

November 14, 2011

## **Board of Commissioner's Meeting**

The Wendell Town Board of Commissioners held its regularly scheduled meeting on Monday, November 14, 2011 at 7:00 p.m. in the Wendell Commissioner's Meeting Room with Mayor J. Harold Broadwell, II, presiding. Also present were Commissioners Carol Hinnant, Sid Baynes; Christie Adams; Ira Fuller and Virginia Gray, Town Manager Teresa Piner, Chief Vance Johnson, Lieutenant Bobby Langston, Town Clerk Jonnie Driver, Planner's David Bergmark and Stacy Griffin, Public Works Director Alton Bryant, Finance Director Butch Kay, Parks and Recreation Director Brinkley Wagstaff and Editor Brian Slattery for Eastern Wake News.

Mayor Broadwell called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was led by Chief Vance Johnson and the invocation was given by Mr. Robert Josey of Pleasant Grove Baptist Church.

### **Adjustment and approval of the agenda**

Commissioner Hinnant stated she would like to add a closed session to the agenda as Item #10 for the purpose of discussing a personnel matter and to seek legal advice from the attorney. Commissioner Fuller made a motion to approve the agenda with the addition of Item #10 Closed Session. The vote was unanimous.

### **Item 1 – Public Comment Period.**

Ms. Laura Evans, 219 N. Hollybrook Road, stated she was in support of the chicken ordinance and encouraged the board to approve the ordinance allowing chickens in town.

### **Item 2 – Consent Agenda**

- a. Approval of the Minutes from the October 24, 2011 Board of Commissioners meeting and work session.
- b. Approval of the Wake County Tax Report for September 2011

Commissioner Hinnant made a motion to approve the consent agenda. The vote was unanimous.

### **Item 3 – Presentation of the 2010-2011 audit report by Petway, Mills and Pearson.**

Finance Director Butch Kay introduced Mrs. Phyllis Pearson of Petway, Mills and Pearson and stated she would go over the audit report and take any questions.

Mrs. Pearson went over the audit report with the board touching on some of the specific areas in the audit. Mrs. Pearson reported that the town's tax collection revenue was 96.98 percent real property was 98.72 percent with vehicle tax being 74.99 percent. She said those numbers were higher than the state average and that the town should be complimented on the efforts of pursuing tax collections. Mrs. Pearson stated there were no weaknesses, or non-compliances found in the summary of the audit.

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Commissioner Hinnant stated in the next budget the board would have to approve for the town to hire an actuarial and asked Mrs. Pearson to address that issue. Mrs. Pearson stated the town offered a post employment benefit, payments to employees which means they get health insurance coverage and other benefits after retirement or after they leave the town providing they meet certain requirements. She said in 2010 the Government Auditing Standards Board required certain things to be done and you have to accrue liability. She said for the first two years the town may accrue and estimate your own liability, which your finance officer has done, but the third year you must have an actuary who comes in and reviews your work and determines what the actuarial basis is for recording the liabilities. She said this has to be done by June 2012 and it cost between \$4,000 and \$5,000 to have the audit done depending upon the number of employees that you have. She said the League of Municipalities has negotiated with a company to give a bulk rate across the state and the company has a very good reputation.

Commissioner Hinnant made a motion to receive the audit report as presented by Petway, Mills and Pearson. The vote was unanimous.

**Item 4 – Discussion of Section 4.5 Code of Ordinances to allow for keeping of chickens within the corporate limits.**

Manager Piner stated on September 26, 2011 a Public Hearing was held regarding amendments to Section 4-5 of the Code of Ordinances. She said since that time concerns had been expressed and those concerns had been incorporated into the proposed ordinance. She said the proposed Ordinance O-3-2011 was before the board for consideration. Mrs. Piner stated she would take any questions or comments on the proposed amendment.

Commissioner Baynes stated the way he read the ordinance was if a hen house or coup existed the ordinance states where it has to be, but there is no requirement that there has to be a hen house or coup. Mrs. Piner said in Section 4-5.1 (5) it states all chickens will be kept in an enclosed area with a top or lid and in a clean, sanitary and healthful condition with all droppings and organic materials to be removed and disposed of in a proper manner. Commissioner Baynes said a person could have a pen and it would not have to be 25 feet from the property line. Mrs. Piner replied it was staff's intent that wherever the chickens were housed would be 25 feet from the property line. Mr. Baynes said it does not read that way. Commissioner Adams and Fuller agreed that it did not read that way.

Commissioner Gray said as I understand it, our goal is to make sure that we have an enclosed area and inside the enclosed area there would need to be a coup so the chickens would have shelter, but they would be able to move around in the pen as long as it has a lid on it. Mrs. Piner stated that was correct.

