

# Holly Springs Town Council Minutes

Regular Meeting  
June 16, 2009

## MINUTES

The Holly Springs Town Council met in regular session on Tuesday, June 16, 2009, in the Council Chambers of Holly Springs Town Hall, 128 S. Main Street. Mayor Dick Sears presided, calling the meeting to order at 7 p.m. A quorum was established as the mayor and five council members were present as the meeting opened.

**Council Members Present:** Councilmen Vinnie DeBenedetto, Parrish Womble, Chet VanFossen, Tim Sack, and Hank Dickson and Mayor Sears.

**Council Members Absent:** None.

**Staff Members Present:** Carl Dean, town manager; Joni Powell, town clerk (recording the minutes); Linda Harper, deputy town clerk; Gina Clapp, director of planning and zoning; Laura Powell, Planner I; Jeff Jones, senior planner; Elizabeth Goodson, development review engineer; Kendra Parrish, senior engineer; Mark Zawadski, planner I; Len Bradley, parks and recreation director; John Herring, police chief; Police Lieutenant Mike Patterson; Drew Holland, finance director; Fire Chief Cecil Parker; and Mark Andrews, public information officer.

**2 and 3.** The Pledge of Allegiance was recited, and the meeting opened with an invocation by Rev. Doug Parlin and of South Wake Baptist Church.

**4. Agenda Adjustment:** The June 16, 2009 meeting agenda was adopted with changes, if any, as listed below.

**Motion By:** Sack

**Second By:** VanFossen

**Vote:** Unanimous

**Items Added to the Agenda:** None.

**Items Removed from the Consent Agenda:** Item 8c., community grants.

**Consent Agenda Items Moved to New Business:** None.

**Other Changes:** None.

**5. Public Comment:** At this time, an opportunity was provided for members of the audience who had registered to speak to address the Council on any variety of topics not listed on the night's agenda. The following input was recorded:

Harold Norris, 306 Brooks Street – Mr. Norris addressed the Council asking how the Hunt Center renovation would affect his property located on Stinson Ave. Mayor Sears suggested that Mr. Norris visit with staff for specifics about the project, but he added that the project would have no impact on Mr. Norris' property.

**6a. Annexation A09-01, Crawley Property** – Ms. L. Powell said the Town has received a petition for voluntary annexation of approximately 3.101 +/- acres located at 1605 Avent Ferry Road. The Property owner is Dawn Coley Crawley who wishes to annex her property into the city limits.

She said the public hearing was opened and closed at a previous Town Council meeting. She said the petition meets all the statutory requirements for annexation.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded: None.

There being no comments, the public hearing was closed.

**Action:** The Council approved a motion to adopt Annexation Ordinance A09-01 annexing approximately 3.101 +/- acres owned by Dawn Coley Crawley, and more particularly described as Wake County PIN: 0648.03-24-9677, into the corporate limits of the Town of Holly Springs.

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous.

*A copy of Annexation Ordinance A09-01 is incorporated into these minutes as addendum pages.*

**7a. Public Hearing: FY 2009-10 Budget** – Mr. Dean said the Town opened and continued the public hearing to resume tonight for the FY 2009-10 budget. The Council is to consider action on the proposed budget ordinance and a proposed ordinance setting the water and sewer rates for FY 2009-10.

Mr. Dean provided highlighted information on the FY 2009-10 budget proposal.

When Mr. Dean covered financial losses of the town's EMS and how he recommends that the service be turned over to Wake County, effective Jan. 1, Councilman Womble began a conversation about how he would prefer that the town not give up the service. During discussions, Chief Parker responded to questions about how the service would be different if the EMS was assumed by Wake County.

With that explanation completed, Mayor Sears reopened the public hearing to accept input. The following comments were recorded:

Glenn Myrto, 408 W. Ballentine Street – Mr. Myrto addressed the Council expressing concern that the Town of Holly Springs was recommending cost of living and merit salary increases in a time when all other companies and municipalities are making cut-backs.

Mr. Myrto also suggested that the part of his water bill that is allocated to fixed and capital costs should be removed from the water bill and added to his tax bill so it could be tax-deductible on his federal income taxes.

There being no further comments, the public hearing was closed.

In discussion among the board, Councilman DeBenedetto asked Mr. Dean to go over his recommended travel allowance / mileage reimbursement policy.

Mr. Dean reminded Council members that he was directed at the budget workshop to devise a proposed travel allowances / mileage reimbursement policy and that \$20,000 had been placed as a line item in the proposed budget. Mr. Dean said the line amount was budgeted to cover the costs of administering the policy, if authorized by the Council.

