

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

October 27, 2008

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
Alderman Napoleon Hogans
Alderwoman Nellie McCoy
Alderwoman Fredricka Sutherland

Others Present:

Larry Faison, Town Manager

Alvin Brown, Police Chief

Debbie Disbrow, Human Resources Officer

Paul Hoover, Director of Inspections

Tom Spinks, Planning Director

John Jackson, Town Attorney

Allen Coats, Finance Director

Danny Gerald, W&WR Director

Ken Metcalf, Recreation Director

Rhonda Webb, Town Clerk

2. Invocation.

Alderwoman Sutherland gave the invocation.

3. Pledge of Allegiance.

Mayor Clark led the meeting in the Pledge of Allegiance.

4. Additions or Deletions to Agenda

There were no additions or deletions to the agenda.

5. Approval of Agenda and Consent Items.

The Board approved a motion to approve the minutes from the September 22, 2008 Board workshop and meeting and the consent items except for item 5d, Halloween Hours. Mayor Pro Tem O'Garra requested that item 5d, Halloween Hours, be moved from the consent agenda to new business to allow discussion of the hours.

Motion by: Alderman Hogans

Second by: Alderwoman Sutherland

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. Public Forum.

No one spoke at the public forum.

7. Public Hearing.

Mr. Metcalf gave an overview of the proposed Recreation and Parks Comprehensive Plan.

Mayor Pro Tem asked about basketball goals in Odell Road Park. Mr. Metcalf stated that the plan is not set in stone but at this time there are no plans to add basketball goals.

Alderman Hogans asked about how close the Parks and Recreation Trust Fund (PARTF) will hold us to the plan. Mr. Metcalf stated that there will be room to make minor modifications but once the Board approves it they will hold us fairly close to it.

Alderwoman Sutherland stated that Woodland West residents feel that the Town is leaving them out when it comes to neighborhood parks. She requested that Woodland West be taken into consideration concerning a neighborhood park. Mr. Metcalf stated that for this proposal we focused on land that the Town owns.

Mayor Clark opened the Public Hearing

Tammy Stephens spoke in favor of the Recreation and Parks Comprehensive Plan.

No one spoke against the Recreation and Parks Comprehensive Plan.

Action: The Board approved a motion to close the public hearing.

Motion by: Alderman Higgins

Second by: Alderwoman Sutherland

Vote: Unanimous

8. New Business.

a. Halloween Hours.

Mayor Pro Tem O'Garra asked Chief Brown why the hours for trick or treat have been

extended for an hour. He stated that the hours in the past have been set from 6:00 p.m. to 8:00 p.m. Chief Brown explained that the hours were extended to allow small children to trick or treat during daylight hours as a safety precaution.

Action: The Board approved a motion to approve Halloween Hours set by Chief Brown.

Motion by: Alderwoman Sutherland

Second by: Alderman Hogans

Vote: Unanimous

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

b. Mendoza Park Site Master Plan.

Mr. Metcalf stated that there are three items that are necessary to apply for the PAFTF grant. They will have to be approved separately. He stated if the Site Master Plan is changed it will

require changes to the other elements of the Comprehensive Plan. Therefore, the Site Plan is the first thing that needs approval from the Board.

Action: The Board approved a motion to approve the Site Plan as presented by the Recreation Department.

Motion by: Alderman Hogans

Second by: Alderman Higgins

Vote: Unanimous

(A copy of the supporting documentation is hereby incorporated by reference and made a part of these minutes – see attachment three.)

c. Recreation and Parks Comprehensive Plan.

Mr. Metcalf had previously given an overview of the Recreation and Parks Comprehensive Plan during the Public Hearing.

Action: The Board approved a motion to adopt the Recreation and Parks Comprehensive Plan.

Motion by: Alderman Higgins

Second by: Alderwoman McCoy

Vote: Unanimous

(A copy of the supporting documentation is hereby incorporated by reference and made a part of these minutes – see attachment four.)

d. Recreation Capital Improvement Plan.

Mr. Metcalf stated that this CIP does not tie the Boards hands in any way and can be amended. He stated that the Recreation CIP is part of the Town's overall CIP. Mr. Jackson stated that this in no way effects money.

Action: The Board approved a motion to adopt the Recreation Capital Improvement

Plan.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O'Garra

Vote: Unanimous

(A copy of the Recreation CIP is hereby incorporated by reference and made a part of these minutes – see attachment five.)

e. Naming of Industrial Park Roadway.

Mr. Spinks advised the Board that Cumberland County 911 Addressing Division pre-approved two of the three possible names that the Board had selected. They approved Marvin Lucas Parkway and Prosperity Parkway; however, Manning Drive was not available.

