

## AGENDA

**Regular Business Meeting of the Southern Pines Town Council  
September 13, 2016, 7:00 PM, Douglass Community Center, 1185 W.  
Pennsylvania Avenue**

Call To Order

### **Pledge of Allegiance**

Pledge of Allegiance led by De'Bryant Martin and Jordan Martin of the Boys & Girls Club of the Sandhill's

### **1. Manager's Comments**

### **2. Consent Agenda**

*All items listed below are considered routine and will be enacted by one motion and without discussion.*

- A. Adopt Worksession Meeting Minutes of July 25, 2016, Agenda Meeting Minutes of August 3, 2016 and Regular Business Meeting Minutes of August 9, 2016 as written.
- B. Resolution to Support AIA Grant Funding request
- C. Board Appointments
  - Board of Zoning Adjustment
    - o Gary Carroll – Initial Appointment – 10/01/2016 – 10/01/2019
    - o Mike Fields – (Alternate) – 10/01/2016 – 10/01/2019
    - o Mike Martin – (ETJ Alternate) – 10/01/2016 – 10/01/2019

### **3. Public Hearings**

- A. Right of Way Abandonment of N. Mechanic Street & W. Rhode Island Avenue – (Tabled 08-03-16)

### **4. Public Comment**

## **PUBLIC COMMENT PROCEDURES**

*The Southern Pines Town Council is committed to allowing members of the public an opportunity to offer comments and suggestions. In addition to public hearings, a special time is set aside for the purpose of receiving such comments and suggestions. All comments and suggestions addressed to the Council during the Public Comment Period shall be subject to the following procedures:*

- 1. The Public Comment Period will be held at the end of the Council Meeting.*
- 2. Each person choosing to speak is asked to keep their statements to a reasonable length in time in recognition that others may also wish to speak and that the Council requires time to conduct its normal business. The Chair retains the right to limit discussion as he/she deems necessary.*
- 3. Speakers will be acknowledged by the Mayor/Chair. Speakers will address the Council from the lectern at the front of the room and begin their remarks by stating their name and address for the record.*
- 4. Public comment is not intended to require the Council and/or staff to answer any impromptu questions. Speakers will address all comments to the entire Council as whole and not one individual member. Discussions between speakers and members of the audience will not be permitted.*
- 5. Speakers will be courteous in their language and presentation. Matters or comments which are harmful, discriminatory or embarrassing to any citizens, official or employee of the Town shall not be allowed. Speaker must be respectful and courteous in their remarks and must refrain from personal attacks and the use of profanity.*
- 6. Any applause will be held until the end of the Public Comment Period.*
- 7. Speakers who have prepared written remarks or supporting documents are encouraged to leave a copy of such remarks and documents with the Clerk to the Council.*
- 8. Speakers shall not discuss any of the following: matters which concern the candidacy of any person seeking public office, including the candidacy of the person addressing the Council; matters which are closed session matters, including but not limited to matters within the attorney-client privilege, anticipated or pending litigation, personnel, property acquisition, matters which are made confidential by law; **matters which are the subject of public hearings.***
- 9. Action on items brought up during the Public Comment Period will be at the discretion of the Council.*



**MINUTES**  
**Worksession Meeting of the Southern Pines**  
**Town Council**  
**July 25, 2016, 3:00 PM, Douglass Community Center**  
**1185 W. Pennsylvania Avenue**

**Present:** Mayor David McNeill, Mayor Pro Tem Mike Fields, Councilmember Fred Walden, Councilman Jim Simeon and Councilwoman Teresa VanCamp

**Absent:** None

**1. Continuation of CU-01-16 Conditional Use Permit: Major Subdivision Application for a Multi-Family Residential Development to include 288 Apartments: Petitioner, Caviness & Cates Building and Development Company – Public Hearing Closed**

Mayor McNeill provided an overview of the item and explained details from the beginning of CU-01-16 on May 10, 2016 to current date while referring to the current Town of Southern Pines code of ordinances.

Mayor McNeill inquired if any Councilmembers had any conflicts of interests, exparte information, etc. to report.

Councilmember Walden stated he had received a letter, but upon discovering its reference, did not continue to read it.

Mayor McNeill stated all Councilmembers received a letter from Ms. Lelsie Bryons regarding her testimony of July 12, 2016.

Mayor Pro Tem Fields stated he received an additional letter from Mr. Fumea and he read the articles in the Pilot regarding CU-01-16 that were independently paid for by a private party. Mr. Fields stated his decision on this item will not be affected by any of this information.