Mr. Dean said the policy was based on Councilman Dickson's suggestion that a tiered allowance policy be instated, providing Tier 1, Tier 2 or Tier 3 allowances depending on a staff member's need.

Councilman DeBenedetto said he maintained that there should be no travel allowance policy and that employees should receive only actual mileage.

Councilman Dickson said he felt that the policy simply formalizes and makes reimbursement more fair than a previous practice.

Councilman Sack said he was looking at the situation from a cost savings viewpoint, saving the Town money in having to buy vehicles. He noted that the cost of providing a vehicle for Chief Herring would be about \$35,000, including service and outfitting it with blue lights. The cost for providing all department heads a travel allowance for the year was only \$20,000, he said.

Councilman Womble asked why the town didn't just have a shared pooling system rather than a fleet of vehicles. He said it was his position that the town should look at that option.

Councilman VanFossen said he felt the Town was losing a level of service in exchange for abolishing monthly travel allowances.

At this time, Councilman DeBenedetto made a motion to adopt the policy with the exception of Paragraph 2 on Page 2 and with the elimination of Section 2.

Councilman Womble seconded the motion.

**Vote:** The motion failed to carry, following a 2-3 vote. Councilmen DeBenedetto and Womble voted for the motion. Councilmen VanFossen, Sack and Dickson voted against.

**Action #1:** The Council approved a motion to authorize the town manager to approve and enact an administrative rule on travel allowances and mileage reimbursements.

**Motion By:** Dickson

**Second By:** VanFossen

**Vote:** The motion carried, following a 3-2 vote. Councilmen VanFossen, Sack and Dickson voted for the motion. Councilmen DeBenedetto and Womble voted against. .

*A copy of the manager's travel allowances and mileage reimbursements administrative rule is*

*incorporated into these minutes as addendum pages.*

**Action #2:** The Council approved a motion to adopt Ordinance 09-10 enacting the FY 2009-10 operating budget, effective July 1, 2009.

**Motion By:** Sack

**Second By:** Dickson

**Vote:** The motion carried, following a 3-2 vote. Councilmen VanFossen, Sack and Dickson voted for the motion. Councilmen DeBenedetto and Womble voted against.

*A copy of Ordinance 09-10 is incorporated into these minutes as addendum pages.*

**Action #3:** The Council approved a motion to adopt Ordinance 09-11 setting the water and sewer rates for the fiscal year beginning July 1, 2009.

**Motion By:** Dickson

**Second By:** Sack

**Vote:** The motion carried, following a 3-2 vote. Councilmen VanFossen, Sack and Dickson voted for the motion. Councilmen DeBenedetto and Womble voted against.

*A copy of Ordinance 09-11 is incorporated into these minutes as addendum pages.*

In deference to a number of audience members present to address the Holly Glen Recreational Special Exception Use petition, the Council approved a motion to move Item 7e. up on the agenda to be discussed at this time.

**Motion By:** Dickson

**Second By:** Sack

**Vote:** Unanimous

At this time, the Council approved a motion to recuse Councilman VanFossen from the meeting due to his professional association with the applicant as architect for the project that is the subject of agenda item 7e.

**Motion By:** Sack

**Second By:** Dickson

**Vote:** Unanimous.

**7e. Public Hearing: Special Exception Use 09-SEU-04, Holly Glen Recreation Site – Ms. L.**

Powell said the Town has received a request for an expansion to the Holly Glen Recreation area that would include a kids' interactive pool as well as a new pump house. The pool would be approximately 5,576 square feet, and the new surrounding deck area would be 6,227 square feet. The existing parking area would be expanded for a total of 44 parking spaces. A bicycle rack also would be added, to be located at the entrance to the existing clubhouse.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony. The following testimony was recorded under oath administered by the Deputy Town Clerk:

Rachel Willis, 169 Summit Oaks Lane – Ms. Willis testified that the parking lot of the site plan would be in her front yard and an invasion of her privacy. She said she feels that it would place an undue burden on her portion of the community. She said lighting would be a problem; she said safety at the clubhouse already is an issue.

Peter Atwell, 105 Sycamore Creek Drive – Mr. Atwell addressed the Council on behalf of the Holly Glen Homeowners Association. He said the swimming pool area expansion project dates back more than three years.

Mr. Atwell explained that the original recreational site was designed and constructed based on an original footprint of the development of 250 homes. Now that the neighborhoods of Holly Glen have grown to more than 900 homes, the recreational area is inadequate and many residents want the Holly Glen HOA to follow through with plans for an expansion of the recreational site.

