



Town of Beaufort, NC

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Town of Beaufort Board of Commissioners Regular Meeting 6:00 PM Monday, September 13, 2021 - Virtual Minutes

Call to Order

Deputy Clerk, Rachel Johnson welcomed the public to the meeting.

Mayor Newton called the meeting to order at 6:00 p.m.

Roll Call

Deputy Clerk, Rachel Johnson conducted the roll call and declared a quorum present.

PRESENT

Mayor Everette Newton
Commissioner Sharon Harker
Commissioner Charles McDonald
Commissioner Ann Carter
Commissioner Marianna Hollinshed
Commissioner John Hagle

Agenda Approval

Commissioner Hagle made a motion to approve the agenda as presented. Mayor Newton conducted a roll call vote. The motion passed unanimously.

Motion made by Commissioner Hagle.

Voting Yea: Commissioner Harker, Commissioner McDonald, Commissioner Carter, Commissioner Hollinshed

Manager Report

Town Manager, John Day provided the Manager Report. Mr. Day informed the Board that the new sweeper truck is here and operational.

Mr. Day then announced and welcomed three new employees with the Town: Sam Burdick is the new Town Planner, Jared Meyer started with the Police Department last Monday, and Gideon Hughes is the new equipment operator in the sewer department.

Mayor Newton asked the Board for any questions regarding the Manager Report. There were none.

Items of Consent

There were none.

Public Comment

No public comments were made.

Items for Discussion & Consideration

1. COVID Numbers in Carteret County, Mask Ordinance Discussion and Returning to In-Person Meetings Check-In

Mayor Newton said that active cases from last week went from 257 up to 335, and then back down to 227 today. He added that although there was an increase of 78 positive cases, hospitalizations have stayed pretty steady at 22-24 over the last week. He added that, unfortunately, there are some deaths to report, adding another death was reported today.

Mayor Newton further added that he had spoken with Dr. Noble regarding their COVID monitoring of the Waste Water Treatment Plant, and that she reported a slight decrease in the COVID numbers.

Mayor Newton then asked the Board to share its thoughts on the Mask Ordinance. Discussion ensued. The Commissioners unanimously agreed to keep the Mask Ordinance in place at this time.

Commissioner Harker asked for an update on the \$20,000 the Town would be receiving to purchase equipment to support a hybrid [virtual and in person] meeting format. Mr. Day explained that Allen Coleman had been working on it prior to his departure. He said that Ms. Johnson may have additional information. Ms. Johnson said that she did not, but that it was on her list to follow up with this week.

2. Appointment to the Parks and Recreation Advisory Board (PRAB)

Mayor Newton explained that there is currently one vacancy on the Parks and Recreation Advisory Board. He then asked Ms. Johnson to read the list of applicants. Ms. Johnson explained that the Town received 11 applications, but after further examination, realized that one of the applicants has since relocated [outside of the corporate limits] and is no longer eligible for appointment. The following applied for appointment to the PRAB: Elizabeth Bertram, Garrett Carpenter, Charlie Deaton, Barbara Francis-Heckman, Sonny Haynes, Jill Jaworski, Mark Orlando, Billy "Bill" Richburg, Zeb Schobernd, James Taylor and Doug Williams.

Mayor Newton asked for a motion to open the floor for nominations. *Commissioner Harker made a motion to open the floor for nominations. Mayor Newton conducted a roll call vote and the motion passed unanimously.*

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Mayor Newton asked the Board for nominations. Commissioner Harker nominated Barbara Francis-Heckman. Commissioner Carter nominated Garrett Carpenter. Commissioner Hollinshed nominated Charlie Deaton. Commissioner Hagle nominated Jill Jaworski.

Mayor Newton then went through the roster and asked each commissioner who they would like to vote for.

Commissioner Hollinshed said her vote would be for Charlie Deaton. Commissioner Carter said her vote would be for Garrett Carpenter. Commissioner McDonald said his vote would be for Barbara Francis-Heckman. Commissioner Hagle said his vote would be for Jill Jaworski. Commissioner Harker said her vote would be for Barbara Francis-Heckman

Mayor Newton asked John Day, Town Manager, how to work through this appointment. Mr. Day suggested naming each of those nominated and asking for a vote for everyone in order to clean up the slate.

Mayor Newton conducted a roll call vote for Barbara Francis-Heckman.

Voting Yea: Commissioner Hollinshed, Commissioner Hagle, Commissioner Harker

Voting Nay: Commissioner Carter, Commissioner McDonald

Mayor Newton conducted a roll call vote for Garrett Carpenter.

Voting Yea: Commissioner Carter

Voting Nay: Commissioner Hollinshed, Commissioner McDonald, Commissioner Hagle, Commissioner Harker

Mayor Newton conducted a roll call vote for Charlie Deaton.

Voting Yea:

Voting Nay: Commissioner Hollinshed, Commissioner Carter, Commissioner McDonald, Commissioner Hagle, Commissioner Harker

Mayor Newton conducted a roll call vote for Jill Jaworski

Yea: Commissioner McDonald, Commissioner Hagle

Nay: Commissioner Hollinshed, Commissioner Carter, Commissioner Harker

Mayor Newton provided a summary of the results: three votes for Francis-Heckman, one vote for Carpenter, zero votes for Deaton, and two votes for Jaworski. Mayor Newton asked John Day for guidance. Mr. Day said that someone could move to appoint the first one, Barbara Francis-Heckman since that's the one with the most votes, or that the Board could go through all of them, whichever the Board prefers. He said that the Board could just vote on Francis-Heckman, which he anticipated would prevail based on the votes so far.

Mayor Newton conducted a roll call vote to appoint Barbara Francis-Heckman to the Parks and Recreation Advisory Board. Barbara Francis-Heckman was appointed to the Parks and Recreation Advisory Board on a 4/1 vote, with Commissioner McDonald opposed.

Voting Yea: Commissioner Hollinshed, Commissioner Carter, Commissioner Hagle, Commissioner Harker

Voting Nay: Commissioner McDonald

Voting Yea: Commissioner Harker, Commissioner Carter, Commissioner Hollinshed, Commissioner Hagle

Voting Nay: Commissioner McDonald

3. **Change Order Request – FY20 Street Rehabilitation & Construction (Sidewalks)**

Greg Meshaw, Town Engineer, reminded the Board of a contract last year with Thomas Simpson Construction primarily for the rehabilitation, reconstruction and construction of roughly three miles of town streets. He added that the contract also included a small portion of sidewalk construction, and that the majority of the street construction has been completed, not including a few “punch list” items. Mr. Meshaw said staff is asking the Board to consider authorizing a change order to

the contract with Thomas Simpson Construction in the amount of \$323,271.33 for the FY20 Street Rehabilitation and Construction Project, so that the town can continue on with the sidewalk construction, and finalize quantities for most of the street construction.

Mayor Newton asked the Board if there were any questions regarding the request. Commissioner Carter asked if the amount was in line with the anticipated costs. Mr. Meshaw confirmed. Commissioner McDonald asked why there is a change order if it was the anticipated cost. Mr. Meshaw explained that actual money was not put in the contract, as the locations were identified, but the final design had not been completed. John Day, Town Manager, explained that there was no way to include the construction cost as it was unknown at the time of the contract. Further discussion ensued.

