



**TOWN OF FUQUAY-VARINA  
BOARD OF COMMISSIONERS REGULAR MEETING  
JANUARY 3, 2017**

**CALL TO ORDER**

Mayor John W. Byrne called the regular meeting of the Fuquay-Varina Board of Commissioners to order on January 3, 2017 at 7:00 p.m.

Commissioners Present:     Blake Massengill (Mayor Pro-Tem)  
                                      Charlie Adcock  
                                      Bill Harris  
                                      Jason Wunsch  
                                      Marilyn Gardner

Commissioners Absent:     None

Others Present:             Town Manager Adam Mitchell  
                                      Town Clerk Rose Rich  
                                      Town Attorney Mark Cumalander

Assistant Town Manager Mark Matthews – *(Absent due to surgery.)*

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**INVOCATION AND PLEDGE OF ALLEGIANCE**

Commissioner Jason Wunsch gave the invocation and Wayne Mauldin led the Pledge of Allegiance.

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**APPROVAL OF THE MINUTES**

The December 20, 2016, minutes of the regularly scheduled Town Board of Commissioners meeting, was presented for approval.

MOTION:                     Mayor Pro-Tem Massengill  
SECOND:                    Commissioner Adcock  
MOTION RESULT:        Passed Unanimously (5-0)

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**PRESENTATIONS**

**Agenda Item No. 4.A: Update – Terrible Creek WWTP Construction Report**

Town Manager Mitchell stated that the \$34 million Terrible Creek Wastewater Treatment Plant expansion project is the largest single investment in the Town’s history, and he asked Public Utilities Director Jay Meyers to narrate the progress of an aerial video of the expansion project. Public Utilities Director Meyers showed a video of the construction and progress made since November 2016. He stated that the project is progressing in a timely manner, ahead of schedule and so far under budget. Mayor Byrne stated that the site is not only capable of treating 3 million gallons per day, but could easily be expanded to treat 6 million gallons per day. He stated that the Board has done a good job in making long-term investments into our town as this treatment plant has the potential for lasting up to 30 years if expanded to its full capacity.

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**PUBLIC COMMENT**

No one chose to address the Town Board during the public comments period.

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**ITEMS TABLED FROM PREVIOUS MEETING**

There were no items tabled from previous meetings.

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**PUBLIC HEARINGS**

**Agenda Item No. 7.A: Rezoning Petition - Clyde Douglas - 527 Dawley Drive - PIN 0656686510 - REZ-2016-26**

Purpose – To consider a request to rezone a total of 6.68 acres, located at 527 Dawley Dr. adjacent to the Summerdale Subdivision, from Residential Low Density Zoning District (RLD) to the Residential Medium Density Conditional Zoning District (RMD-CZD) with the condition that multi-family and townhome uses are prohibited. The subject property is also known as Wake County PIN 0656686510.

Staff Comments – Town Manager Mitchell advised that the property proposed for rezoning is in the town corporate limits and is located in a Residential Low Density Zoning District. The proposed rezoning site consists of 6.68 acres and is currently vacant. The property can be accessed from two existing stub streets located in the Summerdale subdivision, Dawley Drive and Wedmore Drive. Summerdale Subdivision's

access points are from Coley Farm Road and Bridge Street. Surrounding properties to the east of the rezoning request consist of predominately single-family residential development along Bridge Street that are zoned Residential Medium Density (RMD). The property to the south of the rezoning request consists of predominately single-family residential development located in the Summerdale Subdivision, which is zoned RMD-CZD. Located on the northern side of the rezoning request is the Norfolk Southern railroad track as well as warehouse buildings zoned Heavy Industrial (HI). Public utilities consisting of existing water and sewer service are available at the two existing stub streets in the Summerdale Subdivision. There are no thoroughfares identified by the Community Transportation Plan immediately adjacent to the area requested for rezoning. The Land Use Plan calls for Medium Density Residential (MDR) future land use on the subject property. The rezoning request is consistent with the Land Use Plan because RMD-CZD aligns with Medium Density Residential (MDR) future land use. Management and staff recommendation is to approve the request since the request is consistent with the Land Use Plan, as well as the current zoning of adjacent properties to the south and east of the proposed zoning including the adjoining Summerdale Subdivision. Furthermore, the condition that townhome and multi-family development uses are prohibited will ensure that future development of the property is consistent with the adjoining Summerdale Subdivision. For these reasons, the request is considered reasonable and in the best interest of the public. Town Manager Mitchell reported that at the December 19, 2016 Planning Board meeting, the Planning Board voted unanimously to recommend approval of REZ-2016-26 to the Residential Medium Density Conditional Zoning District (RMD-CZD) with the condition that multi-family and townhome uses are prohibited. The rezoning request is consistent with the Land Use Plan, as well as the current zoning and single-family residential development to the south and east immediately adjacent to the proposed zoning. Therefore, the requested zoning is considered reasonable and in the best interest of the public. The Manager concluded that for the reasons identified by staff as well as the Planning Board, management recommends approval of the requested rezoning.

Public Hearing – Mayor Byrne opened the public hearing, and he asked if anyone wished to speak in favor of the rezoning petition. Mr. Clyde Douglass, 2024 Carroll Drive, Raleigh, NC, petitioner for the property, stated that the requested rezoning would allow for the Summerdale Subdivision to be completed with single-family homes only and stated his support for the rezoning. Mayor Byrne then asked if anyone wished to speak in opposition to the proposed rezoning. No one chose to speak in opposition to the rezoning petition for REZ-2016-26. Mayor Byrne declared the public hearing closed.

Board Member Discussion – There was no discussion by the Town Board regarding this request.

