



Regular Council - Minutes Tuesday, January 2, 2018

COUNCIL PRESENT:

Mayor Gordon
Mayor Pro Tem Mulhollem
Council Member Bruton
Council Member Castleberry
Council Member Wilson

STAFF PRESENT:

C.L. Gobble, Administrative Consultant
Chip Hewett, Town Attorney
Kim P. Batten, Finance Manager/Town Clerk

COUNCIL ABSENT:

Council Member Jackson

MEDIA PRESENT:

None

1. WELCOME/CALL TO ORDER:

a) Call to Order & Invocation

Mayor Gordon wished everyone a Happy New Year and called the meeting to order at 6:37 p.m. in the Jeffrey D. Barnes Council Chambers at 14094 Buffalo Road, Clayton, NC and declared a quorum was present. Mayor Pro Tem Mulhollem offered the invocation.

b) Pledge of Allegiance

Mayor Gordon led the pledge of allegiance to the US Flag.

2. APPROVAL OF AGENDA:

a) No additions or changes noted.

Moved by: Council Member Wilson
Seconded by: Council Member Bruton

Agenda Approved

CARRIED UNANIMOUSLY

3. OPEN FORUM/PUBLIC COMMENTS:

(Maximum of 30 minutes allowed, 3 minutes per person)

a) Mr. Neal Brantley of 4796 Covered Bridge Rd., Clayton, NC read a commencement message written by Chief Justice John Roberts for his son's ninth grade graduation entitled "With Good Intentions, He Said, "I Wish You Bad Luck."

The message expressed encouragement and optimism and offered a universal lesson about the value to be found in generosity of spirit, and a quiet message which deserves to endure.

4. **CONSENT AGENDA:**

- a) **Approval of Minutes:
04 Dec 2017 Regular Council Meeting Minutes
18 Dec 2017 Work Session Minutes**

Moved by: Council Member Wilson

Seconded by: Mayor Pro Tem Mulhollem

Consent Agenda Approved

CARRIED UNANIMOUSLY

5. **RECOGNITION/PRESENTATION:**

- a) **Former Planning Board Member ~ Joel M. Pace**

Mayor Gordon recognized the absence of Joel Pace. He mentioned that the Town appreciated his service on the planning board and will recognize him at a later date.

6. **DISCUSSION AND POSSIBLE ACTION ITEMS:**

- a) **Discussion and Consideration of Appointing Two Board of Adjustment Alternates from Town Council Members**

Mayor Gordon stated that prior to the meeting, Council Member Castleberry and Council Member Bruton agreed to serve as alternate members of the Board of Adjustment.

Moved by: Mayor Pro Tem Mulhollem

Seconded by: Council Member Wilson

Council Member Bruton and Council Member Castleberry were approved as alternates on the Archer Lodge Board of Adjustment

CARRIED UNANIMOUSLY

7. **TOWN ATTORNEY'S REPORT:**

- a) **Duke Energy Progress, Inc.'s Governmental Attachment Agreement Review (Banners)**

Attorney Hewett reviewed the Duke Energy Progress, Inc. (DEP) Governmental Attachment Agreement and spoke with Marty Clayton, Duke Energy's District Manager. He explained that in order to attach the new Town Banners to their utility poles, the Town must sign the agreement. Mr. Hewett added that hopefully there wouldn't be an encroachment issue with NCDOT. Discussion followed. Ms. Batten followed saying that MOSCA would install the new Winter banners first, but haven't been delivered yet. Mayor Gordon asked for a motion to sign the Duke Energy Inc. Governmental Attachment Agreement.

DEP Governmental Attachment Agreement appears as follows:

GOVERNMENTAL ATTACHMENT AGREEMENT

This Agreement entered into, between Duke Energy Progress, Inc. d/b/a Duke Energy Progress, a North Carolina corporation, herein referred to as "Licensor", and the Town of Archer Lodge, herein referred to as "Licensee".

