

**CITY OF GRAHAM
REGULAR SESSION
TUESDAY, AUGUST 2, 2016
7:00 P.M.**

The City Council of the City of Graham met in regular session at 7:00 p.m. on Tuesday, August 2, 2016, in the Council Chambers of the Municipal Building located at 201 South Main Street.

Council Members Present:

Mayor Jerry Peterman
Mayor Pro Tem Jimmy Linens
Council Member Griffin McClure
Council Member Chip Turner
Council Member Lee Kimrey

Also Present:

Frankie Maness, City Manager
Aaron Holland, Assistant City Manager
Darcy Sperry, City Clerk
Nathan Page, Planning Director
Keith Whited, City Attorney
Erin Quigley, Administration Intern
Jeff Prichard, Police Chief
Mike Hodgin, Plant Maintenance Superintendent

Mayor Jerry Peterman called the meeting to order and presided at 7:00 p.m. Mayor Pro Tem Jimmy Linens gave the invocation and everyone stood to recite the Pledge of Allegiance.

Honorary Resolution:

➤ ***Tony Fogleman - Resolution of Commendation and Appreciation***

Mayor Jerry Peterman presented Mr. Tony Fogleman with a gift from the City of Graham and thanked him for his five (5) plus years of service to the City of Graham. Mr. Fogleman thanked the City while Wastewater Plant Maintenance Superintendent Mike Hodgin told everyone in attendance that it had been a pleasure to work with Tony.

**RESOLUTION OF COMMENDATION AND APPRECIATION TO
TONY FOGLEMAN
FOR HIS SERVICE TO THE CITY OF GRAHAM**

WHEREAS, Tony Fogleman diligently served the City of Graham Wastewater Treatment Plant from January 18, 2011 until July 31, 2016; and

WHEREAS, Tony retired as a Maintenance Mechanic II at the City of Graham Wastewater Treatment Plant on July 31, 2016 with over 5 years of service; and

WHEREAS, his wisdom, care and dedication has commanded the utmost respect from his colleagues and employees; and

WHEREAS, it is the desire of the City Council to extend their deepest appreciation to Tony for the excellent time and service he has afforded the citizens of Graham and his fellow employees.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAHAM THAT: Tony be commended for his outstanding public service to the City of Graham.

BE IT FURTHER RESOLVED THAT: an expression of appreciation be extended to Mr. Tony Fogleman in the form of this Resolution of Commendation and Appreciation, and that this Resolution become a part of the official records of the City of Graham for all of time, and the original thereof be presented to him in person.

This the 2nd day of August 2016.

Consent Agenda:

- a. *Approval of Minutes – July 5, 2016 Regular Session*
- b. *Tax Releases & Refunds*

CITY OF GRAHAM RELEASE ACCOUNTS				
<i>AUGUST COUNCIL MEETING</i>				
<u>ACCT #</u>	<u>YEAR</u>	<u>NAME</u>	<u>REASON FOR RELEASE</u>	<u>AMOUNT RELEASED</u>
528203	2015	GRANDSTAFF, TADD A.	BOAT SOLD	4.55
528203	2016	GRANDSTAFF, TADD A.	BOAT SOLD	17.75
643740	2016	BROWN, CHRISTIE D.	SOLD BOAT 2013	4.82
656686	2016	PICKARD, GARY DEAN	SOLD BOAT 2013	3.87
501335	2016	MATTHEWS, TIMOTHY I.	SOLD TREE SERVICE BUSINESS	2.96
TOTAL RELEASES				33.95

CITY OF GRAHAM REFUNDS				
AUGUST COUNCIL MEETING				
ACCT#	YEAR	NAME	REASON FOR REFUND	AMOUNT REFUNDED
469429	2015	CLARK, DARLEEN JANE	MOVED TO VA	2.62
TOTAL REFUNDS				2.62

- c. Tax Collector Year End Report*
- d. 2015 Outstanding Tax Listing*
- e. Recreation Commission Removals and Appointments*

Council Member Chip Turner made a motion to approve the Consent Agenda, seconded by Council Member Griffin McClure. All voted in favor of the motion.

