

Town of Indian Trail
Minutes of Regular Council Meeting
March 10, 2009
Administration and Civic Building
5:45 P.M.

The following members of the governing body were present:

Mayor: John J. Quinn

Council Members: Gary D'Onofrio, Jeff Goodall, Shirley Howe, John Hullinger, Dan Schallenkamp,

Staff Members: Town Attorney Keith Merritt, Town Manager Ed Humphries, Town Clerk Peggy Piontek, Planning Director Shelley DeHart, Town Engineer Scott Kaufhold, Finance Officer Marsha Sutton, Tax Collector Janice Cook, Assistant to Town Manager Miriam Lowery, Administrative Assistant Vicky Watts, and Adam McLamb Engineering.

Absent Members: Senior Planner Katie Reeves, Planning Technician Hillary Pace, Trena Sims, Deputy Town Clerk, Junior Planner Jonathon Edwards, Associate Planner Jason Mann, Junior Planner Craig Thomas, and Luke Fawcett, GIS Specialist.

Press/Media: Shirley Bossbach of the County Edge

PRE-MEETING - Administration Building

Present: Mayor John J. Quinn, Gary D'Onofrio, Jeff Goodall, Shirley Howe, John Hullinger, Dan Schallenkamp, Town Attorney Keith Merritt, Molly Hegeman.

Mayor Quinn called the meeting to order.

Dan Schallenkamp made a motion to enter closed session NCGS 143-318.11(a)(6) To consider the qualifications, competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee.

Council voted unanimously in favor of the motion.

Dan Schallenkamp made a motion to come out of closed session.

Council voted unanimously in favor of the motion.

Dan Schallenkamp made a motion to recess to reconvene to the Civic Building.

Council voted unanimously in favor of the motion.

CALL MEETING TO ORDER

Shirley Howe made a motion to reconvene.

Council voted unanimously in favor of the motion.

PRESENTATIONS

Resolution recognizing Girl Scout Troop 2445. **(Copy attached hereto and made a part of these minutes)**

Mayor Quinn congratulated the girls and asked them some questions. He acknowledged the accomplishments of the girls.

ADDITIONS AND DELETIONS

None at this time

MOTION TO APPROVE AGENDA

Dan Schallenkamp made a motion to approve the agenda.

Council voted unanimously in favor of the motion.

PUBLIC COMMENTS

Jan Brown, 6727 Long Nook Lane, Indian Trail, NC would like to know what the Board has done about a time limit for their comments. He suggests the Council have time limit for themselves. He feels they would be much more prepared if they had a time limit. They should create a set of rules and abide by them. He feels it would be fair to the public and the meetings won't go on so late.

CONSENT AGENDA

- a. Tax Report - Month End Tax Report for February 2009 **(Copy attached hereto and made a part of these minutes)**
- b. Approval of minutes for January 13th and February 10, 2009
- c. Approval of revised Rules of Procedure **(Copy attached hereto and made a part of these minutes)**

Jeff Goodall made a motion to approve pull item 7c Approval of revised Rules of Procedure for discussion.

Mr. Goodall on page 9, Rule 9 under "When the presiding officer is in active debate", he has reconsidered the first paragraph "If the Mayor or other presiding officer becomes actively engaged in debate on a particular proposal, he or she *may* designate another council member to preside over the debate."

He would like to change the *may* on the first sentence to "*shall* designate another council member to preside over the debate."

Mr. Schallenkamp inquired how we define debate as opposed to a comment or a question.

Mr. Hullinger said that's the problem he has had with it as well, what do you define as debate, it could be ridiculous if every time the Mayor got into a discussion he has to pass the gavel. He agrees and understands the concept but he's not sure, it's a little to restrictive for that reason he would not support the motion.

Mr. Goodall reread part of the sentence "*becomes actively engaged in debate on a particular proposal*" and advised that the sentence itself presents a definition for debate.

Mayor Quinn asked Mr. Merritt to clarify things so we can move on.

Mr. Merritt advised that requiring the passing of the gavel at every instance can lead to a lot of back and forth. He reminded Council what he advised them the last time, either form is acceptable, it's up to the Board how they choose to operate their meetings.

Mr. D'Onofrio asked if it is automatically the Mayor Pro Tem that takes over. Mr. Merritt advised it defaults to the Mayor Pro Tem unless there is some reason why that person is not to get the gavel.

Ms. Howe advised she voted for shall the last time for the simple reason if we get out of hand the Mayor can stop us and feels this should be the same for the Mayor.

Mayor Quinn asked her to clarify her comments. Ms. Howe replied you rule on a motion as we are making them, you have a certain amount of authority as you should as the Mayor for conducting the meeting. On the other hand, if you get into a discussion and don't give the other Council Members proper time to make their comments and then you comment after each one that's why our meetings are going so long, it becomes argumentative and it's a good way to stop it, that's why I support it.

