

The Smithfield Town Council met in regular session on Tuesday, May 2, 2006 at 7:30 p.m. in the Council Chambers of the Smithfield Town Hall. Mayor Norman Johnson presided.

Councilmen Present:

Charles Williams  
Vic Ogburn  
Daniel Evans  
Clayton Narron  
Andy Moore  
Tom Bell  
Sidney Broadwell

Councilmen Absent:

Staff Present:

Pete Connet, City Manager  
Debra Holmes, Town Clerk/Personnel  
Steve Gillikin, Police Chief  
Bobby Tripp, Public Utilities Director  
Tim Johnson, Parks/Rec Director  
Patrick Harris, Fire/EMS Director  
Paul Embler, Planning Director  
Mark Stephens, Finance Director

Also Present:

Bob Spence, Jr, Town Attorney

Staff Absent:

The invocation was given by Councilman Williams, followed by the Pledge of Allegiance.

**APPROVAL OF AGENDA**

Councilman Broadwell made a motion, seconded by Councilman Williams, to approve the agenda with the following amendments: (1) Move "Budget Amendment 2-4 (2005-2006) from the Consent Agenda to New Business; (2) Move the "Resolution of Interfund Loan - EMS Garage" from the Consent Agenda to New Business; and (3) Add "Comments regarding Finances by Councilman Broadwell" to New Business. Unanimous.

**PRESENTATION**

Mayor Johnson presented to Town Attorney Bob Spence a Memorial Resolution honoring his late father, Robert A. Spence, Sr. who was a former Town Attorney. (Attachment I)

**PUBLIC HEARINGS**

**Item 1: Special Use Permit Request to operate a truck rental establishment on property located on the west side of the intersection of Whitley Drive and West Market Street - Ricky Brady - SUP-06-07**

Mayor Johnson opened the public hearing.

Planning Director Paul Embler addressed the Council on a request by Ricky Brady for a Special Use Permit to operate a mini-storage business on the west side of the intersection of Whitley Drive and West Market Street. The Planning Department recommended approval of the permit with the following conditions: (1) No items for rent or lease exceeding 36 inches in height be within the site distance triangles, required driveways and landscape yards; (2) Rental equipment may not consume required parking for the existing facility; and (3) The applicant make known where the on-site trucks and other equipment for rent will be stored. The Planning Board unanimously voted to recommend approval. The Appearance Commission unanimously voted to recommend approval with the following conditions: (1) Installation of commercial street yard landscaping be in compliance with current town standards for new construction, and (2) no more than one truck is to be parked in front of the line established by the front of the building, parallel with U.S. 70.

Mayor Johnson asked for comments from the Council.

Councilman Williams questioned sign advertisement on the trucks. Mr. Embler stated that the ordinance will not allow for any temporary signs to be placed on the trucks as advertisement.

Councilman Bell stated that a current similar business in the area was permitted with the restriction that no trucks could be parked in front of the store. He questioned if the restriction was limited to that property and would it apply to this permit request. Mr. Embler stated it would not apply to this petition.

Mayor Johnson asked for comments from the audience.

There being no further comments, Mayor Johnson declared the public hearing closed.

The Council reviewed the Finding of Fact as follows:

a. The Council agreed that all applicable specific conditions pertaining to the proposed use have

- been satisfied per staff with regard to meeting the zoning code.
- b Councilmen agreed that access roads or entrance and exist drives are sufficient in size and properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency.
  - c Councilmen agreed that off-street parking, loading, refuse and other service areas being located so as to be safe, convenient, allow for access in case of emergency, and will minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood.
  - d Councilmen agreed that utilities, schools, fire, police and other necessary public and private facilities and other services will be adequate to handle the proposed use.
  - e Councilmen agreed that the location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways will harmonize with adjoining properties and the general area and minimize adverse impacts.
  - f Councilmen agreed that the type, size and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will not have significant adverse impacts on adjoining properties or the neighborhood.

Councilman Bell made a motion, seconded by Councilman Ogburn, to approve the Special Use Permit request with the recommendations by the Planning Staff, based on the Findings of Fact being met. Unanimous.

