

DRAFT



Town of  
**INDIAN TRAIL**  
north carolina

**Town of Indian Trail**  
**Minutes of Regular Council Mtg.**  
**February 9, 2010**  
**Civic Building**  
**7:00 P.M.**

The following members of the governing body were present:

Mayor: John J. Quinn

Council Members: Jeff Goodall, John Hullinger, Robert W. Allen, and Darlene Luther.

Absent: Gary D'Onofrio

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

Media/Press: Marty Mitchen of the Charlotte Observer

**CALL MEETING TO ORDER**

Mayor Quinn called the meeting to order.

**PRESENTATIONS**

**Eagle Scout Recognition**

Mayor Quinn requested Bryce Cyrier to lead those present in the Pledge of Allegiance. He also recognized Bryce Cyrier as having recently received his Eagle Scout award and presented him with a Certificate of Recognition.

**Proclamation for Bouldin Family**

*(The Bouldins were not present to accept their recognition.)*

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### **ADDITIONS AND DELETIONS**

Darlene Luther made a motion to add Item 9c - Discuss of Main Street Program/Beautification

Council voted unanimously in favor of the motion.

Jeff Goodall made a motion table Item 7a - Loitering Ordinance

Council voted unanimously in favor of the motion.

### **MOTION TO APPROVE AGENDA**

Jeff Goodall made a motion to approve Agenda.

Council voted unanimously in favor of the motion.

### **PUBLIC COMMENTS**

Jonathan Baer, 5517 Rogers Road, thanked Council for their service. He addressed Council regarding their discussions police department/sheriff's contract. He feels that the Sheriff's office offers a valuable service to the community; it is the only constitutionally charter law enforcement organization and the highest law enforcement in the nation; others who receive federal funding are under federal jurisdiction. He understands that Council needs factual data for their deliberation into this matter. He also recommended a commission be formed for an emergency preparedness plan with Indian Trail in cooperation with Union County.

Teresa Allen, 5347 Courtfield Drive, addressed the Council concerning the validity of e-mail sent to the Union County GOP by Darlene Luther. She verified that she has banned no elected officials from her restaurant (Bear's Lair), nor does she have any vendettas against any elected officials. She also commented that the e-mail was sent from Ms. Luther personal e-mail account, which is in violation of Town Council ethics policy.

Dan Schallenkamp, 408 Raintree Drive, handed out "Dan's Extremely Conservative Police Department Cost Impact Discussion" to Council. He stated this is in response to an editorial, which he disagrees with, where a citizen suggested that the Sheriff is doing a good job covering the town, but indicated that they could do it all for Indian Trail with no additional cost; which would put the burden of the town's law enforcement on Union County. He explained the cost indicated on his handout which identifies what we get today from state tax for highway patrol and county taxes for services the Sheriff provides

### **CONSENT AGENDA**

- a. Tax Report - Month End tax Report for January 2010
- b. 2009 Delinquent Real Property Tax list to be advertised
- c. Minutes from November 10, 2009
- d. Budget Amendments (1-3)

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John Hullinger made a motion to approve the Consent Agenda.

Council voted unanimously in favor of the motion.

### **OLD BUSINESS**

#### **Loitering Ordinance (2nd reading)**

*(This item was tabled by an earlier motion in Additions & Deletions)*

### **DISCUSSION AND POSSIBLE ACTION**

#### **Planning Board, BOA, Public Safety & Events Committees**

Councilmember Allen referenced the Council's recent extensive search for the town's new Town Manager. He feels Council has the responsibility to provide him with the necessary support to execute the visions of the Town Council and citizens of Indian Trail. He determined that this can be done by a ground up restructuring of these boards and committees.

Robert W. Allen made a motion dissolve existing Planning Board, Board of Adjustment, Public Safety & Events Committees and also develop committee specific applications to identify qualified individuals and limit an individual's participation to one committee at a time and develop consistent policies with the input of the new Town Manager. *(Motion later amended)*

Mr. Merritt advised that there are a few legal issues with respect to dissolving the different committees. The Public Safety and Events committees are committees that were created by the Council and can be dissolved on a motion. The Board of Adjustment is created by ordinance and because it is not a mandatory board it can be dissolved but it must be by way of amending the ordinance; it would be a public hearing process and cannot be done by motion tonight. Staff can be instructed as to how Council would like to amend the ordinance as compared to how it was originally set up. The Planning Board is a mandated board and cannot be dissolved. It is enacted as a city council shall create and designate a Planning Board, as opposed to the Board of Adjustment the city council may provide for one. Case law states that the committees that are not mandated can be recreated by Council but with ones that are mandated there is limited or no ability to recreate. Mr. Merritt will research for confirmation.

