



Board of Commissioners Special Meeting Minutes
Thursday, October 17, 2024 at 6:00 PM
City Hall

1. Call to Order - Mayor Jeff Winecoff

Mayor Winecoff called the meeting to order at 6:00 p.m.

Attendance:

Mayor Jeff Winecoff
Commissioner David Mammay
Commissioner Kim Sherwood
Commissioner Teagan Hall
Commissioner Justin Lovin
City Manager Gordon Hargrove
City Attorney Robert Hornik
Police Chief Kevin Smith
Assistant City Manager Nicole Morgan
City Clerk Nancy Sims

2. Approval of Special Agenda

Consensus to approve the special meeting agenda.

3. Discussion Regarding the Highlands

Mayor Winecoff advised that this special meeting is to provide some information the City has learned regarding the Highlands. We want to answer some questions that you all have been asking. He added the BOC expects kindness during this meeting. If someone gets out of order, they will be asked to leave. He then turned the meeting over to the City Manager.

Mr. Hargrove indicated that information was handed to the attendees in the audience. Tomorrow this same information will be uploaded to the City's website. The information is a 15 bullet point list of historical documents that contains a brief history of the Highlands. He then read the list of documents. The full list is attached hereto and made a part hereof.

<https://www.cityofbsl.org/news/historical-documents-re-highlands>

Mr. Hargrove continued you are probably asking yourselves why all these dates. You asked us how the Highlands was able to be developed the way it was. It is because the developer had vested rights to develop under the rules and regulations that were in place in 1970, prior to the existence of any County or State stormwater regulations. The City had no choice but to approve the building applications. Our attorney, Robert Hornik, will explain vested rights to you. **Mr. Hornik** advised that vested rights is a legal theory that was recognized in North Carolina caselaw by the State Supreme Court in the late 1960's. Commonlaw vested rights means that when a property owner or developer invests in property based on an approved plat and makes substantial expenditures relying on the approval, then even if the rules change down the road they are allowed to develop under the rules that were in effect when platted. What it means with respect to the Highlands is that the Highlands was platted in approximately 1970 and recorded in 1996. When Sanco/Dominion acquired the lots, the streets had been done to a certain extent and other improvements had been made. They acquired vested rights to develop the property and build the property the way it was laid out in 1970. If they had started from scratch today they probably would not have been able to do what they have done, because the rules have changed. But because they acquired the property and made a substantial investment in the property, they are allowed to develop the property based on rights that were acquired in 1970 or 1996 before any of today's regulations were adopted. That is part of the legal issue with respect to what could be done now. The developer has certain rights to continue doing what they have done thus far not subject to today's regulations, because of vested rights.

Mr. Hargrove added we would also like to bring to your attention that when this development came before the BOC and was approved, nobody on this board or no staff member was at the City at that time. So, please take into consideration we are trying to help you the best way we statutorily can. Unfortunately, we have to follow the law. We understand your frustrations, but please understand we have guidelines within which to work.

Mayor Winecoff stated we are not here to fight against you all, but once that area became an HOA we can't help without the HOA asking for it. That has not happened. It is up to the HOA to reach out. I have lived in an HOA and I know there are rules because I had to follow them when my place flooded. I understand your frustrations. After our last meeting, I tried to call the governor and he has not called back. We are trying as best we can to get a FEMA declaration and still have not gotten an answer. Since this board has been elected, we have tried to tighten up some of these rules as we don't think these platted lots should have been built the way they were. We are working on trying to put things in place for the future. You all need to know how to move forward, that unless the HOA reaches out to us there is nothing we can do legally. Now we can open up for questions.

Barbara Reynolds, 739 South shore Drive. Ms. Reynolds started to ask questions about a subject not having to do with the Highlands. Because this was a special meeting for discussion regarding the Highlands, statutorily, Ms. Reynolds was asked to hold her comments for another meeting.

