

Town of Spring Lake
Regular Meeting of the Board of Aldermen
Municipal Building
300 Ruth Street
Spring Lake, NC 28390

June 22, 2009

MINUTES

7:00

p.m.

The Spring Lake Board of Aldermen held a regular scheduled meeting in the Grady Howard Conference Room of the Spring Lake Municipal Building with Mayor Ethel T. Clark presiding.

Board Members Present: Mayor Pro Tem James O'Garra
Alderman Richard Higgins
Alderwoman Nellie McCoy

Alderwoman Fredricka Sutherland was absent.
Alderman Napoleon Hogans participated via telephone.

Others Present:

Larry Faison, Town Manager	John Jackson, Town Attorney
Allen Coats, Finance Director	Pau Hoover, Director of Inspections
Daniel Gerald, W&WR Director	Gregg Jarvies, Interim Police Chief
Ken Metcalf, Recreation Director	Tom Spinks, Planning Director
Robert Thomas, Fire Department Captain	Rhonda Webb, Town Clerk

2. Invocation.

Alderwoman McCoy gave the invocation.

3. Pledge of Allegiance.

Mayor Clark led the meeting in the pledge of allegiance.

4. Additions or Deletions to Agenda

Mayor Pro Tem O'Garra and Alderwoman McCoy requested that the Board add a Closed Session pursuant to G.S. 143-318.11(a)(6) – Personnel to the agenda.

Action: The Board approved a motion to add Closed Session under G.S. 143-318.11(a)(6) - Personnel to the agenda.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderwoman McCoy

Vote: Unanimous

5. Approval of Agenda and Consent Items.

The Board approved the agenda as amended and approved the consent items: Minutes of the June 1, 2009 Special Board Meeting, June 8, 2009 Regular Board Meeting, and

June 15, 2009 Special Board Meeting.

Action: The Board approved the agenda as amended and the consent items.

Motion by: Alderwoman McCoy

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

(A copy of the agenda and consent items is hereby incorporated by reference and made a part of these minutes – see attachment one.)

6. Presentation

Spring Lake Police Department Reconstitution Plan and Budget

Mr. Faison gave an overview of what the Spring Lake Police Department Reconstitution Plan includes. He advised that more than fifteen meetings have been held to try to work out a plan. He requested Chief Jarvies to summarize the plan in more detail.

Chief Jarvies gave an overview of the Spring Lake Police Department Reconstitution Plan and Mr. Coats discussed the budget implications of the plan.

This plan is an 18-month plan that includes the removal of all police officer positions on or about the first of July 2009. He stated that this is not the plan that he had intended to put in place when he came here. Without the availability to bring charges before the County Magistrates, Spring Lake Police Officers will not be effective. This in essence takes away their power. Judge Keever made it clear that all Spring Lake Officers must be hired under a new set of standards. He proposed that on or about June 2010 Spring Lake will have a smaller agency but an agency that will be able to provide all police services except for felony investigations. He explained the factors leading to the reconstitution. The SBI investigation is not complete. Once that is complete the District Attorney will act on that report. He stated that the District Attorney expressed concern about who the new Chief will be and showed apprehension about giving Spring Lake their powers back without knowing who will be in charge. He and the County staff need to feel comfortable about who is in charge and how the department will be run. There is no guarantee that the District Attorney will support any plan that is put in place. We are not in a position to negotiate and our hands are somewhat tied. We could put officers back on the street at risk to them. They still have the authority given to them by Training and Standards to be police officers. They are certified and have arrest powers but we need to be aware that their hands have been tied and will not be effective in their job.

