

Holly Springs Town Council Minutes

Regular Meeting June 19, 2007

The Holly Springs Town Council met in regular session on Tuesday, June 19, 2007, in the Council Chambers of Holly Springs Town Hall, 128 S. Main Street. Mayor Dick Sears presided, calling the meeting to order at 7:05 p.m. A quorum was established as the mayor and five council members were present as the meeting opened.

Council Members Present: Councilmen Peter Atwell, Parrish Womble. Vinnie DeBenedetto, Chet VanFossen, Hank Dickson and Mayor Sears.

Council Members Absent: None.

Staff Members Present: Carl Dean, town manager; Chuck Simmons, assistant town manager; John Schifano, town attorney; Joni Powell, town clerk (recording the minutes); Gina Clapp, director of planning and zoning; Jeff Jones, planner II; Mark Zawadski, planner I; Allison Huffman, planner I; Kendra Stephenson, senior engineer; Elizabeth Goodson, development review engineer; Len Bradley, parks and recreation director; Daniel Weeks, project analyst; Drew Holland, finance director; John Herring, police chief; Jenny Mizelle, director of economic development; Darin Eyster, engineering department; and Mark Andrews, public information officer.

Planning Board Members Present: Tim Sack, Joe Signoretti, Glenn Myrto, Matt Johnson, Deidre Brice and Jimmy Cobb. A quorum of the Planning Board was present.

2 and 3. The Pledge of Allegiance was recited, and the meeting opened with an invocation by Rabbi Ederly of Temple Beth Shalom.

4. Agenda Adjustment: The June 19, 2007 meeting agenda was adopted with changes, if any, as listed below.

Motion By: Dickson

Second By: Atwell

Vote: Unanimous

Items Added to the Agenda: 8n., resolution declaring two fire trucks as surplus to the needs of the town.

Items Removed from the Agenda: 7b., Townes at Arbor Creek was removed at the request of the developer..

Consent Agenda Items Moved to New Business: None.

Other Changes: None.

5. Public Comment: At this time, an opportunity was provided for members of the audience who had registered to speak to address the Council on any variety of topics not listed on the night's agenda. The following input was recorded:

Gerald Holleman, Easton Street – Mr. Holleman talked about growth issues.

Jonathan Gibbons, Ballentine – Mr. Gibbons talked about the noise pollution of big truck braking. He requested a four-way stop at Ballentine and Avent Ferry Road.

6. Family History Library and Resources - Mr. Bob Volpe introduced the Council to representatives with information on the Family History Library and resources available to all citizens at the Apex Stake Center of the Church of Jesus Christ of Latter-Day Saints, 590 Bryan Drive in Apex.

Mr. Volpe presented Mayor and Mrs. Sears with the Sears Family History compiled by Leann

Carroll, volunteer at the Apex LDS FHC.

Action: None.

6b. Novartis Presentation – Mr. Ulrich Valley of the Novartis company addressed the Council to provide members with an update on the construction project and the anticipated impact the company will have on the town.

Action: None.

At this time, Mayor Sears asked to be excused from the Council for the next item on the agenda, citing his contract with Wakefield Development, the applicant, as his reason for the recusal.

Councilman VanFossen also asked to be recused, saying that he is the architect designing the development's clubhouse.

Councilman Atwell asked the Town Attorney for clarification of whether it would be necessary for the two to be recused.

Mr. Schifano advised that following the joint public hearing with the Planning Board, the action of the Council would be to forward the proposal to the Planning Board for review and recommendation. While his argument would be that such action would not be of any financial benefit to either Mayor Sears or Councilman VanFossen, their recusal would eliminate any appearance or perception of impropriety.

Action: The Council approved a motion to recuse Councilman VanFossen and Mayor Sears from deliberations and action on agenda item 7a, the public hearing on proposed amendments to the 12 Oaks Planned Unit Development.

Motion By: Atwell

Second By: Dickson

Vote: Unanimous.

Mayor Pro Tem Hank Dickson presided.

