

# Holly Springs Town Council Minutes

## Regular Meeting Oct. 7, 2008

### MINUTES

The Holly Springs Town Council met in regular session on Tuesday, October 7, 2008, in the Council Chambers of Holly Springs Town Hall, 128 S. Main Street. Mayor Dick Sears presided, calling the meeting to order at 7:00 p.m. A quorum was established as the mayor and four council members were present as the meeting opened.

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

**Council Members Absent:** Councilman Tim Sack.

**Staff Members Present:** Carl Dean, town manager; John Schifano, town attorney; Joni Powell, town clerk (recording the minutes); Linda Harper, deputy town clerk; Gina Bobber, director of planning and zoning; Mark Zawadski, planner II; Laura Powell, Planner I; Stephanie Sudano, director of engineering; Kendra Parrish, senior engineer; Elizabeth Goodson, development review engineer; Len Bradley, parks and recreation director; John Herring, police chief; Cecil Parker, fire chief; Drew Holland, finance director; Michelle D'Antoni, publications specialist; and Mark Andrews, public information officer.

**2 and 3.** The Pledge of Allegiance was recited, and the meeting opened with an invocation by Bishop Mark Sivoldi, of the Church of Jesus Christ of Latter Day Saints.

**4. Agenda Adjustment:** The October 7, 2008 meeting agenda was adopted with changes, if any, as listed below.

**Motion By:** VanFossen

**Second By:** Womble

**Vote:** Unanimous

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

**Items Removed from the Agenda:** None.

**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:

Robert Goldfinger, 301 Flint Point Lane – Mr. Goldfinger addressed the Council saying that Waste Industries has a continuous record of inadequate service for both garbage and recycling collection. Waste Industries is the contractor that provides service in Holly Springs. Mr. Goldfinger told of specific instances when broken glass was left scattered throughout the street and grass. The company, he said, was slow and inadequate in its response. He told of several instances when refuse was not collected.

He said the company is simply slow and unresponsive. He said he did not know about the contents of the contract regarding service, but he wanted the Council to be aware of continuous poor performance.

Gerald Holleman, 5625 Easton Street – Mr. Holleman addressed the Council, commenting on the Oct. 1 informational meeting hosted by Progress Energy. He criticized the town for not publicizing the event and scheduling it on a Saturday. He provided a copy of his written comments for the record. *They are incorporated into these minutes as addendum pages.*

John Bailey, 216 Muses Mill Ct. – Mr. Bailey addressed the Council regarding the proposed New Hill Place shopping center. He said, as a resident of Oak Hall, he said he is concerned about the noise and light pollution from the proposed interchange and shopping center.

Erica Bailey, 105 Stonerail Circle -- Mrs. Bailey addressed the Council. She said she felt her tax dollars are being spent by the Town to respond to an elected official who is on a fishing expedition with artificially-generated charges of wrong-doing. She said she would ask the Town Council to not seriously consider the official's request that the town board hire attorneys unless there is clear evidence that there is wrong-doing. She said if this is done, she would like to see an accounting of the cost and upon conclusion of the legal report, she would request an equal amount be spent on positive things for the town.

**6a. Affordable Housing** – Wake County Commissioner Lindy Brown addressed the Holly Springs Town Council to describe who needs affordable housing in Wake County and to illustrate the demand for affordable housing.

Commissioner Brown and Annmarie Marino emphasized the difference between subsidized housing and homes for the county's working poor.

