

**TOWN OF SELMA
JOINT WORKSHOP
TOWN COUNCIL AND PLANNING BOARD
JERNIGAN BUILDING
110 EAST ANDERSON STREET
AUGUST 16, 2016**

MEMBERS PRESENT:

Mayor Cheryl Oliver, Mayor Pro-tem Jackie Lacy, Councilmember William Overby, Councilmember Mark Petersen, and Town Manager Jon Barlow.

Planning Board Members: Ronnie Lee, Roger Diegele, Jody Duggins, Amy Whitley, Donna Hatcher, and Jim Phillips.

Others Present: Al Benshoff, The Brough Law Firm

Other Staff Present: Planning Director Julie Maybee, Codes Administrator Tomeka Moore, and Interim Town Clerk Brenda Thorne.

Absent: Councilmember Tommy Holmes and Planning Board Member Jennifer Edwards were unable to attend.

CALL MEETING TO ORDER:

Mayor Oliver called the meeting to order at 6:00 p.m. and declared a quorum was present.

**An Overview of Draft Selma
Municipal Code, Chapter 17,
Development Regulations
Provisions Pertaining to
Administrative and Legal
Procedures:**

Planning Director Julie Maybee stated that the Town has contracted with a law firm, and introduced Attorney Al Benshoff of the Brough Law Firm. She said that he has worked in City and County Planning Departments for over 13 years, full-time Town Attorney for both Lumberton and Concord for over 17 years, worked in the private sector, and most recently the Brough Law Firm. She said that the Brough Law Firm represents 19 North Carolina towns and cities as the Town Attorney, and provides specialized legal services. Ms. Maybee stated that from her perspective, they were wonderful from the Planning stand point. She said that she has worked with this Firm for over 18 years, and has found that they have given very sound decisions. Ms. Maybee stated that Attorney Benshoff has over 30 years' experience in writing zoning ordinances and a Master's Degree in Planning. She said to have both a legal background and planning background was wonderful.

Ms. Maybee stated that about the second meeting that she was in Selma, there was a person from the Division of Community Assistance that gave a presentation on the Town's ordinances, and did a diagnostic review. Ms. Maybee reviewed a few things regarding that presentation:

- reorganize the structure of the regulations logically by topic and ease of use,
- revise the list of zoning districts for uniformity (name and description).

Ms. Maybee stated that what it all came down to was making the regulations more user friendly, clear, consistent, and follow the North

Carolina General Statutes. She said that Attorney Benshoff had been instrumental in doing that.

Ms. Maybee stated that in order to pull this together, it was going to take everyone; Mayor, Town Council, Planning Board, Town Manager Barlow, Town Attorney Hewett, herself, Attorney Al Benshoff, other Town Departments, and community stakeholders.

Ms. Maybee gave a PowerPoint presentation (incorporated as Exhibit #1, slides 1-3), and stated that Selma has been proactive in planning for many years including:

- *Historic Architecture of Selma, N.C.* 1980
- *Town of Selma Design Manual*, November 2003
- Selma Municipal Code, Chapter 17 – Development Regulations, re-adopted April 13, 2004 from ordinances adopted in 1988
- Future Land Use Plan with Areas/Corridors of Strategic Importance
- Business and Development Plan for Downtown Selma, February 2010
- Diagnostic Review of Development-Related Regulations and Policies
- Strategic Economic Development Plan Update, January 2016
- New Unified Development Ordinance (UDO), 2017

Ms. Maybee stated that a Unified Development Ordinance (UDO) is the streamlining of the Town's Development Regulations, having one section of the code that is geared towards inclusion of the subdivision ordinance, zoning ordinance, design manual, watershed ordinance, flood damage prevention ordinance, and boards and commissions, and having uniformity. She said that if someone was looking at developing a piece of property in Selma, there is a good document they could refer to. Ms. Maybee stated that one of the goals identified in the Strategic Plan was to have ordinance provisions that were clear and consistent. She said that in the current ordinance, there are provisions that conflict with each other.

Ms. Maybee stated that the goals were:

- uniform, streamlined procedures;
- add new N.C. General Statutes and court decisions;
- create one set of definitions;
- one set of development standards;
- cross reference development standards to permitted use table;
- modernize and streamline code enforcement;
- one list of permitted uses for each zoning district – put in one table; revise land uses to meet Town's needs;
- one or two tables of dimensions (lot size, front/rear setback, etc.); and
- tailored to Selma.

Attorney Al Benshoff gave a PowerPoint presentation (incorporated as Exhibit #1, slides 4-40), and stated that zoning ordinance was Chapter 17,

where the UDO would be. He said that right now, the topics were in the same order, and similar topics were grouped together.

