

**Planning Board Meeting –
May 19, 2014
Minutes**

Members Present: Judy Silver, Betsy Roundtree, Charles Kramer, Bob Mancuso, Ruth Van der Grinten, John Underhill, Joseph Sparacia, Laurence Vaughan, Errol Briggerman

Members Absent: None

Others Present: Laurie Ford and Brad Rhinehalt from Newland Properties, Grant Livengood from McKim and Creed, Michael Lee and Matt Cunningham from Lee Law Firm.

Staff Present: Town Manager Teresa Piner, Interim Planning Director David Bergmark, Planner Patrick Reidy, Planner Allison Rice, Town Attorney David Reif

1. Meeting Called to Order

Mr. Underhill called the meeting to order.

2. Welcome and Recognition of Guests

Mr. Underhill welcomed all guests.

3. Chairman and Board Members' Comments

Ms. Van der Grinten welcomed new Planner, Allison Rice.

Mr. Mancuso shared statistics about Wendell that he found on the town website, detailing the retail market profile of Wendell. He said that there are millions of dollars in missed potential in revenue as it is in the Town. Mr. Mancuso said he wanted the Planning Board to be more proactive asking for analysis of the two Gateways into Wendell.

4. Adjustment and Approval of Agenda.

Joe Sparacia made a motion to approve the agenda. Ruth van der Grinten seconded the motion. The motion passed unanimously.

5. Public Comments

None.

6. Approval of Minutes

A planning board member said there was one correction needed for the minutes: Betsy Roundtree was listed as present and not present at the same time. Mr. Bergmark said he would make the

correction that Betsy Rountree was not present. Mr. Mancuso made a motion to approve the minutes. Mr. Briggerman seconded the motion. The motion passed unanimously.

7. Discussion, Consideration, and Action on the Following Items:

Item #7A – Discussion and action on a map amendment request to rezone three residential pods (SF1, SF2, & SF3) of Wendell Falls from R3 to NC.

Item #7B – Discussion and action on a text amendment to alter the design standards in Chapter 5 of the UDO as they relate to master planned projects in excess of 1,000 acres.

Item #7C – Discussion and action on an amendment to the Wendell Falls Development Agreement.

Mr. Bergmark said this property is located within the corporate limits of the Town of Wendell and is zoned R3. He said this property is also governed by a Planned Unit Development (PUD) document, which serves as an alternative zoning ordinance for the Wendell Falls area. He said in addition to the rezoning request, the applicant has submitted a zoning text amendment request and an amendment to the development agreement controlling this property. Mr. Bergmark said the intent of these submittals was to apply certain standards from the UDO to the area identified by SF1, SF2, and SF3 in Attachment A. He said typically once a development is approved, it cannot be held to newer standards that are adopted by a municipality after that approval. Mr. Bergmark said in this case, Newland had recognized the benefit of many of the standards and processes of the UDO and have voluntarily requested that SF1, SF2, and SF3 be subject to those standards, with a few exceptions detailed in the text amendment request.

Mr. Bergmark said regarding 7A, the Newland Communities had requested a change in zoning classification for approximately 134.6 acres of property. He said the property is currently zoned R3, but is subject to the zoning and development standards outlined in the PUD document. He said Attachment C contained the current development standards for SF1, SF2, and SF3 under the PUD document. Mr. Bergmark said as can be seen in Attachment C, the PUD document requires a minimum lot size of 4500-5000 square feet, a minimum lot width of 45 feet, and a minimum front setback of 20 feet. He said these standards would prevent the applicant from providing any housing product on a smaller scale lot, as well as make the use of rear access alleys impractical.

Mr. Bergmark said existing standards effectively prevent the applicant from supplying many alternative designs, such as Charleston style homes. He said Charleston style homes are typically on narrower lots pulled closer to the street with rear access alleys serving the dwelling. He said the intent of this style of design is to create a more attractive and socially interactive

streetscape by bringing the front of the home closer to the road and moving the attached or detached garages to the rear of the home to be accessed by an alley.

Mr. Bergmark said a copy of those uses allowed in the Neighborhood Center (NC) zoning district is provided in Attachment D. He said as stated in section 2.8 of the UDO, the purpose and intent of the Neighborhood Center (NC) district is to “provide for areas for residential and mixed-use development in close proximity to existing and planned neighborhood centers. The intent is to create higher density residential areas that compliment commercial districts with physical proximity and pedestrian connectivity. Different housing types and lot styles are encouraged...”. Mr. Bergmark said the area to be rezoned would be in close proximity to the amenity center site and future commercial areas.

Mr. Bergmark said the NC zoning district would grant additional flexibility for the developer to provide smaller lot size options with alternative streetscape designs. He said within the NC zoning district, the minimum lot width is 24 feet and the minimum lot depth is 100 feet. He said the minimum front setback is only 10 feet, allowing the home to be pulled closer to the road. Mr. Bergmark said applying the NC zoning district standards would also allow the developer to apply reduced rear setbacks for those lots served by a rear alley.