Mayor Quinn disagreed and read part of Rule 7: *The Mayor or other presiding officer shall have the following powers: (a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes; (b) To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground.*

He feels the Council has the ability to object with regard to standards of courtesy. He read the rest of rule 7.

Shall/may doesn't make any difference it's up to the Council to decide what the situation is and ask for the gavel to be passed.

Jeff Goodall made a motion to approve to change the word from *may* to *shall* in the second line of rule 9: *he or she shall designate another council member to preside over the debate.*

Motion Passed 4 - 1 with John Hullinger opposing.

Dan Schallenkamp made a motion to approve putting the newly modified Rules of Procedure back on the consent agenda.

Motion Passed 4 - 1 with John Hullinger opposing.

Jeff Goodall made a motion to approve the consent agenda

Motion Passed 4 - 1 with John Hullinger opposing.

Resolution-Directions to Employees by Mayor-Council

OLD BUSINESS

a. Streets Lights for Faith Church Road

Mayor Quinn passed the gavel to Mayor Pro Tem Howe.

Mayor Quinn provided the history of this subject for Council, reminding them this was heard at last month's meeting, that he requested that Council approve the addition of street lights for this section. He went onto repeat some of the history, topics included: road was built 3 years ago, finished up without the street lights which apparently were part of the original plan, it appears the best route would be for the town to maintain control of this road which would allow the town to do whatever it so desired as opposed to having to meet the strict standards of the DOT. He asked the Town Engineer, Scott Kaufhold if he had any recommendations on this particular project.

Mr. Kaufhold advised that there is certainly a need here as there are in other places. Two things in the towns favor is that we have the right of way and it's already graded out so you don't have to incur either expense. However there are other areas in the town that have pressing needs.

There was a lengthy discussion on this matter, concluding with the suggestion that Mr. Kaufhold create a ranking list of lighting needs throughout the town. Mr. Kaufhold was asked how long he thought it would take to do this. He replied we can do some research, come up with some criteria, take it to the Transportation Advisory Committee and come back to you within 90 days.

Mayor Pro Tem Howe advised if it, you can come to Council and ask for more time.

Mayor Quinn advised that there are pipes with wires for the lighting. He feels that indicates that lighting was planned, supposed to be there and just wasn't for whatever reason. He can understand because the town would be responsible for approximately \$350,000 and had to pay almost \$800,000 for this project and it's possible that at the time the Engineer just felt like this is getting out of hand. He submits the planning on this was not the best and should have been accounted for but the wires are there.

Gary D'Onofrio made a motion to approve directing staff come up with a ranking list of the street lighting on the thoroughfares.

Council voted unanimously in favor of the motion.

Mr. Kaufhold asked a ranking criteria along with the list of all of our minor thoroughfares? So get the criteria, do the ranking and present that and then findings.

Mr. D'Onofrio advised his motion was for the ranking and feel free to create the criteria.

DISCUSSION & POSSIBLE ACTION

a. Ordinance concerning Elected Officials directing staff

Mr. Humphries provided the history of this matter advising he was directed by Council to take out a section of the charter that pertained to the Managers responsibilities and put it in an ordinance. After lengthy discussion with the Town Attorney, Mr. Humphries requested that it be in the form of a resolution rather than an ordinance. An ordinance should be one that you can enforce and he is unsure how we would enforce this in a positive way.

Mr. Merritt advised he agreed it's better as a resolution, if it's an ordinance it would go in the code of ordinances, has all the enforcement mechanisms such as criminal penalties for violations. He does not think that is what Council is intending to do.

Mr. D'Onofrio wasn't the previous Rules of Procedure adopted as an Ordinance? Mr. Merritt replied yes, but he is unclear as to why it would be. Mr. Humphries advised this is not a town ordinance. Mr. D'Onofrio inquired if it's a resolution where are the teeth. Mr. Merritt advised that your options are that you can censure the person, monitor the person, for this is purely a policy you want the board to follow.

Mr. Goodall inquired about the wording where it states "shall deal with *officers and* employees, who are the officers?

Mr. Merritt advised that it can say employees, but you have a finance officer, if you want to strike officers and just have employees it doesn't change the meaning at all.

Mr. Hullinger does not support this; he feels it's inappropriate to take that authority away from the Council and Mayor.

Mr. Schallenkamp advised that technically we don't have the authority to direct anyone but the Town Manager and then only through consensus.

Ms. Howe feels it makes it very clear to our employees on how this needs to be done.

Mr. Goodall hoped that the town Manager will give a copy to all employees so that understand it's content

Dan Schallenkamp made a motion to approve Resolution as modified to remove "*officers and*" wording from the document concerning Elected Officials directing staff.

