

The Smithfield Town Council met in regular session on Tuesday, April 2, 2019 at 7:00 p.m. in the Council Chambers of the Smithfield Town Hall, Mayor M. Andy Moore presided.

Councilmen Present:

Travis Scott, Mayor Pro-Tem  
Marlon Lee, District 1  
David Stevens, District 2  
Dr. David Barbour, District 4  
Emery Ashley, At-Large  
John A. Dunn, At-Large  
Stephen Rabil, At-Large

Councilmen Absent

Administrative Staff Present

Michael Scott, Town Manager  
John Blanton, Fire Chief  
Lenny Branch, Public Works Director  
Ted Credle, Public Utilities Director  
Gary Johnson, Parks & Rec Director  
Tim Kerigan, Human Resources/PIO  
Shannan Parrish, Town Clerk  
R. Keith Powell, Chief of Police  
Greg Siler, Finance Director  
Stephen Wensman, Planning Director

Present:

Bob Spence, Town Attorney

Administrative Staff Absent

**CALL TO ORDER**

Mayor Moore called the meeting to order at 7:00.

**INVOCATION**

The invocation was given by Mayor Pro-Tem Scott followed by the Pledge of Allegiance.

**APPROVAL OF AGENDA:**

Councilman Ashley made a motion, seconded by Councilman Dunn, to approve the agenda with the following changes:

Remove from the Presentations:

1. Proclamation – Recognizing Anita Liverman’s dedicated service to the Appearance Commission

Add to the Consent Agenda

- Consideration and request for approval to adopt Resolution # 638 (05-2019) to exempt the Water and Sewer Rate Study from bidding requirements and also to approve a contract with UFS to conduct the study.
- Special Event - Powers & Thomas Midway Entertainment, LLC is requesting approval to operate a Carnival at Carolina Premium Outlets located at 1025 Outlet Center Drive. Setup would begin on April 8th. The event would begin April 11th and end on April 21st. The hours of operation and use of amplified sound will be 3:00 pm to 11:00 pm.

Unanimously approved

**PRESENTATIONS:**

1. Proclamation – Recognizing April 18, 2019 as Electrical Lineman Appreciation Day

Mayor Moore presented a Proclamation to Electric Lineman Hunter Parker recognizing April 18<sup>th</sup> as Electrical Lineman Appreciation Day

PROCLAMATION  
ELECTRICAL LINEMEN APPRECIATION DAY  
APRIL 18, 2019

Whereas, the Town of Smithfield honors the profession of linemen, as this profession is a selfless service, steeped in personal, family and professional tradition; and

Whereas, electrical linemen are often first responders during storms and other catastrophic events, working to repair broken lines to make the scene safe for the citizens of the Town of Smithfield; as well as, other public safety workers; and

Whereas, electrical linemen work on the Town of Smithfield power lines 24 hours a day, 365 days a year, to keep the electricity flowing; and

Whereas, due to the danger of their work with thousands of volts of electricity high atop power lines, these linemen put their lives at risk every day for the citizens of the Town of Smithfield with little recognition from the community regarding the danger of their work; and

Whereas, the U.S. Senate in April of 2013 first recognized the efforts of electrical linemen in keeping the power on and protecting public safety, and has designated by resolution the annual celebration of a National Linemen Appreciation Day.

Now, Therefore, I M. Andy Moore, Mayor of the Town of Smithfield, along with the Town Council, do hereby proclaim April 18, 2019 as "Electrical Linemen Appreciation Day"; and we call upon the citizens of the Town of Smithfield to recognize and appreciate the hard work, innovation and dedication that these public servants make every day to our health, safety, comfort, and quality of life.

**2. Recognition of the Public Works Department for being awarded the 2018 North Carolina Main Street Champion**

Downtown Smithfield Development Corporation Executive Director Sarah Edwards presented the 2018 North Carolina Main Street Champion Award to the Public Works Department.

**3. Police Department's 2018 Officer of the Year Award**

Chief of Police R. Keith Powell addressed the Council on the Smithfield Police Department's 2018 Officer of the Year. The award was given to the officer who showed great professionalism, community service, and dedication to the Police Department and The Town of Smithfield. The officer was nominated by secret ballot, completed by every member of the department. The officer receiving the most votes is then reviewed by a recognition committee consisting of four Lieutenants and the Captain of Patrol. The committee then makes a recommendation for Officer of the Year to the Police Chief, who makes the final decision. The Officer of the Year for the Smithfield Police Department Sergeant Dale Wood. Sergeant Wood is a member of the department's Investigation Division. Sergeant Wood has been with the Smithfield Police department since November 2000. Sergeant Wood worked with the Johnston County Sheriff's Office for eight years and Benson Police Department for two years prior to starting with the Smithfield Police Department. Sergeant Wood started with the Smithfield Police Department as a Patrol Officer and was promoted to the rank of Sergeant. Sergeant Wood was transferred to Investigations and has been in Investigations since.

Mayor Moore presented Sergeant Dale Wood with a plaque identifying him as the 2018 Police Officer of the Year.

#### 4. Administering Oath of Office to New Police Officer Damon Kenny

Mayor Moore administered the Oath of Office to new Police Officer Damon Kenny and welcomed him to the Town of Smithfield.

#### 5. Administering Oath of Office to New Police Officer Joseph Heck

Mayor Moore administered the Oath of Office to new Police Officer Joseph Heck and welcomed him to the Town of Smithfield.

### PUBLIC HEARINGS:

1. **Rezoning Request – John A. Whitley (RZ-19-01):** The applicant was requesting to rezone a .11 acre tract of land from an R-8 (Residential) zoning district to the O/I (Office Institutional) zoning district. The property considered for rezoning is located on the northeast corner of South Third Street and Woodall Street and further identified as Johnston County Tax ID# 15030016.

