

**Town of Angier  
Board of Commissioners  
Tuesday, August 4, 2020, 7:00 P.M.  
Angier Municipal Building  
28 North Raleigh Street  
Minutes**

The Town of Angier convened during a regularly scheduled Board of Commissioners meeting Tuesday, August 4, 2020, in the Board Room inside the Municipal Building at 28 North Raleigh Street.

**Members Present:** Mayor Bob Smith  
Mayor Pro-Tem Craig Honeycutt  
Commissioner Alan Coats  
Commissioner Loru Boyer Hawley  
Commissioner Mike Hill

**Members Excused:**

**Staff Present:** Town Manager Gerry Vincent  
Town Clerk Veronica Hardaway  
Planning Director Sean Johnson  
Chief of Police Arthur Yarbrough  
Downtown Manager Christy Adkins  
Finance Director Hans Kalwitz  
Parks & Recreation Director Derek McLean  
Public Works Director Jimmy Cook  
Town Attorney Dan Hartzog, Jr.

**Others Present:**

**Call to Order:** Mayor Smith presided, calling the Board of Commissioners meeting to order at 7:00 p.m.

**Pledge of Allegiance:** Mayor Smith led the pledge of allegiance.

**Invocation:** Mayor Smith offered the invocation.

**Approval of the August 4, 2020 meeting agenda:** The Town Board unanimously approved the agenda as presented.

**Board Action:** The Town Board voted to approve the agenda as presented.

**Motion:** Commissioner Hill

**Vote:** 4-0; unanimous

## **Public Comments**

Junior Price, 619 N. Dunn Street, stated his concerns with the annexation that's up for discussion at tonight's meeting. He is concerned with increasing traffic in that area. Mr. Price also spoke about Whole Vet requesting that the Town consider assisting with entertainment expenses for monthly "cruise-in" events. He suggested they conduct their own fundraising efforts in order to have bands or DJ's.

## **Public Hearings**

### **1. Annexation Petition**

Planning Director Sean Johnson stated a petition for a voluntary annexation was submitted by Ruth Dupree Petrea requesting to annex approximately a 23.36 acre tract of land located at 9725 Kennebec Church Road (Harnett PIN#: 0674-39-0203.000; Wake County PIN#: 0675302448). A Sufficiency of the Petition and a Certification of Results were issued in July; a date to set the public hearing was approved in July and advertised accordingly. Following the required public hearing, the Town Board will be qualified to consider the adoption of an ordinance to annex the property.

Mayor Smith opened the Public Hearing

Seeing no one, Mayor Smith closed the Public Hearing

**Board Action:** The Town Board unanimously voted to approve an annexation petition submitted by Ruth Dupree Petrea requesting to annex property the located at 9725 Kennebec Church Road (Harnett PIN#: 0674-39-0203.000; Wake County PIN#: 0675302448).

**Motion:** Commissioner Hill

**Vote:** 4-0, unanimous

### **2. Rezoning Request**

Planning Director Sean Johnson stated the Planning Department has received a conditional rezoning application from ESP Associates, Inc. for an approximately 23.36 acre tract of land located at 9725 Kennebec Church Road, Angier (Harnett PIN#: 0674-39-0203.000; Wake County PIN#: 0675302448). Prior to the approved annexation, the property was in Wake and Harnett County's planning jurisdiction and zoned R-30 and RA-30, respectively. Because the property has been annexed, any future development will require Angier water and sewer services to serve the property. The requested zoning is CZ-R-6, and includes a proposed subdivision layout for the Board's consideration. The Planning Board recommended approval of the conditional rezoning as presented at their July 14<sup>th</sup> meeting.

Mr. Johnson stated surrounding land uses include low and medium density residential as well as a church adjacent to the property. The requested zoning would allow for uses compatible with existing and adjacent uses. The property in question is not shown on the

future Land Use Map, but is within our urban growth boundary in Wake County. Staff recommended approval of the conditional rezoning to CZ-R-6 as presented.