Robert W. Allen made a motion to amend his motion and instruct staff to research steps in order to reconstitute the Planning Board.

Councilmember Hullinger indicated he is caught off guard and does not understand the purpose for this. Citizens on the committees have served faithfully; has not heard any complaints. Councilmember Allen explained that the nature of this is to provide the new Town Manager with a clean pallet.

Councilmember Luther cited that at this time Council has been determining whether or not to have a council member on the committees, what kind of communication exist between the Council and the committees and if the direction of the Council is being served by the

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committees. This doesn't mean the same people can't be on the committees; just wipe the slate clean and be consistent across the board.

Councilmember Hullinger indicated he doesn't feel that is sufficient reason to disband the committees.

Councilmember Luther asked if this action is intended to be effective when the new Town Manager comes on board. Councilmember Allen replied his intention is to have the research done immediately so that the information is prepared. Mr. Merritt interjected that from a practical standpoint the committees that Council has created it can be done tonight as they are not governed by ordinance, but the ones that are by ordinance would have to go through the public notification process which would be into March at the earliest in regard to the Planning Board and the Board of Adjustment.

Motion Passed 3 - 1 with John Hullinger opposing.

Councilmember Allen asked if in regards to the Board of Adjustment, can it be suspended as he is of the understanding that it can be suspended and reconstituted. Mr. Merritt confirmed yes as it is not a required board and can be amended by ordinance subject to the notice requirements.

Ms. DeHart indicated as to the committees not the Planning Board and Board of Adjustment, can be handled through amendment of the committee policy adopted by Council last year; it established an advertising policy and who could participate on the committee. This policy can be amended and brought back to Council in draft inclusive of limiting participation on the number of committees and other criteria. Mr. Merritt pointed out that if Council does decide to terminate the existing Board of Adjustment, if items come up, the Council would have to act as a Board of Adjustment in the interim; which may mean some practical difficulties.

Mayor Quinn agrees that this motion is out of left field. Councilmember Goodall asked that Mayor Quinn pass the gavel; to which Mayor Quinn replied he is not debating, he is making a statement. Councilmember Goodall asked for a point of order. Council took a five minute break. Upon return from the break Mayor Quinn read the rules regarding passing the gavel when in debate.

Mayor Quinn indicated that on the agenda it is indicated that this item was put on by Councilmember Allen. There is no supporting documentation as to what he would be proposed to give anyone an indication as to debate, discussion; completely out of the blue. He feels this is unusual considering the ramification of the suggested changes. He indicated that a couple of citizens would like to speak regarding this matter.

John Hullinger made a motion allow citizens to speak on this issue using the same parameters as used during Public Comments.

Motion Passed 3 - 1 with Jeff Goodall opposing.

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Dan Schallenkamp pointed out that he is on the sunshine list and when he received the agenda, it in no way indicated the boards mentioned would be potentially disbanded. He was a council member for four years and when he started there was only the Board of Adjustment and the Planning Board. As legal counsel indicated Council can take on the responsibilities of the board, but it would require a tremendous amount of education to learn how items can or cannot be ruled on in regards to the Board of Adjustment because it extremely complicated and it would probably mean another meeting each month for the Council. The prior Council worked hard to have open government and form the committees with citizen participation.

Kathy Broome, 4103 Runaway Circle, feels the public was not given real information regarding the intentions of this item on the agenda. She is insulted as a Planning Board member and a Stormwater Committee member and a Downtown Subcommittee member to have someone think so little of what they've done; it's political.

Robert W. Allen made a motion instruct staff to perform research similarly as requested for the Planning Board for the Board of Adjustment and bring back to Council.

Motion Passed 3 - 1 with John Hullinger opposing.

Robert W. Allen made a motion dismiss and reconstitute the Public Safety Committee and Events Committee.