Alderman Hogans asked if we had checked with Mr. Lucas and stated that he would rather check with him first before we name a road after him.

Mayor Pro Tem O'Garra stated that he would rather go ahead and name the road and if Mr. Lucas has any objections we can come back.

Mayor Clark stated that she will talk with Mr. Lucas and if he opposes the decision we will bring the item back to re-name the road.

Action: The Board approved a motion to approve Marvin Lucas Parkway as the official name of the roadway.

Motion by: Mayor Pro Tem O'Garra

Second by: Alderwoman Sutherland

Vote: Unanimous

(A copy of the supporting documentation is hereby incorporated by reference and made a part of these minutes – see attachment six.)

f. Green Apartments subdivision and Group Development Review.

Mr. Spinks stated that the applicant for case #08-133, Spring Lake Green Apartments Group Development and Subdivision Review is requesting a variance. He stated that it

will require quasi-judicial action from the Board.

Mayor Clark stated that this proceeding will have to be conducted in accordance with special due process safeguards that require quasi-judicial hearing procedures. She requested all persons who wish to testify in this case to sign in.

Mayor Clark gave the Board Members the opportunity to reveal any possible conflicts and asked them if they could rule fairly and impartially and if not gave them the opportunity to withdraw. No one withdrew. Mayor Clark then gave Board Members the opportunity to offer comments concerning the case. None was offered.

Mayor Clark swore in Mr. Harvey Allen as someone giving testimony.

Mr. Spinks presented the plan and stated that staff recommends approval with listed conditions and recommends granting the variance. He stated that there are no problems with the proposed layout.

Patricia Brooks advised that there are a few typo errors. The word Boulevard in the Case heading is spelled incorrectly and condition items 7a, b and c the word "foot" is left off of those three items. These typos will be corrected.

Mr. Allen was available for questions. Mr. Jackson asked if there is adequate turn around area in the proposed parking lot for fire trucks, etc. Mr. Allen stated yes. He stated that on Wilkshaven Road to have a line of traffic coming out, the Fire Department requires 26' of open pavement from the curb and gutter on each side so it does not lend itself to having an entrance there. On Laketree Boulevard there is 100' and you really need 150' therefore it is not a good idea to try to put an entrance onto Laketree. He stated that safety is the main concern.

Alderman Hogans asked Mr. Spinks to explain the conditions of approval and inquired as to items that state "the Town may require". When conditions are worded like that how does staff approach them. Mr. Jackson stated that specific conditions can be made before the final plat is considered. He stated that this portion of the hearing is concerning the variance.

Mayor Pro Tem O'Garra stated that the people who live down Odell Road have only one entrance and exit. Mr. Spinks stated that Odell Road will handle the additional traffic.

Alderwoman McCoy stated that if there should be some type of disaster it would be very difficult for the people who live in New Holly Hills to get out since Odell Road is the only way in and out. She expressed concern about building something new and putting more traffic strain on that roadway. Mr. Spinks stated that staff recommends that this will not cause additional problems due to the small amount of units (48).

Mayor Clark closed the quasi-judicial proceedings.

Action: A motion to approve the requested variance based on there being an adequate turn around area within the proposed parking lot due to the design of the looped drive and the width of the entrance drive allows for two way traffic, and the placement of a second drive Wilkshaven Court and Laketree Boulevard would create traffic congestion and safety issues since the location of any drive would be too close to the intersection, and the Spring Lake Fire Department states that the public safety and fire protection will not be hindered by the proposed drive layout was defeated due to a 4/5 affirmative vote requirement.

Motion by: Alderwoman Sutherland

Second by: Alderman Hogans

Vote: 3-2 against Aye No

Alderwoman Sutherland
Alderman Hogans
Alderman Higgins

Mayor Pro Tem O’Garra
Alderwoman McCoy

(A copy of the supporting documentation is hereby incorporated by reference and made a part of these minutes – see attachment seven.)

g. Budget Amendment #6.

Mr. Coats presented a budget amendment to budget Senior Health Promotion Grant proceeds and Fund balance for the required match. The funds will be used to promote healthy activities among Spring Lake area senior citizens. The grant is for \$5,158 with a local match from the Town of \$516 required.

Action: The Board approved a motion to accept the grant amount and approve Budget Amendment #6.

Motion by: Alderman Higgins

Second by: Mayor Pro Tem O’Garra

Vote: Unanimous

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

h. Security of Sensitive and Confidential Information and Breach Response Plan.

