



**Town of Indian Trail**  
**Minutes of Town Council**  
**November 09, 2010**  
**Civic Building**  
**7:00 P.M.**

DRAFT

The following members of the governing body were present:

Mayor: John J. Quinn

Council Members: Robert Allen, Gary D'Onofrio, Jeffrey Goodall, and Darlene Luther.

Absent Members: John Hullinger.

Staff Members: Town Manager Joe Fivas, Town Attorney Keith Merritt, Town Clerk Peggy Piontek, Finance Director Marsha Sutton, Planning Director Shelley DeHart, Town Engineer Scott Kaufhold, Tax Collector Janice Cook, Assistant to Town Manager Miriam Lowery, Senior Planner Katie Reeves, and Adam McLamb Engineering.

Press/Media: Marty Mitchen of the Charlotte Observer

**CALL MEETING TO ORDER**

Mayor Quinn called the meeting to order.

**ADDITIONS AND DELETIONS**

Jeffrey Goodall made a motion to approve removing item 6d ZT 2010-012 Accessory Apartment Definition Amendment and item 7d Bank Services recommendation.

Council voted unanimously in favor of the motion.

Mayor Quinn announced that Councilman Hullinger was unable to attend tonight's meeting.

### **MOTION TO APPROVE AGENDA**

Jeffrey Goodall made a motion to approve the agenda.

Council voted unanimously in favor of the motion.

### **PUBLIC COMMENTS**

Shirley Howe, 6205 Clearwater Drive, Indian Trail, NC said that as a result of seeing the large volume of paperwork given to Mayor Quinn fulfilling a public records request he submitted, she became curious and submitted one requesting copies of Mayor Quinn's actual request forms. She addressed Mayor Quinn's request of April 23, 2010 in he requested all email correspondence between Council members and staff, including the Interim Town Manager and Council. All correspondence between Peggy Piontek and Attorney Merritt. All correspondence between Council Members and Attorney Merritt. It is her belief that the public should be aware of the time and expense involved in accumulating this data, as they are paying the bill for what she believes is an unreasonable request. Staff had to review and process 80,000 emails an estimated time of 44 hours costing \$2,617.23 in addition to preventing staff from addressing important town business matters. The Town Attorney had to review the emails resulting in an additional expense of \$2,160.00, this added with copying charges totals \$4,802.23. Ms. Howe pointed out that the Town's IT service provider did not charge for the 20 hours of their time (\$2,000 - \$3,000) dedicated to researching. Ms. Howe expressed that Mayor Quinn should reimburse the Town for at least the Attorney and printing fees. She feels that Mayor Quinn should be held accountable for his irresponsible actions and he wants to destroy this town with his persistent negative approach and criticism to anyone who disagrees with him. She asked Council to accept the Public Records Request Policy being presented tonight and consider repayment from Mayor Quinn for the frivolous misuse of our tax money.

Mr. Allen asked Ms. Howe if she was able to determine any rhyme or reason as to why this was requested. She advised that when she was on the Council she was advised that it is not a requirement as to why these requests are being made. They are open to the public without question from anyone else.

John Quinn, 3215 Creek Trail Road, Indian Trail, NC advised that Ms. Howe ran as an open government advocate advising that she spent many hours here going through records that he is not permitted to do. He advised that his emails are routinely shared with the rest of the Council, however in the period in question and since then he has received virtually nothing that has been going back and forth between the Council Members and the Town Manager. He feels he has every right to see and know what's going on as an Elected Official and being made aware and involved in any decisions being made. He felt his request was completely reasonable to understand and see

what was going on. He feels that if the Council, Manager and staff would share dialogue that goes back and forth he wouldn't have to ask for them. He feels that there are closed session minutes that would reflect monies to be kept that Ms. Howe told him, at the time, a crime had been committed. Later after several closed session minutes the Council came to a different conclusion and he believes he has a right to understand why that was. He said that Ms. Howe and this Council has access to anything they want and without his asking for emails he would not know anything that is going on.

### **CONSENT AGENDA**

- a. Tax Report - Month end for October 2010
- b. October 26, 2010 minutes
- c. Public Information Policy

Gary D'Onofrio made a motion to approve the Consent Agenda.  
Council voted unanimously in favor of the motion.

