

The Smithfield Town Council met in regular session on Tuesday, July 1, 2014 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall. Mayor John H. Lampe II. presided.

Councilmen Present:

M. Andy Moore, Mayor Pro-Tem
Marlon Lee, District 1
J. Perry Harris, District 2
Travis Scott, District 3
Emery D. Ashley, At-Large
Charles A. Williams, At-Large

Councilmen Absent

Roger A. Wood, District 4

Administrative Staff Present

Paul Sabiston, Town Manager
Lenny Branch, Public Works Director
Paul Embler, Planning Director
Kenneth C. Griffin, Public Utilities Director
Tim Kerigan, Human Resources/PIO
Tim Johnson, Parks & Rec Director
Mike Scott, Police Chief
Greg Siler, Finance Director
Shannan Williams, Town Clerk

Present:

Bob Spence, Town Attorney

Staff Absent:

Patrick Harris, Emergency Services

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

APPROVAL OF AGENDA:

Councilman Ashley made a motion, seconded by Councilman Williams, to approve the agenda with the following amendments:

- Amended June 3, 2014 Regular Meeting Minutes
- Add to the Consent Agenda: Item # 6 – Special Event – Mid Town Reunion

Unanimously approved.

PRESENTATIONS: None

PUBLIC HEARINGS:

Town Clerk Shannan Williams swore in persons wishing to offer testimony at the Public Hearing.

Mayor Pro-Tem Moore made a motion, seconded by Councilman Scott, to reconsider the application by Nitro Solar Farm (Ashley Spain) for a Conditional Use permit based on new evidence that the applicant believed he was unable to present, and did not present, at the hearing held on June 3, 2014. Unanimously approved.

1. Conditional Use Permit Reconsideration: Nitro Solar Farm (CUP-14-03)

Mayor Pro-Tem Moore made a motion, seconded by Councilman Scott, to open the public hearing. Unanimously approved.

The applicant is requesting reconsideration of a condition use permit application denial by the Town Council to construct and operate a solar farm. The basis for the reconsideration is defined in Section 13-13: Reconsideration of Council/Board Action, of the Unified Development Ordinance, of the Town of Smithfield. The Town Council denied the request for the conditional use permit to construct and operate a solar farm at its June 3, 2014 meeting. The solar farm is proposed to be constructed on a portion of an 87.37 acre tract of land located within the R-20A (Residential-Agricultural) zoning district. The property considered for approval is located on the east side of Yelverton Grove Road approximately 1500 feet south of its intersection with Ray Drive and further identified as Johnston County Tax ID# 15L11034.

Planning Director Paul Embler has incorporated his entire record and provided it to Council in written form in the July 1, 2014 agenda packet.

The Planning Board at its May 1, 2014 meeting unanimously voted to recommend approval of the conditional use permit request to allow for the construction and operation of a solar farm on property located within a R-20A (Residential-Agricultural) zoning district.

The Planning Department recommends approval of the Conditional Use Permit for a solar farm providing a fifty foot landscape buffer with security fence is installed in accordance with any approved site plan prior to operation of the facility.

Mayor Lampe asked if there were any questions/comments from those persons in the audience that were duly sworn to testify.

Ashley Spain of 1975 Yelverton Grove Road testified that the proposed solar farm would be constructed on his property. Mr. Spain stated the income from the project is more profitable than farming and by leasing the land; the family farm will be able to remain in the family.

Mr. Spain admitted into evidence notarized statements from the following adjacent property owners who are in favor of the project: Revel Ray Spain, Jr., Jason Hall and Leonard Stallings.

Mr. Spain also admitted into evidence two maps that showed the proposed project site in relation to the adjacent properties.

Mr. Spain further testified that the proposed site is set back 1,000 feet from the road with a fifty foot buffer and it will be virtually impossible for any motor vehicle accidents to occur. Mr. Spain stated that he would work with the fire department to allow 24 hour access to the solar farm.