Councilmember Allen encouraged the members to reapply because there is a lot of experience on the committees.

Mr. Merritt asked for confirmation from staff that these committees were not formed by ordinance. Ms. DeHart confirmed he is correct.

Mayor Quinn passed the gavel to Councilmember Hullinger. He commented that he did not hear a "thank you" to any of the volunteers who have served on the committees. He expressed his disappointment and questioned whether the Transportation Committee would be next. He feels there is an agenda here.

Councilmember Luther stated there seems to be a division as to the gravity of this item. This is a temporary way to rebuild/reorganize and come up with new policy. It's a formalized end to the way there handled now and has nothing to do with the performance of the people on these boards/committees. In any government it is not unusual for new government to come in and start things over. That doesn't mean to get rid of everything that's good.

Councilmember Hullinger reiterated that the same purpose can be achieved without disbanding these groups. He questioned Councilmember Luther and Councilmember Goodall as to whether they knew about this before the meeting; they indicated they did. He questioned why he was not informed also.

Mayor Quinn agreed that new government can make changes, but feels this is not the way it should be done; should be upfront and open with the information for consideration.

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Motion Passed 3 - 1 with John Hullinger opposing.

Mr. Merritt suggested that Council, to which they agreed, instruct staff to notify the members of the committees by letter to let them know this is temporary, thanking them for their service and encouraging them to reapply when reformed.

### **Waste Connections, Inc./Action Garbage**

Terry O'Neal requested Council approval of reassignment of the existing contract with Action Garbage to Waste Connections, Inc. He introduced Tim Fadul who is the regional manager of Waste Connections. Mr. Fadul gave brief background of their company and expressed their interest in serving Indian Trail. One item they would like to introduce to the town, if Council chooses to consent to the assignment, is a program known as "Recycle Bank". This program returns on average \$20.00 per month per household for participant for recycling. He has met with Ms. Piontek and the Town Attorney on several occasions to discuss this matter and has provided municipal references that they currently service.

Mr. Merritt drew Council's attention to the Acknowledgment and Consent of Re-assignment that Mr. Fadul referred to. There are some legal issues involved that would be appropriate to discuss with Council in closed session. Councilmember Hullinger asked if this matter was time sensitive. Mr. Merritt replied that the sale is to happen on February 15th regardless of whether the Council consents or not; regardless of the stipulation in the current contract that the Council consent to any such sale of the assets of the company.

Jeff Goodall made a motion to enter closed session pursuant to NCGS 143-318.11(a)(3) - To consult with the attorney to protect the attorney-client privilege.

Council voted unanimously in favor of the motion.

Jeff Goodall made a motion come out of Closed Session.

Council voted unanimously in favor of the motion.

Mr. Merritt stated that five or six weeks ago he and staff met with Mr. Fadul and representatives of Action Garbage to discuss their proposed transaction. At that time there were three issues outstanding between the town and Action Garbage. The first was the hydraulic fuel spills that had taken place and the desire of the Town to have further cleaning of the roads after the initial attempt to clean it up. The second issue was the Town had made a request for maintenance records for the vehicles and has not yet received those. The third issue was the separate contracts that had been entered into by Action with individual residents, charging them extra money for picking up a second recycle bin. Action had been informed that was not pursuant to the contract and the Town wanted Action to cease that activity and refund the funds to the citizens they were charging and to provide those citizens names. These issues are still outstanding.

Councilmember Goodall asked the representatives where they were on the particular items.

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Vanessa Ward, with Action Garbage, stated as far as the legality, all e-mails come to her and she has not been informed of that legality. There are customers within Indian Trail that have requested second carts. In the years past they have been instructed by the Town that if citizens wanted a second cart; to bill them separately. This is also the way the recycle bins have been handled. When the parties agreed to provide a second recycle bin, a refund for the recycle bin was credited to their cart account balance. As far as providing a listing, there are only four and she will provide a list; everything else has been taken care of.

Councilmember Goodall asked about the clean up of the hydraulic fluid/garbage juice. Mr. Osbourne with Action Garbage stated that they have clean it up as best it can be done; once it's stained, it's there. Mr. Osbourne explained the process for the clean-up.

