

**MINUTES
FOXFIRE VILLAGE COUNCIL
PUBLIC HEARING/REGULAR MEETING
Foxfire Golf Country Club ~ 9 Foxfire Blvd
January 9, 2018 – 6:30 PM**

1. **Call to Order:** Mayor McCue called the meeting to order at 6:30 PM.
2. **Members Present** – Councilman Don Boito, Mayor Pro Tem Leslie Frusco, Councilman Jon Sedlak, and Councilman Ed Howze,
3. **Others Present** – Lisa A. Kivett-Village Clerk, Police Chief Chad Shue, Officer Gary Garner, Mary Gilroy, Lynne Williams, Jerry Lee, Beckie Pahner, Andy Moody, Floyd and Thelma Geisert, John and Carolyn Hunter, and John Quella
4. **Moment of Silence:** Mayor McCue requested those present to pause for a moment of silence followed by the Pledge of Allegiance
5. **PUBIC HEARING – Request for Rezoning – Courtyard Properties, LLC**

Mayor Pro Tem Frusco made a motion to open the public hearing. The motion unanimously carried.

Zoning Administrator Lisa Kivett gave a brief description of the property and the request for rezoning. The property encompasses 1.24 acres, owned by Courtyard Properties, currently zoned VBD and has a conditional use permit for the home located on it. The purpose of this public hearing is to consider a request to rezone the parcel to RS-30.

Mayor McCue reported that the council had a chronology going back to 1984 for this property. He opened the floor for public comments.

Property owner Lynne Williams said she owned the property for 13 years. She recently subdivided the property and wishes to sell the house located on the 1.24 acres. The buyer Jerry Lee who has been a 9 year tenant cannot get a residential mortgage with a conditional use permit. This is why she is requesting rezoning to RS30, so the house can qualify for the residential mortgage.

Jerry Lee commented that he agreed with Lynne Williams. He realizes this is an economic question because he has tried twice for an appraisal through his mortgage company and both times denied because there are no similar properties to compare. Mr. Lee really likes living in the community and would like to purchase the home and be a permanent property owner.

Councilman Boito asked if it were rezoned, who would they compare the house to. Mr. Lee said it would then be like any other normal 1,200 sq. ft. home on residential property. The way its zoned now, there are no other homes on commercial property to compare it too. The two appraisers he spoke with said it was virtually impossible.

Mayor McCue commented that this request had to go through the Planning and Zoning Board. They reviewed the request and came to a tie, two in favor, two not in favor and one recusal.

Mayor Pro Tem Frusco's issue is that the Village may be opening a precedent saying that anyone can take one little section of property and have it rezoned into something not fully compatible. She said that all the property surrounding this home is zoned VBD and it is her hope that the Village can someday encourage development in the Village Business District, more than what is already there. Her opinion is that taking this one acre of property in the middle of the VBD and changing to residential has the potential of being detrimental to that future development. She would like to explore the possibility of creating a different zoning district that would encompass the entire triangle area to allow for multi-use. She is concerned that in the future we could have someone that wants to subdivide again and build a house. She also pointed out if Mr. Lee would like to sell at some point, there could be complaints about noise generated from surrounding commercial properties.

Councilman Boito is concerned about the potential for spot zoning.

Mayor McCue added that the Village attorney made it clear this is not a legal issue. We can legally rezone the property or legally refuse to rezone the property. This is a policy issue whether we can rezone this property inline with our Land Use Plan. He has concerns that if we turn some of the VBD into residential, we are giving up on the VBD and the vision that this is the area we will have business entities located. Legally, if we received a similar request, we could legally deny it. But as a policy, if we did it once, why wouldn't we do it a second time, how do we justify that.

Mary Gilroy- Planning and Zoning Chair said this was very complicated and the board discussed it extensively. Two members in favor felt there was an economic disadvantage to the property owner and two board members opposed were concerned about spot zoning and it not lining up with the Village Business District. Gilroy added that the Village attorney said it would be okay if they decided to create a separate district for just the triangle property. That property from a zoning perspective is a mess with conditional use permits and its history. If we wrote a district for just this property, we could "contain the damage".

Mayor Pro Tem questioned the possibility of a new zoning district. Gilroy added it would be called VBT and be mixed use. P&Z will look at this at their next meeting. Brief discussion continued on creating a new district.

Councilman Howze asked if we rezoned the triangle, how would it help this property. Gilroy responded, if P&Z is able to write something that is legal and approved by Council, it would make residential use an allowable use in that triangle only.

Lynne Williams commented that the house was also across the street from residential property on the corner of Tie Rd. and Hoffman Rd. and across Hoffman Rd. The property is on the very fringe of the VBD and it would not abandon the VBD to rezone to residential. In addition, if council considered rezoning in the future to a mixed use, Mr. Lee could ask for rezoning from residential to that zoning. The CUP on the building the Village office is located in is not a problem because the owner has a commercial loan. She is asking for the property to be rezoned to RS30 and then see down the road what can be done with the entire triangle.

