The Smithfield Town Council held its regular meeting on Tuesday, September 2, 2025. The meeting was called to order at 6:30 PM.

Members present:

Michael Smith - Mayor
Bill Harris - Vice Mayor
Steve Bowman
Mary Ellen Bebermeyer
Valerie Bulter
Darren Cutler
Jeff Brooks

Members absent:

None

Staff present:

Michael Stallings – Town Manager
William H. Riddick, III – Town Attorney
Lesley King – Town Clerk
Tammie Clary – Community Development & Planning Director
Ed Heide – Director of Public Works
Mark Kluck - Planner II
Judy Winslow – Director of Tourism
Laura Ross – Treasurer
Alonzo Howell – Chief, Smithfield Police Department
Chris Meier – Deputy Chief, Smithfield Police Department
Ashley Rogers – Director of Human Resources
Amy Novak – Director of Parks and Recreation
Steve Clark - Grounds Attendant
Stephanie Kensicki - Assistant Tourism Director
Ava Abbott - Police Officer, Smithfield Police Department
Sam Johnson - Patrol Sargent, Smithfield Police Department
Kate Wahl - Police Officer, Smithfield Police Department
Paul Jones - Senior Police Officer, Smithfield Police Department
Noah Cecil - Police Officer, Smithfield Police Department

Press:
Stephen Faleski - The Smithfield Times Steve Stewart - The Smithfield Times

Citizens:
32

Mayor Smith welcomed all attendees to the meeting and asked all present to stand for the Pledge of Allegiance.

1. Call To Order

Mayor Smith asked all attendees to observe a moment of silence in remembrance of Joseph Luter, III. He expressed his appreciation for what Mr. Luter had done for Smithfield over the years.

2. Pledge Of Allegiance

3. Closed Session Discussion

Councilman Bowman made a motion to defer the closed session until the end of the meeting. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye. The motion passed unanimously.

4. Informational Reports

The Town Manager reported that he would be happy to answer any questions regarding the informational reports from the previous month's activity.

a. Town Manager's Activity Reports

b. Committee Summary Reports

5. Upcoming Meetings And Activities

September 1 -	Town Offices are Closed in Observance of Labor Day
September 2 -	6:30 p.m. - Town Council Meeting
September 9 -	6:30 p.m. - Planning Commission Meeting
September 13 -	6:30 p.m. - Board of Historic and Architectural Review
September 16 -	7:30 p.m. - Board of Zoning Appeals
September 22 -	3:00 p.m. - Town Council Committee Meetings
September 23 -	6:30 p.m. - Special Planning Commission Meeting

NOTE: All of the above public meetings will be held at the Smithfield Center, unless otherwise noted.

6. Presentations

a. Swear-In New Police Officer, Ava Abbott

Chief Howell stated that it was his pleasure to introduce to the Council the newest addition to the Smithfield Police Department, Ava Abbott. He reported that Ms. Abbott was previously an employee at the Middlesex Police Department, having worked in law enforcement for three years.

Lesley King, Town Clerk, completed the swearing-in of Ms. Abbott.

Chief Howell addressed Ms. Abbott, noting that the badge he was presenting her with was a symbol of the public's trust, and encouraged her to hold the code of ethics in high regard. He implored her not to erode the trust of the public and tarnish the badge or the public's relationship with the department.

b. Resolution of Appreciation - Terry Andrews

Mayor Smith invited Mrs. Terry Andrews to the podium. He read a Resolution of Appreciation to Mrs. Andrews in honor of her many years of service to the Town of Smithfield at the Blackwater Regional Library. He wished her well in her retirement.

7. Public Comments

1. Sean Holmer - Mr. Holmer, of 101 Great Oaks Circle in Smithfield, reported that he was present to discuss short-term rentals in the Town of Smithfield. He said that he had been operating a short-term rental in the community for the past two years, but had owned the house at 111 Institute Street since 2018. He explained that having the house as a short-term rental had allowed him to be able to make repairs and updates to the house, adding that he planned to add a fence and front porch railing to the dwelling that matched the characteristics of Historic Downtown. He encouraged any members of the public that had any pictures of the house as it was in 1910 to please let him know as he would like to match the house to its original appearance as much as possible. Mr. Holmer reported that his short-term rental provided the town with tax revenue. He stated that most of the people who rented the house were coming to the town for events and wanted to stay close to what the town had to offer, such as the Farmer's Market. He added that he had renters that utilized his house during the Surry

Power Plant outages, and renters who need a short-term place to stay while looking for their permanent home. Mr. Holmer stated that his purpose in speaking was to give a different perspective regarding the issue of short-term rentals. He encouraged the Council to call or email him if they wanted any additional feedback or information from the owner's perspective.

Councilman Brooks asked Mr. Holmer if he owned any additional units or if the house on Institute Street was his only rental.

Mr. Holmer reported that the home at the Institute was his only rental property, and he had previously lived there as his primary residence.

2. Bob Small - Mr. Small reported that he was present, as he had promised at the last Council meeting, to provide the Council with updates regarding the blighted property at 1502 Magruder Road. He gave the reminder that the owner had retained the services of Davis and Associates to conduct the necessary surveys in order to delineate the Resource Protection Areas (RPAs), the Resource Management Areas (RMAs), and any work with the Smithfield Board of Zoning Appeals (BZA). He stated that the initial survey work had been completed the week prior, with some additional work still needing to be done. He said that the estimated completion time for the delineation of the RPAs and RMAs was sometime before mid-September. Mr. Small gave the reminder that those surveys were necessary in order to begin any work at the property. He expressed that the work was moving forward, and appreciation for the town for working with them to resolve the issue. He noted that he would not be able to attend October's meeting in person, but would submit a written report to be given to the Council.

3. Ginny Soule - Mrs. Soule, of 104 Richmond Avenue in Smithfield, stated that the citizens of Smithfield deserved a full, complete, and transparent report on how the overpayment to the Town Attorney occurred. She requested that the Town Council release a full public report explaining the circumstances of how the overpayment occurred, and what steps were being taken to keep it from happening again. She related that in less than 72 hours; her group had obtained more than 60 signatures on a petition requesting full transparency on the misuse of taxpayer funds. Mrs. Soule gave a copy of the petition to the Town Clerk.

4. Bob Hines - Mr. Hines, of 216 Washington Street in Smithfield, apologized in advance if any of the information he was about to share was incorrect. He said that the recent error concerning the town's compensation of the Town Attorney had resulted in unanswered questions. He related that the most prevalent statement he had seen regarding the issue was from the Town Attorney, Mr. Riddick, as quoted in the Smithfield Times, "Obviously, we, the Council and myself, failed to properly document the change." Mr. Hines reported that citizens wanted to know how and why the error was made. He continued that what he had to say had nothing to do with the increased fee, recognizing that the amount was competitive and fair, but was in regard to the process. He added that he was not suggesting that the move had been underhanded in nature, but he wanted to ask what they knew and when did they know it. Mr. Hines related his personal history of processing invoices for purchases. He said that from what he had read in the Times, some past Council members recalled a conversation in a Town Council Meeting that Mr. Riddick's fee should be adjusted, then consensus was reached, but no vote was taken. He said that maybe that action was considered enough justification to submit new and higher fees. He speculated that perhaps the Council members did not know that a vote and proper documentation was required, adding that Mr. Riddick should have known. Mr. Hines pointed out that the Town Attorney was the constant in the situation as town personnel had changed. He stated that the argument that the protocol had not been known was not good enough, and someone, somewhere saw the increase and paid the higher fee. He said that no one seemed to be willing to step forward and explain just how the situation transpired. He reiterated that the issue was not with the fee, which was fair, but was with transparency and accountability. Mr. Hines acknowledged that if Mr. Riddick's rate had been static from 2008 to 2017, he would have been working too cheaply toward the end of that time period. He additionally pointed out that Mr. Riddick's fee was paid as an hourly contractor, and he received a 1099 form as an independent contractor. He said that due to those actions, the issue should not have been handled as a personnel matter in a closed session, but rather as any other contractor for the public to be able to participate in an open council meeting. He requested that whatever video, audio, or other media from the two meetings regarding the issue be released to the public on the town site. He said that citizens wanted the unedited recordings and not some filtered verbiage from the Mayor or any Council member. He said that if there was a legal problem with that request, then a statute must be cited. Mr. Hines reported that in the not too distant past, many of the current Council members were sitting in the audience and would be questioning a 6 to 1 vote with no public explanatory statement. He read the following from a recent Times Editorial in

