



MINUTES
HILLSBOROUGH TOWN BOARD
March 13, 2006
7:30 PM, Town Barn

The Town of Hillsborough held its regular meeting on March 13, 2006 at 7:30 p.m. in the Hillsborough Town Barn. Present for the Board Meeting were Mayor Tom Stevens, and Commissioners Frances Dancy, Brian Lowen, Eric Hallman, Michael Gering, and Evelyn Lloyd. Staff present were Town Manager Eric Peterson, Assistant Town Manager/Public Works Director Demetric Potts, Planning Director Margaret Hauth, Finance Director Greg Siler, Town Clerk/Personnel Officer Donna Armbrister, Town Engineer/Utilities Director Kenny Keel, Town Attorney Bob Hornik, and Police Chief Clarence Birkhead.

[7:32:20 PM](#) Mayor Tom Stevens called the meeting to order at approximately 7:30 PM.

1. PUBLIC CHARGE

[7:32:44 PM](#) Mayor Stevens did not read the Public Charge, but indicated that it would be followed.

2. AUDIENCE COMMENTS REGARDING MATTERS NOT ON THE PRINTED AGENDA

[7:32:53 PM](#) Jim and Mary Rollins will soon be purchasing property on Daphne Court, and requested to have that gravel road paved by the Town.

[7:33:53 PM](#) Assistant Town Manager Demetric Potts responded that he had talked with the Rollins' realtor regarding this request. He said that the request would be included as part of the upcoming budget considerations.

[7:34:27 PM](#) Mike Daniels requested a variance regarding a grave marker in the Town's cemetery. He stated he was allowed eight inches only to place a flower vase on.

[7:34:59 PM](#) Assistant Town Manager Potts explained the process used when an oversized marker was requested, noting it would require approval of the Board. He said he did not yet have enough information to make a recommendation, and would need time to take a look at the area.

[7:36:26 PM](#) Town Manager Eric Peterson stated staff would bring this item back to the Board in April. He noted he would like to propose amendments to the Cemetery Ordinance so this type of request does not take up the time of the Town Board in future.

[7:37:59 PM](#) Commissioner Gering requested that when this item was brought back before the Board that any proposed changes be justified using background information regarding standard marker sizes from monument companies and other municipalities with cemeteries.

[7:38:43 PM](#) Joe Phelps commented that the sound system presently being used did not allow those sitting in the back of the room to adequately hear the Board's conversation. Town Clerk Donna Armbrister responded that maintenance had been scheduled and would be performed on the system shortly.

Mr. Phelps offered remarks on the Gateway Center and the additional traffic it would cause. He said he and other citizens wanted to make sure that the traffic flow and safety was the best it could be, adding the Town had only one chance to get it right. Mr. Phelps stated concern about the absence of a left turn lane on Churton Street and his fear that delivery trucks would block the street very close to the Fire Department.

Mr. Phelps remarked that the lawsuit brought by the developer of the Gateway Center was discussed during an Emergency Meeting Closed Session regarding an Assisted Living Facility, and was discussed in violation of the Town's ordinance.

Town Attorney Bob Hornik responded to Mr. Phelps' comments regarding the legality of the Closed Session. He stated that an agreement had been reached with the developer of the Gateway Center earlier that day, and at the beginning of the Emergency Meeting he had requested that the Mayor announce that he wanted to have the Gateway matter added to the agenda for that meeting. Mr. Hornik said during the Closed Session they discussed it, and when the Closed Session was completed, the decision was announced at the public session that evening. He said all legal procedures had been adhered to.

[7:43:13 PM](#) Mr. Phelps said in response that the Town's ordinance specifically stated that only the items that were noticed for an Emergency Meeting could be discussed, and it said nothing about adding items.

3. AGENDA CHANGES & AGENDA APPROVAL

[7:43:56 PM](#) Commissioner Lowen stated he wanted to discuss the property located next to the Kerr Drug on Hwy. 70, and also discuss the Economic Development Commission subcommittee being formed for the Hwy. 70 improvements project. Mayor Stevens suggested discussing these items during Committee Reports. Commissioner Lowen agreed.

[7:44:37 PM](#) Commissioner Gering added the appointment of Anjan Desai to the Tourism Board, noting a memorandum had been distributed to the Board at the beginning of the meeting.

[7:45:03 PM](#) Upon a motion by Commissioner Lowen, seconded by Commissioner Lloyd, the Board moved to approve the agenda with the aforementioned amendments by a vote of 5-0. The motion was declared passed.

4. PUBLIC HEARING

- A. Public Hearing - Annexation request from Habitat for Humanity of Orange County, Inc. and Eno Rentals Five, LLC to annex 18 lots on Tuliptree Road. The parcels are identified as TMBL 4.5A.C.6-13 and 4.5A.D.1-10.

[7:45:32 PM](#) Planning Director Margaret Hauth stated that Habitat for Humanity was in the process of acquiring 18 lots on Tuliptree Road for development of single family housing. She noted that Eno Rentals Five, LLC owned a portion of the lots, but had agreed to sell them to Habitat. She said they had an interest in having the annexation take place prior to the transfer to be certain that all the lots would be in the Town's limits. She said the area was within the Extraterritorial Jurisdiction (ETJ) and the lots were currently zoned R-10, so no zoning change was requested.

[7:46:34 PM](#) John Sehon, Immediate Past President of the Board of Habitat, asked that the Board approve Habitat's request when it came before them.

[7:47:32 PM](#) Commissioner Lowen said he was supportive of the request, noting it was a great idea. He said he was sure Habitat was aware of the trash around that property, and asked if they would remove that trash. He said it was an eyesore and wanted it removed. Mr. Sehon said he did not know how it would be done, but Habitat would have it cleaned up.

Ms. Hauth said the annexation ordinance would be ready for the Board's consideration next month.

Mayor Stevens closed the Public Hearing by a consensus of the Board.

5. APPOINTMENTS

- A. Resolution to BOCC requesting reappointment of Barrie Wallace to Planning Board for a second term which would expire March 31, 2009.

[7:48:13 PM](#) Upon a motion by Commissioner Hallman, seconded by Commissioner Lloyd, the Board moved to appoint Barrie Wallace to a second term on the Planning Board by a vote of 5-0. The motion was declared passed. A copy of the Resolution is hereby incorporated as a part of these official Minutes as an Attachment.

- B. Consider a request from Orange County to appoint a representative to the Air Quality Advisory Committee

[7:49:10 PM](#) After a brief discussion by the Board regarding their various schedules, they were unable to determine who might serve as a representative to the Air Quality Advisory Committee. Mayor Stevens stated he would attend the first meeting of the Advisory Committee and bring this item back to the Board for an appointment at the next meeting. The Board agreed by consensus.

C. ADDED ITEM for Tourism Board.

[7:53:31 PM](#) Commissioner Gering stated the Tourism Board had met and considered Mr. Desai's application. He said Mr. Desai had attended several meetings and expressed a strong desire to serve. He said there were several seats currently available on the Tourism Board, and the Board had unanimously recommended Mr. Desai's appointment.

[7:53:48 PM](#) Upon a motion by Commissioner Gering, seconded by Commissioner Hallman, the Board moved to appoint Anjan Desai to a first term on the Tourism Board by a vote of 5-0. The motion was declared passed.

6. APPROVAL OF THE MINUTES OF THE JANUARY 24, 2006 JOINT MEETING WITH THE PLANNING BOARD; THE FEBRUARY 11, 2006 BUDGETARY PLANNING RETREAT; THE FEBRUARY 13, 2006 REGULAR MEETING; THE FEBRUARY 13, 2006 CLOSED SESSION, THE FEBRUARY 27, 2006 MONTHLY WORKSHOP; AND THE FEBRUARY 27, 2006 MONTHLY WORKSHOP CLOSED SESSION

[7:54:11 PM](#) Commissioner Gering noted at correction to the February 27th Workshop Minutes, stating that on page 2 at the 7:40:32 time mark, the correct spelling was "Doughton."

