

MINUTES

City of Milton Board of Zoning Appeals Special Called Meeting March 27, 2008 6:30 PM

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All Board Members Were Present: Heidi Sowder
Gary Willis
Scott Kilgore
Marcia Parsons
Todd Chernik
Walt Rekuc
Sandy Jones

City Staff: Tom Wilson, Community Development
Angela Rambeau, Community Development
Ken Jarrard, City Attorney

AGENDA ITEMS

1. Call to order
2. Chair addresses e-mail comments and clarifies actions
3. Attorney Ken Jarrard comments
4. Members Q & A
5. Adjourn

MEETING CALLED TO ORDER

Chair Heidi Sowder called the meeting to order.

Chair Heidi Sowder

- Called the second agenda item.
- She apologized for events surrounding the March 10, 2008 City Council Work Session that caused concern for members.
- Assured board members that she had no hidden agenda when she attended the March 10, 2008 work session with her process concerns.
- Stated she was willing to do what was necessary to help the board heal and move forward.

Chair Heidi Sowder

- Recited her Timeline of events to Board Members and Staff.

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Chair Heidi Sowder's Timeline

1. BZA meeting Feb. 19th - raised concerns regarding process V08-004 - no ESA and V08-005 - variance request on conceptual site plan prior to Council hearing in March - division of the issue.
2. Friday Feb. 22nd - e-mailed Staff and all Council members about these process concerns.
3. Friday, Feb. 29 - met with Mike Tuller to discuss process concerns around January and February cases, Blue Valley & 2-Morton cases. The big black wall discussion. Requested more information from Staff on tough cases such as these. He requested I speak to Scott about his prepared motions.
4. Monday March 3rd - Requesting training for Board to prepare for upcoming Stream Buffer cases to be heard in March. (Cases were administratively deferred to April).
5. Tuesday March 4th - Council member Alan Tart contacted me to ask if Staff had yet followed up with me regarding my Feb. 22nd e-mail on process concerns. Council had concerns as well and placed BZA process discussion on March 10th Work Session agenda. Invited me to speak regarding my process concerns.
6. Thursday March 6th - Called Scott regarding prepared motions and mentioned I was invited to speak about process concerns. He had similar concerns and said he would try to make it to the mtg.
7. Monday March 10th - Work Session; commented regarding process concerns. Council could have discussed this whether or not public comment was made.

Chair Heidi Sowder

Addressed e-mail comments and clarified actions.

The Chair stated:

- Neither she nor Scott asked to have stream buffers removed from the BZA
- Addressed process concerns
- She did not state at any time that it was the BZA member's opinion
- Never said she or Scott were representing the BZA
- Her concerns were about process regarding 3 cases that came before the BZA
- There were no backdoor politics.
- Reason she went before Council and that she was only addressing the process and did not ask to have stream buffers removed from the purview of the BZA.
- They should look at her voting record.
- Only elected officials can decide what comes to the BZA and it is in the Zoning Code.
- Length of time she has resided in area and her community involvement.
- Comes to other meetings when she felt it was a matter of importance.
- She believed an individual should be allowed to address a council member when there are concerns about matters involving the city.
- Council had concerns about those cases before she came forward.

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Chair Heidi Sowder:

- Opened floor up to the City Attorney Ken Jarrard regarding what had been discussed, concerns via emails that were raised and his opinions and observations during the March 10, 2008 Work Session.

City Attorney Ken Jarrard:

- Stated perhaps the Questions and Answers should be addressed first.

Walt Rekuc:

- Stated he called the Special Called meeting.
- Concerned about issue like this being discussed without other Board input.
- Nobody else besides Scott was contacted.
- No other BZA members were notified of the intention to go to Council.
- Angela brought up stream buffers and that Council was thinking about it.
- Spoke with his councilmember on another matter and he brought up stream buffer issue.
- Councilmember mentioned two of the BZA members coming to work session.
- Nothing prior had been mentioned at the BZA's stream buffer work session.
- These matters were reason for concern and the email.
- Asked Chair why Scott Kilgore was only one asked to attend Council Work Session.
- Said we all have different opinions, but if we had been made aware of this, it may diffuse problems arising in the future.

