

INDIAN SPRINGS VILLAGE
TOWN COUNCIL MEETING
August 20, 2019

The Indian Springs Village Town Council met Tuesday, August 20, 2019. Mayor Brenda Bell-Guercio called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance. All councilmembers were in attendance except Councilmember Elliott.

The minutes from August 6, 2019 were reviewed. Councilmember Robins made a motion to accept the minutes as presented. Councilmember McClurkin seconded and the vote was unanimous.

Wayne Jones, PAZ chairman, introduced Derek Meadows, of Gonzalez-Strength & Associates. Meadows presented to the Council the sub-division request for the Van Pelt property located on Indian Crest Drive. The property will be divided into 3 parcels of over 4 acres each. Two of the lots will be sold. Discussion was held and questions asked by the Council. Robins made a motion to accept the sub-division as presented. McClurkin seconded and the vote was unanimous.

A court reporter was present to record the portions of the meeting applicable to the business license application made by Cape Group LLC. A copy of the transcript prepared by the Court reporter is on file in the office of the Town Clerk. However, these minutes are to stand as the primary record of the events of the Council meeting.

Mayor Bell-Guercio asked for a motion to go into Executive Session prior to the public hearing of business license request from Cape Group LLC to consult with Ben Goldman, attorney for the town of ISV. Goldman presented a written declaration that warrants the authority for Council to go into executive session for the purposes of:

To discuss with the Town's attorney the legal ramifications of and legal options for pending litigation;

To discuss with the Town's attorney controversies not yet being litigated but imminently likely to be litigated if the Council pursues a proposed course of action.

A copy of the declaration is on file in the Town Clerk's office.

Robins made the motion to go into executive session for the reasons stated in the declaration, and Whatley seconded. The vote was unanimous in favor of the executive session.

Prior to calling the executive session to order, Bell-Guercio stated that the Council would reconvene after the executive session and expected the session to last twenty to thirty minutes. Council convened into executive session at 7:10 p.m. and reconvened in open session at 7:53 p.m.

Bell-Guercio opened a public hearing on the question of whether the business license requested

by Cape Group LLC should or should not be issued.

Bell-Guercio recognized Ben Goldman, town attorney. Goldman offered an evidentiary packet to the Council. A copy of the evidentiary packet is on file in the office of the Town Clerk. The packet contained the following:

- The subject business license application,
- A document labeled “site plan,”
- Resolution No. 2019-04-02, requesting the applicant to present to the Town a development impact analysis and mitigation plan along with specific document requests,
- Evidence of transmittal of Resolution No. 2019-04-02 to Cape Group LLC,
- A letter from the attorney for Cape Group LLC refusing to provide documents in response to Resolution No. 2019-04-02,
- Resolution No. 08-06-19-01 setting the public hearing concerning the determination of whether Cape Group LLC should or should not be issued the business license for which it has applied,
- Evidence of transmittal of Resolution No. 08-06-19-01 to Cape Group LLC and its attorney,
- Copies of the applicable portion of the Shelby County, Alabama, tax map, and
- Written objections to the proposed business license application from Dr. Allison and Mrs. Allison, who reside at 3094 Cahaba Valley Road, Indian Springs, Alabama 35124.

Goldman asked Frazier Christy, Town Engineer, to come forward.

Christy testified that the drawing submitted by Cape Group LLC did not meet the requirements of a site plan because it failed to show erosion control, differential runoff, stormwater detention, sewage treatment, a buffer for the surrounding properties, or even the route of access that would be dedicated for the proposed business. Cape Group LLC had also not submitted anything in support of their zoning classification, building approval, whether buildings would be constructed, or fire code compliance. Christy was particularly concerned with how Cape Group LLC plans to prevent the contamination of the MS4 by sanitary sewage with respect to the handling of sewage from RVs, boats, and other deposits on the site.

Christy explained that maintaining two separate uses on the subject property as contemplated by the business license application could be in violation of the Town’s zoning ordinance.

In Christy’s opinion, Cape Group LLC had not demonstrated an ability or plan to comply with the Town’s erosion and sedimentation control ordinance or with the Town’s subdivision regulations, which would be necessary to mitigate the impact of development on adjacent properties and to protect the health, safety, and general welfare of the citizens of the Town.

Christy’s testimony was captured by the court reporter who was in attendance.

Jeff Brewer, the representative for and owner of Cape Group LLC, next addressed the Council. Mr. Brewer acknowledged receiving Resolution No. 2019-04-02 and its associated document requests. Brewer revealed that there was an inconsistency in the business activities described in the application and the activities that he testified would be conducted at the business. In particular, he claimed that there would not be “exterior washing” of boats and RVs.

Next, Mayor recognized Jesse Evans, attorney for Cape Group LLC. He reviewed the time-line of the process in question.

