

**Town of Marshville
Town Council Meeting
Monday, November 16, 2015
Recessed to Monday, November 23, 2015
Marshville Community Center – 118 E. Union St., Marshville**

**Special Meeting – Work Session
Marshville Development Ordinance**

Council Members Present: Mayor Deese; Mayor Pro-Tem Virginia Morgan; Council Members Norma Carpenter, Margaret Bivens, and Jim Rowell. Council Member Huntley called to report he is unable to attend.

Staff Present: Town Manager, Fern Shubert; Town Clerk/Finance Officer, Tonya Johnson, and Planning/Zoning/Subdivision Administrator, Richard Flowe

Call to Order/Invocation/Pledge of Allegiance

The meeting was called to order at 9:10 am by Mayor Deese, who welcomed everyone. The invocation was given by Council Member Margaret Bivens. The Pledge of Allegiance was given by everyone in attendance.

Mayor Deese stated that the purpose of the special called work session is for discussion of the Marshville Development Ordinance. Mayor Deese stated that the council will not take any action today. Mayor Deese reiterated that the purpose of meeting is to review and discuss the ordinance as presented by the Marshville Planning Board.

Work Session – Marshville Development Ordinance

At this time Town Manager Shubert turned the meeting over to Mr. Richard Flowe, who has been working with the planning board in developing the MDO (Marshville Development Ordinance). Council Member Rowell requested that Richard spend sufficient time on a discussion of the zoning map as well as discussion of the ordinances.

Mayor Deese questioned the change in zoning classifications. He commented that this ordinance has more complicated zoning classifications and inquired why the Planning Board thought this necessary.

At this time Richard Flowe presided began the discussion of the MDO and began by explaining the philosophy of the ordinance. Richard pointed out that the town plan was developed first then the ordinance, which is the way the process should be done. Richard stated that the process followed is based on North Carolina General Statutes. Towns must have a plan in order to do zoning. Marshville adopted a Land Use Plan in 2004 making Marshville's authority compliant with state statutes. Richard explained that this new plan sets in place strategies and plans for future growth. Richard pointed out the relationship between the Land Use Plan and the Marshville Development Ordinance. He asked, "How do successful towns lead in enhancing their town?" Richard stated that he worked with the Planning Board to help the members understand that to lead by zoning is not a successful way to lead a town. Successful communities/towns create opportunities for property owners.

A Town Plan is built as mechanism to reinforce the heart of a town (the strength of the core - compared cities of Charlotte, NC and Atlanta, GA). Richard also talked about location dynamics – water/sewer,

industrial zoning, railroad, proximity to an interstate. Next, Richard discussed the dynamics of a neighborhood: lot size, density, and amenities. The new ordinance starts at the core (downtown). It takes into consideration existing neighborhoods and moves outward beyond the main street district to the peripheral areas and sets in place a strategy for how to manage change, growth, etc. The Single Family Residential (SFR) districts are based upon exact same neighborhood uses. Differences are in the density. Richard explained that moving standards to something that works in the industry, using numbers that make sense is the reason for changing the zoning. Richard stated that if a town is not careful with zoning, it can create issues with new construction, refinancing, insurance, and the ability to rebuild in event of catastrophe. Richard pointed out that each zoning district has a purpose statement. Zoning is legislative; you don't have to have a reason to deny zoning petitions.

Richard commended the Planning Board and its hard work during this process. He stated that he is excited to be working with the council. Richard referenced a memo in the Marshville Development Ordinance, the Reading Guide, the Zoning District Comparison Table, and a Table of Contents. He stated that the old ordinance was a hand-me-down that was amended/adjusted to make fit over the years. Mayor Deese commented, regarding the old ordinance, that Marshville eventually out grew it. Council Member Rowell quoted, "Failing to plan is planning to fail."

Richard stated that the desire is for the ordinance to be the plans and specifications for expansion in the future. It is to be a tool. Richard clarified that the future land use map is not to be confused with a zoning map. Copies of the future Land Use Map were provided and a review and discussion ensued. Richard stated that towns are in charge of creating or failing to create their location dynamics. The Land Use Map is about the future but it is not how you should zone everything today.

Mayor Deese called for a brief recess at 10:15 am. The meeting reconvened at 10:30 am.

Richard reviewed the existing zoning map. The Planning Board is recommending that civic uses be treated more alike in the new zoning, creating a new use called the Civic District (churches, schools, cemetery, etc.). Discussion ensued regarding permitted uses in the Civic District.

Richard spent time reviewing the railroad zoning. Discussion ensued regarding differences between light industry and heavy industry. A discussion was had concerning Heavy Industry Overlay based upon performance standards. Richard stated that if a property is rezoned to commercial then you may have messed up. If council doesn't want churches and night clubs in the same district then they shouldn't be put in the same district. He pointed out that this is the reason for the creation of a Civic District.

Council Member Rowell asked about the Anderson Healthcare Project site. It is currently zoned B-6. Richard stated that this plan takes care of rezoning. Anderson Healthcare will go from a conforming use under the current zoning to a conforming use under the new zoning.

