



May 19, 2015

MINUTES

The Holly Springs Town Council met in regular session on Tuesday, May 19, 2015 in the Council Chambers of Holly Springs Town Hall, 128 S. Main Street. Mayor Sears presided, calling the meeting to order at 7 p.m. A quorum was established as the mayor and four council members were present as the meeting opened.

Council Members Present: Mayor Sears, Councilmen James Cobb, Tim Sack and Hank Dickson and Councilwoman Cheri Lee.

Council Members Absent: Councilwoman Linda Hunt-Williams.

Staff Members Present: Charles Simmons, town manager; John Schifano, town attorney; Joni Powell, town clerk, (recording the minutes); Linda Harper, deputy town clerk; Daniel Weeks, senior project manager; Eric Tayler, information technology technician; Adam Huffman, assistant parks and recreation director; Gina Clapp, planning and zoning director; Laura Holloman, planner; Leroy Smith, fire chief; Mary Hogan, finance director; Drew Johnson, plan review technician; Kendra Parrish, engineering director; Jenny Mizelle, director of economic development; Tamara Ward, communications specialist and Mark Andrews, public information officer.

2 and 3. The Pledge of Allegiance was recited, and the meeting opened with an invocation by Rev. Bill Rose, minister of the Oasis Church.

4. Agenda Adjustment: The May 19, 2015 meeting agenda was adopted with changes, if any, as listed below.

Motion by: Sack

Second by: Cobb

Vote: Unanimous

Items added to Consent Agenda: None.

Items added to Agenda: None.

Items removed from the Consent Agenda: item 6d. Resolution 15-21 supporting HB 200 and SB702 calling for changes in North Carolina's Certificate of Need law.

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 comments were recorded:

Edgar Garrido, 5012 Oakmont Ct. -- Mr. Garrido addressed the Council as a member of the Holly Springs Run Club and a program called Watch for Me NC. He said the group promotes runner safety and provides public service announcement posters, bumper stickers, etc. for public safety education and enforcement. Started in 2012, the Watch for Me NC program seeks to improve pedestrian and bicyclist safety. He asked the Town to participate in the program and use its materials.

6a. Consent Agenda: The Council approved a motion to approve all items on the Consent Agenda. The motion carried following a motion by Councilman Sack, a second by Councilman Cobb and a unanimous vote. The following actions were affected:

6a. Minutes – The Council approved minutes of Town Council meetings held May 5, 2015.

6b. Resolution 15-20 – The Council adopted Resolution 15-20 directing the town clerk to investigate the sufficiency of annexation petition A15-01 and setting a public hearing. *A copy of Resolution 15-20 is attached to these minutes.*

6c. Annexation Ordinance A14-05 -- The Council adopted an amendment to Annexation Ordinance A14-05 correcting the legal description of the property annexed. *A copy of Annexation Ordinance A14-05 is attached to these minutes.*

6d. Resolution 15-21 - The Council removed this agenda item for discussion during agenda adjustment.

6e. Budget Amendment, \$84,364 – The Council adopted an amendment to the FY 2014-15 budget in the amount of \$84,364 to cover costs of repairs to the ladder truck. *A copy of budget amendment is attached to these minutes.*

6f. Recreation Program Manager Reclassification – The Council approved reclassification of a Recreation Program Manager (SG 77) position to a Recreation Program Specialist (SG 74) position.

6g. Budget Amendment, \$26,600 – The Council adopted an amendment to the FY 2014-15 budget in the amount of \$26,600 to balance IT capital purchases. *A copy of the budget amendment is attached to these minutes.*

6h. Technical Innovation Contract – The Council approved to enter into an agreement with Technical Innovation in the amount of \$61,162.52 for installation of audio visual systems for the Law Enforcement Center.

6i. Contract Change Orders Report – The Council received a report of contract change orders for T. A. Loving approved by the town manager in the North Main Athletic Complex project.

6j. Rescind Town Policy Statement P-20- The Council approved to Rescind Town Policy Statement P-020 on rezoning requests, effective immediately.

6k. Clarity Communication Group Inc. – The Council approved to enter into a license agreement with Clarity Communications Group, Inc., for 10 units of space in an equipment rack.

6l. Clarity Communication Group Inc. – The Council approved to enter into a 20-year lease agreement with Clarity Communications Group, Inc. for a single strand of dark fiber in the Town’s fiber optic network.

