

**MINUTES
CITY OF DUNN
DUNN, NORTH CAROLINA**

The City Council of the City of Dunn held a Regular Meeting on Tuesday, March 9, 2010, at 7:00 p.m. in the Dunn Municipal Building. Present was Mayor Oscar N. Harris, Mayor Pro Tem N. Carnell Robinson, Council Members Buddy Maness, Bryan Galbreath, Billy Tart, Chuck Turnage and Joey Tart. Also present was City Manager Ronnie Autry, Finance Director Mark Stephens, Police Chief B.P. Jones, Public Works Director Billy Addison, Public Utilities Director Dean Gaster, Planning Director Steven Neuschafer, Chief Building Inspector Mike Blackmon, Recreation Director Perry Hudson, Librarian Mike Williams, City Engineer Ed Powell, City Attorney P. Tilghman Pope, City Clerk Debra West, and Daily Record Reporter Reece Murphy.

INVOCATION

Mayor Harris opened the meeting at 7:00 p.m. and asked Police Chaplain Reverend Roy Johnson to give the invocation. Afterwards, the Pledge of Allegiance was repeated.

AGENDA ADJUSTMENT AND APPROVAL

Motion by Mayor Pro Tem Robinson and seconded by Council Member Joey Tart to adopt the March 9, 2010 meeting agenda with changes, if any, as listed below.

Items Added to the Agenda:

- Approval of Amendment No. 2 to the Agreement for Professional Services between the City of Dunn and Davis-Martin-Powell & Associates, Inc. for the project "2009 Wastewater System Improvements, DMP Project 004223".

Agenda Items Removed:

- none

Motion unanimously approved.

PRESENTATIONS

**Presentation of Advanced Certification
Sergeant Regina Wood Autry**

Mayor Harris and Police Chief Jones presented the Criminal Justice Education and Training Standards Commission Advanced Law Enforcement Certificate to Sergeant Regina Wood Autry.

PUBLIC COMMENT PERIOD

Mayor Harris opened the floor for a (30) minute public comment period.

Mr. Brinson Hunter, 205 Briarcliff Drive, Dunn, NC – He stated that he has been a resident for more than 26 years. He represents all those pets who cannot speak for themselves. He said that a terrible incident occurred on February 16, 2010 when police officers shot a dog. He questioned why police action was taken when this was clearly a job by animal control. Should all pet owners in his subdivision worry that their pets will be shot if they stray for a moment or for a day instead of being picked up by animal control and if such a policy is in place, then it should be changed; why was this animal not tranquilized? This incident should have never occurred and should never be repeated.

Mr. Tom Ferguson, 401 Briarcliff Drive, Dunn, NC – He stated that he has been a resident for 11 years. On his way home from work on February 16th, his daughter called him and was frightened when she saw three Dunn police cars in front of his house. His daughter saw three police officers and one was carrying a rifle. When he arrived, the officers were gone but one of his neighbors met him and said he witnessed a police officer shoot a bulldog. He saw this dead animal in his yard where it remained overnight. His children have asked if the police will shoot their dog should it get out. He questioned why the dog was shot, why didn't

animal control perform a live capture; if euthanization was the intent, why couldn't it have been done elsewhere and why would an animal running through a neighborhood be shot.

Hearing no further comments, the public comment period was closed.

Mayor Harris opened public hearings at 7:12 p.m.

PUBLIC HEARINGS

Rezoning Request PZ-01-10

B & J Properties of Dunn LLC/City of Dunn

PIN #1507-90-7954.000, 1507-91-4098.000,

1507-91-3241.000, 1507-90-5712.000,

1507-90-5623.000

211 W. Cumberland Street

Mayor Harris stated that the public has been notified that oral and written comments will be heard and received concerning the request by B & J Properties of Dunn LLC and the City of Dunn to rezone five (5) parcels of land, totaling 9.86 acres +/-, located at 211 W. Cumberland Street.

These properties are currently zoned TR-CW: Transitional Commercial Warehouse District, C-2: Shopping Center District, and I-10: Industrial District and is requested to be rezoned to C-3: Highway Commercial District.

The public hearing was duly advertised on February 16, 2010 and February 23, 2010.