7a. Joint Public Hearing: Twelve Oaks PUD Amendment, 07-PUD-01-A03 – Mr. Jones said the Town has received a proposed amendment to the Twelve Oaks Planned Unit Development that would add language to the PUD document to address fences and signs as follows:

- Allowing a fence height up to 12 feet in height for the development entrance and internal entrance features into subsections of the subdivision
- Allow for incidental signage throughout the development directing traffic to model homes
- Allow for builder information signs throughout the development

He said the applicant would like to install as the entrance feature into the Twelve Oaks subdivision a fence structure that uses both brick and wrought iron fence and columns. The current PUD document does not cover fences and as such the regulations of the Unified Development Ordinance must be met. The current standard only allows for fences to go up to six feet in height along the perimeter of a subdivision.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded:

Randy Smith, land development manager for Wakefield – Mr. Smith addressed the Council in support of the amendments. He said the developers are trying to provide an attractive entrance with a strong impact.

Bob Brantley of Rodney's Signs, 3321 Hemingway, Apex – Mr. Brantley spoke in favor of the amendments.

There being no further input, the public hearing was closed.

Action: The Council approved a motion to forward Planned Unit Development application #06-PUD-01-A03 for Twelve Oaks to the Planning Board for review and recommendation.

Motion By: Womble

Second By: Atwell

Vote: Unanimous.

Councilman Dickson made a motion to readmit Councilman VanFossen and Mayor Sears into the

meeting. The motion was seconded by Councilman Womble, and it carried unanimously.

7b. Public Hearing: Townes of Arbor Creek – This item was deleted from the agenda during agenda adjustment.

7c. Public Hearing: Zoning Map Change 07-REZ-08– Mr. Jones said the Town has received a request for rezoning, and the applicant is proposing to rezone 2.13 acres along Cotten Lane adjacent to Avent Ferry Road from R-15 Single-Family to R-MF-8 Multi Family Residential. The parcels are adjacent to recently rezoned property that was rezoned from R-15 to R-MF-8. He said these parcels are located within the Village District Area Plan boundary, and that plan designates this area for attached residential uses.

Mr. Jones said that staff and Planning Board recommend approval.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded:

Lorraine Veun, 225 W. Elm Ave. – Ms. Veun, who is a resident of Avent Acres, spoke in opposition to the proposal, pointing out the larger lot sizes of her development would be at odds to the requesting zoning. She said she also is concerned about resulting traffic congestion and noise of higher density development. She said she also is concerned about the unknowns of the specific development of the property.

There being no further input, the public hearing was closed.

Councilman Atwell explained, for the benefit of the audience, that the question of the public hearing was whether the requested zoning was appropriate for the area. He said the Council is prohibited from entertaining specifics about development plans when considering zoning. Later in the process, development plans go through their own vigorous review process, which is when such things as traffic patterns will be examined, he added.

Action #1: The Council approved a motion to approve the following statement: “The requested zone map change from R-15 to R-MF-8 is consistent with the Holly Springs Ten Year Comprehensive Growth Plan (The Village District Area Plan) since the Future Land Use Plan Map indicates this property as Attached Residential Housing. R-MF-8 zoning designation will fit into the area. The requirements allowing for a multi-family zoning will be in conformance with its surroundings.”

Motion By: Dickson

Second By: Atwell

Vote: Unanimous.

Action #2: The Council approved a motion to approve Zone Map Change Petition #07-REZ-08 to change the zoning of 2.13 acres of Wake County PIN # 0648891750, 0648891952, 0648892824, 0648891746, 0648892604 and 0648892798 from R-15: Residential to R-MF-8: Multi Family Residential as submitted by Douglas Ledson.

Motion By: Dickson

Second By: Atwell

Vote: Unanimous.

7d. Public Hearing: Zoning Map Change 07-REZ-09– Mr. Zawadski said that last year, Rezoning Petition #06-REZ-08 included two of the four subject properties and was originally presented to Town Council on June 20, 2006.

He said during that meeting, a number of Council members and adjacent property owners expressed concern about the lack of vehicular access to the property from Holly Springs Road. The applicant indicated that he was under contract for the properties to the north of the site in order to provide vehicular access to the adjacent property that was to be rezoned. The Town Council approved a motion to table the rezoning until Oct. 3, 2006 when the rezoning request was denied because the properties still had not been taken under ownership by the applicant.

He explained that rezoning petition 07-REZ-09 includes the two original properties as well as two additional properties that would help to provide access when the properties are developed. All of these properties are within the corporate limits of Holly Springs and are located near the intersection of Holly

Springs Road and the 55 Bypass.

Mr. Zawadski said the applicant is requesting that a 4.65-acre portion of the larger parcel be rezoned to LB: Local Business and that the remaining 1.92 acres of the property be rezoned to R-8 Residential.

