

**LENOIR CITY COUNCIL
TUESDAY, JANUARY 5, 2021
6:00 P.M.**

PRESENT: Mayor Joe Gibbons presiding. Councilmembers present were Jonathan Beal, Ike Perkins, David Stevens, and Ben Willis. Police Chief Brent Phelps and Communications Director Joshua Harris were also in attendance at the meeting.

VIA TELECONFERENCE:

Participating via teleconference were Mayor Pro-Tem Crissy Thomas, Councilmembers Todd Perdue, Ralph Prestwood, City Attorney T.J. Rohr, City Manager Scott Hildebran and City Clerk Shirley Cannon.

Department Directors participating via teleconference were Finance Director Donna Bean, Fire Chief Hair, Recreation Director Kenny Story, Planning Director Jenny Wheelock, Economic Development Director Kaylynn Horn, Public Utilities Director Radford Thomas, Public Works Director Jared Wright and Communications Director Joshua Harris.

Also participating via teleconference was Garrett Stell, *News Topic*.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance as led by Mayor Gibbons.

GENERAL COMMENTS:

- B. Mayor Gibbons reported that, Firefighter Richard Dorenbusch who recently lost his home to a house fire, appreciated everyone's support and pointed out the Fire Department was assisting the family. A Go Fund Me page was also established for donations.

Mayor Gibbons extended sympathy to the Lenoir Police Department and Sergeant Poythress in the recent loss of K-9 Axel. Axel served the Department and the community well during his six years of service.

Mayor Gibbons thanked all City and County Staff along with Caldwell UNC Healthcare and numerous others who worked hard to set up the field hospital located beside of Caldwell UNC Healthcare and sponsored by Samaritan's Purse in Boone, North Carolina. The hospital is fully operational and Mayor Gibbons asked everyone to keep the individuals in their thoughts and prayers who currently have COVID-19 along with the families who have lost loved ones due to the coronavirus.

In addition, Mayor Gibbons encouraged everyone to continue to follow the protocols that may help prevent the spread of the virus such as wearing a mask, handwashing frequently and social distancing.

**EXPRESSION OF SYMPATHY;
WHISNANT FAMILY; CCC&TI:**

- C. Councilmember Ben Willis asked everyone to keep the family of Ms. Penny Whisnant in their thoughts and prayers as she recently lost her battle with cancer. Ms. Whisnant was an employee of Caldwell Community College and Technical Institute College (CCC&TI) for twenty-six years and was well respected by her peers, the students and the community. Ms. Whisnant served as the Office Manager in the Continuing Education department.

**ANNUAL AUDIT
REPORT; ABC BOARD:**

- D. Mayor Gibbons welcomed the members of the ABC Board who were participating in the meeting via Zoom and stated City Council appreciated all their hard work. The Board members are Jerry Brooks, Chairman, Dr. John Tye and Elizabeth Wilson.

Mr. Jerry Brooks, Chairman, ABC Board, reported that sales totaling \$530,000.00 reached an all-time high during the month of December. He shared the profit distribution also increased by \$74,000.00.

Mr. Steve Huntley, CPA, presented the FY2020 Annual Audit Report to City Council. He reported the City of Lenoir received a distribution amount of \$400,000.00 and the Caldwell County School System received a distribution amount of \$45,041.00. Also, Law Enforcement received \$18,646.00 and \$26,105.00 was allocated for Alcohol Education.

The total gross sales for 2020 were \$4,240,709.00 which was an increase of \$149,220.00. In addition, the total operating expenses were \$569,063.00 for an increase of \$31,108.00. Also, the change in net position was \$4,644.00.

Mr. Huntley further reported that cash increased by \$50,000.00 and the unrestricted working capital amount is \$406,156.00.

Mr. Mike Suddreth, Manager, commented that everything was going well and pointed out that masks were required at all of their locations. He remarked their first product tasting in December was also well received.

Ms. Elizabeth Wilson, Board Member, also reiterated that sales were up all over the state.

On behalf of City Council, Mayor Gibbons thanked the ABC Board for the great report especially during these past months of the pandemic. Mayor Gibbons also shared he was pleased with the operations of all of the stores and their services were well appreciated.

**SPECIAL RECOGNITION;
K-9 AXEL:**

- E. On behalf of City Council, Mayor Gibbons presented a resolution and extended sympathy to Police Sergeant Zachery Poythress in honor and memory of K-9 Axel who passed away on December 29, 2020 from a recent illness. Axel was a committed and dedicated K-9 who served the Police Department well for six (6) years. Sergeant Poythress' family was also in attendance at the meeting.