Mayor McNeill stated Council will disqualify the testimonies on July 12, 2016 at the Regular Business Meeting of Greg Zywockinski and Leslie Bryons as they are not deemed expert witnesses to this particular case.

Mayor McNeill provided a copy of Page A-86 Southern Pines Appendix A: Unified Development Ordinance 2012 S-24 Table of uses and asked for point of clarification of the table regarding multi-family.

Town Manager Parsons stated as he recalls, in 2005 under Use 1.330 the Multi-Family Apartments themselves listed under that particular use, would not have been allowed in OS zoning. Mr.

Parsons continued by stating, however in sub-section 3 below or in notation 3 below, it refers to the development standards where Multi-Family would have been allowed on that particular property with an application for a planned residential development, which would have encumbered its own internal limitations, restrictions, etc. Mr. Parsons further commented that it would be accurate to say that Multi-Family housing would not be allowed in an OS zoning district because a PD, in this case was an allowable use in the table within the OS.

Mayor McNeill inquired if it was possible at that time to have apartments on this parcel.

Town Manager Parsons responded in the affirmative.

Mayor McNeill explained the allowed current uses of the OS district table, discussed the amount of apartments that are being requested, discussed concerns regarding density issues and referred to the revised exhibit C that was submitted by the applicant in July regarding compatibility, building scale, neighborhood character, etc. Mayor McNeill stated one of the major objectives of OS zoning classifications is to encourage a mixture of medium density residential use with offices and services. Mayor McNeill commented that Attorney Mr. Morphis has previously pointed out in his presentation that there are no other offices and services uses listed in this application in which this proposed Multi-Family project will join.

Mayor McNeill commented the entire 25.59 acres' tract has been planned for a 288 apartment unit complex. Mayor McNeill stated that Mr. Morphis contends that the applicant should have requested rezoning from OS to RM-2 due to the plans to utilize the entire OS parcel will be utilized as multi-family and currently there is no other OS parcels in the area. Mayor McNeill stated the current OS uses were read into record by Senior Town Planner Kennedy at a previous hearing.

Discussion ensued amongst Council regarding current OS uses of this tract, downtown overlay district map, surrounding neighborhood compatibility & conformity, definition of a neighborhood, future land use map, etc.

Mayor Pro Tem Fields expressed his concerns of denying this request and emphasized that this application is in compliance of what is allowed for the current zoning and should be approved.

Councilmember Walden stated this parcel allows apartments, but he doesn't feel it was intended for apartments, and the OS was allowed specifically for offices while referring to the current Town ordinances. Mr. Walden reviewed the specific intentions of the future development of this parcel as Council discussed further.

Councilwoman VanCamp stated this particular parcel was not intended for apartments and this can be collaborated by the future land use map which suggests that this parcel should be zoned commercial.

Mayor Pro Tem Fields stated the underlying document has to be considered, which is the UDO and it allows apartments is OS.

Discussion ensued amongst Council, Town Manager Parsons and Town Attorney Gill.

Mayor McNeill made the following motions:

PRELIMINARY PLAT

Finding of fact #1

Mayor McNeill stated as a finding of fact #1, he moves that the application is complete and that the facts submitted are relevant to the case in that the request has met the specified submittal requirements as required by the Town of Southern Pines UDO appendices and the facts submitted are relevant to the case as the evidence submitted as sworn testimony done so by qualified experts or provided through substantiated documentation.

This motion was seconded by Councilmember Walden with the following votes as called 5-0 to approve Preliminary Plat Finding of Fact #1.

Mayor McNeill: Aye

Mayor Pro Tem Fields: Aye

Councilmember Walden: Aye

Councilmember Simeon: Aye

Councilwoman VanCamp: Aye

Motion carries.