Recommendation - Approve REZ-2016-26, to rezone 6.68 acres at 527 Dawley Drive from Residential Low Density Zoning District (RLD) to the Residential Medium Density Conditional Zoning District (RMD-CZD) with the condition that multi-family and townhome uses are prohibited. The rezoning request is consistent with the Land Use Plan, and is reasonable and in the best interest of the public for the reasons identified by staff and the Planning Board.

MOTION: Commissioner Adcock  
SECOND: Mayor Pro-Tem Massengill  
MOTION RESULTS: Passed Unanimously (5-0)

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**Agenda Item No. 7.B: Rezoning Petition - Mauldin-Watkins Surveying, PA - 405 and 407 N Ennis Street - PINs 0666194427 and 0666194316 - REZ-2016-27**

Purpose – To consider a request to rezone a total of 0.688 acres at 405 and 407 North Ennis Street from the Residential Low Density Zoning District (RLD) to the Office and Institutional Zoning District (O&I). The subject properties are also known as Wake County PINs 0666194316 and 0666194427.

Staff Comments – Town Manager Mitchell advised that the property proposed for rezoning is in the Town corporate limits and is located in the Residential Low Density Zoning District. The proposed rezoning site consists of 0.688 acres and is currently an existing medical office building with a gravel parking lot that is a non-conforming use to the Residential Low Density Zoning District and that is restricted under Article K, Nonconformities. This property has street frontage on North Ennis Street. Surrounding properties to the west, north and east of the rezoning request are zoned Residential Low Density Zoning District and consist of predominately single-family residential and one legal non-conforming multi-family dwelling on the east side of Ennis Street across from the properties. The property to the south of the rezoning request consists of a funeral home and a church use that are zoned Office and Institutional Zoning District. Existing public water and sewer services are available to the property. The Community Transportation Plan identifies North Ennis Street as a minor thoroughfare, and existing street improvements and the right-of-way meet this classification. Therefore no additional improvements or right-of-way are expected or required. The Land Use Plan calls for Medium Density Residential (MDR) future land use for the property. The rezoning request is inconsistent with the Land Use Plan because the O&I Zoning District aligns with an Office and Institutional (O&I) future land use, not residential. The property to the south of the subject property is identified by the Land Use Plan as Office and Institutional (O&I) future land use. While inconsistent with the Land Use Plan, management and planning staff recommend approval of the requested rezoning for the following reasons: 1) The proposed zoning district will help to resolve the non-conformity of the property by allowing upgrades or expansion of the existing medical office. 2) Properties to the south of the requested site are currently zoned O&I and identified as Office and Institutional (O&I) future land use in the Land Use Plan. 3) The Town has received no issues or complaints regarding the existing long-term medical office use of the property that is currently non-conforming under the current zoning district. For the reasons identified, the requested zoning to Office and Institutional Zoning District O&I is considered reasonable and in the best interest of the public. At the December 19, 2016 Planning Board meeting, the Planning Board voted unanimously to recommend approval of REZ-2016-27 to the Office and Institutional Zoning District (O&I) as presented. While the rezoning request is inconsistent with the Land Use Plan, the request is considered reasonable and in the best interest of the public for the reasons identified. Town

Manager Mitchell advised that he is in agreement with staff and the Planning Board, and also recommends approval.

Board Member Discussion – Commissioner Adcock asked if there was any reason why it was never rezoned. Town Manager Mitchell stated that perhaps it was an oversight on behalf to Town staff not to clean this up with the update of a zoning map in the past but the property owner would have to be asked as to why they did not pursue the rezoning until now. Mayor Byrne stated that sometimes it’s not an issue unless a complaint generates a need for rezoning, or unless the ownership of the property changes.

Public Hearing – Mayor Byrne opened the public hearing and he asked if anyone wished to speak in favor of the rezoning request. Wayne Mauldin of Mauldin-Watkins Surveying, PA, spoke in favor of the rezoning request stating that during the course of conducting a survey of the property on behalf of Mr. Honeycutt, who recently purchased the property, it was discovered that the property was not properly zoned. Mayor Byrne asked if anyone wished to speak in opposition to the rezoning request for REZ-2016-27. No one chose to speak in opposition to the rezoning request. Mayor Byrne declared the public hearing closed.

Recommendation - Approve REZ-2016-27 to rezone a total of 0.688 acres at 405 and 407 North Ennis Street from the Residential Low Density Zoning District (RLD) to the Office & Institutional Zoning District (O&I). The rezoning request is inconsistent with the Land Use Plan, however the request is considered reasonable and in the best interest of the public for the reasons identified by staff.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Gardner  
MOTION RESULTS: Passed Unanimously (5-0)

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**Agenda Item No. 7.C: Rezoning Petition - Reliabuilt, LLC - 560 SE Judd Parkway and 411 England Avenue - PINs 0666352980 and 0666360004 - REZ-2016-29**

Purpose – To consider a request to rezone a total of 21.866 acres, at 560 S Judd Parkway SE and 411 England Avenue from the Office and Institutional Conditional Zoning District (O&I-CZD) to Residential Medium Density Conditional Zoning District (RMD-CZD). The three conditions stated in the rezoning request application pertain to setbacks, buffers, and transportation access specifications. The subject properties are also known as Wake County PINs 0666360004 and 0666352980.