Mr. Bergmark added that the NC area does comply with the Comprehensive Plan, as the Comprehensive Plan identifies this area as a controlled growth area.

Mr. Bergmark said regarding item 7B, the proposed text amendment being requested was being worded so that it only applied to master planned projects in excess of 1,000 acres. He said the changes would occur in Chapter 5, regarding design requirements. Mr. Bergmark suggested that they put this in the 5.4 “Exceptions” section, and then list the changed standards. He said Newland Communities were requesting 7 changes regarding the number of required units with front porches, the sizes of the front porches, materials of visible foundations, alleys with rear garages, garages on the front facades of narrow units, garage setbacks, and garage width.

Mr. Bergmark said a list of the alternative design standards as proposed by the applicant was included as Attachment A. He said all proposed changes affect section 5.9D (Applicability of House Design Requirements based on Lot Dimension) and section 5.9E (General Requirements). Mr. Bergmark read the proposed text amendment to add language to Section 5.4, D, with staff comments on each item as follows:

Large Master Plan Development Design Standards for Houses. The following exceptions to the general provisions of Section 5.9 shall apply to houses within Master Plan developments in excess of 1,000 acres:

1. **Front Porches or Stoops (Narrow Lots).** Notwithstanding Section 5.9.D., porches or stoops will be required on all houses located on lots less than 49 feet in width, provided that stoops will be permitted on no more than 30% of such lots in each phase of development.

Staff Comment: 5.9D currently requires porches on all lots 49 feet or less in width. There is no provision for stoops to be used in place of porches.

2. **Front Porch Dimensions (Narrow Lots).** Notwithstanding Section 5.9.E.1., porches on houses located on lots less than 49 feet in width will be a minimum of 7 feet in depth and will comprise a minimum of 30% of the length of the façade.

Staff Comment: 5.9.E.1 currently requires porches to be a minimum of 8 feet in depth (rather than 7) and comprise a minimum of 40% of the length of the façade (rather than 30%)

3. **Foundations (Visible).** As to the NC Zoning District only, notwithstanding Section 5.9.E.4., brick, stone, or stucco will be required on the slabs and crawlspace of buildings on each side that faces public street fronts.

Staff Comment: 5.9.E.4 currently calls for these materials to cover slabs and crawlspaces of each side of the house (rather than only those that face public street fronts).

4. **Alleys With Rear Garages (Narrow Lots).** Notwithstanding Sections 5.9.D. alleys with rear garages shall be required on lots of 39 feet or less in width.

Staff Comment: 5.9.D currently requires alleys with rear garages on all lots 49 feet or less (rather than 39 feet or less).

5. **Front-Facing Garages (Narrow Lots).** Notwithstanding 5.9.E.5.a. and b., garage doors will be allowed on front facades of homes located on lots of 40- to 49-foot width, for so long as at least two (2) of the following architectural features are also included on the façade:

- a. Two-car appearance to garage door;
- b. Windows in garage door;
- c. Trellis over garage;
- d. Building overhang over garage;
- e. Keystone or similar decorative design surrounding garage;

- f. Two door garage; and/or
- g. As otherwise approved by the Administrator.

Staff Comment: 5.9.E.5.a and 5.9.E.5.b currently only allows garages on front façades of homes 50 feet or more (rather than 40 feet or more). Under the current language, no additional architectural features are required. The applicant included these additional features as a compromise for allowing front-loading garages on narrower lots.

- 6. **Garage Setbacks.** Notwithstanding Section 5.9.E.5.d., no garage door shall be located any closer than 17.5 feet from the sidewalk or 15 feet from the right of way.

Staff Comment: Section 5.9.E.5.d currently states that no garage door shall be located closer than 20 feet from the right of way.

- 7. **Garage Width.** Notwithstanding Section 5.9.E.5.f., garage doors will not exceed:

- a. 65% of the length of the façade on lots less than 65 feet in width; and
- b. 40% of the length of the façade on lots 65 feet in width or greater.

Staff Comment: Section 5.9.E.5.f currently requires garage doors to not exceed 40% of the length of the front façade for all lots, regardless of lot width.

Mr. Bergmark said he would let Newland’s attorney, Michael Lee, describe the changes to the development agreement. He said the town’s attorney was also present to add comment if needed.

Michael Lee, from the Lee law firm, introduced Newland Communities and their team. He said Newland is the largest developing company in the United States. He said they believe in Home, Healthy Living Systems, and Innovation. Mr. Lee said two nearby examples of their work is Riverlights in Wilmington, NC, and Briar Chapel in Chatham County, NC. He said both are good examples of building communities and identities that strengthen the region that they’re in.

Mr. Lee outlined the 3 documents in question: the Development Agreement under the old zoning ordinance and the PUD. He said the roads and infrastructure that were already in place were designed under the old PUD. He said Newland wanted to follow the new UDO since it aligned with their principles of community interaction and green space better than the old PUD and Zoning Ordinance, but were constrained by the infrastructure that’s already in place.