regard to the Town Council voting to seek outside legal advice: "The current Town Council majority, whose members ran and were elected overwhelmingly on a platform of transparency, has passed its first test and met the moment. We're confident that taxpayers will soon get the answers they deserve." Mr. Hines recognized that the whole issue may be "much ado about nothing," but since the issue was in the open, the taxpayers and citizens needed to be made aware and offer clarification. He said this issue was not the same as the issue with 60-foot-high structures or traffic related to the Pierceville property.

8. Council Comments

Vice Mayor Harris thanked Mr. Hines and all other speakers who had raised questions. He said that when transparency was discussed, it seemed that it was a term used to describe a process and a behavior. He said that in the last two weeks, transparency has become an item that was timed. He explained that in order for the Town Council to complete their due diligence and come to conclusions that were shareable and not misrepresentations, it would take a little time. He continued that the two Closed Sessions that had been referenced, notably in the previous two days, happened within a week. He reported that the last was held on the previous Friday, which was one business day prior to the Council meeting they were all at. Vice Mayor Harris requested that they allow the Council to be as transparent as they had promised to be, and they would do their best to give information across the board. He related that in the previous week he had two very interesting questions asked to him: what the fourth estate was and were all the issues the fault of the newspaper. In answering the first, he explained that in the 1790s in England, society was divided into states: royals, the church, and commoners. He continued that in Edinburgh there was another group that played an important role in a democratic republic, which was the press. He said that the interpretation of what information was in the newspaper was personal to the reader, and the information was processed through the reader's perspective. He said free society must be served by a press that was not afraid to shine a light on areas that all people needed to consider. Vice Mayor Harris detailed that on August 25th there was a closed session in which most of the Town Council members were present and participated. He noted that the Mayor was absent from the meeting due to a personal matter. He reported that the session had been the first where the Council had enacted new guidelines for Closed Session meetings. He stated that the Council would not ever go into a closed meeting again without the Town Manager reading the purpose of the Closed Session and then reconsidering whether the item merits the Closed Session. He continued that on August 25th not one of the Council members had questioned the need to go into Closed Session. Vice Mayor Harris stated that for two hours they discussed the controversy regarding the payment of the Town Attorney, with much of what was said relating to the difference between "intent" and "impact." He related that they had asked the Town Manager to shed light on what had happened on the Town side of the procedure, and he had been quite frank in his responses. He noted that the Town Manager had taken full responsibility for the mismanagement and lack of oversight in the management of contracts. He stated that there was nothing of concrete value in past information about the town's operations, and in the case of the Town Attorney, there was only one existing contract with no other written, provable, formal approvals. He said that the Town Council was looking at the best way to address the staff and ensure that this issue did not arise again. Vice Mayor Harris stated that he personally came away from the conversation believing that the best approach to dealing with the controversy was to focus their efforts on a corrective, not punitive, policy. He related that at the end of the two-hour discussion, the Council concluded that there had been gross mismanagement and lax oversight regarding the increase in fees to the Town Attorney. He continued that the Council determined to proceed with new policy and procedures which they were in the process of considering. He stated that there was much work to be done related to contract writing and consideration. Vice Mayor Harris reported that they had spoken with the Town Attorney, and acknowledged that the Town Attorney had not been present and could not answer their questions directly. He said that they concluded that they should offer the Town Attorney the opportunity to come and speak with them directly. He recognized that the Council members were not legal experts, nor were they an investigative body, and as such they had agreed to have Town Management hire an outside attorney to provide guidance and legal advice. He reported that he had personally asked every member of the Council if they believed that there was any evidence of malfeasance, illegal activity, or attempt to defraud, to which all stated that there was not one person who felt that way. Vice Mayor Harris then detailed that at the next Closed Session, with Mayor Smith present, they agreed it was the appropriate setting to proceed with further investigation. He reported that they had been joined by Ms. Alejandro, from a legal firm in Richmond, who was familiar with contract law and negotiations. He continued that the first part of the session had the Town Attorney in attendance as well to share his perspective. He stated that the Town Attorney and Ms. Alejandro engaged in an in-depth, legally-based conversation. He emphasized that Ms. Alejandro repeated that the biggest problems present were misunderstanding, mismanagement, lack of oversight, poor policies, poor procedures, and a lack of leadership. He added that the organization had been hampered by the change in leadership a number of times over the years. He stated that though Ms. Alejandro reported no illegal activity or attempts to defraud the Town and did not exonerate, nor offer any excuses for the Town Attorney. Vice Mayor Harris stated that it had been a concern of the citizens that the way the fee increases were enacted suggested that taxpayer money was mismanaged, which may hold some truth. He said that many people had stated that they should seek to make public money "whole." He testified that almost the very first words from the Town Attorney was a volunteer statement to write a check covering the difference in monies. He noted that Ms. Alejandro stated that, legally, the Town Attorney would only be obligated to pay any overages since 2024 due to the statute of limitations. He said that the Council had asked the Town Manager to look at the different levels of outstanding monies needed in order to make it right. He said that he was sharing the information because he felt it was important for the public to know. Vice Mayor Harris reported that the motion made by Councilman Bowman once they had returned to open session was largely based on the advice given to them by the outside attorney. He detailed that the motion was to write a new contract for the Town Attorney and turn that information over to Ms. Alejandro and her firm in Richmond, so the contract would be extremely specific, a one-year contract, and they would adjust the salary to a fair market value. He said that prior to the vote, the Council made certain that after reviewing the contract there was nothing that would prevent their putting different stipulations, requirements, or metrics of behavior. Vice Mayor Harris stated that transparency was a process and did not happen overnight.