Mr. Spain also testified that the construction of the solar farm would create some temporary jobs which would be a benefit to the community.

Mayor Lampe asked if there were any questions/comments from the Council.

Councilman Scott asked of Mr. Stallings, an adjacent property owner, if he felt that the proposed solar farm would negatively impact his property values.

Mr. Stallings testified that he did not feel that the solar farm would devalue his property in any way.

Mayor Pro-Tem Moore stated that his concern at the last public hearing was Finding of Fact #3. Mr. Moore stated that the testimony provided by Mr. Spain provided clarity to that issue.

Councilman Harris stated that after the last public hearing, he visited the proposed site to better understand the project.

Mayor Pro-Tem Moore wanted it reflected in the record that there were no prior discussions with Mr. Spain concerning this project.

Councilman Ashley made a motion, seconded by Councilman Williams, to close the public hearing. Unanimously approved.

The Written Finding of Facts

At its July 1, 2014 regular meeting, The Town Council of the Town of Smithfield decided the matter of this Conditional Use Permit Application by motion and vote on each of the following four findings of fact.

1. Finding One of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved or is approved with the following stated conditions.

The proposed solar farm will not materially endanger the public health safety or general welfare; the panels are low profile, will be screened from view, do not produce sound, do not move and have no emissions. They are completely safe and will be installed following all local electrical and building codes. They will be designed to withstand wind loads and will be fenced in and buffered for safety purposes. They are monitored electronically on a 24 hour basis. There are no lights, so neighbors will not be visually disturbed.

2. Finding Two of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town of Smithfield Unified Development Ordinance or other applicable regulations or is approved with the following additional stated conditions.

The solar farm will be in complete compliance with local ordinances and; meets required conditions and specifications. The project will be prepared by licensed North Carolina Engineers and constructed by licensed North Carolina Contractors and Electricians.

3. Finding Three of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application will not substantially injure the value of adjoining or abutting property and will not be detrimental to the use or development of adjacent properties or other neighborhood uses or is approved with the following additional stated conditions.

The solar farm will not adversely affect the use or any physical attribute of adjoining or abutting property. It will be completely screened by a landscape buffer, it will be fenced in and locked so there is no debris or emission coming from the site, and dependable, renewable energy along with creation of new jobs is a benefit to the public.

4. Finding Four of Four: Approved

Based on the evidence and testimony presented it is the finding of the Town Council that the application would not adversely affect the adopted plans and policies of the Town of Smithfield, or violate the character of existing standards for development of the adjacent properties or is approved with the following additional stated conditions.

The screen buffer will be in complete harmony with the area, it will feature large, medium, and small trees and bushes, the solar panels will not be seen from neighboring sites and will not generate any noise or emissions. There are no impacts generated by the solar farm, it does not require sewer or water services, creates no traffic on the roads, does not impact school populations and requires no town services such as police or fire.

Councilman Ashley made a motion, seconded by Councilman Williams, to vote in the affirmative to all of the above four Finding of Facts. Unanimously approved.

Conditional Use Permit Approval/ Denial

Councilman Scott made a motion, seconded by Mayor Pro-Tem Moore, based upon satisfactory compliance with the above four stated findings and fully contingent upon acceptance and compliance with all conditions as previously noted herein and with full incorporation of all statements and agreements entered into the record by the testimony of the applicant and applicant's representative, I move to recommend approval of Conditional Use Permit Application # CUP-14-03. Unanimously approved.

CITIZENS COMMENTS:

- Rodney Taylor - 1107 South First Street, Smithfield - expressed his concerns to the Council about declining property values in the Town of Smithfield.
- Shirley Cooley expressed her concerns to the Council about the entrance of Dogwood Street and Old Goldsboro road. Ms. Cooley explained that the area has been patched but not paved.

Public Works Director Lenny Branch responded that he was aware of the problem and was looking for ways to improve the area.