Mr. Sparacia asked about the difference in density in Newland's new plan vs. the plan under the old developer. Mr. Lee explained that the new plan for SF1, 2, and 3 is slightly denser, but the overall density of the entire development won't change. Mr. Lee said he believed the old plan allowed for 390 units, while their proposed changes would allow up to 405 units. Mr. Lee said the overall cap for the community, however, doesn't change, so if they add units here, they'll be taking it away from somewhere else. Mr. Lee said Newland was asking that the Board approve the rezoning from R3 to NC, that a text amendment to the UDO is approved, and that an amendment to the developer's agreement is approved so that builders can have more diversity of stock and massing patterns. Mr. Lee also asked that Newland be credited for the amount of open space they've already set aside per the open space agreement.

Mr. Mancuso asked if the Marsh Creek Corridor was owned and operated by Wake County, and was told that it was. Mr. Mancuso asked for Mr. Lee to clarify the use of the phrase "massing patterns". Mr. Lee said this means that Newland would like to have different segmentation within one area of the development – varying elevations, lot widths, and setbacks. Mr. Mancuso also asked for him to clarify why he said that this new plan will be more expensive, even though there will be 15 more houses built. Mr. Rhinehalt said that this is true – the new plan will give the development a varying product and further segmentation.

Mr. Underhill asked that if these changes were approved for SF 1, 2, and 3, wouldn't that follow the new UDO guidelines. Mr. Lee responded that rezoning won't do everything to allow for what they want to do. He said they must also amend the developer's agreement. Mr. Bergmark clarified that the old stormwater agreement with the state of NC, as stated in the developer's agreement, still holds and wouldn't change.

Mr. Mancuso asked for clarification on Attachment C for Item 7A about the minimum setback of 0 feet with aggregate of 10 feet. Mr. Bergmark said the standards he was referencing were the standards already agreed upon in the old PUD document, and if these changes are passed, this would no longer apply.

Mr. Underhill asked if it is correct that they are going from 60 foot lot widths to 24 foot lot widths, and setbacks from 25 feet to 10 feet, per Attachment B on item 7B. Mr. Bergmark said that the lot widths are 45 feet minimum under the PUD. He said R3 normally allows for 60 foot lots, but the PUD would negate the 60 foot requirement and put in place the 45 foot minimum width.

Mr. Vaughan voiced his concerns over the small setback and spaces allowed between some of the houses. He said that before they had decided that 10 feet was bare minimum for fire safety between buildings. He said he spoke with Wendell's Fire Chief, Brian Staples, who said that a 6 foot clearance between houses would be too small. Mr. Vaughan said he spoke with Darrel

Alford, Wake County's Deputy Fire Marshall, and received a subsequent call from Charlie Johnson, Wake County's Chief Deputy Fire Marshal, who echoed what Brian Staples had said. Mr. Vaughan said there are two separate fire codes. He said Mr. Vaughan supported this rezoning, but believed there is a minor issue that needs to be resolved. He said he looked at the NC Residential Building Code, which regulates single family and duplex housing, as well as the NC Fire Code. He said although the NC Fire Code does not apply here, the Fire Marshall's office believes that building code standards are too low. He said the small space makes ladders too steep between houses to get to 2nd floor windows. He said they could also cause wind tunnels, and Mr. Vaughan reminded the Board of when an entire apartment community got burned out, even with the presence of fire walls.

Mr. Vaughan said he does not have a problem with the rezoning to NC, but strongly urged that the Board require that any rezoning carry the additional requirement that there is a 10 foot clearance between all buildings in Wendell Falls, regardless of stated setbacks in the NC district. Mr. Vaughn suggested that they move the units flush with the property line and have a patio in between. He made the motion to approve the rezoning to NC with the stipulation that there must be 10 feet between units. He said this would allow the developer to reduce the front setback to 10 feet as wished, and the rear yard setback to 15 feet.

Mr. Lee said that Wendell's UDO, which has already been approved, allowed for 3 foot side setbacks, and so they were dovetailing off of what already exists in the existing UDO. He said Newland would of course work with the fire marshal to ensure they are complying with fire and building codes. Mr. Vaughan reiterated that 6 feet isn't an appropriate distance between houses by a safety standpoint. He suggested that they can be innovative to offset that without losing too many units.

Mr. Reif pointed out that from a procedural standpoint, the Town Board can certainly recommend a text amendment change to change the UDO requirements. He said, however, the current motion can't stand, since that would constitute a conditional rezoning. Mr. Reif said the town can change the requirements in the UDO, but can't change it as a condition for the rezoning itself. He said the Planning Board can vote to make the suggested changes in Item 7B, but not in Item 7A. Mr. Bergmark reminded the Board that a conditional rezoning has to be at Newland's request, and now the process is a little more involved, since they're considered Conditional Districts.

Mr. Lee suggested that the Board could approve the rezoning and the modification to the Development Agreement, and then move to approve the text amendment subject to Mr. Vaughan's one change. He said procedurally, that's what would need to happen.

Mr. Vaughan withdrew his motion. Ms. Van der Grinten asked Newland what Mr. Vaughan's suggestion would do to the plans. Laurie Ford said Mr. Vaughan's request would eliminate at least two of their building products.

