

MARLBORO COUNTY COUNCIL

MARLBORO COUNTY CONFERENCE ROOM

TUESDAY, SEPTEMBER 8, 2009

6:00 PM

CHAIRMAN	DR. CAROLYN PRINCE
VICE-CHAIR	CORRIE PLATO
ADMINISTRATOR	CECIL KIMREY
COUNTY ATTORNEY	HARRY EASTERLING, JR.

COUNCIL:

JEAN MCLEAN, RON MUNNERLYN, DR. CAROLYN PRINCE, STEVE BLACKMON, AND	WILLIE GLADDEN, CORRIE H. PLATO, KEN ALLEN, ANTHONY WOODS
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* ABSENT

INVOCATION - Mr. Anthony Woods

APPROVAL OF AGENDA ITEMS

Motion made by Mr. Steve Blackmon, seconded by Mr. Willie Gladden to add an item to the agenda under Approval of Minutes for September 1, 2009. Vote in favor. Unanimous. Motion carried.

Dr. Carolyn Prince, Chair advised Council needed to go into executive session after approval of the minutes to discuss an Economic Partnership Prospect.

APPROVAL OF MINUTES – AUGUST 4, 2009, AUGUST 11, 2009, AND SEPTEMBER 1, 2009 (ADDED BY MOTION).

Motion made by Ms. Jean Wallace McLean, seconded by Mr. Anthony Woods to approve the minutes of August 4, 2009. Vote in favor. Unanimous. Motion carried.

Motion made by Mr. Ron Munnerlyn, seconded by Mr. Anthony Woods to approve the minutes of August 11, 2009. Vote in favor: Mr. Steve Blackmon, Mr. Ron Munnerlyn, Ms.

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Jean Wallace McLean, Mr. Ken Allen, Mr. Anthony Woods, and Dr. Carolyn Prince. Abstain: Mr. Willie Gladden (not present for meeting). Vote: 6/0/1. Motion carried.

Motion made by Ms. Jean Wallace McLean, seconded by Mr. Ron Munnerlyn, to approve the minutes of September 1, 2009. Vote in favor. Unanimous. Motion carried.

EXECUTIVE SESSION – DISCUSSION OF ECONOMIC PARTNERSHIP PROSPECT

Motion made by Mr. Steve Blackmon, seconded by Mr. Ken Allen to go into executive session to discuss an Economic Partnership Project. Vote in favor. Unanimous. Motion carried.

Ms. Corrie Plato joined the meeting after the vote.

Motion made by Mr. Steve Blackmon, seconded by Ms. Jean Wallace McLean, to leave executive session and re-enter open session. Vote in favor. Unanimous. Motion carried.

Dr. Carolyn Prince, Chair advised no decisions had been made, no votes had been taken.

OLD BUSINESS

ORDINANCE # 661 – AN ORDINANCE AUTHORIZING MARLBORO COUNTY TO CONTINUE AN AGREEMENT WITH THE MARLBORO COUNTY RESCUE SQUAD PROVIDING PARAMEDIC LEVEL EMERGENCY SERVICE AND TRANSFER SERVICE THROUGHOUT MARLBORO COUNTY – THIRD READING

Motion made by Mr. Ken Allen, seconded by Mr. Willie Gladden to approve the third reading of ordinance # 661. Vote in favor. Unanimous. Motion carried.

ORDINANCE # 662 – AN ORDINANCE TO RE-ESTABLISH THE POLICY RELATIVE TO THE ADMINISTRATION OF RESERVED FIRE PROTECTION AD VALOREM TAX TO ESTABLISH A FIRE COMMITTEE, REPEALING ORDINANCES # 483 AND # 615. – THIRD READING

Motion made by Ms. Jean Wallace McLean, seconded by Ms. Corrie Plato, to approve the third reading of Ordinance # 661. Vote in favor. Unanimous. Motion carried.

NEW BUSINESS

RESOLUTION # 09-09-01 – A RESOLUTION ACCEPTING THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY JUSTICE ASSISTANCE GRANT (JAG) # 1GS09127 IN THE AMOUNT OF \$49,524.

Motion made by Mr. Anthony Woods, seconded by Mr. Steve Blackmon, to approve Resolution # 09-09-01 – A Resolution accepting the South Carolina Department of Public

Safety Justice Assistance Grant (JAG) # 1GS09127 in the amount of \$49,524. Vote in favor. Unanimous. Motion carried.