Chair Heidi Sowder:

- Stated Mike Tuller had asked me to talk to him about his prepared motion.
- The day prior to that her Councilmember called her to follow-up on her email to Council and Staff to see if there had been a response to her concerns and there had not been.
- My councilperson told me that the BZA process was going to be on the Work Session agenda - not stream buffers.
- Scott Kilgore indicated he had concerns about the process as well so I told him about the meeting and he stated he would try to attend.
- Discussion about the audio of the meeting and whether it had been listened to.
- Reiterated that she raised process concerns at the BZA briefings and meetings for these 3 cases and nobody else raised concerns.
- Did not feel she had any obligation to discuss with Board every time she had a concern about processes or the way things were being done.
- This was posted on the City Council Work Session Agenda a week before the meeting.

Marcia Parsons:

- Wanted the Chair to explain what "process concerns" meant.
- Asked Chair if she was questioning Staff's process of their determination of what comes to the BZA.
- Asked Chair if she received an answer to her email of Feb. 22nd to Staff about this concern.

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Chair Heidi Sowder:

- Talked about Chapter 14 for stream buffers and environmental things.
- Talked about Chapter 28 for rezoning petitions and use permits.
- Stated streams are something that needs to be identified on a site plan.
- One of the cases that got approved did not show the stream on the site plan and an ESA had not been filed by the applicant.
- Council was not aware of the stream and it got approved.
- Wanted clarification on procedures for applicant applying for a use permit and the whole process.
- Was questioning why the ESA had not been part of the zoning petition.
- Conflict of stream coming to the BZA and the site plan going to Council a month later.
- Told Board she never got an answer to her Feb. 22nd email to Staff.

Gary Willis:

- Listened to the audio 3 times.
- Told Chair when she and Scott Kilgore met with City Council, not one time did either of them let Council know that they were representing the entire BZA.
- This omission gave the impression to many people on the Council to believe that their comments were also those of the entire BZA.
- Referenced Councilmember Thurman's email regarding all members being notified so they could attend.
- Council believed that all the members of the BZA did not want the stream buffers.
- If it was clear these concerns were only your concerns as an individual, they may have felt differently.
- Really upset about Chair's omission to disclose to Board after the meeting that she and Scott had attended the work session to express any concerns.
- Referenced Scott's email of apology.
- Stated Chair and Scott had ample opportunity during the work session meeting to disclose and inform them that the concerns raised were not the concerns of the other 5 board members.
- Stated the rest of the BZA was not given an opportunity to defend themselves or respond to the accusations that were made.

Reiterated what matters the Chair raised with City Council.

- Requested word changes for hardship and harmony.
- Never discussed this matter with rest of the BZA.
- Did not disclose all the facts to Council.
- Made some statements that were simply not the way this Board feels.
- Representations were made to Council without our approval.
- Felt Chair did not represent the Board of Zoning Appeals.
- Trust is a huge issue and I feel that trust was betrayed.
- Every time you both had the opportunity to state concerns were just your opinions, you both never did it and lead them to believe you represented the BZA's opinions.
- Told Chair he believed she had an agenda to get done what she wanted to get done or what you and Scott wanted to get done.

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Chair Heidi Sowder:

- Stated she did not know who said BZA does not want stream buffers, but was not Scott or her.
- Talked about Karen Thurman's email about stream buffers.
- Stated she thought she told the board members she was going to speak at the work session.
- Stated she was not lying about anything and would have appreciated a phone call to discuss these issues instead of having a meeting and being accused of things.
- Was adamant that she did not speak about stream buffers.
- Issue was not around any voting or what the Board has done, but only around the process for the 3 cases in question.
- Referenced Karen Thurman's email.
- Said what Council decides to do with stream buffers was not her job and does not want that purview.
- Stated she was not the secretary of the board and her job was only to run meetings and to vote.
- Told Board they all had a council representative if there are any concerns they can discuss those concerns.
- Asked the City Attorney, Ken Jarrard, to step in to address what he heard at the work session about her representations to council.
- Stated that Council at no time asked if this was the opinion of all the Board Members.

Board Discussion regarding Chair not stating at any time she was representing her own interests and concerns and not those of the entire BZA.

