



Town of
INDIAN TRAIL
north carolina

Town of Indian Trail
Minutes of Regular Council Mtg.
January 12, 2010
Civic Building
6:00 P.M.

The following members of the governing body were present:

Mayor: John J. Quinn

Council Members: Gary D'Onofrio, Jeff Goodall, John Hullinger, Robert W. Allen, and Darlene Luther.

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 Minchin of the Charlotte Observer

CALL MEETING TO ORDER

Mayor Quinn called the meeting to order.

CLOSED SESSION - Real Estate

Jeff Goodall made a motion enter into Closed Session pursuant to NCGS 143-318.11(a)(4) To discuss matters relating to the location or expansion of business in the area served by this body and NCGS 143-318.11(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.

Council voted unanimously in favor of the motion.

Gary D'Onofrio made a motion to enter back into Open Session.

Council voted unanimously in favor of the motion.

Gary D'Onofrio made a motion recess to reconvene.

Council voted unanimously in favor of the motion.

Council took a short break.

Mayor Quinn reconvened the meeting.

Girl Scout Troop #941 led the Pledge of Allegiance.

PRESENTATIONS

CCOG - Agency on Aging

Ms. Linda Smoskey, with the Council on Aging in Union County, presented information regarding the aging population resources/statistics and issues that should be a consideration in the future for Union County and surrounding municipalities; including but not limited to senior housing, transportation, financing long term care, etc.

NC ABC Commission

Laurie Lee, ABC Board Auditor shared information on setting up an ABC board, opening an ABC store, or not, and some general information about profits and distributions. There are currently 163 ABC boards and 415 ABC stores. Of that total, 49 are county-level boards, 107 are municipal boards and 7 are merged boards. The ABC Commission administers NC ABC laws and rules and acts as oversight of local ABC Boards. The Indian Trail Town Council will appoint a 3-member ABC board; designate one member as chairman and determine Board compensation. The IT ABC Board will select site and open store; borrow money and hire employees. The ABC Commission approves each store location but the size, look, layout, and so on are up to ABC Board. Initial board members are appointed for 3, 2, 1 year terms. Board member requirements: GS18B-700(d) Qualifications - the appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character; Professional backgrounds - understand how to run a business; have time to devote to getting a store up and running; willingness to provide on-going oversight; ability to read financial statements.

ABC Store Options: Rent vs. Build; Size - Minimum 2500 sq. ft. retail space and 1000 sq. ft. warehouse; location - 50 ft. from church, school or daycare - well lit, plenty of parking, visibility; cost - \$100,000-\$130,00 for initial stock and \$75,000-\$100,000 or more for up fit. If renting space - 6 months is about the average start up. The up fit estimate includes POS/computer equipment, shelving, security system, etc. She quickly gave a comparison of Standalone vs. Merged Board comparison - overhead, or non-operating expenses include annual

audit (\$7,000), bookkeeping, and board expense. Expertise - intangible benefits of joining with an experienced board.

Ms. Lee stated that over \$258 million were distributed during the 2009 fiscal year. Of that amount, \$64 million stayed in local communities. She briefly went over the bottle price breakdown. She showed a chart showing income and distributions for municipalities around Indian Trail for the 2009 fiscal year. Should the ABC Board decide to open a store, their first order of business is to select a site. Once a site has been chosen, a sign needs to be posted - either on the property or in the window, if the location is a strip mall. Lettering should be clearly visible indicating that this is the proposed site of the Indian Trail ABC store. Include telephone number for general public to make comments; a log should be kept of all phone calls received. Send a letter to the ABC Commission requesting approval. The letter should include the exact location of the site and the date the sign was erected. The information will be forwarded to ALE for investigation. The request for approval will be heard at the next Commission meeting held at least 30 days after the sign is posted.

ADDITIONS AND DELETIONS

Gary D'Onofrio made a motion add Item 8a - Town Manager Contract Vote and Item 8b -Union County Water/Sewer Issue

Council voted unanimously in favor of the motion.

MOTION TO APPROVE AGENDA

Gary D'Onofrio made a motion to approve Agenda.

Council voted unanimously in favor of the motion.

PUBLIC COMMENTS

Dan Schallenkamp, 408 Raintree Drive, commented on the merits of having council members on committees. He feels it's an important aspect to keep council members on each committee. He had taken an informal poll of the Transportation Advisory Committee members and the members felt it was beneficial to have a member of the Council on the committee. When the Public Safety Committee was established, it was purposely formed without a council member so there would be no influence from council members who thought there should or should not be a police department. He expressed concern over the moratorium of fees and how much it would impact small or large businesses; what is going to be cut out of the budget as the fees are cut. In regards to the ABC discussion, he suggested that the board keep track of all expenses incurred while studying this issue as this could be charged back to the ABC Board after its formation. He also expressed concern regarding the 50 foot rule, the general statues rules; it's insulting to possibly have a bar or ABC store just 51 feet away from a school, daycare or church.

CONSENT AGENDA

- a. Tax Report - Month End tax Report for December 2009
- b. Minutes of July 15, 2009, August 25, 2009, September 8, 2009, September 22, 2009 December 7, 2009, December 11, 2009 and December 22, 2009, January 5, 2010
- c. Resolution to Adopt Legislative Positions for the 2010 Short Session of the NC General Assembly (**Copy attached hereto and made a part of these minutes.**)
- d. Budget Amendments 1-30 (See list in Agenda Packet) (**Copy can be found on file with the Finance Officer and is incorporated herein by reference.**)

Councilmember D'Onofrio stated there were a few items he would like to pull from the Consent Agenda; Minutes of July 15, 2009, September 22, 2009 and December 7, 2009. This is for typo or wrong words that he found. He pointed out the corrections: In the minutes of July 15th on page 2 the fourth paragraph down should read "in government management"; September 8th on page 11 under Mr. Schallenkamp's Council Comments it should read "police" instead of policy; September 22nd on page 3 in Mr. D'Onofrio comments it should read "country" instead of county and "perspective" instead of prospective; December 7th on page 1 under Council Members, Darlene Luther was not a member of the Council at that time. Ms. Piontek stated that the minutes can be approved tonight as amended.