The applicant is requesting that the entire .33 acres of the smaller parcel be rezoned to R-8: Residential and that the remaining two parcels (.82 acres and .88 acres) that front Holly Springs Road and 55 Bypass be rezoned to LB: Local Business.

Mr. Zawadski said the requested R-8: Residential and LB: Local Business zoning designations are compatible with the land use plan and that staff and Planning Board recommend approval.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded:

Kathi Nesbitt, 101 Tuska Hills Drive – Ms. Nesbitt asked if the property was being sold.

Steve Seely, - Mr. Seely, representing the applicant, explained that yes, the applicant has the property up for sale. He said their options are open and that the applicant may also develop the property.

There being no further input, the public hearing was closed.

Action #1: The Council approved a motion to approve the following statement: “The requested zone map change from R-10: Residential and R-20: Residential to LB: Local Business and R-8: Residential is consistent with the Holly Springs 10-Year Comprehensive plan, in that it preserves the Mixed-Use designation for the use of the property.”

Motion By: Womble

Second By: DeBenedetto

Vote: Unanimous.

Action #2: The Council approved a motion to approve Zone Map Change Petition #07-REZ-09 to change the zoning of 4.65 acres of Wake County PIN # 0649-53-4407 from R-20: Residential to LB: Local Business and the remaining 1.92 acres of Wake County PIN # 0649-53-4407 from R-20: Residential to R-8: Residential and .33 acres of Wake County PIN # 0649-53-5735 from R-20: Residential to R-8: Residential and .82 acres of Wake County PIN # 0649-53-4990 from R-10: Residential to LB: Local Business and .88 acres of Wake County PIN # 0649-53-1775 from R-20: Residential to LB: Local Business as submitted by Stephan Seely.

Motion By: Womble

Second By: DeBenedetto

Vote: Unanimous.

7e. Public Hearing: Zoning Map Change 07-REZ-10 – Mr. Zawadski said the Town has received a request for a zone map change for a .39-acre parcel located at the intersection of Avent Ferry Road and NC 55 Bypass. This property is currently zoned R-20: Residential and was originally part of the property located directly across the bypass before the right of way for the road was established. The .39-acre piece that was left over is a nonconforming lot and cannot be developed under any zoning district due to its irregular shape.

He said additionally, a 20-foot undisturbed buffer yard is required when the adjacent property (proposed site of Southpark Village) is developed since it is zoned CB: Community Business, and this property is zoned residential. The proposed rezoning from residential to commercial would eliminate this unnecessary requirement since the property would never develop residentially. The requested zoning district is compatible with the Land Use Plan, which designates this property as Commercial, Mr. Zawadski said, adding that staff and the Planning Board recommend approval.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded: None.

There being no input, the public hearing was closed.

Action #1: The Council approved a motion to approve the following statement: “The requested zone map change from R-20 to CB: Community Business is consistent with the Holly Springs Ten Year Comprehensive Growth Plan since the Future Land Use Plan Map indicates this property as Commercial and the Community Business District permits commercial uses.”

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous.

Action #2: The Council approved a motion to approve Zone Map Change Petition #07-REZ-10 to change the zoning of .39 acres of Wake County PIN # 0648-88-0524 from R-20: Residential to CB: Community Business as submitted by Philip Stephens.

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous.

7f. Public Hearing: Zoning Map Change 07-REZ-11 – Ms. Huffman said the Town has received a request for the rezoning of two parcels located off the corner of Sunset Lake Road and Lassiter Road and across from Phase 2 of the Sunset Lake Commons Shopping Center. The total acreage is approximately 6.25 acres, and both parcels currently are zoned R-10: Residential. The parcels are located in the Northeast Gateway Plan and are designated to be mixed use.

Ms. Huffman said the applicant is asking that the .5 acres fronting Sunset Lake Road be rezoned to LB: Local Business and that the 5.75-acre parcel be rezoned to R-MF-15: Multi-family Residential.

Ms. Huffman said that staff and Planning Board recommend approval. She reported that there were dissenting votes on the Planning Board with two members voting against the recommendation to approve because there would be no transitional zoning between the property and neighboring residential properties.

Councilman Dickson pointed out that, although the adjacent properties are zoned residential, the Holly Springs Road properties in that area are destined to be rezoned and developed commercially in the future.

With that explanation completed, Mayor Sears opened the public hearing to accept input. The following comments were recorded:

Walter Colvin, 5316 Sunset Lake Road – Mr. Coleman asked where a second access to the property would be located.