CONSENT AGENDA:

Mayor Pro-Tem Moore made a motion, seconded by Councilman Williams to approve the following items as listed on the Consent Agenda:

1. Approval of Minutes:

May 28, 2014 – Special Meeting – FY 2014-2015 Budget Session
May 28, 2014 – Closed Session
June 3, 2014 – Regular Meeting
June 9, 2014 – Special Meeting – FY 2014-2015 Budget Session
June 11, 2014 – Special Meeting – FY 2014-2015 Public Hearing
June 11, 2014 – Special Meeting
June 11, 2014 – Closed Session

2. Approval Resolution # 544 (06-2014) declaring equipment as surplus personal property and the approval of the electronic auction of surplus personal property

TOWN OF SMITHFIELD RESOLUTION # 544 (06-2014) Authorizing the Sale of Certain Personal Property at Public Auction

WHEREAS, the Town Council of the Town of Smithfield desires to dispose of certain surplus property of the Town in accordance with NC GS 160A-270; and

WHEREAS, the Town Council of the Town of Smithfield desires to utilize the auction services of a public electronic auction service.

NOW, THEREFORE, BE IT RESOLVED by the Town Council that:

- The following described property is hereby declared to be surplus to the needs of the Town:

Model/Vin/Ser.#	Dept	Description
2G1WS553181266107	Police	2008 Chevrolet Impala
	Police	I-Phone S model
	Police	I-Phone S model
	Police	I-Phone S model
EO-0017-AO5	Fire	MSA Evolution 4100 Thermal Imaging Camera
	Fire	Acer Computer Monitor – 23 Inch LCD
Model CF-19	Fire	Panasonic ToughBook Laptop
Model CF-29	Fire	Panasonic ToughBook Laptop
Model N750 DB	Fire	Belkin USB Wireless Adapter
Model PC770	Fire	Verizon PCI Wireless Adapter
Model 6940	Fire	HP Deskjet Printer
	Fire	Desktop PC – 3.2 GHZ, 512 DDR2, No Hard Drive

- The Town Manager or his designee is authorized to receive, on behalf of the Town Council, bids via public electronic auction for the purchase of the described property.
- The public electronic auction will be held beginning no earlier than July 14, 2014.
- The Town Council further authorizes the disposal of Town surplus property by use of a public electronic auction system provided by GovDeals Inc. The property for sale can be viewed at **www.govdeals.com**. Citizens wanting to bid on property may do so at **www.govdeals.com**. The terms of the sale shall be: All items are sold as is, where is, with no express or implied warranties; All items will be sold for cash or certified check only; Payment must be received for all items sold before they may be removed from the premises; All items sold must be paid for and removed from the site of the sale within 5 business days of the sale, or they will be subject to resale.
- The Town Clerk shall cause a notice of the public auction for surplus property to be noticed by electronic means in accordance with G.S. 160A-270(c), available on the Town of Smithfield website www.smithfield-nc.com
- The highest bid, if it complies with the terms of the sale, may be accepted by the Finance Director or his designee and the sale consummated.

Adopted this 1st day of July, 2014.

3. Approval of a contract renewal with Grid One Solution to perform the Town of Smithfield utility meter reading services beginning on July 1, 2014.
4. Approval to renew the annual support agreement with Laserfiche for the use of document imaging software.
5. Approval to add "Slow, Child at Play" signs to be placed in the 300 block of North Sixth Street.
6. Special Event – Mid-Town Reunion- This outdoor event will be held on July 26, 2014 on South 7th Street between east Johnston Street and Church Street.

Unanimously approved.