**Action:** None.

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

- 7a. Minutes - The Council approved minutes of the Council's regular meetings held in August 2008.
- 7b. Resolution 08-46 – The Council adopted Resolution 08-46 indicating the Town's support for NCDOT to close a portion of Ralph Stephens Loop Road right of way. *A copy of Resolution 08-46 is incorporated into these minutes as an addendum page.*
- 7c. Holly Springs Community Planning Month – The Council received a report of a mayoral proclamation designating October 2008 as Holly Springs Community Planning Month.
- 7d. NCDENR Greenway Trails Contract - The Council ratified a contract with NCDENR to receive a grant in the amount of \$75,000 for greenway trails. *A copy of the NCDENR contract is incorporated into these minutes as addendum pages.*
- 7e. Budget Amendment, \$1,950 – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$1,950 to accept insurance proceeds for police and fire vehicles. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*
- 7f. Jones Park Batting Cage – The Council approved the addition of a batting cage to the Jones Park Master Plan.
- 7g. Maple Street Extension Change Order – The Council received a report of a change order within project contingency and approved by the Town Manager in the amount of \$1,440 for dirt fill in the Maple Street extension project. *A copy of the change order is incorporated into these minutes as addendum pages.*
- 7h. Budget Amendment, \$475 – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$475 to accept sponsorship of the Cultural Center's Business Expo. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*
- 7i. Budget Amendments – The Council adopted budget amendments to the FY 2008-09 budget in the amount of \$1,196,700 and to the water capacity project fund in the amount of \$14,903,350 to account for revenue bonds and USDA loan payoff. *Copies of the budget amendments are incorporated into these minutes as addendum pages.*
- 7j. SCIMMP Update Biennial Report – The Council received a copy of the biennial report of Secondary and Cumulative Impacts Master Mitigation Plan update.
- 7k. Linksland Drive Pedestrian Crosswalk – The Council approved installation of a pedestrian crosswalk on Linksland Drive.

**8a. Time Warner Cable** – Ms. Catharine Rice of Action Audits, the town's cable television consultant through the Triangle J Council of Governments, explained that Time Warner Cable (TWC) proposes to separate its cable operations from its parent company, Time Warner Entertainment – Advance / Newhouse Partnership (TWEAN,) in effect creating a situation whereby there is a pseudo-transfer of ownership. With that transfer, the town's current franchise agreement states that the town must approve of this transfer of ownership for it to proceed.

She said the Town desires to have its own dedicated Public Education and Government (PEG) channel over which to broadcast news and events. A PEG channel would be an invaluable asset for the Town on any given day, but particularly in times of emergency, providing the Town with an information outlet available to thousands of residents.

Ms. Rice said it was her opinion that the Town should use this opportunity to grant approval or to deny the TWC spin-off plan to leverage a PEG channel for viewers in Holly Springs.

Mr. Schifano added that the existing franchise agreement that the Town has with TWC, however, already provides for TWC to provide that PEG channel. It would seem enforcement of the existing franchise agreement also would provide the PEG channel.

Ms. Rice said the Council is being asked to adopt a resolution that would consent to the transfer of ownership as requested by TWC, conditioned upon TWC's providing Holly Springs with a PEG channel by March 31, 2008.

Mayor Sears asked if there would be an increase in rates.

Brad Phillips, TWC vice president, said yes there would be a rate increase for not only the transfer, but also for PEG provision.

Mr. Shifano pointed out that Andi Curtis, senior director of public affairs for TWC East Carolina Division, provided a letter of commitment from the company that it will provide Holly Springs with a PEG channel by the first quarter of 2009, once technical and channel management logistics are worked out. In the latest version of the letter, he said, TWC agrees to be bound by liquidated damages for not having a PEG channel in operation by March 31, 2009. The provision would allow the Town to recoup \$500 per day for every day past March 31 the PEG channel is not in operation, Mr. Schifano said.

Mr. Schifano also noted that the proposed resolution sets out the PEG head-in location to be at Town Hall, when it is likely that the Town may rather have it located at 300 W. Ballentine Street. He suggested verbiage changes to allow the town to locate the head-in in any location, as long as it was one location.

**Action:** The Council approved a motion to adopt Resolution 08-47, as amended to not specify the location of head-in equipment, consenting to the transfer of ownership for TWC, conditioned by the provision of a Public, Education and Government access channel (PEG) by March 31, 2009 for Holly Springs customers of TWC as stipulated in the existing franchise agreement.

**Motion By:** VanFossen

**Second By:** Womble

**Vote:** Unanimous.

*A copy of Resolution 08-47 is incorporated into these minutes as addendum pages.*

**8b. Main Street Enhancement Project** – Ms. Parrish said that due to changing traffic volumes on Main Street, staff and the town manager recommend a modification to the Main Street Enhancement Project to retain the center turn lane on Main Street, thus eliminating the traffic-

calming chicanes that originally were planned.