Old Business:

- a. **Public Hearing: Text Amendment for the City of Graham Development Ordinances:***
 - i. **Table of Permitted Uses (AM1614)***

Planning Director Nathan Page explained that per Council's request at last month's meeting, he looked at the uses currently permitted in the B-3 District that would be removed with this proposed amendment. Mr. Page stated that based on his interpretation of the proposed amended Table of Permitted Uses, all of those uses being removed can be accounted for under another use currently in or being added to the table.

Council Member Lee Kimrey expressed concern with the removal of some uses and the interpretation by future administrations to determine whether or not a use by right would be permitted. Mr. Page advised that current North Carolina law does not allow you to totally exclude a use. Law states you must compare that use to the closest use in the table to make a final determination.

Mayor Peterman opened the Public Hearing and with no comments forthcoming, closed the Public Hearing.

Mayor Pro Tem Linens made a motion that the text amendment be approved and that the text amendment is consistent with The Graham 2035 Comprehensive Plan, seconded by Council Member McClure. Ayes: Mayor Pro Tem Linens, Council Member McClure, Mayor Peterman and Council Member Turner. Nays: Council Member Kimrey. Motion carried 4:1.

With no objection from anyone in attendance, Mayor Peterman announced that he was moving the next agenda item, Review Performance of the City Attorney, to the end of the meeting.

Recommendations from Planning Board:

a. Public Hearing: Shamrock Valley (CR0501). This is an amendment to the Conditional Zoning the City did to permit the property owners to build to their rear property line.

Mr. Page explained that the applicant is requesting the ability to build to their rear property lines. He added that in this particular portion of the development, there is common area that borders all of the adjacent properties. This request is not for the property owners to be able to build to the property line adjacent to their neighbor but rather be able to build adjacent to the common area property line.

Following general discussion regarding the original setbacks and the common area per the site plan submitted, Mayor Peterman opened the Public Hearing.

Mr. Jimmy Collins, 5556 Friendship Patterson Road, stepped forward to speak. Mr. Collins advised that he is the builder for this development and that it had been brought to his attention that he has built some sunrooms that are nonconforming. He added that he secured signatures from all residents of this section of the development indicating that everyone is in agreement with this request. Council Members asked Mr. Collins about existing sunrooms and covered porches, decks and if homeowners were ever made aware of restrictions pertaining to adding sunrooms and/or porches.

With no further comments forthcoming, Mayor Peterman closed the Public Hearing.

Council Member Kimrey made a motion that the text amendment be approved with the following conditions:

- Structure can be added to rear property line provided it ties into the existing roof line and matches the character of the neighborhood
- There are no decks

And that the text amendment is consistent with The Graham 2035 Comprehensive Plan and this action is reasonable and in the public interest for the following reasons: While the development doesn't strictly comply with the Suburban Residential type, the homeowners of the entire development have requested to be permitted to construct porches or sunrooms to be better able to use their backyards. Council Member Chip Turner seconded the motion and all voted in favor of the motion.

b. Public Hearing: Pine Duplex (RZ1603). This is a request to rezone property at 521 E. Pine Street from R-12 to R-7.

Mr. Page explained that this is an application to rezone the property to R-7 which will then lead to a request for a Special Use Permit which will allow a duplex. He added that the duplex currently there went through a past rezoning, in which the City created a nonconforming use for this property. Mr. Page advised that he wants to give the applicant the opportunity to clear up the zoning for this property.

Council Members asked Mr. Page if the duplex is still being used as a duplex. Mr. Page advised that it is.

Mayor Peterman opened the Public Hearing.

Ms. Lynda Allred, of Lynda Allred Realty, stepped forward to speak on behalf of the applicants. She handed out pictures taken of the property showing it as a duplex. She indicated that the current owners are trying to sell the property and when looking into the property's history, they found that it is currently considered nonconforming due to a past rezoning. Ms. Allred reiterated that it is their desire to have this cleared up before a sale should take place. Council Members asked Ms. Allred if the duplex has been continuously used as a duplex and she said it has. Council Members verified with Ms. Allred that there are two (2) separate driveways, as the pictures indicate. Ms. Allred advised that there are.

With no further comments forthcoming, Mayor Peterman closed the Public Hearing.