Councilman VanFossen explained that no development plan had been submitted, and that type of specific detail would be addressed later in the development review process.

There being no further input, the public hearing was closed.

Councilmen Atwell and Dickson said they agreed about the future development of the neighboring properties. Councilman Atwell added that he also feels that higher density properties in proximity to business areas is good planning.

The Council members talked about the merits of R-MF-8 compared to R-MF-15. In the end the Council felt the R-MF-15 zone would not be much denser than an R-MF-8 zone and also would require higher architectural standards.

Action #1: The Council approved a motion to approve the following statement: “The requested zone map change from R-10 to LB and zone map change from R-10 to R-MF-15 is consistent with the Holly Springs 10-Year Comprehensive Growth Plan since the Future Land Use Plan Map indicates this property as Mixed Use.”

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous.

Action #2: The Council approved a motion to approve Zone Map Change Petition #07-REZ-11 to change the zoning of .5 acres of Wake County PIN # 0669-06-5586 from R-10: Residential to LB: Local Business and 5.75 acres of Wake County PIN # 0669-06-4161 from R-10: Residential to R-MF-15 as submitted by Steve O’Neal, Chatham Development Corporation.

Motion By: VanFossen

Second By: Womble

Vote: Unanimous.

7g. Public Hearing: Special Exception Use Petition 07-SEU-03 – Ms. Huffman said the Town has

received a petition for a special exception use on property centrally located in the Arbor Creek Planned Unit Development. The applicant is asking for permission for an in-home daycare that would keep up to nine children. The home is located on a cul-de-sac at 101 Bottlebrush Court.

Ms. Huffman said that staff and Planning Board recommend approval.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony and qualified evidence. Under oath administered by the Town Clerk, the following provided testimony to be recorded: None.

There being no testimony, the public hearing was closed.

Action #1: The Council approved a motion to make and accept the following findings of fact to be recorded in the minutes for Special Exception Use Petition #07-SEU-03 for 101 Bottlebrush to allow for an in-home daycare as submitted by Hadizatu Ingawa, revised 03/ 23/2007:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

Motion By: Atwell

Second By: Dickson

Vote: Unanimous

Action #2: Having made findings of fact that the project meets the requirements to be granted a Special Exception Use, the Council approved a motion to approve Special Exception Use Petition #07-SEU-03 to allow an in-home daycare at 101 Bottlebrush as submitted by Hadizatu Ingawa, revised 03/ 23/2007.

Motion By: Atwell

Second By: VanFossen

Vote: Unanimous

A copy of Special Exception Use application 07-SEU-03 entered into the record by the applicant and addressing the findings of facts is incorporated into these minutes as addendum pages.

7h. Public Hearing: Special Exception Use Petition 07-SEU-04 – Mr. Zawadski reported that the Town has received a request for a Special Exception Use for a pet store to be permitted in the LB: Local

Business zoning district at 5289 Sunset Lake Road within the Sunset Lake Commons Shopping Center. Under the current Unified Development Ordinance, a pet store is permitted in the LB zoning district only as a Special Exception Use.

Mr. Zawadski explained that the applicant proposes to sell mostly pet care dry goods, which is allowed by right in the zoning district. The applicant also proposes to sell a small number of hamsters, small birds and fish, and the sale of these animals would require the granting of a Special Exception Use permit.

Mr. Zawadski said staff feels that this type of pet store would be in compliance with both the Town's 10-Year Comprehensive Plan and the Northeast Gateway Plan. It also would be compatible with existing development and the surrounding area.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony and qualified evidence. Under oath administered by the Town Clerk, the following provided testimony to be recorded: None

There being no testimony, the public hearing was closed.

During Council discussion, members expressed concern that dogs and cats would be among the "small caged animals" that were cited in the application.

Applicant Kevin Meyers was invited to respond outside the realm of the hearing. Mr. Meyers said, no, that the small animals that would be sold would include only hamsters, small birds, hermit crabs and fish and no dogs or cats.

Action #1: The Council approved a motion to make and accept the following findings of fact to be recorded in the minutes for Special Exception Use Petition 07-SEU-04 for 5289 Sunset Lake Road to allow for a Pet Store in the LB: Local Business Zoning District as submitted by Kevin Myers:

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

Motion By: Atwell

Second By: VanFossen

Vote: Unanimous

Action #2: Having made findings of fact that the project meets the requirements to be granted a Special Exception Use, the Council approved a motion to grant Special Exception Use Petition #07-SEU-04 for 5289 Sunset Lake Road as submitted by Kevin Myers, with the following conditions:

1. All additional state and local permits and approvals will be required prior to the business opening.
2. The Industrial Waste short form will need to be submitted within 10 business days of Town Council approval. This form can be found in the Development Petition Packet.

