

**TOWN OF SUMMERFIELD
CLOSED SESSION
MINUTES
October 9, 2007**

Present: Mark Brown, Dena Barnes, Bob Williams, Becky Strickland, John Wray, William (Bill) Hill, Town Attorney, Michael Brandt, Town Administrator, and Valarie Halvorsen, Town Clerk.

****NOTE:** In open session, John Wray made a motion to recess to closed session as provided under **NCGS 143-318.11** to consult with counsel at 9:59 pm. There was no discussion. The motion was seconded by Bob Williams and passed unanimously.

Bill Hill discussed litigation brought forth by Summerfield Properties, LLC against the Summerfield Town Council and Zoning Board. He feels that the inclusion of the Zoning Board is not proper and he just obtained a 30 extension to file an answer. He stated there are 2 possible types of relief: a declaratory judgment, which could declare the council action invalid, or a writ of certiorari, which would allow the court to review the council action.

Hill stated the opposing attorney, Mr. Allen, called him and wants to know if the council wants to "work it out." Hill said he can contact Mr. Allen to find out what he means, or let the court make the decisions. He stated the risk is they will get what they want and attorney fees, that it is a tough call because the applicant met the Zoning Board conditions, met the density requirements, and the "frog highway" provision. Hill further stated if they win the twin homes could be put back in as because they were on the application, and that attorney fees are almost always granted to the prevailing party, provided that party is not a municipality.

Hill said this is a legislative act and the burden is on the other party to prove impropriety, that the council decision will stand unless it is shown to be improper. The answer will be filed around Thanksgiving. He further stated there is no discovery under a writ of certiorari.

By consensus, Council reconvened to Open Meeting at 10:34 pm.



Mark Brown, Mayor



Valarie Halvorsen, Town Clerk