**Item 2: Special Use Permit Request to allow for a private nightclub on property located on the south side of West Market Street, approximately 320 feet southeast of its intersection with NC Highway 210 - Marcelo Payamps - SUP-06-08**

Mayor Johnson opened the public hearing.

Planning Director Paul Emblar addressed the Council on a request for a Special Use Permit to allow for a private nightclub on property located on the south side of West Market Street, approximately 320 feet southeast of its intersection with NC 210 Highway. The Planning Department recommended approval with the following conditions: (1) The applicant provide the Planning Director with a letter signed by the property owner agreeing to the proposed use; (2) Additional paved parking in the rear of the building be provided to accommodate the additional parking demands generated by the use; (3) Parking lot landscaping and vehicular surface screening be installed in accordance with current development regulations; and (4) A trash corral be constructed in accordance with current development regulations. The Planning Board unanimously voted to recommend approval. The Appearance Commission unanimously voted to recommend approval.

Mayor Johnson asked for comments from the Council.

Councilman Williams requested that all entertainment be held on the inside of the building and not in the parking lot. Further, he asked if the Police Chief had any concerns.

Chief Steve Gillikin, duly sworn, stated that his staff pulled the reports and he found that there are two similar "bars" in that area. One of those establishments had 73 calls for service during the last 12 month period and the other had 5 calls for service. He questioned what type of "night club" and expressed that any establishment of this sort has the potential for problems which would impact the Police Department.

Town Attorney Bob Spence asked for clarification as to what types of service calls. Chief Gillikin stated traffic stops, suspicious activity, fights, trespasses, and larcenies. Chief Gillikin testified that additional bars in this particular location would (1) create an unduly high density of bar patrons right at this site, (2) would increase the already high criminal and bar use stops for the police and (3) would increase danger to patrons, motorists, and nearby retail businesses.

Town Attorney Bob Spence asked if there was a concern about the merging lane on Highway 70 East at the Highway 210 intersection with the close proximity to the proposed site. The Chief testified that the location of the bar was such that access to it was from the access ramp for traffic from Highway 210 entering Highway 70 business.

Public Works Director Marty Anderson, duly sworn, stated that he was a Registered Professional Engineer in North Carolina with approximately 21 years in engineering. He stated that he had reviewed the site distance and found that there was approximately 220-250 feet of site distance from the property in question. With engineering calculations, he estimated the travel time at 35 mph to be 4.3 seconds; 40 mpg to be 3.7 seconds; and 45 mpg which is the posted speed limit to be 3.3 seconds. He estimated the stopping distance, based on frictional factors, asphalt, and new tires at 35 mph to be 181 feet; at 40

mph to be 219 feet and at 45 mph to be 255 feet. He stated that there is very little reaction time, based on his calculations, to prevent an accident and that this was a dangerous location for a bar due to the point of access to highway 70.

Planning Director Paul Embler, duly sworn, stated that he had approximately 34 years of experience in landscape architect, planning and as a business owner. Mr. Embler testified that, upon his experience, the property values of the adjoining property owners, would be adversely impacted as this type of business would lower the property values due to the growing density of bar patrons and bar locations in the area. Mr. Embler stated that an increase of one bar at this location would adversely impact the adjacent real property businesses and the residential homes across the river that are already complaining of noise.

Hosea Betances, applicant and duly sworn, stated that he wanted to do something good for the citizens. He further stated that he would hire police officers to keep the peace.

Councilman Williams questioned if he was the sole owner. Mr. Betances stated that he and Marcelo Payamps were partners.

Councilman Moore questioned the hours of operation. Mr. Betances stated the proposed use hours would be 2-3 p.m. to 2-3 a.m. Thursdays through Sundays.

Mayor Pro-Tem Evans questioned how the private club and memberships would work. Mr. Betances stated that he would probably sell 200-250 memberships but none the first year in order to attract the customers.

Mayor Johnson advised Mr. Betances that the fire code only allows a certain number of people in a building. Mr. Betances stated that he would do exactly what Town staff told him he could do so that he would be compliant with the law.

Emergency Services Director Patrick Harris, duly sworn, stated that he didn't see any problems with access to the property from a fire/EMS standpoint. He did advise that there were different fire codes for different buildings and he would be unable to state the maximum occupancy number until the submission of plans.