### **PUBLIC HEARINGS**

#### a. COMMUNITY PARK

This matter was advertised in the Enquirer Journal on October 29th & November 4th

A request for the use of an Installment Financing Agreement pursuant to North Carolina General Statute 160A-20. The purpose of this agreement is to purchase land and building located at 304 Matthews Indian Trail Road to be used as a Community Park.

Mr. Fivas advised that the Local Government Commission (LGC) requires that a public hearing is held on these issues, along with Council requesting same to ensure that the everyone has an opportunity to ask or hear any questions or comments on the purchase of the property. This discussion is on the financing instrument. He provided information on the location, acreage, the history of searching for property and deciding on this property. Mr. Fivas informed the audience about the Purchase Agreement and that we have until December 17th to perform due diligence. These steps include: Phase I environmental study, home inspection, title and easement searches which is currently being done by staff. He explained the several different financing methods available in North Carolina, advising that Council requested that staff present a loan financing method at this time as well. Mr. Fivas explained that bids were sought to ensure that the Town received the lowest interest and lowest package. The financing matter will be discussed at length and voted on later in the meeting. However, Mr. Fivas informed the citizens about the terms of the agreement; it is a 15 year loan at 3.39 % interest rate. Mr. Fivas explained that a 20 year loan with a higher interest rate but lower annual payment was reviewed as well. The difference between the two proposals is that doing the 15 year would save us approximately \$250,000.00 in interest. It will result in a higher annual payment, approximately less than \$10,000.00 difference. It is proposed to become a park property, but details are not being discussed at this time. He advised that he and the Finance Director would entertain any questions at this time.

Mayor Quinn opened the public comments portion of the hearing.

Mr. Trip Melton from Walt Perry Realty, representing the Houser family and introduced the members present. He provided the history of the land and advised that the family is very excited about the project and offered to answer any questions Council might have.

Mayor Quinn closed the public comments portion of the hearing.

Mr. D'Onofrio inquired who the lending institution is. Mr. Fivas replied BB&T.

Mr. Goodall thanked Mr. Fivas & Ms. Sutton for the work they have done. He advised it's an incredible opportunity for Indian Trail citizens. We were able to get a great rate, referred to the 1/2 cent tax applied to a Park Fund and now it is coming to fruition for the citizens to enjoy. This is a prime piece of land in downtown Indian Trail, at an incredible price and interest rate.

Ms. Luther advised she visited the site and it is a beautiful property with open areas, slightly chilled and many hardwood areas. The possibilities are endless.

Mayor Quinn concurred it is a very beautiful piece of property.

Mr. Fivas explained that later on in the meeting Council will need to approve the selection of BB&T as the financing institution and a Resolution that is needed for the Local Government Commission. This will be included in a package that we will present to them at their December 7th meeting to get their approval for this loan. When approval is granted, Council will review all the information on all of the inspections we have ordered. A decision will be made by Council no later than December 17th whether or not to go forward.

Mayor Quinn closed the Public Hearing.

b. ZM 2010-002 SUN VALLEY REZONE

This matter was advertised in the Enquirer Journal on October 28th & November 4th  
A request to rezone eight parcels (approximately 27.7 acres) from Single-Family (SF-1) to General Business District (GBD) for future expansion of Sun Valley Commons.

Planning Director, Shelley DeHart explained the property and what a rezone is. The change is from a single family residential to general business district. She provided map amendments to be considered and explained the parcel location, along with the current use consideration and the uses that will be available if this is approved by Council. Ms. DeHart advised that the Planning Board heard this matter on October 19th and continued it on October 27th. They were able to make the required findings *Goal 1.3.1 Quality of Life: A more sustainable quality of life to the residents of Indian Trail by establishing a greater sense of community and promotion a unique identity within the Town of Indian Trail for all residents. Goal 1.3.2 Land Use: A more balanced tax base by promoting the development of office parks, businesses, retail centers and industrial parks.* The Planning Board recommended approval.

Mayor Quinn opened public comments portion of the hearing.

Jess Perry from Walt Perry Realty, 1661 Walkup Avenue, Monroe, NC who represents the seller's of the property. His clients are enthused about the opportunity for Indian Trail for additional retail. He introduced the families he represents advising they are pleased as well.

Vance Southard, 2008 Climbing Rose Lane, Matthews will be happy to answer any questions.