[7:55:49 PM](#) Upon a motion by Commissioner Dancy, seconded by Commissioner Lloyd, the Board moved to approve the aforementioned minutes as amended by a vote of 5-0. The motion was declared passed.

7. COMMITTEE REPORTS

[7:56:44 PM](#) Commissioner Hallman reported that the EDC had discussed the next steps for the Joint Northern Entranceway/Highway 70 Corridor Task Force, noting that both the County and the Town needed to endorse them. He said he would bring the Board at the next Workshop a broad proposal of what could be, with the next step being publicizing a public meeting so get input from the neighborhood. He said from that meeting, they hoped to get a clear scope and then citizen involvement.

[7:58:13 PM](#) Commissioner Gering reported the Tourism Board was accepting applications for vacant seats, and would be holding a meeting later this month to answer questions from potential applicants. He said the Senior Center Design Committee had visited four facilities in the area in preparation for setting their own requirements for a Senior Center at the Sportsplex.

[7:58:58 PM](#) Commissioner Hallman announced that the Walkable Hillsborough Coalition would be holding a forum on Saturday morning from 9 AM to noon at St. Matthews to discuss transportation and traffic issues. He said he believed these issues were timely, adding he had been invited to provide an update from the Transportation Advisory Committee (TAC). He urged the public to attend.

8. REPORT FROM THE TOWN MANAGER

[8:00:29 PM](#) Town Manager Peterson reported that Orange Rural Fire Department President Tom Riley had confirmed that March 23 at 7 PM was an acceptable date and time for a joint budget meeting. He said the Fire Department had offered to provide the Board with dinner.

[8:01:32 PM](#) Town Manager Peterson reminded the Board that last Friday was the deadline for Town departments to submit their budget requests. He said he wanted to give everyone a preview of how things looked at first glance, noting that the General Fund which had not been filtered yet, appeared to have about a \$750,000 deficit. He said that number was about right and was about what he had expected, and they had a lot of hard work to do to get a balanced budget. He said that Town Engineer/Utilities Director Kenny Keel did much of his own cuts and changes, but that budget was still at about a \$350,000 deficit. He said this year was no different than others and would be challenging, and they would do the best job possible to include the Board's top priorities and bring them a recommended budget by the first of May.

9. REPORT FROM THE TOWN ENGINEER

[8:02:39 PM](#) Town Engineer/Utilities Director Kenny Keel gave a status report on current water/sewer projects. He offered the Board a sample of galvanized pipe approximately 50 years old that was being replaced on Sunset Circle.

Mr. Keel provided an update on trihalomethanes, stating they had received a verbal report on the results for February. He said the .05 level was well below the maximum contaminate limit of .08, but the average for the year was still out of compliance at .082. He said he was confident the Town would be in compliance by the State mandated deadline of June 30, after which time the Town could be subject to fines if it were not in compliance. He said information on these results would be mailed out with water bills in March.

Mr. Keel said they now had about 60% of the manholes mapped and about 50% of the water values had been mapped, so that project was moving forward. He said they continued to work on obtaining the Cates Creek Outfall final easements, adding that they had sent out the 30-day notice. He said as of April 1 the Town would be able to go to court to take the property so that construction could begin. He said they were still hopeful that condemnation will not be necessary, and were still negotiating with landowners to come to some agreement.

Mr. Keel said the Wastewater Plant Study has been delayed because the RFP had not been completed, but he hoped that would be sent out in the next few days. He said those RFPs should be returned within the next month, and after he and Town Manager Peterson had an opportunity to examine them, they should be able to bring a recommendation back to the Board for a contract to begin that study.

[8:07:24 PM](#) Commissioner Hallman asked what was the status of our compliance with the trihalomethane contaminate limit.

[8:07:30 PM](#) Mr. Keel stated June 30 was the deadline to be in compliance, which meant by then we had to be at .08 or below. He said if they were still over the limit at the end of the second quarter, they would still be okay as far as fines went, but if we were still out of compliance by the end of the third quarter then we could expect to see some fines levied. He said we had been given a generous amount of time to get into compliance, and he was confident that they would succeed.

[8:08:14 PM](#) Commissioner Gering stated that June 30 was not the third quarter. Mr. Keel said June 30 was the end of the second quarter. He said his understanding was that if we were still out of compliance at June 30, we would not be fined at that time, but if after June 30 our average was over the limit then he was certain we would see some fines.

[8:09:03 PM](#) Town Manager Peterson said in addition to the changes and improvements that had been made to reduce the contact time, they were adding an additional distribution point so we would not have to use a large amount of chemicals.

[8:09:24 PM](#) Mr. Keel said we had to feed a high dosage of chlorine because a portion of it dissipated, and they had to have enough to react properly with the ammonia to form the residuals we need in our system. He said by adding in another feed point we can put in just enough chlorine to do what was needed. He said they were trying to do that project as much as possible in-house to add another feed point, noting they should be able to utilize some existing funds to allow them to do that.

[8:10:21 PM](#) Commissioner Hallman asked if the Town Manager if he had any information on the Eno River Confluence, asking had it been scheduled.

[8:10:35 PM](#) Mr. Peterson said they had not received any information regarding that. He said they had received a letter stating the concepts, but no formal date and time had been forwarded to them. He said he would let the Board know as soon as he was notified. He said he and Mr. Keel planned to attend to represent the Town.

10. REPORT FROM THE PLANNING DIRECTOR

[8:11:31 PM](#) Planning Director Margaret Hauth said she would be glad to answer any questions regarding her report, noting that she would address Commissioner Lowen's question regarding US 70 now if acceptable.

Ms. Hauth said she would like to interrupt the agenda somewhat, noting that Carl Jenkins who was a part of the Closed Session was present and wanted to address the Board now. She said he understood that because this was part of the Closed Session that the Board would not respond, but he wanted the opportunity to provide additional information. The Board agreed by consensus.

[8:13:18 PM](#) Carl Jenkins addressed the Board regarding a nuisance abatement and asked for an extension. He said it was his understanding that he had done what had been requested

regarding the cars on his property. He said he had not understood that when the judge signed an order that it began that day, not the day that he actually received the order. He said the Town Attorney was now seeking an additional \$1,250, and he believed at this point that was unfair.

Mayor Stevens thanked Mr. Jenkins for his comments, and said the Board would take the issue up in its Closed Session at the end of the meeting.

[8:14:48 PM](#) Commissioner Gering inquired on the status of changes to the site review process.

[8:14:53 PM](#) Ms. Hauth replied they had not begun drafting the language, but believed they could have the item ready for the July public hearing. She said she had not understood that the Board wanted it ready for the April public hearing, but that it would be ready for the July public hearing. She said they could fast track it if the Board chose to do so, but they wanted to take some considered time with it and get it right.

Commissioner Gering said he believed since July was several months away they might have more chance for review if they received a preliminary proposal. Ms. Hauth asked if that could be an item sent out to the Board for comment or should it be scheduled as a Workshop item. Commissioner Gering said he did not believe it should be a Workshop item yet, but he would like to review the drafts.

[8:16:17 PM](#) Commissioner Hallman said they had previously discussed the operational analysis for the Department and asked if that was moving along.

