

Town of HOLLY RIDGE

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HOLLY RIDGE TOWN COUNCIL SPECIAL MEETING WORKSHOP JANUARY 7TH, 2015

Mayor Dingler called the Regular monthly Meeting of the Holly Ridge Town Council to order At 6:30 pm at the Holly Ridge Town Hall. Council members present were Mayor Pro-Tem Hines, Councilwoman Stanley, Councilman Lang and Councilman Helms. Also present were Town Manager, Joe Pierce; Chief of Police, John Maiorano; Town Clerk, Heather Reynolds; Deputy Clerk, Tracy Martin; Larry Willaford, Code Enforcement; Barbara Lynch, Planning and Zoning, and Attorney Chuck Kitchen. Councilwoman Bragg was absent from the meeting.

Invocation and Pledge

Councilwoman Stanley gave the Invocation and Mayor Dingler led the Pledge of Allegiance.

Discussion of Chapter 2-Planning Board Ordinance

Attorney Kitchen stated that you are required to have a Board of Adjustment when you have zoning because you might have to have quasi judicial hearings. Attorney Kitchen stated there are three ways that the board of adjustment could be created.

1. Current Town Council serves as Board of Adjustment.
2. The Board of Adjustment would be separate from Town Council and Planning Board
3. Combine Board of Adjustment and Planning Board

Attorney Kitchen stated the ordinance amendment combines the Planning Board and the Board of Adjustment functions. The Board of Adjustment is a policy making board and is considered an office under the constitution. The person has to take an oath of office and is sworn in and they can only hold two positions of office.

Councilwoman Stanley asked the attorney which he thought was the best thing to do. Attorney Kitchen stated he was not crazy about the Town Council acting as the Board of Adjustment. He suggested moving that function away from the Town Council. Attorney Kitchen said as Holly Ridge continues to grow there will be more issues for a Board of Adjustment. The more Quasi-Judicial hearings you have the more you will need the Board of Adjustment.

Councilwoman Stanley asked how many people you have to have on the board. Attorney Kitchen stated it needs to consist of seven people. Attorney Kitchen stated there needed to be five members from the town limits and two members from the ETJ. Councilwoman Stanley then asked if this would need to be advertised. Attorney Kitchen stated if we decided to do something different other than what we have now, we would need an ordinance amendment with a public hearing. Once we have the public hearing then it would be up to the Town Council how the town would make the appointments

Councilman Lang asked how long the term would be for a person joining one of the boards. Attorney Kitchen stated he thought it was three years.

Mayor Dingler asked if the Board of Adjustment would hold the Quasi-Judicial meetings the same way the council has done in the past. Attorney Kitchen stated that is correct.

Councilwoman Stanley asked if the Board of Adjustment was above the Town Council. Attorney Kitchen said the council appoints the Board of Adjustment and no they are not above the Town Council but their decision is final in regards to a special use permit subject to appeal to Superior Court.

Councilman Helms asked if the Town Council's only recourse is to rezone once the newly formed Board of Adjustment approve a special use for an applicant. Attorney Kitchen said that is correct, unless you want to split it up between minor or major conditional use. Attorney Kitchen stated he did not suggest this because it has a tendency for builders not to want to build in our community.

Councilman Helms asked what right the Town Council has after a said meeting has taken place and the Town Council does not like the action taken. Attorney Kitchen stated the Town Council gives up their right when the Board of Adjustment is formed. Councilman Helms asked what the removal procedures are to remove a board member. Attorney Kitchen stated there has to be four absences from four meetings. Councilman Helms asked what rights the Town Council has if after a meeting the Town Council is dissatisfied with the plans. Attorney Kitchen said the Town Council gives up their rights and the decision goes to the Board of Adjustment subject to appeal in Superior Court. Attorney Kitchen stated that Planning and Zoning issues are still up to the Town Council. Attorney Kitchen said it is only when zoning needs a special use permit that it goes to the Board of Adjustment.

Chief Maiorano stated that for these types of zoning issues the Town Council handles the Table of Uses and essentially the Town Council is setting what is permitted and what is conditional use. The Board of Adjustment is not able to arbitrarily decide what is a permitted

use or a conditional use. Attorney Kitchen stated that is correct, the Town Council will continue to decide what a permitted use is and what a conditional use in the Table of Uses.

