



Town of  
**INDIAN TRAIL**  
north carolina

**Town of Indian Trail**  
**Minutes of Regular Council Mtg.**  
**November 10, 2009**  
**Civic Building**  
**7:00 P.M.**

The following members of the governing body were present:

Mayor Pro Tem: Shirley Howe

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

Staff Members: Town Attorney George Sistrunk, 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.

Absent: Mayor John J. Quinn.

**CALL MEETING TO ORDER**

Mayor Pro Tem Howe called the meeting to order. She announced the following: (1) the VFW would be holding a service on Veterans Day at 6:00 pm; the public is welcome; (2) Town Hall will be closed on November 11th for Veterans Day; (3) the annual Christmas parade will be held on Sunday at 2:00 pm; the parade is arranged by the Union West Rotary; (4) the annual Indian Trail Tree Lighting will be held on Wednesday, December 2nd at 6:30-8:30 pm; (5) the Town Council will be holding closed session meetings on November 13th and 14th to discuss the Town Manager search; (6) thanked the candidates for their time and efforts.

**PRESENTATIONS**

**GIS Day Proclamation**

Mayor Pro Tem Howe presented Luke Fawcett, Indian Trail's GIS Administrator, a proclamation in recognition of GIS DAY. **(Copy attached hereto and made a part of these minutes.)**

## **Interviews and Selection for Current Board and Committee Vacancies**

The Council interviewed Mr. Roger Fish for the Parks, Greenway and Trees Committee as follows:

What is your interest in the committee? He grew up on a farm and he continues to gardens and he also volunteers at Stowe Botanical Gardens.

What is your interest in the Committee? He currently serves on the Downtown Committee and is interested in becoming more involved in the town. Would like to see some of the discussions come to fruition.

What skills or perspectives can you bring to the committee? He has served in education for nearly 40 years and he would like to see the involvement of school children from both the high and middle schools.

What do you believe are Indian Trail's important issues? According to the recent survey, public safety, parks planning and roads. He would also like to see more community involvement.

What has Indian Trail done well and what can Indian Trail improve upon? He stated that the quality of staff assembled here is impressive. There has been a community outreach but perhaps increase efforts to harness community volunteers for a community garden or planting trees.

Ms. Dehart reiterated the openings available and Council voted on the candidate. Mr. Roger Fish was appointed to the Parks, Greenway and Trees Committee as an alternate.

### **MANAGERS REPORT**

Ms. Piontek informed Council that the contract for additional deputies has been signed and the Sheriff's office will be putting them in the process. The newly elected officials' training is scheduled to be at 6:00 pm on November 18th. The official election results are in and Mr. Robert Allen and Ms. Darlene Luther are the winners. She has spoken with the Board of Elections about the Mixed Drink Referendum; they have faxed and mailed the official referendum results to Raleigh and she briefly explained the process of how local businesses would get their liquor. There will be ads for committee vacancies advertised in the Indian Trail Trader.

### **PLANNING REPORT**

Ms. DeHart showed the Indian Trail official map book that the GIS division has been working on. This book contains a street index showing whether the road is an Indian Trail road or a DOT road. It also contains points of interest within the Town as well as subdivisions. Staff is working with a printer and will hopefully be able to sale for about \$10.

Planning has also been working on website updates specifically the visitors' tier; which will hold information about the schools, population, town newsletters, how to set up services with direct links, etc. Mr. Fawcett has also been working on the town initiatives page so this can be featured to let citizens know what's being worked on.

They have also been working on research for a potential Business Advisory Committee. These types of committees generally come in the form of non-profit outside of local government, such as, chambers' which are usually town wide; business associations tend to be area specific. Local Government sometimes provides an area of operation for them, perhaps an area in town hall, they report to the Town Council and make recommendations and they often work with the Town Manager or Town Representative.

### **ENGINEERS REPORT**

Mr. Kaufhold presented to Council a showcase provided to the Town by Boggs Paving wherein the "Green Project" Indian Trail participated in was placed in a magazine; the magazine article and accompanying pictures are included in the framed showcase. He commended Adam McLamb on his hard work on the administration building up fit project.

Councilmember Goodall asked about the status of the "Welcome to Indian Trail" signs. Mr. Kaufhold stated that they have been leaving messages with DOT and we are still waiting.

Councilmember D'Onofrio asked about location of the sidewalk project(s) that are to be funded with the CMAQ grant. Mr. Kaufhold responded one is on Rogers Road from Wesley Chapel Stouts Road to Old Charlotte Highway and the other is Unionville-Indian Trail Road from Younts Road to Sardis Road down Sardis to Brick Landing. He updated Council on the status.

Mr. Kaufhold informed Council that the traffic light at intersection at Faith Church Road is estimated to be about 30% complete. He also informed Council that on Unionville-Indian Trail Road, NCDOT is going to strengthen the asphalt with 4 1/2 inches.

### **ADDITIONS AND DELETIONS**

John Hullinger made a motion to remove Item 111 until the first meeting in December.

Council voted unanimously in favor of the motion.

### **MOTION TO APPROVE AGENDA**

Jeff Goodall made a motion to approve Agenda.

Council voted unanimously in favor of the motion.

### **PUBLIC COMMENTS**

Michael Mull, 1007 Mossy Branch Ct., shared with Council a letter he submitted to the Town Manager and the Planning Director. In his subdivision, Chestnut Place, the developer, Mr. Gibson, has not completed the common area improvements as required by the permits granted by the Town. The perform work also deviates from the plans approved by the Town in May 2006. He feels if the conditions are not remedied there would be a negative impact on the property values on the adjoining properties. The immediate concern is the detention pond and the immediate area.