Mary Gilroy commented if the owner with a commercial loan goes to subdivide or sell the property, there could be a similar situation.

Mayor Pro Tem Frusco said she was not unsympathetic but this is not personal. Her concern is attempting to maintain a land use plan consistent with zoning and the long range plan. Frusco added the property is on the outskirts of the Village and is abutting the ETJ, not residential. Lynne Williams disagreed. She added that the Village attorney prepared a memo and recommended that rezoning this property to RS30 would be the cleanest solution. That was his opinion.

Beckie Pahner commented that looking at a new zoning district for the triangle property because of this unique situation does not solve anything. It would open up for more problems in the future. She further elaborated.

There were no further public comments.

Councilman Boito asked what would happen if the owner of the parcel with the apartments decided to turn the units into condos and ask that people buy them. Would the people have the same issue with getting loans? Frusco replied the building has an CUP for the entire building. Councilman Sedlak replied it is a good question however in his opinion not pertinent to this particular situation.

Councilman Howze commented the house has been permitted for the last 24 years. He agrees with the attorney that the cleanest solution is to rezone the RS30.

Mayor McCue said he agreed with Beckie Pahner and is not at all interested in making this a mixed use area. It has been zoned commercial since 1984 and purchased by the current owners while zoned commercial. Its essentially a mixed use property right now because of the CUP. We have a vision that the VBD includes the triangle for the Village. He too is very sympathetic to Mr. Lee who is a wonderful member of the community. However, we cannot make policy decisions

based on the business and banking concerns of individual property owners. McCue is reluctantly opposed to the rezoning as residential for those reasons.

Councilman Boito made a motion to close the public hearing. The motion unanimously carried. A vote was called to rezone the property to RS30.

Councilman Sedlak	aye
Councilman Howze	aye
Mayor McCue	nay
Mayor Pro Tem Frusco	nay
Councilman Boito	nay

The request for rezoning was denied.

6. Additions and Approval of Regular Meeting Agenda

Mayor McCue asked to put the second public comment period after New Business and added *Abatement Procedures for Code Violations* under New Business.

Mayor Pro Tem Frusco made a motion to adopt the agenda as amended. Motion carried unanimously.

7. Consent Agenda

All items listed below are considered routine and will be enacted by one motion and without discussion

A. Approval of Minutes

- December 12, 2017 Regular Meeting

B. Appearance Committee Appointment – Helen Kirk (4 yr. term effective 2/1/18)

Mayor Pro Tem made a motion to adopt the consent agenda as written. Motion carried unanimously.

8. Public Comment Period

John Hunter commented on the recent storm and the lack of snow removal. Councilman Boito replied we no longer have working snow removal equipment, so he considered finding a contractor to remove the snow. After meeting with the Police Chief and driving the Village roads, it was decided to leave the snow instead of having it scraped and causing iced roads. There is much better traction on snow instead of ice. Boito will meet with a contractor to be prepared for the next storm. Chief Shue elaborated on the non-working equipment.

9. Zoning Administrator's Report – Lisa Kivett

As of today, a total of thirteen (13) homes are currently under construction or beginning lot clearing in the Village and One (1) in the ETJ.

Village

One (1) located in Autumn Acres (Edwards property)

Two (2) located in Pineland Preserve

Deer Track

Two (2) N. Shamrock

S. Shamrock

Bermuda Circle

Whitman Court

Eagle Drive

Wildwood Lane

Richmond Rd.

Birdie Ct.

ETJ

Tufts Vista

The following permits were issued in the month of September:

- One (1) single family residence (Autumn Ridge)

I'm working on the 2017 year-end report. It will be included in the Village's Year In Review Newsletter.

10. Councilmember's Reports:

A. Finance – Leslie Frusco

1. Finance Report

Mayor Pro Tem Frusco reported the following as of December 31, 2017:

The total cash balance in the General Fund is \$1,657,735 of which \$833,000 is restricted for the Debt Service Assigned Funds, K9 Funds, Street Maintenance Funds, and Police Vehicle Reserve leaving an unrestricted amount of \$824,732.

This is the high point of our cash balance. As of the end of December we have collected 90% of the budgeted ad valorem taxes and since the first of January we've collected a significant amount more. Many people wait until just before penalties kick in to pay.

The total in the Water Fund is \$651,155 of which \$226,076 is restricted for a new well(s) and tank maintenance leaving an unrestricted amount of \$425,079.

Budget season will begin at the January work session. She would like to discuss "big ticket" or "out of normal" items from each department.

Councilman Sedlak asked if the water fund balance reflected the amount transferred for the construction of the new town hall, Frusco replied it does.

B. Public Safety – Ed Howze

Councilman Howze thanked the Village Clerk for sending out CodeRed messages during the snow event.