WITNESSETH:

That in consideration of the sum of one dollar (\$1.00), receipt of which is hereby acknowledged, Licensor hereby grants unto Licensee the right, privilege and license to install and maintain attachments upon those poles of Licensor, where such attachment will not interfere with the safe and economic operation of Licensor's facilities, or other facilities previously permitted to be attached to Licensor's poles; subject, however, to the following terms, covenants and conditions.

1. Licensee warrants that:

a. all attachments hereunder shall be installed and at all times utilized and maintained in accordance with the National Electrical Safety Code in its present form or as subsequently revised, amended, or superseded, with applicable state and federal laws and local ordinances, and shall at all times comply with generally accepted safety practices of the electric utility industry. It is further understood and agreed that Licensee shall be fully responsible for the installation, utilization and maintenance of said attachments, and that the installation, construction and maintenance of said attachments shall be at the sole risk, cost and expense of Licensee.

b. all attachments hereunder shall be installed at the lowest height consistent with Duke Energy Progress/NESC requirements and provide a minimum clearance of forty (40) inches below Licensor's neutral wire or secondary conductor. Conductors owned and maintained by Licensee shall have a minimum clearance of at least fifteen (15) feet above walkways and at least eighteen (18) feet above roadways. Governmental signs, banners, holiday decorations and other non-cable type attachments shall have a minimum clearance of eleven (11) feet above walkways and at least fifteen (15) feet above roadways.

c. Licensee shall exercise and shall require that its contractors, subcontractors, agents or representatives exercise proper precautions to avoid damage to facilities of Licensor and others supported on the poles, and Licensee shall remain responsible for any and all loss or damage caused by Licensee or its contractors, agents or representatives. Licensee shall make an immediate report to Licensor of the occurrence of any damage and hereby agrees to reimburse Licensor for any reasonable expense incurred in making repairs. Licensee hereby assumes full responsibility for any and all damages to its own plant or facilities and damages to any appliances or equipment of any subscriber to Licensee's service arising from accidental contact with Licensor's energized conductors.

d. Licensee shall be solely responsible for obtaining for itself all easements, licenses and property rights, and in complying with any state or federal regulatory requirements as may be necessary for Licensee's placement and maintenance of its

attachments to Licensor's Poles located on public or private property. Nothing in this Agreement shall constitute or create an assignment to Licensee by Licensor of any easement or license held by Licensor or of any rights under any easement or license held by Licensor.

e. Licensee shall identify all facilities of Licensee installed on Licensor's poles by tagging, marking, etc. in accordance with the latest requirements of Licensor.

2. Licensee covenants and agrees that nothing herein contained or contemplated is intended to increase Licensor's risk or liability for personal injury or death or for property damage and it is hereby expressly understood and agreed that Licensor does not assume any such additional risk; and Licensee, for itself and its successors and assigns, agrees that it does hereby relieve Licensor of and absolve and indemnify Licensor from all such risk and liability arising or growing out of the use of, or entry upon, or occupancy of Licensor's poles and facilities as provided herein or breaches of the warranties contained in this Agreement by Licensee, its licensees, its contractors, agents, employees, or representatives. The obligation of the Licensee to indemnify, defend and hold harmless the Licensor under this Agreement for tort claims is limited to the same extent that the Licensee would otherwise be obligated directly to third persons under existing law or to the extent provided under applicable state law, whichever is less. This shall not be construed as waiving any defense or limitation which the Licensee may have against any claim or cause of action by any persons not a party to this Agreement nor shall it be construed as a waiver of the Licensee's sovereign immunity. This limitation shall not be construed to limit Licensee's indemnification of Licensor for actions other than tort claims. However, Licensee's liability to Licensor under this Agreement shall be limited to the extent of coverage under the insurance requirements set forth in this Agreement.
3. If any member of the public, or of the Licensee and its contractors is injured or killed, or if any property including Licensor's or the public's is damaged in the course of work being performed under the provisions of this Agreement, Licensee shall notify Licensor's Claims Department at (919) 546-7549. Such notification shall be made immediately upon knowledge of such an event, either in person or by telephone and promptly confirmed in writing within 24 hours and shall include all pertinent data including, but not limited to, name of injured party, location of accident, description of accident, nature of injuries, names of witnesses, disposition status of injured or deceased person(s).
4. During the term of this Agreement and for a period of two years subsequent to its termination, Licensee shall maintain and shall require of its contractors, subcontractors, agents or representatives who perform work under this Agreement for the benefit of Licensee to maintain the following minimum levels of insurance on forms and with insurers acceptable to Licensor:
 - (1) Workers Compensation Insurance - Statutory limits.
 - (2) Employer's Liability Insurance - \$1,000,000 each occurrence and \$1,000,000 each employee as respects disease claims.