She said daily traffic volumes on Main Street indicate that chicanes would not provide an acceptable level of service for motorists.

She said the money saved in the project from not adding the chicanes could be used for other streetscape enhancements.

**Action:** The Council approved a motion to approve a modification to the Main Street Enhancement project to retain the center turn lane on Main Street and eliminate the originally planned chicanes and meandering sidewalk.

**Motion By:** Womble

**Second By:** VanFossen

**Vote:** Unanimous.

**8c. Main Street Square Element J, 08-DP-05** – Mr. Zawadski said the Town has received a request for a development plan for 1.21 acres of property located at the intersection of South Main Street and G.B. Alford Highway within the Main Street Square Planned Unit Development. The project includes a two-story 3,861-square-foot bank and a one-story 5,716-square-foot office building.

He said a total of two drive-through lanes are proposed along the south side of the bank, and a total of 38 parking spaces are proposed for both buildings. Pedestrian connections are proposed to connect both buildings with the sidewalks along Delmare Way and Kentworth Drive.

The bank and office buildings meet the architectural requirements set forth in the Main Street Square PUD and are consistent with the commercial buildings previously approved for the development. The buildings are proposed to be constructed primarily of brown colored brick with a second colored brick used along the building base and as window accents. The predominant roofline is proposed to be flat with a decorative EIFS cornice and pitched roofs are also proposed to add additional variation. Windows are proposed to be located on all sides of the buildings and on all stories of the buildings. Other architectural elements include decorative brick patterns, façade modulation, awnings, and columns.

**Action:** The Council approved a motion to approve Development Plan #08-DP-05 for Main Street Square Element J as submitted by Stewart Engineering, project number C8047, dated revised 8/25/2008 with the following conditions:

1. All previous conditions of Main Street Square PUD shall apply.
2. Prior to issuance of Building Permit, the following must be completed:
  - a. A lighting plan must be submitted to and approved by the Department of Planning & Zoning.
  - b. The copper colored roof shall be changed to a color that will be consistent with the architectural design palette of the building and adjacent developments.
3. Fee in lieu of pump station upgrades will be required for this project.
4. A sign permit is required prior to signage installation.

**Motion By:** DeBenedetto

**Second By:** Womble

**Vote:** Unanimous.

**8d. Overlook Medical Center, 08-DP-06** – Mr. Zawadski said the Town has received a request for a development plan for an 11,453-square-foot medical office building to be located near the intersection of Avent Ferry and Cass Holt Roads and Capeside Ave., which leads into the Overlook at Holly Glen Subdivision.

He said a medical office building would be a permitted use within the Local Business zoning district. The proposed building would be oriented with the rear of the building to Avent Ferry Road and the front toward the parking lot, which is located behind the building. There are 57 parking spaces proposed for the use, and a pedestrian connection is planned to both Capeside Ave. and Avent Ferry Road.

Don Mizelle, 5429 Shoreline Ct. – Mr. Mizelle, representing the applicant, explained that the company intends to build office space for lease, presumably for medical use.

**Action:** The Town Council approved Development #08-DP-06 for Overlook Medical Center as submitted by Tony Tate Landscape Architecture P.A., project # 08012 date revised 09/08/08, with the following conditions:

1. This lot is a portion of the previously approved Overlook at Holly Glen. All previous conditions of plan approval from the Overlook at Holly Glen plan will apply to this project as well.
2. The following items will need to be addressed with the 1<sup>st</sup> construction drawing submittal:
  - a. Offsite right-of-way must be dedicated for this project for the 51' right-of-way stub to the Wood property.
  - b. Offsite sewer easements must be dedicated from Overlook at Holly Glen to this lot to provide for sewer extension for this site.
  - c. Evaluation of the existing storm drain along Avent Ferry Road will be required prior to 1<sup>st</sup> construction drawing submittal and any improvements necessary as determined by the Town of Holly Springs Engineering Department must be completed with this project.
  - d. Provide a cross-access easement to the western property line from the parking lot shown to provide opportunity to have cross-access in the future.
3. If any off site sewer facilities are needed to serve this project and are not completed and accepted by the Town at the time of approval of this plan, then these facilities must be completed. The Town is not responsible for completion of off site sewer facilities, and will not guarantee completion of such facilities by any other party, no plats or building permits will be issued by the Town until all necessary on and off site sewer infrastructure is completed.
4. Change the red spruce out to a cedar species more compatible with this climate zone.