Sandy Jones:

- Stated even her Council representative asked why she was not present at the meeting or why she did not hear from me regarding my comments.
- Perception was that the Chair was there representing the Board.
- This was the way it was eluded and represented by Alan Tart.
- When "BZA Board" was used in dialog, there was no clarification given.

Todd Chernik:

- Referenced the subject line in the Chair's email sent out stated "BZA's Concerns."
- Alan Tart, along with Julie Zahner-Bailey, further set things in motion regarding the agenda item.
- It appeared that they clearly did their homework.
- Did not tee it up as process but topics of hardship and harmony were introduced.
- Topics of rezoning vs. variances were introduced as well as the stream buffer.
- They had to be conversations before that work session or you really did not know what they had in their minds.
- Because of these issues, it was even more important for you to clarify that these were not items you wished to talk about.
- Stream buffers were mentioned in your email so they had a catalyst to go from.

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Chair Heidi Sowder:

- Stated Council was aware of the stream buffer cases coming forward long before they came forward to the Board.
- Reiterated that she only talked about process and did not talk about stream buffers.

Todd Chernik:

- Two main questions: (1) why was the Board not copied on the Chair's original email (Feb. 22nd); and (2) would she do anything differently?

Chair Heidi Sowder:

- Stated no deliberate intention to leave Board out of the email.
- Said this was not done purposefully.
- These were her own concerns about the 3 cases, did not include the Board members.
- Reiterated that nobody else raised these issues so they were my concerns.
- Would definitely communicate better with everybody and let everyone know what she was planning to do.
- Believed the Board would be communicating with their Council representatives as well.
- Council's agenda was different than what she was speaking about.
- Maybe these cases started the ball rolling, but I was not part of that.

Marcia Parsons:

- Said when the Chair spoke she talked about the individual cases and not the process.
- Did not remember hearing Chair had a problem regarding the process.

Chair Heidi Sowder:

- Stated these 3 cases were where the process problems happened.
- Stated she did talk about the ESA matter and the omission of the stream on the site plan.
- Do not have a problem with stream buffers or would have voted against them every time.
- Concerns were only about process and 2 Of 3 cases did involve stream buffers.
- Said she was not being sneaky or trying to go behind anyone's back.

Gary Willis:

- Reiterated that this again is a trust issue and when you lose it and do not feel you can trust somebody, then you may hear things differently than if things were disclosed about the meeting.

Further Board Discussion about Chair not clarifying when she spoke or was being addressed by Council that she was not there representing the opinions of the entire BZA, but that she was addressing her personal concerns, and that it should have been disclosed.

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Walt Rekuc:

- Letter sent to Mayor and Council said "BZA Concerns" not just your personal concerns.
- Enough questions got raised about how things were handled that prompted this dialog and meeting.

Sandy Jones:

- Stated she appreciated the Chair's involvement in the community.
- Referenced the Chair's email of Feb. 22nd that mentioned stream buffer concerns.
- Email may have prompted Council concerns because the email was addressed from the BZA Chair.
- Perception was the Chair of the BZA is coming forth because the whole BZA has concerns with stream buffers.
- Two issues are the stream buffer issue and the issue of transparency and feeling that we are a Board and have a representative from the Chair of the Board and the Chair represents the interests of the Board and not an individual interest.
- Shared some of the Chair's process concerns.
- Did not feel she was given the opportunity as a Board member to voice her concerns since she went independently.

Chair Heidi Sowder:

- Stated she understood their concerns about not clarifying her capacity to Council.
- Never represented the "Board" feels this way or that.
- Stated she also said "I" have concerns, not the Board's concerns.

Gary Willis:

- Read excerpt from email that stated *it is my duty as Chair of BZA to bring these concerns.*

Sandy Jones:

- Advised that her Councilmember representative felt the Chair was there representing the Board.
- Should have had the courtesy to her fellow board members to advise them that she felt it necessary to go to Council and include them in that decision.

Gary Willis:

- Stated his Councilmember representative did as well.
- It troubled him that the Chair took one of the members and he was the only one privy to this and he was the only one who got an invitation to attend the meeting.
- Rest of Board knew nothing about it.
- When two members showed up it really represented the opinion of the whole Board of Zoning Appeals.