Motion By: Atwell

Second By: VanFossen

Vote: Unanimous

A copy of Special Exception Use application 07-SEU-04 entered into the record by the applicant and addressing the findings of fact is incorporated into these minutes as addendum pages.

7i. Public Hearing: Special Exception Use Petition 07-SEU-05 – Mr. Jones said The Town of Holly Springs proposes to erect a 170-foot reclaimed water elevated storage tank at the corner of New Hill Road and Irving Parkway. This request requires a special exception use and related public hearing. Town projects do not have to go before the Planning Board for a recommendation. In this case, the Town Council will act as a Board of Adjustment as allowed by UDO section 9.01; F.; 6.

Mr. Jones said the reuse water tank would serve as a holding facility for the Town's new reclaimed water program. When this program is up and running, it will be one of the largest reuse programs in the State of North Carolina.

He said the tank would be surrounded by a six-foot-high chain link fence and landscaping. The final design of the tank has yet to be determined, and it would be subject to the Town Council's review and approval.

He said in addition to a special exception use, the Town is requesting two development standard variances regarding structure height and front yard fence height.

With that explanation completed, Mayor Sears opened the public hearing to accept sworn testimony and qualified evidence. Under oath administered by the Town Clerk, the following provided testimony to be recorded: None

There being no testimony, the public hearing was closed.

Action #1: The Council approved a motion to make and accept the following findings of fact to be recorded in the minutes for a variance of UDO Section 2.04, B., 7., a, Maximum Building Height, to allow for a 170-foot-high reclaimed water elevated storage tank as submitted by Davis Martin Powell and Associates for the Town of Holly Springs project number E-3867.

1. The carrying out of the strict letter of the UDO will result in practical difficulties in the development of the property included in the Variance Petition.
2. Approval will observe the spirit of the UDO.
3. Approval will secure public safety and welfare.
4. Approval will provide substantial justice.
5. a. There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands, buildings, or structures in the same district, **or**
b. There is a peculiar characteristic of a proposed use which makes the application of certain development standards of the UDO, as requested in the petition for variance of development standards, unrealistic.
6. Granting the Variance requested will not confer any special privileges that are denied to other owners or residents of the district in which the property is located.
7. A literal interpretation of the provisions of the UDO would deprive the applicant of rights commonly enjoyed by other owners and residents of the district in which the property is located.
8. The requested variance will be in harmony with the purpose and intent of the UDO and will not be injurious to neighbor or to the general welfare.
9. The special circumstances giving rise to the Variance request are not as a result of actions of the Applicant.

10. Variance Requested is the minimum variance that will make possible the legal use of the land, building, or structure.

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous

Action #2: Having made the necessary findings of fact, the Council approved a motion to grant a variance of UDO Section 2.04, B., 7., a, Maximum Building Height, to allow for a 170-foot-high reclaimed water elevated storage tank as submitted by Davis Martin Powell and Associates for the Town of Holly Springs project number E-3867 at the corner of New Hill Road and Irving Parkway on a parcel more particularly described with Wake County PIN(s) 0649-44-3440, 0649-44-4414.

Motion By: VanFossen

Second By: Dickson

Vote: Unanimous

Action #3: The Council approved a motion to make and accept the findings of fact to be recorded in the minutes for a variance of UDO Section 2.08, 3., d., (1) Fences, to allow for a 6-foot-high fence in the front yard adjacent to New Hill Road as submitted by Davis Martin Powell and Associates for the Town of Holly Springs project number E-3867.

1. The carrying out of the strict letter of the UDO will result in practical difficulties in the development of the property included in the Variance Petition.
2. Approval will observe the spirit of the UDO.
3. Approval will secure public safety and welfare.
4. Approval will provide substantial justice.
5. a. There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands, buildings, or structures in the same district, **or**
b. There is a peculiar characteristic of a proposed use which makes the application of certain development standards of the UDO, as requested in the petition for variance of development standards, unrealistic.
6. Granting the Variance requested will not confer any special privileges that are denied to other owners or residents of the district in which the property is located.
7. A literal interpretation of the provisions of the UDO would deprive the applicant of rights commonly enjoyed by other owners and residents of the district in which the property is located.
8. The requested variance will be in harmony with the purpose and intent of the UDO and will not be injurious to neighbor or to the general welfare.
9. The special circumstances giving rise to the Variance request are not as a result of actions of the Applicant.
10. Variance Requested is the minimum variance that will make possible the legal use of the land, building, or structure.