Mayor Smith opened the Public Hearing

There was discussion regarding traffic concerns and a desire by Board members to include two access points into the southern portion of the development. There was concern that NCDOT would not require adequate roadway improvements for the proposed development.

Mr. Johnson stated that the lack of roadway improvements required by NCDOT for the nearby Bellewood development and charter school was an indication that roadway improvement requirements shouldn't be left up to NCDOT. He commended the Board for adopting the recent Ordinance amendment requiring a Traffic Impact Analysis for larger developments, therefore triggering roadway improvements going forward. He stated that the vehicle trips per day trigger for a Traffic Impact Analysis was not reached with this proposed conditional rezoning. There are 89 units total proposed, and the vehicle trips per day trigger for a Traffic Impact Analysis is set at 100 units.

Mr. Johnson explained that a Traffic Impact Analysis is completed by a 3<sup>rd</sup> party traffic engineer who performs a written analysis of existing roadway and nearby intersections. The analysis examines the increase in traffic with the proposed development and offers recommendations for roadway improvements to be made to accommodate that increase. This Traffic Impact Analysis is submitted by developers along with their development proposal. Staff then reviews it and, if the 3<sup>rd</sup> party engineer recommends improvements, staff then requires those improvements as part of the development review process. Staff can impose those requirements even if NCDOT does not.

In the conditional rezoning proposal, there are 39 units south of Kennebec Church Road. Mr. Johnson stated that the 2<sup>nd</sup> entrance is not required by the Ordinance unless there are 100 or more units accessing that road with the single entrance. He explained that if it is the Board's desire to require a 2<sup>nd</sup> entrance south of Kennebec Church Rd, it would have to be agreed upon at tonight's meeting as a condition of the rezoning approval. Otherwise, staff will be unable to enforce the 2<sup>nd</sup> entrance later.

Junior Price, 619 N. Dunn Street, requested the Board to consider the church and cemetery located on Kennebec Church Road for impacts from increased traffic.

Joe Cebina, a representative of Robuck Homes, stated their company has been developing in the Triangle area for a long time. He stated that two conversations were had with NCDOT; one prior to the Planning Board meeting when the 2nd entrance was first discussed, and one after. Outside of what Mr. Johnson stated about the 100-unit trigger for a TIA (Traffic Impact Analysis), NCDOT still said it would not warrant any traffic improvements. He mentioned that Kennebec Church Road is not HWY 55, as it has a fraction of the traffic that HWY 55 sees in one day. It's a small pass through that is used by people in the area not people coming and going in different areas.

According to NCDOT, it doesn't have the volume to warrant any traffic improvements. NCDOT doesn't want a full access at that location but are open to emergency access. An emergency access is a driveway tie-in but not for through traffic but only for emergency vehicles. There is usually a breakaway gate or removable bollard. Mr. Cebina stated he would express to NCDOT the Town's strong desire for a secondary full access driveway. Mr. Cebina then proposed hiring a 3<sup>rd</sup> party TIA firm that is approved by the Town to see what their recommendations for a 2<sup>nd</sup> entrance are.

Salman Moazzam, an ESP Engineering Associate, stated NCDOT typically is looking to reduce the number of driveways on their roadways. There's only 200-250ft. between the proposed driveway and the location of a possible 2<sup>nd</sup> entrance, which is pretty tight. However, there is an existing driveway across Kennebec Church Rd from the development may help in requesting a secondary entrance.

Mr. Johnson recommended that the Board place as a condition on the rezoning approval that the applicant hire a traffic engineer to perform a Traffic Impact Analysis to determine whether or not the data shows a second entrance is warranted in this case. He then reminded the Board that this project will go before the Board of Adjustment for the approval of the multi-family portion of the development, which will provide another opportunity to place conditions on its approval.