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Chair Heidi Sowder:

- Explained to Board how Scott got invited.
- Primary that Scott had some concerns about the process as she did.
- Stated she and Scott spoke about the process concerns after one of their meetings.

Sandy Jones:

- Would have appreciated the opportunity to perhaps come forward as well as several of the other BZA members had they known.

Chair Heidi Sowder:

- Stated she was informed the process was going to be discussed at the work session and she was told that she could come forward and talk about her process concerns.
- Wanted to talk about the 3 cases in question.
- Council then went on to discuss their hardship and harmony issues.
- Said she had no knowledge that Council was going to speak about this.
- Reiterated she was there to speak only on the process issue.

Sandy Jones:

- Addressed the matter of their last BZA meeting a week before this meeting.
- It was a day and a half after our BZA meeting and you as Chair did not share anything about the details of the meeting.
- Felt there was an intentional omission to present or let the Board know that you as Chair spoke.
- The fact that Council was talking about taking back the stream buffer variance approval process.
- Said the Chair knew this and did not share this information with the Board.
- Asked Chair what she thought her role as the BZA Chair was.

Chair Heidi Sowder:

- Stated she believed her role was to run the meetings and votes.
- When she thought there was an issue and that the Board needed training on the stream buffers, she said she discussed with Staff.
- Said this was based on conversations she had with Mike Tuller.
- Felt the Board was not being provided with enough information.

Sandy Jones:

- Responsibility for the representation of the BZA Chair goes beyond that.

Chair Heidi Sowder:

- Took issue with that statement and asked Ken Jarrard for his interpretation of the responsibilities of the Chair under the By-laws.

Sandy Jones:

- Made statement that current the BZA Chair held a position on the Comprehensive Land Use Committee.
- Representing the BZA as the Chair.

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Chair Heidi Sowder:

- No prescribed responsibilities listed in the By-laws.
- Cannot speak to that and do what is asked of me.
- Was asked by Ken Jarrard to come and represent the Board in the mitigation and I agreed to do so.

City Attorney Ken Jarrard:

- Clarified who can represent a body in mediation.
- Does not have to be the head of an organization.
- Can be whoever has an interest.
- Discussed in executive session and agreed this was appropriate.
- Here acting as the lawyer.
- Hearing that this Board was concerned that City Council believed they got a recommendation to take stream buffer variances away from the BZA and acted affirmatively on that.
- Stated that Ordinance had not been written yet, as he had not drafted it yet.
- Told Board if they would like to clarify that for Council, they could offer up a motion to make their voice heard to City Council stating that the City of Milton not take away stream buffer variances from the purview of the BZA and second it.
- This would not be undoing anything because he had not drafted anything yet.
- Said it was not uncommon for Boards to get upset when one of their members went out and freelances.
- There have been Resolutions passed that states what you can and cannot do as board members.
- This instance was a public forum with a public agenda with a public comment section before every agenda item where anybody is welcome to come in and speak on an agenda item.
- Said everyone of the BZA members have the right to speak as well.
- Stated he understands both sides.
- Trust issue is not a legal issue.
- Advised BZA members to communicate their concerns to Council as he did not want to draft something that will be meaningless.
- Said this Board speaks by its vote.
- Individually they have no authority.
- Stated they could vote tonight and he would take that message to Council.
- Remembers speaking about stream buffers.
- Stated he believed he said it was not unusual for a board of zoning appeals not to want to deal with stream buffers.
- Plenty of jurisdictions where every stream buffer variance goes to the zoning board of appeals.
- Spoke on his comments regarding hardship and harmony and that he thought the use of the word "or" was appropriate and stood by that comment.
- Said he stood behind his opinion.
- Agreed to answer any questions the Board may have.
- Reiterated to Board that they need to speak tonight by their voting regarding Chapter 14 so no time is wasting drafting documents that need not be drafted.