Gary D'Onofrio made a motion to approve the minutes from July 15, 2009, September 8, 2009, September 22, 2009 and December 7, 2009 as amended.

Council voted unanimously in favor of the motion.

Councilmember D'Onofrio brought attention to Item 7c - Resolution to Adopt Legislative Positions for the 2010 Short Session and before approving this as submitted, perhaps removing the support of involuntary annexation within the document as we do not know exactly what changes are being proposed. Mr. Merritt stated there are municipalities that have made changes to the document and passed and presented to the County Commissioners; it is not always adopted in full. It's up to Council discretion as to what is supported within the Resolution.

Gary D'Onofrio made a motion forward to the County Commissioners a Resolution in of the items in their Resolution to Adopt Legislative Positions for the 2010 Short Session of the NC General Assembly less the annexation item.

Motion Passed 4 - 1 with Jeff Goodall opposing.

Jeff Goodall made a motion to approve Consent Agenda as it stands.

Council voted unanimously in favor of the motion.

OLD BUSINESS

Updated Presentation on "Business Friendly Act of 2009" - Staff

Update from the Town Manager (and/or Town Staff) on the

Mr. Merritt stated that he had met with staff regarding Councilmember Goodall's PowerPoint from the September 22nd meeting to go over what was adopted at that time. Some of items have been adopted, such as the sign ordinance. The first item to be addressed tonight is the request that the town temporarily suspend certain fees for the establishment of new businesses within the Town. After consulting with various staff and departments about which fees they collect related to new business, he drafted the resolution that is before Council. The "Town of Indian Trail Fee Schedule" and the "Amended Privilege Licenses Fees" will be attached. This resolution references the attached fees and states which fees are not going to be collected with respect to new businesses; with respect to the privilege licenses, none will be collected for new businesses. There are fees to be collected on a yearly basis, those would continue to be collected. With respect to the Town fees on the Indian Trail Fee Schedule, because the schedule includes both items that are collected for new businesses and for ongoing businesses, he has specifically listed out those items on which fees will not be collected for new businesses. He did the resolution to take affect upon its adoption. This was done in the same manner as the one done for signs where it shall automatically terminate no later than one year from the date of adoption. It will be later than the one for signs, but the provision that it can be reviewed and modified or revoked at anytime by the Indian Trail Town Council has been included. There was discussion with staff concerning the revenue that would not be collected with respect to these fees; he did not have that information with him. Ms. Sutton stated that the anticipated amount of revenue that could be lost is a total estimated amount of \$64,000; there is no way of estimating how much might be lost based on any new mixed drink establishments or anything of that particular nature.

Councilmember Allen clarified that Council is addressing the verbiage that Mr. Merritt is putting together for the Resolution to temporarily suspend the fees.

Councilmember D'Onofrio addressed the comments made earlier by Mr. Schallenkamp regarding where the money would come from; it is all taxpayer money. Right now amidst the throws of economic turmoil there are more people starting their own businesses as an alternative to looking for a job; encouraging entrepreneurship. As a fan of economics, he believes that fewer taxes on businesses equal more jobs and a more robust economy.

Mayor Quinn stated that these are fees for new businesses starting up and it will only make a difference if they know about it; has thought been given to posting on website, advertising, etc. to let people know that Indian Trail is making this move to attract new businesses. There was a brief discussion of this with Council confirming that this information should be pushed out there to the public; perhaps the Chamber could put this information on their website also.

Business Advisory Committee

Ms. DeHart presented the information in regards to the formation of a Business Advisory Committee. There are basically four types that staff came across during research. One could develop as a local Chamber like the City of Matthews or Monroe, or any other jurisdiction that has their own local Chamber. There is also the ability to have a committee connected to an economic development program. That is usually under the guidance of an Economic

Development Director or even the Town Manager, if that is his/her role. A Special District Business Advisory Committee is where a special district is planned such as a Downtown Business District; it is established as a non-profit and has its own source of funding for operations. The last is a straight Business Advisory Committee; the Charlotte model seems to be a very good model for this. They have a large membership that is made up of half the appointments from the Council; the Mayor of Charlotte has two appointments, the Chamber appointments five to the committee and there are two other appointments associated with specific organizations. The staff that supports the Charlotte model is out of the Managers office; specifically economic development staff. Staff believes this model will work for Indian Trail as well. It would be up to Council to direct staff on how the appointment make-up would be; staff recommends the membership makeup contain between nine and twelve with two members specifically from two organizations, one being from the Union County Chamber and the other from Union County Partners for Progress. They are often the first contact when businesses are looking for sites. With this committee a staff liaison would need to be identified. The committee would need to develop and present an annual work program and to have the support of the Council on whatever program they may develop.

Historic Business District

Ms. DeHart informed Council that in researching this subject that both a Historic District and a Historic Business District would benefit the town. The boundaries of the original town jurisdiction included some areas that would not qualify as a business district. This could be simply done with amendment of the UDO in the form of establishing an overlay districts. The Planning Board, if directed by Council, has the authority within the UDO to establish a subcommittee to help them in the preparation of a text amendment. The subcommittee could be staffed with some members of the Indian Trail Arts and Historic Society, members from downtown businesses and downtown residents to have a good mix. Once the draft ordinance is prepared it would go to the Planning Board then on to Council for adoption. She would like to see the committee continue to develop a historic program that could include, as suggested, walking tours and promotion of the downtown, and use the committee as an implementation tool as well. They would come before Council with their work program on an annual basis to let Council know what they would like to do to promote the downtown district.

Councilmember Goodall questioned Mr. Merritt regarding his presentation and whether a motion needed to be made to adopt the suspension of fees. Mr. Merritt confirmed that a motion could be made to adopt the resolution, but reiterated that the draft presented is missing the actual fees attachment, which would be made part of the resolution.

