

Lewisville Town Council
Regular Meeting Minutes
January 12, 2023 – 7:00 PM
Lewisville Town Hall Council Chambers
6510 Shallowford Road

1. Call to Order:

- A. Mayor Horn opened the meeting at 7:00 PM. In attendance were Mayor Mike Horn and Council Members Fred Franklin, Melissa Hunt, David Smitherman, and Jane Welch. Also attending were Town Manager James Ayers, Assistant Town Manager/Planning Director Stacy Tolbert, Finance Director Pam Orrell, Town Clerk Dora Moore and Town Attorney Elliot Fus. Mayor Pro Tem Jeanne Marie Foster and Council Member Ken Sadler were absent.
- B. Invocation – Retired Pastor Tom Lee, Lewisville United Methodist church
- C. Pledge of Allegiance – Council Member David Smitherman
- D. Adoption of Agenda – Council Member Franklin moved to approve the agenda as presented. The motion was seconded by Council Member Hunt and approved unanimously.

2. Consent Agenda

- A. Consent agenda items
 - i. Resolution 2023-001– Financial statements for the five months ended November 30, 2022
 - ii. Approval of Agenda Briefing Minutes – December 1, 2022
 - iii. Approval of Regular Meeting Minutes – December 8, 2022
 - iv. Approval of Closed Session Minutes – December 8, 2022
- B. Council Member Welch moved to remove approval of the December 1, 2022 minutes from the consent agenda and to approve the remaining consent agenda items. The motion was seconded by Council Member David Smitherman and approved unanimously.
- C. Council Member Hunt moved to approve the amended December 1, 2022 minutes to reflect Council Member Welch’s proposed correction:

For the Good of the Order

- A. Council Member Welch inquired about the **uniformity of the** Christmas lights along Shallowford Road ~~in terms of~~ **and** when they were last replaced.

The motion was seconded by Council Member Welch and approved unanimously.

(Resolution 22023-001 is herein incorporated by reference into the minutes.)

3. Presentations, Introductions and/or Proclamations

- A. Presentations
 - i. Forsyth County Sheriff’s Office – Sergeant Stringer shared current call statistics noting that in December the Town’s officers answered 67% of the calls. This is reflective of the new officer funded by the Town. Sergeant Stringer thanked all who attended the Sheriff’s event at the Lewisville Library the past evening. Sergeant Stringer also cautioned people not to drive through standing water and warned them of gift card and jury duty scams. Council Member Franklin inquired if porch pirates were an issue during the Christmas season. Sergeant Stringer answered there were not a lot because doorbell cameras help deter the activity. There were some calls but no increase in calls.

2022													
TYPE OF INCIDENT	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
Total calls for service	531	532	590	586	492	559	586	612	776	775	801	813	7653
Security Check	258	253	275	297	177	245	285	293	517	494	498	556	4148
Traffic Arrest / Violation	26	17	61	39	19	25	37	44	55	24	28	26	401
Alarm	15	21	14	22	21	21	23	26	14	17	12	7	213
Priority Call Response Time	6.4	5.5	7.6	5.6	5.3	4.9	5	5.7	5	4.7	4.4	5.1	65.2
2021													
TYPE OF INCIDENT	JAN	FEB	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Total calls for service	700	516	590	658	528	727	672	601	568	645	655	637	
Security Check	408	266	294	337	274	387	346	295	287	313	391	281	
Traffic Arrest / Violation	50	39	53	67	15	53	47	49	36	97	46	47	
Alarm	16	39	22	23	26	14	19	17	10	16	6	20	
Priority Call Response Time	5.2	5.7	4.8	5	5	5.5	5	5	5	4.5	4.2	5	

- ii. I'm One of the Reasons Lewisville is a Great Place to Live – Mayor Horn and Council Member Welch presented the *I'm One of the Reasons Lewisville is a Great Place to Live* award to Maureen Barton. Council Member Welch nominated Mrs. Barton stating: 'Maureen has lived in Lewisville over 35 years. She is a long-time member of the Lewisville Civic Club and has been in charge of the Town's Christmas parade for 23 years. What a gift to our Town and surrounding communities!' Mrs. Barton was humbled by the recognition and thanked current and past Town Councils for their support with the parade and understanding the changes made over the years. She also thanked volunteers from the Civic Club and Lewisville Arts Council for their service as well as her family who were volunteered by her to help with the parade. *(A copy of Mrs. Barton's certificate and the nomination form are herein incorporated into the minutes.)*

4. Public Forum

- A. Susan Frey, 165 Will Austin Court, shared concern that the new zoning hearing notification signs are not as noticeable due to the muted colors and short height. She requested the Town reconsider using the old signs or at least a taller, bolder sign.