Mayor Newton asked the Board to make a motion on the change order request for the contract with Thomas Simpson Construction Company in the amount of \$323,271.33 for the FY20 Street Rehabilitation and Construction Project.

Commissioner Hagle made a motion to approve the request as submitted. Mayor Newton conducted a roll call vote. The motion passed unanimously.

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Motion made by Commissioner Hagle.

Voting Yea: Commissioner Harker, Commissioner McDonald, Commissioner Carter, Commissioner Hollinshed, Commissioner Hagle

Public Hearing

Kyle Garner, Director of Planning and Inspections, presented a summary of the request to rezone 302 Cedar Street from B-1 to R-8. He said that the current use of the property is a single family home, and it is a historic home that the owners are trying to renovate. However, the lot is non-conforming, as well as the use. If rezoned to residential, the owners would be allowed some relief through Section 11 – the Nonconformities Section of the LDO [Land Development Ordinance] to renovate the house, and to meet the historic standards.

Mayor Newton asked the Board if there were any questions regarding the request. Commissioner Hagle asked Mr. Garner if this would make the use conforming, and if the setbacks would remain non-conforming. Mr. Garner confirmed. There were no other questions.

Mayor Newton asked the Board for a motion to open the Public Hearing. *Commissioner Hagle made a motion to open the Public Hearing. Mayor Newton conducted a roll call vote. The motion passed unanimously.*

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Mayor Newton asked Deputy Clerk, Rachel Johnson, if anyone signed up to speak during the public hearing. Ms. Johnson said that no one was signed up to speak during the public hearing.

Mayor Newton asked for a motion to close the Public Hearing. *Commissioner Hagle made a motion to close the Public Hearing. Mayor Newton conducted a roll call vote. The motion passed unanimously.*

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Mayor Newton asked for a motion regarding the request to rezone 302 Cedar Street. *Commissioner Hollinshed made a motion to approve the request as presented and read the Proclamation. Mayor Newton conducted a roll call vote. The motion passed unanimously.*

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Motion made by Commissioner Hollinshed.

Voting Yea: Commissioner Harker, Commissioner McDonald, Commissioner Carter, Commissioner Hollinshed, Commissioner Hagle

Quasi-Judicial Proceeding

1. Request for Special Use Permit – 1550 Lennoxville Road - Gas-Service Station (Jim Dandy Stores); Case No. 21-17

Mayor Newton read the following statement about quasi-judicial proceedings:

This hearing is a quasi-judicial evidentiary hearing. That means it is like a court hearing, state law sets specific procedures and rules concerning how this board must make its decision. the Board of Commissioners must base its decision upon competent material and substantial evidence in the record, quasi-judicial decision is a decision constrained by the standards in the land development ordinance and based on the facts presented, applications for special use permits must be consistent with the land development ordinance for the Town of Beaufort, where the special use is appropriate in the proposed location for certain topics. The Board of Commissioners may hear opinion testimony from expert witnesses, individuals providing expert opinion must be qualified as experts and provide the factual evidence, upon which they base their expert opinion witnesses may swear or affirm their testimony. And as we get to the each one of these topics, then we will swear people in as appropriate.

Mayor Newton explained that this is the reopening of the quasi-judicial proceeding for the request for a special use permit at 1550 Lennoxville Road for a gas/service station – Case 21-17.

Mayor Newton: I've got the roster of people that have been sworn in already. So we've got three main topics that we're going to talk about, we're not going to talk about anything outside of those three main topics unless there's a consensus among the board to open it up to other topics. So this evening we're gonna be talking about traffic impacts, we're going to talk about environmental impacts and interpretation of land use plan. And in regards to an L 1 zoning. So let's, let's get started with the, the traffic impact, and let's bring out the applicant and see if they have anyone, any other experts that will be providing testimony this evening, specifically about traffic impact and if they haven't been sworn in, we will swear them in. Mr. Davis Are you are you up.

Jim Davis: Yes, sir. As far as traffic, Chase Cullipher (Engineer, The Cullipher Group) is prepared to present some additional evidence and reports for review tonight.

Mayor Newton: Thank you. And Mr Cullipher, is there a particular slide that you would like for us to display for this.

Chase Cullipher: Yes sir, there is, I do have a couple of PowerPoint slides that I can share from my screen. I'd be happy to present

Rachel Johnson: Mr Cullipher you should have access to screenshare.

Chase Cullipher: Thank you,

Mayor Newton: And Mr. Cullipher has received the oath.

Chase Cullipher: Can you see my screen now commissioners?

Mayor Newton: Yes. Got it.

Chase Cullipher: Thank you guys. So, yes, after our last commissioners meeting, you had requested additional information regarding a traffic impact analysis, I reached out to Sepi the engineering which is a traffic and engineering firm I'm familiar with in the Raleigh area. They had told us, there'll be about four to six weeks to do a traffic impact analysis, we were concerned that that time frame will not allow us to get that information to you by this month's meeting. And so we then followed up and reached out to NC DOT, to see if they had any traffic information and counts, and how they would receive this development on Lennoxville Road. And I think it was probably a good result to have reached out to them, because there was some recommendations that they had to change the actual plan for the better of public safety.

This is an email with comments from Dwayne Smith, who's the Assistant District Engineer with with district two which has Carteret County in it. This is a preliminary review because we didn't do an official driveway permit application. J and Davis industries doesn't actually own the property, so we couldn't do an official once it's technically preliminary, but I'm assuming you can read this email but I'll just kind of read them, the three comments they had was there's a high probability that roadway improvements will be required, but not limited to turn lanes, modification to existing driveways, installations of median islands. So I'm gonna have a couple slides to show these changes. The second comment is pretty much says that there's local government regulations and if theirs are more restrictive than DOT, then they would have to be utilized. I researched the ordinance with the town. There are some traffic sections of this ordinance - in your ordinance, but they don't really go in this direction and is more about internal to site, and signage landscaping, how to impact traffic patterns.

Umm..Then this third comment is a page 76 on their policies street driveway access actually has specific requirements for corner businesses, and it even has an even more specific requirements for gas stations, and so on this next slide. ...This is how you do symmetrical road widening in DOT and I just want to include this and submit into evidence because what we would be doing would be utilizing these dimensions and these design speeds and any review done by DOT would have to adhere to the standard, and on my next slide, this is an exhibit of potential right-of-way improvements. Inside there, based on this cuts and the first item at hand was adding a turn lane. And what we have here on this concept is a left turn lane that would go from Lennoxville on to Ocean Street, and what this does is it allows continuing movement of traffic from east to west so people aren't stopping and blocking the road. And the next comment they had in that number one was a modification to an existing drive, and what he means by that is moving the entrance that's closest to Ocean Street. And the reason this is is this eliminates competing traffic movements, so it reduces the potential for impact or collision.

And then he also had information on a median and so with this road widening, there will be a potential median, however, knowledge is preliminary with it. If we do the official submittal these

are, this is about as most conservative of the version we could get. But what this does it eliminates the left turn coming out on that westernmost entrance, and so you have a right in, right out. So all these improvements would be a substantial cost to my client, potentially, and it's all for the better of public transportation and public safety.

