

TYRONE TOWN COUNCIL MEETING

MINUTES

November 17, 2022 at 7:00 PM

Eric Dial, Mayor

Gloria Furr, Mayor Pro Tem, Post 4

Linda Howard, Post 1

Melissa Hill, Post 2

Billy Campbell, Post 3

Brandon Perkins, Town Manager

Dee Baker, Town Clerk

Dennis Davenport, Town Attorney

Mr. Scott Langford was absent.

Also present was:

Sandy Beach, Finance Manager

Lynda Owens, Recreation

Patty Newland, Library Supervisor

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC COMMENTS: *The first public comment period is reserved for non-agenda items. Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

V. APPROVAL OF AGENDA

A motion was made to approve the agenda.

Motion made by Council Member Campbell, Seconded by Council Member Furr.

Voting Yea: Council Member Howard, Council Member Hill.

VI. CONSENT AGENDA: *All matters listed under this item are considered to be routine by the Town Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.*

1. Approval of the November 3, 2022 meeting minutes.
2. Approval of a Memorandum of Understanding (MOU) between the Town of Tyrone and Dogwood Church for the purpose of creating a future multi-use path connection with Peachtree City utilizing a portion of Dogwood Church's property.
3. Approval of the 2023 Employee Benefits Package.
4. Approval of ACTION-PACKED PARTIES contract for the Lighting of the Tree event for \$3,392.00.

A motion was made to approve the consent agenda.

Motion made by Council Member Campbell, Seconded by Council Member Hill.
Voting Yea: Council Member Howard, Council Member Furr.

VII. PRESENTATIONS

VIII. PUBLIC HEARINGS

5. Consideration of a stream buffer and impervious surface setback variance request from applicant EastGroup Properties, LP for parcel 0726 068. **Devon Boullion, Environmental Specialist**

Ms. Boullion stated that applicant EastGroup Properties, LP had submitted a petition for a stream buffer variance at Parcel 0726 068 for the three existing intermittent streams in two locations along the eastern property line. She referred to page 23 of the packet where the streams and setbacks were noted. She added that page 32 was the applicant's plan. She stated that the request was for two separate encroachments, one was on the northeast side the other on the southeast side of the property. On the southeast portion, there were approximately 34,690 square feet of stream buffer encroachment and 14,730 feet of impervious surface. On the northeast portion of the property 16,966 square feet of encroachment. She added that the red and green marks were indicators of the encroachments. Also, on the north end, there were 3,444 square feet of impervious surface.

She shared that Council's decision to deny or grant the request would be necessary for the Engineering/Environmental Department's ability to complete a detailed site plan review. If not approved, the applicant would need to adhere to the numbers in place, and modify their plan. Ms. Boullion clarified that although state and federal guidelines still needed to be met, the local level was as important as relating to the streams and buffers. The federal and state requirements dealt mostly based in mitigation, and local ordinances dealt mostly with hardships.

She stated that variance applications could be granted on a case-by-case basis. If the applicant submitted an application indicating the encroachments and provided documentation of extreme hardship, they would need to present their hardship. It was her duty to inform Council of how the Town's ordinance was structured and what the applicant proposed. She then shared that the 3 intermittent streams were the Town's main focus. She added that there were also ponds and wetlands involved. She referred to page 33 of the packet. She shared that the applicant was proposing to disturb 59.5 acres which were 97.7% of the total site area. This would include 1.19 acres of the buffer and .42 acres of the setback. She added that the applicant was proposing 37.04 acres of impervious surface area which was 60.8 %.

Mayor Dial asked for clarity on the existing water feature section and the three intermittent stream buffers. He posed, what do we have responsibility for and custody of?

Ms. Boullion stated that the Town had responsibility for the intermittent stream buffers. Ms. Boullion pressed that Council's decision would be based on whether the variance could be considered or not. She added that the variance would be considered if unusual

circumstances were strict adherence to the minimum buffer requirements and the article would create an extreme hardship.

Ms. Boullion began her discussion regarding ordinance compatibility and stream impact considerations. Items 1-5 provided a framework for hardship, if no hardship was determined then 6 and 7 would not come into play. They would be considered after a hardship was determined.