Mayor Bell-Guercio asked the public for comments. Vann McClurkin spoke in support of the Town requiring Cape Group LLC to show its ability to comply with any requirements related to the MS4 and ADEM. Don Phizer spoke in favor of the use for boat storage.

Mayor Bell-Guercio further questioned Brewer on issues related to the planned business activities with respect to boats and RVs.

Stauss questioned the absence of a green space buffer, information related to road ingress and egress, and multiple uses on one parcel.

Robins questioned Brewer on the lack of a response to the requests made by Resolution No. 2019-04-02. Robins expressed concerned over the inconsistencies between the business license application and Brewer’s testimony.

Bell-Guercio closed the public hearing at 8:40 p.m.

Goldman presented a second written declaration that warrants the authority for Council to go into executive session for the purposes of:

To discuss with the Town’s attorney the legal ramifications of and legal options for pending litigation;

To discuss with the Town’s attorney controversies not yet being litigated but imminently likely to be litigated if the Council pursues a proposed course of action.

A copy of the declaration is on file in the Town Clerk’s office.

Robins made a motion to return to executive session for the reasons stated in the declaration, and Stauss seconded. The vote was unanimous in favor of convening the executive session. Mayor Bell-Guercio announced that the executive session would be very brief and that the Council would reconvene thereafter.

The council convened to executive session at 8:40 p.m. The council reconvened in open session at 9:00 p.m.

Bell-Guercio expressed concern over the inconsistencies between the business license

application and Brewer's testimony. Bell-Guercio expressed her hope that Cape Group would revise its business license application and resubmit in a manner more consistent with Brewer's testimony.

Resolution no. 08-20-19-01 a resolution determining that Cape Group LLC should not be issued the business license for which it has applied was introduced. The Resolution reads as follows:

RESOLUTION NO. 08-20-19-01

A RESOLUTION DETERMINING THAT CAPE GROUP LLC SHOULD NOT BE ISSUED THE BUSINESS LICENSE FOR WHICH IT HAS APPLIED.

WHEREAS, the Town of Indian Springs Village, Alabama (the "Town") requires that all businesses located within the Town hold a business license pursuant to Ordinance No. 2008-01 of the Town as amended by Ordinances No. 2010-001 and No. 2014-007 of the Town (as amended, the "Business License Code");

WHEREAS, Cape Group LLC has applied for a business license for a new commercial development or redevelopment for which it is the owner to be located at 3127 Cahaba Valley Road, Indian Springs Village, Alabama ("the Business License Location");

WHEREAS, in its business license application, Cape Group LLC identified its proposed business activities as "RV & Boat Maintenance, Washing, & Parking;"

WHEREAS, a document labeled "Site Plan" was attached to the business license application of Cape Group LLC;

WHEREAS, pursuant to Section 4(b) of the Business License Code, "Every person dealing in two or more of the articles, or engaging in two or more businesses, vocations, occupations or professions scheduled herein, shall take out and pay for a license for each line of business;"

WHEREAS, Section 11-51-95(a) of the *Code of Alabama* (1975) , which is a part of the Municipal Business License Reform Act of 2006, contemplates that if a taxpayer at one location

is engaged in more than one line of business falling within separate NAICS sector or sub-sectors, for which a business license is required by the Town, that the taxpayer will take out and pay for a license for each separate NAICS sector or sub-sectors as provided by the terms of the statute;

WHEREAS, “RV & Boat Maintenance,” “Washing,” and “Parking” constitute separate NAICS sub-sectors;

WHEREAS, pursuant to Resolution No. 2019-04-02 and Ordinance No. 2018-01, the Town Council requested that Cape Group LLC submit to the Town Council a Development Impact Analysis and Mitigation Plan, and notice of this request was given to Cape Group LLC;

WHEREAS, pursuant to Ordinance No. 2018-001, “no business operating out of a new commercial or replacement of existing commercial development shall be granted a business license or building permits for new structures until the Town Council of Indian Springs Village has approved the Development Impact Analysis and Mitigation Plan;”

WHEREAS, Section 11-51-90(d) of the *Code of Alabama* (1975), which is a part of the Municipal Business License Reform Act of 2006, contemplates that business license application review will include “ZONING CLASSIFICATION,” “BUILDING APPROVAL,” study of the “FIRE CODE,” identification of the “Business Type,” and when applicable that Town “WILL PROVIDE ANY ADDITIONAL FORMS AND INFORMATION REGARDING OTHER SPECIFIC REQUIREMENTS TO YOU IN ORDER TO COMPLETE THE LICENSING PROCESS;”

WHEREAS, Section 11-51-90(d) specifically advises municipal business license applicants that “If a business intends to maintain a physical location within the municipality, there are normally zoning and building code approvals required prior to the issuance of a business license;”

