



**OAK RIDGE TOWN COUNCIL MEETING
JUNE 2, 2016 - 7:00 P.M.
OAK RIDGE TOWN HALL**

MINUTES

Members Present

Spencer Sullivan, Mayor
George McClellan, Mayor Pro Tem
Jim Kinneman
Mike Stone
Doug Nodine

Staff Present

Michael Thomas, Town Attorney
Bill Bruce, Planning Director
Bruce Oakley, Town Manager
Sam Anders, Finance Officer
Sandra Smith, Town Clerk

1. CALL TO ORDER

Mayor Spencer Sullivan called the meeting to order at 7:00 p.m.

A. Invocation.

The invocation was given by Rev. Andy Cook of The Summit Church-Oak Ridge.

B. Pledge of Allegiance.

2. APPROVE AGENDA

Councilman Jim Kinneman made a **motion** to approve the meeting agenda. **Mayor Pro Tem George McClellan** seconded the motion, and it was passed unanimously (5-0).

3. APPROVE MINUTES OF THE APRIL 19, 2016 SPECIAL MEETING, MAY 5, 2015 REGULAR MEETING, AND MAY 5, 2016 CLOSED SESSION

Mayor Pro Tem McClellan made a **motion** to approve the three sets of meeting minutes. **Councilman Kinneman** seconded the motion, and it was passed unanimously (5-0).

4. RESOLUTIONS, PROCLAMATIONS, ANNOUNCEMENTS

None

5. REPORT FROM GUILFORD COUNTY SHERIFF'S OFFICE

Sgt. League reported there had been two crimes reported in Oak Ridge in the previous month. He reminded attendees to call the sheriff's office if they see anything suspicious, and to keep their doors locked.

6. REPORT FROM OAK RIDGE FIRE DEPARTMENT

Chief Steve Simmons said in May the fire department received 56 calls (26 fire/service related, 29 medical,) and personnel received 272 hours of training. As fire safety tips, Simmons advised residents to keep the lid open when lighting a gas grill and to never leave a lit grill unattended.

7. TOWN MANAGER'S REPORT

A. Bids for sidewalk construction.

Town Manager Bruce Oakley announced that bids had been requested for construction of the sidewalk along Oak Ridge Road from Linville Road to Oak Ridge Commons, but he had still not received enough responses. He said a special meeting might need to be called to approve a bid.

B. Animal control/animal services contract.

Oakley presented the animal control/animal services contract for a 5-year renewal from Guilford County. Oakley said there were no changes from the previous contract, and that the rate is based on population.

Mayor Pro Tem McClellan made a **motion** to approve the agreement. **Councilman Doug Nodine** seconded the motion, it was passed unanimously (5-0).

C. Recognition of volunteer.

Oakley said Parks & Recreation Commission chair Bill Edwards had submitted a letter of resignation. Oakley commended Edwards on his hard work over the last 10 years, and said he was a big reason the park is as nice as it is.

Mayor Sullivan called Edwards to the podium, where he read and presented the following proclamation:

PROCLAMATION

WHEREAS, the Town Council of the Town of Oak Ridge, North Carolina, wishes to acknowledge and express appreciation to **William H. Edwards** for his dedicated service to the citizens of Oak Ridge as a member and chairman of the Oak Ridge Parks & Recreation Commission from 2006 to 2016; and

WHEREAS, as a member of the Parks & Recreation Commission, he has reviewed and deliberated all matters, facts and proposals presented before the Commission and has taken a firm position with regard thereto; and

WHEREAS, through his leadership on the Parks & Recreation Commission, he has sought continuously to make this community a better place to live, work and play through his judicious concern for the establishment of and additions to the Oak Ridge Town Park and for his advocacy on behalf of the park.

NOW, THEREFORE, by virtue of the authority vested in me as Mayor of the Town of Oak Ridge, North Carolina, I do hereby deem it an honor and a privilege to express deep gratitude and sincere appreciation to **William H. Edwards** for his leadership and dedicated service to the Oak Ridge community.