Chief Jarvies stated that the plan will start with transferring two dispatchers to the County E911 office and those positions would become County positions. He would like to reclassify the other two dispatcher positions and allow them to continue functioning in the Police Department in an administrative role. Services by the Sheriff's Office would continue through the summer of 2010 and by that time we will have hired a Police Chief

and twelve officers and will have worked with the Sheriff's Office to train those officers. The Sheriff's Office proposes to provide four deputies, 24 hours per day, 7 days per week. They did agree to only provide three deputies on Sundays and Holidays. We have less than 50% staffing at this time and could not take the policing duties back over right now even if they were given back. The Sheriff has expressed opposition to

mingling forces and we would have to contract with someone to cover shifts that we are not able to cover until we get back up to full staffing. There are things that need to be considered before

we put officers back on the street. It may be difficult to hire police officers into a department that has an SBI investigation hanging over their head and has no police powers. The District Attorney has expressed that things must be done with a clean, broad brush. The District Attorney's decision to refuse warrants puts officers at a severe risk of high liability. People will start challenging them on the street because they will know that warrants will not be issued and citations will be found invalid.

Mr. Coats estimated that the cost for the reconstitution budget is approximately \$2,193,498. The projected revenues from the Fort Bragg/Pope Air Force Base annexation and the sale of the Spring Lake Business and Industrial Park should be enough to fund the Police Department Reconstitution Plan. Should the projected revenues not be enough there will be some fund balance that could be used.

Mr. Faison offered a side by side comparison between the Reconstitution Plan/Cumberland County Sheriff's Department Contract and remaining Status Quo/No Contract.

He requested the Board guidance on the reconstitution plan and the scope of the Cumberland County Sheriff's Office contract. Prior to July 1, 2009 we must adopt the annual budget and set and adopt the tax rate.

Mayor Pro Tem O'Garra asked about who assigned the Sheriff's Department to cover Spring Lake. Mr. Jackson stated under the common law the Sheriff's Department has co-extension jurisdiction with the Town. The Judge's order by memorandum tells the magistrates that it would probably be inappropriate to entertain arrest warrants for Spring Lake because the District Attorney by letter had indicated that he would choose not to prosecute them from the present constituted officers. There has never been an order entered but only access denied. It was through the Judge's administrative authority, the statute she quoted, that she suggested Magistrates not accept arrest warrants.

Alderwoman McCoy asked how the Sheriff can charge Spring Lake extra money if he has County wide jurisdiction. Mr. Jackson stated that there is no precedence or any known statutory authority that says the County can charge the City for those services.

Mayor Pro Tem O'Garra stated that he is leaning toward not giving the Sheriff's Department any money. He stated that he does not want to lose what we have and if

we let go of our Police Department we will never get it back. He is concerned that the District Attorney has his own agenda. I am happy being Spring Lake and am not ready to be North Fayetteville.

Alderwoman McCoy stated that Judge Keever has a boss and we need to go beyond them. Mr. Jackson stated that the District Attorney has total discretion as to what cases he will process. There is no precedence for what has occurred here. Even if we get through the Magistrates the District Attorney will have another shot at not prosecuting the cases. Mayor Pro Tem O'Garra stated that there have been other departments who have had trouble and they were not treated

the way Spring Lake has been treated.

Alderwoman McCoy stated that she has a problem with just letting good officers go. It is not fair

to them. Mr. Jackson stated that we have a dichotomy here. This is an unprecedented situation. Under the statute that the Judge has relied on it was never intended to prevent a sovereign community with police powers authorized by the General Assembly to deny access because of

the administrative right she has. By statute a Magistrate is a judicial officer and is held to his independent judgment when a case is presented to him. The problem is, and it comes back full circle, even though they accept it and issue a warrant the prosecutor can choose to not process the case and you would be right back at square one. Mr. Jackson stated that he has found no statutory authority that will allow a special prosecutor could be interjected into this situation. The statute that will allow a special prosecutor is based on the request of the local elected prosecutor. He will continue to research this issue.

Alderman Hogans stated that he is not inclined to support this contract at this time. He is concerned that the officers that will be working Spring Lake will be tired since they have already worked a 40-hour week. He requested that Mr. Jackson take necessary action to obtain our authority. Mayor Pro Tem O'Garra stated that he agreed with Alderman Hogans. Can we request an emergency injunction on behalf of the citizens of Spring Lake or how will we proceed if the contract is rejected. Mr. Jackson stated that we will have to exhaust our options at the local level before we go to Federal Court. At this point there would be the consideration of a declaratory judgment and there could be a request for a temporary restraining order but it would only affect access to the Magistrates. Even if it were as strong as a Writ of Mandamus against the prosecuting attorney he could still exercise his discretion and not prosecute the cases. That is why it is a catch 22.