PROCLAMATION – CLAIMING SEPTEMBER 14, 2009 – SEPTEMBER 18, 2009 AS INDUSTRY APPRECIATION WEEK.

Motion made by Mr. Ron Munnerlyn, seconded by Mr. Willie Gladden, to approve the proclamation claiming September 14, 2009 – September 18, 2009 as Industry Appreciation Week. Vote in favor. Unanimous. Motion carried.

AFFIRMATION OF DECISION ON ZONING AMENDMENT REQUEST.

The Planning Commission's recommendation and report document was provided to Council regarding the joint meeting held on September 1, 2009 by Marlboro County Council and the Planning Commission at the Marlboro County Courthouse to consider a request submitted by Z.V. Pate (landowner) to amend the zoning map for specific properties. The Planning Commission recommended denial of the zoning map amendment request. A copy of the full Planning Commission report and recommendation document is attached as part of the minutes. Council affirmed its decision denying the zoning amendment request and directed staff to inform the landowner of Council's decision.

Motion made by Ms. Jean Wallace McLean, seconded by Mr. Ken Allen, to accept the affirmation of denial on the zoning amendment request. Vote in favor. Unanimous. Motion carried.

REQUEST APPROVAL OF LAND LEASE BETWEEN MARLBORO COUNTY AND THE DEPARTMENT OF THE ARMY CORPS OF ENGINEERS – MARLBORO COUNTY AIRPORT.

Mr. Cecil Kimrey, County Administrator advised the attorney needed to review the document before accepting. No decision was made.

DISCUSSION OF PARD GRANT FUNDS.

Mr. Kimrey advised the following recommendations were made by the recreation committee for PARD funds: **McColl** – Batting Cage \$2500, **Clio** – Dugouts and Batting Cage \$8000, **Wallace** – Backstop and Fencing - \$10,000, and **Lindsay Park** – Batting Cage - \$2500. All Council Members were in agreement that Blenheim is next in line for PARD Funds, then Brightsville. The county is working on obtaining property for the Blenheim area. Mr. Anthony Woods advised the county must own the property in order to use PARD funds.

APPROVAL OF BIDS

Wallace Water - Booster Pump (reconsideration)

Two bids were received: **CPW** - \$19,613.00 and **Pete Duty & Associates** - \$24,724.92 plus option For fiberglass reinforced plastic composite insulated modular building - \$9,146.25.

Motion made Mr. Ron Munneryn, seconded Mr. Ken Allen, to approve bid from CPW in the amount of \$19,613.00 for the booster pump. Vote in favor. Unanimous. Motion carried.

Justice Complex Furniture

Bids received were: **Hamilton Office Supply**, Bennettsville, SC - \$60,270.96, **Sandhills Office Systems**, Rockingham, NC - \$71,127.00, **Herald Office Systems**, Dillon, SC \$61,952.71 & **Baker Office Systems**, Florence, SC - \$69,900.01. The low bidder was Hamilton Office Supply.

Motion made by Mr. Anthony Woods, seconded by Ms. Corrie Plato, to approve the bid from Hamilton Office Supply for \$60,270.96 for the Justice Complex furniture. Vote in favor. Unanimous. Motion carried.

Highway 385 CDBG Water System Extension

Bids received were: **W&S Underground** - \$446,565.00, **Four Season** - \$444,581.00, **J&B Utility** - \$447,144.00, **C&W Construction** - \$624,638.00 and **Dixon Construction** - \$365,187.08.

Motion made by Mr. Ron Munneryn, seconded by Mr. Ken Allen, to approve the bid from Dixon Construction Company for \$365,187.08 for the Highway 385 CDBG Water System Extension upon approval by the South Carolina Department of Commerce. Vote in favor. Unanimous. Motion carried.

Detention Center – ETV Services Extension

Only one proposal was received from: Bailey’s TV Systems, Woodruff, SC - \$4750.00.

Motion made by Mr. Ron Munneryn, seconded by Ms. Jean Wallace McLean to approve the proposal from Bailey’s TV Systems in the amount of \$4,750.00. Vote in favor. Unanimous. Motion carried.

APPOINTMENTS TO BOARDS & COMMISSIONS

No appointments were made.

REPORTS

Committee Reports

Tim Brown, Library & Sheriff/Magistrate Complex Report - Mr. Willie Gladden spoke on behalf of Mr. Brown. Mr. Gladden advised everything is going smoothly on both projects.