Tiffany Braden, 930 Westway Road. She wanted to verify that the City is not responsible, it is Logan and everyone else we need to get in contact with. **Mayor Winecoff** replied if something like this flooding happens in the future, all we need to be able to act is for the HOA to reach out to the City and tell the City we have problems, can you assist us? The City is not against anybody. **Ms. Braden** said no one can speak to the President of the HOA, however Jade is the manager and she said she and the President have been in contact with the City about the drainage. I have it in writing. **Mayor Winecoff** stated this is the thing, we cannot have anything flood to the golf course from the Highlands until they finish what they need to do and they haven't done that. **Ms. Braden** asked you mean some kind of construction? **Mayor Winecoff** replied yes, they have to do their part. **Ms. Braden** felt then they should not be allowed to sell homes. **Mayor Winecoff** replied the law doesn't allow us to run water and flood somebody else. She then wanted confirmation the rules have now changed. **Mr. Hornik** responded the laws that are in effect today are far different than the laws that were in effect back then. **Ms. Braden** further asked what the City is working on to try to fix this. Do we need to harass the HOA to contact you? **Mayor Winecoff** reiterated they have stuff they need to finish. **Mr. Hargrove** added for the last two years we have been in conversations with the developer. After confirming with Mr. Hornik, **Mr. Hargrove** named Nathan Sanders as the developer. **Mr. Hargrove** continued, we are not happy with the stormwater in your neighborhood. We have been working on this for a couple of years and have identified some issues we would like to see the developer resolve. One of those issues is a stormwater pipe on private property. The City has agreed to lower a pipe on Golfview 10 inches if the developer will replace the pipe at the golf course. That should help drainage over there. Unfortunately, we have not had any feedback from the developer about whether he has permission from the private landowner to do what needs to be done. So we are at a standstill, waiting on him to make his move because if we lower our pipe on Golfview, it will not do anything but make the problem worse. He has to resolve that issue on private property. We have asked for a plan from him showing proper drainage. That is all I can say, but know that we have been in contact with them. **Ms. Braden** stated, so you admit there is a problem and you are attempting to do something about it. What can we do, because this will happen again? **Mr. Hargrove** replied I cannot tell you what to do. That is for you and your neighbors to decide. **Ms. Braden** added we have just been dealing with the builders, we didn't know there was a developer. **Mayor Winecoff** added I can tell you the pipe drained before the developer came in.

Anna Marie Capps, 940 Westway Road. She wanted to clarify that Nathan Sanders is the developer who is responsible for the condition of the land that our homes were built on. **Mr. Hargrove** replied I am not prepared to answer that statement. **Ms. Capps** then asked, if they are grandfathered in with how they developed the land, why doesn't that apply to building permits. Houses are built to a certain code and have to meet certain requirements. How does that not apply to the physical land these homes are built on? **Mr. Hornik** replied the building code is a different set of rules. The rules that apply to inspection and building are the ones that are in effect at the time of applying

for the building permit. The rules that apply are the ones in effect on the day you apply for your permit. Whereas, a plat for a subdivision where there is no buildings, just layout of the streets is a different set of regulations. I know it sounds crazy but that is the way it is. **Ms. Capps** added a lot of people didn't want to come tonight because they felt the situation is hopeless and they have lost faith. I also can't believe the City would call a special meeting just to say we are on our own. **Commissioner Lovin** responded I understand where you are coming from. Everyone that lives there is my neighbor. I have been talking with the mayor and manager trying to figure out things on the back end. What he is saying is legally there are certain things we cannot discuss in a public meeting. You are headed in the right direction, we are doing everything we can however we can only do what we can do legally. We are trying to do things on the back end to get the government to recognize this and step up, but we live in an HOA and it is private. Those are not City streets. **Ms. Capps** replied, but we pay taxes. **Commissioner Lovin** replied yes, because even though you live in an HOA, you still live in the City limits. We want to help but at the end of the day it comes down to the HOA and the developer have to reach out to us and say they need our help. They are not doing that. **Ms. Capps** replied our HOA says they have reached out to you. **Commissioner Lovin** asked who they contacted. If they say they contacted the BOC, I have not seen anything since I was sworn in in December. When I got back to our neighborhood after 36 hours I saw what you went through. We are doing everything we can on the back end, but our hands are tied.

