



KURE BEACH PLANNING & ZONING COMMISSION  
REGULAR MEETING ♦ FEBRUARY 2, 2010

A regular meeting of the Kure Beach Planning and Zoning Commission was held on Tuesday, February 2, 2010 at 7:00 p.m. A quorum was present.

MEMBERS IN ATTENDANCE

Members – Jim Schutta, Alan Votta, Tim Bullard and Craig Galbraith

MEMBERS ABSENT

STAFF IN ATTENDANCE

Building Inspector John Batson  
Commissioner Liaison Barry Nelder  
Secretary Aimee Zimmerman  
P&Z Attorney Holt Moore

CALL TO ORDER:

Chairman Galbraith called the meeting to order at 7:05 p.m.

APPROVAL OF MINUTES

January 5, 2010 Special Meeting  
January 5, 2010 Regular Meeting.

Agenda needs to be amended to reflect that Craig Galbraith is now the Chair of the P&Z Committee.

The candidates should be listed in the order they were interviewed. Eric, Anne, Jim and Tony. It should also mention that Mayor Lambeth and Commissioner Nelder and Building Inspector John Batson were present.

As to the Regular Meeting, it should indicate that Member Galbraith is the Chair. Also, it should indicate that Mayor Lambeth and Commissioner Nelder were present.

In the conversation with representatives from Progress Energy, Chair Galbraith indicated that his final question had to do with the next step the Town should take. It was stated that Town would have to indicate a specific area for consideration which would then be submitted to Progress Energy for cost analysis. The next step was up to the Town.

Under new business, on page 5 of 6, the only reference to committee comments was from Member Galbraith one who commented prior to the recommendation of appointing Jim Vattr. Member Schutta indicated that he felt it was a tough choice but that Jim Vattr was the best choice. All members made similar comments and that should be reflected in the minutes. It was, in fact, a unanimous vote.

**ACTION: Member Votta made a motion to approve the minutes from the January 5, 2010, Special Meeting, as amended. Member Schutta seconded the motion. The motion carried unanimously. Member Schutta made a motion to accept the minutes from the January 5, 2010, Regular Meeting as amended. Member Votta seconded the motion. The motion carried unanimously.**

**OLD BUSINESS:**

1) Discussion on grants available to Town for purposes of burying power lines.

- There was an email exchange regarding how these companies were contacted and whether the Town was charged for these efforts.
- The Town Clerk indicated that this company was willing to help in looking for available grants.
- Chair Galbraith suggested that the Commission ask for guidance from Town Council as to whether they would like to take over this endeavor or whether the Commission should continue their efforts.
- Marlow and Company was contacted by Town Clerk Pralle and they responded directly to Mayor Lambeth.
- Member Schutta agreed that Council should provide guidance to the Commission.
- Chair Galbraith again recommended this matter be tabled and that P&Z should ask council if they want to take the lead in continuing this conversation yet state that it seems like a good opportunity related to appropriations and grants.
- Building Inspector Batson reiterated that there would be a minimum of 1200 feet recommended before it would even be considered. He suggested that perhaps the B1 district should be addressed first.
- Commissioner Liaison Nelder joined the meeting and was brought up to speed on the discussion.
- Chair Galbraith indicated that someone should continue the conversation with Marlow and Company.
- Member Votta stated it was his opinion that Council should make the decision on how to proceed. Member Bullard agreed.

**ACTION: Member Schutta made a motion that this issue be tabled with the recommendation that comments be made for clarification and responsibilities from Council on procedure. Member Bullard seconded the motion. The motion carried unanimously.**

2) Amendment to sign ordinance

- At the last meeting, issues regarding amortization were discussed.
- Chair Galbraith recommended that this issue be tabled pending discussion regarding the economic studies.
- Member Votta stated that at the last meeting he mentioned that this pertains to commercial signs and not just those in the B-1 and the list of sizes pertained only to the B-1 and Building Inspector Batson was charged with obtaining measurements on the other signs. Also, he had mentioned that the percentages on changeable copy needed to be addressed. That research has not yet been completed and thus, this issue should be tabled.