Alderman Higgins summarized for clarification that what the Board is proposing is to continue to train the officers we have now, no contract with the County and we will go back to the type of coverage that others in the County receive.

(A copy of the PowerPoint presentation is hereby incorporated by reference and made a part of these minutes – see attachment two.)

7. Public Forum.

Ms. Jackie Jackson of 751 Goodyear Drive stated that she is saddened by what is happening to the Police Department. She believes they are being treated unfairly. She believes the officers who are here now love Spring Lake and are willing to work for Spring Lake. She believes that the Town of Spring Lake is looking weak and it is now time to get the ball back in place. Leadership needs to be held accountable and not the officers who have stood by Spring Lake. Put the officers in another job until such a time that they can be placed back in the Department. What do you need the citizens to do? Do we need to tell Ed Grannis what we think? We have officers who stood by Spring Lake and they should not lose their job.

Mr. Don Miller of 504 Thalia Road stated that he fully believes what Ms. Jackson said. He stated that the Smith Family will take the 60 foot easement. They are working on the things that they

know they need to do to get the easement in place.

Cumberland County Commissioner Billy King stated that he has received calls concerning police department issues. Actions by the District Attorney and the District Court Judge have gone too far and what they have done is over the top. Two police officers who are arrested does not constitute the need to destroy the entire department. Spring Lake has some tough challenges ahead of you. You are to be commended for having the best interest of your Town at heart.

Hope that you continue to move forward and the best of luck to you.

8. Public Hearing on Case #P09-26, Rezoning 48.47 acres M(P) to M1(P) or More Restrictive Zoning 1027 Marvin Lucas Pkwy Owners Spring Lake et al (Spring Lake).

Mayor Clark opened the Public Hearing. Mr. Spinks introduced Case #P09-26 code amendment to rezone the Freedom Center from M(P), which is heavy industrial plan to M1(P), which is a light industrial plan. Ms. Brooks stated that the Cumberland County Planning Department recommends approval. This zoning is consistent with the 2010 Land Use Plan.

Ms. Ursula Dixon of 2705 Heatter Avenue asked what the zoning means. Mr. Spinks stated that M1(P) is a much more restrictive zoning. She questioned if the Town makes the decision on what goes on the land. Mr. Spinks stated that zoning restrictions dictates what can be built on the land. She is concerned about what will be built. We do not need any more pollution in our area. She does not want something being built that will pollute our area.

Action: Mayor Clark closed the public hearing on an approved motion to close.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderman Higgins

Vote: Unanimous

9. New Business

a. Case #P09-26, Rezoning 48.47 acres M(P) to M1(P) or More Restrictive Zoning 1027 Marvin Lucas Pkwy.

Mr. Spinks stated that the planning department and staff recommends approval. All parties that are involved are in agreement with the rezoning.

Action: The Board approved a motion to approve the rezoning from M(P) to M1(P).

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

(A copy of the agenda memo and memo from the Cumberland County Joint Planning Board is hereby incorporated by reference and made a part of these minutes – see attachment three.)

b. Ordinance Amendment, Chapter 95, Fire Prevention Code.

Chief Doberstein requested the Board to adopt Ordinance (2009) 15 which will incorporate the

2009 Edition of the Fire Prevention Code to include Appendix Chapters B, C, D, F, G and H as published by the North Carolina Building Code Council.

Action: The Board approved a motion to adopt the amended Fire Prevention Ordinance with amendments with an effective date of July 1, 2009 to allow integrating the tools for maintenance, education and enforcement.

Motion by: Alderwoman McCoy

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

(A copy of the agenda memo, current Ordinance with changes noted and Ordinance (2009) 15 is hereby incorporated by reference and made a part of these minutes – see attachment four.)

c. Annexation Resolution, McCoy Property.

