OAK RIDGE TOWN COUNCIL MEETING
AUGUST 2, 2012 – 7:00 P.M.
OAK RIDGE TOWN HALL

MINUTES

Members Present
Ray Combs, Mayor
Roger Howerton, Mayor Pro Tem
George McClellan
Danny Yanusz

Members Absent
Spencer Sullivan

Staff Present
Sandra Smith, Town Clerk
Bruce Oakley, Town Manager
J. Michael Thomas, Town Attorney
Sam Anders, Finance Officer
Bill Bruce, Town Planner

1. CALL TO ORDER

Mayor Ray Combs called the meeting to order at 6:58 p.m.

- **Invocation**
  Mayor Pro Tem Howerton led the group in a moment of silent meditation.

- **Pledge of Allegiance**

2. APPROVE AGENDA

Councilman Danny Yanusz made a **motion** to approve August 2, 2012, agenda. **Mayor Pro Tem Roger Howerton** seconded the **motion** and it was passed unanimously (4-0).

3. APPROVE MINUTES OF JULY 5, 2012, MEETING AND CLOSED SESSION

Councilman George McClellan made a **motion** to approve the minutes of the July 5, 2012, meeting and closed session. **Councilman Yanusz** seconded the motion and it was passed unanimously (4-0).

4. RESOLUTIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Jim Kinneman announced that the Oak Ridge Lions Club's annual Tom Brown Memorial Golf Tournament would be Aug. 25. The event is the group's primary fundraiser, and both players and sponsors are needed. Money raised is used locally to help the sight- and hearing-impaired and others in need.

- Mayor Combs recognized two Boy Scouts who were present at the meeting in order to earn their Communications Merit Badge.

5. TOWN MANAGER'S REPORT

Town Manager Bruce Oakley presented:

- **Resolution regarding membership on the Board of Adjustment.** Oakley said a Council member had traditionally served on the town's Board of Adjustment. The Town Attorney had advised that it was no longer necessary or advisable to do so due to potential conflicts, and the resolution would initiate that change.

Councilman McClellan made a **motion** to approve the resolution terminating an unwritten policy to have a Council member sit on the Board of Adjustment. **Mayor Pro Tem Howerton** seconded the motion and it was passed unanimously (4-0).

- **Voluntary annexation petitions.** The Town has received six requests to annex properties into the town, including one from Guilford County for the Cascades Park. Oakley said he planned to schedule a public hearing on the issue for the next Council meeting in September.

Because Town Attorney Michael Thomas had not yet arrived at the meeting, Mayor Combs skipped down to agenda item 9. Community Updates.

9. COMMUNITY UPDATES

- **Historic Preservation Commission**

  The Commission did not meet in July.

- **Planning & Zoning Board**

  Chairman Doug Nodine reported that the Board met and reviewed two text amendments. It recommended denying one (on the Jordan Lake Watershed Rules) and approving the other (on the permitted locations of sweepstakes businesses).

- **Board of Adjustment**

  The Board did not meet in July.

- **Finance Committee**

  The Committee did not meet in July.

- **Pedestrian Plan Committee**

  The Committee did not meet in July; the next meeting is scheduled for September.

- **Fire Department**

  Fire Chief Steve Simmons reported that in July:

- The department responded to 49 calls (23 medical and 26 fire/service related)
- Department members also completed 146 hours of training, installed one car seat and attended one public education event
- The average response time for the month was 4.5 minutes

Simmons also spoke on lawn mower safety, saying that more than 600 children undergo mower-related amputations each year and that 80,000 Americans are injured in mower-related accidents annually. He advised:

- Never allow a child to ride on a mower with an adult, even if the blade is disengaged
- Keep children indoors when mowing, and pick up rocks, toys and debris that might be in the mower's path
- Always wear shoes when mowing that provide full foot coverage
- Refuel mowers outside and when the engine is cool
- Do not disengage auto shutdown mechanisms cause the mower to stop when someone is no longer seated on it
- Wait for mower blades to completely stop before trying to dislodge a clog

Because the Town Attorney had now arrived at the meeting, Mayor Combs said the Parks & Recreation Commission report would be heard later in the meeting and moved back up to agenda item 6. New Business: Public Hearings.

6. NEW BUSINESS:
PUBLIC HEARINGS

- **TEXT AMENDMENT CASE # 12-06-ORPL-02309: Jordan Lake Watershed Nutrient Rules.** The proposed text amendment applies to all lands and waters draining to Jordan Lake Reservoir. Nutrient removal rules for new development must be adopted to meet the minimum state mandated Jordan Water Supply Nutrient Rules.