Other Committees

Mr. Ron Munnerlyn, Building Committee – Mr. Munnerlyn advised the committee is looking at various options. He will have a more in depth report on the Administration Building and Vault at the next meeting.

Administrative/Financial Report – Cecil Kimrey, County Administrator

The County has received a \$60,000.00 check from NESAs (net \$30,000) for the industrial park.

The County will start the process of condemning a mobile home that is not in compliance with our code. The cost to remove will come from the \$25 assessment.

Library update - The overall cost of the construction appears to be within projections at this time. The cash flow may be close at the end as we will be waiting on several checks at the end of construction.

Bids for the sheriff/magistrate parking lot addition were due September 18, 2009.

The Board of Zoning Appeals public hearing for the landfill was scheduled September 22, 2009.

Employees with at least five years employment through August included: Susan Rivers, Steve Akers, Timothy Shaw and Benetrice Ferguson.

The trees in front of the new library needed to be trimmed. The administrator contacted the State Urban Forestry.

The Federal Correctional Institute was to be contacted to assist in moving Library equipment.

The administrator recommend the County update its Comprehensive Plan with the assistance of The PDCOG. After the plan is completed some changes in the Zoning Ordinance may be necessary.

The administrator was working with the MC Economic Development Partnership on improving the Industrial Park signs.

The Revenues were at 5 % through July 2009, expenditures were at 15% through August 2009.

The county has received the bill for the ambulance chassis retrofit. The Hospital Foundation will take care of the \$65,000.

RECOGNITION OF CITIZEN’S REQUEST BEFORE COUNCIL

Mr. Tom Wood – thanked council for their support with the landfill issue.

RECOGNITION OF COUNCIL MEMBERS

Mr. Ron Munnerlyn – advised he had a conversation with Mr. Jerry Robertson, Chairman of the Economic Development Partnership Board regarding the sign on Highway 38. He is on the image committee – they will work on the cleaning up.

Dr. Carolyn Prince – thanked everyone for their patience and perseverance during the last few months with getting everything together for the numerous meetings and everything running smoothly.

Mr. Anthony Woods – recognized Mr. Johnny Sellers, his appointee on the Planning Commission Board. Mr. Woods advised the board needed to meet every few months. Mr. Ron Munnerlyn stated the county needed to have an orientation for new members.

Motion made by Mr. Steve Blackmon, seconded by Mr. Ron Munnerlyn, to reimburse the Brightsville Fire Department up to \$300 for the refreshments for the unveiling ceremony recognizing Brightsville as a Community. Vote in favor. Unanimous. Motion carried.

NON AGENDA ITEMS

No discussion was heard.

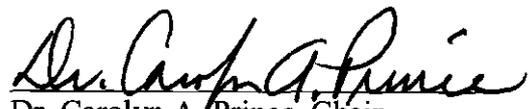
ADJOURN

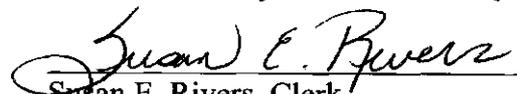
Hearing no further discussion, the meeting was adjourned.

Motion was made by Mr. Steve Blackmon, seconded by Mr. Ron Munnerlyn, to adjourn the meeting. Vote in favor. Unanimous. Motion carried.

(SEAL)

Attest:

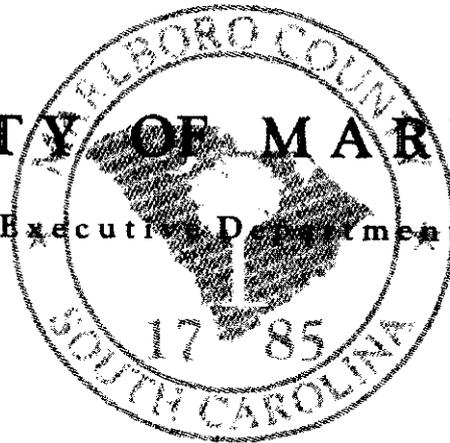

Dr. Carolyn A. Prince, Chair
Marlboro County Council


Susan E. Rivers, Clerk
Marlboro County Council

Date Adopted: October 13, 2009

COUNTY OF MARLBORO

Executive Department



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Marlboro County

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TO: Chairman Dr. Carolyn Prince and the Marlboro County Council
FROM: Chairman Kenneth Rosser, Marlboro County Planning Commission
DATE: September 3, 2009 *Kenneth L Rosser*
RE: Recommendation by Planning Commission to Deny Zoning Map Amendment Request

Recommendation by Planning Commission to Deny Zoning Map Amendment Request

Background

The Marlboro County Zoning Ordinance (Ordinance 545, 2002) provides for a County zoning map that divides Marlboro County into zoning districts. Article X of the Zoning Ordinance allows for amendments to the zoning map upon review and recommendation of the Planning Commission and approval of County Council. On August 7, 2009, a representative of Z.V. Pate, Inc. submitted a request to the County for an amendment to the County zoning map (the "request").

