

**May 12, 2014**

**Wendell Town Board of Commissioners Meeting Minutes**

The Wendell Town Board of Commissioners held their regularly scheduled board meeting on Monday, May 12, 2014 at 7:00 p.m. in the Town Boardroom with Mayor Timothy A. Hinnant presiding. Present at the meeting were Commissioners Sam Laughery; Jon Lutz; John Boyette; James Parham; Virginia Gray; and Manager Teresa Piner; Town Clerk Jonnie Driver; IT Administrator Tamah Hughes; Finance Director Butch Kay; Police Chief Bill Carter; Public Works Director Alton Bryant; Interim Planning Director David Bergmark; and Planner Allison Rice.

Mayor Hinnant called the meeting to order at 7:00 p.m. and welcomed the guest.

Police Chief Bill Carter led the Pledge of Allegiance and the Invocation was given by Reverend James Lee of First Baptist Church.

**Adjustment and approval of the agenda**

No adjustments were made to the agenda and Commissioner Parham made a motion to approve the agenda as written. The vote was unanimous.

**Item 1 – Public Comment Period**

Mr. Delbert Demellow – 221 Meadow Lane stated he read in the paper that the town was going to allow a company to erect a cell tower at the corner of Hollybrook Road and Fourth Street. He asked why the public was not notified about the tower and given an opportunity to come and express their opinion to the town. He said he did not think it was going to represent Wendell very good. He said he did not understand how the company was putting up the tower without having a public hearing when Mr. Rich was moving his already existing business just around the corner and had to have two public hearings.

Mr. Demellow said the town keeps talking about trying to get more businesses in town, but the town did not work with people and try to help them and once the business is in place the town does not support the business and they can't stay in business.

Mr. Demellow said he heard that some people could not get phone service, but to him it was not worth putting the cell tower in the location that has been chosen and not even allowing the public to speak for or against it.

**Item 2 – Consent Agenda**

- a. Approval of the Minutes from the Monday, April 14, Board of Commissioners' meeting.
- b. Approval of the Minutes from the Monday, April 28 2014 Budget Work Session
- c. Approval of the Minutes from the April 28, 2014 Budget Work Session
- d. Renewal of the audit contract with Petway, Mills & Pearson

Commissioner Parham made a motion to approve the Consent Agenda as written. The vote was unanimous.

May 12, 2014

## Wendell Town Board of Commissioners Meeting Minutes

### Item 3 – Introduction of Planner Allison Rice

Interim Planning Director David Bergmark stated Allison Rice joined the Planning Department on April 25, 2014 and that her primary focus will be on long range planning efforts in addition to assisting with Wendell's current planning projects.

Mr. Bergmark stated Allison interned with the City of Raleigh Office of Transportation Planning, where she wrote the Complete Streets Policy for approval by the city's Board of Commissions. She also served as a Research Assistant at the Center for Historic Architecture and Design while attending the University of Delaware, where she helped to develop the State's Scenic and Historic Byways.

David said Allison earned her Master of Arts in Urban Affairs and Public Policy from the University of Delaware in 2013, concentrating in urban planning and historic preservation. She graduated from Chapel Hill High School and attained her undergraduate degree from Meredith College where she studied International studies, specializing in Central European nationalism and Poland. Allison is eager to contribute to the Town of Wendell during such a significant period of the Town's development.

The Mayor and Board welcomed Allison.

### Item 4 – Public Hearing on Amendments to the UDO as it relates to Quasi-Judicial Proceedings and the Board of Adjustment.

David stated by the end of the 2013 Legislative session, a number of changes were passed regarding the Board of Adjustment so this would be just to bring our UDO into compliance with these recent legislative changes.

David stated a number of changes were made regarding appeals to the board of adjustment. G.S. 160A-388(b1) consolidates the provisions on these appeals. Appeals are initiated by a person withstanding to appeal. A notice of appeal must be filed with the city or county clerk and must state the grounds for the appeal. New issues may be raised at the hearing, but if doing so would unduly prejudice a party, the board must continue the hearing to allow time for an adequate response. The act adds a uniform time to make appeals to the board. Appeals must be filed within thirty days of notice of a final, binding administrative decision.

David said previously the law allowed each individual ordinance to set a time limit for making an appeal. G.S. 160A-388(b1)(2) stipulates that a final, binding determination by a zoning administrator must be provided in writing and delivered by personal delivery, electronic mail, or first-class mail to the person requesting it. That person then has thirty days from receipt of the decision to make the appeal.