- (3) Commercial General Liability Insurance, including blanket contractual liability - \$5,000,000 combined single limit per occurrence.
- (4) Automobile Liability Insurance - \$2,000,000 combined single limit per accident.

Prior to the commencement of any attachment of facilities or any work hereunder Licensee and its contractors shall furnish Licensor with certificates of insurance evidencing the required insurance coverage which shall include a provision that such insurance shall not be canceled without thirty (30) days written notice to Licensor. The contractual liability coverage shall insure the performance of all obligations assumed hereunder, including specifically, but without limitation, the indemnity provisions in this Agreement. All policies, except the workers compensation policy, shall name Licensor as an additional insured. All policies of Licensee and its contractors, subcontractors, agents or representatives shall include a waiver of subrogation in favor of Licensor. Failure of Licensee to maintain adequate insurance coverage shall not relieve Licensee of any contractual responsibility or obligation. The requirement, provided herein as to type, limits, and coverages to be maintained by Licensee is not intended to, and shall not in any manner, limit or quantify the liabilities and obligations assumed by Licensee.

- 5. Beginning with the commencement date of this Agreement, the submittal of an *Pole Data Sheet - Attachment Request* form shall be the exclusive procedure to be used by Licensee in obtaining permits to attach facilities to Licensor's poles. No attachment shall be made by Licensee prior to receipt from Licensor of an approved permit. All Pole Data forms shall be submitted to:

Duke Energy Progress
Joint Use - NC 4
410 S Wilmington Street
Raleigh, NC 27601

- 6. Licensor shall have the right, but not the obligation, to conduct a pre-attachment field inspection of all proposed attachment locations described in the permit application. Licensor's inspections shall not excuse Licensee's non-compliance with, or inspection obligation under, this Agreement. Licensee shall reimburse Licensor upon written demand for all costs of such inspection. Failure by Licensor to assess or collect such costs at the time of such inspection shall not constitute a waiver of Licensor's right to assess or collect such costs.
- 7. Licensee's facilities shall be installed in accordance with any Licensor specifications and/or drawings communicated to Licensee. During the term of this Agreement and prior to any construction, Licensor shall review and approve any changes to such specifications and/or drawings. In the event that any poles of Licensor to which Licensee desires to make attachments are inadequate to support Licensee's facilities in accordance with the aforesaid specifications, Licensor shall so notify Licensee in writing including a detailed description of the make ready work necessary to provide adequate facilities, together with the estimated cost thereof, to Licensee, and any other