Mr. Mull request that the Town oppose the proposed substitute wet pond and deny the developers request of deviation.

**CONSENT AGENDA**

- a. Minutes of May 7, 2009, May 18, 2009, May 26, 2009, June 9, 2009, June 11, 2009, October 13, 2009, October 23, 2009, October 24, 2009 and September 30, 2009
- b. Tax Report - Month End Tax Report for October 2009

Dan Schallenkamp made a motion to approve the Consent Agenda.

Council voted unanimously in favor of the motion.

Mayor Pro Tem Howe stated that several public hearings have been advertised to begin at 7:00 pm so legally Council cannot begin those items until that time so other items on the agenda will be moved up.

Jeff Goodall made a motion move ahead on the Agenda until the 7:00 pm. hour.

Council voted unanimously in favor of the motion.

**Snow and Ice Removal Contract**

Mr. McLamb stated that the Town is now responsible for approximately 40 miles of roads; this includes inclement weather maintenance, such as snow and ice removal, trees down, etc. The Transportation Advisory Committee recommends plowing on two roads; Brandon Oaks Parkway from Old Monroe Road to Ponytail Drive to Mustang Drive and Faith Church Road from US 74 to Unionville Indian Trail Road; which are the most heavily traveled town maintained roads. Bid opening was November 5; the three bidders were Inclement Weather Contractors out of Raleigh, Bullseye Construction and Showalter Construction. After reviewing the bids, Showalter Construction was the lowest responsible bidder. The bid represents the hourly rate and the mobilization cost; then it's an hourly rate after that for each item in the contract.

Councilmember Hullinger asked if the Town had looked into the costs of equipping the Town truck. Mr. McLamb replied this was looked into, but the only truck available cannot handle it; a single axle dump truck would be needed to be able to have enough weight to move the snow. Rental was also considered but was determined to not be feasible. Mr. Kaufhold stated that they wanted to look into timely service so the provider would be readily available with equipment and materials when the Town Manager needed to call for that service. This is all contingent upon DOT clearing the main thoroughfares that connect to those roads.

Councilmember Goodall questioned the method of ice removal; as we usually have more ice than snow. Mr. Kaufhold stated it would be a plowing operation while spreading salt and slag behind.

Mr. McLamb stated that within the contract there is a clause that if the Town calls them and they mobilize their equipment and they don't use there equipment at all, the Town would have to still pay them a fee for mobilizing their equipment and also an hourly rate for what it would be per hour for each item. Councilmember Schallenkamp questioned how the hourly rates of each bidder compared.

That information was not readily available, but it was assumed that Showalter was the lowest hourly rate because all their quantities were lower by a good bit.

Gary D'Onofrio made a motion to table Snow and Ice Removal Contract until the next Council meeting.

Council voted unanimously in favor of the motion.

### **Amendment to CMAQ Intersection Project**

Mr. Kaufhold presented a proposed amendment to the CMAQ Intersection Improvement Project for the work being done in the planning and design at Indian Trail Road and Old Monroe Road. Back in April Council awarded the design of the congestion mitigation and air quality grant project to HNTB. The project is intended to improve vehicular traffic flow through intersection. The design will provide for exclusive left turn through and right turn lanes at all four approaches along with optimizing traffic signal timing and keep replacement of existing sidewalks as it is.

In order to implement the adopted Comprehensive Plan and provide improved pedestrian facilities in the intersection it has been requested to add ten foot sidewalks around the intersection to the design at the corners and taper down to six foot sidewalks; so it will have sidewalk throughout and pedestrian refuge at the intersection. In order to do this, there is additional design work that is required. The right of way limits are very constrained. We have sufficient data along the way, but will need additional survey as it's going to be wider. After fee negotiations with HNTB, the additional work is proposed for \$20,000; funded by Powell Bill funds.

Councilmember Howe pointed out that this will be handicap friendly.

Councilmember Goodall questioned the speed limit on Old Monroe Road; Mr. Kaufhold replied that it is currently 45 mph; although the Town has twice tried to get the speed limit reduced. He feels NCDOT wants to keep a consistent speed zone to facilitate the movement of traffic through the area.

Councilmember Schallenkamp asked if this additional money would cover any additional right of ways and would any additional right of way be required for this ten foot sidewalk. Mr. Kaufhold stated that this is for design only. There will be some additional right of way, but for the most part would be looking for a permanent easement for the sidewalk. Councilmember Schallenkamp briefly outlined the considerations of the Transportation Advisory Committee.

At the intersections the sidewalk would have to be up to ADA standards. There was discussion of road markings detailing the pedestrian crossing which can be very basic or elaborate, depending on how much Council wants to spend. Currently the standard design is planned.

Councilmember Hullinger asked what is advantage of ten feet over five feet. Ms. DeHart stated that the ten feet sidewalk is consistent with the adopted Comprehensive Plan, which if any other developer was coming in to redevelop any of those corners, the Town would require compliance with the plan; the intersection is considered a Village Center where the buildings would be moved up closer to the right of way with wider sidewalks. Some of the corners, the gas station and the bank currently do not have sidewalks at all. We are complying with our own regulations that the Town requires everyone else to comply with.

Jeff Goodall made a motion to approve additional work regarding the CMAQ Intersection Project.

Motion Passed 3 - 2 with Gary D'Onofrio, and John Hullinger opposing.

## **OLD BUSINESS**

### **ZT 2009-007 Sign Ordinance Amendment**

(This item is being re-visited pursuant to Council request at 10/13/09 meeting)

Ms. DeHart presented a request to amend Division 900, which is the sign ordinance within the UDO. Staff is proposing to amend this ordinance to establish an "Exempt Sign" chapter as well as introduce regulations that would allow for emergency response agencies to incorporate a LED message sign within their monument sign.

