

MEBANE CITY COUNCIL
REGULAR MEETING
SEPTEMBER 12, 2011

Members Present: Patty Philipps Tim Bradley
 Jill Auditori Ed Hooks
 Everette Greene

Mayor Glendel Stephenson called the regular monthly meeting to order at 6:00pm in the Council Chambers of the Mebane Municipal Building. Councilmember Bradley gave the invocation.

Mayor Stephenson stated the regular monthly City Council meeting for October 3, 2011 has been rescheduled for Monday, October 10, 2011 at 6:00pm.

Mayor Stephenson gave a reminder for the joint meeting of the Orange County Commissioners and Mebane City Council on Thursday, September 15, 2011 at 6:00pm in Hillsborough.

Mac Williams, President of the Alamance County Chamber of Commerce, requested Council's consideration to set a date of Public Hearing for Economic Development Incentives for Ferraro Foods on October 10, 2011 at 6:00pm. Councilmember Philipps made a motion, seconded by Councilmember Greene, to set of date of Public Hearing on October 10, 2011 at 6:00pm. The motion carried unanimously.

Jill Troutman, artist and business owner, announced and welcomed everyone to the grand opening of a new business she and her partners are opening on W. Clay Street, Fine Art Carolina Gallery. She also took a moment to introduce her partners Jude Lobe, Ali Givens, Celine Meador, Pam Watts and Pat Scheible.

In regards to the next item to be discussed, Councilmember Auditori requested to be recused because she owns a business on N. Fourth St. Councilmember Hooks made a motion, seconded by Councilmember Greene to recuse Councilmember Auditori. The motion carried unanimously.

City Engineer Darrell Russell gave a report in regards to the 100 block of N. Fourth Street. He stated as requested by Council, they made a visual inspection of Fourth Street and reviewed the condition of the existing pavement, possible fencing along the western sidewalk, source of muddy stormwater flowing to the street and a possible decorative crosswalk.

Mr. Russell proceeded to report possible options for Council's consideration. In reference to the condition of the existing pavement, he stated this block of Fourth Street had crack pouring done earlier in the year and appeared to be in overall good condition. He noted based on the Pavement Evaluation Survey for this block of street, crack pouring was recommended to address the minor pavement cracking that was observed at the time of the survey. The block was therefore addressed as recommended and no resurfacing is currently proposed within the next few years. He stated there have been comments relating to the visual aspects of the crack pouring and a more uniformed look could be provided by the placement of a seal coat over the existing surface. Mr. Russell said a seal coat and new pavement marking is estimated to cost approximately \$3,000.00.

Council questioned if seal coating would prolong the need for resurfacing and the cost to resurface that block. Mr. Russell replied that seal coating would not prolong the need for resurfacing and to resurface that block of street would cost approximately \$20,000.00, not including the decorative crosswalk.

Mr. Russell addressed the option of fencing along the western sidewalk. He showed a digitally enhanced picture of what the sidewalk would look like with 2 different types of fence/railing. Attachment #1 showed a fence while Attachment #2 showed a handrail installation, both at the edge of the sidewalk. He stated such fencing or railing does not appear to impact the 48" wide minimum accessibility provisions. Mr. Russell stated he discussed the possible fence installation with a local fencing company and they indicated a budget price for a black steel fence, such as the one pictured in Attachment #1, would be in the \$10,000.00 range for a complete installation (approximately 250ft.)

Mr. Russell discussed the muddy stormwater draining to the street which was found to originate from water flowing over a relatively small “bare” area behind the sidewalk on private property. The area is bare due to foot traffic from the adjacent parking area. He stated a set of steps could be used to provide stabilization as well as access to the parking area however the area is private property and could be considered a private property issue. He stated they could discuss possible solutions with the property owner.

Mr. Russell also addressed the matter of the decorative crosswalk. He stated there are currently two white lines across the middle of Fourth Street being used as a crosswalk. If that crosswalk is improved upon, the city would be required to bring it up to current standards for accessibility. Therefore, the set of steps that are currently being used at the crosswalk could no longer be utilized; accessibility ramps at both ends of the crosswalk would be required to meet ADA standards.