specifications with which the attachment must comply as a condition(s) of the permit approval. If Licensee still desires to make the attachments and so advises Licensor in writing, Licensee shall thereby agree to reimburse Licensor for the entire cost and expense thereof including, but not limited to, the increased cost of larger poles, cost of removal less any salvage value and the expense of transferring Licensor's facilities, from the old to the new poles. Upon receiving Licensee's agreement to reimburse Licensor for any and all costs to support Licensee's facilities, Licensor shall replace such inadequate facilities. In the alternative, Licensor may, in Licensor's sole discretion, choose to authorize Licensee (or Licensee's authorized contractors, subcontractors, agents or representatives) to carry out the work requested by Licensee. In that event, Licensee (or Licensee's authorized contractors, subcontractors, agents or representatives) shall undertake such work only after submitting written plans to Licensor describing the work to be done and receiving written approval of such plans from Licensor. In such event, Licensee shall pay all costs of such work and shall be required to acquire all necessary permits or authorizations from Licensor, the state or federal government as may be required. For the avoidance of doubt, all Licensee covenants and agreements outlined in Section 2 of this Agreement shall specifically apply to any Licensee (or Licensee authorized contractors, subcontractors, agents or representatives) work performed under this Section 7. Upon completion, Licensor shall notify Licensee of Licensee's authorization to attach. Where Licensee's desired attachments can be accommodated on present poles of Licensor by rearranging Licensor's facilities thereon, Licensee shall pay Licensor for the entire cost and expense of completing such rearrangement. Licensee shall also make arrangements with the Owners of other facilities attached to the poles for any expense incurred by them in transferring or rearranging the other facilities. Any additional support of poles, including, but not limited to, guying required to accommodate the attachments of Licensee shall be provided at the expense of Licensee.

8. If it becomes necessary or advisable for Licensor to incur expenses in connection with the proper installation and/or maintenance of Licensee's facilities, then Licensee shall reimburse Licensor all costs incurred by Licensor and shall make payment promptly upon presentation of bills therefor.
9. If it becomes necessary for Licensor to transfer, replace or relocate the poles on which Licensee has attached their facilities, Licensee shall be responsible for transferring, replacing or relocating its facilities to the new pole(s) according to Licensor's schedule, and the cost of all such transfer work shall be borne by the Licensee.
10. Licensor retains the right to remove Licensee facilities if necessary for any reason related to safety, engineering, equipment operation or provision of electric service to customers.
11. Licensor shall have the right, but not the obligation, to conduct a post-attachment field inspection of all proposed attachment locations described in the permit application. Licensor's inspections shall not excuse Licensee's non-compliance with, or inspection obligation under, this Agreement. Licensee shall reimburse Licensor upon written demand for all costs of such inspection. Failure by Licensor to assess or collect such

costs at the time of such inspection shall not constitute a waiver of Licensor's right to assess or collect such costs.

DANGER! NOTICE TO LICENSEE AND ITS CONTRACTORS

12. *Electricity is a Natural Hazard:* Licensee and its contractors are hereby advised that the generation, transmission and/or distribution of electrical energy involves the handling of a natural force which, when uncontrolled, is inherently hazardous to life and property. Licensee and its contractors are further hereby advised that, due to the nature of the work of attaching its facilities to Licensor's poles hereunder, other hazardous or dangerous conditions (not necessarily related to the inherent danger of electricity) may also be involved in the work. Accordingly, prior to the commencement of the attachment of any Licensee facilities to Licensor's poles, Licensee and its contractors shall inspect the work area on or near Licensor's poles specifically to ascertain the actual and potential existence and extent of any hazardous or dangerous conditions. It shall be the sole and exclusive duty of the Licensee and its contractors to instruct its supervisors and employees, with respect to any such conditions and the safety measures to be taken in connection therewith; and during the course of the work, Licensee and its contractors shall take all such measures as may be deemed necessary or prudent to protect and safeguard the person and property of their employees and of the general public against all hazardous or dangerous conditions as the same may arise.
13. *Precautions before Commencing Work:* Licensee shall not cause or permit any person(s) to climb Licensor's Poles who does not appreciate the danger of working near conductors and appurtenances charged or liable to be charged with electricity. Licensee and its contractors shall comply with all the requirements of the Occupational Safety and Health Administration (OSHA), the requirements of the North Carolina Overhead High-Voltage Safety Act and any other requirements and practices expected when working near electricity. Licensee and its contractors shall, before climbing poles or structures, exercise their best efforts to make certain that the poles or structures are strong enough to safely sustain workmen's weight in the performance of the required work on the poles or structures. Licensee and its contractors shall have the affirmative duty to identify and comply with pole marking or badging procedures undertaken by Licensor (or its contractors) in the ordinary course of business, which procedures may indicate a hazardous pole condition prohibiting any work on such poles. All work designated in any Application and Permit under this Agreement to be performed near energized electrical conductors shall be performed under the conditions and at the place as stated, but only with the specific understanding that if Licensee and its contractors in their sole discretion regard the location where such work is to be performed, or where such work is being performed, as an unsafe place to work, Licensee and its contractors shall immediately cease and desist from performing all work in such hazardous area. Licensee shall then request, in writing, that Licensor make such change or changes as may be necessary or desirable to render the place of performance at the job site a safe place to work for Licensee and its contractors before Licensee and its contractors are permitted to proceed with any work.

