



Cabarrus County Government – Planning and Development Department

Planning and Zoning Commission Minutes
September 11, 2012

Ms. Susie Morris, Planning and Zoning, Manager called the meeting to order at 7:00 p.m. Members present were: Ms. Mary Blakeney, Mr. Andrew Deal, Mr. Gene Divine, Mr. Larry Ensley, Mr. Danny Fesperman, Ms. Shannon Frye, Mr. Ted Kluttz, Ms. Emily Knudson, Mr. James Litaker, Mr. Richard Price, Mr. Jonathan Rett and Mr. Aaron Ritchie. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Colleen Nelson, Senior Planner, Ms. Shannon Johnson, Planner, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to reappointed members Mr. Richard Price, Ms. Mary Blakeney and Mr. Ted Kluttz and to newly appointed members Mr. Andrew Deal and Mr. Jonathan Rett.

Ms. Morris introduced the new alternate members of the Planning and Zoning Commission. Mr. Jonathan Rett will be representing the Concord area. He is an Engineer and has a lot of experience in the local area with projects. Mr. Andrew Deal is also an Engineer and a PE, and will be representing the Central area. He is very familiar with the Cabarrus area and works with the city of Charlotte with storm water. They are a very welcome addition to our Commission.

Mr. Danny Fesperman nominated Mr. Larry Ensley as the Chairman of the Planning and Zoning Commission. There being no other nominations, Mr. Ensley was appointed by Acclamation.

Mr. Danny Fesperman nominated Ms. Shannon Frye as the Vice-Chairman of the Planning and Zoning Commission. There being no other nominations, Ms. Frye was appointed by Acclamation.

Mr. Larry Ensley nominated Mr. Danny Fesperman as the Chairman of the Board in the absence of both the Chair and Vice-Chair of the Planning and Zoning Commission. There being no other nominations, Mr. Fesperman was appointed by Acclamation.

Roll Call

Approval of May 8, 2012, Planning and Zoning Commission Minutes.

Ms. Mary Blakeney, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE** the May 8, 2012, minutes with correction to page 10, changing the word dumb to dump. The vote was unanimous.

New Business – Planning Board Function

Petition CUSE2012-00001 – Request to amend existing Conditional Use Permit to include Power Generation at the Rocky River WWTP, located at 6400 Breezy Ln, Concord, NC (PIN#5547-06-4548). Applicant is WSACC.

The Chair swore in Ms. Colleen Nelson, Ms. Angela Roberts, Mr. Thomas Hahn, Ms. Robin Moore, and Ms. Susie Morris.

Ms. Colleen Nelson, Senior Planner addressed the Board stating that the applicant is Angela Roberts with CH2M Hill and the owner is the Water and Sewer Authority of Cabarrus County (WSACC). It is a request is for a public service facility. The location is off Breezy Lane in Concord, NC. PIN#5547-06-4548. The site is approximately 241.46 acres total. The site is the current location of the Rocky River Regional Wastewater Treatment Plant.

She said the original Conditional Use Permit was approved in 1996, and in 2011, it was amended to add equipment for importing biosolids from surrounding utilities along with additions to the existing odor control system.

The applicant is purposing an addition for one steam turbine generator building, approximately 1,300 square feet and modifications of the existing incinerator building. These modifications will allow the facility to safely recover heat from the existing equipment and safely generate power from the recovered heat. The facility currently acts as an imported biosolids handling facility.

She said the application and required documents were sent to outside agencies such as Fire, EMS, City of Concord, NCDOT, Health Department and Cabarrus Soil and Water Conservation District; there were no objections. Storm Water review is not necessary since the project will not disturb more than one acre.

The applicant provided documentation compliant with section 8-3 of the Cabarrus County Zoning Ordinance, Petitioning for a Conditional Use. The Applicant submitted a complete application which includes the findings of facts sheet along with a site plan showing the location of the additions on the property.

The wastewater treatment plant is an existing facility and meets the standards for the Ordinance at the time that it was approved in 1996.

Ms. Nelson said the current standards, such as landscaping and buffering, may have changed since the original conditional use permit was issued and will be addressed as needed.