Mayor Pro-Tem Hines asked if we decided to combine the two in a few years would it be another Public Hearing and ordinance change to make a separate Board of Adjustment. Attorney Kitchen stated if the Town Council does not want there to be a combined board anymore, a proposed ordinance would be adopted and that ordinance would dissolve the current Board and put into place a new board. Attorney Kitchen said if we decided to have two separate boards the ordinance would be adopted to make that change.

Councilman Helms asked if the Town Council always reserves the right to change the structure of the Board of Adjustment as long as the General Statute does not change. Attorney Kitchen stated that would be correct.

Councilwoman Stanley asked what the new Town Manager, Joe Pierce thought. Town Manager Pierce stated he is learning the ropes but he thought whatever the best interest of the Town is what needs to be done.

Chief Mairoano asked if the Planning Board is dissolved and in the interim we post for new applicants can it be written to retain the Planning Board. Attorney Kitchen stated the way to handle this is to have the effective date in the future.

Mayor Dinger asked if the Town Council moves forward, will it be a Public Hearing next week or during the February meeting. Attorney Kitchen stated it would be the February meeting because we need time to advertise.

Councilwoman Stanley asked if the current Planning Board members need to be reappointed. Attorney Kitchen replied yes they would need to reapply, the Town Council would accept applications and then the members would be sworn in. Attorney Kitchen said the Town needs to do it this way because the terms of the office are different. Attorney Kitchen said one is an advisory board and one is a decision making board. The Town Council makes the final decision.

Councilman Helms asked what we would do if we have more applicants than we have positions. Attorney Kitchen stated the Town Council can pick whoever they want.

Attorney Kitchen stated the rule is you must have the majority of vote to have someone appointed. If you do paper ballots they must be signed and there is no secret voting allowed. Attorney Kitchen said as the Town becomes bigger and you have more controversial items you have to be careful not to mess up procedurally and if you do, there would be a liability on the Town.

Councilman Helms asked what would happen if there are not enough people for all of the boards. Attorney Kitchen stated if you can't fill the positions, then the ordinance would have to be changed and there must be a quorum.

Mayor Dingler stated the way we have it in the ordinance they will be mainly the Planning Board and only a few times will they become the Board of Adjustments and will have to handle Quasi-Judicial issues when they arise. Attorney Kitchen stated this is correct.

Mayor Pro-Tem Hines asked if they appoint their own chairman. Attorney Kitchen stated it was up to the Town Council.

Mayor Dingler asked how to pick the terms of the people serving on the Board would serve. Attorney Kitchen stated this is done by the board and as long as you don't have everyone coming off at once, the Town should be okay.

Councilwoman Stanley asked when the Planning Board is combined, would the Town at that time assign the terms. Attorney Kitchen stated that is correct.

Mayor Pro-Tem Hines stated if we send recommendations up to County Commissioners they could appoint someone from the outside. Attorney Kitchen stated he has never had this situation so he is unsure of how it would be handled. Attorney Kitchen stated he did not know if they had a choice to go outside of the recommendations of the Town Council.

Mayor Pro-Tem Hines asked if the Planning Board members know what their duties are. Councilman Lang stated the members showed concern at the last meeting. He advised them to come to the next meeting.

Mayor Pro-Tem Hines stated his biggest concern is giving that much power to a board. Mayor Dingler stated the Town Council still controls the Table of Uses and the attorney would be there.

Mayor Pro-Tem Hines asked if we split these duties and took it away from the Town Council, can the Town Council come to the meetings and express their opinion during a Quasi-Judicial. Attorney Kitchen stated if they had standing. Mayor Pro-Tem Hines asked would the Town Council have a right to appeal this to Superior Court if the Town Council does not like the Board of Adjustment's decision. Attorney Kitchen stated the statute changed a couple of years ago. Attorney Kitchen also said before this change the answer was no. Attorney Kitchen stated since then if there is an appeal, the Town Council is the party to the appeal not the Board of Adjustment.

Mayor Pro-Tem Hines stated he could see the point of a small town when there is a small controversial decision to make and just before election the new Board comes in and they decide to return their decision if its within the time frame. Mayor Pro-Tem Hines stated they could take it to court and sue the Board of Adjustment. Attorney Kitchen stated that is correct but they must have someone else to appeal it. Attorney Kitchen said you have to show that you will be affected. He went on to say once it is in Superior Court the lawsuit is the Town because the Board of Adjustment is the Town and the Town decides it. Mayor Pro-Tem Hines asked who the Attorney works for and Attorney Kitchen stated the Town. Attorney Kitchen stated no one represents the Board of Adjustment. Mayor Pro-Tem Hines stated this

is our way to keep control over the decision. Attorney Kitchen stated until Legislation fixes this, it will remain this way. Mayor Pro-Tem Hines stated he feels more comfortable giving all of the control to the Planning Board being the Town Council has an option. Attorney Kitchen stated he would recommend doing it soon for matters of policy as they will make a final decision.