6m. North Main Athletic Complex Change Order – The Council approved a contract change order with TA Loving in the amount of \$40,700.37 for additional work in street improvements related to the North Main Athletic Complex project.

6n. Avent Ferry Rd./NC 55 Bypass Project – The Council authorized funding in the amount of \$100,000 from limited obligation bond proceeds for land acquisition and related costs in the Avent Ferry Road / NC55 Bypass intersection improvement project and amended the project fund accordingly.

6o. Momentum Telecom Contract – The Council approved to enter into a wholesaler agreement with Momentum Telecom for the North Main Athletic Complex project.

6d. Resolution 15-21 – Councilman Dickson said he had asked that this item be removed from the Consent Agenda for separate action because the issue is so important.

Councilman Sack said he was glad for the chance to address the issue because he feels the process is flawed. When a hospital organization wins as Certificate of the Need from the state, there is no mechanism to trigger the construction of the hospital; therefore, the town is at the mercy of the hospital organization as to when – if ever – it will build. In the meantime, no other organization can come in and obtain a CON to build a hospital. “We are held hostage by the process year after year after year and we have no recourse,” he said.

Councilman Dickson added that it is not only hospitals that are subject to the CON process but certain medical facilities and specialized services and equipment.

Councilwoman Williams said she would suggest an amendment to the proposed resolution that would support legislation language that would at least modify the CON appeals process. She said if the whole process is not eliminated, modification “baby steps” might be a move in the right direction.

Council members agreed.

Action: The Council approved a motion to adopt Resolution 15-21 as amended that the Town Council of the Town of Holly Springs requests that the Wake County delegation in the North Carolina State Legislature:

- provide support for HB 200 to modify the Certificate of Need process to exclude certain types of health care services so they are more readily available to citizens;
- support SB 702 calling for the outright repeal of the North Carolina Certificate of Need law so that all health care services are more readily available to citizens; and
- short of a full repeal of the Certificate of Need laws, support modifications to the law that would trim the appeals process so that only merited challenges to the State's decision are moved forward and to increase the number of facilities that can be certified to more accurately mirror an area's population growth.

Motion by: Sack

Second by: Dickson

Vote: Unanimous.

7a. Ordinance Amendment, Hens in Town Limits – Councilman Dickson said during his campaign he talked with citizens who asked him his position on the keeping of backyard laying hens. He promised them he would look into it more if he was elected.

In 2010, a local couple asked the Council to consider amending the Town's animal control ordinance to allow backyard laying hens. Council directed that the Town Attorney prepare such an ordinance for consideration by the Council.

Councilman Dickson said this most recent request is to consider an amended version of Town Code Section 12-80 that would allow chickens in limited numbers in certain circumstances, providing for such factors as lot size and setbacks and permitting procedures for coops. Councilman Dickson's proposed version would allow for two hens; in residential and agricultural zones on lots of no less than 8,000 square feet; coops would be small and kept within 12 feet of a property line.

The Town Attorney's version would allow four hens on any residential or agriculture lot with the coop adequately sized for the number of hens and be placed no less than 50 feet from a property line.

Mr. Schifano said in 2010 that his draft was similar to that adopted by other towns that have amended their ordinances in order to allow hens to be kept within the town limits. Councilman Dickson said his is too, although it may be more restrictive.

While the drafts are presented for Council review and discussion, some staff members have reservations. As in 2010, staff concerns center around the added call volume to the animal control program; that the average lot size in Holly Springs is not conducive to housing poultry; that regulation of the appearance of coops and pens would be problematic; and that while most owners of chickens would be responsible in disposing of animal waste, a significant number may not, causing noise and smell complaints from adjacent landowners.

Other concerns mentioned by staff members: polluted storm water run-off; wildlife that would be attracted by chickens; subdivision covenants and how the town is usually expected to enforce covenants; and cranky neighbors complaining of noise and smell – even if there isn't any.

Ms. Powell reported that the Town gets calls and emails on both sides of the issue, and it is roughly equal between those who want chickens to be allowed and those who do not.

In discussion, Councilman Sack said he was still against the idea for all the reasons stated in 2010. He said he understands how some residents believe that it would be a really good idea, they are not considering any of the negative impacts that could result. And that, he said, is what the Council has to do – consider the negative impacts.