Councilman Ashley made a motion, seconded by Councilman Rabil, to open the public hearing. Unanimously approved

Planning Director Stephen Wensman addressed the Council on a request by John A. Whitley. Mr. Wensman explained in 2016, Mr. Whitley made application for the same rezoning which was reviewed by the Planning Board before being withdrawn. At that time, The Board reviewed the application and recommended approval based on a previous Staff recommendation in favor of the rezoning.

The property considered for rezoning to O/I is 0.11 acres, shares a driveway with the residential property to the east, is entirely within the 100 year flood plain and would likely be considered a spot zoning. Staff recommends denial of the rezoning for the following reasons:

- The rezoning would result in a non-conforming O/I lot. The minimum lot size in the O/I district is 6,000 sq. feet; the subject parcel is only 4,792 sq. feet. The existing structure (home) would not meet the structure setbacks in the O/I district.
- Off-street parking and handicap accessible parking meeting UDO requirements for an office use would likely be difficult to provide given the small size of the lot, creating the need for variances.
- The property to the north is zoned O/I CUD, which is a different and district zoning district and could be considered a spot zone given its size. The zoning of this parcel to O/I would likely be a spot zoning which is prohibited.
- The proposed office use would be an intensification of land use in the 100 year flood zone.
- Office uses should be buffered from residential uses with a Type B landscape buffer which would be difficult given the small size of the lot and the configuration of the shared parking access on the rear of the lot.
- The rezoning is inconsistent with the comprehensive land use plan. The Plan guides the property as medium density residential.
- The rezoning would be an encroachment of commercial uses into a residentially guided and zoned area.

The Planning Department recommends denial of the Zoning Map Amendment; and recommend that the Town Council deny the request with a statement declaring the request to be inconsistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is not reasonable nor in the public interest.

The Planning Board reviewed the application and recommended approval of the rezoning with a 6-1 vote. The Board commented that in 2016, the Board reviewed the same item (later withdrawn by the applicant) and had recommended approval based on Staff's previous affirmative

recommendation.

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the April 2, 2019 agenda packet.

Mayor Moore asked if there were any questions from the Council.

Mayor Pro-Tem Scott questioned Mr. Wensman's statement about residential uses being around the proposed property stating there was a commercial use adjacent to the property. Mr. Wensman responded the commercial use adjacent to the property was zoned O/I CUD meaning it was a conditional use zoning district. Mr. Wensman did not know the facts behind the rezoning, but especially the O/I CUD zoning district is a stand-alone rezoning.

James Whitley of 2017 Mountain Laurel Drive in Clayton and 219 Johnston Street in Smithfield responded to some of the concerns outlined by Mr. Wensman. He explained the property was adjacent to the Travel Odyssey. Between Johnston and Woodall Streets along South Third Street there was only one residential property. He did not feel that his business would be a detriment to the existing uses. Mr. Whitley stated in regards to the setback requirements and buffers, he could not do anything because Woodall Street was a manmade barrier. In regards to concerns about the property being in the 100 year floodplain, Mr. Whitley stated that after Hurricane Matthew, most properties East of I-95 were probably included in the 100 year floodplain. Due to the nature of his business, he didn't anticipate more than one car would be parked near his law firm at a time. He and his secretary would park in the lot behind the building. Mr. Whitley further explained that Tom Berkau owns the property directly behind the property and he is not opposing the rezoning. Mr. Whitley stated it was his goal to enhance the community and he would never do anything to detract from the community. Mr. Whitley further stated he would comply with any regulations from the Town such as ADA accessibility and signage.

Councilman Barbour questioned if Mr. Berkau resided in the house behind the property. Mr. Whitley responded it was a tenement, but he has owned the property for several years and has never had any issues with the tenants. Councilman Barbour further questioned if Mr. Whitley or Mr. Berkau spoke with the tenants about the proposed rezoning. Mr. Whitley responded they had not.

Councilman Barbour questioned that a concern listed by staff was it doesn't qualify because it cannot meet the setback requirements. Mr. Wensman responded the rezoning would create nonconformities. Councilman Barbour questioned if spot zoning was illegal. Town Attorney Bob Spence responded that while spot zoning was illegal, he did not believe this qualified as spot zoning. Councilman Barbour questioned the amount of nonconformities and variances. Mr. Wensman responded one issue would be the handicapped parking stall and making sure it was the one closest to the entrance. Councilman Barbour asked if approved what would be the next step for Mr. Whitley. Mr. Wensman responded Mr. Whitley would have to provide a site plan. If he could not meet the UDO requirements, he would need to make application to the Board of Adjustment for a variance.

Mr. Whitley stated the property was a bungalow style home with sidewalks to the front of the property and to the side of the property. He felt confident he could meet the ADA accessibility requirement. He explained it was his intent to practice law in the building. He advocated that the property was more commercial in nature than residential. He stated a business person would maintain the property much better than a residential tenant.

Councilman Ashley stated there are many businesses in the downtown area that were one residences. When he reviewed this property, the Town bypassed the natural boundary of the ditch to allow the Travel Odyssey. He explained that while he understood the issue of parking, the entire downtown businesses have parking issues that why they rely on municipal parking lots and on street parking. Councilman Ashley stated this would be an enhancement to the community.

Councilman Stevens questioned if six members of the Planning Board zoning in favor of the rezoning request. Mr. Wensman responded in the affirmative

Mayor Moore asked if there was anyone in attendance that wished to speak on the matter. There were none.

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

Mayor Pro-Tem Scott made a motion, seconded by Councilman Rabil, to approve Rezoning Request RZ-19-01 rezoning .11 acre tract of land from an R-8 (Residential) zoning district to the O/I (Office Institutional) zoning district stating it was consistent with the Town of Smithfield Comprehensive Growth Management Plan and that it was reasonable and in the public interest. Unanimously approved.

