

MINUTES OF
CITY OF CREEDMOOR – BOARD OF
COMMISSIONERS
SPECIAL MEETING
SEPTEMBER 1, 2010
5:30 P.M.

PRESENT:

Mayor Darryl D. Moss, Mayor Pro-tem Jimmy Minor, Commissioner Tim Karan, Commissioner Otha Piper, Jr., and Commissioner John Stallings. Also present was Mr. Tom Mercer, City Manager, Ren Wiles, Finance Officer/City Clerk, and Attorney Lori Dutra.

OPENING:

The Mayor opened the meeting at approximately 5:31 pm. The Mayor announced the purpose of the Special Meeting, to discuss the Paddington subdivision permits and recreation requirements. Before beginning the business portion of the meeting, Manager Mercer introduced three new members of the Creedmoor staff:

Mr. Rick Flowe, the Planning and Zoning Administrator

Mr. Kenneth Geathers, the Public Works Director, and

Mr. Brian Wilson, serving as a Public Works staff member and as a Professional Engineer for the City.

BUSINESS PORTION

Manager Mercer makes a general introduction/recap of the issue. Manager Mercer introduced Administrator Flowe to provide an overview of the situation and recommendation(s) to the Board. Administrator Flowe passed out a memorandum on the issue. (Copy attached to these minutes.)

See Page 2 of said memorandum, the Findings and Conclusions section. Administrator Flowe presented excerpts from City policy statements, intended to show the Board's relevant goals and intentions for subdivision development. Administrator Flowe addressed the use of bonding by developers/builders to ensure construction of required amenities. At this point, he summarized one key point of contention. Administrator Flowe characterized the developers and builders as believing that bonds in place to ensure recreation facilities are built was sufficient for Certificates of Occupancy (CO). The Creedmoor interpretation is No, the actual construction of the required amenity is needed before COs can be issued. Administrator Flowe summarized two key points to the situation, an earlier action of the board to suspend issuance of building permits and an ordinance requirement which prevents staff from issuing COs until all requirements are met. Thus, staff is not able to take actions on the situation until something changes. Conclusion, "We have sufficient tools in our existing ordinances to go back all the way to the developer..." to enforce compliance with original responsibilities.

Administrator Flowe made reference to HB 683 and the subsequent session law, allowing municipalities to terminate extensions of permits if there is only one violation. He believes that the failure to install playgrounds/recreation areas constitutes such a violation.

Recommendation: Location of playground is uncertain. Administrator Flowe recommends that the Board of Commissioners release the hold on permits so that Creedmoor administration can go back into action. This does not mean that permits will be issued without resolution of the recreation issue. Administrator Flowe summarized the multiple party issue, that many different parties have to be coordinated to reach an acceptable conclusion.

Administrator Flowe went on to address specific recreation concerns about the required facilities and some of the sizing specifications. E.G. Does the proposed parking lot constitute a play area for children? He also pointed out the current standard requires approximately 3 acres of recreation land. Administrator Flowe believes that only the Board can make the modification to allow the recreation area to be spread over multiple sites. 25% has to be playground equipment for children. If strictly enforces, play area for children would resemble an elementary school playground.

Recommendation: They (inclusive of builders, developers, banks, etc.) need to design something. Administrator Flowe recommended that the Board allow staff the freedom to “drill down” with the interested parties to reach resolution. He promised to keep the Board informed and to bring any requested exceptions to the Board for consideration.

After this point, a question and answer session followed. The Mayor questioned if the City’s ordinances were effective enough to get the playground/recreation area built. Administrator Flowe replied that in his opinion, the ordinances are strong enough to do that.

Commissioner Minor offered insights based on his history and involvement with the approval of this subdivision. He expressed his understanding that multiple recreation sites to meet the ordinance requirements were always considered a possibility. Commissioner Minor also expressed his strong desire to see playground equipment installed, or he “will be holding someone responsible.”

The Mayor expressed his desire to have information to come back to the Board. Administrator Flowe expressed his confidence in being able to keep the Board informed of progress on the issue. Administrator Flowe also expressed his position that the communication would be information only; nothing requiring Board action would be done electronically. “We want the development community to see that we have a handle on this issue.” The Mayor expressed his desire that this be a standing agenda item until it is resolved.

Administrator Flowe made the summary observation that the scale of the recreation area(s) as required by City ordinance and what the developers are proposing are vastly different. This

led to a discussion on whether the developer's lot inventory would be reduced or if there is land previously set aside for recreation purposes. Commissioner Minor reiterated his opinion that the intention was always to have the equipment dispersed through the neighborhood.

