



Town of Indian Trail
Minutes of Town Council

January 25, 2011

Civic Building

6:30 P.M.

The following members of the governing body were present:

Mayor: John J. Quinn

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

Staff Members: Town Manager Joe Fivas, Town Attorney Keith Merritt, Town Clerk Peggy Piontek, Planning Director Shelley DeHart, Finance Director Marsha Sutton, Town Engineer Scott Kaufhold, Tax Collector Janice Cook, Assistant to Town Manager Miriam Lowery, and Grant Writer Hillary Pace.

Press/Media: Marty Mitchen of the Charlotte Observer, and Jason deBruyn of the Enquirer Journal.

CALL MEETING TO ORDER

Mayor Quinn called the meeting to order and lead the Pledge of Allegiance

PRESENTATIONS

- a. **VFW Post 2423 presentation of donation for Crossing Paths Park**

Post Commander Jack Campbell, Brian Boze and Don Tagle presented a check in the amount of \$1,500 for the flag pole for Crossing Paths Park. Council thanked the VFW for their generous donation.

b. ABC Board update and reimbursement of funds.

Wes Hinson representing the ABC Board presented to Council the history of the initiation of the ABC Board and store and it's success. He presented a reimbursement check to the Town in the amount of \$7,892.83. He also reported to the Town the sales for the month of December were \$246,686.00. The store opened November 10, 2010. Mr. Hinson advised they received an email from Ms. Laurie Lee of North Carolina Alcoholic Beverage Commission advising them that they have far exceeded her financial expectations for the store.

Mr. Goodall complimented and thanked the ABC Board on the success of their opening.

c. Pandamonium - Teen Clubs USA

Mr. Traficanti advised they would like to be represented as an alcohol-free teen center geared towards the middle and high school age groups, which provides a safe, secure and fun destination for teens to gather. He has fully trained security on site to not only control the inside but also check people coming into the establishment. He has a "if you leave/go outside; you can not return" policy to help keep out unsafe matters such as drugs/alcohol as well. They are only open 3 nights a week on Friday, Saturday and Sunday. The size of the bldg is over 25,000 sf and consists of: A Juice Bar; Dance Floor, VIP Rooms for special parties (birthdays, etc), Game Room, Lobby, Separate restrooms for girls/boys, A coat room and business offices for staff. There is also a required dress code to get in – no hats, gang colors. Mr. Traficanti feels this club is a much safer and healthier alternative than for groups of teens to hang out in parking lots of Wal-Marts or Fast Food restaurants.

d. The 2010 Year in Review

Mr. Fivas provided Council and the audience a snapshot of all the accomplishments of the Town in the past year. He thanked Council and staff for their hard work, dedication and diligence and advised that 2011 looks to be a year where more accomplishments can be made.

ADDITIONS AND DELETIONS

Robert Allen made a motion delete Item 9b Discussion of report: regarding costs to create a Police Department - Status/Data.

Mayor Quinn ruled Mr. Allen's motion out of order, advising that we are a Dillon Rule State which states that the Powers of a Municipal Government only come to them by the State or the Town Charter. In order to exercise such a power to remove an elected officials desire to bring a matter out to the public he/she was elected to serve, that power would have to be granted by the State Statute or our Charter. He requested Mr. Merritt site the specific or the wording in our charter that allows the Town Council to take such an action he would be willing to hear it. Mr. Merritt addressed the issue of being a Dillon State by citing a case that was adopted in 2005, where the Courts ruled that mandate of General Statute 160A-4 has replaced Dillon's Rule with respect to North Carolina and that Chapter 160A must be construed in favor of extending powers to a municipality. In addition Mr. Merritt referred to the Rules of Procedure adopted by Council, specifically Rule 4 which addresses the agenda and states" the Council may, by majority vote, add items to or subtract items from the proposed agenda." There is nothing specific with respect to it being added by a member of the Council, there is not law that prohibits the majority of the Council from setting the agenda.

Mayor Quinn replied those powers would only be allowed (are not specifically stated) for agenda items that are offered by one elected official can only be removed by the majority of other elected officials. He referred to an article he recently read pertaining to the County Commissioners asking to have an item added on the evening of the meeting, that request was denied. They went onto state that if the item had been added in a lawful way, stating that all elected officials have a right to be heard in a public meeting and on the agenda and other elected officials do not have the right to deny that elected voice to be heard.