The third comment that he had is specifically in reference to this policy here, and what it has it has dimensional requirements for gas stations, and the biggest component to this, I believe, is that there's a 50 foot minimum on ones that are perpendicular to the right away and 25 foot where they are parallel. And so that actually impacted our site plan. I went into this component, and the other components and updated this. This slide here, which is a revised site layout. Everything in red shows where we're meeting those rules on the previous slide. And what ended up doing is reduced, the canopy size, because we went from four pumps in a square shape to three and a lot. This drive being removed. Has this driveway meeting the requirements from the previous slide. And we updated this with the parking and everything else to meet the town's ordinance. But now, it would also meet DOT's requirements, pretty much to the letter, and all of it is really simplifies the site and makes everything significantly safer for the public. That is all I had in this presentation if you would like to ask any questions, I am prepared.

Mayor Newton: And let's stand on that for just a second. Mr. Davis Do you have anyone else that's going to speak to traffic impacts?

Jim Davis: No sir, Not tonight.

Mayor Newton: Okay, thank you. And, is there anybody, any expert witnesses that would like to rebut these statements? Rachel, do you see anyone.

Rachel Johnson: I do. Will Laura Satterly, raise your hand? Okay.

Laura Satterly: And we just like to.....

Mayor Newton: Hold on just a second. Are you an expert in traffic impacts?

Laura Satterly: No. We'd like our traffic expert to respond to the new information presented tonight. Especially since this is the first time we've seen it. So we would need, we have Dr. Bugg, who you met last meeting, but he would need to formally review this. He has a PhD in civil engineering, but this is the first time we're seeing this information.

Mayor Newton: Okay. And is he with us this evening?

Laura Satterly: He was not able to be with us this evening but he has to be able to review it in advance so even if he was on these are detailed maps that we would need to look at it with a close eye, just like they've had a chance to prepare this over the last few weeks.

Mayor Newton: Okay. Is there any other experts that would like to...

Laura Satterly: I would like to move to table until we've had a chance...

Mayor Newton: Okay. Are there any other experts who would like to rebut? Alright let's go down to the next item which is environment. Excuse me. Before we do that let's go down the roster see if there are any questions from the commissioners, specifically about traffic impacts. Commissioner Hollinshed?

Commissioner Hollinshed: The only one is looking at that map, you're saying that they have to turn on to Ocean, in order to get into the facility?

Chase Cullipher: Yes.

Commissioner Hollinshed: From the east.

Chase Cullipher: Yes, ma'am. That is the recommendation from DOT at this time and again, is to minimize the amount of turning movements in the area, which is generally a very good way of increasing safety and reducing collisions.

Commissioner Hollinshed: Thank you.

Mayor Newton: Commissioner Carter?

Commissioner Carter: I just... Does that mean your tanker trucks would also be turning in on Ocean Street?

Chase Cullipher: Right now the tanker trucks and I think Jim could speak to this, to some extent is that the same trucks that are going to the development further down the road would be ones that are providing fuel here, and they would be turning right in, out and then they would be closed Street and turn right continue going east. I believe would be the preferred plan, but that can be coordinated with their drivers as needed.

Commissioner Carter: Is Ocean big enough to handle that?

Chase Cullipher: Yes, ma'am. It's a 60 foot public right-of-way with a standard of 22 foot of asphalt, which is, which is a normal road. I would not see it being an issue. And there are radii that have been widened to accommodate the turning limits of the truck in this proposed plan so it makes it easier for them to ingress and egress.

Commissioner Carter: Thank you.

Mayor Newton: Commissioner McDonald? You're muted, sir.

Commissioner McDonald: I have no questions at this time.

Mayor Newton: Thank you. Commissioner Hagle?

Commissioner Hagle: Yeah. Uh, looking at the drawing, Someone coming from the east would in go into the development, and then if they want to continue west... Won't they have to go back to Ocean to get out?

Chase Cullipher: In this version, yes sir. Which.. I would like to add, it is the conservative... Since the DOT hasn't had any traffic counts completed since 2019, and we actually were trying to get some traffic counts completed for this particular presentation. They were not able to do it. They didn't have the equipment available. And so what I put together is the most conservative, if they asked us to do all of these types of improvements, so it could be any variation of once an official driveway permit application is submitted, this drawing was the most expensive and has the largest changes.

Commissioner Hagle: Looks like the traffic flow would be very confusing on the lot. I'll wait to see what the traffic analysts say.

Mayor Newton: Thank you. Commissioner Harker?

Commissioner Harker: I would just like to have just a little time to look at it, other than the flash that we've actually seen looks like, you know, contacting NC DOT paid off in some ways of making some suggestions that we hadn't really thought of... The impact on Ocean, I just need just a little second to to kind of take a look. Can we flash that back again?

Chase Cullipher: Yeah, I'll see if I can.

Commissioner Harker: Treat me like I'm in the third grade, with an A-minus. Can you take your cursor and tell me where traffic is coming in and out of based on this?

Chase Cullipher: [moving cursor to follow route on screen] So if you were eastbound heading, say toward Boathouse, you can make a right in and pull into a parking space or pull in and get fuel. And then you can maneuver, if you're in the car space to pull back out right here. Right out, but you could not make a left. You wanted to come forward and come out to Ocean Street, you can make a right out of here, or a left out here. If you wanted to make a left you'd have to go to Ocean Street, in this particular version.

Commissioner Harker: Okay. Is there any way to improve that being able to either make a U turn to come around to avoid putting a lot of traffic on Ocean? If you're coming out of the complex and heading to the Boathouse?

Chase Cullipher: I mean you, you could still use this right turn coming out of here to go east... so you don't have to use Ocean. But to turn left and you wouldn't have to use Ocean to get into the site, and it's, it's very common in DOT world to just try and eliminate as many close proximity turning opportunities as possible. And so this was the recommendation presented to us by DOT.

Commissioner Harker: Just one last question... If we're going to be exiting onto Ocean to eventually make a left hand turn, going across... the oncoming traffic, have they figured out how to navigate any potential accidents of people turning in and those coming out?

Chase Cullipher: Generally speaking, the public, learns and adapts to changes in traffic patterns. It'd be similar as if we had the roundabout added at 101 and Live Oak Street. It takes a little bit of time but then once people see it and understand that it usually goes off without a hitch.

Commissioner Harker: Okay. No further questions. Thank you for the review.

Mayor Newton: Thank you. Thank you. Let's go back to Mr. Davis for the environmental impacts.