Mr. Spinks presented a petition for annexation of .57+/- acre tract of land at 809 Chapel Hill Road. He advised that Resolution (2009) 13 directs the Clerk to investigate the sufficiency of the petition and directs staff to conduct a feasibility study for the petition.

Action: The Board approved a motion to approve Resolution (2009) 13.

Motion by: Alderman Higgins

Second by: Alderwoman McCoy
Vote: Unanimous

Action: The Board approved a motion to approve clerk to set public hearing.
Motion by: Alderman Higgins
Second by: Alderwoman McCoy
Vote: Unanimous

(A copy of the agenda memo, petition for annexation and Resolution (2009) 13 is hereby incorporated by reference and made a part of these minutes – see attachment five.)

d. Ordinance Amendment, Chapter 51, Impact Fees.

Mr. Gerald presented an amendment to Chapter 51 to add section 96 Facility Use Fees or Impact Fees. He requested that the Board approve Ordinance (2009) 12 and requested that the Board approve the Rate and Fee Schedule change with the correction stated.

Action: The Board approved a motion to adopt Ordinance (2009) 12.
Motion by: Alderman Higgins
Second by: Mayor Pro Tem O'Garra
Vote: Unanimous

(A copy of the agenda memo, Rate and Fee Schedule change, and Ordinance (2009) 12 is hereby incorporated by reference and made a part of these minutes – see attachment six.)

e. On-Call Policy.

Mr. Gerald presented the On-Call Policy. He stated that under section 15.2 Policy #3 the last sentence needs to be removed. He requested that the Board adopt it with the correction.

Action: The Board approved a motion to adopt the On-Call Policy with the correction.
Motion by: Mayor Pro Tem O'Garra
Second by: Alderwoman McCoy
Vote: Unanimous

(A copy of the agenda memo and On-Call Policy is hereby incorporated by reference and made a part of these minutes – see attachment seven.)

f. Contract, Stimulus Funding.

Mr. Gerald advised that the Town has received stimulus funds for the Tank Mixer project. This will eliminate Trihalomethanes that occur in water when it sits in the tank. This will reduce the need to flush the system and will reduce our water bill. These funds require

a 50% of \$76,500 payback amount.

Action: The Board approved a motion to approve the contract.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderman Higgins

Vote: Unanimous

(A copy of the agenda memo and contract is hereby incorporated by reference and made a part of these minutes – see attachment eight.)

g. Annual Audit Contract Resolution.

Mr. Coats presented the audit contract for the fiscal year ending June 30, 2009. He requested that the Board approve the contract. He also advised that this year's contract price for the audit is \$12,750 which is the same price as last year.

Action: The Board approved a motion to approve the audit contract Resolution.

Motion by: Alderman Higgins

Second by: Alderwoman McCoy

Vote: Unanimous

(A copy of the agenda memo and audit contract is hereby incorporated by reference and made a part of these minutes – see attachment nine.)

h. Year End Budget Amendments.

Mr. Coats presented budget amendment #13 to amend Water and Sewer Improvement Capital Project budget to account for stimulus money received in the form of free money and a no interest loan for the purchase of a water tank mixer.

Action: The Board approved a motion to approve Budget Amendment #13.

Motion by: Alderman Higgins

Second by: Alderwoman McCoy

Vote: Unanimous

Mr. Coats presented budget amendment #14 to amend General Fund budget to account for various planned and non planned shortfalls in individual line items during the year.

Action: The Board approved a motion to approve Budget Amendment #14.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

Mr. Coats presented budget amendment #15 to amend Spring Fling Fund budget to

account for additional contribution received and spent on this year's event. Spring Fling was fully funded this year by contributions.

Action: The Board approved a motion to approve Budget Amendment #15.

Motion by: Alderwoman McCoy

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

Mr. Coats presented budget amendment #16 to amend the Business and Industrial Center Driveway Project budget to account for additional engineering and construction cost associated with the stormwater system.

Action: The Board approved a motion to approve Budget Amendment #16.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

Mr. Coats presented budget amendment #17 to amend the NC Hwy 87 Median Sprinkler Project budget to account for additional construction cost associated with the project that DOT billed the Town for this fiscal year.