A copy of the resolution is hereby incorporated into these minutes by reference. (Refer to page 8).

Police Chief Brent Phelps read a statement from Sergeant Poythress which said that, "Some people will say that it is just a dog, but they overlook the impact these dogs have on people's lives. Axel has proven his dedication and love for the people of the Police Department and the City. I would like to express my deepest gratitude for the support of the Lenoir Police Department Command Staff, everyone at the Police Department, and for all the messages and support we have received during this time."

Sergeant Poythress further shared in his statement that "we could fill up pages with his stats, but what the stats will never know are the countless times he saved my life, another officer's life, or a citizen's life by doing his job or by nothing more than his presence. It will never be known the amount of times someone's mind was changed or a situation was deescalated just by Axel being there."

Axel also assisted other agencies 127 times including the Caldwell County Sheriff's Office, Hudson Police Department, Granite Falls Police Department, Hickory Police Department, Valdese Police Department, Burke County Sheriff's Office, North Carolina Highway Patrol, North Carolina State Bureau of Investigation, US Marshalls, and the US Department of Homeland Security.

Chief Phelps further commented that when individuals have interaction with a well-trained Police Officer and K-9, they know it. Chief Phelps thanked City Council for all of their support and also thanked Sergeant Poythress for his dedication, training, care and love for Axel.

On behalf of City Council, Mayor Gibbons commended K-9 Axel and Sergeant Poythress for their commitment and dedication to the Department, citizens and the community and thanked them for their service.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

CHAPTER 160D LEGISLATION:

- A. A public hearing was held in order for City Council to consider an ordinance updating the City's Code of Ordinances in accordance with N.C.G.S. Chapter 160D, as presented by Planning Director Jenny Wheelock.

A copy of the power point presentation is hereby incorporated into these minutes by reference. (Refer to pages 9-26). Also, a copy of the proposed ordinance is on file in the Planning Department.

Mayor Gibbons opened the public hearing to receive public comments for the amendments to Chapter 160D.

Director Wheelock presented an overview of the proposed ordinance, which addresses changes to the land development ordinances required by N.C.G.S. Chapter 160D.

The ordinance addressed all changes required under N.C.G.S. Chapter 160D except for changes to the streets and the subdivision chapters, which will be addressed in a separate ordinance this spring. Planning Staff is working hard with Public Works to coordinate the proposed changes, which must be adopted by July 2021 for the City to remain in compliance with the state law.

Director Wheelock shared that Planning Staff relied heavily on materials developed by the UNC School of Government in preparing the ordinance and followed the UNC School of Government's checklist to ensure they had addressed all of the new legislation within the ordinance. The submitted checklist also includes all of the notes made by the Planning Staff upon their review of the proposed ordinance.

Director Wheelock stated it is important to note that terminology pertaining to Conditional Use Permits has been replaced throughout the Ordinance by Special Use Permits. Director Wheelock reviewed conflict of interest standards for boards, modernization updates to the minimum housing enforcement chapter, the standards for administrative modifications for Special Use Permits and Conditional Zoning districts, and the role of the Planning Board in serving as a preliminary forum for special use permits. Director Wheelock clarified the Board of Adjustment is designated as the appeals board for all administrative decisions on development ordinances.

Responding to questions from the Council about the changes in the Planning Board's role in the review of Special Use Permits, Director Wheelock clarified that statutes allow for Special Use Permits to go before an advisory board before going before the Council for a quasi-judicial hearing and decision. However, the new law clarifies that the Planning Board can only serve as a "preliminary forum" and Council cannot base their decision on the recommendation of the Planning Board. City Attorney Rohr state there was no change regarding the legality of this process. Director Wheelock further pointed out the Planning Board will continue to make recommendations for site plan modifications, conditions, and additional information for consideration to both applicants and the Council, and hear citizen comments. The Board also aims to use the forum to better inform the citizens about the process and what a quasi-judicial hearing at Council will entail. Council will continue to receive staff analysis and recommendations, including draft findings of fact and conditions, and will

receive all of the comments from the Planning Board as well – just not as a formalized recommendation for approval or denial.

Director Wheelock commended everyone for all of their hard work and assistance in the preparation of this ordinance. She also extended a special thank you to Lucy McCarl and Sharon Bryant for their time and effort in consolidating the three sets of the rules and procedures into one set of New Rules of Procedures for the Land Use Boards thereby making them all consistent, as a related follow-up to the ordinance overhaul.