Preliminary Plat

Finding of fact #2

Mayor McNeill stated as a finding of fact #2, he moves that the application does not fully comply with Section 2.20.5(G) Criteria for a Preliminary Plat, Criteria 1-6, in that Criteria 1 is not applicable. Criteria 2 that the proposed project is not consistent with the goals and objectives of the Comprehensive Long Range Plan due to the fact that the Comprehensive Plan recommends that Council ensure new development and redevelopment are compatible with the overall scale, architectural, transportation and public-space characteristics of the neighborhood in which it occurs. While multi-family is an appropriate use in this *area*, the proposed project consists of 288 apartment units housed in twelve buildings where the density would be between two to five times greater than five surrounding developments. One of the key concerns for residents is ensuring that growth and change do not degrade the quality of existing neighborhoods, this means: maintaining compatible scales and intensities of development. The Town does have the authority to address the streetscapes, landscaping, scale and setback of projects to maintain internal compatibility and neighborhood vitality. Criteria 3 that the proposed project does not fully comply with Section 3.5.11 Office Service due to the fact that one of the major objectives of the OS District is to encourage a mixture of medium density residential uses with offices and services and under the proposed preliminary plat, the entire subject OS tract of land would be solely used for multi-family purposes. Criteria 4, the proposed project is not compatible with surrounding with the existing single family and multi-family developments due to the size and scale of the project. Criteria 5, the proposed projects

effect on the vitality of adjoining properties would be greater on the Village on the Green than any of the other four previously mentioned developments of Village in the Woods, Village by the Lake, Knollwood in the Pines, and the Southern Pines Housing Authority due to the Village on the Green bordering the proposed project consisting of three story buildings within 60 feet of the property line. Criteria 6 the proposed project would be adequately served by the Town's water and sewer services with expenses borne by the developer. The existing service road would be improved to State standards by the developer as the primary means of ingress and egress to the proposed project.

This motion was seconded by Councilmember Simeon with the following votes as called 4-1 to not approve Preliminary Plat Finding of Fact #2, Criteria 1-6.

Mayor McNeill: Aye  
Mayor Pro Tem Fields: Nay  
Councilman Walden: Aye  
Councilman Simeon: Aye  
Councilwoman: Aye

Motion carries.

Mayor McNeill stated although the project is consistent with the Comprehensive Long Range Plan of favoring infill development in areas with access to public facilities over development on the perimeter that requires extension of public facilities, I move that the proposed Preliminary Plat is not consistent with those documents that constitute the officially adopted land development plan and other applicable plans in that the proposed project fails to meet P-2 Neighborhoods due to its density and scale of buildings not compatible with the surrounding neighborhood characteristics and P-4 Future Land Use due to replacing the entire OS zoned parcel with a multi-family project in effect eliminating the primary uses for this tract of land in which it was provided the OS zoning designation and fails to encourage a mixture of medium density residential uses with offices and services.

This motion was seconded by Councilmember Walden with the following votes as called 4-1 to deny Preliminary Plat Finding of Fact #2.

Mayor McNeill: Aye  
Mayor Pro Tem Fields: Nay  
Councilman Walden: Aye  
Councilman Simeon: Aye  
Councilwoman: Aye

Motion carries.

## CONDITIONAL USE PERMIT

### Finding of fact #1

Mayor McNeill stated he moves that as a finding of fact that the application is complete and that the facts submitted are relevant to the case.

This motion was seconded by Councilmember Walden with the following votes as called 5-0 to approve Conditional Use Permit Finding of Fact #1.

Mayor McNeill: Aye  
Mayor Pro Tem Fields: Aye  
Councilman Walden: Aye  
Councilman Simeon: Aye  
Councilwoman: Aye

Motion carries. Finding of fact #2

Mayor McNeill stated he moves that as a finding of fact the application does not comply with Section 2.21.7 Criteria for a Conditional Use Permit, Criteria A-F, in that (A) the proposed conditional use fails to meet Section 3.5.11(3) by not containing a mixture of medium density multi-family residential units with office and services uses;(B) the proposed conditional use does not conform to the character of the neighborhood in which it is located due to the CUP requesting a total of 288 apartment units for a rate of 11.2 units per acre and the range of units in the neighborhood is 2.6 to 6.4 units per acre. In addition, the proposed scale for the apartment building is planned at three stories each whereby the surrounding neighborhood is predominantly one to two story dwellings. And (F) the public interest and welfare supporting the proposed use is not sufficient to outweigh both individual and collective interest that is adversely affected by the establishment of the proposed use due to the size and scale of the project.

This motion was seconded by Councilmember Simeon with the following votes as called 4-1 to deny Conditional Use Permit Finding of Fact #2.

Mayor McNeill: Aye  
Mayor Pro Tem Fields: Nay  
Councilman Walden: Aye  
Councilman Simeon: Aye  
Councilwoman: Aye

Motion carries.