Should the Board of Adjustment grant approval of the Conditional use Permit, Staff requests the following conditions become part of the approval and case record:

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1. Site plan review and approval required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements and conditions. (Zoning)
2. Granting order, stating restrictions and applicable conditions of approval, shall be recorded with the deed of the property. (Zoning)
3. Applicant shall procure any and all applicable federal, state, and local permits prior to commencement of project. (Zoning)
4. Expansion of project, as well as modifications or changes to approved site plan, must receive Board of Adjustment approval in the form of an amendment to the Conditional Use Permit. (Zoning)

Ms. Angela Roberts, Project Manager, CH2M Hill, 11301 Carmel Commons Blvd. Suite 304, Charlotte NC 28226, addressed the Board. She said also here tonight is Mr. Thomas Hahn, Project Engineer and Resident Inspector working on Phase I of the project.

She said this is the second phase of the WSACC Heat Recovery & Power Generation Facility that was approved in May 2011, by the Cabarrus County Planning and Zoning Commission. She said Phase I consisted of construction of facilities for sludge import to fuel the furnace and produce heat.

This particular project is Phase II and is construction of facilities to use furnace heat to generate electrical power. The proposed use for the second phase of the project will consist of recovering heat from the existing WSACC Rocky River Regional Waste Water Treatment Plant (WWTP) furnace to generate power.

The major components of the second phase of the Heat Recovery Power Generation Facility Project are: Heat Recovery Steam Generator (HRSG), Steam Turbine Generator (STG) and a Steam Turbine Generator Enclosure Building.

She said the Heat Recovery Steam Generator equipment will be installed in the existing furnace building. There is a steam turbine generator which will be installed and a concrete pad will be constructed to support the steam turbine generator. The steam turbine generator will be enclosed in a building approximately 1,300 square feet and 22 feet high.

She said from the existing furnace building, there will be overhead piping to transport the steam to the steam turbine generator. From the steam turbine generator electrical power will be produced. WSACC has a contract with the City of Concord to transfer the electrical power to the existing power grid that is within their property.

Ms. Roberts showed pictures representing typical views of the Heat Recovery Steam Generator equipment that will be installed in the existing furnace building on the

WSACC site and she showed a slide which represents the Steam Turbine Generator that will be enclosed in the building.

She said the existing furnace building has four floors. The Heat Recovery Steam Generator equipment will start on the first floor and continue on the fourth floor. The piping will exit from the HRSG carrying steam, then to the Steam Turbine Generator. The condenser will condense the steam and convert it to water. She said it is a continuous loop. It goes back to the HRSG equipment and produces steam for the steam turbine generator.

She showed an illustration of the Steam Turbine Generator Building that will house the equipment. She said it will be ventilated only, and the electrical room will be air conditioned for the electrical equipment. She showed a typical example of the structure that will be built to enclose the steam turbine generator. WSACC will make a decision on the specific type of building that they want; it will be a modular type building of this design.

The project design is scheduled to be completed in November 2012. The contractor bidding is estimated to be completed January 2013 and the construction is estimated to be completed October 2013.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE**, Conditional Use Permit - Petition CUSE2012-00001 with the conditions recommended by staff. The vote was unanimous. (See attached Findings of Fact).

Director Report

Ms. Susie Morrison, Planning and Zoning, Manager, addressed the board introducing the new Planning staff member Ms. Shannon Johnson. Ms. Johnson has been employed by Cabarrus County working with the Sustainable Local Economy Project. Her time is split between Planning and Sustainable Local Economy.

We have been given the Youth Council and that is also a part of Ms. Johnson's responsibilities. She will be a familiar face and will be handling cases. Right now we are trying to get everything up to speed. She has a degree from the University of Maryland. Her background is mainly in local economy, local business and helping companies get up and running and hiring employees.

Mr. Koch updated the Board on the Ben Small case. We are in the process of filing a motion for summary judgment. Hopefully, it will be heard the beginning of next month. Presumably, it will bring an end to that case at the court level and if he does not comply with what we believe to be the directive of the court, then we may have to pursue it further.

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Ms. Morris said the first round of the text amendments were successful and approved in July. There were no changes made by the Board of Commissioners. What is a blueway was the only question that was asked. She said that is pretty good if that is the only item that was questioned out of all of the changes that we worked through.