Council Member McClure made a motion that the application be approved, that the application is consistent with The Graham 2035 Comprehensive Plan and that this action is reasonable and in the public interest for the following reasons: It furthers the policies and strategies put forth in that plan. Council Member Kimrey seconded the motion and all voted in favor of the motion.

c. Quasi-Judicial Public Hearing: Pine Duplex (SUP1602). This is a request for a Special Use Permit for a Dwelling, Duplex for property located at 521 E. Pine Street.

Mayor Peterman recessed the regular Council meeting in order to convene a Quasi-Judicial Public Hearing. Mayor Peterman polled the Council for any financial interests, fixed opinions or communications regarding the property. Mayor Peterman disclosed that he is neighbors with the applicants and has spoken to them about the property. He further stated that he believes that this will not affect his decision making capabilities but would recuse himself if the Council asked him to. No Council Member objected.

City Attorney Keith Whited swore in Mr. Page and Ms. Lynda Allred.

Mr. Whited directed the pictures of the property Ms. Allred previously passed out to be labeled Exhibit "A" and entered into evidence. Mr. Page explained that this is a request for a Special Use Permit to bring the existing duplex on the property into compliance with the current development ordinance. He reminded Council that based on the preceding agenda item, the property is now zoned R-7, therefore it is eligible to be considered for a Special Use Permit.

Council Member Kimrey asked Ms. Allred to verify that the property has two (2) driveways and two (2) sidewalks and has adequate parking for a duplex as per the pictures submitted into evidence. Ms. Allred verified that to be true and accurate.

Mayor Peterman closed the Quasi-Judicial Public Hearing.

Council Member Turner made a motion that the application be approved as presented, to adopt the Findings of Fact and Conclusions of Law as presented in the staff report, the application is consistent with The Graham 2035 Comprehensive Plan and the action is reasonable and in the public interest for the following reasons: The proposed Special Use Permit is compatible with the area and meets all six (6) conditions required by Section 10.144 of the Development Ordinance, seconded by Council Member Kimrey. All voted in favor of the motion.

Findings of Fact and Conclusions of Law

1. All applicable regulations of the zoning district in which the use is proposed are complied with.
 - *The property is zoned R-12, a duplex is permitted only with a rezoning (R-7) and a special use permit, or a rezoning to R-MF or R-G.*
2. Conditions specific to each use, identified by the Development Ordinance, are complied with.
 - *There are no conditions specific to “dwelling, duplex.”*
3. The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
 - *The continued use of the location as a duplex will not materially endanger the public health or safety.*
4. The use will not substantially injure the value of adjoining property or that the use is a public necessity.
 - *The continued use of the location of a duplex will not substantially injure the value of adjoining property.*
5. The location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
 - *The duplex is located in a neighborhood residential section of Graham, and is in general conformity with The Graham 2035 Comprehensive Plan.*
6. Satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.
 - *All said items have been functioning satisfactorily for the 60 years that the lot has been functioning as a duplex.*

d. Public Hearing: Jay Industrial (RZ1604). This is a request to rezone property at 1201 Jay Lane from I-1 to I-2.

Mr. Page explained the reason for this request is to permit the finishing of textile products and that adjacent buildings to the West and Northwest are already zoned I-2, with all of the other surrounding property zoned I-1. He added that there is property directly across Interstate 40/85 that is zoned R-18, however he feels that there is a large enough barrier to where he does not consider that to be adjacent to the subject property.

Council Member Kimrey asked Mr. Page to confirm that this property meets the building setbacks on the front and parking setbacks for the I-2 use. Mr. Page stated that since he had not seen a survey, he did not know the answers to that question.

Mayor Peterman opened the Public Hearing.

Mr. Ryan Moffett of the Vernon Law Firm stepped forward to address the Council. Mr. Moffett indicated that he was representing Empire Building, LLC - the owner of the property. Mr. Moffett advised that the prospective tenant for this building expects to add approximately thirty (30) full-time jobs to Graham should this rezoning be approved. He added that the prospective tenant also expects to have a relatively low environmental impact as well despite operating a textile finishing procedures at the site.

With no further comments forthcoming, Mayor Peterman closed the Public Hearing.

