

## REGULAR MEETING

The Town Council of the Town of La Grange, North Carolina met in Regular Session at the Town Hall on September 8, 2008, at 7 p.m. with the following present:

Mayor Woodard H. Gurley; Mayor Pro Tem Bobby Wooten; Council Members Larry Gladney, Elliott Sutton, George Koonce, Gregory Rouse and Clifton Harrison; Town Manager John P. Craft; Town Attorney, George Jenkins, Jr.; Town Clerk, Nelda H. Johnson, CMC.

Absent: None

Guest: 23

### CALL TO ORDER, INVOCATION, WELCOME

Mayor Gurley called the meeting to order and asked Council Member Harrison to give the invocation. Mayor Gurley gave a welcome to all Council Members and guest.

Mayor Gurley gave a special welcome to Boy Scout Troop 114 and recognized Scout Leader Mack Beard and scouts Garrett House, Andrew Croom, Mitchel Smith, James Smith, Joshua Minton, Zack Beard and Marshall Letchworth.

### ITEM 1A: PUBLIC HEARING

A Public Hearing to consider Proposed Amendments to Town Code of Ordinances; Chapter 38, Zoning that would allow the operation of a convenience store within a residential district. The request was by Mrs. Toretha Jones.

Mayor Gurley opened the public hearing.

Manager Craft spoke stating that this request was addressed last month and the request was tabled in order to address it as a full council this month. Manager Craft reviewed the background information and history on the property as well as had photos of the property.

- Background information and history:
  - Was operated as a convenience store until October of 2005.
  - Structure has been without utilities since October 2005 until May of 2008 (Electric Service was restored to make repairs only). The store has not been in operation and has exceeded the 180 days. The store is located in an R-5 Zoning District which made it a nonconforming use.
  - The "use" was nonconforming since the original adoption of the Zoning Ordinance.
- Planning Board has heard the request twice.
- The Planning Board has voted unanimously to recommend that the request be denied.
- Proposed Amendment to Town Code of Ordinances; Chapter 38, Zoning
  - In order to grant this request, there are only two options to consider:
    - (1) Rezoning of the subject property
    - (2) Amend the zoning ordinance to include convenience stores as permitted uses within the District.
- Rezoning is not a viable option as it would be considered spot zoning, which is illegal.
- Amending the Permitted Use Table to include Convenience Stores as permitted or conditional uses within the District is the only option.
  - Consider effect on other properties in the area
  - Consider the effect on property values

Manager Craft stated that staff recommendation and the recommendation of the Planning and Zoning Board was to deny the request to amend the Zoning Ordinance or Zoning Map to protect property values.

Mrs. Toretha Jones spoke stating that the building had been a store for over thirty years and it is closed at this time; but, if we do not open it we have a building that we have to pay tax on and a mortgage on. Mrs. Jones stated that they had owned the building for about ten or twelve years and does not think it is fair to property owners not to be able to use it for the purpose it was bought. Mrs. Jones further stated that she knew that the homeowner next door had some concerns about guys hanging around; but, guys hang around now and the store is not open. No alcohol beverages are planned to be sold and that should not be an issue. Children are next door but this convenience store is not going to be any different than any other convenience store. Mrs. Jones requested that the Council please keep in mind that they do have a building that they have to pay taxes on.

William P. Graham, adjacent property owner of the store, spoke stating that he had lived there for twenty-eight years of the thirty years that the store was in operation and has never seen any control over the store. Mr. Graham stated that he feels that if the store opens there are going to be persons hanging out in the night and there would not be any control. Loud noises and excessive talking has always been a problem and if the store reopens it would be a bad thing.

Jeff Jones, part owner of the store, stated that they bought the property to use as a store and the former persons occupying the store left for unknown reasons and it was closed. Mr. Jones stated that he had no knowledge that once the store was closed for 180 days that this procedure would have to be followed. Mr. Jones stated that he needed the store open because he pays taxes on it and also pays a mortgage on it. The property was bought as an investment and if he had known he could not recoup some of his investment he would not have bought it. Mr. Jones stated that as far as the homeowner next to the property, he also has a home on the property and it is affected as much as Mr. Graham is affected and he knew it was a store when he bought his property.

Mrs. Jones spoke again stating that La Grange has a Police Department and it is their duty to monitor any activity that is going on around the store property.

Mrs. Margaret Cunningham, member of the Planning and Zoning Board, spoke stating that she had several concerns with the store reopening sighting inadequate parking, most important, the elementary school across from the property and a daycare just down the street. Mrs. Cunningham stated that she did not think reopening the store was a good influence for the Town.