Town Clerk Shannan Parrish administered affirmations to those that wished to offer testimony during the Public Hearing

2. **Special Use Permit Request – Will Roland (SUP-19-03):** The applicant was requesting a special use permit to allow for a church/place of worship on property located within a B-3 (Highway Entrance Business) zoning district. The property considered for approval is located on the southeast side of the intersection of West Market Street and Whitley Drive and further identified as Johnston County Tax ID# 15086028.

Councilman Barbour made a motion, seconded by Councilman Stevens, to open the public hearing. Unanimously approved.

Planning Director Stephen Wensman testified the applicant was requesting a special use permit to allow for approximately 1,881 sq. ft. of tenant space to operate a church in the B-3 Zoning District. The church would have seating for 30 in a 1,405 sq. ft. worship space. Associated with the church would be a 228 sq. ft. office, a 198 sq. ft. kitchen, and 50 sq. ft. of storage area. The property is 1.06 acres in size with a roughly 12,600 sq. ft. multi-tenant commercial strip center located at the corner of Whitley Drive and West Market Street. There was also a roughly 1200 sq. ft. storage structure/garage on the rear of the property. There were 24 parking stalls on the site for the commercial use. The parking lot was mostly paved across the full frontage of both Whitley Drive and West Market with no access control. Churches are a permitted use in the B-3 Zoning District and require a Special Use Permit. Churches must comply with the supplemental regulations of the Unified Development Ordinance, Section 7.32. Mr. Wensman explained the church must have adequate parking, not significantly increase traffic on local roadways within a residential neighborhood, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours and the land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.

Mr. Wensman reviewed staff's findings. They are as follows:

#### **STAFF'S FINDINGS OF FACT**

1. The use of the church will not endanger the public health, safety or general welfare of the public as long as egress from the site is limited to Whitley Drive after each worship service.
2. The use of the property for church is in harmony with the existing development and uses. There is very limited retail activity currently and the church will be active when other uses are not.
3. The use will not impede the normal and orderly development and improvement of surrounding property because the adjacent commercial is not retail in nature.
4. Adequate utilities are present. The use will have no impact on the utilities.

5. Directing exiting church traffic to use Whitley Drive as opposed to West Market Street, will minimize impacts to highway traffic on West Market Street.
6. The use will be in conformance with regulations.
7. Adequate parking exists, however the uncontrolled access onto West Market Street is a public safety issue. As a result, Staff is recommending the condition of approval: that a traffic attendant be on duty after each worship service to prohibit cars from exiting directly onto West Market Street and to direct cars to Whitley Drive for egress from the site.
8. The proposed use is consistent with town plans.

The Planning Department recommends approval of the Special Use Permit, SUP-19-03, with the following condition:

- That a traffic attendant be on duty after each worship service to prohibit cars from exiting directly onto West Market Street and to direct cars to Whitley Drive for egress from the site.

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the April 2, 2019 agenda packet.

Mayor Moore asked if there were any questions from the Council.

Mayor Pro-Tem Scott questioned if the traffic attendant could be a volunteer. Mr. Wensman responded in the affirmative. Mr. Wensman stated it would be negligent of staff not to require some control since it is 60ft of road frontage with no access control onto the highway.

Councilman Barbour stated there was not a lot of traffic on Highway 70 Business West on Sunday mornings. He felt it was unnecessary to require the church to have a traffic attendant, but suggested a barrier (such as traffic cones) be installed to control ingress and egress.

Mayor Moore stated there were not sidewalks on Whitley Drive and he has observed pedestrians walking in that residential neighborhood. He felt it was more dangerous for traffic to flow from the church to Whitley Drive instead of the traffic flowing on Highway 70 Business West

Councilman Barbour questioned if the Council could require the church to limit the amount of egress onto Highway 70 Business West. Mr. Wensman responded if there was a hazard and a concern, the Council could place reasonable conditions on the permit. Mr. Wensman explained if the Council did not feel there were any safety issues, then he didn't believe the Council could place a condition to control egress from the site. If there were no safety concerns, Mr. Wensman would delete staff's recommended condition of having a traffic attendant.

Councilman Ashley stated the property did have ingress and egress on both sides of the property. Mr. Wensman responded it was uncontrolled ingress and egress.

Mayor Pro-Tem Scott stated the church should be able to make their own decision about traffic control.

Mayor Moore asked the applicant if he was in agreement with the testimony provided by Mr. Wensman. The applicant, Will Roland, stated he was in agreement with the testimony offered by Mr. Wensman. Mr. Roland further stated he did not have a problem with having traffic attendant and he would ensure that those leaving the church would do so safely.

Councilman Ashley questioned if there were any objections from the other tenants in the mall. Mr. Roland responded there had been no objections only encouragement.

Councilman Barbour questioned the hours of operation. Mr. Rolland responded they would meet only on Sunday from 10:30 am until 12:30 pm.

Mayor Moore asked if there was anyone in attendance sworn to testify in this matter. There were none.

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

### **The Written Finding**

Councilman Ashley made a motion, seconded by Mayor Pro-Tem Scott, to vote in the affirmative to all of the below eight stated Finding of Fact. Unanimously approved.

The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.
3. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.
5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.
7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.
8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

### **Record of Decision: Approval of Conditional Use Permit Application Number SUP-19-03**

Councilman Ashley made a motion, seconded by Councilman Rabil, based upon satisfactory compliance with the above eight 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 Special Use Permit Application #SUP-19-03. Unanimously approved.