[8:16:35 PM](#) Ms. Hauth said they had a proposal from Roger Waldon to review the work already performed and Mr. Waldon believed they could do this expeditiously. She had been working on filling out the forms but wanted to hear back from Mr. Waldon regarding his review before they had job descriptions written. She said she believed they would have an agreement very soon.

[8:17:06 PM](#) Ms. Hauth reported on the property on Hwy. 70, noting that after the last Board meeting they had taken a second look at the Minimum Housing Code. She said they had found some provisions in the Code that they can bring to bear immediately on that property. She said the Code applied in both the Town limits and the ETJ, and they planned to use the requirements regarding occupied dwellings, security of the building, the accumulation of junk or trash, and several others. She said under the Minimum Housing Code provisions they should be able to adequately address that property.

Ms. Hauth said there was one property the needed to be addressed first, which was also located on Hwy 70. She said right now they believed they had the language they needed, and they would stay in touch with the Board to make sure that they get that language in place.

[8:18:12 PM](#) Commissioner Lowen stated he wanted to make sure the Board stayed on top of this situation. He said the trash was unsightly and disgusting, and he wanted it cleaned up as quickly as possible.

11. ITEMS FOR DECISION – CONSENT AGENDA

- A. Consider Approving an Amendment to the Waterstone Water & Sewer Extension Agreement to Extend the Deadline when Construction Work Must Start on this Project
- B. Authorize staff to participate with Carillon Assisted Living in sponsoring a Town Easter Egg hunt on the Carillon property
- C. Consideration of an Ordinance to Amend Chapter 12 Fire Prevention of the Town Code
- D. Consideration of an Interlocal Agreement with Orange County for implementation of Stormwater Management Program.

8:19:13 PM Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to approve the Consent Agenda by a vote of 5-0. The motion was declared passed. A copy of the Ordinance to amend Chapter 12 Fire Prevention of the Town Code is hereby incorporated by reference and made a part of these official Minutes as an Attachment.

12. ITEMS FOR DECISION – REGULAR AGENDA

- A. Gary Lee, Owner of the Blue Bayou Club, regarding a Partial Waiver of Penalties on the Food & Beverage Tax

8:19:49 PM Gary Lee stated that he and his wife were owners of the Blue Bayou Club at 106 S. Churton Street, and he was addressing the Board to request relief in the way of a partial waiver of the Food and Beverage Tax Penalty. He said he had been notified about a month ago that he had failed to pay the tax for the months of July to December 2005. He said he immediately calculated that he owed approximately \$700, but the penalty and interest was around \$1,005, a 150% increase. He asked that the Board grant him a partial waiver on the amount of the penalty owed, stating he believed it to be an unreasonable and excessive burden.

Mr. Lee stated that the tax was used to promote tourism in Hillsborough. He said he had been in business for just over three years and had over 4,500 paid members. His records showed that 20% of his members lived in Hillsborough, but up to 50% of his patrons sign in as guests. He said these patrons eat at local restaurants, shop locally and buy gas locally, which resulted in his club already contributing to the promotion of tourism.

Mr. Lee said that since opening the club, he and his wife had consistently suffered losses of \$20,000 or more each year, and they were able to cover this expense only because they have kept their day jobs. He said they had decided to keep the club open because they believed in Hillsborough and believed in promoting the community. He said they had made that commitment because they loved Hillsborough.

Mr. Lee said that the penalty and interest being assessed impacted their personal finances directly and prevented them from investing in their business and the tourism they promote. He stated he supported the Food and Beverage Tax and admitted it was irresponsible to have

overlooked timely payment, but respectfully asked that the Board allow a waiver of some part of the penalties.

[8:22:23 PM](#) Mayor Stevens asked the Town Attorney if this was something the Board would legally consider.

Town Attorney Bob Hornik said they could consider it in the same manner that the Board considered other nuisance cases. He said there was some leeway regarding the interest and penalties, but the Town would have to collect the tax itself. He said the penalty was assessed using a formula that was applied each month that the reports were not submitted and the tax not paid.

[8:23:14 PM](#) Town Manager Eric Peterson said there were cases in the past where the Board had reduced the amount of the Food and Beverage Tax penalties.

[8:23:25 PM](#) Commissioner Gering asked if this needed to be included in the Closed Session for discussion. Town Attorney Hornik responded in so far as it involved negotiations, the answer was yes.

Commissioner Gering asked if it was legal to include it in tonight's Closed Session. Town Attorney Hornik responded as long as we informed everyone that we were going to add that.

[8:23:47 PM](#) Upon a motion by Commissioner Gering, seconded by Commissioner Lloyd, the Board moved to amend the agenda for the Closed Session to include a discussion on this issue in order to confer with the Town Attorney by a vote of 5-0. The motion was declared passed.

Mayor Stevens informed Mr. Lee that any decision the Board came to would be made in open session.

B. Consider Request from Eric Oliver to Assist in Stopping the Unauthorized Delivery of The Chapel Hill News to His Home

[8:24:24 PM](#) Eric Oliver said in 2004 he had attempted to stop unsolicited newspapers from being thrown in his driveway. He said it was a nuisance because to him it was littering, but more importantly it was a safety issue. He said if he was away from home the papers piled up in the driveway and it was obvious he was not at home.

Mr. Oliver provided the Board with a short history of his efforts to halt the newspaper deliveries, including working through the chain of command until he reached the Publisher. He said he was assured through each step of that process that the deliveries would cease. But, he said, the deliveries started again in March. He said there did not seem to be any current ordinances in the Town to address this, noting that ordinances regarding litter or unsolicited material did not help. He said his search had revealed that individuals might be able to address this by an amendment to the trespass ordinance to include some language regarding unsolicited newspapers.

Mr. Oliver noted that he had located a paper from a journalism conference written by someone from Central Michigan University regarding the regulation of home delivery of free newspapers. He said the paper cited that the Supreme Court had set out four standards from which laws could be crafted to address the regulation of the newspapers: 1) must be content neutral and not discriminating against a particular viewpoint; 2) must serve a significant government interest such as public safety; 3) must be narrowly tailored to further that significant government interest; and 4) alternate means must be available for the speech to take place, such as newsstands, mail subscriptions, and others.

Mr. Oliver said this problem seemed to be unique to The Chapel Hill News, noting that paper had careless disregard for the safety of his home and property. He asked that the Board consider amending the Trespass Ordinance to allow individuals to pursue a process to stop delivery of free newspapers.

[8:30:37 PM](#) Mayor Stevens said the Town Attorney had been taking notes, and asked if this was something the Board wanted him to take a look at. Town Attorney Hornik stated he would be happy to take a look and see if there was some method to address this. He said there was nothing in the Town Code presently that would address it, adding the closest thing we had was language regarding obstructions on the streets but it did not address this kind of situation.

Mr. Oliver said it appeared the easiest way to do this would be to allow individuals some means of redress. He said he did not know if other people had the same problem or if they even cared. He said if it was just a nuisance issue he would pick up the paper and throw it away, but the safety issue was the concern.

[8:32:21 PM](#) Commissioner Lowen commented he did not know if it was a trespass issue because people delivering the paper most likely did not cross onto private property. He said in theory it could be worded so that it was a trespass if someone was throwing something onto your property when they had been asked not to.

[8:32:45 PM](#) Commissioner Gering asked if there was any other remedy a homeowner had than an ordinance to trespass.

[8:32:52 PM](#) Town Attorney Hornik said it might be possible to ask for some sort of injunctive relief from The Chapel Hill News.

[8:33:07 PM](#) Mayor Stevens said he understood that this was a safety issue, and asked if the Town Attorney would take a look at it and see if there was a simple remedy.

[8:33:28 PM](#) Commissioner Hallman suggested that as a first step a letter be drafted from the Town stating that this was an issue for its citizens and asking that the newspaper address it. Mayor Stevens stated he would be happy to draft a letter.