She said the Text Amendment Committee is back up and running. Mr. Ensley, Mr. Fesperman, Mr. Divine, Mr. Litaker and Mr. Rett will be participating on that committee. We also have two folks from the Sustainable Local Economy group that will be joining our group and will be part of our discussions. They are Mr. Chris Pinto; he has a metal fabrication business and Mr. Josh Knipp who is an attorney. There will now be six people on the committee. The process will pretty much be the same. They have agreed to attend some of the Planning and Zoning Commission meetings if they need to hear discussions.

We are getting ready to work on the second round of Text Amendments. She has started some correspondence with our attorney on some things that we may or may not need to have in our Ordinance.

Mr. Koch commented on the decision of the Adequate Public Facilities Ordinance (APFO). The Supreme Court by a 5 to 2 vote affirmed the Court of Appeals decision and declared the APFO invalid; not just part of the APFO but the entire Ordinance.

He said this is probably close to the end of the line, legally, with reference to any challenge to the Ordinance its self. We are going to file a motion for a rehearing.

One of the issues that was raised in the dissent was the severability provision that was contained in the Ordinance; which says, if there is a provision in the ordinance that you find invalid, you do not have to invalidate the whole; you just invalidate that part of it that you find troublesome. The main part of the Ordinance that they found troublesome was the so called "Voluntary Mitigation Payment," the APFO fee. That is what the Majority spent all of its time talking about and did not consider the severability argument at all, which is kind of amazing, because that is a pretty well established area of the law.

He said the Board of Commissioners has authorized him to file a petition for rehearing on that issue and also a much larger issue that is implicit in the Majority opinion. It has to do with the powers of local government, generally and particularly in the zoning area as to how you construe the enumerated powers and the powers that are implied from the enumerated powers.

Statute 153A-4 states that enumerated powers are to be construed broadly to give effect to the provisions of those statutes that enable local government to carry out its powers. The Majority opinion basically writes that Statute out of the Statute books. They have determined in that holding, that unless it is specifically stated in a Statute, you do not have the power to do it.

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He said it is a very troublesome holding, in a larger perspective, not only in just the zoning area, but also across the board with reference to other implied powers that local government, whether it be county or cities, felt that they had. The same set of Statutes is contained under GS-160A, which are the municipal ordinances. It is a larger issue and there is a lot of activity with the NC Association of County Commissioners and the NC League of Municipalities. They are both very concerned about the language in that holding and it is for that reason, and also the severability issue, that we are going to file this petition. If the Supreme Court denies it, that really truly is the end of the road.

Hopefully, we will be able to generate enough support across the state for them to take a hard look at it. There are a couple of retired Supreme Court Justices who have a real problem with that decision. There is a lot going on and it has to be filed by the end of the month, so we are working on it at the moment.

Mr. Koch said the County is not really challenging the money part. It would be good to be able to retain the majority of the Ordinance in the County's tool box in case it is needed in the future. He is talking about the parts that concern phasing of development, and some of the other nonmonetary things that can potentially be done to try to marry development, to have adequate infrastructure and facilities to accommodate it. We do have that as one of the issues that would be addressed in the severability part, and the larger issue about some of the language that seems to restrict the implied or implicit powers of local government, particularly in the zoning area. We are going to take on that issue too. It has some ramifications way beyond the presumed limited holding of this case.

Mr. Koch said there is also the refund lawsuit, which had been stayed by court order, pending the outcome of the validity lawsuits. We are getting cranked back up on that one.

The County's position is that we have Consent Agreements that do not require the money to be repaid and a number of related legal defenses to that. Secondly, there is a very real question about who the money belongs to. The check may have been written by a developer or builder, however, there is a very real belief that it was ultimately paid by the purchaser of the new home. So, that is an issue among the others that we are going to sort through. There is no inclination on the part of the Board of Commissioners to just write a check and give that money back and let it be sorted out elsewhere.

He said that will be going on for a while and we will see where it goes. So, we are not completely finished with the APFO at this point. We do have an ordinance that has been declared by the Supreme Court to be invalid and we are honoring that holding at this point. In other words, anyone applying for a new permit or wants to file a plat can do so irrespective of that ordinance; at least at the present time.