Seeing no one, Mayor Smith closed the Public Hearing

**Board Action:** The Town Board unanimously voted to rezone property located at 9725 Kennebec Church Road (Harnett PIN#: 0674-39-0203.000; Wake County PIN#: 0675302448) from R-30/RA-30 to CZ-R-6 subject to a 3<sup>rd</sup> party Traffic Impact Analysis by the developer to determine if a second access driveway is warranted.

**Motion:** Commissioner Coats

**Vote:** 4-0, unanimous

### **Consent Agenda**

#### **1. Approval of Minutes**

- a. July 7, 2020 – Regular Meeting

**Board Action:** The Town Board unanimously voted to approve the Consent Agenda as presented.

**Motion:** Commissioner Hill

**Vote:** 4-0, unanimous

## **New Business**

### **1. Whole Vet**

Dale Robbins president of Whole Vet stated last November's car show was a success. He requested the Board to consider monthly "Cruise-In" events on the last Saturday of every month to start as soon as possible. He also asked the Board if they would consider contributing funding for the entertainment at these events such as bands or DJ's.

There was discussion regarding the Governor's executive orders regarding COVID-19 related restrictions on gatherings.

Mr. Vincent stated he does not recommend the Town provide funding that has not been budgeted, as it's too early into the new budget to measure the Town's revenues amid uncertainty due to COVID-19.

**Board Action:** The Town Board unanimously voted to table this discussion until September's Board meeting.

**Motion:** Commissioner Hawley

**Vote:** 4-0, unanimous

### **2. Reimbursement Agreement for Coronavirus Relief Fund with Harnett County**

Mr. Vincent stated the expectation is that municipalities will use the Coronavirus Relief Funds to cover salaries and benefits for public safety employees who are presumed to be substantially dedicated to mitigate COVID-19. Reporting documents will need to be completed along with the Coronavirus Relief Fund plan template as well as a signed fully executed interlocal agreement approved by the Board. Harnett County has received \$5,101,389 and is required to allocate 25% of funds for use by localities. Allotment is distributed by population; Angier will receive \$254,450. Documentation has already been prepared for salaries and benefits used by Angier Police Department and that number exceeds \$304,000. The Town Clerk has also been in contact with FEMA to apply for reimbursement of protective measures and supplies that have been purchased.

**Board Action:** The Town Board unanimously voted to enter into an agreement with Harnett County to receive the funding for local governments as part of the Coronavirus Relief Fund established under the federal CARES Act.

**Motion:** Pro-tem Honeycutt

**Vote:** 4-0, unanimous

### **3. Budget Amendment #2**

Finance Director Hans Kalwitz stated that similar to Budget Amendment #1, unspent project related money has been reallocated from last fiscal year to FY 2021. Considering the internal

deadline for closing last fiscal year books was July 15, 2020, there was a bit of time after our first July 7, 2020 Board of Commissioners meeting to assess incomplete projects.

Mr. Kalwitz emphasized, this is not new money, rather unspent money from last year. Due to COVID-19, Department Heads experienced a lag with completing projects. Additionally, last fiscal year the Planning & Inspections Department was able to end the year significantly under budget, therefore freeing up the \$25,000 to complete a much-needed update of the Town's Construction Specifications & Details that would otherwise not be accomplished within this new fiscal year (given budget constraints).

Budget Amendment #2 accepts the transfer from FY 2020 Budget into FY 2021 Budget. The outstanding projects are as follows:

- \$3,500 – Preliminary Engineering for new Town Hall/Police Department Building
- \$25,000 – Update Angier's Construction Specifications & Details

**Board Action:** The Town Board unanimously voted to adopt Budget Amendment #2 for unspent project related money to be reallocated from last fiscal year to FY2021.