Councilman Moore questioned if the Police Department had received any complaints about the current bars. Chief Gillikin stated he had received noise complaints from neighbors as far downstream as South Smithfield.

Councilman Bell questioned if mixed drinks would be served. Mr. Betances stated that he didn't think so but he would "at least" serve beer. Further, he stated there would be no food service.

Mayor Johnson asked for other comments from the audience. There were none.

There being no further comments, Councilman Broadwell made a motion, seconded by Councilman Williams, to close the evidence and public hearing. Unanimous.

The Council reviewed the Finding of Fact as follows:

- a. The Council agreed that all applicable specific conditions pertaining to the proposed use have been satisfied per staff with regard to meeting the zoning code.
- b. Councilmen agreed that access roads or entrance and exist drives are sufficient in size and but are not properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency. Mayor Pro-Tem Evans sited Chief Gillikin and Public Works Director Marty Anderson's testimony.
- c. Councilmen denied that off-street parking, loading, refuse and other service areas being located so as to be safe, convenient, allow for access in case of emergency, and will minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood.
- d. Councilmen agreed that utilities, schools, fire, police and other necessary public and private facilities and other services will be inadequate to handle the proposed use. Councilman Moore sited Chief Gillikin's testimony regarding the large burden to be placed on police for additional calls.
- e. Councilmen agreed that the location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways will harmonize with adjoining properties and the general area and minimize adverse impacts.
- f. Councilmen agreed that the type, size and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will have significant adverse impacts on adjoining properties or the

neighborhood due to the hours of operation.

Mayor Pro-Tem Evans made a motion, seconded by Councilman Moore, to deny the Special Use Permit request based on the Findings of Fact (c), (d), and (f) not being met. Unanimous.

The Town Council unanimously finds the following specific findings. There are already two bars with a very high joint traffic at this location. There were 78 calls to the police for this area in just the last 12 months. An increase in the number of bars in the area would create a higher density of bar customers in this one area which increased intensity of use would be so high as to have a significant adverse impact on retail business in the area and would adversely affect the ability of the neighbors to attract retail customers. This area already has as many bars as it can accommodate without significant adverse impact. The Town Council further finds that the location of the bar on the Highway 210/70 ramp creates a traffic hazard to traffic entering Highway 70 from the Highway 210 turn without adequate notice. The Town Council finds that there is an undue risk that bar patrons would pull in front of them and without adequate reaction time to prevent likely motor vehicle collisions.

**CITIZEN COMMENTS**

- Elton Evans with the Johnston County Veterans Office presented a Certificate of Appreciation to Mayor Johnson.

Further, Mr. Evans requested that the Town assist the Johnston County Veterans Office with its electric bill until it can get financially stable. He stated that the light bill was running approximately \$500/month.

Public Utilities Director Bobby Tripp advised that his office had moved the Veterans Office to a small commercial rate and had given them a three-month rebate. The problem is that it is a 2600 square foot old house with little insulation.

Town Attorney Bob Spence stated that there could be legal issues if the Town shows favoritism to a particular group. Following discussion, the Council advised Mr. Evans that staff would look further into the issue and report back to the Council at the June meeting.

- Chris Johnson, Executive Director of the Downtown Smithfield Development Corporation, addressed the Council on a proposed project by Ross Lampe for development along the river.

Mr. Ross Lampe explained his vision of construction of a waterway or canal built on the edge of the flood plain and supplied by the Neuse River. He stated that property could be developed along the water front. Further, he was unsure how it would be funded. He asked that the Town consider such a project before the widening of the bridge.

- Councilman Moore thanked the Fire Department for their efforts in putting forth the 100<sup>th</sup> Anniversary of the Fire Department and the Electric and Sanitation Departments for their hard work and dedication.

**CONSENT AGENDA**

Councilman Broadwell made a motion, seconded by Councilman Evans, to approve the following item as listed on the Consent Agenda:

- Minutes of April 4, 17, and 27, 2006  
Unanimous.