Within the exemption chapter it is proposed to establish this chapter to exempt public notice or warning signs by various agencies as well as traffic and regulatory signs. The Town's current ordinance has regulations in there, but there is not one agency that checks with us before they erect any kind of regulatory signs. This would also exempt internal signs and temporary signage associated with Town recognized events.

With regard to the LED signs, staff is proposing to allow a message board component within a monument sign for emergency response agencies. This would be located at the facility site. The message display would be for emergency, public announcements, such as an amber alert. It would need to be architecturally integrated where a maximum of 30% of the sign area could be the message board and it could only display channel letters. This was initiated through a request from Stallings VFD proposing to establish a monument sign at the Old Monroe Road location and proposed to have a LED message board component. Our current ordinance does not allow that, staff indicated to Stallings VFD that this would be brought before Council.

The Planning Board heard this at their August 18th meeting; at that meeting they directed staff to modify some of the section and specifically all language allowing LED signs. This was heard again by the Planning Board on September 15th, at that time they did make the required findings for the modified amendment. Council heard this item at the October 13th meeting with various comments relating to restricting the number of days a town recognized event banner could be displayed prior to the event. The section currently reads that a banner cannot be erected until two weeks prior to the event. There were also comments related to removing the LED message sign board for emergency related agencies. The Council voted unanimously to continue this item until tonight's meeting.

The Planning Board, in their transmittal, made the required findings, which Ms. DeHart read as follows:

The proposed amendment as modified and transmitted by the Planning Board is consistent with:

- 1) 1.3.2 of the Comprehensive Plane - Land Use; the proposed amendment of Division 900 Sign Ordinance establishes sign standards will assist in the avoidance of potential land use conflicts between neighboring properties while streamlining the process for regulatory signs.
- 2) The granting of this amendment is in the best interest of the public because the intent is to provide sign standards that will streamline the process for regulatory signs and Town recognized event signage.

Action required by Council tonight is Receive transmittal and public comment and motion to approve as transmitted, approve with modifications, or disapprove the request.

Two copies of the draft ordinance were passed out before the meeting. Draft Ordinance A - is the amendment as transmitted by the Planning Board; Draft Ordinance B - is modified by removing the criteria of the two week restriction on page 5 and does allow LED message board for emergency services only.

Mayor Pro Tem Howe opened and closed the public comment section of the public hearing; no one had signed up to speak on the matter.

Council discussed the matter briefly; with the concern that although the LED message board would be used initially for the intended purpose, there would be no control as to what would be put on there.

Ms. DeHart stated that if Council is considering adopting Draft Ordinance B, which does allow for the LED signs and removes the two week restriction, she will read new findings into the record that goes along with that ordinance. She read the findings as follows for Draft Ordinance B:

The modified amendment is consistent with the following goals:

- 1) 1.3.2 of the Comprehensive Plan - Land Use; because it establishes sign standards that will assist in the avoidance of potential land use conflicts between neighboring properties while streamlining the process for regulatory signs.
- 2) The granting of this amendment is reasonable and in the best interest of the public because the intent is to streamline the processes for regulatory signs, town recognized events and to allow for immediate emergency information distribution by allowing for emergency response agencies to incorporate a LED message board within a monument sign on their property.

Gary D'Onofrio made a motion to approve ZT 2009-007 with Ordinance B which removes the two week restriction and allows the LED message board for emergency response agencies. **(Copy attached hereto and made a part of these minutes.)**

Motion Passed 4 - 1 with Dan Schallenkamp opposing.

## **NEW BUSINESS**

### **Annexation Ordinance #128**

Mr. Edwards presented a request to adopt 1) Annexation Ordinance #128 into the corporate limits of the Town, and 2) the ordinance setting the effective date of annexation for January 19, 2010. This is a voluntary annexation request by First Baptist Church of Indian Trail. The parcel is located just off of Faith Church Road around the Village of Lake Park area. He pointed out the area on the map shown. The parcel is 3.67 acres with a current zoning designation with the county as R-20; it is undeveloped land.

If annexed, staff will recommend a zoning of Institutional for this property and this must be done 60 days after adoption of the Annexation Ordinance. This would be in the Sardis/Interchange Mix Village per the Indian Trail Comprehensive Plan. Staff has analyzed and verified the land use calculations for this Village in relation to the subject property and found that this would be in line with the Comprehensive Plan. If adopted, the annexation will come back before Council for approval of a zoning map amendment at the December meeting.

At the last Council meeting Council approved to set the public hearing date for November 10, 2009 and directed the Interim Town Clerk to investigate the sufficiency of the annexation petition. Staff also had the opportunity to discuss the annexation with the Village of Lake Park at their Council meeting on October 13, 2009, mainly explaining the annexation process and answering any questions, as the property borders Lake Park. As stated earlier this property will come back for a zoning map amendment to set the annexed property as Institutional at the December meeting. Per conversations with the Town's Tax Department, the effective date for the annexation is recommended for January 31, 2010 to coincide with the Town's regular tax billing cycle.

For information purposes only, Staff has included a concept plan for ball fields. The applicant will pursue a Special Use Permit after the effective date of annexation.

Mr. Edwards read the consistency finding into the record as follows: The Town Council of Indian Trail finds that pursuant to the requirements of NCGS 160A-31(d), that the proposed Annexation Ordinance #128 petition offered by the applicant does in fact meet all requirements for a proper voluntary annexation under North Carolina law and is found to be valid in form and manner. Staff recommendation is to receive this staff report and public testimony; make the required consistency finding, pursuant to NCGS 160A-31(d) requirements; make a motion to approve or disapprove the proposed annexation and if motioned for approval also indicate the effective date of January 31, 2010.