Insert Jim Davis Exhibit

Applicant Jim Davis: All right, I'm gonna share my screen real quick, and jump to these slides here. Comments from the previous meetings, and from the board members, relative to environmental safety, we thought it might be simplest in the interest of time, to simply seek the State's UST, Underground Storage Tank Divisions, pre-approval for the site. Given its history as, formerly a convenience store and gas station and also its location in the more or less center of town, we thought that might be the simplest way to satisfy some of the environmental safety concerns that have been presented to date. So what we did, we reached out to a state engineer, a state certified UST engineer named Tim Loughlin. He is certified by North Carolina to design these particular site plans that include petroleum lines, petroleum tanks, gas pumps, so on and so forth. And what he did was draft, based on our preliminary site plan, he drafted a complete design to submit to the state for pre-approval which is not necessarily common I've never done that, and I wasn't sure what they would say, but he did formally submit our equipment list with the approved manufacturers that are certified by the state of North Carolina. And what we got back was this letter from Ms. Ruth Strauss. Ruth is head of the UST Permits and Inspections Branch and pretty much, what she said verbally and then followed up in this email is that given the equipment that we were proposing to use, the location, and the fact that it was a modern system being designed, versus reusing something that would have existed at this site years ago, she saw no issue in a preliminary approval. However, her formal approval would require a formal UST-6 form to be submitted and that is pretty much just the, the formal way of submitting the equipment list, the actual design, but all that comes. Yes, a formal process that requires some ownership, some fees, and we didn't feel like that was necessary quite at this point to go quite that far without approval for the special use permit.

Next, I've shared this before but this is just our compliance history, and then a letter dated back in, I believe, July, that shows our current complete compliance at all of our locations, that's been questioned a few times. I'll be happy to elaborate on that more if necessary, and we also kind of ran out of time in the last meeting, and our two experts one of them didn't even have time to speak in the first meeting, but they are both on the call tonight. Hunter Evans is owner and president of Evans Environmental, he's on the call tonight. If anyone has specific questions, and also Paul Sutton who y'all speak heard speak before about USDA design and his components, he's also on the call tonight, if, if there's any questions about the environmental safety of the system that we're intending to install here. I believe we have enough people here tonight to answer those questions with expert testimony. We talked about California and North Carolina being pretty similar, and how strict they are relative to UST compliance/regulatory restrictions. These are just some examples of some, some locations that are near the San Francisco area on at the top of your screen here. This is a loop neighborhood market. This store was built and this is actually an elementary school right here beside it. These are very densely populated neighborhoods. These children walk to school every day. And this over here is actually a high school, so it's just an example of something similar where you have a densely populated urban area. A lot of different demographics, pedestrian, biking, driving traffic - all safely operating with a

site like this for their convenience. Down at the bottom, something also similar to Beaufort's situation. The Bridgeway gas station - this is a large Marina, obviously the site is right across from San Francisco Bay and some fairly similar situation to Lennoxville with Town Creek. And then this is just another example over here of a convenience store located in densely populated urban area near a Port, just trying to show that this is not an idea that that we're just coming up with these are things that are done in our industry across the country, routinely. Lastly, again I've said that Paul and Hunter are both on the call tonight. If, after I get done speaking and you have some specific questions, I believe they can help answer those. And also just a brief follow up on the comments made, I believe by Commissioner Hollinshed about canopy and how....

Mayor Newton: Mr. Davis if I can stop you there, that's kind of outside of the bounds of what we wanted to accomplish this evening, unless there are specific questions later on. Thank you. All right. Is there anybody, any experts that would like to rebut this? Rachel, do you see anybody that wants to rebut.

Rachel Johnson: I do not see anybody raising their hand. No, sir.

Mayor Newton: Okay. Thank you. So we'll go down to the last topic which was the interpretation of gas station versus convenience store that was brought up and Kyle can you provide your interpretation?

Kyle Garner: I'd be glad to, Mayor. Based on the ordinance, especially in the definition of gas-service station. It does lend itself to give almost two different types of definitions. The first, of course, talks about gas stations and the type of fluids and so forth that you can get. Then the second part of it says that it may also be, which means that there are two different definitions... it can be this or it can be something else. In this particular case, the gas station that we have or that is being proposed is that the applicant is requesting the first part of that definition. Ironically, much like a lot of other folks have given information, this evening, if you were to use the Google search engine like a lot of folks did to gather their research. If you type in service station or gas station, ironically, you're going to see exactly what comes up in areas, much like what you would do if you typed in convenience store. Matter of fact, they're almost identical. And I would encourage folks to do that. And so hence, with that, Mayor, after discussion with our town attorney, we felt extremely confident that the gas station portion fits the request of the applicant in a special use permit.

Mayor Newton: Thank you. Let me pause right there, and then also listen to a rebuttal to that. Let me go back, please, to the environmental side. I need to go through the commissioners and see if you had any follow up questions, and I'll come right back to Kyle and the rebuttal. Commissioner Hollinshed? You're on mute.

Commissioner Hollinshed: Sorry, I have none.

Mayor Newton: Okay, thank you very much. Commissioner Carter?

Commissioner Carter: I have none.

Mayor Newton: Thank you. Commissioner McDonald?

Commissioner McDonald: I have one or two questions that I need to get answered. And I don't know whether it's appropriate time to ask them or not. However, it is in reference to safety.

Mayor Newton: But is it in reference to environmental safety?

Commissioner McDonald: It is. And my question is, sir. The difference between the propane and gasoline. As far as a leak, combustion, or whatever it may be, in order to bring in damages or whatever to the neighborhood. What would be the difference?

Mayor Newton: Mr. Davis, are you prepared to answer that?

Jim Davis: I can answer it pretty generally and just simply say that propane is as a gas is actually a vapor, whereas gasoline is a liquid. The liquid will be stored below ground in a sealed system, our vapors are never released into the open environment. Whereas propane, you know the tanks above ground, if you have a leak, there is going to be, you know, unless you smell it, you're not going to notice it's there, whereas gasoline is actually a liquid stored below ground, at a very safe temperature in a sealed container system. I don't know if that answers your question, completely...

Commissioner McDonald: It does, but I think I can move forward with some other questions as we go along.

Mayor Newton: All right, thank you. Commissioner Hagle?

Commissioner Hagle: No questions. No questions about the environmental.

Mayor Newton: Great. And Commissioner Harker?

Commissioner Harker: Just a few questions. The evidence that you received from the documents that you've shared, that'll be part of your expert witness that information that they're commenting on is the system that you are currently using, correct? They're talking about the system that you would be using... to put in the ground?

Jim Davis: That we would install, yes ma'am

Commissioner Harker: Okay. All right. And so this UST-6, you know, pre installation, I'm assuming that's something we can always get if things, you know, I guess somewhat progressed. If not, you didn't really need it but that seemed like something they kind of recommended in there is that correct?

Jim Davis: It would be required to get formal site approval for construction, kind of like a building permit. Yes, ma'am.

Commissioner Harker: All right. No further questions.

Mayor Newton: Thank you, and Commissioner McDonnell, would you like to hear from Chief Ray, as far as your concerns, your safety concerns?

Commissioner McDonald: Not at this time, sir. Okay, thank you. All right, so let's let's go back to the discussion that Kyle was was having. Is there any rebuttal to that discussion? And I think I see Miss Smith.

Ms. Smith: Yes, thank you.

Mayor Newton: And Ms. Smith just for, for the record. Can you confirm, are you an expert in land use planning and the Land Development Ordinance?

Ms. Smith: I am an attorney, and I am an attorney with extensive experience in land development ordinances and environmental regulation. I'm also representing some of the other parties in this hearing. And so speaking on their behalf as their legal counsel.

Mayor Newton: Okay. In this particular case, it'll be as your expertise to rebut the previous comments.