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Scott Kilgore:

- Reiterated his apologies to the Board.
- Felt badly that it did not occur to him to communicate to the rest of the Board about going to the meeting and including them.
- Wish now that everybody had been there.
- Huge lesson learned on board communication.
- Stated anything he did with the Board or Council going forward, they would know well in advance.
- Said the *appearance of evil causes all kinds of problems*.
- Appearance was there that they were doing something sneaky.
- Assured the Board they were not.
- Did not believe Heidi was either.
- Could understand why the Board's feelings were hurt and why they felt as they did.
- Said during other Board work sessions and meetings concerns were raised about process and did not hear anyone else stating their concerns over this issue.
- Said at any public speaking he may do, the first words out of his mouth were going to be *I am representing myself and am not representing the Board in anyway*.

Todd Chernik:

- Opportunity for everyone going forward in new business matters in their standard meetings to express everyone's concerns to see if there is interest in pursuing those concerns.
- Cannot legally meet outside of a public meeting to confer on issues.

Heidi Sowder:

- Addressed Sandy Jones' statement about shortness of briefing meetings.
- Stated she as Chair during many meetings, suggested the Board move their meetings to another night instead of having them one hour before the regular meeting.
- Got voted down every time.
- Said in order to do a good job, they need more time to review these cases adequately.
- Did not feel they were able to be effective in the briefing sessions if so short of time period.

Walt Rekuc:

- Asked the Chair Heidi Sowder if after all that she heard if she still felt comfortable leading the BZA.
- Would she rather step down as Chair if you feel you have lost everyone's confidence?

Heidi Sowder:

- Stated it would depend if everyone could trust that she did not have any backdoor deals going on and could forgive her.
- Would like to stay on as had enjoyed being the Chair.
- Felt they have had tough cases and they had all done their due diligence.
- Spoke with Angela about how staff could improve on providing them more information in their packets.
- Fully prepared to stay on and was committed to the Board.
- Believed she had done a good job.
- Reiterated her apologies.

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- Reiterated she believed it was her right to state her concerns about the process.
- Stated she hoped they could all heal and go forward from this and take it as a learning experience.
- Reiterated she had the right to go speak as did anyone else on the Board if they chose to do so.

Walt Rekuc:

- Trust appears to have been lost.
- Board does not always agree on things, but all opinions should always be considered.
- Want to make sure she considered where she felt she currently stood with the other board members and if they still had confidence in her.

Heidi Sowder:

- Stated that if the Board did have respect for one another that they would be able to move forward from this and take it as a learning experience.
- Did not believe that anything major had happened to the Board.
- Hoped that going forward the Board could move past this matter.
- Said she did not think she should be the secretary for the Board.

Sandy Jones:

- Need to collectively bring forward requests of Staff.
- Board has different view points and requests for different information.

Scott Kilgore:

- If they were trying to sneak something by the Board, would not have stood up in a public meeting with the Mayor, Council, press and public.
- Would have called my council representative and said, *you need to get going on this.*
- Reiterated they made a mistake and should have clarified these were our opinions and not the board's and it will not happen again.
- Not meant to deceive anybody or give the impression of more credentials than they had.
- Stated he honestly believed that Heidi's intentions were the same as his.
- Said the Board obviously had to make their own decision.

Todd Chernik:

- Asked Heidi and Scott to prevent this from happening again, should they feel the need to address Council or the public in the future on any specific topic, that they would first make the Board aware of the issue of discussing.
- Also asked if they would they also in the future make it clear that it was their individual opinion and not as a board member.

Scott Kilgore:

- Stated yes, clearly he would let them know.

Heidi Sowder:

- Said you could say you were coming forward as a board member, but not representing the board's opinion.
- Asked if this was also for any other things she might be involved in or just the BZA.

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Gary Willis:

- Stated this was going back to the trust issue.

Heidi Sowder:

- Said this was like a First Amendment right of free speech.

Todd Chernik:

- Main two issues that he saw were (1) lack of transparency with this Board and (2) once the public forum took place it was not made clear that you were not speaking on behalf of the Board and as a result Council and our City Attorney started pursuing 3 different amendments to our ordinance.
- Specially related to hardship and harmony that he stated he had significant issues with.
- Cases recently that were approved that would have been denied based on the criteria discussed the other night.
- Mushroom effect as a result of the lack of disclosure.
- Stated he would like to make a motion

Motion and Second: Todd Chernik made a motion to request that Counsel abstain from making binding decisions regarding the March 10 Work Session discussion, agenda items pertaining to the BZA. stream buffers, hardship and harmony and variance guidelines related to the number of lots, percentage or acreage of lots.