5. Prior to issuance of Building Permit:
  - a. The copper colored roof shall be changed to a color that will be consistent with the architectural design palette of the building and adjacent developments.
  - b. Modify the gable roof over the center doors along the Avent Ferry Road façade to match the design and materials of the center gable roof on the parking lot façade.

**Motion By:** Womble  
**Second By:** DeBenedetto  
**Vote:** Unanimous.

**8e. Green Oaks Parkway** – Councilman DeBenedetto read a prepared statement outlining a detailed timeline of the Green Oaks Parkway construction project and costs from his own estimations and calculations. At Councilman DeBenedetto's request, his prepared statement is incorporated into these minutes. The comments are attached as addendum pages.

He then discussed with Council members his intent to make a motion to hire outside legal counsel to advise the Town Council on seeking legal redress to recoup damages and interest on funds allocated and paid to address the Army Corps of Engineers' cease and desist order for environmental and construction missteps for Green Oaks Parkway and for the additional hours the town's staff spent related to addressing the Army Corps of Engineers' cease and desist order.

Mr. Dean explained that on July 15, 2008, the Town Council unanimously approved a three-party contract with the developer and contractor to resume work on the first two lanes of Green Oaks Parkway. The contract specifies that the Town will recoup from the developer (through fee credit reductions) any environmental fines and other costs of completing the first two lanes. The contract specifies that any other costs relating to the environmental matter incurred by the Town (other than staff salaries and normal Town overhead) similarly will be paid by the developer through fee credits.

Below is a fact sheet prepared by Mr. Andrews to help explain the complex issue:

**Green Oaks Parkway Agreement Facts:**

- The Town entered into a public-private partnership for construction of two lanes of Green Oaks Parkway. This partnership was unique in the scale of off-site road improvements that the developer agreed to make. Typically, developers only are obligated to make improvements along their property. The original intent under the partnership was that the Town would not spend any general tax dollars on the first two lanes.
- The partnership is spelled out in a developer agreement whereby the developer would front the cost of construction of the two-lane road in exchange for a waiver of transportation fees on lots constructed in the 12 Oaks subdivision. The proposed cost of construction of the two-lane roadway exceeded what the developer would save through waived transportation development fees.
- The Novartis economic incentive agreement unanimously approved by the Town Council required the Town to accelerate construction of an additional two lanes of Green Oaks Parkway. The additional two lanes were solely the Town's responsibility.
- While the first two lanes were under construction, the Town was proactive in getting the developer to make design changes to accommodate the future two lanes.
- The Town was responsible for the cost of these changes since their purpose was to accommodate the second two lanes. The developer fronted the \$880,000 cost of these design changes for approximately a year at no interest cost to the Town. It is estimated that the Town saved more than \$500,000 by having this work done during construction of the first two lanes rather than retrofitting when the second two lanes were added.
- The Town became the holder of an environmental permit from the Army Corps of Engineers in an effort to expedite permit approval, finish the road sooner, and meet the Town's contractual obligation to Novartis Vaccines and Diagnostics.
- The developer's contractor performed work outside the area of disturbance allowed under the environmental permit. The violation caused work on the roadway to be suspended. After the work was allowed to continue, the developer had difficulties resuming the work.
- On July 15, 2008, the Town Council unanimously approved a three-party contract with the developer and contractor to resume work on the first two lanes.
- The contract specified that the Town will recoup any environmental fines and other costs of completing the first two lanes. The contract specifies that the Town will recoup this money through transportation development fees paid as homes are built in 12 Oaks, regardless of who builds the homes or when.
- At the time it approved the 54-day contract, the Town Council was notified that change orders were forthcoming.
- At their Sept. 2, 2008 meeting, change orders were approved by all Council members in attendance. Failure to approve the changes would have caused the contractor to stop work again, resulting in further delays and additional costs.
- In summary, the initial estimate for construction of the first two lanes of Green Oaks Parkway was \$2.2 million. As a result of recent

changes in this public-private partnership, the Town's expenditure of general tax dollars for the first two lanes is estimated at \$235,000. The Town will recoup this expense through development fees as homes in the subdivision are built.