Motion Passed 4 - 1 with John Hullinger opposing.

(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)

NEW BUSINESS

a. Board of Adjustment Appointment

Ms. DeHart advised this is a request to appoint Mr. Roger Fish to a 2 year alternate appointment. She went on to read his qualifications.

Mr. Goodall asked if someone contact Mr. Fish. Ms. DeHart advised she contacted him after receiving a recommendation from Mayor Pro Tem Howe.

Mr. Hullinger inquired about the procedure for these seats and for the Planning Board. Ms. DeHart explained the procedures. Mr. Hullinger inquired if we have a procedure for mid year? Ms. DeHart advised she does not believe so. Mr. Hullinger advised he'd like to see a procedure created, to have it posted to allow other people who might be interested.

Mr. D'Onofrio asked if there are any alternates currently on the Board of Adjustments. Ms. DeHart said yes, there are 3 alternate seats, this is one of them.

Dan Schallenkamp made a motion to approve appointing Roger Fish to fill the vacated alternate seat on the Board of Adjustments.

Council voted unanimously in favor of the motion.

Dan Schallenkamp made a motion for staff to come back to Council with a procedure on filling such vacant seats in the future on the Planning Board and Board of Adjustment.

Council voted unanimously in favor of the motion.

MANAGERS REPORT

Mr. Humphries advised he has nothing to report.

Mr. Merritt advised that we have received some comments from the Legislative Liaison and some changes have been made to the charter, nothing substantive, there were areas where he felt like we could delete some areas that are covered by Statute. As he suspected, the section that dealt with the Statute of Limitations did not survive review by the Legislative Liaison so it has been taken out. He does have a draft that he sent back and he will provide the Board with a copy so they can see the near final changes. Tomorrow's the date the final charter amendments will be introduced to the Legislature.

PLANNING REPORT

None at this time.

ENGINEERS REPORT

Mr. Kaufhold updated Council on the Monroe Bypass, comments from Federal Government are expected any day now and we should get a recommended alignment out of that.

On WBT they had a spot on the stimulus project and Faith Church Road/Unionville Indian Trail Road got a little spot on the camera.

Chestnut Connector and Indian Trail Road a recent conversation with Barry Moose, as you know the roadway and our small bridge by the school were lumped into one TIP project; in regards to funding TIP projects with Powell Bill Funds, the state of the bridge is poor and since it's a state road there's nothing we can do with it right now. If Chestnut Connector is given a green light, Mr. Moose said he would get a TIP number assigned to that bridge which means we would have the option to advance funding to get that project moving faster that it would sit on a list with the DOT.

Discussion pursued.

COUNCIL COMMENTS

Mr. D'Onofrio With regard to the public comments issue, time that we spend debating this is something that we have been working on. We also recently changed some verbiage on how long we can debate an item to move it along.

He addressed the Sheriff's office location matter. The one email he wants to address is the last email he received, which stated that we rushed to do it. This matter was discussed for several months, we try to have a healthy debate and the outcome is usually good. He read the email he received from the Mayor. To say he was hurt is an understatement because to imply overtly or directly that I am deliberately lying to the citizens of Indian Trail is an insult and furthermore it's not true. We can say a lot of things about each other: we don't agree, ideas are lousy, that's not the way to go about it; we can disagree until the end of time. But when somebody says to somebody else that they are deliberately lying to the public, the people that I was elected to represent, that is not going to fly and it will not happen again.

Mr. D'Onofrio assured Mayor Quinn, as he has been advised by Counsel, if he reads this kind of thing again, where somebody says I am lying to the public directly; there will be legal involvement because I will not stand for it. I would ask for an apology but probably will not get one.

Mayor Quinn stated he did not call him a liar, just that he purposely did not do his research on this matter which you had every opportunity to do. He has done a lot of research on this project and Mr. D'Onofrio's statements were not true. He recalled last year when he accused the Council and staff about lying pertaining to resignation of Mr. Godwin. When you get elected you have to get thick skin, the things that you guys have said is irrelevant. People have a right to express their opinions, including elected officials and the people have a right to tell you that you were wrong. I believe firmly that it was clear that proper deliberation was not done in this matter. As well as, you had the opportunity to put it off, let the Public Safety Committee look at it, do a number of things, at least give the folks the respect and I felt there was disrespect to the public by rushing to that decision that night. Mr. Schallenkamp asked Ms. Howe to withdraw her motion, out of respect to the folks, for no other reason, even if you had passed it later on. I went onto state that I would have accepted your decision if at least respect had been given to the folks and their concerns had been recognized. I believe that wasn't done, I'm entitled to my opinion, I'm sorry you were offended; I get offended by stuff too. We're here to represent our constituents and I believe in this matter they wanted to be heard, they wanted a strong presence of law enforcement and they don't have that now. We don't have a prominent facility, that's all part of law enforcement.