1. Required Text Amendment (1):  
Section 16.16B of the UDO currently requires appeals to be filed within 30 days from the "decision, order, determination, or interpretation made by the administrator". In order to Align with the legislative change, the language in this section should be changed to say "within 30 days from written notice of a final, binding administrative decision".
2. Required Text Amendment (2):  
Section 15.16,E,4 of the UDO includes language clarifying that an appeal stays all

May 12, 2014

### Wendell Town Board of Commissioners Meeting Minutes

Proceedings in furtherance of the action appealed from, unless the Administrator certifies, based on the records of the case, that a stay would cause damage to life or property. In order to align with the legislative change, an additional sentence should be added to the end of 15.16E,4 stating, "In those instances where enforcement is not stayed, the appellant may request an expedited hearing. If that request is made, the board must meet within fifteen days to hear the appeal."

3. Required Text Amendment (3):  
Section 16.16,D of the UDO currently contains the old language which call for a four-fifths Vote in order to overturn a staff decision or rule in favor of an appellant on an appeal. The heading and text of this section needs to be amended to state that only a simple-majority (3/5) vote is required.

Under the 2013 legislative changes, the standard for variances were simplified by deleting the "practical difficulty" language. It retains the requirement for a showing of unnecessary hardship," which under North Carolina case law has long been the principal consideration for variances. Additionally, although the alleged hardship must be real and substantial, the applicant is no longer required to show no reasonable use could be made of the property without a variance.

4. Required Text Amendment (4):  
Section 15.17,C of the UDO currently contains language which references the "practical difficulty" and "no reasonable use" requirements. Section 15.17,C,1 needs to be modified to say "There are unnecessary hardships in the way of carrying out the strict letter of the Ordinance; and " additionally, Section 15.17,C,5 needs to be deleted entirely, as it references the "no reasonable use" requirement.

David stated the Planning Board voted unanimously to recommend approval of the proposed text amendments, and staff recommends approval of the proposed zoning text amendment to Sections 15.16 and 15.17 of the UDO. The proposed changes are already state law. Implementing the changes into the UDO simply brings our code into compliance with these new state regulations.

There were no questions from the Commissioners for Mr. Bergmark and the Mayor opened the Public Hearing. No one wished to speak for or against the public hearing. Mayor Hinnant closed the Public Hearing.

Attorney Cauley said he would like to point out that these changes are required by the General Statute.

#### **Item 5 – Public Hearing on a Special Use Permit request to operate a fitness center at 15 W. Fourth Street**

David Bergmark stated Joshua Ritch requested a Special Use Permit to operate a fitness center at 15 W. Fourth Street. This request represents an amendment to an earlier special use request approved by the Town Board at the same location.

Mr. Bergmark said no variances were being requested, he is currently located at 45 N. Main Street and has expressed the desire to expand his business operation. The proposed site is within the town limits of Wendell and is zoned Downtown Mixed Use (DMX)

May 12, 2014

**Wendell Town Board of Commissioners Meeting Minutes**

Mr. Bergmark stated the applicant has also expressed a desire to include a small day-care area for children to be watched while their parents use the facility. Part-time daycare facilities in which children are watched for 4 hours or less are not required to be licensed by the state.

Mr. Bergmark said a special use permit was approved for the auction company prior to this Special Use Request and approval of this special use permit would override the prior special use approve at this location.

Commissioner Laughery asked David to explain to the citizen that made the public comment about why the installation of a cell tower did not require a Special Use Permit. David said the primary use is in the downtown there is a greater concern about parking and because the cell town is in a manufacturing where the requirements are not as stringent, more things can be done.

Mayor Hinnant opened the Public Hearing for comments. Mr. Paul White and Joshua Ritch were sworn in by the attorney to speak on the Public hearing. Mr. White said he was trying to do something to help the downtown area and hoped that the board would support the Special Use Permit. Mr. White said he would answer any questions that the board had. There were no questions.

**Item 6 – Discussion and Action on Amendments to the UDO as it relates to Quasi-Judicial Proceedings and the Board of Adjustment.**

Commissioner Parham made a motion to adopt the amendments to the UDO as it relates to Quasi-Judicial Proceedings and the Board of Adjustment. The vote was unanimous.

**Item 7 – Discussion and Action on a Special Use Permit request to operate a fitness center at 15 W. Fourth Street.**

Commissioner Lutz made a motion to approve the Special Use Permit for the fitness center at 15 W. Fourth Street. The vote was unanimous.

**Item 8 – Town Manager presents balanced budget and requests for public hearing to be set for the May 27<sup>th</sup> meeting.**

Manager Piner stated the budget was prepared in accordance with North Carolina Local Government and Budget Fiscal Control Act. The FY 2014-2015 recommended budget totals \$5,060,104 for all town operations, capital improvements and debt service requirements.