Mayor Harris asked if there was anyone present to speak for or against this rezoning request.

Council Member Joey Tart recused himself from deliberation and decision of this matter due to his own personal conflict of interest because he is part owner of this property. It was the consensus of the Council to excuse Mr. Tart from discussion and vote.

Hearing no further comments, Mayor Harris closed the public hearing.

Conditional Use Permit CU-01-10

Carolina Discount Drug Store LLC

PIN #1506-97-5492.000

741 Tilghman Drive

Mayor Harris stated that this is a request for a Conditional Use Permit [Zoning Ordinance Article IX Section 22-461 (9) a.] from Carolina Discount Drug Store LLC (applicant). The conditional use will allow for the operation of an apothecary at 741 Tilghman Drive.

This request is for the purpose of operating an apothecary. According to the applicant, the apothecary will sell strictly medical related supplies and fill prescriptions. There are mostly office and medical facilities around this property.

This Public Hearing is an opportunity for the Council to hear **sworn** testimony and receive specific evidence from the public to include any party for or against the request. During the deliberation for decision questions may only be asked to clarify previous testimony.

The public hearing was duly advertised on February 16th & 23rd, 2010.

Mayor Harris yielded to City Attorney Pope.

City Attorney Pope introduced CU 01-10 a request by Carolina Discount Drug Store LLC for the issuance of a conditional use permit to allow for the operation of an apothecary at 741 Tilghman Drive. The hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards.

Attorney Pope asked that all persons who wish to testify in this case, approach the podium to be sworn or give their affirmation.

Swearing-In:

City Attorney Pope administered oaths to:

City Planner Steven Neuschafer

Applicant Larry Luso, 3032 Austin Dr., Garner, NC 27529

Explanation of Proceeding

Attorney Pope explained that testimony will first be given by City Planner Steven Neuschafer, then from the applicant and their witnesses, and then from opponents to the request. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Council to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. Reports from persons who are not present to testify will not be accepted. Attorneys who speak should not give factual testimony but may summarize their client's case. Before beginning your testimony, please clearly identify yourself for the record.

City Attorney Pope opened the hearing on Case #CU 01-10 Conditional Use Permit Application and asked for testimony from Planning Director Steven Neuschafer.

Testimony from the Planner

Planner Neuschafer asked that the documents contained behind tab #11 in the City Council packet which includes the conditional use application, Planning Department staff report, statement of justification from the applicant and a map of the property be entered as evidence. *(A copy of these documents entered as evidence for Case #CU 01-10 Conditional Use Permit is incorporated into these minutes as Attachment #1)*

Mr. Neuschafer explained that the Planning Board met February 23, 2010 and recommended unanimously to approve this conditional use permit.

At the end of the City Planner's testimony, Attorney Pope asked if there were any questions of the City Planner.

None were heard.

Attorney Pope asked if there were questions of the City Planner from any opponent/proponent. None were heard.

Attorney Pope asked for testimony from the Applicant/Proponents

Mr. Lawrence spoke in support of the apothecary. He stated that the Planning Board supports this conditional use and entertained any questions from the Council.

Attorney Pope asked the Council if they had any questions of the applicant/proponents.

Council Member Turnage inquired as to the number of individuals which will be employed. Mr. Luso responded three to five.

Council Member Joey Tart asked about the ownership of this property. Mr. Luso responded that information is contained within the application proposed to the Planning Board.

City Attorney Pope entertained questions from other parties for the applicant/proponents. None were heard.

Testimony from Opponents

No one spoke in opposition of the request.

Attorney Pope entertained further questions from the City Council members for the applicant, proponents, opponents, or for the planner or other sworn persons. He explained that once the public hearing is closed, the only questions that the Council may pose to the applicant, proponents or opponents shall be for clarification. No new evidence can be introduced after closing the public hearing. Any additional

conditions that the Council wishes to consider to place upon the use of the land by the applicant, must ask the applicant if he/she will voluntarily place the condition upon his/her property at this time.

