



**REGULAR MEETING OF  
THE VILLAGE OF CLEMMONS COUNCIL  
March 25, 2019**

The Village of Clemmons Council met on Monday, March 25, 2019, at 6 p.m. The meeting was held at the Village Hall, Clemmons, North Carolina. The following members were present: Mayor Wait, Council Members Barson, Binkley, Combest, Lofland, and Wrights. Attorney David Kasper was also present. Attorney Warren Kasper was absent.

**Call to Order & Pledge of Allegiance**

Mayor Wait called the meeting to order at 6 p.m. and led the Pledge of Allegiance.

**Public Comments**

There were approximately 18 citizens in attendance. There were three individuals signed in to speak:

- Mark Beckmann, 3722 Squirewood Drive, Clemmons, NC – thanked everyone for their representation regarding the industrial park.
- Allen Daniel, 100 Fernworth Court, Clemmons, NC – thanked everyone, especially Council Members Barson and Combest, for speaking out on their behalf and against supporting the park.
- Fire Chief Jerry Brooks, 6010 Blue Bonnet Lane, Clemmons, NC – requested Council's support regarding the rural fire protection district overlay.

**Approval of the Minutes**

Council Member Wrights moved to approve the minutes of the March 11, 2019 regular meeting as presented. The motion was seconded by Council Member Lofland and unanimously approved.

**Approval of the Agenda**

Council Member Combest moved to approve the agenda as presented. The motion was seconded by Council Member Wrights and unanimously approved.

**Announcements**

- A. Mayor Wait announced that the West Forsyth High School Women's Basketball Team won the NCHSAA 4-A State Championship on Saturday, March 16, 2019 defeating Southeast Raleigh by a score of 47-36. Mayor Wait will send a letter of congratulations.

**Business – Information/Review Items for Future Action**

- A. Marketing and Communications Director's Report.
  - 1. *Events Update* - Marketing and Communications Director Ford provided an update on the following items and events:
    - Coffee with a Cop – Thursday, April 4, 2019 from 8:00 a.m. – 9:00 a.m. at Chick-fil-A
    - Spring Cleanup – Saturday, April 27, 2019

-Movie Night - Saturday, April 27, 2019 at Jerry Long YMCA “*Ralph Breaks the Internet*”

B. Manager’s Report.

1. *Financial Report for February 2019* – report was presented.
2. *Audit Services Bid Update* – Finance Director Stroud advised Council of audit services bids that had been received. A brief discussion was held.

Council Member Combest made a motion to stay with Cannon & Company and have Staff provide a contract for approval at the next regular Council meeting on April 8, 2019. The motion was seconded by Council Member Binkley and unanimously approved.

3. *Sheriff’s Department Report for February 2019* – report was presented.
4. *Budget Workshop Date(s) and Time* – Finance Director Stroud will send out a list of proposed dates to hold the budget workshop.
5. *Supplemental Fire Suppression Update* – Manager Buffkin provided Council with a legal memo prepared by Attorney David Kasper addressing three specific questions (attached hereto as Exhibit A and incorporated as part of the minutes). Clemmons Fire Chief Jerry Brooks and Forsyth County Fire Marshal Gary Styers were in attendance to provide an overview to Council. This model is a cost-effective attempt to add staffing without having to increase the local fire tax districts (there are 24 fire tax districts throughout the county). Last year, the fire tax rate was .06. The revenue generated stays in Clemmons. This current year, a county-wide .0036 tax rate increase was added to each of the districts (only the third of a cent increase would be used for the overlay). Six fire fighters have been added to enhance service levels (the cost for a home valued at \$150,000 was an additional \$5.40). Clemmons is the largest tax base (as far as a rural fire protection area) within the county. To add six fire fighters would have taken an additional .0137 (which would have been an additional \$20.55 for the same \$150,000 house). This overlay model would be spreading the cost among all the folks involved in the service district as the staffing would travel different places. Mayor Wait provided a detailed explanation to Council of how this has come about. Chief Brooks expressed his full support of the program and urged Council to do the same. He advised that there is a state-mandated \$.15 cap. They advised that the County Commissioners have imposed a \$.03 cap. A service district has to be in place by July 1, 2019. Council Member Combest stated this is a vital service and should be supported 100%. He asked if this implied an automatic authority to raise the overlay tax without coming back to the Village of Clemmons Council. Fire Marshal Styers advised that the rate is set by the County Commissioners but they have imposed that \$.03 cap. He stated that they can take back any recommendations to the County Commissioners. Council Member Combest offered that any increase, however small, has to come back