BUSINESS ITEMS:

1. Ordinance Amendment – Section 10-157 “Stopping with left side to the curb”

Town Manager Paul Sabiston and Police Chief Mike Scott addressed the Council on a request to amend Chapter 10 Section 157 of the Town ordinance by adding the words “or park” and removing the words, ...”in the business district”...: Chief Scott explained that this amendment will prohibit the stopping of vehicles against traffic on Town streets in the Town Limits of Smithfield, as opposed to only in the business district. The police department has received complaints of vehicles parking/stopping the wrong way on Town streets. This parking/stopping maneuver endangers other drivers by driving vehicles in the on-coming lane of travel both while parking/stopping, and when pulling from the parked/stopped spot. Chief Scott stated that he has reviewed Town ordinances from Selma, Clayton and Benson and has found all of these Towns prohibit parking/stopping against traffic on town streets. By changing Smithfield’s Ordinance, all major Towns in Johnston County will be uniform in this regard.

Councilman Williams stated that the immediate issue was on Hancock Street only due to overflow parking and high volume days at the Department of Social Services. Mr. Williams suggested that “No Parking” signs be installed in the 700 block of Hancock Street to alleviate some of the complaints.

Councilman Ashley made a motion, seconded by Councilman Harris to table this request until a later date. Unanimously approved.

2. Discussion regarding Holiday and Overtime Pay for non-exempt employees

Town Manager Paul Sabiston addressed the Council on consideration to amend the policy concerning holiday pay, continuous service pay and overtime pay for non-exempt employees. Mr. Sabiston explained that this discussion is in regards to employees in the Electric and Water and Sewer Departments expressing their concerns at the June regular meeting. Mr. Sabiston further explained that there were two issues to consider. The first issue was whether the Town would be willing to actually pay time and a half to employees that are called back into work on a holiday. The second issue was whether the Town would be willing to pay (not in compensatory time but in money) for continuous time worked that exceeds forty (40) hours of physical time worked. Presently, such time is generally taken as compensatory time off by the employee and not paid out as a part of the Town policy. Mr. Sabiston made the following recommendations to Council: 1) Consider adjusting the policy to allow non-exempt employees that work during holidays and do not miss any other work hours during that week to be paid time and a half for the holiday hours worked. And 2) consider adjusting the policy to allow non-exempt employees that perform continuous work in addition to forty (40) hours of physical work to be paid time and a half for the continuous hours worked. Sick, vacation or holiday pay would not be counted towards the forty (40) hours of actual worked hours.

Mayor Pro- Tem Moore asked that a monthly report be submitted to the Council regarding the overtime expenses.

Councilman Scott made a motion, seconded by Councilman Ashley, to approve adjusting the policy to allow non-exempt employees that work during holidays and do not miss any other work hours during that week to be paid time and a half for the holiday hours worked. Unanimously approved.

Councilman Williams made a motion, seconded by Mayor Pro-Tem Moore, to approve adjusting the policy to allow non-exempt employees that perform continuous work in addition to forty (40) hours of physical work to be paid time and a half for the continuous hours worked. Sick, vacation or holiday pay would not be counted towards the forty (40) hours of actual worked hours. Unanimously approved.

3. Discussion regarding Compensation for Advisory Boards

Town Manager Paul Sabiston addressed the Council on the compensation amount to the Town's Planning Board and Board of Adjustment members. During the FY 2014-2015 budget work sessions, the question arose regarding whether the Town was paying an adequate monthly sum to our advisory boards. Presently, the Planning Board members and Board of Adjustment members are paid \$10.00 per meeting in attendance. Other Town advisory boards are not compensated for their service.

Councilman Scott made a motion, seconded by Councilman Lee, to table this request until the Planning Board and Board of Adjustments have had an opportunity to discuss this and make a recommendation to the Council. Unanimously approved.

4. Discussion regarding amending the Employee Cell Phone Policy

Town Manager Paul Sabiston addressed the Council on consideration to amend the Town of Smithfield's Cell Phone Policy for employees. During the FY 2014-2015 budget work sessions, Council requested that staff amend the employee cell phone policy. The current policy adopted in 2010 allows a taxable stipend amount that is dependent on the type of phone in which an employee utilizes. The current stipend amounts are as follows: \$125.00 a month for smartphones, \$50.00 or \$15.00 a month depending on usage requirements. The proposed policy amends the stipend amounts to \$50.00 per month, \$25.00 per month and \$15.00 per month. The proposed stipend amount is based on job requirements and accessibility. Mr. Sabiston explained that this policy would take effect on January 1, 2014 to allow employees time to terminate their current cell phone contracts.