  Mayor Combs presented how the public hearing would be conducted. He explained that the state had adopted the Jordan Lake Watershed Rules about five years ago. The purpose of the Rules is to keep nutrients such as phosphorous and nitrogen from entering the Haw River and New Hope rivers, which flow into the Jordan Lake and are causing pollution. The general assembly recently approved legislation that would allow implementation of the next phase of the Rules to be delayed for two years. Still, at some point, the state could require municipalities that contribute to pollution in these rivers to pay to retrofit developments with some type of stormwater device (such as a retention pond) to prevent excess runoff. If the town does not pass this text amendment and waits for two years (as the state has allowed), it could be responsible for paying for stormwater devices for developments built during that timeframe. Combs said if the text amendment is passed now, the developers will bear the responsibility for installing those devices. No one knows what development might occur in the town in the next two years, and it is up to the Council to decide whether to implement the next phase of Rules now or wait, Combs said.

  Doug Nodine, Planning & Zoning Board chairman, reported that the Board recommended denial of the text amendment because there is so much uncertainty

as to the Rules and whether they will be applied as passed or not. Given the condition of the real estate industry, Nodine said the Board did not feel the time was right to implement rules that would double development costs.

Proponents:
Jim Kinneman said he was "marginally in favor" of passing the text amendment now because requirement standards in 2017 will still be in effect and waiting two years will make those standards more difficult to attain. He suggested doing some testing to establish a baseline of nutrients entering the Haw River and determine if the town has a significant problem. Testing would show whether it was prudent to pass the text amendment now or wait, but Kinneman said he didn't think the town had enough information to pass it currently.

Opponents:
Jerry Cooke questioned why the state passed the Jordan Lake Rules and not the same regulations on other waterways, saying a strong political group in Raleigh effectuated the change. He questioned why the town would want to be one of only two municipalities to adopt this phase of the Rules now, particularly when no one knows what will happen with the Rules in the future.

Mike Stone said everyone deserves clean water, but said if the Rules were really about that construction along the Jordan Lake would be stopped and it would be terminated as a recreational resource. He also suggested testing water in Haw River as it enters and leaves Oak Ridge. The town does not have any idea what it would cost to retrofit a development, but he asked if the town has a plan to pay for such decisions in the future – such as condemning or purchasing property for that purpose.

Council questions:
Councilman Howerton asked how the 2-year delay would affect the Town, and Oakley said the nutrient levels could be raised by new developments. In two years, the town could be responsible for retrofitting developments built between now and when the Rules take effect; if the text amendment is passed now, the Town might get credit for implementing the Rules ahead of schedule. Howerton inquired about the other municipality – Wake County – that has already passed phase two of the Rules. He also asked if the Council could set a future date for the Rules to take effect or could table the issue, and Bruce said yes.

Councilman Yanusz asked if the town had received any feedback on why the Rules had not been passed by other municipalities, and Mayor Combs said he didn't think many had considered the issue yet. Matt Williams, Guilford County watershed engineer, said three counties that had passed the next phase of Rules are considering whether to go back and delay the action for two years. Stokesdale, Sedalia and Whitsett have not yet made a decision, but Guilford County does not plan to address the issue now. Yanusz asked if, as part of the development approval process, a developer could be made responsible for retrofitting an existing development if the state or federal government required it; Bruce said that could likely be done as part of a conditional-use rezoning. Thomas said conditional zoning is allowed and that the Town can use its discretion in requiring reasonable conditions. This situation is unusual in that there are both basin-wide rules proposed and the legislature has delayed implementation of the next phase of Rules, and the Town is trying to avoid citizens having to pay for retrofitting devices during

the 2-year delay. Thomas said he thought it was reasonable to impose a condition on rezoning requests that the developer agree to reimburse the town for retrofitting costs.