Mayor Pro Tem Howe opened public comments section for the public hearing.

Sammy Thomas - Church Administrator for First Baptist Church of Indian Trail, 732 Fairview-Indian Trail Road, spoke on behalf of the church and explained that this property was purchased for the purposes of additional land needs in developing ball fields for their school, Metrolina Christian Academy and it needs to be annexed in order to proceed.

Mayor Pro Tem Howe closed the public comments section of the public hearing.

For clarification, Mr. Edwards again pointed out the proposed annexation area on the map shown.

Jeff Goodall made a motion to receive the staff report and public testimony and approve extending the corporate limits of the Town of Indian Trail to include Annexation Ordinance #128 with the effective date of January 31, 2010 at 11:59 pm.

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

#### **MCA 2008-006 Fire Prevention**

Mr. Brian McLamb, Chairman of the Public Safety Committee, presented the request to amend the Indian Trail Code of Ordinances establishing Chapter 93 Open Burning of Yard Debris in the Town of Indian Trail. The Public Safety Committee was tasked with developing a burn ordinance. Primary concerns were citizen complaints, burning in proximity to high density area, health problems and fire safety concerns. The committee held many discussions regarding negatives and positives of the ordinance and the enforcement of such an ordinance. Chief Blythe brought his concerns to the Public Safety Committee; which were regarding the hold time as they have to stay until the deputies

arrive; the fire department is unable to enforce the ordinance and there are not too many complaints now; it is anticipated that an increase in complaints would occur with the ordinance adoption.

This ordinance would ban the open burning of yard waste, the open combustion of material that is burned without a chimney or a permitted air pollution control device. Yard waste being any grass, weeds, leaves, tree trimmings, plants, shrubbery, pruning and such other material which are generated in the general yard maintenance; the waste must be from the property on which it is burned.

All allowed open burning shall be conducted in a safe nuisance free manner, when wind and weather conditions are such as to minimize adverse effects and not create a health hazard or a visibility hazard on roadways, railroads, or airfields. Open burning shall never be left unattended by a responsible party. Open burning shall be conducted in compliance with all local and state fire protections regulations. Burning of yard waste within one hundred (100) feet of any residential structure within the corporate limits of the Town of Indian Trail is prohibited. Permits to burn yard waste outside of the one hundred foot minimum must obtain the required permit from the North Carolina Department of Forest Resources. The permits may also be obtained at some gas stations; the permits by statute are free of charge. The yard waste must originate on the premises of private residences and is burned on those premises.

It is regulated by safe weather conditions, never to be left unattended and be in compliance with local and state regulations, prohibited within 100 ft. of any residential structure, must obtain required permit from NCDENR-FR and it must originate on the premise where being burned. This would be enforced by the code enforcement and UCSO. The civil penalties being first a warning; \$200 for second offense; \$300 for third offense and \$500 for all subsequent offenses; with the second and third offenses being per day. The rules are written on the permit and also include safety guidelines for open burning. The Public Safety Committee recommends approval of the draft ordinance as presented. Outstanding issues associated with the ordinance are: a request to have the Town renegotiate cost for yard debris pick-up with the service provider; and, a request that the ordinance include citation monies collected to be issued to the responding VFD by the Town.

Mayor Pro Tem Howe opened and closed the public comments section of the public hearing; no one had signed up to speak.

Council discussed the 100 foot requirement for clarification.

Councilmember D'Onofrio questioned whether input was solicited from Bakers, Stallings or Wesley Chapel VFD. Mr. Fawcett stated that the Deputy Chief from Stallings attended the meeting as well and he concurred with Chief Blythe to keep it simple. There are so many loopholes, enforcement is difficult. Councilmember D'Onofrio stated that it is clear what the Town intends, but has concern that this will take in occurrences that the Town is not intending to prohibit.

Councilmember Howe asked if currently the fines collected were sent to the schools. Mr. Fawcett confirmed that civil penalties collected do technically go to the schools at this point.

The Public Safety Committee discussed the how the public could be educated regarding the ordinance and putting the information on the website as well as links to the Division of Forest Services for the permit.

Councilmember Howe suggested a later effective date to give time to educate the residents. Mr. Fawcett replied that perhaps brochures could be produced to pass along to the public when they are on the scene; as this is something that Stallings does.

Councilmember Hullinger asked if either of the fire personnel represented at the meeting shared any statistics for fires started by burning yard debris. He is opposed to this because it could be abused by conflicting neighbors and we're infringing upon the land use rights of the property owners; as most are responsible. We are also forcing that land owner to purchase trash can to haul off the debris.

Councilmember Goodall agrees with extending the effective date and recommends extending to January 1 to allow for an education campaign. Ms. DeHart can also include information regarding the ordinance, if adopted, in the town newsletter.

Lt. Coble expressed his reservations. He is of the understanding that the deputies will not be enforcing this ordinance. See about the participation from fire department as they are on scene to gather the needed information and pass along to code enforcement for Indian Trail; it is a civil penalty not criminal. Perhaps this could be worked out with the fire department so they can leave. He agrees with Chief Blythe, there are not many calls concerning this. There are resources for citizens for ongoing nuisance as the Division of Air Quality.

Jeff Goodall made a motion to approve MCA 2008-006 Fire Prevention add Chapter 93 to the code of ordinances effective January 1, 2010.

Motion Failed 3 - 2 with Shirley Howe, John Hullinger, and Dan Schallenkamp opposing.

Dan Schallenkamp made a motion table this and instruct staff to work with fire agencies, law enforcement and code enforcement to find out how this can be effectively enforced.

Motion Passed 3 - 2 with Jeff Goodall, and John Hullinger opposing.

