

REGULAR MEETING
TOWN OF WAYNESVILLE
BOARD OF ALDERMEN
TOWN HALL – 9 SOUTH MAIN STREET
JANUARY 24, 2012
TUESDAY – 7:00 P.M.

The Board of Aldermen of the Town of Waynesville held a regular meeting on Tuesday, January 24, 2012. Members present were Mayor Gavin Brown, Aldermen Gary Caldwell, Libba Feichter, J. Wells Greeley and LeRoy Roberson. Also present were Town Manager A. Lee Galloway, Assistant Town Manager Alison Melnikova, Town Clerk Phyllis McClure, Finance Director Eddie Caldwell, Planning Director Paul Benson and Town Attorney Woodrow Griffin. Mayor Brown called the meeting to order at 7:00 p.m.

Approval of Minutes of January 10, 2012

Alderman Caldwell moved, seconded by Alderman Feichter, to approve the minutes of the January 10, 2012 meeting as presented. The motion carried unanimously.

Public Hearing Request by Judy Ferguson to Rezone Property Located at 56 Elysinia Avenue (.16 acres) Hazelwood Urban Residential (H-UR) to Hazelwood Business District (H-BD)

The Town received a request from Ms. Judy Ferguson to rezone land she owns at 56 Elysinia Avenue from the Hazelwood Urban Residential District to the Hazelwood Business District. The minutes of the Planning Board meeting from December 19, 2011, were presented to the Board. At that meeting, the Planning Board recommended denial of the rezoning request by unanimous vote, but Ms. Ferguson had the option of presenting her request to the Town Board for its consideration.

Information that was presented to the Planning Board by the Town Staff was presented to the Board of Aldermen. It was noted that on the map of the area, Elysinia Avenue is the dividing line between the Hazelwood Urban Residential District and the Hazelwood Business District. The lot at 56 Elysinia Avenue which Ms. Ferguson wishes to have rezoned is on the east side of Elysinia Avenue, and there is no other commercial property on that side of the street. There is some commercial property on the west side of Elysinia Avenue, but it is in the Hazelwood Business District. The Planning Board felt that it was important to protect the Hazelwood Urban Residential District from the intrusion of any commercial uses.

Attorney Griffin opened the public hearing. The following persons spoke:

Jared Davis, attorney with Jeffrey Norris and Associates, appeared to represent Ms. Ferguson, a resident of this area for many years. Mr. Davis said this property is .16 acres and in its current zoning would be allowed to have a business, but would also need to be a primary residence. It would not be feasible to operate a business and reside in a house with only 1,000 square feet.

Ms. Ferguson would like to market the property commercially. The property is perceived as a commercial area since the Urgent Care Center, and businesses such as Doggie Day Care and Mountain BBQ are located on the other side of Elysinia. Mr. Davis said he did not feel that rezoning this property would be arbitrary and capricious. Zoning boundaries follow the center lines of streets. The twelve lots on this side of Elysinia Avenue face an intersection. Since 25% are already set up for commercial, they do not feel that this would be considered a spot zoning. The residential value and use of this property is diminished because of its zoning. The house next door is empty because of foreclosure and it doesn't help the town's tax base if a house is empty. The house sits in a flood zone and it is very difficult to get financing. Rezoning the property would not change traffic and the neighbors did not have to worry about their taxes being raised based on a rezoning.

Mayor Brown asked Mr. Davis if the property were rezoned, where he thought the zoning line should be drawn. Mr. Davis said he felt that the entire side of the street should be rezoned.

Mayor Brown asked Planning Director Paul Benson to explain what the uses of the lots are and Mr. Benson explained the uses.

Lula Ruff, said she lives behind this property on the Westwood side. She does not feel that it is the proper place for a business. Businesses located on the other side create traffic, noise and lights at night. There is a house in front and brick residence behind this property and she asked where a driveway would be located. Ms. Ruff said most people on Elysinia are like the residents on Westwood Circle that can't afford to pay any more taxes and the ones she has spoken to are all opposed to the rezoning.

Greg Ferguson said he would like to clarify that there was an intervening property between the white house and Ms. Ruff's property. The brick house is owned by someone else. The property requested to be rezoned has its own area for parking.

Phil Ferguson said the other corridors into town are zoned commercial thoroughfares.

No one else spoke; Attorney Griffin closed the public hearing.