Council questioned if the mid-block crosswalk is necessary with there being accessible crosswalks currently available at Clay Street and Center Street Mr. Russell replied no the mid block crosswalk is not a required location for a crosswalk, it has just been there for years and used that way.

Mr. Russell said a new decorative painted crosswalk similar to those recently installed on Clay Street would cost approximately \$3,000.00; however, new pavement would also need to be placed prior to such activity at an additional cost of approximately \$3,000.00 for milling and pavement overlay. He stated that cost plus the cost of bringing the crossing up to current ADA standards is estimated to be in the \$18,000.00 range.

Pam Biggs, Owner of Bella Bleu Savvy Spa, 111 N. Fourth Street, presented a hard copy of an email previously shared with the Council and city staff concerning some research she had conducted in reference to the decorative crosswalks. She stated she had spoken with a representative from the US Department of Justice Americans with Disabilities Act concerning their circumstances and he informed her that because there is an ADA compliant parking space on the block and both sidewalks are accessible at that intersection, no handicap accessibility is necessary mid-block. She also spoke of a request for a new one-way traffic sign for the 100 block of N. Fourth Street.

Council spoke briefly about a previous request for diagonal parking on the 100 block of North Fourth Street.

City Manager Robert Wilson stated a new one way traffic sign could be taken care of easily.

Councilmember Hooks made a recommendation to address the requests presented for renovations on the 100 block of N. Fourth Street during budget work session for the next fiscal year. Councilmember Greene and Councilmember Bradley agreed. Councilmember Bradley also expressed the need to research the ADA requirements further before any formal decisions are made.

Councilmember Hooks made a motion, seconded by Councilmember Bradley, to have Councilmember Auditori rejoin the meeting. The motion carried unanimously.

City Manager Robert Wilson spoke concerning the landscaping plan for downtown. Mr. Wilson shared photographs of a brick planter option but made no recommendations. Additional photographs presented to the city staff by the Destination Downtown Beautification Committee were also shared as possible options. After some discussion, the Council directed the city staff to develop a landscape plan with input from downtown business owners and any other interested parties then return to Council with a recommendation.

Jackie Brown, member of Destination Downtown, spoke concerning the photographs that were submitted on behalf of their organization. She expressed their desire to see a plan that will be consistent throughout the whole downtown area.

Tom Boney, Editor of Alamance News, clarified the exact area being discussed for improvements. He expressed his continuing concerns with the involvement of two members participating in issues related to Clay & Fourth Streets.

Brooks Gardner, 517 N. Carr Street, gave an opposing statement towards Mr. Boney's comments.

No formal action was taken concerning the 100 block of N. Fourth Street and the downtown landscape plan.

The Council received a request from Public Works Director Jimmy Jobe, to purchase a 2012 Knuckle Boom Loader and chassis from Public Works Equipment and Supply, Inc. using the piggyback statute. Mr. Jobe proposes to "piggyback" the bid of the City of Newberry, South Carolina which was in the sum of \$120,277.00. City Attorney Charles Bateman spoke concerning the request. He stated the item is within the current year's budget and meets all the requirements within the piggyback statute. He continued by adding that staff recommends approval of the request. Councilmember Bradley made a motion, seconded by Councilmember Philipps, to approve the request to purchase the 2012 Knuckle Boom Loader and chassis from Public Works Equipment and Supply, Inc. using the piggyback statute. The motion carried unanimously.

Mayor Stephenson announced, per the applicant's request, the Public Hearing to be held on a request from Old Hillsborough Partners, LLC to amend the CU-R-8 (Conditional Use Multi-Family) Zoning to CU-R-8 (Conditional Use Single Family) to allow for the construction of patio homes has been requested to be tabled until next month's meeting. Councilmember Bradley made a motion, seconded by Councilmember Greene, to table the Public Hearing until next month's meeting, October 10, 2011 at 6:00 p.m. The motion carried unanimously.

Mayor Stephenson called for a short break. The Mayor called the meeting back to order.

During the Public Comment period, George Tyson, 104 Dogwood Drive, spoke concerning the 15' buffer adjacent to his residence. He requested the city's assistance in requiring those property owners to maintain the buffer and not allow another drive way to be placed at the rear of the property.