14. *Bonding to Electric Company Ground:*

- a. Definitions: For this section, the following terms when used herein shall have the following meaning:

"Vertical ground wire" shall mean a wire conductor of Licensor attached vertically to the pole and extended from Licensor's multi-grounded neutral (defined below) through Licensee's space to the base of the pole where it may be either butt wrapped on the pole or attached to a grounded electrode.

"Multi-grounded neutral" shall mean Licensor's conductor located in Licensor's space which is bonded to all Licensor's vertical ground wires.

"Bonding Wire" shall mean a number 6 AWG copper wire conductor connecting equipment of Licensee and Licensor to the vertical ground wire.

- b. Installation of Bonding Wire: At the time Licensee support wire and communication cable are installed, Licensee shall install a bonding wire on every pole where a vertical ground wire exists, in accordance with NESC. Any piece of Licensee equipment attached to Licensor's pole which does not have a vertical ground wire shall be bonded to Licensee cable support wire and properly grounded. Drawing 09.04-02 attached hereto and incorporated herein, unless otherwise specified by Licensor, shall be representative of Licensee's bonding requirement of its Facilities to Licensor's Distribution Poles.

- c. Absolute Grounding Requirement: Under no condition may Licensor's vertical ground wire be broken, cut, disconnected, severed, removed, unbonded or damaged. If Licensor's vertical ground wire is broken, cut, disconnected, severed, removed, unbonded or damaged, no work shall be allowed on Licensor's poles until Licensor is notified, in writing, and the condition is corrected. Licensee and its contractors shall assure that Licensee's facilities constantly remain properly grounded, either to Licensor's vertical ground wire or through the use of jumper cables or temporary grounds until such permanent ground is affixed.

- d. Additional Bonding Precautions: Licensor reserves the right, but is not obligated to, install, at Licensee's expense, a bonding wire to any piece of Licensee equipment where, in the opinion of Licensor, a safety hazard exists or may exist in the future.

- e. Licensee's Duty to Warn: It shall be the responsibility of Licensee and its contractors to warn and instruct its personnel working on Licensor's poles of the requirement of bonding its wires to Licensor's vertical ground wire and the dangers associated with ungrounded and unbonded facilities and to furnish adequate protective equipment to protect its personnel from bodily harm during work on its communications facilities. Licensor assumes no responsibility for warning, instructing, for furnishing equipment to, or for the training or job qualifications of Licensee and its contractors or their personnel, including supervisors or employees working on Licensor's poles.

15. This Agreement shall be effective as of the date of acceptance by Licensee indicated below and shall continue for a period of five (5) years from the date of execution unless earlier terminated by either party in accordance with the provisions herein. This

Agreement shall be renewed upon the same terms and conditions at the end of the initial term unless either party, at any time and whether with or without cause, cancels and terminates this Agreement, either in whole or in respect to any particular attachment hereunder, by mailing to the other a written notice thirty (30) days in advance of its intent to do so. Upon such termination Licensee shall within thirty (30) days complete the removal of its facilities from the property of Licensor and for failure to do so, Licensor may, at Licensee's sole expense, immediately remove said facilities of Licensee without any liability for severance, loss, or damages to Licensee or any person or persons whatsoever; and thereafter, both parties shall be relieved of and from all obligations hereunder, in respect to those facilities and attachments so terminated and removed, except such as may have accrued prior to such termination.