With no further testimony, a motion was made by Council Member Billy Tart and seconded by Council Member Turnage to close the public hearing for CU-01-10 at 7:20 p.m. **Motion unanimously approved.**

Rezoning Request PZ-02-10

Larry Hardison/My Three Sons Investments Holding Company

PIN #1516-76-0029.000

206 S. Elm Avenue

Mayor Harris stated that the public has been notified that oral and written comments will be heard and received concerning the request by Larry Hardison/My Three Sons Investments Holding Company to rezone a parcel of land, totaling .24 acres +/-, located at 206 S. Elm Avenue.

This property is currently zoned R-7; Single-Family Dwelling District and is requested to be rezoned to C-3; Highway Commercial District.

The public hearing was duly advertised on February 16th & 23rd, 2010.

Mayor Harris asked if there was anyone present to speak for or against this rezoning request.

Hearing no further comments, Mayor Harris closed public hearings at 7:22 p.m. and reconvened the regular meeting.

CONSENT ITEMS

Minutes – Council considered approval of minutes of the February 5, 2010 Budget Retreat/Planning Session.

Minutes - Council considered approval of minutes of the February 9, 2010 Council meeting.

Tax Releases/Refunds – Council considered approval of Tax Releases/Refunds #254 - #262. *Copies of Tax Releases/Refunds are filed in the office of the Tax Collector.*

Motion by Council Member Joey Tart and seconded by Council Member Maness to approve all consent items. **Motion unanimously approved.**

ITEMS FOR DECISION

Rezoning Request PZ-01-10

B & J Properties of Dunn LLC/City of Dunn

PIN #1507-90-7954.000, 1507-91-4098.000,

1507-91-3241.000, 1507-90-5712.000,

1507-90-5623.000

211 W. Cumberland Street

Manager Autry stated that this is a request to rezone five (5) parcels of land totaling 9.86± acres, located at 211 W. Cumberland Street. These properties are currently zoned TR-CW: Transitional Commercial Warehouse District, C-2: Shopping Center District, and I-10: Industrial District and is requested to be rezoned to C-3; Highway Commercial District.

The Planning Board met on February 23, 2010, to review the request and ask for comments from the public. After hearing comments from the public and the request from the applicant, the Planning Board recommended unanimously to approve this request.

Motion by Council Member Maness and seconded by Council Member Turnage to approve the request from B & J Properties of Dunn LLC/City of Dunn to rezone five (5) parcels of land (PIN #1507-90-

7954.000, 1507-91-4098.000, 1507-91-3241.000, 1507-90-5712.000, 1507-90-5623) totaling 9.86± acres and located at 211 W. Cumberland Street from TR-CW: Transitional Commercial Warehouse District, C-2: Shopping Center District, and I-10: Industrial District to C-3; Highway Commercial District based on the following justification:

- 1) The City of Dunn Land Use Plan identifies this area as a mix of commercial and office use on the future land use map. This property is located in area four of the Land Use Plan.
- 2) The amendment is not inconsistent with the surrounding land uses which are both (mixed commercial and office uses) in this area.
- 3) The permitted uses in the C-3 District are not considered detrimental to the area and would be beneficial to the entire community.

Motion unanimously approved.

(Council Member Joey Tart abstained due to a personal conflict of interest-He is part owner of this property)

(Clerk's Note: NCGS 160A-75 states that no member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct)

**Conditional Use Permit CU-01-10
Carolina Discount Drug Store LLC
PIN #1506-97-5492.000
741 Tilghman Drive**

This request is for the operation of an apothecary at 741 Tilghman Drive.

This property is currently zoned O & I; Office & Institutional District.

The Planning Board met on February 23, 2010, reviewed the request and asked for comments from the public. After hearing comments from the public and the request from the applicant, the Planning Board recommended unanimously to approve this request.

Motion by Council Member Joey Tart and seconded by Council Member Galbreath to approve CU-01-10 based on the following findings of fact:

1. The use requested is listed among the conditional uses in the district for which the application is made. *Per the zoning ordinance Article IX Division 1 Section 22-461 (9) a, the Conditional Use is listed in the ordinance.*
2. The requested use is essential or desirable to the public convenience or welfare. *There has been no opposition received regarding this request; therefore, with the absence of concerns to the contrary, the requested use is considered desirable to the surrounding community.*
3. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor be detrimental to the health, morals, or welfare. *There will not be direct impact to the adjacent area due to the fact that there are similar type businesses surrounding this property; therefore, the operation of an apothecary would not be detrimental to the area.*
4. The requested use will be in conformity with the land development plan. *The location of this request is surrounded by the office & institutional district along an average thoroughfare; the issuance of this permit will be appropriate with the anticipated growth pattern of future medical and institutional identified in area four of the 2030 Land Use Plan.*
5. Adequate utilities, access roads, drainage, sanitation, and other necessary facilities have been or are being provided. *All facilities are available at this location which is currently a vacant building.*

Motion unanimously approved.