WHEREAS, Section 11-51-(d) further advises municipal business license applicants that “The completion and submission of this form does not guarantee the approval or subsequent issuance of a license to do business. Any prerequisites for a particular type and location of the business must be satisfied prior to licensing;”

WHEREAS, the Town Clerk is the Town’s Designee for purposes of administering the Business License Code;

WHEREAS, the Town Clerk investigated the business license application of Cape Group LLC, and pursuant to Section 18 of the Business License Code, the Town Clerk referred the application to the Town Council for a determination of whether such license should or should not be issued;

WHEREAS, pursuant to Resolution No. 08-06-19-01, on August 20, 2019, a public hearing was held on the question of whether the business license requested by Cape Group LLC should or should not be issued, and notice of the public hearing was given to Cape Group LLC;

WHEREAS, at the public hearing on August 20, 2019, Cape Group LLC as given the opportunity to appear personally, or through its counsel, or both, and the Town Council proceeded to hear any evidence presented both for and against the issuance of said license;

WHEREAS, the Business License Location is zoned E-1 Single Family Residential, subject to the limitations of the December 22, 1992, Order of the Circuit Court of Shelby County, Alabama, in *Wyatt, et al. v. City of Pelham*, CV-90-738-NJ (Cir. Ct. Shelby Co., Ala.) (“the Order”);¹

¹ The Town reserves the right to challenge the validity of the Order. However, it is not necessary to do so for purposes of the determination made herein.

WHEREAS, pursuant to Article III, Section 1.1.E. of the Town’s Zoning Ordinance, Ordinance No. 2015-002, “in no case shall there be more than one main building, and one main use of one lot;”

WHEREAS, the Business License Location is located on the same lot as a Marathon gas station;

WHEREAS, the Town has received objections to the business license application from affected neighbors;

WHEREAS, Ordinance No. 2016-003 is the Town’s Erosion and Sedimentation Control Ordinance, the purpose of which is “to protect the health, safety, and general welfare of the citizens of the Town of Indian Springs Village, Alabama through the regulation of non-stormwater discharges to the Town” municipal separate stormwater system (‘MS4’) to the maximum extent practicable as required by federal and state law;”

WHEREAS, the Town Engineer is the person charged with administering, implementing, and enforcing the provisions of the Town’s Erosion and Sedimentation Control Ordinance;

WHEREAS, Ordinance No. 2015-006 sets forth the Town’s Subdivision Regulations, the purpose of which includes mitigating “[t]he impact of development upon adjacent property,” addressing “[c]oncern for the health, safety and welfare of the entire Town,” “[c]oordination with other applicable ordinances and plans,” and to “[r]egulate the development of all property in the Town;”

WHEREAS, the Town Engineer is charged with enforcing the Town’s Subdivision Regulations;

WHEREAS, Article V, Section 8 of the Subdivision Regulations specifies that “All property to be developed in the Town of Indian Springs Village shall comply with these minimum regulations;”

WHEREAS, Article V, Section 5 of the Subdivision Regulations authorize the requirement of “whatever additional engineering information [the Town Engineer] deems necessary to make a decision on subdivisions and other developments which contain an area of questionable drainage;”

WHEREAS, Article IX of the Subdivision Regulations set forth controls for differential runoff and storm water detention;

WHEREAS, Article X of the Subdivision Regulations incorporates by reference the “Pre-Construction and Post-Construction erosion control requirements ... specified in the Storm Water Management Plan” for the Town, which “requirements are applicable to ... the construction of individual commercial or residential properties;”

WHEREAS, the Town Council has received the input and analysis of the Town Engineer with respect to the subject business license application and the related regulatory concerns;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of Indian Springs Village, Alabama, while in regular session on Tuesday, August 20, 2019, at 7:00 p.m. as follows:

1. Having heard all evidence offered by any party and all evidence that was presented bearing upon the question of whether or not to issue the business license requested, the Town Council hereby finds that:

- a. “Parking” is not a permitted use for the applicable zoning, and it is not a “general retail commercial use” as contemplated by the Order;