She stated that strict adherence to the minimum buffer requirements would reduce the buildable areas on the site. It would prevent the applicant from utilizing the areas on the property included in the stream buffers and impervious area setbacks to the extent proposed in the applicant's petition. Strict adherence to the minimum buffer requirements would require the applicant to re-configure the conceptual site development plan, which was prepared as a supplemental document for the purposes of a re-zoning petition.

She reported that the determination of fact on the matter (would adherence to the minimum buffer requirements create an extreme hardship) can only be made by the Town Council and would be necessary to consider anything further. She stated that compared to other properties of similar size in Tyrone that were large undeveloped properties, the property had neither an exceptional or peculiar number of water features nor a proportion of the property's total acreage that would be considered unbuildable per the Town's ordinances. She clarified that Council had that total acreage of property along with the total disturbed acreage, which was a substantial portion of the property. She also included the area that was within the buffer and setback and the table that indicated all as a point of reference.

Ms. Boullion shared that the literal interpretation of this ordinance would not deprive the applicant of any rights afforded to others with similar site conditions. The Town's Stream Buffer Protection ordinance was adopted by the Town Council in 2007 -- the buffer and setback requirements outlined in the ordinance have since been applied to similar proposed land development activities on similar sites. She reiterated that other developments complied with the stream buffer and requirements according to the ordinance or were exempted based on specific conditions that would not currently apply.

Council Member Campbell asked Ms. Boullion in her professional opinion, would this cause a hardship if Council granted the variance. Mr. Perkins shared that staff would depend on the ordinance, by asking her opinion would place her in a difficult position. He added that staff presented the facts, and it was left to Council to make the determination. Mayor Dial followed up by asking what was the regional buffer standard. Ms. Boullion stated that Tyrone adopted the Atlanta Regional standard 50-foot buffer and the 25-foot setback.

Ms. Boullion added that regarding hardship thus far, would the piece of land be affected by the buffers than the average lot of the same size, it would not. Would the developer be deprived of a right that someone else was afforded with the same conditions, they would not. Ms. Boullion stated that she pieced through the information submitted that would be most relevant to determine ordinance compatibility. A conceptual

development plan was approved which was not a formal site plan. The Technical Review Committee had not formalized the complete final site plan. Staff's denial for the purpose of a re-zoning petition would have been improper. She added that adherence to minimum stream buffer requirements and zoning buffer requirements was not considered an unusual condition or circumstance. The required construction of a multi-use path was an unusual condition. With appropriate alternative site design, however, the path could be incorporated into the plans in a manner that would not require a local stream buffer variance request.

Ms. Boullion shared that the last consideration as it related to hardship, alternative site designs that required no or less intrusion were possible but would require a reduction in the buildable area on-site or a justification statement. The applicant had not provided an alternative site plan. The applicant stated that the business park and a multi-use path, as proposed and approved in the conceptual development plan, would be undevelopable without the use of the existing stream areas as shown in the variance petition, exhibit B.

Ms. Boullion stated that the aforementioned factors would be considered hardships. If Council did determine extreme hardship, two additional factors would come into play. The purpose of the regulation was to protect public health and safety, the environment, and general welfare; to minimize public and private losses due to erosion, siltation, and water pollution; and to maintain stream water quality by (1) Creating buffer zones along the streams of the town for the protection of water resources; and (2) Minimizing land development within such buffers by establishing buffer zone requirements and requiring authorization for any such activities. Regarding the purposes and intents of the regulations, granting of variance requests, though allowed by ordinance, should be kept to a practicable minimum to protect water quality, provide for infiltration of stormwater runoff, preserve wildlife habitats, scenic value, recreation value, and minimize flood risks from future developments.

Ms. Boullion shared that there was a lot of proposed development in Tyrone, and the decision to grant or deny the request would be viewed as precedent by those seeking stream buffer variances in the future. Any individual item was made to be mitigated but it's not eliminated. The Town needed to be judicious and consistent when determining hardship, one's hardship should be equivalent to another person's hardship. There should be justification for granting the variance.