**NEW BUSINESS**

- b. Bid Award for 2005-2006 Street Resurfacing Project

Public Works Director Marty Anderson addressed the Council on bids received for the Street Resurfacing Project as follows:

Coastal Carolina Division of APAC-Atlantic, Inc .....	\$163,432.73
S.T. Wooten Corporation .....	\$172,432.00
SELCO Construction, Inc.....	\$173,872.00
Johnson Brothers Utility and Paving, Co., Inc. ....	\$183,318.00

Mr. Anderson advised that \$3,005.60 would need to be taken from the Street Division Supplies/Operation line item, which is normally used for repairing potholes and other supplies/operations.

Councilman Ogburn made a motion, seconded by Councilman Broadwell, to award the bid for the 2005-06 Street Resurfacing Project to Coastal Carolina Division of APAC-Atlantic, Inc. for an amount not to exceed \$153,005.60 and approve the use of the Street Division Supplies/Operations line item (105600.3300) for the excess \$3,005.60. Unanimous.

c. Tandem Dump Truck Purchase and Capital Outlay Budget Amendment

Public Works Director Marty Anderson addressed the Council on the purchase of a 2006 International Model 7600 Tandem 6x4 Heavy Duty Truck Chassis with an Ox Steel Dump Body from White’s International Trucks of Greensboro. Further, he stated that staff had studied the elimination of the FY 05-06 budgeted capital outlay equipment such as the 3/4 ton Utility Truck and the Flatbed Truck with dump body to purchase this Tandem Dump Truck, which is proposed capital outlay equipment in the FY 06-07 budget. He stated that combining the savings from the refuse truck and the elimination of the budgeted capital equipment will make it possible to purchase the Tandem Dump Truck, saving \$90,000 in the FY 06-07 budget.

Councilman Ogburn made a motion, seconded by Councilman Broadwell to purchase the Tandem Truck using the “piggyback” equipment procurement process and that the Capital Outlay Equipment budget amendment be approved. Unanimous

d. Budget Amendment 2-4 (2005-2006)

Councilman Moore requested clarification as to the two budget amendments.

Finance Director Mark Stephens stated that Budget Amendment #2 is to transfer monies from the Electric Fund - Fund Balance and moving it to the Electric Capital Projects Fund to pay for the contracts for the hospital that was not appropriated in the current year’s budget:

	Increase (Decrease)
Revenue	
Transfer from Electric Fund	47-3900-1700 .....\$375,000
Fund Balance Appropriated	31-3970-0000 .....\$375,000
Expenditure	
JMH Addition	47-7230-7401 .....\$375,000
Transfer to Capital Projects	31-7230-9102 .....\$375,000

Budget Amendment #3 is the cost of the EMS Garage Renovation which was originally budgeted in the General Fund at \$200,000 but due to engineering delays and construction costs, the cost is now \$300,000. This amendment transfers the amount into the General Fund Capital Projects.

Revenue	
USDA Loan	46-3900-5400 .....\$300,000
Loan Proceeds	10-3710-0000 .....\$(200,000)
Expenditure	
EMS Garage Renovation	46-5400-7401 .....\$300,000
Capital Outlay	10-5400-7400 .....\$(200,000)

Budget Amendment #4 is for the purchase of the park property on Buffalo Road in the amount of \$165,000.

Revenue

Loan Proceeds	10-3710-0000 .....	\$165,000
Expenditure Capital Outlay	10-5400-7400 .....	\$165,000

Councilman Broadwell requested that all projects of this size be placed under New Business instead of Consent Agenda for consideration by the Council.

Councilman Williams made a motion, seconded by Councilman Moore, to approve the budget amendments. Unanimous.

e. Resolution of Interfund Loan - EMS Garage

Councilman Broadwell made a motion, seconded by Councilman Narron, to adopt the resolution of interfund loan thereby borrowing the funds from the Electric Fund and reimbursing the Electric Fund with the loan proceeds from the USDA once 95% of the project is complete. Unanimous.

f. Councilman Broadwell Remarks - Finances

Councilman Broadwell thanked the Finance Director for his quick response to questions and timely reports.

There being no further business, the meeting was adjourned.

\_\_\_\_\_  
Norman R. Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Debra W. Holmes, Town Clerk