

DRAFT
MINUTES
Town of Blowing Rock
Board of Commissioners
Special Meeting- August 27, 2014

The Town of Blowing Rock Board of Commissioners held a special meeting to discuss the Mountainleaf project proposal on Wednesday, August 27, 2014 at 5:30 p.m. The meeting took place at Town Hall located at 1036 Main Street, Blowing Rock. Present were Mayor J.B. Lawrence, Commissioners Albert Yount, Dan Phillips, Sue Sweeting, Doug Matheson and Ray Pickett. Others in attendance were Town Manager Scott Fogleman, Town Attorney Allen Moseley, Town Engineer Doug Chapman, Planning Director Kevin Rothrock, Police Chief Tony Jones, Finance Officer Nicole Norman, Public Works Director Mike Wilcox, Emergency Services Director Kent Graham and Town Clerk Sharon Greene.

CALL TO ORDER

Mayor Lawrence called the meeting to order at 5:30 p.m. and stated that a public hearing would not be held.

MOUNTAINLEAF CUP # 2014-03

Commissioner Pickett asked to be recused from the discussion due to a perceived financial conflict of interest since his property is located adjacent to the subject property. Mayor Lawrence asked for a motion to that effect. A motion was made by Commissioner Matheson, seconded by Commissioner Sweeting to recuse Commissioner Pickett as requested. Unanimously approved.

Planning Director Rothrock gave a brief history of the Mountainleaf Conditional Use Permit request process. He stated the request was submitted to the Town on May 6, 2014. Upon review of the application, staff had identified three areas where the proposed project does not meet the land use code thus requiring waivers: 1) building height (increase maximum allowed height from 40 feet to 55 feet for the hotel), 2) the number of parking spaces (from 267 to 254 spaces due to overlapping uses), and 3) impervious area to allow up to 70%.

The request was presented to the Planning Board for approval during their June 19th meeting. The Planning Board then recommended approval with the following five (5) conditions:

1. The Applicant shall improve and widen Hill Street to 18 feet of asphalt width and curb and gutter.
2. All parking for the property shall be accessed within the site.
3. The Applicant shall provide escrow funds for the sidewalk from the corner of Hill Street (at Main Street) to Southern Comforts Restaurant.

4. All sidewalks within the site will be available to the public.
5. The Applicant shall provide public restrooms on the site.

On July 8th and August 12, 2014, Town Council quasi-judicial public hearings were held. During the August 12th meeting, it was the consensus of Council to hold a special meeting on August 27th to discuss the Mountainleaf CUP request further.

Planning Director Rothrock presented the draft CUP to Council for their consideration. He explained the CUP included various changes that had been made to the original CUP as well as commitments made by the Applicant at the August 12th meeting.

Commissioner Sweeting then asked Mr. Rothrock to read the sections of the CUP that were changed so the audience would know what steps were taking place to protect the public.

Planning Director Rothrock began his review of the CUP changes. After reading **Permitted Uses** (b) Change in Use on Page 17 of the CUP, Commissioner Sweeting had questions regarding any change in use and suggested that any changes in occupancy receive approval by the Town Council as well as the Zoning Administrator.

Commissioner Yount commented that he thought Commissioner Sweeting was negotiating. Mayor Lawrence stated Commissioner Sweeting was asking a question for clarification purposes. Town Attorney Moseley agreed that Commissioner Sweeting was asking questions about the CUP for clarification purposes only.

Commissioner Matheson asked what would happen should the property be sold before the project was completed. Mr. Rothrock stated if that were to happen the CUP would run with the property.

Mr. Rothrock continued reading the changes in the CUP, under # 4 **Architecture and Design (b)**; Commissioner Phillips had questions regarding any major changes requiring another public hearing. Mr. Rothrock explained the process in which the applicant would follow and said the applicant would have to build what was approved by Council. Any major changes to the exterior of the buildings would need approval from Council and any change in use that required more parking would need Council approval as well.

Planning Director Rothrock continued to read the CUP. In regard to Section (d) **Building Height**, Commissioner Phillips asked Fire Chief Kent Graham if he could certify for the record that without stamped architectural plans, would he be comfortable that adequate safety services could be provided with the ladder truck that the department had to proposed building heights within the project and meet all fire code regulations. Mr. Graham stated he didn't feel comfortable making that statement without seeing stamped architectural plans; however, based on the drawings presented, safety equipment could reach the proposed heights.

Commissioner Phillips then asked if there were ever public hearings held on commercial projects regarding fire and safety. Mr. Graham stated he was aware of that happening. Commissioner Yount asked if the Department of Insurance in Raleigh ever got involved. Mr. Graham stated it depended on the size of the project and he was unsure of the specific parameters.

Commissioner Matheson then asked for clarification from Mr. Graham in reference to providing proper safety coverage based on the drawings that were presented. Mr. Graham stated he was comfortable saying that adequate safety services could be provided to the project according to the drawings presented.