Councilman Ashley questioned if the Town should have a stipend or a Town plan.

Councilman Scott made a motion, seconded by Mayor Pro-Tem Moore, to approve the cell phone policy as presented. Mayor Pro-Tem Moore, Councilman Scott, Councilman Lee, Councilman Harris and Councilman Williams voted in favor of the motion. Councilman Ashley voted against the motion. Motion passed 5 to 1.

Cell Phone Policy

1.0 Purpose:

The purpose of this policy is to establish a set of procedures concerning the use of Town-issued cell phones or the issuance of a cell phone stipend in order to comply with federal, state, and local laws. This policy establishes guidelines for monitoring and controlling cell phone costs, cell phone use, and other administrative issues related to cell phones.

2.0 Overview:

Changes in technology, employee demographics, services provided by the Town, and laws related to cell phones necessitate providing options to employees for Town-related cellular and data services. This includes providing Town-issued phones or various levels of stipends based on the employee's job requirements.

This policy further defines the provisions of the Personnel Policy in regard to personal use of public property.

This policy does not guarantee any position the right to a Town-issued phone or stipend.

In keeping with public records requirements, all records related to Town-issued phones are considered public record, except in instances where protected by law.

3.0 Policy:

Option 1-Cell Phone Stipend

Department heads may request a cell phone stipend for positions within their department, based on the qualifications below, to be approved by the Town Manager. Employees in positions that are approved will receive a stipend to compensate for business use of a

personal cell phone. Employees whose only required means of communication are a hand-held radio, direct connect service, or pager are not eligible for a stipend.

One or more of the following qualifications must be met:

- The job responsibilities are such that it is important that the employee be accessible at all times. These would include department head and high-level supervisory position.
- The job requires the employee to be mobile more than 50% of the employee's normal work time, and consistent alternative communication is required.
- The job requires the employee to be accessible for on-call or emergency work. Please note that communication convenience for employees who are not normally on call is not a satisfactory qualification.
- The job requires the need of a cellular device for the safety of the public and/or employee.

Rules for receiving a cell phone stipend are as follows:

- The stipend rates will be included with the policy as an attachment and updated as of July 1 of each year, depending on a review of carrier rates.
- The stipend will be included in the employee's pay on the second payroll of the month, beginning in the month the stipend is approved. In instances where a stipend is approved at a time other than the beginning of the month, the first stipend payment will be prorated.
- In no event will the stipend be greater than the employee's monthly plan cost. For employees that incorporate more than one phone on their personal plan, the cost of the first phone listed on the plan will be one that determines the stipend amount.
- Employees are responsible for purchasing a phone, accessories and a plan of their choice. There will be no additional initial stipend for the purchase of phones or other equipment. However, during the initial implementation of the policy, employees who choose a personal plan with the Town's current provider may retain ownership of their current Town-issued phone and accessories.
- Employees agree to allow the Town to publish their number internally and to accept business calls on their phone at all times. In addition, employees who receive stipend agree to respond to Town text messages and/or emails via their cellular device.
- The Finance Department may request verification of an active plan and plan rates at any time.
- Employees do not have to substantiate business use of the phone, and the stipend is non-taxable under Federal regulations. The stipend is not an increase in base pay.
- The Town is not liable for additional stipends due to separation of employment, whether voluntary or involuntary.
- Employees should notify their employer immediately if their phone is not in service due to loss or damage of the phone.
- Once during any 12-month period, an employee may be eligible to receive reimbursement for a phone damaged while performing job duties, which will be reviewed on a case-by-case basis by the Town Manager. The maximum amount of eligible reimbursement will be included with the policy as an attachment. The reimbursement provided will depend on the actual cost of the phone, accessories damaged, insurance deductible, or the type of stipend received.
- Employees are encouraged, but not required, to carry insurance on their phone.