Mr. Jones spoke again stating that he and his wife are the owners of the daycare that Mrs. Cunningham mentioned. Mr. Jones stated that he understood the issues about the school and the person that plans to rent the convenience store does not plan to sell wine or alcohol, just groceries.

Council Member Gladney spoke stating that in his opinion the school should not be an issue or the parking an issue.

There being no further comments from the public, motion was made by Mayor Pro Tem Wooten, seconded by Council Member Sutton to close the public hearing. Motion carried 6-0 in favor of motion.

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Sutton to accept the recommendation of the Planning and Zoning Board and deny the request.

Mayor Pro Tem Wooten stated that he would like to address the issue. Mayor Pro Tem Wooten stated that the Council is asked to change an ordinance to accommodate one individual. Ordinances were put into place for a reason and as Manager Craft has already stated, one of the reasons is to protect property values. Mayor Pro Tem

Wooten stated that he sympathizes with the Jones'; but, Town Staff and the Planning and Zoning Board has recommended that the request be denied and that was the purpose behind his motion.

Mayor Gurley called for a vote on the motion.

Mayor Pro Tem Wooten, Council Members Sutton and Harrison voted in favor of the motion. Council Members Koonce, Gladney and Rouse voted against the motion. There being a 3 to 3 tie, Mayor Gurley voted in order to break the tie; and, voted in favor of the motion. Motion carried 4-3 in favor of the motion to deny the request.

#### **ITEM 1B: PUBLIC COMMENT PERIOD**

None

#### **ITEM 2: AMENDMENT(S) TO AND APPROVAL OF THE AGENDA**

Manager Craft requested that ITEM 7D: APPROVAL OF ANNUAL FIRE DEPARTMENT CONTRACT WITH LENOIR COUNTY be moved from the consent agenda to ITEM 8B; and, the addition of ITEM 4B: REQUEST TO ADDRESS THE TOWN COUNCIL – JIMMY CARR SUTTON.

#### **ITEM 3: CONSENT AGENDA**

- a. Approval of Minutes
  - i. August 4, 2008 Regular Session Minutes
  - ii. August 4, 2008 Closed Session Minutes
- b. Approval of Resolution Declaring Municipal Property as surplus and authorizing the Town Manager to dispose of property on Gov Deals. Copy of Resolution No. 2008-09-212 hereto attached and filed in Resolution Book III.
- c. Annual approval of Fire Department Contract with Wayne County. Copy of Fire Contract on file in Clerk's office.
- d. Annual approval of Fire Department Contract with Lenoir County (Removed)
- e. Approval of Fireworks Display by Chamber of Commerce during Garden Spot Festival

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to approve the original agenda and the consent agenda with the two changes requested by Manager Craft. Motion carried 6-0 in favor of motion.

#### **NEW BUSINESS**

#### **ITEM 4A: REQUEST TO UTILIZE LIONS PARK BY THE BLACK MINISTERS ALLIANCE OF LA GRANGE ON SEPTEMBER 27, 2008**

Manager Craft stated that a request by Maurice R. Goodall, on behalf of the Black Ministers Alliance of La Grange, had been received requesting to be allowed to utilize the park facilities (Lions Park) on September 27, 2008, to sponsor a Day of Prayer and Gospel Day in the Park.

Manager Craft stated that he had some concerns and one was primarily liability. As Mr. Goodall stated in his request, their organization does not have liability insurance to cover themselves in case of an accident. Manager Craft stated that the Town should protect themselves and require that liability insurance be provided.

Manager Craft recommended the following guidelines for use of municipal facilities:

- (1) Approval should be required by Town Council each time an outside organization wishes to utilize facilities on which to conduct an event that is not a Town sponsored event.

- (2) Use of facilities is contingent on the organization having \$1,000,000 liability insurance naming the Town as additionally insured.
- (3) Organizers must provide portable restroom facilities, if the event is to last more than three (3) hours.
- (4) Consider a fee for utility usage and a deposit for clean-up costs if not left in a reasonable condition.

Council Member Gladney questioned the statement in the request by Mr. Goodall, "In the event that a person may be injured, the Town of La Grange will not be responsible for accidents that may occur during this event. All participants will be responsible for themselves."

Manager Craft stated that the statement does not relieve the Town of any responsibility should an accident happen on Town property.

Council Member Koonce questioned if the recreation association had liability insurance.

Manager Craft stated that the La Grange Recreation Association does have liability insurance as well as the Town has specific riders for recreational activities such as the Garden Spot Festival.

Motion was made by Council Member Sutton, seconded by Mayor Pro Tem Wooten to allow the Black Ministers Alliance of La Grange use of the Lions Park as long as they have liability insurance as to protect the Town.

Council Member Harrison questioned if anyone knew the cost of liability insurance for one day and no one knew an estimate.