Staff Comments – Town Manager Mitchell advised that the current zoning of the property is Office & Institutional Conditional Zoning District (O&I-CZD) and is within the Town's corporate limits. The property was rezoned at the request of the property owner in 2001-2002 along with the property that was ultimately developed as Universal Healthcare with the goal of marketing the property for medical office or a similar use, but only the Universal Healthcare portion has been developed. Six conditions apply to these

properties under the current zoning district and are attached. The conditions for the proposed rezoning to Residential Medium Density Conditional Zoning District (RMD-CZD) are as follows:

- 1.) A 30 foot setback adjacent to property along England Ave that will remain vegetated, and will include a minimum 10 foot wide planting area to create a buffer. The setback shall not be used for any other purpose other than existing or approved landscaping;
- 2.) A 10 foot wide planting area shall contain landscape material that is installed at a minimum height of eight (8) feet along and adjacent to the property on England Ave;
- 3.) Access via the property will be by internal public streets connected to Holland Rd and Barneswyck Dr. No private driveways will access existing SE Judd Pkwy and Holland Rd.

The property to the east is SE Judd Pkwy., and on the east side of the parkway is Residential Low Density District RLD, which is the Northwyck Subdivision, as well as vacant land zoned Office and Institutional Conditional Zoning District (O&I-CZD). Also adjacent to the project to the east is the Universal Healthcare Facility zoned Office and Institutional District Conditional Zoning District (O&I-CZD). To the north is the Fuquay-Varina United Methodist Church zoned Residential Agricultural District (RA). To the west is England Ave with single-family lots zoned Residential Low Density District (RLD). To the south is Holland Rd. and across Holland Rd. is Cross Creek Drive that has a duplex subdivision zoned Residential Medium Density District RMD, as well as vacant land zoned Office and Institutional Conditional Zoning District (O&I-CZD). Public sewer and water is available to serve the property. Road improvements will be required along SE Judd Pkwy., which requires a 100 foot right-of-way and three (3) lane cross-section road improvement with curbing and sidewalks, and along Holland Rd., which requires a 60 foot right of way and a two (2) lane cross section road improvement with curb and sidewalks. Town Manager Mitchell advised that NCDOT and/or the Town may require, based on the Town's Standard Specifications and Construction Details, a Transportation Impact Analysis (TIA). If a TIA is required, additional traffic improvements may be required based on the findings of the TIA.

Town Manager Mitchell stated that while inconsistent with the Land Use Plan, Town staff recommends approval of the proposed rezoning for the following reasons:

- 1.) Residential Medium Density Conditional Zoning District (RMD-CZD) provides a reasonable transition from Residential Low Density District (RLD) uses to the west and Office & Institutional District (O& I) uses (nursing home and church) along SE Judd Parkway.
- 2.) Public water and sewer is available to serve the property.
- 3.) The proposed zoning includes a condition for a landscaped buffer from the property adjacent to the lots on England Avenue.
- 4.) Access for the project is limited to Barneswyck Dr at SE Judd Pkwy and Holland Rd, for which Holland Rd has a signalized intersection with SE Judd Pkwy.

- 5.) The proposed zoning of Residential Medium Density Conditional Zoning District (RMD - CZD) is less intense than the current Office and Institutional Conditional Zoning District (O&I-CZD).

Town Manager Mitchell advised that for the reasons identified, the requested rezoning of Residential Medium Density Conditional Zoning District (RMD - CZD) is considered reasonable and in the best interest of the public.

At the December 19, 2016 Planning Board meeting, the Planning Board voted 4-2 to recommend approval of REZ-2016-29 to the Residential Medium Density Conditional Zoning District (RMD - CZD) with the three conditions stated in the application. It was cited that the rezoning request is inconsistent with the Land Use Plan, however the request with the conditions presented by the petitioner is reasonable and in the best interest of the public for the reasons identified by staff. Town Manager Mitchell advised that he agrees with staff's and the Planning Board's recommendation, and further recommends approval.

Board Member Discussion – Commissioner Adcock asked the Town Manager about the road improvements required on Judd Parkway for this request. Town Manager Mitchell stated that there is a three (3) lane cross-section with curb, gutter and sidewalk that the developer will be required to construct. Commissioner Adcock then asked if a 100 ft. right-of-way along SE Judd Parkway is a part of the Transportation Improvement Plan or should it be a condition for this rezoning request. Town Manager Mitchell offered a recommendation that the Town Board request that the petitioner include an additional condition of a 100 ft. right-of-way along SE Judd Parkway for this rezoning request even though they are only required to construct a cross-section that is less than what the 100ft right-of-way can accommodate.

Public Hearing – Mayor Byrne opened the public hearing, and he asked if anyone wished to speak in favor of the rezoning request. Mr. Grant Livengood, 1730 Varsity Drive, Raleigh, of McKim & Creed Inc., spoke in favor of request on behalf of the petitioners (Charles L. & James J. Parker). He stated that meetings were held with the adjacent property owners where the owners raised concerns regarding drainage. He stated that the petitioners feel that the drainage issue will be addressed during the site plan process. Mr. Bruce Herbert, 227 Strathburgh Lane, Cary, also spoke in favor of the petition, and he stated that they were committed to bringing solutions to the drainage issue during the site plan process. Commissioner Harris asked the developers how they plan to address the drainage issue. Mr. Bruce Herbert stated that they plan to redirect the flow of water. Mayor Byrne then asked if anyone wished to speak in opposition to the rezoning petition. Mr. Robert Johnson, 629 E. Vance Street, stated he was not necessarily opposed, but since the development of United Healthcare, the drainage along his property has gotten worse, and he would like to see the drainage issues addressed. Mrs. Vicki Powell, 405 England Avenue, Fuquay-Varina, stated that she is not against the matter of development of the property, but she is opposed to the proposed density (110 single-family homes) for this rezoning. She asked the Board to consider the higher traffic demands of the proposed project. Mayor Byrne asked if anyone else wished to speak in opposition to this rezoning petition, and hearing no further comments, he declared the public hearing closed.