before the Village of Clemmons Council. Forsyth County is approaching all municipalities for their participation.

Council consensus was to direct Staff to have a County Staff member come to the next regular meeting to speak on this topic.

6. *Pavement Condition Survey* – A brief recap was provided to Council by Public Works Director Gunnell.

Council consensus was to direct Staff to place this as an action item on next meeting's agenda and include both contracts.

7. *HB 294 Discussion* – Manager Buffkin provided an overview of HB 294 to Council. A brief discussion was held with no action taken at this time.

8. *Training Updates*

- a. *Fair Housing for Council, Planning and Zoning Boards* – Manager Buffkin suggested the training be held during the time the Zoning Board is scheduled to meet (as they only meet if there is a case to be heard). He advised Council to consider a 2<sup>nd</sup> Wednesday of the month at 6:30 p.m.

- b. *Lewisville and Clemmons Zoning Boards Joint Training* – Manager Buffkin advised Council of the opportunity to hold a joint training with both Zoning Boards and stated a date/time has not been determined yet but the discussions have begun.

9. *Tanglewood Business Park Update* – Council Member Barson provided the following update:

“Mike and I were able to connect with many Commissioners over the past week and it continues to be clear that the commissioners are determined to make productive use of the Idols Road-Tanglewood area. As are we. The challenge is resolving our different assessments of what productive is and whether or not what is best for Clemmons is also best for all of Forsyth County.

This past Thursday, our Commissioners tabled the Phase One/ Beaufurn decision to allow them time to take in new information. This is a positive move and shows their continued willingness to listen to the Clemmons council and community.

In all our conversations, we reinforced the letter of the prior meeting, which is to vote no to Phase One and explore other opportunities for that land. Beaufurn is a wonderful company and I would personally love to welcome them to Clemmons, but not in that location and not as part of the greater Tanglewood Business Park as currently proposed.

We also reinforced our willingness to be partners on future endeavors regarding that property. At this point, we have to sit and wait to hear from the county commissioners on their decision regarding Phase One, as well as their interest in entertaining other opportunities.”

10. *Market Center Drive – Phase IA Budget* – A brief overview was provided to Council by Public Works Director Gunnell as these are the revised numbers from Yadkin Valley Paving for Market Center Drive – Phase IA.

Council consensus was to direct Staff to place this as an action item on next meeting’s agenda for consideration.

C. *Attorney’s Report* – nothing to report.

D. *Planner’s Report.*

1. *March 19, 2019 Draft Planning Board Meeting Minutes* – minutes were presented.
2. *De-annexation Discussion* – Manager Buffkin advised Council that after the last Planning Board meeting, Stan Forester presented him a copy of a letter that he has presented to state legislators requesting de-annexation of a property of which a portion is in the northern part of the Village of Clemmons. His intention is to develop that land under the county’s zoning guidelines. Manager Buffkin has reached out to Senator Krawiec asking for a delay until the Village Council has an opportunity to hear the request and state a position on that request. He clarified that the legislature can take action with or without Council’s approval. Council Member Wrights stated his preference would be for Mr. Forester to request the portion of the property that is in the county be annexed by the Village of Clemmons and developed to our standards. All of Council was in agreement with this sentiment. Council Member Combest stated that his recommendation would be that this feeling of Council be conveyed as clearly and forcibly as possible to our elected representatives.

