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**MINUTES**  
**BOARD OF ADJUSTMENT**  
**RECONVENED MEETING**  
**January 25, 2021**

**MEMBERS PRESENT:** Leon Meyers  
Susan Halkiotis  
Jeff Scott  
Kent Qandil

**MEMBERS ABSENT:** Scott Taylor

**STAFF PRESENT:** Michael Harvey, Current Planning Supervisor  
Elaina Cheek, Secretary to Board  
James Bryan, Staff Attorney

**AGENDA ITEM 1: CALL TO ORDER / DELIBERATION ON CASE A-4-20**

Chair Leon Meyers called the meeting to order at 7:00 p.m. and reminded all parties the purpose of the meeting was to begin deliberation on Case A-4-20, a special use permit application proposing development of a recreational facility on a parcel of property at the intersection of Old Greensboro Highway and Holly Creek Lake.

Chair Meyers reminded the Board had closed the public hearing, so members would not be accepting any additional testimony from the public or staff. The purpose of tonight's meeting was to deliberate on the request, review the testimony in the record, make the necessary findings, and take action on the special use permit application.

**DELIBERATION: Case A-4-20 – Evidentiary hearing to review a Class B Special Use Permit application for a recreational facility off Old Greensboro Highway.**

*In accordance with UDO Sections 2.7 Special Use Permits, 5.2 Table of Permitted Uses, 5.3.2 Special Uses, and 5.7.2 Recreational Facilities, the applicants have submitted a Class B Special Use Permit (SUP) application for a parcel on Atkins Road, which is further described as follows:*

- *Case Number: SUP20-0008*
- *Parcel Identification Number: 9758-52-5171*
- *Acreage: 16.2 acres*
- *Zoning District: Rural Buffer (RB)*
- *Watershed Designation: University Lake Protected*

*The applicants are proposing an outdoor recreational facility for the playing of cricket, specifically 2 outdoor fields.*

*The applicant is not proposing any outdoor lighting, structures, bleachers, public address system, concession stand, or other facilities connected with the athletic fields. Access to the property will be off Old Greensboro Highway. With no lighting, the facility would operate during daylight hours only.*

Chair Meyers summarized the competent material evidence and testimony contained in the record for this case.

Mr. Jeff Scott indicated he was unsure about the affidavits entered into the record by the applicant alleging harassment from one of the neighbors and what value they really had on the proceedings.

1 Mr. James Bryan reminded members, applicant testimony from the January meeting indicated the affidavits concerning  
2 possible harassment were for information purposes and background only and were not officially entered into the record.

3  
4 Chair Meyers reminded the Board staff had provided, specifically in Attachment 5 of the December 14, 2020 agenda  
5 packet beginning on page 174, a script to aid members in deliberation. Chair Meyers also reminded the Board the  
6 applicant provided their suggested/recommended findings as part of their application (Attachment 1 of the December  
7 14, 2020 agenda packet). Vice-chair Susan Halkiotis said the agenda from the December regular meeting (Case  
8 Number A-4-20 beginning on page 61) was in the record of these proceedings.

9  
10 Vice-chair Halkiotis said the first finding involved a determination the proposed use would maintain or enhance the  
11 value of adjacent property. Mr. Scott said there were comments in the record from realtors in both direct testimony and  
12 affidavits that the use will and will not maintain property values. These statements argued the use will and will not  
13 maintain or enhance contiguous property.

14  
15 Mr. Bryan reminded the Board their deliberations and required findings are based on the competent material evidence  
16 and sworn testimony in the record. The Board needed to discern between simple speculation versus substantial  
17 testimony and separate evidence from opinion. Affidavits can have weight in the deliberation process but the Board  
18 needs to rely on competent testimony. The issue with affidavits is the Board has no clear record of the competency of  
19 the person offering an opinion. There was also the issue of the author not being available for cross-examination by  
20 parties with standing or the Board during the hearing. An affidavit may provide context, but in and of itself does not  
21 constituted material evidence or sworn testimony.