**ACTION: Member Votta made a motion to table this item until the March meeting. Member Schutta seconded the motion. The motion carried unanimously**

3) Zoning Overlay District

- Two applications have been received but there is no other information available.
- There are some recommended changes regarding appointment process which might need to be decided prior to selecting a committee to work on this item.

**ACTION: Member Schutta made a motion to table this issue until the committee membership issues are resolved. Member Bullard seconded the motion. The motion carried unanimously.**

4) Impervious Surfaces

- This item is on the agenda for informational purposes only.
- Public hearing is scheduled for February 16<sup>th</sup>.
- Member Schutta asked how this ordinance amendment would affect a lot that is at the end of a block. It was stated by Building Inspector Batson that the lot would not be affected as far as the driveway but that he could still have the 15% of the setback covered.

5) Townhome Definition

- Chair Galbraith asked for clarification regarding property lines referring to a line that separates the two units from each other or the building being separated by property lines from other buildings. Attorney Moore took it to mean that the wall between the units was what he considered the property line.
- Attorney Moore stated that the property line could continue on to split the yard as well or it could end at the end of the building.
- Attorney Moore did not see any barriers in the two different scenarios of a duplex or townhouse.
- Chair Galbraith requested clarification regarding commonly owned land and whether one could have a duplex on commonly owned land. For instance, you could have a

duplex on commonly owned land, such as our condos are, in that the parcel is owned by different property owners and there is a homeowners association which is responsible. Can this be called a duplex?

- In NC, Attorney Moore did not find anything in his research indicating that a 2-unit structure could not be called a duplex.
- Chair Galbraith stated that if that is what's followed and if they changed Condo to Duplex, they really wouldn't have to change anything as to ownership structure, that would assist in financing and insurance purposes, is there any cost associated with it. Moore stated there is a unit owner's act in the legislature as well as the condominium act. There's a statutory framework available without it having to be designated a condominium.
- Attorney Moore suggested that Attorney Calder address this issue for the Commission for clarity.
- If P&Z changes the definitions, and says a duplex is a two unit, attached structure whereas a condo is three or more, if they change all the documents in KB to reflect that and put in a definition of townhome, would that just be a wording change and nothing else. Attorney Moore indicated he did not believe so.
- Only in Kure Beach Village are their townhomes. BI Batson stated that he would have a problem if asked to separate the structure, would this be a problem.
- Attorney Moore proposed that either scenario could be considered a townhome but that they all could really be called a duplex without any legal ramifications.
- Chair Galbraith stated that a duplex has common ownership of the land between the owners whereas there is no individual property ownership in a condominium.
- Building Inspector Batson questioned how that would be deeded.
- Attorney Moore stated that there would be a plat with two different footprints and the yard. This does not create a problem with the minimum lot size.
- The gentleman who addressed the Board last month stated that by calling his residence a condominium it was causing problems regarding financing. There was some confusion, however, as to what he was questioning.
- The definition of condominium can be described as three or more units, town home is 2 attached units with individual plots under the units and duplex is 2 attached units with common ownership of everything.
- Building Inspector Batson questioned how this would be deeded. How can he instruct the attorneys and developers to prepare their documents appropriately? Although it's a 2 unit condo, it will be called a duplex. Attorney Moore asked if these lots, when divided, would satisfy the minimum lot requirement. Building Inspector Batson stated no and that it would not be approved. Building Inspector Batson questioned the declarations.
- Duplex title is more of a generic title according to Attorney Moore. He stated that it could also be called a townhouse with all the declarations in place.
- Commissioner Nelder questioned how this would solve the guy's problem. Due to our rules, calling his home a condo and owning more than 30% of it denied him financing and insurance. Member Votta indicated that the banking regulations changed and that is what is causing the problem.

- Member Votta asked what the code difference was. Townhouse has 2 hour firewall whereas condos only require a 1 hour firewall. If it's called a duplex, leaving the common land underneath would remain a 1 hour firewall.
- Member Votta recommended that it be changed to duplex with common area underneath, tell guy about this and ask him to bring that to his attorney for consideration and come back to the Board with a recommendation. Member Votta asked Building Inspector Batson to effectuate this process.