City Attorney Charles Bateman addressed Mr. Tyson's issues. He stated under the prevailing law the City has no authority to enforce the restrictions of the subdivision.

Chris McKinley, 110 Dogwood Drive, questioned if Council would consider placing enforceable stipulations on properties which are zoned based on restrictions and covenants so issues not left to be enforced as a voluntary issue by other property owners.

Bobbi Tyson, 100 Dogwood Drive, spoke on the same matter and submitted photos of the property abutting Dogwood Drive which they feel is not being maintained properly.

Barbara McKinley, 110 Dogwood Drive, expressed her concerns with the condition of the street and the continued disintegration of the buffer and properties adjacent to their homes.

Amos Stokes, 725 Vance Street, provided staff and Council with an article concerning the World Trade Center (WTC) Artifacts Program which provides cities the opportunity to receive debris/artifacts from the WTC which have been stored at Hangar 17 at JFK International Airport after the September 11 attacks. He suggested that the City of Mebane try to obtain a piece of the debris in remembrance of that historical event. Mr. Stokes also questioned the staff concerning the recent odor and taste of the city's water.

City Engineer Darrell Russell addressed the water issue. He stated in an effort to be in compliance consistently with the TTHM limits, the firm of Hazen & Sawyer was retained to help in those efforts. Based on Hazen & Sawyer's recommendation the Graham-Mebane Water Plant recently began treating the water with a new chemical ferric sulfate which did not work and they have switched back to their conventional chemical alum. He said citizens should continue to see daily improvements to the odor and taste of the water. He stated the water is safe to drink.

Hadley and the Notice of Appeal letter and they are a part of the official record of the proceedings.

Mr. Bateman stated Planning & Zoning Director Ms. Hadley had before her the appeal of her decision to issue a Certificate of Zoning Compliance to Mebane Oaks Development Group. He requested that she explain to the BOA what was requested of her, what steps she took in response there to, and the basis upon which she issued the determination which is being appealed.

Ms. Hadley stated she received a written request for a Certificate of Zoning Compliance from Mr. Kalo, attorney representing the Walgreens development. She made sure that the zoning of the property met the requirements. The property is zoned B-3 for neighborhood business and in Article 4 of the Permitted Uses Table a pharmacy/drugstore is a permitted land use in that zone. In the certificate she stated the zoning of that property and explained that was a permitted use. The building and proposed use of land complied with the provisions of the UDO.

Ms. Hadley further explained that zoning compliance also includes setbacks, landscaping, parking and sign ordinance requirements which she considered when determining their compliance. She stated when making those determinations she referenced the standards in the UDO which was amended on March 1, 2010. She said it is an aesthetic perimeter buffer which must meet a minimum 5' in width and based on her interpretation it does. Also they must look at the number of understory and canopy trees. Upon accessing the property she counted 27 understory trees and 37 canopy trees for a total of 64 and 156 shrubs which met the criteria. She stated another minimum of 1 canopy tree for every 2500 sq. ft. or 1 understory tree for every 1400 sq. ft., so in calculating the impervious for parking she came up with 36,000 sq. ft. which requires 14 canopy trees and 26 understory trees, therefore in her interpretation it meets the amendment March 1, 2010.

Mr. Bateman stated she has with her in the record 2 documents, one of which is a site plan. He questioned if that was the site plan she's referred to.

She replied yes, the site plan and landscaping plan.

Mr. Bateman questioned if both of those plats/maps are identified by the legends on them as being the site plan and the landscape plan.

She replied yes and stated those are the plans she referred to when she made the comparisons on the actual grounds. She stated the findings of the actual grounds were consistent with the plans and the plans were consistent with the zoning requirements.

Mr. Bateman referred to numbered photographs submitted by Ms. Hadley. He requested that she explain to the BOA what those photographs represent. He also asked if Ms. Hadley took the photographs and when she took them.