Councilman Cutler related his personal history as a nuclear machinist, then a submarine officer, and then transferred to medicine. He said as part of his job he participated in a lot of fact-finding and critiques. He noted that critiques in that line of work were intensive meetings that identified who was responsible for an issue and how to correct the root cause to be able to restore confidence in the ability to execute the mission. Councilman Cutler stated that he had spent a lot of time sharing and discussing his feelings on the subject with other Council members. He said it was straightforward that the deviation from the contracted amount to the billed amount and the approval method utilized were the root causes. He said that the law was clear, as demonstrated by Ms. Alejandro, that the Council must vote to raise the pay. He continued that with the proper billing statements; there never would have been a problem. He said that if there had been proper adherence to the contract and utilization of methods for increased compensation in accordance with state code, then there would never have been a problem. Mr. Cutler reported that they had covered transparency at length, and they should be doing like Chief Howell said earlier: doing the right thing even when no one is looking. He quoted Admiral Rickover as saying, "You get what you inspect, not what you expect," and "Responsibility is a unique concept. You may share it with others, but your portion is not diminished. If responsibility is rightfully yours, no evasion or ignorance or passing the blame can shift the burden to someone else." He related that elements of transparency could be thought of in the same manner. Councilman Cutler thanked the Smithfield Times directly for their efforts to bring transparency to the issue. He observed that he had caught some flak, which was fine as neither he nor the Times minded. He stated that no Council members ever saw the bills of filling rate in print from the Town Attorney or the Town Manager leading up to the release of the story. He said that only a billing summary was requested from the treasurer and used for the evaluations that had not been completed in years. He continued that the request did not include the hourly rate and the contract in place at the time was the only thing provided as a mechanism of employment. He detailed the information that was pulled on their direct reports, but they did not have the same things for the Town Attorney. He said that for the Town Attorney, the contract and the summary of billing were all that the Council had to conduct their evaluation and was where his own information requests ended. He said that the media invoked the Freedom of Information Act (FOIA) and read it as: "The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government." Councilman Cuter reported that the Smithfield Times brought transparency to an issue that only a single individual in the Town Staff was aware of until the Town Manager pulled the contract. He said that until the Smithfield Times reached out to the Council, only a select few knew the story, FOIA requests, or the billing problem before being revealed by the Times. He said that there was plenty of time to act and be transparent before the release of the story, and the subsequent sensationalization and finger pointing on social media. Councilman Cutler stated that the Town Manager had become a little bit of a scapegoat for the problem, but he was an excellent Town Manager. He stated that the Town Manager had been advised by the legal services provided by the Town Council. He wagered that the reputation of the Town Attorney as well as the confidence of a

Council that had kept the same Town Attorney for over 30 years without questioning the billing or contract, etc., had instilled in the Town Manager a level of trust in the Town Attorney that made him feel that he didn't need to question the billing or changes. He quoted from the Town Code: "It shall be the duty of the Town Attorney to draft all bonds, deeds, obligations, and contracts, etc. which may be required of him by any ordinance or order of the Council which, by law, usage, or agreement, should be drawn by the Town." He said that there was much to blame for the issue, however the root cause was the lack of knowledge of the contract itself. Councilman Cutler stated that the Town had been audited since 2008 and not a single audit pulled that specific contract. He reviewed that only one Council member from 2018 had acknowledged to the paper knowledge of the rate increase made that year. He said that the Council had a level of trust so high that they revolted to renew the contract prior to resolving the issue by invoking a 2018 discussion of raising rates as a validation for the change, and then validating a non-transparent arrangement. He invoked the phrase "trust, but verify," and said that the fault was lacking verification in exchange for trust and lacking awareness of the contract until the 2025 evaluation cycle. He quoted James Madison as saying: "The truth was that all men having power ought to be distrusted in a certain degree." Councilman Cutler questioned what the citizens had lost in the process, and quoted from a book by James Harris "ethical transgressions, such as acts of commission and acts of omission, the former is treated much more harshly than the latter in society." He said that Mr. Harris wrote about government: "Most of us are painfully aware that our trust in government, corporations, and other public institutions have been undermined by lies." He said that the writer was alluding to the fragility of the public's trust, and continued to read from his writings. He recognized that they had determined that no malicious intent had occurred, but added that the citizens of Smithfield may lose public trust. He noted that the public had lost the ability to consider the marketplace and other services available. He said that despite the confidence that the Town Council displayed in retaining the Town Attorney, the firm was not without responsibility and required accountability. He summarized that the contract had been in existence since 2008, with one individual particularly aware of it, and since the 2024 pay increase. He said that the contract was with the Town Council, and hired at the pleasure of the Town Council; however, it was with the citizens of Smithfield. Councilman Cutler said that he would make motions in New Business on the agenda to take 100% accountability for all payments contrary to the 2008 contact. He said that Ms. Alejandro had said that the law would support that action, and an informal raise was not in accordance with the state and Virginia Code. He said it was within their right and recoverable by state law to the statute of limitations. He said that Ms. Alejandro would not advise on the action but would advise on the outcome of their decision-making. Ms. Alejandro stated that the corrections were not taken in 2018 or 2024. He noted that Ms. Alejandro said that there was nothing stopping the firm from paying back any overpayment or making overpayment a condition of contract renewal. He said a breach of contract with the citizens of Smithfield required full accounting, external audit, balancing of the books, and making the citizens whole.

Mayor Smith confirmed that there were no other Council members who wished to comment.

9. Consent Agenda Items

Councilwoman Butler made a motion to approve C(a) through C(e) on the Consent Agenda. Councilman Brooks seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye.

a. Motion to Amend the Town's Pay and Classification Plan
Finance Committee Chair, Jeff Brooks

b. Resolution to Appropriate Funds to the 2025/2026 General Fund Operating Budget for Vehicle Purchase
Finance Committee Chair, Jeff Brooks

c. Invoices Over $20,000 Requiring Council Authorization:
Finance Committee Chair, Jeff Brooks

i. The Peterbuilt Store - New Public Works Truck $129,324.00

ii. The Blair Brothers, Inc. - Sykes Court Paving $ 41,450.00

d. Resolution to Accept St, Andrews, Royal Blackheath, Ayrshire Loop and St. Annes located in Cypress Creek Phase 6 into the Town's Maintenance System for Funding
Public Works Committee Chair, Bill Harris

e. Motion to Accept the Proffer Amendment for Battery Park Storage
Public Buildings and Welfare Committee Chair, Valerie Butler

10. Action Items

a. PUBLIC HEARING: Conditional Rezoning and Special Use Permit - The Promontory
Tammie Clary, Director of Community Development and Planning

Tammie Clary, Community Development and Planning Director, reported that the applicant was seeking a conditional rezoning to Planned Mix Use Development (PMUD) to facilitate the construction of 5 commercial lots, future commercial area, 107 single-family detached units, 103 single-family-attached units (67 villa units, 36 townhouse units) a maximum of 210 units in total, and 22.93 acres of open space. She stated that the project would be phased, starting with the commercial sites. She observed that the road beside Tractor Supply was planned to be extended, with a network of public roads, connecting to Cypress Run Drive and Turner Drive. Mrs. Clary reported that in order to facilitate this project, the applicants had applied for the following:

Conditional Official Zoning Map Amendment (Rezoning):
The uses the applicant is proposing (attached and detached units, fast food restaurant, car wash, restaurant, drive-in bank) are permissible in the Planned Mixed Use Development District (PMUD). These uses are also in line with the Future Land Use Map, as the current designations are Residential Mixed Use and Corridor Mixed Use, which provide for primary residential uses and primary mixed commercial / multifamily residential uses.

1st Special Use Permit- Article 3.J2.C.7: Drive-thru facilities.
The applicant is requesting flexibility to utilize drive-thru facilities on all 5 commercial parcels, with the current plan of a drive-in bank and fast-food restaurant with a drive-thru window.