During the planning process, Mr. Atwell, said most resident concerns of which he was aware were addressed, and he was surprised that the parking lot was posing a concern.

He addressed concerns about the parking lot, its buffering, its lighting and the amount of parking.

He said the site plan accomplishes the neighborhood's existing and future need for a family-friendly recreational site as well as having a positive impact on property values in the subdivision.

Randall Miller -- Mr. Miller explained that in designing the site, designers tried to have a minimal impact on the environment and the townhome section.

Ms. Willis – Ms. Willis addressed the Council again and said the water from this area drains into her driveway. She noted that townhomes are two stories, and the views out those second story windows are going to be parking lot. She asked the Council to not take action until their concerns were addressed.

Councilman Dickson asked Mr. Miller to comment on the water drainage. Mr. Miller explained that the parking lot would provide curb and gutter that would take most of the water currently running into the Summit Oaks properties and diverting it away. He said the project would actually improve drainage issues.

Others who had signed up to speak declined as their concerns had been addressed.

There being no further evidence, the public hearing was closed.

Councilman Womble asked if the HOA could reconcile with the Summit Oaks Townhomes on the communications issue.

**Action #1:** The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for Special Exception Use Petition #09-SEU-04 for Holly Glen Recreation Pool Expansion as submitted by Thompson & Associates, dated 5/11/2009.

Special Exception Use Findings of Fact:

A special exception use may only be granted upon the presentation of sufficient evidence to enable a written determination that:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

**Motion By:** Dickson

**Second By:** Sack

**Vote:** Unanimous.

*A copy of the Special Exception Use Petition 09-SEU-04 addressing the findings of fact is incorporated into these minutes as addendum pages.*

**Action #2:** The Council, having made findings of fact that the project meets the requirements to be

granted a Special Exception Use, approved a motion to approve Special Exception Use Petition #09-SEU-04 for Holly Glen Recreation Pool Expansion as submitted by Thompson & Associates, dated revised 5/11/2009 with the following conditions:

1. All previously approved conditions for the Holly Glen Rec. Site will apply to this plan.
2. This project will be required to meet the Town of Holly Springs NPDES Ph. II Post Construction Stormwater Ordinance.

**Motion By:** Dickson

**Second By:** Sack

**Vote:** Unanimous.

At this time, Councilman VanFossen remained recused as he is the architect for the Mims House renovation that may be impacted by Items 7b. and 7c.

**7b. Public Hearing: Ordinance 09-12 (09-UDO-03) Amendment** – Ms. L. Powell said that a proposed amendment was developed in association with the Mims House renovations special exception use request that appears later on this agenda. She asked the Council to open and continue the public hearing to resume on July 7, 2009.

With that explanation completed, Mayor Sears opened the public hearing to accept input. None was offered.

**Action:** The Council approved a motion to continue the public hearing to resume on July 7, 2009.

**Motion By:** DeBenedetto

**Second By:** Sack

**Vote:** Unanimous.

**7c. Public Hearing: Special Exception Use 09-SEU-03, Mims and Wright House** – Ms. Powell said as stated in the previous report, the applicant has requested a UDO amendment, Special Exception Use and also a Downtown Development Incentive.

She said due to applicant delays, the DDI request was not able to move forward with necessary legal advertisement requirements; therefore, staff is requesting that this agenda item, 09-SEU-03, be tabled until the July 7, 2007 Town Council meeting so that the DDI final determination can be in place prior to the special exception use plans' being considered for approval.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony. None was offered.

**Action:** The Council approved a motion to continue the public hearing to resume on July 7, 2009.

**Motion By:** Dickson

**Second By:** Sack

**Vote:** Unanimous.

At this time, the Council approved a motion to readmit Councilman VanFossen into the meeting.

**Motion By:** Womble

**Second By:** Sack

**Vote:** Unanimous.

**7d. Public Hearing: Ordinance 09-13 (09-UDO-04) Amendment** - Mr. Jones said a proposed UDO amendment would help define senior housing, such as assisted living, rest homes and nursing homes. The UDO currently has these uses listed but fails to define the uses in the definition section. These amendments to the UDO would include adding definitions for the following terms: Assisted Living, Rest Homes, and Nursing Homes, and removal of the term Convalescent Homes, because Nursing and Convalescent homes are so similar in definition.

He said parking requirements for these uses already are defined as one parking space per two beds for Nursing and Rest Homes. These amendments would also include adding Assisted Living Homes to the parking for residential uses in the Off-Street Parking section to be defined as one space per two beds.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded: None.

There being no comments, the public hearing was closed.