Jeff Goodall made a motion adopt the Resolution Temporarily Suspending Collection of Certain Fees by the Town of Indian Trail, North Carolina for Establishing a New Business, including the Exhibits for "Amended Privilege License Fee Schedule" and the "Town of Indian Trail Fee Schedule"

Council voted unanimously in favor of the motion. **(Copy attached hereto and made a part of these minutes.)**

Business Nuisance Ordinance

Mr. Merritt stated that the other item in Councilmember Goodall's presentation was a suggestion for a Business Nuisance Ordinance. In referring back to the presentation, one suggestion was to prohibit skateboarding on business property, storefronts, commercial parking lots and sidewalks; the second was to discourage non-consumer loitering; and the third was to create safe and unobstructed passages for customer pedestrian traffic. This ends up being two new ordinances with a reference back to an ordinance that is already on the books. He first addressed the Loitering Ordinance, which is a new Chapter 131. It says "It shall be unlawful for any person to occupy the streets or sidewalks in the Town of Indian Trail in such a way as to obstruct or interfere with the free passage into or out of any public business, sidewalk or private property". The enforcement provision is \$250 for the 1st offense, \$500 for the second offense; and \$1,000 for the third and each subsequent offense. The amounts fined and collected will be turned over to the school board. In addition, he did include that it could be a misdemeanor punishable by a fine not to exceed \$50; no imprisonment with this ordinance. He had a conversation with Lt. Coble with respect to criminal enforcement of any of these ordinances and the deputies would prefer there not be a criminal enforcement element. First of all it takes about twice as much paperwork if it is done on a criminal basis and there are a lot of safeguards within the system, as the system is not particularly interested in prosecuting people who are riding on their skateboards.

The second part is actually an ordinance that is already on the book; Chapter 114 which deals with soliciting. Soliciting is prohibited and it states "It shall be unlawful for any person to solicit contributions, or sales of any kind, and to distribute any kind of communication material, souvenirs, free samples, services, or otherwise, within the rights of way of public streets, roads and highways within the town limits of the town." There is no required change for that matter.

The third ordinance is a new Chapter 74 which deals with not only skateboarding, but also bicycles. The first part of the ordinance deals with skateboards, roller skates, in-line skates and other coasters and toy vehicles. It makes it unlawful to use any of those types of devices on any street except while crossing at a crosswalk or intersection; on the premise of any municipal building or any municipal parking facility; on any sidewalk located in any Business or Commercial Zoning District as defined by Chapter 520 of the Indian Trail Unified Development Ordinance; on portions of private property located in any Business or Commercial Zoning District as defined by Chapter 520 of the Indian Trail Unified Development Ordinance, where such property is dedicated to use by the general public, and where the owner of such property is dedicated to use by the general public, and where the owner of such private property has prominently posted a notice indicating that the use of skateboards, roller skates, in-line skates, scooters, sleds or coaster is prohibited on the property.

Another issue Lt. Coble was concerned about is they have issues enforcing the skateboarding and other things on private property, even business private property. There have been circumstances where there are children of people who are at stores in a mall who may be behind the store skateboarding and the owners don't care and there are other business owners that may complain about them being behind the store, but if there is no real objection by the owner of the property it makes it difficult for law enforcement. He has tried to set forth that if someone in a mall/strip

center wants this enforced, they need to post it so that law enforcement officials know that they want it to be enforced on their property. The second part of the ordinance addresses clinging to a motor vehicle, which is pretty straightforward. The third part deals with riding bicycles on the sidewalks. This prohibits riding bicycles on the sidewalk within a business district; Council needs to consider whether to do this or not. There are places where someone would ride from their house to a local establishment within the business district; with this ordinance it's basically saying that once this person gets into the business district they can no longer ride on the sidewalk. Although there are other municipalities that have something similar on their books, Mr. Merritt recommended Council discuss this and determine if this is what they want to do within Indian Trail. The enforcement would be similar to the loitering ordinance penalty. The combination of the proposed ordinances plus what the Town already has on the books, captures what Councilmember Goodall was trying to accomplish with a Business Nuisance Ordinance.

Lt. Coble stated that in dealing with juveniles, in Councilmember Goodall's presentation, kids hanging out on sidewalks in front of businesses and such, this is what a lot of what would be called in for enforcement. When dealing with juveniles, 15 years of age and under as determined in North Carolina, the officers do not take them into custody unless certain criteria are met. One of these does not meet the criteria; so it would be a non-custodial type interaction with the kids. What happens is the case would be brought before a juvenile justice official to determine whether the case warrants it being introduced into the court system. As a juvenile court counselor they determine whether a minor is introduced into the court system or probation system based upon the case and circumstances provided; the counselor acts as a filter so as to not bog down the court system unnecessarily. The Counselor does a lot of counseling sessions if that is the determined route; there have been more extreme cases than this type of violation that have not been introduced into the court system. Lt. Coble is not certain whether or not civil penalties can be assessed if the juvenile is not convicted on the criminal side, if it's to be a two-sided offense. He supports the loitering ordinance and feels this will take care of the skateboarding, but urged Council to consider the proposed ordinance concerning riding of bicycles on the sidewalk. He suggested making the enforcement of the loitering ordinance be assessed a civil penalty and not a criminal offense; the proposed penalties are steep in comparison to other law violations. The business owners are sometimes cooperative in the prosecution; without their cooperation the case falls apart.

Councilmember Goodall confirmed with Mr. Merritt that this loitering ordinance is a new one. He feels the ordinance has the information he requested to be included. In talking with some of the business owners he found that some of them don't mind the kids' activities, but others do. He performed some of his own research and found on the Michigan Municipal League website eight ordinances, ready made addressing skateboarding and those types of activities. He asked for confirmation as to whether the fees collected go to the public schools. Mr. Merritt confirmed this was correct. Mr. Merritt stated as to the enforcement the ordinance can be set up so that a warning is given; it's up to Council. Councilmember Goodall stated he has mixed feelings regarding the bicycle ordinance; he knows we are building sidewalks so the school children can safely walk to school, but he feels that bicycles should be on the roads; but perhaps not in the business district.

Lt. Coble wanted to add that the clinging to the motor vehicle part is relevant, as they did have an incident where a mother ran over her child because he was hanging on to the back of her vehicle and he sustained major head injuries from the incident.