16. Neither this Agreement nor any part or rights thereunder, shall be assigned by Licensee without the written consent of Licensor having first been obtained.
17. This Agreement, upon its approval and execution by the parties hereto, shall supersede the previous attachment agreement between the parties hereto of the 3rd day of January, 2018. All attachments of Licensee previously approved by Licensor shall be incorporated into this Agreement, subject to the requirements specified herein. It is agreed that all existing attachment agreements, written or oral, between the parties hereto for the purposes set forth herein are, by mutual consent, hereby canceled and terminated.
18. This Agreement and the rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any principles of conflicts of laws where the giving of effect to any such principles would result in the laws of any other state or jurisdiction being applied to this Agreement.
19. Nothing herein contained shall be construed to confer on Licensee an exclusive right to make attachments to Licensor's Poles or confer any rights to any third party not specifically identified herein by name.
20. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
21. LICENSEE agrees to become a member of the National Joint Utilities Notification System (NJUNS) within sixty (60) days of the date of this Agreement. LICENSEE shall maintain the necessary equipment required to receive transmissions from NJUNS. Membership and instructional information are available at www.web.njuns.com.

Page 7

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, by their respective officers thereunto duly authorized on the dates indicated below.

Duke Energy Progress
LICENSOR

By _____
Robert Sipes
VP Business Services

Date _____

Town of Archer Lodge
LICENSEE

By Michael A. Gordon
Michael A. Gordon
Mayor

Date 3 JAN 18

Kim Batten
Witness



Moved by: Council Member Castleberry
Seconded by: Council Member Bruton

**Approved Mayor Gordon to sign Government Attachment Agreement
between Duke Energy Progress and the Town of Archer Lodge**

CARRIED UNANIMOUSLY

b) Discussion of filling Mayor vacancy

Attorney Hewett shared a blog written by Frayda Bluestein, a Distinguished Professor of Public Law and Government at UNC School of Government, regarding filling a vacancy on the Town Council. He discussed G.S. 160A-63 in depth. Discussion followed regarding the different options available to Council. Also, Attorney Hewett clarified the role of Mayor Pro Tempore following the Mayor's resignation.

c) Proposed timeline for Town Council

Attorney Hewett presented a tentative timeline for Town Council. Several scenarios regarding the resignation and replacement of the mayor and the possibility of a vacant Council seat. Discussion followed. Town Council agreed to discuss individuals to fulfill the term as Mayor at the January 16, 2018 Work Session. Afterwards, at the Regular Town Council meeting on February 5, 2017, Town Council may accept the Mayor's resignation and then move forward to replace Mayor's position. Mayor Gordon suggested that Council confer with other fellow Council members before the Work Session, and also, confirm approval from potential candidates before nominating them.

8. ADMINISTRATIVE CONSULTANT'S REPORT:

a) Update on MAPS Group Process

Mr. Gobble shared the MAPS Group's **DRAFT** Personnel Policy and **DRAFT** Classification & Pay Study recently received. He reported that he, the Mayor and Ms. Batten will soon meet with Becky Veazey with the MAPS Group regarding the draft. Mr. Gobble commended Council for being one more step up the ladder for getting municipal documents completed. He hopes that Ms. Veazey can present it at the February 5, 2017 Town Council Meeting.

9. VETERAN'S COMMITTEE REPORT:

a) No Report.

10. MAYOR'S REPORT:

a) No Report

11. COUNCIL MEMBERS' REMARKS:
(non-agenda items)

a) Council Members wished all a Happy New Year while Mayor Pro Tem added that the upcoming transition on the Town Council will be handled as a team. In closing, Council Member Castleberry wanted an update on the State's \$50K Park Grant endorsed by NC House of Representative Donna White for the Town and Mayor Gordon advised Council the Grant was on hold since the Town hasn't purchased park land.

12. ADJOURNMENT:

a) No Further Business

Moved by: Council Member Castleberry

Seconded by: Mayor Pro Tem Mulhollem

Meeting adjourned at 7:45 p.m.

CARRIED UNANIMOUSLY



Matthew B. Mulhollem, Mayor Pro Tem



Kim P. Batten, Town Clerk