### **ZM 2009-003 Industrial Ventures Rezone**

Ms. Hillary Pace presented a request to rezone Industrial Ventures Industrial Park from Regional Business District (RBD) zoning to Light Industrial (LI) zoning. The requested rezoning consists of 235.46 acres and 100 properties. The site falls within the Hwy. 74 corridor within the Comprehensive Plan.

The Planning Board held a public meeting on this item on October 20th and it was recommended to support this rezoning. All notification was conducted in accordance with NC General Statutes and UDO Chapter 310.

Ms. Pace showed the area on a map and gave a brief background of the area development. She read the required findings made by the Planning Board into record. The proposed amendment is consistent with the following goals:

- 1) Goal 1.3.2 Land Use: A mix of different types of land uses and the avoidance of potential land use conflicts between neighboring properties and surrounding municipalities.
- 2) Goal 1.3.2 Land Use: A more balanced tax base by promoting the development of office parks, businesses, retail centers, and industrial parks.

The request for this zoning reclassification is a reasonable request and is in the public interest

because it promotes the goals of the adopted Comprehensive Plane in the area of Land Use and is consistent with the adopted plans within the Town. She went over the options for Council consider.

Ms. Pace read a letter submitted by Travis Cook of 2111 Landin Chase Drive in Laurel Creek Subdivision. Within the letter he requests the Town not approve the rezoning. A counter to the reasoning that most of the facilities are already light industrial is that when he purchased his home he knew the zoning was Regional Business District which is different than what has been developed there. He feels the Town allowed the situation to exist and consideration should be given to the surrounding properties and how they would be affected. Notification was given to adjoining property owners, but he feels it should have been given to the entire subdivision that would be effected.

Mayor Pro Tem Howe opened public comments portion of the public hearing.

Carlton Tyson, 2593 West Roosevelt Blvd., Monroe, informed Council that his company developed both phases of this park and when it was built; he does not believe there were any subdivisions surrounding the property at that time. It was developed under County requirements with an Industrial zoning classification.

Councilmember Howe closed the public comments portion of the public hearing.

Ms. Pace reiterated that notifications were sent out in compliance with NCGS and the Town's UDO.

Councilmember D'Onofrio confirmed that the Highway Corridor is more in line with what is being recommended. This development was there before the subdivisions. The tenants within the Industrial Ventures Park were adversely affected by the change to RBD zoning and this is a proposal to correct.

Jeff Goodall made a motion to approve ZM 2009-003 rezone Industrial Ventures from RBD to LI.

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

Ms. Piontek thanked Adam McLamb's father-in-law's company, United States Gipsom, for donation of two cubicles plus filing cabinets to be used by the town employees.

#### **CZ 2009-001 Holly Park Ph IV**

Ms. Reeves presented a request to rezone Holly Park Ph IV to a Conditional Zoning District. The purpose of this application is to change the conditions of approval to allow for a cul-de-sac to be installed at the end of Holly Villa Circle and not connect it to Wesley Chapel Road. This is the first conditional zoning process since the adoption of the UDO. Ms. Reeves gave a quick overview of the process.

Ms. Reeves stated that this is a request to assign a conditional zoning designation to Holly Park Phase IV to modify the requirement to connect the subdivision to Wesley Chapel Road. In October of 2002 Holly Park Phase IV was originally approved. In 2006, the HOA of that phase requested to the Council to remove the connection requirement. Council denied the request at that time. In early 2009 the developer contacted the Town to express his inability to fulfill the requirements to connect the subdivision to Wesley Chapel Road. The Council voted to use bond money plus town funding to

install a cul-de-sac at the end of Holly Villa Circle. This triggered the requirement to amend the application for modification to the original development conditions. In August an application was prepared and in September and October it went through community meetings and the planning process. The Planning Board is recommending approval of this project. Visuals for the project were provided.

The conditional zoning process requires that the process go through a couple of more public involvement steps than previously required; two community meetings, planning board meeting and then Town Council. The Town notified all residents within Holly Villa Phase IV and also those residents located within 500 feet of Phase IV. The first public meeting was held at Sun Valley High School with three attendees. The second meeting was held in the Civic Building and no one attended. Some concerns expressed were about drainage on the site; she has spoken to the engineer and it was indicated to her that this would be taken care of during the construction. This item was heard before the Planning Board on September 24; no one from the public signed up to speak. Comments from area agencies: DOT - reiterated that they prefer fewer entry points onto Wesley Chapel; Fire Marshall - if the road were not put in it would not have an impact on emergency response times; Union County Public Works - approved preliminary cul-de-sac plans with no further comments. An appraisal was commissioned for the project which showed no significant impact on property values.

All previous conditions of approval apply for SUP 2002-006 and SUP 2006-006M with the exception of the requirement to connect Holly Park Ph IV to Wesley Chapel Road. The construction plans for Holly Park Phase IV were to be revised and approved to reflect a cul-de-sac at the end of Holly Villa Circle with landscaping to prevent vehicles from connecting to Wesley Chapel Road. Additionally, conditional zoning is required to meet consistency findings with the Comprehensive Plan.

The proposed amendment is consistent with the following goal:

Goal 1.3.1 Quality of Life - the proposed conditional zoning district will meet the goal of quality of life through the removal of the requirement to connect to Wesley Chapel Road. The statement of appraisal report indicated that there will be no significant impact to the property values through this modification.

Statement of Reasonableness- The request for this conditional zoning district is a reasonable request and is in the public interest because it promotes the goal of the adopted Comprehensive Plan, in the area of Quality of Life, and is consistent with the adopted plans within the Town. Recommended action after making the required findings, motion to approve, approve with modifications, disapprove, or send back to the Planning Board for more study of this conditional rezoning.