**Action #1:** The Council approved a motion to accept the following statements as true: *“The requested UDO Text Amendment is consistent with the Vision Holly Springs Comprehensive Plan Policies for Future Land Use. The proposed UDO Amendments allow for diversity in housing opportunities and ensure quality of life for all residents.”*

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous.

**Action #2:** The Council approved a motion to adopt Ordinance 09-13 to approve and enact UDO Text Amendment #09-UDO-04 to modify the text of UDO Section 3.02, 3.05, 7.04, and 11.02 pertaining to senior housing.

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous.

*A copy of Ordinance 09-13 (09-UDO-04) is incorporated into these minutes as addendum pages.*

**7f. Public Hearing: Special Exception Use Petition 09-SEU-05, CEDA Soccer Academy – Ms. L. Powell** said the Town has received a request for a private CEDA Soccer Academy to consist of four soccer fields located at 6112 Rex Road. The site would consist of a paved parking lot located along the frontage of Rex Road. The applicant has requested waivers of curb and gutter requirements as well as for providing water and sewer requirements.

She said with this project, the applicant has requested waivers of UDO requirements as follows:

- *road improvements along Rex Road in accordance with the Town's Thoroughfare Plan (in this instance, either widening or a fee in lieu of road improvements would meet UDO requirements);* staff recommends denial of this waiver;
- *water line extension and sewer line extensions to site;* the site plan as proposed does not meet the Town requirements for water and sewer extensions to the site; however, neither water or sewer are required for the project as proposed at this time (i.e. no building).

Ms. Goodson explained that staff had no issues with waiving the water and sewer extension requirements but staff did recommend that the Council require the widening or fee in lieu of widening for Rex Road.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony. The following testimony was recorded under oath administered by the Deputy Town Clerk:

Kathryn Shirley, 6512 Rex Road – Ms. Shirley addressed the Council and said she was not opposed to the soccer complex use, but she had concerns about the inadequacy of Rex Road to handle the additional traffic. She said she would withhold her objections if the speed limit were reduced and a turn lane into the property were required.

Randy Miller, Thompson and Associates – Mr. Miller said the road condition is also a concern of the applicant, and the site plan features a right-in drive. For the turn lane, he said, the developer would have to conform to the requirements of N.C. Dept. of Transportation.

On the issue of the applicant's waiver requests, he said the utility extension requests were obviously because of the remote nature of the property and the lack of buildings.

On the issue of the applicant's request for not having to widen Rex Road or pay a fee-in-lieu of widening, Mr. Miller said the applicant asked if the fee-in-lieu could be required at a later time in the review process.

There being no further testimony, the public hearing was closed.

**Action #1:** The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy to allow for soccer fields in the R-30: Residential district as submitted by Thompson and Associates, dated revised 4/15/2009.

Special Exception Use Findings of Fact:

A special exception use may only be granted upon the presentation of sufficient evidence to enable a written determination that:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral

- standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
  - c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
  - d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
  - e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
  - f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
  - g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
  - h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
  - i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
  - j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

*A copy of the Special Exception Use Petition 09-SEU-05 addressing the findings of fact is incorporated into these minutes as addendum pages.*

**Action #2:** The Council approved a motion to make and accept findings of fact to be recorded in the minutes for a waiver of regulations of UDO Section 7.07 B. 14. a. to allow for the applicant not construct the required road improvements along the subject property frontage for Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy as submitted by Thompson & Associates.

Waiver Findings of Fact:

A petition for a waiver of regulations of UDO Section 7.07 B. 14. a. to allow for the applicant not to construct the required road improvements along the subject property frontage may only be granted upon the presentation of sufficient evidence to enable a written determination that:

1. The granting of the waiver will not be detrimental to public safety, health or welfare or injurious to other property;
2. Conditions upon the request for a waiver are unique to the property for which a waiver is sought and are not applicable generally to other property;
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is not carried out;
4. The waiver will not contravene the provisions of this UDO or the *Comprehensive Plan*;
5. Where the waiver impacts on the design, construction or maintenance obligations of public facilities, that the appropriate public agency has reviewed and approved the proposed development in writing and the subdivider has submitted a copy of such approval.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**Action #3:** Despite having made the necessary findings of fact, the Council approved a motion

that will allow the applicant to not widen the road but to pay a payment in lieu of widening for Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy.

**Motion By:** DeBenedetto

**Second By:** Womble

Councilman Sack asked if the motion could be amended to delay payment of the required fee-in-lieu until the second phase of the project.

The motion was so amended by Councilman DeBenedetto and seconded by Councilman Womble.