Attorney Al Benshoff stated that there were three pieces of the project and would review the first portion (Procedures) tonight. He said that the Procedures were how things get done. Attorney Benshoff stated that there were four procedural articles in Chapter 17. He said that there were two other things that they need to remember. Attorney Benshoff stated that the Legislature and courts have decided that there were different kinds of decisions made by local government. He said that there were only four type of decisions that local government could make, and each one of the procedures have to fit into one of the four. Attorney Benshoff stated that Council makes legislative decisions almost all the time. He said the other decision was a quasi-judicial decision. Attorney Benshoff stated that this was the most problematic from a procedural standpoint because it was the most like a court. He said that this was the one for special use permits. Attorney Benshoff stated that special use permits require sworn testimony, findings of fact, and conclusions of law. He said that quasi-judicial decisions involve applying set standards in the Town's ordinance to a specific application. Attorney Benshoff stated that there were many standards in the Town's ordinance now that apply to quasi-judicial decisions. He said that if the due process is done correctly, and the applicant is given their due process, no decision that the Town makes could be challenged on those credits. Attorney Benshoff stated that if the Town follows the process, is fair, and does what the General Assembly says, the Town would be in good shape.

Councilmember Petersen asked if ex-parte meant outside of the hearing.

Attorney Benshoff stated that was correct. He said that the decision should be based on what is heard in the hearing room, and is supposed to be fair because the witnesses are sworn in and can be cross examined. Attorney Benshoff stated that there was that due process that makes it fair. He said that if you do not do this, the court could send it back to be redone or take the decision out of the hands of that Board.

Attorney Benshoff stated that the other two types of decisions were administrative, which are decisions that the Town Manager and Planning Director make, and advisory, which are the decisions made by the Planning Board. He said that the Planning Board makes recommendations to the Town Council.

Attorney Benshoff stated that next he would discuss the decisions made by Town Council regarding development, what the Planning Board does, and what the Board of Adjustment does.

Mayor Oliver stated that staff and the Planning Board makes decisions based on ordinance standards. She said that it then goes to Council where they surround that with vision and other pieces of information. Mayor Oliver stated that she would think that sometimes it was hard from

a Planning Board perspective when they might be leaning one way internally, but the ordinance does not give them what they need. She said in that case, they look to change the ordinance to make it better support or broader enable to deal with different situations.

Attorney Benshoff stated that was a perennial situation because the ordinance is not fixed. He said that people think of new things to do with their property, and as land uses change, they would need to update to ordinance by putting things in or take things out.

Mayor Pro-Tem Lacy asked if that meant the ordinance would be amended.

Attorney Benshoff stated that was correct. He said that Town Council could amend the ordinance when they wanted as long as they have two weeks' notice in the paper and post the property if it is a rezoning. Attorney Benshoff stated that the idea here is when the UDO is finished, Council will have a public hearing to repeal the current Chapter 17, and substitute it with the new one. He said that ideally, there would be one big amendment.

Attorney Benshoff stated that Town Council decides what the Selma Municipal Ordinance says, and would amend it from time to time. He said the zoning ordinance, the UDO, is part of the Town ordinance, and the zoning map is part of the Town ordinance. Attorney Benshoff stated that one of the things that Council is often asked is to amend the zoning map. He said that Council does zoning text amendments. Attorney Benshoff stated that under Selma's code, a major subdivision plat was for four or more lots, and would need a special use permit. He said that none of these require a quasi-judicial hearing. Attorney Benshoff stated that the decision that Council makes that has the rigorous due process are special use permits.

Attorney Benshoff stated that there were two types of map amendments. He said that when you do a traditional rezoning, Council needed to consider all the uses that could be built on the new zoning district. Attorney Benshoff stated that Selma's ordinance now has a provision called Special Use District, which in the UDO would be called Conditional District Rezoning. He said that this was the kind of rezoning where the applicant could tell Council specifically what they want, and could limit their application to a few uses. Attorney Benshoff stated that the applicant and Town Council could agree on conditions that apply just to that property.

Councilmember Petersen asked if the property retains its zoning with the Conditional District Rezoning.

Attorney Benshoff stated that was correct. He said that was a unique zoning district for a property or properties, and most places put CUR10 and the date on it.

Mayor Pro-Tem Lacy asked what the difference was between the traditional and conditional.

Attorney Benshoff stated that on a traditional rezoning, Council would not get the opportunity to suggest any conditions to be placed on the property, and Council would have to consider all the uses. He said that the conditional district was a unique district carved out just for that application.

Mayor Pro-Tem Lacy asked if someone could put a subdivision in the traditional.

Attorney Benshoff stated that subdivisions were in a different category, and would be getting to subdivisions. He said that a subdivision is the creation of new property lines and new lots. Attorney Benshoff stated that they could create rezone and create a subdivision at the same time, but did not have to.