Rezoning Request PZ-02-10
Larry Hardison/My Three Sons Investments Holding Company
PIN #1516-76-0029.000
206 S. Elm Avenue

This is a request to rezone a parcel of land totaling .24± acres, located at 206 S. Elm Avenue. This property is currently zoned R-7; Single Family Dwelling District and is requested to be rezoned to C-3; Highway Commercial District.

The Planning Board met on February 23, 2010, to review the request and ask for comments from the public. After hearing comments from the public and the request from the applicant, the Planning Board recommended unanimously to approve this request.

Motion by Council Member Billy Tart and seconded by Council Member Maness to approve the request from Larry Hardison/My Three Sons Investments Holding Company to rezone a parcel of land (PIN #1516-76-0029.000) totaling .24± acres and located at 206 S. Elm Avenue from R-7; Single Family Dwelling District to C-3; Highway Commercial District based on the following justification:

- 1) The City of Dunn Land Use Plan identifies this area as a mix of commercial and residential use on the future land use map. This property is located in area three of the Land Use Plan. This property is along a major commercial corridor.
- 2) The amendment is not inconsistent with the surrounding land uses which are both (mixed commercial and residential) in this area.
- 3) The permitted uses in the C-3 District are not considered detrimental to the area and would be beneficial to the entire community.

Motion unanimously approved.

Consideration of Resolution
To Award Bids
2009 Wastewater System Improvements

City Engineer Ed Powell of Davis-Martin-Powell & Associates, Inc. (DMP) explained that bids were received and opened on Thursday, February 25, 2010 for the project 2009 Wastewater System Improvements. Separate bids were received for each of the three segments of this project and the results are as follows:

Gravity Sewer Rehabilitation and Replacement – A total of seven (7) bids were received and opened. The three lowest bids are as follows:

- H.G. Reynolds Co., Henderson, NC \$812,045.00
- RF Shinn Contractor, Concord, NC \$908,445.00
- T.A. Loving Co., Goldsboro, NC \$955,305.00

(Recommendation by DMP to tentatively award a contract to H.G. Reynolds Co. in the amount of \$812,045.00 contingent upon approval by Construction Grants and Loans Division)

City's Pumping Station and Forcemain Upgrade-A total of eleven (11) bids were received and opened. The three lowest bids are as follows:

- Seaside Environmental, Raleigh, NC \$1,642,000.00
- Ralph Hodge Co., Wilson, NC \$1,736,895.85
- Hall Contracting, Charlotte, NC \$1,833,236.00

(Recommendation by DMP to tentatively award a contract to Seaside Environmental in the amount of \$1,642,000.00 contingent upon approval by Construction Grants and Loans Division)

Wastewater Treatment Plant Upgrade-A total of eight (8) bids were received and opened. The three lowest bids are as follows:

- State Utility Contractors, Monroe, NC \$4,585,000.00
- Seaside Environmental, Raleigh, NC \$4,985,800.00

- Haren Construction, Etowah, TN \$5,035,000.00

(Recommendation by DMP to tentatively award a contract to State Utility Contractors in the amount of \$4,585,000.00 contingent upon approval by Construction Grants and Loans Division)

City Engineer Powell stated that he was pleased to report that the total overall project cost was projected at 10.5 million; however, the bids were submitted below projections, at a cost savings of approximately 1.9 million. Approximately 4M has been secured in grants (CWMTF @ \$2.95M and Rural Center @ \$1M) with the remainder financed for 20 years at a low interest 2.1% loan from Construction Grants and Loans Division.