Cindy Caison, 890 Westway Road. She is having trouble understanding. BSL knew there was a drainage issue. At what point can the City step in and say to the developer and builder you are making the other side a living hell, because there are parts of the golf course that have collapsed because of our water. At what point did or could the City say they are ruining the City. **Mr. Hargrove** replied it goes back to the fact that we can't turn down a building permit for the Highlands because they have a statutory right. **Ms. Caison** added that pipe at the golf course has been collapsed for a long time. I know people that walk there and that pipe comes from our community. **Mayor Winecoff** reiterated you need to understand that if someone comes to us and they meet all the criteria, the State regulates that we must give them a building permit. We have to follow State laws. If someone owns property in BSL and they meet the criteria, they can build. There is nothing we can do. He then explained how a developer can build in wetlands by paying the Army Corp of Engineers. **Ms. Caison** asked if that is something the City is working on changing? **Mayor Winecoff** responded we cannot stop the Army Corp of Engineers because that is the federal government, but we are working on putting more strict rules in place for building in areas that could possibly flood. One of the biggest lobbying groups in Raleigh is the Home Builders Association. **Ms. Caison** then inquired how we can get rid of our HOA. **Mr. Hornik** replied there are ways you can do that but I'm not familiar with your covenants. **Ms. Caison** continued if we do get rid of our HOA and then reach out to the City, will you come in and help? **Mayor Winecoff** replied that is our job. **Ms. Caison** then said the HOA tells us we cannot dig in our ditches. The HOA says we cannot remove vegetation out of the ditches. The sooner I can get rid of them the better. If I do start digging in my ditch are you going to

arrest me because I am protecting my house? **Mayor Winecoff** replied that is between you and the HOA.

Laurie Streeter, 870 Pine Needles. WWAY did a news broadcast, Mayor, where you said you were working with FEMA to get our homes fixed and to help with infrastructure. To date PTC#8 has not been declared. We have had no help from any agency. Please try to do a better job of getting FEMA, we really need help. **Mayor Winecoff** replied he reached out again today to our representatives in Raleigh and asked for help because we need it to be declared. They are also pushing. **Ms. Streeter** added please don't give up, we are all struggling financially and emotionally.

Devin Tilley, 961 Westway Road. I am social worker and note that it has been a lot of us versus them. How can we get together to come up with a solution to try to help everybody? **Mayor Winecoff** replied I have told people to flood the office of your congressman, call them and leave a message. Everyone needs to keep bugging them. **Ms. Tilley** added a lot of us feel hopeless. She then explained the hierarchy of needs. **Mayor Winecoff** replied we know what needs to move, but you all have to push as well. We are not ignoring you, but we can't go too far. You also have to work to get it done as well.

Emily Peat, 920 Westway Road. She asked to give proof of how many times the Mayor contacted the Governor? **Mayor Winecoff** replied he made a phone call after the last meeting and also talked to our representatives in Raleigh.

Ryan Armstrong, 910 Westway Road, Yes or no answer, it sounds like there is no immediate recourse for us tonight. **Mayor Winecoff** replied true.

Shannon Van Deren, 320 Pine Lake Road. You say you are following the plat map from 1970, does that leave us with more lots not yet developed that will also fall under this 1970 rule that homeowners coming in aren't going to know about? Also, is there something that we can do in the community for the unknowing families that may be coming to buy a lot will that fall under this rule? **Mr. Hargrove** replied the City has over 9,500 lots that can be developed that are pre-platted. He raised the alarm to the commissioners that if we don't find a way to resolve this issue then we will have this type of problem all over again. I am going back to the Mayor's point that we are looking at some type of stormwater overlay or a change to our UDO that would eliminate the ability of builders to build a grade on slab and require them to build on a raised slab or foundation. If those houses had been built on a raised slab it would have probably eliminated a lot of the damage that you all had. We are looking at strengthening our UDO to prevent this from happening in the future.