Mayor Quinn asked as to the enforcement of the loitering, would more patrols be necessary. Lt. Coble replied that in the past they've used special funds that were available in the off duty money that was budgeted last year. When school starts they usually start using that money because that was a special projects fund and the area over at Sun Valley needs dedicated sight and visibility of officers. The businesses themselves have banded together to hire off duty patrol for enforcement of loitering around their businesses. He feels he needs to maintain and keep the whole town covered; he can't specifically put an officer to stay in one area. They have tried to address the area over there. Mayor Quinn stated that he appreciates the off duty program and feels it's a fiscally responsible and reasonably priced.

Gary D'Onofrio made a motion adopt Chapter 131- Loitering Ordinance into the Code of Ordinances.

Councilmember Luther requested that parking lots be included in the Loitering Ordinance; that is typically where she sees the problem. Mr. Merritt stated that parking lots are considered to be streets for purposes of enforcement, but it helps to make it clearer for the officers then he can add. Lt. Coble stated that his only issue with the proposed addition of parking lots is that this is a privately owned area; reiterated his prior concerns with enforcement of this issue. Discussion continued regarding the enforcement of this matter.

Councilmember Hullinger also believes the fines are also steep and would like to see those reduced to perhaps \$50, \$100 & \$150 or \$250.

Motion Passed 3 - 2 with John Hullinger, and Darlene Luther opposing.

Mr. Merritt stated that this is the first time this has been introduced as an ordinance and to adopt at a first reading it would need to be a super majority, otherwise there would need to be a second reading to officially adopt the ordinance.

Councilmember Goodall made the motion to adopt the Charlotte model for the Business Advisory Committee, but for members to be appointed by the Council instead of the Mayor.

Ms. DeHart stated that membership some are appointed by the Council, two by the Mayor and some filled by the Chamber as well. Typically in the Town's committees the Town Council has appointed every member of each committee. Councilmember Goodall stated he is not in favor of starting a new Chamber of Commerce. He favors the Charlotte model because it does include business persons. Councilmember Allen indicated that he is leaning toward the Town of Matthews model, but with business people recruited from the community. He feels it is clearer as to the specifics as to what it is being formed to do. He would like to create a hybrid, looking at the Town of Matthews and augmenting it with some of the highlights from the Charlotte model.

Ms. DeHart stated that in the Matthews model they are specifically tasked with implementing the Town's economic development program. As it stands now, our Town does not currently have an economic development program. This would be the first step in developing our own business association or advisory committee to help develop a program; whether it be a recommendation to charge an economic development plan for a particular area or for the town as a whole. She feels the Matthews model is a little more advanced. Whichever model the Council decides on, if the Council is the appointing authority, Council can insure that the members are from businesses located within the Town. She recommends appointing a member from the local Chamber and from the Union County Partners for Progress.

Councilmember Goodall withdrew his motion.

Jeff Goodall made a motion adopt the Matthews model and request Jim Carpenter with the Union County Chamber and a representative from Union County Partners for Progress to be members.

Ms. DeHart explained how the Union County Partners for Progress works.

Council voted unanimously in favor of the motion.

Mr. Merritt confirmed that the Loitering Ordinance would need to have a 2/3 majority vote at the first reading in order to adopt tonight. It only had a simple majority vote at the first introduction of the ordinance and will therefore need to have a second reading with a majority vote in order to adopt.

In regards to the Historic District, staff needs direction as to whether Council wants to pursue as recommended and task the Planning Board to utilize their authority to develop a sub-committee. Otherwise, staff would need to look for committee members and develop at the Council level. Ms. DeHart stated that it's typical practice when Town's develop overlay districts that people are brought in that live in the area, work in the area and the Planning Board itself is experienced in ordinance writing. The Historic Society can lend itself to their expertise in the historic area. To get a well rounded overlay district, we're not just establishing an overlay district, it's writing associated criteria that will be implemented within this area. The Historic may promote the historic aspect, but also need to promote the businesses.

Jeff Goodall made a motion designate the original boundary as was in 1907 as the Indian Trail Historic Business District and create the Indian Trail Historic Advisory Committee.

Motion Passed 4 - 1 with John Hullinger opposing.

Councilmember Goodall suggested tabling the committee discussion until another meeting.

Finance Presentations:

Auditor's Report/Fund Balance Analysis

Ms. Sutton explained that the audit performed by Tinsley and Terry as presented at the December 8th meeting needs to be accepted by the Town.

Gary D'Onofrio made a motion to accept the auditing report prepared by Tinsley and Terry as presented at the last meeting.

Council voted unanimously in favor of the motion.

Ms. Sutton stated that the next item she had to present is an inquiry made by Councilmember D'Onofrio regarding the general fund balance analysis. She explained the different pieces of the funds included in the fund balance appropriations. The Town's current general funds - fund balance is \$9.7 million the funds which were accumulated over an 11 year period. The last two years the town has combined about 4.3 million dropped into the fund balance. The reason is that we have had re-evaluation, which would have some impact. The revenues have exceeded our expenses; during the last year employees have tried to curtail expenses. In looking at that number, it is made up of several pieces. One is the capital reserve funds fund balance which \$1.4 million, that particular money is set aside for a future town hall site and building. \$3.2 million is for Powell Bills funds which can only be spent on Powell Bill expenses. We also have a reserve required by state statue of \$236,000, which is account receivable and due from other governments; these are not funds that can be spent until you have it in house. Also included in that amount are encumbrances, purchase orders or in a particular given year are encumbered under governmental accounting, those flow from one year into the next. There is also a designation for subsequent year's expenses and part of that is the \$242,000 that the town designated for law enforcement and several other expenses. There is \$4 million undesignated; with the LGC you must keep at least 8% of your prior year's expenses, if we fall below that they will send us a white letter; this amount is about \$456,000. The auditors believe it prudent to have at least six months reserve for expenses, which would be about \$2.8 million. Cash on hand is needed for unforeseen circumstances, emergencies, pay cash instead of borrowing, generate investment income, maintain investment grade "A" bond rating. Of the \$4 million, if the town retains the six months that leaves a little over \$1 million and that would be funds available for Council initiatives and appropriations in the event of an emergency. The following items have recently come to the forefront as items Council would like to spend funds on: road improvements, parks, additional law enforcement, potential increased sanitation costs, tipping fees, the economy, etc.