Mr. Coats presented a plan to protect sensitive and confidential information pursuant to the Federal Trade Commission’s Fair and Accurate Credit Transactions Act of 2003 and the Identity Protection Act of 2005. He stated that General Statutes requires the Town to safeguard certain information of customers, vendors, employees, and other individuals who provide information to the Town. He stated that we have been following the procedures for years but it is now required to be put in writing. He requested the Board approve Resolution (2008)17 which incorporates a policy to protect

this information.

Action: The Board approved a motion to approve the Resolution and policy #11.
Motion by: Alderman Hogans
Second by: Alderman Higgins
Vote: Unanimous

(A copy of the Resolution and Policy is hereby incorporated by reference and made a part of these minutes – see attachment nine.)

i. Resolution, Gross Receipts on Heavy Equipment Rental.

Mr. Coats presented a Resolution to impose gross receipts tax on the rental of heavy equipment. The General Assembly removed certain heavy equipment from the property tax base. They enacted provisions which allow Counties and Municipalities to tax the gross receipts on the short-term rental of heavy equipment. He requested the Board adopt the Resolution. At this time there are no companies in Spring Lake that rent this type of equipment so it will not provide any additional revenues.

Mr. Faison asked what the ramification would be if the Board decided not to adopt this Resolution. Mr. Coats stated that the County will still be required to assess this tax.

Alderman Hogans asked the attorney for clarification on the vote requirements on this matter. Mr. Jackson stated that this has the force and effect of levying a tax and will require a 2/3 majority vote or 4 of the 5 Board Members.

Action: The Board approved a motion to adopt Resolution (2008) 18.
Motion by: Mayor Pro Tem O'Garra
Second by: Alderwoman McCoy
Vote: Unanimous

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

j. Policy, Remote Voting at Board Meetings.

Ms. Webb presented a remote voting at Board Meetings policy.

Mr. Faison brought attention to the part of the policy that specifies what the Board should do in the event an agenda item requiring a super majority affirmative vote to pass is presented and one or more Board members are voting electronically. The policy states that item would be brought back for affirmation of the vote when the entire Board is present.

Mr. Jackson reiterated that, based on previous advice and guidance he gave the Board, he believes that until there is enabling legislation from the General Assembly, that it is

legally challengeable. He believes that the Board should always ratify at the next meeting when this policy is used due to the challenge ability of it. This procedure is legally challengeable but the ratification procedure attempts to cure that problem if there is ever a question.

Alderman Hogans asked if it would be to the advantage of the Board to qualify the use of this policy. Mr. Jackson advised that it is limited to three situations and if the Board wants to define emergency they can limit the policy further. His advice was based on trying to keep it broader but the Board can narrow its use to specifically exclude it to a specific factual situation.

Mayor Pro Tem O'Garra stated that it appears that we really do not have a leg to stand on. He stated that it seems we are taking a vote that we legally do not have a right to do.

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

Motion by: Alderwoman Sutherland

Second by: Alderman Hogans

Vote: 4-1

Aye

Alderman Higgins

Alderman Hogans

Alderwoman McCoy

Alderwoman Sutherland

No

Mayor Pro Tem O'Garra

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

k. Discussion Concerning TIP Project #U-4444, Murchsion Road Widening.

Mayor Clark requested permission from the Board to go on record to state that we are against DOT's plan. She requested staff to put together a letter stating reasons why we are against it for the November 5th deadline. She wanted staff to create a Resolution stating why we are against it to be presented to DOT at a later date.

Alderman Hogans asked Mayor Clark to broadly state, for the general public's benefit, why we are against this. Mayor Clark replied we are against them wanting to make Bragg Blvd a freeway, cut off access from one side of town from the other, closing Spring Avenue and making it one way, and closing the entrances to businesses along Bragg Blvd.

Alderman Higgins stated that he can not ever recall such a public out cry against any project. He believes that DOT needs to revisit other possibilities before they proceed in shutting the Town down. He stated that he endorses what the Mayor has done and her request.

Mayor Clark stated that the entire delegation from this part of the State has pledged to help us.

Mayor Pro Tem O'Garra stated that he took a proposal to DOT and will be checking on this. He stated that this will have to become political to make something happen favorable for Spring Lake. This is something we have to keep at. Mayor Clark requested that Mayor Pro Tem O'Garra let the Board know when he will be doing things like that. He stated that he did this as a citizen rather than a Board member.

Alderman Hogans has not heard anyone who likes the plan. He stated that the closing of Bragg Blvd is almost certain. He stated that what Mayor Pro Tem O'Garra is doing is right on track and that is to come up with an alternate plan. He stated that we need to come up with an alternate plan. He requested staff come up with what we don't like about this plan and put that in writing. He made a substitute motion that we have a staff person appointed to this effort to come up with what we particularly do not like about this plan and present that and offer a proposal that we are in favor of. Mayor Clark explained that Mr. Faison works on the technical side of FAMPO and Alderman Higgins works on the political side. The motion died for lack of a second. Mayor Clark stated that the traffic volume is the problem and not so much the closing of Bragg Blvd.