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous

Action #4: Having made the necessary findings of fact, the Council approved a motion to grant a variance of UDO Section 2.08, 3., d., (1) Fences, to allow a 6-foot-high fence in the front yard adjacent to New Hill Road as submitted by Davis Martin Powell and Associates for the Town of Holly Springs project number E-3867.

Motion By: VanFossen

Second By: Dickson

Vote: Unanimous

Action #5: The Council approved a motion to make and accept the following findings of fact to be recorded in the minutes for Special Exception Use Petition 07-SEU-05 to allow the Town of Holly Springs to erect an elevated reclaimed water storage tank at the corner of New Hill Road and Irving Parkway as

submitted by Davis Martin Powell and associates for the Town of Holly Springs project number E-3867.

- a. The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare;
- b. The proposed use will not injure or adversely affect the adjacent area;
- c. The proposed use will be consistent with the character of the district, land uses authorized therein, and the Town of Holly Springs Comprehensive Plan;
- d. The proposed use shall conform to all development standards of the applicable district (unless a waiver of such development standards is requested as part of the special exception use petition and approved as set forth above, in which case the proposed use shall conform to the terms and conditions of such waiver).
- e. Access drives or driveways are or will be sufficient in size and properly located to: ensure automotive and pedestrian safety and convenience, traffic flow as set forth in Section 7.09 – Pedestrian Circulation and Vehicular Area Design; and, control and access in case of fire or other emergency;
- f. Off-street parking areas, off-street loading areas, trash enclosures, trash pick-up and removal, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- g. The lot, building or structure proposed for the use has adequate restroom facilities, cooking facilities, safety equipment (smoke alarms, floatation devices, etc.), or any other service or equipment necessary to provide for the needs of those persons whom may work at, visit or own property nearby to the proposed use;
- h. Utilities, schools, fire, police and other necessary public and private facilities and services will be adequate to handle the needs of the proposed use;
- i. The location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts; and,
- j. The type, size, and intensity of the proposed use (including but not limited to such considerations as the hours of operation and numbers of people who are likely to utilize or be attracted to the use) will not have significant adverse impacts on adjoining properties or the neighborhood.

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous

Action #6: Having made findings of fact that the project meets the requirements to be granted a Special Exception Use, the Council approved a motion to approve Special Exception Use #07-SEU-05 as submitted by Davis Martin Powell and associates for the Town of Holly Springs project number E-3867 with the following condition:

1. Prior to Building Permit elevation must be submitted to Town Council for approval.

Motion By: VanFossen

Second By: Dickson

Vote: Unanimous

A copy of Special Exception Use application 07-SEU-05 entered into the record by the applicant and addressing the findings of facts is incorporated into these minutes as addendum pages.

8. Consent Agenda: The Council approved all items on the Consent Agenda following a motion by Councilman Dickson, a second by Councilman VanFossen and a unanimous vote. The following actions were affected:

8a. Budget Report - The Council received a report of FY 2006-07 budget amendments #118 through #147 approved by the town manager.

8b. Budget Amendment, \$200,000 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$200,000 to allocate funds to cover sanitation contract. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8c. Budget Amendments, \$330,000 and \$90,000 – The Council adopted amendments to the FY 2006-

07 budget in the amount of \$330,000 and \$90,000 to pave Thomas Mill Road and install water line in the Holly Springs Business Park. *Copies of the budget amendments are incorporated into these minutes as addendum pages.*

8d. Budget Amendment \$295,000 - The Council adopted an amendment to the FY 2006-07 budget in the amount of \$295,000 to allocate funding for the Stinson Ave. Phase II project. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8e. Budget Amendment, \$2,575 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$2,575 to allocate interest income to cultural center and fire station renovation project budgets. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8f. Budget Amendments, \$97,600 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$97,600 to reallocate funds to the business park pump station project and wastewater reuse system. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8g. Budget Amendment, \$57,900 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$57,900 to cover unanticipated fire/rescue department expenditures. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8h. Budget amendment, \$59,350 – The Council adopted amendment to the FY 2006-07 budget in the amount of \$59,350 to adjust the fire station project budget to actual expenditures. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8i. Budget Amendment, \$1,725 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$1,725 to accept insurance proceeds for repairs to a water distribution vehicle. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8j. Budget Amendment, \$100,000 – The Council adopted an amendment to the FY 2006-07 budget in the amount of \$100,000 to increase water purchases. *A copy of the budget amendment is incorporated into these minutes as an addendum page.*