22  
23 There was general discussion on the issue(s) associated with the use of affidavits amongst the Board.

24  
25 Chair Meyers indicated there are three categories of evidence associated with testimony on property values. The  
26 Board heard from Holly Creek residents, both of whom are realtors and granted standing, offering their expert opinions  
27 the use would not maintain property values, emails from realtors expressing the opinion the use would not maintain  
28 property values, and testimony from a realtor the project would maintain adjacent property values. Part of the evidence  
29 offered by the applicant and their expert witness Ms. Virginia Ferguson was an affidavit from an appraiser (Mr. Kirkland)  
30 as well.

31  
32 Mr. Scott asked how the Board defined contiguous property. Mr. Bryan indicating the plain meaning of the word meant  
33 the parcels would have to be adjacent. This was a matter where case law would be a factor and reminded the Board at  
34 different steps in this process of decisions made with respect to standing of various individuals who have offered  
35 testimony for and against the project. Board members granted standing to residents on Holly Creek lane, who argued  
36 they would experience special harms if the permit were approved. Specifically, the Weidner's argued the project would  
37 have a negative impact to property value. The Board granted them standing to present evidence supporting this  
38 argument.

39  
40 Chair Meyer asked what the plain wording of the Unified Development Ordinance (UDO) was, related to the  
41 maintenance of property values. Mr. Bryan said that as detailed in the script provided by staff, the exact wording of the  
42 required finding read as: *The use will maintain or enhance the value of contiguous property.*

43  
44 There was general discussion over the meaning of the word contiguous as well as the granting of standing to the  
45 residents on Holly Creek Lane.

46  
47 Chair Meyer asked about the required finding in Section 5.3.2 (A) (2) (c) of the UDO reading as follows:

1 *The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in*  
2 *which it is to be located and the use is in compliance with the plan for the physical development of the County as*  
3 *embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County*  
4 *Commissioners.*

5  
6 Vice-chair Halkiotis indicated staff had testified the use was in harmony with the area presuming the Board made  
7 affirmative findings on all required elements of the project as required by the UDO. She recalled staff testifying County  
8 elected officials had indicated, by including the use as an allowable land use within the Rural Buffer general use zoning  
9 district, it was deemed to be in harmony for the area. This of course presumed the Board made the appropriate  
10 findings the applicant had met their burden demonstrating the application complied with the Ordinance and voted to  
11 issue the special use permit based on the competent material evidence in the record. Vice-chair Halkiotis referenced  
12 staff's abstract (page 66) outlined various policies contained in the adopted Comprehensive Plan supporting the  
13 development of recreational facilities in the rural areas of the county.

14  
15 Mr. Scott indicated he was concerned about the submitted site plan, specifically notes indicating there would not be  
16 outdoor lighting or restrooms facilities (restroom facilities requiring installation of a septic system) developed as part of  
17 this submittal. If the Board decides to approve the permit based on available facts, what happens in a year if the  
18 applicant wants to add lighting and a restroom facility. This might affect the Board's decision on the three general  
19 findings in Section 5.3.2 of the UDO. Mr. Bryan reminded the Board staff had testified modifications to the site plan  
20 would require the applicant to go back through the evidentiary hearing process so the Board could determine  
21 compliance with the UDO. The applicant cannot simply add outdoor athletic field lights or a bathroom facility without  
22 this Board reviewing and approving the modification. Vice-chair Halkiotis indicated staff's abstract addressed this issue.  
23 Staff recommended imposition of conditions to ensure the project had to come back through the permit review process  
24 if outdoor athletic field lights or septic systems are installed.

25  
26 Chair Meyer said the conditions might need revision the Board should pay close attention to proposed wording to  
27 ensure modifications have to come back for review. Mr. Bryan indicated this was already a provision within the UDO,  
28 specifically addressing what constituted a change staff could approve and what had to be reviewed by the Board  
29 approving the request.