**Action:** The Council considered a motion to retain outside legal counsel (specifically, former Town Attorney Ernie Pearson) to advise the Town Council on seeking legal redress to recoup damages and interest on funds allocated and paid to address the Army Corps of Engineers' cease and desist order for environmental and construction missteps for Green Oaks Parkway and for the additional hours the town's staff spent related to addressing the Army Corps of Engineers' cease and desist order.

**Motion By:** DeBenedetto

**Second By:** Womble

There was much discussion of the motion.

Councilman Dickson said he would offer a substitute motion to defer any action until the next meeting when all Council was in attendance. He said he felt something as important as hiring legal counsel to question senior staff, then he would want all councilmen present to vote on the question.

Councilman VanFossen disagreed with Councilman's DeBenedettos facts and figures in his statement. He said Councilman DeBenedetto's concerns about an "interest free loan," were unfounded since developer agreements providing fee credits is the mechanism used by municipalities to build most public infrastructure. He said he also did not agree that if the Town Council was inclined to hire outside counsel that it should be Ernie Pearson, since Mr. Pearson drafted the original agreement.

Mayor Sears said he had concerns about Councilman DeBenedetto's calling an attorney individually without knowledge of entire council.

Mr. Schifano said he had no problems with the Council's hiring outside counsel to review the Green Oaks Parkway documents.

Councilman Dickson said that, aside from the usual audit of financials, any time the Council might set about hiring a professional to overview staff, then he would need to trust the motives of the person making the suggestion. Councilman Dickson added that he did not trust Councilman DeBenedetto's motives.

**Action:** The Council approved a substitute motion to table the question until the next meeting when all Council members will be in attendance.

**Motion By:** Dickson

**Second By:** VanFossen

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

**10. Other Business:** Councilman Dickson discussed an inflammatory letter to the editor containing broad-brush accusations and misinformation about the town's police and fire departments. Councilman Dickson said he responded to all the accusations and provided clarifications. He asked that his written response be included in the minutes. It is included in these minutes as addendum pages.

**11. Manager's Report:** Mr. Dean reported that the Certificate of Need public hearing for area hospital applicants, including Holly Springs Hospital, is scheduled for Oct. 20. He said facts about the Green Oaks Parkway project are posted on the Town's Web site for citizens to have facts about the project.

**12. Closed Session:** The Council approved a motion to enter into Closed Session, pursuant to G.S. 143-318.11(3), to consult with the Town Attorney regarding three matters of land acquisition.

**Motion By:** Dickson

**Second By:** Womble

**Vote:** Unanimous.

#### **General Account of Closed Session – Oct. 7, 2008**

In Closed Session, the Council provided direction to the town attorney regarding acquisition of easements, including the Earp Street extension in front of the Goddard School, the cost of which is to be paid by the developer, per an agreement. Mr. Schifano explained how there was a difference in the value of the 15,000 square feet before and after the taking, which divided the nearly four acres into a 3.5-acre tract and a .43-acre tract. He reported that he had managed a fair settlement amount for the property but that developer will not be happy because it will be an amount substantially higher than what was estimated a few years ago.

**Action:** The Council approved a motion to return to Open Session.

**Motion By:** Dickson

**Second By:** VanFossen

**Vote:** Unanimous

#### **-- End General Account**

**13. Adjournment:** There being no further business for the evening, the Oct. 7, 2008, meeting of the Holly Springs Town Council was adjourned

following a motion by Councilman VanFossen a second by Councilman Dickson and a unanimous vote.

Respectfully Submitted on Tuesday, Dec. 2, 2008.

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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.** *[Note that documents requested to be added to the record may include opinions and misinformation and should not be construed to be validated as fact because they are included in the minutes.]*