**Vote:** Unanimous.

**Action #4:** The Council approved a motion to make and accept findings of fact to be recorded in the minutes for a waiver of regulations of UDO Section 7.08 D. to allow for the applicant not to be required to extend municipal water lines to this site and along the frontage of this property for Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy as submitted by Randy Miller of Thompson & Associates.

Waiver Findings of Fact:

A petition for a waiver of regulations of UDO Section 7.07 B. 14. a. to allow for the applicant not to construct the required road improvements along the subject property frontage may only be granted upon the presentation of sufficient evidence to enable a written determination that:

1. The granting of the waiver will not be detrimental to public safety, health or welfare or injurious to other property;
2. Conditions upon the request for a waiver are unique to the property for which a waiver is sought and are not applicable generally to other property;
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is not carried out;
4. The waiver will not contravene the provisions of this UDO or the *Comprehensive Plan*;
5. Where the waiver impacts on the design, construction or maintenance obligations of public facilities, that the appropriate public agency has reviewed and approved the proposed development in writing and the subdivider has submitted a copy of such approval.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**Action #5:** Having made the necessary findings of fact, the Council approved a motion to grant a waiver of regulations of UDO 7.08 D. to allow the applicant not to extend municipal water lines to this site and along the frontage of this property for Special Exception Use Petition #09-SEU-05 CEDA Soccer Academy.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**Action #6:** The Council approved a motion to make and accept findings of fact to be recorded in the minutes for a waiver of regulations of UDO Section 7.08 E. to allow for the applicant not to be required to extend municipal sanitary sewer lines to this site for Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy as submitted by Randy Miller of Thompson & Associates.

Waiver Findings of Fact:

A petition for a waiver of regulations of UDO Section 7.07 B. 14. a. to allow for the applicant not to construct the required road improvements along the subject property frontage may only be granted upon the presentation of sufficient evidence to enable a written determination that:

1. The granting of the waiver will not be detrimental to public safety, health or welfare or injurious to other property;
2. Conditions upon the request for a waiver are unique to the property for which a waiver is sought and are not applicable generally to other property;
3. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is not carried out;



4. The waiver will not contravene the provisions of this UDO or the *Comprehensive Plan*;
5. Where the waiver impacts on the design, construction or maintenance obligations of public facilities, that the appropriate public agency has reviewed and approved the proposed development in writing and the subdivider has submitted a copy of such approval.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**Action #7:** Having made the necessary findings of fact, the Council approved a motion to grant a waiver of regulations of UDO 7.08 E. to allow for the applicant not to be required to extend municipal sanitary sewer lines to this site for Special Exception Use Petition #09-SEU-05 CEDA Soccer Academy.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**Action #8:** Having made the necessary findings of fact, the Council approved a motion to grant Special Exception Use Petition #09-SEU-05 for CEDA Soccer Academy, as submitted by Thompson and Associates, dated revised 4/15/2009 with the following conditions:

1. This entire site will be subject to the NPDES Ph. II Post Construction Ordinance at the time of any additional development to this project.
2. A fee-in-lieu of construction of road improvements for Rex Road along the frontage of the project (half of 41' btb on 90' row) will be required with Phase 2.
3. Prior to 1<sup>st</sup> construction drawing submittal the following items must be addressed or provided on the plans:
  - a. Offsite right-of-way must be dedicated for this project if needed. Right-of-way dedication will be required prior to 1<sup>st</sup> construction drawing submittal. (*This condition of plan approval will not be needed if the waiver of road improvements is approved by Town Council.*)
4. The following items will need to be addressed on revised plans to be submitted to the Department of Planning & Zoning within 5 days of Town Council action:
  - a. Show required sewer service for this site (*This condition of plan approval will not be needed if the waiver of this requirement is approved by Town Council.*)
  - b. Show required water service for this site. (*This condition of plan approval will not be needed if the waiver of this requirement is approved by Town Council.*)

**Motion By:** DeBeneetto

**Second By:** Womble

**Vote:** Unanimous.

**7g. Public Hearing: Special Exception Use 09-SEU-07, Young Achievers Academy** - Ms. Powell said the Town has received a request for a Special Exception Use for Young Achievers Academy, a child care center that would be located at 1605 Avent Ferry Road (the subject property of Annexation 09-01 earlier in the agenda.)

She said the building is proposed to be approximately 13,728 square feet. This would be a primary use as allowed by the Local Business district; however, if a single use wants to have a maximum square footage of 16,000 square feet, it is a special exception use. The developer would like to have the opportunity to expand in the future and is moving forward as a special exception use with such in mind.

