

Cashiers Area Community Planning Council Minutes

November 16, 2020

2:00 p.m.

Village Green (Common Hall) & Virtual Meeting

Members	Present	Absent	Members	Present	Absent	Members	Present	Absent
David Bond	X		Robin Ashmore	X		Michael Cox	X	
Bob Dews		X	Mark Letson	X		Deborah Townsend Stewart	X	
Glenn Ubertino	X							

Staff Present

Michael Poston- Planning Director

John Jeleniewski- Senior Planner

Heather Baker- County Attorney

Caroline LaFrienier- Planner II

Allison Kelley- Administrative Assistant

Others Present

Steven Macauley, Applicant

Craig Justus, Attorney to Applicant

John Noor, Attorney

Call to Order

Chairman Michael Cox called the meeting to order at 2:17 p.m. and a quorum was present.

Additions to Agenda

Deborah Stewart made a motion to approve the agenda, and remove number 4 "Public Comments." Robin Ashmore seconded the motion, and it carried unanimously.

Approval of the Minutes

Mark Letson made a motion to approve the October 26th, 2020 minutes presented to the Council. Robin Ashmore seconded the motion, and it carried unanimously.

New Business

a) Special Use Permit: Cashiers Village

Chairman Cox opened the public hearing at 2:18 p.m.

Mr. Cox stated county staff and Council had received a motion to continue from attorney John Noor on behalf of several parties that claim to have standing to participate in the quasi-judicial hearing. Before proceeding further with the hearing, the Council would like to hear the objection to notice of hearing and motion to continue from Mr. Noor.

Mr. Noor stated for the record the clients he represents in regards to the motion are from the Gana-Sita Property Owners Association, the Chattooga Conservancy, Yvonne Johnson, Jean Menge, and Laura Moser. He was obtained on Friday, November 12, 2020 at 4:00 pm to represent his clients to be prepared for this hearing. The notice of hearing was provided approximately sixteen days ago, which is at no fault from county staff. However, it is impossible for his clients to be prepared for a hearing at this magnitude involving the issues that are going to be considered by the Council with no time to prepare. To his understanding, this is the largest development proposal that has been presented in the Cashiers area. In particular, it requires the evaluation of areas that involve potential landslide issues, traffic concerns, evaluation issues for abutting property owners, public safety and other issues that generally require expert testimony to be provided. Mr. Noor stated his clients have the right to be able to produce that evidence through expert witnesses, and they could not obtain those experts in the amount of time given from notice to the proposed project.

Mr. Noor stated he is involved in several other projects in western North Carolina area, and in the last two weeks they have contacted over a dozen experts with background in the type of issues the Council will have to consider. These experts were not available to assist his clients as of today, and most would not be available until mid-to-late January. The first basis for request to continue is to provide adequate time to respond to the development proposal. Mr. Noor stated it is a due process concern for his clients to be able to present that evidence, and ask for a reasonable amount of time to prepare that response and provide it at a later hearing to the Council. The second reason for requesting the continuance is and no fault to staff as he believes they did all they could to set the meeting up in a way that is fair and safe. Mr. Noor stated the notice was issued on October 30th and since that time the Governor of NC issued an executive order that in-person mass gathering limits to 25 people, and it would be unlawful because of the COVID-19 restrictions. In addition, NC public meetings law requirements, there is an in-person public hearing or a remote hearing and not an option for a hybrid meeting. Mr. Noor stated in this situation those present in-person are the Council, parties that alleged to have standing, community members, and those on the virtual format are participating in the hearing. This constitutes as a remote meeting under state law that and under the governors emergency declaration, remote meetings can occur if all parties with standing consent to the remote meeting. Mr. Noor stated that his clients are concerned about the due process rights that are presented regarding the remote meeting, and do not consent at this point to the remote meeting. He stated they would like to have the opportunity to work with the applicant, and staff in how information is being presented, how the Council views witnesses, how the interface is being communicated and whether there is a delay in that communication for objection purposes, and how information that is presented in paper has been shared. Mr. Noor stated they have asked to continue in February due to the availability of expert witnesses in the area, COVID-19, holiday season, and general work load based on those private practice. His clients would like the same opportunity as staff had to review the proposed project, to his understanding it was submitted in August or September and the staff report did not come out until late October. This would allow adjoining neighbors their due process rights to be prepared.

Craig Justus attorney for the applicant has been practicing land use law for approximately 30 years. Mr. Justus stated it is common during these types of hearings for those in opposition to ask for more time to collect experts to oppose the proposed project. The general assembly has set out in the rules that is our law of the minimum notice requirement. Mr. Justus stated the argument is not that the county has violated process and notice of the general assembly that is required, Mr. Noor has stated it violated the constitutional rights, and Mr. Justus would respectfully disagree. The general assembly