Mayor Pro Tem Howe opened and closed the public comments for this public hearing; no one had signed up to speak.

Councilmember D'Onofrio feels the landscaping element should be taken care of by the HOA. Ms. Reeves stated that at the meeting in May, Council directive was to put in minimal landscaping to create the illusion that the road is no longer apparent. Council briefly discussed their recollection of this item. Mr. Kaufhold input for consideration that with the cul-de-sac, instead of a valley gutter, a vertical curb could be put in and also there is some grading work to do and material could be used for a small berm; less material to move from the site. After an additional discussion by Council, Ms. Reeves stated that her understanding of the directive of Council is to remove the part about the landscaping and contact the HOA during the process to coordinate the planting of the shrubs while

the contractors are out there. Councilmember Goodall does not feel staff should coordinate the planning of shrubs. Ms. DeHart stated that the condition can be modified and all of the property that was planned for the road is currently under Town ownership and the direction of the Council is after the cul-de-sac is completed all the land outside the cul-de-sac will revert to the Holly Park HOA.

Gary D'Onofrio made a motion concur with the Planning Board recommendation modifying draft condition #2 to remove the landscaping element for CZ 2009-001 Holly Park Ph IV

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

### **MCA 2009-002 Electronic Gaming Operations**

Ms. DeHart presented the request to amend Chapter 115, which is the adult use section, of the Municipal Code of Ordinances. Specifically to add the use of electronic gaming operations. Currently there are no ordinances on the books allowing for or regulating this use. The Town has received recent applications filed to establish this use. Staff has kept in contact with adjacent jurisdictions and many are adopting regulations for this use. There are reports of problems associated with the use, such as, the businesses operating 24 hours a day, congestion around the businesses, illegal drug sales outside the businesses and not having free access for public safety purposes.

This type of operation is basically internet gaming on computers or electronic machines. Patrons purchase minutes on telephone cards or internet time which can be exchanged for game time. Some operations award additional telephone cards, sweepstake prizes, etc. The state legislation has attempted to enact controls, however have been unsuccessful.

In order to address the problems regulations are needed in various areas. First of all, establish a definition as follows: Electronic Gaming Operations - Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This does not include any lottery approved by the State of North Carolina. The issue of access is also addressed that while the business is open and patrons are on the premises, Electronic Gaming Operations shall be open for direct, unobstructed access by law enforcement personnel, fire department personnel, and emergency response personnel and entrance doors unlocked. The ordinance establishes a minimum age of 18. It also establishes a penalty which refers back to penalties that are currently in our Municipal Codes in Section 10.99.

With adoption of this ordinance, Council is deeming that it is in the best interest to protect the health, safety, welfare and morals of the citizens of the Town of Indian Trail to regulate electronic gaming operations.

Mayor Pro Tem Howe opened and closed the public comments section of the public hearing; no one had signed up to speak.

Councilmember Goodall wanted to be clear that by this definition it would not affect existing game facilities geared toward teens. Ms. DeHart confirmed that the existing facilities are not for games of

chance and they would not be affected. She stated location would be addressed in the zoning ordinance the Planning Board is looking at now.

Councilmember Hullinger asked if the ordinance was as restrictive as can be legally allowed. Mr. Sistrunk gave a brief background from a legislative standpoint. Under this framework the Town would be able to regulate these facilities much like other adult establishments.

Councilmember Schallenkamp understands there are a couple of applications received. Ms. DeHart confirmed this and stated that letters have been issued to the applicants indicating this is not an allowed use in the Town and we are trying to set up the regulations in the event it does do forward. The applicants cannot pick a location because there is no applicable zoning and they cannot be approved until that is addressed; this addresses the secondary issues. Councilmember Schallenkamp asked if it was possible to restrict alcohol sales from these establishments. Mr. Sistrunk believes the Town could regulate the sale of alcohol at these locations, but not prohibit entirely.

When the Planning Board comes back through with the zoning ordinance Ms. DeHart will bring back information to the Council; this information could be shared with other municipalities in Union County.

Councilmember Howe suggested that if this does pass to send a letter to our representatives in Raleigh to try to get them to get on this a little more quickly. She understands that the people who are backing the gaming facilities have a lot of clout to back the applicants.

Dan Schallenkamp made a motion to approve MCA 2009-002 Electronic Gaming Operations as presented.

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

Dan Schallenkamp made a motion to approve sending a copy of the ordinance and a cover letter to our representatives expressing our desire to have our legislators look into this matter to regulate.

Council voted unanimously in favor of the motion.

### **MCA 2009-001 Chapter 90 Abandoned Vehicles**

Ms. DeHart presented a request to amend Chapter 90 of the Municipal Code of Ordinances which addresses abandoned vehicles and the enforcement. There is a recent House Bill 867 which amended the definition of an abandoned motor vehicle; it was based off of the worth of a vehicle. The prior statute required that the vehicle have a worth of less than \$100. This was modified to say appears to be worth less than \$500.

Mayor Pro Tem Howe opened and closed the public comments section of the public hearing; no one had signed up to speak.

Councilmember Howe asked if this would affect the current ordinance that allows for one car that is properly covered. Ms. DeHart replied that this amendment will only change the definition of junked motor vehicle; it also does not cover the enforcement of this ordinance.

Dan Schallenkamp made a motion to approve MCA 2009-001 Chapter 90 Abandoned Vehicles as presented.