Mr. Vaughan made a motion to approve the rezoning from R3 to NC. Mr. Bergmark asked for a statement of Comprehensive Plan consistency. Mr. Vaughan included the suggested Statement of Plan Consistency and Reasonableness (listed below) with his motion. Mr. Mancuso seconded the motion. The motion passed unanimously.

Statement of Plan Consistency and Reasonableness

- Any recommended change to the zoning map should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature.

In staff's opinion, the requested zoning map amendment for the 134.6 acre portion of the parcel identified by PIN # 1763944745 from R3 to NC is consistent with the recommended uses and development types outlined in the Wendell Comprehensive Land Use Plan for the S-4 sector.

Mr. Lees said that changing the setbacks would eliminate 3 types of homes that can be built, affecting the diversity of buildings. Mr. Vaughan asked if these issues came up with the Briar Chapel development. Mrs. Ford said that there aren't any setback requirements in Briar Chapel. She said Newland maintains full authority to set the setback requirements as they see fit, and they require 3 foot setbacks on smaller lots because it's consistent with international building code and because they work closely with fire departments. Mr. Lee explained that narrower lots are allowed because alleys allow for dual access. Ms. Van der Grinten asked if Wendell required a 10 foot clearance, would Newland still be able to do its project. Mr. Lee said that it would eliminate 3 products. Mrs. Ford explained that a 5 foot setback on a 32 foot wide lot would only allow a 22 foot wide house. She said the setback requirement on a 26 foot wide lot would result in a 16 foot wide house. She said Newland has plans of doing a 0 foot setback on one side later, as Mr. Vaughan suggested, but can't do that now because of the existing infrastructure.

Mr. Mancuso said he saw this project as a phoenix rising out of the ashes.

Mr. Bergmark pointed out that the setback requirement isn't a special case for Newland properties. He said this is what is allowed for in the UDO for the NC zoning district.

Mr. Sparacia made a motion to approve Item 7B, the text amendment to Chapter 5 of the UDO, as proposed. Mr. Mancuso seconded the motion. The motion passed unanimously.

Mr. Sparacia made a motion to approve Item 7C, the amendment of the Developer's Agreement, as discussed. Ms. Silver seconded the motion. The motion passed unanimously.

Mr. Bergmark asked for a statement of plan consistency and reasonableness, saying that one can be used for both motions. Mr. Sparacia motioned that the Board adopts the suggested Statement of Plan Consistency and Reasonableness (listed below) for both 7B and 7C, relating to Principle #6 and 8 with his motion. The motion was seconded. The motion passed unanimously.

Statement of Plan Consistency and Reasonableness

- Any recommended change, if deemed necessary, should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, and is reasonable in nature.
- Such statements could refer to the general principles of the Comprehensive Plan, including but not limited to:
 - Principle Number 6: “Provide for a range of housing opportunities including upscale housing, senior housing, and downtown living choices” OR
 - Principle Number 8: “Ensure local and regional transportation interconnectivity and options while also maintaining and enhancing Wendell as a walkable community”

Mr. Mancuso discussed an article that he had read in the News and Observer on May 16th called “Mortgage Mess”. He said the article said that we are in a situation of low building stock, despite low mortgage rates. He said many don’t believe anything will change until 2017. He asked the Newland representatives their opinions on this and to speak to their financial situation. Mr. Rhinehalt said that by varying the housing product, Wendell Falls will open opportunities for everyone to buy. He said additionally, this project is funded long term through a partner. Mr. Rhinehalt said they are not borrowing in order to fund this project. Mrs. Ford said that Briar Chapel opened in 2008 at the start of the downturn of the economy. She said there are now 550 families, which is a testament to the quality of builders. She said they are very selective of builders because they expect another downturn in the economy.

Mr. Kramer asked Newland’s representatives for a set of standard covenants for the development. Mrs. Ford said that they are working on Wendell Fall’s covenants, but they will be basing them off of Briar Chapel’s. She said she would give Briar Chapel’s covenants to Mr. Bergmark for distribution.

Item #7D – Discussion and action on parking regulations as they pertain to prepared surfaces.

Mr. Bergmark explained that the Planning Board had already sent their recommendations on this topic to the Board of Commissioners. He said at the March 17th meeting, the Planning Board recommended a number of amendments to the Wendell Code of Ordinances and Unified Development Ordinance as they related to nuisance vehicle and parking regulations. He said at the April 14th Board meeting, the Board of Commissioners did adopt the Ordinance, but took out the language regarding parking on prepared surfaces. He said the original proposal moved the parking standards from the UDO to the Code of Ordinances and amended the language so that parking on prepared surfaces was only required on the front yard, but there was a limitation on the number of vehicles you could park in the front yard. Mr. Bergmark said that cap was set at 5, and that was the number recommended by the Planning Board.

Mr. Bergmark said at the April 14 meeting, concern was expressed by the Board about the language of the proposal, although they did not give instruction as to how this language should be changed. He said the Mayor and one of the Commissioners did give comments after the meeting, which are attached. He said planning staff are now bringing it back to the Planning Board with alternatives that are generally less restrictive than what was originally proposed.