5. Appointment(s) – None

6. Public Hearing(s)

- A. L-104 – Site plan amendment and amendment of uses - 771 Williams Rd from HB-C to HB-C requested by Stephen Long c/o Williams Rd HQ, LLC

i. Staff presentation

- a. Mrs. Tolbert reported that 771 Williams Road backs up to the US 421 off-ramp and is outside the downtown overlay area. The property was rezoned by Council in 2021 upon request by then property owners Advance Appliance. The new owners are requesting use and site plan amendments, no rezoning. Although not required, elevations were offered for the 2-story building. The Planning Board recommended approval to council at their November 9 meeting. *(Staff presentation is herein incorporated into the minutes.)*

ii. Public hearing

a. Opponents

1. Nancy Steffan, 305 Westeba Lane, expressed concern about the beautiful trees being cut down. She also feels the traffic noise will increase with the new business.
2. Russell Courchine, 310 Westeba Lane, also expressed concern regarding traffic noise increasing due to the new business.
3. Aaron Hutmacher, 315 Doub Road, inquired if sidewalks should be installed due to proximity to the gateway project. He also inquired about lighting and how security will

be controlled in the parking lot. He further inquired about a greenway connecting Williams Road to the Town and parks.

b. Proponents

1. Rodney Bentley, 8008 Riverview Drive, Clemmons, is with Salem Contracting and the applicant. Mr. Bentley stated they are open to installing sidewalks along the property line if desired by the Town. He explained that Keller Williams Elite will have their offices on the upper floor and will offer real estate classes twice a week that are typically held during weekdays; however, evening and weekend classes cannot be ruled out. General retail business will be located on the lower level. The parking lot size is designed to accommodate the school as well potentially 3 retail businesses and it will be lit.
2. The first floor exterior will have a combination of stone and board and batten or hardy synthetic siding will be on the second floor. Metal roofs will be over the porches and architectural shingles will be on the main roof. The rear elevation will have glass, rollup doors to accommodate outdoor seating for a restaurant.

iii. Council discussion

- a. Council Member Franklin stated the site plan appears to allow for sidewalks but he doesn't feel they should be insisted at this time. Mrs. Tolbert also feels there is plenty of right-of-way for sidewalks.
- b. Council Member Welch inquired about the trees. Mrs. Tolbert reported there will be a buffer all around the property due to a required visual buffer for abutting residential property. Only trees needing to be removed will be removed.
- c. Council Member Smitherman inquired if septic will be an issue for serving food. Mrs. Tolbert stated that would be handled by Forsyth County Environmental Health.
- d. Council Member Hunt asked if the Gateway project stopped at the roundabout and Mrs. Tolbert confirmed that it does.

iv. Consideration of Ordinance 2023-002 – Council Member Hunt moved to approve Ordinance 2023-002. The motion as seconded by Council Member Fred Franklin and passed unanimously. *(Ordinance 2023-002 is herein incorporated by reference into the minutes.)*

7. **Technical Review(s) for Compliance** – None

8. **Preliminary Site Plan Approval(s)** – None

9. **Evidentiary Hearing(s)** – None

10. **Annexation Request(s)** – None

11. **Old Business** – None

12. **New Business**

- A. Resolution 2023-002 - Qualifications-Based Selection exemption – Projects under \$50,000 can be exempted from the Request for Qualifications (RFQ) process for architectural, engineering and related services. This would make it easier to procure professional services such as an architect for the Town Hall Annex assessment or a surveyor for property being acquired. Council Member Welch moved to approve Resolution 2023-002. The motion was seconded by Council Member Hunt and approved unanimously. *(Resolution 2023-002 is herein incorporated by reference into the minutes.)*

- B. Moser property donation – Lewisville-Vienna Road – An attempt to donate .046-acre tract on Lewisville-Vienna Road previously owned by Dianne Jones Moser to the Town was reported by Mr. Ayers. Although the Town is grateful when property owners consider donating their property to the Town, the Town must determine if acquisition is beneficial to the Town. Due to the very small size of this lot and it is not adjacent to existing Town-owned property, Mr. Ayers recommended the donation be declined. Council Member Hunt moved to decline acceptance of the property donation. The motion was seconded by Council Member Franklin and motion passed unanimously. Mayor Horn stated the Town is extremely fortunate and grateful that the Moser family has been very generous with land donations to the Town over the years. Unfortunately, this particular piece of property does not have a useful purpose for the Town and would only be a liability.
- C. Resolution 2023-003 – L-103 – To set a public hearing on February 9, 2023 for conditional district rezoning request of 7.45 acres off future extension of Great Wagon Road (PIN 5875-87-6070) from RS-20 to RM-8-C by Luke Dickey; Stimmel Associates, PA - Council Member Franklin moved to approve Resolution 2023-003. The motion was seconded by Council Member Smitherman and approved unanimously. *(Resolution 2023-003 is herein incorporated by reference into the minutes.)*
- D. Resolution 2023-004– L-105 – To set a public hearing on February 9, 2023 for conditional district rezoning request for 1138 Lewisville-Clemmons Road from RS-9-C to RM-5-C by Ron Davis with Allegro Investment Properties, LLC - Council Member Smitherman moved to approve Resolution 2023-004. The motion was seconded by Council Member Welch and approved unanimously. *(Resolution 2023-004 is herein incorporated by reference into the minutes.)*
- E. Resolution 2023-005– Authorizing Town Manager to sign finalized settlement agreement between Town of Lewisville and Solomon Development, LLC – Mayor Horn read the following statement:

Many of our residents are aware of the apartment building on Shallowford Square that was proposed by Solomon Development in 2020

Following an extensive process by our planning board to review this project including public hearings in which many of you attended, the council did not approve the proposed project.

Last year, Solomon Development notified the town of its intention to sue the town for \$8 million in compensatory and punitive damages and attorney fees for not approving the apartment project.

Additionally, Solomon notified the council of its intention to sue the individual council members who voted not to approve the project as well as certain Planning Board members.

The town and Solomon engaged in several months of negotiations in an effort to avoid going to court. Our goal was to settle Solomon Development's claims against both the town and the individual council and planning board members.

We were unable to reach an agreement with Solomon Development, so as a next step, the town requested a third-party mediation in an attempt to resolve the matter. Participating for the town in the mediation were Mayor Mike Horn and Council Members Ken Sadler and Melissa Hunt. Participating for Solomon Development were Jeff Zenger and Julie Zenger. All parties had retained legal counsel who also participated in the negotiations and the mediation.

The mediation occurred in December of last year resulting in an agreement that the town will pay Solomon Development approximately \$2 million dollars which includes acquiring the property that was the subject of the dispute.

After many hours of discussion among council members, and at the advice of our attorneys, the council reluctantly agreed to this settlement to avoid a jury trial of in which a favorable verdict for the town was uncertain and which could also have resulted in compensatory and punitive damages significantly greater than the settlement that was reached.

Neither the town or any town official has agreed that any mistakes were made in the decision to not approve the project. However, by agreeing to the settlement the council believes it is fiscally responsible in order to avoid the cost of several years of litigation and the potential for greater liability from a jury decision. It will also be beneficial to own the property near Shallowford Square that is being acquired as part of the settlement.

I am confident that I speak for those council members, who voted not to approve the proposed apartment building project at its proposed location on the Square, that we acted in what we believe was in the best interest of the town and our residents.

While not requiring an increase in our resident's property taxes to pay this settlement, this settlement will have a significant impact on our general fund balance having both short and long-term implications for our town and residents.

Mayor Horn moved to approve Resolution 2023-005. The motion was seconded by Council Member Hunt and approved unanimously. (*Resolution 2023-005 is herein incorporated by reference into the minutes.*)

13. Administrative Reports

- A. Upcoming Town events and holidays – Manager Ayers announced Town offices will be closed January 16 for Martin Luther King Jr. Day.
- B. Manager's Report – None
- C. Planner's Report – None
- D. Attorney's Report – None
- E. Clerk's Report
 - i. Council retreat – January 27-28
 - ii. Town & State Dinner – February 22, 5 PM – Raleigh Convention Center
 - a. Let Town Clerk know by February 1 if plan to attend.
 - iii. CityVision – April 25-27 – Concord
- F. Community Center Facilities & Programming Manager's Report – None
- G. Approvals at Special Called Meeting on December 29, 2022
 - i. Ordinance 2022-067– Amending Budget Ordinance 2022-001 – Mediated settlement agreement - \$1,975,000
 - ii. Resolution 2022-073 – Mediated settlement agreement between Town of Lewisville and Solomon Development, LLC - \$1,975,000
- H. Approvals at the Briefing and Action Meeting on January 5, 2023
 - i. Ordinance 2023-003 – Amending 2022-001 Budget Ordinance – Replenish Parks & Recreation Department Contingency Fund - \$10,000

- ii. Ordinance 2023-004 – Amending 2022-001 Budget Ordinance – Increase MAWCC maintenance and repairs - \$25,000

14. **For the Good of the Order**

A. Public comments

- i. Susan Frey, 165 Will Austin Court, thanked the Council for what they do for the Town stating it does not go unnoticed and is appreciated.

B. Council comments

- i. Council Member Franklin stated his agreement with Mrs. Frey related to the zoning hearing signs and noted they are inadequate.

15. **Adjournment** – Council Member Hunt moved to adjourn the meeting at 8:01 PM. The motion was seconded by Council Member Franklin and approved unanimously.

ATTEST:

Mike Horn, Mayor

Dora K. Moore, Town Clerk