Council Member Koonce asked if the liability insurance could be added onto the Town's insurance since the Town already has some recreation coverage.

The Town has an umbrella policy that covers events over and above; however, Manager Craft stated that he felt it was the Town's duty to make sure that entities have insurance that utilize the park to protect themselves as well as protect the Town.

The Town covers the two annual parades, Christmas Parade and the Martin Luther King, Jr. Parade.

Council Member Gladney questioned if the Town could purchase additional insurance to cover events and then have the entity reimburse the Town.

Manager Craft stated that it could be done.

Council Member Gladney made a substitute motion, in addition to Council Member Sutton's original motion for liability coverage, seconded by Council Member Rouse to add restroom facilities as a requirement for events that is to last more than three hours. The liability insurance must be provided by the entity naming the Town as additionally insured; or, upon request, the insurance may be provided by the Town of La Grange and the cost would be reimbursed back to the Town by the entity. Motion carried 6-0 in favor of motion.

#### **ITEM 4B: REQUEST TO ADDRESS TOWN COUNCIL – JIMMY CARR SUTTON**

Mr. Sutton addressed the Council stating that on September 4, 2007, he went to the Police Department and reported that certain persons were threatening to burn his trailer. Mr. Sutton stated that he reported this information three times to the Police Department and then on October 1, 2007, his mobile home was burned. Mr. Sutton stated that he was concerned that the investigation was not handled properly and also contacted Manager Craft with his concerns. Mr. Sutton further stated that almost a year has passed and still nothing has been done and the mortgage company, Greentree, is holding him responsible for payments because the fire was suspicious. In addition, on

May 13, 2008, someone broke into the trailer and threw his things out and the Police Officers have not made an arrest.

Mayor Gurley stated to Mr. Sutton that if he had a witness or witnesses to these two incidents that he needed for this person or persons to go to the Police Department and sign a statement as what they know concerning the burning of his trailer and the break-in of his trailer.

Manager Craft stated that he had met with Mr. Sutton a couple of times and had a couple of telephone conversations with him concerning the incident and Mr. Sutton has also met with Chief Sullivan. Chief Sullivan has followed up on every lead that Mr. Sutton has proposed to him and nothing has been proven. There is a suspect, but due to insufficient evidence no arrest can be made.

Mr. Sutton stated that the Police Department did have some papers that he wanted back so that he could provide them to his lawyer.

Mayor Gurley instructed Mr. Sutton to contact Interim Police Chief Jerry Davis concerning this issue.

#### **ITEM 5: DISCUSSION RELATED TO PURCHASE OF MUNICIPAL BANNERS AND FLAGS**

Manager Craft stated that the new banners had been purchased for the downtown area and would be installed before the Garden Spot Festival. Also, Manager Craft stated that he would like to expand the areas to which the new flags are installed. Manager Craft's recommendation to the Council was to purchase additional flags that are larger in size to be placed at all entrances coming into La Grange and some other pertinent areas.

Manager Craft also stated that he was seeking Council approval of the design of the Municipal Flag. The new flag would be the new logo on a white background and would be placed at Town Hall, Public Works, Police Department and the cemetery. Some business and churches has already contacted the Town wanting to display the new Town flag. Manager Craft stated that it was his recommendation, due to the cost, to charge for the flags.

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to accept the recommendations of Manager Craft on the purchase and placement of additional municipal banners and the design of the municipal flag. Additional flags desired by businesses or churches would have to be purchased from the Town. Motion carried 6-0 in favor of motion.

#### **ITEM 6: REQUEST TO HOLD A MIXED BEVERAGE ELECTION**

Manager Craft stated that Salvador Tinoco, owner of La Flama Mexican restaurant in Snow Hill is considering opening a restaurant in La Grange. One of his concerns was the inability to serve mixed beverages. Mr. Tinoco has requested that the Council consider conducting a mixed beverage election to determine the public's desire as it relates to this issue. At the present time establishments can already sell beer and wine (either on premises or off premises, dependent on the licenses held).

Manager Craft stated that there are two ways to request for a mixed beverage election.

(1) The Governing Board of the Town of La Grange request that the Board of Elections conduct the election.

(2) Citizens can produce a petition including signatures of 35% of the registered voters within the Town and this petition must be verified by the Board of Elections.

Once the Board of Elections receives the formal request from the Governing Body of the Town, an election must be held not less than 60 days nor more than 120 days. Mixed

beverage elections cannot be held on the Tuesday after the first Monday of November in even numbered years.

Manager Craft informed the Council that if they desired to hold a mixed beverage election they would need to vote to conduct the election. If a special election is held, the Town would have to pay the cost of the special election which will range from \$5,000 - \$8,000 dependent on whether or not two weeks of early voting is required or desired. If the Council desires to wait until the next election (one year from now) there would be negligible cost associated with the referendum at that time.