Councilmember Goodall questioned whether Waste Connections will be using the same trucks and if the maintenance records are available now. Mr. Osbourne replied that two of the trucks with problems have already been taken off the route and the only maintenance records available are what is required by NCDOT and can supply those. There was additional discussion outlining the Council's concern regarding maintenance the vehicles.

John Hullinger made a motion instruct staff to have continued discussion of ongoing garbage contract

Council voted unanimously in favor of the motion.

### **Indian Trail Business Hall of Fame**

Councilmember Goodall apologized for not having a slide available. Recently Council has made decisions to attract new business by putting a moratorium on fees for the next year. He proposed an incentive for existing businesses by recognizing those that have been in business consecutively for 10, 20 30 years by having a Hall of Fame with a gold, platinum levels that would come with some type of perk for businesses to reach a higher level. A ceremony could be held presenting with a plaque including them in the Hall of Fame. The award would be commensurate with the longevity of the business within Indian Trail. This recognition could be included in the Town newsletter or Monthly Planner and acknowledges what the business has done for Indian Trail and encourages other businesses to reach that level. Another suggestion is the business could be automatically included in a future economic development committee. Additional discussion continued.

Jeff Goodall made a motion direct Town Manager/Town Staff to develop a Business Hall of Fame proposal by May 1st and bring back to Council at the first meeting in May.

Motion Passed 3 - 1 with John Hullinger opposing.

### **Amendment (Addition) to the Business Friendly Act of 2010**

Councilmember Goodall presented the initiative to indefinitely extend the existing one-year fee moratorium to any existing Indian Trail business that will be displaced by the NCTA Monroe

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By-Pass project with the goal of encouraging these effected businesses to remain within the Town borders.

Jeff Goodall made a motion to approve the initiative to indefinitely extend the existing one-year fee moratorium to any existing Indian Trail business that will be displaced by the NCTA Monroe By-Pass project with the goal of encouraging these effected businesses to remain within the Town borders.

Councilmember Goodall doesn't believe there will be very many. The business would have to prove they are being displaced and if they relocate within the town limits; meet these criteria and indefinitely suspend fees for that move. Every business means a lot to the town.

Council voted unanimously in favor of the motion.

### **Allocation of Park Funds**

Ms. Sutton requested direction from Council as to how the monies allocated for the Park Fund should be spent. Currently there are three park expenses that will be coming through and clarification is needed as to whether these amounts would be paid from the Park Fund. In the packet, staff provided a draft checklist representing a menu of options for your consideration. After discussion, it was determined that the park funds should be used for land acquisition and development only.

### **NEW BUSINESS**

#### **ZT 2010-001 Subdivision Ordinance**

Ms. DeHart presented a request to amend Chapter 350-Subdivision Ordinance of the UDO, specifically 550.030 and 350.070, to reference Union County plat size requirements in accordance with NCGS. The Planning Board heard this request at its January 19, 2010 public meeting. After deliberation, the Planning Board made the required findings and recommended approval with minor modifications for clarity.

Ms. DeHart read findings into record as follows:

1. The proposed UDO amendment is consistent with the following goals:
  - 1.3.2 of the Comprehensive Plan - Land Use; the proposed UDO ordinance amendments allows land use and the benefits therein to use and subdivide land according to state statutes.
2. This UDO ordinance amendment is a reasonable request and in the best interest of the public because the amendment corrects text consistent with North Carolina State Statutes related to subdivisions.

Mayor Quinn opened and closed public comments section of the public hearing; no one signed up to speak.

Robert W. Allen made a motion to concur with the findings and approve as transmitted.

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Council voted unanimously in favor of the motion.

### **Budget Calendar for 2010-2011**

Ms. Sutton presented the proposed budget calendar. These dates are tentative depending on Council's needs and direction. The Goals and Initiative Session is included on this schedule; but, can be changed to another time if Council so desires and these dates can either be deleted or used for something else. She has updated Mr. Fivas regarding the schedule and he is in agreement. After discussion, it was determined that the meetings should be scheduled after 6:00 pm during the week and have an all day session on March 13th instead of dividing into two days. Ms. Sutton will adjust the calendar and present to Council after revision.