Council consensus was to direct Staff to prepare a draft resolution for consideration at the next regular Council meeting.

Stan Forester, 6778 River Center Drive, Clemmons, NC – came to the podium and spoke. He stated he has been working on this project for 11 years and is requesting help from the Village of Clemmons. He advised that he had received 100% support from the Planning Board on the Comprehensive Plan. Council Member Lofland stated that she does not think there is anyone on the board that is opposed to any development but the preference is that it be developed to Clemmons standards. Council Member Barson clarified that what Planning Board approved was a change in the Comprehensive Plan update. They nor Council have the authority to approve a de-annexation request. Council Member Wrights stated that we are very limited on land in Clemmons and our tax base and

reiterated his preference for Mr. Forester to not request de-annexation from Clemmons but request annexation of the entire property into Clemmons. Mr. Forester stated he is not trying to burn a bridge but to build a bridge as the property is 94% in Forsyth County and 6% in the Village of Clemmons which is why he is going in this direction. Council Member Wrights asked Mr. Forester why is he opposed to annexing into Clemmons. Mr. Forester stated that it would not be the proper use of that land with the way the Comprehensive Plan is currently designed (single-family residential property). Mayor Wait clarified that the change the Planning Board unanimously approved to the Comprehensive Plan (which will have the change included for consideration) has not been adopted by Council and a Public Hearing would be called for on that as the next item on the agenda.

**Business – Action Items**

- E. Call for Public Hearing for Comprehensive Plan Update – Planner Ledbetter advised that an electronic Comprehensive Plan Draft update will be sent via email to Council to review this week and a representative from the Council of Governments will provide a formal presentation at the next regular meeting. She encouraged Council to provide any questions or comments to Staff so they can be addressed at the meeting. She advised Council that the Comprehensive Plan does not have zoning recommendations, only land-use recommendations for geographic areas.

Council Member Wrights moved to call for public hearing for the Comprehensive Plan Update on Monday, April 8, 2019 at the Regular Village Council Meeting. The motion was seconded by Council Member Barson and unanimously approved.

- F. Preliminary Subdivision Site Plan Review of Hampton Place C-19-001 – Planner Ledbetter presented the preliminary subdivision site plan. The zoning is RS-9. They are proposing seven lots. It meets all conditions and ordinances. There is one required modification is for the property owner to stub to the property line for better future access. She advised that the Petitioner is attempting to use the stormwater management device associated with Barrington Oaks so they will not have to duplicate that effort so their stormwater management will be handled through the Barrington Oaks management device or they will have to put it onsite. It is conditioned that one of the two must occur. Planning Board unanimously recommended approval.

Council Member Combest moved to approve the preliminary subdivision site plan of Hampton Place C-19-001. The motion was seconded by Council Member Wrights and unanimously approved.

- G. Council Comments – Mayor Wait thanked Fire Marshal Styers and Chief Brooks for their attendance and providing information. Council Member Barson clarified with Director of Operations Gearren that the equipment for the livestreaming of meetings is on order and should be installed in the next 2-3 weeks. Council Member Barson clarified with Manager Buffkin an update from the Forsyth

County Sheriff's Office at the next regular Council meeting on April 8, 2019. Council Member Lofland asked if there was any interest in Council trying to come up with something to help Mr. Forester. Attorney David Kasper cautioned Council regarding contract zoning in any discussions that would take place.

**Adjournment**

Council Member Lofland moved to adjourn the meeting at 7:39 p.m. The motion was seconded by Council Member Barson and unanimously approved.