Commissioner Mammay left at 6:46 p.m.

Mr. Hargrove continued, we are looking at stormwater overlays and stormwater fees. But, the speed of government is never fast. **Ms. Van Deren** opined that is concerning that there are 9,500 lots. When can we anticipate change coming? **Mr. Hargrove** responded it is imminent. Even prior to PTC#8 I asked our city attorney about a stormwater overlay that would help this. We typically bring the changes to the Planning Board first and then hold a public hearing with the BOC. Some of these UDO changes

could conceivably be within the next 60 to 90 days. **Ms. Van Deren** inquired how we can help. **Mr. Hargrove** replied speak in support of the public hearing. If you support it come out and speak about it so the BOC understands what the community wants. **Ms. Van Deren** then wanted to know what is meant when the Mayor says the HOA needs to come to the City. **Mayor Winecoff** replied if the HOA comes to the City we will work with the HOA to develop ways to help, such as bringing pumps in etc. An agreement has to be in place for us to come in and help. They can hold us liable. **Ms. Van Deren** added you also said the Homebuilders Association is the largest lobbyist of the General Assembly. None of us can compete with that. If we desire to try to persuade the Homebuilder's Association, how do we do that? **Mayor Winecoff** replied when new rules come out you can go on their website, see what they propose and give your opinions. Sometimes we know when they come out, but a lot of times we just don't know about it. You have to just keep checking the General Assembly website.

Terry Boyton, 549 Eagle Lane. How can we be proactive, we can't fight the HOA. For instance, when we drive down Highway 87 and see a new development why can't we take out a bill board that says this is a potential flood zone or demonstrate in front of this property. **Mayor Winecoff** replied we don't have anything to do with that, but you probably would need a permit to protest or with a billboard you would need proof of the facts. I can't tell you what you can and can't do. I would just be careful. **Ms. Boyton** felt the only way to affect the builders is to hit them in their pocket.

Laurie Streeter 870 Pine Needles. What would you recommend if we wanted to slow down or stop building and clear cutting in the City? It seems like the development is rampant, and the more vegetation removed the more we are prone to flooding. **Mayor Winecoff** replied my honest answer is you would probably lose. If you tried to stop a developer you would lose. They have so much power that even if we didn't like it, we would get no attention paid to us. That is just the way it is. All the City can do is put stricter rules in place. Truth is you can't stop the building.

Diana, Downing Road. She lives right next to Westway and has trenches in her backyard. They are completely flooded, there is no movement of water to any outlet, and they are totally blocked by trees. Logan did not implement any clearance and the trenches do not satisfy any standards. What is your due diligence here? How did you ensure that they did their responsibility? It doesn't look like they installed a proper trench to have a flow of water. **Mr. Hornik** replied Brunswick County regulates stormwater, the City has no legal interest in stormwater trenches. If it is under any regulation it would be the County. The easements are not dedicated to the City, they are dedicated to the HOA. **Diana** then stated they said they have the accountability of implementing the trenches properly so who did their due diligence to ensure they did it properly? **Mr. Hornik** replied, it should have been the builder or developer because they are the ones ultimately who installed the trenches. **Diana** inquired who ensures they do that. **Mr. Hornik** responded I suppose it would need to be inspected by someone. He recalled an amended plat recorded more recently that showed drainage easements along some of the lots. **Diana** then inquired how can we know that they did their due diligence to have proper trenches in place, and if they didn't fulfill the

standard whose responsibility is it to fix it? **Mr. Hornik** replied the property owners would have to do that.

Daniel Eason, 670 Mohawk Drive. **Mr. Eason** was advised that statutorily this meeting is regarding the Highlands only.