Michael Falkenberry, 519 Pickets Circle, Indian Trail. Expressed his concerns, no notice sent was to his house he found out by a sign on ground. He feels there is not enough police or fire safety to protect and sustain any additional growth in this town. Traffic is unable to be controlled as it is; it's too close to a high school to expeditiously evacuate the students. He questioned the zoning process using the example of a Funeral home next to McDonald's. If this is being done, do it right, look at all avenues? If there's a ban on residential construction why are we building more businesses? There are many vacant store fronts now.

Mayor Quinn closed public comments portion of the public hearing.

Mayor inquired about land area coming up to the residential area of Picket Circle is void of trees. What kind of screening will there be to protect the residents property value. Ms. DeHart replies it falls into a group 2 category which requires a 25 foot buffer and explained. Tree ordinance would have to be adhered to.

Mayor Quinn asked what the long term plan for the neighborhood. Ms. DeHart replied based on the size of the parcels of Pickets Circle it is considered a medium to high density residential which is appropriate for the periphery of the Village Center. There is no proposed change within Pickets Circle for a rezoning. It is an opportunity for them to work with the developers to try and get a sewer extension into that neighborhood.

Mayor Quinn inquired about the notice requirements for the residents of Pickets Circle. Ms. DeHart advised 2 notices were sent out to 30 different addresses about both Planning Board meetings to the adjacent property owners as well as for this public hearing. Large signs were posted on the property, one due a storm did fall down and staff went out the next day to put it back up.

Jeffrey Goodall made a motion concur with the findings read into the record and approve ZM 2010-002 Sun Valley Rezone.

Council voted unanimously in favor of the motion.

c. ZT 2010- 011 LANDSCAPE ORDINANCE AMENDMENT

This matter was advertised in the Enquirer Journal on October 28th & November 4th

Ms. DeHart presented a request to amend Division 800- Landscaping- of the Unified Development Ordinance to allow for staff decision on an alternative landscape plan after 45 days after presentation to the Parks, Tree and Greenway Committee for a recommendation for the purpose of customer service. It can be difficult to get a Quorum on the Parks, Tree and Greenway Committee; this would enable us to have an opportunity for minimum of two meetings. This would be consistent with the Planning Boards 45 day regulation. Staff will use discussion from the presentation meeting as a guide. The Planning Board heard this matter on October 19th and voted 4-1 to make the required findings: *Goal 1.3.2 - Land Use: Avoids land use conflicts by continuing to process applications for land*

use in a streamline and efficient manner while upholding the intent of the Landscape Ordinance - It is a reasonable request in the best interest of the public because it promotes a more efficient development system and review process.

Mayor Quinn opened and closed the public comments portion of the hearing as no one had signed up to speak.

Gary D'Onofrio made a motion to concur with the findings read into the record and approve ZT 2010- 011 Landscape Ordinance Amendment.

Council voted unanimously in favor of the motion.

d. ZT 2010-012 ACCESSORY APARTMENT DEFINITION AMENDMENT

*This matter was removed from the agenda by a motion made under item 3 Additions and Deletions.*

e. ZT2010-013 BUSINESS AND COMMERCIAL ZONING DISTRICTS

This matter was advertised in the Enquirer Journal on October 28th & November 4th  
A request to amend Chapter 520 of the UDO to allow for additional commercial uses and additional building height in various districts.

Ms. DeHart explained the purpose of this is to allow flexibility in building heights and add an entertainment use. Currently we have a maximum of 40 feet in height which limits opportunities in entertainment, hospitality and corporate office and mixed uses. Setback distance to building height ratio is as follows: Structure adjacent to Non-residential 1 foot setback for every 2 feet in height, Structure to residential 1 foot setback for every 1 foot in height, multifamily - maximum 60 feet. Exceptions -roof structures, stairways and equipment if screened.  
Use Table: Hospitality and entertainment categories, theater (motion picture and theatrical playhouse) -  
Add to use table: Motion picture use - adjacent to road infrastructure due to traffic demands, Theatrical Playhouse is smaller in size.