C. Consider Request to Use the Town Hall Property (near the Town Barn) for the “National Sleepout” on March 31st to Raise Awareness for Homelessness

[8:33:53 PM](#) Planning Director Margaret Hauth introduced the Item, noting that Reverend Torrain had suffered a minor stroke and was not able to be present this evening.

[8:34:31 PM](#) Mayor Stevens stated that Reverend Torrain was requesting that the Town allow the Town Hall property to be used for a National Sleepout on Friday, March 31st, by members of Neighborhood House and others. He said the activities would begin around 5:30 PM and include speakers, educating the public regarding homelessness and food, along with the overnight camping. He said that Reverend Torrain indicated that his group would provide portable toilet facilities. He said they would not be using any of the Town buildings.

[8:34:55 PM](#) Town Manager Eric Peterson said they could accommodate this request if the Board approved, and would provide security via the Police.

[8:35:01 PM](#) Commissioner Dancy said she would like for staff to check with the neighbors to see if they have any concerns.

[8:35:18 PM](#) Commissioner Lloyd said there may be a concern because the location was a dark area, and said she was assuming that people would be putting up tents.

[8:35:38 PM](#) Mayor Stevens said the group had wanted to use Town property for this homelessness awareness event. He said the participants camping out would not include persons who were homeless.

[8:35:51 PM](#) Commissioner Lowen said he understood it was not actually homeless persons taking part, but persons who wanted to raise awareness of homelessness issues. He said since the Police would be involved it was not a security issue, adding this was a symbolic project.

[8:36:16 PM](#) Ms. Hauth said this event was part of a national effort to raise awareness to invite people who had a warm, safe place to sleep every night to venture out of their safe environment. She said they could send notices to neighbors to alert them of the event.

[8:36:51 PM](#) Commissioner Dancy said we should also remind everyone of any rules regarding use of the property. Ms. Hauth responded the restrictive covenants stated it was for municipal purposes.

[8:37:10 PM](#) Mayor Stevens asked if that would be an issue. Town Attorney Hornik this was a much different situation than what Commissioner Dancy had referred to, noting he had talked with the Manager about this and they were comfortable with the request. He said regarding the liability issue, he and the Manager had talked about whether the sponsors had any liability insurance, and he did not know the answer to that but expected it was no.

[8:37:56 PM](#) Commissioner Hallman said they had filed a 501(C)(3) application, but they did not have liability insurance.

[8:38:04 PM](#) Commissioner Lowen asked if the liability issue was a problem. Town Attorney Hornik said if the crowd was what they expected and security was present, then liability would probably not be an issue. He said they expected the group to be about 20 persons.

[8:38:32 PM](#) Mayor Stevens said he supported this group's efforts, noting this issue is a part of our community. He said if the community wanted to participate, then we should support their efforts. He suggested that the Board allow the Town's resources to be used.

[8:39:12 PM](#) Commissioner Lowen said he understood that there were some neighbors who had concerns, but trusted that those concerns would be addressed. He said it was important to talk with them.

[8:39:24 PM](#) Commissioner Gering said he would like to know if the Police Chief had any concerns regarding any of the issues.

[8:39:30 PM](#) Police Chief Clarence Birkhead said no, that they would provide a Police presence and did not believe there would be any problems.

[8:39:47 PM](#) Town Attorney Bob Hornik said the Town should define the exact area where the event would take place, noting it would be an additional assurance to neighbors.

[8:39:57 PM](#) Mayor Stevens said he was happy to leave that to the discretion of the staff to define the areas and the Town's expectations, and to make sure we had the permission of the neighbors or addressed any reasonable requests. He said this type of request should be an administrative issue, noting it should not have to come before the Board for approval.

[8:40:22 PM](#) Town Manager Eric Peterson said that Community Policing would be working with the group, and he would meet with Chief Birkhead and Captain Jacobs to coordinate the event and place them in charge of setting some limitations

[8:40:40 PM](#) Commissioner Lowen suggested enclosing the area to be used to make it obvious what was accessible and what was not.

[8:41:07 PM](#) Upon a motion by Commissioner Hallman, seconded by Commissioner Lowen, the Board moved to authorize that the staff work with Neighborhood House to coordinate the homelessness event on Town property by a vote of 5-0. The motion was declared passed.

D. Consideration of Options on Riverwalk acquisition

[8:41:48 PM](#) Planning Director Margaret Hauth said at the February Workshop the Board had requested a recommendation from staff on how to proceed with the Riverwalk acquisition. She said she had contacted Mr. Gourley but had not received a response.

Ms. Hauth said she had received a recommendation from Orange County staff regarding a secondary acquisition agent who may have training and interests that align more closely with the project of Riverwalk. She said she had a copy of Guenevere Abernathy's resume if the Board wanted to see it, noting Ms. Abernathy was with the Triangle Land Conservancy and operated her own business. Ms. Hauth said Ms. Abernathy was involved in real estate development that had a preservation aspect in terms of explaining to property owners the benefits of conservation easements, discount sales, and that sort of thing. She said she had met with Ms. Abernathy on Friday and she was very excited about our project. Ms. Hauth said Ms. Abernathy's interests and talents were better aligned with the negotiated nature of our project than Mr. Gourley's talents.

Ms. Hauth said she had explained to Ms. Abernathy the Town's timeline of having this completed by August 1 so that if other means of acquisition became necessary we would have time to pursue that. She said her recommendation would be to contract with Ms. Abernathy.

[8:44:12 PM](#) Commissioner Gering asked if we were to contract with Ms. Abernathy, what became of our agreement with Mr. Gourley.

[8:44:19 PM](#) Ms. Hauth said there were provisions in Mr. Gourley's contract that would allow us to give him notice to stop work. She said he did acquire one property on the Town's behalf so he would have to be paid for that, since the contract was for "per property acquired." Ms. Hauth said we would place performance measures and performance timelines and guidelines in the new contract.

[8:44:59 PM](#) Upon a motion by Commissioner Hallman, seconded by Commissioner Gering, the Board moved to authorize the staff to pursue a contract with Guenevere Abernathy by a vote of 5-0. The motion was declared passed.

Town Manager Peterson asked the Town Attorney if that motion was sufficient to authorize him to execute the agreement. Town Attorney Hornik asked if we had the terms set. Mr. Peterson said he realized the terms would have to be generated, but wanted the Board to authorize him to go ahead and execute an agreement.

Responding to a question by Commissioner Gering regarding fees, Ms. Hauth noted that the contract with Mr. Gourley was for \$750 per property and there were about 10 properties. Commissioner Gering suggested that the new contract state the fee would not exceed \$1,000 per property.

Upon a motion by Commissioner Gering, seconded by Commissioner Hallman, the Board moved to amend the previous motion to authorize the Manager to execute the contract with terms not to exceed \$1,000 per property by a vote of 5-0. The motion to amend the previous motion was declared passed.

Town Manager Peterson noted he would prepare an RFP and have Ms. Hauth and Ms. Abernathy work out the details. He said he would like this as the first item on the agenda for the next Workshop.

E. Request from Stratford to discuss options on Parcel 6 in Waterstone

[8:48:02 PM](#) Planning Director Margaret Hauth noted that Dave Denison with Stratford was present this evening, and was interested in having some time with the Board prior to the April public hearing when this item would be back before the Board. She said he wanted to discuss some general terms about amendments to the Waterstone Master Plan.