Option 2 – Standard Town-Issued Phone

If a position does not meet the qualifications for a cell phone stipend, department heads may request that a Town-issued phone be provided. This request is subject to review and approval by the Town Manager.

Rules for Town-issued phones are as follows:

- This is an accountable (non-taxable) plan.
- If the employee is assigned a phone for take-home purposes, the employee must accept business calls and/or messages on the phone at all times.
- The Town is responsible for the purchase of a non-data phone and required accessories from its preferred carrier.

- Special features will not be included unless approved for business purposes only.
- Personal cell phone calls are discouraged while on Town business, except in the event of an emergency.
- The Finance Department will review the phone bills at the end of the month.
- Phone numbers that exceed the plan limit during the month will be reviewed further to determine if personal calls caused the plan to exceed its limits. An employee may be responsible for reimbursing the Town at the per-minute rate included in the policy attachment for extra phone calls.
- For other personal service charges incurred, the reimbursement rate will be the rate charged by the carrier.
- Any reimbursements are due to the Town within 10 days notice from the Finance Department.
- Employees should notify their supervisor immediately of a lost or damaged phone.
- Employees may be responsible for reimbursing the Town for costs incurred as a result of loss or damage of a Town phone and/or accessories due to employee negligence.
- Upon separation of employment, employees will return cell phone and all accessories prior to receiving final pay check.

Consequences

Employees who make excessive personal calls on a Town-issued phone, utilize a cell phone in such a way that interferes or prevents them from accomplishing their job responsibilities, or otherwise violate this policy may have use of a Town-issued phone or their stipend suspended, and/or be subject to other disciplinary action. In addition, any personal use deemed excessive by management will be required to be paid by the employee.

If an employee is out of work more than 30 days, they may be required to turn in their Town-issued phone or have their stipend suspended until returning to work.

Phone Safety

Employees should use proper safety procedures at all times when using a cell phone, especially while performing job duties.

- Employees should use sound judgment while operating equipment or a motor vehicle. If at all possible, pull the vehicle to safety or turn off equipment when using any feature of a cellular phone.
- Employees in possession of a Town phone should keep the phone secure and well-maintained at all times to prevent damage.
- Employees should adhere to all federal, state, and local laws regarding cell phone use.

This policy shall remain in effect until such time as amended by the Town Manager.

Councilmembers Comments:

- Councilman Ashley offered an update on the pay raise scandal of 2011. He stated that the Town has spent over \$61,000 in attorneys' fees related to this litigation. Mr. Ashley further explained that the real issues were the unauthorized pay outs of vacation and compensatory time.
- Councilman Scott questioned if the auditing of the Town departments has begun.

Town Manager Paul Sabiston responded that the Water Plant and the Finance Department are currently being reviewed

Councilman Scott asked for an update on the Public Forum on Utilities.

Town Manager Paul Sabiston responded that the public forum will be held in September.

Town Manager's Report:

- **Department Reports**

- A highlight of each department's monthly activities was given to the Council.

- **Financial Report**

- General Fund revenues for the month ending May 31, 2014 were \$591,874. Year to date revenues for FY 2013-2014 general fund were \$12,887,056. The general fund expenditures for the month ending May 31, 2014 were \$1,058,205 and YTD expenditures were \$10,528,457.

- **Manager's Updates**

A monthly report was submitted to the Council

Closed Session: Pursuant to NCGS 143-318.11 (a)(3)

Mayor Pro-Tem Moore made a motion, seconded by Councilman Harris, to enter into Closed Session pursuant to NCGS 143-318.11 (a)(3). Unanimously approved.

Adjourn

There being no further business, Mayor Pro-Tem Moore made a motion, seconded Councilman Ashley to adjourn. Unanimously approved.

ATTEST:

John H. Lampe II., Mayor

Shannan L. Williams, Town Clerk