BE IT FUTHER RESOLVED, that a copy of this proclamation be recorded in the permanent minutes of the Town of Oak Ridge, and a copy thereof, duly executed by the Mayor, be presented to **William H. Edwards**.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the Town of Oak Ridge to be affixed this 2nd day of June, 2016.

8. PUBLIC HEARINGS

- A. **Text Amendment.** Amendments proposed to Chapter 30 of the Oak Ridge Code of Ordinances to implement recommendations of the adopted Oak Ridge Future Land Use Plan Update, to ensure compliance with state statutes, and to modernize and correct inconsistencies. Proposed amendments include but are not exclusive of Article IV Division 2 Planning and Zoning Board, Article VII Zoning (to revise Rural Preservation District and Rural Multifamily District, and create a new Town Core-Residential District), Section 30-111 Establishment of Official Zoning Map, Section 30-301 Zoning map and text amendments, Section 30-302 Conditional use districts and special use permits, and Section 30-700 Assurance of completion of improvements.

Mayor Sullivan said the item was continued from the May 5, 2016 meeting. The public hearing portion of the meeting had been completed, and the Council could continue with its deliberations.

Planning Director Bill Bruce presented the staff report, which is hereby incorporated by reference and made a part of the minutes. Bruce said he had attempted to address the concerns Council members had expressed at the last meeting, and that he had made several revisions to the proposed text amendment based on those concerns. Bruce said he was happy to answer any questions from the Council.

Mayor Sullivan said the Council members had received both Bruce's staff report and a revised copy of the text amendments.

Councilman Stone asked about the text amendment regarding community outreach on page 4, under 30-301(b)(4) and whether the wording should contain the word "shall" or "should." Bruce said he thought the proper word was "should," based on the town attorney's concern about exceeding state statute. He said using the word "shall" leaves it up to the developer whether or not to follow. He said at some point, using the word "should" might mean that a developer does not have to do any outreach. Bruce said he would strongly encourage developers to reach out to neighbors.

Councilman Kinneman made a **motion** to approve the text amended as revised and presented. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (5-0).

B. 2016-17 Fiscal Year Budget.

Mayor Sullivan announced this would be the second public hearing on the budget, since the first one was held at the Town Council meeting in May.

Finance Committee chairman John Jenkins said the committee had spent a good deal of time working on the budget, which would add \$258,000 to the fund balance if approved. He said the budget had been vetted extensively, and he was pleased to present it to the Council.

Mayor Sullivan opened the public hearing.

Proponents:

Ann Schneider, chair of the Historic Preservation Commission, said she had contributed to the budget process, and that she saw the level of scrutiny the Finance Committee had given to the budget. She said she believed the budget was prudent, community minded, and fiscally conservative, and that she supported it.

Micah Spencer, a member of the Parks & Recreation Commission, said he thought that the budget was a good one, and that he endorsed it. He suggested the Council allocate some funds in the future for a permanent sound system in the amphitheater.

Opponents:

None

The public hearing was closed.

Council comments/questions:

Councilman Kinneman explained that the Town was increasing the fund balance this year because it had used the fund balance to pay off the debt on the park last year. He said he thought it was prudent to be cautious about not reducing the fund balance further this year, but said the Council should look at the issue more closely next year.

Mayor Pro Tem McClellan said he was impressed with the conservative budget with no tax increase. He said next year he would like for the Council to hold a budget workshop to review short-term and long-term goals and perhaps consider a tax reduction.

Councilman Stone said he was frustrated with the budget process, and although he wanted a tax decrease this year, he knew he did not have enough votes of Council members to achieve that now. He said it was a conservative budget and he would support it this year.

Councilman Nodine encouraged an early workshop next year so the Council could give direction to the Finance Committee. He suggested doing a 5-year

capital budget each year, and said he would like to see the fund balance addressed and possibly taxes lowered next year.