Commissioner Karan shared his own information on this development. He expressed his desire to let staff have their chance to address the issue.

Commissioner Piper expressed his desire that the problem be corrected in a way that shows developers that they will not be able to do what they want in Creedmoor.

Commissioner Stallings expressed his opinion that the issue was well researched and that he is willing to release the hold on permits.

The Mayor turned to Attorney Dutra. She indicated that the City has told "the people across the street" that they don't have a special use permit anymore. Administrator Flowe amplified that his intent is to contact all relevant parties that hold/did hold a special use permit or are subject to final plat approval. His intent is to notify that the approval has been terminated. The expectation is "that will get their attention."

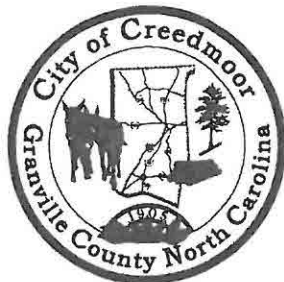
The Mayor, Attorney Dutra and Administrator Flowe discussed the proper procedures for motions and taking Board action. Commissioner Minor clarified that the proposal before the Board would allow construction to take place, but no certificate of occupancy could be issued before all amenities are in place. Administrator Flowe responded that, No, his intention was to continue to hold permits as an enforcement tool. If the Board lifts the hold on permits, then the staff would be in a position to act if the developer came into compliance. He continued that he would like to see bonding requirements put on the developer, for 125% of the quoted price for the item, service or project. Administrator Flowe reiterated his opinion that any bonding for projects or construction is separate from eligibility for a CO.

Motion by Commissioner Minor to release the hold on the application process imposed by the Board for building permits and restore the responsibility to the staff to seek the full compliance with the Subdivision Ordinance. Seconded by Commissioner Piper. The motion received a unanimous vote.

Commissioner Minor expressed his desire to task the Planning Department with the development of a design manual for playground equipment for future designers.

ADJOURN

Commissioner Piper made the motion to adjourn the Special Meeting. Seconded by Commissioner Stallings. The motion received a unanimous vote. The meeting adjourned at 6:55 pm.



CITY OF CREEDMOOR

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CITY MANAGER
THOMAS H. MERCER

COMMISSIONERS
TIMOTHY J. KARAN
JIMMY MINOR
OTHA PIPER, JR
JOHN T. STALLINGS
HERMAN B. WILKERSON

TO: Mayor and Board of Commissioners
Tom Mercer, City Manager
Tom Currin, City Attorney

FROM: F. Richard Flowe, AICP, Planning, Zoning & Subdivision Administrator

DATE: September 1, 2010

SUBJECT: **Paddington – Recreation Area Construction – Zoning/Building Permit Hold**

BACKGROUND

Earlier in 2010 the Board of Commissioners enacted a “hold” on any and all zoning and building permits in the Paddington subdivision. This action pertained to prohibiting additional home construction until the required Recreation Area, in accordance with the City of Creedmoor Code of Ordinances and subsequent approval(s) during the plan approval process, is established. Key dates are listed below as additional information.

Approvals:

1. September 22, 2003 - Special Use Permit – Cluster development approved by the Creedmoor Board of Adjustment.
2. November 25, 2003 – Board of Commissioners approved ‘preliminary (sketch) plans for 126 lots with total allocation of 45,360 gallons per day.
3. December 19, 2003 – Letter from City Manager stating allocation commitment.
4. May 12, 2005 – Preliminary Plat (Tracts 1 & 3). *The phase has streets/infrastructure essentially complete.*
5. October 25, 2005 – Preliminary Plat for Phase 2 (Highlands) approved. *This phase has not been developed – no streets or infrastructure.*

Development Summary

As of September 29, 2009 the development activity of the Paddington subdivision was as follows:

Developed Phase(s)

Phase 1	49 lots	49 occupied
Phase 2	<u>47 lots</u>	<u>9 occupied</u>
Total	96 lots	58 occupied

Undeveloped Phase(s)

Phase 3	42 lots	Sketch Plan only, no Preliminary Plat approval, no recorded lots
Phase 4	95 lots	Highlands- Preliminary Plat approval; no recorded lots

FINDINGS & CONCLUSIONS

Following a review of the files and discussions with staff the following facts have been determined:

A. The Zoning Ordinance requires the holder of a Special Use Permit to meet all City development standards. The Subdivision Ordinance states the developer:

1. "shall provide land",
2. specifically stating "1/35 of an acre shall be reserved for each dwelling unit planned or proposed",
3. that such land "shall form a single parcel",
4. unless "where two or more parcels would be in the best interest of the public",
5. and "The shape of the portion of reserved land which is deemed suitable for active recreation shall be sufficiently rectangular or round to be useable for any or all recreational facilities and activities",
6. such "reserved land shall be located so as to e reasonably serve the recreation and open space needs of the residents",
7. "Access shall be provided to any reserved recreational areas by adequate sidewalks, easements or frontage on neighborhood streets",
8. "must be accessible by emergency vehicles",
9. "At least 25% of any site reserved for recreation in each subdivision shall provide playground equipment for children",
10. "shall provide on the plat a description of the active recreation areas, including playground, ball fields, tennis courts, and the like to be provided in that area",
11. "must be completed prior to final plat approval"; however,
12. "In lieu of completion of the improvements, the developer may submit a performance bond or letter of credit in the amount of 125% of the estimated cost of completion", and
13. "No certificate of occupancy for any dwelling in a development shall be issued before completion of improvements." (*meaning that a performance bond or letter of credit may only substitute for the actual completion to enable a Final Plat to be recorded, and may not substitute for the issuance of a Certificate of Occupancy*)

B. The Recreation Area required by City Code has not been met in accordance with applicable policy. The swimming pool may apply to a portion of the requirement; however, without either a

variance or the re-processing of the permit approval for a special use for the subdivision, cannot be considered a satisfactory substitution for the required Recreation Area.

- C. The Padding subdivision is not in compliance with the provisions of their Special Use Permit and/or the Subdivision Ordinance, specifically **§153.61 Recreation Areas**.
- D. The Board of Commissioner action to direct the staff to withhold issuance of any zoning/building permits effectively halts construction until authority to the Zoning Administrator and Building Official is restored for the Paddington subdivision.

POLICY IMPLICATIONS

The Board of Commissioners action to place a “hold” on the issuance of zoning and/or building permits prohibits staff from administering the provisions of the Code of Ordinances applicable to this subdivision. The subdivision, by virtue of being shown and approved on one Preliminary Plat, includes all of phases 1, 2 and 3.

FISCAL IMPACT

The fiscal impacts on the City include:

- A. Vacant lots are assessed at fair market value and Ad Valorem taxes are assessed on that value.
- B. Vacant lots do not require any municipal services, other than maintenance of infrastructure serving to provide access to, street lights, and/or stormwater management from those lots.
- C. Construction upon vacant lots will increase both revenues and costs to serve future residences.
- D. Litigation resulting from actions and/or inactions by the City.

ALTERNATIVES & RECOMMENDATIONS

The Board of Commissioners may either continue the “hold” on the permits or release the “hold” to allow staff to work within the context of the Code of Ordinances and the approvals granted by due process.

Continuation of the ‘hold’ on permits will potentially result in continued political involvement by the Board of Commissioners. This is *not the recommended approach* due to the need for the administration and enforcement arms of the staff to administer the provisions of the Code.

Releasing the “hold” on permits will result in the administration and enforcement of the Code to seek compliance with the requirements of the Subdivision Ordinance. The Subdivision Administrator will be responsible for seeking compliance. The withheld permits have not had the desired effect on the extraction of the recreation area while economic conditions deteriorated; however, since these parcels/lots have been recovered by financial institutions/banks the policy has clearly been effective. There is now an incentive to adhere with the requirements of the Code, provided there is a consistent message from staff, backed by the enforcement arm of the City.

The *recommendation* before the Board from staff is to consider a motion that will allow staff to begin enforcement process with the original development by terminating the approval of the Preliminary Plat for the entire Paddington subdivision. This action will eliminate any and all vested rights to future phases of the development. This action will maintain the connection to the original developer/landowner. Suggested draft motion: ***“to release the hold imposed by the Board and restore the responsibility to the staff to seek the full compliance with the Subdivision Ordinance”***.

204.5.3.2 Violation of code provisions. The code enforcement official may revoke a permit upon determination that the work for which the permit was issued is in violation of, or not in conformity with, the provisions of this or the technical codes.

(General Statute 153A-362, 160A-422)

204.6 Fees.

204.6.1 Fees. A permit shall not be issued until the fees prescribed by the local governing authority have been paid. No amendment to a permit shall be released until the additional fee, if any, has been paid.

(General Statutes 153A-354 and 160A-414)

204.6.2 Work commencing before permit issuance. If any person commences any work on a building or service systems before obtaining the necessary permit, he or she shall be subject to a penalty as established by the local governing body.

(General Statutes 153A-354 and 160A-414)

204.7 Inspections.

204.7.1 Periodic inspections for hazardous or unlawful conditions. The inspection department shall make periodic inspections as specified in General Statutes 153A-364 for counties and 160A-424 for cities.