---

John Wait  
Mayor

ATTEST:



---

Lisa Shortt, NCCMC  
Village Clerk



# KASPER & PAYNE, P.A.

## ATTORNEYS & COUNSELLORS AT LAW

DAVID T. KASPER  
 dtkasper@kasperlaw.net  
 GEORGE A. "TRIP" PAYNE  
 gapayne@kasperlaw.net

OF COUNSEL  
 EDWARD Y. BREWER  
 GILBERT T. DAVIS  
 WARREN E. KASPER

March 25, 2019

PRIVILEGED AND CONFIDENTIAL

TO: Mayor and Council, Village of Clemmons  
 FROM: David T. Kasper, Assistant Village Attorney

RE: *Clemmons Fire Service District*

Mayor and Council,

Manager Buffkin recently asked that I provide you with this memorandum detailing my opinion on Forsyth County's proposed establishment of a countywide service district within the Village of Clemmons. While I am happy to give a brief overview of the general rules, specifically, I was asked the following questions:

1. Does the County have to seek approval from the Village to establish the proposed fire service district?
2. How was the County able to legally levy the 0.36 cent tax during fiscal year 2018-2019?
3. Can a future Village Council, or this Council in the future, later decide to withdraw its consent to inclusion within the fire service district?

### **Village Consent to Establishment of Proposed Fire Service District?**

Forsyth County recently proposed the establishment of a *new* Countywide Service District. I have been asked whether or not the consent of the Council is required in order to establish this new district. This question is answered in North Carolina General Statutes § 153A-302. This statute states, "Territory lying within the corporate limits of a city... may not be included unless the governing body of the city ... agrees by resolution to such inclusion." Here, as the Council is the governing body of the Village of Clemmons, the consent of the Council to inclusion must be granted by resolution prior to the establishment of a new fire service district under N.C.G.S. § 153A. Based on the statute, I think the answer is quite clearly yes, the County must seek, and receive by resolution, approval from the Village in order for property within the Village to be included in the new proposed Countywide Fire Service District.

### **County's Levy of 0.36 Cent Tax During Fiscal Year 2018-19**

The Forsyth County Board of Commissioners adopted its 2018-2019 Budget Ordinance (the "Budget Ordinance") during a special meeting held on June 7, 2018. Within the Budget

Ordinance, in Section 9, the Commissioners established the rate for each of the established fire districts within the county. The Commissioners set the rate for the Clemmons Fire & Rescue Protection District at 0.0636. The relevant question now is, did the County have the legal authority to levy the 0.0636 tax rate on the properties within the Clemmons Service District. This question is also answered by the North Carolina General Statutes. As Professor Kara Millonzi of the UNC School of Government notes in the “County Funding for Fire Services in North Carolina” publication, “the county board of commissioners may, but is not required to, levy an annual property tax within the service district in addition to the property tax or taxes it levies throughout the county (service district tax).” The law allows the County Commissioners to set the annual tax rate for service districts within the county. The Clemmons Service District is an established fire service district and the County Commissioners may set the rate for established service districts. Therefore, it is my opinion, the County had sufficient legal authority in order to set the tax rate for the Clemmons Fire & Rescue Protection District at 0.0636 for fiscal year 2018-2019.

### **Ability to Withdraw Consent to Inclusion in Fire Service District**

As noted in response to the first question, the Village Council must pass a resolution authorizing property within its boundaries to be included in a new Fire Service District. The question then becomes, would a future Council be allowed to withdraw its consent or would this Council later be permitted to withdraw consent to being included in the new Countywide Service District? This answer is not entirely clear. As noted, the statute explicitly requires that the Village Council must pass a resolution giving consent to being included but, the statutes are silent as to how the Council would be able to withdraw consent. I have read through the statutes governing this issue and researched the published cases that may shed some light for you. Unfortunately, the case law is also silent on this issue as far as I can tell. In my opinion, the County would continue to levy tax on property within the new service district for so long as the Commissioners deem it necessary, regardless of whether the Village Council has withdrawn its consent. I think the County would allow us to withdraw our consent if, and only if, the removal of the Clemmons properties would not materially impact the finances of the Countywide Service District. Therefore, unless the County agrees to our withdrawal, I believe that it would likely require a local act passed by the North Carolina legislature to remove Clemmons from the Countywide Service District.

Feel free to contact me with any questions.

Sincerely,

David T. Kasper  
Assistant Village Attorney