City Attorney Ken Jarrard:

- Ask for a time period on when to move forward.
- Recommendation regarding those items or just leave them alone?

Motion was seconded by Sandy Jones.

Discussion about length of time and if 60 days would be appropriate.

Staff Tom Wilson:

- Asked that the motion be repeated.

Chair Heidi Sowder:

- **Restated motion** *that Counsel abstain from making binding decisions regarding the March 10th work session discussion, agenda items pertaining to the BZA with regard to stream buffers, hardship and harmony and variance guidelines for the number of lots, percentage or acreage of lots for 60 days.*

There was no further discussion. Vote: 7-0. Motion unanimously carried.

City Attorney Ken Jarrard:

- Stated he would alert the City Council of this matter this evening.

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Todd Chernik:

- Commented that he believed once Council is informed this would probably trigger various communications.
- Asked the City Attorney or Staff how best to manage that communication so there is not a repeat occurrence.

Staff Tom Wilson:

- The Board has been set up with a cityofmiltonga.us website and suggested anything they wished to share with the other members of the board to just copy to that site and check it on a regular basis to make sure that absolutely nothing gets missed.

Todd Chernik:

- Inquired as to whether it should be added to an upcoming agenda.

Sandy Jones;

- Council has a heavy case load the next couple of weeks.
- Perhaps at a separate work session.

Heidi Sowder:

- Asked staff if they were going to start enforcing the ESA to make sure they are always submitted.

Staff Tom Wilson:

- Responded that the ESAs have always been submitted.
- First time he has ever heard tonight that it had been omitted from an application.

Heidi Sowder:

- Clarified that the case in question came forward for rezoning back in December and the stream was not identified on the site plan.
- The ESA is the applicant's responsibility on each and every site to show all of the environment impacts to that site.
- That is why that particular stream buffer matter came to the BZA.
- Stated her concern was in going forward is Staff going to enforce that an ESA is done with each and every application so that her process concerns are satisfied and that proper process would be followed.
- Said that was adopted in November of 2004 by Fulton County and is part of Milton's code.

Staff Tom Wilson:

- Informed the Board that an ESA will always be obtained where it is required by the Zoning Ordinance.
- Not usually distributed to the Board.
- Stated currently the Zoning Ordinance does not allow for stream buffers to go to City Council.
- Chapter 14 requires that stream buffers come to the BZA and that is the way it will be conducted until changes are made.

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Heidi Sowder:

- Referenced Chapter 28 and stated it was a requirement that an ESA be filed with each and every rezoning.

Staff Tom Wilson:

- Not aware that there was ever an omission of an ESA in an application form.

Heidi Sowder:

- Asked Tom Wilson if the stream should have been documented on the site plan then, correct?

Staff Tom Wilson:

- Responded that was not why it was not transmitted to the City Council. It was a Staff error where the arborist failed to hand off that information to the planner who wrote the case.
- That is our process and that has been corrected.
- He stated he could not go back and undo that.

Heidi Sowder:

- Reiterated that this was the basis for her concern and questioning the process.

Todd Chernik:

- If Board gets cases they feel they do not have sufficient or all of the information to make an informed decision that the Board needs to defer the case.

Heidi Sowder:

- Also the Board needs to take action if necessary to deny.
- This is the Zoning Code of the City of Milton and reason for her concern.
- On the case in question the stream was omitted and 5 times the density was allowed on the site without the stream being referenced.
- Stated her concern was they needed full disclosure.

Gary Willis:

- Asked the City Attorney if he had any other questions or comments.

City Attorney Ken Jarrard:

- Said he did not.

Gary Willis:

- If they could get to new business, he stated he would like to make a motion.
- Thanked Chair for her apology, but stated it still was an issue of lack of trust.
- Stated the Board was nothing more than trust.
- Said he had lost 100% of his trust for the Chair and her leadership abilities for this Board.

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Motion and Second: Gary Willis made a motion that Heidi Sowder be removed as the Chair of the Board of Zoning Appeals effective immediately.

Chair Heidi Sowder:

- Asked that the City Attorney, Ken Jarrard, comment on the motion.