3. **Special Use Permit Request – Bonnie Godwin (SUP-19-05):** The applicant was requesting a special use permit to allow for a residential dwelling on property located

within an O/I (Office / Institutional) zoning district. The property considered for approval is located on the north side of North Street, approximately 100 feet east of its intersection with North Seventh Street. The property is further identified as Johnston County Tax ID# 15010047

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

Planning Director Stephen Wensman testified the property is a former single family residence that has been used as an office. The property has a driveway access off North Street and has an attached carport that extends back to the rear property line with 7 parking spaces. The property also shares a large parking lot with the 3 office properties to the east. Within the shared parking lot, an additional 3 parking stalls are shown to be on the property. There is more than adequate parking for the residential use on the property. With the shared parking arrangement, it is possible that office visitors may use the available parking stalls on this property from time to time. This property and the 3 properties to the east are all former single family homes that have been used for offices. The other three appear to be used for office use currently. These properties have a shared parking lot in the rear of the homes. There does not appear to be a shared access easement for the parking lot. The other properties sharing the parking lot include: Neuse Gastroenterology office, Johnston Memorial Hospital and Dr. Manmohan Singh office. The remaining two properties on the block, to the west of the subject property, are currently used for single family homes.

Mr. Wensman reviewed staff's findings. They are as follows:

#### **STAFF'S FINDINGS OF FACT**

1. The use of the structure and property for single family residential is will not be detrimental or create endangerment to public health, safety or welfare. Single family residential is a less intensive use than an office use.
2. The use of the property for single family residential use is consistent with the use of the adjacent properties to the west, therefore, in harmony with existing development.
3. The use will not have an impact on the normal and orderly development and improvement of the surrounding property for uses permitted in the district. Single family residential is a special use in the district with a valid permit. Portions of the block are currently used for office and residential in harmony with each other.
4. Adequate utilities are present. The use will have no impact on the utilities.
5. The single family use has adequate ingress and egress with a direct access to North Street.
6. The use will be in conformance with regulations.
7. The use will have no impact on the public access.
8. The proposed use is consistent with town plans.

The Planning Department recommends approval of the Special Use Permit, SUP-19-05, with the following conditions:

- The applicant shall use the property strictly in accordance with the plans submitted and approved by the Smithfield Town Council.

Planning Director Stephen Wensman has incorporated his entire record and provided it to Council in written form in the April 2, 2019 agenda packet.



Mayor Moore asked if there were any questions from the Council. There were none.

Mayor Moore asked the applicant if she was in agreement with the testimony provided by Mr. Wensman. Ms. Godwin testified she was in agreement with Mr. Wensman's testimony and further testified she purchased the property almost two years ago. There was a commercial tenant in the building at the time she purchased the building, but when their contract expired the tenant vacated the premises. She has had difficulty renting the building for commercial use because there is not a demand for commercial uses, but there is a demand for residential uses.

Councilman Ashley questioned if Ms. Godwin knew the history of the property. Ms. Godwin responded the property belonged to Jimmy Flowers, but she did not have any historical knowledge of the property. Councilman Ashley stated all those properties used to be single family homes before becoming doctors' offices. Councilman Ashley believed the property purchased by the hospital was purchased with the intent of using it as a residential space for medivac emergency personnel.

Mayor Moore asked if there was anyone in attendance sworn to testify in this matter.

Dr. Richard Lee of Neuse Gastroenterology testified he had been practicing medicine for two decades and the offices along North Street have been doctors' offices for almost fifty years. He stated it was a very active business area with a lot of EMT and transport vehicles bringing debilitated patients to his office and others. Dr. Lee expressed his concern about the property being used as residence because it could be a hazard to debilitated patients visiting his office and it could be hazard to the children of the residence playing in the shared parking lot.

Ms. Godwin responded her property has been totally fitted for residential use. To the left of her property are two residential houses. She testified that she has not seen any of the activities Dr. Lee was referring to. She would prefer to rent it as a commercial property, but there is no demand for that. The demand is for residential property.

Councilman Barbour questioned the shared parking lot. Ms. Godwin responded that the parking lot directly behind her property is not shared. Mr. Wensman responded it was connected parking but legally not shared parking. He further stated there was more than adequate parking for a single family residence.

Councilman Barbour further questioned if the property was converted into a residential use, would a fence be installed to protect the children from playing in the parking lot since there was not a traditional backyard. Ms. Godwin responded there was a backyard that happened to be covered with asphalt. She was not opposed to installing a fence.

Councilman Ashley questioned if Dr. Lee had a separate driveway to his office or if he and Ms. Godwin used the same driveway. Dr. Lee responded they both used the same driveway because the property line was split out the center of the driveway. Councilman Ashley further questioned if Dr. Lee's patients use that access to enter his building. Dr. Lee responded they could enter from that access or behind the building

Mayor Pro-Tem Scott suggested that this request be tabled for thirty days to see if Ms. Godwin and Dr. Lee could come to some type of mutually beneficial agreement.

Councilman Ashley questioned if there were children playing basketball at the residence would have a negative impact on the adjacent business. Ms. Godwin responded most children are in their home playing video games and not outside playing. She stated she would be more than willing to look at installing a fence. She was also interested in finding out how the driveway was divided.

Councilman Dunn asked Dr. Lee who owned the driveway on the other side of his property. Dr. Lee responded the driveway was shared with the hospital. Councilman Dunn questioned if the properties on the other side of Ms. Godwin's property were residential or commercial. Mr. Wensman responded both properties were residential.

Mayor Pro-Tem Scott questioned if the Town had access to the actual property line. Mr. Wensman responded there was no way to know the actual property lines without a survey or a recorded plat.

Councilman Ashley stated he was concerned about the impact this had on Dr. Lee and his practice and on Ms. Godwin as the property owner. Before making a decision, Councilman Ashley stated he would rather know more facts on the boundary lines and anything that can be done with the site plan to limit impacts on both parties.