Board Member Discussion – Mayor Pro-Tem Massengill asked about storm water run-off for this project. Town Manager Mitchell stated that this project would be required to

place a storm water facility to manager storm drainage. Mayor Pro-Tem Massengill also asked about the traffic study that will be done for this area. Town Manager Mitchell stated that the traffic study could require improvements in addition to those already recommended for the project. Commissioner Adcock stated that the Town has strengthened the storm water requirements since the development of Universal Health Care, so the intent of the requirements is to not increase any run-off. He stated that traffic is an issue that the Town will be addressing for a long time, but setting aside the right amount of right-of-way is a measure that the Town chose to allow for the planning of future improvements to the road section.

Recommendation - Approve REZ-2016-29, to rezone 21.866 acres at 560 SE Judd Parkway and 411 England Avenue to the Residential Medium Density Conditional Zoning District (RMD-CZD) with the three conditions stated in the petition, and the additional condition of requiring the 100 ft. right-of-way dedication. The rezoning request is inconsistent with the Land Use Plan; however, the request with the conditions proposed by the petitioner is considered reasonable and in the best interest of the public for the reasons identified by staff.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Wunsch  
MOTION RESULTS: Passed Unanimously (5-0)

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**Agenda Item No. 7.D: Rezoning Petition - Reliabuilt, LLC - 719, 721, and 911 Fleming Loop Road - PINs 0656332012, 0656338945 and 0656231510 - REZ-2016-30**

Purpose – To consider an amendment to the zoning map for a total of 108.201 acres, located at 719, 721 and 911 Fleming Loop Road from the Residential Agricultural Zoning District (RA) to the Residential Medium Density Conditional Zoning District (RMD - CZD), with the condition that property be developed under Open Space Development standards. The subject properties are also known as Wake County PINs 0656332012, 0656338945 and 0656231510.

Staff Comments – Town Manager Mitchell advised that the current zoning of the subject property is Residential Agricultural (RA) Zoning District and is outside the town corporate limits. The petitioner is requesting to amend the zoning map to Residential Medium Density Conditional Zoning District (RMD-CZD) with the condition to develop the property as an open space development for single-family lots. The property to the north is currently zoned RA with a mix of vacant land and individual large lots. The property to the west is zoned RA and is the existing Fleming Fields Subdivision, a large lot single-family development. To the south is land under Wake County jurisdiction zoned R-30 and R-20 district and a portion in the Town's jurisdiction that is zoned Residential Agricultural (RA) that is large lot single-family development or vacant property. Property to the east of the Norfolk Southern railroad track is a vacant tract that is zoned Residential Agricultural (RA) and includes a portion of the rezoning request area that is adjacent to the existing Parker Pointe Subdivision, Carriage Heights Subdivision and the

Ridges at Kenneth Creek Subdivision, which are zoned Residential Medium Density (RMD) in the Town's jurisdiction. The Land Use Plan calls for the property in question and all the adjacent lands as Medium Density Residential (MDR) future land use except for that portion of the property to the south that is in Wake County's jurisdiction, which the Land Use Plan identifies as Low Density Residential (LDR) future land use. Public sewer and water is available to serve the properties. Road improvements will be required along Fleming Loop Road, which requires a 60 ft. right-of-way and a two (2) lane cross-section with curb and sidewalk. The Western Parkway runs north and south along the west boundary of the proposed rezoning, which the developer will be required to reserve the required 120 feet for the future implementation of this thoroughfare. Should the property be developed, a Transportation Impact Analysis (TIA) will most likely be required based on the Town's Standard Specifications and Construction Details and NCDOT requirements. Additional traffic improvements may be required by NCDOT or the Town based on the findings of the TIA. The 2015 Average Daily Trip traffic count by NCDOT was 760 trips per day. The design capacity of Fleming Loop Road is 10,000 ADT. At the December 19, 2016 Planning Board meeting, management and staff recommended approval of the proposed request for the following reasons:

- 1.) The proposed rezoning is consistent with the Land Use Plan
- 2.) Public water and sewer is available to serve the property
- 3.) The proposed rezoning includes a condition to develop the property as an open space development only with single-family residential lots.

Town Manager Mitchell stated that for the reasons identified, the requested zoning is considered reasonable and in the best interest of the public.

Town Manager Mitchell also stated that the petitioner will introduce some additional conditions during the public hearing period. At the December 19, 2016 Planning Board meeting, the Planning Board voted unanimously to recommend denial of REZ-2016-29 to RMD-CZD with conditions stated in the application. After a vote to recommend approval failed by a vote of 3-3, the Planning Board unanimously voted to deny this petition with a recommendation that the Town Board of Commissioners take a closer look at traffic and density along Fleming Loop Road for this rezoning petition. Since the Planning Board meeting, the applicant has proposed additional conditions pertaining to a 20 foot buffer on all boundaries other than Fleming Loop road frontage, and a maximum density of 3.0 dwelling units per acre. Town Manager Mitchell advised that with these conditions, he recommends approval.

Board Member Discussion – Commissioner Adcock asked if it was the intent of the petitioner to develop property on the east side of the railroad track, and if so would the maximum density also be 3 dwelling units per acre. Town Manager Mitchell stated that the petitioner can speak to that question, but because of access issues with the railroad track there may plan to develop the property at a later time but no plan has been submitted for review. Commissioner Wunsch asked about the previous maximum density of dwelling units per acre for this rezoning. Town Manager Mitchell stated that the petitioner imposed a condition of only half of the units, with the initial dwellings units per acre being six (6).