Mr. Jackson stated that it is important to send the message to DOT that we do not agree with the plan. He stated that we need to come up with an alternate. He believes that we need to send a strong message to DOT and stated that the situation is extremely political. We need the backing of our political leaders.

Alderman Higgins stated that we are a part of a transportation committee. Mr. Rick Heicksen has proposed numerous plans and there are issues with woodpeckers, historical property, wetlands, etc. He stated that he doesn't believe staff is equipped with the knowledge to propose a plan without the help from other planners.

Alderwoman Sutherland mentioned the proposal that Representative Lucas had presented and stated that everyone at the public hearing agreed with what he was proposing.

November 5, 2008 is the deadline for submitting comments to DOT. Mayor Clark stated that we will not be able to have an alternate plan in place by November 5, 2008.

Mayor Clark clarified that she wants a letter that states we reject the plan with comments as to what we do not like.

Mr. Faison stated that we are going up against some big guns but that is not a reason to give up. There are things that could be expressed in a letter. He stated that we do not have the capability on staff of how feasible alternate ideas are. He stated that a Board

response is the way to go. He suggested that the Board adopt a follow up resolution and take other steps that the Mayor and the Town Attorney is working on.

Action: The Board approved a motion to provide guidance on the potential actions that Alderpersons and Staff may take on behalf of the community to address TIP #U-4444.

Motion by: Alderwoman Sutherland

Second by: Alderman Higgins

Vote: Unanimous

(A copy of the supporting documentation is hereby incorporated by reference and made a part of these minutes – see attachment twelve.)

9. Board and Staff Comments:

Mayor Pro Tem O'Garra

- The last bus from Fayetteville coming to Spring Lake leaves at 6:30. The bigger bus should be in use within 30 days. Mr. Hoover will be the point of contact for the bus service from now on.
- I stand by the word "illegal" that I used. I just tell it like it is or like it was "illegal" and I'm not bashing Board members or being unprofessional, just telling it like it was.
- The 30% that we are supposed to get is now 19% - 20%.
- Glad everyone showed up tonight.

Alderwoman McCoy

- Happy to see everyone here. We need to try to encourage citizens to come to the meeting.

Alderman Hogans

- Apologize for missing the dedication of the walking path.
- Thanked Mr. Metcalf for the long effort that they put in to bring the Mendoza Park plan to fruition.

Alderwoman Sutherland

- Thanked everyone for being patient.
- The reason she stated what she did at the last meeting is that she stands by what is written. Still believe that a Board member should not come to someone else's community watch meeting.
- Asked about moving the sidewalk that is supposed to go in the Business and Industrial Center to another area in Spring Lake where it would be utilized.
- Thanked the employees.

Alderman Higgins

- Recognized the Chamber President.

- Recreation has worked very hard and staff is appreciated. Has gotten only good comments recently about staff.
- Good to see everyone.

John Jackson

- Comment on the variance tonight, once a final decision is reached on a quasi-judicial zoning decision, the same matter can not be brought back to the Board for a rehearing. Unless there is a different application or conditions have changed on the site or in the ordinance, a board does not have the legal authority to rehear these cases.
- Happy to be here.

Mayor Clark

- We have a wonderful staff, we do have good people.
- Thanked Del Crawford for all the work that he has done on the Recreation Plan.

10. Closed Session, G.S. 143-318.11(a)(6) - Personnel.

Action: The Board approved a motion to go into Closed Session pursuant to G.S. 143-318.11(a)(6) – Personnel at 8:55 p.m.

Motion: Alderman Hogans

Second by: Alderwoman Sutherland

Vote: Unanimous

Mayor Clark called the meeting back into open session at 9:25 p.m.

Alderman Higgins stated that we are well pleased with the Manager's performance. Wish is could be 10% - 15% but we at least want to do something to show our appreciation.

Mayor Clark stated that the Board really would like to do more but because of budget constraints we are not able to do any more.

Action: The Board approved a motion to give the Manager a 2% pay increase effective November 1, 2008.

Motion: Alderman Higgins

Second by: Alderwoman McCoy

Vote: Unanimous

11. Adjournment.

Action: There being no further business to come before the Board, the meeting was adjourned at 9:27 p.m.

Motion: Alderman Hogans
Second by: Alderwoman McCoy
Vote: Unanimous

Rhonda D. Webb, CMC
Town Clerk

ATTEST:

Ethel T. Clark
Mayor