8k. Holly Springs Business Infrastructure Grant – The Council authorized the Mayor to execute a grant agreement with the United States Economic Development Administration (EDA) for a \$1 million grant for sewer infrastructure improvements in the Holly Springs Business Park. *A copy of the Economic Development Administration grant is incorporated into these minutes as addendum pages.*

8l. Resolution 07-25 – The Council adopted Resolution 07-25 enacting 07-DPM-01 amending the Development Procedures Manual to add annexation requirement waiver provisions. *A copy of Resolution 07-25 is incorporated into these minutes as an addendum page.*

8m. Resolution 07-26 – The Council adopted Resolution 07-26 to enter into a municipal agreement with NCDOT for the widening of Green Oaks Parkway. *A copy of Resolution 07-26 and NCDOT agreement are incorporated into these minutes as addendum pages.*

8n. Resolution 07-27 – The Council adopted Resolution 07-27 declaring two fire trucks surplus to the needs of the town. *A copy of Resolution 07-27 is incorporated into these minutes as an addendum page.*

9a. Bass Lake Road Sidewalk – Ms. Stephenson said the Town proposes to construct 5,267 linear feet of sidewalk from Earp Street to the Bass Lake Retreat Center. This is an important sidewalk link identified in the Comprehensive Pedestrian Plan as a high priority project.

She said staff and the Technical Review Committee evaluated various options for the sidewalk, including width, material and location (which side of Bass Lake Road) for installation. Staff compared the impacts and costs of 5-foot concrete, 8-foot concrete and 8-foot asphalt sidewalk options and various configurations for installation.

She said because the scope of this project is for sidewalk construction only, rather than a roadway widening of half of the typical roadway cross section, the sidewalk would be installed behind the existing roadway ditch, per NCDOT requirements, and would be designed to minimize easement and construction costs.

Ms. Stephenson said when the road eventually is widened to the ultimate cross section, this sidewalk would need to be relocated when full road widening is done. Designing the sidewalk so that it would not have to be relocated in the future was examined; however, it would significantly increase cost for right of way and construction, she explained.

She said staff and the Technical Review Committee recommend that sidewalk be installed on the south side of Bass Lake Road for the entire length of the project because it has minimal grade changes,

no pedestrian crossing of the road, and fewer obstructions. The TRC also recommends that the sidewalk be of 8-foot-wide concrete.

She said potential utility costs also were discussed. The TRC recommends that if utility relocation expenses result in a significantly increased project cost, that the location and size of the sidewalk be reevaluated. Utility relocation expenses will be more precise once the preliminary sidewalk design is complete.

Councilman Dickson asked if the project could be constructed in a combination of widths and materials. He said his priority would be Phase 1 of the project in order to help pedestrians get to schools and businesses. He said the foot way to the park might not need to be such a big investment.

Mr. Bradley said he looks at the project from a greenway trail viewpoint rather than from a sidewalk viewpoint. He agreed that many materials are used, including asphalt, concrete, mulch, crush and run and grass. He said his preference for Phase 2 of the project would be asphalt.

Action: The Council approved a motion to endorse the Bass Lake Sidewalk Plan with 5-foot-wide concrete sidewalk to be installed on the south side of Bass Lake Road in Phase 1.

Motion By: Dickson

Second By: Atwell

During discussion, arguments were made for 8-foot concrete construction. Councilman Dickson said he could not see the Town's spending an extra \$44,000 for construction that eventually would be torn up.

Vote: The motion failed to carry, following a 3-2 vote. Councilmen Atwell and Dickson voted for the motion. Councilmen DeBenedetto, Womble and VanFossen voted against.

Action: The Council approved a motion to endorse the Bass Lake Sidewalk Plan with 8-foot-wide concrete sidewalk to be installed on the south side of Bass Lake Road in Phase 1.

Motion By: VanFossen

Second By: Atwell

Vote: Unanimous.

In a discussion of Phase 2, Councilman VanFossen said he would prefer the north side of Bass Lake Road. The opposite view was that continuity on the south side would be more desirable.