30  
31 There was a general discussion on the steps necessary to modify an approved site plan.

32  
33 Vice-chair Halkiotis said there were 17 mutually agreed to conditions contained in staff's report on this project on page  
34 180 of the December agenda packet.

35  
36 Chair Meyers began to review the conditions.

37  
38 Vice-chair Halkiotis said during the hearings there was talk about a condition addressing design of the overflow grass  
39 parking area. Specifically requiring installation of a hedgerow to buffer the parking area from adjacent property, limiting  
40 the total number of cars on the property at any given time to 50.

41  
42 There was general conversation on the conditions as contained on page 180 of the December Board of Adjustment  
43 packet.

44  
45 Chair Meyers suggested members begin reviewing the script provided by staff.

46  
47 Mr. Scott indicated he believed there was substantial evidence in the record indicating the applicant complied with the  
48 provisions of Sections 2.2 and 2.7 of the UDO detailing the submittal of a complete application package and payment of  
49 required fees. This included required application forms, detailed owner information, list of all property owners within

1 1,000 ft. a detailed narrative outlining the operation of the proposed recreational facility and its compliance with  
2 applicable regulations, a professionally prepared site plan, development schedule, and method of debris removal.  
3

4 Vice-chair Halkiotis asked what happens if the applicant did not comply with the conditions of the special use permit.  
5 Mr. Bryan indicated staff would initiate an enforcement proceeding in accordance with the UDO and, if the applicant did  
6 not address the matter, the permit could be rescinded consistent with Section 2.7.12 of the UDO.  
7

8 Mr. Scott asked how the Board, with the closure of the public hearing, could modify the conditions. Chair Meyers  
9 indicated the Board was deliberating on the request and following the script provided by staff outlining what evidence  
10 was in the record. Ultimately, the Board would deliberate and make a determination, which staff will produce in writing  
11 and he would sign. The Board had the ability to modify conditions, presuming the request was approved, addressing  
12 consistency with applicant and staff testimony or address public safety concerns. For example, the applicant agreed to  
13 a condition requiring delineation of the grass overflow parking area with a hedgerow and limiting the total number of  
14 cars on the property to 50. A revised site plan was submitted denoting these conditions. The Board had the authority  
15 to modify existing conditions to ensure agreements were memorialized.  
16

17 Mr. Bryan indicated there were many ways the Board could do this. He agreed staff had prepared a script outlining its  
18 recommendations and the evidence in the record supporting their recommendations. The script takes each separate  
19 provisions of the Ordinance and provides documentation on what occurred during the evidentiary hearing. The Board  
20 can go section by section in its review and make appropriate findings and determinations as they believe the competent  
21 material evidence and testimony in the record allows them to do.  
22

23 There was general discussion over the script.  
24

25 Vice-chair Halkiotis agreed with Mr. Scott that there was ample evidence in the record denoting the applicant complied  
26 with the provisions of Sections 2.2 and 2.7 of the UDO in terms of submitting a complete application and payment of  
27 required fees.  
28

29 **MOTION** made by Vice-chair Halkiotis to find the applicant met their burden on the submittal of required application  
30 components as detailed in Sections 2.2 and 2.7 of the UDO as detailed on pages 175 through 176 of the December 14,  
31 2020 Board of Adjustment agenda packet, seconded by Mr. Scott.  
32

33 **VOTE:** Unanimous.  
34

35 Chair Meyers asked if there was any discussion on compliance with the provisions of Section 5.3.2 (B) 1, 2, 3  
36 addressing waste disposal, safety, and vehicle access.  
37