He said a petition to rehear is something that would have a short time period to file. The Supreme Court has a very short time period in which to decide to grant it or not. We

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should know pretty quickly, probably by the end of October, where that is going, if anywhere.

Mr. Fesperman asked if any APFO fees would be imposed.

Mr. Koch said not in this county.

Mr. Fesperman said they are looking at it the same way in Davidson. He asked them what their position was on fees, and they have put it on the back burner. There is also pending APFO's in Davidson, and they have said that the Commission will have to vote to not pursue collection; which they have not done. He said development has started to pick back up and everyone seems to be watching the collectability side of this issue and who is going to end up receiving, if the money is paid back. They seem to think that the ruling did not state anything about the remuneration to a degree. He said it will be interesting to see how this plays out as we move on.

Mr. Koch said Jim Scarborough represents the developers and builders who are seeking refunds in the law suit that we have, and he was quoted in the paper saying that now the price of houses will go down; which seems to imply that the fee is ultimately paid by the purchaser.

He said there are a lot of issues surrounding that, but at least going forward, based on the holding of that case, we cannot enforce it against anybody going forward.

Mr. Fesperman said that seems to be what everyone is doing right now, it is an interesting case.

Mr. Ensley asked if there were any APFO cases in the state that the court has validated.

Mr. Koch said the Cary one was struck down but he thinks that Chatham County has one by special legislation and Orange County. There was also a case from Currituck County, from 10 to 15 years ago where they had a single sentence APFO like we use to have, that basically said facilities need to be adequate. There is an Appellate Court case that upholds that. They just kind of breezed over it in our case.

Mr. Fesperman said Davidson has always said theirs ordinances were different from the regular APFO because the money was used to buy police cars, fire trucks and public parks; it was never used for education.

Mr. Koch thinks the Federal Court took care of that.

Ms. Morris announced that Ms. Emily Knudson will be leaving the area and that there will be an opening for an alternate member to represent the Harrisburg area.

Ms. Morris said if the Board remembers the scenario where we acted as the guinea pigs for the CONNECT Project that the COG is working on. The County has decided to

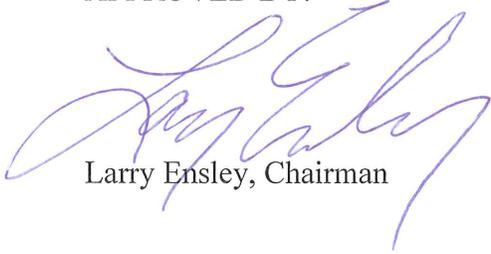
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participate in that project. If you see any advertisements about CONNECT or Connecting Our Future, that is the project. It is probably more at a 40,000 foot scale than it is the caring capacity study that we talked about before; which is more Cabarrus County and the municipalities. She does not know if the committees have been staffed. There is a meeting tomorrow and she may know more after that. She will let the Board know if they are looking for volunteers for the different interest groups.

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There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:39 p.m.

APPROVED BY:



Larry Ensley, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:



Susie Morris
Planning and Zoning Manager

FINDINGS OF FACT
CONDITIONAL USE PERMIT APPLICATION
APPLICANT: WSACC
ROCKY RIVER REGIONAL
WASTE WATER TREATMENT PLANT
CUSE 2012-00001

FINDINGS OF FACT

1. The use as proposed is not detrimental to the public health, safety or general welfare.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *The proposed use adds no new additional burden to the property that would affect the public adversely.*
 - c) *This is the second phase of a prior approved conditional use permit application (CUSE 2011-00004)*

2. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *All such facilities, which are not specifically required for this additional use, are located nearby.*
 - c) *This is the second phase of a prior approved conditional use permit application (CUSE 2011-00004)*

3. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.
 - a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*
 - b) *The proposed use adds no new additional burden to the property that would affect the public adversely.*
 - c) *This is the second phase of a prior approved conditional use permit application (CUSE 2011-00004)*

4. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.

a) *See Applicant's response to this requirement, which is incorporated by reference as a Finding of Fact.*

b) *The proposed use adds no new additional burden to the property that would affect the public adversely.*

c) *This is the second phase of a prior approved conditional use permit application (CUSE 2011-00004)*