The Planning Board heard this matter on October 27th and expressed concern for potential noise impact regarding the possibility of an outdoor theatre. They requested the use of outdoor theatres require a special use Permit, allowing the adjacent property owners to be notified and the use to be considered on a case by case basis. Primary use they recommend a Special Use Permit. They were able to make the required findings. *Goal 1.3.2 - Land Use:* Promote a quality mix of different land uses while avoiding conflicts with the neighboring properties by adding entertainment uses where appropriate and allowing flexibility in building height protecting neighboring residential uses. It is in the best interest of the public because it promotes uses and building heights consistent with the vision of the Comprehensive Plan. They voted to recommend approval.

Gary D'Onofrio made a motion concur with the findings and approve ZT 2010-013 Business and Commercial Zoning District.

Council voted unanimously in favor of the motion.

f. ZT2010-014 VILLAGE CENTER OVERLAY ZONE AMENDMENT

This matter was advertised in the Enquirer Journal on October 28th & November 4<sup>th</sup>  
A request to amend Chapter 630- Village Center Overlay Zone of the UDO to clarify

applicability and introduce exemption language recognizing planned developments or approved projects prior to the adoption of the Unified Development Ordinance.  
Applicant: Town of Indian Trail; Location: Village Center Overlay Zone.

Ms. DeHart advised this chapter provides all the development standards and the intent is to achieve the vision of the Comprehensive Plan in a Village Center. The proposal is to introduce an exemption in this section and clarify development standards. In applying these standards, staff has experienced difficulty in applying them on commercial centers that have been approved prior to the adoption of the UDO. Staff has also discovered that these requirements do not consider internal lots within commercial centers and explained the process a commercial center goes through before breaking ground and provided examples of how this would have affected the Austin Village Center if in place when approved. The Planning Board had a public meeting on this matter on October 27th and we able to make the required findings which were read into the record: 1.3.2 - Land Use - ensuring compatibility with existing development, reasonable because it recognizes existing planned development designs and clarifies requirements. The Planning Board voted to recommend approval.

Mayor Quinn opened and closed the public comments portion of the hearing as no one had signed up to speak.

Mayor Quinn inquired on the number of preapproved developments that will be affected. Ms. DeHart replied four, Sun Valley Commons Phase I and II, Harris Teeter Shopping Center right across the street, Austin Village and Stinson Crossing which has not yet broken ground. Mayor Quinn confirmed these would be the only four and does not include the Downtown Center across the street. Ms. DeHart replied that was already planned to be moved up adjacent to streets. Mayor Quinn inquired why this had not been addressed prior to this, is it because there was some action now and it was discovered. Ms. DeHart confirmed he was correct.

Jeffrey Goodall made a motion concur with the findings and approve ZT2010-014 Village Center Overlay Zone Amendment.

Council voted unanimously in favor of the motion.

g. ZT2010-015 NONCONFORMING SITE ASPECTS

This matter was advertised in the Enquirer Journal on October 28th & November 4th A request to amend Chapter 1410 and 1470 of the UDO to allow for an incremental process for bringing nonconforming sites into compliance with Town Ordinances.

Katie Drye, Senior Planner advised this is to allow for incremental improvements to a site based on the amount of investment into a property nonconformity - something that was established lawfully in accordance with the regulations at the time but no longer complies with the ordinance. This is divided into three sections, structural improvements, site expansions and establishment of allowed use where previous use has been nonconforming. The amount of improvements correlates with investment over a five year period. Site improvements correlate directly to the percentage of investment into the structure. For example if 40% of value of structure is being used for a remodel, then 40% site improvements must be installed to include parking and landscaping.

The Planning Board was required to make two findings - one for Comprehensive Plan Consistency and one regarding the public's benefit. Based on this report, staff is of the opinion that the following findings can be made:

The proposed UDO amendment is consistent with the following goal of the Comprehensive Plan: Land Use; the proposed UDO ordinance amendments will help promote a quality mix of different land uses while avoiding land use conflicts with neighboring properties by ensuring compatibility with existing development. This UDO ordinance amendment request is reasonable and in the best interest of the public because it allows for the redevelopment and expansion of sites in the Town while bringing the sites more into conformity with the Town's ordinances.

Mr. D'Onofrio advised he like the spirit of the ordinance, but was curious if there was any concern about requiring additional landscaping or parking might deter a property owner from putting investment into the property. Ms. Drye replied this is more lenient than our current ordinance and explained.

Mr. Fivas complimented Ms. DeHart and Ms. Drye on this as there have been scenarios where people who wanted to come in and start small businesses were finding it difficult to make the initial investment. They did substantial research that would enable them to come in and meet some of our interest of improving the aesthetics over time. This is a very good solution to a very complex problem.