Motion by Council Member Galbreath and seconded by Council Member Turnage to adopt the formal resolution to award contracts to the lowest responsible bidder for each project of the 2009 Wastewater System Improvements as recommended by DMP. **Motion unanimously approved.** *A copy of Resolution (R2010-04) to award contracts to the three lowest bidders as recommended by DMP is incorporated into these minutes as Attachment #2.*

Acceptance of PAL Mentor Coordinator Grant from National Association of Police Athletic/Activities League

Manager Autry explained that this is a request to accept the PAL Mentor Coordinator Grant from National Association of Police Athletic/Activities League, Inc.

This grant is to hire a full-time Mentor Coordinator for 13 months at \$9.00 per hour to recruit Mentors and Mentees (Youth) and connect them together to help the youth and reduce juvenile crime. Total grant amount is \$23,302.00 which includes the coordinator position, training and training materials. Position \$18,720.00, FICA \$1,431.00, Travel \$2,851.00 and training supplies \$300.00.

This is a no match grant.

Motion by Council Member Galbreath and seconded by Council Member Maness to accept the PAL Mentor Coordinator Grant from National Association of Police Athletic/Activities League. **Motion unanimously approved.**

Curbside Recycling Contract/ Amendment to Solid Waste Contract

Manager Autry explained that this is a proposed contract for residential curbside recycling at \$3.05 per household per month for every other week service with a 65 gallon roll-out cart provided by Republic Waste Services as well as an amendment to the existing solid waste contract to coincide with the curbside recycling contract – both contracts expiring June 30, 2015.

Mayor Harris pointed out that within the contract, the waste hauler (Republic Waste) should state to the City, that they will abide by all rules and regulations set out by the State of NC with reference to recycling and to develop a policy to address residents that are non-compliant with recycling.

Mr. Autry stated that with the implementation of the plastic ban imposed by the State in October, 2009, the State is not aggressively enforcing the issue at this time so Republic does not have any contracts that gives a hold harmless agreement or with that type of wording; however, in the future, something could be forthcoming and the City could talk with them at that time. He added that at this time, the State is asking residents to voluntarily recycle and are encouraging municipalities to implement curbside recycling. He explained that if the waste hauler is caught dumping co-mingled material at a normal landfill site, that hauler can be cited by the State and it is their responsibility to investigate where the co-mingled material came from.

Mayor Harris asked Attorney Pope if this contract could be approved with a clause that Republic would include a process whereby the contractor will notify the City of residents that are non-compliant with the recycling process. Attorney Pope responded that the Council cannot approve a contract contingent upon there being something added to it in the future until both parties have negotiated language that would be

inclusive. He added the Council could approve the contract and direct the City Manager that it is the desire of the City Council to try to work out such an arrangement or policy with the contractor. The contractor will not start performing on a contract contingent upon something being decided in the future.

Mr. Pope stated that the City Manager spoke with the contractor with regard to the City's request for such language and they do not presently include it in any of their contracts. The contract could always be amended in the future.

Mayor Harris asked City Attorney Pope if the Council could approve the contract as it is written subject to the Mayor, City Manager and City Attorney negotiating with the contractor for the sole purpose of these two particular clauses in the contract being acceptable to the City. Attorney Pope responded that could be done if the Council gave authority to the Mayor, Manager and himself to accept agreeable terms as it relates to those conditions if that is the wish of the Council.

Council Member Galbreath stated that he was not comfortable with the Mayor, Manager and City Attorney negotiating the contract without bringing it back to the Council.

Council Member Turnage stated that if the waste hauler violates the state statute, then the hauler would be held responsible and it is incumbent upon the contractor to bring this issue back to the City if they find a number of citizens not complying with recycling. There is already a process in place.

Council Member Maness suggested that they approve the contract as presented and negotiate working out an amendment to the contract if it is deemed to be necessary to accomplish the policy issues concerning the Mayor. He does not want to delay approving the contract.

Council Member Joey Tart pointed out that state requirements would be stringent enough for the waste hauler to abide.

Mayor Harris pointed out that once the Council approves the contract, then the contractor is not obligated to amend it.

Council Member Turnage stated that the Council should focus on educating citizens to know what they can or cannot put in the recycling containers. It was suggested that educational material be distributed to the residents via the monthly water bill and through the local media.

Further discussion was held about the City having the capability to adopt policies which address the concerns of the Mayor. Mayor Harris pointed out that the contractor is under no obligation to amend the contract once approved.