Ms. Boullion stated that in addition to adherence to the Town and state minimum standards for construction and post-construction stormwater management, the applicant proposed additional green infrastructure (infiltration) practices, namely Bioretention areas and enhanced filter strips, as on-site mitigation measures. Based on a preliminary staff review, the engineering practices proposed for the site appear to satisfy best engineering practices and standards.

While proposed mitigation measures were a factor, the cumulative impact on local watersheds should be taken into consideration. These best engineering practices were only intended to minimize (or mitigate) the impacts associated with the creation of impervious surface areas and encroachment in stream buffers; they are not purported or intended to eliminate the environmental impacts associated with land development.

Council Member Campbell asked if most of the development would be taking place toward the Hwy 74 portion of the property. Ms. Boullion stated that the proposed

disturbed acreage was 97.7 % of the site, which would entail most of the site. Council Member Campbell asked how the development would affect the multi-use path along the eastern border of the property. Ms. Boullion stated that the multi-use path was within the existing 50 ft. easement which would cross the stream. The path could still be constructed without the need for a local stream buffer variance. Stream crossings for transportation routes were exempt from the ordinance. The path variance trigger would be due to grading and disturbance.

Mayor Dial posed that the Town asking for the installation of the multi-use path may be considered a hardship, due to cost. Ms. Boullion stated that it was an unusual circumstance and there would be a cost. Council Member Campbell asked how that would affect the property to the north of the project. Ms. Boullion stated that she would need to review a larger topography map, however because of other District Regional requirements regarding drinking water, the Town was required to keep the impervious area in a Watershed. The developer was not allowed to go over 25%. The impact would be mitigated, it may have an impact but would be difficult to place an exact number on it without a detailed plan.

Mayor Dial opened the public hearing for anyone that wished to speak in support of the item.

Attorney Rick Lindsey asked for more time than usually allotted. Mr. Davenport shared that it was Council's discretion to add more time. This was a variance public hearing, not a rezoning. Mayor Dial stated that he would allow 15 minutes for both sides.

Mr. Lindsey introduced John Coleman and John Ratliff representing EastGroup Properties, LP. They currently owned the property that was zoned M1 Planned Industrial Park which was in place since August. The plan before Council was the same plan that the Planning Commission saw twice and Council saw once. The water areas and streams were on the plans when presented each time, but nothing had changed. He agreed that the plan was no small impact. If the variance was not granted it would result in a 20% decrease in the buildable area.

Mayor Dial stated that he calculated the square footage of all of the buildings and took into consideration if the variance was denied. He added that he calculated 7%, not 20%. Mr. Lindsay stated that the entire southeastern building would be lost and similarly with the building to the north. At that point it would be impossible to construct the multi-use path due to its location, it was a safety issue. Mr. Lindsey stated that the Town approved the plat in 2018 that indicated where the cart path could be placed.

He added that if a variance was issued, mitigation would increase to a 50% impact. We have to make the property better than it was. The Army Corp of Engineers and the Environmental Protection Division (EPD) would be heavily involved. The other areas do protrude a bit more into the property. A 20% reduction in the buildable space was an extreme hardship each property was different and required mitigation.

Mr. John Coleman introduced John Ratliff, Wesley Reed, Johanna, and Courtney. He stated that during the year, the DRI process was completed and approvals for rezoning and the zoning site plan were completed. He added that their intent was still to partner with the town on the quality technology park on Hwy 74. Mr. Coleman stated that they were long-term owners and were staying for 50-70 plus years. They planned on creating