Ms. Howe advised the pipes on Clearwater are in the ground and are covered with dirt. She thanked everyone on the Planning Dept., Engineering and Ed for their efforts in finally brining this thing to an end.

When Council approves something we need to support it and let's move on instead of all the emails going back and forth to the Homeowners Association. It's almost becoming a blog at this point which was not the purpose. It was for them to share information, not a bandstand for political reasons and/or criticizing the council

Mr. Schallenkamp suggested we limit ourselves in Council comments to about 3 minutes, he will make a note in our next Council packets.

Two NCDOT representatives attended the TAC it was very productive to get to know our representatives better. He thanked them for coming. He mentioned during the retreat some initial ideas about the fire study. As it stands right now, the RFP the County is doing is to ask municipalities their opinions. If that happens let's get the Council involved to come up with a list of our needs.

Mr. Schallenkamp advised that Mayor Quinn has a MUMPO meeting on the 18th; reminding him he has to work the phones and get Council instructions on that. Mayor Quinn advised he will forward the agenda via email.

Mr. Schallenkamp applauded Mr. D'Onofrio for bringing up that email. He read it also, and got the same message as he did. You do not expect to see that kind of email from another elected official from that same time.

Mr. Schallenkamp read an ordinance that was passed May 23, 2006.

He read #4: *The Mayor is only the authorized spokesperson for the Town Council when directed by the Town Council and any opinion expressed by the Mayor not previously authorized by the Town Council is the Mayor's own opinion for which the Mayor is solely responsible.*

He asked the Mayor and all Council to be very clear that we are expressing our opinions and solely our opinions.

The Mayor has no authority to speak on behalf of the town unless he is directed to do so.

Mr. Goodall stated this is not even election season yet but it sure feels like it with what you read in emails and neighborhood newsletters. He agrees with Mr. Schallenkamp, comments out there have to specify personal opinions and not the consensus of this Council.

As for the law enforcement building, he feels it was a dead issue when Sheriff Cathey himself told this Council if he were in my shoes he would do exactly the same thing. That's enough for me that ended that whole story in these hard economic times. He's a smart man and he said he would have made the same decision. If anybody out there thinks this was a short study decision, we've been looking at law enforcement in general for years, not months, days or weeks and we continue to study it to provide the best public safety for the citizens of Indian Trail. There was a comment made that those that voted against Highway 74 idea were against Public Safety, that did not fly too well with him or his colleagues. We have too much in front of us, we need to move forward and not linger and stagnate over stuff like that.

Mr. Goodall asked Mr. Humphries when the new town seal is coming. Mr. Humphries replied he will email each one of you tomorrow and let you know. Mr. Goodall inquired about the electronic sign. Mr. Humphries replied there is a committee working on the design process, they are supposed to get back to me next week and we'll review it at that time.

Mr. Goodall asked if there will be a banner for Earth Day/Arbor Day and the Farmer's Market and will we be able to put it up a month in advance like 5 days? Ms. DeHart replied yes.

Mr. Goodall announced these upcoming events will be held on April 18th. He discussed the new website and wanted to make them aware there is a new volunteer form on the website in the event section that can be printed, mailed or dropped by the office. Soon we will have an interactive form that can be filled out, you can volunteer for as many events as you would like to assist us. We'd appreciate it

because we're trying to make our events the best they can possibly be. These are our Town events, it has been eluded to that this committee is my committee, it is not my committee, and I just sit as a Chairperson. These are our town events; they are of utmost importance to the character of this town. We as a committee will do everything we can to make good solid recommendations to the Council to make these events the best they can be and attended by the most people and enjoyed by everyone. It's a wonderful committee; we have our next meeting next Thursday, March 19th, at 6:30 right here in the Civic Building. There are some great minds on that committee. He reminded everyone that the Farmer's market will go through November, whatever the growing season allows.

Mr. Hullinger thanked Mr. D'Onofrio for addressing Mr. Brown he had similar thoughts on that and also Mr. Schallenkamp because he was thinking the same thing limiting Council comments to 3 minutes.

CLOSED SESSION

Shirley Howe made a motion to enter closed session NCGS 143-318.11(a)(6) To consider the qualifications, competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee.

Council voted unanimously in favor of the motion.

Mayor Quinn left the Closed Session before it was concluded.

Dan Schallenkamp made a motion to come out of closed session.

Council voted unanimously in favor of the motion.

ADJOURN

Dan Schallenkamp made a motion to adjourn

Council voted unanimously in favor of the motion.

APPROVED:

John J. Quinn, Mayor

Attest:

Peggy Piontek, Town Clerk