- b. Cape Group LLC has not submitted a Development Impact Analysis and Mitigation Plan to the Town Council, and therefore, none can be approved;
- c. Cape Group LLC has not submitted a complete site plan to the Town as requested by the Town Council, including the following items that were not provided:
 - i. The use, location, size, and height of all existing and proposed structures on the site.
 - ii. All easements and rights-of-way.
 - iii. The setback and side lines of buildings on adjoining property, and other information concerning the lot or adjacent property as may be required for determining conformance with the provisions of the Town's Zoning Ordinance, Ordinance No. 2015-002.
 - iv. The location and dimensions of all existing and proposed exterior graphic displays.
 - v. Existing and proposed buffers/greenbelts.
 - vi. Topography at two foot intervals, to be checked by the Town Engineer for applicability to flood plain contours.
 - vii. A plan showing the location of necessary fire hydrants with adequate water flow.
 - viii. Existing and proposed exterior lighting.
 - ix. Existing and proposed exterior storage areas.
 - x. Existing and proposed parking and loading areas.
 - xi. Existing and proposed pedestrian walkways.
 - xii. Existing and proposed points of ingress and egress.
 - xiii. Existing and proposed storm drainage facilities; utility easements; and fences.
 - xiv. Existing and proposed site grading.
- d. Cape Group LLC has not submitted the following items that were specifically requested by the Town Council:
 - i. Written certification from the Shelby County Health Department that adequate sewage treatment facilities are available at the proposed site.
 - ii. A statement describing any noise, smoke, gas, vibration, fumes, dust, fire, radio interference, or explosion hazard that may exist upon the property.
 - iii. A statement describing whether the building groups will be architecturally unified.
 - iv. A traffic analysis indicating the estimated effect of the proposed special exception use on adjacent street traffic, including volume flows to and

from the proposed facility, prepared by a registered professional engineer.

- v. A copy of any existing and intended deed restrictions for the subject property.
 - vi. Plans for all permanent storage of material, merchandise, and equipment.
 - vii. Hours of allowed use when commercial delivery, service, or refuse removal trucks may enter the property
- e. Cape Group LLC has not provided for a buffer or greenbelt buffer as required for the Business License Location;
- f. Cape Group LLC has not shown how it would plan to prevent illicit discharges that would violate the Town's MS4 Storm Water Management Program and its Erosion and Sedimentation Control Ordinance as runoff from washing vehicles (other than individual residential car washing and charitable car washing) is not an approved source of non-storm water discharge;
- g. Cape Group LLC has not shown how it would plan to prevent the contamination of the MS4 by sanitary sewage with respect to the handling of the same from RVs, boats, and other deposits on the site;
- h. Cape Group LLC has not shown how it would satisfy the requirements for development set forth in the Town's Subdivision Regulations;
- i. Approval of the proposed business license would violate the regulation set forth in Article III, Section 1.1.E. of the Town's Zoning Ordinance, Ordinance No. 2015-002, that "in no case shall there be more than one main building, and one main use of one lot;"
- j. In order to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the

inhabitants of the Town, the license requested by Cape Group LLC should not be granted.

2. Based upon the findings set forth herein, the Town Council hereby orders that the business license requested by Cape Group LLC should not be issued.

3. Hand Arendall Harrison Sale LLC is hereby authorized to represent the interests of the Town and any and all of its associated departments in any matters related to Cape Group LLC's business license application and/or to pursuing a claim and/or filing suit against Cape Group LLC if it attempts to operate a business at 3127 Cahaba Valley Road, Indian Springs Village, Alabama; to associate such other counsel as may be required to represent the interests of the Town; and to take any and all actions necessary to advance the interests of the Town in relation to the matters described herein, including all stages of litigation, discovery, trial, and appeal. The Mayor and other officers and employees of the Town acting at the direction of the Mayor are hereby authorized to execute any claim forms, pleadings, engagement agreements, waivers, or other documents that may be necessary to preserve the Town's interests relative to the matters described herein.

4. The Town Clerk shall promptly notify the applicant of the Town Council's determinations herein by providing a copy of this Resolution to Cape Group LLC.

5. Pursuant to Section 18 of the Business License Code, if Cape Group LLC desires to appear before the Town Council to show cause why the license requested should be issued, it shall file a written notice with the Town Clerk, said notice to be filed within two (2) weeks from the date of mailing by the Town Clerk of the notice of the denial of the license by the Town Council.

6. The sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared invalid or unconstitutional by a court of competent jurisdiction, then such ruling shall not affect any other paragraphs and sections, since the same would have been enacted by the Town Council without the incorporation of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section. Specifically, the Town Council would have determined that the business license requested by Cape Group LLC should not be issued based upon any one of the findings set forth in Paragraph 1 of this Resolution standing alone.

ADOPTED: This 20th day of August, 2019.

Herb Robins
Council Chairman Pro Tem

ADOPTED: This 20th day of August, 2019.

Brenda Bell-Guercio
Mayor

ATTESTED: This 20th day of August, 2019.

Joan Downs
Town Clerk

Robins made a motion to adopt the resolution as presented, and McClurkin seconded the motion. The vote was unanimous in favor of the adoption of Resolution No. 08-06-19-01.

A motion was made by Stauss to reappoint Joan Downs, Town Clerk, effective August 20th with an increase in salary to her and the assistant part-time clerk Christy DeNard effective on their anniversary dates.

Mayor Bell-Guercio adjourned the meeting at 9:15 pm.

Respectfully submitted,
Joan Downs, Town Clerk

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