



**OAK RIDGE BOARD OF ADJUSTMENT MEETING
OCTOBER 14, 2010 – 7:00 P.M.
OAK RIDGE TOWN HALL**

Members Present

Wendell Ott, Chairman
Jim Kinneman, Vice Chair
Nancy Stoudemire
Beth Walker
Alex Papp, ETJ Representative
Jay Cumbus, Alt

Members Absent

Danny Yanusz, Alt

Staff Present

Rachel Hawley, Town Clerk

1. CALL TO ORDER

The October meeting of the Town of Oak Ridge Board of Adjustment was called to order at 7:00 PM by chairman, Wendell Ott.

2. ROLL CALL

The roll was called by Town Clerk, Rachel Hawley.
Beth Walker, Jim Kinneman, Wendell Ott, Nancy Stoudemire and Alex Papp are seated. Alternate, Jay Cumbus is also in attendance.

3. APPROVE AGENDA

Jim Kinneman offered a **motion** to approve the meeting agenda. **Beth Walker** seconded the motion which then passed unanimously (5-0).

4. APPROVE MINUTES OF SEPTEMBER 9, 2010 MEETING

Alex Papp offered a **motion** to approve the minutes of the September 9, 2010 meeting as presented. **Nancy Stoudemire** seconded the motion which then passed by unanimous vote (5-0).

5. OTHER BUSINESS

Review applications and vote for the nomination of two applicants to be appointed to the Board:

-There are two vacancies in connection with the expiration of Mr. Ott and Mrs. Walker's terms.

-Deborah McGinnis is an applicant in addition to Mr. Ott and Mrs. Walker who have both indicated a willingness to serve an additional term.

-Mrs. McGinnis speaks to the board about her previous volunteerism, her job, her desire to serve and why she and her family chose to relocate to the area.

-Alex Papp asks why she wants to serve.

-Mrs. McGinnis wants to be more involved in the community and this opportunity presented itself in a timely manner.

-Nancy Stoudemire asks if she would have an interest in serving on the Planning & Zoning board because of her interest in determining growth.

-Mrs. McGinnis indicated that she would prefer to get her feet wet slowly as she does have other obligations with other organizations.

-Jim Kinneman asks if the applicant is aware that the Board meets infrequently.

-Mrs. McGinnis indicates that she is aware of this.

-Wendell Ott asks if the Board of Adjustment was her first priority or if she noticed the vacancy on this board first.

-Mrs. McGinnis indicates that she prefers this board and has read and studied the Board's meeting notes.

-Jim Kinneman mentions that there will be situations in which personal preference may be in opposition to the rules/ordinances of the town. Is she comfortable with this?

-Mrs. McGinnis indicates that she is comfortable making decisions without personal bias.

(Mrs. McGinnis exits the meeting after her interview to fulfill a family obligation).

-Wendell has a copy of the resolution passed to establish guidelines for appointment of applicants to board vacancies.

-Suggests that in adhering to these guidelines, that the Board rank the three candidates for the two positions but Beth and Wendell should recuse themselves for the decision and ask alternate, Jay Cumbus, to sit in making the decision.

-Wendell and Beth step off of the dais and Jim Kinneman takes over to chair the meeting.

-The first step in the process of nomination is to determine if Mrs. McGinnis is considered a satisfactory and qualified applicant for the position.

Nancy Stoudemire makes a **motion** that Mrs. McGinnis is a satisfactory and qualified applicant for the vacant positions on the Board of Adjustment. **Alex Papp** seconds the motion which then passes unanimously (4-0).

-Jim Kinneman asks Mr. Ott if he plans to leave without completing his term.
-Mr. Ott says that it is up in the air.

-Jim Kinneman asks if it would be possible to nominate Mrs. McGinnis as an alternate member of the board.

-Rachel Hawley and Wendell Ott inform the Board that this is against Ordinance governing Board make up to appoint more than two alternates.

-Ranking the three (3) qualified candidates:

-**Nancy Stoudemire** makes a **motion** that Wendell be top choice based on Board experience and knowledge of the law. **Alex Papp** seconds the motion which then passes unanimously (4-0).

-**Alex Papp** makes a **motion** that Mrs. Walker be the 2nd choice because of her past experience and involvement with the organization. **Jay Cumbus** seconds the motion which then passes unanimously (4-0).

-By default Mrs. McGinnis is ranked third.

-The Board and Town Staff will communicate this decision with Mrs. McGinnis and encourage her to apply for another committee or board. The Ordinance Review Committee was suggested because they meet infrequently. Whoever presents the nominations to Town Council should indicate that she was ranked as Highly Qualified.

Review of Quasi-Judicial Training:

Beth Walker and Jay Cumbus attended a Quasi-Judicial training last spring hosted by the Centrolina Council of Governments and are going to share some of what they covered:

Walker:

-Types of appeals were discussed.

-What is the appeal period in our Town? It is specified on the notice of violation (also located in the ordinance). It is generally 30 days after notice of a BOA decision that they have to appeal to the Superior Courts.

- The training also included discussions of the following:

-Advertisements for BOA meetings at the training.

-How recusals and alternates are handled and that cross examination procedures needed to be spelled out in the rules of procedure for the purposes of board member information and for transparency.

-Applications have to be submitted in a specified amount of time to be heard at the next meeting.

-Documentation of letting appellants know when their case was heard.

-What you can listen to or not (hearsay vs. evidence).

-Beth took away from the training that the Board has taken numerous opportunities to educate themselves (formal, informal trainings, readings from the School of Government on BOAs and attending BOA meetings of other municipalities).

- There is a new law on collecting evidence: not relying on lay witness' testimony. Defines quasi-judicial appeals more broadly and establishes new rules accordingly.

-Wendell Ott presents another issue that has come up in recent months that he has not yet called to the Board's attention.

A ruling from the NC State Bar (established to regulate the practice of law) expanding the definition of practicing law without a license to include appearing before quasi-judicial proceedings on behalf on another party (you can give testimony but not to represent a third party).

If the board feels like they need to enforce this ruling, they could examine it further or they could do nothing. If they have someone to represent an entity and a question is raised, the issue may need to be addressed at that time.

-Beth Walker mentions that the board could ask the representative if they are here to give testimony or represent the appellate and if they are licensed to practice law in order to get the statement on the record.

-Wendell Ott doesn't feel that the BOA has an obligation to enforce a rule of the NC State Bar.

-Jim Kinneman feels that most appellants without an attorney will be representing themselves.

-Wendell Ott explains a situation in which this may occur (involving small family corporations with one owner representing its case).

-Beth Walker says that an infirm or disabled individual could not send a representative to testify for them because it would constitute hearsay (they don't know it on their own personal knowledge).

The Town could have some flexibility on this procedure.

6. **ADJOURNMENT**

Alex Papp motioned to adjourn the October 14, 2010 meeting of the Board of Adjustment. **Nancy Stoudemire** seconded the motion at 8:00 P.M. The motion passed unanimously (4-0).

Respectfully Submitted:



Rachel R. Hawley, Town Clerk

Rachel Hawley



Wendell Ott, Chairman