City Attorney Ken Jarrard:

- Stated he was not aware this was going to be on the agenda tonight.
- Said that the Charter does not really provide bases for removal of an officer.
- It did not mean that they cannot be removed.
- Law is that if there is nothing identified as a bases for the removal of officers they has to be cause.
- Stated if they believe that they have cause to remove their Chairman, this matter has been duly advertised and noticed and consideration of officers is on the agenda, it is appropriate for discussion this evening.
- Asked that that the cause in the motion be articulated as to the bases of the motion.
- Rules are silent as to removal so it would be his position that cause has to be articulated as the bases for removal.

Gary Willis:

- Stated his cause would be that the Chair has overstepped her boundaries in her position as Chair and lost the trust of myself and probably several of the other Board members and her leadership ability is not the leadership ability that we need for this Board.

Walt Rekuc seconded the motion. There was the following discussion:

Todd Chernik:

- Clarified that the standing motion would be to remove Heidi as the Chair but not to remove her from the Board entirely.

Scott Kilgore:

- Asked that the motion state specific actions that were taken and documented and were undisputable that warrant such a harsh response by this Board.
- Said if crimes of moral terpreutuity had been committed or if documented lies can be proven, then okay.
- If it is clear that we as a board were lied to or misled, I would like to know this and we need to vote on this.
- Understand that emotions are high and hate for the board to vote while emotions are high.
- Concerned about hearing the facts and what the motion is based on.
- Stated that the Board was contemplating taking a very severe action.

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Gary Willis:

- Responded to Scott Kilgore and stated that trust is huge and is the biggest factor.
- All the things discussed tonight are factors.
- There was plenty more besides what he mentioned.

City Attorney Ken Jarrard:

- Said there was a motion and a second.
- Offered up something for discussion.
- Stated he may be a little out of the legal field, but felt he was their counselor as well as their lawyer.
- Asked if the Board might contemplate a postponement of this decision to have some discussion to find perhaps another way to possibly achieve the same effect without a decision by the Board to remove.
- Asked the Board if they understood his suggestion like perhaps voluntary stand-down.
- Before the nuclear option is used, there might be a way to have discussion.

Todd Chernik:

- There is a lot of merit to what the City Attorney is saying.
- Need to consider the implications arising out of decisions made in the heat of the moment that are driven by emotions tonight.
- Concerned about effect this would have with Heidi sitting on the Comprehensive Land Use Plan Committee.
- If we postpone our vote would afford the Board and Heidi to further address some of our concerns.
- Concern about transparency and full disclosure going forward.
- Asked that the Board may want to consider this suggested option.

Scott Kilgore:

- Can a motion to postpone be made when a motion had already been made and seconded?

Ken Jarrard:

- Clarified that even though a motion had been made and seconded, a substantive motion on the hierarchy of motions is the lowest motion.
- Motion to adjourn, motion to postpone, and motion to table all take precedence and can be made while a motion is pending even if it has been seconded.

Scott Kilgore:

- Stated he wished to make a motion to table.

Motion and Vote: Scott Kilgore made a motion to postpone on the basis of his earlier comments and that he would like to see that the Board has had an opportunity to cool their emotions and see some time pass to try to regain the trust. Stated he knows it will take some time to regain the trust, but believed they should allow some time to be more transparent and make that process work. Heidi Sowder seconded the motion for discussion.

There was no further discussion.

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City Attorney Ken Jarrard:

- In absence of further discussion called for vote on the motion to postpone.

Vote: 5 against and 2 for, with Scott Kilgore and Marcia Parsons voting to postpone.

City Attorney Ken Jarrard:

- Stated the principle motion was back on the floor.
- Called for a vote for all those in favor to remove the Chairperson from the Board of Zoning Appeals.

Vote: 4 in favor (Walt Rekuc, Sandy Jones, Marcia Parsons, Gary Willis), 1 vote in opposition (Scott Kilgore), and 2 abstaining (Heidi Sowder and Todd Chernik).

City Attorney Ken Jarrard:

- Asked what their grounds for abstaining were based on.

Todd Chernik:

- Did not feel the Board has fully considered the downstream implications relating to such decision.
- Also believes there should be additional time for the Board to think through this and due process.