2nd Special Use Permit- C.20: Waiver of yard requirements for reduced setbacks:

Townhouse:	Villa:	SFD:	Required:
Front 25’/20’	Front 25’/20’	Front: 25’	Front 35’
Side 10’	Side 12’	Side: 10’	Side 15’
Rear 25’	Rear 25’	Rear: 25’	Rear 35’

Mrs. Clary continued that the amenities would include the items depicted on L11- L15: signage, multipurpose lawns, grill area, waterfront deck, fishing outpost, native plantings, seating nook, tot lot, seating with open views to the lake, trails, firepit, picnic pergola with tables and benches, Adirondack chairs, and sand beach. She noted that the applicants added a dog park with play equipment. She stated that the applicants would appoint a property owners association that would be responsible for the maintenance and upkeep of the following: (i) all open space, common areas, and other amenities noted in the Conceptual Plan; (ii) all stormwater management infrastructure, including “wet” stormwater management infrastructure, specifically the best management practices; and (iii) landscaped buffer areas, as shown in the Conceptual Plan. She detailed that the applicants were proffering the following road improvements:

1. Southbound right-turn lane (100-foot storage plus 200-foot taper) into right in/right out proposed Project entrance off of US 258/Rt. 10 (Benns Church Boulevard) designated as Public Road A on the Conceptual Plan and currently serving as an entrance to the existing Tractor Supply;
2. Southbound right-turn lane (100-foot storage plus 200-foot taper) into right in/right out proposed Project entrance off of US 258/Rt. 10 (Benns Church Boulevard) designated as Public Road J on the Conceptual Plan (in between Turner Dr & Tractor Supply); and
3. A conditional payment of $1,000,000.00 toward the construction of the roundabout at Turner Drive.

She stated that in addition to those proffers, the applicants were proffering a conditional cash proffer to Isle of Wight County Schools if they are over enrollment capacity at SMS at the time of CO issuance. Finally, no more than 60 zoning permits will be issued in a 12 consecutive month period for the residential units. Mrs. Clary reviewed that the application was favorably recommended to Town Council at the July Planning Commission. She reported that the applicants were in attendance with a prepared presentation.

Kent Henry of 3122 West Marshall Street in Richmond, stated the presentation he was going to show them detailed the revisions that had been made to the package since the last time he was present. He began by displaying the updated General Development Plan, commercial at the front and townhouses directly behind. He reported that the number of townhouses had been reduced to 36, which decreased their density. He observed the proposed townhouses complied with the existing building height code for the Town of Smithfield, meaning there was no waiver request necessary. He continued that the villas were also behind the commercial area, with the developer having broken up some of the villas into duplexes. He specified that the number of villas had decreased by an additional 10 or so to a total of 67. Mr. Henry said that they had reimagined the single-family lots by making some of them larger to stay in substantial conformance with the plans submitted. He reported that the density had been lowered to 107 single-family units. He noted that when they were working on the newest iteration of the product, they matched it to the Smithfield Zoning Ordinance, specifically that their attached product matched the Attached Residential (AR) zoning density requirements, and the single-family detached matched the Suburban Residential (SR) Cluster Subdivision.

Mr. Henry listed the high-level revisions as follows: Reduced density to 210 units; No waiver requested for reduced buffer and keeping the 50' buffer on the property line; Single-family Detached matches SR-Cluster district setbacks and density; Single Family Attached (SFA) matches AR district setbacks and density; VDOT approval on TIA consistency memo, Larger entry park and creation of a dog park. He reviewed the two SUP Requests and the continued plan to allow a sewer tie-in for the church, allowing them to connect to the public sewer. He reviewed the phasing plan that was discussed in the Staff Report and gave an overview of where the amenities were located on the project site map. He next summarized the Traffic Plan information and the decrease in school impacts due to the decrease in density. Mr. Henry emphasized that the developer was only able to proffer for impacts specifically attributable to their development. He stated that they had received a letter from Isle of Wight County Schools dated 12/13/2024 that reported that Smithfield Middle School would exceed capacity when future development was added, and noted that they had addressed the issue in their proffer statement. He related that due to the changes in density, the fiscal impacts had been updated. Mr. Henry reviewed the notable proffers including: pattern book for architectural and landscape standards, amenities to match conceptual plans, construction of two turn lanes, conditional $1 million payment for the construction of the roundabout on Turner Drive, conditional payment to the public school if Smithfield Middle School was over capacity at the time of Certificate of Occupancy (CO) issuance, commercial parcels to be developed first, and the prohibition of piers or docks on Cypress Creek.

Mayor Smith asked if the Council had any questions.

Councilman Cutler shared with the Council members information compiled by Town Staff that included growth-rate data in the area. He noted that there were no growth rates included on the report, but there was the statement that new population growth of about 3,000 people was expected to take place over 10 years, or 3.3% annually. He observed that the presentation given had reported a cash flow for the Town of about $250,000.00 annually, but he did not feel that information captured the cost of growth of services from all the development. He pointed out that in the Tishler Bice study, the County was in the red at a rate of growth of 2% annually and would be forced to raise taxes strictly because of numerical growth. He said that based on the numbers presented, the Town was already edging up to the 2% growth rate without approving new development. He questioned if the Promontory even needed to be built. Councilman Cutler said to Mr. Henry t that their product looked great, but he disagreed with the setbacks SUP. He asked Staff and the developer to tell him what was good about the project.

Mr. Henry observed that in the developers Fiscal Impact Analysis, the methodology utilized a marginal analysis, explaining that it was specifically their incremental effect on the Town's operations. He said that the other developments that Councilman Cutler had mentioned, namely Mallory Pointe, had also completed their own Fiscal Impact statements. He reported that the property in question was beautiful, and one of the last large properties in Smithfield to be developed. He added that the proposed development would be in the commercial corridor of Benns Church Boulevard which had allowed them to include 5 commercial parcels that were needed in the Town of Smithfield. He repeated the road improvements that would be completed as a result of the development. He stated that the residential parcels helped to offset the costs associated with bringing the commercial areas online. Mr. Henry reported that they offered a great mix of products, including attainable housing for young adults and housing appropriate for aging adults. He said that they were the right developer to complete a project on that property.

The Town Attorney reminded Mayor Smith that the developer had their opportunity to make his presentation, and the next step generally was to have the public hearing with Council engaging with the developer after.

Mayor Smith opened the public hearing, reporting that there were three people signed up to comment.

Tanya Harwell - Mrs. Harwell of 224 Smith Drive in Smithfield stated that she wanted to speak about her daughter with Prader-Willi syndrome and the challenges associated with that diagnosis.

Mayor Smith confirmed with Mrs. Harwell that the public hearing was not in regard to accessory structures.

Renee Bevan - Mrs. Bevan of 101 Beale Avenue in Smithfield reported that she wanted to offer tentative support for the proposed development, The Promontory. She specified that her support was tentative due to her belief that the developer needed to submit a plan that conformed with the Town's existing zoning laws. She stated that considering that there was a request to change the land use from Community Conservation (CC) to PMUD, the builder should have had no problem meeting the setback requirements and there was no reason to approve the requested SUP related to setbacks. She continued that if compliance with the Town's setbacks resulted in fewer homes and lower density, then the Town's laws were effective. Mrs. Bevan continued that the developer should be more specific on the proffered amenities, and quoted from page L8 that amenities "may include the following," and she asserted that it should be changed to "shall." She asked the Council to ensure that the amenities were included on the site plan so that there was not a repeat of the issues had at Cypress Creek. Mrs. Bevan told Mr. Henry that she had been pleased to see that the developer had increased the buffer size. She gave the reminder that 4 of the current Council members had campaigned on a platform of "Managed Growth," and managed growth meant compliance with the Town's zoning laws.

Bob Thornton - Mr. Thornton of 3752 Little Neck Point in Virginia Beach reported that he had been hired by the landowner of the property that included the 5 commercial parcels in order to market them. He stated that they previously had been successful in bringing Tractor Supply to site. He recalled that at the time that the business was being constructed, the road perpendicular to the site was all that they could get VDOT to review. He detailed that he had been working on the marketing for the other 5 commercial parcels for the last 10 years. He stated that there was now a bank committed to the parcel on the corner of Benn's Church and Turner Drive, and it was a bank that was local to Smithfield. Mr. Thornton reported that there were many fast food establishments interested in the site, but they could not sell the commercial parcels without access to the site. He pointed out that there was only one access point to the development past the Tractor Supply to be able to serve the other 5 parcels. He emphasized that having an access point in the back of the property was critical to marketing the commercial parcels. He said that without the creation of the roundabout or the infrastructure support that the residential area would provide, he did not think that the commercial parcels were viable. He suggested that the Council give serious consideration to the project.