While the Zoning Ordinance does not require the Planning Commission to conduct a public hearing on a zoning map amendment request, the Planning Commission nonetheless held a public hearing on the request to receive comments and information from the public and additional evidence on which it could base its recommendation to County Council.

The Planning Commission received and reviewed the request, considered public comment and information provided at the September 1, 2009 public hearing and voted to recommend denial of the request. This report memorializes the Planning Commission's findings, recommendation and report made to County Council on September 1, 2009 and incorporates by reference the minutes from the Planning Commission meeting at which that recommendation and report was made, which are attached hereto as Exhibit A. In addition, the September 1, 2009

public hearing was recorded and a transcript is available for review and inspection at the County Clerk's office.

Standard

Under Section 10-5 of the Marlboro County Zoning Ordinance, the Planning Commission is required to consider the following factors in determining whether a zoning map amendment is appropriate:

1. The relationship of the request to surrounding land uses and the County's Comprehensive Plan,
2. Whether the uses permitted by the proposed change would be appropriate, and
3. Other circumstances and conditions affecting the property, surrounding land and the County at large.

The Planning Commission considered each of these factors in evaluating the evidence in the record and making its recommendation and report to Council.

Findings of Fact

On August 7, 2009, a representative of Z.V. Pate, Inc. (the landowner) submitted a request to the County for an amendment to the County zoning map. The request sought a zoning map amendment for the following specific properties: Tax Map. Nos. 03-01-02-04, 03-01-02-07, 03-01-02-038, a portion of 03-01-02-039, a portion of 03-01-02-040 and 03-01-02-058. The landowner requested that these parcels be rezoned from their current zoning designation of GD (General Development District) to RR (Rural Resource District). The request indicated that the existing use of the property was for agricultural purposes. The request also indicated that the proposed use after rezoning was for a sanitary landfill. Sanitary landfills are prohibited under these parcels' current GD zoning district. Sanitary landfills are permitted under the proposed RR zoning district if a supplemental land development permit is first obtained for that use pursuant to Article V of the Zoning Ordinance.

The landowner provided supplemental information regarding its request on August 27, August 28 and September 1, 2009, including a clarification that it was requesting rezoning for all of parcels 03-01-02-039, 03-01-02-040 and 03-01-02-058 rather than portions of those parcels.

The County Council and the Planning Commission held a joint public hearing on the rezoning request on September 1, 2009 at 6:00 p.m. at the Marlboro County Courthouse. County staff first summarized the rezoning request and identified a potential conflict of interest and his decision not to participate in the rezoning process. Legal counsel for Marlboro County then explained the rezoning process, the factors the Planning Commission was to consider when evaluating the request, and the Planning Commission's obligation under the Zoning Ordinance to make a recommendation to County Council to approve or deny the request based on the evidence in the record.

The Planning Commission then received public comment. Thirty-one individuals from North Carolina and South Carolina spoke during the approximately 45-minute comment period, including the applicant, the public and County staff. A representative of the applicant spoke first, followed by interested members of the general public and final comments from a representative of County staff. Based on the level of interest expressed regarding the topic and the number of citizens who had signed up to speak, the Planning Commission decided to receive additional comment, evidence and information beyond the initial allotted comment period.