[8:48:46 PM](#) Dave Denison said that construction had begun and they were on tract to meet all of their deadlines, the first of which had already been met. He distributed to the Board two different layouts for Parcel 6, noting that in light of the comments made by the Board at the last public hearing, Stratford was amending their request to provide 95 patio homes and recombine mixed use Parcels 15 and 18 to provide for multi-family homes. He said that Parcels 15 and 18 were on the north side of Waterstone Drive and would shift the alignment of Town Center Road.

Mr. Denison said when they purchased the property they had also acquired the obligations, to the Town, the community college, and MI Homes. He said because the Board wanted to provide some affordable housing, they had talked with MI Homes about having a more affordable product to go on Parcel 6. The layout he had distributed was the product they had come up with, noting it fit the size of the lots. He said they wanted feedback from the Board on limiting the number of lots in Parcel 6 to 95 lots, although the approval they now have would allow 271 apartment units.

Mr. Denison said their amended proposal would be to have 95 forty-foot lots on Parcel 6 with an affordable product with a price range beginning at \$200,000. He said the price range of single-family homes on Parcels 1 and 2 began at \$325,000.

Mr. Denison said the other issue brought forward at the public hearing was a remark by a representative of Durham Technical College regarding the need for multi-family housing. When they looked at other areas of the property, they determined that Parcels 15 and 18 were both mixed use and could be combined, and that an additional 1.2 acres would be cut out and added to Parcel 14 which was the 1-acre park, bringing the total acreage in Parcel 14 to 2.2 acres.

Mr. Denison said keeping the same number of rooftops, this change would limit this tract to 176 units, with 11.7 multi-family units per acre on 15 acres. He said if the Town would rather the 1-acre park remain 1 acre, they would propose to dedicate the additional 1.2-acres to the Town for some other public purpose. He said they would prefer that it be a larger park, but they would leave that decision to the Board.

Mr. Denison said the remainder of the plan would remain the same. He said the affordable product they were suggesting in the area indicated would fit the neighborhood better than multi-family housing. He said the layout for Parcel 6 was a suggested layout, and they would welcome comments from the Planning Board, Planning staff, and the Board.

[8:56:38 PM](#) Commissioner Gering said he did not need an answer tonight, but asked why this combination of use was better in our Economic Development District than the plan that was already approved. Mr. Denison said they would be prepared to answer that by the next time they met.

[8:57:15 PM](#) Mayor Stevens commented that as they have continued with the process, he had talked with the Chair of the County Commissioners today, and was reminded that as we make changes in how things were built out that we think about how it impacts schools and the County. He said he would like to know what the impact on schools would be from this development.

[8:58:21 PM](#) Commissioner Hallman said there was a 25-foot buffer noted on the plan, and since the SUP had been issued we probably couldn't ask for something more.

[8:58:27 PM](#) Ms. Hauth said that one thing about the Entranceway Special Use District was that it did not necessarily prescribe buffers between the different uses, and since we don't know what the adjacent property might be used for there may be some flexibility there. She said around the boundary of Waterstone the buffers ranged from 100' down to 25' based on adjacent use and anticipated adjacent use.

[8:58:54 PM](#) Mr. Denison said in talking with Mr. Moren and looking at the buffer zone, they had wanted to look at a somewhat different alignment. He said Mr. Moren's consultant and Stratford's engineers were in agreement as to where the road should be placed to have the least impact on the wetlands in that area. He said he had asked Mr. Moren what his plans were for his property, and he indicated he had none. Mr. Denison said if Mr. Moren did plan something on that property, there were a number of options he could consider.

[9:01:10 PM](#) Commissioner Gering commented that this same scenario would apply equally well if Parcel 6 remained multi-family.

[9:01:31 PM](#) Mr. Denison said that this location was a good breaking point for two different land uses.

[9:01:42 PM](#) Mayor Stevens remarked that it might be premature in that they were not trying to prescribe how it was designed, but they were concerned about the design of the streetscape, what it would look like, and the types of houses. He said they were concerned about how it created community.

[9:02:03 PM](#) Mr. Denison joked that they certainly would not have garages sticking out in front of the homes.

[9:02:13 PM](#) Mayor Stevens said those were the types of considerations they wanted to focus on.

[9:02:18 PM](#) Mr. Denison said he hoped that by April he would be able to show the Board some product built elsewhere that was similar to what they planned to give them a better idea of what

to expect.

[9:02:33 PM](#) Commissioner Hallman asked to refresh his memory regarding the original number of multi-family units proposed.

[9:02:41 PM](#) Ms. Hauth responded the original proposal called for 271.

[9:02:47 PM](#) Mr. Denison said their revised proposal would remain at 271, consisting of multi-family and patio homes.

[9:03:32 PM](#) Commissioner Hallman said regarding the price of the lower cost units, he asked if any other models had been considered for Parcel 6. Mr. Denison said he had not talked with MI Homes about that, but promised to do so.

[9:04:13 PM](#) Commissioner Lloyd asked if they were keeping in mind that this was in an Economic Development District with some businesses. She said it was nice to get the homes, but if there was not some business included we would not get the full potential of the development. Mr. Denison said so far he had done everything he had promised to do, and would continue to do so. Commissioner Lloyd thanked Mr. Denison for all he was doing.

F. Consider Approval of Water/Sewer Extension Contract for Wilkerson Development, CCD Corp.

[9:05:24 PM](#) Town Engineer/Utilities Director Kenny Keel stated that this was a basic water/sewer contract, noting the specific conditions were spelled out in Appendix A of the contract. He said the biggest item that was different from the Town's basic contract was item #3, where the developer was required to pay \$59,850 in addition to other required fees as a contribution toward the construction costs of the Thalle (Hart's Mill) Sewer Outfall, which would pass through the southern portion of the project property.

[9:06:52 PM](#) Planning Director Margaret Hauth commented that this was a request for a satellite annexation of 38.58 acres, and the conundrum the Board faced each time an annexation came up was whether to spend time talking about annexation and zoning before it actually took any action on the contract. She said the applicant, Roy Wilkerson of CCD Corp., was present this evening.

[9:07:00 PM](#) Commissioner Hallman asked what needed to be done first.

[9:07:01 PM](#) Mr. Keel said that the contract would have to be acted on first if it appeared that the other requests would be approved.

Town Attorney Hornik commented that the contract would have to be in place to provide a vehicle for the annexation and to guarantee the contribution for the provision of water and sewer.

[9:07:37 PM](#) Commissioner Hallman said he had talked with Mr. Wilkerson about this, and had gotten the sense that this project was well-liked, as well as the possibilities it brought. He said

at the same time, the Town had just launched a Strategic Growth Plan. He said he did not want to hold this up, but as Chair of the Strategic Growth Plan Task Force he would like to see this go to the Task Force for consideration with the understanding that in four months they would have a preliminary report out.

[9:08:35 PM](#) Mr. Hornik responded that there was no provision in providing water and sewer that it had to be done in a certain time frame. He said the only concern he had was if in six months the Board decided to pick this back up and make a decision on it, had you lulled the public to sleep regarding it. He said you would have to make a decision regarding re-advertising that you were about to consider action on it. He said the other complication was determining whether we need to plan to move the water and sewer action on and then follow up with discussion of items G and H tonight, or if we can ask the Task Force to take a look at this and come back to us in several months with comments.

[9:09:36 PM](#) Commissioner Lloyd commented on the sum of \$59,850 noted in the Appendix of the contract, which was for water and sewer. She said we could not require that the amount be paid if we did not agree to the annexation, and if we did annex it she wanted to know what they were annexing it for.

[9:10:07 PM](#) Mr. Keel said the \$59,850 would not have to be paid until construction actually began on utilities on the site, so if for whatever reason construction did not begin, that money would not be paid even if the Board approved the contract and it was signed. He said there was a two to three year window for construction to start or the contract was considered null and void, and he did not think approving the contract would have any negative impact if the project did not go forward.