There being no further public participation, Mayor Gibbons closed the public hearing and reminded Council that, due to current legislation guidelines pertaining to public hearings, action would need to be deferred on the proposed Ordinance until the January 19 City Council meeting. The legal ad for the public hearing was published in the News-Topic on Friday, December 25, 2020 and again on Friday, January 1, 2021.

Upon a motion by Councilmember Willis, which carried unanimously, City Council deferred action on the submitted Ordinance until the January 19, 2021 City Council meeting as per current legislation guidelines pertaining to public hearings.

III. CONSENT AGENDA ITEMS

A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:

1. Minutes: Approval of the minutes of the City Council meeting of Tuesday, December 1, 2020 as submitted.
2. Proclamation; K-9 Axel: Approval of a proclamation in honor and memory of K-9 Axel who passed away on December 29, 2020. His service and dedication will be well remembered.

Upon a motion by Councilmember Willis, Council voted 7 to 0 to approve the above listed items on the Consent Agenda as presented and as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

JANUARY CALENDAR:

1. By consensus of the Council, the calendar for the month of January was approved.

CITY/COUNTY

SERVICES COMMITTEE:

2. The City/County Services Committee will conduct a virtual meeting on Monday, January 11 at noon.

EDC:

3. The Caldwell County Economic Development Commission will conduct a virtual meeting on Tuesday, January 12 at 8:00 a.m.

ABC BOARD:

4. The ABC Board will conduct a virtual meeting on Thursday, January 14 at 2:00 p.m.

LENOIR TOURISM DEVELOPMENT

AUTHORITY:

5. The Lenoir Tourism Development Authority will conduct a virtual meeting on Thursday, January 14 at 4:00 p.m.

LENOIR BUSINESS ADVISORY

BOARD:

6. The Lenoir Business Advisory Board will conduct a virtual meeting on Thursday, January 14 at 6:00 p.m.

HOLIDAY

CLOSING:

7. City offices will be closed on Monday, January 18 in observance of the Martin Luther King, Jr. Holiday.

B. ITEMS FOR COUNCIL ACTION

BID AWARD; LHS RENOVATION

PROJECT; FORMER LHS FACILITY:

1. City Staff recommends Council award the low bid of \$86,384.00 to Precision Construction Company, Granite Falls, NC, for the former LHS High School Auditorium (LHS) Construction Renovation Project as submitted.

A copy of the bid tab is hereby incorporated into these minutes by reference. (Refer to pages 27).

City Manager Hildebran reviewed the list of improvements that included sanding, painting, gutters, and new restrooms to be located on the main floor. Mr. Hildebran also reminded Council that Community Development Block Grant (CDBG) funds would be used for this renovation project.

Recreation Director Story also reported plans were in place for additional improvements at other facilities and clarified for Council an ADA ramp would be installed at the LHS Auditorium in order for individuals to access the stage area. These improvements will be included in the next phase of the project. Director Story thanked all City Staff and Departments for all their hard work and assistance regarding this project.

Upon a motion by Councilmember Beal, Council voted 7 to 0 to award the low bid of \$86,384.00 to Precision Construction Company for the LHS Renovation Project as submitted and as recommended by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

BOARD ANNOUNCEMENTS:

A. Mayor Gibbons announced the following individuals for re-appointment to the City's Authorities/Boards/Commissions. These re-appointments will be presented to Council for their consideration of approval at the January 19 City Council meeting.

Lenoir Business Advisory Board

Tim Biddix

Matt Underwood

Planning Board

James Bradshaw

4-year term

Parks and Recreation Advisory Board

Vacancy due to the resignation of Board member Erik Rabinowitz who moved out of the City limits. Mr. Rabinowitz's term expires February 2022.

DELEGATE; NCLM ADVOCACY

GOALS:

B. Mayor Gibbons suggested that City Council select a voting Delegate for the purpose of submitting the City of Lenoir's recommendation to the North Carolina League of Municipalities (NCLM) for the City of Lenoir's 2021-2022 list of Advocacy Goals by Thursday, January 14, 2021.

Councilmember Perkins nominated Mayor Pro-Tem Crissy Thomas to serve as the City's Delegate to submit this information to the NCLM. This motion carried with a 6 to 0 vote.