Council Member Kimrey made a motion that the application be approved as presented, that the application is consistent with The Graham 2035 Comprehensive Plan and that this action is reasonable and in the public interest for the following reasons: Rezoning the property would be consistent with the Industrial type. I-2 would permit manufacturing and would breathe new life into a vacant property. Council Member McClure seconded the motion and all voted in favor of the motion.

e. Public Hearing: Text Amendment for the City of Graham Development Ordinances:
i. Removal of Planned Unit Development (AM1615)

Mr. Page explained that Staff proposes to amend the Development Ordinance, Article IV, Division 8, Planned Unit Development Overlay District. He added that this amendment is proposed because the PUD is a tool that has been replaced with Conditional Zoning and the most recent PUD issued by the City was in 2004 (Hideaway Farms and Old Fields) and the first was in 1999 (Villas on Hanford).

With no comments forthcoming, Mayor Peterman opened and closed the Public Hearing.

Mayor Pro Tem Linens made a motion that the text amendment be approved, that the text amendment is consistent with The Graham 2035 Comprehensive Plan and that this action is reasonable and in the public interest for the following reasons: The proposed amendment simplifies the development process by removing complicated procedure that hasn't been utilized in more than a decade. Council Member Turner seconded the motion and all voted in favor of the motion.

ii. Removal of Protest Petition (AM1616)

Mr. Page explained that this amendment has been brought about by a change the General Assembly has made that has forced our hand. He stated that the Protest Petition is no longer a valid form of protesting against an amendment to our zoning ordinance or zoning map.

Council Members asked Mr. Whited if law permits Council to extend the right to be heard to residents of our Extra-Territorial Jurisdiction (ETJ). Mr. Whited advised that we are authorized by law to do so.

With no comments forthcoming, Mayor Peterman opened and closed the Public Hearing.

Council Member McClure made a motion that the text amendment be approved, that the text amendment is consistent with The Graham 2035 Comprehensive Plan and that this action is reasonable and in the public interest for the following reasons: The proposed amendment brings into alignment with the NC SL 2015-160, but also respects the input of the residents of our ETJ. Mayor Pro Tem Linens seconded the motion and all voted in favor of the motion.

Economic Development:

- a. ***Public Hearing: to receive comments on a proposal to extend economic development incentives for a proposed manufacturing and support facility to be constructed in the North Carolina Commerce Park (NCCP). The proposed incentive would include a total cash grant in the amount of \$1,065,000 over a five year period and the waiver of development fees valued at \$100,000 in accordance with the provisions of NCGS 158-7.1, NCGS 158-7.2 and NCGS 160A-20.1. The consideration for the incentives will be the company's agreement to have constructed upon the site, improvements consisting of a facility which will employ not less than 205 full time positions with average salaries of \$46,322 and which will increase the tax base by not less than \$15,300,000. Funding for the incentives will come from fund balances on hand and will not require a tax increase by any of the governmental units.***

City Manager Frankie Maness explained that this was the Public Hearing to receive public comment on an incentive proposal for Project Prescient. He advised that this Colorado based company is considering a location within the North Carolina Commerce Park (NCCP). He reminded everyone in attendance that the NCCP is a joint undertaking between Alamance County and the Cities of Graham and Mebane to entice industrial development in the Hawfield's area. Mr. Maness added that Project Prescient proposes to invest \$15.3 million dollars in the NCCP, deliver at least 205 fulltime jobs averaging \$46,322 by the end of 2018. The proposed project site sits on the Mebane side of the existing line of agreement between Graham and Mebane, however due to the Interlocal Agreement for this park, Graham, Mebane and Alamance County share in the expenses such as incentives and infrastructure, as well as revenues. Mr. Maness explained that the total cash incentive is \$1,065,000 with \$300,000 being an initial grant payable upon the construction of the facility (certificate of occupancy) with the balance paid in five (5) annual installments beginning on the first anniversary of the certificate of occupancy. There will be a waiver of permit and inspection fees for the initial construction with a value not to exceed \$100,000. Graham's total share pursuant to the Agreement would equal \$388,333. It is proposed that there will be typical clawback provisions that try and capture a minimum investment of \$15.3 million dollars, 205 fulltime positions averaging \$46,322. Graham's total share would be \$388,333 and Staff recommends approval of the Resolution presented.