Mr. Benson said a lot of people were surprised when Big Mountain BBQ moved to their current location. If starting with a blank slate he would have recommended leaving the property residential, because this is mainly a residential area. If the property in question is rezoned to the Hazelwood Business District, parking will only be allowed in the rear or at the side, not in the front of the building. In his opinion, the property would not have viable parking.

Alderman Feichter asked what would happen to the other properties if the property is rezoned. Mr. Benson said there is now a geographical boundary that the zone follows. Alderman Feichter asked about making all the properties commercial. Mr. Benson said it would create an undesirable development pattern. Eventually it might all convert to commercial. The residence proposed for rezoning would probably be difficult to sell as residential and there could be interest in commercial.

Mayor Brown moved, seconded by Alderman Caldwell, to deny the request by Ms. Judy Ferguson to rezone the property at 56 Elysinia Avenue from Hazelwood Urban Residential to Hazelwood Business District. The motion carried unanimously.

Public Hearing Request of Premier Chemicals to Rezone Property at 12 Commerce Street and 390 Smathers Street (6.7 acres) From Central Business District (CBD) to Commercial Industrial (C-I)

Premier Chemical, formerly Giles Chemical, is requesting a change where the facility is located along Commerce and Smathers Streets from the current Central Business District Zone to a Commercial Industrial Zone.

In the Planning Board meeting minutes of December 19, 2011, it was noted that there is considerable concern among the neighboring businesses and residents about parking and traffic issues that have arisen with the location of the packaging facility of Premier Chemicals.

Premier Chemicals has been in operation since 1950, and when the Land Development Standards were adopted, the property was placed in the Central Business District. In such a district, the industrial use of hazardous chemicals made the operation a heavy industrial operation, and that is not permitted in the Central Business District. As a non-conforming use, the industry was not eligible to expand, which is what the company wishes to do. In order to carry out their expansion, they are requesting rezoning to the Commercial Industrial Zoning Classification. Such a zone will allow the company to expand operations.

The Planning Board recommended approval to the requested rezoning on a majority vote, but it was after receiving a considerable amount of public input on the matter.

Attorney Griffin opened the public hearing. The following persons spoke:

Mark Yops, 95 Love Lane, congratulated Giles for being in business during this economy. However, he feels that they have outgrown the business community of Frog Level. Trucks on Dellwood Road are constantly crossing over the yellow lines, over the sidewalk on Commerce Street and semi-trucks create problems for other traffic. It is not uncommon for trucks to be parked in the street and there is no regard for parents that drive their children to the Middle School when they constantly have to maneuver around the parked trucks. Rezoning of the property would make things more disruptive than they already are. A Giles Chemical employee is always parking their car on the sidewalk causing pedestrians to walk in the street to get around the car. Mr. Yops objects to the expansion proposed because it is located in the flood plain area. Panacea has a deck for people to sit and enjoy the creek, but with the expansion they would see a factory or industrial building and more noise would be created. Access to the site in the area of Love Lane and Chestnut Park Drive would create additional problems, because this is already a congested area. There are several new businesses in the Frog Level area, and festivals are held here. This area is historic and the proposed addition by Giles would devalue their properties.

Patrick Bradshaw, Civil Design Concepts, spoke on behalf of Premier Chemicals. He has served as the consultant for Giles and has had the privilege of serving on Waynesville's Steering Committee for review and adoption of the Land Development Standards. In April 2011, their

activity was a permitted use, but it was felt that changes made in the LDS were an unintended oversight and changed the permitted uses. Mr. Bradshaw read uses from the previous ordinance that were recently changed. He felt that it was not the goal to alter the permitted uses within that district.

Alderman Roberson asked how much traffic would increase with the addition. Mr. Bradshaw said Premier Chemicals Representative Matt Haynes can speak to this issue more than he could. Mr. Bradshaw said the uses being proposed would have been permitted under the previous LDS. Having a toxic material does link itself to being a heavy industrial district.

Matt Haynes, representing Premier Chemicals, gave a brief background on Giles and how they began operations in this location in 1950 as one of the largest American producers of Epsom Salt and contributor to economic development in Haywood County. They are an environmentally friendly system and very responsible with a zero effluent facility. All industrial water is reused and recovered and they are regulated by the Food and Drug Administration. They employ 90 people in Waynesville and have increased local employment since 2008. They are seeking rezoning to Industrial Zoning. They are in the middle of a feasibility study on their proposed project which is how this became an issue. Their proposal is to add a 3,000 square foot facility to produce Magnesium Hydroxide which is used in wastewater treatment, water treatment and odor control. Magnesium Hydroxide is an inert mixture of Magnesium Oxide and water. If spilled, it is not necessary to report to EPA because it is not felt to be a danger to the environment. The additional operation would create six (6) truckloads per week. The traffic flow for the new facility would be across their back lot with an entrance from Smathers Street and another across from Charlie's Corner. They do not expect a negative impact from this.