Ms. Hadley stated she took them when she made a site visit to the property. She explained the photographs in numerical order:

- 1) Front of the building, from the North view
- 2) Front of the building, from the East view
- 3) Front of the building, from the Northwest view -fencing, signs and the crepe myrtles
- 4) Side of the building, from the South view -streetscape along 8th Street
- 5) Rear of the building
- 6) Rear of the building, from the Northeast view -fence along the rear, environmental shed
- 7) North West view - fence located on Walgreen property
- 8) North view
- 9) North East view
- 10) East view - canopy trees, shrubs
- 11) East view from 5th Street -blue flags indication of property lines

Mr. Bateman asked for clarification. He questioned if the fence is on the property line. Ms. Hadley replied no, there is an additional 4 ft. on the other side of the fence which is Mr. Wilson's side of the property. Mr. Bateman clarified so there's 4 ft between the fence and the property line. Ms. Hadley answered yes, when you look at it from that angle, 5th Street.

- 12) East view from 5th Street
- 13) Rear of building, Northeast view -adjacent to the Arrowhead Villas property

Mr. Bateman questioned if Ms. Hadley is the designated Zoning Administrator for the City of Mebane. She replied yes.

Mr. Bateman asked, based on her study of the UDO and her examinations of the materials on the grounds, is it her opinion that the property fully complies with the zoning ordinance and did she in fact certify to that. She replied yes.

Mr. Kalo stated he had no specific questions but requested that all documents submitted be made part of the record.

Mr. Bateman directed a statement to the BOA, he stated based on the testimony of Ms. Hadley it appears the property complies with all respects of the zoning ordinance and it was appropriate for her to issue a zoning certificate.

Mr. Bateman asked Ms. Hadley if the zoning ordinance permits her to issue zoning certificates and if so, does she issue them often. She replied yes to both questions.

Mr. Bateman said it is their opinion that the burden now going forward shifts to Mr. Petesch's client.

Mr. Petesch asked if at Ms. Bagby would be giving evidence subsequently. Mr. Bateman replied, she may be a rebuttal witness.

Mr. Petesch proceeded to address questions to Ms. Hadley. He said for clarification, she testified the plantings complied with the landscape plans and then later she commented that she evaluated under the March 2010 amendment. He asked her to clarify which standard she used when certifying the zoning compliance. She stated she used the current UDO including the March 2010 amendment.

Mr. Petesch asked on what date she took the photographs. She stated she did not have the date written down.

Mr. Petesch questioned if the date was subsequent to the request from Mr. Kalo on behalf of the Mebane Oaks Development Group. She stated she took the photographs in preparation for the packets. He said, so you took the pictures after issuing the certificate of zoning compliance. She said he did not ask her to take photos prior to, she went out there to access the property and it met the land use plan. He asked if she took the pictures after issuing the certificate of zoning compliance. She answered yes, in preparation for the packets because an appeal was filed.

Mr. Petesch questioned if it is the duty of the Zoning Administrator to enforce the provisions of the UDO. Ms. Hadley replied yes.

Mr. Petesch stated during his questioning he would like to make clear that when he refers to the "Walgreens" project/property, he is referring to the commercial development located on the corner of S. 5th Street/Mebane Oaks Road/S. 8th Street in the City of Mebane and when he refers to the Wilson property he is referring to the residential property located at 815 S. 8th Street.

Mr. Petesch asked when the certificate of occupancy was first issued for the Walgreens store. Ms. Hadley stated there is a process when a building permit application is submitted, a portion of that application is for zoning and it has to be signed off on by the Zoning Administrator and that takes place during the initial part of the process.

Mr. Petesch stated in his understanding, prior to the store opening for business, the Planning Department would make a site visit to ensure the site was built as approved and that would result in a Certificate of Occupancy (CO), is that correct? Ms. Hadley said the process here is the building inspector makes a site visit and he also consults with her as well to see if the site meets all the zoning aspects before issuing a CO but the zoning is already taken care of on the initial building permit, it's not a separate document.

Mr. Petesch asked do you know when the CO was issued in this case. Ms. Hadley said she did not have that date written down but she could find it.

Mr. Petesch asked when did you first analyze the Walgreens project for compliance with the UDO.