Council Members and Staff spoke of future revenues and the economic impact of the estimated \$9.5 million dollar annual payroll for this project. Mr. Maness advised that Alamance County and Mebane approved this incentive agreement yesterday at their respective meetings.

Mayor Peterman opened the Public Hearing.

Mr. Mac Williams, 610 S. Lexington Avenue Burlington and President of the Alamance County Chamber of Commerce, stepped forward and told Council that we are in a competitive situation. He thanked Mr. Maness for his hard work and attention to detail while collaborating with Mr. Craig Honeycutt and Mr. David Cheek to put this incentive package together as well as recognizing the hard work of the leaders of all three (3) entities that allows for us to be competitive for projects such as this.

Ms. Katie Culp, President of KSM Location Advisors, stepped forward representing Prescient Company, Inc. Her company specializes in site consulting work and has been retained by Prescient Company, Inc. to look into opening a second office in the Southeast. She advised that it has come down to this location in the NCCP and a site in Atlanta and she expects the company to make a decision within the next couple of weeks.

Council Members discussed with Ms. Culp factors such as the strength of our areas workforce, flight access from this area, the company's aggressive time frame for construction, production services and the hiring of local workers.

With no further discussion or comments forthcoming, Mayor Peterman closed the Public Hearing.

Council Member Kimrey made a motion to approve the Incentive Agreement for Project Prescient Company, Inc. and authorize the Mayor, City Manager, City Attorney, City Clerk and Finance Officer to execute the agreement on behalf of the City, seconded by Council Member Turner. All voted in favor of the motion.

RESOLUTION AUTHORIZING AN INCENTIVE AGREEMENT FOR PROJECT PRESCIENT

WHEREAS, Prescient Company, Inc. is considering the location of a new manufacturing facility in the North Carolina Commerce Park (NCCP), which is an economic development zone under an extended agreement between Graham, Mebane and Alamance County, by December 31, 2018; and

WHEREAS, the location of this manufacturing facility within the NCCP will involve new capital investment (including, building, machinery and equipment) of approximately Fifteen Million Three Hundred Thousand (\$15,300,000.00) and the creation of two hundred five (205) full time employment positions with average annual salaries of \$46,322.00; and

WHEREAS, an incentive package totaling \$1,165,000 is being considered by Graham, Mebane and Alamance County as inducement for the location; and

WHEREAS, G.S. Section 160A-20.1, 158-7.1, and 158-7.2, as construed by the North Carolina Supreme Court in its opinion in Maready v. The City of Winston-Salem, et al, 342 N.C. 708 (1996), permits the City to enter into an agreement with Prescient Company, Inc.; and

WHEREAS, Graham, Mebane and Alamance County find that in order to aid and encourage the construction of the facility and installation of the machinery and equipment in the NCCP, it is necessary and desirable to assist and reimburse the Company for a portion of its construction costs and new equipment costs;

NOW, THEREFORE, BE IT RESOLVED by the Graham City Council that:
Reimbursing Prescient Company, Inc for a portion of its construction and equipment costs serves a public purpose and will increase the taxable property base for the County and Cities of Graham and Mebane, and help create not less than two hundred five (205) new jobs in the County, all of which will result in an added and valued benefit to the taxpayers of the City.

BE IT FURTHER RESOLVED that:

1. The Mayor, City Manager, City Attorney, City Clerk and Finance Officer are authorized to enter into an incentive agreement with Prescient for a maximum participation of \$388,333 from the City of Graham;
2. That the cash incentive be payable as follows:
 - \$100,000 upon issuance of Certificate of Occupancy
 - \$51,000 within 30 days after the First anniversary date of the certificate of occupancy
 - \$51,000 within 30 days after Second anniversary date of the certificate of occupancy
 - \$51,000 within 30 days after Third anniversary date of the certificate of occupancy
 - \$51,000 within 30 days after Fourth anniversary date of the certificate of occupancy
 - \$51,000 within 30 days after Fifth anniversary date of the certificate of occupancy;
3. The agreement must include assurances for the investment of \$15,300,000 of taxable property within the geographic boundaries of the North Carolina Commerce Park, as established by Compact approved on May 2, 2013, and the creation of 205 jobs with average annual gross wages of \$46,322; and
4. The agreement must also include that Prescient account to the City Staff each year prior to receiving any cash incentive payment and any personal property must remain taxable in the economic development zone for each year in which an incentive is sought. Any failure to meet the investment, job creation and wage thresholds will result in proration of the incentive cash payment for that year.