Mr. Bergmark submitted the following options of alternative parking standards for consideration:

1. OPTION 1: Delete section 10.4,k,1 of the UDO. Amend Section 24-95(b)(5) to include language stating “unless on a prepared surface, no vehicles are to park between the front entrance and the edge of pavement”

- This language was proposed by Mayor Hinnant. The up-side of this proposal is that the language is clear and simple, but would allow parking in the front yard on a non-prepared surface so long as they were not parked directly in front of the front entrance. This proposal would not limit parking in the side or rear yard.

2. OPTION 2: Delete section 10.4,k,1 of the UDO. Amend Section 24-95(b)(5) to include language stating “unless on a prepared surface, vehicles shall not park in the front yard of a dwelling unless located between the driveway and the side property line closest to that driveway.

- This language is also fairly clear and simple, but would be more restrictive than the first proposal. Some lots have driveways on the very edge of their property lines, leaving insufficient room to park a vehicle between the driveway and the side property line within the front yard. In those cases, the property owner would have to park additional vehicles in the side or rear yard. No limit on the number of vehicles which may be parked in the side or rear is included. Enforcing this option would be difficult in those few situations where the existing driveway is dirt and is not well delineated.

3. OPTION 3: Delete section 10.4,k,1 of the UDO and do not create any alternative language.

- This option would simply remove the parking standard as it relates to parking vehicles on prepared surfaces. Residents would be able to park anywhere on their property without restriction.

Mr. Underhill said that option number 3 was not an option, and there was general agreement by the rest of the Board. Mr. Mancuso noted that Mr. Bergmark did not mention Commissioner Gray's comments. He asked if dirt driveways were grandfathered in on either Option 1 or Option 2? Mr. Bergmark said that driveways are already exempted in the UDO, and will apply to the Code of Ordinances when it's moved. Mr. Bergmark said Commissioner Gray wanted to provide for case by case exemptions, which would not be transparent and would be difficult to implement. He said there would be questions over who would judge the exemptions.

Mr. Mancuso noted that the language in Option 1 and Option 2 both specifically say "prepared surfaces", which leads the reader to believe that is a material other than dirt. Mr. Bergmark said that was a good point about Option 1. He said it does not actually incorporate the language from the UDO, but you would still be able to park on your driveway, as long as your driveway does not go up to the front door. He said that was also a good point about Option 2. He said the Board could add a sentence to say existing driveways were not required to become a prepared surface.

Mr. Sparacia said that a landscape architect is putting together a plan for his house downtown. He said he has a garage and driveway on the side, and they're planning for a large gravel parking pad in the front of the house, large enough to fit 3 or 4 cars. Mr. Sparacia asked if he would be in violation under the code? Mr. Bergmark assured him that gravel is a prepared surface, although he would be restricted as to number of vehicles at one time since this would not be his driveway. Mr. Bergmark said the point is not to restrict parties, and this ordinance would not be used to restrict occasional high, volume parking. Mr. Sparacia said this is much more restrictive than it first appears.

Ms. Van der Grinten said she liked that Option 1 is clearly outlined. Mr. Kramer noted that it's important that we improve the town's image with the development Wendell Falls. Mr. Sparacia said that he wasn't going to build his house to impress the developers of Wendell Falls. Mr. Kramer said that we need to bring this town up, instead of bringing it down. Mr. Underhill said that it's too restrictive, especially if only 2 cars are allowed. Mr. Sparacia declared that if he paid money for a gravel circular parking pad and it fits four cars, he's going to put four cars on it. He said this is his house and his property, and if he pays the bills and taxes, then he's going to park three cars there. Mr. Sparacia said that this is an issue of aesthetics vs. personal freedom. He said that he doesn't know that section 10.14, k,1 of the UDO isn't fine the way it is, barring some additional wording to make the ordinance less restrictive.

Mr. Kramer noted that this ordinance is being discussed because people are driving on the sidewalks, onto their front yards, in order to park directly in front of their front doors, causing ruts in their front lawns.

Mr. Underhill suggested that they increase the percentage allowed and that the Board adds the Mayor's suggestion, Option 1. Mr. Bergmark clarified that the percentage in the ordinance is talking about the width of 2 cars and 25% of the yard. He said it could be potentially more cars depending on how wide the house is. He said this language is also in addition to an existing driveway. He said that this new option is more restrictive than the first one that they brought to the Board of Commissioners.

Ms. Van der Grinten said that she has a driveway, and a third vehicle, which is on the side but not on the prepared surface. She asked would she be in compliance with the ordinance. Mr. Bergmark said that under the suggested ordinance that the Planning Board brought to the Town Board, Ms. Van der Grinten would be in compliance. He said under the current ordinance that we are not enforcing, she would not be in compliance. Ms. Van der Grinten said that the current language (10.14, k,1) is too restrictive, and that she likes Option 1, or really, she likes the wording of the suggestion they had brought to the Board of Commissioners before.