38 Mr. Scott indicated he did not believe there was testimony in the record indicating the applicant had not met their  
39 burden. Vice-chair Halkiotis said there was comments submitted by various County staff contained in Attachment 4 of  
40 the agenda package indicating the applicant had met their burden with respect to addressing waste disposal, safety,  
41 and vehicle access. Chair Meyers said the package did include an email from NC Department of Transportation staff  
42 indicating access would be from Old Greensboro Highway. This was also a recommended condition of staff.  
43

44 **MOTION** made by Vice-chair Halkiotis to find there was sufficient evidence in the record demonstrating the applicant  
45 had complied with the provisions of Section 5.3.2 (B) of the UDO as detailed on page 176 of the December 14, 2020  
46 Board of Adjustment agenda packet, seconded by Mr. Scott  
47

48 **VOTE:** Unanimous.  
49

1 Chair Meyers indicated the next finding, on page 177, concerned compliance with Sections 2.5 and 5.7.2 of the UDO.  
2 These sections concerned the completeness of the site plan and compliance with applicable land use regulations.  
3

4 Mr. Scott indicated the Board had the original site plan, the updated site plan introduced into the record at the January  
5 2021 evidentiary hearing denoting the changes in the parking area, and the detailed narrative indicating to him the  
6 applicant had met their burden in providing a site plan demonstrating compliance with the applicable standards to  
7 develop a recreational facility. Chair Meyers asked if that was a motion.  
8

9 **MOTION** made by Mr. Scott to find the applicant met their burden on the submittal of a site plan demonstrating  
10 compliance with the provisions of Sections 2.5 and 5.7.2 of the UDO, seconded by Vice-chair Halkiotis.  
11

12 **VOTE:** Unanimous.  
13

14 Chair Meyers said the Board was now going to have to address compliance with the general standards associated with  
15 the approval of denial of a special use permit as contained in Section 5.3.2 (A) of the UDO. These requirements were  
16 outlined on page 178 of the December 14, 2020 Board of Adjustment agenda packet.  
17

18 Chair Meyers said the Board had in the record testimony from Ms. Virginia Ferguson that the use would maintain  
19 contiguous property values. This testimony included an affidavit prepared by Richard Kirkland. Vice-chair Halkiotis  
20 said there was also the testimony from Mr. and Ms. Leslie Weidner who indicated it was their professional opinion the  
21 use would not maintain adjacent property values. Mr. Scott said he was willing to consider the Weidner's testimony but  
22 did not give weight to the emails they provided from other realtors indicating their opinions on the maintenance of  
23 property values, as they were not present at the meeting.  
24

25 Chair Meyers said he had inadvertently skipped a required finding. He informed the Board their first course of action  
26 was to determine if the project complied with the provisions of Section 5.3.2 (A) (2) (a) of the UDO. This required a  
27 determination if the use will or will not maintain or promote the public health, safety, and general welfare if developed  
28 and operated in accordance with the application submittal.  
29

30 Mr. Scott indicated he did not see any compelling evidence in the record indicating the use would not maintain or  
31 promote the public health, safety, and general welfare.  
32

33 Vice-chair Halkiotis agreed indicating the lack of amenities such as a public address system as well as outdoor athletic  
34 field lights and use of portable restroom facilities removed at the end of the defined cricket season addressed her  
35 concern over public health, safety and welfare. Requiring driveway access off Old Greensboro Highway was  
36 consistent with the UDO and eliminated the potential use of Holly Creek Lane by individuals using the proposed  
37 recreational facility. This was a concern of several neighbors, who had testified to increased road traffic and  
38 maintenance costs since the inception of the cricket field. Chair Meyers reminded the Board the applicant indicated  
39 they would erect no parking signs on Holly Creek Lane along their property to ensure no one using the athletic fields  
40 would park along the private roadway. Mr. Scott said neighbor testimony over increased road maintenance costs did  
41 not affect the public health, safety, and general welfare. As this was a private road, issues associated with the  
42 collection of required monies to maintain the roadway were a private matter. The fact the recreational facility would not  
43 be using Holly Creek lane address most of his concerns over public health and safety issues.  
44

45 **MOTION** made by Vice-chair Halkiotis to find there was sufficient evidence in the record demonstrating the applicant  
46 had complied with the provisions of Section 5.3.2 (A) (2) (a) of the UDO. Specifically, as detailed on page 178 of the  
47 December 14, 2020 Board of Adjustment agenda packet, there was sufficient evidence in the record indicating the use  
48 will maintain or promote the public health, safety, and general welfare, seconded by Mr. Kent Qandil.  
49

50 **VOTE:** Unanimous.