Mayor Sullivan said the Council was looking at creating a more proactive approach next year. He said the Town was in an enviable financial position with a positive fund balance. He said some Council members were talking like a tax decrease had never been considered, but that it was a part of the Finance Committee's job every year. With the solid financial position, growing tax base and efficient, effective government, Sullivan said he thought a tax decrease could likely be afforded next year.

Mayor Pro Tem McClellan made a **motion** to approve the budget as presented. **Councilman Kinneman** seconded the motion, and it was passed unanimously (5-0).

9. NEW BUSINESS

Hearing of CMT Commons' civil penalty settlement offer.

Sullivan said a representative of CMT Commons had accepted the Council's invitation to come and address the Council.

Attorney Jeff Olyenik addressed the Council on behalf of his client. He said he understood the issues with them revolved around 12 items the HPC had said were not in compliance; by the time the lawsuit filed was heard by a judge, all but three items were resolved. He and representatives of CMT Commons had met with the HPC informally and had been able to resolve those issues as well. Olyenik said he had understood that if those items were addressed, staff would recommend to the Council to drop the civil penalties that had been imposed. He said thought he had made the point clear that if a compromise was reached and the work completed, the issue would be over, but now it appears the Town did not have that same understanding. He said on October 4, he received an email from Town Attorney Michael Thomas saying the Town Manager had agreed the work had been completed. Then in November, he said the Town filed suit to collect the civil penalties.

Olyenik said his clients had always tried and thought they were in compliance, and he believed they were in compliance now and that a deal had been reached with the Town. He said if the penalties are paid, most of the money should go into the County education fund, so the County had to be a party to the lawsuit. He said he had asked the Town many times for another meeting or formal mediation, but the Town had refused. Olyenik said his clients had now made a settlement proposal. Although there was some issue about whether the Town could retain 10 percent or 20 percent of what was collected, he thought that amount was 10 percent. Out of the nearly \$30,000 fine, he believed the Town could keep 10 percent or about \$3,000, so that was the amount his clients had offered to pay. Olyenik said the dictionary says a penalty is a fine or a monetary amount assessed to punish someone who is noncompliant – someone who had thumbed their noses at the Town. He said he had seen nothing to indicate CMT Commons had not tried to find a solution, and he could see no bad behavior on their part so there was nothing to punish. He said he was appearing before the Council to ask that the penalty be abated, or that the Town Council accept the settlement offer.

Kinneman said there had been many opportunities with deadlines for CMT Commons to offer alternatives, and they had thumbed their noses at the process. He said the request Olyenik was making should have been done when CMT Commons had the official opportunity. Kinneman said he had been on the Council when the property was rezoned for a fitness center and he had specifically asked if they wanted to request any other use, and they said no. He said CMT Commons was now renting out their facility for non-fitness business, that they knew those uses were not allowed with their zoning, and that they continue to flagrantly thumb their noses at the Town's ordinances. Regarding CMT Commons' offer, Kinneman said the Town still would have to give at least 80 percent to the school system, regardless of the amount collected. He said the issue had never been about the money to him, and that he was incredulous that Olyenik did not see that. He said CMT Commons representatives had been disrespectful to staff and members of various Town boards, and if the matter were left up to him he would be happy to give all the money to the school system.

Olyenik said he had never heard anything about CMT Commons being out of compliance with its zoning, and he was not aware of any Notices of Violation being issued. He said CMT Commons was not thumbing their noses at the Town, but they and the Town just had differing opinions. He again said Thomas had said in the informal meeting with HPC that if the work was done, he would make a recommendation for no penalties. He said the next thing he knew, the Town was filing a lawsuit for payment of the penalties.

Kinneman said by continuing to violate or ignore the Town's ordinances in general, CMT Commons was basically thumbing its nose at the Town. He said the civil penalty was to penalize bad behavior, and CMT Commons had displayed bad behavior.

Olyenik said one of the penalties assessed was for CMT Commons' failure to leave the property. He asked if the Council expected CMT Commons to shut down their business. He said the other fine was for signage that had been approved by the County, but HPC said that was not what it wanted.