As Planning Director Rothrock continued reading the CUP, Commissioner Phillips questioned why (g) **LEED Designs** had been struck from the CUP. Mayor Lawrence stated it had been struck from the original CUP after coming from the Planning Board. Commissioner Phillips stated he would like for this section to be added back into the CUP. He asked if Council had voted on this section and if not, why it was being deleted. Planning Director Rothrock advised this section had been deleted from the original draft CUP because it was not required. Commissioner Phillips said this apparently had been adopted by the Town for a reason and wanted to know why it was deleted on this CUP and not removed from the Town Code completely. Planning Director Rothrock advised a template from a prior CUP had been used and this particular section was specific to that project.

Planning Director Rothrock continued his review of the CUP with #6 **Sewer and Water**. Commissioner Phillips asked if a study had been completed regarding the impact this project might have on the Town's water system. Mr. Rothrock called upon Town Engineer Doug Chapman to answer this question. Mr. Chapman stated the Town's Water Treatment facility was currently running at less than half capacity and this project would not have a significant impact on the system.

Commissioner Matheson asked if a Performance Bond would be received regarding water and sewer. Planning Director Rothrock confirmed there would be a Performance Bond required for up to 125% of the project infrastructure costs.

Planning Director Rothrock continued the review with #14 **Solid Waste/Recycling Collection**. Commissioner Phillips asked if these containers would be seen while driving down the Town's Main Street. Planning Director Rothrock explained the location of the containers stating they would be screened and placed on the lower parking area below the retail spaces.

Upon conclusion of the CUP review, Mayor Lawrence asked Planning Director Rothrock if the project met the conditions of the Town Ordinance with the exception of the requested variances. Planning Director Rothrock stated that it did meet the conditions except for the requested building height waiver, flexibility in required parking (13 spaces), and flexibility in allowing an increase from 36% up to a maximum of 70% impervious surface.

Mayor Lawrence asked for any discussion at this time. Commissioner Yount made a motion to deny the CUP and variance requests on the basis that the Town's Land Use Code could not be met. He continued his motion for denial by stating the parking space variance was tenuous, because the applicant implied the hotel spa did not expect customers other than those who stayed at the hotel. Commissioner Yount questioned why any business would limit their customers. He felt the general public would be welcome at the spa.

Commissioner Yount continued to state that regarding the building height variance request, there was a lack of sufficient evidence shown during the two quasi-judicial hearings that this waiver would not injure surrounding property values.

Regarding the 5-year vesting request, Commissioner Yount stated the NC General Statute provided for a 2-year vesting period and anything beyond that period would be a special exemption granted by the governing body. Commissioner Yount felt the applicant had not proven the need for a 5-year vesting period.

Commissioner Yount stated the special intensity request concerned him greatly and a deviation from the normal should only be allowed in extenuating circumstances. Commissioner Yount's motion for denial was seconded by Commissioner Phillips.

Commissioner Phillips stated his first concern was that Chief Graham could not certify that adequate fire and safety services could be provided to this project and that this was a number one priority. He continued to say that he was disturbed by the statement that Council only had to discuss the three (3) waiver requests. Commissioner Phillips felt that Council needed to decide what was right for Blowing Rock and the developer had the right to make money which he understood. However, he was disturbed that the Town's Planning Office had used a template from a previous project and had marked it up and he also found it disturbing that the Planning Office had stated to the press they were in favor of this project. Commissioner Phillips advised the Planning Office's job was to be objective and to put the facts in front of Council for them to make that decision.

Commissioner Phillips said that Council was led to believe the applicant met all the code requirements. Council had only seen renditions and no stamped architectural drawings. Commissioner Phillips stated the retail space could be consolidated and a Dollar General Store could be placed there and there were many issues involved and that rules needed to be set in the beginning because it would be difficult to say no later.

Commissioner Phillips continued to state that the applicant didn't own the property, did not have all the needed financing, had no architectural drawings, had never developed a project such as this one, and could buy the property then turn around and sell it to someone else. He felt that Blowing Rock was taking a big risk in approving this project in concept only and he was unable to look the citizens of Blowing Rock in the eye and make a decision in favor of this project. He continued to state that he felt pressured and

pushed into a corner regarding this project and that he knew the property would be developed eventually, but it needed to be developed into something right for Blowing Rock. Commissioner Phillips said Blowing Rock was a village and needed to remain that way because if Blowing Rock became a Town, its soul would be lost.

Commissioner Sweeting stated she agreed with Commissioner Phillips regarding the need to set rules. She felt this project would benefit Blowing Rock by increasing school enrollment, providing employment, etc. She said the Chamber had commented there was a need for more people to come to Blowing Rock and this project would help do that. Commissioner Sweeting continued to state the Town's tax base would also be increased. She said because the Hayes Center had failed, people were now afraid of that happening again. Commissioner Sweeting also advised that she had not felt pressured regarding this project.

Commissioner Matheson reiterated that he too agreed with some of what Commissioner Phillips had said as well as comments from Commissioner Sweeting. He said that he had heard a lot of talk from residents who felt this project was a good idea and he didn't feel the Hayes Center project should keep other projects from being developed. Commissioner Matheson said that Council would have a lot of control with this project and adequate codes were in place to follow.