Councilman McClellan asked if a bond could be required for retrofitting costs, and Thomas said he was not aware of such a bond and that it would be difficult to obtain one since the costs for retrofitting are unknown. McClellan asked developer Jerry Cooke the cost of a retention pond, and Cooke said he had built two at a cost of $70,000 and $50,000 respectively. McClellan said although passing the text amendment now might protect the Town regarding developments in the next two years, the Town might still have to look at retrofitting older developments. Matt Williams said if nutrient levels in the Jordan Lake have not decreased to a state-mandated level in 2017, the state will require every municipality in the river basin to decrease nutrient levels by 8 percent; the municipality would then have 6 months to submit a plan on how that will happen. Williams added that the Jordan Lake Rules will probably double the cost of Best Management Practices (BMPs) for developers, but there is no way for the town to get a credit for implementing the Rules now because there is no model for that. The state should have a benchmark by the end of 2013.

Mayor Combs asked if what the town is considering is protecting its taxpayers from having to pay to retrofit a development as opposed to the developer paying those costs, and Williams said yes. Combs asked if taxpayer money might have to be used to retrofit developments in two years because the Council failed to pass the text amendment now, and Williams said there was no real way to answer that question. Combs asked if taxpayers might have to pay for retrofitting developments in the Extraterratorial Jurisdiction (ETJ) area, and Thomas said he didn't believe so because even though that area falls under the Town's zoning authority, it is not under its taxing authority; he suggested that could be a county responsibility, but said the answer to that question is also unknown. Combs asked about the amount of land that could be disturbed before it comes under the Rules, and Oakley said the 1-acre for residential and ½-acre for commercial is based on the entire parcel size, not on individual lots. In the case of a residential development, Combs asked if the responsibility for retrofitting stormwater runoff devices could be required of the homeowners association if the developer had turned the development over to the HOA. Thomas said the answer could be yes because conditions go with the land.

Combs asked Jerry Cooke if he believed it would be more expensive to retrofit stormwater devices in a development because it had not originally been planned to include them, and Cooke said it likely would because an engineer had designed the development based on requirements at the time. Combs said if it cost more to go back and retrofit a development, the Town's taxpayers would be faced with those costs if the text amendment is not passed now. "I don't want to place taxpayers on the hook for something that could have been paid for by developers," Combs said. He asked why testing, as the town had proposed several years ago, was not viable; Williams responded that he didn't speak for the state, but that they seemed to be treating all the municipalities in the river basin as a whole, whether individually they are "a model citizen or not." Williams added that it is easier for the state to police the entire group of affected municipalities than individual towns. Combs asked if Oak Ridge would then be in the same boat as larger municipalities such as Greensboro and Burlington without any recourse, and Williams said yes.

Councilman Yanusz asked about the 8 percent reduction figure that could be required in 2017, and Williams responded that meant 8 percent of nitrogen entering the Jordan Lake and that the state would require all the affected municipalities to reduce what is entering the lake by 8 percent (not each individual town or site).

Mayor Pro Tem Howerton asked when that 8 percent reduction might be required, and Williams said the municipalities will know in February 2017. Each municipality will then have 6 months to show how that 8 percent decrease will be achieved. Howerton said he was bothered by the fact that the town was being asked to pass something when the rules and regulations are unknown. Williams responded that the Jordan Lake Rules have been passed, but agreed that there are many unknowns.

Councilman McClellan made a **motion** to adopt the text amendment based on the fact that it is consistent with the adopted development plan and that the state and federal government will likely eventually mandate the requirements; that it is reasonable because it addresses clean rivers and lakes in North Carolina; and it is in the public interest because it will potentially limit tax liabilities of the citizens of Oak Ridge. **Mayor Combs** seconded the motion.

Additional Council discussion:
Councilman Yanusz said he had a concern about passing something with so many unknowns. Councilman McClellan agreed, but said his responsibility was to the taxpayers and businesses in Oak Ridge today and to try to protect them from tax increases, and that he believed passing the text amendment now was the lesser of two evils; the Council can always rescind the text amendment if the state "guts" the Rules, McClellan said. Mayor Combs said psychologists called the decision required an "avoidance-avoidance conflict" – when a decision must be made, neither of which option is desirable. Combs said he had friends in development, but he represented the taxpayers who could end up paying for the Council's delay in making a decision. Councilman Howerton said no one knows more about contaminated water than he does, and while he is reluctant because of the unknowns, he would support the adoption of the amendment because he is in favor of citizens being able to get clean water.

Council's **vote** was 3-1 in favor (Council members McClellan, Combs and Howerton voting for and Councilman Yanusz voting against).

Mayor Combs then called for a 5-minute recess at 8:20 p.m. and the meeting began again at 8:25 p.m.

- **TEXT AMENDMENT CASE # 12-07-ORPL-02845: Sweepstakes Businesses.** The proposed text amendment will regulate permitted locations of electronic gaming operations/sweepstakes.