Mr. Merritt repeated that there is no law that prohibits the majority of the Council from adding or removing any items to the agenda and that a motion has been made to delete an item. Mayor Quinn refused to recognize the motion and would not call for a vote.

Mr. Merritt pointed out that a Council Member may make a motion to appeal the procedural ruling of the presiding officer pursuant to your procedural motions rule 18 motion 1 - A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the council. This order is an order immediately after a decision is announced and at no other time, the member making the motion need not be recognized by the presiding officer of the motion. If timely made may not be ruled out of order.

Jeffrey Goodall made a motion appeal the procedural ruling of the presiding officer.
Council voted unanimously in favor of the motion.

Motion Passed 4 - 1 with John Hullinger opposing.

Robert Allen made a motion delete item 9c Review of Town Council Ethics Policy and discussion of creating an Ethics Committee.

Mayor Quinn ruled the motion out of order.

Jeffrey Goodall made a motion appeal the procedural ruling of the presiding officer.
Council voted unanimously in favor of the motion.

Motion Passed 4 - 1 with John Hullinger opposing.

Robert Allen made a motion deleting item 9a Discussion of money which was paid to the Mayor and Town Manager outside of payroll (Enquire Journal 12/5/10). Status & info from report/packet of info the Clerk was to compile.

Mayor Quinn ruled the motion out of order.

Jeffrey Goodall made a motion appeal the procedural ruling of the presiding officer.
Council voted unanimously in favor of the motion.

Motion Passed 4 - 1 with John Hullinger opposing.

Mayor Quinn passed the gavel and informed the audience of what was removed from the agenda.

Mr. Merritt pointed out that a Council Member may make a motion to appeal the procedural ruling of the presiding officer pursuant to your procedural motions rule 18 motion 1 - A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the council. This order is an order immediately after a decision is announced and at no other time, the member making the motion need not be recognized by the presiding officer of the motion. If timely made may not be ruled out of order.

MOTION TO APPROVE AGENDA

Jeffrey Goodall made a motion to approve the Agenda as modified.
Motion Passed 4 - 1 with John Hullinger opposing.

PUBLIC COMMENTS

Mayor John Quinn, 3315 Creek Trail Road, Indian Trail, NC commented on an article in the Enquirer Journal, advising that the reporter informed him that the Town Manager was to provide the newspaper some records pertaining to that article. He recited a quote from John Adams about the people's right to knowledge of the character and conduct of their rulers. He believes that information is not forthcoming. Mr. Quinn played a recording of Mr. D'Onofrio in connection with public safety. He expressed his opinion that certain questions on the survey are bogus.

CONSENT AGENDA

- a. Tax Report - Month end for December 2010 (**Copy attached hereto and made a part of these minutes**)
- b. December 14, 2010 minutes
- c. Clean Water Management Trust Fund Grant Agreement Resolution (**Copy attached hereto and made a part of these minutes**)
- d. Budget Amendments (**Copy can be found on file in the Finance Office and is incorporated herein by reference.**)

Jeffrey Goodall made a motion to approve the consent agenda.
Council voted unanimously in favor of the motion.

PUBLIC HEARINGS

There were no public hearings for this meeting.

BUSINESS ITEMS

- a. **PARTF Grant for Community Park**

Mr. Fivas provided the history of the matter along with the process of getting the document ready for Council consideration. Mr. Fivas informed Council that they will be voting on two critical questions: 1) Do we have the matching funds available, he assured Council that staff believes we do, it will come from an existing funding source dedicated towards parks. Therefore it will not take away from any other programs or issues. 2) Council will need to get an understanding and approve the draft plan, which is what the grant would go towards.

Hillary Pace presented to Council what the PARTF Grant is, its cycle requires submission by January 31st, the Parks Authority selects first recipients for the first 3 quarters by May 30th and in July the recipients for the fourth quarter are selected. Ms. Pace went on to explain the requirements: Justification, Project costs, proof of site control, site map, environmental review and the scoring system. The Council was provided information pertaining to Phase I of the park. Council had general discussion on the matter.