[9:10:49 PM](#) Commissioner Lloyd said if we were holding the developer back and he had people who wanted to locate there, then these funds would help the Town out financially and would keep them from having to take money from the Capital Facility funds. She said she understood the Town's point, but noted it was hard for her to hold the developer up because she understood his point as well. She said this development would be a positive, and she did not believe the developer would say one thing and do another once the Board approved this.

[9:11:44 PM](#) Commissioner Dancy said she did not believe delaying action on the annexation would hold the developer up.

[9:11:55 PM](#) Ms. Hauth said he could not develop the property until action was taken, noting it was now zoned residential. She said because the property was in the ETJ they could not rezone it and annex it later, noting the annexation would have to occur first. She said right now the property was under County zoning.

[9:12:20 PM](#) Commissioner Lloyd said at some point we had to annex the property in order for the developer to do what he wanted to do. Ms. Hauth said that the property had to be rezoned in order for the developer to do what he wanted to do. Commissioner Lloyd said we could not rezone the property until it was annexed.

9:12:46 PM Ms. Hauth said the developer could pursue a rezoning through the County.

9:12:49 PM Mayor Stevens said he believed the Board felt that this development would be a positive for the community because of the addition of tax revenues and the types of businesses it would bring in. He said at the same time they were looking at the Strategic Growth Plan. He said we were discussing delaying this for about four months, when construction was not scheduled to begin for one or two years, or longer.

9:13:28 PM Commissioner Hallman said he agreed that they did not want to hold it up so that those potential clients that wanted to locate there would go away. But at the same time, he said, we had entered into this cooperative project with the County and to turn around and say we were doing this on our own just as we started that process seemed to be bad faith. He said if we could target the mid-term release of the report which was four months away and make it known that we were not holding this up for a year but were allowing it to go to the Task Force and get their blessing, then we could move ahead.

9:14:16 PM Commissioner Gering said he did not see the urgency in approving the first part of this three part process, noting he would rather we consider alternatives at the same time. He suggested deferring it until the Board received feedback from the Strategic Growth Plan Task Force. He said he recalled from a previous case that there was a sixty-day time limit from the Planning Board's recommendation was received that the Town had to act on the annexation.

9:14:58 PM Mr. Hornik stated that there was a sixty-day window from the time an annexation ordinance was adopted.

9:15:04 PM Commissioner Gering said he was speaking of the period of time between the Planning Board's recommendation and the Board's action, noting that action had to take place within sixty days.

9:15:21 PM Ms. Hauth said she believed that the requirement Commissioner Gering was speaking of was that the Planning Board was required to offer a recommendation within a certain time frame of the close of the hearing, and not an obligation of the Board.

9:15:34 PM Commissioner Gering said he would like to have an answer for that. Ms. Hauth said the Town Attorney was looking that up now.

9:15:36 PM Commissioner Lowen said that the Planning Board had not actually acted on the request.

Ms. Hauth stated that because it was a satellite annexation, the Planning Board did not have to make a recommendation on the annexation, but they did offer a recommendation on the rezoning. She said to clarify, the agreement with the consultants for the Strategic Growth Plan was that they would be available in September, so we were not looking at a long period of time before a document was brought forward

[9:16:07 PM](#) Commissioner Lowen said Commissioner Hallman had suggested giving the Strategic Growth Planning Committee an opportunity to look at this and give us their blessing. He asked if they would be reviewing this.

[9:16:28 PM](#) Ms. Hauth said they would be recommending future land use matters, but there would not be a step added where they would get involved in the development review process.

[9:16:45 PM](#) Mr. Hornik read Section 20.48 of the Zoning Ordinance, which said “The Board of Commissioners shall not consider the enactment of the proposed amendment until forty days after the date of the public hearing or until the Planning Board made its recommendation, which ever comes first.” Mr. Hornik said the time frame referred to the Planning Board, and the Town Board could not act until after the public hearing or after the Planning Board made its recommendation to us. He said it was not a deadline by which the Board must act, rather with respect to rezoning applications it was a date before which we could not act.

[9:17:35 PM](#) Alois Callemyn addressed the Board, stating he had served on the Strategic Growth Planning Committee and knew how important it was. He said they had started this process a year ago in January, and the letter they had submitted to the Town was last September, and this seemed like a very long time to them. He said he believed they were comfortable waiting four months, noting they trust the Town but did not want to get caught in limbo or in some loophole where they came back in four months and was told they had missed some deadline.

[9:20:22 PM](#) Mayor Stevens said Commissioner Gering had suggested deferring action on this until the Strategic Planning Committee had an opportunity to comment, and he would take that as a motion.

[9:20:37 PM](#) Commissioner Gering said we needed to make it clear that we were waiting for specific input from the Strategic Planning Committee, not just for some draft that came back that had nothing to say about this property.

[9:20:55 PM](#) Commissioner Hallman suggested focusing the Strategic Planning Committee on that northern entranceway part of it, so that way we would have some sense of where we are.

[9:21:17 PM](#) Commissioner Gering said he did not want to sit here in July and reconsider this application without the input of the Strategic Planning Committee.

[9:21:19 PM](#) Commissioner Hallman said he believed that would be a directive, that the Strategic Growth Planning Committee consider that as a top priority.

[9:21:25 PM](#) Mayor Stevens added that in good faith we think everything will be okay, but as we are looking at strategic growth, if we see issues or problems that we communicate them very expeditiously to the applicant. He said we should not wait until July if we find something in April.

[9:22:09 PM](#) Mr. Callemyn said in all fairness they understand the Board’s position, and

thanked them for the time they had put into this issue.

By consensus of the Board, this Item was Tabled.

G. Consideration of an Ordinance to annex 38.58 acres owned by CCD Corp on the west side of NC 57 between Rabbit Drive and Strouds Creek Road (TMBL 4.44..1, 1b)

By consensus of the Board, this Item was Tabled.

H. Consideration of an Ordinance to zone 38.58 acres on the west side on NC57 between Rabbit Drive and Strouds Creek Road as Light Industrial (TMBL 4.44..1, 1b)

By consensus of the Board, this Item was Tabled.

I. Consideration of a Request to Rename a Street in the Town's ETJ

[9:23:10 PM](#) Planning Director Margaret Hauth said this was an interesting request from Orange County to rename a street in the Town's ETJ currently named Greentree Drive, which made a "backwards c" action to make two connections to Miller Road. She said the two connecting roads were platted with different names, and the one on the north end platted as Woodlawn Drive would soon be extended into Churton Grove subdivision. Because of that, the County was requesting to revert back to the original name of Woodlawn Drive.

Ms. Hauth said this action would impact two houses in the ETJ, one that was owner-occupied and one that was rental. She said she had contacted both families and they were hesitant to be renamed and renumbered, citing issues such as impact on their mortgages or deeds, since those documents refer to the road name. She said there were questions to be resolved to the families' satisfaction, but added that eventually 12 additional homes would be built so the street name change would become more important.

Ms. Hauth said an alternative would be to allow Greentree Drive to remain named that for the "c" shaped portion, then have Woodlawn Drive start at some point in the corner of Greentree Drive. She said that would make it more difficult to locate addresses. She said the County staff had suggested putting up two streets signs, but she was not sure that would be helpful to anyone on Miller Road to put up a sign that said here is Greentree but turn here for Woodlawn as well. She said clarity of street name and direction was the most important thing, noting it was a safety concern in terms of directing emergency services.

[9:26:23 PM](#) Commissioner Lowen said he understood the two residents' concerns, and he wished there was no one affected by the change. But, he said, two residents affected as opposed to twelve was of serious concern.