Ms. Smith: And can I screenshare, Mr. Mayor? And my video is not on.

Mayor Newton: Absolutely. Rachel?

Rachel Johnson: That feature should be available now, and we also have two other people who have their hands raised. We have a Laurie Cunningham and Bruce's iPhone.

Mayor Newton: Okay, well let's stand by and let's get with Ms. Smith first.

Ms. Smith: All right, let me see if I can get those.... There we go. Can you see that?

Commissioner Hagle: No...

Ms. Smith: All right, let's see the screen share is on.

Rachel Johnson: Yes, ma'am. Is it a document you sent earlier today?

Ms. Smith: Yes, It's the PowerPoint presentation. Can you load it, is it labeled the Smith rebuttal?

Rachel Johnson: Yes, I believe I can pull it up for you.

Ms. Smith: Great, thank you.

Mayor Newton: Ms. Smith, if you could please limit your conversations specifically to the topic at hand, please.

Insert Evidence – Smith Slides

Ms. Smith: This is just an overview of the Beaufort Land Development Ordinance, so this is the, the overview of how the ordinance works, and basically the Beaufort Land Development Ordinance defines both convenience stores and gas service stations and defines them as distinct blend uses. The ordinance recognizes that gasoline may be sold at both convenience stores and gas stations, but the two land uses in the ordinance differ in the other types of services and retail sales they provide in addition to sale of gasoline. Based on those differences between the two land uses the ordinance allows gas stations in a number of districts where convenience stores are not allowed and the reverse is also true.

In this case the ordinance allows gas stations in the L-1 district by special use permit but does not allow a convenience store. If you'll go to the next slide please. These are the two definitions directly from the Beaufort Land Development Ordinance so you can see, convenient food store means a retail store, designated and stopped to sell primarily food, beverages gasoline and household items. The definition of gas service station refers to a building or lot where gasoline, oil, greases and accessories are supplied, stored, and dispensed to motor vehicles, and where also vehicle equipment can be sold and vehicles serviced. Next slide please. So as I said that these land uses overlap, but they also differ. So the definitions recognize that both convenience stores and gas stations sell gasoline, but the definition of gas station does not include a retail store that sells food, drink and other household items. The definition of convenient food store does not include sales of tires, batteries, and other vehicle equipment. Next slide. And this is a table showing how the Beaufort Land Development Ordinance has treated these two different land uses in the zoning districts. So as you can see with the L-1 zoning district, the ordinance does not allow a convenience store, even by special use permit. It does allow a gas station by special use permit. And you can see the other commercial or transitional zoning districts, clearly the ordinance is making a distinction between these two different types of land uses. And essentially making those distinctions based on the types of services and retail that are being provided in addition to gasoline sale. Next slide please. We will stop there, but this gets into the section of the ordinance that talks about the criteria for issuing and approving a special use permit. And the very first criteria under the ordinance is that the proposed use must be an allowable special use in the zoning district it is being located within. And so in my legal opinion is certain that it's clear that the ordinance is treating gas stations and convenience stores differently, it defines them differently as distinct land uses and does not allow a convenience store and the L-1 zoning district. I'll be glad to answer any questions.

Mayor Newton: Thank you. Let's, let's go over to Mr. Alexander first, and the attorney for the applicant, I saw you had your hand up, and then we'll come back to Laura Cunningham. Mr. Alexander?

Mr. Alexander: Good evening. Can you see me.

Mayor Newton: I've got you, yep. Thank you.

Mr. Alexander: Thank you. I'm going to share my screen really briefly, I have some legal materials I like to run over with you, if I may... it says that the host is disabled participant screen sharing.

Rachel Johnson: Yes. Is this information that was provided prior to the meeting?

Mr. Alexander: It was it was that A6 legal materials.

Rachel Johnson: Give me just one second, I'll get that pulled up.

Mr. Alexander: Thank you.

Rachel Johnson: I have A1, A2, A5.... I'm sorry, what was the title of it.

Mr. Alexander: It's A6 legal materials.

Rachel Johnson: I do not have that information.

Mr. Alexander: Okay, well, I have provided it to you before the hearing tonight but I'll just I'll just go through my argument.

Rachel Johnson: You should be set up to screenshare.

Insert A6 Evidence

Mr. Alexander: Okay, thank you...Sure. Here we go. Alright, so what we're looking at now is the definition of gas station it's in the Beaufort Land Development Ordinance. I understand there's been some confusion about this point. However, when we interpret a land use Ordinance of this type, we have to give plain meaning to the text so we've got a building our lot where gasoline, oil, greases, and accessories are supplied, stored, and dispensed to motor vehicles. Well in this application, Jim Dandy has provided a request for facility freezer application and the materials clearly indicate that we have gas dispensers on site, so I don't think there's any question whether we are dispensing gasoline at this site, so...

Mayor Newton: Mr. Alexander....

Mr. Alexander: Yes, sir?

Mayor Newton: My apologies. I was just looking at the roster of who's been sworn in and you have not been sworn in, can you just stand by while the clerk swears you in you and just make this official.

Mr. Alexander: That's fine.

Mayor Newton: Thank you.

Rachel Johnson: So, Mr. Russell. You can either swear or affirm...

Mr. Alexander: I'll swear.

Rachel Johnson: Do you swear that the evidence you shall give to the board in this action shall be the truth, the whole truth and nothing pressure, so help you God.

Mr. Alexander: I do.

Mayor Newton: And my apologies for the for the interruption Mr. Alexander.

Mr. Alexander: That's okay, Mr. Mayor, I appreciate it. Okay so we've got the definition of gas and service station. And then...what the opposition is trying to make some use of is the fact that Mr. Davis, as a result of an honest mistake being a lay person, inadvertently, wrote convenience store on the application because he viewed the terms interchangeably. As we can see here from the definitions, we got a convenient food stores a retail store designated stock to sell primarily food, beverages, gasoline and household items. So, just to clear the one point up where the application that's currently before the board is an application for a gas station. The applicant amended the permit to more clearly state the appropriate use that was contemplated by the land use ordinance, and that was done at the direction and approval of the town so there's no question about what the application is as it's been submitted, it's a gas station. The materials that are in the application clearly have gas dispensers labeled on the plat maps and obviously that's what we're talking about is an underground storage tank for the use of gas dispensing to the general public.