Mayor McNeill stated he moves that the proposed Conditional Use Application is not consistent with the documents that constitute the officially adopted Land development plan or applicable plans, in that the proposed CUP eliminates any further Office Services uses in this *area*, therefore creating in essence a rezoning of the property from Office Services to Residential which fails to meet the Long Range Plan for the Town of Southern Pines.

This motion was seconded by Councilwoman VanCamp with the following votes as called 4-1 to deny CU-01-16.

Mayor McNeill: Aye  
Mayor Pro Tem Fields: Nay  
Councilmember Walden: Aye  
Councilmember Simeon: Aye  
Councilwoman VanCamp: Aye

Motion carries.

Council retired to recess at 4:25 PM

Council reconvened at 4:31 PM

**2. Update on the Moore County Neighborhood Cats Southern Pines Project – Angela Zumwalt**

Angela Zumwalt and Dr. Tom Daniel were present to discuss the nine month to date statistics and progress with the Moore County Neighborhood Cats Southern Pines Project. Ms. Zumwalt provided a slide presentation detailing the progress of the program. Ms. Zumwalt asked Council to support the program by working with them to design approved signage that would list information regarding identification of the community feeding stations for neighborhood cats and would also like approval to run an informational ad in the Pilot regarding the program.

Council thanked the group for all of their positive work and unanimously agreed they could work with the Planning & Zoning department to initiate an approved sign and they would review a draft ad prior to running in the Pilot.

Upon motion by Councilmember Simeon, seconded by Councilmember Walden and carried unanimously 5-0, it was agreed to collaborate with the program with their scheduled activities in October.

**3. Correction to Adopted Sewer Rate Ordinance – Adam Lindsay**

Town Manager Parsons gave a brief overview of the item.

Upon motion by Councilmember Walden, seconded by Councilwoman VanCamp and carried unanimously 5-0 this was approved.

**4. CDBG Economic Development Project Amending the Capital Project Ordinance**

Town Manager Parsons provided an overview of the item.

Upon motion by Councilmember Simeon, seconded by Councilmember Walden and carried unanimously 5-0 this was approved.

**5. Request to Discuss the Definition of a Family as Defined in the UDO; Petitioner, Town of Southern Pines Planning Department**

Town Manager Parsons gave a brief overview of the item.

Senior Town Planner Kennedy referred to Mr. Lauer's recommended language.

Council unanimously agreed to further research this item and review at a later date.

As so incorporated to these minutes of July 25, 2016 are exact copies as so recorded in the ordinance and resolution books of the Town of Southern Pines as if fully set out in the minutes.

There being no further business the meeting adjourned at 5:25 p.m.

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Peggy K. Smith  
Town Clerk

**MINUTES**  
**Agenda Meeting of the Southern Pines Town Council**  
**August 3, 2016, 7:00 PM, C. Michael Haney Community Room,**  
**Southern Pines Police Department**  
**450 W. Pennsylvania Avenue**

**Present:** Mayor David McNeill, Mayor Pro Tem Mike Fields, Councilmember Fred Walden, Councilmember Jim Simeon and Councilwoman Teresa VanCamp

**Absent:** None

Call to Order

**1. Manager's Comments**

**2. Consent Agenda**

*All items listed below are considered routine and will be enacted by one motion and without discussion.*

- A.** Adopt Worksession Meeting Minutes of June 27, 2016, Agenda Meeting Minutes of July 6, 2016 and Regular Business Meeting Minutes of July 12, 2016 as written.

Town Manager Parsons stated the minutes for the July 12, 2016 Regular Business Meeting were not included in today's packet and will be added to the August 9, 2016 Regular Business Meeting Packet.

- B.** Amendment to AX-04-15

Town Manager Parsons gave an overview of the item and explained the amendment has been adopted at a previous meeting and has required additional language due to property description.

**3. Public Hearings**

- A.** **OA-02-16 Ordinance Amendment to Chapter 4: Section 4.11. Transportation: Section 4.11.3 Access to Lots: Petitioner, Nancy Garner**

Senior Town Planner Kennedy provided an overview of the item.

- B.** **Right of Way Abandonment of N. Mechanic Street & W. Rhode Island Avenue**

Town Manager Parsons provided a brief overview of the item.

Upon motion by Councilmember Walden, seconded by Councilmember Simeon and carried unanimously, 5-0, this item was tabled.

- C.** **AX-03-16: Voluntary Annexation Request for the 325 Sheldon Road: Contiguous Annexation: Petitioner, Moore HL Properties Inc.**

Senior Town Planner Kennedy explained the item.