Mayor Broadwell asked Attorney Cauley if a sentence was added at the end of Section 4-5.1 (5) that said "the boundary of said enclosed area shall be no less than 25 feet from any adjacent property line" would be sufficient. Attorney Cauley said yes.

Commissioner Fuller said Section 4-5.1(4) would need to be changed to read "the hen house or coup shall be required rather than permitted.

Commissioner Adams made a motion to approve Ordinance O-3-2011 with the following amendments.

- (1) Section 4-5.1(4) A hen house or coup shall be required and shall be permitted in a manner similar to accessory buildings and shall be located in the rear yard only and shall be no less than 25 feet from any adjacent property line.
- (2) Section 4-5.1(5) All chickens will be kept in an enclosed areas with a top or lid and in a clean, sanitary and healthful condition with all droppings and organic materials to be removed and disposed of in a proper manner. The boundary of said enclosed area shall be no less than 25 feet from any adjacent property line.

Commissioner's Baynes, Adams, Fuller and Gray voted in favor of the motion. Commissioner Hinnant voted in opposition of the motion. The motion carried with a 4-1 vote.

**Item 5 – Discussion regarding development infrastructure improvements and acceptance by the town.**

Planner Stacy Griffin stated Chapter 17 of the Wendell Unified Development Ordinance provides requirements for infrastructure improvements, bonds for required improvements and warranties against defects in those improvements. She said currently there were no subdivisions that had been developed under the current guidelines.

Ms. Griffin stated there had been some question about when bonds should be returned to the developer. She said in the UDO the financial guarantee is 10% after everything has been installed and is renewable in one year terms until 50 percent of the building permits have been issued in that phase. She said a suggested change was for it to read 50 percent of the certificates of occupancy have been issued within the applicable phase. Once 50 percent of the occupancies have been issued within the phase the developer may petition the town to take over ownership and maintenance of the streets and infrastructure.

Ms. Griffin stated at the October 24<sup>th</sup> Board meeting the ability for a subdivision to pay for its services with the taxes collected on that subdivision was discussed. She stated as an example in Olde Wendell Subdivision an estimate for resurfacing 595 linear feet of street was \$4484. She said with the resurfacing and the four street lights on that section of the street it totaled \$4490.48. She said there are four houses and two vacant lots on that street and the total taxes paid last year were \$5897.37 which is enough to pay for the resurfacing of the street and lighting; however, taxes would not be enough to pay for all town services provided such as police, parks and recreation and solid waste services.

Ms. Griffin stated another concern discussed was the cost of street lights. Currently the UDO states the developers will install underground wiring for street lights, the street lights themselves and their costs as well as all costs associated with the use of custom or decorative materials.

Ms. Griffin stated prior to the economic downturn, it was Progress Energy's policy to install all the street lights at the time the underground wiring was installed and turn the lights on. She said now their policy is that staff has to request what lights are installed and when they are to be turned on. She said to make that clear in the UDO a sentence could be added to Section 17.5A to make it read, "The developer shall install underground wiring for street lights and shall install

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lights at the developer's costs prior to final plat approval. The Town will notify Progress Energy when the lights should become operational for each block within the applicable phase."

Ms. Griffin stated when the developer uses upgraded poles and fixtures the town also charges them the difference in the cost of the town's standard wooden pole and fixture and the cost of the upgraded light for a period of 20 years (the extent of the contract with Progress Energy). She suggested wording could be added to Section 17.5B to better clarify such as "Custom or decorative street lighting proposed by the developer is subject to approval by the Town prior to installation. The developer is responsible for all costs associated with the use of custom or decorative materials, to include the difference in the costs associated with the town's standard pole versus the upgraded lighting for a period of 20 years.

Ms. Griffin stated staff contacted Progress Energy about the possibility of turning off lights within existing stalled developments and that they could be deactivated but there would be a cancellation fee for each light. She said staff inquired about an existing stalled development where the lights were already installed and the town pays \$12.45 per light per month to keep the lights burning. Cancellation fees for this same subdivision would be \$390.52 per light which would take the town 32 months to break even from the cancellation fees.

Mrs. Griffin said staff is seeking direction from the board as to whether or not to take this to the Planning Board for further review. She said they would also recommend the review of the water/sewer allocation policy and the relationship between developments and cost of services that the town provides.