Next thing I'm going to show you are some... is a couple of cases that I was able to find this afternoon in relation to this topic. We've got Lambeth Brush, versus the Town of Kure Beach, and that is a case in which there was a dispute concerning the interpretation of the town's board, or the town's ordinance, as it relates to surface area in the town, and just to speed this up because I know we are trying to move along pretty quickly tonight, I'm going to go down to a highlighted section that I have for your review that I think is important for everyone to see and I'm having trouble...[inaudible]. So when we're interpreting zoning ordinance, we need to understand that the zoning ordinances delegate the common law property rights of a property owner and must be strictly construed in favor of the free use of property. So, when you have statutory language that is clear and unambiguous words in a statute must be construed in accordance with their plain meaning, unless a statute provides an alternative. So, in this case, it's presumed that a land owner can use their property as they see fit, unless the zoning ordinance specifically restricts his ability to do so. But when you look at the plain language of the statute you clearly see that gas station is a contemplated use under the special use section for a light industrial district of this type in the Town of Beaufort. So, when the statutory language is clear and unambiguous the words must be interpreted and given their play, meaning if it says gas station, it means gas station, and he submitted.. Jim Davis has submitted an application for use as a gas station at this particular site. And the issue with the convenience store that I have is, in my personal, well, in my opinion, having interpreted as a convenience store in the Town of Beaufort could be any store where they sell food or other household items, and it would not necessarily have to sell gasoline at the convenience store, you've got things like Big Daddy Wesleys, you've got places like Kwik e Mart and, you know, some others that don't sell gasoline. So my understanding of the ordinances that when you talk about a pure convenience store you could include businesses of that type within that definition. When we talk about gas station in this light industrial district you've also got this as part of the definition, the right to use the property for oil changes and tire changes, which to me is a more burdensome and invasive use of the property, and it just stands to reason that if a use is the use of this property for a gas station will be permitted that use as the use of the property. A secondary use of the property for a food store would not necessarily be a deal breaker because the primary use is for a gas station, and then we've actually got the ability to use the property for more invasive uses. So that was the Town of Kure Beach and then we got Proctor versus the City of Raleigh Board of Adjustments, that's 538 section 621 That's a court of appeals case, the Court of Appeals in North Carolina, and that's more precedent about the plain meaning rule in

construing the zoning ordinance. The courts are required to use the fundamental principles of statutory construction interpretation. When statutory language is clear and unambiguous, the words in the statute must be construed in accordance with the plain meaning unless the statute provides an alternative meaning. So, what the, what Miss Smith and the her clients are basically suggesting is they're trying to create an ambiguity between the interpretation of this gas station definition and the convenience store definition. The fact remains though that the plain meaning of the statute, or the ordinance in this case, says that it can be used as a gas station and there are in fact gas pumps on site, and I would suggest that to read this particular section of the ordinance in any other way so that it would prevent the use of this site in this manner would be approaching bad faith that to say, because it's the plain meaning is just clear as day so that's what the statutes say is the precedent and we have to interpret the statutes accordingly and follow the precedent that's been set forth by the state courts of the State of North Carolina. So, that being said, at this time... I know that we're still on this topic, but I would ask that the, the Board of Commissioners, allow us to submit additional evidence on one of the points under the special use criteria. And I guess we can get to that, once we're done with this particular section and then the board can consider if it wants to hear that or not.

Mayor Newton: Thank you, and let's go over to Laurie Cunningham, please.

Laurie Cunningham: Mr. Mayor, I'm sorry. Miss Smith has addressed the concern that I had already.

Mayor Newton: Okay. Thank you. So let's go down the roster with the commissioners and see if there are any questions on this particular topic. Commissioner Hollinshed?

Commissioner Hollinshed: On the land use plan specifically?

Mayor Newton: Specifically, yes.

Commissioner Hollinshed: So, based on previous testimony, it was going to be a facility that would sell gasoline. And also, what I'm going to call sundries, and is a example that was given some kind of [inaudible], or whatever. So, in my mind, you can do one or the other. If you combine them, you negated what is the intent, yes? So if you put a pack of nabs up there in your, in your service station and sell it, you've created a convenience store. That's where I'm going with this.

Mayor Newton: Okay. Commissioner Carter?

Commissioner Carter: I'm inclined to believe the same thing, it sounds like these people just want a gas station there without a convenience store because it seems to be some concern about having convenience store, which I think would be most useful to all of us. But do I understand it correctly that they only want one? Um, so that would mean a gas station would be appropriate? I'm not sure that I understood that clearly.

Mayor Newton: Would you like for me to ask Ms. Smith, that specifically?

Commissioner Carter: I would like you to ask the attorney please. The one that just spoke to us.

Mayor Newton: Mr. Alexander?

Commissioner Carter: Yes.

Mayor Newton: Okay. Mr. Alexander?

Mr. Alexander: Thank you, thank you for the questions. I think when, when we talk about interpretation of this particular definition, the reason I uploaded that case to you from Kure Beach is says that the zoning, um, zoning ordinances are in delegation of common law rights so they have to be strictly construed. In this particular case, we have submitted a permit for a gas station, but the definition of gas station, merely says that it's a place that dispenses gasoline, It doesn't say that you can't sell... it does, it doesn't restrict the right to sell food in addition to gasoline at that site. So, if there really was an intent in drafting this to prevent the sale of, you know, food and sundries at a gas station, I think he should stay that clearly, and it does not. So, because we are stuck with a case precedent that tells us that we have to strictly construe the ordinance in favor of the property rights of the applicant, my interpretation is that it's a permissible use and you can't hang it up because they also sell food at that site. I understand that.

Commissioner Carter: It's kind of like to me, you're saying, wait, can only be a gas station but, in your opinion, it could be both and I've been thoroughly confused now. So, yes or no. Can they have only one? Is that what you're saying?

Mr. Alexander: My interpretation is under this definition they can do both. But if you had if you had a convenience store only then it would not be appropriate for the site. And I grant you that much.

Commissioner Carter: You're basically saying they could. What he asked for was a gas station but a convenience store, actually could be included

Mr. Alexander: Under this definition and the due to North Carolina case law, yes, I think it can be. And I understand there is potentially a conflict between these definitions in the ordinance, and I also understand this has been developed quite a while ago and may need some updating. But, you know since the applicant has applied for this permit, based on the ordinance as written, I think he's entitled to rely on the ordinance as written in terms of his permanent approval in this case.

Commissioner Carter: And that's opinion, period, based on what you have seen.

Mr. Alexander: I'm making a legal argument on behalf of my client. Yes, ma'am.

Commissioner Carter: That's what I'm trying to find out. Thank you.

Mayor Newton: Okay. Commissioner McDonald?

Commissioner McDonald: I am really, really confused and thanks, Ann for getting that straightened out. I was in the impression that the attorney was seeking to get a gas station. However, if I understand correctly, he's asking for permission for a convenience store and a gas station, which he is also in layman's terms, stating that the convenience store, and its wording covers anything that is convenient, within the law to sell on that property, is my understanding.

Mr. Alexander: No sir.

Commissioner McDonald: So, if that be the case. That is what you're...is that what you're basically saying?

Mr. Alexander: No, no sir, that, that is, that is not what we're saying. The application is for a gas station. And there will be, you know, other items sold in addition to the sale of gas but the primary use for the property is for gas dispensing and an underground tank facility for a gas station. I mean there's no question about that. So, I guess, you know this ambiguity that's trying to be raised by Ms. Smith kind of has the view backwards, because it's presumed that the property can be used by the owner or the applicant for reasonable purposes, and then the burden is on the town to construe this narrowly in favor of those rights so if it doesn't prevent the sale of other items incidental to gas and the definition, this, then the, the permit application, err, the special use permit application as submitted would be appropriate because it clearly says you can have a gas station and that's where we're going for as a gas station. I mean, I hate to, I'm not trying to confuse you if anything I'm trying to undo some confusion that's kind of been sown previously. I think, but you know I do recognize there are these two different definitions in the Beaufort Ordinance, that may need to be cleared up in the future. But again, as it stands as written the application for a special use permit in this case would be appropriate based on the existing definition. And in fact, if you know, as I said previously, if you have a convenience store and another section of town, you could have a convenience store that did not sell gasoline. I know it says "and" it has those four things that it says it says gasoline, food and household items and some other things. But what if what if there was an applicant who is searching, seeking to have a convenience store? Would you deny them because they were not selling gasoline in addition to those other items? I don't think so. I think it would be assumed within the definition, just like in this case, the other sales of other items are assumed within the definition of gas station. Basically in plain meaning rule, you have to use ordinary everyday language, in terms to interpret the statute. So, what do you think a gas station is? What do you think of when you hear, see the phrase gas station?

