

# Holly Springs Town Council Minutes

## Regular Meeting Oct. 21, 2008

### MINUTES

The Holly Springs Town Council met in regular session on Tuesday, October 21, 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 p.m. A quorum was established as the mayor and all five council members were present as the meeting opened.

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

**Council Members Absent:** None.

**Staff Members Present:** Carl Dean, town manager; Chuck Simmons, assistant town manager; John Schifano, town attorney; Joni Powell, town clerk; Linda Harper, deputy town clerk, (recording the minutes); Drew Holland, finance director; Len Bradley, parks and recreation director; Gina Clapp, director of planning and zoning; Mark Zawadski, planner I; Stephanie Sudano, director of engineering; Scott Brummond, IT technician; Michelle D'Antoni, publications specialist; John Herring, police chief; and Mark Andrews, public information officer.

**2 and 3.** The Pledge of Allegiance was recited, and the meeting opened with an invocation by Rev. Billy Dennis, pastor of Swift Creek Baptist Church.

**4. Agenda Adjustment:** The Oct. 21, 2008 meeting agenda was adopted with changes, if any, as listed below.

**Motion By:** Sack

**Second By:** Womble

**Vote:** Unanimous

**Items Added to the Agenda:** Item 9c., consider change order reducing the construction amount of Fowler Construction Company contract for Green Oaks Parkway.

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

**Consent Agenda Item Removed for Discussion:** Remove Sept. 2, 2008 meeting minutes for discussion.

**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:

Mark Fowle of 308 Holly Glen Avenue read his wife's letter to the editor published by the Holly Springs Sun in the Thursday, Oct. 16, 2008 issue. The letter expressed opinion regarding the three-party agreement among Fowler Contracting, the Town and Wakefield Development for the paving of Green Oaks Parkway.

Mr. David George, 30 S. Meridian, Indianapolis, IN, of Kite Realty Group, introduced himself to the Town Council. He said that he will be working with the New Hill Place development.

**6a. Town Entrance Signage –** Mr. Russ Wallace, 212 Westminster Drive, and past president of the Holly Springs Civitan Club, advised that some Council members have suggested to him that the civic organizations in Holly Springs (Civitans, Lions, Kiwanis, Masons, Rotary) should formally request the Town to study the possibility of including their emblems on the Town's gateway welcome signage that is yet to be constructed.

Mr. Wallace said this was suggested because clubs had asked the Town about the possibility of getting approval to erect something themselves and were told it would not be allowed due to current sign ordinances.

Mr. Wallace delivered a three-minute presentation on the need for these types of signs.

Councilman DeBenedetto said that it was a great idea and concept. Councilman Womble agreed and asked the group to provide their ideas for these types of signs.

Mr. Dean said that staff was working with this idea and welcomed their comments.

At this time members of the Civitans, Lions Club, Kiwanis, Masons and Rotary Club introduced themselves to the Town Council.

**Action:** None.

**7a. Public Hearing: Zoning Map Change Petition 08-REZ-12 –** Ms. Powell explained that the Town has received an application for rezoning of

two areas in the New Hill Place project area. She said the first area is approximately 0.43 acres to rezone it from CB: Community Business to R-MF-15: Residential. The second area is approximately 4.02 acres to rezone it from R-MF-15: Residential to CB: Community Business.

Ms. Powell said the rezoning request is in compliance with the comprehensive plan that allows high density as well as community businesses. The Planning Board voted with a 5 to 2 vote to approve.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded: None. There being no comments the Mayor closed the public hearing.

**Action #1:** The Council approved a motion to accept the following zoning consistency statement as true: "The requested zone map changes from CB: Community Business to R-MF-15: Residential as well as the change from R-MF-15 to CB: Community Business is consistent with Vision Holly Springs Comprehensive Plan since the Future Land Use Plan Map indicates these properties as Regional Center and this includes both commercial and high density residential."

**Motion By:** Sack

**Second By:** VanFossen

**Vote:** Unanimous

**Action #2:** The Council made a motion to adopt Ordinance #R08-14 to approve Zone Map Change Petition #08-REZ-12 to change the zoning of property located near the intersection of G.B. Alford Highway and New Hill Road and more particularly described as Wake County PIN # 0649355577 (0.43 acres) from CB: Community Business to R-MF-15: High-Density Multifamily Residential and to change the zoning of approximately 4.02 acres of a portion of Wake County PIN# 0649368215 from R-MF-15: High-Density Multifamily Residential to CB: Community Business as requested by Cara Lacey of John R. McAdams, Inc.