- D.** **Right-of-Way Abandonment for a Portion of N. Ridge Street: Petitioner, Moore HL Properties, Inc.**

Town Manager Parsons provide an overview.

4. Miscellaneous

- A. **CU-01-16: Written Decision and Conditional Use Permit for Major Subdivision for Multi-Family Residential Development for 288 Apartments; Petitioner, Caviness & Cates Building and Development Company**  
**\*(Action to be taken at Agenda Meeting)**

Mayor Pro Tem Fields discussed adding additional language to the motion to deny approval at the August 9, 2016 Regular Business Meeting.

Upon motion by Councilmember Walden, seconded by Councilmember Simeon and carried unanimously, 5-0 it was approved to deny approval of CU-01-16.

As so incorporated to these minutes of August 3, 2016 are exact copies as so recorded in the ordinance and resolution books of the Town of Southern Pines as fully set out in the minutes.

There being no further business the meeting adjourned at 5:15 p.m.

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Peggy K. Smith  
Town Clerk

## Minutes

### Regular Business Meeting of the Southern Pines Town Council August 9, 2016, 7:00 PM, Douglass Community Center, 1185 W. Pennsylvania Avenue

**Present:** Mayor David McNeill, Councilmember Fred Walden, Councilmember Jim Simeon, Councilwoman Teresa VanCamp

**Absent:** Mayor Pro Tem Fields

Call To Order

#### Pledge of Allegiance

The Pledge of Allegiance was led by Cub Scout Christopher John Guenther of Pack 1 at St. Anthony of Padua. Councilmember Simeon presented Christopher a certificate of appreciation from the Town of Southern Pines.

#### 1. Manager's Comments

Assistant Town Manager Adam Lindsay gave an overview of the Consent Agenda.

#### 2. Consent Agenda

*All items listed below are considered routine and will be enacted by one motion and without discussion.*

- A. Adopt Worksession Meeting Minutes of June 27, 2016, Agenda Meeting Minutes of July 6, 2016 and Regular Business Meeting Minutes of July 12, 2016 as written.
- B. Amendment to AX-04-15.

Assistant Town Manager Lindsay provided an overview of the item and stated this annexation was approved last year and the suggested amended identification language was suggested by Office of NC Secretary of State.

Upon motion by Councilmember Walden, seconded by Councilmember Simeon and carried unanimously 4-0, the Consent Agenda was approved.

#### 3. Public Hearings

- A. **OA-02-16 Ordinance Amendment to Chapter 4: Section 4.11, Transportation: Section 4.11.3 Access to Lots: Petitioner, Nancy Garner**

Senior Town Planner Kennedy provided an overview of the item and explained the legislative hearing process.

Mayor McNeill opened the public hearing.

Richard Yelverton of Pinehurst referred to a map of the property and discussed the proposed amendment and how much safer this would make the property and the surrounding area.

Councilmember Simeon asked for more clarification of the proposed driveways.

Mr. Yelverton explained the benefits to one driveway access, etc. as opposed to three individual driveways.

Councilmember Walden asked what type of language would be incorporated into the code regarding maintenance of the property.

Mr. Yelverton stated the language located in the proposed amendment requires the property owners to maintain the property.

Upon motion by Councilmember Simeon, seconded by Councilwoman VanCamp and carried unanimously 4-0, the public hearing was closed.

Councilmember Walden motioned to approve the requested text amendment and to make a finding and determination that the approval of the text amendment request is consistent with the adopted Land Use Plan and that the approval of the text amendment request is reasonable and in the public interest due to the approval being consistent with the comprehensive plan and, as a result, the approval furthers the goals and objectives of the comprehensive long range plan, in that it addresses public safety and welfare and reduces the impact of the highway corridor being able to see. This motion was seconded by Councilmember Simeon and carried unanimously 4-0 and was approved.

Councilmember Walden moved to approved OA-02-16. This motion was seconded by Councilwoman VanCamp and carried unanimously 4-0 to approve OA-02-16.

**B. Right of Way Abandonment of N. Mechanic Street & W. Rhode Island Avenue**

Mayor McNeill stated this item was tabled at the August 3, 2016 Agenda Meeting.

**C. AX-03-16: Voluntary Annexation Request for the 325 Sheldon Road: Contiguous Annexation: Petitioner, Moore HL Properties, Inc.**

Senior Town Planner Kennedy gave a brief overview of the item.

Mayor McNeill opened the public hearing.