Action: The Board approved a motion to approve Budget Amendment #17.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderwoman McCoy

Vote: Unanimous

Mr. Coats presented budget amendment #18 to amend the Stormwater Capital Project budget to account for engineering, survey and construction cost associated with the Stormwater Rehabilitation projects.

Action: The Board approved a motion to approve Budget Amendment #18.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderman Higgins

Vote: Unanimous

Mr. Coats presented budget amendment #19 to amend Water and Sewer Fund budget to account for various planned and non planned shortfalls in individual line items during the year.

Action: The Board approved a motion to approve Budget Amendment #19.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderman Higgins

Vote: Unanimous

Mr. Coats presented budget amendment #20 to amend Stormwater budget to account

for transfers to Capital Project funds for various stormwater rehabilitation projects.

Action: The Board approved a motion to approve Budget Amendment #20.

Motion by: Alderman Higgins

Second by: Alderwoman McCoy

Vote: Unanimous

Mr. Coats presented budget amendment #21 to amend Sanitation Fund budget to account for various planned and unplanned shortfalls in different line items.

Action: The Board approved a motion to approve Budget Amendment #21.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

(A copy of the agenda memo and Budget Amendments is hereby incorporated by reference and made a part of these minutes – see attachment ten.)

i. Board to Set Date for Special Board Meeting to Adopt Budget Ordinance.

Mr. Coats requested that the Board set a Special Meeting date to adopt the annual Budget.

Action: The Board approved a motion to set June 29, 2009 at 2:00 p.m. as a Special Meeting date to adopt the 2009-2010 Budget Ordinance.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

10. Board and Staff Comments :

Alderman Higgins

- Good to see all the public here.
- Appreciate the comments that our County Commissioner made.
- This is going to be a tough budget decision and I will vote to make sure we have adequate coverage.

Mayor Pro Tem O'Garra

- Stated to Police Officers that I did not get what you wanted but I share the blame with others for what has happened to you. I am going to fight this to the end.

Alderwoman McCoy

- Thanked the employees for doing such a magnificent job for the Town of Spring Lake.

- Special thanks to Kevin McIver, Jonathan Faircloth, Benjamin Prince and Jason Williams in the Fire Department
- Thanked everyone for coming out and supporting us.
- Police, I am in your corner.

John Jackson

- Happy to be here.

Mayor Clark

- As Mayor I want to make a statement about the current status of our Law Enforcement. The press has tried to portray us as lackadaisical leaders who knowingly let our Police Department deteriorate to the status that rendered them ineffective to properly police our town and this is simply not so. When we became aware of the current allegations in the performance of our Chief we took measures to obtain all the facts pertaining to these allegations. We requested the help of the SBI to get to the bottom of this. The whole truth has not been told and can not be told until the investigation is complete. Many of our citizens have had concerns and still do, but I as Mayor can not discuss the issues of an ongoing investigation. Chief Jarvies is doing an excellent job holding the department together and we wish him well. I encourage all of us to collectively stay focused on our ultimate goals and that is to restore our department's right to the full use of Cumberland County's court system and to provide the best leadership to our town and citizens that they deserve. In closing, we will rebound and overcome this current problem and we will emerge stronger. Spring Lake will continue to grow, prosper, attract new business and be good neighbors with the military community. Spring Lake will continue to be a place where people will want to live, work and raise their families and call home.

11. Closed Session.

Action: The Board went into Closed Session pursuant to G.S. 143-318.11(a)(6) – Personnel at 8:37 p.m.

Motion: Alderwoman McCoy

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

The Mayor called the meeting back into Open Session at 9:15 p.m.

Action: The Board approved a motion to ask for the Town Manager's Resignation.

Motion: Alderwoman McCoy

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

12. Adjournment.

Action: There being no further business to come before the Board, the meeting was adjourned at 9:18 p.m.

Motion: Alderwoman McCoy
Second by: Mayor Pro Tem O'Garra
Vote: Unanimous

Rhonda D. Webb, CMC
Town Clerk

ATTEST:

Ethel T. Clark
Mayor