City Attorney Ken Jarrard:

- Asked for Chair Heidi Sowder's comments as well.
- Stated he was not certain that was a legal basis for abstaining.
- Not trying to make them change their mind, but not sure if it was sufficient legal basis for abstaining.

Chair Heidi Sowder:

- Because of the ramifications of what she was being asked to vote for, felt it was her right to abstain from the vote.

City Attorney Ken Jarrard:

- Reiterated he was not sure if the reasons stated were sufficient to abstain from the voting.
- Called for another vote of the "no" votes.
- One "no" and 2 abstentions so the motion carries to remove the Chair.

Walt Rekuc:

- Asked the City Attorney if they were to make changes to the By-laws for the future, under Article 6, they would they need to include existing and proposed text for that change.
- It states also that the proposed change must be held for 14 days before it is presented to the Board of Zoning Appeals for action.
- Asked if this was the proper time to do so.

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City Attorney Ken Jarrard:

- Stated it was not because it was not on the agenda.
- What does need to be discussed tonight is your Chair.
- Consideration of officers is an advertised item this evening.
- Said as the Chairperson was removed the Board needed to vote for another.

Todd Chernik:

- Stated they had a Vice Chair and asked if that would suffice until they meet another time.

City Attorney Ken Jarrard:

- Stated the Vice Chair could take over the meeting and turned the meeting over to her.

Vice Chair Sandy Jones:

- Took over the chairing of the meeting as the Board's Vice Chairperson.

City Attorney Ken Jarrard:

- Stated there was not much left to run, just the Q & A portion on the agenda.

Vice Chair Sandy Jones:

- Called for Questions and Answers.

Walt Rekuc:

- Stated he wanted to ask that the item of changes to the By-laws regarding removal of officers be put on the agenda for the next meeting.
- Also want to add a condition regarding an item on one of their original meetings where they looked at changing under Article 5, Section 7, Item 4.
- Asked Staff to research regarding time limit for application presentations
10 minutes/no time limit discussion, propose changing public comment speaking from 2 minutes to 3 minutes and propose rebuttal speaking to a 5 minute time limit.

Todd Chernik

- Asked Vice Chair if they wanted to add to the next agenda the issue of the term of office to be one year or if it will coincide with the elected official's term.
- This should be added to the agenda for the next meeting.

Staff Tom Wilson:

- Asked the Board if they were requested Staff to prepare a document with these changes in it to present to the BZA at the next meeting.

Board Discussion of possible changes to the By-laws.

Walt Rekuc:

- Read Article 3, Section 4 regarding conduct of board member and new election of officers.

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Staff Tom Wilson:

- Stated that the issue of change of By-laws was not on the agenda tonight so the clock cannot start ticking and will begin that process at the next meeting.

City Attorney Ken Jarrard:

- Commented that he had set through the entire proceeding and stated he did not want his sitting there and hearing the reasons - although he was mindful of the reasons that were articulated - but the notion of cause is a legal issue.
- Did not want his silence to be deemed as his acquiescence that he was necessarily agreeing that cause had been demonstrated.
- Said he was not suggested that it was not the case.
- Wanted to clarify that he had not said anything this evening that led the Board to believe that probable cause had been satisfied.

Marcia Parsons:

- Asked if she could make a personal comment.
- Thanked Heidi for her diligence and passion for city matters and for her service and wanted to make sure she understood none of this was personal.

Other Board Members Concurred.

Heidi Sowder:

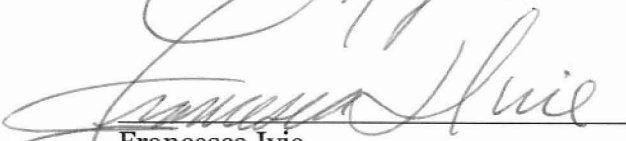
- Thanked the Board.

ADJOURNMENT

Motion and Second: Vice Chair Sandy Jones made a motion to adjourn the meeting. Walt Rekuc seconded the motion to adjourn. Vote: 7-0. Motion unanimously carried.

Meeting adjourned at 8:43 p.m.

Date Approved: May 20, 2008



Francesca Ivie
City Clerk's Office



Sandy Jones, Vice Chair
Board of Zoning Appeals