Ms. Hadley answered when she received the request from Mr. Kalo for the Certificate of Zoning Compliance. Mr. Petesch asked so you began your analysis on June 1, 2011. She said yes because he needed a Certificate of Zoning Compliance and she had to be sure it was in compliance before issuing the certificate.

Mr. Petesch asked if Ms. Hadley was aware of any alterations or changes made prior to her UDO review taking place since the CO was issued. She stated to her knowledge no changes were made, not any that would make them noncompliant with the zoning certificate.

Mr. Petesch asked when she made the determination that Walgreens was in compliance with the UDO. She stated she went out on June 2, 2011 to make her assessment. He said so that was the first time the Planning Department or any Zoning Administrator had made a determination that Walgreens store property was in compliance with the UDO. Ms. Hadley said now prior to CO we make sure that it meets the criteria of the current ordinances that are in effect.

Mr. Kalo interjected by saying there has been multiple different reviews of this project when different versions of the UDO were in effect. He requested that Mr. Petesch clarify when questioning which version of the UDO he is referring to and when.

Mr. Petesch expanded his question by asking has there been, prior to issuing the Certificate of Zoning Compliance on June 2, 2011, a final determination/decision that the Walgreens store was compliant with the provision of the UDO, under any version of the UDO. Ms. Hadley replied, in her interpretation, it does. Mr. Petesch asked when those final determinations were. She stated she had no specific date. He asked for a month or year. She said, I don't know. Mr. Petesch asked if there are any records of that determination. Ms. Hadley stated they have a building permit which shows it does meet the current UDO. He questioned when that building permit was issued. Ms. Hadley stated she was going by the initial building permit. Mr. Petesch stated it was his understanding that permit was based on the Mebane Zoning ordinance and the LSP. Ms. Hadley said in her interpretation it meets both of them.

Mr. Petesch asked what the differences are between a certificate of zoning compliance and a zoning permit. Ms. Hadley said a zoning permit is when the building permit application is first submitted and she signs off on the zoning portion of that application. With the Certificate of Zoning Compliance, if you look at the UDO, that can be a certificate they can issue before the CO is actually given but here they do it all in one step on the building permit therefore both of them are taken care of whether it be a zoning permit or a certificate of zoning compliance, in my interpretation. Mr. Petesch said so the city does not actually issue a separate zoning permit. Ms. Hadley stated if someone request it she can issue one but either one verifies that the zoning is correct.

Mr. Petesch asked if a zoning permit was every issued for the Walgreens store. Ms. Hadley said it was, on the building permit.

Mr. Petesch asked if Ms. Hadley wanted to add anything in respect to the process she went through in determining that the Walgreen's store was in compliance with the current version UDO. She replied no.

He asked Ms. Hadley to tell the BOA what documents were reviewed or consulted in preparation of the Certificate of Zoning Compliance. She stated she referred to the provisions of the current UDO which was in effect on June 2, 2011 and looked at all aspects of zoning under the UDO.

Mr. Petesch questioned who was involved in that process. She answered for zoning herself because she is the one to issue the certificate of zoning compliance. He questioned if anyone else participated or provided her with information that she used when making the determination for the Walgreens store. She stated Ms. Bagby went with her when she assessed the property. Mr. Petesch asked Ms. Bagby's position with the City. She replied Landscape Beautification Coordinator.

Mr. Petesch asked how much time Ms. Hadley spent on the process altogether from the time she received the request for the Certificate of Zoning Compliance and began analyzing the Walgreen property for compliance until the time she made her determination. She stated one day, Mr. Kalo made the request on June 1, 2011 and she dated the Certificate of Zoning Compliance for June 2, 2011.

Mr. Petesch questioned if anyone representing the Walgreens project, Crown or Mebane Oaks Development Group, ever requested any waiver of the UDO requirements. Ms. Hadley said none that she was aware of. Mr. Petesch said so no waiver has ever been requested or granted by the Zoning Administrator for the project since its inception. Ms. Hadley said she didn't recall signing off on anything titled "waiver". He asked if any variances had been granted for the Walgreens project. She said she didn't recall a variance. He asked if any other final determinations had been made by the City of Mebane Zoning Administrator since the building permit was issued on February 24, 2009. She said she issued the Certificate of Zoning Compliance. He asked if that was the only final determination that has been made since this issuance of the building permit.