Alderman Roberson asked about the exit and entrance. Mr. Haynes said the entrance would be from Dellwood Road. Mr. Haynes added that Sulphur Acid is being used on the other side of the business. They have proper containment and proper spill response plans and their employees are trained to handle these.

Earl Bradley, Earl's Automotive in Frog Level, presented photos of trucks unattended in the road for long periods of time, parked the wrong way and backing up the street. He is constantly asking drivers to move their trucks from blocking his business. In the design presented by Giles for their addition in the Spring of 2011, trucks were to be kept out of the street and this is not being done and their staging areas are not being used. The Board of Adjustment recommended that "No Parking" signs be added and this has not been done. Mr. Bradley said if the rezoning is approved and Giles gets a new building, the area will become a parking lot for trucks. They are parking in his front door and he can't do his business. The people that came to the Board of Adjustment meeting weren't happy and they still aren't happy. Mr. Bradley said he lives on the hill above Giles and the noise is terrible. He said the Board of Aldermen is supposed to protect the citizens and taxpayers as well as businesses.

Alderman Greeley asked Mr. Bradley how long he has lived in his present location. Mr. Bradley said he has been there about 12 – 13 years and has been in business in Waynesville for 22 years. When he was at a location on Richland Street he requested a variance and was turned down.

Sally Bradley, Earl Bradley's wife said she is opposed to the rezoning because she believes that Giles is planning on expanding and this would be a detriment to everyone in this area. She feels that it is a waste of her time to stand before the Board tonight because she spoke at the Board of Adjustment meeting and the residents are suffering today because of their decision. She asked if this Board was going to make the same mistake. She felt that big corporations are the ones that are able to win in this town rather than a small business.

Mary Roper, Chestnut Park Drive, asked what the rezoning would do to her property. She lives in a residential area and wanted to know how much closer Giles Chemical planned to expand in the area.

Peggy Roberts said she hoped the zoning issue can be resolved. She would like to see Giles Chemical grow and thrive for the next 50 years. Ms. Roberts said she has lived on Mill Street for the past 40 years and never caused Giles any problems. If you walk across a neighbor's property (Ms. Henson's driveway) you can leap onto the building that Giles has built. She has seen the trucks and headlights almost into Mr. Bradley's door of business. The Giles Chemical issue is out of control and she would like to know what they are going to do to her. If there are trucks running back and forth in front of her property now, it will only get worse and she has had all she is going to take. Several years ago, the Richland Baptist Church requested a variance to build an open picnic shelter and their request was denied; however, Giles can build an industrial building in her doorway. There has got to be a higher power to put a stop to this. Children can't sleep in their front bedrooms because of the noise. People have had to shut the front parts of their houses since last June. Giles has tried to put a curtain damper on the ventilation fans, but the wind just blew the curtains. They have now put a metal box over the fan and it seems to vibrate worse. Ms. Roberts asked the Board to consider these things and deny the request.

Ron Muse said he wishes Giles Chemical Company well. Everyone should be treated equal. The area for a 3,000 square foot building is less than 1 ½% of what is requesting to be rezoned. Mr. Bradley has a lot across the railroad tracks and he was denied a rezoning. Buffers are needed between zones. When ordinances were updated they said they were going to have a railroad zone and he felt that this was erased. Mr. Muse added that he was also denied rezoning for commercial.

Scott Fleenor said he has lived at 31 Suyeta Park Drive for 16 years. He chose to live in Waynesville which goes along with all the noise, etc., of living inside town. He is concerned about changing the zoning to heavy industrial. He asked what uses are included in this zone, and feels that changing the zone would increase traffic and noise.

Rebecca Franklin, 449 Mill Street, has been at this location since 2000. Trucks come in and out all night and you can't sleep because of all the traffic. Ms. Franklin asked the Board to consider these things before making a decision.