Public Hearing – Mayor Byrne opened the public hearing and asked if anyone wished to speak in favor of the rezoning request. Mr. Grant Livengood, 1730 Varsity Drive, Raleigh, spoke in favor of the request on behalf of the petitioner. He stated that they are

providing as a condition a 20-foot buffer around the perimeter of the property instead of the required 10-foot buffer. He stated that the petitioners are proposing additional conditions as follows:

- 1.) A 6 foot privacy fence shall be constructed within the landscape buffer along the common western property line of 644 Fleming Loop Road. The fence shall be approximately 435 feet to the southwestern property corner of 644 Fleming Loop Road.
- 2.) A 6 foot privacy fence shall be constructed within the landscape buffer along the common southern property line of 741 Fleming Loop Road.
- 3.) A 6 foot privacy fence shall be constructed within the landscape buffer along the common eastern property line of 729 Fleming Loop. The fence shall begin approximately 336 feet south of the right of way of Fleming Loop Road and extend for a distance of approximately 218 feet to the southeastern property corner of 729 Fleming Loop Road.

Mayor Byrne then asked if anyone wished to speak in opposition to the petition. Mr. Eddie Taylor, 623 Near Post Drive, Mr. Douglas Pfitzenmair, 624 Near Post Drive, Ms. Cindy LaDelle, 619 Near Post Drive, Mrs. Margaret Howard, 729 Fleming Loop Road, Mr. John Maeder, 623 Fleming Loop Road, Mrs. Tammy Horton, 644 Fleming Loop Road, Mr. Robby Horton, 644 Fleming Loop Road all spoke in opposition to the proposed rezoning. Those speaking in opposition to the rezoning expressed their concern regarding the availability of vacant space around the Town, the proposed density for the project, increased traffic along Fleming Loop Road, and screening. Following comments in opposition to the rezoning request, Mayor Byrne declared the public hearing closed.

Board Discussion – Commissioner Harris stated that this seems like a great opportunity to blend urban and rural development. He said that as the Town continues to grow, we will be confronted with this type of development issue, but at the same time he opined that there is value in maintaining rural character for the community. Mayor Pro-Tem Massengill stated that with Fleming Loop Road and NC 42 being NCDOT roads, NCDOT will look at the improvements needed in that area for this project. He then stated that the petitioner has offered several conditions in an effort to negotiate with the adjacent property owners, he then stated that he is comfortable with the rezoning request. Commissioner Gardner asked if Fleming Fields has Town water and sewer. Town Manager Mitchell stated that it only has Town water. Commissioner Adcock stated that the petitioner is bringing sewer to the property, which would allow for a more dense development. He stated that he wants it to be clear that we are talking about 3 units per acre on both sides of the railroad track. He stated that if he had to vote tonight on this matter, he would vote to approve it, but his preference is to table the matter in order to get the petitioner to try to get some of the residents more on board with the proposal. Commissioner Harris also offered that developers and adjacent residents need further discussion, and he would be in favor of tabling the matter. Mayor Pro-Tem Massengill then stated that it appeared to him that the developer and adjacent property owners had ample time and attempts were made to reach a consensus on this matter but that it appeared that there was not further consensus to be made. He then made the following recommended motion.

Recommendation - Approve REZ-2016-30 to rezone 108.201 acres, located at 719, 721 and 911 Fleming Loop Road from the Residential Agricultural (RA) Zoning District to

Residential Medium Density Conditional Zoning District (RMD-CZD), with the revised conditions proposed by the applicant, adding the conditions submitted by the petitioner for the record. The rezoning request is consistent with the Land Use Plan and is considered reasonable and in the best interest of the public for the reasons identified by staff.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Wunsch

Further Board Discussion – Commissioner Adcock asked direction from the Town Manager. Town Manager Mitchell stated that if it is the Town Board’s desire, the matter could be tabled to a future meeting that needed to be date specific (he recommended no later than the January 17, 2017 meeting), but that was not his recommendation. Attorney Cumalander stated that the Board might wish to provide additional time (more than the two weeks suggested by the Manager) for discussions between the two parties but that it was not required. Rich Van Tassel of Royal Oaks Building Group, stated that if the Town Board desired, he and his team would make a concerted effort to have further dialogue with the neighbors and be back in two weeks for consideration of this matter.

Following further discussion, Mayor Pro-Tem Massengill withdrew his motion and Commissioner Wunsch withdrew the second to his motion.

Motion made to table the request to for the rezoning petition REZ-2016-29 until the January 17, 2017, Town Board meeting to allow the developer and neighboring property owners more time for dialogue.

MOTION: Commissioner Adcock  
SECOND: Commissioner Harris  
MOTION RESULTS: Passed Unanimously (5-0)

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**CONSENT AGENDA**

**Agenda Item No. 8.A: Resolution - Hurricane Matthew Financial Assistance - Authorization of Agents**

Purpose – To consider a Resolution to authorize the Primary and Secondary Agents to execute and file applications for federal and state assistance on behalf of the Town of Fuquay-Varina following Hurricane Matthew.

Recommendation – Approve the Resolution to authorize the Primary and Secondary Agents to execute and file applications for federal and state assistance on behalf of the Town of Fuquay-Varina following Hurricane Matthew as presented.

**Agenda Item No. 8B: Utility Allocation - Partin Place, Phases 5 and 6**

Purpose – To consider a Utility Allocation request for the Partin Place Subdivision – Phases 5 and 6.

Recommendation – Approve the Utility Allocation request for 17,700 gpd for sewer and 28,620 gpd for water for Partin Place Phases 5 and Phase 6 as presented.