McClellan said he thought the penalties were based on flagrant bad behavior. He referred to the resolution the Town Council passed in September 2015, which said CMT Commons had appeared before various Town boards in 27 public meetings including four Planning & Zoning Board meetings, five Town Council meetings, 14 HPC meetings, and four Board of Adjustment meetings. McClellan said he was bound to uphold laws, statutes and ordinances, and that violations mean consequences. Of the offer to pay 10 percent of the civil penalty, McClellan called it a slap in the face.

Olyenik said consequences should be imposed when someone had made no effort. He said he was not at most of the meetings involving CMT Commons, so could not tell how anyone had acted except at the last three meetings. McClellan responded that the issues had been going on a long time, and the remedy here was for CMT Commons to pay the fine.

Councilman Stone said when the issues with CMT Commons first arose, he had been a member of the Planning & Zoning Board. He said he had a problem when one of the owners of CMT Commons called and threatened him, and yet he was expected to

maintain a certain level of decorum. He said he had received no apology, and asked if that was bad behavior; Olyenik said he was not there, but if someone had called Stone on his personal phone and was not courteous, that would not be proper behavior. Stone said it had been several years with no apology offered. He said work on the sign – which did not comply with the ordinance – began before a permit was issued. He asked Olyenik if that was bad behavior, and Olyenik said the County had said it did comply. Stone said the rendering presented to the Town did not look like what CMT Commons had built, yet those things had been worked through. He said he was seeing a pattern of unwillingness to comply with the ordinance; he asked Olyenik if he was aware of any activities by CMT Commons that do not comply with their zoning, and Olyenik said no. Olyenik said if no one ever notified CMT Commons that their activities violate the permitted use and they continue that behavior, there needed to be an explanation. Oakley said there had been at least one or two, and maybe more, informal courtesy notices, such as for a boxing match and renting the facility out for concerts and birthday parties.

Stone agreed that the issue was not about the amount of money the Town would collect, but more about the bad behavior that will be seen by the others in the Town. He said if the Council does not enforce the Town's ordinances in this instance, it would be difficult to enforce it any other time. Stone said he expected to see some contrition on the part of CMT Commons. He said he did not see a settlement offer of 10 percent and CMT Commons' you-leave-us-alone-and-we'll-keep-doing-what-the-hell-we-please attitude as an offer.

Olyenik said Chad Gimbert, a CMT Commons partner, was out of town on business and unable to attend the meeting. He said he had not been involved in the case the entire time, so he could not address some of the issues. He said if he had received an email saying someone needed to come apologize for three years of behavior, he would have had them attend the meeting. He said he did not realize contrition meant an apology. As for the \$3,000 offer, Olyenik said it was an amount CMT Commons had chosen that was somewhere between zero and \$30,000.

Stone said he only had one vote, but he knew the Planning & Zoning Board members and Historic Preservation Commission members had been abused, and those were the people who deserved an apology. He said in his opinion, CMT Commons was trying to give the Town a black eye, and he did not like that. He added that he was more than a little surprised that the Town was expected to compromise on the civil penalty without any acknowledgement that CMT Commons had done anything wrong – something that it says in the settlement offer letter.

Nodine asked if someone had told CMT Commons that they would waive the fines, and Olyenik said there had been an email from Michael Thomas. Oakley said the email said if all items on the October 2012 Certificate of Appropriateness (COA) were completed as approved in 2012, staff would recommend that the Council waive the fees. Olyenik said he was referring to an email written in July 2015. Thomas said staff had proposed if CMT Commons would comply with the COA as upheld in court without further meetings, applications, proceedings before the HPC, without further Town time to enforce and so forth – if they would agree to do that right then – there would be such a recommendation by staff. He said that did not happen.

