



**OAK RIDGE TOWN COUNCIL SPECIAL MEETING
SEPTEMBER 10, 2020 - 2:30 P.M.
(Meeting held electronically via Zoom)**

This meeting was conducted remotely under N. C. Gen. Stat. § 166A-19.24 by use of simultaneous communication using the Zoom online platform and in which Town Council members participated by simultaneous communication. Town Council members were joined and participated in the entire meeting, unless otherwise noted.

MINUTES

Members Present

Ann Schneider, Mayor
Jim Kinneman, Mayor Pro Tem
George McClellan
Doug Nodine
Martha Pittman

Staff Present

Bill Bruce, Town Manager
Sandra Smith, Town Clerk
Michael Thomas, Town Attorney
Sean Taylor, Planning Director

1. CALL TO ORDER

Mayor Ann Schneider called the meeting to order at 2:30 p.m.

2. APPROVE AGENDA

Mayor Pro Tem Jim Kinneman motioned to approve the meeting agenda, and Councilman George McClellan seconded. Via roll-call vote, the motion was passed unanimously (5-0).

3. OLD BUSINESS

RZ-20-01: AG (Agricultural) to RS-40 (Residential). The property is located on the south side of Oak Ridge Road, bordering Williard Road to the west and bordering Billet Road to the east, approximately 750 feet south of the intersection of Oak Ridge Road and Billet Road, in Oak Ridge Township. It is owned by Charles M. Benbow Co.

The property description was read by Mayor Schneider, who stated that the required public hearing had been held on September 3, 2020 via Zoom. She said that the Council was required to leave the public comment period open for 24 hours. She requested a motion and said after it was seconded, Council could have discussion and comment.

Councilwoman Martha Pittman moved to approve the proposed zoning amendment AG to RS-40 for RZ-20-01 based on the following:

- 1. The proposed zoning amendment is consistent with the adopted comprehensive plan of the Town of Oak Ridge. The Planning Board has provided the Council with its written statement that the proposed zoning amendment is consistent with the comprehensive*

plan, and the Council concurs and adopts the Planning Board's finding of consistency by reference. In addition, the Council further finds that the proposed zoning amendment is consistent with the comprehensive plan.

AND

2. *The proposed zoning amendment is reasonable. The Council considers the proposed zoning amendment to be reasonable because the report of the Town staff finding the proposed zoning amendment to be reasonable is adopted by reference.*

AND

3. *The proposed zoning amendment is in the public interest. The Council considers the proposed zoning amendment to be in the public interest because the report of the Town staff finding the proposed zoning amendment to be in the public interest is adopted by reference.*

Councilman McClellan seconded the motion.

Mayor Schneider opened the floor for Council comments and discussion.

Councilman McClellan said if the plan meets the Land Use Plan and Development Ordinance, Council had no recourse but to vote in favor. He said the subdivision plan was technical and would be heard by the Planning & Zoning Board regarding water runoff concerns.

Mayor Pro Tem Kinneman said he had looked into the proposed use and the runoff concerns, and that there had been runoff from the property for many years. He said the current use is for farming, which is not ideal for controlling runoff. He said changing the use to residential may actually help mitigate runoff as trees will be added. He said runoff had probably been an issue for neighbors for decades, but with trees and grass to be planted as part of the development, it would still exist but could perhaps be made better. With those things in mind, Kinneman indicated he would vote in favor.

Councilman Nodine said he thought the applicant's plan was an excellent solution to the runoff problem, and he would love to vote for it. However, with straight RS-40 zoning, there was no control over the number of units – up to 22 – that could be placed on the site. He disagreed with Kinneman, saying that if 22 units were built, runoff for surrounding property owners would be severely impacted. He said that a Conditional Use rezoning would have been an opportunity to solve the issue, but the applicant had said straight RS-40 had been recommended by the Planning Director. Nodine said the Planning Director had said it was “more efficient” or “easier.” Nodine said he did not think it was particularly difficult to recommend conditions; as far as being “more efficient” or “easier,” staff had spent numerous hours researching the possible cemetery – something the Town has no jurisdiction over. Nodine said he did not understand why a condition limiting the applicant to the plan and the number of lots presented had not been proposed. Without that, Nodine said he would be voting in opposition to the rezoning request.

Councilwoman Pittman said she had investigated the possibility of a Conditional Use zoning, since Nodine had mentioned it during the public hearing. Her understanding was that was not something Council or an outside party could impose, and any conditions must be proposed by the property owner. She said she hoped the water issues would be addressed during the site plan phase, but she saw no reason to deny the property owner the best and highest use of the property, which is his right, providing that it meets the Land Use Plan and town ordinances.