Ms. Smith: Mr. Mayor, may I address this?

Mayor Newton: Not right now, Ms. Smith, thank you. I also see some hands that are up. This is for the, the commissioners to specifically ask questions about these topics. Commissioner McDonald, do you have any other other questions?

Commissioner McDonald: Not at this time.

Mayor Newton: Thank you, Commissioner Hagle?

Commissioner Hagle: Well, the definitions are confusing. Your comments indicate that in cases of convenience stores with the definition there, they can sell gasoline and can sell food or whatever else they want. So it's a very confusing situation, and it's too bad that the definitions are

so confusing, but I appreciate your input but I still think there's a difference. Because sometimes there are gas stations that don't sell anything but gasoline, and there are convenience stores that don't sell gasoline. So, in this case, its combined use is what makes our definition very confusing.

Mayor Newton: Thank you. Commissioner Harker?

Commissioner Harker: Um, yes. Just making sure I'm off mute. I just want to stick with the fact that we're gonna talk about the gas station. Simply and clear, without getting into a lot of that so please stick strictly with the gas station and I'm going to stick with you, Mr. Alexander because you did make a point. You're saying that the definition doesn't restrict the sale of sundries, but the definition also doesn't permit it either. So, if we're sticking with the gas station principle, and it doesn't state that you can do anything else other than that is there, I need some clarity on that.

Mr. Alexander: Okay, yes ma'am.

Commissioner Harker: To assume that it's okay, I'd like to see a little bit about... I wrote down statutes just to take a look at what you've presented a little bit clearly. But I'll let you go ahead and finish it because I do have a follow up question after that.

Mr. Alexander: Yes, ma'am. I appreciate that question, and it is a good one. I think, the deciding factor on that issue, because it isn't expressly permitted, I would refer you back to that Town of Kure Beach case that I cited to you. And there are some, that's why I cited that case is because there's a presumption in the law that since the zoning ordinance is in protection of the applicant's common law rights to enjoy their property has got to be strictly construed. So you don't go beyond what's actually written in the definition so you look at the definition, it says a gas station, it's a place that dispenses gasoline to the public and has tanks for that purpose. Is this application for a gas station facility? Yes it is. And there's nothing else said, so it's silent on that issue. Therefore, you have to favor the common law rights of the applicant because it doesn't specifically exclude that. So the kind of the tipping point is the is the precedent that I cited.

Commissioner Harker: Right. So, the enjoyment of the property owner is to include the sundry sales because we have spoken with the applicant and he said you know, one without the other, it's not gonna make any financial sense. To assume that this is going to be the right when he's actually applied for the gas station, and not having the other sundries part, I don't know if we're presuming that his right is to have the convenience store too when he specifically is asking for gas station. Am I making that clear?

Mr. Alexander: Not entirely, but I think, I think...

Commissioner Harker: Presumptive right to have that along there when we didn't really presume it to be... his presumptive right...

Mr. Alexander: Well, I don't know if ... presuming, maybe as I said, that might not be the right word.. But I think it's a matter of strictly construing the statute as it's written in this case, the ordinance, in this case, the definition. And that's when you focus in on, whether it's a gas station or not, and primarily it is a gas station that is primarily what he's going to be selling and that's primarily why people are going to be visiting. It's just the fact that under the economic models of

our times, it doesn't work necessarily not to have any additional sales going on, it just doesn't work for that site so...

Commissioner Harker: As you had said earlier this is, uh, fairly old, you know, language here, and how do you modernize it without, you know, getting into some deep trouble? Because if we do it with this one, my concern is having to try to do it with others. It just really negates our land use ordinance and how it's presented. That's my only concern.

Mr. Alexander: Right. I understand your concern. I think it's a fair point. Um, I think, again, though the applicant is entitled to rely upon the land ordinance that's in effect at the time the application is submitted. So I think perhaps in the future, this may be an issue that needs some follow up, and you know I appreciate your comments are very thoughtful and I share your concern.

Commissioner Harker: Thank you so much.

Commissioner Carter: One question

Commissioner Hagle: I have another question too.

Mayor Newton: Okay, let's go to Commissioner Carter first.

Commissioner Carter: It sounds presumptive that he applied for a gas station. Under the general presumption that the town had included both. So, we can assume or use his words, presumed that that is exactly what he was going after, because that was what the general interpretation is in the way the ordinance has been interpreted over the years. So I think what we've got is residents don't want a gasoline station there. I don't know what they want there, but there are property rights too. I don't know when they bought them but there are property rights too and I would say that when you ask for a gas station, I don't know anywhere around here that have gas stations and like Mariana said that don't sell anything. So it's not just automotive stuff that's in the gas station, it's other stuff and can be and has been.

Mayor Newton: Commissioner Hagle?

Commissioner Hagle: Mr. Alexander, the definition we have for the gas station/service station, the last phrase says and "other similar services are rendered." How do you, what is... to me, that could mean other services for vehicles, or other services of any kind. Is that how it's a very vague language, and are you saying that that covers just about anything?

Mr. Alexander: Well, I hadn't really thought about it in those terms, I do agree that that is perhaps a little bit vague or the definition. My understanding is that it's aimed more towards automotive services. But at the same time, you know, we've got this, this argument on the other side that, that convenience store is bad, but a gas station that has, you know, an oil change facility or a tire changing facility would be permitted and be fine. I mean I'm sure that's not their position, but yeah that's what they're arguing, basically so I mean are we going to have a facility that has you know stalls where they change the tires and you hear the loud wrenches going and we've got.....[inaudible] Right and that's what we have to do. And the bottom line is at the end of

the day, the applicant submitted an application that is primarily for a gas station, and there's some other things going on incidental to that, but my interpretation of North Carolina precedent indicates that due to strict construction of the zoning ordinance, we have to construe it narrowly and, you know, it is appropriate to issue the permit for the application that has been submitted, because it doesn't prohibit these activities incidental to the gas sale. I'm trying to be as clear as I can about that, I'm sorry if I'm not making myself clear.

Commissioner Hagle: Okay. You're making yourself clear.

Mayor Newton: Okay, so let's go to the roster and see where you think we are, we started off with three topics this evening there has been some new information that has been provided. There is no requirement for us to make a decision this evening, but we can. We certainly can if that's the pleasure of the board. Commissioner Hollinshed, is there anything else within these three topics that you want further information on?

You're on mute.

Commissioner Hollinshed: I do not. There's nothing more that I think can be added to this at this time.