Mayor Smith asked if there was anyone else who wished to speak on the matter. Hearing and seeing none, he closed the public hearing.

Councilman Cutler asked Mr. Henry to specify what the change was with regard to the buffer.

Mr. Henry recalled that the issue had been a sticking point as they went through the Planning Commission review process. He stated that they brought the buffer up to the existing PMUD standards as outlined in the Town Code. He reported that the setbacks in the PMUD did not differentiate between the different types of residential products. He related that the current iteration of the project included larger lots and shifting houses to other locations on the property to allow for the park at the front entrance.

Councilman Cutler asked why the developer did not choose to apply for zoning that they could match the setbacks to.

Mr. Henry reported that when the development team had first met with the Town in 2022 or 2023, the PMUD designation made sense for this particular project, and stated that it still did. He said that the AR and SR Cluster densities chosen from the Town Codes allowed them to support public infrastructure.

Councilman Cutler reported that he was still in talks with the School Board Chairman about the issue of school proffers. He reviewed that when he and Councilman Brooks attended the legislative summary conference, an issue discussed was proffer requirements. He said that the attorneys from Sands Anderson stated that if the County was in the process of modifying their proffer rules, even if the project was already submitted but not approved and the proffer rules changed, then they would still need to adhere to those proffer rules. He said that he did not know if that information was correct, but it was what had been reported to them by the attorneys at that event, which was hosted by the Virginia Municipal League.

Vice Mayor Harris asked Councilman Cutler what he was suggesting in relation to the project they were currently discussing.

Councilman Cutler suggested that they table the matter for a long period of time. He stated that it would be risky governance of the Town Council for them to not understand the growth rate that was taking place in the Town with consideration of what had already been approved in Smithfield and the perils that the County was facing based on their numerical growth rate. He added that there needed to be an assessment for the Town in order for them to understand what their growth rate was and how it would affect their taxes. He continued that by tabling the matter, they would allow time for the County to fix the proffer system in order to allow the conditional proffer to become non-conditional.

The Town Attorney reported that action was not possible. He explained that the Town Council could not ask for a proffer.

Councilman Cutler stated that no one was asking for a proffer.

The Town Attorney said that the County could not fix their proffer system due to the fact that there was not a proffer system. He stated that the County could amend their Capital Improvement Plan, but there was not a proffer system.

Councilman Cutler stated that he was speaking in plain language.

The Town Attorney said that they needed to speak in very specific language due to the nature of the issue. He reported that he had spoken with the County Attorney on the issue as well, and it came back to the point that localities were not permitted to ask for proffers and were not permitted to accept proffers unless there were capital items identified in their Capital Improvement Plan. He added that the impact must be specifically attributable to the particular development. He acknowledged that the Town could not demand anything, but it would allow the developer to change the manner of the offer from conditional to non-conditional.

Councilman Cutler stated that he understood what the Town Attorney was saying, but noted that if the Council tabled the issue long enough and if the County amended their Capital Improvement Plan, then it would change the offer that the developer could make, per what the developer's attorney had stated at a prior meeting.

The Town Attorney stated that he would let the developer's attorney address the issue, as he did not want to speak for them.

Tyler Rose, Attorney with the law firm Williams Mullen, explained that there was a distinction in the world of proffers and the statute was pretty specific in the case of residential developments like the Promontory. He stated that there was a general cash proffer statute that related to cash proffers related to non-residential developments and Capital Improvement Plan projects. He reported that there was a more specific statute, 15.2230.4, that related to residential developments — specifically on-site and off-site proffers. Mr. Rose stated that the definition of off-site proffers included a general concept of cash proffers and did not have the Capital Improvement Plan concept either. He emphasized that the proffer related to residential developments needed to be specifically attributable to the development. He stated that the public facilities concept included public schools. Mr. Rose said that the Capital Improvement Plan concept that they were discussing was different than the residential development statute that they were dealing with in the matter. He stated that the developer was limited to the proffers that they were allowed to provide and was limited to the developers' specific impacts to public facilities, including public schools. Mr. Rose said that whether the County admitted the Capital Improvement Plan projects related to other infrastructure, the more specific statute related to public schools would take precedence over the more general statute. He explained that the reason why the development team was trying to offer more flexibility in the proffers was due to the numbers they were receiving were not as specific as they would have liked. He said that the way the proffer was written allowed them to address the developments specific impact to that Smithfield Middle School, which was the only school identified as being impacted.

Councilman Cutler recalled that when Mr. Rose addressed the issue prior he had said that if the School Board and the County's documents they had used to guide their writing were written differently or more appropriately than that would change what could be proposed.

Mr. Rose said that he did not recall saying that, and the explanation he had just given was how he had always interpreted the statute. He apologized if he had created confusion, but they were limited to the specific statute related to the issue.

Councilman Cutler stated that his point in bringing the issue up was that if the County made changes pursuant to those specific statutes that allowed a change, then that could be pursued while the project was not approved.

The Town Attorney reported that it could not. He said what Mr. Rose was trying to explain was that their development only impacted Smithfield Middle School, and they could not offer money for "schools" when they had no reported impact on other schools. He said that if the County amended their plan, and included other schools that were not directly impacted by their specific project, the Promontory, then they could not offer money towards schools that were not impacted. The Town Attorney gave the reminder that they had been discussing the contingent proffer for months, and it had been sent to the County Attorney for his review. He noted that the County was bound by State Law.

Councilman Cutler said that per a previous discussion they had, the Town Attorney had indicated that if the documentation regarding the process was changed at the County, then it could change what was possible.

The Town Attorney said it did not. He asserted that the developer could not offer money for impacts to schools that they have no impact on. He pointed out that the developer was offering money for the schools that they would impact, which was all they could do.

Councilman Cutler said that he and the Town Attorney could discuss the issue later.

The Town Attorney said that Councilman Cutler had raised the issue at a public meeting.

Councilman Cutler said that he did not think he would be able to refine his question further, but he would be happy to discuss the issue further at a later point. He recommended that they table the project to assess the Town's growth rate.

Councilman Bowman said that he understood Councilman Cutler's statement, and acknowledged that he had his own idea of what he thought was appropriate growth for the Town as far as taxation went. He expressed concern if the Council was going to be put in the position that they were holding a process to see what might come and even when, or if, it did occur, it might not be applicable to the project in question.

Councilwoman Bebermeyer asked how the conditional proffers would work, specifically at what point they would be applied.

Mr. Rose stated that the statutes read that proffers could only be offered to address impacts that were applicable at the time that the project was approved. He said currently, the numbers that were being reported did not show an impact due to number fluctuations. He said that there was the potential for impact now, but if in the future overcapacity was projected at Smithfield Middle School, then the developer would pay in accordance to what the numbers reflected.

Councilwoman Bebermeyer asked who made that decision.

Mr. Henry said it would be through the issuance of the Certificate of Occupancy (CO). The Town

Attorney observed that information was written in the proffer.

The Town Manager clarified that if the schools identified that they were at capacity, then the Town would not issue a CO until that proffer was honored.

Councilwoman Bebermeyer confirmed that the townhouses were 3-story, and the villas were 2-story.

Mr. Henry added that though the townhouses were 3-story, they were within the existing height requirement.

Councilwoman Bebermeyer related that she had made her disdain for townhouses very well known. She expressed appreciation that the proposed townhouses were within the height requirement and the developer was not asking for an SUP in that regard.