The average fund balance for municipalities in our range is \$2.7 million. This does not take into account the 8% requirement for 6 months reserve. The average property rate for 2008 for municipalities in the 10,000-49,999 without electrical systems was .4637; for municipalities from 2,500-10,000 without electric systems was .2682 and Indian Trail's tax rate is .145.

Ms. Sutton explained that Indian Trail does have fund balance, however, those funds could be gone very quickly in today's environment and we do need to accumulate fund balance to keep pace with the Town's growth and the every growing demands of our citizens. She explained that several places have a fund balance policy in which if fund balance reaches a certain level, money could be applied to a capital projects program.

Councilmember D'Onofrio confirmed with Ms. Sutton that the Town's is healthy, but not excessive. Ms. Sutton feels that the Town is very well positioned to do the things that the Council may want to do.

Councilmember D'Onofrio, in going over the tax report, noticed that the collection rate was at 80% and was curious to know how this compared with last year. Ms. Sutton stated that it's about normal. Ms. Cook added that delinquency notices will come out at the first meeting in February.

Councilmember Goodall questioned if we would be moving to the 11 -digit system. Ms. Sutton replied no plans have been made in that direction, but she would like to move toward the state's system; perhaps this can be looked at during the coming year. Councilmember Goodall also asked if the audit can be put on the website. Ms. Sutton confirmed it can be. Councilmember Goodall thanked Ms. Sutton and Ms. Cook and the rest of the staff for assisting in the audit. This audit is a tribute to the prior council and to those that came before.

Budget Amendment - Admin Renovations

Ms. Sutton presented the information regarding the requested additional funds in the amount of \$1,000.00 for blinds, keyless mechanical entrance to the back, and printing and installation of the town logo on the front doors. There was additional discussion regarding the town seal and potential costs.

Jeff Goodall made a motion approve the additional funds requested in the amount of \$1,000 plus additional \$2,500.00 for the seal for the outside of the administration building.

Council voted unanimously in favor of the motion.

Deputy Finance Officer

Ms. Sutton stated that during the audit a discussion arose concerning a procedural item regarding the Deputy Finance Officers. All checks are to be signed by either the Finance Officer or a properly designated Deputy Finance Officer. Ms. explained the problem is the expense payable clerk is currently a Deputy Finance Officer; which means that the person writing the expense checks can sign those checks. She saw this as a problem when she can on board and since she has been here the expense payable clerk has not signed any checks. The auditors understood, but did recommend modifying the process. The auditors also recommended that a designated Deputy Finance Officer be privy to closed session information. Ms. Sutton recommends Ms. Piontek fill this designation when she has re-assumed her role as Town Clerk and also Ms. Luther, who has agreed to be designated. This would only come into play in the event Ms. Sutton is not here; such as vacation. The reason the Town Manager should not be the Deputy Finance Officer is that they are normally on the bank account; but Ms. Sutton is recommending that the Town Manager and the Staff Accountant be authorized in extreme emergencies if there is no one else to sign the check. This step would help to strengthen the internal control process. The recommendation is to have this change effective upon the start of the new Town Manager.

Robert W. Allen made a motion recommendation as presented.

Motion Passed 4 - 1 with John Hullinger opposing.

Appointment of Transportation Committee Chairperson and Stormwater Committee Chairperson

Ms. Piontek clarified that in reference to Councilmember D'Onofrio's earlier motion in adding items as 8a and 8b, it should have been 9a and 9b, as he was referencing a previous draft of the agenda.

Gary D'Onofrio made a motion table to the next meeting.

Council voted unanimously in favor of the motion.

DISCUSSION AND POSSIBLE ACTION

Town Manager Vote

Councilmember D'Onofrio announced that the Council had a final candidate for the Town Manager position and made the following motion.

Gary D'Onofrio made a motion to approve the Town Manager contract. **(Copy can be found on file with the Finance Officer and is attached hereto by reference.)**

Council voted unanimously in favor of the motion.

Councilmember D'Onofrio announced that Joseph Fivas, former Town Manager of Owosso, Michigan has been selected as the new Town Manager. He then read the press release.

Union County Water Sewer Issue

Councilmember D'Onofrio indicated that it has been brought to his attention to an action taken at a recent Union County Commissioners meeting regarding a water/sewer CIP project in eastern Union County. Essentially the county is eligible for federal funds from several years ago; they had hoped to apply the funds to nine separate projects, but as it turned out those would not be eligible for the grant in question. At the last commissioner's meeting they moved to apply for the grant for one project, the east side water and sewer treatment facility. This was brought to his attention by the Mayor of Stallings who expressed concern that this area, which is rife with development, population and is suffering from a lack of water and sewer was maybe not looked at as well as it should have been. The need in this area is more immediate or more viable than other areas of the county. He is not looking for action tonight, but perhaps a resolution could be drafted to be presented to the County.

Mr. Ed Coscicki, Public Works Director for the County addressed the issue. He made the point that applying the grant funding to the east side project does not mean that the other areas are being overlooked. The County is moving forward with additional sewer development for this area and they recognize that as well as expanding existing facilities, new facilities are being considered and are identified in the CIP. He gave a brief history of the grant funds which were congressionally earmarked through the EPA grant program in 2001-2003. The appropriations were made and designated to the county; procurement requirements were not met with the projects that were completed at that time; one requirement is that it be in an area of the Yadkin Basin. This current project on the east side would meet the requirements for the grant; this is a matching grant (55%/45%) and they wanted a project of significant magnitude that they were sure would cover all the grant funds and the county would get the \$1.6 million.

The proposed east side project is about a 95% complete in design and the project is necessary to alleviate some existing capacity problems in the Wingate/Marshville area. Right now there are periodic overflows of wastewater stations there causing environmental concerns. The County has contract capacity with the City of Monroe for 2.6 million gallons per day and can't physically deliver more than 2 million per day, so they are trying to correct that problem. He recognizes that this project doesn't do anything to address capacity for this area. He briefly explained what projects are currently on the radar. The funds are for a construction grant for the development of new facilities and not for maintenance or to expand existing structures.