204.7.2 Required public school inspections. Inspections of schools for fire hazards shall be in accordance with General Statute 115C-525(b).

204.8 Certificate of compliance.

204.8.1 Building occupancy. A new building shall not be occupied or a change made in the occupancy, nature or use of a building or part of a building until after the inspection department has issued a certificate of compliance. The certificate of compliance shall not be issued until all required service systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the inspection department.

(General Statutes 153A-363 and 160A-423)

204.8.2 Certificate of compliance. Upon satisfactory completion of a building, plumbing, mechanical, electrical, fire protection or gas system, or portion thereof, a certificate of compliance shall be issued. The certificate of compliance represents that a structure or system is complete and for certain types of permits is permission granted for connection to a utility system. The certificate of compliance shall not be construed to grant authority to occupy a building.

(General Statutes 153A-363 and 160A-423)

204.8.3 Temporary/partial occupancy. A temporary/partial certificate of compliance may be issued permitting occupancy for a stated period for specific portions of a building or service system that the inspector finds safe for occupancy prior to final completion of the entire building or system.

(General Statutes 153A-363 and 160A-423)

204.8.4 Issuing certificate of occupancy. Upon satisfactory completion of a building and after the final inspection,

the inspection department may issue a certificate of occupancy. The certificate of occupancy shall state the occupancy may be safely occupied.

204.8.4.1 Existing buildings. A certificate of occupancy for any existing building may be obtained by applying to the inspection department and supplying the information and data necessary to determine compliance with the technical codes for the occupancy intended. Where necessary, the code enforcement official may require detailed drawings and inspections to determine compliance with the applicable codes. When, upon examination and inspection, it is found that the building conforms to the provisions of the technical codes and other applicable laws and ordinances for such occupancy, a certificate of occupancy shall be issued. The certificate shall state the approved occupancy type.

204.9 Service utilities.

204.9.1 Connection of service utilities. No person shall make connections from a utility, source of energy, fuel or power to any building or system that is regulated by the technical codes until approved by the inspection department and a certificate of compliance is issued.

(General Statute 143-143.2)

204.9.2 Temporary connection. The inspection department may authorize the temporary connection of the building or system to the utility source of energy, fuel or power for the purpose of testing building service systems.

(General Statutes 153A-363 and 160A-423)

204.10 Stop work orders. Whenever a stop order has been issued by an inspection department involving alleged violations of the State Building Codes, the owner or builder may appeal in writing to the Commissioner of Insurance, or his or her designee, within 5 days after the date the order is issued, with a copy of the appeal to the inspection department. No further work may take place in violation of a stop order. The Commissioner, or his or her designee, shall promptly conduct an investigation. The inspection department and the owner or builder shall be permitted to submit relevant evidence for the investigation. The Commissioner of Insurance, or his or her designee, shall provide a written statement of the decision setting forth the facts found, the decision reached and the reasons for the decision. In the event of dissatisfaction with the decision, the person affected shall have the option of appealing as set forth in Section 203.1.2.

(General Statutes 153A-361 and 160A-421)

204.11 Floor loads and occupant loads.

204.11.1 Occupancy. No building shall be occupied for any purpose that will cause the floors to be loaded beyond their safe capacity. It shall be the responsibility of the owner or occupant of any building, where excessive floor loading is likely to occur, to employ a design professional in computing the safe load capacity. The computations shall be filed as a permanent record of the inspection department. The inspection department may permit occupancy of a building when the department is satisfied that the capacity will not be exceeded.


Darryl Moss, Mayor


Ren E. Wiles, Finance Officer/City Clerk

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therefor shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured.

§ 160A-419. Changes in work.

After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department.

§ 160A-420. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

§ 160A-421. Stop orders.

- (a) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed.
- (b) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:
 1. Appealing to the Building Code Council, or
 2. Appealing to the Superior Court as provided in G.S. 143-141.
- (c) The owner or builder may appeal from a stop order involving alleged violation of a local zoning ordinance by giving notice of appeal in writing to the board of

adjustment. The appeal shall be heard and decided within the period established by the ordinance, or if none is specified, within a reasonable time. No further work shall take place in violation of a stop order pending a ruling.

- (d) Violation of a stop order shall constitute a Class 1 misdemeanor.

§ 160A-422. Revocation of permits.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

§ 160A-423. Certificates of compliance.

At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, and no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a Class 1 misdemeanor.

§ 160A-424. Periodic inspections.

The inspection department shall make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in structures within its territorial jurisdiction. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

§ 160A-425. Defects in buildings to be corrected.

When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property he owns.