The proposed building would be oriented towards the eastern property line. There are 39 parking spaces proposed, and pedestrian connections are planned to the proposed sidewalk along Avent Ferry Road.

This building would be subject to the recently-adopted commercial architectural requirements; however, because the nature of the use is a child care center and not a more traditional commercial use, according to the applicant, classrooms must be partitioned adequately, and the 50% glass requirement for the first 15 feet of the building façade that faces adjacent development and a front lot line cannot be met. The applicant has provided the following:

- Glass Provided:  
Front Elevation: 20%

Left Side Elevation: 23%  
Right Side Elevation: 23%

Ms. Powell said the applicant has provided brick faux windows as well as brick window awnings along the front, side and rear elevations as an alternate means of architectural compliance request. Because of these efforts, staff concurs with the petitioner's request.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony. The following testimony was recorded under oath administered by the Deputy Town Clerk: None.

There being no testimony, the public hearing was closed.

**Action #1:** The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for Special Exception Use Petition #09-SEU-07 for Young Achievers Academy to allow for a child care center in the Local Business district as submitted by Pabst & Hilburn, PA project number 118-08, dated 6/1/09.

Special Exception Use Findings of Fact:

A special exception use may only be granted upon the presentation of sufficient evidence to enable a written determination that:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

**Motion By:** Womble

**Second By:** VanFossen

**Vote:** Unanimous.

*A copy of the Special Exception Use Petition 09-SEU-07 addressing the findings of fact is incorporated into these minutes as addendum pages.*

**Action #2:** The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for alternate compliance with the regulations of UDO Section 3.08, A, 1. c (2)(c) (ii) Architectural and Site Design to allow for reduction in the glass requirement along of the primary facades of the child care center in association with project #09-SEU-07 for Young Achievers Academy and to allow for faux brick windows and awnings instead of glass as submitted by Pabst & Hilburn, PA project number 118-08, dated 6/1/09.

### Alternate Compliance Findings of Fact:

A petition for a waiver of regulations of UDO Section 3.08, A, 1. c (2)(c)(ii) Architecture and Site Design to allow for reduction in the glass requirement along of the primary facades of the child care center may only be granted upon the presentation of sufficient evidence to enable a written determination that:

1. The proposed development represents the use of (*building materials*, colors, textures, *building architecture*, roof features, façade modulation, *building orientation*, *signs*, landscaping, lighting or *open space*) which will result in a development pattern which is equivalent to or superior to that achievable under the applicable regulations;
2. The proposed development will be compatible with and will enhance the *use* or value of area properties;
3. The proposed development is consistent with the intent of the *Comprehensive Plan*; and,
4. The proposed development is consistent with the intent and purpose of this UDO.

**Motion By:** Womble

**Second By:** VanFossen

**Vote:** Unanimous.

**Action #3:** Having made the necessary findings of fact, the Council approved a motion to permit the alternate compliance with the regulations of UDO Section 3.08, A, 1. c (2)(c)(ii) Architectural and Site Design Requirements to allow for faux brick windows and awnings instead of glass as submitted by Pabst & Hilburn, PA project number 118-08, dated 6/1/09.

**Motion By:** Womble

**Second By:** VanFossen

**Vote:** Unanimous.

**Action #4:** Having made the necessary findings of fact, the Council approved a motion to grant Special Exception Use Petition # 09-SEU-07 for Young Achiever's Academy as submitted by Pabst & Hilburn, PA, project number 118-08 dated 6/1/2009 with the following condition(s).

1. A fee-in-lieu of upgrade will be required for this project for the Pump Station and associated Force Main.
2. The following items are to be provided with the 1<sup>st</sup> construction drawing submittal:
  - a. Provide documentation in the form of a recorded plat of any required offsite sewer easements.
  - b. Provide a sampling chamber on the grease trap.
  - c. Pavement section must meet NCDOT standards for Avent Ferry Road.
  - d. Due to the proximity of this project to the Primrose School project, documentation of the full road improvements of this site with the Primrose project across Avent Ferry Road will be required with a phasing plan.
3. The following items are required prior to approval of construction drawings (or issuance of a land disturbance permit)
  - a. Approval of Stormwater Management Plan is required.
  - b. Payment of the Stormwater Fee-in-Lieu will be required.
  - c. Provide a plat recording onsite cross access easement from the entrance to the site to the property line at the street stub location.
4. This project will be required to meet the Town of Holly Springs NPDES Ph. II Post Construction Stormwater Ordinance.
5. Stormwater Performance and Maintenance Sureties in the form of a stormwater bond, escrow account or other approved form of surety are required for this project. The performance surety must be in place for this project prior to Stormwater Management Plan Approval.
6. A Traffic Impact Analysis was required for this project. Review was completed after the review of this plan. Please refer to the TIA for additional information about roadway improvements and requirements.
7. A fee-in-lieu of construction of the thoroughfare median on Avent Ferry Road will be required for this project.