states the law requires that these types of hearings require a notice that must be posted between 10-25 days. Mr. Justus stated that the idea that this is violating the constitution is stating that state law is unconstitutional. The county followed state law when sending out notices, and Mr. Justus does not agree that this violates due process rights. Mr. Justus stated that the idea that this violates a recent governor order about mass gatherings, it was very clear that exempted from those requirements were government's providing services to the public which includes this Council providing this service for the proposed application. He stated this event is excluded and exempt from the mass gathering requirements, and there is no constitutional ban having this meeting. In addition, Mr. Justus stated that Mr. Noor stated this violates a remote hearing, which is not correct as a remote hearing would be that all council members or at least one were remote from one another. The general assembly allows you to participate with the other members remotely if not all members were in the same room. Mr. Justus stated that since the entire Council is in-person attending, it is not a remote meeting and there is no requirement that those that want to object has to consent to the remote hearing. Staff made an effort to find space to have an in-person meeting and those that chose to participate virtually. Mr. Justus stated they are ready to present their evidence in-person, and staff have allowed more options for those in opposition to participate virtually. Being a developer there is many time constraints in the ability to move forward, and the idea to continue in February is a hardship. The county commissioners have set rules that follows state law, and he would respectfully ask to move forward because none of the points in the objection matches what state law or the county requires for these types of hearings. Mr. Justus asked the Council to consider that we do not know what is around the corner with the pandemic, as there are spikes that are occurring that may get worse before it gets better. Mr. Justus stated they should not push the meeting as they are here ready to move forward, and the pandemic might be worse two months from now. Depending on what happens with the pandemic, they might have to consider holding the meeting virtually, but all those in opposition would have to consent to the virtual meeting.

Mr. Noor stated that this notion is not stated they are not counting the official notice, but by using electronic format, state law requires a location and means for electronic viewing in the notice. That was not provided in the notice, there is no location for someone who would want to view this hearing that do not have access to a computer. In addition, Mr. Noor stated they would like the opportunity to present information and participate which is a constitutional protection and is guaranteed to his client. He could not be prepared in three days to present information that this Council needs to make a decision. That is a due process issue, and sometimes these hearing can take multiple days and months for the Council to make a decision.

Ms. Baker inquired from Mr. Noor if the entire Council of the Board of Adjustment in Buncombe County was present. Mr. Noor stated the entire Council was present.

Mr. Cox asked Mr. Noor what professional experts do they intend to obtain. Mr. Noor stated traffic experts, geologist for related landslide stability concerns, property experts for evaluation appraisal, and a stormwater expert. Mr. Cox inquired if the experts would be used to help argue the standing of his clients. Mr. Noor stated the experts would be able to help prove his clients standing.

Mr. Cox asked Mr. Justus if his client would suffer any undue financial hardships from continuing this hearing. Mr. Macauley stated yes he would suffer financial hardship if they postpone the hearing more than a month.

Ms. Baker informed the Council she believed they are legally holding the meeting correctly amidst the pandemic. The notice has to be sent out between 10 days an no more than 25 days before the hearing, and that was legally done. All the adjacent property

owners with standing had at least two weeks to gather experts, and she understands Mr. Noors concern and request of not being able to get experts together within that amount of time. There is no council member participating remotely, the law that was passed this summer by the state legislator states a remote meeting is when a member of the governing body is participating remotely. Ms. Baker stated they also provided a way for the public to observe, not necessary to participate unless they have standing. The notices that were sent out had the YouTube link to observe at any time, and staff also considered those that did not have computers or internet and had the option to call the Planning Department to help find a place or way to participate. We have complied with all those elements, and she believes they are having the hearing the correct manner, and the decision is for the Council to decide if they want to grant the continuance request.

Glenn Ubertino made a motion to hear from those parties that alleged to have standing. Mark Letson seconded the motion, and it carried unanimously.

Deborah Stewart made a motion to grant the continuance request. Robin Ashmore seconded the motion, and opened for discussion from the alleged parties with standing.

The following parties that alleged to have standing were in favor of the continuance request: Anita Cramer, Steven Johannessen, Pat Nardy, Paul Anderson, Glenn and Lisa Ullmann, Mark and Jamie Moran, Giuliana Kaufman, Suzanne Graham and William Wallet, Jeannie Menge, Robert Savelson, Kelly Ryan, Keven Hawkins, Nicole Hayler, Robert Wood, and Mary Ellis.

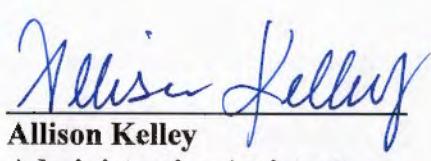
David Bond made a motion to continue the hearing for January 6, 2021 at 9:00 a.m., Glenn Ubertino seconded the motion, and it carried unanimously.

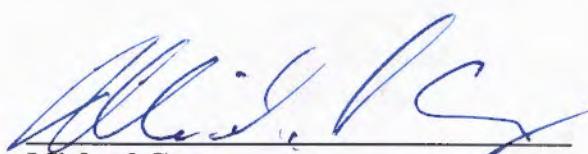
Chairman Cox closed the public hearing at 3:40 p.m.

Adjournment

With no further business to discuss, Chairman Cox adjourned the meeting at 3:41 p.m.

Respectfully Submitted,


Allison Kelley
Administrative Assistant


Michael Cox
Cashiers Planning Council Chairman