IX. REPORT AND RECOMMENDATIONS OF COUNCIL MEMBERS

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 7:42 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

PROCLAMATION



In Recognition of

K-9 Axel

6/30/2013 – 12/29/2020



WHEREAS, canine Axel was born on June 30, 2013 in the Czech Republic and imported to the United States where he was purchased by the Lenoir Police Department in August of 2014; and

WHEREAS, canine Axel began his training in September of 2014 by Patrol Sergeant Zachery Poythress while he obtained his Comprehensive Police Service Dog Trainer and Police Service Dog Team Instructor Certifications; and

WHEREAS, canine Axel was officially certified to work in October of 2014 and was the first Lenoir Police Department K-9 to be dual certified by two certifying associations; and

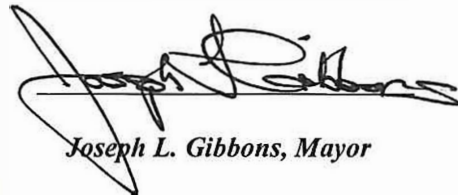
WHEREAS, canine Axel in his 6 years of service, has been instrumental in the seizure of illegal drugs in the community, an asset in tracking suspects, missing persons, and lost children, as well as been a delight to various audiences with his demonstrations and training.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of Lenoir acknowledge Police K-9 Axel's loyal and dedicated service to the citizens of Lenoir and to his handler Patrol Sergeant Zachery Poythress;

NOW THEREFORE BE IT FURTHER RESOLVED, that I, Joseph L. Gibbons, Mayor of the City of Lenoir, and on behalf of the Lenoir City Council, the citizens of Lenoir, and the department members of the Lenoir Police Department do hereby offer our most sincere condolences, thoughts and prayers to Sergeant Poythress and his family on the loss of Police K-9 Axel who passed away on December 29, 2020 due to a sudden illness. His service and dedication will long be remembered.

WITNESS, my hand and seal this the 5th *day of* January, 2021.

SEAL


Joseph L. Gibbons, Mayor

ATTEST:


Shirley M. Cannon, City Clerk



NCGS 160D Updates

{ Technical Changes to NC Land Use Law
(previously found in 160A and 153A)

Lenoir City Council

January 5, 2021

Presented by: Jenny Wheelock, AICP, CZO

- ⌘ SOG checklist – included in packets, summarizes how staff addressed each item in the new law
- ⌘ New terminology – Special Use Permits
- ⌘ General philosophy – streamline, consistency, clear expectations
- ⌘ Small fixes – a few things that we didn't catch when we did the zoning overhaul last year

Overview

- ⌘ Any case (QJ or Legislative), can't participate if:
 - ⌘ You have a close familial, business, or other associational relationship with the landowner or applicant
 - ⌘ The outcome of the matter is likely to have a direct, substantial, and readily identifiable financial impact on you

(pages 4-6 of ordinance)

Conflict of Interest: Review

- ⌘ Quasi-judicial cases, you ALSO can't participate if:
 - ⌘ You have a fixed opinion prior to the hearing that isn't susceptible to change
 - ⌘ You have talked about the case prior to the hearing, and haven't disclosed that communication ("ex parte communication")
 - ⌘ You have ANY financial interest in the outcome of the matter
 - ⌘ You have a close familial, business, or other associational relationship with an "affected party"

(Remember – all of the conflicts on the previous slide also apply!)

Conflict of Interest: Review

Appeals from all administrative decisions under 160D powers would go to the Board of Adjustment:

- ⌘ Building (current: City Council)
- ⌘ Housing (current: Board of Adjustment)
- ⌘ Floodplain Development (current: City Council)
- ⌘ Subdivisions (current: City Council)
- ⌘ Zoning (current: BOA)
- ⌘ Stormwater (current: BOA)

Appeals Board: Board of Adjustment

Declares certain occupied buildings and unoccupied structures to be detrimental to public health and safety:

- Occupied structures that are “unfit for human habitation” and
- Abandoned structures

Minimum Housing Ordinance

Process:

1. HI gets complaint, or observes a violation, conducts initial investigation
2. HI serves notice of complaints and notice of an administrative hearing to be held at the property
3. HI conducts an administrative hearing, makes findings.
4. Final order of the HI – 30 to 90 days to make repairs or demolish
5. Failure to abate – process for the City Council to adopt an ordinance and abate the violations

Minimum Housing Ordinance

Findings:

1. Deteriorated (can reasonably be repaired)
2. Dilapidated (cannot reasonably be repaired)

Orders:

1. Deteriorated – ordered to make repairs
2. Dilapidated – ordered to demolish/remove
3. Vacate and Close – when a structure is occupied, the Housing Inspector may also include an order to vacate and close, if continued occupancy while repairs are being made would “present significant threat of bodily harm”

Minimum Housing Ordinance

Council Actions:

1. Ordinance authorizing HI to cause the structures to be repaired and/or demolished
2. Recorded with the ROD
3. Ordinance can contain language to “vacate and close”
4. Costs added a lien on the subject property, same to a special tax assessment

Once an ordinance is adopted, the City can post the property as “unfit for human habitation” and it becomes a Class 1 misdemeanor to occupy the property.

NOTE: there is no authority in the statutes for this posting until an owner fails to comply with an order.

Minimum Housing Ordinance

- ⌘ Codifies our general practice, with specific guidelines to take most of the discretion out of the administrative process
- ⌘ ONLY available for two types of approvals: Conditional Zoning and Special Use Permits

Zoning Ordinance: Minor Modifications

Minor modifications can be approved by the Planning Director* when:

- ⌘ The modified plan continues to comply with all written conditions and standards of the CZ ordinance or the SUP permit; AND
- ⌘ The changes are necessary to comply with a development regulation or to accommodate a physical site constraint that was not known at the time of adoption; AND
- ⌘ The changes would not significantly alter the development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other character from that indicated by the original plans.

*Note that approval or denial of a requested modification could be appealed by anyone with standing to the BOA

Minor Modifications (administrative)

Proposed changes also specifically define what can't be a "minor" modification:

- ⌘ A change in a condition of approval/text of a CZ ordinance
- ⌘ A change in what uses are permitted
- ⌘ A change in the density of the overall development
- ⌘ For mixed-use projects, a change greater than 20 percent in the ratio of GFA of residential vs. non-residential uses*
- ⌘ For mixed-use projects, an increase greater than 10 percent in land devoted for non-residential uses*

*Only relevant to Conditional Zoning districts, as SUPs are for a single use. We've never had a project where this would apply, but land use ratios often shift based on market conditions and tenants, but also have disparate impacts (residential uses vs commercial uses).

Major Modifications

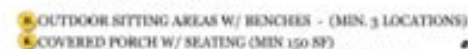
Original Project:

- ⌘ 68 units in 5 buildings, plus a community building
- ⌘ Two driveways
- ⌘ 136 parking spaces (2/unit)

What changed?

- ⌘ Parking code amended to reduce parking requirements
- ⌘ Site was re-surveyed, and original survey was found to be off by ~8 ft. on the existing grade of the property