**ACTION: Member Bullard made a motion to table this issue and requested that Building Inspector Batson contact the homeowner from the last meeting and ask that he return to the Commission, with his attorney, for next month's meeting. Member Votta seconded the motion. The motion carried unanimously.**

6) Commission Vacancy

- This item is listed for informational purposes only.
- Member Bullard had been out of town and asked for clarification.
- Chair Galbraith indicated that he presented this recommendation to council and that there was some lively conversations about
- Chair Galbraith indicated that it was tabled due to proposed changes for committee membership that have tied up this issue. Committees have been asked to provide feedback. There is also a question regarding offering one or two recommendations, whether council should appoint it, whether it satisfied the open door policy.
- For the record, Member Bullard, stated that nothing different had been done this time than any other time since he has served on the Board other than meeting in the kitchen which was due to the conference room not being available.
- Member Schutta indicated that he expressed this to Council.

7) Vice chair appointment

- This matter was tabled from the January meeting.
- In the past this position was always given to the newly appointed member yet that member has not yet been selected. Thus, this matter could be tabled until the March meeting.

**ACTION: Member Bullard made a motion to table this issue. Member Schutta seconded the motion. The motion carried unanimously.**

**NEW BUSINESS**

1. Economic Development studies

- Member Galbraith's understanding was that the Council wanted comments from the individual committees on these studies. Member Schutta believed that Council wanted a recommendation as to how the committees would feel Council should proceed based on the different studies. These comments will be used for the March meeting.

- There is a meeting on February 10<sup>th</sup> at 2:00 p.m. There will be a discussion of the different reports.
  - Member Votta suggested SLAP take over the parking study and that the Economic Development Committee deal with some of the others. Chair Galbraith stated that the NC State report and the B1 report should be looked at by the Overlay District Committee.
  - Member Votta stated he was at the last meeting and they are moving forward with implementing the recommendations in the reports. Member Votta also believed the economic development committee needs to be involved more heavily in this process.
  - Chair Galbraith stated that clearly there are elements in both studies that can be used for a form based planning project in the overlay district.
  - Member Schutta believed that the Town Council needs to say that if we want to change the B-1, the Town has to begin to make those changes. P&Z made a recommendation years ago to take K Avenue by the pier and to start modifying that. The Town needs to figure out what they are willing to invest and change and take the overlay committee and ask what needs to be done, deal with common signage, beautification, etc. The Town must start this process. A plan needs to be created.
  - Chair Galbraith reaffirmed Member Schutta's statement and stated that P&Z attempted to start this process with the sign ordinance amendments. Is Council ready to accept a radical change in the B-1 district? If they won't take that innovative step then P&Z is wasting their time.
  - Three members indicated that they would be able to attend the meeting.
2. Comments regarding the proposed changes in the committee membership procedures.
- Commissioner Nelder stated that the revisions in the agenda packet are not the current ones. Apparently Council has made additional changes.
  - Member Bullard recommended that this item be tabled.
  - Chair Galbraith questioned the issue of ownership rather than residency. By allowing people to own property and serve on committees can be problematic rather than those being residents. Property owners take a different perspective in terms of their recommendations which are there to maximize the value of their property and in no way take into account the residents. As an example, Chair Galbraith stated that the 35' height limit was put in place by the residents and represented what they wanted to see in their town rather than a property owner from some other state that really do not care about the height limit.
  - Chair Galbraith also questioned persons with fractional ownership of a property.
  - Member Bullard stated that the original P&Z charter stated that one person needed to be on the Board that was in the ETJ.
  - Chair Galbraith and Member Schutta believed that the State Statutes indicated that P&Z (or whatever it is called – commission working together for planning of town) that they should be residents of the Town.
  - Commissioner Nelder indicated that this is the same part of the discussion that came up at the last BOA meeting. In the Town Ordinances, Chapter 19 refers to

BOA and Chapter 2 as to P&Z. In both of those sections it states "citizen" and "resident". Commissioner Nelder expressed the same concerns.