No voiced comments were made.

Upon motion by Councilmember Walden, seconded by Councilmember Simeon and carried unanimously 4-0 the public hearing was closed.

Councilmember Simeon moved to approved the voluntary annexation AX-03-16 325 Sheldon Road. This motion was seconded by Councilwoman VanCamp and carried unanimously 4-0 and was approved.

**D. Right of Way Abandonment for a Portion of N. Ridge Street: Petitioner, Moore HL Properties, Inc.**

Senior Town Planner Kennedy gave a brief overview and referred to an aerial map.

Discussion ensued.

Mayor McNeill opened the public Hearing.

No voiced comments were made at this time.

Upon motion by Councilmember Walden, seconded by Councilwoman VanCamp and carried unanimously 4-0, the public hearing was closed.

Councilmember Simeon stated he moves that the proposed portion of N. Ridge Street requested to be abandoned is not contrary to the public interests and that no individual owning property in the vicinity of the street, alley or the subdivision in which it lies will be deprived of reasonable means of ingress or egress to their property, therefore he moves to approve the request to abandon the Right of Way abandonment for a Portion of N. Ridge Street as specified in the provided map. This motion was seconded by Councilmember Walden and carried unanimously 4-0 and was approved.

**4. Public Comment**

No public comments were voiced.

**5. Miscellaneous**

Mayor McNeill stated that Mayor Pro Tem Mike Fields has officially submitted his letter of resignation effective today, August 9, 2016. Mayor McNeill read the letter of resignation out loud and provided copies of the letter to Council and the Town Clerk.

Mayor McNeill personally expressed his gratitude for the many years and hours Mr. Fields has graciously given to the Town of Southern Pines away from his business and family while serving in the many various roles he has held. Mayor McNeill stated Mr. Fields holds a great passion for his community and will be missed and we wish him well on all of his future endeavors.

Mayor McNeill stated further discussion regarding the vacancy for Mayor Pro Tem and an upcoming Council vacancy will continue at the Worksession on August 22, 2016.

Councilmember Simeon stated the Town has lost a great servant to our community that has worked very hard providing good leadership and a great deal of knowledge as he receives this letter with great regret.

Councilmember Walden stated he is shocked upon the news of this letter of resignation and the Town is losing a great leader of Southern Pines. Mr. Walden spoke of Mr. Fields' vast experience, knowledge and dedication he has shared with the Town over the years and stated he will be missed on the Council.

Councilwoman VanCamp commented she serves on Council today because of Mike Fields and she was very taken back by the news of his resignation letter today. Ms. VanCamp stated she had discussed this decision with Mr. Fields today and clearly this was not an easy decision for him to make. Ms. VanCamp reflected on his dedication to the Town over the years and emotionally stated Town Council has lost a very valuable human resource asset. Ms. VanCamp also commented that she and Mr. Fields didn't always agree on issues, but she could always trust his honest opinions and balanced views with his focus on the best interest of the Town, its citizens and the preservation of the historical perspective of the community. Ms. VanCamp wished Mr. Fields well as he pursues other interests, projects and adventures in the future.

Upon motion by Councilmember Walden, seconded by Councilwoman VanCamp and carried unanimously 4-0, Mr. Fields' letter of resignation was regrettably accepted effective immediately.

Mayor McNeill stated Mr. Fields will be greatly missed.

Upon motion by Councilmember Simeon, seconded by Councilmember Walden and carried unanimously 4-0 the meeting was adjourned.

As so incorporated to these minutes of August 9, 2016 are exact copies as so recorded in the ordinance and resolution books of the Town of Southern Pines as fully set out in the minutes.

There being no further business the meeting adjourned at 7:36 p.m.

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Peggy K. Smith  
Town Clerk



***RESOLUTION TO SUPPORT GRANT APPLICATION FOR THE ASSESSMENT OF THE TOWN'S WASTEWATER COLLECTION SYSTEM***

*WHEREAS*, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of asset inventory and condition assessment of water and wastewater systems; and

*WHEREAS*, The Town of Southern Pines has need for and intends to perform condition assessment of the Town's existing wastewater collection system, described as the Southern Pines Critical Sewer Condition Assessment project; and

*WHEREAS*, The Town of Southern Pines intends to request state grant assistance for the project,

*NOW, THEREFORE BE IT RESOLVED*, that the Southern Pines Town Council on behalf of all its citizens, as applicant, will arrange financing for all remaining costs of the project, if approved for a State grant award.