David DeVaughn, 901 Westway Road. He thinks this is more about the fact that this development was allowed to be built. These people are spending \$30,000. This is something that needed to be done before the development was built. Also, he was not clear what was meant by maintaining the ditches. Do you mean take the plants out that soak up the water? Do we maintain the part under the driveway too? Do we get down on our hands and knees and shovel out the dirt? The water had nowhere to go. You're lucky the lake wasn't full. If it was cool to build on a toxic waste dump in 1972 would anybody do anything about that? Plain and simple this should have not been built. I don't trust you to get anything done.

Tiffany Braden, 930 Westway Road. She wanted to know before the developer owned the land and there was no HOA, who was responsible for the land? **Mayor Winecoff** replied whoever owned the land was responsible. He then explained that he installed swales at his house which was his responsibility as a landowner to do. He then reiterated there is nothing we can do for the rules from the 60s and 70s. That is why we have been trying to find something to make it stricter when they build. **Ms. Braden** then stated this had been a problem for many years and the city knew that, she wondered if the City knew just because the roads were already there. **Mayor Winecoff** replied not necessarily, that area could have flowed perfectly before they started building. **Ms. Braden** then said the land was not built up before Florence and it flooded during Florence. Don't you think there should have been something for new homeowners coming into the neighborhood to tell us that? **Mr. Hornik** replied that would not be the City's obligation. That would be the owners/sellers' obligation to disclose. If there was significant flooding on the property, that should have been disclosed.

Cindy Caison, 890 Westway Road. She asked if vested rights transfer. **Mr. Hornik** replied yes. You own your lot, you own the house on the lot, but you also have an obligation to follow the covenants which the HOA owns. When you bought your property you also acquired the HOA rules in your declaration. **Ms. Caison** wanted to know how they can keep vested rights over me. **Mayor Winecoff** replied because they form the HOA to regulate what you can and can't do.

Russell Miller, 901 Golfview Road. When a State or City needs a road, they enact eminent domain. He then read the definition. What I am trying to say is you have people whose needs outweigh the property owner's and the municipality's needs. You have the right to say the City needs to do this in the name of eminent domain. You can supersede that and compensate yourselves later. He listed his previous employment. He further stated you don't have to go back and forth, you can get grant money, or do a GoFundme. Think about that. Look at Highways 70 and 40 and all the landowners they used eminent domain on. Go to the landowners and say to them you are done.

Linda Natole, 1281 East Boiling Spring Road. She wanted clarification the City is working on getting FEMA funds, and wondered if they will supersede the HOA. Mr. Hornik replied FEMA is providing financial assistance and that would not affect or change the covenants that govern the HOA. There would be no relationship between FEMA and the HOA. Ms. Natole then wanted to know, for FEMA to assist these people sometimes FEMA will demand they build back to FEMA specifications, to raise their property. Is that going to hurt them more? Mayor Winecoff replied we need FEMA to also help with funding for the City because the City can't afford this and we need to get this stuff fixed. We still have roads that need to be repaired. Ms. Natole stated I'm willing to help, I have volunteered before. Mayor Winecoff continued flood the offices of our representatives. Ms. Natole asked who you suggest we contact. Mayor Winecoff responded we rode around with Rouzer's team for two hours. Also contact Thom Tillis and Tedd Budd. They all need to be contacted. Email or call their offices. Contact numbers for representatives will be uploaded on the City's website tomorrow.

Audience question. How can we help individual people? Mayor Winecoff said Good suggestion. Maybe there could be created some kind of site that was already on Facebook. Because living so close to the coast we will have more storms.

Mayor Winecoff thanked everyone for coming tonight.

4. **Adjourn**

Motion to adjourn the meeting at 7:22 p.m.

Moved by: Kimberly Sherwood

Seconded by: Teagan Hall

Motion Carried 5-0




Jeff Winecoff, Mayor


Nancy Sims, City Clerk *Retired*