Mary Rabb, 63 Quincy Street, said the trucks sit at Giles all night with their engines running and felt that they should stay at the staging area if the truck was running all night. The back of their lot is in the front of her property. Giles was supposed to beautify and improve their property several years ago, but she hasn't seen anything pretty there and the traffic is terrible. Ms. Rabb

was concerned about school buses traveling Mill Street, adding that there are two areas where the dirt has washed from underneath the pavement.

James Roberts has lived behind Giles Chemical for the past 40 years and on Water Street in Frog Level before that. Mr. Roberts said the area was a beautiful little place at one time. He had concerns about the creek running beside Giles Chemical and felt that any material that might leave their business could be dangerous to children playing in the area.

No one else spoke; Attorney Griffin closed the public hearing.

There was a considerable amount of discussion following the public hearing, particularly regarding the issue of parking along Smathers Street/Sulphur Springs Road. Earl Bradley presented a video of some of the parking and traffic issues in this area.

Alderman Greeley asked how many additional employees would be needed with the proposed addition. Mr. Haynes said the new facility would be a daytime facility only with the addition of three new positions. Alderman Greeley asked about the property being in the floodplain. Mr. Benson said Giles received no rise certificates in the past to build facilities in the area. He added that building in the floodplain is not a problem. Building in the floodway portion is a problem because a study must be done as to whether the addition could cause a rise in the flood level.

Alderman Roberson said one issue that was brought up by almost everyone is the truck noise. There was discussion regarding the hours of operation at Giles Chemical. Mayor Brown asked about the possibility of a conditional zoning district.

Alderman Feichter said she knew that dilemmas would be heard tonight, from a business that has been in the area for a number of years and made contributions to the community and those members of the community that have specific needs. Short of “dividing the baby” she said there is the question of how do you satisfy both very important entities and she is not sure at this point how this can be done.

Alderman Greeley said Giles wants to invest to better their product and the folks that are neighbors also have an investment that everyone has to live with. He asked if there might be a way to negotiate on what is requested and address the issues of buffering and parking.

Sally Bradley said their building has been offered for sale to Giles as a possible solution.

Patrick Bradshaw said that Giles would not be motivated to enter into negotiations for a conditional district for their existing use and he asked that unreasonable expectations not be pursued.

Manager Galloway said several years ago, there were some issues with Giles Chemical regarding a buffer that was to be installed, but was unsure exactly what the issues were at that time. Peggy Roberts said Giles Chemical did plant about 8 – 10 pine trees that might be grown when her grandchildren are old. All the existing Locust trees were removed and Giles Chemical was telling them at that time that they just wanted to be a good neighbor. Matt Haynes said trees had to be removed because they were in the right-of-way of an electrical power line. The power line right-of-ways also make it almost impossible to build along the back area of their property.

Alderman Caldwell said he remembered that there was an issue of unsightly appearance at the back of Giles property when the trees were removed.

Alderman Greeley moved to table the issue until further information is gathered and further discussions are held, seconded by Alderman Caldwell. The motion carried unanimously with four ayes (Caldwell, Feichter, Greeley and Roberson) and one (1) nay (Brown).

No Parking Signs on Smathers Street and Sulphur Springs Road

When the request for expansion of Giles Chemical came before the Board of Adjustment in the spring of 2011, there was a recommendation that the Town Board consider passing an ordinance to prohibit on-street parking on Smathers Street and Sulphur Springs Road between the bridge at Commerce Street and the Sulphur Springs Baptist Church.

Town staff has looked at these roads carefully and evaluated whether any parking should be allowed on Smathers Street and Sulphur Springs Road. Both streets are narrow and heavily traveled, and they simply do not lend themselves to permitting parking on the street. Town staff asked that the recommendation of the Board of Adjustment be expanded to adopt an ordinance to prohibit parking on either side of Smathers Street between Commerce Street and Boyd Avenue and on either side of Sulphur Springs Road between Boyd Avenue and Plott Creek Road.

A video was presented by Mr. Earl Bradley showing trucks from Giles Chemical parked and maneuvering along Smathers Street and Sulphur Springs Road. Mr. Bradley pointed out that a variance was granted for Giles Chemical and part of this was that the vehicle use be allowed only on their property. Mr. Bradley said Giles wants to be a good neighbor, and a good neighbor would not build something like this that would hurt their neighbors. There are school buses that have to go around these trucks. Mr. Bradley said if the "No Parking" signs are installed, the Police Department can write some citations for those offenders.