Mr. Henry added that the villas were 2-stories, but the primary living area was on the first floor, which allowed for aging in place.

Councilwoman Bebermeyer confirmed with Mr. Henry that the developer had also decreased the number of townhouses, and that Cypress Run Drive would become a town-owned road. She reviewed the other planned entrances into the development. She asked Mr. Henry to discuss pedestrian access in the development.

Mr. Henry reported that there were sidewalks on both sides of the road within the development and a trail system through the RPA that tied into them. He added that on the public roads there were sidewalks down one side. He noted that in the commercial area there would likely be sidewalks, but how it would look would depend on the tenant as those site plans came forward.

Councilwoman Bebermeyer asked Mr. Henry to address the issue raised by Mrs. Bevan on the use of "may" in regard to the amenities.

Mr. Henry pointed out that in the proffer statement, item 5 reads: "the project shall provide the amenities as shown on the conceptual plan and contemplated on sheets L11 through L15." He said that the developer specifically referenced the Master Plan and Amenity Overview, as well on each individual page in the range given.

The Town Attorney said that he had also spoken with Mrs. Clary on the subject raised by Mrs. Bevan. He explained that the proffers used "shall."

Councilwoman Bebermeyer asked Mrs. Clary whether the proposed pump station on the project would service that entire area.

Mrs. Clary clarified that the area would be serviced by Isle of Wight County for their water and sewer utilities.

Councilwoman Butler asked Councilwoman Bebermeyer the reason she did not like townhouses, and asked Mr. Henry if he could then explain why they had chosen to include townhouses in their project.

Mr. Henry explained that townhouses allowed the developer to deliver attainable housing, and it was their lowest price point given the density that they were able to utilize. He said that they had placed that density internally in the plan, and reiterated that they were within the Town required building height. He acknowledged that townhomes weren't for everyone, but it allowed a first-time home buyer an opportunity to own a house. He reported that on July 24th he researched homes in Isle of Wight County that had 1750 square feet or more. He said that the results were 18 homes on the market that were under $500,000. He specified that the average year those homes were built was 2002 and the average price was $435,000. Mr. Henry stated that their townhome product offered buyers who were looking at those houses newer, quality construction at a price that was attainable.

Councilwoman Bebermeyer reported that her issues with townhouses were that they were not attractive and had the appearance of a large wall. She noted that one thing she did like about the project was the commercial aspect and said that the property was the perfect place for it. She recalled that for years many had said that Smithfield needed to be a walkable town, and she felt that the proposed project was just that. She recognized her issues with the density; however, she felt that it was important to note that it was walkable to the places that people would want to walk to, for example, the bank or grocery store.

Vice Mayor Harris reported that it had taken a while for him to lean toward approval for the Promontory. He recalled back to Mrs. Bevans comments and said that he was one of the Council members who had run on a platform of managed growth. He stated that in working with Mr. Henry, he felt that the project had given them an opportunity to do exactly that: manage the growth. He pointed out that the original number submitted had been lessened significantly, giving credit to Mr. Henry and the development team and were open to suggestions given by the Planning Commission and Town Council. He pointed out that the developer had revised the plan no less than 5 times, and had returned each time with a reflection of what they had requested. He noted that the plan for the Promontory was very similar when compared with the vision for the town outlined in the Comprehensive Plan. Vice Mayor Harris related that the increased walkability in the area would also decrease the number of cars on the road. He emphasized that the builder was shouldering the expense of virtually everything that was important to the infrastructure needed and that was one aspect that had led him to support the project. He additionally noted that their allowance of Hope Presbyterian Church to tap into their line, allowing access to public utilities, showed him that they were interested in be part of their community. He continued that their reworking the buffer to get rid of the SUP, making larger lots, and decreasing the number of homes were all good things. Vice Mayor Harris asserted that generally, he did not think that SUPs were in order if their sole purpose was to increase density and increase profit for the developer. He pointed out that he had said on a number of occasions that he would consider SUPs if they seemed to bring benefit to the town. He reviewed the two SUPs requested, and related that the request for drive-thrus in the commercial parcels was no problem; however, the second SUP regarding the setbacks had bothered him a great deal. He said that they had approached the developer about breaking the property zoning into sections and not under a PMUD, but apparently that was not possible. He related that he had learned to embrace the issue because the setbacks presented were within the AR and SR requirements for those specific areas, but they did not find them within the PMUD designation. He said that it present as silly, and speculated that maybe they needed to consider rewriting the zoning. Vice Mayor Harris summarized that the SUP for yard setbacks was not a big issue, and the proposed development had potential to bring good to that part of the town. He said for those reasons he was in favor of approval.

Councilman Cutler asked Mr. Henry how many cars the TIA had estimated would be added due to the project.

Devin Simpson, representative of Kimley-Horn, reported that she had been responsible for the Traffic Impact Analysis (TIA) for both the Benn's Church Master TIA and the consistency memo. She asked Councilman Cutler if he was referencing the development as a whole, meaning that he was including commercial and residential.

Councilman Cutler stated that was correct.

Mrs. Simpson said that roughly combined the number was about 350, or a little under, during the peak hour.

Councilman Cutler asked if that number took into account the walkability of the area.

Mrs. Simpson reported that it did not, adding that the decision to be conservative came about when they were completing the Benn's Church Master TIA. She clarified that it was their hope that walkability would decrease the number of cars on the road, but they did not want to be too conservative in their assumption.

Councilman Cutler noted that the walkability would be dependent on weather, etc., and asked for confirmation that there would be a net increase in traffic.

Mrs. Simpson acknowledged that was correct.

Councilman Cutler reported that they had discussed in Closed Session the legality on changing the zoning, and they had learned that it was possible. He asked the Town Manager how much the town's payment was for the roundabout at Turner Drive.

The Town Manager reported that town had agreed to a contribution of just under $1 million, or $982,000; however, it was all associated with the parcels across the street from that area.

Councilman Cutler asked if the building of the Promontory relieved any payment the town had toward that amount.

The Town Manager confirmed that it did not, as the developer's contribution had already been factored in when that amount was agreed upon.

Councilman Cutler asked Mr. Henry if there were 5 businesses lined up for the commercial parcels.

Mr. Henry reported that they had 2 currently, but no letters of intent had been signed since the zoning was not in place.

Councilman Cutler asked if they were advertising to any local business or was it only open to national businesses.

Mr. Henry stated that they were advertising to anyone who wanted to come.

Councilman Cutler referenced the growth data given, and noted that the developer's financials showed that the town would have a surplus of $250,000 annually.

Mr. Henry reported it was a marginal analysis for the addition of their project.

Councilman Cutler observed that the town had approved and considered with the Grange and the Promontory about 3,000 citizens coming into town over the next 10 years. He asked the Town Manager if he could speak to how that would affect the police and the fire department, what additional services would need to be provided, and what the consequences of the additional growth to what had already been approved could be.

The Town Manager reported that it was an aggressive estimate to think that all 3,000 people would be in Smithfield in 10 years, and that estimate was using an audacious build-out timeline. He stated that the impacts that would occur included the increase in police personnel, as the ratio was generally 1 officer to 500 citizens. He noted that the revenue from the additional homes was what generally gave the ability to pay for the additional personnel. He said that beyond that, impact would be to level of service as fire, EMS, and schools were all provided by the County.

Councilman Cutler asked if the town would inherit the streets from the development.