Mr. Petesch quoted City of Mebane's UDO Section 2-5b and 2-10b. He questioned if the Technical Review Committee had reviewed the Walgreen's site plan and landscape plan for compliance with the UDO. Ms. Hadley said yes. He questioned who the members of the TRC. Ms. Hadley named those departments. Mr. Petesch asked if the TRC had reviewed the plans after Ms. Hadley received the request from Mr. Kalo for the Certificate of Zoning Compliance. She answered they did not review the plans in reference to the zoning compliance but Ms. Bagby is a member of the TRC and based on zoning it meets the UDO.

Mr. Petesch submitted the March 2010 UDO amendment, Article 6, Section 6-3 Landscaping, Buffering, and Screening, A. Purpose and Applicability, marked as Wilson-Exhibit "A" also attached were the minutes from the March 1, 2010 meeting. He said as he reads the current version of the UDO Section 6-3A.-3(f) it says the minimum buffer between a commercial and residential property is 5 ft. He asked Ms. Hadley to tell the BOA exactly what she did to confirm that the buffer was at least 5 ft. between Mr. Wilson's property and the Walgreens property. Ms. Hadley stated based on the site assessment if you look on the landscape plan there is a 5 ft. minimum, as you go around the buffer because on the other side of the fence you have at least 3-4 additional feet on the other side of the fence so you would meet the 5 ft. minimum.

Mr. Petesch submitted Wilson-Exhibit "B", a blown up version of the Walgreens site plan. He pointed out a certain "v" which juts in towards the Walgreens property with an Existing Iron Pipe (EIP) at the bottom of that "v", he questioned if that EIP represented the property line. Ms. Hadley said not in her interpretation, in her interpretation there is another 3-4 feet on the other side of the fence.

Mr. Petesch submitted Wilson-Exhibit "C", another blown up version of the site plan depicting the parking area and Wilson-Exhibit "D", an excerpt from the UDO, Section 6-4.4. Design Standards for Parking, Stacking and Loading Areas. Mr. Petesch requested Ms. Hadley to explain how she determined, based on Table 6-4-2 of the UDO, the parking space design standards to be used in the Walgreens project. She explained in her interpretation that the parking area is compliant.

Mr. Petesch questioned what material the fence on Walgreen's property is made of. Ms. Hadley replied a vinyl fence. He questioned the height of the fence. She stated 6 ft.

Mr. Petesch had no further questions for Ms. Hadley. He continued with his opening statement.

Mr. Petesch asked Doug Yarborough to come forward to testify before the board. Doug Yarborough, 6537 Hwy 119N, Leesburg, NC stated he has worked for Landmark Surveying since 1984 and has worked as a professional land surveyor with them since 1991. Mr. Petesch provided the Council and Mr. Yarborough Wilson-Exhibit "E", a boundary survey completed by Mr. Yarborough in August 2010. Mr. Yarborough identified the property surveyed. Mr. Petesch asked in what stage was the Walgreen project when he completed the survey. Mr. Yarborough stated the final construction stage. Mr. Petesch asked if Mr. Yarborough was able to make a determination of distance between the closest impervious surface on the Walgreen's property and Mr. Wilson's property. He stated he was able to measure and it was 3.7 ft.

Mr. Bateman questioned Mr. Yarborough for clarification. He stated the map submitted indicated several different calls on the line, for example from S. 5th Street down to the first iron stake, there are 2 different lines and 2 different calls. Mr. Yarborough stated they are designated by letters, at the next call back, at point F & C and G & B, there are 2 sets of irons. Mr. Bateman asked if that implies that a surveyor determined that those irons should be placed where they are. He answered that they were placed there by surveyors. Mr. Bateman questioned if he knew the diameter of the post in which one of his measurements was obstructed. Mr. Yarborough replied no. He questioned if he had anyone from the Walgreens store with him to observe his actions. Mr. Yarborough replied no. Mr. Bateman asked if Mr. Yarborough was being compensated for his work on this project. Mr. Yarborough replied yes.