**Motion:** Commissioner Hill

**Vote:** 4-0, unanimous

### **Manager's Report**

- Department Reports (Informational Items included in Agenda packets)

Town Manager Gerry Vincent updated the Board on various items. Those items are the following:

1. Due to a reduction in funding by NCDOT (COVID-19 related), the HWY 210 Sidewalk Project was delayed and is tentatively scheduled to be awarded for construction on May 18, 2021. Therefore, the Town will bid out the project in March. In addition, the Junny Road Sidewalk Project is scheduled for engineering on September 16, 2020, right of way acquisition December 31, 2021, and awarded for construction on May 17, 2022.
2. A rendering is being prepared to illustrate the potential of the Downtown Parking Lot Project and should be ready by the August 18<sup>th</sup> workshop. This will help business/property owners to visualize how improvements will benefit each of them.
3. An Economic Development Plan was prepared in 2017, but never presented officially to the Board of Commissioners for adoption and followed through with the recommended strategies and action plan. There are a number of revisions to be made and some added areas of interests. Once a proposal is received, it will be forwarded to the Board for action.
4. Gov. Cooper's Executive Order 142 regarding the waiver of utility late & disconnect fees will end on July 29<sup>th</sup>, and we understand the Governor will not extend it another 30 days. Utility account customers have been notified, and requested to make arrangements

regarding their accounts. To date, the revenue loss is approximately \$111,130 as of the end of July.

Staff will send out approximately 330 individual letters to customers explaining the repayment plan option or payment in full. This will undoubtedly be a very time-consuming task based on a lean staffing model.

5. Non-Profit Donation Funds have been distributed per the Board of Commissioners approved/adopted FY21 Budget. These organizations included the Angier Chamber of Commerce, Area Food Pantry, Veterans of Foreign Wars (VFW), and the Senior Citizens organization.

6. Staff Highlights:

Finance Department: As you are well aware, the Finance Department has gone through some significant changes for the last 2 ½ -3 years. But as of now, we are golden. Hans has taken on and completed a number of significant tasks since he started in August 2019.

Highlights include:

- A completed FY19 audit, and beginning on the FY20 audit;
  - A successful budget process;
  - Engaging/meeting with his staff on a regular basis and recommending efficiencies across the board;
  - Hiring competent and professional staff;
  - Recommended sound financial investments, and keeping the local banks honest;
  - Recommending & implementing procedural, policy and customer service advances;
  - Beginning the process of implementing a new financial software (with staff), which is significant to the Town;
  - Established multiple folders for every account, projects, investments, and transactions. So much, that we had to purchase additional storage capacity from Harnett County;
  - Lastly, providing overwhelming monthly financial reports to the Board
- Each Department Head gave highlights on their respective departments.

### **Mayor & Town Board Reports**

**Board Action:** The Town Board unanimously voted to go into Closed Session pursuant to NCGS 143-318.11 (a) (3) to discuss the Gregory, Inc. lawsuit at approximately 8:27pm.

**Motion:** Commissioner Hawley

**Vote:** 4-0, unanimous

**Board Action:** The Town Board unanimously voted to reconvene in open session at approximately 8:50pm.

**Motion:** Commissioner Hawley

**Vote:** 4-0, unanimous

Town Attorney Dan Hartzog, Jr. read from a prepared statement.

**Public Statement on Settlement of Gregory, Inc. v. Town Of Angier (19 CVS 1598)**

*"This claim was filed as a class action complaint by the law firm of Shipman and Wright, LLP on July 30, 2019, challenging the validity of water and sewer fees collected by the Town from developers, including the Plaintiff, Gregory, Inc. The primary basis for these claims is Plaintiff's contention that the fees charged by the Town were in excess of the Town's authority pursuant to the Public Enterprise Statute. In Quality Built Homes v. Town of Carthage, 369 N.C. 15, 789 S.E.2d 454 (2016), the North Carolina Supreme Court held that the Town of Carthage exceeded its statutory authority to charge impact fees for future use of the water and sewer systems. Carthage had relied on the Public Enterprise Statutes, Chapter 160A, Article 16 to enact the fees. Those statutes state, in pertinent part, that "[a] city may establish and revise ... rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise," and that "[a] city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises ... to furnish services," and that "a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor." The Supreme Court held that, "while the enabling statutes allow Carthage to charge for the contemporaneous use of its water and sewer systems, the plain language of the Public Enterprise Statutes clearly fails to empower the Town to impose impact fees for future services." Quality Built Homes Inc. v. Town of Carthage, 369 N.C. 15, 19–20, 789 S.E.2d 454, 458 (2016).*