Motion by Council Member Turnage and seconded by Council Member Maness to approve the residential curbside recycling contract and amendment to the solid waste contract between the City of Dunn and Republic Waste Services beginning May 1, 2010 and ending June 30, 2015. **Motion unanimously approved.** *A copy of the agreement for collection and disposal for residential solid waste, recyclables & certain commercial solid waste between the City of Dunn and Republic Waste Services is incorporated into these minutes as Attachment #3.*

**Amend City of Dunn Fee Schedule
By Adding Residential Curbside
Recycling Fee**

Motion by Council Member Maness and seconded by Council Member Joey Tart to amend the City of Dunn fee schedule by adding residential curbside recycling at \$3.05 per month effective May 1, 2010. **Motion unanimously approved.** *A copy of the amendment to the City of Dunn FY 09-10 Fee Schedule is incorporated into these minutes as Attachment #4.*

ITEMS FOR DISCUSSION AND/OR DECISION

Financial Report

Finance Director Mark Stephens provided the following financial update to the Council:

- The City as of January 31, 2010 had \$3,083,873 cash in the General Fund and \$1.9M cash in the Water/Sewer Fund.
- Investment earnings are in the .35% - 0.0% range.
- Building Permit Fees were \$38,001 or 58.46% of budget. The City should be at 58.33% of budget.
- The Sales Tax Revenue for January was \$509,598 or 35.89% of budget. The City should be at 41.67% of budget.
- Water and sewer revenues were \$2.4M or 59.38% of budget. The City should be at 58.33% of budget.
- Fuel cost per gallon was \$1.92 in January.
- Property taxes collected as of January 31, 2010 were 91.89% of budget. Same period last year, the City had collected 88.42% of budget.
- Expenditures were 56.91% of budget in the general fund and 51.21% in water/sewer fund. The benchmark for this period is 58.33%.

ADMINISTRATIVE REPORTS

Motion by Council Member Galbreath and seconded by Council Member Billy Tart to approve the Administrative Reports. **Motion unanimously approved.**

ITEMS FOR DECISION (continued)

Approval of Amendment No. 2 to the Agreement for Professional Services between the City of Dunn and Davis-Martin-Powell & Associates, Inc. for the project 2009 Wastewater System Improvements DMP Project 004223

Motion by Council Member Maness and seconded by Council Member Joey Tart to approve Amendment No. 2. **Motion unanimously approved.** *A copy of Amendment No. 2 to the agreement for Professional Services between the City of Dunn and DMP for the project 2009 Wastewater System Improvements is incorporated into these minutes as Attachment #5.*

ANNOUNCEMENTS

The following announcements and/or comments were made.

Mayor Harris

- City of Dunn offices will be closed Friday, April 2, 2010 in observance of Good Friday.
- The next City Council meeting will be held on Tuesday, April 13, 2010.
- Reminded the Council members to mark their calendar for the Ethics Training class offered by the NCLM on Tuesday, April 20th from 1:15-3:30 pm in the Smithfield Recreation & Aquatics Center
- Mid-Carolina Senior games will be held from April 14th – 29th, 2010 at Pope Air Force Base.

Mayor Pro Tem Robinson

- Reminded citizens of the 2010 census and the importance of being counted.

Council Member Turnage

- Offered condolences on behalf of the City Council, to the Dafford family in the loss of Mrs. Fannie Dafford.

CLOSED SESSION

8:09 p.m. - Motion by Mayor Pro Tem Robinson and seconded by Council Member Joey Tart to enter closed session pursuant to N.C.G.S. 143-318.11(a)(3) to consult with the City Attorney about legal contracts. **Motion unanimously approved.**

Closed Session adjourned at 9:15 p.m. and Council reconvened the regular meeting at 9:16 p.m.

Motion by Council Member Billy Tart and seconded by Council Member Maness to approve the minutes of the closed session as recorded by City Attorney Pope. **Motion unanimously approved.**

With no further business to discuss, a motion was made by Council Member Billy Tart and seconded by Council Member Maness to adjourn the meeting at 9:17 p.m. **Motion unanimously approved.**

Oscar N. Harris
Mayor

Attest:

Debra G. West
City Clerk