**Agenda Item No. 8.C: Budget Amendment - Bishop Photo - Parks, Recreation & Cultural Resources Department - BA-2017-22 - \$1,400.00**

Purpose – To recognize funds from Bishop Photo in the amount of \$1,400.00 for non-resident scholarships within the Parks, Recreation & Cultural Resources Department.

Recommendation – Adopt budget ordinance BA-2017-22 as presented and recommended.

**Agenda Item No. 8.D: Amendment to the Sub-Recipient Agreement - Bridge Street and Southern Street Infrastructure Improvements Project**

Purpose – To consider an amendment of the Bridge Street and Southern Street Infrastructure Improvements Sub-recipient Agreement with Wake County, for the purpose of extending the end date from February 28, 2017 to May 31, 2017.

Recommendation – Approve the amendment of the Sub-Recipient Agreement for Bridge Street and Southern Street Infrastructure Improvements Project as presented.

A motion was made to approve all items A through D on the Consent Agenda as recommended.

MOTION: Commissioner Gardner  
SECOND: Commissioner Wunsch  
MOTION RESULTS: Passed Unanimously (5-0)

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**ADMINISTRATIVE REPORTS**

**Agenda Item No. 10.A: Fuquay-Varina Planning Board By-Laws Amendment**

Purpose – To take action on a proposed amendment to the Planning Board By-Laws.

Staff Comments – Town Manager Mitchell advised that the Planning Board By-Laws are being updated to correlate with the recently adopted Land Development Ordinance, as well as to maintain conformity with the North Carolina General Statutes. Terminology within the Planning Board by-laws has been changed to remove gender references and

has been streamlined to maintain consistent terminology but not duplicate policy language already included in the Land Development Ordinance or North Carolina General Statutes. No substantive changes have been made to the By-Laws. Changes made to the by-laws can be classified into three (3) categories: 1.) removal of outdated or redundant information; 2.) removal of gender references; and 3.) compliance with the Town's branding campaign and agenda format. On December 19th, the Planning Board voted unanimously to recommend approval of the proposed amendments to the Planning Board By-Laws. Management and staff are also recommending approval.

Board Discussion – Mayor Byrne stated that these amendments coincide with the changes to the Town's recently adopted Land Development Ordinance.

Recommendation – Approve the Fuquay-Varina Planning Board By-Laws amendment as presented.

MOTION: Commissioner Adcock  
SECOND: Commissioner Harris  
MOTION RESULTS: Passed Unanimously (5-0)

#### **Agenda Item No. 10.B: NW Judd Parkway - Right-of-Way Consultant Selection**

Purpose – To consider approval of a contract with PPS, Inc. for the appraisal and negotiation of right of way acquisition for the Northwest Judd Parkway Project.

Staff Comments – Town Manager Mitchell advised that Town Staff engaged numerous right of way (ROW) acquisition firms to provide services for negotiation, documentation, and acquisition of ROW for the NW Judd Parkway project. Two highly qualified firms responded to our requests. These services are necessary to ensure that ROW is acquired in accordance with Federal requirements and in a form that is acceptable to NCDOT Division 5. PPS, Inc. is staffed with former NCDOT employees who are well versed in the Uniform Act and NCDOT ROW requirements. These services will help ensure that no NCDOT approval delays will result from the methods for ROW acquisition. This effort requires more work than typical right of way acquisition, in that it includes federally required services specified in the Uniform Act for residents whose homes/businesses are impacted. These services include but are not limited to relocation and consultation services to aid in the moving process. Town Staff recommends that the Town enter into a contract that is based on cost per parcel for the level of effort that PPS expends as laid out in their contract proposal. Town Manager Mitchell advised that this is a not to exceed contract, so if the work materially changes, PPS would need to request a contract amendment. Any substantial change in scope would be evaluated by staff and management, and subsequently brought to the Town Board with a recommendation. The proposed not to exceed amount is \$371,500.00. Staff and management have evaluated PPS, Inc.'s proposal, are familiar with their past work on similar projects, and recommend the Town Board approve the selection and contract with PPS, Inc. for right of way acquisition. Professional ROW acquisition services will allow the Town to expediently acquire right-of-way for this important transportation project in a manner meeting Federal requirements, so the Town may move forward to the construction phase. Funding for this contract is already established in the NW Judd Parkway project ordinance. This work is reimbursable under the Locally Administered Projects Program (LAPP) grant that the Town received. Town Manager Mitchell reported that the LAPP

Grant for NW Judd ROW is 50% Town Match and 50% Federal Highway Administration Funding. He stated that \$2.9 million is what the Town received in grants for this project, and \$2.9 million is projected to be matched in local funds for the project.

Board Discussion – Mayor Byrne asked if the Town could negotiate better deals with this particular firm for other upcoming projects. Town Manager Mitchell stated that they could be used for other projects, but any negotiations would have to be kept separate from this project since it involves federal funding. Town Manager Mitchell stated that he would look for opportunities in the future to negotiate rates based on the amount of work provided to the contractor.

Recommendation – Approve the selection of PPS, Inc. for right of way acquisition services and authorize the Town Manager to enter a contract based on the scope and fee presented in the amount of \$371,500.00, subject to NCDOT concurrence and approval by the Town Attorney as to form.

MOTION: Commissioner Gardner  
SECOND: Mayor Pro-Tem Massengill  
MOTION RESULTS: Passed Unanimously (5-0)

**Agenda Item No. 10.C: Contract Award Authorization - Narron Contracting or Sandhills Contractors, Inc. - U5530-GB Bridge Street Sidewalk Project- \$445,695**

Purpose – To consider award of the Bridge Street Sidewalk project to either Narron Contracting or Sandhills Contractors, Inc. based on the outcome of proceedings for Narron Contracting's bid withdrawal request under North Carolina General Statute 143.-129.1.