Mayor Pro-Tem Scott asked Ms. Godwin if she was opposed to tabling this request for thirty days. Ms. Godwin responded she was not opposed to the idea.

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

Councilman Barbour questioned if it was possible to have a survey done in that time period. Ms. Godwin responded that there may be something already records, but if not he and Dr. Lee would have to share in the cost of a survey.

Councilman Stevens asked Dr. Lee if he had three way to access his property. Dr. Lee responded in the affirmative. Councilman Stevens stated Dr. Lee was not being denied access to his property because he had to other entrances.

Mayor Pro-Tem Scott made a motion, seconded by Councilman Ashley, to table the request until the next council meeting to allow staff to work with the property owners for an amicable solution. Unanimously approved.

#### **CITIZENS' COMMENTS:**

- Anthony Lee of 802 Martin Luther King Jr. Drive stated that while a fire hydrant was flushed near his home, the water washed away the gravel in his driveway. The Town Manager responded the Fire Department hasn't begun flushing hydrants, but there was a water leak in the area. The Town Manager will contact Mr. Lee regarding the incident and determine what can be done.
- Darius Rose of 5146 Black Creek Road expressed his appreciation to the Council for supporting the proposed tethering ordinance. He explained rescue groups supported the change. Councilman Barbour questioned if Mr. Rose had any concerns about the proposed ordinance. Mr. Rose responded his only concern was the enforcement of the ordinance, but this change was better than the current situation rescue groups face every day with tethered animals.
- Joan Santoro of 5127 Us Highway 301 South stated she was excited to see the proposed ordinance. Ms. Santoro explained she volunteered with Paw Project, a community outreach program that worked with owners who wished to keep their animals but lacked some financial means. She questioned how the Town would disseminate this information to animal owners and how long the Town would give the owners time to comply with the ordinance change. She volunteered to distribute fliers to animal owners. Mayor Moore responded this was the first step in notifying owners and assured her that Town staff would make sure all animal owners knew of the change.

#### **CONSENT AGENDA:**

Councilman Barbour made a motion, seconded by Councilman Dunn, to approve the following items as listed on the Consent Agenda:

1. The following minutes were approved
  - February 21, 2019 – Special Meeting
  - March 5, 2019 – Regular Meeting

2. Special Event – Craft Beer Crawl: Approval was granted to allow the Downtown Smithfield Development Corporation to hold a Craft Beer Crawl on September 20, 2019. This event will have amplified sound.
3. Special Event – Poochapalooza Festival: Approval was granted to allow the Parks and Recreation Department hold a festival at the Town Dog Park located at 1219 South Second Street on April 27, 2019 from 11:00 am until 2:00 pm. This event will require closure of South Second Street from Holding Street to Hood Street. This event will also have amplified sound.
4. Special Event – Car Show: Approval was granted to allow Riders Meet Circuit to hold a car show on June 30, 2019 from 10:00 am until 5:00 pm at Sound Station and Security located at 713 East market Street. This event will have amplified sound.
5. Police Promotion: Approval was granted to promote a Police Sergeant to the rank of Police Lieutenant
6. Police Promotion: Approval was granted to promote a Police Officer to the rank of Police Sergeant.
7. Approval of a temporary Easement Agreement with Robert Penny for the placement of a gateway sign on the Penny property NC Pin# 168210-36-9744.
8. Bid was awarded to Mark Gregory Roof Company in the amount of \$14,800.00 for the replacement of the mausoleum roof at Sunset Memorial Gardens Cemetery. Bids received were as follows:
 

• Mark Gregory Roof Company Inc.	\$14,800.00
• Baker Roofing	\$31,108.00
• Best Inc.	\$36,406.00
• Sharon Roofing	No Bid
• Dale Sparks	No Bid
9. Bid was awarded to David Hinton Construction in the amount of \$49,787.00 for the DAV Trail and Handicap Parking upgrades at Talton Field, Johnson Park, Bob Wallace Jaycee Kiddie Park and Smith-Collins Park. Bids received were as follows:
 

• David Hinton Construction Co., Inc.	\$ 49,787.00
• First Choice dba Larry Davis	\$ 66,014.75
• Hollins Construction	\$ 88,886.00
•	
10. Approval was granted to adopt resolution #637 (04-2019) Supporting House Bill 399 – Disaster Area Building Rehabilitation Tax Credit Bonus

TOWN OF SMITHFIELD  
 RESOLUTION # 637 (04-2019)  
 RESOLUTION IN SUPPORT OF HOUSE BILL 399 - DISASTER AREA BUILDING  
 REHABILITATION TAX CREDIT BONUS

WHEREAS, the Town of Smithfield and the Downtown Smithfield Development Corporation (DSDC) along with other local and regional partners are working towards the revitalization of our downtown area to establish it as a vital economic sector of the Town for the community's benefit; and

WHEREAS, the Town of Smithfield realizes that a healthy, vibrant downtown makes all other economic development initiatives in the community easier to achieve; and

WHEREAS, the Town of Smithfield, as well as many private investors, have made significant advancements towards downtown's improvement through strategic planning and reinvestment; and

WHEREAS, the Town of Smithfield understands that it is fortunate to retain historic commercial structures that offer unique opportunities by differentiating our community from other communities and thus, we wish to preserve them when appropriate for future use and reinvestment; and

WHEREAS, the Town of Smithfield recognizes that the highest concentration of our historic structure stock is in the downtown area and this area provides more tax base value per acre than any other segment of the community; and

WHEREAS, the Town of Smithfield is interested in building upon these established investments to strengthen our tax base thus decreasing the potential of future tax increases for our citizens to maintain existing levels of service throughout the community; and

WHEREAS, the historic commercial structures play a vital role in our capabilities to entice reinvestment and create our market niche; and