1 Chair Meyers added he did not believe there was sufficient evidence in the record refuting the applicant's testimony  
2 related to the applications compliance with the Section.  
3

4 Chair Meyers asked if there was additional discussion on compliance with Section 5.3.2 (A) (2) (b) of the UDO that the  
5 use will or will not maintain or enhance the value of contiguous property.  
6

7 Mr. Qandil asked if there was ever an argument the proposed recreation facility constituted a public necessity allowing  
8 the Board to determine there was no need to make the required finding. Vice-chair Halkiotis said in her mind there was  
9 no argument made by the applicant suggesting this land use was a public necessity. The staff never made that  
10 suggestion either and provided documentation as part of the script outlining the applicable evidence in the record.  
11

12 Mr. Scott reminded the Board there was testimony on both sides that the use would and would not maintain values.  
13 Vice-chair Halkiotis respected the Weidner's concerns but did not find their testimony sufficient to prove the use would  
14 not maintain adjacent property values. Mr. Qandil said he believed the testimony of Ms. Ferguson who argued the use  
15 would maintain adjacent property values and did not believe there was sufficient evidence in the record demonstrating  
16 the applicant had not met their burden.  
17

18 **MOTION** made by Vice-chair Halkiotis to find there was sufficient evidence in the record demonstrating the proposed  
19 recreation facility will maintain the value of contiguous property. Specifically, Vice-chair Halkiotis cited the testimony of  
20 Ms. Ferguson and the analysis provided by Mr. Kirkland. Mr. Scott seconded the motion.  
21

22 **VOTE:** Unanimous.  
23

24 Chair Meyers indicated the next finding, as detailed on page 179, was on Section 5.3.2 (A) (2) (c) that the proposed  
25 recreation facility will or will not be in harmony with the area in which it is located.  
26

27 **MOTION** made by Mr. Scott to find there was sufficient evidence in the record demonstrating the proposed recreation  
28 facility will be in harmony with the area and complied with the County's Comprehensive Plan, seconded by Mr. Qandil.  
29

30 **VOTE:** Unanimous.  
31

32 Chair Meyers thanked the Board and indicated if there were any comments on the proposed conditions beginning on  
33 page 180 of the December 2020 agenda packet.  
34

35 After general discussion, Vice-Chair Halkiotis moved to modify the conditions as follows:  
36

- 37 • Condition One modified as follows (highlighted in *italics*): *Consistent with the submitted Special Use Permit*  
38 *application, and for public safety purposes as required in Section 5.3.2 (B) (2),* proposed outdoor athletic fields  
39 shall only be used to support the playing of cricket matches and practices. No other recreational activities are  
40 proposed for the property;
- 41 • Condition Three modified as follows (highlighted in *italics*): *Consistent with the submitted Special Use Permit*  
42 *application, and for public safety purposes as required in Section 5.3.2 (B) (2),* cricket play shall only:
  - 43 a. *Occur* from the months of April through October;
  - 44 b. Be played during weekends (Saturday and/or Sunday) with practices being limited to two days a  
45 week for no more than 3 hours during daylight hours.
- 46 • Condition Four modified as follows (highlighted in *italics*): *Consistent with the submitted Special Use Permit*  
47 *application, and for public safety purposes as required in Section 5.3.2 (B) (2),* matches are for  
48 social/recreational purposes only. Use of the recreation facility will not be part of a professional league  
49 associated with earning prize money or other form of monetary gain for participants;