Mr. Kalo asked if he contracted with 3 different surveyors to survey the same piece of land, would they all come up with the same measurements, courses and distances. Mr. Yarborough replied no.

Mr. Petesch followed up by asking if there were every any multiple locations for the EIP marked "A" or has it consistently been in the same place. Mr. Yarborough stated it appears to be in the same place because the measurements now very closely resemble the measurements on the map from last year. Mr. Petesch asked if the testimony given about the distance between the iron pipe and the back of the curb his opinion or factual information based on his own personal information. Mr. Yarborough replied it is fact, it's less than 5ft.

Mr. Petesch requested Mr. William "Bill" Wilson, Jr. to come before the BOA to testify. Mr. Wilson verified his name and that he is the true owner of property located at 815 S. 8th Street. Mr. Petesch asked if Mr. Wilson has had an opportunity to view the Walgreens property recently. Mr. Wilson stated yes, today. Mr. Petesch showed Mr. Wilson a copy of the landscape plan, already submitted for the record, for his reference. He asked if Mr. Wilson measured the height of the fence from the grade to the highest point of the fence. Mr. Wilson replied yes, it measured 7ft 6in. Mr. Petesch asked if he measured several different trees on the property which are also shown on the landscape plan. Mr. Wilson answered yes. Mr. Petesch asked the condition of the fence which separates the Walgreens store from his property. Mr. Wilson answered that the fence has fallen apart from day one and continues to fall apart.

Mr. Kalo asked Mr. Wilson if he is currently involved in litigation with the developers of Walgreens and the City of Mebane. Mr. Wilson replied that is correct. Mr. Kalo gave a detailed litigation history initiated by Mr. Wilson involving the Walgreen's developers and the City of Mebane. He asked Mr. Wilson if this all ensued after the fact that Walgreens would not pay him a large sum of money for some of his property. Mr. Wilson replied yes.

Mr. Petesch objected to Mr. Kalo questions. Mr. Kalo stated it goes to bias and allows the BOA to access the creditability of the witness. Mayor Stephenson overruled.

Mr. Bateman asked Mr. Wilson to state his current address for the record. Mr. Wilson stated 510 Edinburgh Drive, Burlington, NC. Mr. Bateman questioned what was located on the property prior to the Walgreens store. Mr. Wilson replied a vacant lot and prior to that Tommy's Mini Mart. Mr. Bateman questioned if Tommy's had a drive-thru on the side adjacent to his property. Mr. Wilson replied on Tommy's property.

Mr. Petesch submitted Wilson-Exhibit "F", a list of key UDO provisions. Mr. Petesch referred to those provisions in his closing statement. Mr. Petesch also submitted Wilson-Exhibit "G", the mandate from the court of appeals and the opinion confirming that the building permit was ruled "void ab initio".

Mr. Bateman requested Sandy Bagby to come forward to testify. Mr. Petesch reserved the right to cross examine the witness. Ms. Bagby gave testimony concerning the plantings which are located on the Walgreens property. Mr Bateman asked if she participated in examining the site plan and the landscape plan. She said yes. He asked if she visited the grounds to verify the plantings were in place. She said the plantings in place complied with the landscape plan. He asked if those landscape plans as submitted comply with the UDO that was in effect on March 1, 2010. She replied yes.

Mr. Petesch clarified which trees were understory trees and which ones were canopy trees. He asked Ms. Bagby to show him the understory trees on the landscape plan. Ms. Bagby stated they are the crape myrtles and she identified them on the landscape plan. He questioned if there were any understory trees located on the property line shared between Walgreens and Mr. Wilsons. She stated there is one (1) there that is not shown which was added in addition to what was submitted on the plan. He questioned if there is only one understory tree on the property line, how is it compliant. She said if understory trees are used instead of canopy trees then they would be closer together, it does not state they have to have both canopy and understory trees. Mr. Petesch asked if she measured the distance between the Leland cypress that are behind the tote storage and closure located in the middle of Mr. Wilson's property line. She stated they measured those on the landscape plan that was submitted and it was compliant. Also when they made the site visit the plantings appeared to be compliant but they did not measure every plant on the property. He stated she would not be able to offer any testimony then about the specific distance between the closest Leland cypress behind the tote storage and closure and the next Leland cypress or other canopy tree to the right along the property line. She stated there are actually more Leland cypress planted behind that area, they showed 3 and there are 7 in that spot. She continued by saying there is an additional maple tree at the corner that is not shown on the plan.