WHEREAS, the rehabilitation of historic structures is challenging in terms of acquiring needed bank financing, meeting building code regulations and overcoming general risks of unknown conditions and securing private investment for blighted properties; and

WHEREAS, the Town recognizes that the North Carolina Historic Preservation Tax Credit (HPTC) program offers an often necessary financial tool that levels the private investment risks and opportunities when competing for sites outside the built area and also provides the leverage needed to meet financial gaps experienced with traditional lending institutions; and

WHEREAS, the Town of Smithfield has experienced success with meeting these historic rehabilitation challenges due to the availability of the HPTC program and has experienced more than \$4.2 million of historic investments that utilized the HPTC program; and

WHEREAS, the Town of Smithfield believes that more of this type of reinvestment can occur with the availability of the HPTC and believes the HPTC program is a worthy leveraging tool to stimulate a specific area of our economy that will support the entire community; and

THEREFORE, BE IT RESOLVED that the Town of Smithfield endorses and supports passage of House Bill 399 to extend the Historic Preservation Tax Credit to ensure its continued availability as a tool to spur economic recovery in traditionally blighted or underutilized areas of North Carolina.

**11. The following advisory board appointments were approved:**

- Carolyn Ennis was reappointed to serve a fifth term on the Library Board of Trustees.
- Robin Cook was appointed to serve a first term on the Appearance Commission.
- Brandie Davis was appointed to serve a first term on the Appearance Commission.

**12. Approval was granted to appoint Dr. Kathleen Coates to serve on the Downtown Smithfield Development Corporation's Board of Directors.**

**13. New Hire Report**

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>	<u>Rate of Pay</u>
Police Officer I	Police	10-20-5100-5100-0200	\$16.69/hr. (\$37,318.84/yr.)
Police Officer I	Police	10-20-5100-5100-0200	\$16.85/hr. (\$37,676.60/yr.)
Police Officer I	Police	10-20-5100-5100-0200	\$16.85/hr. (\$37,676.60/yr.)
P/T Admin Specialist	General Government	10-10-4100-5100-0200 30-71-7220-5100-0200	\$12.75/hr.

		31-72-7230-5100-0200	
P/T Athletic Staff	P&R – Recreation	10-60-6200-5100-0210	\$10.00/hr.
P/T Athletic Staff	P&R – Recreation	10-60-6200-5100-0210	\$10.00/hr.
P/T Pool Staff	P&R – SRAC	10-60-6220-5100-0220	\$7.50/hr.
P/T General Staff	PU – Water Plant	30-71-7200-5100-0200	
P/T SRAC Instructor	P&R – SRAC	10-60-6220-5100-0230	\$15.00/hr.
P/T SRAC Instructor	P&R – SRAC	10-60-6220-5100-0230	\$15.00/hr.
P/T SRAC Staff	P&R – SRAC	10-60-6220-5100-0230	\$8.50/hr.
P/T SRAC Staff	P&R – SRAC	10-60-6220-5100-0230	\$8.50/hr.
P/T SRAC Staff	P&R – SRAC	10-60-6220-5100-0230	\$9.00/hr.

**Current Vacancies**

<u>Position</u>	<u>Department</u>	<u>Budget Line</u>
Licensed Water Plant Operator	PU – Water Plant	30-71-7200-5100-0200
Police Officer I	Police	10-20-5100-5100-0200
Sanitation Equipment Operator	PW – Sanitation	10-40-5800-5100-0200

14. Approval was granted to adopt Resolution # 638 (05-2019) to exempt the Water and Sewer Rate Study from bidding requirements and also to approve a contract with UFS to conduct the study.

TOWN OF SMITHFIELD  
RESOLUTION # 638 (05-2019)  
EXEMPTING WATER & SEWER RATE STUDY  
FROM G.S. 143-64.31

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively “design services”) to be based on qualifications and without regard to fee; and

WHEREAS, the Town proposes to enter into one or more contracts for design services for work on the Water and Sewer Rate Study; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than \$50,000.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SMITHFIELD RESOLVES:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31.

Section 2. This resolution shall be effective upon adoption.

15. Special Event – Carnival: Approval was granted to Powers & Thomas Midway Entertainment, LLC to operate a Carnival at Carolina Premium Outlets April 11th until April 21st. Amplified sound was approved for the hours of operation 3:00 pm to 11:00 pm.  
Unanimously approved.

**Business Items:**

1. **Consideration and Request for approval to adopt Ordinance #498 to limit the tethering of animals in the Town of Smithfield**

Chief of Police R. Keith Powell addressed the Council on a request to adopt Ordinance #498 to limit

the tethering of animals in the Town of Smithfield. The Police Department presented Council with a proposed Tethering Ordinance during the March Council meeting. The Council asked for the proposal to be left open for thirty days to allow time for citizens' comments. The proposed ordinance was modified to allow dogs to be tethered during certain times of the day as long as the animal is being monitored by the owner. Chief Powell responded that all feedback received supported the tethering ordinance. Staff will work with the public to educate them on the changes.

Councilman Barbour requested that the outdoor storage section be clarified to include the times. Chief Powell responded the ordinance could be amended to add clarification.

Mayor Moore suggested that (8)c. include the time and (8)c. (ii) include "in accordance with (8)c."

Mayor Pro-Tem Scott made a motion, seconded by Councilman Dunn, to adopt Ordinance #498 with the suggested amendments. Unanimously approved.