Mayor Quinn opened the public comments portion of the Public Hearing.

Doug Marsh, 15120 Idelwilde Road, is a local business owner in Indian Trail explained he may be test case and explained. The improvements in the current ordinance make it difficult to justify rent for the amount of money tenants are willing to pay. He is in favor of any relief and feels it will enable him to get another building, whereas under the current guidelines he might be unable to do so.

Mayor Quinn closed public comments portion of the hearing.

Council had a discussion on this matter expressing their approval of the spirit of the ordinance but has concerns that business owners might have funding for improvements to the building but not enough for that and the parking and landscaping. Does it become more prohibitive and what is the net effect, does it inspire improvements or inhibit it. Ms. Drye advised that caveats are in place for such situations, if you are making improvements of 25% or less to the cost of the building then there would be no requirements to make these other improvements.

Jeffrey Goodall made a motion concur with the staffs findings and recommend approval of ZT2010-015 Nonconforming site aspects.

Council voted unanimously in favor of the motion.

### **BUSINESS ITEMS**

Council took and returned from a short break.

***Mayor Quinn left the meeting, Mayor Pro Tem Goodall facilitated.***

#### a. Installment Loan

Mr. Fivas explained that Council has been provided a document that points out the loan from BB&T to finance the large park purchase. He explained it is a 15 year loan with a 3.39% interest rate. One of the key factors that

include this interest figure is that currently in the home on the premises is being rented. One of the conditions, based on the IRS Code is that we can have the renters paying the Town money for those 12 months, however, per code they would have to vacate within the next 12 months to maintain our nontaxable status. Staff recommends approving BB&T as the lending institution and the terms described in this loan. Mr. Fivas explained that an RFP went out and this was, by far, the best interest rate and package we received.

Mr. D'Onofrio expressed how exciting it is to be an elected official involved in this project for the citizens to have for all time. He said he is proud to be a part of it and went on to explain how long a process it has been to find the appropriate piece of land, at a reasonable price, with good financing terms.

Ms. Luther inquired if staff has a copy of the rental lease that is due to expire in June. Mr. Fivas replied yes and the expiration date is June 15, 2011.

Mr. Allen inquired when the lease expires will a modification be applied for the lower rate? Ms. Sutton replied that a revision has been prepared and Council was provided that documentation this evening. She explained that Mr. Lewis Lloyd, Senior Vice President for BB&T and their Bond Council reviewed some IRS Codes and their Bond Council came back and said because the private use of public property is less than 10% we can have the nontaxable rate, which can be accomplished up front, as long as BB&T has put in the agreement that the renters will be vacated within 12 months of the closing date. Their lease is up June 15th, so we are confident that we can give them sufficient notice to make that deadline. If this is not successful, this loan would become taxable for the remaining portion of the life of the loan. Ms. Sutton explained that this is a key point that we will pay careful attention to.

Gary D'Onofrio made a motion to approve the installment loan from BB&T as presented.

Further conversation transpired between Council, Mr. Fivas and Mr. Merritt about concerns of the tenants vacating on time. Mr. Merritt advised he is confident that should the tenants not voluntarily vacate legal proceedings to eject them from the premises can be completed before the 12 month cutoff. Discussion pertaining to the amount of property involved with the lease agreement. Staff we believe it is only for the home, we will research that matter and will have answers prior to the December 17th date as part of our due diligence.

Mr. Goodall wanted the public to understand that we will not be opening the 51 acres next year; it will probably have to be done in phases.

Council voted unanimously in favor of the motion.

- b. Council Resolution to file application for approval of a Financing Agreement with the Local Government Commission.

Mr. Fivas explained that this Resolution is essentially giving the Town Manager the authority to file an application with the Local Government Commission and discusses the terms of the financing and other key facts. We already have the majority of the document completed and will send it tomorrow morning. The Local Government Commission has been very helpful in providing us with information and guiding us through the process.

Robert Allen made a motion to approve Council Resolution to file application for approval of a Financing Agreement with the Local Government Commission.