- 1 • Condition Five modified as follows (highlighted in *italics*) There shall be no use of Holly Creek Lane to support  
2 activities on the property (*i.e. field access, parking, or staging of vehicles with the exception of public safety*  
3 *vehicles responding to an emergency*);
- 4 • Condition Nine modified as follows (highlighted in *italics*) The recreational facility shall use portable toilets,  
5 which shall be:
  - 6 a. *Services* after every event within 72 hours;
  - 7 b. *Screened with a wall consistent with the approved site plan*;
  - 8 c. *Removed from the site at the conclusion of the cricket season every October.*
- 9 • Condition 12, related to screening of porta-potties, was deleted. Language incorporated as part of Condition 9;
- 10 • A new condition 13 reading as follows: *Consistent with applicant testimony from the December 14, 2020 and*  
11 *January 11, 2021 Board of Adjustment public hearings, no more than 50 cars shall be on-site at any time during*  
12 *a cricket match or practice*

13  
14 Mr. Scott asked if this would address the screening of the overflow-grassed parking lot. Chair Meyers said at the  
15 January 11, 2021 public hearing to show a hedgerow delineating the grassed parking area as recommended by staff  
16 already revised the site plan. If the Board approved the permit, the applicant was bound to abide by the modified site  
17 plan requiring the hedgerow.

18  
19 Chair Meyers asked if there were any other modifications to the various conditions or a second to Vice-chair Halkiotis  
20 motion. Mr. Scott seconded the motion to approve the modified conditions.

21  
22 **VOTE:** Unanimous.

23  
24 Chair Meyers asked if there was a motion to indicate the applicant had met their burden under the UDO to warrant  
25 approval of a special use permit for a recreational facility on the subject parcel. This motion would also have to involve  
26 approving the site plan and imposing the revised conditions.

27  
28 **MOTION** made by Vice-chair Halkiotis to find:

- 29 1. The applicant, through competent material evidence and sworn testimony, demonstrated the proposed  
30 recreational facility complied with the various provisions of the UDO including findings the project would  
31 maintain the value of contiguous property, was in harmony with the area in question, and would promote the  
32 public health, safety, and general welfare,
- 33 2. There was insufficient evidence in the record indicating the applicant had not met their burden, and
- 34 3. The Board had made the required findings of fact and conclusions of law to issue the permit.

35  
36 Seconded by Mr. Scott.

37  
38 **VOTE:** Unanimous.

39  
40 **MOTION** made by Vice-chair Halkiotis to approve the Special Use Permit authorizing the development of a recreational  
41 facility

- 42 1. The applicant, through competent material evidence and sworn testimony, demonstrated the proposed  
43 recreational facility complied with the various provisions of the UDO including findings the project would  
44 maintain the value of contiguous property, was in harmony with the area in question, and would promote the  
45 public health, safety, and general welfare,
- 46 2. There was insufficient evidence in the record indicating the applicant had not met their burden, and

1 3. The Board had made the required findings of fact and conclusions of law in order to issue the permit.  
2

3 Seconded by Mr. Scott.  
4

5 Chair Meyers asked Vice-chair Halkiotis to clarify that her motion was to find the Board had determined the applicant  
6 met their burden, to issue the Special Use Permit imposing the revised conditions, and to approve the site plan as  
7 modified by the applicant at the January 11, 2021 evidentiary hearing. Vice-chair Halkiotis indicated that was her  
8 motion. Mr. Scott said that it what he thought the motion was when he seconded it.  
9

10 **VOTE:** Unanimous.  
11

12 **ADJOURNMENT**  
13

14 **MOTION** made by Mr. Scott to adjourn, seconded by Mr. Qandil.  
15

16 **VOTE:** Unanimous.  
17  
18

Leon Meyers



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LEON MEYERS, CHAIR  
21 October 2021