Nodine said the issue had been dragged out, with CMT Commons saying the rendering they had presented to the Town was not what they intended to build. He said Olyenik could stand there and say he did not know certain things, but Nodine had chatted with Chad Gimbert about a month ago. He said at that time he had told Gimbert that first there needed to be an apology to Council members and staff. He said he told Gimbert that as far as he was concerned, CMT needed to make a reasonable offer – maybe half of what was owed – and the Council might be willing to accept that. He said the offer the Town had received was an insult, and unless the Town received a decent and reasonable offer, he would vote against accepting it.

Olyenik asked when Nodine had talked with Gimbert, and Nodine said he had talked with Gimbert and Mark Smith about a month ago. Olyenik said he had asked for multiple meetings or opportunities to dialog with the Town, and he had never gotten one. Nodine said he suggested that a reasonable offer be submitted.

Sullivan said he had also had a conversation with a CMT principal. He said he found it very disturbing that there had been no apology issued. He said he did not like disagreement, and was glad he had been able to facilitate a modified COA from CMT Commons by first convincing Gimbert to submit a modified COA request and then convincing a very reluctant HPC and staff to hear it. He outlined the process that Town had gone through with CMT Commons, and said from September 2012 to 2015, CMT Commons had been determined not to do any work, and all he had observed from them was bad behavior. He said they were not interested in complying, and the Town had repeatedly tried to reach compromises with no response from CMT Commons. He said the settlement offer was an insult to the Town, and the issue was not about the money. Regarding the sign, Sullivan said he did not care what the County ordinance said, and other directions from the Town superseded that. He said Olyenik was asking the Town to forgive three years worth of bad behavior and ignore enforcing its own ordinances, which was something the Council could not do.

Regarding the settlement offer, Olyenik said no one had ever said to him, “Here’s the number we need.” He said Thomas had assured him the suit would be refiled in court by the Town, but he would prefer the issue be resolved. Sullivan said the Town had been waiting for CMT Commons to make an offer, not the other way around.

McClellan asked if Olyenik was going to go back to his clients and ask that they submit a reasonable offer. Olyenik said he would relay what he had heard, and Mrs. Gimbert was also in attendance at the meeting. He asked where the parties go from here.

Councilman Nodine made a **motion** to reject the settlement offer. **Councilman Kinneman** seconded the motion.

Kinneman said when Gimbert had arrogantly asked the Town to forgive the civil penalty, he had told him an apology was needed, and Nodine had told him the same thing about a month ago. He told Olyenik he should look at the meeting minutes, and that he found it very galling that CMT Commons wanted forgiveness. He said it was insulting that neither of the CMT Commons partners were in attendance. He said if Mark Smith was not willing to come and apologize for what he had done, without making faces, smirks or winks, then he was not sure how he could accept any offer from CMT Commons. Olyenik said he would have brought certain parties with him if

he had known it was required, and he did not think a dialog between Smith and some members of the Council would have been productive.

Sullivan said if CMT Commons wished to make another offer, he thought Olyenik understood it needed to be an amount worthwhile to consider. He said an apology might be key, but he expects a statement that says CMT will be a good corporate citizen and will follow the Town's ordinances.

Stone said he was not going to call any names, but those who had behaved badly knew who they were. He said he expected a public apology acknowledging abuse of the Planning & Zoning Board, HPC and staff; a dollar figure that acknowledges and accepts some level of responsibility; and assurances that CMT Commons will diligently comply with the Town's ordinances. If all that is received, he could be on board. Kinneman and Sullivan agreed.

Council's vote in favor of the motion was unanimous (5-0).

Councilman Kinneman made a **motion** to amend the meeting agenda to add a closed session to discuss a legal matter with the Town Attorney pursuant to N.C.G.S. 143-318.11(a)(3). **Councilman Stone** seconded the motion, and it was passed unanimously (5-0).

10. CITIZEN COMMENTS

Patti Paslaru, a member of the Planning & Zoning Board, said after hearing all the debate, it bothered her not knowing about the violations by CMT Commons. She asked that staff be directed to give copies of violation notices to the Planning & Zoning Board so they will no longer be ignorant of what is going on.