Attorney Benshoff stated that another Council decision was a Special Use Permit. He said that Council would hold a quasi-judicial public hearing. Attorney Benshoff stated that Planning Board would make a recommendation to Council, and could hold a public hearing if written into the ordinance. He said that the Planning Board should not hold a quasi-judicial hearing with sworn testimony, which would result in two records that could conflict. Attorney Benshoff stated that the way it is set up now is that it goes to the Planning Board for an advisory decision, and to Council for the quasi-judicial hearing and makes the decision. He said that it was a two part decision, which include holding the hearing, make findings of fact based on the evidence heard, and conclusion of the law. Attorney Benshoff stated that one thing that is new in the draft was the Planning Board Chairman should attend the quasi-judicial hearing to make their report on the record; otherwise, it was just hearsay.

Attorney Benshoff stated that the last Council decision was Major Subdivision Plats. He said that three lots or fewer would be staff approval, but four lots or more or requires a special use would go to Town Council. Attorney Benshoff stated that because it was a special use, it would require a quasi-judicial hearing. He said that he has been asked to include a change that a quasi-judicial hearing was not required for a major subdivision that did not require a special use permit.

Attorney Benshoff stated that Planning Board decisions are always advisory, and Board of Adjustments are always quasi-judicial.

Councilmember Overby questioned the Planning Board members acting as the Board of Adjustment.

Attorney Benshoff stated that the Planning Board makes advisory recommendations to Town Council. He said that the Board of

Adjustment makes the decisions it makes with any appeals going to Superior Court. Attorney Benshoff stated that they should not get a decision made on the same topic.

Mayor Oliver asked if there was a conflict when at a Planning Board hearing where anyone could present information, and then they are in a quasi-judicial hearing where there is to be no ex-parte communication, which could have already occurred at the Planning Board.

Attorney Benshoff stated that it could happen. He said that he would not worry about it because the kinds of decisions were separate, and there were a lot of new statutes about what the Board of Adjustment does. Attorney Benshoff stated that now in a quasi-judicial hearing, Board of Adjustment members and Town Council should disclose if they have had an ex parte communication, and should disclose if they could be fair or not. He said that if someone has a conflict and will not step down, the Board or Council could make a motion and take a vote to excuse that person from that matter.

Attorney Benshoff reviewed the standards for a variance that include:

- 1) Unnecessary hardship results from strict application of ordinance,
- 2) Hardship results from conditions of the property,
- 3) Hardship results that did not result from actions of the applicant,
and
- 4) Variance is consistent with spirit and purpose of the ordinance.

Attorney Benshoff stated that something new in the UDO was a special exception. He said that it was similar to a variance, but the standard of proof was less. Attorney Benshoff stated that what you can give an exception for was very narrowly tailored.

Attorney Benshoff stated that the Board of Adjustment also interprets the zoning ordinance and interprets the planner's decision.

Attorney Benshoff stated that one of the things that the Planning Director does was the approval of minor subdivisions, which was the creation of three or fewer new lots. He said that the Planning Director could also approve a Special Purpose Subdivision, which include cemetery subdivisions, subdivisions which create lots for public utilities, and could approve gift lots.

Attorney Benshoff stated that the Planning Director would also be doing zoning permits and certificate of zoning compliance. He said that the terminology in the Town's ordinance was not set. Attorney Benshoff stated that when someone want to build something, they should first go to the Planning Director and apply for a zoning permit, which shows the County that the property is correctly zoned for what they want to do. Attorney Benshoff stated that at the end of the process, before getting a Certificate of Occupancy, the applicant must get a Certificate of Zoning Compliance, which advises that it was built the right way.

Attorney Benshoff stated that the Town's ordinance talks about sketch plans, which is a small drawing and site plans, which are the big, detailed plans for larger, non-residential development. He said that site plans were much defined and were in great detail. Attorney Benshoff stated that there were other kinds of permits such as storm water, flood plain, signs, vested rights, and certificate of appropriateness that were occasional and would be glad to discuss.

Town Manager Barlow stated that vested rights was something that does not come up very often.

Attorney Benshoff stated that vested rights has to be asked for. He said that in 1988, the Legislature approved a law similar to one in Colorado in which someone could get a permit to develop their property, and the Town could not change the zoning. Attorney Benshoff stated that the permit only lasts for two years, and can be extended to five years.

Attorney Benshoff stated that there was a schedule to be filled out at a later date. He said that they could schedule another workshop sometime in October to review the rest of the UDO. Attorney Benshoff stated that ideally it would be ready in November, and could schedule a public hearing and adopt the UDO when Council was ready. Attorney Benshoff suggested that it have an effective date that was not the date of adoption because there might be some zoning map change, time to phase it in, or time for printing.

ADJOURNMENT:

With no further business, the meeting adjourned at 7:02 p.m.

BRENDA W. THORNE, Interim Town Clerk