Councilwoman Lee said she had spoken with a friend who lives in Raleigh where chickens are allowed and who has chickens herself in a very urban area. Councilwoman Lee said she thought her friend would be staunchly supportive of the idea and was surprised when her friend said chickens are a lot of work and not everyone would do right. She warned Councilwoman Lee that

there would be those who would ruin it for everyone because they would not follow the rules and properly care for their birds.

Councilman Cobb said he originally was against the idea but is warming up to the idea as he sees a lot of towns that are doing it. He said he would prefer the increased setbacks offered in the town attorney's draft. He pointed out that many homeowner associations would not allow them, so for many it would be a moot point.

Councilman Cobb said he was not ready to make a decision but he thinks the idea merits additional study, particularly since Holly Springs and Fuquay-Varina are the only towns in Wake County that do not allow backyard chickens.

Councilman Sack said he would like feedback from other towns.

Councilman Dickson said he understood and was fulfilling a promise by bringing the issue forward.

Councilman Sack said he needs to hear more about run-off issues; and how other towns limit the number of chickens and size of coops

Action: None.

7b. 15-DP-01, Eagles Development Plan - Ms. Clapp said the Unified Development Ordinance gives the director of planning and zoning the authority to act upon development plans for projects with 20,000 square feet or less in gross floor area. If the director does not approve a development plan, the petitioner has 30 days in which to appeal the director's decision to the Town Council at a public meeting.

This is an appeal of the director's decision. After meetings among planning and zoning staff, engineering staff, the town manager, the project's design team and its owner to discuss options for moving forward, the project engineer on behalf of the owner, has submitted a letter to request that the Town Council consider approval of the project based upon amendments proposed to the plans.

Don Bataille, project engineer with McKim & Creed on behalf of owner Dilip Gandhi, submitted a development plan petition to construct an Eagles gas station and carwash on Lot 9 in Southpark Village. Southpark Village is a master planned integrated commercial shopping center that was approved originally by the Town Council in February 2003. As a part of the approval of the master plan, the developer submitted and incorporated a series of design guidelines that all development within the center would be subject to upholding.

The proposed Eagles gas station and car wash are designated as a primary use in the CB-Community Business zoning district which the property is zoned. Since the proposed uses are allowed, and the total square footage of the buildings is less than 20,000 square feet, this project is reviewed as an administrative development plan. If staff feels that all ordinance and site requirements are met, then staff has the authority to approve the proposed development plan.

When this development plan petition was received, staff posted the plans to the Town's Web page as all plans are. There was some question from the public in regard to the proposed use locating on this site, and when forwarded to the Town Council, there were concerns addressed about the carwash and its access drive. These comments and concerns were shared with the petitioners.

The project engineer and architectural team have worked with staff in meeting the standard UDO and Engineering Design and Construction Drawing Standards (EDCDS) requirements. However, on the third and official action submittal, there still were concerns from staff about the proposed waivers to eliminate a significant amount of required glazing on both the north and south facades of the gas station/convenience store building and the east/Dairy Queen facing side of the car wash building as well as the minimal separation of the car wash driveway and the main pedestrian sidewalk along Village Walk Drive. As a result of these concerns, the director of planning and zoning did not approve the development plan based upon the requested architectural waivers and the carwash driveway design's being in conflict with the Southpark Village Design Guidelines.

As a result of this action, a meeting was held among planning and zoning staff, engineering staff, the town manager, the project's design team and its owner to discuss options for moving

forward. The project engineer on behalf of the owners, has submitted a letter to request that the Town Council consider approval of the project based upon further amendments proposed to the plans. The proposed amendments would include converting the faux brick windows on the north and south facades of the gas station/convenience store building and east elevation of the car wash building to black spandrel glass and moving the carwash building and driveway several feet north to increase the separation of the drive and the sidewalk and adding brick columns and black “wrought iron” fencing to improve the appearance and sense of place and safety along the sidewalk.

Action: The Council approved a motion to approve Development Plan 15-DP-01 for Eagles at Southpark Village as submitted by McKim & Creed with the following conditions:

1. All previous approval conditions for *South Park Village Master Plan* will apply to this plan.
2. A fee-in-lieu of upgrade will be required for this project for the pump station and/or force main
3. Within 10 business days of approval:
 - a. revised drawings shall be submitted to include the turning template for the proposed truck to serve the property.
 - b. Revised landscape plan is to be submitted with a fence detail provided for final approval by the Department of Planning and Zoning.
 - c. revised drawings in conformance with all Town Council specified modifications must be submitted to the Department of Planning and Zoning for review and verification of conformance.