Alderman Caldwell moved, seconded by Alderman Feichter, to adopt an ordinance designating "No Parking" on Smathers Street from its intersection at Commerce Street to its intersection with Boyd Avenue and Sulphur Springs Road from its intersection with Boyd Avenue to its intersection with Plott Creek Road. The motion carried unanimously. (Ord. No. 2-12)

2011 Annual Certification of Firefighters

Each year, the Chiefs of all Fire Departments in North Carolina must submit a certification to the State that the firefighters in that department have been active in responding to fires and in receiving the number of hours of training required. If a fireman is on this certified list, that individual or his heirs become eligible for certain benefits. After a period of service and certification spanning twenty years, the firefighter becomes eligible for a small monthly payment through the Firemen's Pension Fund.

The Firemen's Pension Fund operates under the direction of a Pension Committee appointed by the Town Board. This Committee receives an annual payment from the North Carolina Department of Insurance, and those funds are provided by a tax on insurance premiums collected in North Carolina. The Committee then uses those funds to pay the Pension due to firefighters

that have completed twenty years of service. Certified firemen are also eligible for a \$50,000 line-of-duty death benefit as well.

The certified list of firemen prepared by Fire Chief Joey Webb was presented to the Board. By submitting this list, Chief Webb is certifying that these firemen were active in responding to fires and received the minimum 36 hours of training to make them eligible for benefits from the Pension Fund.

Alderman Feichter moved, seconded by Alderman Greeley, to approve the certified list of firemen as presented by Fire Chief Joey Webb. The motion carried unanimously.

Renewable Energy

In 2006, the North Carolina General Assembly passed legislation which required utility companies to secure an increasing percentage of their power from renewable energy sources. By the year 2021, each utility company is supposed to be securing 12.5% of its power from renewable energy sources – wind, solar, swine or chicken manure, just to name a few.

In assigning this task, the General Assembly allowed the Investor Owned Utilities to collect a fee to make this renewable energy source possible since the cost of renewable energy has a much higher per kilowatt hour price than the cost of energy derived from nuclear, coal, oil or natural gas fired facilities. For those customers of Progress Energy, there is a renewable energy or REPS charge on the utility bill each month.

For wholesale customers like Waynesville, the legislation allows Waynesville to pay a REPS charge to Progress Energy which provides all the power for the 3,100 customers on the Waynesville Electric system. Wholesale customers are billed at a ratio of what their power purchases are, compared to all the power sold by Progress Energy.

In the Budget Ordinance which the Town Board adopted, there is a monthly REPS fee that was accurate when the budget was adopted in June. But the REPS fee is adjusted in January of each year, and the REPS charge for 2012 has been boosted considerably. As a result, it will be necessary for the Town Board to amend the budget ordinance and show an increased REPS charge for all levels beginning with bills issued after February 1, 2012.

Finance Director Eddie Caldwell attended the meeting to help explain the changes and what is being proposed as the Town passes along the REPS charge to its customers. A couple of years ago the State Legislature passed law that a certain percentage of power produced must charge a percentage of customers for the production of this power. In the first two years it has been kept the same. Progress Energy has been charging \$2,993.78 per month REPS charges and the Town has been paying the charge. Currently charges for residential are .53/month and this is proposed to increase to .56/month. Commercial is now being charged \$2.67/month and this is proposed to increase to \$4.50/month, which is still \$2.22 less than the rate charged to commercial customers by Progress Energy. Industrial is now being charged \$26.80/month and this is proposed to increase to \$35.00/month, which would be \$10.52 less than charges imposed by Progress Energy.

Alderman Roberson moved, seconded by Alderman Feichter to amend the budget to include the REPS charges as proposed by Finance Director Eddie Caldwell. The motion carried unanimously. (Ord. No. 3-12)

Resolution for Approving Local Water Supply Plan

State law requires that each local water system supplying public water services have a Local Water Supply Plan. This Plan must be adopted by the local governing body and presented to the State for their review. Public Works Director Fred Baker prepared a plan a few years ago but it was never approved by the Town Board by resolution.

Alderman Roberson moved, seconded by Alderman Greeley to adopt the resolution approving the Local Water Supply Plan. The motion carried unanimously. (Res. No. 1-12)

Adjournment

With no further business, Alderman Feichter moved, seconded by Alderman Caldwell to adjourn the meeting at 9:26 p.m. The motion carried unanimously.

Phyllis R. McClure
Town Clerk

Gavin A. Brown
Mayor