a quality product with quality architecture and landscaping. He noted that along with the elevations, they would be back in front of Council for their architecture and compliance with the Overlay District. There had been interest from BioMed, technology, and electronic manufacturing companies. Mr. Coleman shared that this was their first submission to the Town of Tyrone and they had no idea there was a variance required for the stream buffer. He displayed the site plan which indicated that they were going to impact the area in question. We were never told there was going to be a variance request. He shared that they went through the public hearings and the easement process. He added that they were under the impression that everything had already gone through the process for the former movie studio project. He believed that the Town knew that the area would be disturbed, and disclosure would have been ideal, having the knowledge moving forward. Based on the Corp of Engineers, the 60-acre site had ½ acre of impact. He added that his engineers would speak on that. Due to the minor impact, it would now fall under the Nationwide permit category. They had three other sites in metro Atlanta with similar conditions. What typically happened was that the local entity would defer to the state and federal review for the mitigation requirements. He added that prior to having knowledge of the variance, the analysis was sent to the Corp. of Engineers and the State for review. \$600,000 was budgeted for mitigation fees. Mr. Coleman again stated that they did wish to partner with the Town. When they found out about the variance they met with Mr. Trocquet and Ms. Boullion regarding additional mitigation which was above and beyond the state and federal requirements, the green infrastructure, and the bio-retention. The square footage of the additional mitigation that they proposed was equal to or greater than what the impact was. He stated that their plan was to filter the runoff on the multi-use path which would be discharged onto the other site, which would leave no negative discharge. They closed on the property without knowledge of a variance requirement, without the variance it would reduce the building by 20%. He echoed with the display that the building that would be lost without the variance, leaving a smaller footprint. That impact would have been a contingency with the seller had they known. He stated that the reduction of a 150 sq. ft. building would be equivalent to about \$20 Million of total land value. This would mean fewer jobs and less tax revenue and could also limit their ability to move forward with the project. Their photographs indicate a great match for what the Town was looking for. Without the variance, the multi-use path could not be built. That would be an extreme hardship and key for the Town. The confusion was that there was an existing easement agreement from 2018 to accommodate the multi-use path located within the stream buffer.

He felt that it was a double standard if the Town did not work with them on the overall site plan.

Wesley Reed with Everly and Associates stated that their metro Atlanta firm worked in over 60 jurisdictions. He added that having variance public hearings was more the exception than the rule. With Palmetto, his firm did have to go through the Army Corp. of Engineers but not a public hearing. He stated that they were disturbing a significant portion of the site, 10% was the buffer and multi-use path. 5% of the site was the berm which was located on the Hwy 74 side. Mr. Reed stated that the streams that were under discussion were intermittent streams. He added that there were three types of streams, ephemeral, perennial, and intermittent. Perennial streams flow all year, ephemeral streams flow during wet times, and intermittent streams flow rarely. Normally, staff would submit the stream impact to the Army Corp. of Engineers for their review. He stated that the three streams' total square footage was 184, 171, and 558 which was a

total of approximately 1,000 feet of actual stream. He reported that if you were within seven miles of the intake of the Watershed of Whitewater Creek, there would be a 100-150 ft. buffer. Their development was well over seven miles. Mr. Reed shared that filter strips were part of the zoning plan. The reason why you have stream buffers was to help treat and infiltrate the water. He shared that there was on-site mitigation and the \$600,000 off-site mitigation bank used to protect the stream buffers. He added that the site required adequate parking and fire lanes for safety.

Mayor Dial opened the public hearing for anyone that wished to speak in opposition to the item. No one spoke.

Council Member Hill shared that it was stated that once the EPD signed off on the report, a variance was issued in other cities. She asked if the EPD gave their approval on the Town's particular project. Mr. Reed stated (inaudible) that it was submitted a least a week before the variance process. The Army Corp. usually took 45-60 days and the EPD could take up to four months, so they were well within the timeframe. He added (inaudible) that a permit would not be applied for until all comments were met.

Mayor Dial stated that he was unaware that Tyrone was a unicorn when it came to stream buffer variances. Mr. Davenport stated that Union City also required stream buffer variances. Mayor Dial stated that he did not want to be a town that was overly restrictive. Council Member Howard shared that maybe we should look back at 2007 to see what was taking place. Mayor Dial stated that he had no doubt that the Town's request for the path would contribute to the hardship. He was confused that there was no good communication on whether a variance was needed. Whose job was it to check if there was a variance needed for the buffer? Or was it assumed that it was already handled through the previous development? Council Member Hill stated that it should be the buyer's due diligence before purchase. Council Member Furr agreed. Mayor Dial added that he did not like that it was a surprise to them (EastGroup).

Council Member Campbell stated that his main concern was to protect the environment during any future development. The path would take lesser president over projection of the environment. If both could be accomplished, that would be a set in the right direction.

Council Member Furr inquired about the type of path that would be constructed through the Wetlands.

