant is going to do with it. As happens, you can get it rezoned and the next day someone wants to buy it. The way you were going to use it all changes. The new person can come in and use it any way, under MU. The real question is, is MU appropriate for that area or not? That is the question. It either is, or it isn't. If it isn't, then, if the applicant wants to go through the special use permit, they will work through that with him. Attorney Koonts will do his best to get this before the Board as quickly as possible.

Mayor Pro Tem Tichy made the motion to rezone the property to MU, as per the application. Alderman Clemmons seconded the motion. The motion passed 3-2. Alderman Gregory joined Mayor Pro Tem Tichy and Alderman Clemmons in voting for the motion. Alderman Sharpe and Alderman Slaughter voted in the negative.

Mayor Bundren thanked everyone present. Mayor Pro Tem Tichy made the motion to adjourn. Alderman Clemmons seconded. The motion passed unanimously and the special meeting was adjourned.

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Cathera R. Bundren, Mayor

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Ben York, Village Clerk