Staff Comments – Town Manager Mitchell advised that the Town was awarded construction funding through the Locally Administered Projects Program (LAPP) for the Bridge Street Sidewalk Project - U5530-GB in the FY 2017 Federal funding cycle. Town Staff solicited bids from construction companies and received 5 bids. The apparent low bidder was Narron Contracting with a bid of \$358,536.50. Narron subsequently requested a withdrawal of their bid based on a significant clerical error. The North Carolina General Statutes allow a bidder to withdraw their bid due to clerical error provided they notify the letting agency within 72 hours, and subsequently provide evidence at a hearing that the error was mathematical or clerical in error rather than an error in judgment. Narron has initiated this process and Town staff are working through the withdrawal process with the contractor, and Town legal counsel. This process is prescribed by NC General Statutes and requires a hearing where Narron Contracting provides documentation that their error was clerical and not a judgment error. If the error is determined to be clerical, the request to withdraw would be approved and Narron Contracting would not forfeit their bid security. Sandhills Contractors appears to be the lowest responsible, responsive bidder when considering Narron's withdrawal. Sandhills Contractors' bid was \$445,695.00. Sandhills Contractors have been doing work in the area for a number of years and have worked with the Town in the past although not recently. Town Manager Mitchell advised that he and staff are comfortable with Sandhills

Contractors' ability to complete this type of project. Town Manager Mitchell reported that as with any LAPP project, the award is subject to NCDOT concurrence. He further referenced the bid tabulation and Narron's request for withdrawal of their bid and the pertinent NC General Statute that were included with the agenda for reference. Town Manager Mitchell stated that in order to avoid a delay in schedule, he and staff are recommending the Board approve the contract award for the Bridge Street sidewalk to Narron Contracting, or in the case that Narron Contracting has withdrawn or is no longer the lowest, responsive and responsible bidder, to Sandhills Contractors, Inc. up to the bid amount (which would be no higher than \$445,695). This project is funded by a LAPP award that provides 80% Federal Highway Administration Funding with a 20% Town Match. Funds are already accounted for in a project ordinance. Town Manager Mitchell advised that the Narron Contracting bid was \$358,536.50 (\$71,707.30 Town match) and the Sandhills Contractors bid was \$445,695.00 (\$89,139.00 Town match).

Board Discussion – Mayor Byrne asked about the timeframe for the hearing. Engineering Director Tracy Stephenson stated that it is anticipated that the hearing would take place sometime next week. Town Attorney Cumalander advised the Town Board to make the motion as precisely crafted in order to include the General Statute that allows withdrawal of a bid.

Recommendation – Authorize the Town Manager to award the Bridge Street Sidewalk project to the lowest responsible responsive bidder (either Narron Contracting or Sandhills Contractors, Inc.) based on the outcome of the proceedings related to Narron Contracting's bid withdrawal request in accordance with North Carolina General Statute 143.-129.1. Approval of the contract is contingent on NCDOT concurrence in award of the bid, and review by the Town Attorney as to form.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Wunsch  
MOTION RESULTS: Passed Unanimously (5-0)

**Agenda Item No. 10.D: NCDOT Construction Agreement - Bass Lake Road/Hilltop Needmore Road/Sunset Lake Road Intersection Improvement Project - Reimbursement Resolution, Project Ordinance, and Budget Amendment - BA-2017-23 - \$150,000.00**

Purpose – To consider adoption of a Reimbursement Resolution, Project Ordinance, and Budget Amendment (BA-2017-23) as well as approval of the NCDOT Construction Agreement for the Bass Lake Road/Hilltop Needmore Road/Sunset Lake Road Intersection Improvements Project.

Staff Comments – Town Manager Mitchell advised that earlier in 2016, the Town was notified by representatives of the North Carolina Department of Transportation (NCDOT) that Division 5 had been awarded federal Mobility Fund monies to assist with improvements to the intersection of Bass Lake Road, Hilltop Needmore Road, and Sunset Lake Road. At the time, NCDOT engineers identified a scope of work that consisted of adding dedicated left-turn lanes on Bass Lake Road heading north on Sunset Lake Road and Hilltop Needmore Road heading south on Sunset Lake Road.

The scope also included signalization improvements. The estimated cost of the improvements at the time was \$505,000, which was close to the \$500,000 awarded to Division 5. Division 5 earned the \$500,000 after competing in a process for the funds against other Divisions in NCDOT across the State. Since identifying the scope of work, Division 5 began the design phase of the intersection improvements and with 65% of the design now complete, the estimated cost to construct the project is now projected to be \$655,000. NCDOT is short what they believe will be necessary by no more than \$150,000 and approached the Town about participating with the intersection improvements. NCDOT Division 5 officials indicated to Town management that if outside resources up to \$150,000 could not be obtained that Division 5 will have to abort the project and return the Mobility Fund monies back to the State office to redistribute to other projects around the State that initially competed for the funds. Town Manager Mitchell advised that due to recent developments in the vicinity of the subject intersection that are now part of the Town corporate limits, existing subdivisions that are inside the Town's corporate limits within close proximity, and recent rezonings in the immediate location of the subject intersection, he and staff recommend that the Town participate in the intersection improvements project at an amount not to exceed \$150,000. Currently the intersection fails during morning and afternoon rush hour times as well as during other times of the day when traffic is heavier. Investing in an improved intersection will support the investments in water and sewer infrastructure recently made in the immediate area of the intersection, add value to the town subdivisions that are in the vicinity of the intersection, and perhaps be a catalyst for additional development of property immediately adjacent to the intersection. The Town's participation means that the Town will initially fund up to \$150,000 from the General Fund reserves. The proposed reimbursement resolution will allow for the Town to reimburse itself in the General Fund should monies be available from the 2015 Transportation Bond upon the completion of the Judd/Main Intersection Project, NW Judd Parkway Project, and Sunset/Main Purfoy Intersection Project. Per the NCDOT Construction Agreement, the Town will only be billed for actual expenses not to exceed \$150,000. Town Manager Mitchell stated that he did ask NCDOT to explain what happens if the project comes in at a cost significantly higher than expected. NCDOT's response was that with the Town's participation that they would, within reason; figure out a way to complete funding for the project.