**Motion By:** Sack

**Second By:** VanFossen

**Vote:** Unanimous

*A copy of Ordinance R08-14 is incorporated into these minutes as addendum pages.*

**8. Consent Agenda:** The Council approved a motion to approve items 8b through 8h on the Consent Agenda. The motion carried following a motion by Councilman Dickson, a second by Councilman VanFossen and a unanimous vote. The following actions were affected:

8a. Minutes – This agenda item was removed from the Consent Agenda during agenda adjustment.

8b. Budget Report – The Council received a report of amendments to the FY 2008-09 budgets approved by the town manager. *A copy of the budget report is incorporated into these minutes as an addendum page.*

8c. Budget Amendment, \$250 – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$250 to accept a Cultural Center business expo sponsorship. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8d. Resolution 08-48 - The Council adopted Resolution 08-48 enacting the town's Identity Theft Prevention Program. *A copy of Resolution 08-48 is incorporated into these minutes as addendum pages.*

8e. Budget Amendment, \$165 – The Council adopted an amendment to the FY 2008-09 budget in the amount of \$165 to accept insurance proceeds for an ambulance. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8f. Parks and Recreation Facility Rental Policy Amendment – The Council amended the Parks and Recreation Facility Rental policy to include rental fees and procedures for the Womble Park band shell. *A copy of the rental policy is incorporated into these minutes as addendum pages.*

8g. Utley Creek Wastewater Treatment Plant – The Council approved Change Order No. 3 to the Utley Creek Wastewater Treatment Plant project construction contract at a total contract increase of \$18,400 to provide for future addition of ultraviolet lamps. *A copy of contract change order #3 is incorporated into these minutes as addendum pages.*

8h. Piney Grove-Wilbon Road Alignment Contract – The Council entered an engineering services proposal in the amount of \$10,000 for functional alignment and design of the connection roadway between Piney Grove-Wilbon Road and Ralph Stephens Loop Road. *A copy of the contract is incorporated into these minutes as addendum pages.*

**8a. Minutes** – Councilman DeBenedetto explained that he had requested to remove the Sept. 2, 2008 minutes from the Consent Agenda because he thinks that it doesn't properly reflect his concern prior to the meeting of Sept. 2. Councilman DeBenedetto said that he had requested the Council via email to delay any action on Green Oaks Parkway until the next Council meeting so that he could be in attendance. He said that he would like the Sept. 2, 2008 to reflect that comment.

Councilman Sack said that this request is not appropriate because Councilman DeBenedetto was not in attendance at the Sept. 2 Council meeting, and the minutes records the actual actions of the Board, not emails sent to administrative offices prior to the meeting.

Councilman Dickson said the meeting minutes reflect the actions of the Board and gives a general account of each agenda item. It's not customary to include prior emails from the Council making requests or asking questions to be included into the minutes.

Councilman Sack said the Council is voting for the approval of the minutes, that the minutes reflect the correct action made by the Board and is an official record of Town actions. He said unless requesting for a correction to the testimony that was presented at the meeting, the minutes are accurate.

**Action:** After much discussion the Council approved a motion to approve the minutes of the Council's regular meeting held September 2, 2008 as written.

**Motion By:** Sack

Councilman Womble asked if Councilman DeBenedetto's concerns with the minutes were that they don't reflect his request to postpone action on an agenda item until the next Council meeting until he could be in attendance.

Councilman DeBenedetto said that the minutes do not reflect his email requesting to postpone action of Green Oaks Parkway until the next meeting until he could be present. He said he is requesting the email making that request be inserted in the September 2, 2008 minutes.

There was discussion among staff and Council members whether Councilman DeBenedetto's request was made known to the Council during the meeting. Mr. Dean said the meeting Power Point slide for the agenda adjustment included a notation that was pointed out by staff that Councilman DeBenedetto had requested the item be delayed.

Ms. J. Powell said that if the Board chooses to include the email language or attach the email to the minutes that she would do so by included the email as addendum pages, as other requests are handled.

**Second By:** Dickson

Councilman Womble asked the Council's if Councilman DeBenedetto could bring up his concerns about the Green Oaks Parkway project under Other Business. The Council Members were in consensus that Councilman DeBenedetto could address that matter under Other Business.

**Vote:** The motion carried following a 4-1 vote. Councilmen VanFossen, Sack, Womble and Dickson voted for the motion. Councilman DeBenedetto voted against.

**9a. City of Raleigh Water Contract** - Mr. Dean explained that the Town has an existing contract with the City of Raleigh for 1.2 million gallons per day maximum water purchase. He said in order to utilize this purchase, the Town must pay an availability fee in an amount set by the City of Raleigh in their sole discretion (approximately \$284,544 per year before any water is purchased). The fact that Raleigh has the contractual right in the 1997 contract to set this fee at whatever they want makes for difficult budgeting in the utility fund, and with the additional capacity purchased in the Harnett County plant, it is overly redundant. Mr. Dean said he has negotiated a release from this contract commencing June 2010, and with the passage of a new interlocal agreement on emergency water supply, each municipality will be able to purchase water from each other at the bulk rate in times of need.