**Motion By:** Womble

**Second By:** VanFossen

**Vote:** Unanimous.

At this time, the Council recessed for five minutes.

**7h. Public Hearing: Special Exception Use 09-SEU-08, 104 Hidden Cellars Drive** – Mr. Zawadski said the Town has received a Special Exception Use request to locate a family child care home at 104 Hidden Cellars Drive within the Somerset Farms subdivision. The applicant is proposing to care for no more than eight children. The UDO permits a maximum of 20% of the square footage of a residence to be used for a home occupation. The applicant is proposing to use 168 square feet of the 1,997 square foot structure and would be in compliance with the UDO requirements.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony. The following testimony was recorded under oath administered by the Deputy Town Clerk: Ms. Sherri Morris, 101 Hidden Cellars Drive – Ms. Morris spoke in opposition to the request, saying that she has concerns about increased traffic, lack of parking and commercial nature of the use. Scott Bidwell, 101 Hidden Cellars Drive – Mr. Bidwell spoke in opposition to the request for similar reasons.

E.J. Hanks, 116 Hidden Cellars Drive – Mr. Hanks said he was opposed because of similar concerns.

Russell Lichtenstin, 109 Hidden Cellars Drive – Mr. Lichtenstin said he was opposed because of the increased traffic.

Ms. Valerie Thayer, the applicant – Ms. Thayer addressed neighbors concerns. She said there would never be any more than six children, plus her own, in her home. She said safety is paramount to her, too. While others testified that they were concerned about the additional cars approaching her home and how that traffic posed a danger to their children, she asked why are the parents allowing children to play in street when there is a safe play area / meeting area at a nearby playground.

Ms. Thayer said she had worked to improved a property that had been run down; she said there would be no signage to make the property look non-residential; she said there would be no toys left out in the yard and that no one would even know there was a child care business at the property.

Ms. Thayer added that the traffic concerns were above what would actually be the case. She said there may not be an additional six cars on the street because cars may bring siblings to a maximum of six children. She said people are describing a scenario of all cars arriving and leaving her home at one time, which would not likely be the case.

Randall Thayer, 104 Hidden Cellars Drive – Mr. Thayer addressed the Council, supporting his wife's petition. He explained that a family home day care is an economics thing for his family. He said that while he understands that the cul-de-sac was quiet, he does not believe up to six additional cars a day would change that. He also said he feels his house is big enough and can support the day care inside.

There being no further evidence, the public hearing was closed.

Councilman Sack said family child care homes are a common request, and the concerns raised by residents are common; however, he said all the approved family child care homes have resulted in no complaints.

Councilman DeBenedetto asked for clarification on what the Somerset Farms Homeowners Association position.

Ed Burt, 216 Harvester Drive – Mr. Burt, who is president of the Somerset Farms HOA, addressed the Council and said he received an email from the management company that stated someone wanted to have a family child care.

Mr. Burt said the subdivision covenants state that no property owner could pursue “obnoxious or offensive business activities” on their property, but there is nothing in the covenants prohibiting all home businesses.

Secondly, the covenants state that an owner can do “nothing to annoy the neighbors,” but Mr. Burt admitted that was pretty subjective issue. He said the Council could make its determination and then the HOA board would have to take it up.

**Action #1:** The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for Special Exception Use Petition #09-SEU-08 to allow for a family child care home at the property located at 104 Hidden Cellars Dr., Wake County PIN 0658-26-4503.

Special Exception Use Findings of Fact:

A special exception use may only be granted upon the presentation of sufficient evidence to enable a written determination that:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;

- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

**Motion By:** Sack

**Second By:** Dickson

**Vote:** Unanimous.

*A copy of the Special Exception Use Petition 09-SEU-08 addressing the findings of fact is incorporated into these minutes as addendum pages.*

**Action #2:** Having made the necessary findings of fact, the Council approved a motion to grant Special Exception Use #09-SEU-08 to allow for a family child care home at the property located at 104 Hidden Cellars Dr., Wake County PIN 0658-26-4503, as requested by Valarie Thayer with the following condition:

1. All additional state and local permits and approvals will be required prior to the business opening.

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous.