Richard talked of several properties whereby the recommended plan makes the property non-conforming according to the new plan. Richard asked the council if it wants those businesses to continue in that area. The business are surrounded by residential development in the neighborhood in which they are located. If the zoning remains industrial then more can happen. If council down zones, then businesses can stay but they can't grow. Council Member Rowell's opinion is that current businesses should stay but industry shouldn't be allowed to grow in that area. Under the proposed zoning the neighborhood along Cherio Lane would go back to residential.

Mayor Deese asked if the zoning change would impact the amount the property owner pays for taxes, utilities, etc. Richard stated that the zoning change does not affect the use. Town Manager Shubert stated that if a business that is in operation is made non-conforming how it could be affected by abandonment. Richard stated that he is talking about a non-conforming use and not an abandoned property. Richard gave an example of a Supreme Court case. Richard discussed nonconformities, Article 22 of the ordinance. Discussion ensued about Discontinuation of Nonconforming Uses, Article 22.4-1. Richard recommended that council give serious thought to this potential rezoning. Planning Board Chair, Susan Drake, recommended that council go and physically visit the property for which changes are being considered.

Planning Board Chair, Susan Drake stated that this review is an ongoing process and that the Planning Board welcomes any requests for revisions or changes. Ms. Drake suggested a joint meeting with the Planning Board to further discuss issues such as this.

Richard stated that the purpose of the Extra Territorial Jurisdiction (ETJ) is to manage changes around the edge of town. Discussion ensued regarding recommended changes in and around the town's ETJ to encourage industrial growth closer in where sewer is more readily accessible. Richard stated that properties should be zoned based upon the feasibility of what can be developed. He stated that the recommended zoning is proposed to grow the Town of Marshville from the inside out. Town Manager Shubert stated that if Marshville cannot provide sewer does not mean that Union County will not provide sewer. The county is planning massive sewer expansions at the town's expense.

Richard commented that in writing the plan and the ordinances the process has been about the Town of Marshville. He asked, "Does the town want to create competition for itself?" The recommendation is to bring value into the Town of Marshville. Discussion ensued. Council Member Rowell commented that if the town rezones then the county will lose tax revenue. That may create a negotiating point with the county. Council Member Rowell argued against rezoning the property to agricultural. Richard stated that we have to plan according to what we have and what we know. The game plan is intended to be what is best for the Town of Marshville into the future.

Richard briefly discussed Transitional Mixed Use areas (TMU). Council Member Rowell is against TMU area because of the multi-family component (apartment complexes). Council Member Bivens and Mayor Pro-Tem Morgan agreed.

Discussion ensued concerning preserving Marshville's historic area. Council Member Bivens desires to preserve the town's historic buildings. Mayor Deese disagreed. He desires that Marshville be modern and progressive. Richard pointed out that the zoning map does not have an historic district.

Council Member Rowell referred back to TMU area and asked how a single family attached is defined. Richard replied that single family attached refers to townhouses. Mayor Deese pointed out that every multi-family area is not the projects. Ms. Drake pointed out that there are other areas in town where multi-family use is permitted. Richard stated that area is singled out for one reason – it will be the end of the landing strip, referring to the Monroe Bypass. If the area isn't rezoned then development may skip over that area.

Town Manager Shubert commented that the discussion got away from historic districts before she got an opportunity to comment. She stated that by being designated historic may make projects more do-able.

She talked about benefit of having historic designation which may help the town. Richard stated that the ordinance does not set in place an historic district

Richard gave an assignment to the council. Richard suggested moving the map(s) back to town hall and encouraged council members to review the proposed marked up zoning map. He would like for next work session to have specific questions.

Mayor Deese requested that Richard have a draft of the zoning map available for the next work session. Ms. Drake stated that the Planning Board just finished that map at approximately 11 am Thursday night.

A motion was made by Council Member Carpenter to recess the meeting to reconvene on Monday, November 23, 2015 at 3 pm at the Marshville Community Center. The motion was seconded by Mayor Pro-Tem Morgan and passed unanimously.

There being no further comments, the meeting recessed at 12:20 pm.

Reconvened Meeting – Monday, November 23, 2015

Council Present: Mayor Deese; Mayor Pro-Tem Morgan Council Members Carpenter, Rowell, and Bivens. Also present was newly elected Council Member, Ernestine Staton. Council Member Huntley was absent.

Staff Present: Town Manager, Fern Shubert; Town Clerk/Finance Officer, Tonya Johnson; and Planning/Zoning/Subdivision Administrator, Richard Flowe

Reconvened

Mayor Deese reconvened the meeting at 3:09 pm. The Pledge of Allegiance was given by everyone in attendance.

Work Session – Marshville Development Ordinance

Richard Flowe commented that a lot of good discussion was had at the last meeting. He stated that a lot of good feedback has been received, particularly regarding densities. Richard took a few minutes to run over the matrix of densities and to get council's feedback. He referred to the Zoning District Comparison chart in the Marshville Development Ordinance notebook.

Richard stated that SFR stands for Single Family Residential. Richard reviewed the differences among the zoning districts, specifically density and minimum square foot size. Richard responded to a question asked by the manager regarding streets and right-of-ways and whether minimum lot size includes or excludes that area.