Board Discussion – Mayor Byrne recommended that the Board make the investment to bring the much needed project to fruition. Commissioner Wunsch asked about the anticipated start date for the project. Town Manager Mitchell stated that construction might start earlier but that the summer of 2018 is the worst-case scenario offered by NCDOT. Commissioner Gardner and Mayor Byrne offered that this information be given to the News & Observer for a press release to make the public aware of the Town Board's decision on this matter.

Recommendation – Adopt the Reimbursement Resolution, Project Ordinance, and Budget Amendment (BA-2017-23) as presented and recommended and approve the NCDOT Construction Agreement for the Bass Lake Road/Hilltop Needmore Road/Sunset Lake Road Intersection Improvements Project as presented and recommended subject to review and approval as to form by the Town Attorney.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Gardner  
MOTION RESULTS: Passed Unanimously (5-0)

**Resolution No. 17-1439**  
**Ordinance No. N-17-01**

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## **OTHER BUSINESS**

### A. Manager's Report

- Town Manager Mitchell informed the Town Board that the Town has received positive press upon being featured in two calendars, the 2017 National Recreation and Park Association Calendar and in the 2017 and the Governor Highway Safety Calendar. The Parks, Recreation and Cultural Resources Department was also featured in a state publication (Recreate North Carolina) for the Arts Inspired Program.
- Reminded the Town Board regarding the groundbreaking ceremony on January 10, 2017 at 2:30 for the Bob Barker Company expansion project.

### B. Project Status Report – January 2017

### C. Appointment of Planning Board Members

Mayor Byrne appointed the following to serve three-year terms, ending December 2019.

#### **Planning Board**

Cindy Sheldon - (appointed as In-town member)

Jim Chandler – (appointed as In-town member)

Randy Beavers - (appointed as In-town Alternate Member) *(New position per LDO)*

### D. Appointment of Board of Adjustment Members

Mayor Byrne appointed the following to serve three-year terms, ending December 2019.

#### **Board of Adjustment**

Mike Dorman – (re-appointed as member and Chairman)

Dan Miller – (ETJ member upon approval of Wake County)

*Note: One In-Town position may be appointed at the January 17, 2017.*

### E. Parks, Recreation, and Cultural Resources Advisory Board Appointments

Mayor Byrne appointed the following to serve three-year terms, ending December 2019.

#### **Parks & Recreation Advisory Board**

Bryan Hayes – (re-appointed as member and Chairman)

Michelle Hankins – (re-appointed as member)

*Note: Still seeking applicants for two vacant ETJ Seats.*

Motion to appoint and re-appoint members to the Boards as recommended.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Gardner  
MOTION RESULTS: Passed Unanimously (5-0)

Motion to adopt the resolution recommending Wake County's appointment of Dan Miller to serve as an ETJ member on the Board of Adjustment as recommended.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Wunsch  
MOTION RESULTS: Passed Unanimously (5-0)  
**Resolution No. 17-1440**

F. Coffee with a Cop - McDonalds – January 19, 2017 – 8:30 am - 10:30 am

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### **TOWN BOARD MEMBER COMMENTS**

Mayor Pro-Tem Massengill – Stated that he had no further comments.

Commissioner Adcock – Asked about the number of house permits that were issued in 2016. Building Code Director Chris Hinnant stated that there were approximately 612.

Commissioner Harris – Stated that he had no further comments.

Commissioner Wunsch – Stated that it was great to be back.

Commissioner Gardner – Stated that 2016 was a great year and she looks forward to another great year.

Mayor Byrne – Stated that he will be attending the Governor's Inaugural Ball this coming Saturday night.

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### **CLOSED SESSION**

A motion was made for the Town Board to enter into closed session at 10:20 p.m. pursuant to N.C.G.S. §143-318.11(a)(3) – Attorney Client Privilege and §143-318.11(a)(6) – Personnel.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Wunsch  
MOTION RESULTS: Passed Unanimously (5-0)

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**OPEN SESSION**

The Town Board returned to open session at 10:35 p.m. with nothing to report out of closed session.

Town Manager Mitchell then reported that the scoring for the 2018 LAPP Grant has been done and the Town has the number one highest scoring roadway project, which could result in the Town receiving grant funds of \$4.5 million for the NW Judd Parkway Project. Final action on the matter will be taken by the Executive Committee of CAMPO on February 15, 2017. He also stated that the Town applied for funding for two other projects, the Park Depot Greenway and for a project connecting the Mineral Spring Park to the Dog Park, but those projects were not considered for funding.

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**ADJOURN**

A motion was made to adjourn the meeting at 10:49 p.m.

MOTION: Mayor Pro-Tem Massengill  
SECOND: Commissioner Gardner  
MOTION RESULTS: Passed Unanimously (5-0)

Adopted this the 6<sup>th</sup> day of February 2017 in Fuquay-Varina, North Carolina.

FUQUAY-VARINA, NORTH CAROLINA

\_\_\_\_\_  
John W. Byrne, Mayor

ATTEST:

(TOWN SEAL)

\_\_\_\_\_  
Rose H. Rich, Town Clerk