Commissioner Phillips stated he didn't see a lot of "Vote Yes" signs in the audience.

Mayor Lawrence called for a vote on Commissioner Yount's motion for denial. In favor: Yount and Phillips. Against: Sweeting and Matheson. Mayor Lawrence voted "No" in order to break the tie. The motion failed.

Commissioner Sweeting then made a motion for approval of the CUP with the following changes: Page 17 (b) **Changes in Use:** Changes in occupancy shall be subject to the review and approval of the Town Zoning Administrator **as well as Town Council.** Mayor Lawrence asked if Commissioner Sweeting wanted to be more specific. She stated her motion was in reference to the listed changes in use in that section of the CUP.

Also, on Page 27, # 14 **Solid Waste/Recycling Collection:** Commissioner Sweeting asked that **delivery service** be included and the times allowed be changed to be between the hours of **8:00 a.m. to 7:00 p.m.**

On Page 27, #16 (ii) **Development Phasing:** With the approval of the Town Zoning Administrator **as well as Town Council** regarding reducing the amount of the bond or letter of credit. In (iv) of the same section, she asked that **timelines be given to the Town Council as well as the Zoning Administrator.**

Page 23 #7 **Commissioner Sweeting asked that a sidewalk be constructed on the outside parameter of the project from east Hill Street to the Chetola entrance in**

order for a connection to be made during the Greenway project. Commissioner Matheson seconded the motion.

Commissioner Sweeting stated the Greenway project would have an entrance near Chetola, therefore with the extended sidewalk there would be a connection to Bass Lake. She also said even though this project was a conceptual design, Council would be approving or disapproving changes to the CUP as well as building designs. Commissioner Sweeting reiterated that this project would bring employment to the area, increase school enrollment, and connect the north end of Main Street to the rest of Main Street.

Mayor Lawrence asked Commissioner Sweeting if her motion included the 5-year vesting period. Commissioner Sweeting stated she was not in favor of the 5-year vesting; **however she would agree to a 2-year vesting period followed by up to two (2) six-month extensions if approved by Council for a total vesting period of possibly 3 years.** Town Attorney Moseley asked if Commissioner Sweeting was amending her motion to include this change. She stated that she would make that amendment to her motion. Commissioner Matheson seconded the amended motion.

Commissioner Phillips asked if Commissioner Sweeting would consider amending her motion to require that the CUP stay with the current applicant. Town Attorney Moseley stated that would not be legal.

Commissioner Yount commented that he didn't quite understand the increased school enrollment, because only one member of the Town's Fire Department and the Police Department lived in the Town limits and he didn't think employees of this project would be able to afford a house in Blowing Rock. He did however agree that employment would be increased. Commissioner Sweeting stated school enrollment included areas outside the Town limits of Blowing Rock.

Commissioner Phillips commented with his experience hiring employees, he had found that they come from other places such as Tennessee and didn't live in this area.

Mayor Lawrence interjected and stated this was not part of the evidence presented in the public hearings. Commissioner Phillips stated he was discussing the motion and wished to speak. Commissioner Yount also agreed that Council should be able to discuss the motion as well.

Commissioner Phillips stated that Commissioner Sweeting used the reasoning that this project would do great things for the economy but she was actually selling out downtown Blowing Rock because there were small businesses in Town that were struggling and she did not care. Commissioner Phillips continued to state that this project would hurt Blowing Rock's economy and would take the heart out of the village.

Commissioner Sweeting responded that Commissioner Phillips had every right to his opinion, however when Hwy 321 was completed, people could then go straight to

Boone. She commented a Greenway study had been completed, because Blowing Rock needed people to continue to shop at their shops, eat at their restaurants, etc. and that was the basis for her decision.

Commissioner Matheson stated there were a lot of feared assumptions on both sides.

Commissioner Sweeting called the question. In favor: Sweeting and Matheson. Against: Phillips. Abstention: Yount. Mayor Lawrence referred to Town Attorney Moseley regarding the abstention vote from Commissioner Yount. Commissioner Yount argued an abstention was not a vote. Town Attorney Moseley commented that he didn't understand why Commissioner Yount was abstaining from voting.

Audience member Keith Tester stated that he had read the Town Ordinance that afternoon and it said without an approval from the Board, an abstention counted as a "yes" vote. Commissioner Yount said according to the Robert's Rules of Order, an abstention was not considered a vote.

Town Attorney Moseley left the meeting to read the Town Ordinance regarding this matter. Upon his return, he read Section 2-12 of the Town Ordinance that stated without approval from the Board, an abstention vote was considered an affirmative vote.

Commissioner Yount stated he wanted the record to reflect that according to the Roberts Rules of Order an abstention was not considered a vote.

Mayor Lawrence stated the motion passed.

CUP # 2014-03 Mountainleaf – Exhibit A

ADJOURN

There being no further business to discuss, the meeting was adjourned at 7:00 p.m.

MAYOR _____
J.B. Lawrence

ATTEST _____
Sharon Greene, Town Clerk

ATTACHMENTS (08-27-14)
CUP # 2014-03 Mountainleaf – Exhibit A