Mrs. Piner stated funds totaling \$203,200 are being used to balance the FY 2014-2015 budget. This allows the fund balance to remain above 40 percent of expenditures, per policy established by the board. The ending fund balance for FY 2013-2014 is estimated at \$1,981,450.

Mrs. Piner stated some of the highlights from the budget were:

- Property tax remains at \$.49 per \$100 of valuation
- Vehicle decal fee to remain at \$10 per vehicle
- Solid waste fee to remain at \$22 per month
- Lake Drive Stormwater project is funded in the amount of \$85,000 from Fund Balance
- Salary increases for employees of Merit increase of 1.5 percent and COLA of 1.5 percent
- No staffing additions – four positions remain vacant
- Vehicle loan: 1 police and 1 code enforcement \$15,000 per year for 59 months

**May 12, 2014**

**Wendell Town Board of Commissioners Meeting Minutes**

- Facility loan: Field lights \$90,000; Public Works Building \$75,000; Town Hall improvements \$150,000; marquee sign \$25,000. \$42,000 per year for 10 years.
- Special Events: \$10,000 per year to support special events in the Downtown District
- Raleigh will increase water and sewer rates by 5 percent.

Mrs. Piner said a public hearing is scheduled for the May 27<sup>th</sup> Board meeting with a vote on the

Mayor Hinnant said on the renovations to this building I do not see furniture, and when we paint and put down new carpet you are certainly going to be able to tell that this is surplus furniture. Mrs. Piner said if the board is comfortable with the \$150,000 we will see what we can back off of in the Board meeting room. Mayor Hinnant said I would ask that you look at adding furniture.

Commissioner Laughery asked if the list of things to renovate the building were in priority order. Mrs. Piner said we have started with the large numbers at the top for the things that we know are needed.

There were no further questions.

**Item 9 – Discussion and action on changes to the solid waste ordinance as it pertains to trash containers**

David Bergmark stated there had been some question about the time frame to have the trash containers at curbside prior to pick-up and the time frame in which to remove the containers might not be enough time for people especially those who might work on 2<sup>nd</sup> and 3<sup>rd</sup> shifts. The Planning Board took a look at this and felt that it would be better to have a 48 hour time frame so the containers would go to curbside no earlier than 7:00 a.m. the day prior to scheduled pick-up and removed from the curb no later than 7:00 p.m. the day after the scheduled pick-up.

Commissioner Parham made a motion to adopt the ordinance as amended. The vote was unanimous.

**Item 10 – Commissioner/s Comments**

Commissioner Laughery said he was pleased with the Main Street closing on Friday, May 2<sup>nd</sup> for the street dance and that he felt it was very successful. He urged everyone to support the Downtown businesses.

Commissioner Lutz had no report.

Commissioner Parham stated as we move forward with Wendell Falls I think about what Ken Adkins said when he mentioned the UDO and that the commissioners need to look at the UDO as situations arise take a look at the UDO and see if we can change anything. He said we have disgruntled citizens because they are not involved and may not understand. We need to make sure that they are aware of what is going on.

Commissioner Boyette said in reference to Mr. Demellow's complaint about not wanting a cell phone at his back door, I feel the same way, I don't particularly want it in my back yard either, but when citizens complain about not have cell phone service and business owners something has to be done.

**May 12, 2014**

**Wendell Town Board of Commissioners Meeting Minutes**

Commissioner Gray said I want to thank Mr. Demellow for coming and making his feelings known. I live two blocks over and I will have to see it also, but it is a much needed infrastructure. The town does not own that piece of land, so we can't control what he uses it for. I want to welcome Allison Rice and I am particularly interest in her Historic Preservation, I thank that will be an asset to the town. She said I also attended the Chamber monthly meeting and they are busy planning and working on events and if anyone would like to volunteer to help the chamber, I am sure they would appreciate the help.

**Item 11 – Mayor's Comments**

Mayor Hinnant said on Saturday he met with representatives from Newland Company and went to the development they have between Chapel Hill and Pittsboro and it is very nice.

**Item 12 – Closed Session**

Commissioner Parham made a motion to go into a closed session to pursuant to G.S. 143-318.11(a)(6) to discuss a personnel matter. The vote was unanimous.

Commissioner Parham made a motion to return to regular session.

Commissioner Parham made a motion to approve a 1.5 percent merit raise for the manager and that upon approval of the budget a 1.5 percent COLA when the other employees are given the COLA. The vote was unanimous.

Item 13 – Adjourn.

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Timothy A. Hinnant, Mayor

Attest:

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Jonnie S. Driver, Town Clerk