Commissioner Hinnant said she had some concern about the 50 percent of the Certificates of Occupancy before the town takes over the streets. She said that was too low she would like to increase the Certificates of Occupancy. She said on the issue of a subdivision paying its own way that example used as a snapshot and if it was looked at for a period of three years it might not be paying its way, and some of the other developments might not be paying their way. She said she believes there is a way to reach a break-even point, but she was not exactly sure how to do that. She said she also felt that the lights that were already on should be left on.

Commissioner Baynes said he did not like accepting any incomplete infrastructure. He said he would feel comfortable with a policy that says the town would not accept any infrastructure until it is complete and bond for that period. He said he felt like that period should be when 75 percent of the Certificates of Occupancy are issued.

Commissioner Fuller stated this recommendation is far better than what we had, but for the record the town has not been accepting incomplete infrastructure. The bonding process is there and the Town Board does not at the end of one year have to accept the infrastructure if there are deficiencies. He said the request tonight is for us to look at it and make a motion to send it to the Planning Board for them to work on it and bring it back to the board.

Commissioner Fuller made a motion for staff to forward the item to the Planning Board for their review to include the water/sewer allocation policy and the relationship between developments and cost of services.

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Commissioner Hinnant said she thought it would be helpful if the Planning Staff would give a brief description of what the town was doing and what we are currently doing so that everyone would know what has changed.

The motion passed unanimously.

**Item 6 – Review and update on status of current bonds held by the Town for approved development.**

Manager Piner stated at the October 26, 2011 Board of Commissioners meeting, information concerning the bonds currently held by the town were requested. She stated the town currently has three bonds in place, however since the agenda packets were sent out the two for SunTrust Bank have been replaced and new bonds have been received from CYGNUS which is a development company out of Atlanta who purchased Brighton Subdivision. These bonds are for streets that we have not accepted.

There was no further discussion.

**Item 7 – Discussion on the proposed rezoning classifications for the Extraterritorial Planning Jurisdiction (ETJ) extension area.**

Planner David Bergmark stated at the October 24, 2011, meeting staff recommended the closest equivalent Wendell zoning designation be given to those properties within the ETJ extension area that was approved by the Wake County Board of Commissioners on July 5, 2011. He said the purpose behind the zoning designations was to avoid the unnecessary creation of non-conforming lots.

Mr. Bergmark said at the October 24, 2011, meeting the Town Board directed planning staff to gather additional data on potential nonconforming lots within existing subdivisions in the ETJ extension area.

Commissioner Baynes said the board had pointed out specifically the situation of Tanner's Creek and the reduction minimum lot size standards. He said he had spoken to a builder that had built a few houses in Tanner's Creek and a few of the owners and they were upset about the minimum lot sizes being diminished. He said I think we need to stick to minimum size lots and a simple way to handle this is to let these developments have variances. He said Tanner's Creek is the only one that you are recommending downsizing even though some of the other developments have a higher percentage of lots that will be non-conforming.

Mr. Bergmark said we are recommending that a couple of other areas have a different zoning designation, so we are not just recommending Tanners Creek be zoned R2. Commissioner Baynes said that seems to be the one that has the most dramatic changes. He further stated he did not feel that it was fair to reduce the lot sizes when you have houses out there where other lots that have not been developed. Commissioner Fuller stated he did not feel with the town's request for the additional ETJ that we should not have any negative impact upon those properties. He further stated in the end there may be a few that are negatively affected that we

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cannot help. He said whatever we need to do in working with the Planning Board to take a look at this and make sure that as we hold these meetings that the property owners are treated fairly.

Manager Piner said that is what we are trying to do and in order to reduce the number of non-conforming lot's staff believes it would be best for the property owner's long term. However, what we are willing to do is talk with those owners and explain to them the way it works, and that we want to look after their best interest and when we explain that to them, I think they will understand it and agree with the zoning.

Commissioner Hinnant said we might want to come up with a way to contact these individuals and let them know that these informational meetings are being held. Mrs. Piner agreed.

Commissioner Baynes said I appreciate staff's willingness to work with the property owners, but I think you should be willing to listen to the concerns of this board. He said in Tanners Creek you have large tracts of land that have not been platted into lots. He asked what will happen if we reduce lots sizes and someone comes in and takes the rest of that property and puts much smaller lots. He said I don't want to even consider that. He stated he thought the process should be stopped and that variances should be given.

Commissioner Adams said she agreed, that the town needs to keep this from being an issue and asked what could be done to avoid this problem. Mr. Bergmark said we could issue a variance, but there is only about a five foot difference. He said these lots cannot be subdivided because of the depth. He said we were trying to avoid the owner having to come in and get a variance.