[9:26:47 PM](#) Ms. Hauth said she would contact the County to discover when they needed to have the conversion in place and then give the two affected families the maximum amount of time to have their addresses changed for mail delivery, driver's licenses, that sort of thing.

[9:27:15 PM](#) Commissioner Lowen commented on how addresses were changed from the Town's viewpoint, noting changing that type of information on property plats and such was of concern.

[9:27:20 PM](#) Ms. Hauth said she believed a simple document could be recorded that reflected the parcel identification numbers, and then when someone conducted a title search that reference document would come up. She said she did not believe the deeds would have to be rewritten.

Commissioner Lowen asked if this action would rename the whole street as Woodlawn. Ms. Hauth said that was correct, adding that what was now Greentree would stay Greentree.

[9:27:46 PM](#) Upon a motion by Commissioner Lowen, seconded by Commissioner Dancy, the Board moved to authorize the name change. By a vote of 5-0, the motion was declared passed.

J. Receive Granview Subdivision Traffic Study Update

[9:30:13 PM](#) Assistant Town Manager/Public Works Director Demetric Potts said that Lorraine Rielly had requested that we remove our traffic control equipment to a different location to determine if there was speeding on the north end of Summit Drive. We did that for the week of February 16th through the 23rd, and received the same result that 85th percentile speed was 30 mph. He said based on that finding, it did not meet the requirements for installation of traffic calming devices. Mr. Potts said staff was once again recommending that no traffic calming devices be placed on Summit Drive.

[9:31:45 PM](#) Commissioner Lowen said in order to address concerns of the residents, he would like to see police patrols stepped up.

[9:32:06 PM](#) Commissioner Dancy asked about the stop signs in other areas.

[9:32:18 PM](#) Mr. Potts said the Board had authorized the addition of a stop sign on High Court, and it had been installed. He said the Beckett's Ridge Homeowners' Association had wanted input on the multi-way stop sign on Beckett's Ridge Drive, and they would be meeting with the Chair of the group to provide that feedback.

[9:32:47 PM](#) Commissioner Hallman said that the study determined that no multi-way stop signs were needed. Mr. Potts responded that was correct.

[9:33:32 PM](#) Commissioner Gering said since it appeared we would not approve this request, we should respond to Ms. Rielly and give her the results of the study, and to keep us informed if she believed the situation changed. Mr. Potts agreed to do that.

[9:34:14 PM](#) Before moving into Closed Session Commissioner Hallman asked that the Board discuss the northern entranceway redevelopment project at the Workshop with the hope of getting approval from the Board to move forward.

[9:34:44 PM](#) Commissioner Hallman said he would provide some information with a brief description of the scope.

[9:34:57 PM](#) Mayor Stevens called for a recess.

Mayor Stevens reconvened the meeting.

[9:35:08 PM](#) Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to go into Closed Session by a vote of 5-0. The motion was declared passed.

12. CLOSED SESSION

- A. Closed Session as authorized by North Carolina General Statute Section 143-318.11(6) to Discuss Personnel Issues
- B. Closed Session as authorized by North Carolina General Statute Section 143-318.11 (3) to meet with Town Attorney regarding current Litigation as an Update on Carl Jenkins Nuisance Litigation regarding nuisance abatement.

Upon returning to Open Session, and upon a motion by Commissioner Dancy and seconded by Commissioner Lowen, the Board moved to authorize the Town Attorney to pursue litigation as discussed in the Closed Session by a vote of 5-0. The motion was declared passed.

- C. Added Item – Blue Bayou Club

Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to pursue tax and penalties repayment within 10 months, with the provision that if any payments were late, collection would be accelerated, by a vote of 5-0. The motion was declared passed.

13. ADJOURN

Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to adjourn at 10:15 PM by a vote of 5-0. The motion was declared passed.

Respectfully submitted,
Donna F. Armbrister, CMC
Town Clerk

RESOLUTION REQUESTING AN APPOINTMENT
TO AN EXTRATERRITORIAL JURISDICTION SEAT
ON THE HILLSBOROUGH PLANNING BOARD

WHEREAS, as a result of the end of a tem, it is necessary to appoint a person to a seat reserved on the Hillsborough Planning Board for persons residing within the town's extraterritorial planning jurisdiction; and

WHEREAS, by state statute and town ordinance, the Orange County Board of Commissioners initially has the authority and responsibility to appoint ETJ members to the town's Planning Board.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE TOWN OF HILLSBOROUGH RESOLVES:

Section 1. The Orange County Board of Commissioners is respectfully requested to re-appoint the following individual to a full term of an ETJ seat on the Hillsborough Planning Board, whose term would expire in March 31, 2009:

Ms Barrie Wallace
140 Tuscarora Dr
Hillsborough, NC 27278

Section 2. If the Orange County Board of Commissioners fails to appoint persons willing to serve in the capacity described above within 90 days after receiving this resolution, then the Hillsborough Town Board may make this appointment.

Section 3. The Town Clerk shall send a copy of this resolution to the Orange County Manager.

Section 4. This resolution shall become effective upon adoption.

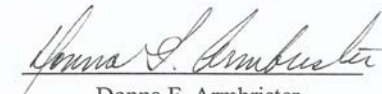
The foregoing resolution having been submitted to a vote received the following vote and was duly adopted this 13th day of March, 2006.

Ayes:

Notes:

Absent or excused:

I, Donna F. Armbrister, Town Clerk of the Town of Hillsborough, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Hillsborough Town Board of Commissioners on March 13th, 2006.


Donna F. Armbrister
Town Clerk

ORDINANCE # ORD2006.03.13-11.C

Section 12-16 Control of Hazardous Materials

This article provides for the control of hazardous materials as well as the removal and abatement of any discharge of hazardous materials on the land or in waters of the Town of Hillsborough.

(a) Intent and purpose.

1. It is the purpose of this article to promote the health, safety and welfare of the citizens of the Town of Hillsborough by protecting the land and the waters over which the town has jurisdiction from pollution by hazardous Materials. It is not the intention of this article to exercise jurisdiction over any matter as to which the United States government or the state has exclusive jurisdiction, and no provision of this article shall be so construed. The town further declares that it is the intent of this article to support and complement applicable provisions of the Federal Water Pollution Control Act, 33 USC 1251 et seq., as amended; the National Contingence Plan for removal of oil adopted pursuant to that act; and the state Oil Pollution and Hazardous Substances Control Act of 1978, G.S. 143-215.75 et seq., as amended; the EPA 112r Clean Air Act 42 USC 7401 et seq.

2. Further, it is the intent of this article that the Fire Chief or his designees shall have the authority to summarily abate or remedy hazardous materials discharged into the environment in such a manner as to endanger the health, safety or welfare of the general public or in such a way as to constitute a public health nuisance. The Fire Chief or his designee shall determine the type, amount and quantity of equipment and personnel required to adequately abate and remedy all hazardous materials discharged into the environment.

(b) Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bailee means any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

Bona fide farm purposes means the production and activities relating to or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or a foreign market.

Carrier means any person who engages in the transportation of hazardous Materials for compensation.

Discharge means but shall not be limited to any emission, spillage, leakage, pumping, pouring, emptying or dumping of hazardous Materials into waters of the town or upon the land of the town, but shall not include amounts less than the quantities that may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A. However, this article shall not be construed to prohibit the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by the state or county government agency in any program of mosquito or other pest control, or their use by any person engaged in a bona fide farm purpose on

a bona fide farm or accepted forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the state, county or local agency charged with authority over such uses, shall not constitute a discharge. The use of a pesticide regulated by the state pesticide board in a manner consistent with the state pesticide law, as amended, shall not constitute a discharge for purposes of this article.