Wesley Reed (inaudible) shared that it would be a 10ft. multi-use path made from asphalt. He shared a rendering and stated that an area dropped off significantly. A retaining wall would be erected on the property line side of the path along with handrails. A wall would also be installed along the building side and stepping down which would sustain a lot of costs. He added that the best way for long-term would be a bridge.

Mayor Dial shared that the Town had experience with the cost of a bridge. He added that he understood that the Town was creating hardship with the multi-use path for them and the citizens. He thanked Mr. Reed for his explanation of the type of stream.

Ms. Boullion stated that the simplest definition of an intermittent stream was that it flowed 3-4 months per year. She also looked at the soils which indicated long-term was

that water would be present. Many factors were assessed. She explained that an ephemeral stream was a stream that had water in it after it drained 72 hours, which was basically a ditch. The intermittent stream channels had different soil profiles and shapes. She added that she felt that it was mischaracterized that intermittent streams simply had water flowing in after a 72-hour rain event. She added that their environmental report that they created in June also mentioned that local issuing authorities needed to verify the buffers and that the Town was the final point of contact. It did not mention that a stream buffer variance potentially from the local issuing authority. Mayor Dial asked when did that take place? Ms. Boullion shared that the report was prepared, on June 20, 2022. Mayor Dial clarified that it was from their environmental representatives. Ms. Boullion stated yes, it was from their consultant for the Army Corp. Aquatic resource delineation.

Mayor Dial asked Mr. Reed if a variance was to be issued, where would the water go that would otherwise be in that stream? Mr. Reed stated that water gets into the streams either over land or groundwater. During cart path construction, assuming there would be water at the time, a French drain would be constructed along the stream bottom. A perforated pipe, with gravel wrapped in filter fabric, would be installed. He explained that would be how the groundwater would be captured and flow to the same point of discharge. Some of the water from the pervious surfaces would be routed to the detention ponds, and some to the buyer retention ponds. He explained that a wet extension pond had at least 3ft. in it at all times. Anything that settles does not resuspend and that helps discharge cleaner water. He continued, if the Town had a 100-year storm, the detention ponds would hold the water, then release it over time to the same points the water was currently released. Mr. Reed stated that the amount of runoff was what they would be maintained by using the wet extension ponds., currently, there was no treatment on the site. Council Member Furr clarified that they would put French drains in place. Mr. Reed stated that they would be happy to make that a condition. Council Member Furr agreed.

A discussion began regarding approval contingent on the approval of the Army Corp. of Engineers the EPD, and the French drain system.

Ms. Boullion reminded everyone that their engineers would need to adhere to certain standards if it was French drains or another type, they would still have to meet those standards. Council Member Furr stated that she was not happy with granting the variance but agreed that the Town assisted with creating the hardship and added that if the correct measures were taken moving forward, she would be satisfied. Mayor Dial revisited the notion of setting a precedent he believed that hardship was created and hopefully, everyone agreed that we were all trying to work together.

A motion was made to approve the stream buffer and impervious surface setback variance requested from EastGroup Properties, LP for parcel 0726 068 based on the approval of the United States Army Corps of Engineers and the Environmental Protection Division and the use of French Drains during construction.

Motion made by Council Member Campbell, Seconded by Council Member Hill.
Voting Yea: Council Member Howard, Council Member Furr.

IX. OLD BUSINESS

X. NEW BUSINESS

6. Consideration to renew the Debris Monitoring Contract with Tetra Tech, Inc.
Scott Langford, Town Engineer / Public Works Director

Mr. Perkins presented the item. He stated that the purpose of the debris agreement was in case of a storm or event that would cause downed trees and a large amount of debris. An on-call contractor would be required to be ready for such events. He added that the current agreement with Tetra Tech had provisions for two additional 1-year renewal periods. All county municipalities were piggybacking off of the county's contract. Council Member Campbell asked if there was a cost involved to keep them on a retainer. Mr. Perkins shared that he believed it was a pay-as-you-go contract.

A motion to approve the renewal of the Debris Monitoring Contract with Tetra Tech, Inc. per Amendment Number 1 was made.