Commissioner Baynes made a motion to leave Arbor Trace and Tanners Creek at RR and recommended variances for non-conforming lots and send the rest forward to the Planning Board as proposed. Commissioner Fuller said I don't have a problem with that, but can we legally do that. Attorney Cauley said since it is a recommendation to the Planning Board that the board could proceed on that basis. He said you will have to adopt an ordinance after the public hearing and then there may be some different considerations. Commissioner Fuller stated he thought this issue was still at staff level and that it would not go to the Planning Board yet. Mr. Bergmark said it will go to the Planning Board on November 21 and December 19.

Commissioner Baynes withdrew his motion, but asked that the record show that he was not in favor of downsizing the lots in Arbor Trace and Tanners Creek.

Commissioner Gray asked that staff inform the residents in the ETJ area of the meetings so they can come and see what the town is recommending. Mr. Bergmark stated they will try to get the word out to the property owners about the informational meetings.

Commissioner Hinnant said we want it clearly understood by the Planning Board that it was never the intention of this board to harm any property owner in the ETJ extension area and that we need to provide as much protection as possible for these people.

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**Item 8 – Commissioner’s reports**

Commissioner Adams reported the Community Advisory Committee of the Eastern Regional Center schedule for November 16 had been cancelled and has not been rescheduled at this point.

There were no further reports.

**Item 9 - Mayor’s Report**

No report was given.

**Item 10 – Closed Session**

Commissioner Hinnant made a motion to go into Closed Session on a personnel issue and seek legal advice pursuant to General Statute 143-318.11(a)3 and 143-318.11(a)6. The vote was unanimous.

Commissioner Adams made a motion to return to regular session. The vote was unanimous.

**Adjournment**

Commissioner Fuller made a motion to adjourn at 8:45 p.m. The vote was unanimous.

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J. Harold Broadwell, II, Mayor

Attest:

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Jonnie S. Driver, Town Clerk

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The Wendell Town Board of Commissioners held a Work Session following the Regularly Scheduled Board meeting on Monday, November 14, 2011, at 8:45 p.m. with Mayor Harold Broadwell presiding. Present were Commissioners Carol Hinnant, Sid Baynes; Christie Adams; Ira Fuller and Virginia Gray; Town Manager Teresa Piner, Finance Director Butch Kay, Public Works Director Alton Bryant, Chief Vance Johnson, Lieutenant Bobby Langston, Planner's David Bergmark and Stacy Griffin, Attorney Jim Cauley, Town Clerk Jonnie Driver, and Eastern Wake News reporter Brian Slattery.

**Item 1 – Lake Myra Incorporated's request to move its light show into the corporate limits for the 2012 holiday season.**

Manager Piner stated there were four site options which were:

- A. J. Ashley Wall Towne Square,
- B. Near the tennis courts at Wendell Park,
- C. T-ball field area at the park,
- D. West of the T-ball fields.

Mrs. Piner stated option A was the best site because it already had the 400 amp service and a stage available. She stated the cost for this site would be approximately \$3,000 for the portable restrooms and cleaning for 45 days.

Mrs. Piner said option B would cost approximately \$3500 which would cover the cost of installing an additional power meter and the portable restrooms and cleaning. She said it would impact accessibility to the Community Center for the basketball games that would be started and would impact the residents of Third Street and the surrounding area.

Mrs. Piner stated option C would cost approximately \$5500 which included the cost of the 400 amp service and portable restrooms. She said it would impact the Soccer program because they play until the last Saturday in October and would also impact the T-ball field for the Spring Season.

Mrs. Piner stated option D was more secluded, would not impact the fall soccer program or affect the August set up date that Lake Myra requested. She said by clearing the site; the area could be used for an amphitheater in the future but the cost to clear, grade, seed and straw would be \$75,000 and the cost of the 400 amp service that would need to be installed would be \$2500 for a total cost of \$77,500.

Mrs. Piner stated in addition to the cost associated with each option there would be some additional expenses depending on the options that are selected such as additional liability insurance \$2,500, trams from Downtown Wendell to the park \$39,825, relocating the basketball to off-site during the time of the light show \$3,126, cost to repair the designated parking area after the show to grade and seed \$20,000, contract parking which was recommended by the League of Municipalities \$22,893, parking lot 8" base stone \$104,780, and gravel/asphalt drive around amphitheater \$128,000.



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Mrs. Piner stated Lake Myra Christmas had requested construction of a 20' x 40" stage by the town at a cost of \$1000, and feeds to the control panel and displays by the town as requested by Lake Myra \$2000.

Commissioner Hinnant said some of the cost associated are things we are looking at doing long term, but has anything been done in seeking sponsorship for site preparation because this is a lot of money. Mrs. Piner stated we have not at this time, but that is something we can certainly look into and see if we can make it happen.