Robert Allen made a motion to approve the certification for the N. C. Parks and Recreation Trust Fund. Council voted unanimously in favor of the motion.

b. Indemnity Policy

Mr. Merritt presented to Council that this policy deals with the ability of a current or former Council Member or employee of the Town to ask to be reimbursed for legal costs in both the Civil and Criminal context. This is not something the Town currently has in place and it is his opinion that it might be needed.

Jeffrey Goodall made a motion to approve the Indemnity Policy as written.

Mayor Quinn read NCGS 128-10 commenting if this policy is consistent with that law.

Since there were no comments, Mr. Goodall called for the vote.

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

c. Building Inspector

Ms. Luther explained her reasons for putting this on the agenda explaining that perhaps Council should get information and perhaps start discussions about the possibility of Indian Trail performing our own inspections as we start to grow commercially.

General discussion pursued with Mr. Fivas advising that he has been in contact with other jurisdictions in the County, along with his previous experience, since the codes are all the same the real gain is having control over when the inspections are done and on what timeline. Mr. Fivas explained the currently the town creates a relationship of trust with a new entity between the permit and planning process and then we hand them off to the County for inspections, which is sometimes where things fall apart.

Jeffrey Goodall made a motion pursue bringing one stop shopping process for building inspections to the Town of Indian Trail.

Motion Passed 4 - 1 with John Hullinger opposing.

Council took and returned from a brief recess.

DISCUSSION ITEMS

- a. **Discussion of money which was paid to the Mayor and Town Manager outside of payroll (Enquire Journal 12/5/10). Status & info from report/packet of info the Clerk was to compile.**

This matter was removed as a result of a motion made in Item 3.

- b. **Discussion of report: regarding costs to create a Police Department - Status/Data. Please have available any data that has been collected.**

This matter was removed as a result of a motion made in Item 3.

- c. **Review of Town Council Ethics Policy and discussion of creating an Ethics Committee.**

This matter was removed as a result of a motion made in Item 3.

- d. **Strategic Transportation Planning**

Mr. Fivas requested input from Council whether this is the appropriate time for staff to start putting together the process for Bonding, as it is approximately a six month process to get ratings. Mr. Fivas assured the Council that we are not moving forward with getting bonds, we are simply gathering information so we are prepared to do so, should that be the course of action that Council wants to take after we receive the survey results. There was discussion amongst Council and staff on what is involved.

MANAGER'S REPORT

Mr. Fivas had nothing to report.

PLANNING REPORT

Ms. DeHart had nothing to report.

ENGINEERS REPORT

Mr. Kaufhold had nothing to report.

COUNCIL COMMENTS

Mr. Goodall had no comments.

Mayor Quinn asked Mr. Allen about a posting on his facebook.

Mr. Hullinger had nothing to report.

Mr. D’Onofrio thanked the Town Manager and staff for putting together the 2010 year in review, advising that he believes it’s a good practice. The last quarter of the year indicates many things that were accomplished and he thanked Mr. Fivas and the staff for all their hard work in getting all of it accomplished. There are a lot more positive things happening and he hopes to read about them in the newspaper.

Ms. Luther hopes that 2011 is at least as productive as 2010 was, she appreciates the staff for their hard work in making the visions become reality. It is her hope that all the negative energy can be put aside in 2011.

Mr. Allen commented that it's great to see what we have accomplished and he refuses to let anything break the momentum.

CLOSED SESSION

John Hullinger made a motion to enter closed session N.C.G.S. 143-318.11(a)(3) Consult with Attorney to consider and give instructions concerning a potential or actual claim, administrative procedure, or judicial action.

N.C.G.S. 143-318.11(a)(4) To discuss matters relating to the location or expansion of business in the area served by this body.

Council voted unanimously in favor of the motion.

John Hullinger made a motion to approve coming out of Closed Session

Council voted unanimously in favor of the motion.

ADJOURN

John Hullinger made a motion to adjourn

Council voted unanimously in favor of the motion.

APPROVED:

John J. Quinn, Mayor

Attest: _____
Peggy Piontek, Town Clerk

DRAFT