Motion made by Council Member Campbell, Seconded by Council Member Howard.
Voting Yea: Council Member Hill, Council Member Furr.

7. Consideration to purchase an Envirosight Pole Camera from Environmental Products Group from the Enterprise Fund for \$18,784.14. **Scott Langford, Town Engineer / Public Works Director**

Mr. Perkins stated that the pole camera was included in the FY 22/23 budget. The pole camera provided the staff with the ability to see down pipes without having to enter confined spaces. The Envirosight Pole Camera will be purchased from Environmental Products Group through Sourcewell Contract (#120751-EVS) for \$18,784.14. The camera would also include a laser measuring tool and pressurization kit and funding would come from the Sewer Enterprise Fund.

A motion was made to award the Envirosight Pole Camera purchase from Environmental Products Group through Sourcewell for \$18,784.14.

Motion made by Council Member Furr, Seconded by Council Member Hill.
Voting Yea: Council Member Howard, Council Member Campbell.

8. Consideration to Award Project Number PW-2022-02 - Rebid 2022 Roadside Tree Pruning and Removal project to Zamora Tree Service for the fee of \$16,900.
Scott Langford, Town Engineer / Public Works Director

Mr. Perkins shared that Council approved the Public Work budget which included roadside tree pruning and removal to provide a better line of sight and safer conditions along the Town's Roads. The project includes sections of Tyrone Road, Senoia Road, and Castlewood Road. The project was originally bid on September 14, 2022, but the two bids were determined to be non-responsive. The project was re-advertised and rebid. The rebids were taken on November 2, 2022. The low bidder was Zamora Tree Service at a price of \$29,000.

Council Member Furr asked if the aforementioned roads were the only roads within the bid. Mr. Perkins stated that yes, only the road that was bid on would be within the project. Council Member Furr asked about the timeframe. Mr. Perkins shared that he

believed that it was for the current fiscal year, but would need to speak with Mr. Langford for more information. He added that the items on the list were larger than what the public works crew was able to handle themselves.

A motion was made to award the project number PW-2022-02 Rebid 2022 Roadside Tree Pruning and Removal project to Zamora Tree Service for the fee of \$29,000.

Motion made by Council Member Campbell, Seconded by Council Member Hill.
Voting Yea: Council Member Howard, Council Member Furr.

XI. PUBLIC COMMENTS: *The second public comment period is for any issue. Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

XII. STAFF COMMENTS

Mr. Perkins updated everyone on the Shamrock Park playground. Weather permitting, the contractor was hoping to complete the equipment installation on Friday, mulch on Tuesday, and have the concrete poured on Wednesday. A bench delivery was out of their control and was expected to be delivered in mid-December. He added that hopefully, the playground would be ready for the Lighting of the Christmas Tree event on November 27th. Council Member Furr inquired about swings for toddlers. Mr. Perkins stated that the playground equipment was designed for ages 5-12. He added that he had spoken with them regarding prices for the swings and for mats that are placed under the swings and slides.

XIII. COUNCIL COMMENTS

XIV. EXECUTIVE SESSION

A motion was made to move into Executive Session for two real estate items and for one personnel item.

Motion made by Council Member Furr, Seconded by Council Member Howard.
Voting Yea: Council Member Hill, Council Member Campbell.

A motion was made to reconvene.

Motion made by Council Member Campbell, Seconded by Council Member Furr.
Voting Yea: Council Member Howard, Council Member Hill, Council Member Campbell.

Mr. Davenport shared that the Town Manager's contract was scheduled to expired on December 31, 2022. The proposed agreement was for Council's consideration and was for a 3-year term beginning January 1, 2023 for three consecutive years. He added that it was basically under the same terms and conditions as the current contract with some exceptions.

A motion was made to approve the Town Manager contract as written.
Motion made by Council Member Campbell, Seconded by Council Member Hill.
Voting Yea: Council Member Howard, Council Member Furr.

XV. ADJOURNMENT

A motion was made to adjourn.

Motion made by Council Member Furr.

Voting Yea: Council Member Howard, Council Member Hill, Council Member Campbell.

The meeting adjourned at 9:00 pm.

By: _____
Eric Dial, Mayor

Attest: _____
Dee Baker, Town Clerk