## **TOWN OF SMITHFIELD North Carolina**

### **ORDINANCE # 499**

#### **AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD CODE OF ORDINANCES, CHAPTER 4, ANIMAL AND FOWL; SECTION 67, ANIMAL ABUSE PROHIBITED**

**WHEREAS**, Chapter 4 of the Town of Smithfield's Code of Ordinances outlines the regulations concerning animals and fowl within the Town; and

**WHEREAS**, The Chief of Police, R. Keith Powell, is requesting the Ordinance be amended to prohibit tethering of animals in the Town.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Smithfield that Chapter 4, Animals and Fowl; Section 67, Animal Abuse Prohibited is rewritten as follows:

#### **Sec. 4-67. – Animal Abuse Prohibited**

- (a) Prohibited acts. All animals shall be kept and treated under sanitary and humane conditions and it shall be unlawful for any person to engage in one (1) or more of the following acts:
- (1) Failing to provide adequate feed, water and shelter or failing to maintain the animal in a clean and healthy environment. All animals, unless otherwise indicated in this chapter, shall be given adequate feed, adequate water and adequate shelter. Examples of shelter that is not adequate include, but are not limited to the following:
    - a. Underneath houses, outdoor steps, decks or stoops, or underneath motor vehicles;
    - b. Inside metal barrels or cardboard boxes;
    - c. Shelters prone to flood;
    - d. Shelters surrounded by debris, obstructions or impediments that may endanger an animal;
    - e. Confinement of the animal in storage rooms, sheds or other buildings without windows and proper ventilation.
  - (2) Failing to keep an animal under sanitary and humane conditions which are detrimental to the animal's health and general welfare and which maintain a condition of good order and cleanliness and reduce the possibility of transmission of disease. Both indoor and outdoor enclosures shall receive periodic cleanings to remove excreta and other waste

material, dirt and trash so as to minimize disease, hazards and to reduce odors. These periodic cleanings shall not exceed a five-day period. If, however, more than one animal is held in one enclosure, these cleanings shall not exceed two days.

- (3) Failing or refusing to provide adequate medical attention for any sick, diseased or injured animal.
- (4) Engaging in animal cruelty; animal cruelty means every act, omission, or act of neglect whereby unjustifiable pain, suffering or death is caused or permitted, or attempted to be caused or permitted against animals, and includes acts or attempted acts of beating, torturing, injuring, tormenting, mutilating, teasing, molesting, baiting, or harassing animals, the trapping of animals unlawfully, and overworking or overdriving animals. This shall not include the lawful taking of animals under the jurisdiction and regulation of the wildlife resources commission, lawful activities of organizations or agencies conducting or sponsoring biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal.
- (5) Promoting, staging, holding, managing, conducting, carrying on or attending any game, exhibition, contest, fight or combat between one or more animals or between animals and humans, or intentionally allowing animals to engage in a fight.
- (6) Permitting any exhibit, function or activity where animals are being cruelly treated or animals run the risk of causing injury to the public or themselves. Animal control shall have the authority to inspect and to close down public exhibits of animals including those which are part of fairs, carnivals, festivals, fundraising events, petting zoos and any other activity or function carried out in the town if it is determined that animals are being cruelly treated or run the risk of causing injury to the public or themselves.
- (7) Poisoning, or exposing a domestic animal to any known poisonous substance or mixing a poisonous substance with food, so that it will likely be eaten by an animal. This does not include attempts or acts of persons to lawfully rid their own property of mice or rats or other vermin, nor does it include other acts permitted by the North Carolina Wildlife Department.
- (8) Allowing a collar, rope or chain to become embedded in or cause injury to an animal's neck, or allowing a choke or pinch collar to be used as a primary collar on an unsupervised animal, or chaining or tethering an animal to a stationary object for a period of time or under conditions that an animal control officer deems harmful or potentially harmful to the animal. Examples of harmful or potentially harmful chaining or tethering include, but are not limited to the following:
  - a. Using a length or weight of a chain or tether that is not appropriate for the size, weight and age of the animal. A chain or tether should not be less than ten (10) feet long. Using a chain or tether that exceeds ten (10) percent of the animal's body weight shall be deemed not appropriate and potentially harmful.
  - b. An owner may not leave a dog outside and unattended by use of a restraint that unreasonably limits the dog's movement:
    1. Between the hours of 10 pm and 6 am
    2. In case of extreme weather conditions, including conditions in which:
      - a. the actual or effective outdoor temperature is below 32 degrees Fahrenheit
      - b. a heat advisory has been issued by a local or state authority or jurisdiction
      - c. a hurricane, tropical storm or tornado warning has been issued for the jurisdiction by the national weather service.
  - c. Outdoor storage from 10pm to 6 am. Every person having custody of domestic animals which are kept outdoors or in an unheated enclosure shall provide such an animal or animals with the following minimum standards of shelter:

- (i) The shelter for a dog or any species of similar size shall include a moisture proof and wind-proof structure of suitable size to accommodate the animal and allow retention of body heat and shall be made of durable material. Such structures shall be provided with a sufficient quantity of suitable bedding material, consisting of hay, straw, cedar shavings or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat. When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.
  - (ii) Space requirements in accordance with C(i). Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement to maintain physical conditioning. The animal should be able to sit, stand, turn, and lie without obstruction. Adequate space for food and water containers must be provided. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavioral patterns. Animals shall not be tied, chained, fastened, or otherwise tethered to any stationary or inanimate object as a means of confinement or restraint to property, but must be in an approved enclosure.
- (9) Carrying or causing to be carried in or upon the open area of a truck or other motor vehicle any animal that is not secured, in an animal carrier or by a harness or other device, such that the animal cannot fall, jump, or be thrown from the vehicle.
- (10) Unless otherwise permitted by law, giving away or offering any animal as a prize, premium or advertising device for or as an inducement to enter any contest, game or other competition involving skill or chance.
- (11) Placing or confining an animal or allowing an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability or death. If an animal is discovered in a motor vehicle under such conditions, the procedures specified in section 4-134(d) should be followed.
  - (b) Exceptions. Nothing in this section shall be deemed to prohibit the humane transportation of horses, cattle, sheep, poultry or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported. Nothing in this section shall be construed to prohibit the town department, division, or employee designated to enforce the provisions of this chapter or veterinarians from euthanizing dangerous, unwanted, injured or diseased animals in a humane manner; nor to prohibit slaughterhouses or medical facilities from the proper, humane and lawful carrying out of their activities or duties.
  - (c) Inspections. Animal control officers shall have the authority to conduct inspections of pet shops, kennels, dealers, or breeders, to the extent not preempted by state law, in order to determine if there is any abuse of animals. Pet shops, kennels, dealers, and breeders are subject to the state laws concerning rabies control abuse of animals shall include any act described in this section or any other act which is detrimental to the well-being of the animal. It shall be unlawful for any owner or employee of any pet shop or kennel or any dealers or breeders to violate this section.