The Town Manager stated that was correct, adding that the town would then receive reimbursement from VDOT per lane mile. Vice Mayor Harris made a motion to approve the conditional rezoning and SUP for the Promontory. Councilman Bowman seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilman Bowman voted aye, Councilwoman Butler voted aye, Councilman Cutler voted nay, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye. The motion passed by a majority of 6/1.

b. PUBLIC HEARING: Text Amendments to the following sections of the Zoning Ordinance
Tammie Clary, Director of Community Development and Planning

i.	Article 2.Q and P	Reclassify Accessory Apartments as Accessory Dwelling Units and Clarify Regulations
ii.	Article 3.O	Update the Floodplain Overlay
iii.	Article 3.S	Create the Pinewood Heights Industrial Park Overlay

Mayor Smith reported that there were three proposed text amendments, and he wanted to address each individually.

Mrs. Clary stated that the first was an amendment to Article 2, P and Q. She explained that the amendment would update accessory apartments to accessory dwelling units. She reported that they would still require an SUP, but removed the family and age requirements. She noted that it would also allow freestanding ADUs in addition to ADUs over detached garages, and not require the removal of the kitchen. Mrs. Clary continued that Article 2P changed accessory apartments to accessory dwelling units. She reviewed that the Planning Commission favorably recommended this application with the following conditions: removal of item 4, remove breezeway from 8a, 8c replace shall with "may." She said that the Town Staff also suggested removing the porch, patio, etc. from 8a.

Mayor Smith opened the public hearing.

Tonya Harwell - Mrs. Harwell of 224 Smith Drive in Smithfield explained that her adult daughter had a rare syndrome called Prader Willi, and she would like for her to be able to have some independence in her life, but still keep her safe. She listed out the different symptoms of the syndrome that her daughter lived with, including malignant hypothermia and hyperthermia, which required her to be at specific temperatures. She stated that her daughter wanted a little independence, and having a dwelling close by would enable her to ensure her daughter was in a safe environment.

Councilman Bowman reported that he had known Mrs. Harwell for about 25 years, and he could validate the challenges that she had encountered with her daughter's care.

Mrs. Harwell observed that there were a lot of things she could control in a smaller environment to ensure her daughter's safety and well-being.

Mayor Smith stated that there were no other members of the public signed-up and asked if anyone else wished to speak. Hearing and seeing none, he closed the public hearing.

Councilman Cutler made a motion to approve the text amendment to Article 2.Q and P. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote, with seven members present. Vice Mayor Harris voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, Councilwoman Butler voted aye, and Mayor Smith voted aye.

Mrs. Clary reported that the next proposed text amendment was to Article 3.O updating the Floodplain Ordinance. She stated that the Federal Emergency Management Agency (FEMA) updated the Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS). She said that the Town Staff utilized the provided model ordinance, which has already been approved by DCR (Department of Conservation and Recreation). She related that once approved by Town Council, it will need to be approved by FEMA. Mrs. Clary reviewed that the item appeared on the April 9th, 2024 Planning Commission agenda as a discussion item, with the Planning Commission favorably recommending the application with the condition that alternative language allowing accessory structures in the Special Flood Hazard Area (SFHA) be included. She noted that the Town Staff additionally suggested removing the language allowing accessory structures and instead prohibiting accessory structures in the SFHA, as that would be in conformance with our Chesapeake Bay Protection Area (CBPA) guidelines, which do not allow accessory structures in the RPA.

Mayor Smith opened the public hearing and confirmed that there were no members of the public signed up for comment. He asked if there was anyone present who wished to speak on the matter. Hearing and seeing none, he closed the public hearing.

Councilman Cutler made a motion to approve the text amendment to Article 3.O updating the Floodplain Ordinance. Vice Mayor Harris seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilman Brooks voted aye, Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye.

Mrs. Clary stated that the final proposed text amendment was to Article 3S to create a new Pinewood Heights Industrial Park Overlay (PHIPO) District. She reported that the item appeared as a discussion item at the July Planning Commission meeting, and a red-lined version was attached. She said that the Planning Commission made suggested changes as a discussion item and favorably recommended it to Town Council.

Mayor Smith opened the public hearing and confirmed that there were no members of the public signed up for comment. He asked if there was anyone present who wished to speak on the matter. Hearing and seeing none, he closed the public hearing. The Town Manager recalled that in Committees they had discussed the issue of shipping containers and thought they may want to talk about it further to decide if they wanted to allow any shipping containers in the district and, if so, in what cases they would be permissible. He noted that a SUP was currently required for anyone to use a shipping container in the industrial park.

Councilman Bowman stated that after considering the matter, he preferred that they continue to have shipping containers require an SUP in the industrial park. He added that they could revisit the issue at a later date if they felt that a change needed to be made.

Mayor Smith agreed that it would allow the Town Council to review each individual shipping container and its use.

Councilman Cutler asked what the cost would be to apply for a shipping container SUP.

The Town Manager detailed that it was $400 to apply for the SUP, and added at least three months to the process.

Councilman Cutler reported that he had driven through the area in question, and felt that it could be one of the best proactive projects that the town had pursued. He stated that he would like to see fewer impediments to the least earning small businesses wishing to establish themselves in that area, but he was understanding of the balance necessary. He questioned if they could come up with a better zoning ordinance to provide that balance instead of requiring the use of an SUP.

Councilman Bowman said that he was in agreement, however he did not want to pass it at the initial outset.

Councilman Cutler agreed that having it as a by-right use would be a bad idea, but he was not in favor of making it a barrier for entry for small businesses.

Councilman Bowman said that it was not his intent to create barriers. He clarified that the last thing he would like to see in the new industrial park was many shipping containers positioned in an unsightly manner.

Councilman Brooks asked how the Council felt about allowing one shipping container per lot by-right. He recognized that the area in question was pretty visible, and lots could be viewed in succession without delineation.

The Town Manager stated that in order to make shipping container use by-right he would want them to be shielded from view, and needed to be presentable. He offered that they could spend time crafting guidelines.

Councilman Cutler began to make a motion to table.

Councilman Bowman interjected that he did not want to table the issue, but wanted to approve the issue as initially presented without any reference to shipping containers. He related that the Town Staff and the Planning Commission could further work on the issue, but he wanted to pass the overlay.

Councilwoman Bebermeyer agreed that they should pass the overlay and then still work on some of the finer issues.

Councilman Bowman made a motion to approve the text amendment to Article 3S to create a new Pinewood Heights Industrial Park Overlay (PHIPO) District. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, Councilwoman Butler voted aye, Councilman Cutler voted aye, and Mayor Smith voted aye.

c. Motion to Approve the Town Council Summary Minutes from August 5th, 2025
William H. Riddick, III, Town Attorney

The Town Attorney recommended that minutes be approved with minor corrections.

Councilman Bowman made a motion to approve the amended minutes. Vice Mayor Harris seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilman Cutler voted aye, Vice Mayor Harris voted aye, Councilman Bowman voted aye, Councilwoman Butler voted aye, Councilman Brooks voted aye, Councilwoman Bebermeyer voted aye, and Mayor Smith voted aye.

Councilman Cutler stated that he was attaching a letter to request that the overpayments come back to the town and to the citizens, as well as stipulations for contract renewal that say the same for future motions once they had results of those audits.

Councilwoman Butler asked Councilman Cutler for clarification that the audit they were requiring would take an estimated 18 hours to review back to contract information in 2008.

Councilman Cutler confirmed that was the scope that was discussed.

Mayor Smith asked if they were breaking it into sections of 2008 through 2018, etc.

The Town Manager reported that was how the staff internal audit was being completed. He said that when he spoke with the auditing firm he would ask them to break out the information in the same way.

Councilwoman Butler confirmed that Councilman Cutler's last comment was not a motion, but an observation.