The citizens who provided comments, evidence and information at the hearing expressed concerns regarding numerous issues, and provided information to the Planning Commission, including:

- the landfill's impact on the environment and the health of the citizens of Marlboro County, including EPA statistics that all landfills leak and that very small amounts of contaminants that can result in very large areas of groundwater contamination (18 citizens);
- the inconsistency of the proposed use of the subject parcels as a sanitary landfill with the County's Comprehensive Plan, including the fact that the County produces only a small amount of waste that can be handled by the Lee County Landfill for 20 years. In addition, population of the County is decreasing, as is the volume of waste in the County (3 citizens);
- the lack of need for a landfill based on current waste production and capacity (4 citizens);
- concern that the use of the parcels as a landfill would not be in the best interests of the County and would degrade its appearance, including potential detriment to the local economy and recreational opportunities if a landfill is constructed on the subject parcels (13 citizens);
- leakage problems with landfills and the inability to control what goes into them, as well as downstream contamination risks, potential impacts on the seven-stream watershed from Marlboro County to Georgetown, South Carolina, truck traffic, odors, garbage, and increased air pollution (9 citizens);
- environmental justice issues, specifically that the landfill is proposed to be sited in a historically poor community (2 citizens);
- concerns about out-of-state waste and a potential landfill's implications for citizens in neighboring counties (5 citizens);
- potential "green" alternatives to a landfill (2 citizens);
- money spent on attorney's fees (1 citizen);
- the landfill's negative impact on at least three wilderness camps in the Wallace area that are unique to South Carolina (1 citizen);
- the inappropriateness of the proposed use to the surrounding rural, agricultural land (6 citizens);
- the negative impact of a landfill on the County at large by ruining economic development and ruining aesthetics with potentially one of the largest landfills in the United States (7 citizens); and

- Landfill height concerns and concerns over birds creating airline hazards for nearby airlines and military installations (4 citizens).

In addition, six citizens whose properties were located near the subject parcels expressed opposition to the landfill and concerns regarding the potential depreciation of their property value and potential health concerns if a landfill were to be constructed on the subject parcels.

Additional details regarding the public comments received at the hearing can be found in the minutes attached as Exhibit A and the transcript of the hearing available for inspection at the County Clerk's office.

At the conclusion of the public comment period, the Planning Commission closed the public hearing. The Planning Commission then openly deliberated on the request, and based on the need to receive legal advice related to the pending litigation involving Marlboro County, went into executive session for approximately 10 minutes. Following the executive session, the Planning Commission reopened its deliberations. During these deliberations, Planning Commission members inquired about several topics, including the following:

- A Commissioner reviewed the uses permitted under the Zoning Ordinance's RR zoning designation and inquired as to whether the Planning Commission had the power to partially approve a request for a zoning map amendment, such that the request would be approved for certain uses and denied for others. Legal counsel responded that the Planning Commission may only vote to recommend approval or denial of a rezoning request for all permitted uses within the zoning district, and that partial approvals were not allowed.
- In response to citizen comments, a Commissioner asked a question regarding whether the Planning Board is required by law to consider rezoning requests. Legal counsel responded by confirming that, under the County Zoning Ordinance, the Planning Commission is required to consider the three factors listed in Section 10-5 of the Zoning Ordinance and make a recommendation to County Council regarding whether the request should be approved or denied based on the evidence in the record.
- A Commissioner asked whether, assuming that the rezoning request is approved, the applicant's rights could subsequently be reversed or modified. Legal counsel responded that it would be difficult for the Planning Commission to reverse its recommendation in that situation after Council acted, and even then only if a different landowner approached the Planning Commission to seek a zoning map amendment.
- Finally, a Commissioner inquired as to whether Federal or State law provided for financial compensation to landowners for the loss of use of their land if a landfill is constructed on the subject parcels as a result of the approval of the rezoning request. Legal counsel responded that State and Federal law generally would not provide compensation to private landowners in this situation.

At the end of the Planning Commission's deliberations, a Commissioner stated for the record that his vote would be based on a number of reasons, including the inappropriate proposed

use of the properties and the insufficiency of evidence in the record to satisfy the three factors in the Zoning Ordinance.

Recommendation

The Planning Commission evaluated the evidence in the record as it related to the three factors set forth in Section 10-5 of the Ordinance and concluded that there was insufficient evidence to satisfy the three factors in Section 10-5. Further, the Planning Commission concluded that there was substantial contrary evidence in the record to support a denial of the rezoning request based on the three factors.

Based on the information received from the applicant on August 7, 27, 28 and September 1, 2009 and the evidence received at the public hearing, the Planning Commission voted to recommend the denial of Z.V. Pate's request for a zoning map amendment. This recommendation to deny the request was made by a majority vote of the Planning Commission (by unanimous vote) in open session on roll call. After the vote, the Chairman reported to County Council the Planning Commission's recommendation and this report memorializes the Commission's report to County Council on September 1, 2009.

Attachment – Exhibit A, September 1, 2009 Planning Commission Meeting Minutes