*That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.*

*That the Applicant will continue to provide for efficient operation and maintenance of the wastewater collection system following the condition assessment project.*

*That Brent Lockamy, TOWN ENGINEER, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a grant to aid in the wastewater collection system condition assessment project described above.*

*That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.*

*That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.*

*Adopted this 13<sup>th</sup> day of September, 2016.*

*I certify that this resolution was adopted by the Town Council of the Town of Southern Pines at its meeting of September 13th, 2016, as shown in the minutes of the Town Council for that date.*

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*Mayor of the Town of Southern Pines*

**Agenda Item**

**To:** Reagan Parsons, Town Manager

**Via:** Bart Nuckols, Planning Director

**From:** Chris Kennedy, Senior Planner

**Subject:** Abandonment of Right-of-Way: N. Mechanic Street & W. Rhode Island Avenue; Petitioner, Caviness & Cates Building and Development Company

**Date:** August 9, 2016

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**Abandonment of Right-of-Way: N. Mechanic Street & W. Rhode Island Avenue; Petitioner, Caviness & Cates Building and Development Company**

In April 2016, the Town of Southern Pines Public Works Department received a request that the Town Council consider two sections of road for a right-of-way abandonment. The first section identified for right-of-way abandonment is comprised of the one and one-half (1.5) block portion of N. Mechanic Street extending from the eastern boundary of the intersection with W. Maine Avenue and N. Mechanic Street to the termination of N. Mechanic Street at the NE Service Road. The second section identified for right-of-way abandonment includes the portion of W. Rhode Island Avenue extending from the northern boundary of the intersection of W. Rhode Island Avenue and N. Mechanic Street extending to the termination of W. Rhode Island Avenue at the NE Service Road. Both portions included in the request are unopened sections of right-of-way (See attachment). At the April 12, 2016 Regular Business Meeting of the Town Council the Town Council adopted a resolution to review the request for this abandonment at the May 2016 Regular Business Meeting of the Town Council.

Both sections of right-of-way listed in this request are considered “paper” streets in that the areas designated for a street are not currently improved or easily accessible for most types of transportation. These sections of street are not included in Powell Bill funding calculations. The Town does not have future plans to improve these portions of unopened road. The Town does have a sewer line that runs east to west along W. Maine Avenue that will require an easement if the abandonment is approved.

Per UDO Section 2.29, the procedure to abandon streets, no matter their condition or utility, requires an adopted resolution, public notices, and a public hearing. Per UDO Section 2.29.2, the process for abandonment may be initiated by the Town Council or the owner of property abutting the street or alley. The Town Council shall adopt a resolution declaring its intent to close a street or alley and call for a public hearing. If the abandonment is approved, the areas abandoned revert automatically to the adjoining property owners to the midway point of the right-of-way on their side of the street for the length of their property on that right-of-way.

**Town Council Hearing – July 25, 2016 (July 2016 Town Council Work Session):**

At the July 25, 2016 Town Council Work Session, the Town Council deliberated and made a series of findings of facts and motions to deny Conditional Use Permit application CU-01-16. The Town Council decided to continue the public hearing for this right-of-way abandonment until the August 9, 2016 Regular Business Meeting of the Town Council.

**Town Council Hearing – July 12, 2016 (July 2016 Regular Business Meeting of the Town Council):**

At the July 12, 2016 Regular Business Meeting of the Town Council, the Town Council continued and the public hearing for Conditional Use Permit application CU-01-16. The Town Council then closed the public hearing but did not deliberate or make any motion to approve or deny CU-01-16, therefore, per the staff recommendation listed herein, the Town Council decided to continue the public hearing for this right-of-way abandonment until the July 25, 2016 Town Council Work Session.

**Town Council Hearing – June 14, 2016 (June 2016 Regular Business Meeting of the Town Council):**

At the June 14, 2016 Regular Business Meeting of the Town Council, the Town Council continued the public hearing for Conditional Use Permit application CU-01-16. Per the staff recommendation listed herein the Town Council decided to continue the public hearing for this right-of-way abandonment until the July 12, 2016 Regular Business Meeting of the Town Council.

**Town Council Hearing - May 23, 2016 (May 2016 Town Council Work Session):**

At the May 23, 2016 Town Council Work Session, the Town Council continued the public hearing for Conditional Use Permit application CU-01-16. Per the staff recommendation listed herein the Town Council decided to continue the public hearing for this right-of-way abandonment until the June 14, 2016 Regular Business Meeting of the Town Council.