Mr. Petesch recalled Doug Yarborough. Mr. Petesch asked Mr. Yarborough to refer to the landscape plan. He asked Mr. Yarborough if during his visit to the property today, did he recall if there were any Leland cypress placed in that portion behind the tote storage. Mr. Yarborough stated he did not recall. Mr. Petesch called Mr. Wilson to testify. He asked Mr. Wilson what the result of his measurements today between the Leland cypresses. Mr. Wilson stated when measuring closest trunk to closest trunk it was 55 ft. between the 2 Leland cypresses. Mr. Petesch asked if there were any other red maple, willow oak or Leland cypress between those trees. Mr. Wilson replied no.

Mr. Kalo made his closing remarks.

Mr. Bateman briefly reviewed testimony given by all sides. He explained that 4/5th of the votes would be needed to overturn Ms. Hadley's decision. He stated with no other observations or witnesses to come before the BOA, one of two motions could be made. One motion could be to allow the appeal of Mr. Wilson and the other to affirm Ms. Hadley's decision. Upon motion of Councilmember Bradley, seconded by Councilmember Hooks, the Board unanimously affirmed the actions of the Planning Director in issuing the Certificate of Zoning Compliance, finding that the evidence presented at the hearing and the documents in the record, support a finding that the property in question was in compliance with the Mebane Unified Development Ordinance as in effect on June 2, 2011 and the Planning Director had the authority to issue the Certificate in question. The appealing party did not present sufficient convincing evidence to meet the burden of persuasion that the Planning Director was in error.

The Council received a request for approval of a Capital Project Ordinance for the Forest Ridge Pump Station and Force Main Replacement. Finance Officer David Cheek spoke to the matter. He stated the estimated cost of the project is 3.3 million. He stated staff recommends the project to be funded from the Water & Sewer Fund Balance and also as a loan from the General Fund to be paid back in 5 years at no interest. Councilmember Hooks made a motion, seconded by Councilmember Auditori, to approve the Capital Project Ordinance as submitted. The motion carried unanimously.

The Council received a request for a Final subdivision plat from Mebane 8540, LLC for approval of "Arrowhead North", R-O-W dedication of Baker Lane. The total acreage is +/- 26.87 acres proposed to be subdivided into 8 lots. Sidewalks are to be constructed along one side of the street. City Manager Robert Wilson spoke concerning the issue. Councilmember Hooks made a motion, seconded by Councilmember Philipps, to approve the request. The motion carried unanimously.

The Council received a request for approval of a proposed policy for the use of the Antique Fire trucks. Councilmember Bradley requested to be recused from this matter due to his position of Asst. Fire Chief with the Mebane Fire Department. Councilmember Hooks made a motion, seconded by Councilmember Philipps, to recuse Councilmember Bradley. The motion carried unanimously. City Attorney Charles Bateman explained upon Council's request he drafted a set

of guidelines for the use of the antique fire trucks which are to be maintained as “museum” quality restorations. After considerable discussion among Fire Chief Bob Louis and Council the policy was requested to be revised and brought back. No formal action was taken. The Council requested that Councilmember Bradley rejoin the meeting.

Councilmember Philipps made a motion, seconded by Councilmember Greene, to approve the Tax Releases and Refunds. The motion carried unanimously.

City Manager Robert Wilson requested Council to begin thinking of dates for the tour of city departments. Councilmember Auditori suggested Monday, September 26th or Tuesday, October 11th. No date was set.

Councilmember Auditori stated concerns were brought to her attention in regards to the landscaping at the new Wendy’s property. City Manager Robert Wilson stated he would look into those concerns.

The minutes of the August 1, 2011 regular meeting were approved as presented.

There being no further business, the meeting was adjourned.

Glendel Stephenson, Mayor

ATTEST:

Stephanie W. Shaw, City Clerk