*According to the holding in the Town of Carthage case, the Public Enterprise Statutes allow the Town to levy fees only "to charge for the contemporaneous use of its water and sewer services—not to collect fees for future discretionary spending." In contrast, the Town may not "charge for prospective services." The NC Supreme Court found that the Town of Carthage's impact fee ordinances "plainly point[ed] to future services" because they: (1) were charged at the time of final plat approval; (2) were charged in addition to tap fees, which were due when the owner connected the property to the system; and (3) the language of the Town's ordinance refers to "expanding" the system and to properties "to be served." In this case, the Town of Angier's ordinances at the time were comparable to the Town of Carthage's ordinance.*

*In 2017, the General Assembly adopted new legislation to authorize the collection of "system development fees," now found at N.C. Gen. Stat. §§ 162A-200 et seq. The legislation allows collection of fees for water and sewer services "to be furnished," but only according to certain conditions and limitations set forth in the statute. Local governments were allowed from October 1, 2017 to July 1, 2018 to bring any existing fees into compliance with the statute, which required, among other requirements, having a licensed financial or engineering professional conduct a written analysis of the costs of potential future capital improvements to calculate the basis for the fee and setting up a capital reserve fund, to account for the use of these funds. See N.C. Gen. Stat. § 162A-211(d). The Town did timely retain Envirolink to conduct a written analysis to calculate the system development fees. However, the Town did not actually complete setting up a capital reserve fund until the most recently adopted budget.*

*Plaintiff's case was based on two separate theories of liability: (1) prior to July 1, 2018, the Town illegally collected fees in violation of the Supreme Court's ruling in Quality Built Homes; and (2) after July 1, 2018, the Town's system development fee, calculated by Envirolink, did not meet the criteria required by the statute. The total amount of fees charged at issue in the case was approximately \$1.12 million. If they had prevailed, Plaintiffs would also be entitled to interest of 6% as to each fee collected by the Town, which would have brought the amount at issue to date to approximately \$1.6 million. In addition to this, Plaintiffs' counsel would potentially be entitled to attorney's fees if they had prevailed. To date, Plaintiff's counsel estimated that they had accrued \$200,000 in attorney's fees.*



*The Town of Angier is not unique in being sued over these fees, and many towns have elected to settle due to the perceived risks. At this point in the litigation, we believed the most prudent course of action was to resolve these claims through settlement rather than proceed with litigation given our risk factors set forth above. Had we continued to defend the case, interest and attorney's fees would continue to increase as the litigation progressed. Settlement of the case at this stage of the litigation mitigates those risks, and allows the Town to move forward and put these claims behind us, while structuring the settlement in a way that will minimize the impact on the Town and avoiding the risk of paying a much higher amount in the future after protracted litigation."*

**Board Action:** The Town Board unanimously voted to approve the terms of the settlement with Gregory, Inc.

**Motion:** Commissioner Coats

**Vote:** 4-0, unanimous

**Adjournment:** Being no further business, the Town Board voted unanimously to adjourn the meeting at 9:04pm.

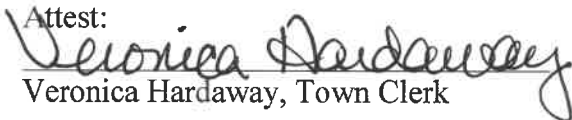
**Motion:** Commissioner Hill

**Vote:** Unanimous, 4-0



Robert K. Smith, Mayor

Attest:

  
Veronica Hardaway, Town Clerk