Should the Council vote to hold a special election now, or wait until the next scheduled election, this would mean that the Town's registered voters will have the opportunity to vote to determine whether or not mixed beverages are allow in La Grange.

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to allow the citizens to vote on whether or not to sell mixed beverages.

After discussion, Mayor Pro Tem Wooten, Council Members Harrison and Sutton voted against the motion. Council Members Gladney, Koonce and Rouse voted in favor of the motion. There being a 3 to 3 tie and Mayor Gurley chose not to vote; therefore, the motion failed due to the lack of a majority vote.

Motion was made by Council Member Gladney, seconded by Council Member Koonce to allow the citizens to make the choice concerning the sale of mixed beverages in the Town of La Grange at a scheduled election held by the Lenoir County Board of Elections in May 2009. Council Member Gladney, Koonce and Rouse voted in favor of the motion. Mayor Pro Tem Wooten, Council Members Harrison and Sutton voted against the motion. There being a 3 to 3 tie, Mayor Gurley broke the tie by voting in favor of the motion. Motion carried 4-3.

At this time, Manager Craft introduced Officer Johnathan Whitley to the Town Council. Officer Whitley is an employee with the Lenoir County Sheriff's Department and has begun working part-time for the La Grange Police Department.

#### **ITEM 7: AUTHORIZE DESIGNATED MUNICIPAL EMPLOYEES TO DISCHARGE WEAPON IN CITY LIMITS TO REDUCE THE SQUIRREL AND PIGEON POPULATION**

Manager Craft stated that over the past several years the Town has received numerous complaints related to pigeons and squirrels. The Town does have a fairly significant pigeon and squirrel population. Pigeons represent a health hazard in that their feces can carry a disease known as histoplasmosis. The squirrels can cause, and has caused, damage to personal property and are the primary cause of electrical outages within the Town.

Due to the fact that La Grange is a bird sanctuary, the Council has to approve the persons that will be allowed to discharge firearms within the city limits in order to control the pigeon and squirrel population.

Manager Craft recommended that John Mark Heath (employee at the Wastewater Treatment Plant), the Police Chief (currently Interim Chief Davis), Assistant Police Chief, and the Police Sergeants (currently Kenneth Black and Daryl Cato) be approved to control the pigeon and squirrel population. These persons must possess a hunting license, and must follow State requirements while reducing the population in season. Out of season, special permits are required.

Motion was made by Council Member Gladney, seconded by Council Member Harrison to authorize the above named positions and named persons to discharge a firearm in the Town Limits to control the pigeon and squirrel population.

Council Member Koonce questioned the liability in case of an accident.

After discussion, the motion carried 5-1. Council Member Koonce voted against the motion.

**ITEM 8A: CONSIDER RESCHEDULING OCTOBER COUNCIL MEETING**

Manager Craft stated that the October Council meeting is scheduled for October 6, 2008. There is a conflict due to an onsite evaluation of the Automated Meter Reading System in Austin, Texas, prior to the Town's potential purchase. Also, the North Carolina League of Municipalities annual meeting is October 10-12, 2008.

Manager Craft recommended that the October Town Council Meeting be postponed and rescheduled until Wednesday, October 15, 2008.

Motion was made by Council Member Gladney, seconded by Council Member Harrison to reschedule the October 2008 Town Council Meeting until Wednesday, October 15, 2008. Motion carried 6-0 in favor of motion.

**ITEM 8B: APPROVAL OF FIRE CONTRACT WITH LENOIR COUNTY**

Manager Craft provided each Council Member with an updated copy of the Fire Contract with Lenoir County showing recommended changes. Manager Craft reviewed each change.

Motion was made by Council Member Gladney, seconded by Mayor Pro Tem Wooten to approve the amended Fire Contract with Lenoir County. Motion carried 6-0 in favor of motion. Copy of Fire Contract on file in the Clerk's office.

**UNFINISHED BUSINESS**

**ITEM 9: INFORMATIONAL ITEM – NC LEAGUE OF MUNICIPALITIES ANNUAL MEETING**

Manager Craft reminded the Council that the NCLM annual conference will be held in Charlotte on October 10-12, 2008.

**ITEM 10: CLOSED SESSION**

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to go into Closed Session as authorized by North Carolina General Statutes 143-318 (a) (4) (5) (6). Motion carried 6-0 in favor of motion.

**ADJOURNMENT**

Motion was made by Mayor Pro Tem Wooten, seconded by Council Member Gladney to adjourn. Motion carried 6-0 in favor of motion.

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Nelda H. Johnson, CMC, Town Clerk

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Woodard H. Gurley, Mayor