Mr. Dean said that prior to 1994 the Town was supplied with water by wells and he reviewed the history of the 1997 City of Raleigh contract. He said when growth began around this same time, the Town began purchasing some water to supplement the supply from wells from the Town of Apex - as a bulk customer, as they had extra water available. Holly Springs is a growing community with increasing water needs to support the continued growth, and the need for a permanent guaranteed source of water capacity was obvious to Town leaders.

Councilman Womble asked if the Town will continue to pay the City of Raleigh the \$285,544 until 2010. Mr. Dean said yes the Town will continue to pay Raleigh that amount until 2010. He said withdrawing from the old 1997 water contract and entering into a new interlocal contract with Raleigh will save the Town money that could be applied toward the Harnett County water capacity loan.

He said the new contract gives the Town and the City of Raleigh the ability to reverse water flow in case of an emergency. If the City of Raleigh needs water, the Town can reverse the flow to Raleigh.

Councilman Sack asked if any additional work will be needed at the pump station to handle the reverse water flow from Holly Springs to the City of Raleigh. Mr. Schifano said the contract includes language for additional work and repairs on the utility lines and pump station and at whose expense it would be to accommodate reverse water flow.

Mr. Dean said the utility line and pump station is there and operating. Mr. Dean asked Ms. Parrish if there were any upgrades needed for the pump station located on Holly Springs Road. Ms. Parrish said staff suggested installing a fire hydrant and valve at that booster pump station.

Mr. Schifano said the contract requires the City of Raleigh to double check valves and conduct an engineering study. He said the study is to elevate their water tank levels and determine how much pressure is required to send water from the Town to the Raleigh. He said the Town knows how much water is required to fill the town's tanks. He said in the event that Raleigh will need to reverse water flow Raleigh will bear all the associated cost of completing the study.

Councilman Sack clarified that it would be the City of Raleigh's responsibility and expense to repair the lines on their side and the Town's responsibility for maintenance and repairs to the Holly Springs lines.

There was further discussion between Councilman Sack and Mr. Schifano concerning the repairs and maintenance on the utility lines and the volume of water the Town would receive from the City of Raleigh and other contract language that may be changed during the final review.

Councilman DeBenedetto asked if the Harnett County Water Treatment Plant project was on schedule. Mr. Dean reported Harnett County has received its notice to proceed and is holding monthly progress meetings.

**Action:** The Council approved a motion to authorize the town manager to withdraw from the 1997 water contract and to enter into a new interlocal agreement with the City of Raleigh, subject to any minor modifications required by the City of Raleigh and approved by the manager and attorney.

**Motion By:** VanFossen

**Second By:** Womble

**Vote:** Unanimous.

*A copy of the City of Raleigh Interlocal Agreement is incorporated into these minutes as addendum pages.*

**9b. Green Oaks Parkway Project** - Mayor Sears said at the Oct. 7 Council meeting this agenda item was deferred until the next meeting when all Council members were in attendance.

Councilman DeBenedetto at this time read a timeline he devised beginning June 4, 2004 and ending September 2008 and the associated costs in his calculations for Green Oaks Parkway. Councilman DeBenedetto made the following motion: to retain 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.

Councilman Sack said that Councilman DeBenedetto was present at the July 15, 2008 Town Council meeting when the three-party contract was presented to the Board for approval and for funding of the project. He said the Council read and understood that this was a new contract and understood the importance of completing the project. He said all Council Members knew the situation with the developers and that the Town will be funding and completing the road. Councilman Sack said that Councilman DeBenedetto has read the time line about the project or contract, but hasn't clearly stated his problems with the contract. He said that Mr. DeBenedetto has raised a question about what he characterizes as a \$642,907 loan, and he asked Mr. DeBenedetto if he had directed those questions to the Town Attorney to explain.

Councilman DeBenedetto said that he asked the Town Attorney and was provided with answers to those questions and said that the motion is to hire an outside attorney to address his three concerns 1) to recoup damages, and interest on funds paid to address the Army Corps of Engineers; 2) construction missteps for Green Oaks Parkway and 3) for additional manhours Town staff spent related to addressing the Army Corps of Engineers.

Councilman Sack asked what questions can an outside attorney answer about the contract that the Town Attorney couldn't answer. Councilman DeBenedetto said that he desires a fresh pair of eyes on this situation, and he reread his written motion to hire outside counsel to review the contract; and recoup the damages and interest on funds allocated and paid to address the Army Corps of Engineers 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.

