



**OAK RIDGE TOWN COUNCIL SPECIAL CALLED MEETING  
JUNE 7, 2017 – 4:00 P.M.  
OAK RIDGE TOWN HALL**

**MINUTES**

**Members Present**

Spencer Sullivan, Mayor  
George McClellan, Mayor Pro Tem  
Jim Kinneman  
Doug Nodine

**Staff Present**

Bruce Oakley, Town Manager  
Bill Bruce, Planning Director  
Sandra Smith, Town Clerk

**Members Absent**

Mike Stone

**1. CALL TO ORDER**

Mayor Spencer Sullivan called the meeting to order at 4:00 p.m.

**2. APPROVE AGENDA**

**Councilman Jim Kinneman** made a **motion** to approve the meeting agenda. **Councilman Doug Nodine** seconded the motion, and it was passed unanimously (4-0).

**3. APPROVE RESOLUTION URGING THE NORTH CAROLINA GENERAL ASSEMBLY TO REJECT SB642**

The resolution is as follows:

**R-2017-06**

**A RESOLUTION URGING THE NORTH CAROLINA GENERAL ASSEMBLY  
TO REJECT SB 642  
AND RADICAL CHANGES IN THE  
APPEAL OF BOARD OF ADJUSTMENT DECISIONS**

**WHEREAS:**

1. Currently appeals from decisions of municipal and county boards of adjustment are made to the Superior Court Division of the General Court of Justice in the nature of certiorari, an ancient method under Anglo-American jurisprudence whereby a superior tribunal reviews the record of a decision of an inferior tribunal in a manner that both respects the decision-making authority of the lower body while assuring that its decisions affecting property rights were made in accordance with law, but which does not force parties to re-litigate the matter in an entirely new trial.

2. Certiorari appeals from decisions of municipal and county boards of adjustment are provided for under Chapters 153A and 160A, respectively, of the General Statutes, and all such decisions for counties and municipalities alike are controlled by the provisions of N.C. Gen. Stat. § 160A-388, the section of the general statutes that provides for the appointment and procedures of boards of adjustment.

3. Two bills have been introduced in the Senate in the 2017-18 Session of the North Carolina General Assembly that would destroy the traditional certiorari review of decisions by boards of adjustment, and effectively replace them by an appeal process establishing jury trial determinations of local land use and code enforcement determinations.

4. These two bills were both introduced on 5 April 2017. The first, SB 615, was styled "AN ACT TO AMEND CERTAIN LAWS GOVERNING AGRICULTURAL MATTERS" but contained not only agricultural provisions but a Sec. 5 styled "ESTABLISH REBUTTABLE PRESUMPTION FOR ZONING, UDO, AND OTHER APPEALS BEFORE BOARDS OF ADJUSTMENT." The second, SB 642, is styled "AN ACT TO PROVIDE REGULATORY RELIEF FOR LANDOWNERS BY 2 ESTABLISHING A REBUTTABLE PRESUMPTION OF PROPER LAND USE UNDER 3 THE ORDINANCE AND BY REQUIRING CLEAR AND CONVINCING EVIDENCE 4 TO REBUT THAT PRESUMPTION IN QUASI-JUDICIAL PROCEEDINGS BEFORE 5 THE BOARD OF ADJUSTMENT." The provisions of the two bills as they affect appeals from decisions of county and municipal boards of adjustment are virtually the same and have the same effect.

5. The inclusion of changes to the board of adjustment appeal process, in an agricultural bill, appeared to be an inappropriate attempt to obtain passage of this legislation by hiding it in unrelated legislation.

6. Upon being informed of pending SB 615, but unaware of pending SB 642, the Town of Oak Ridge on 1 June 2017 adopted its resolution R-2017-05 calling upon the General Assembly to remove the inappropriate and damaging Sec. 5 from the agricultural bill styled SB 615, and prior to formal adoption of said resolution the Town contacted its legislative delegation and requested its attention to this bill. On or about 30 May 2017 the said Sec. 5 was removed from SB 615.

7. The provisions of SB 642 remain pending and would significantly change the appeal procedures currently provided for decisions of boards of adjustment under N.C. Gen. Stat. § 160A-388.

8. The proposed provisions in current SB 615 affecting appeals from decisions of boards of adjustment:

(a) repeal certiorari appeals and replace them with de novo trials in the superior court, a radical change contrary to established common law and statutory precedent and procedures, and

(b) creates a rebuttable presumption that any proposed change in the use of land regulated under a zoning ordinance is legal and compliant, and

(c) requires the zoning authority to prove otherwise at the de novo trial by not merely a preponderance of the evidence but by the significantly higher evidentiary standard of clear and convincing evidence.

9. The actual effects of the proposed change in the appeal of board of adjustment decisions, if adopted by the general Assembly, would be:

(a) To effectively render any change in use of land regulated under a zoning ordinance presumably legal, and subject to abatement only upon the zoning authority's proof by clear and convincing evidence that the use is not compliant with the applicable zoning ordinance, no matter how noxious, detrimental, or dangerous such use might actually be;

(b) To transform the current relatively streamlined and expeditious certiorari review by the superior court into a prolonged jury trial procedure, with an accompanying and massive increase in the cost to municipalities, counties, and taxpayers to defend duly enacted zoning laws and the due enforcement thereof;

(c) To undermine the inherently technical nature of zoning regulation, as established and maintained by the General Assembly for almost a century -- namely, delegated zoning authority applied by local elected boards with safeguards for individual property rights through a rational and reasonable local appeal process subject to superior court review -- by reversing the applicable burden of proof and placing such decision-making with trial lawyers and juries.

(d) To adversely affect the creation, implementation, and administration of zoning and subdivision regulation, zoning and public safety code enforcement, and historic districts, decisions affecting all of which are currently subject to the certiorari appeal process.

10. Adoption of such radical changes in the board of adjustment appeal process is grossly inappropriate in this legislative session in which all zoning and other land-use authority and procedures are subject to comprehensive rewriting and re-enactment in pending SB 419, styled "An Act To Reorganize And Clarify Statutes Regarding Local Planning And Development Regulation."

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Oak Ridge calls on the members of the General Assembly to **reject Senate Bill 642** and any other bill or provisions thereof affecting or purporting to change the appeal or other procedures applicable to county and municipal boards of adjustment.

The Clerk is directed to send a copy of this resolution to each of the members of the General Assembly representing the people of the Town of Oak Ridge, to North Carolina Senate President Pro Tempore Philip E. Berger, Sr., and to North Carolina House Speaker Tim Moore.

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After discussion, **Councilman Nodine** made a **motion** to approve resolution. **Mayor Pro Tem George McClellan** seconded the motion, and it was passed unanimously (4-0).

#### 4. PUBLIC COMMENTS

- Michelle Davidson, 2800 Lockland Drive and a member of the Parks & Recreation Commission, spoke to the Council about concerns she has regarding communication between the Commission and Town staff.

**13. COUNCIL COMMENTS**

Council discussed ways to improve communication and better define the role of the Parks & Recreation Commission.

**14. ADJOURNMENT**

**Councilman Nodine** made a **motion** to adjourn the meeting at 4:29 p.m. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (4-0).