Commissioner Adams said it seems the two best site options are option A and C. She said option A could be the best selection for economic purposes for Downtown and that she would like to hear what Mr. Williams had to say about that option. She said option C is the T-ball field and she thought something could be worked out as far as the impact of the accessibility to the Community Center. She asked if the 400 amp service that needed to be installed would be a long term benefit. Mrs. Piner said it would, because if and when the town decided to move forward with the amphitheater that would be beneficial. Commissioner Adams said she was in favor of sponsorships as Commissioner Hinnant had suggested.

Commissioner Adams said the contingency/alternative were not requirements of making this event happen or not happen. She said they are things to consider throughout the process. She said in reference to the additional liability insurance, why is this being recommended, do we charge other events for additional liability insurance. Parks and Recreation Director Brinkley Wagstaff stated that any large event has to provide \$1,000,000 liability insurance. Commissioner Adams said the cost to repair the designated parking area after the show; grade and seed for \$20,000 she saw that as what if. If the weather is bad we could possibly have some damaged areas to be fixed, but she could live with that better than the Parking lot 8" base stone \$104,780. She said I think the parking lot is an unnecessary expense. She asked if there had been any major repairs to be done to the parking lot in the past from the parking of the soccer and T-ball. Mr. Wagstaff said they don't play T-ball or soccer in the rain, so up to this point we have not had any major damages. Commissioner Adams said she did not see where the contract parking was needed because it was not required for any other event that the town had.

Commissioner Hinnant said she would like to see this downtown, and there should be a way to work things out even if they had to start a little smaller. She said the town does not have the money to make this work at the Community Center with the cost that are associated with the project.

Commissioner Baynes stated he felt that it should be downtown also from an economic standpoint.

Commissioner Gray stated she was also interested in Option A downtown, because she did not feel it was fair to shorten the ball season, or mess up the T-ball and soccer field turf. She said I don't think it is fair to bring something new in and take away from what parks already have in place. She said it seemed to her that option A answered all the questions that had been talked about tonight.

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Mr. Williams stated the light show would not work on option A. He said the space was too small and he would only be able to put one-third of his display out. He said where the stage is set up people would have to go thru the display and that he did not allow that. He said the show would work at the tennis court location, but it would take a lot of work due to the lay of the land, it is not level. He stated the best site is the T-ball site and it would benefit the town if the amphitheater ever came to life. He said the T-ball sight offered a good service for the handicapped.

Mr. Williams said he did not see where the portable toilets were necessary. He said on the cost of trams only one was needed, not three. He said he would suggest CAT buses rather than trams, but he did not know the cost. He said the relocation of basketball was unnecessary because they would not park on the paved parking, just the grass area. He said he did not have the light show when it rained so it should not be a problem and that his website eluded to that. He said they would not need the contract parking.

Commissioner Hinnant said could you use option D west of the T-ball without the amphitheater. He said it would work, but it would take a lot of work getting the soil packed for parking.

Commissioner Adams asked how much of the T-ball field would he need to set up. Mr. Williams replied the entire field. He said he would not need to start every year in August, but with the first year he wanted to make sure everything was perfect.

Commissioner Hinnant said there is a lot more discussion that needs to be done on the location and if anyone on the board would like to work with Mr. Williams and staff that would be good.

Commissioner Fuller said it would be helpful if Option C is the only site that would work, that staff take this site and work directly to get these things worked out and to bring it back in 30 days to see if we can make it work.

Commissioner Hinnant said she did not want to remove Option A from the table that she would like for Mr. Williams to go back and look at the areas that could be used at the Square, the parking area at the Woman's Club and the big open space behind the Woman's Club. Mr. Williams said I have looked at it three times and I don't see how it will work. He said the current display is 300 feet long. Mr. Williams said the Square is too well lit and it would wash out the light show.

**Item #2 State of Emergency Ordinance review.**

Manager Piner stated staff had been working with the attorney on the State of Emergency Ordinance. She said this does not have to go to the Planning Board because it is in the zoning code.

Commissioner Baynes said I do think we need to adopt an ordinance that gives the mayor authority because there are times when a State of Emergency is needed. He said he would suggest that under Proclamation by mayor to remove emergency agencies and list those agencies specifically so there would not be any questions.

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Commissioner Fuller suggested placing it on the November 28, 2011, Regular Board meeting for discussion and action.

**Adjourn.**

Commissioner Fuller made a motion to adjourn the work session. The vote was unanimous and the meeting was adjourned at 10:00 p.m.

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J. Harold Broadwell, II, Mayor

Attest:

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Jonnie S. Driver, Town Clerk