Councilmember Allen suggested that water/sewer permits, if not used, could perhaps be turned back in for use for projects that are shovel ready. Mr. Coscicki replied that the County is in the process of trying to update permit list to ensure they have a thorough understanding of what has been allocated for water and sewer. He explained they are in the process of updating policies also and explained a little of this.

Councilmember D'Onofrio feels this type of interaction would be beneficial on a regular basis. He questioned whether, for example, a movie theater wanted to come here. How long would it be before this could happen? Mr. Coscicki stated that on the sewer side there is some capacity available that hasn't been allocated; the commissioners will be addressing this in the near future. On the water side, it's a little more difficult in some respects. He explained this briefly and a brief discussion ensued. No action was taken by Council.

NEW BUSINESS

ZT 2009-011 ABC Stores

Ms. DeHart presented the request to add the ABC Store use to the use table in the UDO. Specifically amending sections 520.020 (G) - Use Table & Standards as well as Chapter 1610.080 which establishes a definition for an ABC Store. It was proposed to the Planning Board that this use be allowed within a General Business District, a Regional Business District and within the Village Center Overlay. During the recent election the referendum to allow for an ABC Store within the Town was passed. In preparing this amendment, staff located a new Session Law 2009-36 which became effective on October 1, 2009. This new law establishes a process for local governing boards to object to a location of an ABC Store. The process that was

set with this new law is that the Council shall consider the location within a public hearing. Information and evidence would be presented to the Council within that public hearing and if the Council chose to end with an objection to the site it would be processed in the form of a Resolution, which would be sent to the ABC Commission. After reviewing the state law, staff found that it was similar in process to a Special Use Permit that jurisdictions have as a process. This information was given to the Planning Board at their last meeting and they indicated that the ordinance could be written to allow the use by right or to require a SUP to be heard by Council. Staff thought this would implement the state law if Council chose to do so. Ms. DeHart read the ABC Store definition as follows: An establishment that specializes in the sale and distribution of alcoholic beverages as a retail use, provided that such establishments meet all of the requirements and standards of Chapter 18B of the North Carolina General Statutes, the State of North Carolina ABC Commission, any local ABC Board in the jurisdiction where such an establishment will be placed, and any other appropriate local and/or state regulations or ordinances.

Ms. DeHart read the following findings for the record:

1. The proposed UDO amendment is consistent with the following goals:
 - 1.3.2 of the Comprehensive Plan - Lane Use; the proposed UDO ordinance amendments allows for a use established through the passing of a referendum by the voters of Indian Trail adding to the mix of different land uses while avoiding land use conflicts with neighboring properties and surrounding municipalities.
2. This UDO ordinance amendment is a reasonable request and in the best interest of the public because the voters of Indian Trail authorized the establishment of the use by passing a referendum in 2009 in Indian Trail.

Based on the required finding, they do transmit a recommendation to approve subject to the SUP requirements. Since the public meeting with the Planning Board, the attorney has raised some concerns regarding the proposed process. The Special Use Permit guidelines are established in state law, which requires that it be heard in a quasi judicial manner and it has a specific appeal process that would not be appropriate for what has been outlined in new state law. The state law does not say it has to be heard in a public hearing in a quasi judicial manner, nor does it set up an appeal process. It was recommended to develop a separate chapter specific to ABC stores. A draft copy is included in the packets; it establishes a process to implement the option for Council. She briefly outlined the process.

Mayor Quinn opened public comments section of the public hearing.

Jan Brown, 6727 Long Nook Lane, requested Council consider the ABC Board and suggested having experienced businessmen on the Board; a good banker, a good accountant and a good lawyer.

Dan Schallenkamp, 408 Raintree Drive, suggested that Council keep track of all the expenses associated with the ABC so that the money can be refunded to the taxpayers. He hopes the Council will make the ABC Board selection an open process. The facts are that alcohol is related in 50% of our traffic fatalities and contributes to domestic problems. He asked that Council consider that funds/profits related to ABC be contributed to the only battered women's

shelter in the county; as funding for them was cut out of the Town's budget last year. He informed Council that in 2009 some of the ABC funds for municipalities were held back to help balance the state budget; cautioned to not spend profits before it gets here.

Mayor Quinn closed public comments section of the public hearing.

Councilmember D'Onofrio asked for clarification as to exactly where the location of the Overlay Village Center District on the map. Ms. DeHart responded that basically at all specifically identified intersections. It would have to have the proper zoning underneath and then it can occur where ever the commercial centers are; primarily along Highway 74 in Regional Business Districts. It would be allowed at a couple of main intersections and that's only if the underlying zoning is there. Councilmember D'Onofrio asked when districts were considered why weren't Central Business District and the Neighborhood Business District included in the recommendation. Ms. DeHart explained that the Neighborhood Business District and the Central Business District were primarily within the Downtown. If Council desires the addition of the Central Business District then it can be added. The Neighborhood Business Districts are closer within a neighborhood to residential area; it is meant to be a transitional area between a commercial district and a neighborhood. Most of that area would be mainly daycares or office use; not high traffic commercial area.

Mr. Merritt stated that the initial decision Council makes with regard to the areas where stores are permitted as a matter of right. This Council doesn't have the ability to say where the ABC Store goes, it is up to the state ABC Commission. This document helps to identify the areas and therefore objection can be made by Council if deemed necessary.

Gary D'Onofrio made a motion amend the use table 520.020 to include permitted use by right for Central Business District and Neighborhood Business District in addition to General Business District, Regional Business District and Village Center Overlay Districts.

Motion Passed 4 - 1 with John Hullinger opposing.

Gary D'Onofrio made a motion adopt Chapter 7190 as written Alcohol Beverage Control Store and concur with the consistency findings as read into record including the amendment to include the added business districts.