### **Main Street Program**

Councilmember Luther stated that she and Ms. DeHart attended a seminar regarding "Main Street Program" which has to do with downtown beautification initiatives that focus on helping small businesses in the form of a grant. The deadline for applying is March 31st. They are requesting an overview of the town, current plans for downtown and what kinds of businesses are located in the downtown. The grant amounts are from \$20,000-\$300,000. Any work performed for the grant would have to provide direct financial benefit to small businesses or must create jobs in association with small business or must spur private investment in association with small business. It can be used for public improvements and public infrastructure or establishment of new facade in the form of incentive grants in connection with private investment. In order to qualify for the grant there are pieces of research that would have to be gathered as far as vacancy rates and qualitative studies in talking with the businesses and getting a feel for what a difference it might make for them. After discussion, there was Council consensus to proceed with the grant application.

### **MANAGER'S REPORT**

Ms. Piontek congratulated Lt. Coble on his recent engagement. She informed Council that the Planning Director, Town Engineer, Finance Director and herself met with Council members Allen and Luther to discuss an array of issues, one being tax incentives for economic development and will also meet next week to discuss new information. Since staff has been requested to perform and provide research, she wants to keep Council fully apprised. Councilmember Allen elaborated that this meeting was to identify incentives to keep businesses and jobs in Indian Trail. After a brief discussion, it was suggested that perhaps Council should revisit the resolution concerning individual council members directing to staff. Council consented for staff to put together information together concerning incentives for businesses locating within Indian Trail.

Ms. Piontek suggested arranging a workshop with Bob Cook to go over the ins and outs and procedures of MUMPO and transportation issues after Mr. Fivas starts. She will come up with a date and e-mail Council for their availability.

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She is in the process of arranging a reception for Mr. Fivas. Elected officials from Union County and surrounding municipalities will be invited. Council consensus was received to hold the reception on March 10th at Xtreme Ice Center.

A Public Safety Appreciation dinner has been held in year's past and she asked for clarification as to what Council would want to do. A few different suggestions were made.

She informed Council that the lapel pins have been ordered, awing ordered, the town capsule is on display in the Town Hall lobby and the seal for Town Hall has been ordered and anticipates it will be up in a couple of weeks. The old seal will be placed on the Development Services Building.

Ms. Piontek will see how the council meeting on the 23rd is shaping up to see if the ABC Board applicants can be interviewed on that date or if another date would need to be suggested.

### **PLANNING REPORT**

Ms. DeHart stated the Carolina Thread Trail grant process is moving forward; expecting the RFPs from various consultants. The presentation and associated documents will be presented at the 1st March meeting. The town has again received its recognition as a Tree City USA. The Tree City USA plaque will be presented at the Earth Day/Arbor Day event at Town Hall on April 24th. The draft Park Plan is available at various locations as well as on-line for public review.

### **ENGINEERS REPORT**

Mr. Kaufhold informed Council the LRTP has been made public for review and comment; copy at planning and the library. On Feb. 25th from 4-6 pm a drop-in public meeting will be held to receive public comments. At Thursday's TCC meeting the NCTA representative indicated they were on schedule and on budget; start construction at end of year.

### **LAW ENFORCEMENT REPORT**

Lt. Coble updated Council on events that occurred in Indian Trail in January 2010.

### **COUNCIL COMMENTS**

Councilmember Luther believes it is a good idea for Indian Trail to have an emergency preparedness plan in place.

Councilmember Hullinger had no comments.

Mayor Quinn stated the county emergency preparedness plan is available through the county offices.

Councilmember Allen had no comments.

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Councilmember Goodall stated the census mailing will be going out soon; he reminded everyone of the importance to returning the information.

**CLOSED SESSION**

Jeff Goodall made a motion to enter closed session pursuant to NCGS 143-31.11(a)(5) - To establish or instruct the staff or agent concerning the negotiation of the price and terms of a contract concerning the acquisition of real property.

Motion Passed 3 - 1 with John Hullinger opposing.

Gary D'Onofrio made a motion to enter Open Session

Council voted unanimously in favor of the motion.

**ADJOURN**

John Hullinger made a motion Adjourn.

Council voted unanimously in favor of the motion.

APPROVED:

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John J. Quinn, Mayor

Attest:

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Peggy Piontek, Town Clerk