Mayor Newton: Okay. Are you inclined to make a decision this evening?

Commissioner Hollinshed: I am.

Mayor Newton: Okay. Thank you. Commissioner Carter?

Commissioner Carter: I think I've been thoroughly confused by Mr. Alexander, but I think I'm ready to make a decision.

Mayor Newton: Thank you. Commissioner McDonald?

Commissioner McDonald: I came in confused, I've been more confused, and at the present time, I'm not ready to make a decision.

Mayor Newton: Okay. In which of those three areas do you need more information?

Commissioner McDonald: All three.

Mayor Newton: Okay. Commissioner Hagle?

Commissioner Hagle: We did have some questions about the traffic and the flow of traffic on that lot, and I thought we might get a little more information about that.

Mayor Newton: So, is your preference to do act on this this evening or the work session.

Commissioner Hagle: I just.... the traffic flow in and out of the lot. And I think, at least one other Commissioner made those kind of comments, and I just think we could look at that a little more. I would like to think about that a little bit more.

Mayor Newton: Okay. And Commissioner Harker?

Commissioner Harker: I think we've covered a lot of ground here. And I did, I was the one who kind of wanted to take a look at that traffic impact a little bit closer. I appreciate the time that they have spent going over it. I still, I stick by my guns by saying I did want to have an opportunity to take a look at that a little bit more thoroughly because there is an impact there on Ocean that I want to be very clear about before saying that's okay. So, I would prefer to delay that.

Mayor Newton: Okay. So I think there's a consensus to delay until the work session, specifically for the traffic impacts.

Commissioner Harker: Yes, for me..

Mayor Newton: Mr. Grady, what are we missing before we clean this up?

Arey Grady: Yes, sir. The controlling statute certainly allows a reasonable time for the board to make a decision, so you do not have to make it this evening. And with all things legal the term reasonable time is not defined, I think the board would certainly be within its rights to make the final decision at the next meeting. Mr. Mayor, I would suggest that the board be clear.. Is the hearing going to be open for further evidence at the next meeting, or are we just going to deliberate at the next meeting? I think the applicant and other interested individuals would want to know.

Mayor Newton: And let's see what's the pleasure of the Commissioners? Commissioner Hollinshed?

Commissioner Hollinshed: Well, it sounds like the board wants to put this off until the work session.

Mayor Newton: Correct. But do you want to close the public hearing portion or do you want to keep that open in order to allow extra evidence, specifically on the topic of traffic impacts?

Commissioner Hollinshed: For me? Close.

Mayor Newton: Okay, thank you. Commissioner Carter?

Commissioner Carter: Unless we need some clarity on the traffic pattern, no additional evidence.

Mayor Newton: Thank you. Commissioner McDonald?

Commissioner McDonald: I would love to get some more information on the environmental safety of the neighborhood and with the gas station being put in that neighborhood.

Mayor Newton: Well, the consensus of the board is just to focus on the traffic impacts, not necessarily reopen the environmental impacts.

Commissioner McDonald: Okay, I understand that. Then we'll hear it at the work session.

Mayor Newton: Okay, and the question would be, do you want to close the public hearing or do you want to do you want to keep it open to admit extra evidence?

Commissioner McDonald: We would want to keep it open.

Mayor Newton: Commissioner Hagle?

Commissioner Hagle: Leave it open, just on the traffic.

Mayor Newton: Okay, thank you. Commissioner Harker?

Commissioner Harker: On the traffic, fine, keep it open because we do have some questions about it, so I don't want to necessarily think it's a final thing, it's just going to finalize some things I think you would have to keep that open in order to do that.

Mayor Newton: Okay, that seems very clear. Now may I have a motion, please, to recess this until the work session?

Commissioner Hagle: So moved

Mayor Newton: A motion has been made. Is there any discussion? Let's go down the roster for a vote. Commissioner Hollinshed?

Commissioner Hollinshed: Aye

Mayor Newton: Thank you, Commissioner Carter?

Commissioner Carter: Aye

Mayor Newton: Thank you, Commissioner McDonald?

Commissioner McDonald: Aye

Mayor Newton: Thank you, Commissioner Hagle?

Commissioner Hagle: Aye

Mayor Newton: Alright, thank you. And Commissioner Harker?

Commissioner Harker: Aye

Commissioner Hagle made the motion to recess the hearing until the Work Session, with the hearing to remain open only to consider additional information regarding traffic impacts of the proposal. The motion passed unanimously.

Voting Yea: Commissioner Carter, Commissioner Hagle, Commissioner Harker, Commissioner Hollinshed, Commissioner McDonald

Mayor/Commissioner Comments

Mayor Newton asked for Commissioner Comments.

Commissioner Hollinshed reminded everyone that on Saturday, September 25, household hazardous waste will be collected by the county at the health department, and to gather all your insecticides and materials that are labeled and you can take them out there and dispose of them.

Commissioner Carter said she would like to remind everybody that vaccinations are essential and the Broad Street Clinic will be offering free vaccinations at the farmers market on Saturday from 9-1 and encouraged anyone who isn't vaccinated to do so. In addition, Commissioner Carter said that Facebook and social media have been rampant with unfounded rumors about not only this particular issue [Jim Dandy proposal] but about other proposed issues. She said that if you don't know what you're talking about, please don't put it on Facebook as fact.

Commissioner McDonald had no comment.

Commissioner Hagle thanked the applicants submitting applications to fill the vacancy for the Parks and Recreation Advisory Board. He said it's great to see that many citizens would like to serve, adding that there were lots of very talented people. He encouraged applicants to submit applications for other boards and committees as they become available. Commissioner Hagle shared how pleased he is to see all the streets and sidewalks that are being installed, noting that there will probably continue to be some inconveniences from time to time before its all said and done. He then shared his safety, health, and environmental comments, sharing that he worked in an industry where safety, health, and the environment were very important. His safety message was to focus on your driving, as there's fewer daylight hours. His health message was encouraging people to get vaccinated if they're not already, adding that we need to we need to get that done in our county so that we can get back to regular order again. Lastly, he echoed Commissioner Hollinshed's earlier statements about the hazardous waste disposal effort with the county.

Commissioner Harker welcomed and congratulated Mrs. Francis-Heckman on her appointment to the advisory board for the Parks and Recreation. She then thanked all of the applicants that put their name into the pot to serve. Lastly, she added that when it comes down to protecting you and your loved ones, the community is really having some heartbreak, noting that with the [COVID] variant we are losing people, and increasingly more patients hospitalized. She encouraged citizens to do whatever they need to do to protect themselves, whether it be getting the vaccine, wearing a mast, or both as it could save a life.

Mayor Newton thanked the Board for its comments. He then reflected on the anniversary of 9/11 and thanked first responders on that horrific day 20 years ago. He added that as a mayor, he has the opportunity to see the professionalism of our first responders on a daily basis.

Adjourn

Motion made by Commissioner Hagle to adjourn the meeting.

Voting Yea: Commissioner Harker, Commissioner McDonald, Commissioner Carter, Commissioner Hollinshed

Mayor Everette Newton

Deputy Town Clerk

Minutes prepared by Kate Allen and edited by Deputy Clerk Rachel Johnson