Motion Passed 4 - 1 with John Hullinger opposing. **(Copy attached hereto and made a part of these minutes.)**

ZM 2009-006 Stallings VFD Rezoning

Jonathan Edwards presented the proposed rezone of 4616 Old Monroe Road - Stallings VFD; three parcels totaling just under five acres. It is currently zoned Single Family Residential (SF-1). This rezone request was initiated by the Town at the property owner's request to change from SF-1 zoning to Institutional zoning. Many of the surrounding properties are currently single-family residential uses. It is located in a Village Center overlay. No impacts to public services or facilities are anticipated at this time. In the Comprehensive Plan this area is in the

Old Monroe/Suburban Mix Village. The current land use provides that just over 1 1/4/% of the Village is Institutional right now; max for Institutional is 7% in this Village. The proposed zoning would make total institutional just under 2% (increase of over 1/2%); still well within the recommended Institutional for this Village.

Planning Board heard this item at their December 15, 2009 meeting. The Board unanimously recommended approval of this rezone to the Council.

Mr. Edwards read the consistency findings into record as follows: The proposed zoning map amendment is consistent with the following:

1) 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 promoting a unique identity of the Town of Indian Trail for all residents.

As this proposed zoning is to be Institutional in nature, this helps to promote a diversity of land uses and a better quality of life for those in the Town of Indian Trail.

2) Goal 1.3.2 Lane Use: A mix of different types of land uses and the avoidance of potential land use conflicts between neighboring properties and surrounding municipalities.

With due consideration given to the existing uses surrounding the property, this requirement can be satisfied due to the relative low-impact of the proposed zoning.

The request for this zoning classification is a reasonable request and is in the public interest because it promotes the goals of the adopted Indian Trail Comprehensive Plan in the areas of Quality of Life and Land Use, and is consistent with the adopted plans within the Town of Indian Trail.

Mayor Quinn opened and closed the public comments section of the public hearing. Mr. Pitt had signed up to speak on this matter, but withdrew due to the time.

Jeff Goodall made a motion ZM 2009-006 Stallings VFD Rezone as submitted

Council voted unanimously in favor of the motion. **(Copy attached hereto and made a part of these minutes.)**

Establishment of an Indian Trail ABC Board

Councilmember Goodall used as his primary source of information NCABC.com; the North Carolina Alcohol Beverage Commission website. The information shown on the screen is as follows: Approval Authority - November 3, 2009 66.32% (1347 of 2031 total) of Indian Trail voting citizens designated they were for and ABC Store in Indian Trail. 70.32% (1431 of 2035) of Indian Trail voting citizens designated they were for Mixed Beverages sales in Indian Trail Restaurants, Hotels, Private Clubs and Convention Centers. He made reference to Primary NC Regulatory Requirements shown on the screen. He feels the potential market share as shown on the screen, would be heavily dependent on site location, ease of access and visibility and as follows: Indian Trail, Lake Park, Hemby Bridge, Wesley Chapel, Stallings, Portion of Fairview, Portions of Monroe, SC beach vacation traffic from points west, Fayetteville and Wilmington traffic from points west, and Smokey Mountains vacation traffic from points east and southeast.

If this is indeed our market share, it represents approximately 25% of the population of Union County; not including the vacation traffic.

Councilmember Goodall showed on the screen an overview of current Union County ABC Store information as follows: Monroe - ranked 24th of 159 statewide ABC stores in profit % to revenue; 11.23% profit in 2008-2009; \$4.9 million in total sales; Over \$750,000 in revenue sales to Monroe area restaurants; currently local supplier for Indian Trail restaurants. Waxhaw - ranked 120th of 159 statewide ABC stores in profit % to revenue; 3.8% profit in 2008-2009; profit % likely to spike higher now that mixed beverages sales were recently approved on Nov 3rd as Waxhaw area restaurants will be able to purchase there. Note: Two other Union County municipalities are also voter-approved for an ABC Store.

He indicated that this boils down to a three part process - 1) hold a referendum, which the Town has completed; 2) the Council puts together a local ABC Board; 3) the Board puts a store in operation. Council would need to address whether to pay a stipend to the selected members this year also.

Mr. Goodall's recommendations as shown on the presentation slide are as follows:

1. Direct Town Manager to Advertise for three (3) member Indian Trail ABC Board per NCGS 18B-700 (a-j) "Local ABC Boards."
 - Advertise for Positions
 - Accept Applications
 - Schedule Interviews with Council
 - Council Selects Three Member ABC Board (staggered terms per NCGS) and the Council Selects One
 - Member as Board Chair
 - Town Council Determines Salary for Board per NCGS 18B-700(g)
2. Town Attorney, Town Manager, Finance Director, Planning Director and new IT ABC Board work cohesively together and in conjunction with the NC ABC Commission to ensure all statutory requirements are strictly followed.
3. Town Attorney and Town Manager keep Town Council regularly apprised of progress and anticipate any roadblocks which could cause delay and provide recommended solutions to ensure goals remain on track
4. Once the ITABC Board is established, initial goals should include, but not be limited to:
 - Develop overall business plan/model
 - Identify an extremely visible, easy access location on a high volume thoroughfare (Recommend square footage be at minimum 25-50% larger than current Monroe Store).
 - Upon Town Council's approval, negotiate a lease for a suitable property (Key stakeholders: Town Council, ITABC Board, Attorney, Town Manager, Finance Director, Planning Director.)
 - Hire a Store Manager
 - Identify and establish logistical, financial forecast, marketing/advertising needs (Signs, hours of operation (IAW NCGS guidelines), interior design, security requirements, interior layout, proper

staffing, etc.)

- Stock store
- Widely advertise "GRAND OPENING" date

Councilmember Goodall stated that most of this would be done by the Board. The suggested timeline on his presentation slide is as follows:

- Jan-Mar: Establish ITABC Board with goal of 1st meeting in March
- Apr-Jun: Identify suggested site to lease with goal lease completed no later than Aug. 1
- Jul-Sep: Operational and Logistical requirements with goal to be completed no later than Sep 30
- Oct-Dec: GRAND OPENING with goal ideally late summer or early fall, but no later than Dec 31.