**7i. Public Hearing: Comprehensive Plan Amendment 09-CPA-01** – Mr. Zawadski explained that the Village District Streetscape master plan identifies sidewalks, landscaping, pedestrian elements, and public art as core streetscape elements and provides recommendations for incorporating these improvements along the major streets in the Village District Area. The plan also includes standards and guidelines for these improvements to ensure consistency throughout the Village District Area and a phasing plan to help to prioritize where and when improvements should be made. The purpose of the document is to provide a guide for future public and private streetscape improvements in the downtown area and to improve the character and overall livability of the community.

After a presentation by consultants Withers and Ravel, Councilman Sack said he had a concern about 12-foot wide sidewalks along Main Street.

The consultant said it was better to label the plan “a maximum of 12 feet” because it would provide for flexible width all within the right of way.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded: None.

There being no comments, the public hearing was closed.

**Action:** The Council approved a motion to adopt Resolution 09-21 adopting 09-CPA-01 adding

the Village District Streetscape master plan as presented and allowing for staff to make formatting and minor editing corrections.

**Motion By:** VanFossen

**Second By:** Womble

**Vote:** Unanimous.

*A copy of Resolution 09-21 is incorporated into these minutes as an addendum page.*

**8. Consent Agenda:** The Council approved all remaining items on the Consent Agenda following a motion by Councilman Sack, a second by Councilman VanFossen and a unanimous vote. The following actions were affected:

**8a. Resolution 09-22** - The Council adopted Resolution 09-22 declaring certain personal property to be surplus to the needs of the Town and authorizing the disposal of said property. *A copy of Resolution 09-22 is incorporated into these minutes as an addendum page.*

**8b. Resolution 09-23** – The Council adopted Resolution 09-23 to adopt a new Municipal Records Retention and Disposition Schedule. *A copy of Resolution 09-23 is incorporated into these minutes as addendum pages.*

**8c. FY 2008-09 Community Agency Grants** – This item was removed during agenda adjustment.

**8d. Raleigh Street and Earp Street Lights** - The Council authorized street light installations in areas along Raleigh and Earp Streets.

**8e. Budget Amendment** – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$180,275 and \$236,900 to move the 911 PSAP fund into the General Fund as a separate department under Public Safety. *Copies of the budget amendments are incorporated into these minutes as addendum pages.*

**8f. Budget Amendment** – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$285,700 to move Forest Springs developer agreement funds from the Utility Fund to a capital project fund. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

**8g. Budget Amendment** – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$5,550 to assign funds from Street Reserves to the Main Street Enhancement project. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

**8h. Budget Amendment** – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$1,225 to allocate funds for supplies to prepare for surplus vehicles to be sold. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

**8c. FY 2008-09 Community Agency Grants** – Councilman Dickson said he felt the purpose of the community agency grants was to provide funding for groups that provide a local benefit.

He noted that most of the applicants had local projects planned; but he has an issue with the application of the Community Partners Charter High School now known as Southern Wake Academy and how the application was for operating costs.

He said he also had a question about the Rotary Club's project, which was to provide food kits for foreign lands and not in Holly Springs.

He said he would prefer to give the Rotary Club funds to the Fuquay-Varina Food Pantry.

Councilman DeBenedetto said the Council should maybe look at public support of civic groups in a broader sense.

Mr. Dean pointed out that policy and state law define a public purpose.

**Action:** The Council approved a motion to grant all community agency grant requests, except for the application from Community Partners Charter High School.

**Motion By:** Sack

**Second By:** DeBenedetto

**Vote:** Unanimous.

**9. Other Business:** none

**10. Manager's Report:** none.

**11. Closed Session:** The Council approved a motion to enter into Closed Session, pursuant to NCGS 143-318.11(a)(4) for the purpose of discussing a matter of matters relating to the location or expansion

industries or other businesses in the area served by Holly Springs.

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous.

**General Account – Closed Session June 16, 2009**

In Closed Session, the Town Manager reported to Council about a potential industry that has expressed interest in locating in Holly Springs. He noted that the site that is being examined by the company will need water and sewer services extended to it.

In Closed Session, there was no other vote of the Council other than a motion to return to Open Session, which carried unanimously.

**12. Adjournment:** There being no further business for the evening, the June 16, 2009, meeting of the Holly Springs Town Council was adjourned following a motion by Councilman Dickson, a second by Councilman Sack and a unanimous vote.

Respectfully Submitted on Tuesday, Dec. 15, 2009.

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Joni Powell, CMC, Town Clerk

**Addendum pages as referenced in these minutes follow and are a part of the official record.**