Mayor Schneider thanked Pittman for making the point that Council could not ask for conditions to be placed on the rezoning, nor would it be legal to do so. She asked Town Attorney Thomas, who said effectively that was correct. Thomas added that if the idea was broached and the applicant was willing to consider it, that would be considered a substantial change to the application and another public hearing would have to be held on what would be considered a different application. Schneider said that in addition, the applicant would have to withdraw the current application, pay the application fees again, and have a new public hearing.

Schneider reiterated that the plan is consistent with the Land Use Plan, it is surrounded on all four sides by RS-40 zoning, and it is part of the same tract on which Merriman Farm and other neighboring residences have been built. She said it was appropriate zoning for the property, and she could see no reason to deny the request. She pointed out that the Planning & Zoning Board had unanimously recommended the rezoning. Merriman Farm neighbors had said they had runoff problems, but Schneider said she thought they would be more accurately described as drainage issues. She said when water was flowing into those drainage ditches during the recent extremely heavy rainfalls, they were doing exactly as they were intended to do. She said many Oak Ridge residents face similar issues. She highlighted Kinneman's point that perhaps the development on the property might improve those issues, or at the least would not make it worse. She said creating nine lots instead of 22 should go a long way in mitigating concerns. Schneider said the Council cannot deny the property owner the right to develop the property within the restrictions of the approved Land Use Plan, which had been created by a group of Town citizens and adopted by a previous Town Council. She said RS-40 is the least dense type of zoning, and it was recommended by staff because the only other type of zoning is Rural Preservation District (RPD), for which this property does not qualify because it has no significant historic or environmental features. The requested zoning is appropriate, and denying it would run counter to basic property rights.

In response to Nodine, Kinneman said he was not too concerned about 22 houses being built on the property because there would have to be extensive mitigation for the drainage issues and a challenge with drilling wells has already been seen. Kinneman said he would be surprised if even nine or 10 buildable lots could be established on the property, especially given that farmland does not always perk well.

Nodine responded that if 22 units were allowed, it would obviously increase drainage problems because there would be more impervious surfaces. He said he had not suggested that Council should issue an edict for conditional zoning; Nodine said he simply suggested that staff did not do a good job in investigating the possibility of it to meet the needs of the applicant and not create further issues for neighbors. He said once the rezoning is approved, Council will have no control over the number of units, up to a maximum of 22, which was what the zoning would allow. He said if Hall decided to sell the property at some point, the new owner would not be bound by Hall's plan. Nodine said he thought Hall would have been happy to include conditions, but now that opportunity was lost. He said that was his only problem with the development, and he thought conditional zoning could go a long way in allaying the fears of neighbors.

McClellan asked Nodine if he thought Hall had a good plan. Nodine said yes, but Council was not approving the plan. McClellan said he thought it would be hard for the developer to change the plan, particularly since he had said he had no intention of allowing additional houses. Nodine again said Hall could decide to sell the property to another developer, but Council would have already given up any control it could have had. McClellan asked Hall if he planned to sell the property, and Hall said no.

Schneider said she thought staff had done an excellent job, and she understood that conditional use is not typically a desirable thing because zoning is designed to stand on its own and not be tweaked. She asked Taylor for his opinion, and Taylor agreed, saying that conditional zoning is not generally used to determine the number of lots, but is usually used to have a developer agree to installing berms or other features to lessen the impact of commercial development on adjoining properties. He said the Land Use Plan specifically recommends RS-40, not Conditional Use-RS-40, and that is the device he uses as far as what citizens created in the Land Use Plan. Taylor said any type of zoning can be changed; even with Conditional Use, an applicant could later come back and ask that conditions be removed, and a different Council might approve it. Regarding leaving the center portion of the property zoned Agricultural, Taylor said that zoning allows for much more intensive agricultural uses, such as 100 head of cattle or 100 swine, something he did not think would be acceptable in an area surrounded by residential use. Schneider said Hall, although he is technically the developer of the property, is not a developer by profession. She said he serves on the HPC, and in the last few years she has known him, she has found him to be forthright.

Via roll-call vote, the motion was passed unanimously by 4-1 vote (Nodine voting in opposition).

4. ADJOURNMENT

Councilman McClellan made a motion to adjourn the meeting at 2:57 p.m., and Mayor Pro Tem Kinneman seconded. Via roll-call vote, the motion was passed unanimously (5-0).

Respectfully Submitted:

Sandra B. Smith, CMC, NCCMC
Town Clerk

Ann K. Schneider
Mayor