  Bruce said the proposed text amendment would limit the locations for electronic gaming/sweepstakes businesses. The change would add a row in the Permitted Use Table under Recreational Uses. Electronic games/sweepstakes would only be allowed in districts zoned GB, and no machine or operation would be allowed within 1,000 feet of a church, public or private school, daycare, park or residence or residentially zoned property. Staff recommended approval, saying the request is consistent with the Town's "rural traditions and family environment."

Proponents:
Jim Kinneman said he was not really for or against, but had some concerns about the terminology in the text amendment, which uses phrases like "Internet café." Kinneman said he wanted to make sure a business such as Starbucks was not defined as an Internet café.

Opponents:
None

Council questions:
Councilman McClellan asked if courts have ruled on this kind of restriction, and Thomas confirmed that it was legal. He asked if the sweepstakes establishment about to open in Oak Ridge would be affected, and Oakley said no and that it would be considered a legal, nonconforming use, but that it cannot move, expand, etc. McClellan asked if 68 Place would be affected by the text amendment, and Bruce said he assumed it was within 1,000 feet of residences.

Mayor Combs said he didn't want to include businesses such as Starbucks in the "Internet café" definition, and Thomas said he didn't believe that would be a problem since the ordinance specifically talks about games of chance.

Mayor Pro Tem Howerton made a **motion** to approve the text amendment, saying it was consistent with the town's comprehensive development plan, and that it is reasonable and in the public interest per the report by town staff, that approval was recommended by the Planning & Zoning Board, and that it is consistent with traditions and the family environment of the Town. **Councilman Yanusz** seconded the motion and it was approved unanimously.

7. CITIZEN COMMENTS

Jim Kinneman said he understood there were many unknowns with the Jordan Lake Rules, but urged the Council to go ahead and do some testing to find out what levels of nutrients Oak Ridge is actually contributing. Mayor Combs said the town is inquiring about that, but it appeared that it would be extremely expensive to hire a consultant to design the method of testing and do the testing over a period of time in order for the state to accept the results.

Jerry Cooke said he appreciated the Council wanting to protect the taxpayers regarding the Jordan Lake Rules, but said now Council is going to have to figure out how it is going to permit growth in this situation.

8. MONTHLY FINANCIAL REPORT

Finance Officer Sam Anders presented:

- A strong cash position. A wire transfer of $32,165 has been received from Guilford County for property tax collections through July 31. In July, $38,311 was received for the fourth quarter of ABC store revenue, and $4,014 has been

collected on a rezoning/subdivision case, which doubled the projected $2,000 budgeted for 2012-13.

- Auditors are scheduled for Aug. 13-18, and everything is on schedule and ready for them.

- A budget amendment is being requested to separate park improvements from equipment. The amendment is a "housekeeping" item and does not increase or decrease any items in the budget.

Councilman McClellan made a **motion** to accept the monthly financial report as submitted. **Mayor Pro Tem Howerton** seconded the motion and it was passed unanimously (4-0).

Councilman Yanusz made a **motion** to accept the budget amendment as requested. **Mayor Pro Tem Howerton** seconded the motion and it was passed unanimously (4-0).

9. COMMUNITY UPDATES (continued from previously in the meeting)

- **Parks & Recreation Commission**

  Chairman Bill Edwards reported:
  - Commission member Winnie Lewis's term has expired and she has decided to "retire;" the Commission is seeking new members to fill that and other vacancies.
  - He has compiled an executive summary for the Needs Assessment Survey responses, which was included in Council's packet. Charts illustrated that most people appear to be satisfied with how the park is being developed, what they want to see included in the park in the future, and suggested future events in the park.

Mayor Combs thanked Edwards for putting together the executive summary.

10. CITIZEN COMMENTS

None

11. COUNCIL COMMENTS

- **Mayor Combs** spoke on water, saying someone had recently "griped" in the Grins & Gripes section of the Northwest Observer about people watering their lawns during a drought, and someone else responded that some people put in a well for that purpose. Combs said many people apparently don't realize that all water in the town comes from underground.

12. ADJOURNMENT

Councilman Yanusz made a **motion** to adjourn at 8:55 p.m. **Councilman McClellan** seconded the motion and it was passed unanimously (4-0).

Respectfully Submitted:

Sandra B. Smith, Town Clerk

Ray Combs, Mayor