Councilman Atwell said he would like the material to be as natural as possible and that he would prefer asphalt on Phase 2.

Councilman VanFossen and Mayor Sears said concrete would prove to be more durable against tree roots.

Action: The Council approved a motion to endorse the Bass Lake Sidewalk Plan with 8-foot-wide concrete sidewalk to be installed on the south side of Bass Lake Road in Phase 2.

Motion By: Womble

Second By: DeBenedetto

Vote: The motion carried 3-2. Councilmen VanFossen and Atwell voted against the motion. Councilmen VanFossen and Atwell said they both supported installation of the sidewalk; however, Councilman VanFossen said he was voting against the motion because he preferred the north side of Bass Lake Road. He asked that staff examine the possibility of installing a crosswalk and children crossing signs across Bass Lake Road at Windance.

9b. Parks and Receptions Master Plan – Mr. Bradley said that at the May 15, 2007 Town Council meeting, Design-Based Planning, Inc. presented the Parks and Recreation Master Plan. Comments were requested, and none have been forthcoming. Staff considers the document finalized and requests that the Town Council approve and adopt the plan.

Action: The Council approved a motion to approve and adopt the Parks and Recreation Master Plan as submitted by Design-Based Planning, Inc. for the Town of Holly Springs.

Motion By: Dickson

Second By: VanFossen

Vote: Unanimous.

9c. Progress Energy Encroachment Agreement – Ms. Stephenson said the Town proposes to construct two projects which would encroach onto Progress Energy lands – the Holly Springs Business Park pump station and the Forest Springs outfall, which actually is to be constructed by the developer with fee credits from the Town.

Ms. Stephenson said Town staff has been working with Progress Energy for 18 to 24 months to secure the needed easements for these two projects. The attached draft letters of agreement are part of the package of information that Progress Energy requires before forwarding these easement requests to the North Carolina Utilities Commission.

At this time, Councilman VanFossen asked if he should recuse himself from this vote since the projects would serve the 12 Oaks PUD.

Mr. Schifano said his advice would be that Councilman VanFossen would not need to recuse himself because the sewer system projects would serve those entire areas and not just 12 Oaks.

Action: The Council approved a motion to enter into agreements with Progress Energy, subject to legal and staff review, for property encroachments for the Holly Springs Business Park pump station and Forest Springs outfall projects.

Motion By: Atwell

Second By: DeBenedetto

Vote: Unanimous

A copy of the letters of agreement are incorporated into these minutes as addendum pages.

9d. Code of Ethics and Conduct Policy – Mr. Schifano said Town staff and Council Members had received a document via email from Councilman DeBenedetto, who proposes that the Council consider adoption of it as an “Interim Code of Ethics.” The provisions of the proposal are specific and set out detailed requirements for the reporting of business transactions of elected public officials. Councilman DeBenedetto also proposes that the proposal be enacted retroactively for more than two years, back to March 2005.

Mr. Schifano summarized that he does not believe that Councilman VanFossen and Mayor Sears have violated any laws or ethical standards in their contracted work with Wakefield Development.

That said, he has looked at the sufficiency of the Town’s current Code of Ethics and Conduct in comparison to other municipal codes of ethics and model codes that exist.

He said if the Council was amenable, he would suggest amendments along the following lines to promote disclosure:

1. Define some terms more specifically.
2. To require Council members to state their conflict when requesting motion for recusal.
3. Remove, “pursuant to state law” in contract
4. Leave the table or room
5. Written disclosures of pertinent business relationships

Mr. Schifano added that a requirement in one of the model codes states that a recused member leave the table for open session or the meeting room, if closed session. No other town responding to his survey requires this, and it presents logistical issues.

Mr. Schifano said he did not have any strong feelings about it one way or the other and that it would be up to the Council.

There was much discussion.

Action: The Council approved a motion to amend P-021, Code of Ethics and Conduct for Public Officials, as outlined by the Town Attorney.

Motion By: Atwell

Second By: DeBenedetto

Vote: Unanimous

10. Other Business: None

11. Manager’s Report: None

12. Closed Session: None.

13. Adjournment: There being no further business for the evening, the June 19, 2007, meeting of the Holly Springs Town Council was adjourned following a motion by Councilman Atwell, a second by Councilman Womble and a unanimous vote.

Respectfully Submitted on Tuesday, Sept. 18, 2007.

Joni Powell, CMC, Town Clerk

Addendum pages as referenced in these minutes follow and are a part of the official record.