Mr. Vaughan asked what the Board of Commissioners didn't like about the proposed Amendment.

Ms. Van der Grinten made a motion to accept Option 1 as it is currently worded. Mr. Mancuso seconded the motion. Mr. Sparacia asked if this applies to existing houses or if this only applies to new construction. Mr. Bergmark said that the proposed change would be incorporated into the Code of Ordinance and not the UDO. He said they would be taking out the language from the UDO, and entering the new language into the Code of Ordinance. Mr. Bergmark said that means that this only applies to residences in the corporate limits, not the ETJ.

Mr. Vaughn noted that this will cause unnecessary hardship to those with poor means. Ms. Van der Grinten explained that part of the reason this was brought before the board was to get people to not park in their front lawn or in front of their door. Mr. Sparacia asked if, with Option 1, depending on the width of the property, could he put 2-5 cars on his front lawn? Mr. Bergmark said yes, as long as you're not parked in front of your front door. Mr. Mancuso asked if Ms. Van der Grinten made a motion to delete Section 10.4,k,1 and amend Option 1 without the additional bullet. Ms. Van der Grinten said yes. Mr. Bergmark pointed out that they could pass a motion to recommend the original amendment that was presented to the Board of Commissioners, as well as another just in case the BOC doesn't accept it again.

Mr. Sparacia suggested that they keep Section 10.4,k,1, but add some of the freedom from the language in Option 1, to come up with a whole new option that would work better.

Mr. Mancuso suggested that they just stay with Option 1. Mr. Sparacia agreed. The motion to accept Option # 1 as worded passed 6 in favor, 3 opposed.

Item #7E – Discussion on a zoning text amendment to add indoor and outdoor firing ranges to the UDO’s Use matrix table.

Mr. Bergmark had asked the EDC to look at the use table to see if there were any uses unaccounted for in the downtown area, and this use is something that the EDC had come up with. Ms. Rice explained that the Town Board and Economic Development Committee (EDC) have requested that the Planning Board review whether modifications should be made to the Unified Development Ordinance (UDO) to allow indoor and outdoor shooting firing ranges. She said interest had previously been expressed by an investor regarding the opportunity of opening an indoor small arms shooting range in downtown Wendell. However, the current Table of Uses does not specifically define land uses for indoor or outdoor shooting ranges, and the investor never contacted Planning Department staff to pursue this venture.

Ms. Rice said Perry’s Gun Shop currently serves as a successful part of Wendell’s downtown. She said an indoor shooting range has the potential to further appeal to a strong customer-base that already exists. She said there was a question as to how this body should consider this benefit versus whether this use will affect the perception of the town as it continues to grow. She said so many gun establishments in one place may create a negative experience to outside visitors. Ms. Rice said, given the feedback staff has been given, it is likely to create a positive experience. Ms. Rice said it should also be investigated whether any municipalities outside of Wake County allow indoor shooting ranges within their downtown areas. Ms. Rice said given the relative lack of facilities available in Wake County, this use could generate a lot of interest generate from around the region.

Ms. Rice said in order to determine how to best address these uses, staff researched standards of neighboring jurisdictions, including Wake County, Raleigh, Zebulon, Fuquay-Varina, Garner, Cary, Holly Springs, Wake Forest, Knightdale, and Apex. She said of these 10 jurisdictions, (3) allow indoor shooting ranges by right and (5) allow outdoor shooting ranges either by right, with a special use permit, or with a special use permit with additional standards provided. She said additional use standards for Wake County and the City of Wake Forest are listed in Attachments A and B. Ms. Rice said although there are several indoor and outdoor shooting ranges within

Wake County, it is apparent that the facilities have been grandfathered in to their jurisdictions and that most municipalities' zoning ordinances do not encourage new development of shooting ranges.

Ms. Rice said Indoor firing ranges, when permitted, are usually included within the Indoor Recreation use. She said Wendell's UDO defines Indoor Amusements as "establishments that provide commercial recreation activities completely within an enclosed structure such as video arcades, skating rinks, roller rinks, and bowling alleys". She said Indoor Recreation Facilities are defined as "uses or structures for active recreation including gymnasiums, natatoriums, fitness center, athletic equipment, indoor running tracks, climbing facilities, court facilities and their customary accessory uses. Ms. Rice said this definition is inclusive of both non-profit and for-profit operations." She said we don't have anything related to what an indoor shooting range would allow. Ms. Rice said she gave these definitions because the towns that do allow for indoor firing ranges allow them under these uses.

Ms. Rice said Wendell currently permits Indoor Amusements as a use subject to additional standards in the CMX, CC, DMX, and CH zones, with the provision that "no outdoor public address or audio system shall be permitted which can be heard beyond the boundaries of the property." She said Wendell permits indoor recreation in all zoning districts. She said this use requires a special use permit in the DMX (Downtown Mixed Use) zoning district and is permitted with additional standards in all residential zones except NC (Neighborhood center). Ms. Rice said the additional standard listed for Indoor Recreational facilities is that "indoor recreation facilities are permitted as part of a common plan of development but shall not be permitted as infill development."