Discussion ensued regarding what happens if a town does not accept road. Richard explained that DOT does not typically accept neighborhood streets anymore. Town maintenance is more cost effective and creates a larger Powell Bill system. Town Manager Shubert commented that currently it is assumed that a land owner handles maintenance up to the road, even a sidewalk. She asked how the ordinance addresses that situation. Richard stated that in the new ordinance any new streets built would be curb and gutter streets. Maintenance of space is typically maintained by the homeowner even though the area may be public space. Richard stressed the need to set up neighborhood streets for neighborhoods. Town Manager Shubert asked if this means that different rules will apply for already existing neighborhoods.

Richard's reply was not necessarily. Discussion ensued regarding prescriptive maintenance, which is when a public agency exercises maintenance on property.

Richard discussed easements and right-of-ways. He explained that an easement is a specific encroachment on someone's property. Richard provided an illustration using a sewer easement example. The new ordinance discourages using easements. The new ordinance attempts to address what may be issues upfront.

Richard addressed possible scenarios for use of open spaces in subdivisions. He reminded the council to keep in mind that the plan will be constantly moving/changing.

Mayor Deese asked whether or not to change zoning for those properties further out if there is a desire to develop further out. Richard's response was that the Town Plan would need to be studied. The town should lead with its plan and not with zoning. The Town Manager asked what is to keep developers needing water and/or sewer from going to the county instead of the town. She added that towns no longer have involuntary annexation. Richard stated that zoning is a legislative action. This council engages in two legislative acts, (1) adopt a plan and (2) receive technical recommendations from the Planning Board for zoning changes. Richard recommends that the town have a water/sewer extension policy in place. Union County has a stake in the success of Marshville.

Mayor Deese commented that Union County already has water and/or sewer in Marshville's ETJ. Zoning is agricultural. He asked if the town can require a property to annex into town before granting a zoning change. Richard stated yes if they request a zoning change, but not if they are satisfied with zoning. Richard commented that development shouldn't be happening in an agricultural district. Discussion ensued concerning annexation, a comparison of the town plan and the proposed zoning. Some discussion was also had about flood zones and flood insurance.

Richard referred back to the discussion regarding density. He stated that the Grandfather clause may not always be a good thing because along came zoning. Older houses may be non-conforming, not illegal but they just don't meet current standards. The desire is for neighborhoods to thrive. A request for a zoning change is to include a memo, consistency statement and a purpose and intent statement. Towns have to find ways to use zoning strategically.

Mayor Deese called for a brief recess. The meeting reconvened at 4:45 pm.

Richard discussed a Supreme Court case in Arizona, regarding a sign (donation bin at a church). The court said stop right now alleging that using content to set rules violates a fundamental freedom of speech right. Temporary signs are hugely affected by the court ruling.

Article 17 of the new ordinance addresses sign regulations. Exempt signs include speed limit signs, stop signs, regulatory signs, and directional signs. The standards as written in the new ordinance are in the middle. Richard solicited the councils help with numbers in the proposed ordinance, particularly for temporary signs. He asked, "Do I put in the ordinance that anything tied to an event must come down as soon as the event is over?" Council Member Rowell questioned the ordinance and why temporary signs appears in various sections of the sign ordinance rather than all the information compiled in the temporary sign section. Richard stated that the ordinance can be changed, or that references can be added.

Council Member Rowell referred to Article 17, Section 17.15 Administration, Enforcement and Interpretation, Part (C) Appeal to a Superior Court. Richard pointed out that is standard. Town Manager Shubert pointed out that civil penalties go to the school system. She inquired if there is a way to retain the cost of enforcement. Richard stated yes.

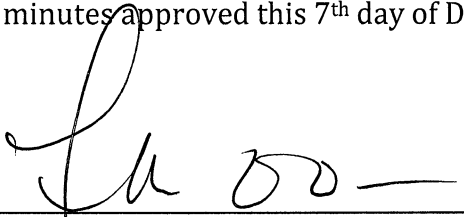
Richard commented that there may be some things in ordinance that you think you don't want in your town. He pointed out that if things are not put in ordinance then it is not permitted. The ordinance speaks to things that will give administrative clarity.

It was the consensus of the council to have another workshop on Wednesday, December 9, 2015 at 9 am and on Monday, December 21, 2015 at 9 am, both at the Community Center. Mayor Deese called for a special meeting for Wednesday, December 9, 2015 at 9 am at the Community Center for a Marshville Development Ordinance work session. The Town Clerk was directed to publicize the meeting. Richard stated that the next discussion will include design standards.

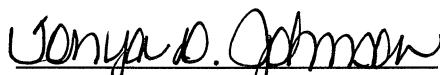
Adjourn

Council Member Rowell moved to adjourn. The motion was seconded by Council Member Carpenter. There being no further comments the meeting adjourned at 5:45 pm.

These minutes approved this 7th day of December, 2015.

By: 
Franklin D. Deese, Mayor

ATTEST


Tonya D. Johnson, Town Clerk