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

### **Contract Award for Holly Villa Circle Cul-de-sac Construction**

Mr. McLamb stated that per Council's direction, staff advertised for bidders to construct the completion of Holly Villa Circle cul-de-sac. Bids were open on November 5 and reopened on November 10. The design work was done by Eagle Engineering. He supplied a visual of how the cul-de-sac would proceed. There were five bidders. After the opening of the bids, it was realized that some of the bidders had received an addendum and others had not, so to be fair, all bids were rejected and the bidders were asked to re-bid, with responses from two; Red Clay and WM Warren & Sons.

The project cost estimate was based off of Council's decision to go with Option 2 at a previous meeting. The total of engineering's estimate at the time was \$99,000 for construction. The option was going to be paid for from the developer bond and additional town funds. The engineer's estimate was based off of a conceptual plan, not off of the final design plans. Since that time, the asphalt quantities have been reduced drastically; sidewalk quantities have gone down and the unit prices are also lower.

The lowest responsive responsible bidder is Red Clay Industries. Staff request Council to award and approve the contract.

Councilmember Goodall asked where the companies were located. Mr. McLamb replied that WM Warren & Sons is located in Indian Trail and Red Clay Industries is located in Charlotte.

Jeff Goodall made a motion award contract to WM Warren & Sons Incorporated of Indian Trail.

Mr. McLamb confirmed that according to state statute, the Town does not have to take the lowest responsible bidder. Councilmember Schallenkamp understands why Councilmember Goodall chose WM Warren & Sons and he supports supporting our local businesses, but Council has to judiciously spend taxpayer money.

Councilmember Goodall stated for the record that the bid price difference is approximately \$4,000.

Motion Failed 4 - 1 with Gary D'Onofrio, Shirley Howe, John Hullinger, and Dan Schallenkamp opposing.

John Hullinger made a motion award the contract to Red Clay Industries.

Motion Passed 4 - 1 with Jeff Goodall opposing. **(Copy can be found on file with the Finance Officer)**

### **Sidewalk CIP along Waxhaw Indian Trail Road**

Mr. Kaufhold brought before Council information regarding the Waxhaw-Indian Trail Road CIP project. This comes as a recommendation from the Transportation Advisory Committee along with staff. The CMAQ intersection project lies in the heart of this project. There are two parts to this; the sidewalk along Waxhaw Indian Trail Road and the second part is along Old Monroe Road from Waxhaw-Indian Trail Road to Brandon Oaks Parkway. The limits of the project will be from Coventry Drive to Colton Ridge Drive. This project extends through the limits of the current CMAQ Grant Intersection Project. The cost to do the survey, design, and permitting work is \$95,500 of which \$87,000 funded by Powell Bill and \$8,500 funded by Stormwater Utility.

A portion of this work will provide staff with the field survey and subsurface utility data (gas, electric, telephone, etc ) staff will use this information to provide in-house design services in order to resolve an existing drainage problem at the low point of Indian Trail Road at the north end of Colton Ridge Subdivision. This proposed design work is recommended by the Transportation Advisory Committee.

The amount would be for the survey, design and permit approval; it does not cover the utility relocation or right of way or any easements that may be needed.

Councilmember D'Onofrio stated that what jumps out at him is the cost and the use of the Powell Bill funds. There are a lot of roads to be taken care of now and the Powell Bill fund allocation was diminished from what the Town expected. He feels it may be a more judicious use of the money to not spend the funds on design work here. He would be in favor of using that money for something that would be more in line with what the citizens are looking for as relayed in the citizen survey - road and traffic improvement as opposed to the sidewalk construction.

Councilmember Schallenkamp understands the point of view, but the design work is required and is not free; it's a precursor to actually having a sidewalk down the road. The sidewalks would make the village centers more walkable and this work won't be less expensive down the road. He feels if the design work were not done now, it would add more years to actually having more sidewalks. This sidewalk would tie into the new intersection project as well existing sidewalks further down. The Town doesn't need to be taking steps backwards

Councilmember D'Onofrio stated that other sidewalk plans were in place a long time ago before the Town had 40 miles of roads to take care of. Economic funds were different than they currently are considering the amount of Powell Bill funds the Town is receiving. He believes there's about \$1 million in total CMAQ Grant money. Mr. Kaufhold confirmed that for construction there is a little over \$1 million that represents a combination of \$910,000 for the grant and the Town matched 25%. This proposal would be using town funds. Councilmember D'Onofrio feels the Town should be careful now that we have the additional town roads. He would like to see the intersection project come to fruition beforehand.

Councilmember Schallenkamp debated that if the Council doesn't anticipate approving the monies to construct the sidewalk a year from now, then don't spend the money on the engineering work; but he cautions against that as this is a step in the right direction. He asked Mr. Kaufhold if he had concerns of maintain the Town roads with the current Powell Bill funds going forward. Mr. Kaufhold replied that the Town has a little over 37 miles of roads now and we're fine. But as discussed previously, there is a downward trend and he feels perhaps we should hold steady with regards to the roads we have under our jurisdiction now. Council briefly discussed the reduction in

allocation of Powell Bill funds and what would be anticipated to receive; there was no definite amount determined except that it could be lower.

Mr. Kaufhold informed Council that there is a House Bill looming whereby discussion of the possibility of secondary roads being handed over to counties or municipalities; it's currently locked up committee.

Mr. Kaufhold elaborated on the cost savings of \$29,000 of Stormwater Utility Funds as mentioned in the staff report. If the Town were to move forward with the sidewalk and the drainage there would be an additional cost to what is shown. He pulled out the drainage and that is a realized cost. Staff can handle that internally versus having the design done outside. Councilmember Schallenkamp asked if the Town went ahead with the design work, we would save \$29,000 in Stormwater funds. He also asked if the design figure of \$95,500 was put out to bid or could the Town put it out to bid to see if we could get a lower estimate. Mr. Kaufhold stated that almost two years when the Town put out RFP for professional services, basically on call engineering contract. It's revolving around the Minnie Brooks act; its qualification based selection. With a construction contract, numbers come in and selection is typically from the low bid. With professional services, selection is based upon qualifications, scope out the work and then goes through fee negotiations. Staff comes into play, as to what we think is necessary and determine that the unit costs are correct; this is what is done with consultants. Staff can go back and negotiate further.