Ms. Rice said oversight in the development of firing ranges, both indoor and outdoor, does not usually come from the municipality. She said operation of shooting ranges and their designs are legally obliged to adhere to OSHA laws on lead and noise exposure, as well as EPA laws regarding lead. She said the design of indoor shooting ranges is also usually under strict insurance regulations. She said any proposed indoor shooting range would be required to be designed by an architect or designer in order to ensure safety measures are met. In the case of Wendell, a Wake County building inspector would review the designer's proposal as part of the building permit approval process. Ms. Rice said if the shooting range is certified through the National Rifle Association, the US Department of Energy, the US General Services Administration, or any related nonprofit and government body, there are usually specifications that must be met. She said at least one UDO does stipulate that ranges must be certified with the NRA.

Ms. Rice said Wendell's Code of Ordinance (Section 14-50) stipulates that "No person shall discharge any firearms, fireworks, or any other explosive contrivance within the inhabited portion of the town, without the town manager's consent."

Mr. Underhill asked if Ms. Rice had come across anything about noise levels. Ms. Rice said no. She said the noise level is generally referred to in the UDO allowance for indoor recreation. Mr. Bergmark said that we do have a Noise Ordinance in the Code of Ordinance, which any firing range must comply to.

Mr. Bergmark said staff was trying to enlist the Planning board to investigate should we allow these uses, where should we allow them, is there a negative perception attached to it, are there any uses we wouldn't want this to be next to, and so forth. He said sometimes we say that some uses can't be within 300 feet of a day care. Mr. Bergmark said from a safety standpoint, for an indoor range, most of the safety issues will be addressed by the building inspector and the applicant would have to have an architect design it to be safe and the building inspector verify that it is safe. He said other than that, the Town would need to decide if we want to have it downtown, do we want to have it next to certain other things? He said this is the discussion that we are bringing to the Planning Board tonight.

Ms. Rice asked to address some of the questions. She said planning staff did bring this to the EDC and we did speak to Barry Perry. She said he was on board with having some of these restrictions to make sure that this use is zoned appropriately, if we did choose to allow it. She said he did point out that anything under 110 decibels would be appropriate. She said the EDC did recommend that we make special stipulations saying that this use shouldn't be within a couple hundred feet of a school, church, or any establishment selling alcohol.

Mr. Sparacia said he had a couple of points to make. He said he thinks this is a great idea. He said there are a lot of people, like veterans, that will use this facility. He supports this type of activity downtown. Mr. Sparacia said Outdoor ranges, he is totally against downtown. He said an indoor facility, where it's out of sight and there's no sound, where nobody could hear what's going on in there, if it's designed right, is a great idea. He thinks this will bring in more traffic than Kannon's men's shop took away when he left. Mr. Sparacia said we would become a destination, which we need. He said it would support the new distillery going in downtown, as well as a couple of new restaurants. He thinks this is a stroke of brilliance and can't see how this can offend anybody. He said this is a financial, commercial decision, and this is the type of activity that Wendell needs. He said there are many locations that are sitting there empty that would be perfect for this.

Mr. Underhill asked if any of these towns cited, like Fuqua and Wake Forest, do they actually have a shooting range? Ms. Rice answered that Raleigh, Wake Forest have firing ranges. Mr.

Mancuso asked if they're downtown. Ms. Rice said they are not, which is why we wanted to expand the search for examples a bit. She said most of these ranges were grandfathered in. She said the most recent one, operated by Wake County, was built ten years ago and that was originally built within Wake County's jurisdiction and then was absorbed by the town.

Mr. Reidy did mention that Mr. Perry had mentioned that, in Briar Creek they're building a multi-million dollar firing range. Mr. Briggerman asked what kind of issues come up for people who work there and their exposure to lead? He said he has been around a lot of battery manufacturing facilities, and the employees have monthly blood tests because of working where the lead is being smelted. He asked what can we do to ensure employee safety, with an exhaust system for example. Ms. Rice replied that this issue wouldn't be covered under the zoning ordinance, it would be covered under OSHA regulations. She said it's already a law that is well regulated.

Mr. Mancuso said he has two points. First, he sees this as a legitimate activity in this country, both indoor and outdoor. Second, where should the indoor use be located? He sees this as the political side of the question. He said as he reads it, in the downtown mixed use area, there would have to be a special use permit and that will only be granted by the Board of Commissions. He said he thinks that we need to center ourselves on the issue of if we want indoor and outdoor ranges in downtown and let the commissioners decide if there should be a special use permit. Mr. Bergmark said that it would only be a special use if you just add indoor firing ranges as an example of Indoor Recreation. He said that could be one avenue to take – just add it to the definition of Indoor Recreation. Mr. Bergmark said he wouldn't be entirely comfortable with that since there will be a lot of residential districts as well. He said he would be more prone to split it out for its own use, and then let the Board decide which zones it is allowed in, to permit it outright, permit with stipulations, or permit through special use permit. He said most of the safety concerns for indoor ranges will be addressed through building codes and other regulatory agencies, so it's really more of an issue of if and how we want to allow it. He said he has more reservations about outdoor ranges, and would feel more comfortable about allowing that through special use.