Mayor Pro-Tem Hines asked if the Town Council wants to appoint their chairperson. Mayor Dingler stated she does not see an issue with allowing the Planning Board electing their chairman. Councilman Helms asked if as it stands the Board of Adjustment can appoint a chairman in the ETJ. Attorney Kitchen stated he thought they could. Mayor Pro-Tem Hines stated he thought a proposal needs to be brought before the Town Council in regards to the chairperson. Mayor Pro-Tem Hines said if we change the way the chairman is appointed he has a change of heart about the whole thing.

Mayor Dingler has a question about section 2-8. Is the 30 day referral something new and something we should be doing? Attorney Kitchen stated the 30 day is statutory requirement and we put it there so the Planning Board would know it was 30 days.

Councilman Lang asked if the Town Council was telling the Planning Board that it is going to be a combined board and Attorney Kitchen said that is correct.

Attorney Kitchen stated the safest thing to do is to send this back to the Planning Board because there is a change regarding the position of the chairman. Attorney Kitchen said he will change the ordinance and give it to the Town Manager. Attorney Kitchen stated we will then send it back to the Planning Board for comment and then we will set the Public Hearing after that. Attorney Kitchen said we would call for the Public Hearing in February 2015 to set a date for the Public Hearing in March 2015. Mayor Dingler asked for the names of the members of the Planning Board. Barb Lynch, admin for Planning and Zoning gave the following names.

- John McIver
- Dawneva Evans
- Judy Ferrier
- Skip Anderson
- Cindy Throne
- Patricia Hosinski
- Anna Gaskins

Councilwoman Stanley asked which members joined within the last 6 months. Barb stated Patricia Hosinski and Judy Ferrier who took over in the middle of the year because George Lang's term ended.

Mayor Dingler asked which members were ETJ members. Barb Lynch stated Anna Gaskins and Skip Anderson.

Attorney Kitchen stated he would draft the ordinance so all of the members will have it in front of them so there will not be any questions.

Councilman Helms stated he has a change in section 2.2 which is a math distribution question. There are two with a one year term and four with a two year term and only one with a three term. Attorney Kitchen stated this is from the General Statues.

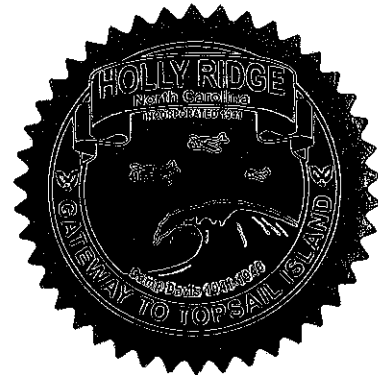
Mayor Pro-Tem Hines asked if the members needed to take an ethics class. Attorney Kitchen thought they would have to. Mayor Dingler stated maybe the members could take the ethics class. Mayor Dingler asked if this information needed to be included in the ordinance. Attorney Kitchen said yes it would need to be included.


Mayor Pro-Tem Hines stated he would like for the information to be required. He also asked if there would be a time frame and if the member has not completed both requirements can they be removed from the Board. Attorney Kitchen stated that is correct. Mayor Dingler suggested after six months if courses had not been completed they could be removed.

A motion was made by **Councilwoman Stanley** and seconded by **Councilman Lang** that once changes are made it would be sent it back to the Planning Board for recommendation and then back to the Town Council. **All Agreed.**

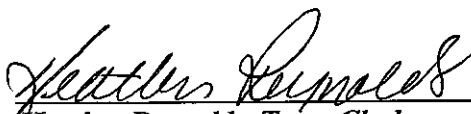
A motion was made by **Mayor Pro-Tem Hines** and seconded by **Councilman Lang** to adjourn a 7:52 P.M. **All Agreed.**

Attest:





Anita Dingler, Mayor



Heather Reynolds, Town Clerk

These minutes were recorded and prepared by Deputy Clerk, Tracy Martin