Councilman Cutler stated he had prepared a motion, but wanted to wait for the outcome of the audit in order to gauge the correct scop of repayment.

11. New Business

a. Additional Invoice Received Since Finance Committee Requiring Council Authorization: Michael Stallings, Town Manager

1. Lewis Construction of Virginia - Cypress Creek Bridge Waterline Work$ 25,923.60

The Town Manager reported that an additional invoice had been received after the Committee Meetings. He explained that as the work was being completed to the Cypress Creek Bridge, they were made aware of a piece of pipe that needed to be replaced through one of the abutments. He directed them to the associated invoice in their informational packet.

Councilman Brooks asked for more information about how the situation arose.

The Town Manager said that as work was progressing, Town Staff viewed a piece of pipe that went through one of the abutments, and wanted to have it replaced while they were completing bridge work. He noted that otherwise the Town would have had to shut a lane down in the near future to complete the necessary work, but they were able to utilize the existing lane closure to have it completed.

Ed Heide, Director of Public Works, clarified that the pipe was not leaking, but a seal that went through the abutment on the Red Point side of the bridge had failed, causing the ductal iron pipe to lay on the bridge abutment, which was causing a friction point which had the potential to cause a future leak. He said that with the bridge already partially closed, it seemed like a good time to address the issue. He observed that the cost for traffic control was almost the same as replacing the pipe itself.

Councilman Brooks made a motion to approve the invoice. Councilman Cutler seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilman Brooks voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, Councilwoman Bebermeyer voted aye, Councilwoman Butler voted aye, Councilman Cutler voted aye, and Mayor Smith voted aye.

b. Motion to Accept the Proposal for Audit Services Regarding Over-payment to the Town Attorney.

Councilman Cutler reported that the Council had spoken with the Town Manager regarding obtaining audit services due to the recent accounting situation they had encountered. He asked what the cost of those services.

The Town Manager reported that it was $4,100 with the firm Robinson Farmer Cox, the auditing firm that they used who is the Town's existing auditing firm. He stated the quote was for the firm to do an external audit to address the invoice situation.

Councilman Cutler asked if it was approved, would it be part of the Town's annual audit fee. The

Town Manager reported that cost would be separate and outside.

Councilman Cutler asked when the audit could be completed.

The Town Manager reported that it sounded like it could be started soon. He reviewed the quote and stated that the firm was estimating 18 hours of work, and he anticipated that within probably two weeks they would be able to turn it around.

Councilman Cutler made a motion to authorize the Town Manager to fund an audit of the billing between the Town of Smithfield and the Town Attorney's firm to determine the extent of any over/under payments since the contract start date in 2008. Councilwoman Bebermeyer seconded the motion.

Councilwoman Butler asked if reviewing contracts was a part of the Town's annual auditing process.

The Town Manager reported that during the audit process the auditors would pull a random sampling of invoices and check those against existing contracts. He stated that he had confirmed with Robinson Farmer Cox and they confirmed that over the years, the Attorney's contract had never been part of their random sampling.

Councilwoman Butler questioned that the Attorney's contract had not ever been pulled since 2008.

The Town Manager clarified that it would have had to have been pulled after 2018. He noted that prior to that time there was not the same type of auditing. He said that the Town also changed auditing firms occasionally as their contracts were reviewed every 5 years.

Councilwoman Butler expressed surprise that the contract had never been audited by any firm. She suggested that was something that they may need to require moving forward.

Councilman Bowman reported that he thought that the Treasurer would include what the Town was paying for outside contracted services as part of her monthly report.

Councilwoman Butler agreed it should be audited internally, but it should also have outside auditing as well.

The Town Manager related that as part of their audit this year he could have representatives from Robinson Farmer Cox present to the Council information about their process.

Vice Mayor Harris asked Councilman Cutler to share more information about why they were requesting this action.

Councilman Cutler said that the Town Staff were capable, certified professionals who could complete an audit. He added that with an outside audit there would be a second review to validate the Town's findings. He said that when they did such an action and validated the effectiveness of their own corrective actions, then they verified to Staff, the Town Council, and the public that the Town's funds were being managed appropriately.

Vice Mayor Harris said that this was a step that needed to be taken due to the amount of issues, problems, and misinformation.
Mayor Smith called for the vote, with seven members present. Councilman Brooks voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, Councilwoman Bebermeyer voted aye, Councilwoman Butler voted aye, Councilman Cutler voted nay, Councilman Brooks voted aye, and Mayor Smith voted aye. The motion passed unanimously.

13. Closed Session

Councilman Bowman expressed concern about the topic for Closed Session a. Closed Session for the Purpose of Discussing Personnel Matters, more specifically, the Four Appointed Positions by Town Council as follows: Town Manager, Town Treasurer, Town Clerk, and Town Attorney, Pursuant to Section 2.2-3711 A1 of the Code of Virginia. He asked if it was the Council's intent to talk with each one of the individuals during the current session.

Councilwoman Bebermeyer stated that it was only to discuss their evaluations.

Councilman Bowman noted the time and care that needed to be taken and questioned if that should be done at a later date, perhaps as part of Committees.

Mayor Smith stated that it was his understanding that there was to be light discussion and then they needed to get a response back to Human Resources by the 22nd for them to be present with them on the 26th.

Vice Mayor Harris said that he was in agreement that the appropriate attention should be given to the evaluations, especially given the amount of work Ashley Rogers, Director of Human Resources, had put into the endeavor.

Mrs. Rogers stated that the timeline was up to them and could be adjusted. She confirmed that the evaluations were scheduled to be delivered at the next Committee meeting. She related that there was discussion to be had, and the Council meeting had already been scheduled, which was why it was on the agenda.

Councilman Cutler asked for confirmation that it was basically for consolidation.

Councilman Bowman made a motion to go into Closed Session to discuss the identified closed session topics. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye.

Entered into Closed Session: 9:10 pm
Returned from Closed Session: 10:04 pm

Councilman Bowman made a motion to return to Open Session. Vice Mayor Harris seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye.

Councilman Bowman made a motion to certify that only the topics previously mentioned were discussed during the Closed Session. Councilwoman Bebermeyer seconded the motion.

Mayor Smith called for the vote, with seven members present. Councilwoman Butler voted aye, Councilwoman Bebermeyer voted aye, Councilman Brooks voted aye, Councilman Cutler voted aye, Councilman Bowman voted aye, Vice Mayor Harris voted aye, and Mayor Smith voted aye.

a. Closed Session for the Purpose of Discussing Personnel Matters, more specifically, the Four Appointed Positions by Town Council as follows: Town Manager, Town Treasurer, Town Clerk, and Town Attorney, Pursuant to Section 2.2-3711 A1 of the Code of Virginia.

b. Closed Session for the Purpose of Cost Negotiations for Red Point Taphouse Right of Way Valuations Pursuant to 2.2-3711 A3 of the Code of Virginia

c. Closed Session for the Discussion of Acquisition / Disposition of Real Property, more specifically, The Grange @ 10Main Pursuant to 2.2-3711 A3 of the Code of Virginia

12. Old Business

a. Agreement to refund SUP Advertisement Fee

Vice Mayor Harris stated that it was his understanding that the Town Attorney had looked into the legality of the Town's ability to repay the sum of $400 for a previous permit application.

The Town Attorney reported that they had come to the conclusion that there was nobody to object to the action. He explained that the fee was to cover the cost of the advertisement required.

The Town Manager confirmed that they had already voted to complete the action, and now they could write the check.

14. Adjournment

The meeting adjourned at 10:07 pm.

Michael Smith - Mayor

Lesley A. King
Lesley King - Town Clerk