Councilman Sack said that the request is to hire the same attorney that wrote the original three-party agreement to this roadway.

Mayor Sears said that was discussed at the last meeting that Ernie Pearson was the originator of the contract and Councilman DeBenedetto's response was that he did not know.

Councilman DeBenedetto said that Mr. Pearson has more than 20 years of experience, and that he understands that Mr. Pearson is the originator of the 2003 contract which was for water and sewer and not the roadway. Councilman DeBenedetto requested the Council to consider the motion to hire an outside attorney to advise the Town on the three issues.

After much discussion among the Council members it was the consensus of the Board to take a vote on the recommended motion.

**Action:** The Council considered a motion to retain 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.

**Motion By:** DeBenedetto

**Second By:** Womble

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

**9c. Green Oaks Parkway Project** – Mr. Schifano explained that this request is to consider change order #5 that would reduce by \$58,911 the construction amount of the Fowler Contracting Company contract for Green Oaks Parkway. Mr. Schifano said the original "fill-slope" contract was approved by the Council on May 5, 2008 in the amount of \$154,279.65. He said this contract allowed the installation of power by Progress Energy to the Novartis site to be placed in its ultimate location at the shoulder of Green Oaks Parkway, in lieu of having the utility provider place temporary overhead power to be relocated at the town's expense in the future. After contract negotiations with the contractor on June 13, 2008 it was advised that there were certain "alternate" contract options that should be written into the contract, making the original possible contract amount \$174,847.25; however, the alternates were not chosen by the Town, and a cost reduction of \$58,911 from the contract amount was realized.

**Action:** The Council approved a motion to approve change order #5 to the construction contract of Fowler Contracting Company reducing the construction amount by \$58,911 for work completed on the Green Oaks Parkway project.

**Motion By:** Dickson

**Second By:** Womble

**Vote:** Unanimous.

*A copy of the Fowler Contracting Company contract change order #5 is incorporated into these minutes as addendum pages.*

**10. Other Business:** Councilman Dickson said that he had attended the Bass Lake Day event and it was a good event and staff was great. He commented that he would like to see more people attend and support all Town events, like the Farmers Market. Mr. Dean said that it takes time for these types of functions to grow the desired attendance.

Mayor Sears said that he agreed with Councilman Dickson's comments regarding the Farmers Market and commented that he would like to see more people attend programs at the Cultural Center.

Councilman Womble reported a sign was hit on Crittenden Lane that needs to be corrected. He asked Town staff how many proposed homes were on the original Twelve Oaks plan.

Mr. Dean said the original Twelve Oaks plan proposed 1,300 to 1,500 homes and when it was called Finisterra the plan proposed 2,200 homes.

Mayor Sears announced HollyFest is scheduled for Saturday October 25, 2008 at Womble Park. There will be games for the kids, food vendors and the haunted school house.

Council Womble asked if the rental policy and fees of the band shelter will be the same as the picnic shelter. Mr. Bradley said yes it is the same policy and fees.

Councilman DeBenedetto announced the one stop voting starts Thursday, October 23 in Holly Springs.

Councilman DeBenedetto requested that his email dated September 2, 2008 be included into these minutes as addendum pages.

*A copy of Councilman DeBenedetto email dated September 2, 2008 is incorporated into these minutes as addendum pages.*

Councilman Sack reported road repairs are needed on both sides of Third Street near the detention pond.

**11. Manager's Report:** Mr. Dean invited the Council Members to attend the history book signing at the Holly Springs Library on Friday October 24, between 7 and 8 p.m.

Mr. Dean said that he appreciated the Council Members, the Chamber of Commerce and Charles Whitaker and others who attended the Certificate of Need public hearing for locating a hospital in Holly Springs, on Monday October 20, 2008. He said that it was a productive meeting.

Mr. Dean welcomed Joni Powell back to work; she is recovering and feeling better from her illness.

Mr. Dean reported that Daniel Weeks met with Waste Industries and discussed the Town's garbage and recycling collection problems.

**12. Closed Session:** The Council approved a motion to enter into Closed Session, pursuant to G.S. 143-318.11(a)(6) to conduct the town manager's performance evaluation.

**Motion By:** Sack

**Second By:** Dickson

**Vote:** Unanimous

#### **General Account of Closed Session – October 21, 2008**

In Closed Session, the Town Council performed the town manager's performance evaluation. Following the evaluation, the Council provided direction regarding the manager's merit increase in salary.

The Council approved a motion to return to Open Session.

**-- End General Account**

**13. Adjournment:** There being no further business for the evening, the Oct. 21, 2008 meeting of the Holly Springs Town Council was adjourned.

Respectfully Submitted on Tuesday, Dec. 2, 2008.

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Linda R. Harper, CMC, Deputy Town Clerk

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