- Chair Galbraith was willing to write an economic opinion to Council on this issue.
- Member Bullard stated that Section D states that incumbent committee members will be interviewed at the regularly scheduled meeting. He believes the interviewees are entitled to a private interview as has been done that way in as long as he has served on the Commission.
- Chair Galbraith indicated that when the School of Government official addressed the Commission, he wasn't entirely sure of the procedure. Chair Galbraith indicated that the interviews should be held privately yet the discussion of the appointment should be done publicly.
- Chair Galbraith also took issue on recommending more than one person for appointment. It must be uniform. It is easy for the committee, especially this one, to see which candidate is most qualified for the appointment. The Commission wants to make sure they have the highest qualified applicants. He stated that perhaps council should do the interviewing and appointing of the members, as it is in other areas. He stated that it then becomes a political process where the Committee is made up of people who share the same political values. The Jeffersonian notion of democracy is to appoint the best qualified person, people with opposing opinions, which, following discussion, result in the best decisions. There is also a Stalinist notion of democracy which is similar to having Council appoint the committee members. By asking for two recommendations it makes it look political.
- Member Schutta recommended that Council should just appoint the members to the Commission. Even if the Commission forwarded a recommendation of two persons, council would pick who they wanted rather than the most qualified. He further recommended that under committee membership, we should have a list of minimum qualifications for members. There should be requirements which are also revisited periodically.
- Chair Galbraith took issue with sending recommendations to council that are not necessarily the most qualified candidates. It either has to be the most qualified person or make it a political process.
- Member Votta stated that there needs to be a trust in the Committees.
- Member Votta stated that he has document from February, 2008, where council adopted process for filling vacancies. Will the new procedure replace this policy? According to this policy, P&Z followed the procedure to a "T". Member Votta thought perhaps a blanket procedure should not apply to the quasi-judicial committees such as P&Z and BOA.
- While the Commission is going to recommend that property owners should not serve on quasi-judicial committees, Chair Galbraith did not have issue with them serving on other committees.
- Chair Galbraith commented that, regarding the open meetings law reference in Sec. VII (B), it seemed like a slap in the face. He stated that this Commission has bent over backwards to make sure they comply with the policies and procedures.

Commissioner Nelder stated that this issue of the open meetings law is sent down to the Town by the State legislators.

- Member Schutta stated that in his opinion that if you had a closed meeting for the purposes of interviewing people that the state would not have an issue with it. Any employee in the town who has a personnel review should be open? He believes we should ask the state for clarification.
- Sec. VII (D), Chair Galbraith indicated that this is only appropriate for interviewing applicants and it is incumbent upon the Town to find out what the interview process, under the state laws, are.
- Attorney Moore stated that he has an issue with VII (D) since it is a blanket prohibition, there is a problem with the Board of Adjustment as they must be very careful about closed meetings as they must be afforded the opportunity to confer with their attorney. With a blanket policy, that would not work for BOA. Chair Galbraith believed VII (D) should be removed as VII (B) is sufficient.
- Chair Galbraith summarized comments:
  - Quasi-Judicial committees of P&Z and BOA should be dealt with separately and should be referenced back to current policy.
  - Unanimous opinion that the recommendation under II (A) any KB resident or person owning property that owning property should be struck from the proposal.
  - Either one applicant, the highest qualified, should be recommended to Council or Council appoint the committee members and make this a political issue.
  - Add as item II (D) that a committee put together a list of minimum qualifications for committee members and that that list be updated periodically.
  - Section VII (D) should be eliminated as it is redundant and that Section VII (B) is sufficient.
- Chair Galbraith stated that he does not have a problem with fine-tuning the procedure. Chair Galbraith stated that what was in effect when they went through the process was exactly what the February, 2008, policy stated. Member Votta stated that P&Z already had a policy, no matter how vague, in effect and it was very cut and dry. Member Bullard agreed.

### MEMBER ITEMS

Chair Galbraith stated that he asked Council to identify to what extent the email retention issue will affect committees and committee members. Do intracommittee email communications fall under these policies? Commissioner Nelder indicated there are new courses at Chapel Hill coming up to address these issues. He will research and report back to the Commission.



ADJOURNMENT:

**ACTION:** Member Bullard made a motion to adjourn the meeting. Member Schutta seconded the motion. The motion carried unanimously.

Meeting was adjourned at 8:40 p.m.

  
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Craig Galbraith, Chairman

  
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Aimee Zimmerman, Secretary