Adopted this 2nd day of August 2016.

Old Business: (continued from earlier)

b. Review Performance of the City Attorney

Mayor Peterman explained that due to Mr. Whited's absence from last month's meeting, this agenda item was not discussed in closed session, but was discussed in open session and it was unanimously agreed to table this item until tonight's meeting.

Mr. Whited advised Council that at last month's meeting, Mr. Tom Boney of the Alamance News incorrectly reported NC Law pertaining to closed session to Mayor Peterman prior to going into closed session last month. Mr. Whited stated that the State of NC requires each municipality to have a lawyer and acknowledges that Council has a right or privilege to talk to your lawyer at any time or among themselves about what your lawyer has said – as per N.C.G.S. §. 143-318-11. Mr. Whited concluded by stating that Council's relationship with the City Attorney is always protected.

Mr. Tom Boney of the Alamance News stepped forward to respond to Mr. Whited's comments. Mr. Boney argued that since Mr. Whited is not currently an employee of the City, but rather a subcontractor, his evaluation would have to be done in open session. Mr. Boney alleges that the issues the City is dealing with pertaining to Mr. Whited are fiscal issues and not performance based. Mr. Boney strongly requested that the Council record the meeting should they go into closed session so that it would be subject to review by a court in the event this is challenged. Mayor Peterman advised that they would talk about Mr. Whited's performance evaluation in closed session and then talk about his salary in open session.

At 8:46 p.m. Mayor Peterman made a motion to go into Closed Session to Consider the Conditions of Appointment of the City Attorney Pursuant to the Terms of *N.C.G.S. §. 143-318-11 (a) (6)*, seconded by Council Member Turner. Ayes: Mayor Peterman, Council Member Turner, Mayor Pro Tem Linens and Council Member McClure. Nays: Council Member Kimrey. Motion carried 4:1.

At 8:56 p.m. Council Member Turner made a motion to reconvene the open session, seconded by Mayor Pro Tem Linens. All voted in favor of the motion.

Mayor Peterman read the following prepared statement:

Trust is something that is earned and Keith has earned this entire Council's trust. We'd like to give a thank you to him for his hard work and diligence to the City of Graham.

Council Members took turns expressing their appreciation and thanks to Mr. Whited, while Mr. Whited told Council that he truly enjoys working for the City.

Council Members and Staff then discussed the idea of changing to the current arrangement by which Mr. Whited works for the City. Mr. Maness spoke of the advantages for the City to have an attorney paid through payroll versus the current contractual paid through accounts payable. He informed Council that there are thresholds for the NC Retirement System and the Affordable Care Act and we have to be cognizant of those when adding a part time employee. Mr. Maness recommended that Council have an employment agreement outlining the parameters of employment for Mr. Whited. Mayor Peterman instructed Mr. Maness and Mr. Whited to work together to create an employment agreement to present to Council at next month's meeting.

Issues Not on Tonight's Agenda

Mayor Pro Tem Linens expressed his appreciation for those responsible for taking care of the potholes on South Main Street.

Council Member Kimrey asked Mr. Maness about the status of the Economic Development Committee creating an overlay district for the NCCP. Mr. Maness advised that while it has been discussed internally among Graham Staff, it's currently on the backburner with the Committee.

Mr. Maness thanked Administrative Intern Erin Quigley for her help this summer and wished her well in her upcoming senior year of college.

Mayor Peterman thanked Police Chief Jeff Prichard for the work his department continues to do on a daily basis.

At 9:17 p.m. Council Member Kimrey made a motion to adjourn, seconded by Council Member Turner. All voted in favor of the motion.

Darcy Sperry, City Clerk