This ordinance shall be effective upon adoption

## **2. FY 2019-2020 Budget Discussion**

Town Manager Michael Scott informed the Council this item was on the agenda to enable the Council to recess the meeting to at a date and time specific to conduct a budget work session. It was the consensus of the Council to recess the meeting until April 11<sup>th</sup> at 7:00 pm.

### **Councilmembers Comments:**

- Councilman Lee referenced a new article concerning the last budget session. He stated that the underserved are still continuing to be underserved. Some of the big ticket items in the budget included: new Police cars, a new fire truck, air packs for the Fire Department, a new garbage truck and a splash pad at Smith-Collins Park. During the meeting, Councilman Ashley stated the Town needed to finalize the plan for Smith-Collins Park. Councilman Dunn questioned the splash park. Every year citizens from East Smithfield come and express their concerns about drainage or streets and we tell them to wait until budget time. The Town Manager has already set the budget and has told his department heads what needs to be done. So again, it's the same cycle. We talk about the Sarah Yard Community Center but it's only open 9 hours a week. A bridge club wanted to meet in it and the Parks and Recreation Director was agreeable because it's not being used. It could be used for the elderly people in the community, but it's not. The wooden area behind Smith-Collins Park needs to be maintained. The ditch along Old Goldsboro road needs to be maintained. Councilman Barbour wants to spend more money for park facilities throughout Town. We have a park the Town doesn't use. As we move through the budget, what is the plan? Until the Manager starts directing Department Heads to look at the area for the needs, I will keep calling it out.
- Councilman Dunn stated that with all due respect to Councilman Lee, when he asked the question about the splash park, it was to determine the reoccurring costs. He explained that part of what the Council has to do with any project no matter what it is or where it may be is look at the reoccurring cost. He explained he was simply doing his due diligence. He suggested that Councilman Lee express his opinions during the budget process.
- Councilman Barbour stated he would love if District 4 got half of the money spent on the other side of Town. He questioned how much had been spent on his side of Town. He stated west Smithfield only has a park not owned by the Town and the Town needs to be spending money on his side of town, but he wasn't going to forget the other needs throughout the Town. He explained he has been one of the biggest advocate for the splash pad at Smith-Collins Park. He stated nothing would be accomplished if the Council did not work together and they should be working for the good of the entire Town. He also stated he was proud the Council adopted the tethering ordinance.
- Mayor Pro-Tem Scott stated the Council was on a good start with budget. The Town Manager opened the floor for discussion with each councilmember having an opportunity to speak and there was little discussion Mayor Pro-Tem Scott felt the Council should be more proactive instead of reactive and work together. Financially the Town is stable and the Council needs to be looking at the big picture instead of anyone's personal agenda.
- Councilman Ashley stated he was in agreement with Councilman Lee and voted for all the improvements for Smith-Collins Park. He stated the Council needed to make the park a priority because if they did then there wouldn't be any types of these discussions.
- Mayor Moore reminded everyone about the Litter Sweep on April 13<sup>th</sup> from 7:00 am until 11:00 am. He challenged all of the Council to come out and support clean-up efforts in every district in Town. He explained that several Municipalities were doing the same and all Municipalities were adopting a joint Proclamation. He asked everyone to come together to work for all of the communities and all of the Town. Mayor Moore stated #SSStrong Day followed the Litter Sweep so he encouraged everyone to make it a Smithfield Day.

### **Town Manager's Report:**

Town Manager Michael Scott gave a brief update to the Council on the following items:

- Hydrant Testing: The Fire Department will begin their annual hydrant testing. In mid-April and will continue until the end of May.
- SRAC: A Mother/Son Dance is scheduled for the evening of April 13th for those who are interested. It will begin at 7:00 at the Sarah Yard Center. We are also preparing to celebrate the 10th Anniversary of the SRAC on May 26th of this year. District Senior Games are also taking place this weekend, as well as the opening of the baseball season for the Miracle League.
- River Bank: The budgeted riverbank refurbishment is underway with sheet pile driving beginning this week. This will create some additional noise in the area while the driving is taking place. The project will run through the fall.
- Ham and Yam: The Ham and Yam event is scheduled for Saturday, May 4th in the downtown area. Please make plans to attend and bring the entire family for all day fun.
- A highlight of each department's monthly activities was given to the Council

**Close Session pursuant to NCGS 143-318.11 (a) (4):** To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations

Councilman Barbour made a motion, seconded by Councilman Dunn, to enter into Close Session. Unanimously approved at 9:13 pm.

### **Reconvene in Open Session**

Mayor Pro-Tem Scott made a motion, seconded by Councilman Dunn, to reconvene in Open Session. Unanimously approved at 9:37pm.

### **Recess**

Being no further business, Councilman Barbour made a motion, seconded by Councilman Rabil, to recess the meeting until April 11, 2019 at 7:00 pm. Unanimously approved. The meeting recessed at approximately 9:38 pm.

ATTEST:

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M. Andy Moore, Mayor

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Shannan L. Parrish, Town Clerk