**Town Council Hearing - May 10, 2016 (May 2016 Regular Business Meeting of the Town Council):**

At the May 10, 2016 Regular Business Meeting of the Town Council, the Town Council continued the public hearing for Conditional Use Permit application CU-01-16. Per the staff recommendation listed herein the Town Council decided to continue the public hearing for this right-of-way abandonment until the May 23, 2016 Town Council Work Session.

## **Staff Comments:**

- This right-of-way abandonment request has been submitted by the same petitioner as Conditional Use Permit application CU-01-16. The petitioner is seeking the approval of a Conditional Use Permit for a multi-family development along the NE Service Road and the abandonment of the right-of-ways included herein as part of the development request.
  - Town staff recommends that the Town Council delay their decision making of this right-of-way abandonment request until the Town Council formally makes a decision on Conditional Use Permit application CU-01-16.
  - Furthermore, Town staff recommends to the Town Council that should the Conditional Use Permit application CU-01-16 be denied, the right-of-way abandonment requests listed herein also be denied.
  - As a part of any denial or approval of CU-01-16, Town staff recommends that the Town Council delay action and table any decision relative to this right-of-way abandonment until after the expiration of the legal appeal period provided to a Conditional Use Permit and/or any appeal of the decision is resolved.
- The UDO standards and requirements for the abandonment or vacation of right-of-way are defined in UDO Section 2.29.

## **2.29 VACATION OF STREETS OR ALLEYS**

### **2.29.1 Purpose and Applicability**

This section establishes the process for approving the elimination of a Street or Alley, in whole or in part.

### **2.29.2 Initiation**

The process may be initiated by the Town Council or the owner of property abutting the street or alley. The Town Council shall adopt a resolution declaring its intent to close a street or alley and call for a public hearing.

### **2.29.3 Notice**

The Town Manager shall cause the notice to be published once a week for four successive weeks prior to the hearing, mail a copy of the notice by registered or certified mail to all the owners of property adjoining the street or alley and post notice in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto. The cost of notice shall be borne by the applicant for the vacation.

### **2.29.4 Decision**

At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the Town Council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress

and egress to his property, the Council may adopt an order closing the street or alley. A certified copy of the order shall be filed in the office of the register of deeds.

### **2.29.5 Appeals**

Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the Council's order to the District Court within 30 days after its adoption.

### **2.29.6 Ownership**

- (A) Except as provided in paragraph (C) of this section, upon the closing of a street or alley in accordance with this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.
- (B) The provisions of this subsection regarding division of right-of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.
- (C) The Town may reserve its right, title, and interest in any utility improvement or easement within a street closed pursuant to this section. Such reservation shall be stated in the order of closing. Such reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the Town. To retain such easements, the Town Council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements.

### **2.29.7 Recording Procedures**

The recorder of deeds shall write legibly on the vacated plat the word "vacated," and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

### **Attachments:**

- Map Depicting Right-of-Way to be Vacated

**Town Council Actions:**

**The Town Council shall vote on whether the proposed street or alley vacation request is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property. The Town Council could make one of the following motions for recommendations or any alternative they wish:**

**I move that the proposed street or alley vacation request...**

- 1) **is not contrary to the public interest, and that no individual** owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property, therefore...
- 2) **is contrary to the public interest, and that individuals** owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property, therefore...

**I move to:**

- 1) **Approve** the abandonment of the portions of N. Mechanic Street and W. Rhode Island Avenue as specified in the attached map;
- 2) **Deny** the abandonment of the portions of N. Mechanic Street and W. Rhode Island Avenue as specified in the attached map; OR
- 3) **Approve** the abandonment of the portions of N. Mechanic Street and W. Rhode Island Avenue as specified in the attached map **with the following additional conditions...**

**IN ADDITION TO *Street or Alley Vacation Approval from Town Council*, THE APPLICANT SHOULD BE REMINDED THAT ALL APPLICABLE PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION AND/OR DEMOLITION CAN BEGIN.** When the applicant applies for the required permits such as zoning, grading, soil erosion control, building, sign, etc., a set of detailed plans (including a site plan in compliance with various Sections of the Town of Southern Pines UDO) will be necessary. Planning staff recommends a staff consultation of the applicant's preliminary plans to provide comprehensive remarks by all appropriate Town departments/divisions. Such staff consultation should minimize development costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements.