Having control over hazardous Materials means but shall not be limited to any person using, transferring, storing or transporting hazardous Materials immediately prior to a discharge of such hazardous Material onto the land or into the waters of the town, and specifically shall include carriers and bailees of such hazardous Materials.

Hazardous Materials means any substance that when discharged in any quantity may present an imminent and substantial danger to the public health, safety or welfare, as designated pursuant to G.S. 143-215.77A, or constitutes a public health nuisance.

Oil means oil of any kind and in any form, including but specifically not limited to petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances, and are considered to be hazardous materials.

Person means any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, federal or state governments, or private or public corporations organized or existing under the laws of this state or any other state or county.

Public health nuisance includes any discharge determined to be dangerous or prejudicial to the public health.

Premises means any real or personal property involved in a discharge contrary to the provisions of this article.

Restoration and restore means any activity or project undertaken in the public interest or to protect the public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by a hazardous material discharge as nearly as is possible or desirable to the condition that existed prior to the discharge or to abate a public health nuisance.

Superior court means the county superior court.

Waters means any stream, river, creek, brook, run, canal, swamp, lake, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, contained within, flowing through, or bordering upon this town.

(c) Parking and Garaging of Tank and Cargo Vehicles

1. Except in an emergency, no tank or cargo vehicle carrying hazardous materials shall be left unattended on any street, highway, avenue or alley, provided that this shall not prevent a driver from the necessary absence from the truck in connection with the delivery of his load, except that during actual discharge of the liquid some reasonable person shall be present at the vehicle, nor shall it prevent stops for meals during day or night if the street is well lighted at the point of parking.

2. Tank or cargo vehicles carrying hazardous materials shall not be left unattended at any time on residential streets, or within 500 feet of a residential area, educational facility, care facility or hospital. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, present an extreme life safety hazard.

(d) ENFORCEMENT PROCEDURES

1. Inspections and investigations.

The Fire Chief or his designee is empowered to conduct such inspections and investigations as shall be reasonably necessary to:

- (1) Determine compliance with the provisions of this article;
- (2) Determine the persons responsible for violation of this article;
- (3) Determine the nature and location of any hazardous materials discharged to the land or waters of this town; and
- (4) Enforce the provisions of this article.

2. Entry upon land.

The Fire Chief or his designee are empowered upon presentation of identification to enter upon any private or public property for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove hazardous Materials discharge or to perform any restoration necessitated by the hazardous Materials discharge.

3. Confidentiality.

Any information relating to a secret process device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this article shall not be revealed except as may be required by law or lawful order or process.

4. Discharges.

(1) *Unlawful discharges.* It shall be unlawful, except as otherwise provided in this article, for any person to discharge or cause to be discharged hazardous material into or upon any waters or lands within the town, or into any sewer, surface water drain or other waters that drain into the waters of this town, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause. Any discharge occurring in violation of this section constitutes a public health nuisance and is determined to be detrimental to the health, safety and welfare of the citizens of the town.

(2) *Exceptions.* This section shall not apply to discharges of hazardous materials in the following circumstances:

1. When the discharge was authorized by law, either statutory or regulatory.
2. When any person subject to liability under this division proves that a discharge was caused by any of the following:

- a. An act of God.
- b. An act of war or sabotage.
- c. Negligence on the part of the United States government or the state or its political subdivisions, including a county or town.
- d. Any act or omission by or at the direction of a law enforcement officer or firefighter.

5. Removal of prohibited discharges.

(1) *Person discharging.* Any person having control over hazardous materials discharged in violation of this article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersant or treatment materials that will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the state environmental management commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result of and participate in a transfer to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(2) *Removal by town.* The town is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by any other cooperating federal, state or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse hazardous materials discharged onto the land or into the waters of the town and to perform the necessary restoration regardless of whether the discharge is in violation of this article. The Fire Chief shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the town's personnel and for use of the town's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public health, safety or welfare, or public property, or abate a public health nuisance, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.

(3) *Cooperation with town.* In any removal undertaken by the town, the person having control over such hazardous materials shall assist in the abatement, removal and remedial measures associated with the hazardous material discharge. Assistance shall consist of any or all of the following:

- (a) Shall comply with the direction and orders of the fire chief.
- (b) Shall supply any emergency response plan information available for the site of any discharge.
- (c) Shall supply emergency response equipment, personnel and materials available on the site.

(e) Required notice.

Every person owning or having control over hazardous materials discharged in any circumstances other than pursuant to a rule adopted by the state environmental management commission, a regulation of the U.S. Environmental Protection Agency, or

the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the Town of Hillsborough, Orange County Emergency Management and the State of North Carolina of the nature, location and time of the discharge and of the measures being taken, or are proposed to be taken to contain and remove the discharge. If the discharged material is a pesticide regulated by the state pesticide board, the Fire Chief shall immediately inform the chair of the pesticide board. Removal operations under this section of substances identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the pesticide emergency plan adopted by the state pesticide board; provided that in instances where entry of such hazardous substances into waters of the town is imminent, the Fire Chief may take such actions as are necessary to physically contain or divert such substances so as to prevent entry into the surface waters.

(f) Criminal penalties.

Any person who violates the provisions of this article or fails to comply with any of its requirements shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in G.S. 14-4.

(g) Civil penalties.

1. Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this article or fails to report a discharge as required by section 12-16(e) or who fails to comply with the requirements of section 12-16(d)5.1 or orders issued by the Fire Chief as a result of violations of such requirements, shall incur, in addition to any other penalty provided by law, a penalty in the amount of \$1,000.00 for every such violation. Every act or omission that causes, aids or abets a violation of this subsection shall be considered a violation under the provisions of this subsection subject to the penalty provided in this section.

2. The penalty provided in this section shall become due and payable when the person incurring the penalty receives a notice in writing from the Town of Hillsborough describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a written request for reconsideration with the Town manager within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment having been served on the violator, or within 30 days of the town manager deciding any request for reconsideration, the town manager shall cause that a civil action in superior court be initiated to recover the amount of the assessment.

(h) Determination of expenses.

Upon completion of any hazardous materials removal or restoration project or activity or abatement conducted pursuant to the provisions of this article, each agency that has participated by furnishing personnel, equipment or material shall deliver to the Fire Chief a record of the expenses incurred by the department. Upon completion of any hazardous Material removal or restoration project or activity, the Fire Chief shall prepare a statement of all expenses and costs of the project or activity expended by the town and shall transmit this to the town manager and finance director.

(i) Demand for payment.

Upon receipt of the statement of expenses and costs from the Fire Chief the Finance Director shall make demand for payment upon the person having control over the hazardous materials discharged to the land or waters of the town unless the discharge has occurred due to any of the reasons stated in section 12-16(d)4.2.2(a-d) or if the discharge is one resulting from a bona fide farm purpose that has occurred on a bona fide farm.

(j) Contested charges.

A person contesting a demand for payment made pursuant to section 12-16(j) shall have ten days from receipt of the demand for payment to request that the matter be considered by the Town Manager. The final decision of the Town Manager may be appealed to the superior court within 30 days of the date of that decision in an action in the nature of certiorari.

(k) Collection.

Any person having control of hazardous materials discharged to the land or waters of the town in violation of the provisions of this division and any other person causing or contributing to the discharge of hazardous materials shall be directly liable to the town for the necessary cleanup projects and activities arising from such discharge, and the town shall have a claim to recover from any and all such persons. If the person having control over the hazardous materials discharged shall fail or refuse to pay the sum expended by the town, the amount shall be a lien upon the land or premises where the discharge occurred, and shall be collected as unpaid taxes.