Motion by: Dickson

Second by: Sack

Vote: Unanimous.

7c. Redistribution of Sales Tax - Mr. Simmons said that Holly Springs could face a loss of \$1,617,369 if Senate Bill 369 Sales Tax Fairness Act is passed into law as written, according to a report by the North Carolina League of Municipalities. That lost revenue translates into roughly a five-cent property tax increase for local residents if the State of North Carolina effectively takes sales tax revenues from here and redistributes elsewhere in the state.

Estimates generated by the League indicate that cities could face a statewide loss of nearly \$120 million. Some towns would gain revenue and some would lose revenue under the terms of the bill, which converts the locally levied sales tax to a state sales tax and distributes it on a per capita basis around the state. Overall, though, the result is a \$120 million loss of city revenue.

Much of this loss can likely be attributed to the absence of any city hold harmless payment from counties once the bill is fully implemented. That payment from counties to cities is made so that cities receive revenues equivalent to which they would have received under the Article 44 sales tax, which was converted to a state sales tax in exchange for the state’s assuming Medicaid funding responsibilities. However, the amount of that payment is calculated based on articles of local sales tax that are repealed by SB 369, leaving no basis for calculating an amount of those payments once the bill is implemented. Additionally, some cities are hurt by the bill's mandate that counties distribute sales taxes to the cities within their borders on a per capita basis.

The League also is concerned about SB 369's conversion of the local sales tax to a state sales tax that is allocated to local governments. This eliminates a locally levied tax and puts city sales tax distributions fully under state control and subject to the annual appropriations process – which generally places cities squarely at the bottom of the list of priorities.

League staff is having discussions with sponsors of SB 369, legislative leadership and staff and will continue to advocate for additional municipal revenue options that maintain locally controlled revenues and provide stability and flexibility for municipalities going forward.

But the League could use our help. Elected officials and private citizens are urged to contact our Wake County delegation to voice opposition to this proposal that could significantly impact Holly Springs and hundreds of N.C.'s cities and towns.

Mr. Simmons said he supports current policy and when the state starts changing the rules, the Town's ability to plan and be fiscally responsible is compromised. He said he would urge residents to contact legislators.

Councilman Cobb said the change would mean a more than 5-percent drop in the Town's budget and he doesn't think we could find services enough to cut to make up that shortfall.

Mayor Sears said he would hand-deliver a resolution to the Wake delegation and provide copies to other mayors in the state.

Councilman Sack noted that many cities in the state are in the same boat.

Council asked that text be provided on the Town's Web site to help people to write letters to their representatives. Council asked that contact information for state legislators be provided.

Action: The Council approved a motion to endorse a letter requesting members of the Wake County delegation to oppose SB 369 in any form on the basis that it not only impacts Holly Springs with a significant revenue loss but it also eliminates a locally levied tax and puts city sales tax distributions under State control.

Motion by: Cobb

Second by: Sack

Vote: Unanimous.

8. Other Business: None requiring or resulting in Council action.

9. Manager's Report: None requiring or resulting in Council action.

10. Closed Session: The Council approved a motion to enter into Closed Session, pursuant to North Carolina General Statute 143-318.11(a)(5) to discuss real estate acquisition.

General Account – Closed Session May 19, 2015

In Closed Session, the Town Council talked about the pros and cons of selling a piece of property on Main Street. Members felt the 2010 property appraisal is low and that a newer appraisal might be in order. Members also want to make sure that if the Town sells the property that it would be developed according to existing approved plans for the property.

In another land acquisition matter, the Council discussed the merits of buying another parcel on Main Street so that development could be nurtured on the property to provide Holly Springs with a downtown business center. The question became does the Town pursue street improvements in the area or does it buy the available land instead.

Action: The Council approved a motion to investigate the potential purchase of the property.

Motion by: Sack

Second by: Cobb

Vote: Unanimous.

Action: The Council approved a motion to reenter open session.

Motion by: Sack

Second by: Cobb

Vote: Unanimous.

-- *End of General Account*

11. Adjournment: There being no further business for the evening, the May 19, 2015 meeting of the Holly Springs Town Council was adjourned.

Respectfully Submitted on Tuesday, July 21, 2015.

Joni Powell _____

These minutes follow and are a part of the official record.