Dan Schallenkamp made a motion to ask Engineering staff to try to refine the design work cost in light of the economic downturn and reduction in Powell Bill fees the Town is receiving.

Motion Passed 4 - 1 with Gary D'Onofrio opposing.

### **Add Public Comments to Second Meeting of Each Month**

Councilmember Hullinger believes that as government should be centered around people, he sees no reason to not have public comments at both regularly scheduled meetings each month. Some residents may not be able to come to the first meeting of the month and this would provide them an opportunity to comment.

John Hullinger made a motion add Public Comments to second meeting of each month

After a brief discussion the following motion was made.

Council voted unanimously in favor of the motion.

### **Additional Five Deputies in January**

*(This item was tabled until the December 8, 2009 Town Council meeting.)*

### **Events Advisory Committee Quarterly Update**

Councilmember Goodall is passing on information from the Events Advisory Committee recommendations. The EAC is recommending that Family Fun Day for 2010 be extended to a full day from 9am-7pm and in 2011 be extended to a weekend event. Staff did a tremendous amount of work for the event this year which was for six hours and the committee feels the event could be extended for a longer day without much more work involved. He, personally, would even like to see

a Crossing Paths week with different section of the country represented each night. In the committee's opinion the best time to solicit for next year's Family Fun Day was the hour before it closed this year; while the vendors are still there.

Councilmember Howe addressed if they have enough volunteers to run the event. Councilmember Goodall replied that this year labor was hired for set up and break down of the event. The work beforehand, soliciting businesses and vendors would be the same amount of work whether it is a five hour or a ten hour event; once they're there, it's on.

Councilmember Hullinger suggested sending out a questionnaire to all that participated to ask their opinion of whether to extend the event and for how long. Ms. Piontek made note that in order for the event to start at 11:00 am, staff was there at 6:30 am.

Councilmember D'Onofrio stated that the advisory committee along with staff did a good job this year. He can see the value in going later, but would defer to the committee.

Councilmember Howe stated that it seemed that more people came later in the afternoon as opposed to earlier in the event. Councilmember Goodall suggested having children activities in the am with a gearing toward teens during the evening.

There was general discussion as to electrical issues if the event were to be held later with further research requested.

Councilmember Goodall stated that there may be needed a policy regarding committee members conducting business with Indian Trail, could include other committees not just Events Committee. There are Event Committee members that are in the marketing business. One particular member filmed and made available for distribution the Waxhaw parade; they had the blessing from the Town of Waxhaw. He wants to encourage the participation on the committees, but doesn't want to appear to be a conflict of interest.

Councilmember D'Onofrio feels the Town needs a draft policy to put in place to alleviate conflicts of interest.

Councilmember Schallenkamp stated that perhaps the attorney could look into it, but anyone serving on a board or committee is to recues themselves if a matter comes up that they have direct financial interest in.

Ms. DeHart stated that she had done a little research regarding event committees and that she recalled seeing other jurisdictions having this type of policy.

Councilmember Goodall thanked the town staff for their efforts toward events.

### **Use of Personal E-Mail Addresses for Town Business**

Mayor Pro Tem Howe handed the gavel over to Councilmember Schallenkamp and then stated that she has had difficulty securing correspondence from Mayor Quinn regarding the Family Circle. This is because of e-mails being sent from a personal e-mail website by Mayor Quinn. There is no way of knowing if all e-mails were given as requested. Family Circle has refused to share the e-mail correspondence. The state statutes require that the Town capture all the e-mail data as part of public

records. This cannot be followed when council members use their personal computer e-mail address for town business. The Town furnishes all council members with a laptop along with a printer for such duties as well as having a designated e-mail server provider.

All Council members should all be aware that conducting town business on their personal e-mail website is subject to having their personal computers examined to retrieve correspondence pertaining to town business. She requested fellow council members to approving directing the town attorney to draft a resolution to refine the state statute. She also request that this document be prepared and placed on the November 24th meeting agenda for consideration. She also requested that when the Code of Ethics is reviewed that this information be included.

The Council held general discussion with it being determined that this mechanism be included in the Code of Ethics.

Shirley Howe made a motion to direct Mr. Merritt to compose a paragraph in the Code of Ethics regarding the use of personal computer or website and draft language that clearly indicates that using a non-official town e-mail address for sending town business is a violation of ethics.

Council voted unanimously in favor of the motion.

The gavel is handed back to Mayor Pro Tem Howe.

### **COUNCIL COMMENTS**

Councilmember D'Onofrio wished everyone a Happy Veterans Day and recommended attendance at the flag ceremony tomorrow at 6:00 pm at the VFW.

Councilmember Schallenkamp congratulated Robert Allen and Darlene Luther on their successful campaign and condolences and congratulations to those that came close; every vote counts. He attended the Warriors and Warbirds show this past weekend at the Monroe Airport and it was excellent.

Councilmember Howe concurred with Councilmember D'Onofrio's statements.

### **CLOSED SESSION**

Dan Schallenkamp made a motion to enter closed session pursuant to 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 come out of Closed Session.

Council voted unanimously in favor of the motion.

### **ADJOURN**

Dan Schallenkamp made a motion Adjourn.

Council voted unanimously in favor of the motion.

APPROVED:

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John J. Quinn, Mayor

Attest:

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Trena Sims, Interim Town Clerk