Mr. Mancuso asked if Planning staff is asking the Planning Board to go through all that language, and he would rather see that language come from the Planning Department. Mr. Bergmark said that the staff was looking for feedback. Mr. Underhill said that this is just a discussion, not a vote. Mr. Mancuso then asked what are the next steps to be done? Mr. Bergmark said that staff is looking for the Planning Board to tell staff if they're in favor of this use, whether or not they would want an indoor range in the DMX district, and if they want the outdoor to be special use or permitted with additional standards. Mr. Mancuso said that staff is asking a bit too much of the board, since he would have to research this before giving a recommendation. He said that he's been on the Board for several years, and there's been a

protective interest on what goes on in the Downtown. He said there was going to be a biker bar, and the board didn't like that. Mr. Sparacia reminded them of the tattoo parlor. Mr. Sparacia said that this is a different thing. Mr. Mancuso said that his point is that he is not able to put language down right now, he can only say that this is a legitimate use. Mr. Bergmark asked what more information, beyond what was given tonight, would the Board need to be prepared to make a vote on this at your next meeting.

Mr. Underhill gave Mr. Paul White 3 minutes to speak on behalf of the EDC. Mr. White said that he's vice-chair of the EDC, and the EDC were trying to make things happen. He said we need traffic downtown. He said with Wendell Falls coming in, one of the things the EDC looked at are things that will make things happen. Mr. White said we have a gun store that is probably one of the biggest in the state. He said we also have a gunsmith on the corner. He said he's thinking that all the rules and regulations are going to be there if someone wanted to build an indoor range, it's going to be controlled, because you can make the recommendation that the NRA certification be put on it. He said the EDC thought that this would be a calling card, a niche. He said this is not something that everyone has, and it would fit in with businesses that already exist. Mr. White said the hope is that people would come in to shoot, and then walk around and go to a restaurant. He said their interest for indoor ranges is that it would be in the Downtown area. He said he's not too keen on the outdoor range, since it would have to be outside the town.

Mr. Bergmark said that when the Board meets again, staff can put together a recommendation of what they think makes sense, but they wanted to give the board this information first to get a sense of what the Board's concerns would be, and if they would need any additional information. Ms. Van der Grinten said that Mr. Perry was with them on the previous Friday. She said that she doesn't know anything about guns, but she's not opposed to them. She said they certainly generate a lot of interest. She said her concern is with the health and safety considerations, mainly for the lead effects on the environment and the people working there. She said she wants to know how that is regulated and how that works. Mr. Bergmark said that, not to say that it's not a valid concern, but that this isn't an issue that the board needs to address through a text amendment, because it's not something that's regulated by the UDO. He said those items are regulated by OSHA and other regulatory agencies, and it's not something that we dictate to them.

Mr. Mancuso pointed out that those are operational procedures of that business, just as what a restaurant does with its garbage does not concern the planning board. Ms. Van der Grinten said that Mr. Perry made it seem like these are issues that the Planning Board can take responsibility for. Mr. Underhill said that the point is that the Planning Board has some concerns about OSHA, which can be addressed at the next meeting. Ms. Rice said that she believes the point that Mr. Perry was trying to make was that there are certain design considerations that will help with the health and safety of the business, for example the balance between the ventilation of the building

to prohibit lead absorption vs. the noise that will escape with the ventilation. He did say that he knew of places that did not comply with noise ordinances and health ordinances, and he said that it was easy for a business to comply.

Mr. Bergmark said that they would provide a map of the downtown area for the next meeting so that the Board could see exactly what area they're talking about. He said that he is getting the general feeling that the Board is in favor of the indoor range, and staff will put together some language reflecting how they think it would be best addressed. He asked how the Board felt about addressing outdoor ranges. The Board agreed that they weren't interested in that use downtown. Mr. Mancuso said that they should leave the outdoor ranges for the people who run the turkey shoots out in the country, and that sort of thing. Mr. Bergmark said that we could say that it's not allowed in the corporate limits, but still allow it in our ETJ, or we could say that we don't want it at all. Mr. Mancuso said that he doesn't want to allow outdoor ranges at all, that it presents more problems than benefits.

Mr. Mancuso said that these are two separate issues. He said the indoor range is going to be controlled, but the outdoor is going to be controlled, too. He said there's going to be a berm, and setbacks from other people's properties, etc. Mr. Mancuso said to bring back language about indoor and bring back language about outdoor. He said that he needs information before he decides one way or the other about whether or not to allow outdoor ranges.

Mr. Kramer pointed out that you need a business person to come forward before the situation is changed. Mr. Bergmark said that if someone came forward now, they would have to pay for a text amendment. Mr. Sparacia said that right now we need to focus on getting something moving on downtown.

Mr. Mancuso made a motion to adjourn. Mr. Vaughan seconded the motion. The motion passed unanimously. The meeting was adjourned at 8:30 pm.