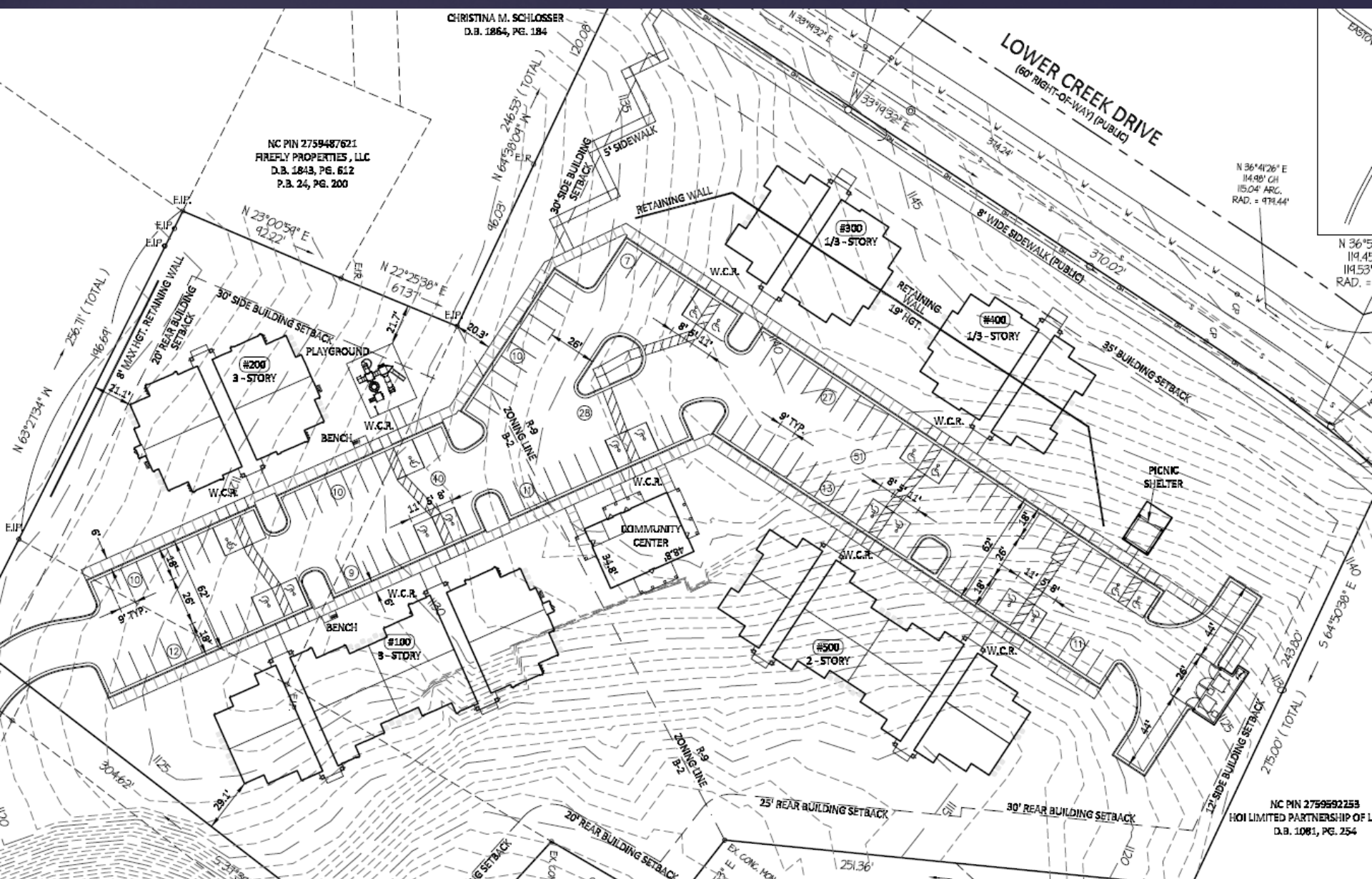
Example Case: Katz Corner Apartments



Minor Modification?

- ⌘ Couldn't get slope to work for Driveway on Lower Creek Drive; it was eliminated
- ⌘ Clubhouse relocated to central location on the site, because of requirements of the NC Housing Finance Agency
- ⌘ The additional 8' of drop in grade made the proposed 1story/2story split buildings impossible –1story/3story buildings were proposed instead
- ⌘ The 2-story/3-story split building was reduced to 2 stories on both sides.
- ⌘ Parking reduced to 119 spaces (now back to 120)

Example Case: Katz Corner Apartments



28 The Planning Board provides a preliminary forum for review of special use permits. The Planning Board may hear citizen comments related to the permits, request that the applicant provide additional information to the City Council (such a request shall not be binding on the applicant), conduct informal preliminary discussion of the application, and make recommendations for revisions or conditions. Such recommendations should be based on goals and policies outlined in the Comprehensive Plan and other planning documents. No part of the forum or recommendation may be used as a basis for a decision by the City Council; however, the Planning Board's recommendations will be forwarded to the City Council along with other administrative materials pursuant to standard quasi-judicial procedures.

The Planning Board shall forward its recommendation on the application to the City Council within 45 days of the Board's first review of application. Upon an affirmative vote of the majority of the Planning Board to forward the recommendations to Council, or after 45 days have passed without a recommendation from the Planning Board, the planning department will set a date for an evidentiary hearing before the City Council and cause notice to be served and posted as provided under Article XIII, Division 3 of zoning ordinance. The Planning Board shall also call for and set the date of a public hearing during which the City Council shall receive public comments on the application.

PB review of Special Use Permits – p. 58

- ⌘ New Rules of Procedure for the Land Use Boards – chose to adopt “joint” rules for all three land use boards (Big thanks to Lucy McCarl and Sharon Bryant on that project!)
- ⌘ New housing and zoning enforcement letters; Iworq new code enforcement tracking program (we are already using it for permitting)
- ⌘ Streets and Subdivision chapters – streamlined review, cost sharing/developer agreements, dedication of ROW, Technical Review Committee, consistent standards for improvements between SW, zoning, streets, and subdivision.

Next steps; related projects

Questions? Discussion?