11. MONTHLY FINANCIAL UPDATE

Finance Officer Sam Anders presented the financial report and a budget amendment, which are hereby incorporated by reference and made a part of the minutes. He said it was also customary in Oak Ridge for the Council to give the Finance Officer authority to modify the budget at the end of the fiscal year in order to create a balanced budget. He said he would report any adjustments to the Council at the first meeting in July.

Councilman Kinneman made a **motion** to approve the financial report. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (5-0).

Mayor Pro Tem McClellan made a **motion** to approve the budget amendment. **Councilman Stone** seconded the motion, and it was passed unanimously (5-0).

Mayor Pro Tem McClellan made a **motion** to give the Finance Officer authority to modify the budget as needed through June 30 and to report any changes to the Council at the July 7, 2016, meeting. **Councilman Nodine** seconded the motion, and it was passed unanimously (5-0).

12. COMMUNITY UPDATES

A. Finance Committee.

Chairman John Jenkins said he had heard three requests from the Council to drop the tax rate next year and one to refine the budget process. He said he agreed, and the tax rate is dependent on capital requests. He said he thought a 5-year capital plan is imperative for the Committee to evaluate the tax rate.

B. Planning & Zoning Board.

Member Patti Paslaru said the Board had approved the site plan for Bojangles', but had asked that they consider improving safety as vehicles are entering and exiting the site and in the parking lot. She said Councilman Kinneman had addressed the Board on becoming a Tree Board, and had taken a beating for it. Board members wanted to find out exactly what they are being asked to do, and are now trying to decide how much they are willing to do.

C. Board of Adjustment.

No meeting

D. Historic Preservation Commission.

Chair Ann Schneider reported:

- A COA for a house in Barrow Place on Linville Road had been turned down due to a lack of compatibility with the Historic District. The Commission gave detailed feedback, and the contractor has resubmitted an amended plan for the June HPC meeting.
- The grant subcommittee had met with the panel of three outside experts, which was impressed with the quality of the grant applications submitted and the strength of the impact on the Historic District. The HPC will decide the grant recipients at its next meeting.
- She had reached out to several people and hoped to find someone to move the Berrier cabin on Oak Ridge Road. The Northwest Observer had expressed an interest in writing an article on the cabin.
- HPC member Kristin Kubly attended a training session in May.

E. Parks & Recreation Commission.

Chairman Bill Edwards reported:

- This was his final report, since he had recently resigned from the Commission. He thanked the Council for the opportunity.
- Two Music in the Park events were held in May. Seth and Madi were scheduled to perform on June 11, and Robert Tilley & the Hard Time Band would play on July 9.
- RidgeFest was scheduled for that weekend.

13. CITIZEN COMMENTS

- Patti Paslaru said a tree had been down in the park for many months, and she asked when it would be removed. Staff pointed out that the tree is on the cell phone tower property and the Town had no authority to require the property owner to move it.
- Micah Spencer said the congressional primary would be held June 7 as well as some elections for judge. He urged everyone to vote.

14. COUNCIL COMMENTS

15. CLOSED SESSION

A closed session was held to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body pursuant to N.C.G.S. 143-318.11(a)(3).

Councilman Kinneman made a **motion** to go into closed session at 9:17 p.m. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (5-0).

Councilman Kinneman made a **motion** to return to open session at 9:35 p.m. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (5-0).

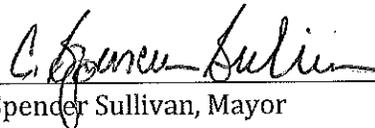
16. ADJOURNMENT

Mayor Sullivan made a **motion** to adjourn the meeting at 9:35 p.m. **Mayor Pro Tem McClellan** seconded the motion, and it was passed unanimously (5-0).

Respectfully Submitted:



Sandra B. Smith, NCCMC, CMC, Town Clerk



C. Spender Sullivan, Mayor