Council voted unanimously in favor of the motion.

c. Citizen Survey

Mr. Fivas provided the history of this matter and went on to explain the three companies staff research resulted in. Mr. Fivas advised that staff reviewed sample surveys provided by these companies, explained how staff looked at different facets and scored them on a number of different categories resulting in the recommendation of ETC Institute, who also provided the lowest cost quote. This survey would be conducted randomly to be statistically and scientifically correct to a +/-5% margin of error, but in an attempt to fulfill Council's request for any resident to have input into the survey there is an internet survey option for an additional cost of \$2,400. This would be different from the scientific method and give you a different breath of information. Mr. Fivas used Highpoint, NC survey as an example to point out all the positive aspects that this company provides on the final product. The survey consists of seven pages, they recommend we use several of the questions they benchmark again, but we have the ability to create some questions that can specifically address our community. Council had a lengthy in depth discussion about one going to each residence, and some of the concerns about an on line survey as well.

Darlene Luther made a motion to approve ETC Institute without the on line option and bring back more information for Council to review about on line.

Council voted unanimously in favor of the motion.

d. Bank Services recommendation.

**DISCUSSION ITEMS**

*There were no discussion items for this meeting.*

**MANAGER'S REPORT**

a. Park Dedication Ceremony

Mr. Fivas thanked Ms. Sutton and Ms. DeHart and their support staff for their hard work in keeping the tight timeline for the large park. He advised that the dedication ceremony for Crossing Paths Park is scheduled for December 18th, more information will be forthcoming. Mr. Fivas advised that this is truly becoming a "community park" as staff has solicited and many additional donations, which will be acknowledged throughout the park. There will be a sidewalk ribbon cutting the Potter Road sidewalk. Our new Event's Coordinator, Rebecca Jones has been coordinating some issues with the Rotary for the Christmas Parade on November 28th, along with the Christmas tree lighting ceremony on December 9th from 6-8 pm. Mr. Fivas informed Council that Town Hall will be closed on Veterans Day and reminded them that Mr. Munn's funeral is at 2 pm. Mr. Fivas introduced Rebecca Jones as the Town's new Events Coordinator and Public Information Officer, provided some of her background and welcomed her to Indian Trail.

Mr. D'Onofrio asked if any private donations are available for the Crossing Paths Park. Mr. Fivas replied yes, a meeting is scheduled for tomorrow with the Parks, Tree and Greenway Committee and the Arts and Historical Society where we plan on proposing a fundraiser in their area to do either bricks, handprints that can be displayed, for a fee of perhaps \$25 to get community names in the park as well.

Mr. Fivas reminded everyone that the ABC Store will have a soft opening on November 10th and a Grand Opening is scheduled for November 22nd.

**PLANNING REPORT**

*Ms. DeHart had nothing to report*

**ENGINEERS REPORT**

Mr. Kaufhold advised that they are working on a draft neighborhood traffic calming policy which will be coming to Council in the near future.

**COUNCIL COMMENTS**

Darlene Luther commented about the opening of the ABC Store.

Robert Allen thanked the Planning Department for their being proactive. He requested that the Planning Board trust the staff and move this thing to a realization.

Gary D'Onofrio had no comments to make.

Jeffrey Goodall expressed condolences to Munn family and commented on John Munn's many accomplishments. He extended heartfelt appreciation to all the Veterans serving, advising while we sleep comfortably there's somebody sleeping in mud and getting shot at so we should not forget about them. He congratulated the election winners. Especially those that represent Union County, State Senator select, Tommy Tucker, and our State House Representative Craig Horn. Both of these gentlemen will be representing Indian Trail at the new Republican Majority Legislature in the North Carolina General Assembly. He also congratulated the three Commissioner selects, Mr. Johnathon Thomas, Jerry Simpson and Todd Johnson. He acknowledged that the voters were against expanding the Board of Commissioners from 5 to 7. These gentlemen will have a lot of work in front of them and invited all of the election winners to come to our Council meetings at least two times a year.

Mr. Fivas expressed Kudos to Scott Kaufhold, Joe Tolen and the rest of the Engineering staff on Crossing Paths Park.

**CLOSED SESSION**

*There were no matters to be discussed.*

**ADJOURN**

Robert Allen made a motion to adjourn  
Council voted unanimously in favor of the motion.

APPROVED: \_\_\_\_\_  
John J. Quinn, Mayor

Attest: \_\_\_\_\_  
Peggy Piontek, Town Clerk

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