He reported attending the West End Fire and Rescue Board of Directors meeting. The department is having issues with staffing and losing three qualified members but have many volunteers to fill in the gaps. This does not directly affect the Village.

Howze thanked Chief Shue for closing off the entrance to Foxfire Rd. during the snow event. This area is extremely dangerous when there is snow or ice and vehicles have run into the fence in the past.

Mayor McCue added that the fire department recently completed a renovation of the Foxfire firehouse to include a kitchen area. There will be an open house when the new Village offices are complete.

C. Water Department – Jon Sedlak

Councilman Sedlak reported a few water issues during the month including broken pipes at the pool house. He suggested the pool facility be winterized each year.

He looked at a couple of potential well sites and will be contacting the property owners. One site is located in Tufts Vista and the second is located in the 1,500 acre Stonehill Pines property.

Councilman Sedlak commented that Gilbert cleaned up the yard waste area and Bruce McFadden, at no charge, put down some stone in the areas with holes.

D. Streets and Park – Don Boito

Councilman Boito reported that large amounts of yard debris were dumped in the middle of undeveloped cul-de-sacs located on the east side of the Village. He asked that residents let the police department know if they see any unusual activity. Mayor Pro Tem Frusco believes it someone from outside the Village dumping debris from somewhere else than in the Village.

Councilman Boito asked that council give him any suggestions on possible paving projects for the next year's budget.

Councilman Boito said the water lines on Foxfire Blvd. are not yet installed but the club will continue hand watering until it is installed.

11. Mayor's Report

Mayor McCue suggested council read an article in the Southern City magazine regarding texting. Texting between council members can become public record with a requirement to maintain those records. He suggested they refrain from texting each other.

Mayor McCue gave an update on the Stonehill Pines property which recently sold. The property was sold on December 20th to a man named Tim Sweeney who is the CEO of Epic Games in Cary, NC. Mr. Sweeney is one of the largest land owners in the state owning about 45,000 acres of property throughout N.C. before purchasing the Stonehill Pines land. Most of this property has been turned into conservancies for natural environment. He has intentions to do the same with the 1,500 acres and also hopes to purchase property along Drowning Creek to connect to this property.

The Council discussed this acquisition at the last meeting and amended the development agreement to say generally speaking that we will not try to enforce any construction schedule as long as the land remains undeveloped. Mr. Sweeney had concerns about the development agreement wording so the amendments were made. Within the agreement, the Village will receive approximately one-acre for a well-site. When the agreement is finally terminated and when the land goes into a conservancy, the owner will pay the Village \$50,000. This may take years or possibly decades to actually do this. In the meantime, he plans to thin out trees. McCue suggested he allow some areas for hiking.

Although we will lose some tax revenue, it will provide a nice buffer protecting us from overdevelopment and preserving a country atmosphere.

Mayor McCue said he will send an electronic draft of the Long Range Plan to council by weeks end. A hard copy will also be in their boxes. He asked that they review the plan and get back with him on any suggestions. He would like to have it on the website for public comments as soon as possible.

12. Old Business:

None

13. New Business:

A. Public Comment Procedures for Regular Meetings and Work Sessions

Mayor McCue prepared draft of an amendment public comment procedures for regular meetings and a draft of procedures for work session. He asked council to review them for any changes or for consideration of adoption.

B. Abatement Procedures for Code Violations

Mayor McCue said that a while back, the Village attorney suggested we change our Code to add an abatement procedure for violations other than public nuisances. McCue commented on the recent nuisance abatement at the beach property which was a health and sanitation nuisance and a safety issue. The new abatement procedure would be for things like trailers parked on properties. He asked that council to give this some thought.

14. Public Comment:

John Quella commented that he would like to know what happened at the council meeting and not wait a month to read the minutes. Mayor McCue explained the minutes are approved for the following month and then put on the website. Mayor Pro Tem Frusco asked that council further discuss when minutes should be posted at the next work session. Brief discussion continued.

15. Closed Session Pursuant to: N.C.G.S §143-318.11.(5) *To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price or other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.*

Mayor McCue reported the Council would now go into Closed Session at 7:45 pm.

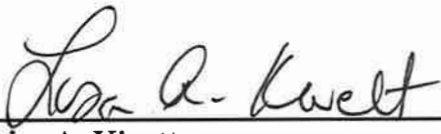
16. Return to Regular Meeting

Councilman Sedlak made a motion to return to the Regular Meeting at 7:52 PM. The motion unanimously carried.

17. Adjournment

Councilman Boito made a motion to adjourn. The motion unanimously carried. The meeting adjourned at 7:53 PM.

As so incorporated to these minutes of January 9, 2018 are exact copies as so recorded in the ordinance and resolution books of Foxfire Village as if fully set out in the minutes.



Lisa A. Kivett, CMC, NCCMC, CZO
Village Clerk



E.M. McCue III
Mayor