Councilmember Goodall feels this timeline echoes what Ms. Lee stated that the store could be up and running in six months. He feels it is critical to open before the holidays. In speaking with people that have run alcohol stores he learned that 25% of the yearly revenue was conducted during the holidays.

Councilmember Allen commented that the Council wants to get qualified people on the Board; he assumes that there are samples of applications, questionnaires, etc. available from the NC ABC Commission for our use. Are others advertising for members also? Ms. Lee replied that she did not know how other Towns go about getting the information out there; but they do usually ask for resumes as opposed to an application process.

Mr. Merritt believes that the members who serve on the Board do not have to be residents of Indian Trail; there is no residency requirement per state statutes. Ms. Lee confirmed this information was correct and it is up to Council to determine if there are term limits also. She also stated that in terms of the sort of people desired; ideally it would be a group of professional people, but people who have the time to invest in getting this up and running as it is a labor intensive process in the beginning.

Councilmember Goodall questioned as far as advertising, could the grand opening be advertised? Ms. Lee stated an ad could be placed in the newspaper stating that the store is opening, post the hours and location. She also commented that an ABC Board can join the Chamber of Commerce and have information there.

Councilmember D'Onofrio feels that advertising for applicants is a good way to go and ensure the process open due to the recent events with another ABC Board. He suggested adoption with an ethics policy built into it. He also stated that if there is a Board stipend, he would be in favor of a small amount, as he doesn't want the stipend to be the reason someone might apply for the position on the Board.

Councilmember Goodall indicated that in regards to the compensation, as in the beginning there will be a lot more work involved, suggested \$200 per month for board members and \$300 per month for the Chairman. Councilmember D'Onofrio questioned the Town Manager as to the

normal advertised period of application acceptances. Ms. Piontek replied it's generally for two weeks with additional advertising if necessary.

Councilmember Hullinger stated his two concerns, the first being that he doesn't feel that government should be in the retail business, but the state has it set up that way and the second concern was that no taxpayer money would be used for this. Mayor Quinn commented that in the setting up of this Board there will be expenses, but the Council could have the Board reimburse the town for expenses. Council discussed this briefly. Ms. Lee stated that she would work with the Board and can provide a resource book with all contact information needed for them to use.

Gary D'Onofrio made a motion direct the Town Manager to advertise for ABC Board applicants for 30 days.

Council voted unanimously in favor of the motion.

Jeff Goodall made a motion pay the new ABC Board \$200.00 per month for regular members with the Chairman to receive \$300 per month.

Council voted unanimously in favor of the motion.

MANAGER'S REPORT

Ms. Piontek indicated that she and Ms. Reeves attended the Manager/Clerk luncheon in Mineral Springs, at which Ms. Reeves brought everyone up to date on the Carolina Thread Trail. She briefly went over additional topics discussed at the meeting. She will be including Mr. Fivas as a recipient of the weekly reports.

Councilmember D'Onofrio asked if a subdivision list could be provided for Mr. Fivas. Ms. Piontek confirmed she will get this information to him. He also mentioned the Bouldin family as shown on "World's Strictest Parents" as this show showed Indian Trail in a positive light; he would like to present them with a proclamation. Ms. Piontek stated that she would contact them. Councilmember Goodall asked about the Cole family and if any information had been received regarding them. Ms. Piontek has not yet had direct contact with them.

PLANNING REPORT

Ms. DeHart updated the Council on the Carolina Thread Trail and the developing of a grant. They are reviewing consultants and will be coming back to Council later in the month with an Interlocal Agreement for their consideration. Planning is working on the Austin Village grand opening for the Harris Teeter which is scheduled for February 3rd at 8:00 am.

ENGINEERS REPORT

Mr. Kaufhold informed Council that the Holly Villa cul-de-sac project is 95% complete. He stated that one "Welcome To" sign had been received. Councilmember Goodall commented that

he would like to make sure that Indian Trail has proper signage for the by-pass. Ms. Kaufhold stated that signage was discussed at the last TCC meeting and the signage issue will need to be revisited because a new criteria has been established.

Mr. Kaufhold commented that in the weekly report of TCC meeting happenings, there was a meeting led by COG that included a member from either Gastonia or Gaston County and folks from Mecklenburg County/City of Charlotte that had the opportunity to meet with NC Sec. of Transportation Conte; not one representative from Union County was at the meeting. There was a brief discussion of this issue.

Mr. Kaufhold stated he will try to put together a power point presentation to update Council regarding a backyard drainage issue out in Taylor Glenn; as e-mails have been flying. There was a brief discussion of a private water line that had busted on Clearwater Drive; the water had frozen on the road.

COUNCIL COMMENTS

Councilmember Luther stated she is excited about the ABC Store. She is in support of the loitering ordinance, but feels the fines are excessive. She also commented that she would like to discuss why or why not have council members on the committees.

Councilmember Hullinger commented that he would like the meetings to end around 10:00 pm if possible.

Councilmember D'Onofrio welcomed the new Town Manager and feels the citizens and staff will respect him and he will have the full support of the Council.

Mayor Quinn passed on commenting.

Councilmember Allen stated he is also looking forward to working with the new Town Manager. He feels we have some housecleaning responsibilities to handle. In regards to the shovel ready projects in Indian Trail, he believes we are on the verge or have already eclipsed Monroe. There are numerous outstanding water and sewer permits that have been around a long time; why can't we demand these permits not being used within the compound of the municipality be released to the Town in order to get something done.

Councilmember Goodall excited about the new Town Manager; he is extremely well experienced with what the town needs. He gave a big round of applause to Ms. Piontek for keeping the boat afloat.

CLOSED SESSION

Gary D'Onofrio made a motion enter into Closed Session pursuant to NCGS 143-318.11(a)(4) To discuss matters relating to the location or expansion of business in the area served by this body and NCGS 143-318.11(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.

Council voted unanimously in favor of the motion.

Robert W. Allen made a motion to enter into Open Session.

Council voted unanimously in favor of the motion.

ADJOURN

Robert W. Allen made a motion Adjourn.

Council voted unanimously in favor of the motion.

APPROVED:

John J. Quinn, Mayor

Attest:

Trena Sims, Interim Town Clerk